

**Annex 37**

“Civil Aviation Caretaker Authority for Somalia (Project SOM/03/016), Project Evaluation: Final Report”, *UN Development Programme, ICAO*, 24 July 2009 (Extracts)



UNITED NATIONS DEVELOPMENT PROGRAMME  
INTERNATIONAL CIVIL AVIATION ORGANISATION



**CIVIL AVIATION CARETAKER AUTHORITY  
FOR SOMALIA**  
(PROJECT SOM/03/016)



**PROJECT  
EVALUATION**

**Final Report**

**24 July 2009**

**EVALUATION TEAM**

*Daher M. Calin – Somali National Evaluator*

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# Executive Summary

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## Background

CACAS project SOM/03/016/F/ was approved in December 2003 as a successor to SOM/96/002, which was active from 1996, both with the main mandate of ensuring the continued availability of essential safety services for international civil aviation in the Mogadishu FIR “in the absence of a functioning and recognised Government of Somalia.”

Two subsidiary objectives were defined initially:

- (1) the rehabilitation of the civil aviation services in Somalia and
- (2) the establishing of the nucleus for a future civil aviation administration.

## Key functions

The following were defined as key functions or immediate objectives (Project Document par. A.4.2 and Annex VII refer):

1. To ensure an adequate level of safety and service for air transport operations;
2. Providing aviation facilities and services essential for international air transport operations and of humanitarian and rehabilitation activities;
3. Accelerated development of skilled manpower;
4. Productivity from resources allocated and to commercialize self-funding;
5. Cost recovery.

## Purpose of the Evaluation Mission

The mandate of the evaluation missions was succinctly stated as to:

- A. Assess the status of the implementation of the five objectives (i.e. key functions/immediate objectives) of the Project and
- B. Determine if the objectives of the project and the mission of CACAS are still adequate and relevant in the current context.

## Methodology

To carry out its mandate the mission conducted interviews with the main stakeholders concerned, namely the CACAS administration, UNDP, and ICAO. Questionnaires were prepared for, and direct interviews were held with, the authorities responsible for aviation in the Federal Government of Somalia and in the Regions of Puntland and Somaliland and with the main users’ representatives, AFRAA, IATA and KAAO, and the humanitarian flights coordinating agency UNHAS. Finally, the provision of service provided by CACAS was analysed and observed, and the existing project provided or managed infrastructure and systems in Nairobi, Berbera, Bossaso and Hargeisa were observed and assessed.



## Key findings

The analysis of the Project Document revealed considerable ambiguity concerning the scope of the Project. The External Evaluation conducted in 2000 formulated a number of recommendations, the main one in the sense of removing the mandates of 'authority' and 'development' from the scope of the Project.

CACAS appears to, in the most, have confined its activities to this revised mandate, while other stakeholders, and especially the local authorities, continued seeing CACAS as a development agency. Much of the criticism originates from this misunderstanding.

In respect to mandate A. of the mission, to assess the status of implementation of the five immediate objectives/key functions, key findings were:

- Objectives 1 and 2, availability of systems and services, the users, stated that, where available, the FIS provided is adequate. However, they would like to see a higher level of service of AIS, ATC, OPMET and the implementation of VHF, NAV AIDS, and VHF air ground communications.
- Objective 3, accelerated development of skilled manpower, the views of the Somali authorities were that more should have been done, and that all the positions should be filled by Somalis.

The Project Document envisaged the training of personnel for the continued operation of the air transport system and to facilitate the integration of Somali civil aviation personnel.

- Objective 4, revenue generation: for CACAS it has been limited to air navigation charges whilst airports do collect and retain their own charges. There is a level of cross-subsidisation of Air Navigation Charges to airports as (1) consultancies and non-ANS systems and services provided to airports are not charged and (2) some users do not pay ANS charges to CACAS alleging they are paid to local authorities.
- Objective 5, cost recovery, has been achieved through the levying of air navigation charges collected through IATA. There is a substantial amount of arrears and bad debts and efforts to collect these have stalled.

In respect to mandate B of the mission, determine if the objectives of the project and the mission of CACAS are still adequate and relevant in the current context, the findings were:

- The Transitional Federal Government of Somalia (TFGS) considers that the mandate of ICAO to provide services in the Mogadishu FIR lapsed with the establishment of an internationally recognised Somali Government, and that therefore the Flight Information Centre should operate under their authority;
- The regions expressed the desire (not to say the intent) of taking over the provision of Air Traffic Services in the airspace over the territory under their control, under the argument of inadequate level of service, lack of progress in infrastructure development and alleged lack of transparency in the allocation of resources;



- All levy criticism at the lack of support to their own endeavours, mainly in respect to infrastructure development, especially of airports, which they continue to perceive as a CACAS mandate.

## Conclusions

From the information collected and observations, the contradictions and ambiguity in the mandate of CACAS are at the root of much of the mistrust of the federal and regional authorities towards the project. This source of misunderstanding should be removed without delay.

In what concerns the five key-functions, the mission believes that some of the criticism of both the users and the authorities alike is justified. A more proactive approach could have led to a more accelerated infrastructure development, namely by the deployment of some VHF, NAVAIDS and/or GNSS procedures, the improvement in the level of services, namely the provision of some ATC, better AIS and better AEROMET, and in a more accelerated empowerment of Somali nationals. It is to be recognised, however, that capital investment projects are largely dependent upon the availability of financial resources.

The evaluation team was left with the perception that more involvement in the project by ICAO and UNDP could have resulted in the mitigation or elimination of many of the reported problems and shortcomings.

Finally, and what concerns the future, the demands of the Transitional Federal Government and the regions for ownership cannot be ignored. These demands must be dealt with by dialogue, addressing legitimate concerns while maintaining the integrity of the Mogadishu FIR. ICAO and UNDP should take steps aimed at piloting the transition with a view to precluding disruptions in essential services.

## Key recommendations

The recommendations cover:

- A. Project performance in the sense of ensuring better effectiveness under the existing framework by clarifying the mandate, improving project control, and instilling a sense of ownership by Somalia,
- B. Institutional issues and the setting in motion the transition towards the handing over responsibility for the provision of services to Somalia through:
  - a. Promotion of consultations;
  - b. Establishment of a Steering Committee to provide the framework for the conduct of the consultations.
- C. Improvement of service provision and the infrastructure development.



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## Annex V – Data Gathering Forms

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**Transitional Federal Government of Somali Republic**

Honorable Ali Ahmed Jama, Minister of Air & Land Transport

**Somali Civil Aviation Management Authority (SCAMA)**

Capt. Mohamoud Sh. Ali, General Manager

**Puntland State of Somalia**

Honorable Ahmed Elmi Osman, Minister of Civil Aviation & Airports  
 Mr. Abdulkadir Sh. Mohamud, Director General of Civil Aviation & Airports  
 Mr. Abdullahi Farah Essa, Director of Civil Aviation & Airports  
 Mr. Amin Abdullahi Hagai, Director of Planning, Air Transport, & Statistics  
 Mr. Abdulmajid Samater, Bossaso Airport Manager  
 Mr. Siciid Yusuf, Bossaso Airport Deputy Manager

**Somaliland**

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 Honorable Ahmed Omar Mohamed, Vice-Minister of Civil Aviation & Air Transport  
 Mr. Abdi Ali Obsieh, Director General, Ministry of Civil Aviation & Air Transport  
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**International Air Transport Association (IATA)**

Mr. Gaoussou Konate, Regional Director Safety, Operations & Infrastructure, AFI

**African Airlines Association (AFRAA)**

Mr. Christian E. Folly-Kossi, Secretary General  
 Mr. Elijah Chingosho, Technical and Training Director

**Kenya Association of Air Operators (KAAO)**

Col. E.K. Waithaka, Chief Executive

**Africair, Inc.**

Capt. T.A.D. Watts, Managing Director

**ALS Ltd. (Aircraft Leasing Services)**

Mr. Ramesh Peshavaria, Managing Director

**Bluebird Aviation, Ltd.**

Capt. J.F. Mahommed, General Manager





## Annex V – Data Gathering Forms



**UNDP/ICAO EVALUATION  
CIVIL AVIATION CARETAKER AUTHORITY FOR SOMALIA  
CACAS SOM/03/016/F/01/15  
June 8 – July 3, 2009**

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**EASTERN & SOUTHERN AFRICAN (ESAF) OFFICE EVALUATION FORM**

The Team will primarily evaluate the implementation status of the five key objectives of the current CACAS project, i.e.:

- (1) Provision of Air Traffic Services to aircraft operating in the Mogadishu FIR and the collection of revenue through the application of aeronautical charges
- (2) Provision of technical and operational assistance at designated airports and to local administrations in Somalia
- (3) Establishment and operation of a nucleus Civil Aviation Administration for the functioning of CACAS
- (4) Formulation and implementation of a training programme for national personnel
- (5) Formulation of procedures and draft regulations required for the operation and maintenance of civil aviation activities.

The following is an outline of key issues to be discussed and specific information to be obtained. Paragraph & page numbers refer to the UNDP Project Document which should be referred to.

**A.4. Institutional Framework** (page 5)

- A.4.2.1. To ensure that an adequate level of safety and service is provided for air transport operations
- A.4.2.2. To efficiently provide, operate, maintain or develop aviation facilities and services that are essential to the conduct of international air transport operations and of humanitarian emergency relief and rehabilitation activities in Somalia.
- A.4.2.3. To initiate and maintain programmes for the accelerated development of skilled manpower.
- A.4.2.4. To obtain maximum productivity from the resources allocated to CACAS and to commercialise self-funding and/or profit-making system components where practicable.
- A.4.2.5. To recover the costs of facilities and services that are provided to support air transport requirements.

## Annex V – Data Gathering Forms

**A..5. Terms of Reference** (page 7)6. A..5.2. **Administration**

i The Authority will operate as a project under the direction of the TCB, ICAO and .in close cooperation with the ICAO Regional Office in Nairobi.

iv ICAO shall appoint a suitably qualified Project Manager, for the management and coordination of the activities of the Authority in accordance with its defined role and immediate objectives.

**FINANCIAL**A..5.3. **Financial** (page 8)

Is the UN/UNDP/IATA agreement for revenue collection being adhered to?  
Would you suggest any changes to these procedures?

B..2.7. **Financial Resources** (page 11)

1. Air Navigation Charges - International Traffic
2. Air Navigation Charges - National Airports
3. ICAO Trust Account – Somalia

B..4.1.2. **Operation** (page 12)

Operational assistance to designated airports....together with the provision of technical assistance, involves also the creation of a potential for local revenue collection....

B..4.1.4. **Resource Utilization** (page 12)

In as much, as the Authority shall be a self-financing body, its operation must be sustained from revenue received. Implementation of the project is proposed in cooperation with UNDP to underwrite the required funding for the project until such time as sufficient funds have accumulated in the ICAO Trust Fund.

B..4.1.5. **Cost Recovery** (page 13)

The underlying principle is the application of charges for services provided. Implementation of the cost recovery concept for international air transport operations is now an ongoing process involving IATA as the collection agency.

**B..2 End-of-Project Situation** (page 10)

- B..2.1. Aviation Infrastructure
- B..2.2. Organizational Structure.
- B..2.3. Facilities
- B..2.4. Services
- B..2.5. Procedures
- B..2.6. Civil Aviation Personnel

## Annex V – Data Gathering Forms

B..2.8. **Transitional Measures** (page 12)

...it is planned that on establishment of a National Government of Somalia all Project activities and assets will be transferred to the designated Government Aviation.

B..4. **Strategy & Proposed Implementation Arrangements** (page 12)B..4.1.1. Flight Safety

Have facilities and services been regularly inspected by expert national and international staff?

B..5. **Role of External Co-operation in Attainment of Project Objectives** (page 14)B..5.1. Donor Community**H. PROJECT REVIEW, REPORTING AND EVALUATION** (page 18)

H..1. It appears that the recommendations of the May 2000 UNDP/ICAO evaluation have been only partly implemented. What are your views?

H..3. To what extent has UNDP formally been visiting the project for purposes of monitoring and reviewing?





## Annex V – Data Gathering Forms



**UNDP/ICAO EVALUATION  
CIVIL AVIATION CARETAKER AUTHORITY FOR SOMALIA  
CACAS SOM/03/016/F/01/15  
June 8 – July 3, 2009**

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**CACAS & MOGADISHU FIC EVALUATION FORM**

The Team will primarily evaluate the implementation status of the five key objectives of the current CACAS project, i.e.:

- (6) Provision of Air Traffic Services to aircraft operating in the Mogadishu FIR and the collection of revenue through the application of aeronautical charges
- (7) Provision of technical and operational assistance at designated airports and to local administrations in Somalia
- (8) Establishment and operation of a nucleus Civil Aviation Administration for the functioning of CACAS
- (9) Formulation and implementation of a training programme for national personnel
- (10) Formulation of procedures and draft regulations required for the operation and maintenance of civil aviation activities.

The following is an outline of key issues to be discussed and specific information to be obtained. Paragraph numbers refer to the UNDP Project Document which should be referred to.

**A.4. Institutional Framework** (page 5)

A.4.2.1. To ensure that an adequate level of safety and service is provided for air transport operations

A.4.2.2. To efficiently provide, operate, maintain or develop aviation facilities and services that are essential to the conduct of international air transport operations and of humanitarian emergency relief and rehabilitation activities in Somalia

What initiatives were undertaken in the following Categories?

A – Initiatives with safety implications

## Annex V – Data Gathering Forms

B – Initiatives to maintain existing system components and standards

C – Initiatives to increase system capacity

D – Initiatives addressing critical management functions and efficiency

A.4.2.3. To initiate and maintain programmes for the accelerated development of skilled manpower.

A.4.2.4. To obtain maximum productivity from the resources allocated to CACAS and to commercialise self-funding and/or profit-making system components where practicable.

A.4.2.5. To recover the costs of facilities and services that are provided to support air transport requirements.

**A..5. Terms of Reference** (page 7)

Which TORs have been given the most emphasis? Which ones the least? From the existing mandate what would you propose be modified?

A..5.1. Operation

Please provide traffic statistics.

A..5.2. Administration

A..5.3. Financial

1. Are the UN/UNDP/IATA procedures for revenue collection being fully observed?
2. Are there any constraints or shortcomings? Would you suggest any changes to these procedures?
3. Can you provide revenues and expenditure accounts, including any financial commitments the Project Manager made for emergency provisions for 2007 & 2008?

**B..2 End-of-Project Situation** (page 10)

Please indicate activities undertaken to address the following requirements in the Project Document.

B..2.1. Aviation Infrastructure

B..2.2. Organizational Structure. Please provide current organizational chart.

B..2.3. Facilities

B..2.4. Services

B..2.5. Procedures

B..2.6. Civil Aviation Personnel

B..2.7. Financial Resources

1. Air Navigation Charges - International Traffic
2. Air Navigation Charges - National Airports
3. ICAO Trust Account – Somalia

B..2.8. Transitional

What measures or plans regarding the transfer of activities and assets on establishment of a National Government of Somalia have been taken ?

## Annex V – Data Gathering Forms

**B..4. Strategy & Proposed Implementation Arrangements** (page 12)1. Flight Safety

Have facilities and services been regularly inspected by national and international staff?

Has technical assistance been provided to designated airports to ensure safety criteria is met?

2. Operation

Which essential facilities and services have been provided and/or are being maintained?

To which airports has operational assistance been provided and in what form?

Actions taken or potential for local revenue collection?

3. Training

Please provide a list of training activities undertaken by the Project (courses, seminars, workshops, exercises, etc.) indicating location, sponsor, duration and staff members involved.

Have these been consistent with the priorities specified in Annex IV, EFFECTIVE PARTICIPATION of NATIONAL STAFF and TRAINING PROGRAMME?

3. Resource Utilization

Is CACAS self-financing?

4. Cost recovery

Has anything been done concerning airport charges including charging of UN and other Agency flights?

## B..4.2.

To what extent have local inputs been sought or obtained for designated airports?

Is the current “salary structure based on regional parity and overall market values”?

**B..5. Role of External Co-operation in Attainment of Project Objectives** (page 14)B..5.1. Donor Community

Highlight any activities undertaken in developing requirements and finding donor financing?

B..5.3. United Nations Volunteers (UNV)

Are UNVs employed? In what capacity?

**H. PROJECT REVIEW, REPORTING AND EVALUATION** (page 18)

H.1. It appears that the recommendations of the May 2000 UNDP/ICAO evaluation have been only partly implemented. What are your views?

H.2. Has the project been liaising with the users through IATA?

H.3. To what extent has UNDP formally been visiting the project for purposes of monitoring and reviewing?



## Annex V – Data Gathering Forms

**CACAS OPERATIONAL ISSUES**

This section aims more specifically at evaluating the:

- (1) provision of Air Traffic Services to aircraft operating in the Mogadishu FIR and the collection of revenue through the application of aeronautical charges
- (2) formulation of procedures and draft regulations required for the operation and maintenance of civil aviation activities.

**Airspace & Procedures**

- What are the classes and structure of ATS airspace?
- What ATS units have been implemented and what are their respective functions?
- Does CACAS and other ATS manual of operations or of procedures?
- What are the separation standards? Where and how are these promulgated?
- What ATS incidents have happened in last two years? How are they investigated? Are results communicated to users?

**Communications****Fixed communications**

- What AFTN links are available?
- What is the average number of AFTN messages per day? How are messages handled internally?
- Are there any other means of fixed communications?
- What ATS/DS links are implemented?

**Mobile communications**

- What air ground communication channels are available?
- Please provide list of transmitters, receivers, year of installation, reliability, status, availability of spares and assessment of life expectancy.

**Navigation**

- Please list NAVAIDS available indicating ownership and reliability.
- Are there any GNSS procedures?

**Surveillance**

Is any surveillance means available? Do any adjacent ACCs or FICs have any surveillance coverage within the Mogadishu FIR?

**AIS**

Is there a Somalia AIP?

How is aeronautical data gathered and distributed?

What is the area of coverage of CACAS?

**MET**

## Annex V – Data Gathering Forms



**Evaluation Mission**  
**Civil Aviation Caretaker Authority for Somalia (CACAS)**  
**SOM/03/106/F/01/15**

*Daher Muse Calin, Somali National Evaluator*  
*José Carvalho, Aviation & Evaluation Expert*  
*Ernest Wickersham, Evaluation Team Leader*

**INSTITUTIONAL EVALUATION FORM**

Sir,

As you are aware, since 1995 the provision of Air Traffic Services in the Mogadishu FIR and some Somali airports has been carried out by an extraterritorial unit operating from Nairobi under an ICAO/UNDP Project. The Project was also intended to provide the embryo of a Somali Civil Aviation Administration, but realities on the ground precluded any significant development of this component.

As part of the standard periodic project review, but also taking into account the desirability of evolving towards normalcy in the functioning of Somali national institutions, UNDP and ICAO are undertaking an evaluation of the Project. This exercise should both analyse past performance, and point to future directions.

For any proposals to be meaningful it is indispensable that they take into full consideration firstly and foremost the views of the Somali Government, but also take of other governance bodies and institutions, and of the aviation community at large, it being clear that though the need for continuity availability of service must be unquestionable, institutional considerations are paramount.

To assist in the analysis, information gathering will be systemized under four headings:

1. Regulatory and Safety Oversight
  - a. Personnel licensing
  - b. Aircraft registry and airworthiness oversight
  - c. Air Operators certification and oversight
  - d. Airport licensing and operations oversight
  - e. Oversight of air navigation systems and service provision.
2. Provision of Air Navigation Systems
  - a. Provision of Air Traffic Services
  - b. Provision of Aeronautical Information Services

## Annex V – Data Gathering Forms

- c. Provision of Radio Navigation Systems
  - d. Provision of aeronautical telecommunications both fixed (point-to-point) and mobile (air/ground)
  - e. Provision of Aeronautical meteorological services
3. Airports
- a. Runways, and other operational surfaces
  - b. Power supply and lighting, including runway lighting
  - c. Terminals and other commercial buildings
  - d. Airport services including
    - i. Rescue and fire-fighting
    - ii. Ground control
    - iii. Ground handling services
    - iv. Fuel supply
    - v. Catering
4. The way forward
- a. The National Civil Aviation Authority
  - b. The Provision of Air Navigation Services and facilities
  - c. Provision of Airports

A questionnaire addressing these issues is provided on the following page. Please take this only as a guideline for your contribution. Feel entirely free to address any other areas of concern or expand on considerations that you consider could be of assistance in devising a consensual and effective way forward.

Thank you.



## Annex V – Data Gathering Forms

**INSTITUTIONAL QUESTIONNAIRE****A. Regulatory & Safety Oversight**

- a) How are these functions being carried out in your area?
- b) Define your area of intervention.
- c) Has any enabling legislation or regulations been promulgated?
- d) By whom and in what form?

**B. Provision of Air Navigation Systems**

- a) Does your administration provide any of the services or systems concerned?
- b) Are you satisfied with the services being provided by CACAS in this domain? If not, expand on services concerned and causes for dissatisfaction;
- c) How do you see your relations with CACAS and where do you see room for improvement?

**C. Airports**

- a) What airports and commercial aerodromes come under your jurisdiction?
- b) What is the organisational framework? Single authority, regional, per airport? Commercial? State?
- c) What are the sources of revenue?
- d) Which of the facilities and services listed are available and who is the respective provider?
- e) Where these are provided by other than the airport itself, are you satisfied with the level of service and with the institutional arrangements?
- f) What are your main limitations and what suggestions would you make for improvement?

**D. The Way Forward**

- a) Would you favour the establishment of independent authorities for:
  - (1) regulation and oversight
  - (2) the provision of ANS
  - (3) the decentralisation of airport provision?
- b) Would you consider it feasible that functions regulation and oversight and ANS be managed by an independent body, deriving its authority from the State, but operating under a supervisory board incorporating all stakeholders?
- c) If not, what alternative formula would you favour?





## Annex V – Data Gathering Forms



**UNDP/ICAO PROJECT EVALUATION**  
**CIVIL AVIATION CARETAKER AUTHORITY FOR SOMALIA**  
**(CACAS SOM/03/016/F/01/15)**

June 2009



**USERS EVALUATION FORM**

Sir,

As you are aware, since 1995 the provision of Air Traffic Services in the Mogadishu FIR and some Somali airports has been carried out by an extraterritorial unit operating from Nairobi under the auspices of ICAO.

The project is being evaluated in relation to services provided, suitability of existing arrangement, and way forward. The review team would be grateful to obtaining your contribution to the ongoing exercise both in what concerns present level of services and the future requirements.

Below you will find a questionnaire to assist in gathering your input. However, please feel free to deviate from this and provide any other information that in your view could assist in ensure safety and efficiency of air operations in the Somali airspace and Somali airports.

1. Please rate either as Adequate, Inadequate or none but Required, each of the following services and facilities in the FIR/UIR and t selected airports (insert applicable locations):

	<b>Air/Ground COM</b>	<b>ATS</b>	<b>AIS</b>	<b>MET</b>
<i>Airspace</i>				
En-route, Lower airspace				
En-route, Upper airspace				
<i>Aerodromes (specify)</i>				
1.				
2.				
3.				
4.				

2. There are no functioning NAVAIDs in the Mogadishu FIR or aerodromes. Please indicate locations where in your view the following should be available, indicating for each one if you see it as Indispensable or merely Desirable:

<b>Locations</b>	<b>VOR</b>	<b>NDB</b>	<b>ILS</b>	<b>GNSS</b>
1.				
2.				
3.				
4.				

## Annex V – Data Gathering Forms

3. En-route communications are provided on HF only. How do you rate the need for en-route VHF?

Indispensable       Desirable       Not a priority

4. Considering the level of service provided, would you rate the air navigation charges:

Adequate       Excessive

5. Would you be amenable to a higher air navigation charge in exchange for a better level of service, for example VHF and NAVAIDS?

Yes       No

6. Sooner or later the Mogadishu ACC will have to be relocated to Mogadishu. From a purely aeronautical perspective what would be the essential conditions to be met before this move could be considered?

7. Please provide any other comments that you may feel pertinent:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organisation: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

Return to: [j.carvalho.jf@avc-consult.com](mailto:j.carvalho.jf@avc-consult.com)



**Annex 38**

“In Kenya, UN refugee chief urges support for Somali refugees and host communities”,

*UN High Commissioner for Refugees, 21 December 2017*



## In Kenya, UN refugee chief urges support for Somali refugees and host communities

Filippo Grandi expresses his gratitude to Kenya for hosting almost half a million refugees and keeping its borders open to people fleeing war.

By Melissa Fleming | 21 December 2017 | [Español](#) | [Français](#) | [عربي](#)



During a visit to a women's centre in Dadaab, Kenya Grandi reassured refugees of UNHCR's continued support. © UNHCR

NAIROBI, Kenya – UN High Commissioner for Refugees Filippo Grandi has expressed his gratitude to Kenya for continuing to host almost half a million refugees and keeping its borders open to people fleeing war.

In a meeting with President Uhuru Kenyatta on Wednesday (Dec 20), Grandi received assurances that as the Somali refugee repatriation programme progresses, no refugee will be returned against his or her will.

“At a time when many other countries are closing their borders and adopting restrictive measures, Kenya is continuing to host refugees,” Grandi said. “This commitment of Kenya must be matched by the international community with humanitarian and development funding as well as increased resettlement places, university scholarships and other opportunities.”

**“This commitment of Kenya must be matched by the international community.”**

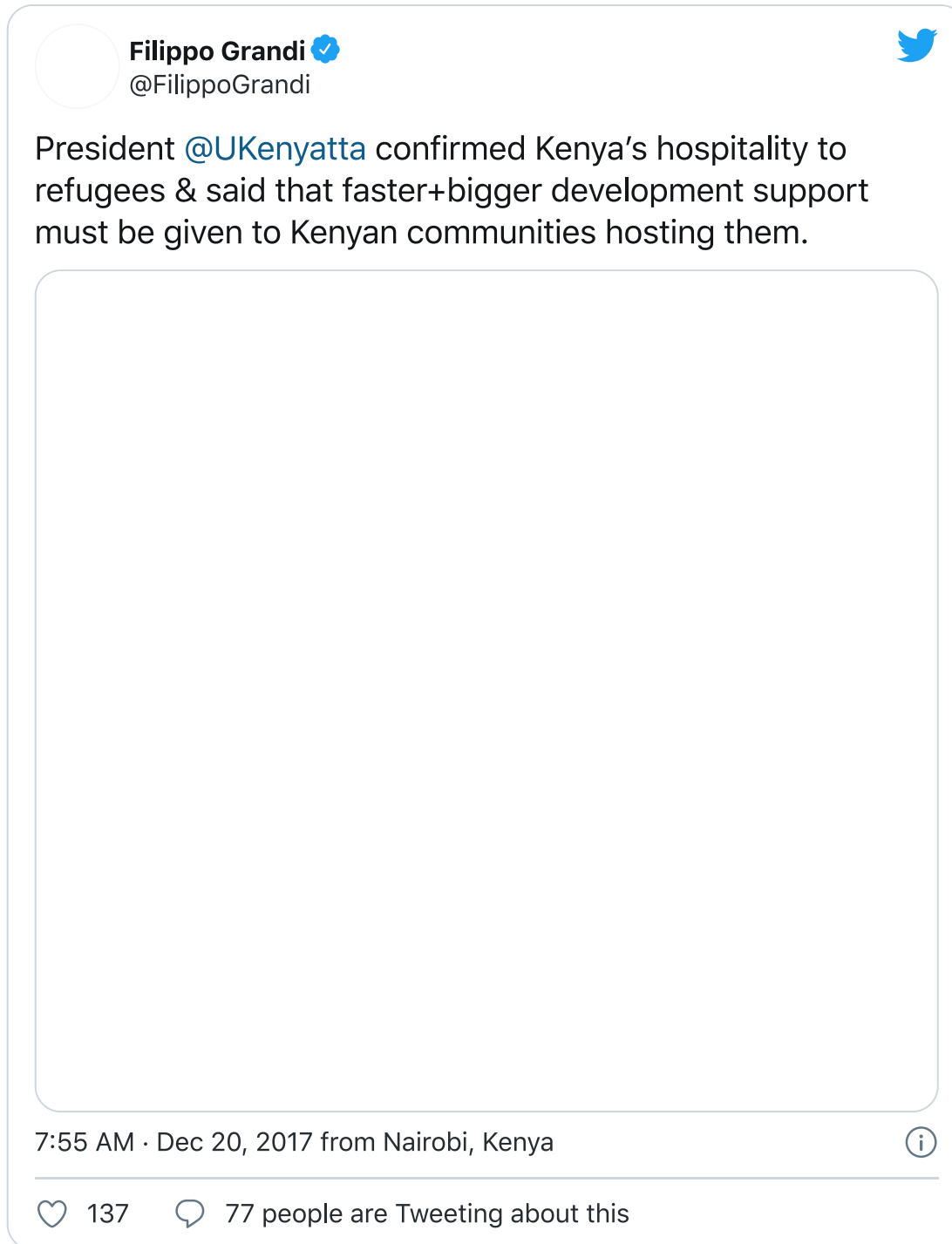
The Somali refugee crisis is now entering its 27<sup>th</sup> year and Grandi said that as long as Somalia remains fragile, many refugees will remain apprehensive about returning home. Nevertheless, he noted that a significant number of refugees are deciding to return.



Kenya: UNHCR chief calls for more support for Somali refugees (Arnold Temple, camera-editor / Dana Hughes, producer)

So far this year, over 35,000 refugees from Dadaab refugee camp have moved back to Somalia under UNHCR's voluntary repatriation programme, while over 18,000 have registered to leave. Since December 2014, over 73,000 refugees from Dadaab have returned voluntarily to Somalia.

"These refugees are hopeful, and have made informed choices," Grandi said, pledging continued support from UNHCR, the UN Refugee Agency in providing them with reintegration assistance upon arrival in Somalia.



On Monday, in Kismayo, Somalia, where most returning refugees from Dadaab have settled, Grandi met families who had lived in refugee camps in Kenya and Djibouti for two decades. Although the families were concerned about security, they expressed joy about shedding their refugee status and

determination to contribute to rebuilding their country. UNHCR, together with the American Refugee Committee, is building simple settlements for returnees in greatest need of housing, and providing vocational training to help them find work or create businesses.

On a visit to Dadaab on Tuesday, together with Ahmed Hussen, the Canadian Minister for Immigration, Refugees and Citizenship, Grandi spoke to refugees who were trying to decide whether to remain in Dadaab or return home to Somalia. Both Grandi and Hussen visited the repatriation ‘help desk’ where UNHCR carefully verifies the voluntary nature of their decision. While meeting refugees, Grandi appealed for stronger international efforts towards stabilization.

“Somalia continues to need international efforts to help rebuild infrastructure and to create security conditions for refugees to return,” he said.

During his visit, Grandi heard from Somali refugees about their challenges and hopes for the future. He also met with local authorities and host community leaders.



UN High Commissioner for Refugees Live From Dadaab

UNHCR, the UN Refugee Agency was live [Follow](#)

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“It’s useful for me to be here to learn and hear from you, even as we continue to do our best to support you,” he said, at a meeting with women and girls who are survivors of sexual and gender-based violence in Dadaab’s Hagadera camp.

The women and girls displayed artwork they had been trained to make through a UNHCR-funded programme, managed by the International Rescue Committee, that supports vulnerable women. The women, who receive counselling at the center, expressed gratitude for the support they received but asked for more sewing materials so they could sell their wares, citing a lack of sufficient income-generating activities in the camp.

“I can assure you that UNHCR and our partners are doing our best to use the scarce resources available to meet the most basic needs,” Grandi said. He expressed his regret that donor support is diminishing at a time when refugees here still require ongoing aid.

Receiving Grandi in her modest shelter with a tin roof and a dirt floor, Ladan, a mother of five, told Grandi that conditions were tough. She was relocated after her section of the camp was closed as people left for Somalia. “I struggle to get enough food for my children as the food we used to receive was reduced by half,” she said, referring to World Food Programme’s ration cuts, a consequence of reduced donor funding.



Her woes were echoed by other refugees, including community leaders who met with Grandi and outlined the challenges they face in the camps. The leaders cited high numbers of school dropouts and lack of higher education, decreasing opportunities to be resettled to third countries and lack of specialized services for people with special needs as some of their challenges.

Grandi listened carefully to their concerns, particularly the need for more university education scholarships and vocational training. He was inspired by 16 high achieving students whom he met with Minister Hussien and had been awarded university scholarships under the World University Service of Canada, but regretted that hundreds of other successful high school graduates would not have the means to continue their studies.

- **See also:** [UN refugee chief finds Somalia suffering from instability and drought, but sees hope](#)

The High Commissioner said he would continue to appeal to international donors on their behalf and work with the government of Kenya in realizing President Kenyatta's pledge to establish a vocational education center in Dadaab for both refugees and the host community.

"Our appeal to donors and hosting countries is not to give up on Somali refugees," Grandi said, noting that the World Bank had allocated US\$100 million in loans in recognition of Kenya as a major refugee hosting country. Much of that investment is planned for infrastructure development and environmental rehabilitation programmes in Dadaab.

Grandi called for a departure from a dependency model of enclosed camps like Dadaab. He said he was encouraged that Kenya had signed on to be one of the 13 countries that have adopted UNHCR's new [Comprehensive Refugee Response](#) model.

"In the future," Grandi said, "we will strive to adopt an approach that provides both refugees and the host community access to services, while promoting self-reliance and economic opportunities to improve their living conditions and avoid aid dependency."

**Annex 39**

UN Security Council Resolution 2520 (2020), S/RES/2520, 29 May 2020



## Resolution 2520 (2020)

### Adopted by the Security Council on 29 May 2020

*The Security Council,*

*Recalling* all its previous resolutions and statements of its President on the situation in Somalia,

*Reaffirming* its respect for the sovereignty, territorial integrity, political independence, and unity of Somalia,

*Reiterating* that Al Shabaab poses a serious threat to the stability of Somalia and its neighbours, *condemning* Al Shabaab attacks in Somalia and beyond, *expressing deep concern* at the loss of civilian life from Al Shabaab attacks, *further expressing concern* over the presence in Somalia of pro-Islamic State in Iraq and the Levant actors, *noting* the threat posed by Al Shabaab is evolving and that degrading Al Shabaab and building and sustaining peace will require regional cohesion, a comprehensive strategy, reconfiguration of support, a focus on stabilisation, enhanced efforts across multiple avenues and an integrated and coherent approach among relevant actors,

*Underlining* its commitment to further strengthen Somalia's security institutions and forces towards exercising full authority over its own territory and taking the lead in security operations,

*Paying tribute* to the bravery and sacrifices made by the African Union Mission in Somalia (AMISOM) and Somali security forces personnel in the fight against Al Shabaab, and *commending* the contribution of AMISOM to building lasting peace and stability in Somalia,

*Welcoming* the progress made over the last year including recovering additional territory from Al Shabaab, training Somali security and police forces, steps to deepen Somali security sector reform such as completion of biometric registration of Somali security forces, and finalisation of the Somali-AU-UN Joint Threat Assessment,

*Welcoming* the support provided by the UN Support Office in Somalia (UNSOS) to AMISOM and the UN Assistance Mission in Somalia (UNSOM), *further welcoming* political support provided by UNSOM, and the AU and Somalia's efforts to convene key stakeholders on future international security support to Somalia post-2021, and the political and financial support from international partners, *welcoming* the commitment by Somalia and the UN to further strengthen their relationship, *reiterating* the importance of strong cooperation, and unified command and control





within AMISOM, and *further reiterating* the importance of transparency and accountability with all key partners,

*Underlining* the importance of reaching an inclusive political settlement between the Federal Government of Somalia (FGS) and its Federal Member States (FMS), *reiterating* the importance of the full implementation of the tasks set out in the Somali-led Transition Plan which sets out the progressive transfer of security responsibilities from AMISOM to the Somali security institutions and forces, through operational, supporting and institutional-building activities, and *underlines* its expectation that the Somali authorities set out their clear vision for security post-2021 and seek support from partners on this vision,

*Underlining* in this regard the ongoing delays in the implementation of the priority measures and commitments outlined in paragraph 1 and paragraph 24 of resolution [2472 \(2019\)](#), committed to in the 2019 Mutual Accountability Framework and based on commitments set out in the 2017 Security Pact agreed at the London Somalia conference, and *further encouraging* progress against these measures,

*Emphasising* the importance of full cooperation between the FGS and its FMS, *noting* the responsibilities of all parties to improve cooperation and engage in FGS-led discussions, and *underscoring* that full cooperation would advance progress on key national priorities including: the implementation of the National Security Architecture; the delivery of tasks set out in the Somali-led Transition Plan; delivery of further financial reforms; the review of the Constitution; and implementation of timely elections by late 2020 or early 2021,

*Condemning* violations and abuses of international human rights law and violations of international humanitarian law in Somalia, *calling* on all parties to act in full compliance with their obligations under international human rights law and international humanitarian law, and *further recalling* the Working Group Conclusions on Children and Armed Conflict in Somalia ([S/AC.51/2017/2](#)),

*Expressing grave concern* at the humanitarian situation in Somalia and the impact of the COVID-19 pandemic, *recognising* that the pandemic presents a profound challenge to Somalia's health system, socio-economic and humanitarian situation, *calling* for the provision of humanitarian assistance necessary to support Somalia, *noting with appreciation* the measures taken by AMISOM and the UN to ensure the safety and security of AMISOM and UN personnel whilst maintaining continuity of operations, *calling* for continued efforts to mitigate the impact of the pandemic, and *welcoming* the role played by AMISOM in supporting Somali-led disaster management and relief efforts and their efforts to create conditions conducive to the delivery of humanitarian assistance,

*Reaffirming* the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their full, effective and meaningful participation and involvement in all efforts at all levels for the maintenance and promotion of peace and security, and the need to increase their role in decision-making and leadership with regard to conflict prevention and resolution,

*Emphasising* the need for adequate risk assessment and risk management strategies by the FGS and the UN, of climate change, other ecological changes, natural disasters, energy access, and other factors on the stability of Somalia,

*Taking note* of the 2019 Joint AU-UN Review of AMISOM, the African Union Peace and Security Council's communiqué of 7 May 2020 on the situation in Somalia, and the Secretary-General's report of 13 May 2020, [S/2020/398](#) on the situation in Somalia,

*Determining* that the situation in Somalia continues to constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Calls on* the FGS and its FMS urgently to make further progress on transition and *welcomes* the FGS's commitment to revise the Somali-led Transition Plan by the end of September 2020, realigning tasks with partners and agreeing clear defining roles for all key stakeholders;

2. *Urges* the FGS and FMS to take concrete action to fulfil the priority measures in the 2019 Mutual Accountability Framework essential to Somali security and to inform decisions on international support for the Somali Security Sector after 2021;

(a) Reach an inclusive political settlement on resource and power sharing, establishment of governance and oversight structures, and the delineation of responsibilities of Somali security institutions;

(b) Reinstitute regular meetings of the National Security Council or an alternative mechanism for engagement;

(c) Accelerate technical and security planning for elections in coordination with AMISOM, UNSOS and UNSOM to allow one-person-one vote elections, which are free and fair, peaceful, transparent, timely, credible and inclusive, allowing as many citizens to vote as possible in late 2020 or early 2021;

(d) Develop and start implementing an achievable, time-bound and coordinated plan for force generation of able, affordable, accountable and acceptable forces and for the integration of regional forces into the federal armed forces and state police;

3. *Reiterates* that Al Shabaab and other armed groups will not be defeated by military means alone, and in this regard, *calls on* the FGS, FMS, AMISOM, the UN and international partners to work closer together to take a comprehensive approach to security which is collaborative, gender-responsive and stabilising, and *calls on* international partners to provide support to the FGS to counter Al Shabaab's finance, procurement and propaganda efforts;

4. *Recalls* its support for the tasks set out in the Transition Plan, and underscores the recommendation in the Joint Review 2019 that AMISOM's strategic tasks and priorities be seen primarily in the context of the transition;

5. *Underlines* its intention to assess security support needed to prepare Somalia towards taking on the leading role on security by end of 2021 and post-2021, and take decisions on the reconfiguration of AMISOM on the basis of: 1) Information shared by the AU, FGS, EU and relevant international partners; 2) Implementation of the priority measures outlined in paragraph 2 above; and 3) Outcomes of the independent assessment report as mandated in paragraph 34 of resolution [2472 \(2019\)](#) and modified in paragraph 38 of this resolution;

6. *Underlines* the necessity of taking a coordinated and cohesive approach to Somali-led political and security reforms and thereby *calls on*:

(a) The FGS to drive forward and lead strategic coordination through regular high-level meetings of the Comprehensive Approach to Security (CAS) or alternative mechanisms, starting at the earliest opportunity, and for AMISOM, UNSOM, UNSOS, the FGS and FMS to increase coordination and collaboration at all levels;

(b) International and regional partners, in coordination with UNSOM and through the CAS including the military coordination mechanism, and other relevant

mechanisms, to coordinate and better align their support to AMISOM and Somalia in line with the Security Pact and to enable delivery of the tasks set out in the updated Transition Plan, including with respect to mentoring, training, equipment, capacity building, and remuneration of police and military forces;

(c) The FGS, FMS, AMISOM, the UN, the AU and relevant partners, to increase comprehensive joint planning, coordination, information sharing and strategic communications led by the FGS, and for the FGS, AMISOM and UNSOS to undertake inclusive and integrated planning on transition locations, joint operations, and stabilisation activities in line with the tasks in an updated Somali-led Transition plan;

7. *Underscores* the need for all stakeholders to take into account the security situation in each location during transition of security responsibilities to Somalia and with due regard to the need to protect civilians and mitigate risk before, during and after any military operation, *underlines* that all joint operations and transitions, strategic and operational decisions, should be agreed between the Somali security forces, Somali authorities and AMISOM from the outset in coordination with the UN and other international partners where appropriate, and *reaffirms* the essential role of the police and justice sector in stabilisation efforts, the preparation and conduct of elections, and as the central security actors post transition;

8. *Urges* the FGS, with the coordinated support of the international community, to set out a clear strategic plan to generate new Somali security forces, integrate forces from the FMS and train and equip current and newly generated federal forces, *requests* the AU and UNSOM to provide additional support to AMISOM in its provision of combat mentoring support to the SNA, and *underlines* the importance of deploying these forces for delivery of the tasks set out in the updated Transition Plan;

## **AMISOM**

### **Priorities and tasks**

9. *Decides* to authorise the Member States of the AU to maintain the deployment of 19,626 uniformed AMISOM personnel until 28 February 2021, inclusive of a minimum of 1,040 AMISOM police personnel including five Formed Police Units, to support security preparations for elections due at the end of 2020 or the beginning of 2021, and to conduct tasks in line with an updated Somali-led Transition Plan and the handover of security to Somali security forces;

10. *Further decides* that AMISOM shall be authorised to take all necessary measures, in full compliance with participating States' obligations under international law, including international humanitarian law and international human rights law, and in full respect for the sovereignty, territorial integrity, political independence and unity of Somalia, to carry out its mandate;

11. *Decides* to authorise AMISOM to pursue the following strategic objectives within the context of the transition to Somalia taking responsibility for security, as set out in the Transition Plan and in agreement with the FGS:

(a) Conduct a gradual handing over of security responsibilities from AMISOM to the Somali security forces with the aim of Somali security institutions taking the lead by 2021;

(b) Reduce the threat posed by Al Shabaab and other armed opposition groups with a view to enabling a stable, federal, sovereign and united Somalia;

(c) Assist the Somali security forces to provide security for the political process at all levels, stabilisation efforts, reconciliation, and peacebuilding, and provide relevant support to Somali police and authorities to create a secure

environment in the build up to elections with the aim of fully handing over security responsibility to Somali security institutions;

12. *Decides* to authorise AMISOM to carry out the following priority tasks to achieve these objectives:

(a) Maintain a presence in the sectors set out in AMISOM's Concept of Operations, prioritising the population centres identified by the FGS and reconfiguring in line with a Somali-led updated Transition Plan;

(b) Reconfigure AMISOM, and revise tasks, as security conditions allow, in support of the updated Transition Plan and in favour of police personnel within the authorised AMISOM personnel ceiling;

(c) Mentor, and assist Somali security forces, including combat readiness mentoring for Somali military forces, and mentoring and training where necessary for Somali police;

(d) Contribute towards securing and consistently maintaining key supply routes in collaboration with the Somali security forces, including to areas recovered from Al Shabaab, and in coordination with stabilisation and reconciliation actors, in particular supply routes essential to improving the humanitarian situation, which may include commercial goods essential to meeting the basic needs of civilians, those critical for logistical support to AMISOM, and key supply routes supporting delivery of the Transition Plan, and *underscoring* that the delivery of logistics remains a joint responsibility between the United Nations and AU;

(e) Assist, as appropriate, the Somali security forces to enable the Somali authorities to carry out their functions of government, including their efforts towards, stabilisation coordinated with the Ministry of Interior, Federal Affairs and Reconciliation (MoIFAR) and Community Recovery and Extension of State Authority and Accountability (CRESTA/A), reconciliation, peacebuilding, election preparation and security for key infrastructure;

(f) Conduct jointly-planned and targeted offensive operations that support the updated Transition Plan, including jointly with the Somali security forces, to disrupt and degrade Al Shabaab and other armed opposition groups, and take actions to mitigate the threat posed by improvised explosive devices;

(g) Protect, as appropriate, its personnel, facilities, installations, equipment and mission, and to ensure the security and freedom of movement of its personnel, as well as of United Nations personnel carrying out functions mandated by the Security Council;

(h) Receive defectors on a transitory basis, as appropriate, and in coordination with the United Nations and the FGS;

(i) Support and assist the FGS and its FMSs in implementing the total ban on the export of charcoal from Somalia and the documentation and facilitation of the inspection of seized equipment including small arms and light weapons as requested in paragraph 18 of resolution [2111 \(2013\)](#) and paragraph 6 of resolution [2182 \(2014\)](#);

13. *Requests* the African Union (AU) to continue to develop and update the CONOPS in line with the updated Somali-led Transition Plan, and in close collaboration with the FGS, the UN and key partners;

14. *Requests* the AU to strengthen oversight and operational coordination among AMISOM contingents, strengthen command, control and accountability of the operationalisation of mission enabling units, including air assets, enabling the creation and operationalisation of mobile forces in the Sectors in line with AMISOM's reconfiguration, ensure coordinated operational decision making under both the

Sector and Force Commander, and ensure that all force enablers and multipliers operate under the command of the Force Commander, as well ensure effective consultation with appropriate Somali and international partners on operational decision-making;

15. *Supports* the AU equipment reviews undertaken in 2019, *urges* the AU to finalise its equipment review by September 2020 with UN support, taking into consideration Statement of Unit requirements (SURs), and within existing resources, in order to strengthen AMISOM's operational capabilities, fill gaps in resource requirements, and enhance its force protection to carry out their mandated tasks, and *further encourages* Member States to support the AU in mobilising the required resources and equipment, including through uncaveated financial contributions to the AMISOM Trust Fund based on deliverable recommendations set out in the equipment review;

16. *Urges* the deployment of the remaining civilian component to provide full support to AMISOM's military and police tasks for transition and drawdown;

17. *Strongly underlines* the continued importance of AMISOM forces carrying out their mandate in full compliance with participating states' obligations under international law, including with regard to the protection of civilians, especially women and children, and of cooperating with UNSOM and UNSOS in implementing the Human Rights Due Diligence Policy on United Nations support to Non-United Nations security forces (HRDDP) across the preparatory, conduct and review phases of operations; *calls upon* AMISOM to undertake, and upon the AU to ensure, regular monitoring and prompt and thorough investigations into and reporting on allegations of violations and abuses of international human rights law and violations of international humanitarian law, as well as ensuring the highest standards of transparency, and conduct and discipline, and harmonisation of their procedures with UNSOM, *welcomes* the AU's progress on the development of a compliance framework, and *urges* troop- and police-contributing countries to strengthen their cooperation with the AU and the UN to ensure the effectiveness of the AMISOM compliance and accountability measures;

18. *Requests* AMISOM to strengthen uniformity of reporting to the Civilian Casualty Tracking Analysis and Response Cell (CCTARC) across all of the sectors, and take further steps to ensure mitigation measures are in place, *underlines* the importance of ensuring information is shared with relevant actors including the United Nations, is integrated into AMISOM reporting, and feeds into operational guidelines and plans, and *requests* the full support of troop and police contributors to the CCTARC, in collaboration with humanitarian, human rights and protection actors;

19. *Reaffirms* the importance of AMISOM's zero-tolerance policy on Sexual Exploitation and Abuse, and in this regard, *requests* the AU and troop- and police-contributing countries to screen personnel, undertake risk assessments, deliver all relevant training to personnel, to protect and support the relief and recovery of survivors who report abuse, carry out timely investigations into allegations to hold perpetrators accountable, and to repatriate units where there is credible evidence of widespread or systemic sexual exploitation or abuse by those units, and *further requests* the AU to work closely with the UN in this regard;

20. *Strongly encourages* efforts to increase the percentage of female uniformed personnel deployed to AMISOM by the Troop and Police Contributing Countries, and *urges* AMISOM to ensure the full, effective and meaningful participation of women across its operations and to integrate a gender perspective throughout the delivery of its mandate;

### Logistical and Financial Support

21. *Requests* the Secretary-General to continue to provide a logistical support package in full compliance of HRDDP, through UNSOS for UNSOM, AMISOM uniformed personnel and 70 AMISOM civilians, on the basis set out in operative paragraph 2 of resolution 2245 (2015), and to increase support to 13,900 Somali security forces, including an appropriate share of the state and federal police, who are formally integrated into the Somali security forces in line with the National Security Architecture and who are actively participating in joint or coordinated operations with AMISOM that directly implement the Transition Plan, *reiterates* the importance of AMISOM and the Somali security forces working jointly with UNSOS on the delivery of logistics support, including inter alia ensuring convoy and airfield security, protection of civilians and protecting main supply routes, and *further requests* the Secretary-General to expand UN support to Somali security forces to include training, equipment and mentorship to counter the threat of improvised explosive devices (IEDs);

22. *Agrees* with the Secretary-General that oversight and accountability, in particular compliance with HRDDP will be the cornerstone of the partnership between the United Nations, the AU, the FGS and the FMSs, *requests* the Secretary-General to ensure that any support provided to non-United Nations security forces is provided in strict compliance with the HRDDP, and *requests* the FGS and AU to agree as soon as possible, a memorandum of understanding with the UN on the conditions of provision of UN support to Somali security forces;

23. *Requests* the Secretary-General to work closely with the AU in supporting the implementation of this resolution, including to provide technical and expert advice on the planning, deployment and strategic management of AMISOM in line with the mandate of the United Nations office to the AU;

24. *Reiterates* its call for new donors to provide support for:

(a) AMISOM through the provision of additional funding for troop stipends, equipment, and technical assistance for AMISOM, as recommended in the AU/UN funding report and to support the effective functioning of the CCTARC and the disbursement of amends;

(b) The United Nations Trust Fund in Support of the African Union Mission to Somalia and Somali security forces including funding directed to training equipment and funding and mentoring of the Somali security forces to counter the threat of improvised explosive devices, tackle the proliferation of small arms and light weapons, and to support state and federal police as set out in paragraph 21;

(c) National and state-level institutions for the development of the Somali security sector, including capacity building for the maritime police force in line with resolution 2246 (2015);

25. *Underlines* the need to enhance the predictability, sustainability and flexibility of financing for AU-led peace support operations authorised by the Security Council and under the Security Council's authority consistent with Chapter VIII of the Charter, and *encourages* the Secretary-General, AU and Member States to continue efforts to explore in earnest funding arrangements for AMISOM, bearing in mind the full range of options available to the United Nations, AU, the European Union, and to other partners, and considering the limitations of voluntary funding, in order to establish secure future funding arrangements for AMISOM;

## Somalia

26. *Reiterates* the urgency of full cooperation between the FGS and its FMS, *notes* initial steps taken to organise a meeting between the FGS and FMS focal points, and *encourages* all stakeholders to use this meeting and other opportunities to overcome their challenges to deliver on important national priorities;

27. *Underlines* the important steps taken by the FGS towards institution reform and capacity-building in the security sector, including continued progress on bio-metric registration of the SNA, payment of salaries through direct electronic transfers and progress made on joint operations including Operation Badbaado;

28. *Calls on* the FGS and FMS to fully support the state and federal police through effective training, equipping, and sustainment support, *reiterates* the critical role police play to sustaining SNA operations aimed at securing and holding territory and *emphasises* a professional and capable police force, able to contribute to providing security for civilian populations, is necessary for the FGS to fully implement the STP;

29. *Calls upon* Somali authorities, in coordination with AMISOM, international partners, and relevant United Nations entities, including UNMAS, to combat the illicit trade, transfer, destabilising accumulation, and misuse of small arms and light weapons in all aspects, to prevent access of unauthorised recipients to all types of explosives and related materials in Somalia, and to ensure their safe and effective management and storage;

30. *Calls on* the Somali authorities to take further necessary political and technical steps to ensure one-person-one-vote elections by the end of 2020 or early 2021;

31. *Reaffirms* the important role of the full, equal, meaningful and effective participation of all Somalis, including women, youth, persons with disabilities, Internally Displaced Persons (IDPs) and refugees in the prevention and resolution of conflicts, reconciliation processes, peacebuilding and elections and other political processes, and *acknowledges* the significant contribution that civil society can make in this regard;

32. *Calls on* Somali authorities to work with relevant partners to ensure protection for all from sexual and gender-based violence, including sexual exploitation and abuse and conflict-related sexual violence, to take appropriate steps to investigate allegations, strengthen legislation to support accountability in line with relevant resolutions, and to accelerate the implementation of the Joint Communiqué and the National Action Plan to combat sexual violence in conflict;

33. *Calls on* the Somali authorities to take action to prevent the killing, maiming and abduction of children, the recruitment and re-recruitment in accordance with the 2017 Working Group Conclusions on Children and Armed Conflict in Somalia, and the use of sexual violence against children in armed conflict, and to hold those responsible to account, *calls upon* the Somali authorities to take appropriate measures to prevent attacks against civilian infrastructures including against schools and hospitals, cease detentions of all children on national security charges where this is in violation of applicable international law and instead to treat them primarily as victims, and *further calls* on the FGS to take action to fully implement their 2012 Action Plans, the 2014 standard operating procedures for the handover of children separated from armed groups, the 2018 Roadmap and the Working Group Conclusions on Children and Armed Conflict in Somalia ([S/AC.51/2017/2](#));

34. *Reiterates* its continued concern at the high number of refugees and IDPs, *stresses* that any evictions should be consistent with relevant national laws and

international obligations *welcomes* the FGS' ratification of the AU Kampala Convention, and *stresses* the importance the FGS fully implementing its provisions;

35. *Recalls* its resolution [2417 \(2018\)](#) and *expresses* grave concern at the ongoing humanitarian crisis in Somalia and its impact on the people of Somalia, encourages all partners including donors to maintain humanitarian assistance in 2020 and to provide additional assistance to the broader COVID-19 response, *strongly condemns* indiscriminate attacks and attacks directed against humanitarian and medical personnel and civilian infrastructure, including by Al Shabaab, and any misuse or obstruction of humanitarian assistance, *reiterates* its demand that all parties allow full, safe, rapid and unhindered access for the timely delivery of humanitarian assistance to persons in need across Somalia in accordance with relevant provisions of international law and in line with humanitarian principles, and *underlines* the importance of proper accounting of international humanitarian support;

### **Reporting**

36. *Requests* the AU to keep the Security Council informed every 90 days, through the Secretary-General, on the implementation of AMISOM's mandate, through no fewer than three written reports, with the first written report no later than 15 August 2020, and *further requests* in this regard, specific reporting on, 1) progress on joint operations in support of the Transition Plan including the use and effectiveness of coordination mechanisms, 2) proposals for revised tasks as per paragraph 12 (b), 3) accountability measures taken to address underperformance, including command and control, and conduct and discipline, 4) measures taken to protect civilians, 5) equipment review outcomes and use of force assets, and 6) staffing of the civilian component, and *encourages* timely reporting to allow for the Council to take into account AU perspectives on the situation in Somalia;

37. *Requests* the Secretary-General to keep the Security Council regularly informed on the implementation of this resolution, in his regular reports requested in paragraph 22 of resolution [2461 \(2019\)](#), and in this regard *further requests* the Secretary-General to assess in his regular reports, 1) progress achieved on the priority measures referenced in paragraph 2 of this resolution, 2) implementation of HRDDP, and 3) UNSOS support to AMISOM, UNSOM and the Somali security forces;

38. *Reaffirms* the Security Council's intention to keep the configuration of AMISOM under review, *requests* the Secretary-General to conduct an independent assessment, by 10 January 2021, and present options to the Security Council on international support to the whole security environment in Somalia post 2021, including the role of the UN, AU and international partners, and after consultations with the FGS, AU and international partners on their respective views;

39. *Decides* to remain actively seized of the matter.



**Annex 40**

Note by the Secretary-General of the International Maritime Organization on the Relations with the UN and the specialized agencies on Piracy and armed robbery against ships in waters off the coast of Somalia, IMO A 25/19(a)/1/Add.1,  
16 November 2007



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ASSEMBLY  
25th session  
Agenda item 19(a)

A 25/19(a)/1/Add.1  
16 November 2007  
Original: ENGLISH

## EXTERNAL RELATIONS

### (a) Relations with the United Nations and the specialized agencies

#### Piracy and armed robbery against ships in waters off the coast of Somalia

#### Note by the Secretary-General

#### SUMMARY

**Executive summary:** This document contains at annex a draft Assembly resolution on Piracy and armed robbery against ships in waters off the coast of Somalia, which the Council, at its twenty-fourth extraordinary session, approved for submission to the Assembly

**Action to be taken:** Paragraph 4

**Related documents:** A 25/19(a)/1 and C/ES.24/12(a)/2/Add.1

1 The Council, at its twenty-fourth extraordinary session, considered a draft Assembly resolution on Piracy and armed robbery against ships in waters off the coast of Somalia proposed by the Secretary-General for adoption at this session. The draft resolution aims at raising awareness of the worrying situation in the waters off the coast of Somalia and suggests appropriate remedial action to be taken in the prevailing circumstances.

2 Following discussion, during which several delegations expressed support for the initiative and approval of the proposed resolution, stressing the seriousness of the situation, the Council approved the draft resolution for submission to this session of the Assembly for consideration with a view to adoption.

3 The annex is based on the Secretary-General's original proposals to the Council (C/ES.24/12(a)/2, annex) and contains, in addition, proposals which were put forward and supported during the debate in the Council, including a number of editorial amendments suggested to the Secretariat.

#### Action requested of the Assembly

4 The Assembly is invited to consider the draft Assembly resolution with a view to adoption.

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## ANNEX

## DRAFT ASSEMBLY RESOLUTION

## Resolution A.[.....](25)

Adopted on [...] November 2007

(Agenda item 19(a))

**PIRACY AND ARMED ROBBERY AGAINST SHIPS  
IN WATERS OFF THE COAST OF SOMALIA**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECALLING ALSO article 1 of the Charter of the United Nations, which includes, among the purposes of the United Nations, the maintenance of international peace and security,

ALSO RECALLING article 100 of the United Nations Convention on the Law of the Sea (UNCLOS), which provides for all States to co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State,

FURTHER RECALLING article 105 of UNCLOS which, *inter alia*, provides that, on the high seas or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates and arrest the persons and seize the property on board,

BEARING IN MIND article 110 of UNCLOS which, *inter alia*, enables warships, military aircraft, or other duly authorized ships or aircraft clearly marked and identifiable as being on government service to board any ship when there is reasonable ground for suspecting that the ship is, *inter alia*, engaged in piracy,

REAFFIRMING resolution A.545(13) on “Measures to prevent acts of piracy and armed robbery against ships”, adopted on 17 November 1983; resolution A.683(17) on “Prevention and suppression of acts of piracy and armed robbery against ships”, adopted on 6 November 1991; and resolution A.738(18) on “Measures to prevent and suppress piracy and armed robbery against ships”, adopted on 4 November 1993,

BEARING IN MIND resolution A.922(22), through which the Assembly adopted the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (“the Code”) and which, *inter alia*, urges Governments to take action, as set out in the Code, to investigate all acts of piracy and armed robbery against ships occurring in areas or on board ships under their jurisdiction; and to report to the Organization pertinent information on all investigations and prosecutions concerning these acts,

BEARING IN MIND ALSO resolution A.979(24) on “Piracy and armed robbery against ships in waters off the coast of Somalia”, by means of which the Assembly, *inter alia*:

- recommended a number of measures to protect ships from piracy and armed robbery attacks in waters off the coast of Somalia and by means of which the situation was brought to the attention of the Security Council of the United Nations (“the Security Council”);
- requested the Secretary-General to continue monitoring the situation in relation to threats to ships sailing in waters off the coast of Somalia and to report to the Council, as and when appropriate, on developments and any further actions which might be required; and
- requested the Council to monitor the situation in relation to threats to ships sailing in waters off the coast of Somalia and to initiate any actions it might deem necessary to ensure the protection of seafarers and ships sailing in waters off the coast of Somalia,

NOTING WITH SATISFACTION the actions taken by the Council and the Secretary-General pursuant to resolution A.979(24),

CONSIDERING that the Maritime Safety Committee has approved MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships and has established a special signal for use by ships under attack or threat of attack,

NOTING that the General Assembly of the United Nations, at its sixty-first session, by resolution A/RES/61/222 on “Oceans and the law of the sea”, adopted on 20 December 2006, *inter alia*:

- .1 encourages States to co-operate to address threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats; and
- .2 urges all States, in co-operation with the Organization, to combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity-building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislation, as well as providing enforcement vessels and equipment and guarding against fraudulent ship registration;

NOTING ALSO, with great concern, the increasing number of incidents of piracy and armed robbery against ships occurring in waters off the coast of Somalia, some of which have reportedly taken place more than 200 nautical miles from the nearest land,

MINDFUL OF the grave danger to life and the serious risks to navigational safety and the environment to which such incidents may give rise,

BEING PARTICULARLY CONCERNED that the Monitoring Group<sup>1</sup> on Somalia, in its report<sup>2</sup> of 27 June 2007 to the Security Council, confirmed, *inter alia*, that piracy and armed robbery against ships in waters off the coast of Somalia, unlike in other parts of the world, is caused by the lack of lawful administration and inability of the authorities to take affirmative action against the perpetrators, which allows the “pirate command centres” to operate without hindrance at many points along the coast of Somalia,

BEING AWARE of the serious safety and security concerns the shipping industry and the seafaring community continue to have as a result of the attacks against ships sailing in waters off the coast of Somalia referred to above,

BEING CONCERNED at the negative impact such attacks continue to have on the prompt and effective delivery of food aid and of other humanitarian assistance to Somalia and the serious threat this poses to the health and well-being of the people of Somalia,

NOTING, with appreciation, the “Sub-regional seminar and workshop on piracy and armed robbery against ships” held by IMO in Sana’a, Yemen, from 9 to 13 April 2005, for countries in the Red Sea and Gulf of Aden region; and the follow-up meeting held in Muscat, Oman, from 14 to 18 January 2006,

BEING AWARE that the Security Council has, through resolution S/Res/1425(2002), adopted on 22 July 2002, stipulated that the arms embargo on Somalia prohibits the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities,

NOTING that the Security Council, by resolution S/Res/1766(2007) adopted on 23 July 2007, decided, *inter alia*, to re-establish the Monitoring Group on Somalia and directed it to continue to investigate, in co-ordination with relevant international agencies, all activities, including in the financial, maritime and other sectors, which generate revenues used to commit violations of the embargo on all delivery of weapons and military equipment to Somalia, which the Security Council had established by resolution S/Res/733(1992),

NOTING ALSO that the Security Council, being concerned at the continuing incidence of acts of piracy and armed robbery against ships in waters off the coast of Somalia:

- .1 on 15 March 2006, in response to resolution A.979(24), through a Statement<sup>3</sup> by the President of the Security Council, *inter alia*, encouraged Member States of the United Nations, whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia, to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in

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<sup>1</sup> Established by the Security Council through resolution S/Res/1519(2003) and its mandate was renewed and expanded through resolutions S/Res/1558(2004), S/Res/1587(2005), S/Res/1630(2005), S/Res/1676(2006), S/Res/1724(2006) and S/Res/1766(2007).

<sup>2</sup> See United Nations document S/2007/436, paragraphs 89 to 91 and 118 and 119; Report of the Monitoring Group on Somalia pursuant to Security Council resolution S/Res/1724(2006).

<sup>3</sup> See United Nations document S/PRST/2006/11.

particular the transportation of humanitarian aid, against any such act, in line with relevant international law and further urged co-operation among all States, particularly regional States, and active prosecution of piracy offences; and

- .2 on 20 August 2007, in operative paragraph 18 of resolution S/Res/1772(2007) encouraged Member States of the United Nations, whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia, to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law,

NOTING WITH APPRECIATION the action taken by the Secretary-General of the United Nations in response to the request of the Council at its ninety-eighth session and, in particular, for bringing the Organization's concerns to the President of the Security Council with a request to bring them to the attention of the members of the Security Council,

RECOGNIZING that the particular character of the present situation in Somalia requires an exceptional response to safeguard the interests of the maritime community making use of the sea off the coast of Somalia,

RECOGNIZING ALSO the strategic importance of the navigational routes along the coast of Somalia for regional and global seaborne trade and the need to ensure that they remain safe at all times,

RECOGNIZING FURTHER, in view of the continued situation in Somalia giving reason to grave concern, the need for the immediate establishment of appropriate measures to protect ships sailing in waters off the coast of Somalia from piracy and armed robbery attacks,

APPRECIATING the efforts of those who have responded to calls from, or have rendered assistance to, ships under attack in waters off the coast of Somalia; acknowledging the efforts of a number of international organizations in raising awareness amongst, and providing guidance for, their respective memberships and reporting to the Organization in relation to this issue; and noting with appreciation the work done by the International Maritime Bureau of the International Chamber of Commerce in providing the industry with warnings in relation to incidents occurring in waters off the coast of Somalia and assistance in resolving cases where ships had been hijacked and the seafarers on board had been held hostage,

RESPECTING FULLY the sovereignty, sovereign rights, jurisdiction and territorial integrity of Somalia and the relevant provisions of international law, in particular UNCLOS,

HAVING CONSIDERED the actions taken, following the adoption of resolution A.979(24), by the Council, at its ninety-eighth regular and twenty-fourth extraordinary sessions, and by the Secretary-General in the light of the prevailing situation in the waters off the coast of Somalia,

1. CONDEMNS AND DEPLORES all acts of piracy and armed robbery against ships irrespective of where such acts have occurred or may occur;

2. APPEALS to all parties which may be able to assist to take action, within the provisions of international law, to ensure that:
  - .1 all acts or attempted acts of piracy and armed robbery against ships are terminated forthwith and any plans for committing such acts are abandoned; and
  - .2 any hijacked ships are immediately and unconditionally released and that no harm is caused to seafarers serving in them;
3. STRONGLY URGES Governments to increase their efforts to prevent and suppress acts of piracy and armed robbery against ships irrespective of where such acts occur and, in particular, to co-operate with other Governments and international organizations, in the interests of rule of law, safety of life at sea and environmental protection, in relation to acts occurring or likely to occur in the waters off the coast of Somalia;
4. ALSO STRONGLY URGES Governments to immediately:
  - .1 issue, to ships entitled to fly their flag, as necessary, specific advice and guidance on any appropriate additional precautionary measures ships may need to put in place when sailing in waters off the coast of Somalia to protect themselves from attack, which may include, *inter alia*, areas to be avoided;
  - .2 issue, to ships entitled to fly their flag, as necessary, advice and guidance on any measures or actions they may need to take when they are under attack, or threat of attack, whilst sailing in waters off the coast of Somalia;
  - .3 encourage ships entitled to fly their flag to ensure that information on attempted attacks or on committed acts of piracy or armed robbery whilst sailing in waters off the coast of Somalia is promptly conveyed to the nearby coastal States and to the nearest most appropriate Rescue Co-ordination Centre;
  - .4 provide a point of contact through which ships entitled to fly their flag may request advice or assistance when sailing in waters off the coast of Somalia and to which such ships can report any security concerns about other ships, movements or communications in the area;
  - .5 bring to the attention of the Secretary-General information on attempted attacks or on committed acts of piracy or armed robbery against ships entitled to fly their flag whilst sailing in waters off the coast of Somalia for him to take appropriate action in the circumstances;
  - .6 encourage ships entitled to fly their flag to implement expeditiously, for the ship's protection and for the protection of other ships in the vicinity, any measure or advice the nearby coastal States or any other State or competent authority may have provided;
  - .7 establish, as necessary, plans and procedures to assist owners, managers and operators of ships entitled to fly their flag in the speedy resolution of hijacking cases occurring in the waters off the coast of Somalia;



- .8 investigate all acts or attempted acts of piracy and armed robbery against ships entitled to fly their flag occurring in the waters off the coast of Somalia and to report to the Organization any pertinent information; and
  - .9 with respect to ships entitled to fly their flag employed by the World Food Programme for the delivery of humanitarian aid to Somalia, where such ships are to be escorted by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, to conclude any necessary agreements with the State(s) concerned;
5. REQUESTS Governments to instruct national Rescue Co-ordination Centres or other agencies involved, on receipt of a report of an attack, to promptly initiate the transmission of relevant advice and warnings, through the World-Wide Navigation Warning Service, the International SafetyNet Service or otherwise, to ships sailing in the waters off the coast of Somalia so as to warn shipping in the immediate area of the attack;
6. REQUESTS ALSO the Transitional Federal Government of Somalia to:
- .1 take any action it deems necessary in the circumstances to prevent and suppress acts of piracy and armed robbery against ships originating from within Somalia and thus depriving them of the possibility of using its coastline as a safe haven from where to launch their operations;
  - .2 take appropriate action to ensure that all ships seized by pirates and armed robbers and brought into waters within its territory are released promptly and that ships sailing off the coast of Somalia do not henceforth become victims of acts of piracy or armed robbery;
  - .3 advise the Security Council that, in response to the pressing request of the Council of the International Maritime Organization, it consents to warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, operating in the Indian Ocean, entering its territorial sea when engaging in operations against pirates or suspected pirates and armed robbers endangering the safety of life at sea, in particular the safety of crews on board ships carrying, under the World Food Programme, humanitarian aid to Somalia or leaving Somali ports after having discharged their cargo; and
  - .4 advise also the Security Council of its readiness to conclude any necessary agreements so as to enable warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service to escort ships employed by the World Food Programme for the delivery of humanitarian aid to Somalia or leaving Somali ports after having discharged their cargo;
7. CALLS UPON States in the region to conclude, in co-operation with the Organization, and implement, as soon as possible, a regional agreement to combat piracy and armed robbery against ships; and to take all necessary legislative, judicial and law enforcement action so as to be able to receive and, subject to national laws, prosecute or extradite any pirates or suspected pirates and armed robbers arrested by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service;

8. REQUESTS FURTHER the Secretary-General:
- .1 to transmit a copy of the present resolution to the Secretary General of the United Nations for consideration and any further action he may deem appropriate;
  - .2 to continue monitoring the situation in relation to threats to ships sailing in waters off the coast of Somalia and to report to the Council, as and when appropriate, on developments and any further actions which may be required;
  - .3 to establish and maintain co-operation with the Monitoring Group on Somalia; and
  - .4 to consult with interested Governments and organizations in establishing the process and means by which technical assistance can be provided to Somalia and nearby coastal States to enhance the capacity of these States to give effect to the present resolution as appropriate;
9. REQUESTS the Maritime Safety Committee to review and update, as a matter of urgency, MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22) taking into account current trends and practices;
10. ALSO REQUESTS the Council to continue to monitor the situation in relation to threats to ships sailing in waters off the coast of Somalia and to initiate any actions which it may deem necessary to ensure the protection of seafarers and ships sailing in waters off the coast of Somalia;
11. REVOKES resolution A.979(24).
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#### **Annex 41**

“Kenya – KDF”, *African Union Mission to Somalia*, available at:  
<https://amisom-au.org/kenya-kdf/> (last accessed: 21 December 2020)

## Kenya – KDF

HOME » KENYA – KDF



Soldiers of the Kenyan Contingent serving with the African Union Mission in Somalia (AMISOM) stand in front of the black flag of the Al Qaeda-affiliated extremist group Al Shabaab painted on the wall of Kismayo Airport. On 02 October 2012, Kenyan AMISOM troops supporting forces of the Somali National Army and the pro-government Ras Kimboni Brigade moved into and through Kismayo, the hitherto last major urban stronghold of the Al-Qaeda-affiliated extremist group Al Shabaab, on their way to the city's airport without a shot being fired following a month long operation to liberate towns and villages across southern Somalia from Afmadow and Kismayo itself. AU-UN IST PHOTO / STUART PRICE.

October 16th 2011, Kenya Defence Forces moved into Southern Somalia to pursue insurgents group Al Shabaab after a series of kidnappings of tourists along the border. One month, later Kenyan government agreed to re-hat its forces under the African Union Mission in Somalia.

The troops from Kenya were later formally integrated into AMISOM on February 22, 2012 after the United Nations Security Council passed Resolution 2036.

AMSOM's Sector 2, which has its headquarters in the port city of Kismayo, is comprised of Lower and Middle Juba. Currently there are 3664 troops from Kenya after they pulled out a battalion when 850 Sierra Leonean troops arrived.

### PRESS RELEASES



**Condolence Message on the Death of Former Prime Minister of Somalia, H.E. Omar Arte Qalib**

- November 20, 2020

**AMISOM STATEMENT ON DEATH OF FORMER PRESIDENT JERRY RAWLINGS** - November 15, 2020

**AMISOM condemns attack on its convoy** - September 7, 2020



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- November 23, 2020

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#### **Annex 42**

“Global Maritime Crime Programme: Indian Ocean West”, *UN Office on Drugs and Crime*, available at: <https://www.unodc.org/unodc/en/piracy/Indian-Ocean.html> (last accessed: 21 December 2020)



**United  
Nations**

**Office on Drugs and Crime**

GLOBAL MARITIME CRIME PROGRAMME



## Indian Ocean West

The Indian Ocean West (IOW) team of the Global Maritime Crime Programme is based in the [Regional Office for Eastern Africa](#) in Nairobi. The programme has extensive experience and knowledge in supporting states in the region in the fight against maritime crime and has a programming presence in the following countries in the East African Region: Angola, Comoros, Kenya, Madagascar, Mauritius, Namibia, Pakistan, Seychelles, and Tanzania.





The IOW programme is committed to support Member States, through its mandate, to develop cooperation both at a regional and international level and build law enforcement capacity among member states to counter serious organized crime within the maritime domain. In terms of our lines of activity, we traditionally offer support to countries to tackle transnational maritime crime throughout the entire criminal justice chain. This involves technical, material, and infrastructural support to law enforcement, prosecution, and detention. All interventions have a strong regional cooperation emphasis and under the mandate of its Indian Ocean Forum on Maritime Crime (IOFMC), it provides a strong coordination and delivery mechanism, covering thematic areas for intervention focusing primarily, but not limited to, Maritime Drug Trafficking, Fisheries Crime and Smuggling of Somali Charcoal. The participation of 22 states in IOFMC activity is a clear indication that the Forum fills an important gap in the regional response to these types of crimes at sea. Some of our activities are as follows:

**Law Enforcement:** The programme builds maritime law enforcement capacity and capability through the delivery of training courses and full-time mentorship, which are customized according to the specific needs of the counterparts. It also runs the Southern Route Partnership (SRP), which provides a coordination platform for national drug enforcement agencies and international partners to identify priority areas and coordinate support that enhances common objectives. The programme also delivers support in information sharing through the strengthening of maritime domain awareness (MDA) capabilities, including the development of terrestrial technology to augment MDA picture as well as dark targeting and behavioural analysis capability.





**Prosecution:** The Prosecutors' Network, which is a cross cutting pillar within the IOFMC provides a setting for senior prosecutors from across the Indian Ocean region to meet, share knowledge, problem solve, and discuss cooperative strategies for prosecuting maritime crimes including piracy, heroin trafficking, trafficking in persons, people smuggling, and wildlife trafficking. The forum includes relevant training on topics such as mutual legal assistance, and the development of simulated trials to provide a coherent and coordinated approach to prosecuting and adjudicating regional maritime drug trafficking. The forum also supports member states with reviews of their legal frameworks with a view to ratify and domesticate relevant international conventions into domestic law and mentorship programmes.

**Detention:** The programme has been delivering a Prevention of Violent Extremism (PVE) programme in Kenya and Somalia, and the main thematic areas of engagement are focused on training and mentoring of Prison Staff dealing with Violent Extremist Prisoners (VEPs), delivery of physical, procedural and dynamic security, enhancing prisoner record management systems, rehabilitation and reintegration activities, including support to vocational training, education and moderate religious (counter-narrative) teaching programmes, as well as the implementation of a robust risk assessment tool aimed at assessing risks of re-offending, recruiting and radicalising amongst the prisoners. Prior to this, the programme was actively involved in supporting prison management services that held convicted pirates, ensuring the environment in which they were detained was human rights compliant enabling safe and secure detention.

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## United Nations Office on Drugs and Crime





### **Annex 43**

Report of the UN Secretary-General on the situation with respect to piracy and armed robbery at sea off the coast of Somalia, S/2019/867, 8 November 2019



# Security Council

Distr.: General  
8 November 2019

Original: English

## The situation with respect to piracy and armed robbery at sea off the coast of Somalia

### Report of the Secretary-General

#### I. Introduction

1. The present report is submitted pursuant to paragraph 33 of Security Council resolution [2442 \(2018\)](#), in which the Council requested me to report within 12 months on the implementation of the resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia.

2. The report covers the period from 1 October 2018 to 31 October 2019 and highlights major developments since my previous report ([S/2018/903](#)). It is based on information provided by the United Nations system, including the International Maritime Organization (IMO), the United Nations Office on Drugs and Crime (UNODC), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Assistance Mission in Somalia (UNSOM), as well as Member States and regional organizations, including the European Union Naval Force (EU NAVFOR), the North Atlantic Treaty Organization (NATO), the Indian Ocean Commission and the Intergovernmental Authority on Development (IGAD).

#### II. Main developments, trends and considerations regarding piracy off the coast of Somalia

3. During the reporting period, efforts to combat piracy off the coast of Somalia continued, thanks to the concerted engagement of the international community, including the Contact Group on Piracy off the Coast of Somalia; the ongoing contributions of individual Member States (see annex I); international naval forces; and the work of the Federal Government of Somalia, with support from UNSOM and partners to strengthen governance and the rule of law within Somalia.

4. During the reporting period, no ships were successfully hijacked for ransom. Two significant piracy incidents, and a few instances of suspicious activity, occurred in the regional waters around the Somali coastline, in the Somali Basin (see annex II).

5. On 16 October 2018, there was an attempt to board the bulk carrier *Sydney* approximately 340 nautical miles east of Mogadishu. The attack was repulsed by warning shots from the privately contracted armed security personnel on board. Following the attack, EU NAVFOR Somalia Operation Atalanta ordered the Spanish



maritime patrol and reconnaissance aircraft *Cisne* to the area for further investigation of suspected pirate activity. On 28 October 2018, a team from the EU NAVFOR Somalia flagship *Castilla* disrupted an active pirate action group<sup>1</sup> whaler used to facilitate the attack.

6. On 21 April 2019, the fishing vessels *Adria* and *Txori Argi* were attacked 280 nautical miles off the central coast of Somalia. The attack was repelled following an exchange of fire between the suspected pirates and privately contracted armed security personnel on board. The suspected pirates had allegedly seized a Yemeni fishing dhow off the central coast of Somalia prior to the attacks, with 25 Yemeni and Somali crew members on board. On 23 April 2019, the EU NAVFOR Somalia flagship *Navarra* seized the Yemeni fishing dhow, *Al Ahzam*, off the central Somali coast, apprehended five suspected pirates and released the 25 crew members held as hostages. On 26 April, the five suspected pirates were transferred to the Seychelles authorities for prosecution. EU NAVFOR headquarters piloted the operation under the command of the operational headquarters in Rota, Spain, three weeks after the operation handover from Northwood, United Kingdom of Great Britain and Northern Ireland. With the support of various EU NAVFOR active assets in the region, including the German *Jester* and Spanish *Cisne* maritime patrol and reconnaissance aircraft, EU NAVFOR Somalia was able to control the situation and prevent any further imminent attacks.

7. Due to the quick intervention by international naval forces and the use of privately contracted armed security personnel, the pirates were therefore unable to successfully hijack the ships. In spite of the overall decrease in piracy attacks off the coast of Somalia in recent years, the attempts remind us that piracy has been reduced but not eradicated and remains a dangerous threat to the region.

8. The industry releasable threat assessment<sup>2</sup> of 1 September 2019 indicated that criminal groups previously involved in piracy seemed to be continuing to meet their financial objectives by pursuing lower-risk criminal activities, such as the smuggling of people, narcotics, weapons or charcoal. However, they had the intent and capability to conduct pirate attacks should the opportunity arise. Just one successful seizure, leading to ransom, could encourage financiers in Somalia to reinvest in piracy action. It also indicated that the continued presence of international naval forces, such as the Combined Maritime Forces and EU NAVFOR Somalia, together with the measures in the fifth version of *Best Management Practices*,<sup>3</sup> continued to constitute the most effective forms of deterrence and defence against piracy in the region. With regard to the southern Red Sea, no attacks had been conducted against shipping in the area during the reporting period. The threat related to such attacks was likely to remain at a low level as long as the Stockholm Agreement held.

9. In response to the decreased threat of piracy, the Round Table of international shipping associations and the Oil Companies International Marine Forum decided to update the geographical boundaries of the high-risk area and reduce its size as of 1 May 2019. The Round Table reiterated that flag States must continue to monitor the threat to ships flying their flag, set appropriate security levels in accordance with the

<sup>1</sup> A pirate action group is a group organized by its members to conduct acts of piracy and robbery at sea, usually within a specific geographic maritime area.

<sup>2</sup> Written by the Combined Maritime Forces and the European Naval Force (EU NAVFOR) to inform risk management decision-making for merchant and large commercial fishing shipping operators that are transiting through the Red Sea, the Gulf of Aden and the western Indian Ocean.

<sup>3</sup> BIMCO and others, *Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea*, version 5 (Livingston, Edinburgh, Scotland, United Kingdom, Witherby Publishing Group, Ltd., 2018).

International Ship and Port Facility Security Code and ensure that all incidents were reported accurately and in a timely manner to authorities.

10. At its 100th session, held from 3 to 7 December 2018, the IMO Maritime Safety Committee noted that the shipping industry had comprehensively reviewed and updated its guidance on piracy and armed robbery, which had resulted in the development of the fifth version of *Best Management Practices* and other guidance. The Committee also noted that the new and revised guidance reflected the developments in piracy and maritime security since the publication of the fourth version of *Best Management Practices*, including the development of further regional guidance, changes in pirate modus operandi and the establishment of new regional reporting mechanisms. The Committee approved the revised *Best Management Practices*, which was publicly available and was intended to assist companies and seafarers in further mitigating maritime security threats, as well as helping to increase the security of world trade.

11. The Committee invited member Governments to take note of the revised *Best Management Practices*, along with other revised guidance, and to advise owners, operators and managers of ships entitled to fly their flag, as well as the shipboard personnel employed or engaged on such ships, to act accordingly. The revised guidance is intended to support existing IMO guidance, namely: Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships (MSC.1/Circ.1333/Rev.1); Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships (MSC.1/Circ.1334); and Maritime Safety Committee resolution MSC.324(89) on the implementation of *Best Management Practices* guidance. International organizations were also invited to take note of the guidance and to advise their membership to act accordingly.

### **III. Development of counter-piracy efforts in Somalia**

#### **A. National legal and policy frameworks**

12. Two meetings of the Maritime Security Coordination Committee were held during the reporting period: in Nairobi on 29 and 30 October 2018; and in Mauritius on 18 June 2019, on the margins of the plenary session of the Contact Group on Piracy off the Coast of Somalia. Delegates from the Federal Government of Somalia, federal member states and “Somaliland” attended both meetings, together with international donors and agencies implementing Somali projects. The meetings provided an opportunity for all parties to increase their visibility and coordinate their work in the maritime domain and allowed Somali actors to highlight their most pressing requirements. IGAD, together with international partners, continued to support the Committee during the reporting period. The support consisted of strengthening the capacities of the Federal Government to monitor progress on maritime governance structures on land in Somalia.

13. The Federal Government of Somalia has expressed its intention to reinvigorate the National Maritime Coordination Committee under the Office of the Prime Minister as part of its efforts to improve coordination of all Somali maritime activities. Reinvigorating the Committee is an encouraging development that will allow Somali maritime stakeholders to better articulate collective objectives and ensure increased international focus.

14. The draft bill reviewing the law on pension and gratuities is pending approval by the Upper House of the Federal Parliament. The bill provides the legislative framework relating to the rightsizing of the security services in support of the national

security architecture agreement and is expected to enhance the operational effectiveness of Somalia's maritime forces, in support of the restructuring of the Somali armed forces and security services.

15. The Somali Maritime Administration Department, within the Ministry of Ports and Marine Transport, was established under legislation by the Federal Government of Somalia on 18 December 2018, with its formal launch taking place on 14 October 2019 following a needs assessment undertaken by IMO in May 2019. The launch was attended by federal member states and international partners. A capacity-building plan for the Department, supported by IMO, UNSOM, the World Food Programme and the European Union Capacity-Building Mission in Somalia, will focus on legal compliance, ship registration, crew certification and the establishment of a maritime rescue coordination centre, with an initial operating capability target for the Department in the first half of 2020. Work is also ongoing with the support of IMO and UNSOM to translate a draft Somali shipping code into Somali to meet international legislative requirements, which will allow Somalia to discharge the duties of a flag State, port State and coastal State, in accordance with the relevant IMO instruments, thereby contributing to the delivery of the governance pillar of the country's expanding blue economy.

16. The Federal Government of Somalia, through the Ministry of Fisheries and Marine Resources, issued licences to 31 longline vessels under a memorandum of understanding with the Chinese Offshore Fishing Association. The licensing steps and process were consistent with the Interim Agreement on Revenue-Sharing for the issuance of fishing licences signed by the National Security Council in February 2018. Vessels were licensed to exploit migratory tuna and tuna-like species in the Somali exclusive economic zone beyond the 24-nautical-mile coastal zone reserved for Somali fishers.

17. Noting the need for cross-sectoral and inter-organizational collaboration, the Federal Government of Somalia has continued to engage with the Indian Ocean Tuna Commission and to collaborate with the FISH-i Africa task force and, at a global scale, with partners through the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. EU NAVFOR Somalia and the European Commission Directorate-General for Maritime Affairs and Fisheries share sightings and analysis with the Indian Ocean Tuna Commission for onward transmission to concerned States, including the Federal Government of Somalia, in an effort to support the authorities in understanding the extent of the problem and considering actions to curtail such illegal practices.

## **B. Capacity-building**

18. While piracy remains dormant, Somalia's waters are increasingly becoming a space where maritime crime is thriving, affecting not only its ability to recover from years of conflict, but also posing a threat to the stability of neighbouring countries. National and transnational criminal syndicates, pirate action groups and Al-Shabaab exploit porous borders and a weak rule of law to move people, arms and illicit goods through Somalia and its waters. Somali maritime law enforcement authorities are further challenged by an unprecedented number of vessels that dock in its ever-expanding ports. Against this backdrop, and thanks to the support of a core group of donors, including Denmark, Italy, Japan, the European Union, the Netherlands and the United Kingdom, the UNODC Global Maritime Crime Programme continued to assist Somalia in building its maritime law enforcement and policing capacity and capability to enable effective patrolling of its waters and disruption of maritime crime at sea. The engagement of the Programme is rooted in and furthers the Somali Maritime Resource and Security Strategy, and it is coordinated with partners.

19. In the reporting period, the Programme remained active in three key Somali ports, namely Berbera, Boosaaso and Mogadishu. Puntland continues to face enormous challenges due to the increasing movement of people and illicit goods, particularly weapons, that reach its coastline through maritime routes, mostly from Yemen. To further the capacity of the Boosaaso Port and Maritime Police Unit to patrol longer stretches of the coastline, the Programme supported their efforts to undertake a series of successful rescue operations and interdictions by providing advanced visit, board, search and seizure skills, engineering skills for increased operational readiness and equipment. In “Somaliland”, the Programme supported the Coast Guard in Berbera by providing operational readiness and maritime law enforcement skills to further their efforts to protect the maritime space from illegal fishing as well as the illegal movement of people and goods.

20. In Mogadishu, the UNODC Global Maritime Crime Programme continued its 18-month capacity-building programme, delivered jointly with United Nations Office for Project Services (UNOPS), in coordination with the European Union Capacity-Building Mission in Somalia. The effort is aimed at establishing a solid foundation upon which the Mogadishu Maritime Police Unit will conduct maritime law enforcement and secure the waters off Mogadishu, its coastline and its territorial maritime space. The capacity-building programme focused on seamanship, coxswains and engineering skills with a view to providing visit, board, search and seizure skills. While the programme will end in 2019, the UNODC Global Maritime Crime Programme will continue to work with maritime law enforcement authorities to enhance capacity, particularly in view of the Mogadishu Maritime Police Unit stepping up its patrolling responsibilities around the Mogadishu airport and port.

21. A joint security sector governance programme capacity-building initiative, funded by the European Union and Sweden and implemented by the UNSOM-United Nations Development Programme Integrated Security Sector Reform Section, has been initiated. The aim of the programme is to strengthen security sector governance and reform, promoting and improving the coordination of security arrangements across the country while also enhancing democratic oversight and accountability within the sector. Furthermore, an integrated UNSOM and United Nations Development Programme structure is engaging with Somali counterparts on capacity-building initiatives through the framework of the Comprehensive Approach to Security that will further strengthen the effectiveness of Somali maritime forces.

22. UNODC and UNSOM, along with the European Union Capacity-Building Mission in Somalia, have also played an important role in the capacity-building activities of the Somali Maritime Police Unit. In support of capacity-building efforts, patrol boats are being procured by UNODC for the Maritime Police Unit in Mogadishu and infrastructure augmentation is being carried out by UNOPS, through European Union funding mechanisms. During the reporting period, the UNODC Global Maritime Crime Programme continued to deliver training and mentoring programmes for the Maritime Police Unit to enhance operational capability in the areas of maritime law enforcement and marine engineering.

23. A new coordination structure, the Maritime Police Working Group, has also been established by the Federal Government of Somalia to advance maritime policing with the federal member states. The Working Group, which is seen as a key platform for the expansion of maritime law enforcement along Somalia’s coastline, held its inaugural meeting on 18 September. It was attended by Egypt, Sweden, Qatar and Turkey, as well as by UNODC, UNSOM and the European Union Capacity-Building Mission in Somalia.

## C. Community issues

24. The Ministry of Fisheries and Marine Resources continues to lead the drive to develop the marine and coastal fishing sector as a key source of economic growth. Efforts in this area, especially when combined with community strengthening and advocacy, will contribute to the fight against piracy by reducing the recruitment of pirates in coastal areas.

25. Through the implementation of the Coastal Communities Against Piracy project, among other initiatives, FAO is working closely with the Ministries of Fisheries at the federal and state level to provide meaningful employment opportunities along the value chain in the fisheries sector, thereby providing alternatives to piracy or involvement in other illicit coastal activities.

26. The Coastal Communities Against Piracy project is supporting the development of income-generating opportunities for young people through long-term training programmes in Boosaaso and Mogadishu. Training topics include safety at sea, on-board handling, and improved fishing and post-harvest techniques. The project is also working to improve the design and performance of small-scale fishing, having distributed 27 vessels built locally in Somalia. In an effort to reduce post-harvest losses and improve income gained from fishing activities, FAO is providing training on new, value added fish processing techniques and providing cold chain assets such as refrigerated trucks and solar-powered flake ice machines. It is also strengthening fisheries cooperatives and other organizations at landing sites and conducting feasibility studies for new infrastructure. These activities are accompanied by participatory research and activities to build civic responsibility and raise awareness of the dangers of piracy, as well as provide opportunities within a well-managed fisheries sector. Other efforts implemented by FAO in support of fisheries value chain development include market development in domestic markets and in those of neighbouring States, and awareness and education campaigns around cooking and nutrition. In strengthening the value chain, FAO aims to stimulate market demand for underused resources in Somali waters.

27. FAO has also received funding from the trust fund to support initiatives of States countering piracy off the coast of Somalia to install Automatic Identification System transponders and Very High Frequency Digital Selective Calling handheld radios in 175 small fishing boats in Boosaaso, to assist anti-piracy forces with more information and improved monitoring of fishing activity. The intervention has not only improved the monitoring of fishing activities but has also built the capacity of ministries and fisheries associations in monitoring and managing Somali fisheries as well as improving safety at sea for individual fisherfolk.

## IV. International cooperation

### A. Contact Group on Piracy off the Coast of Somalia

28. The Contact Group on Piracy off the Coast of Somalia held its twenty-second plenary session in Mauritius, on 20 June 2019. It was attended by the following countries: Australia, China, Denmark, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, Madagascar, Mauritius, Netherlands, Norway, Pakistan, Panama, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Seychelles, Spain, Sri Lanka, Sweden, Turkey, United Arab Emirates, United Kingdom, United Republic of Tanzania and United States of America. Representatives of “Somaliland” also attended, as did representatives of many international, regional and private sector organizations. For the first time, Somalia elected not to attend and to focus instead on

further coordination of the National Maritime Coordination Committee before holding detailed engagements with the Contact Group. The plenary session was chaired by Mauritius as Chair of the Indian Ocean Commission, with the Commission supporting the plenary session as the secretariat of the Contact Group.

29. Recalling Security Council resolution [1851 \(2008\)](#), the plenary welcomed the continued efforts by the international community to combat and deter piracy off the coast of Somalia. It reiterated the need for stronger coordination of maritime security initiatives within the Contact Group community and called for the increased commitment of regional States in the Contact Group and for ownership of activities related to the fight against piracy and related threats and crimes. The plenary acknowledged the suppression of piracy and called upon international naval forces and independent deployers to maintain their presence off the coast of Somalia. The choice of Kenya to chair the Contact Group from 1 January 2020 to 31 December 2021 was endorsed with appreciation, and the offer made by the Indian Ocean Commission to continue to provide secretarial support to the Chair of the Contact Group was noted by the plenary.

30. During the session, the plenary also discussed the future of the Contact Group. It agreed on the need to ensure that the Contact Group remained an agile mechanism that was embedded in a long-term strategy for the region. It also agreed that more efforts were required to ensure a holistic approach for the region, along with better coordination and increased efficiency. The plenary also agreed to establish a steering committee to look into a strategic plan for the Contact Group. It noted the closure of the Working Group on Operations at Sea and agreed to transfer the activities of the Indian Ocean regional capacity-building working group to the Djibouti Code of Conduct. In addition, it called for the strict observance of the transfer agreement and expressed its strong opposition to the premature release of convicted pirates.

31. The plenary followed several other meetings, including the second Ministerial Conference on Maritime Security in the Western Indian Ocean, which was held on 19 June 2019 and was organized by Mauritius and the Indian Ocean Commission, with the support of the European Union-funded regional maritime security programme. Meetings of the Maritime Security Coordination Committee, the Virtual Legal Forum, and Contact Group-related working and technical groups, as well as the annual meeting of the Board of the trust fund to support initiatives of States countering piracy off the coast of Somalia were held on 18 and 19 June 2019. Contact Group members also participated in the side events that were organized on the margins of the Ministerial Conference to celebrate “maritime week”.

32. The Indian Ocean Commission has supported the Contact Group for three years, with support from the European Union-funded regional maritime security programme, which is implemented by four regional organizations – IGAD, the East African Community, the Common Market for Eastern and Southern Africa, and the Indian Ocean Commission – in close collaboration with FAO, the International Criminal Police Organization (INTERPOL) and UNODC. The aim of the programme is to provide a comprehensive approach to maritime security in the western Indian Ocean. The Regional Maritime Information Fusion Centre in Madagascar and the Regional Maritime Centre for Operational Coordination in Seychelles have been created under the programme, with the objective of developing a regional maritime architecture in the western Indian Ocean, based on improved maritime information exchange and joint operations at sea.

33. Regional agreements for the exchange and sharing of maritime information and for the coordination of joint actions at sea were signed in 2018 under the European Union-funded regional maritime security programme by seven East African and



Indian Ocean countries and areas.<sup>4</sup> The implementation of the agreements and the full operationalization of the Regional Maritime Information Fusion Centre and the Regional Maritime Centre for Operational Coordination are under way. Both are crucial in establishing a surveillance and control mechanism in the region. The signing of these agreements marked an important step in the establishment of a maritime security architecture, which includes other regional initiatives, such as the Djibouti Code of Conduct and its 2017 Jeddah Amendment. The architecture capitalizes on a specifically developed maritime awareness system and on best practices from Asia and Europe, and it complements monitoring and surveillance in the western Indian Ocean.

34. The hosting of the second Ministerial Conference on Maritime Security in the Western Indian Ocean was a flagship initiative of the European Union-funded regional maritime security programme. The conference brought together over 250 participants from 30 countries and regional and international organizations, including researchers, political and government representatives, and maritime technical experts, to debate and discuss maritime security initiatives. Participants called for the strong coordination of maritime safety and security initiatives to improve their impact and avoid duplication, as well as for the development of synergies where necessary, and the facilitation of the involvement of States as well as regional and international partners.

## **B. United Nations trust fund to support the initiatives of States countering piracy off the coast of Somalia**

35. During the reporting period, the trust fund continued to provide financial assistance to contribute to combating piracy off the coast of Somalia. It supported regional prosecution efforts as well as maritime law enforcement and governance, among other things.

36. Since 31 December 2012, the trust fund has received a total of \$14,834,461 from 18 donors. However, for several years, the trust fund has not been able to meet the United Nations Development Group benchmark contribution threshold level for multi-partner trust funds, which denotes diminishing interest from donors. As of 31 August 2019, the balance of the trust fund was \$218,895. Two projects have already been approved by the Board of the trust fund for a total amount of \$1,419,184 and are awaiting funding.

37. On 19 June 2019, the Board of the trust fund held its 21st meeting in Balaclava, Mauritius, with the Department of Political and Peacebuilding Affairs of the Secretariat serving as Chair. During the session, Board members continued their discussion on the future of the trust fund. They highlighted the important value of the trust fund in countering piracy off the coast of Somalia but acknowledged the need to abide by the threshold requirement of the United Nations Development Group for multi-partner trust funds. Therefore, there was consensus among Board members to make a renewed call for contributions to the trust fund to try to avoid its closure. However, if the trust fund did not meet the threshold requirement in 2019 and if there was no commitment from donors to meet the level in 2020, the Board decided it would close the trust fund on 31 December 2021. The Board did not approve new projects

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<sup>4</sup> The two regional agreements under the European Union-funded regional maritime security programme were signed by five countries – the Comoros, Djibouti, Madagascar, Mauritius and Seychelles – during the first Ministerial Conference on Maritime Security, held in April 2018. In addition, Kenya and France/La Réunion signed the same agreements in November 2018 during the Sustainable Blue Economy Conference held in Nairobi.

due to the limited amount of funding available and the already-approved projects that were awaiting funding.

## **V. Strategic maritime security activities**

### **A. International capacity-building**

38. Through the support of the IMO Djibouti Code of Conduct programme, States off the coast of Somalia, the western Indian Ocean and the Gulf of Aden have learned lessons in effective regional collaboration. Currently, the focus of the IMO programme is to develop a multi-agency approach that encourages the region to work at the national and cross-border levels to pursue a more comprehensive approach in order to prevent a resurgence of piracy, as well as to combat other threats, such as terrorism against oil and gas installations, illegal, unregulated and unreported fishing, and the trafficking of drugs, weapons and humans.

39. In response to these existing and emerging threats, the Jeddah Amendment to the Djibouti Code of Conduct was adopted in January 2017 as a mechanism by which participatory States agreed to work together to build national and regional capacity to prevent a resurgence in piracy and to address wider maritime security issues, a key component of which was agreeing to enhance maritime domain awareness in the region. To this end, the region has prioritized the establishment of national maritime information-sharing centres in each of the Djibouti Code of Conduct signatory States. These centres will play a key role as national pillars for the regional information-sharing network alongside the designated regional information-sharing centres. During the reporting period, Kenya began integrating its existing systems to establish a joint maritime operations centre with support from IMO, Denmark and the United Kingdom.

40. The effective implementation of the commitments made by each of the signatory States to establish a national organization to promote inter-agency cooperation and to develop national capability is paramount to the continued success of the Jeddah Amendment. Therefore, it is vital that the signatory States continue to establish their own national organizations, legal frameworks and capacity to address wider maritime security issues. To date, IMO, together with international and regional partners, has facilitated over 84 training courses that have benefited over 1,698 trainees from the region through the Jeddah Amendment.

### **B. Naval activities off the coast of Somalia**

41. During the reporting period, NATO has continued its engagement off the coast of Somalia in support of the international community's counter-piracy efforts. To that end, NATO retains maritime situational awareness of the area and monitors the piracy situation, including through the NATO Shipping Centre in the United Kingdom, which regularly interacts with the global shipping community. Moreover, NATO has continued its valuable partnerships with relevant counter-piracy stakeholders and has remained active in counter-piracy forums, such as the Contact Group on Piracy off the Coast of Somalia.

42. Both the European Union and the Combined Maritime Forces continued to operate dedicated multinational naval counter-piracy missions to protect merchant vessels and deter pirate activity in the Gulf of Aden and western Indian Ocean during the reporting period, as authorized by the Security Council. In addition, individual Member States of the United Nations, such as China, India, Japan, the Republic of Korea and the Russian Federation, have continued to operate in the area as

independent deployers, upholding security at sea by protecting and escorting commercial vessels.

43. The Combined Maritime Forces are a multinational naval partnership comprising 33 members, with a dedicated counter-piracy presence as one of its three constituent task forces. Operating as Combined Task Force 151, the Combined Maritime Forces patrol the Red Sea, the Gulf of Aden, the Arabian Sea, the Somali Basin and the northern Indian Ocean and actively operate in close cooperation with EU NAVFOR Somalia and independent deployers.

44. EU NAVFOR Somalia has continued its counter-piracy efforts through Operation Atalanta, which typically involves up to two warships, two maritime patrol aircraft and up to 700 personnel, covering an area stretching from the Red Sea to the Arabian Sea into the Indian Ocean down to the Mozambique Channel. The force has been further augmented through the periodic inclusion of a warship of the Republic of Korea in addition to the standing direct contributions from non-European Union Member States such as Serbia and Montenegro.

45. EU NAVFOR Somalia actively responded to the attacks against the *Sydney*, the *Adria* and the *Txori Argi*. In addition to its dedicated counter-piracy activities, EU NAVFOR Somalia has continued to engage coastal communities in Somalia by providing a platform for European Union instruments and United Nations agencies to promote development programmes within inaccessible communities with a view to providing alternative forms of income.

46. On 29 March 2019, the operational headquarters of EU NAVFOR was transferred from Northwood, United Kingdom, to Rota, Spain, and the Maritime Security Centre-Horn of Africa was relocated to Brest, France. The Centre remains integral to Operation Atalanta and plays an important role in assuring the global shipping industry that it will see a military response to piracy in the region. The Centre provides regional maritime domain awareness and receives registration details on transiting vessels through voluntary reporting, as recommended in the fifth version of *Best Management Practices*, in conjunction with the United Kingdom Maritime Trade Operations. The Centre uses this information to assess the vulnerability of the vessels to piracy. It also acts as a conduit to inform the shipping industry of threat assessments and incident-related threat bulletins based on the combined assessment of EU NAVFOR Somalia and the Combined Maritime Forces.

47. EU NAVFOR and the Combined Maritime Forces presented their latest joint threat assessment to the shipping industry bodies at the Shared Awareness and Deconfliction conference held in Bahrain in April 2019, and to government representatives at the plenary meeting of the Contact Group held in Mauritius in June 2019. With only two confirmed piracy attacks in the past 12 months, neither force assesses that there are any tactical indicators or warnings to point to a resurgence in piracy off the coast of Somalia, provided a deterrent force still exists at sea, able to deter and disrupt pirate activities.

## **VI. International legal and judicial issues, including human rights considerations**

### **A. Legal frameworks and cooperation**

48. From 1 to 3 August 2019, the Indian Ocean Commission held a ministerial retreat on the future of the organization in Moroni, 35 years after its institutionalization by the 1984 Victoria General Agreement on Cooperation. At the end of the retreat, participants adopted a declaration on the future of the Commission,

redesigning and laying the foundation for what will be the new Indian Ocean Commission. In the declaration, they referred, among other issues, to the risk of terrorism, the development of transnational criminal networks and maritime insecurity. It notes the two ministerial conferences on maritime security in the western Indian Ocean held in Mauritius in 2018 and 2019 and states that the renewed mandate of the Commission should include issues related to peace and security as well as maritime security, among other things. During the reporting period, the Department of Political and Peacebuilding Affairs of the Secretariat and the Commission initiated discussions on activities to help build the capacity of the Commission to promote and consolidate peace and security in the region, in line with the cooperation framework signed on 15 June 2018.

49. In line with the World Maritime Day theme for 2019, “Empowering women in the maritime community”, the Somali Ministry of Women and Human Rights Development, along with the Ministry of Ports and Marine Transport, UNSOM and the European Union Capacity-Building Mission in Somalia organized a consultative conference for women in the maritime sector in Mogadishu on 4 September 2019. The conference sought to create a platform in the lead-up to the twentieth anniversary of Security Council resolution [1325 \(2000\)](#) that would allow the Federal Government of Somalia, federal member states, civil society and international agencies involved in the maritime sector to discuss opportunities for women working in the sector and chart a road map for their future growth, as well as considering their contributions to the development of the blue economy in Somalia.

50. During its forty-sixth ordinary session, the IGAD Council of Ministers established a task force on the Red Sea and the Gulf of Aden. The task force held its 1st consultative meeting in Nairobi on 3 and 4 April 2019 and its 2nd consultative meeting in Djibouti from 15 to 18 September 2019. It agreed on the need for greater cooperation on issues such as combating illegal, unreported and unregulated fishing, violent extremism, piracy and irregular migration and on the need to ensure the freedom of maritime navigation in the waters of the Red Sea and the Gulf of Aden.

51. In its resolution [36/11](#) of September 2017, the Human Rights Council established a new open-ended intergovernmental working group, for a period of three years, with a mandate to elaborate the content of an international regulatory framework, without prejudging the nature thereof, and to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and security companies.

52. The first session of the intergovernmental working group, held in Geneva from 20 to 23 May 2019, provided an occasion to reiterate the importance of building on the conclusions and recommendations of the former working group to identify means to more efficiently prevent human rights abuses relating to the activities of private military and security companies; to more effectively protect and ensure access to justice and remedies for victims of such abuses; and to strengthen accountability for perpetrators of abuse, which had been largely elusive throughout the world. To further assist it with its mandate and in line with resolution [36/11](#), the working group invited written contributions from Governments, relevant special procedure mandate holders and mechanisms of the Human Rights Council, the treaty bodies, regional groups, intergovernmental organizations, civil society, the industry and other stakeholders with relevant expertise, including the Co-Chairs of the Montreux Document Forum and the International Code of Conduct Association.

## B. Hostage release and support efforts

53. The International Seafarers' Welfare and Assistance Network, an international charity based in the United Kingdom, administers the Piracy Survivor Family Fund of the Contact Group. Financial support from the fund has enabled the network to continue to provide support to hostages and their families during and after captivity, including the four crew members of the *Siraj* who have been held hostage by Somali pirates since March 2015.

54. On 14 September 2019, the Hostage Support Partnership negotiated the release of one of the *Siraj* crew members, who had been held by the pirate group "Karani" and who was very ill. With funding from the Piracy Survivor Family Fund and support from the Government of the Islamic Republic of Iran, the Partnership extracted the hostage and provided assistance for medical treatment and evacuation. Efforts to secure the release of the remaining three hostages continue. The network has been able to establish contact with the families of the remaining hostages and is trying to assess their needs in order to provide humanitarian support. It has also been able to assist released hostages and their families with re-employment, rehabilitation, medical services and education.

## C. Cooperation on piracy-related prosecutions

55. During the reporting period, the UNODC Global Maritime Crime Programme, acting as the secretariat of the Law Enforcement Task Force of the Contact Group, facilitated the 3rd meeting of the Task Force at the Lower Saxony State Office for Criminal Investigation in Hannover, Germany, in May 2019. During the meeting, participants discussed progress that had been made relating to the prosecution of suspected pirate leaders, associates and financiers since the previous meeting, held in Lyon, France, in May 2018.

56. The Task Force noted the value of the INTERPOL database of piracy suspects, which had been used to help to identify suspects among refugees arriving in Europe from Africa. The influx of migrants from Africa had brought several pirate associates to Europe, and the excellent crime scene records from hijacked vessels had provided fingerprint records that matched the suspects. As a result, several piracy arrests were conducted during the reporting period by the United States Federal Bureau of Investigation (related to the Michael Scott Moore kidnapping), and by Germany (related to the *Smyrni* case and the *Ems River* and *Susan K* hijackings).

57. At the request of the Law Enforcement Task Force, UNODC presented a report entitled "Proceeds of piracy crime: locating assets of pirate leaders and financiers", which was funded by the Trust Fund. The Task Force called for further research on the issue of piracy and transnational organized crime, including the possible nexus between pirate leaders and Al-Shabaab. In January 2019, UNODC also issued the "Summary of laws regulating floating armouries and their operations" and "Guidelines for the use of privately contracted armed security personnel" both of which are to be annexed to the second edition of the publication *Maritime Crime: A Manual for Criminal Justice Practitioners*.

58. On the basis of work conducted by the Task Force and UNODC, it is believed that four pirate action groups remain active in Somalia and are receiving funding to conduct piracy attacks against the shipping industry. There are indications of a fifth group operating out of the south of Somalia, which has carried out a number of unsuccessful attacks against ships. In addition, there are inactive pirate groups, such as the one holding the remaining crew of the *Siraj*. On 17 March 2019, a major Somali pirate financier was killed in an ambush while he was travelling from Gaalkacyo to

Hoby. He had returned to Somalia in February 2019 after serving time in an Iranian prison.

59. From 18 to 20 March 2019, the UNODC Global Maritime Crime Programme and the EU NAVFOR Legal Advisor from operational headquarters, assisted by an expert from the Australian Constabulary, conducted a piracy prosecution pathway exercise in Seychelles for the purpose of maintaining the region's capacity to conduct piracy prosecutions. Participants included representatives from the Office of the Seychelles Attorney General, the Judiciary, the Seychelles Police Force, the Coast Guard, the Air Force and the Seychelles Armed Forces. The training included sessions on revisions of legal frameworks regarding piracy, challenges in the chains of custody and evidence, and regular procedures for the handover of suspected pirates to the national law enforcement agencies.

60. The UNODC Global Maritime Crime Programme repatriated the last 28 pirates who had completed their sentences in Kenya. The last four were repatriated in February 2019. Since its inception in 2009, the Programme has repatriated 138 pirates who completed their sentences in Kenya, and there are currently no remaining convicted pirates in Kenyan prisons. Six suspected pirates apprehended in 2017 were repatriated from Seychelles on 29 November and 1 December 2018 as a result of their acquittal. Currently, five suspected pirates remain in detention in Seychelles, awaiting trial following their apprehension in April 2019. Finally, in August 2019, the Programme supported the repatriation of one convicted pirate who had completed his sentence in Japan.

61. With a view to promoting the rehabilitation and reintegration of pirates convicted in prosecuting countries in the region, the Government of Seychelles and the Transitional Federal Government of Somalia signed an agreement in 2011 to allow the transfer of persons convicted of acts of piracy to return to Somalia to serve their sentences. This was followed by a memorandum of understanding between Seychelles and each state authority in "Somaliland" and Puntland. UNODC has since facilitated the transfers and has built human rights-compliant infrastructure in "Somaliland" and Puntland, with support from the trust fund.

62. On 29 July 2019, the President of "Somaliland", Muse Bihi Abdi, conferred early release to 19 convicted pirates, held at Hargeysa Central Prison, who had been transferred by Seychelles in 2012. The President acted in accordance with the Constitution of "Somaliland", which grants him the power to pardon prisoners. However, his action was in breach of articles 5 and 7 of the memorandum of understanding between Seychelles and "Somaliland", which stipulate that the transferring State or authority shall retain exclusive jurisdiction for the review of the judgment and sentence and that the receiving State or authority shall continue to enforce the sentence as if the sentence had been imposed in the receiving State or authority. One week later, on 2 August 2019, the pirates were released. Currently, one pirate remains in Hargeysa Central Prison, as his sentence was converted from piracy to attempted escape in 2015. On 2 August 2019, the Chair of the Contact Group on Piracy off the Coast of Somalia issued a communiqué expressing the concern of the international community regarding the decision and highlighting the importance of upholding the responsibilities acquired through several agreements in the region to prevent the reescalation of piracy in the western Indian Ocean.

63. On 3 August 2019, Puntland indicated its intention to undertake a review of the sentences of the 30 pirates currently held in Boosaaso and Garoowe prisons. In response, the Chair of the Contact Group issued a second communiqué on 13 August 2019. The UNODC Global Maritime Crime Programme continues to monitor the enforcement of the sentences of all the convicted pirates transferred from prosecuting countries in the region.

## VII. Observations

64. The absence of successful piracy attacks off the coast of Somalia since my previous report demonstrates the effectiveness of the current mitigation measures applied by the Federal Government of Somalia, the shipping industry and the international community, including the Security Council and military and naval forces, to combat piracy and armed robbery at sea off the coast of Somalia.

65. However, I am concerned that several attacks were attempted during the reporting period. While unsuccessful, they demonstrate that piracy networks in the region remain active and ready to resume attacks if the opportunity arises. I commend the capture of the five suspected pirates who are now awaiting trial in Seychelles, which demonstrates that a swift, concerted response from international naval forces and the shipping industry continues to be vital in tackling the piracy threat, and a critical deterrent. Piracy off the coast of Somalia remains suppressed but still not eradicated; it will not be eradicated until the root causes of piracy, including the lack of alternative livelihoods, insecurity and weak governance structures, are addressed.

66. Piracy is only one of many threats to maritime security off the coast of Somalia. I am concerned by the persistence of illegal, unreported and unregulated fishing, and I urge Member States to abide by international regulations.

67. I welcome the efforts of the Federal Government of Somalia to develop a sustainable maritime sector. Initiatives related to gender mainstreaming in the maritime domain and to the recruitment and advancement of more women maritime police officers are encouraging steps in empowering Somali women to participate in the maritime sector.

68. Since my previous report, the international community has discussed fundamental aspects of international cooperation on countering piracy off the coast of Somalia, including the scope and focus of the Contact Group on Piracy off the Coast of Somalia vis-à-vis other regional instruments and mechanisms, prosecution mechanisms, and the future of the trust fund to support initiatives of States countering piracy off the coast of Somalia. In that regard, I note the need to explore synergies among the various instruments and mechanisms on maritime security in the region, including on countering piracy, to achieve the most comprehensive, concerted and effective international response possible.

69. I commend the work of the Hostage Support Partnership and the International Seafarers' Welfare and Assistance Network in relation to the release of a seriously ill hostage captured on the *Siraj* in March 2015 and call for the immediate and unconditional release of all remaining civilians and seafarers held hostage in Somalia. I reiterate my call to all partners to contribute to the Piracy Survivor Family Fund, which fulfils a crucial role in the rehabilitation of survivors of Somali piracy, supporting seafarers and their families.

70. I thank the Government of Mauritius for its leadership as Chair of the Contact Group on Piracy off the Coast of Somalia and welcome the Government of Kenya as incoming Chair from 1 January 2020. I also thank the Indian Ocean Commission for its secretariat role of the Contact Group. I note with appreciation contributions to the trust fund to support initiatives of States countering piracy off the coast of Somalia and encourage Member States to provide contributions to the trust fund for the remainder of 2019.

71. I encourage the Contact Group, international naval forces and the international community, as well as the Federal Government of Somalia and the federal member states to continue working together on combating piracy off the coast of Somalia.

## Annex I

### **Contributions of Member States, observers, non-governmental organizations and the private sector to countering piracy off the coast of Somalia**

1. The statements below have been provided by Member States in response to the relevant operative paragraphs of Security Council resolution [2442 \(2018\)](#):

2. Bulgaria participates in the European Union Naval Force (EU NAVFOR) Somalia Operation Atalanta, the objective of which is to deter, prevent and repress piracy and armed robbery off the coast of Somalia. The operation is aimed at contributing to the improvement of maritime security in the region, to deter piracy and armed robbery, to enhance the security of major maritime routes and to ensure the protection of humanitarian aid by escorting vessels of the World Food Programme and other endangered ships to ports in Somalia. Bulgaria has a mandate to participate in the operational headquarters of Atalanta with up to two military officers. Since 2009, Bulgaria has participated with a naval officer at operational headquarters in Northwood, United Kingdom of Great Britain and Northern Ireland. Since 2019, Bulgaria has continued to participate in Atalanta, with a naval officer stationed at its headquarters in Rota, Spain, as a practical expression of the country's contribution to the efforts of the United Nations and the European Union to combat piracy.

3. France is among the main contributors to the EU NAVFOR Somalia Operation Atalanta. In March 2019, the headquarters of Atalanta's Maritime Security Centre-Horn of Africa was relocated to Brest, France, and its operational headquarters was relocated to Rota, Spain. France also participates in the work of the Contact Group on Piracy off the Coast of Somalia. During the latest plenary meeting of the Contact Group on 20 June, France took an active part in the discussions that resulted in the decision not to extend the mandate of the Contact Group beyond piracy issues. Given that piracy cannot be considered completely eradicated, the Contact Group should continue its early warning work on piracy resurgence. Other maritime crime issues could be addressed within other frameworks, including the European Union-funded regional maritime security programme, the European Union Critical Maritime Routes Indian Ocean project and the Djibouti Code of Conduct. France also continues to advocate for regional ownership of maritime security issues. France supports the implementation of the regional security strategy of the Indian Ocean Commission, as well as the implementation of the Djibouti Code of Conduct, with a view to creating interconnected centres for the fusion of information of maritime interest.

4. In accordance with information provided by the Ministry of Internal Affairs of Georgia, in the context of the implementation of Security Council resolution [2442 \(2018\)](#), the Coast Guard Department of Georgia, owing to limited resources and competences, is unable to enforce specific measures in order to combat piracy off the coast of Somalia. However, it should be underlined that relevant offices of the Coast Guard Department systematically share information about suspected vessels with the maritime agencies of partner States and international organizations. Information-sharing will be maintained and relevant Georgian agencies will continue to implement all international obligations, including those contained in Security Council resolutions. According to materials provided by the Ministry of Defence of Georgia, as a leading authority in the field of export control systems, it is a military production licensing organ. With regard to this issue, it takes into account mandatory requirements established by Security Council resolutions relating to arms embargoes and sanctions. This means that a positive decision is not taken and permission for the export and transit of military production is not granted if an embargo applies to the country of final destination. This procedure applies to Somalia, as well, as it has been



subject to the embargo imposed by the Security Council in resolution [733 \(1992\)](#) since 1992. Moreover, a new legislative framework regulating export control in Georgia came into effect in 2014. It is completely harmonized with European Union legislation, resulting in the integration into national legislation of internationally recognized principles, standards and best practices in the field. The starting point in issuing permission is the comprehensive analysis of the product's country of final destination, as well as its end user and end use. This means, in the first place, the fulfilment of obligations under Security Council resolutions and relevant international agreements on security and non-proliferation.

5. Hungary, as a member State of the European Union, implements Security Council resolution [2442 \(2018\)](#) through the European Union missions EU NAVFOR Operation Atalanta and the European Union Capacity-Building Mission in Somalia. Hungary welcomes the efforts and effectiveness of both missions. However, due to their current operational commitments, the Hungarian Defence Forces are not in a position to contribute manpower to the missions.

6. Italy participates in the European Union Naval Force Operation Atalanta and, since the start of the operation, has provided a Navy warship, which also serves as flagship for the Force Commander. Italy has also permanently posted two officers and one petty officer in the operational headquarters in Rota, Spain, and provides, on regular rotation with two other nations, the Deputy Operational Commander (which includes an assistant and a secretary). Furthermore, in order to contribute to the improvement of maritime security in the region, Italian Navy warships provide, during their deployments, local maritime capacity-building activities and key leader engagement activities to local authorities, regional navies and other maritime actors relevant to the maritime security of the area of operation, (i.e. the Navy and Coast Guard of Djibouti, the Navy and Air Force of Seychelles, and the Mogadishu Police Forces).

7. Lithuania takes part in the EU NAVFOR anti-piracy operation Atalanta. During the reporting period, Lithuania posted one officer to the operational headquarters in Northwood, United Kingdom, beginning on 6 November 2018, and later to Rota, Spain. Since August 2019, Lithuania has increased its participation in the operation by deploying an autonomous vessel protection detachment comprising 12 servicemen on the World Food Programme ship and a national support element of 2 servicemen in Djibouti.

8. Maldives, with over 950 km of coastline in the middle of the Indian Ocean, upholds a strong commitment to the maritime security of the nation. This commitment has been undertaken through continuous maritime patrol by the Maldives Coast Guard and through joint maritime patrol by sea and air with friendly naval forces in Maldivian waters. The Maldives signed the Djibouti Code of Conduct in 2009 to support the suppression of piracy by enhancing information-sharing, capacity-building and training among the nations of the Horn of Africa and the western Indian Ocean region. Since then, the country has been engaging in transnational communication and cooperation in receiving information related to maritime piracy. In 2017, Maldives also signed the Jeddah Amendment, which expanded the scope of the Djibouti Code of Conduct. Maldives, Sri Lanka and India signed a trilateral maritime security cooperation agreement in 2012 for joint cooperation in humanitarian assistance and disaster relief, monitoring of exclusive economic zones, search and rescue and anti-piracy efforts. Further enhancements in maritime security include the signing of a memorandum of understanding in 2019 between Maldives and India for the sharing of white shipping information to develop maritime domain awareness, which would help monitor shipping activities in the Indian Ocean region. Now brought under the aegis of the trilateral maritime security cooperation agreement, the multilateral "Dosti" exercise carried out by the Coast Guards has been conducted in Maldives every other

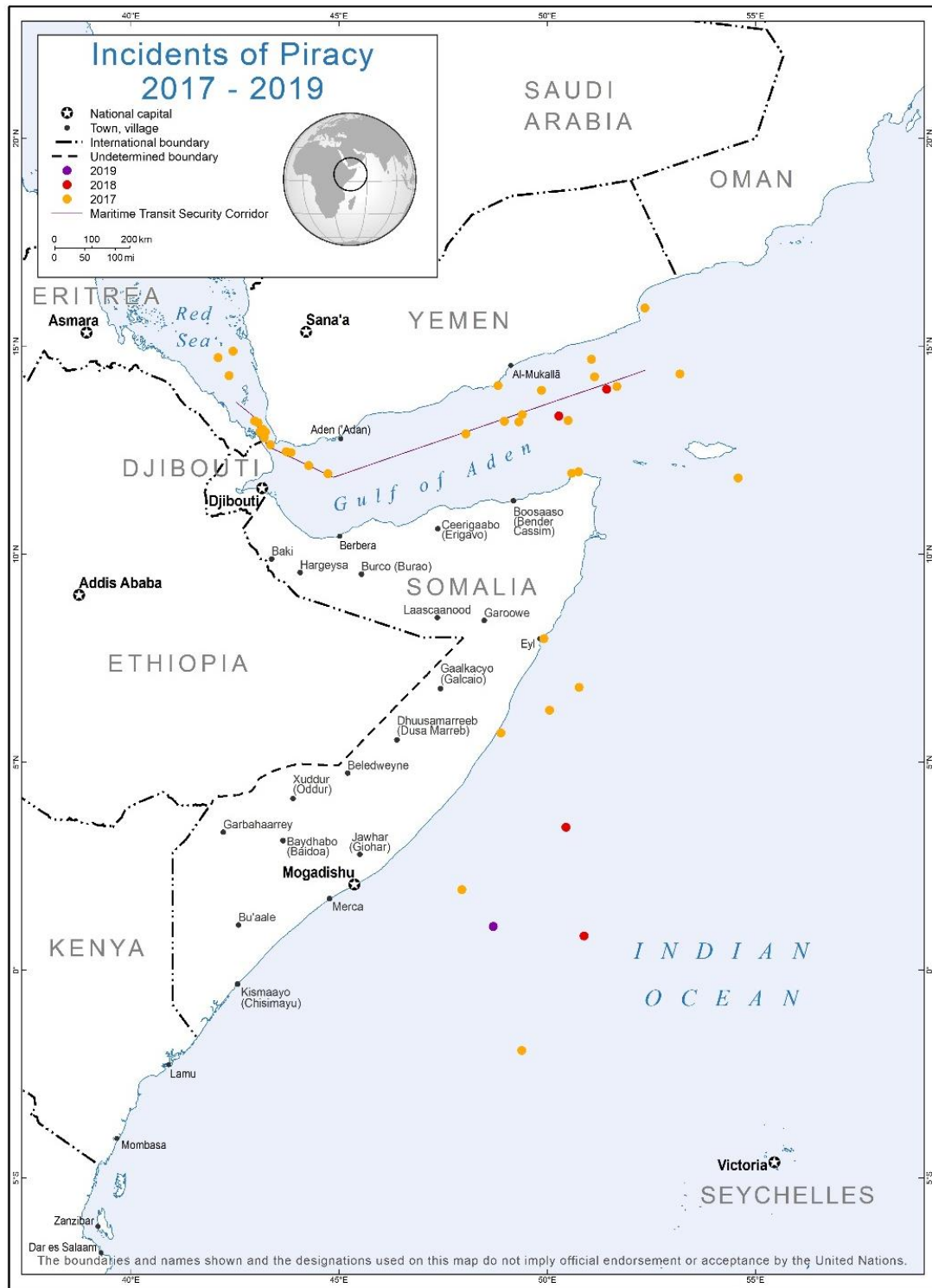
year since 1991 to enhance interoperability in counter-piracy, armed robbery and other issues related to maritime security and safety. In order to enhance further maritime domain awareness, coastal surveillance radar system chains are being installed across the archipelago. A total of 10 integrated radar systems will be completed by the end of 2020, with the assistance of the Indian Government. Since Maldives straddles strategic international sea lanes used by ships passing to and from the high-risk area, legislative provisions have been made for the handling of armed guards on board ships visiting Maldives ports (for the procedure, see <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Documents/Maldives.pdf>). The latest incidents related to Somalia in Maldivian waters include the apprehension by the Coast Guard of a skiff with three Somalis on board 41 nautical miles west of Aa Atoll, Maldives, on 23 June 2018 and the apprehension by the Coast Guard of two fishing vessels in Maldivian waters, each with 200 tons of fish from suspected illegal, unregulated and unreported fishing in Somali Puntland waters in January 2018.

9. Oman has established a centre for maritime security, which includes representatives of all the military, security and civil entities, so as to constantly coordinate and work jointly. The centre works around the clock to administer and lead marine security operations to counter security threats to ports, maritime facilities and coasts, as well as the Omani maritime region. It is equipped with state-of-the-art technical equipment of ships, boats, and maritime reconnaissance aircraft. It goes without saying that the centre harnesses all its capabilities to ensure the safety and security of the Omani maritime region. It is worth mentioning that no incident of piracy or armed robbery has been reported, to date, in the maritime region of Oman, since 6 November 2018, as the centre constantly works to coordinate jointly among the above-mentioned entities to counter illegal threats and activities. It is also in touch with regional and international centres, in order to achieve the objectives of international maritime security.

10. Since May 2009, Sweden has sent five naval units to Operation Atalanta, the European Union maritime intervention in the Gulf of Aden, off the Somali coast. The operation, mandated by the Security Council, is conducted with the consent of the Federal Government of Somalia. The European Union Naval Force protects vulnerable shipping and deters, prevents and represses piracy and armed robbery at sea in the region. In autumn 2017, Sweden provided a fifth contingent consisting of a naval boarding force and two fast assault craft to the operation. Sweden has recently increased its personnel contribution to the headquarters of Operation Atalanta in Rota, Spain, from two staff officers to three. Currently, Sweden does not intend to increase its personnel or contribution further.

### Annex II

### Map of incidents of piracy, 2017–2019



Map No. 4600 UNITED NATIONS  
October 2019

Office of Information and Communications Technology  
Geospatial Information Section

**Annex 44**

“Project Completion Report, Democratic Republic of Somalia, Petroleum  
Exploration Promotion Project (Credit 1043-SO)”, Report No. 7533, *The World  
Bank*, 8 December 1988

Document of  
**The World Bank**

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**Report No. 7533**

PROJECT COMPLETION REPORT

DEMOCRATIC REPUBLIC OF SOMALIA

PETROLEUM EXPLORATION PROMOTION PROJECT  
(CREDIT 1043-SO)

DECEMBER 8, 1988

Industry and Energy Division  
East Africa Department  
Africa Regional Office

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Washington, DC 20433  
USAOffice of Director-General  
Operations Evaluation

December 8, 1988

MEMORANDUM TO THE EXECUTIVE DIRECTORS AND THE PRESIDENTSUBJECT: Project Completion Report on Democratic Republic of Somalia  
Petroleum Exploration Promotion Project (Credit 1043-SO)

Attached, for information, is a copy of a report entitled "Project Completion Report on Democratic Republic of Somalia - Petroleum Exploration Promotion Project (Credit 1043-SO)" prepared by the Africa Regional Office. Full evaluation of this project has not been made by the Operations Evaluation Department.



Attachment

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MAPS

1. IBRD 20039 (Map as of March 1980)
2. IBRD 20037 (Map of Acreage Situation Early 1982)
3. IBRD 20038 (Contracted and open areas as of August 1986)
4. IBRD 20062 (Seismic program as implemented)
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DEMOCRATIC REPUBLIC OF SOMALIA  
PETROLEUM EXPLORATION PROMOTION PROJECT  
Credit 1043-SO  
PROJECT COMPLETION REPORT

Preface

Credit 1043-SO (Petroleum Exploration Promotion Project) in the amount of US\$6.0 million was approved on November 7, 1980, to assist the Ministry of Mineral and Water Resources (MMWR), the Government's entity responsible for all petroleum exploration in the country, in financing and implementing the project. The project's main objectives of supporting the Government's efforts to intensify exploration for petroleum resources in the country, and to improve its planning of the energy sector, were largely met. To make up for start-up delays, some administrative bottlenecks and initially a lack of availability of IDA funds, the Credit was extended by 24 months to December 31, 1985. At closing, the Credit was fully disbursed.

This Project Completion Report (PCR) was prepared by the Technical Department of the Africa Region of the World Bank, based on reports, data and documents in the project files. The borrower has reviewed the report and his comments have been considered and incorporated in the text.

In accordance with the revised procedures for project performance audit reporting, this Project Completion Report was read by the Operations Evaluation Department (OED), but the project was not audited by OED staff. OED sent copies of the draft report to the Borrower and the comments received have been attached as an Attachment to the Report.

SOMALIAPETROLEUM EXPLORATION PROMOTION PROJECTCREDIT 1043-SOBASIC DATA SHEETKEY PROJECT DATA

	<u>Appraisal Estimate</u>	<u>Actual or Re-estimate</u>
1. Total Project Cost	7.2	n.a.
2. Credit Amount	6.0	6.0
3. Credit Amount Disbursed	6.0	6.0
4. Physical Components Completed	06/83	06/85
5. Proportion Completed by above date (%)	70	100
6. Proportion of Time Overrun (%)		92
7. Financial Performance	Poor	Good
8. Institutional Performance	Poor	Good

CUMULATIVE DISBURSEMENTS

	<u>FY81</u>	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>
(i) Appraisal Estimate	2.05	5.39	6.0	-	-
(ii) Actual	0.12	2.88	4.24	5.82	6.0
(iii) (ii) as % of (i)	6	53	71	-	-

OTHER PROJECT DATA

	<u>Original</u>	<u>Revised</u>	<u>Actual</u>
Negotiations	04.21.80	-	04.25-30.80
Board Approval	06.10.80	-	06.10.80
Credit Agreement Date	n.a.	-	11.07.80
Effective Date	10.31.80	-	04.30.81
Closing Date	12.31.83	12.31.84	12.31.85
Date all Physical Components Completed			
(i) T.A. - Exploration Consultants	06.30.83	-	07.31.84
(ii) T.A. - Legal Consultants	06.30.83	-	12.31.85
(iii) T.A. - Accounting Consultants	06.30.83	-	12.31.85
(iv) Afgoy - Coriole Seismic Survey	11.30.81	-	08.15.83
(v) Energy Planning	11.31.81	-	05.01.86
(vi) Training	12.31.83	-	12.31.85
(vii) Other Studies (Oil Shale)	12.31.81	-	None
(viii) Promotion	01.31.81	-	09.15.82
(ix) Negotiations with oil Companies	06.30.81	-	03.31.84
Total Project Cost (US\$ million)	7.2	-	
Overrun	-	-	

Borrower	Democratic Republic of Somalia
Executing Agency	Ministry of Minerals & Water Resources
Fiscal Year of Borrower	January 01 - December 31
Follow-up Project	Afgoy Gas Delineation Project

Credit	1464 -SO
Amount in million	SDR 17.5 (appr. US\$18.0)
Credit Agreement Date	June 27, 1984

MISSION DATA

		Month, <u>Year</u>	No. of <u>Weeks</u>	No. of <u>Persons</u>	Man- <u>weeks</u>	Date of <u>Report</u>
Identification		09.23.79	2	2	4	
Preparation		11.19.79	1.5	3	4.5	11.29.79
Preappraisal/Appraisal		01.20.80	1.5	2	3	02.08.80
<b>TOTAL:</b>		-	5	7	11.5	-
<u>Supervision</u>	1	05.24.80	1.4	1	1.4	06.10.80
	2	09.28.80	1.4	2	2.8	10.24.80
	3	11.23.80	1.4	2	2.8	12.11.80
	4	06.04.81	1.5	2	3	08.12.81
	5	01.31.82	1.5	3	4.5	02.21.82
	6	05.20.82	1.1	2	2.2	n.a.
	7	06.07.82	0.6	4	2.4	n.a.
	8	08.09.82	1.3	4	5.2	08.23.82
	9	09.13.83	0.6	3	1.8	09.22.82
	10 (*)	01.13.83	2	2	3	02.24.83
	11 (*)	06.19.83	1.2	3	3.6	08.05.83
	12 (*)	07.21.83	0.3	3	0.9	07.26.83
	13 (*)	08.11.83	0.3	3	0.9	08.25.83
	14 (*)	09.11.83	0.7	2	1.4	10.05.83
	15 (*)	12.04.83	0.8	2	1.6	12.30.83
	16 (*)	05.10.84	0.6	3	1.8	06.11.84
	17 (*)	09.03.84	1.3	3	3.9	10.09.84
	18 (*)	11.11.84	0.8	3	2.4	01.23.85
	19 (*)	02.10.85	0.8	3	2.4	04.22.85
	20 (*)	03.31.85	0.9	1	0.9	04.24.85
	21 (*)	08.12.85	0.5	3	1.5	10.25.85
Completion		-	-	-	-	-
<b>TOTAL:</b>			<u>21.0</u>		<u>53.4</u>	

COUNTRY EXCHANGE RATES

Name of currency Somali Shilling (So. Sh.)

## Year:

Appraisal Year Average (1980)	US\$1 = 6.295
Intervening Years Average	US\$1 = 19.59
Completion Year Average (1985)	US\$1 = 42.50

\* Indicates mission dealing in part with new project, and therefore adjusted for sharing time.

DEMOCRATIC REPUBLIC OF SOMALIA  
PETROLEUM EXPLORATION PROMOTION PROJECT

CREDIT 1043-SO

PROJECT COMPLETION REPORT

Highlights

1. The IDA Credit under review, in the amount of US\$6.0 million, helped finance a petroleum exploration promotion project for the prospective onshore and offshore areas of Somalia. The beneficiary of the credit and executing agency was the Ministry of Mineral and Water Resources (MMWR) which is in charge of all matters concerning petroleum exploration activities.
2. Somalia has a small energy resource potential. Forested lands are the main domestic energy source but indiscriminate use of wood and lack of reforestation have seriously diminished this potential. The hydro potential, although largely undeveloped, does not exceed about 130 MW. Despite recent substantial energy petroleum exploration activities, no oil or gas has yet been discovered in commercial quantities although numerous oil and gas shows have been detected. Reported oil shale deposits turned out to be very poor in hydrocarbon content. Coal, in small occurrences in northern Somalia, is not attractive due to thin seams and high ash and sulphur content. Renewables such as bagasse from sugarcane contribute in a small way to steam and electricity generation; wind and solar energy have been the subject of pilot projects under bilateral financial assistance. Some geothermal potential is present, however this has not been investigated fully.
3. At project appraisal, domestically produced wood and charcoal met almost three quarters of Somalia's energy needs, petroleum imports the other 25 percent, in this manner covering virtually all the modern commercial energy demand. About 85% of Somalia's total energy supply, in the form of biomass (firewood, charcoal, etc.), is used mainly for household purposes. Power generation was, and is, based almost entirely on petroleum products - mainly diesel and, for the Mogadishu area, bunker fuel. Accordingly, increasing consumption rates and rapidly growing petroleum prices were straining the balance of payments and affecting negatively Somalia's economic growth. Other than conservation and substitution the only available means for alleviating this difficult situation was, and still is, to explore for and develop possible hydrocarbon reserves in prospective areas of Somalia. In this context, the project had the double objective of promoting exploration by international oil companies and strengthening the capacity of the Government (GOS) to manage the energy sector in general and the petroleum subsector in particular. The first objective was addressed by preparing an exploration promotion report that reviewed and compiled previous work with additional surveys (geological and geophysical), and by modernizing the legal/fiscal framework for petroleum exploration and production. This preliminary work led to the organized promotion of free acreage. The other objective was addressed by providing technical assistance to MMWR to supervise petroleum activities and negotiate

modern exploration/production agreements, training of MMWR staff, and by assistance to GOS in energy planning. A separate component consisted of a seismic survey over the potentially gas-bearing area of Afgoy-Corirole, near Mogadishu.

4. Project implementation had a slow start due to MMWR administrative inexperience in IDA projects, delays in the availability of IDA funds and also slow decision-making within GOS. However, once the procedures were understood, project implementation including the selection of consultants moved more rapidly. Since some local costs during the seismic survey had to be absorbed under the project (given the particularly acute lack of funds of GOS), and the contemplated local expenses for the consulting firms (house rental, vehicle rental, local workers hiring) did not materialize, the project was completed with a large cost underrun (US\$1.1 million equivalent). However, all credit funds were disbursed.

5. All the data available at the onset of the project in the MMWR files were organized and microfiched to produce a data base. Old seismic surveys (mostly pre-1970 vintage) and all subsurface information (more than 56 dry holes) were compiled and presented in a promotional report for sale to interested companies. A promotion meeting organized in Houston in 1982 resulted in three companies being actually interested in negotiating for exploration blocks. Two exploration agreements for nine blocks were later finalized under the new petroleum law prepared by the GOS consultants. A seismic survey of about 650 line-km over the Afgoy-Corirole block indicated the existence of several structural features. A semi-detailed addition of about 175 line-km was recorded over the Afgoy area where a gas discovery had been reported by Sinclair et al in 1966. This led to the next project - Afgoy Gas Delineation Project (Cr. 1464-SO). No special studies were recommended under the project and the oil shale study was dropped because the occurrence of oil shale could not be confirmed. The energy planning study was a pioneering effort, and was carried out under difficult conditions and with an almost complete lack of data. Nevertheless, a substantial amount of work was done. They have now been superseded by the subsequent Bank/UNDP Energy Assessment report which could build on the study. Among its contributions were the generation of data particularly in the rural energy sector, but it failed in its attempts to analyze the sector in its entirety and to provide fully convincing policy recommendations. Further analyses will be forthcoming under the Power Rehabilitation Project.

6. Although not all the project components were successful, the two basic aims of the project - attracting oil companies to explore in Somalia and the institutional strengthening of MMWR building were achieved. In March 1984, Exxon and Elf signed exploration agreements (IBRD 20037) for a total of nine blocks. But as a late fall-out of the exploration promotion effort and of the impact of the important Hunt Oil discovery in N. Yemen, five new contracts covering 13 blocks (IBRD 20038) were recently negotiated. As of August 1987 a total of 7 international oil companies (Amoco, Shell, Conoco, CIPC, Chevron, Occidental, and Agip) have taken an acreage position in Somalia with another 5 expressing interest. Exploration work underway consists of geological, geophysical and drilling operations.

7. The lessons learned from this project can be applied to similar lending operations by the Bank Group. They are:

- (a) There should be close project supervision by IDA staff through frequent missions and close contacts with consultants and contractors;
- (b) The potential benefits of training activities are limited due to the severe constraints faced by the public sector as a whole;
- (c) It is unrealistic to expect a Government with severe financial constraints to provide timely financing of local costs for contractors and consultants; such costs should be carried by IDA;
- (d) It is important to obtain firm commitments as to the compensation to be paid for damages; in this case to farmers affected by the seismic survey.

DEMOCRATIC REPUBLIC OF SOMALIAPETROLEUM EXPLORATION PROMOTION PROJECTCREDIT 1043-SOPROJECT COMPLETION REPORTI. INTRODUCTIONEnergy Resource Base

1.01 The project under review was the first lending operation in the petroleum sector of Somalia. While petroleum accounts for nearly 25% of total energy consumption, petroleum demand is satisfied entirely through imports. A 250,000-ton refinery near Mogadishu, which until recently was owned jointly with Iraq, processes primarily Saudi crude. The actual refinery configuration is such that it is not adapted to the local market as it produces about 50% of heavy fuel. Gas oil represents 50% of petroleum products consumption, followed by gasoline and fuel oil (about 20% each), and kerosene, jet fuel and LPG account for the balance. In 1979, when the project was appraised, petroleum imports were becoming a growing burden on Somalia's balance of payments. They amounted at that time to nearly US\$43 million (net of fuel oil exports of about US\$14 million), or about 26% of export earnings. Rising oil prices were expected to boost the petroleum import bill at a time when exports were decreasing, even when oil imports were subsidized in part by Saudi Arabia. Somalia was facing severe energy problems because of a narrow and poorly developed resource base and inadequate pricing policies. The country therefore decided to intensify the search for its own petroleum resources, and the Government (GOS) turned to the Bank for help in promoting its prospective areas to private oil companies in the hope of discovering and developing domestic hydrocarbon resources.

Institutional and Legal Framework

1.02 The central authority for carrying out petroleum and mining activities in Somalia is the Ministry of Mineral and Water Resources (MMWR), and within the Ministry, the Department of Mines and Hydrocarbons (DMH). The Ministry is thus responsible for all policy matters relating to hydrocarbon upstream activities and their organization.

1.03 The Mining Code of 1970 and its regulations of 1971 governed petroleum exploration and production until limited amendments to the Mining Code were promulgated in the form of a new Mining Code dated January 9, 1984. The Amendments were made to facilitate the new and more modern form of petroleum concession agreements which was prepared in conjunction with the lending legislation. The concession agreement includes the principal forms of fiscal levy, royalty, income taxation and a supplementary revenue tax (SRT). The SRT is based on the profitability of the venture of the oil

company concerned, and escalates as higher levels of real rates-of-return are achieved. The model contract provides for a maximum exploration period of six years including extensions, and a production period of 25 years.

### Status of Exploration

1.04 Petroleum prospective sedimentary areas cover about 90 percent of the land area (637,140 km<sup>2</sup>) and all of the offshore continental shelf out to the 200 m depth (about 300,000 km<sup>2</sup>). Inasmuch as each of the prospective basins has a different geological setting the stratigraphic and structural objectives differ somewhat in each basin. Briefly, Somalia has widespread and appreciable thicknesses (up to 30,000 feet aggregate) of marine deltaic Jurassic, Cretaceous and Tertiary sedimentary strata. It also contains favorable porous and permeable reservoir rocks (limestones, limestone reefs, bioclastic lenses and sandstones), demonstrated oil/gas potential source rocks, and structural and/or combination traps of various sizes. Somalia has thus a large oil and gas potential which remains largely untested. At the time of project appraisal these areas had been explored during three main exploration cycles. In all some 54 wells had been drilled (roughly an onland density of one well in 10,000 km<sup>2</sup>, which is low), numerous oil and gas shows encountered, but no commercial discovery was made. All exploration activity ceased from 1977 to 1979. A renewed Government effort in 1978 to attract foreign oil companies had, by 1979, only a marginal result in that two companies, Arco in the Mudugh Basin and Texaco in the Lamu Embayment, separately negotiated for exploration permits in 1979. The petroleum potential of Somalia, though still not fully evaluated, was deemed sufficiently interesting to warrant the organized effort of promoting the various sedimentary basins. In this context, the GOS requested assistance from the Association in financing an exploration promotion project.

### Project Objectives

1.05 The project's main objectives were to assist the Government in: (a) preparing a synthesis for sale to interested companies, of all information acquired previously by foreign operators across the entire territory; (b) organizing its exploration data base; (c) establishing a modern petroleum law with proper accounting and reporting systems; (d) preparing a promotion meeting to offer exploration acreage to the petroleum industry; (e) carrying out a seismic survey to enhance the geological knowledge of the Afgoy-Coriole area which is rich in oil/gas shows (Afgoy-1 and Coriole-1); (f) establishing in the energy sector a data base for policy decisions, analyzing priority issues and establishing the framework for continuous sectoral planning capability; and finally (g) assisting in the training of professionals, the purchasing of office and field material and equipment. Financing of the project was provided by an IDA Credit (Credit 1043-SO) in the amount of US\$6.0 million to cover the full foreign exchange costs of the project. Estimated local costs amounting to US\$1.2 million equivalent were to be financed by the Government.

1.06 This report is based on documents and reports existing in the project's files and discussions with some consultants and Government officials.



## II. PROJECT IDENTIFICATION, PREPARATION AND APPRAISAL

### Origin of the Project

2.01 Though some preliminary petroleum exploration was carried out in the 1920s, it started in earnest after World War II when Shell became active in the former British Somaliland and Sinclair and Agip in the former Italian Somalia. Since then, BP, Gulf, CONOCO (Conorada), Texaco, Elf and others acquired and relinquished acreage after carrying out geological and geophysical surveys and exploratory drilling (54 wells). Then all activity ceased in 1974. At the time of the project identification mission (September 1979), international oil companies began to show some new interest in Somalia, possibly due to the change in political orientation of the country.

2.02 Government negotiations with two oil companies marked the end of a two-year lull in activities. ARCO negotiated an exploration block of approximately 140,000 km<sup>2</sup> covering the entire Mudugh Basin including the offshore and Texaco a block in the Lamu Embayment between the Juba Valley and the Kenyan border. In fact, ARCO's block was so huge (IBRD 20039) that the IDA identification mission advised MMWR that the size of the ARCO concession was too large compared with most concessions in other countries, and that it would remove the area for a long time with minimal work commitment and minimal relinquishments. At the same time, the GOS in an effort to attract oil companies in the offshore of the Indian Ocean and the Gulf of Aden, financed 60 percent of a speculative marine seismic survey carried out by GECO of Norway. (Under the normal circumstances prevailing at the time, the geophysical firm should rather have footed the entire cost and possibly paid either a dividend or a lump sum to the GOS). However, the general attitude towards Somalia by the oil industry was one of indifference although two companies (Cities Service and Shell) subsequently to project appraisal signed contracts for offshore tracts. It is in this context, and the very difficult balance-of-payment situation, that the GOS presented a request for assistance from the World Bank Group to intensify exploration and modernize the petroleum legislation.

2.03 The IDA identification mission found that there was a need to modernize the legal/contractual framework and to promote systematically Somali exploration acreage. Due to the activities of the oil companies over the years, the mission also found that there existed significant information about the petroleum potential of Somalia, but the information was scattered in various areas of the Ministry and even in other ministries, and considerable portions of the information could only be found in the files of the oil companies. In addition, the state of preservation of the available information was often deficient and there was no overview presenting systematically the various positive aspects of the petroleum potential. Against this background the mission identified a possible project which was agreed to by GOS.

### Project Preparation and Appraisal

2.04 An IDA mission prepared and appraised the project in January 1980 in light of the project objectives mentioned above. From a review of incomplete files and vintage seismic data, it was concluded that many of the 54 exploration wells drilled over the years had in fact been on doubtful

structural prospects. Only 20 of the wells had been drilled subsequent to the introduction of multiple seismic coverage in Africa (after 1964) and only seven of these after digital seismic had progressed enough to eliminate successfully most multiples. Cumulative drilling density in 1980 was low - 54 wells drilled in all or one onshore well per 11,000 km<sup>2</sup> and one offshore well per 100,000 km<sup>2</sup>. It appeared that the country was underexplored and in need of a more intensive exploration effort. A number of structures and combination prospects had not been fully tested - diapir domes, horst and tilted fault blocks of rift tectonics, reef and shoal plays. In short, the unconsolidated results of past exploration was inadequate to establish firmly Somalia's petroleum potential. Furthermore, GOS was interested in developing rapidly the Afgoy-Corirole gas and/or gas-condensate possibilities as a reliable domestic source of energy. In this framework, the Bank agreed to support the Government's aim to: (i) redirect efforts to lease acreage to oil companies through a complete reassessment of its petroleum potential and a revamping of the relevant legislation; (ii) assist in assessing the Afgoy-Corirole prospects through a modern seismic survey; and (iii) improve its planning strategy for the development of the energy sector.

2.05 The scope of the project consisted of the following four components:

(A) Technical Assistance to Directorate of Mines and Hydrocarbons (DMH)

(a) Advisory Exploration Consultants (48 man-months)

- (i) to secure, evaluate and compile available surface and subsurface information in Somalia, and prepare maps, profiles and reports carrying new ideas to explore for hydrocarbons;
- (ii) to devise a strategy for promoting the petroleum potential to oil companies;
- (iii) to prepare a detailed seismic program on the Afgoy-Corirole prospects;
- (iv) to help the legal and accounting consultants with improving and modernizing the legal and contractual framework for exploration and production;
- (v) to help administer the acreage bidding procedure (including definition of permits, preparation of data package, evaluation of bids);
- (vi) to provide support to the GOS team during negotiations with oil companies;
- (vii) to help monitor the work of operating companies; and
- (viii) to devise and help the training of professional staff.

(b) Legal Consultants to undertake the modernization of the petroleum legislation (Mining Code Regulations and a Model Contract) and to support the Government during negotiations.

(c) Petroleum Accounting Consultants to establish a petroleum accounting and auditing system designed to monitor and audit expenditures of operating companies.

(d) Training of Professionals Geologists, geophysicists, lawyers, accountants and economists to be trained on-the-job, through special courses or in seminars.

- (e) Special Studies if warranted.
  - (f) Purchase of Office and Field Equipment needed to support the work of the consultants and store geological and geophysical data.
- (B) Geophysical Survey of the Afgoy-Corirole Prospects  
Possibly 700 line-km over this gas prospective area aimed at confirming whether the structures were worthy of further exploration efforts.
- (C) Assessment of the Oil Shale Deposits in the Northern Regions  
Reported oil shale and oil seeps to be checked and their evaluation undertaken. This component turned out to be unwarranted (para 3.11).
- (D) Energy Planning to assist the Government in establishing a data base for policy decisions, analyzing priority issues in the sector, preparing the framework for continuous sectoral planning and creating a national energy planning capability.

2.06 Credit negotiations were held in Washington in April 1980 and the Credit was approved by the Board on June 10, 1980.

2.07 The Credit became effective on April 30, 1981. Although there were no special conditions of effectiveness, the Credit was deemed effective once the consultants were identified.

### III. IMPLEMENTATION

#### Implementation Plan

3.01 The Directorate of Mines and Hydrocarbons (DMH) in the Ministry of Mineral and Water Resources (MMWR) managed the project with the assistance of an exploration consulting firm which provided technical, advisory and administrative support on an as-needed basis. Other consulting firms, such as a law firm and an accounting firm, contributed their share of assistance in the revamping of the Mining Code and preparation of a model contract establishing an accounting/auditing system and providing advisory support during negotiations with oil companies. The Ministry formed a full-time implementation unit, officially called the Directorate of Hydrocarbons (DH), and manned by counterpart professionals. The DH fully participated in all the project activities.

#### Technical Assistance to the DMH

3.02 The exploration consultancy contract was signed in May 1981 for a three-year duration. The consultants were required to:

- (a) recover all past exploration information (surface and subsurface) from the GOS' offices or from previous operators for consolidation in a single file;

- (b) rework and compile the information;
- (c) prepare a promotion report for sale to interested companies and organize a promotion meeting to attract companies to explore in Somalia;
- (d) organize and administer the exploration bidding (including definition of permits, preparation of data package, analysis of bids);
- (e) advise the DMH on all steps of exploration and in particular during negotiations and to help monitor the work of operating companies;
- (f) support the legal consultants in their effort to modernize the petroleum legislation;
- (g) design and implement a training program for DMH professionals; and
- (h) prepare the seismic program for the Afgoy-Corirole survey, and control the quality of the acquisition and processing phases of said survey.

All these activities were implemented in a satisfactory way; however, the promotion report lacked an evaluation of each basin and some geochemical considerations in support of Somalia prospectiveness.

3.03 The legal consultancy contract was signed in October 1981 to undertake the modernization of the existing petroleum legislation, and to assist the Government during negotiations with oil companies. After some initial hesitation, the GOS decided to adopt a type of contract based on sliding-scale rates-of-return which trigger different levels of special taxes. Both the exploration and the accounting consultants participated in the elaboration of the new legislation including the regulations. These were promulgated in February 1984. The legal consultancy contract with its extensions came to an end in December 1985 under Credit 1043-SO, but has been continued under Credit 1464-SO.

3.04 The accounting consultancy contract was to prepare an accounting/auditing system to help monitor oil companies' activities. The consultants also trained two local accountants and assisted the DMH with organizing their project accounts.

3.05 The training of some Somali professionals took place either on the job, or in the case of four persons (one geophysicist, one geologist and two accountants) on the premises of the consultancy firms (exploration and accounting consultants) for a total of about 20 months. In addition, several professionals and MMRW officials had various opportunities to attend professional gatherings including promotion and negotiation meetings. The training of the professionals resulted by and large in improving their skills and in widening their understanding of the oil industry. However, in a few instances the trainees were not able to take full advantage of the opportunities offered, due to their limited backgrounds. In addition, the whole civil service in Somalia suffers from a profound lack of motivation due to very low salaries and the prevalent management practices. In this context, any training of groups or individuals can only have limited results in terms of operational performance.

3.06 The purchase of office and field equipment was limited to copying machine, minicomputer, telex machine and filing material for logs and reports. The Afgoy-Corirole seismic tapes are presently being stored with the seismic contractor.

3.07 The Geophysical Survey over the Afgoy-Corirole area in Block 9 (IBRD 20037 and 20062) consisted of seismic acquisition and processing along approximately 810 line-km. The field work started in August 1982 and was completed in March 1983 without encountering major problems. Data processing was done in Houston, Texas with quality control supervision carried out by the exploration consulting team. The data processing covered the period from August 1982 through June 1983 utilizing an IBM 4341 and Petty-Ray software. All the state-of-the-art techniques were used, and the processed lines were made available for interpretation as soon as each line was completed. The interpretation phase of the survey was undertaken by the exploration consultant who also used the help of the Somali trainees during part of the work. The interpretation phase ended in early September 1983. The survey indicated that the Corirole structure was on a different trend from the Afgoy prospect, and that there is another separate trend referred to as the coastal structural trend. Faulting is abundant throughout the surveyed area and creates interpretation difficulties. Seven prospects were identified in the surveyed area, and the exploration consultants recommended to the MMWR that a well be drilled at a location corresponding to their interpretation apex.

3.08 The energy planning consultancy contract was for assisting the Government in establishing a database, analyzing priority issues and establishing the framework for continuous sectoral planning. This was a pioneering effort in Somalia, and it was handicapped by a significant lack of reliable statistical information. The work was finalized in early 1986.

3.09 Since quite a large amount of funds were still available under the category of Special Studies, at the time of preparation of the follow-up project (Afgoy Gas Delineation), the Government decided and the Bank agreed to make use of the unused funds for preparing said project under the special studies category of the credit. A petroleum consulting firm was hired to make an engineering study of the Afgoy-1 well results, and to design the gas project. At the same time, this firm was required to serve (under the subsequent credit) as exploration advisers to DMH during the contemplated drilling operations and subsequently for ongoing exploration monitoring, in replacement of the initial advisers whose contract came to an end. The services of a drilling management firm were also contracted to prepare the drilling operations.

#### Changes In Project Schedule

3.10 Initial delays were due to lack of available IDA funds, which delayed effectiveness. At the onset of project implementation, delays for selecting consultants were piling up because of: (a) poor preparation of submitted proposals and their general lack of responsiveness; and (b) lack of familiarity by the Borrower with the Bank recommended procedures. Therefore the exploration consulting firm and the energy planning firm were contracted to start in June 1981, about one year later than forecasted. Legal and accounting consultants were contracted even later. These considerable initial

delays were coupled with unavoidable additional delays during project implementation, such as extension of seismic survey and slower interpretation than expected, and repeated problems with the intermediate reports in energy planning. These problems led ultimately to a two year delay in project completion.

### Changes in Project Scope

3.11 The main change in scope has concerned Part C of the Credit Agreement - the assessment of the Northern Regions oil shale deposits, which was dropped in its entirety. The exploration consultants early in their employment made an attempt to reach the two areas where oil shale reportedly crop out. Due to continuing unsettled border conditions, only the Bihendula shale zone could be visited. Samples of apparently kerogen-rich shales turned out to be merely normally rich shale after laboratory analyses. These marine, fossiliferous shales of Jurassic age, found in a graben structural environment, have a certain oil-source potential, and thus might have played a role in generating hydrocarbons. Oil recovered from tests in the Dagh Shabel-3 well south of Berbera supports this interpretation. However, surface samples are notoriously insufficient to support a final conclusion, particularly in an arid climate due to deep weathering. Trench and/or pit digging and core drilling are necessary in order to reach the unweathered layers for proper sampling. But the lack of water in a desert environment (necessary for an oil shale operation), the remoteness of the area, and also the rather poor security prevailing at the time, helped MMWR decide to abandon this part of the project. Furthermore, the intention of developing an oil shale operation in a country deprived of and remote from hydrocarbon production (roughly three bbl of oil equivalent are needed to produce four bbl of shale oil) can be questioned on a purely material balance point of view. The funds initially set aside for the oil-shale component were reallocated.

3.12 Another change in project scope was the extension of the Afgoy-Coriolo seismic survey by another 160 line-km of detailed work over the gas prospective Afgoy structure, or a total of 810 line-km. This addition delayed the seismic interpretation by five months.

3.13 When the results of the Afgoy detailed seismic survey were available, a major change in project scope was seriously considered, viz. the reentry of Sinclair well Afgoy-1 which had significant gas shows, since at that time in excess of US\$1 million could have been made available under the credit. Though the GOS agreed with such a change, a detailed cost computation showed that the amount available was not adequate to cover the envisaged operation given the risks involved, and the reentry possibly was therefore not pursued further.

3.14 These changes in project scope contributed to the project delays. Nevertheless, project funds were entirely disbursed with time.

### Reporting and Auditing

3.15 Under strong Bank prodding, MMWR finally produced an activity report in October 1983 that covered 1981, 1982 and the first half of 1983. No other report (neither quarterly nor annual) has been received since then, although the various consultants produced periodic reports on their activities that

when taken together covered all the activities of the project. Auditing of the accounts was performed by the Government's auditing agency in 1983 to cover the years 1981 and 1982 and in 1984 to cover 1983. The 1984 and 1985 accounts were audited by MMWR's external auditors. Both audits covered also the MMWR's special account established with the Central Bank of Somalia for recording the sale of promotion reports and expenditures in relation to petroleum promotion. In short, MMWR has been lax with their reporting commitments, but generally prompt in producing satisfactory audited accounts.

Procurement

3.16 DMH complied fully with IDA's procurement guidelines. The technical assistance contracts (exploration consulting, legal, accounting, energy planning, negotiation specialist) were all awarded on the basis of selections made upon technical merits of proposals received from IDA-approved shortlists of consultants. The Association approved each of the appointments.

3.17 Procurement for the seismic acquisition contract and for the seismic processing contract was done through international competitive bidding in accordance with Bank guidelines.

3.18 To the best knowledge of Bank staff supervising the project, procurement procedures created no problems for DMH. No procurement problems arose during project implementation. For a first time borrower, MMWR was exemplary in following the Bank's procurement guidelines.

Project Costs

3.19 The following table compares the actual project costs with the appraisal estimates. A more detailed presentation of costs is in Annex 1.

Project Costs Table

	US\$ Million						
	Appraisal			Actual			
	Local	Foreign	Total	Local	Foreign	Total	
T.A. to DMH	0.375	2.445	2.820	T.A. to DMH	0.060	2.008	2.068
Geophysical Survey	0.400	2.100	2.500	Geophysical Survey	0.000	2.940	2,940
Energy Planning	0.025	0.225	0.250	Energy Planning	0.000	0.274	0,274
Subtotal	0.800	4.770	5.570				
Contingencies	0.400	1.230	1.630	Delin. Drill. Prep.	0.003	0.778	0.781
Total	1.200	6.000	7.200	Total	0.063	6.000	6.063

3.20 The project was completed with an estimated cost underrun of US\$1.1 million, due to the fact that some estimated local expenditures did not occur, and also because IDA agreed to finance, as part of the geophysical contract, the local costs of the seismic survey. This was done in order to ensure the timely implementation of the survey in view of GOS' very difficult financial position which could have caused very long and costly delays. However, IDA assumed that an understanding existed for GOS to pay compensation

to any local farmers that might be affected by the seismic survey. It turned out later that this was not the case, and no compensation was paid. This was unfortunate, although it is likely that the affected farmers suffered only moderate losses. In order to avoid a repetition of this problem, adequate safeguards were agreed for the subsequent Afgoy gas project.

### Disbursements

3.21 The disbursement schedule prepared during appraisal was modified to incorporate the changes in the scope of work as well as to reflect the unavoidable delays in project start-up.

#### Cumulative Credit Disbursements (US\$ Million)

<u>Fiscal</u> <u>Year</u>	<u>Appraisal</u> <u>Forecast</u>	<u>Actual</u>
1981	2.050	0.116
1982	5.390	1.939
1983	6.000	4.236
1984	-	5.199
1985	-	5.885
1986	-	6.000

3.22 Disbursements started in the last quarter of FY81 shortly after the credit was declared effective. The disbursement schedule was based on the initial project schedule, but since this schedule was modified more than one time, disbursement lagged correspondingly. At the end of the initial closing date, only 71% of the credit was disbursed, and at the end of the first extension (December 1984), 87%. Finally, at the end of the second extension, (December 1985) 98% was already disbursed, leaving just a few amounts to be paid over the subsequent few months for work performed before the final closing date.

### Performance of Consultants

3.23 Most of the consultants - the legal firm, the accounting firm, the exploration and engineering firm, the drilling management firm - performed commendably. The initial exploration technical assistance firm and the individual negotiation adviser had a more uneven performance, whereas the performance of the energy planning firm was less than satisfactory in some aspects in spite of substantial IDA assistance. The results of the engineering/exploration firm were somewhat disappointing, although this might be attributed to the quality of data with which they were working. However, the final report met reasonable minimum standards.

### Performance of Contractors

3.24 The seismic acquisition and processing for a total cost of US\$2,940,579 were all executed satisfactorily without undue problems other than normal field problems. The work was done in a business-like and professional manner. The recording parameters and the energy source (96 channels, 24 geophones per trace, 4 vibrators) were well thought out and represented state-of-the-art techniques. Although the deeper data were not as good as one would hope, this is due, most likely, to geological conditions.



It is, however, possible that the processing could be improved with current state-of-the-art techniques. The application of such techniques is largely a question of trial-and-error at the time of processing. It would therefore have been advantageous for IDA's technical staff to be present during processing in order to consider and test such techniques.

#### IV. PROJECT RESULTS

##### Technical Assistance

4.01 The results of petroleum promotion projects are often difficult to determine with precision. They are successful when a fair amount of acreage is taken up by oil companies for active exploration, particularly if wildcat drilling is undertaken, but such results take time to materialize and are also heavily dependent on political and technical factors outside of the projects. In the case of the Somalia project, the following results can be listed:

- (a) promotion - preparation of a promotion report and organization of a well attended promotion meeting;
- (b) response to the promotion effort
  - immediate negotiations with three oil companies for 11 blocks, of which two signed exploration agreements;
  - following a renewed effort, negotiations with five oil companies for approximately 13 blocks, some with seismic options and some with drilling commitments;
- (c) establishment of a modern petroleum legislation;
- (d) organization of an accounting/auditing system for monitoring the activities of oil companies;
- (e) implementation of a seismic survey in the Afgoy-Coriole area of Block 9; and
- (f) successful training of professionals.

##### Promotion Outcome

4.02 The formal promotion presentation was made in Houston on September 14, 1983, and attracted representatives of 14 oil companies. About ten promotion reports were sold. The agenda of the meeting consisted of a technical session in the morning and legal/contractual and accounting presentations in the afternoon. The next day the GOS delegation including the Minister of Mines and Water Resources held discussions with some interested company officials concerning the bidding process and the amount of support by the Government. Several representatives at that time requested that the deadline for presenting proposals be extended until February 15, 1983. Documents such as the new Mining Code and Mining Regulations, a model

concession agreement and the proposed petroleum contract fiscal terms, were handed out to the participants.

4.03 The meeting was seen as rather successful since four companies indicated their interest in exploration blocks, both onshore and offshore. Later on eleven companies requested a copy of the bidding documents, but only three presented proposals around the deadline of February 15. Negotiations resulted in two companies (Esso and Elf) signing up for in all nine blocks (see IBRD Map No. 20038) for seismic options. Although a greater response had been hoped for, the resulting exploration activity considerably exceeded that prevailing at the time of appraisal (see IBRD Map No. 20039). This is due to the fact that each contract was now carrying a sizeable geophysical work commitment in a shortened two year period. Taking into account the perceived country risk, the fact that the Hunt Oil Alif field in North Yemen had not yet been discovered and that the new model contract (based on variable taxation depending on the rate-of-return), was largely untested, the results achieved can be considered very satisfactory, particularly since one of the signatories is a very large company. In this last case, negotiations bogged down at an early stage but were revived thanks to a Bank initiative with MMWR.

4.04 Subsequently, and in part as a result of a renewed promotion effort, a total of five additional companies negotiated contracts (some with firm well commitments) for exploration acreage which was free or had been relinquished since the time of the promotion meeting in June 1982. This represents a very significant amount of exploration commitments, especially taking into account the present depressed international exploration level and the fact that there have as yet been no commercial discoveries in Somalia. The new companies were:

- Chevron - 3 blocks (one offshore) in Western Gulf of Aden
- CIPC - 2 blocks along mid-Gulf of Aden
- Occidental- 2 blocks (one offshore) near the tip of the Horn
- Conoco - 3 blocks in the Nogal Uplift
- Amoco - 3 blocks adjacent to and including most of the Afgoy-Corirole area (in Block 9).

4.05 In summary most of the project's goals were met, petroleum exploration has been enhanced and organized with appropriate procedures, professionals have been trained in petroleum exploration (geology, geophysics, accounting, contract negotiation), petroleum legislation has been modernized and the GOS capability to monitor oil companies' activities has been developed. Only the energy planning studies, due in part to the weakness of the consultants, did not accomplish fully their primary purpose since the report did not establish a satisfactory framework for continuous energy planning.

## V. INSTITUTIONAL PERFORMANCE

### Organization and Management

5.01 At the time the project was appraised and for the initial phase of its implementation, the Director General of the MMWR was directly responsible for the project, until the newly formed project unit was consolidated as the Directorate of Hydrocarbons (DH). Since that time the DH, under the monitoring of the Director General, dealt essentially with all matters concerning exploration. The DH consists basically of a director, a geologist and an accountant. Additional help was secured on an as-needed-basis from the ministry's staff.

5.02 If, at the beginning of project implementation, MMWR had difficulties in many aspects of the project (procurement, selection of consultants, book-keeping and withdrawal requests), these soon became resolved and decision making and project execution became reasonably efficient, taking into consideration the general problems of communicating with Somalia (very unreliable telex and virtually nonexistent telephone service). However, the overall petroleum administration is still weak as a result of the serious morale and efficiency problems affecting the whole civil service in Somalia.

5.03 Most of the Credit Conditions were complied with. Some of those conditions were waived because they became irrelevant such as in the case of oil shale studies (para 3.11), while others like reporting conditions were dealt with only in part (para 3.15).

## VI. BANK PERFORMANCE

6.01 The project was properly identified and appraised. During its implementation, the supervision missions discussed the proposed scope changes or suggested changes in order to streamline its execution (see paras 3.10 to 3.14).

6.02 Relations between MMWR and IDA have been good throughout the entire project cycle. Possibly the most significant IDA contribution was to expedite the preparation of the legal/fiscal framework for petroleum exploration and to initiate the resolution of a break-down in negotiations for one contract.

6.03 The project was periodically supervised during its implementation, with an average of 3.3 supervision missions a year. IDA staff undertook 20 missions between May 1980 and August 1985 for an average interval of slightly less than three months between missions. (Many of these missions also dealt with the preparation of the subsequent Credit 1464-SO.) The frequency and timing of the missions were necessary for the supervising staff to assess the activities in progress and to express their views and recommendations on the project implementation. The experience from this project shows clearly that under conditions like those prevailing in Somalia, i.e., difficult communications and a fairly weak administration that is not experienced in petroleum matters, a high frequency of (brief) visits is very important to ensure the prompt and appropriate implementation of a project.

6.04 The Bank, at the request of MMWR, prepared short lists of consultants and assisted in the preparation of the various terms of reference necessary to hire the consultancy firms. During implementation IDA, in consultation with MMWR, also maintained close contacts with the various consultants financed under the project in order to ensure that the work programs were adhered to and that the output met quality standards. The experience from this project demonstrates the benefits to the borrower from close Bank involvement with consultants, in view of the fact that the consultants normally do not have the Bank's country knowledge, and that many consultants are not familiar with the exact requirements under exploration promotion projects, which are different from their typical oil industry activities.

6.05 The project was justified by its results, even if some benefits were late in showing up. Altogether 22 blocks have been leased for exploration out of 46 available; a very good result. Professionals trained under the project (geophysicist, geologist, accountants) played an important role in the implementation of the subsequent project.

## VII. CONCLUSIONS AND LESSONS LEARNED

7.01 The main goals of the project were to accelerate exploration and strengthen the Government agency in charge of petroleum. Although no commercial oil or gas discoveries have been made so far in Somalia, the results of the technical assistance project are encouraging with a very high level of petroleum exploration now under way in the country. Obviously it is not certain that hydrocarbons will be discovered in commercial quantities; however, all the necessary conditions are present, e.g., abundant oil and/or gas shows; presence of source rocks, reservoir rocks and seals; occurrence of traps whether structural, stratigraphic or combination. The need to strengthen the GOS' energy management capability was reached in terms of the petroleum exploitation subsector although not fully in terms of overall energy planning.

7.02 In this last respect, the project was amongst the first Bank petroleum exploration projects that included an energy planning component. This happened before the Bank's energy assessment division was organized; it was in a way a pioneering effort. Therefore little experience existed at the time in terms of qualified consultancy firms in the energy field, and it represented the very first effort of this kind in Somalia. These factors explain in part the uneven performance of the selected firm, despite strict monitoring by the Bank at the request of GOS.

7.03 Although the number of supervision missions may seem high (average 3.3 per year), this was money well spent given the complexity of the project, the problems affecting the whole civil service in Somalia and the difficult external communications. In fact, the experience from this project demonstrates clearly the need for a close supervision through frequent visits, combined with a very close contact with consultants and contractors financed under this type of projects. In some aspects, in particular the seismic processing, it could in fact be argued that the project might have benefitted from even closer attention by IDA technical staff.

7.04 The training activities under this project were useful, but the benefits were necessarily limited by the severe constraints that the public

sector in Somalia is facing. These constraints also made it impossible for GOS to cover the local costs of contractors and consultants, as had been anticipated originally. The experience from this project demonstrates that such costs should from the beginning be planned to be covered by IDA financing.

7.05 The question of compensation for local farmers affected by the seismic survey had not been foreseen; as a result, no firm commitments existed to handle this problem, which was unfortunate although those affected suffered only moderate losses. As a result of this experience, a firm GOS commitment to handle such problems was obtained for the subsequent Credit 1464-SO.

SOMALIAPETROLEUM EXPLORATION PROMOTION PROJECTPROJECT COMPLETION REPORTProject Costs in US\$ Million

	<u>Local</u>	<u>Appraisal Foreign</u>	<u>Total</u>		<u>Local</u>	<u>Actual Foreign</u>	<u>Total</u>
Assistance to DMH	0.17	0.97	1.14	Assistance to DMH	-	1.71	1.71
Training	0.015	0.135	0.15	Training	-	0.143	0.143
Equipment & Storage	-	0.20	0.20	Equipment & Storage	-	0.016	0.016
Special Studies	0.16	0.92	1.08	Special Studies	-	- 1/	-
Geophysical Survey	0.40	2.10	2.50	Geophysical Survey	-	2.941	2.941
Oil Shale Assessment	0.03	0.22	0.25	Oil Shale Assessment	-	- 1/	-
Assist. to Energy Planning	<u>0.025</u>	<u>0.225</u>	<u>0.250</u>	Assist. to Energy Planning	-	0.274	0.274
Subtotal	0.80	4.77	5.57				
Contingencies	<u>0.40</u>	<u>1.23</u>	<u>1.63</u>	Afgoy Drilling Preparation	-	<u>0.916</u>	<u>0.916</u>
TOTAL	1.20	6.00	7.20	TOTAL	-	6.000	6.000

1/ No direct expenses were undertaken under this component.  
A few minor expenses were absorbed under the Technical Assistance Component.

ANNEX 2

SOMALIA  
PETROLEUM EXPLORATION PROMOTION PROJECT

Credit 1043-SO  
PROJECT COMPLETION REPORT

SCHEDULE OF CUMULATIVE DISBURSEMENT  
(in US\$ 000)

<u>First Year and Quarter</u>	<u>Appraisal</u>	<u>Actual</u>	<u>Actual/ Appraisal %</u>
<u>1981</u>			
1st Quarter			
2nd Quarter			
3rd Quarter			
4th Quarter	2050	116	6
<u>1982</u>			
1st Quarter		116	
2nd Quarter		243	
3rd Quarter		291	
4th Quarter	5390	1939	36
<u>1983</u>			
1st Quarter	5540	2192	40
2nd Quarter	5695	2875	50
3rd Quarter	5848	3934	67
4th Quarter	6000	4236	71
<u>1984</u>			
1st Quarter	-	4354	73
2nd Quarter	-	4593	77
3rd Quarter	-	4980	83
4th Quarter	-	5199	87
<u>1985</u>			
1st Quarter	-	5743	96
2nd Quarter	-	5817	97
3rd Quarter	-	5847	97
4th Quarter	-	5885	98
<u>1986</u>			
1st Quarter	-	5905	98
2nd Quarter	-	5991	-
3rd Quarter	-	5991	-
4th Quarter	-	6000	100

SOMALIA

PETROLEUM EXPLORATION PROJECT

CREDIT 1043-SO

PROJECT COMPLETION REPORT

A. List of Contracts

	<u>Signed</u>	<u>Contract</u> <u>Ended</u>	<u>US\$</u>
<u>Consulting Firm</u>			
Worldwide Exploration	04.25.81	04.30.84	1,008,602.50
Energy Dev. Intl. (E/DI)	10.10.81	12.31.85	273,738.18
Delson & Gordon (D&G)	10.09.81	12.31.85	473,162.24
Coopers & Lybrand (C&L)	09.11.82	12.31.85	267,761.84
MacLachlan International	03.30.83	02.28.84	119,885.29
Keplinger/McCord-Lewis (KML)	09.11.83		
	02.11.84	n.a.	366,437.79
O'Brien/Goins/Simpson (OGS)	02.12.84	n.a.	549,833.40
Geosource/Petty-Ray	06....82		<u>2,940,578.74</u>

B. Expenditures According to Categories

	<u>Allocated</u>	<u>Expenses</u>
Category 1	2,445,000	1,869,411.89
Category 2	2,100,000	2,940,578.74
Category 3	225,000	273,738.18
Category 4 (unallocated)	1,230,000	-
Preparation for Afgoy Drilling Project	-	<u>916,271.19</u>
<b>TOTAL</b>	<b>6,000,000</b>	<b>6,000,000.00</b>



ATTACHMENT 1COMMENTS FROM THE BORROWER

MOG1067  
 OEDD2  
 .IBRDMOG  
 INTBAFRAD MOGADISHU  
 SOMALIA  
 NOVEMBER 22, 1988

FOR ALEXAND NOWICKI

BELOW ARE COMMENTS RECEIVED FROM ALI NALEYE OF OCTOBER 18 ON THE PETROLEUM EXPLORATION PROMOTION PROJECT (CR. 1043-SO). NO OTHER COMMENTS WILL BE RECEIVED.

QUOTE: THE REPORT IS OBJECTIVE AND WELL WRITTEN AND WE ARE SATISFIED WITH IT. HOWEVER WE WOULD HAVE LIKED THE UNSATISFACTORY PERFORMANCE OF CONSULTANT FIRMS-ENERGY DEVELOPMENT INTERNATIONAL (EDI) AND THE ENGINEERING FIRM KEPLINGER-TO BE MORE STRONGLY STRESSED. IN FACT, WE FEEL A PASSING COMMENT ABOUT THE NON-PERFORMANCE OF THESE CONSULTANTS IS UNFAIR TO THOSE WHO PERFORMED QUITE WELL.

1. IN OUR OPINION, EDI'S WORK FOR MMJ WAS TOTAL FIASCO, IN SPITE OF REPEATED MONITORING EFFORTS AND ASSISTANCE BY THE I.D.A THE FIRM NEITHER FULFILLED THE PRIMARY OBJECTIVE TO ESTABLISH A DATA BASE FOR POLICY DECISIONS NOR DID THEY ESTABLISH A SATISFACTORY FRAME WORK FOR CONTINUOUS PLANNING OR A GENERAL OVERVIEW OF ENERGY SITUATION THAT COULD SERVE AS BASIS FOR FURTHER STUDIES.

2. KEPLINGER'S INTERPRETATION OF AFGOI SEISMIC DATA WAS FLAWED. NO CONSIDERATION WAS GIVEN TO NUMEROUS FAULTS WHOSE EXISTENCE IN THE AREA IS UNDOUBTED. THE ANTICLINAL STRUCTURE THE FIRM CAME UP WITH WAS FICTITIOUS, HENCE THE GAS WELLS WERE MISLOCATED. WE FEEL REINTERPRETATION OF THE SEISMIC SECTIONS WILL SHOW DIFFERENT STRUCTURE, AND THE PROBABILITY OF FINDING A GAS DEPOSIT IS STILL EXISTS.

3. WE FOUND MINOR ERRATA IN FOLLOWING PARAS:

I. PAGE 1, PARA. 1.03.

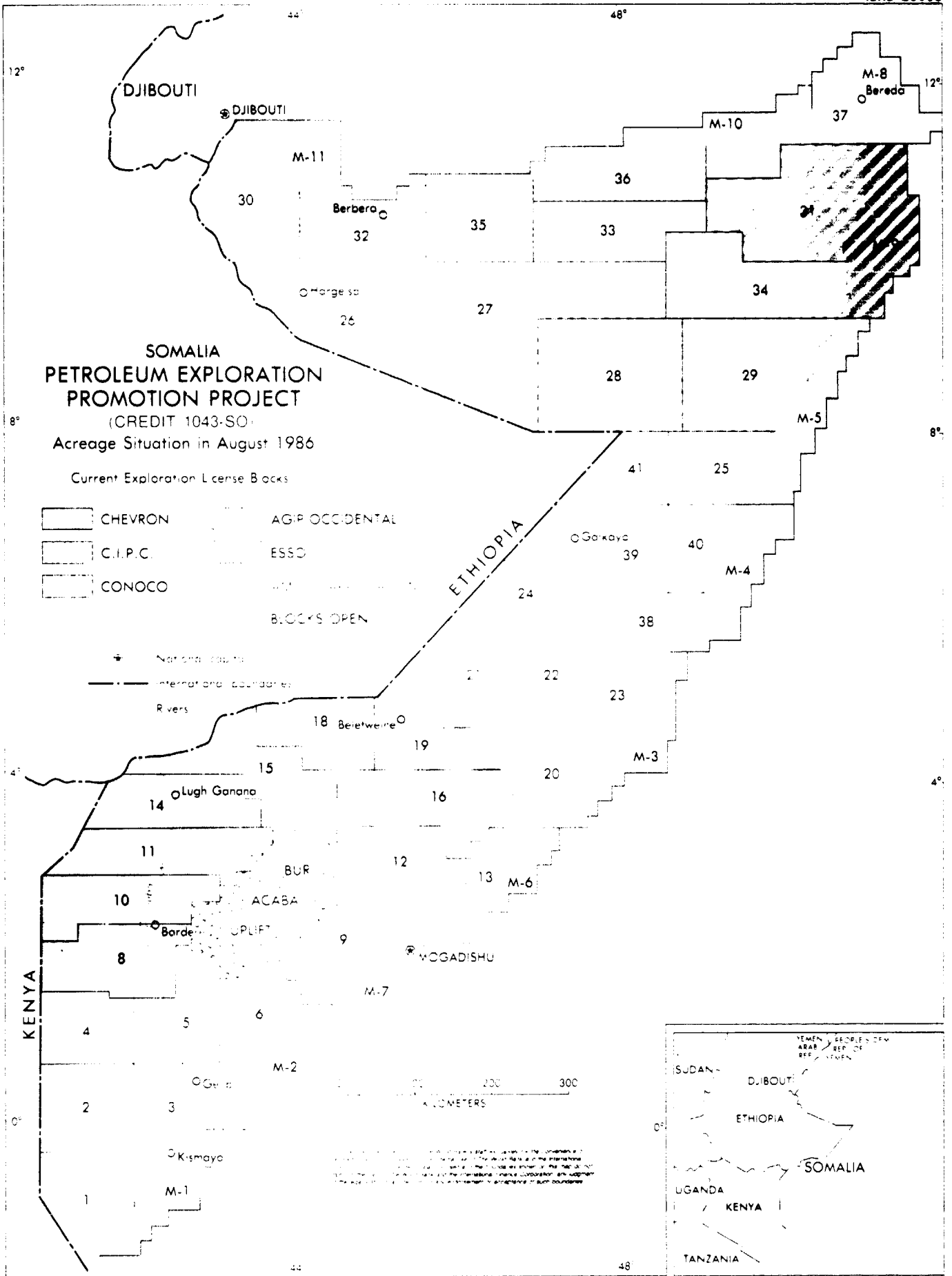
PLEASE NOTE THAT THE MINING CODE WAS PROMULGATED IN JANUARY 9, 1988, NOT FEB. 1988.

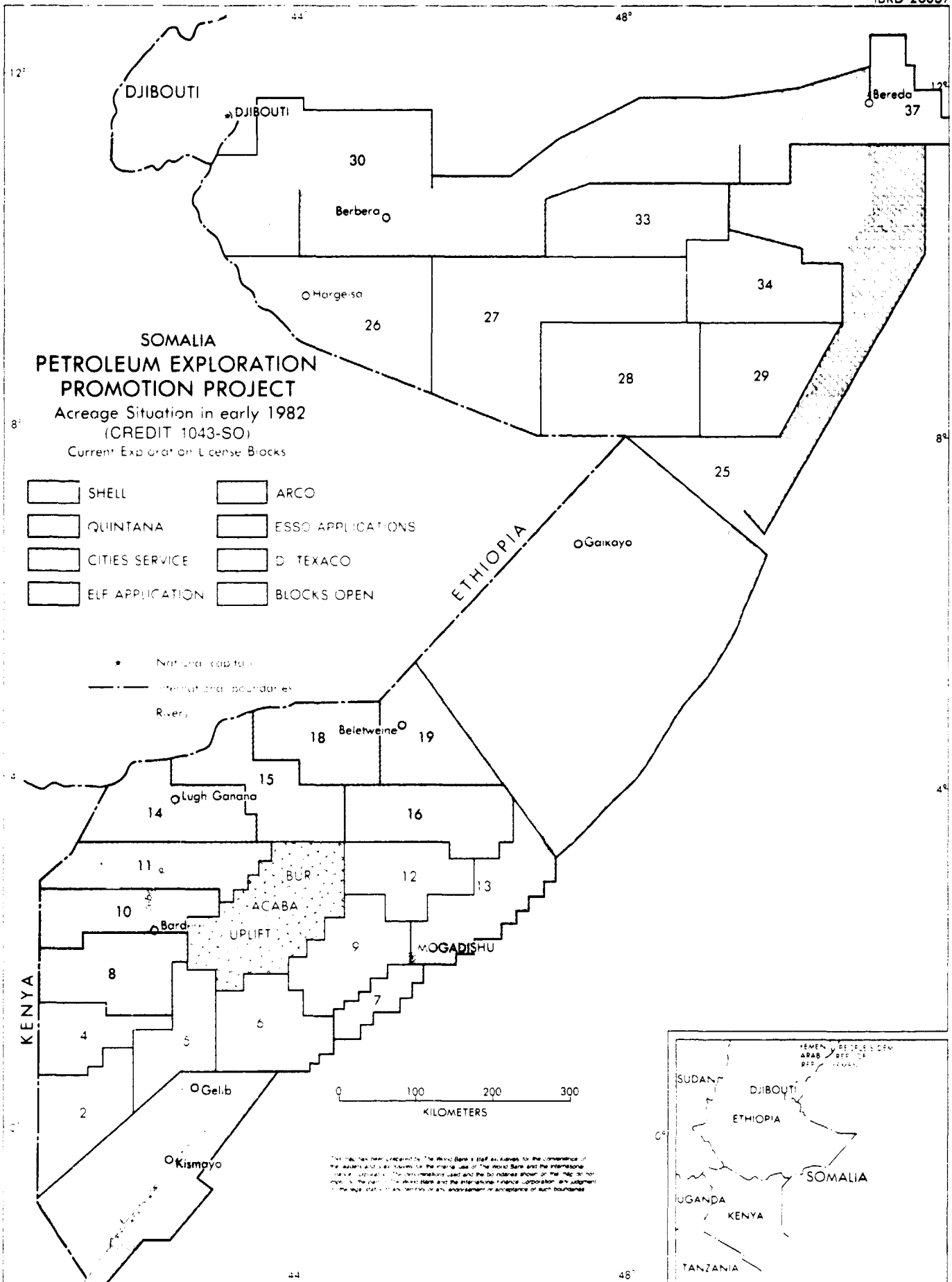
II. PAGE 3, PARA 2.01

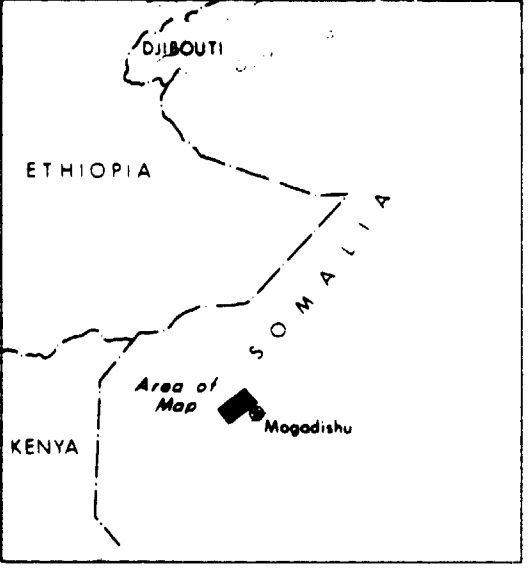
WE BELIEVE PETROLEUM ACTIVITIES CEASED IN 1974, WHEN BURMA OIL CO AND ITS PARTNERS RELINQUISHED THEIR CONCESSION ACREAGE IN LUGH BASIN, HENCE A LULL OF ACTIVITIES OF ABOUT 5 YRS. UNQUOTE.

REGARDS, FALCONER



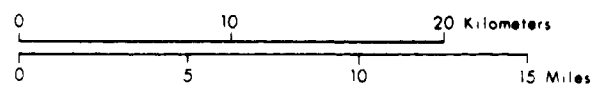




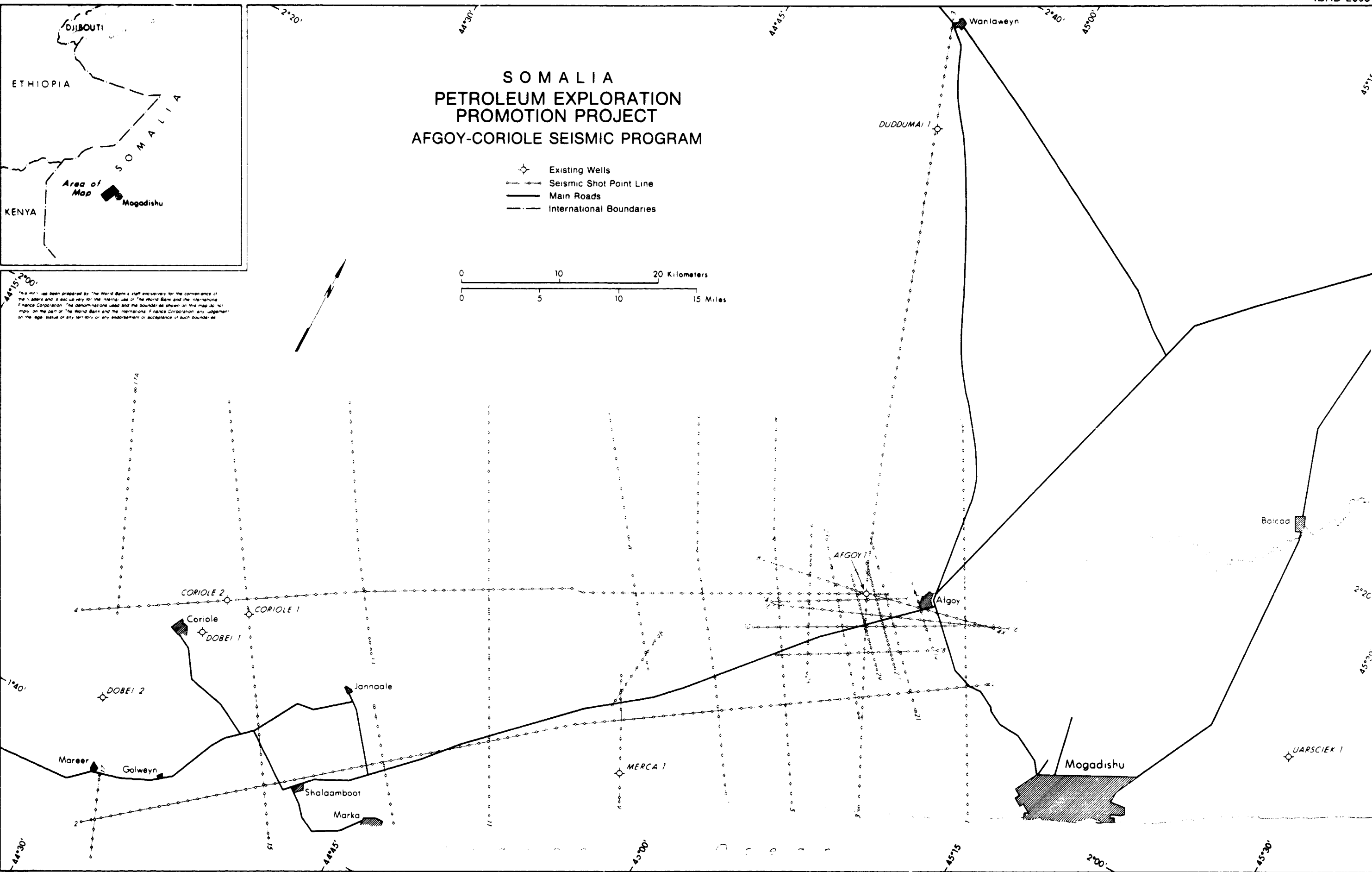


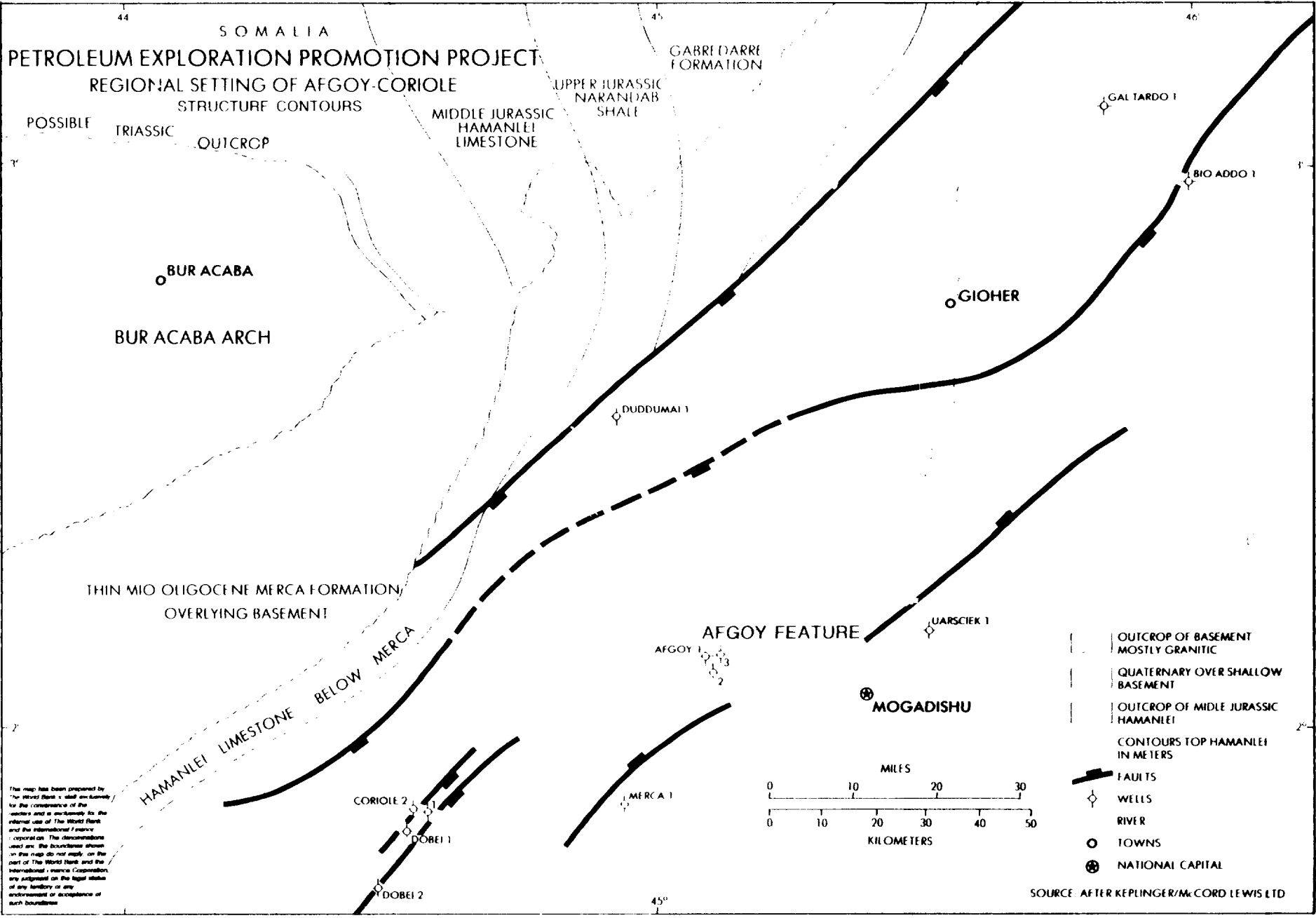
### SOMALIA PETROLEUM EXPLORATION PROMOTION PROJECT AFGOY-CORIOLE SEISMIC PROGRAM

- ◊ Existing Wells
- Seismic Shot Point Line
- Main Roads
- International Boundaries



The map has been prepared by the World Bank's staff exclusively for the convenience of the readers and is exclusively for the internal use of the World Bank and the International Finance Corporation. The denominations used and the boundaries shown on this map do not imply on the part of the World Bank and the International Finance Corporation any judgement on the legal status of any territory or any endorsement or acceptance of such boundaries.





**Annex 45**

"Review of UNHCR's Kenya-Somalia Cross-border Operation",  
EVAL/CROS/14, *UN High Commissioner for Refugees*,  
1 December 1994

# Review of UNHCR's Kenya-Somalia Cross-border Operation

## Review of UNHCR's Kenya-Somalia Cross-border Operation

### EVAL/CROS/14

By Central Evaluation Section | 01 December 1994

#### SCOPE OF THE REVIEW

This review analyzes effectiveness and impact of the cross-border strategy followed by UNHCR in response to the 1992 influx of Somali refugees into Kenya. It also seeks to draw planning and management lessons that could be applied to future cross-border operations. Finally, the review makes suggestions regarding the orientation the programme could take in the near future.

In carrying out the evaluation key documents were reviewed and in-depth discussions were held with UNHCR staff in headquarters and the field. Extensive discussions were also held with officials of other United Nations agencies, donors, the governments, and staff of non-governmental organizations both international and Somali. Information covering essentially all activities was collected and analysed during the review, but in the interest of brevity, only the information required to facilitate an analysis of major issues and support conclusions is provided.

#### BACKGROUND TO THE OPERATION

(1). The Cross-Border Operation from Kenya into Somalia was arguably one of the more innovative programmes recently undertaken by UNHCR. It has translated into practice a new approach to humanitarian assistance founded on prevention and the non-differentiation of mandates. Furthermore, the operation was a dynamic and complex intervention that addressed simultaneously various aspects of refugee protection and assistance in both the country of refuge and the country of origin. It is also noteworthy that all three elements of UNHCR's global strategy, prevention, protection and solutions, have been dealt with in the Cross-Border Operation.

(2). The central government of Somalia was overthrown by rebel factions in January 1991, following years of a civil war that culminated with the fall of Mogadishu. What began as a general uprising against an unpopular dictatorship, then evolved into violent anarchy. Instead of forming a governing coalition, the many Somali liberation movements turned their arms against each other in what became an endless struggle for the control of land and resources.

(3). About three quarters of the population of Somalia have been affected by the conflict and hundreds of thousands have died. Famine and persisting insecurity led to the displacement of millions of people inside Somalia as well as to refugee flight neighbouring countries.



- (4). The deterioration of the situation in Somalia and its effects on the region soon became causes of serious concern for the international community. By mid-1991, the United Nations launched its consolidated appeals for the Horn of Africa and Somalia. The funds raised for relief activities were mostly disbursed to the ICRC and international NGOs operating in Somalia. Later in the year, assessment missions were despatched to the region, and their findings consolidated in reports prepared by the Special Emergency Programme for the Horn of Africa (SEPHA) Unit assistance DHA. UNHCR activities for the relief of Somali refugees in Kenya, and later the Cross-Border Operation from Kenya into Somalia, were included in the SEPHA appeals.
- (5). The developments in Somalia began affecting UNHCR's programme in Kenya at the end of 1991. Somali refugees were crossing the southern part of the border to the Liboi area or sailed boats to the Kenyan coast.
- (6). In early 1992, fighting between major factions spread out into the Gedo region. Members of the deposed President's clan who had sought refuge in Gedo, and scores of local residents fled to other parts of the country or crossed the border into the Northeast Province of Kenya. Most of the refugees who were part of this second influx settled in sites around the Kenyan towns of Mandera and El-Wak, located on or near the border with Somalia. By mid-year, more than 300,000 Somali refugees had entered Kenya and their number increased assistance the rate of 1,000 per day.
- (7). UNHCR and the Kenyan authorities adopted a strict assistance policy assistance the border sites to deter nationals from posing as refugees. Refugees crossing to Liboi were screened upon arrival. In the Mandera and El-Wak areas UNHCR had hoped that a minimalist approach would reduce the attraction caused by relief distribution while suitable camp sites could be identified farther from the border. However, refugees were not moved from the border area because the Kenyan government feared that they pose a threat to the region's stability. Furthermore, assistance in the border sites was soon significantly increased after some relief agencies and the media criticized UNHCR's approach.
- (8). The UNHCR Cross-Border Operation from Kenya into Somalia was planned in response to the population movements and refugee flows of spring 1992. The operation aimed at stabilizing the Somali communities inside their country to curtail the refugee influx to Kenya. UNHCR planners also hoped to prevent further influxes and to establish in Somalia conditions conducive to the voluntary repatriation of refugees.
- (9). Rehabilitation Quick Impact Projects (QIPs) were selected as the main tactical instrument of the operation in Somalia. Beginning with fall 1992 cross-border field teams were deployed assistance the Mandera and El-Wak locations in Kenya. The teams made exploratory incursions into the Gedo region, and soon followed with the fielding of QIPs.
- (10). The establishment in Somalia of the first UNHCR outposts, in early 1993, coincided with the deployment of the Unified Task Force (UNITAF) which had landed earlier in Mogadishu. UNITAF, and later the military contingent of the United Nations Operations in Somalia (UNOSOM), deployed units in the major towns of the Gedo region. It also came soon after ICRC ended the cross-border feeding programme that it had operated from El-Wak to stem potential refugee outflows in south Gedo.
- (11). Implementing the Cross-Border Operation has required the quick build-up of a much larger staff than that of the Branch Office in Kenya. At the peak of the operation, in late summer 1993, some 65 international and 30 local staff worked in field outposts or in the management unit in Nairobi. The end of the programme in the Gedo region and the closure of field offices in 1994 brought the total number down to less than a dozen.

(12). As of April 1994 the UNHCR Cross-Border Operation had cost a total of USD 35.6 million. From end 1992 to fall 1994 some 360 QIPs worth a total of USD 7.9 million were launched. During the same period UNHCR assisted the voluntary repatriation of about 58,000 refugees assistance a cost of USD 11 million.

(13). Funding objectives have not been met in 1994. Donor response to the USD 14,5 million appeal for the cross-border programme has amounted only to USD 5,1 million. Donor “fatigue” has been caused by the quick deterioration of the general situation in Somalia. Observers predict that a reversal of the progress toward rehabilitation made in the last two years will occur after UNOSOM’s scheduled withdrawal. Furthermore, the attention of donor states has switched from the Horn of Africa to the Rwanda emergency. In this unfavourable context, UNHCR is seeking funds to complete the repatriation of some 50,000 Somali refugees who wish to leave south Kenya for their home grounds in the Juba and Kismayo regions.

## **OVERVIEW**

### **THE CRISIS WAS QUICKLY RESOLVED**

(14). The Cross-Border Operation from Kenya into Somalia has shown that UNHCR could by means of proactive programmes seek solutions to refugee crises even before they had fully developed. The operation succeeded in quickly stemming the flow of refugees from the Somali region of Gedo into Kenya. It has also so far prevented further influxes and contributed to create in south-west Somalia conditions that encouraged refugees to return to their country.

(15). The operation brought a solution satisfactory to both the refugees and the assistance community. Less than two years after the beginning of the operation, most of the refugees who had crossed into north-east Kenya had returned to Somalis, and the border sites where they had regrouped were closed. The alternative to prolonged exile UNHCR offered to Somali communities through the rehabilitation of their hometowns had spared refugees the debilitating effects of camp life. The voluntary repatriation of Somali refugees also significantly alleviated the burden placed upon the Government of Kenya and the international community by costly care and maintenance programmes.

(16). UNHCR cross-border rehabilitation activities have had an immediate impact on the Somali communities. The choice of QIPs as rehabilitation tools has allowed the operation’s planners to act with speed and flexibility. The first QIPs were launched early in the operation in areas where UNHCR expected refugees to return. While the rehabilitation effects of the programme were not immediately perceptible, QIPs quickly attracted the attention of Somali populations whether refugees, displaced or residents. As a result, spontaneous returns from the Kenya border sites or from other regions in Somalia became noticeable soon after the fielding of the cross-border teams.

### **THE OPERATION MAY NOT HAVE A LASTING EFFECT**

(17). The achievements of the operation may be short-lived, however, for a number of reasons that include the uncertainty prevailing in Somalia and the absence of adequate programme planning.

(18). First, conditions in Somalia have started deteriorating again in the second half of 1994. The peace initiatives that brought Somali warlords together failed to produce government structures. Tensions between various clans have increased, and observers foresee a reversal to an all-out civil war after the withdrawal of the United Nations’ military contingent in April 1995.

(19). Second, most of the rehabilitation activities initiated under the Cross-Border Operation are not self-sustainable or will not be sustained by generally unmotivated local communities. Pressed by the scale of the influx into Kenya, UNHCR planners have primarily invoked the short-term attraction power of QIPs on the Somali populations rather than their lasting rehabilitation impact. On one hand Somalis reacted encouragingly to the QIPs because they saw the immediate benefits that were available through project generated employment and contracts. On the other hand, the pressure of impact-driven activities and managerial constraints within UNHCR and its international implementing partners hampered project planning. Many QIPs were quickly designed by the field teams, and have lost their effect after the project implementation phase. Furthermore, activities which need the continued input of local communities after project completion are likely to be abandoned by a population concerned essentially with immediate survival.

(20). Third, the operation's planners did not succeed in coopting international agencies capable of consolidating and developing the activities initiated by UNHCR. The integrated cross-border and cross-mandate approach to the emergency in the Horn of Africa envisaged by the international community failed to materialize. Designated as the lead agency in the Cross-Border Operation from Kenya into Somalia, UNHCR in effect launched the programme alone.

### **AN ALTERNATIVE STRATEGY MUST NOW BE DEVELOPED**

(21). In the future, UNHCR cross-border activities in Somalia should be limited to the preparation of repatriation movements. The QIPs phase of the operation has in fact ended with the closure of the UNHCR outposts in Gedo and with the inability of the teams to operate in the Juba regions. Continuing rehabilitation QIPs in the current Somali imbroglio would neither serve effectively the needs of the communities nor facilitate voluntary repatriation.

(22). An encashment programme for the benefit of the many refugees in the Kenyan coastal camps who have decided to repatriate to Somalia may be the most appropriate form of action. The experience of Gedo has shown that QIPs were more valued by the communities for the resources brought in during implementation than for their actual rehabilitation achievements. QIPs, however, were continued by UNHCR because they were poles of attraction for populations on the move. In the Juba and Kismayo regions the communities are made up of either sedentary rural or semi-urban populations. Without a sustainable rehabilitation impact on these communities QIPs would not be useful.

(23). A minimum UNHCR presence will continue to be needed in Somalia for coordinating voluntary repatriation movements. Experienced staff should be deployed both in Kismayo and in Mogadishu to prepare repatriation movements in consultation with the local forms of authority. As much as conditions permit, the monitoring of returns should be continued.

(24). Securing funds for the operation may be easier information rehabilitation objectives are left out. Donors' "fatigue" with Somalia and the shifting of funding priorities towards Central Africa have been the main cause of a serious funding shortfall in 1994. The lack of a solid rationale for continuing the QIPs programme may, however, be another cause. Major donor states officials view with scepticism the continuation of rehabilitation activities in Somalia, but approve of UNHCR's support to voluntary repatriation.

### **OPERATIONAL FEATURES ARE REPLICABLE**

(25). Many of the initiatives taken under the Cross-Border Operation from Kenya into Somalia can be qualified as daring. The programme has quickly achieved the important objectives set by its planners. It has been based on

an innovative policy approach and a pragmatic strategy. Clearly, a comprehensive approach to refugee crises founded on prevention and the non-differentiation of mandates is increasingly required in the type of situations UNHCR is facing today.

(26). Observers generally agree that in Somalia the cross-border approach was put to test under some of the worst imaginable conditions. Many of the operation's organizational components are sound blueprints that require some adjusting to be replicated elsewhere. The creation of a cross-border unit, the organization of mobile field teams and the establishment of temporary outposts in Somalia have allowed for quick and flexible action. In future cross-border programmes the Organization could improve its response by giving special attention to planning and policy input, to coordination with field teams and to the selection experienced staff.

### **ORIGINS AND IMPACT OF THE CROSS-BORDER OPERATION**

(27). The operation had many positive achievements. Most importantly, it made possible the voluntary repatriation of Somali refugees and the closure of the border sites in the Northeast Province of Kenya. This approach spared refugees years of camp life under the relatively poor conditions prevailing in that region. It also eased the burden forced upon the Government of Kenya and the international community by the events in Somalia. Finally, rehabilitation activities under the Cross-Border Operation from Kenya into Somalia contributed to stabilizing populations in the Gedo region, and assistance least in the short term to the prevention of further outflows.

### **INNOVATIVE APPROACHES WERE PUT TO PRACTICE**

(28). The operation adopted a number of innovative approaches to humanitarian assistance. Among those, the most important is the Preventive Zone Concept. This approach aimed at stabilizing, in selected zones covering both sides of a border, populations that included refugees, displaced persons and victims of drought. In addition, it was meant to prevent further refugee flows and to prepare conditions conducive to voluntary repatriation. The innovative character of the approach was further enhanced by the absence in Somalia of government structures, and the prevailing condition of civil strife.

(29). The Cross-border Operation from Kenya into Somalia quickly evolved as a self-contained UNHCR programme. Initially, it had been envisaged as part of a broad cross-mandate and cross-border strategy aimed assistance two preventive zones: one extending from Kenya into Ethiopia, the other one from Kenya into Somalia. The humanitarian assistance framework developed in meetings that brought together representatives of all major United Nations agencies, called for the harmonization of programmes across borders and among agencies, and for the non-discrimination among categories in need. The cross-mandate element, however, failed to materialize in Kenya and Somalia. As a result, UNHCR, which was designated the lead agency

(30). Operating across the border in countries of origin is not entirely new to UNHCR. In the late 1980s UNHCR had launched a number of rehabilitation projects from Pakistan into non-government controlled areas in Afghanistan. These projects had substantially contributed to the establishment of conditions favourable to the return and reintegration of Afghan refugees in these areas.

### **THE CROSS-BORDER STRATEGY WAS TAKEN A STEP FURTHER**

(31). There are nevertheless major differences between UNHCR cross-border activities in Afghanistan and the Kenya to Somalia operation. In the case of the Afghanistan rehabilitation programmes, UNHCR's inability to establish a working presence in the target areas and the existence of highly developed logistic capabilities in

Pakistan imposed the cross-border formula. In Kenya and Somalia, however, the cross-border characteristics were determined from the start through the design of preventive zones of uniform humanitarian assistance stretching across the border. Furthermore, UNHCR staff was directly involved on the sites of projects, and their presence was consolidated through the establishment of compounds.

(32). In previous cross-border operations such as those in Afghanistan, or in Operation Lifeline to Sudan, UNHCR's activities had made up for only fractions of much larger international efforts. In the Kenya to Somalia operation, UNHCR was the lead agency and the only one able to deploy quickly on the Somali side of the border.

## **PREVENTION, REPATRIATION AND PROTECTION**

### **PROTECTION COULD HAVE BEEN BETTER DEFINED**

(33). Although the Cross-Border Operation has undeniably contributed to the protection of the refugees who returned to Somalia, there has been little debate about how this mandate should have been translated into practice. Planners have been mainly concerned with social and economic rehabilitation. The immediate survival needs of the communities, the issues of short-term integration and returnee aid and development have all been discussed. An assistance strategy was designed and implemented. Evidently, the preventive approach developed in the Cross-Border Operation has included protection components. However, a clear protection policy that would have addressed goals and defined means had not been spelled out.

(34). While involvement in countries of origin has been the subject of much debate within UNHCR, lessons drawn from past protection roles in programmes such as Afghanistan and Cambodia have not been applied. Clearly, UNHCR becomes increasingly involved in situations where it must engage de facto in community-based protection activities akin to human rights monitoring. The formulation of policy guidelines in that domain would assist operations planners in systematically meeting the protection needs of the populations UNHCR is assisting.

(35). In the context of the cross-border Operation, deploying field teams and encouraging international NGOs to step-in has amounted to "protection through presence". Field officers have monitored the return of refugees and the displaced. They have also interceded with the warlords and other local forms of government. Nonetheless, the attribution of specific protection roles would have enabled UNHCR not only to protect the populations better, but also to measure better its achievements for the benefit of overall planning.

### **PREVENTIVE GOALS WERE REACHED**

(36). The prevention of further refugee flows into Kenya has been the main achievement of the Cross-Border Operation. Stabilizing the populations present in the Gedo region was important in order to break the cycle of displacements which caused refugee outflows. Preventing the movements of populations in Somalia was also an ambitious undertaking because since the outbreak of the civil war most of the Somalis have been on the move. Many had fled armed conflict by moving to their ancestral territories, but then were rejected by the local population, or driven farther by rival clans.

### **THE OPERATION FOCUSED ON THE COUNTRY OF ORIGIN**

(37). The approach taken by UNHCR aimed assistance countering the attraction that resulted from the dispensing of assistance to refugees in Kenya through relief delivery inside Somalia. Moreover, the activities under the Cross-Border Operation sought to assist local populations in restoring basic community structures in

their places of origin. As a result, Somali populations were spared the debilitating effects of long-term care and maintenance they would have faced had they moved to refugee camps.

(38). UNHCR planners favoured community-targeted aid in Somalia over individual assistance hoping that community projects would restore socio-economic interdependence and encourage populations to settle. In addition, such projects assisted in the rehabilitation of the infrastructures that had been destroyed during the civil war. Finally, the implementation of community-gearred activities required the development of some basic forms of representation, and thus also contributed to reinstate some degree of law and order in a previously anarchic environment.

(39). The deployment of field teams, and the establishment of compounds, in major towns of the Gedo region assistance the beginning of 1993 provided UNHCR with the operational capabilities required for implementing the cross-border approach. Logistical bases that would cater rehabilitation projects were set up furthermore, the permanent presence of staff allowed for close interaction with local populations on the issues of rehabilitation and community development. Relations were developed with representatives of the local communities, and the organization of local implementing partners was encouraged.

### **CONTINUED INTERCLAN FEUDING HAMPERED THE OPERATION**

(40). Finding truly representative interlocutors was not always an easy task. UNOSOM whose mandate included assisting with the restoration of basic government structures sought to organize town councils throughout Somalia. However, it took much time and internal struggling before these councils could establish their legitimacy and become suitable counterparts. The case of the Garba Harre District illustrates how painful that process has been. Staff had to intrench themselves in the UNHCR compound for four days while heavy fighting between various Somali factions raged on the town's streets in support of their bids for council seats.

(41). A leading impediment to the cross-border efforts has been the large gap between the international community's objectives and the expectations of the Somali population. Most international staff involved in the Cross-Border Operation felt that the Somalis valued the income they derived from implementing rehabilitation projects, more than the return to normal living conditions these projects aimed assistance achieving. In effect, the UNHCR operation was widely regarded by the Somalis as a mere vehicle for cash and marketable goods. Clearly, in such a context the preventive impact of the Cross Border Operation appears somewhat ephemeral.

(42). Major donor states' officials, as well as UNHCR and NGO staff, generally agree that work carried out under the Cross-Border Operation has significantly contributed to restoring stability in the Gedo region and prevented refugee outflows. Notwithstanding, they remain sceptical of its long-term impact. One commonly shared opinion is that no assistance will carry sustainable effects until the Somalis themselves overcome interclan feuding and start rebuilding a civil society.

(43). The cross-border activities of UNHCR and its international partners in south-west Somalia exceeded their preventive objectives and contributed to attract refugees back home. More than 90,000 refugees returned voluntarily to Somalia since the beginning of the operation, most of them spontaneously. The prospect of improving security conditions in the Gedo region, poor living conditions and the lack of economic opportunities in the Kenyan border sites have been the main factors of return.

### **REPATRIATION STARTED UNEXPECTEDLY**

(44). Repatriation started as a trickle assistance the end of 1992, and reached its peak during the summer of 1993. By mid-1994 Somali refugees had left the border sites in Kenya to return primarily to the Gedo region, and many of the residents of the coastal camps had also registered for repatriation.

(45). Assistance its inception the Cross-Border Operation was not aimed assistance facilitating the return of Somali refugees from the Kenyan border camps. UNHCR and international NGOs agreed that conditions in Somalia were so precarious that voluntary repatriation could not be encouraged or supported. Repatriation was considered a distant future option. However, assistance the time the cross-border teams started to operate, field staff noticed that a number of refugees were leaving the camps for Somalia. Subsequently, UNHCR opened registration and developed a repatriation programme.

(46). Initially, the idea that UNHCR would launch a repatriation programme was not well received by various groups within the Organization itself. Some officers of the Division of International Protection believed that repatriation to war-torn Somalia would be premature because the minimum standards of protection generally sought by UNHCR for repatriants could not be ensured. In the field, staff involved in the care and maintenance programmes thought that refugees were not ready to move out of the camps.

### **ORGANIZING REPATRIATION WAS DIFFICULT**

(47). Preparing repatriation movements to the Gedo region has not been an easy task for UNHCR personnel, both in the Kenyan camps and in the areas of return. Weak community structures in the camps made participative planning difficult because of constant changes in refugee representation. In Somalia, securing the agreement of the receiving communities required lengthy negotiations with groups of elders primarily concerned with the material benefits they believed could be derived from cooperating with UNHCR.

(48). Some staff also point out that the lack of cooperation between the UNHCR Sub-Offices and the cross-border field units in the early planning stages of repatriation delayed the process. By the end of 1992, cross-border teams began undertaking missions to the Gedo region that brought them in communities. The teams, however, did not share their plans or findings with Sub-Office staff, and separate missions had to be organized to assess the feasibility of repatriation.

(49). Major logistical problems have plagued repatriation. Instead of assuming a supportive role, UNHCR has been directly involved in arranging the logistics of repatriation movements. Selecting dependable transport from the many offers pressed upon UNHCR by rival clans was a first obstacle. Convoys would be sabotaged information all the parties did not find their expected benefits. The, ensuring the safe passage of convoys through territories controlled by local warlords was an additional challenge. Typically, each warlord on the repatriation route would convincingly offer to protect the convoys in exchange for some retribution.

(50). Escort arrangements made with UNOSOM somewhat alleviated the security threats encountered on the repatriation routes. However, UNOSOM had its own mind on the pace of rehabilitation in Somalia and viewed with scepticism early repatriation movements. Political Affaires staff thought that tangible institution-building should be completed before repatriation could start. As a result, UNOSOM would respond selectively to Anchor's requests for convoy protection, and alternative arrangements had to be negotiated.

(51). Logistical problems were further exacerbated by the unpredictability of the refugees themselves. Repeated no-show of candidates to repatriation assistance the agreed departure times caused UNHCR to pay large standby fees to the transporters. This has been particularly disastrous in the context of the attempted airlift to Somalia, and also made escort arrangements with UNOSOM more difficult to negotiate.

(52). UNHCR field teams often felt that Nairobi and headquarters staff could not fully appreciate the magnitude of the challenges involved in organizing voluntary repatriation to Somalia. Frustration was expressed at critiques of over-expending against the transport budgets. Staff argued that ensuring the safe return of refugees under the anarchic conditions prevailing in Somalia left them with no alternative but buying off protection from local warlords at the going rates.

(53). There are contending views among UNHCR staff of the bearing of individual assistance on the refugees' willingness to repatriate. Staff who had been involved with the care and maintenance programmes in the Kenya border sites tend to argue that the abundance of food in the camps kept refugees from returning home. On the other hand, UNHCR officers who took part in the planning of the Cross-Border Operation minimized the delays caused by the food factor and contend that the number of refugees wishing to repatriate has grown in consistent relation with the pace of normalization in the Geed region.

### **RETURNEE AID AND REHABILITATION**

(54). The rehabilitation activities carried out in Somalia under the Cross-Border Operation have significantly contributed to the revival of the Gedo region. Somalis saw in the programme both the opportunity to reconstruct their towns and a chance to derive immediate benefits from the resources brought in by international organizations. It is arguable that the actual rehabilitation of community structures could have been better served by a well planned multi-sectoral programme than by QIPs. The prevailing sense of urgency given the situation in Somalia, however, compelled planners to somewhat forfeit programme design quality in return for quick deployment.

### **QIPS WERE EXTENSIVELY USED**

(55). A main feature of the Cross-Border Operation has been the exclusive use of QIPs for aid and rehabilitation purposes in south-west Somalia. From the operation's inception until the recent closure of UNHCR outposts in the Gedo and Juba regions, the administration of QIPs has been the principal occupation of all field teams. At present, international NGOs who continue activities initiated by UNHCR still process QIP proposals, and so do UNHCR field staff in the coastal region of Kismayo.

(56). Undoubtedly, UNHCR-funded QIPs have significantly contributed to restoring locally acceptable living standards in the Gedo region. Rehabilitation efforts have targeted all major community infrastructures and services, as well as the traditional occupational sectors. Activities have ranged from the rehabilitation of health centres to chicken farming, and have included such varieties as the building of camel slaughter slabs, the clearing of bush roads or metal piping collection. In some instances QIPs have provided the region's populations with elements of comfort that had been unknown in the pre-war era.

### **REHABILITATION PRECEDED REPATRIATION**

(57). Contrary to previous situations, QIPs were launched in Somalia before repatriation could be envisaged. Since the formulation of the Quick Impact Project approach in Nicaragua, the QIP has been regarded as the leading model of post-return assistance capable of providing returnee-populated communities with timely reintegration assistance. The QIP formula has gained wide recognition and support both within UNHCR and among donor states. In Nicaragua, UNHCR sought to consolidate the completed repatriation process by addressing the immediate needs of the communities where returnees had settled. In that case, returnees had already received an initial relief package, and communities in areas of return had benefited from a board rehabilitation programme.



(58). In the context of the Cross-Border Operation, QIPs aimed initially at stabilizing populations within Somalia and at preventing further refugee outflows to Kenya. UNHCR planners had been primarily concerned with the flow of refugees into the Kenyan border sites, the camps' limited absorption capacity and the reluctance of the Government of Kenya to accommodate a large fleeing population. At that stage repatriation was only a remote possibility.

(59). The QIP approach was selected by the planners of the operation because they felt that the unfolding of events in Somalia required an immediate response. QIP programmes are modular in structure and therefore appear flexible. They also imply limited commitments and thus limited financial risks. As a result, the lead time from programme planning to implementation could be reduced to a minimum.

### **CONDITIONS PREVENTED COMPREHENSIVE PLANNING**

(60). A comprehensive rehabilitation programme might have been more desirable, but conditions in Somalia would not have permitted its implementation. Some critics of the Cross-Border Operation have suggested that an integrated multi-sectoral approach would have been more effective and less costly. At present indeed, with relatively free access to the Gedo region and its communities, aid officials can assess rehabilitation needs with the precision required for the designing of a comprehensive programme. This was not the case at earlier stages.

(61). At the beginning of the operation, a number of factors impeded the formulation of extensive needs assessments. First, high degree of insecurity prevented the cross-border teams from covering more than a few locations in the Gedo region. Only later, several district capitals could be reached by air and from these places quick incursions were made into less accessible rural areas. Second, the few attempts made at collecting data were often misunderstood by the villagers who expected money and materials to come with the teams. In further visits to the same areas the data collectors would be greeted with such animosity and threats that assessment missions could not proceed. Third, throughout the implementation period, no local assessment capacity could be relied upon beyond that of the Somali elders committees.

(62). While conditions gradually improved with the constitution of local forms of government and the emergence of local NGOs, the quality of the information feedback received from the field outposts did not meet the standards required for comprehensive planning. This shortcoming was partly due to the significant pressure for immediate delivery the communities put on field teams, and partly to insufficient guidance and training. Almost a year after the beginning of the operation, several sets of guidelines were issued to the field. However, instructions mostly spelled out submission and reporting criteria to be applied to QIPs, but remained weak on the subject of needs assessment, the evaluation of the communities' wants and of the projects' contributions to overall rehabilitation objectives.

### **ATTEMPTS AT PLANNING CAME LATE**

(63). The establishment within the Cross-Border Operation Unit of a Technical Team aimed at capitalizing on QIPs' experiences with a view to develop a comprehensive rehabilitation plan. The team comprised Sectoral specialists seconded to UNHCR from international NGOs. Sectoral guidelines were issued by the end of 1993, and distributed to all the outposts and concerned NGOs. Notwithstanding, the Technical Team failed to formulate a comprehensive plan primarily because it was not able to find, or interface with, local institutions and international agencies committed to integrated multi-sectoral rehabilitation work. The team was eventually dissolved in the summer of 1994.

(64). There are different views on whether QIPs could have been better coordinated. Some cross-border staff have referred to an unavoidable “ scattered and ad-hoc QIP s phase “ that should have preceded a “ reconstruction and development phase “. Other staff members have suggested that there has been an over-zealous implementation of the programme. It is likely that the operation’s planners did not feel a pressing need for coordination because they were less concerned with actual rehabilitation achievements than with fixing down populations and encouraging repatriation. The disparities shown between rehabilitation levels in various locations at the closure of the programme would confirm that the QIPs were mere tactical instruments.

(65). In the absence of region-wide plans, the degree to which QIPs effectively contributed to rehabilitation was largely determined by the field teams’ common sense, and by the pressures applied by Somali individuals and groups on these teams. Overall, QIPs have allowed for the proper rehabilitation of many essential services and structures. Nonetheless, in some areas, where teams had formulated and implemented well-structured plans, the return of fewer people than had been anticipated resulted in over-assistance and dependency. In other areas, the selection and approval of QIPs was somewhat dictated by security threats and contributed to the local warlords’ version of rehabilitation activities.

### **THE RESPONSE OF SOMALI COMMUNITIES PROVED WEAK**

(66). The rehabilitation effect of individual QIPs in Somalia has not been commensurate with the magnitude of the resources committed because the communities were weak or non-existent. In recent years, UNHCR programmes have gradually evolved from individual support to community assistance. Aid planners generally believe that the collective approach boosts beneficiary involvement and reduces the risk of seeing the assisted population fall into a state of perpetual dependence. Planners work on the premise that individuals inevitably organize them selves into social communities.

(67). For a number of reasons, Somali communities have proven much weaker than was anticipated by aid planners. First, the Somalis’ semi-nomadic tradition makes for an extremely fragmented society. Second, Islamic tradition generally excludes women from direct participation in community decisions. Third, the civil war has forced many Somalis to seek refuge in ancestral areas of abode they had never seen before. These in country migrations often resulted in conflicts with the resident populations. Finally, the clan structure of Somali society has prevented new communities from forming or functioning.

(68). The impact of the Cross-Border Operation on community rehabilitation could have been enhanced had more QIPs been gender-sensitive. Aid workers have often observed that Somali women do not share the men’s confrontational attitudes, and instead are genuinely committed to improving their families’ ‘ell being. Furthermore, because women carry out all of the domestic chores and most of the subsistence activities, they are natural partners for community rehabilitation work. While administrating QIPs with male partner was generally described by field workers as endless negotiations exercises to determine precisely who would get what, so men were seen as relatively pragmatic and efficient counterparts.

### **LOCAL NGO’S EMERGED QUICKLY**

(69). The International Rescue Committee (IRC) has been anchor’s main implementing partner for the cross border QIP programme. Throughout the operation, however, IRC has in turn come to rely increasingly on Somali NGOs. IRC field teams in Somalia identified needs, developed responses and submitted projects proposals to UNHCR. In the process IRC teams contracted local labour and services or sought out local counterparts who would implement the QIPs. Somalis soon understood that they could organize themselves in a manner that

would make them eligible for the NGO label, propose rehabilitation activities and derive cash benefits from project implementation.

(70). The emergence of many Somali NGOs in response to the QIP programme has been a positive factor in the operation because it spared international agencies some of the interminable negotiating required for direct implementation. Local NGOs, often made up of only a few individuals, knew better than expatriate staff how to hire and purchase the resources required for the QIPs without disturbing the local balance of power. Furthermore, they were able to enrol local communities more effectively than international aid workers could. Despite many misgivings with regard to accountability, local NGOs have played an important role in bringing fragmented communities to negotiate and even to cooperate.

### **MANY QIPS HAD UNINTENDED EFFECTS**

(71). Though many QIPs have achieved the rehabilitation goals stated in the project descriptions, they sometimes appear to outside observers of no value to the community. Among the most visible examples are the covered markets that were built and remain unused in several locations. Similarly, some schools are squatted by displaced families, and water hand-pumps are removed to give place to the traditional open wells.

(72). Notwithstanding, such seemingly failed projects are always shown as important contributions to the communities by the residents who had been associated with their implementation. In effect, many QIPs are valued by the local populations more for the fringe benefits that could be derived during the implementation phase than for their final outcome. Thus, the construction of schools and markets has provided a number of residents with substantial wages and procurement contracts. As for water pumps, the metal was sold as scrap or used by blacksmiths for the confection of axes and knives.

(73). This unintended impact of QIPs was not negligible. Wages and contracts have fueled local cash-starving economies with the resources needed for a return to basic production and trade standards. The benefits were then distributed among members of the communities in accordance with the traditional social structure. Ultimately, the effects of these alternative circuits would also contribute to the overall objectives of the Cross-Border Operation: namely the stabilization of populations inside Somalia.

### **REHABILITATION COSTS WERE HIGH**

(74). The costs of project delivery in Somalia have run significantly higher than in any other part of the world. Furthermore, the projects' end products have been valued by the beneficiaries at only a fraction of the value ascribed to them in anchor's and the donor states' books. The example of the hand-pumps illustrates it well. Forged hand-pumps are relatively more costly to donor states than were worth only their weight. Viewed from this angle, the QIP approach was not cost-effective.

(75). Opinions differ on whether a QIP-only rehabilitation programme was the correct approach in Somalia. Some staff point out that making cash and materials available to the communities in the Gedo would have supported the return to normality as much as the QIPs did. In addition the communities would have been able to manage the region's rehabilitation in accordance with their own priorities. On the other hand, many field staff contend that local decision-makers would have under-prioritized vital care services and structures. Since most of the QIPs are not self-sustainable, services such as health, sanitation and education are likely to stop as soon as external funding is cut.

### **CASH AND RESSOURCES COULD HAVE BEEN AN ALTERNATIVE**

(76). It is likely that many of the Cross-Border Operation's QIPs could have been efficiently replaced by various cash-dispensing schemes. International aid and development agencies' experts familiar with the prevailing conditions in south-west Somalia concur that restoring some degree of normalcy requires primarily the injection of cash and resources. Because of the scarcity of the country's natural resources, Somalis have always been traders. Before the civil war, economic activity in the Gedo region centered on the commerce of goods bought in Kenya and delivered to the markets in Mogadishu. In addition, local economies derived cash from foreign aid that trickled down the intricate clan and government networks. With war-time destruction and looting, the Somalis' purchasing power has dropped to minimum levels; markets have collapsed and merchants have lost their capital investments.

(77). Major aid agencies have encouraged the creation of networks of credit unions as a means to increase the availability of funds to Somali entrepreneurs. With funds allocated under the USAID food monetization programme for Somalia, the IRC has established credit unions in several major towns of the Gedo region. The credit unions are run by local boards of directors. They function as lending institutions with the difference that they have no shareholders, and thus profits gained from the payment of interests on loans are reinvested in the union's fund. Furthermore, successful loan recipients are bound to pay a small percentage of their operations' profits to the fund as well.

(78). Despite initial scepticism, observers agree that the credit unions experiment has been highly successful. Aid workers who had been involved in assistance to Somalis generally doubted that a system calling on the beneficiaries' sense of accountability would function. This assumption, however, overlooked the extreme stringency of the codes of ownership and behaviour that determine relations between Somalis. In fact, because in the credit unions scheme individuals are accountable to their own community, represented by the local board of directors and other borrowers, the default rate has been low.

(79). UNHCR was not able to consider such unconventional alternatives, because staff involved in the Cross-Border Operation had neither the planning nor the implementing capacity required. Whereas QIPs generally entail fairly simple assessments, some procurement work and some elementary wages and contracts administration, establishing projects like the credit unions requires systems development skills. Evidently, the Operation's planners selected what they saw as a quickly fielded and easily managed programme option.

(80). There is no doubt that the benefits of the QIP programme largely outweigh its costs. The alternative of long-term care and maintenance programmes and continued ordeal for refugees in the Kenyan border sites have been achieved more efficiently through better programme planning and management. QIPs have been particularly costly in Somalia because they were meant to serve a wider range of goals than simple rehabilitation ones. In the process, the planners of the operation have knowingly traded off some of the generally accepted standards of project management for maximum delivery speed and impact.

## **INTERAGENCY COORDINATION AND THE CONTINUUM**

(81). Relations with other agencies involved in the Somalia emergency have brought only marginal benefits to the Cross-Border Operation. At best, UNHCR obtained limited operational support from some, while at worst, the Organization found itself accused of "crimes against humanity". Designated by the Security Council as the lead agency for the operation, UNHCR has carried out the cross-border programme on its own. The weakness of its implementing partners has prevented UNHCR from developing a sustainable rehabilitation plan to be continued by other agencies.

## **OPERATIONAL CONSTRAINTS HAMPERED INTEGRATION**

(82). Coordination with various United Nations agencies was more effective in the area of fund raising than in the planning and implementation of programmes. The Special Emergency Programme for the Horn of Africa (SEPHA) appeals consolidated by DHA presented convincingly the integrated response United Nations agencies operating in the Horn of Africa intended to develop in face of the emergency. A UNHCR summary paper on the Preventive Zone Concept emphasized the need of an integrated approach to the Somali crisis, and envisaged the creation of joint management structures. On the specific issue of cross-border activities in Somalia, the paper foresaw joint field teams composed of UNHCR, WFP, UNICEF, NGO staff and other UN agencies if necessary. Notwithstanding, the integrated approach did not materialize in the Kenya to Somalia Cross-Border Operation.

(83). Generally, the agencies which participated in the SEPHA lacked the operational capacity to commit themselves to the operation. Furthermore, their programme priorities often did not match the operation's strategy. As a result, the lead role conferred to UNHCR by the Security Council was welcomed by these agencies who saw this as an opportunity to step back rather than revise their established programmes.

(84). The creation in Nairobi of a Disaster Management Team (DMT) under the auspices of UNDP, and linked to the United Nations Special Envoy to Somalia, was a genuine effort at strengthening interagency coordination. The DMT was intended to coordinate both relief and development activities in Somalia. All major United Nations agencies are represented on the team which meets regularly. UNHCR has often used this structure to keep the United Nations community abreast of developments in the Cross-Border Operation. In return, the benefits the Organization has derived from the DMT have been only marginal. Furthermore, UNHCR staff contend that the team was set up too late to effectively coordinate already well engaged programmes.

(85). The efforts deployed by the DMT to bring an integrated response of some scale to the relief needs at the Kenyan border sites have not been matched in Somalia. The fact that all agencies aside from UNHCR covered Somalia until recently from branch offices in Mogadishu has prevented their representatives in Nairobi from making any significant contribution to the Cross-Border Operation. On the other hand, agency staff in Mogadishu could neither operate effectively in south-west Somalia, nor manage the integration of their activities with UNHCR's

### **WFP PROVIDED VALUABLE SUPPORT**

(86). Despite a controversy over food for work programmes, cooperation with WFP was generally effective in the Gedo region. WFP had opened offices in several major towns at about the same time UNHCR established its cross-border outposts. Its main activities included providing supplementary food for vulnerable groups as well as food for work. The presence of another United Nations relief agency in the region also reinforced the stabilizing effect of international civilian assistance. Nonetheless, WFP's food for work programme has sometimes been questioned. While it is generally admitted that food for work is a valuable complement to rehabilitation efforts, critics contended that in the Gedo region, excess food derived by the population from generous food derived by the population from generous food for work schemes saturated the local markets and discouraged cash crops farming.

### **UNOSOM WAS A MIXED BLESSING**

(87). Coordination with UNOSOM in the field has been somewhat frustrating to UNHCR teams. Although UNOSOM's mandate evolved from purely military to humanitarian objectives, its structure never gained the flexibility required for relief work. Furthermore, after its failure to disarm the Somali militias, UNOSOM fell back on simple military escort tasks while getting itself increasingly involved in political institutions development and

rehabilitation activities. The scale of UNOSOM's contribution to rehabilitation has been negligible, but the reluctance of its Humanitarian Affairs staff to consult with UNHCR and the NGOs has undermined the negotiating of some QIPs with local communities.

(88). UNOSOM's paramount concern with security has also hampered the work of international relief agencies. Clearance for field staff movements would be withheld, or escorts not granted. Eventually, the scale of forces commonly displayed in UNOSOM operations was deemed threatening and was resented by the Somali population. Furthermore, because UNOSOM regarded with apprehension any movements of population. UNHCR-supported repatriation activities often became the object of tedious negotiations with post commanders and of referrals to the high Command.

## **RELATIONS WITH IRC PROVED AMBIGUOUS**

(89). The choice of IRC as anchor's main implementing partner for the QIP programme was not planned. UNHCR first approached the Lutheran World Federation (LWF) . LWF had gained significant logistics experience in Somalia through organizing a food and relief air-lift. An agreement was expected to be reached, but LWF retracted at the last moment explaining that it did not have the capacity required for the operation.

(90). A number of problems have, from the outset, plagued anchor's cooperation with IRC. First, the agreement drawn with IRC did not clearly define the parties' roles and responsibilities. Second, the project management practice of IRC teams differed significantly from UNHCR's. Third the IRC team present at the time in Kenya was inexperienced and would have benefited from greater support and guidance from its headquarters. Fourth, the international staff IRC recruited in Nairobi for the Cross-Border Operation somewhat lacked maturity and experience.

(91). The agreement signed with IRC was flawed because it misled IRC staff into believing that they had the same decision-making prerogatives as the UNHCR cross-border officers. The planners of the Cross-Border Operation had thought that conditions in Somalia called for fully integrated teams rather than the usual contractual relations between implementing partners and UNHCR. Thus, the first cross-border teams based in Kenya were headed jointly by UNHCR and IRC leaders. Differences in the approaches and methods of work of the two organizations quickly made such arrangements unworkable. The problem was eventually resolved with the creation in Gedo of UNHCR-only outposts.

(92). Resentment of what was perceived by IRC staff as the UNHCR bureaucracy hampered project management and the planning efforts of the Cross-Border Unit in Nairobi. IRC staff generally saw themselves as doers distrusted by their UNHCR counterparts. Partly due to their impatience with the QIPs approval and financial disbursement procedures, IRC staff have for long neglected project reporting. In turn, the lack of feedback has prevented UNHCR planners from properly assessing the effects of the QIP programme.

(93). Finally, IRC staff could have been selected more carefully for this delicate operation. The situation improved with the arrival of more qualified personnel, but the support provided by IRC headquarters has not matched the needs of the operation. Most of the IRC expatriate field workers were recruited in the region. Although generally dedicated to their new assignments, they lacked strong project planning and administration skills.

## **ROLES COULD HAVE BEEN BETTER DEFINED**

(94). Much of the misgivings that characterized relations between the IRC and UNHCR could have been tackled through clearer definitions of objectives, roles and rules. The drafting of project submission and reporting

guidelines to be shared with all implementing partners involved in the QIP programme illustrates that UNHCR planners have tried to address these issues. Notwithstanding, the pressure to “get things done now” has on the whole prevailed over careful operations’ planning. Furthermore, since some of the difficulties with the IRC cross-border team resulted from the agency’s internal organization, UNHCR could have raised its concerns more effectively with IRC headquarters.

(95). There has been a variety of views among planners and observers of the Cross-Border Operation on how the UNHCR rehabilitation efforts stand in the continuum from relief to development. While UNHCR has repeatedly spelled out its commitment to the continuum approach, operations planners find it somewhat difficult to apply in emergency environments. In the context of Somalia, the absence of central authorities and persistent warring between factions preclude any development initiative. Officials from major aid agencies point out that development programmes cannot be forced upon populations unwilling to cooperate even for the relief of their own communities. Aid planners speak of a “suspended continuum” in Somalia.

### **SUSTAINABILITY WAS NOT A PRIORITY**

(96). The pressing developments that prompted the launching of the Cross-Border Operation understandably eclipsed anchor’s concern with the continuum. Nonetheless, designing sustainable rehabilitation QIPs could have made them a meaningful contribution to future multi-sectoral development programmes. Along efforts to restore normal living conditions in the Gedo region, UNHCR cross-border teams launched a number of “quasi-developmental” QIPs. These initiatives aimed at self-sustainability and reached farther than the rehabilitation objectives of the operation. To the cross-border planners they were primarily justified by the need to consolidate progress towards the region’s stabilization. Without necessarily engaging in development activities, more QIPs could have been geared to self-sustainable activities.

(97). Encouraging the creation of national aid and development institutions is necessary, but in a country fragmented into a multitude of clan-controlled areas such initiatives can be only viable locally. UNHCR has, through the QIP programme, encouraged the formation of a multitude of Somali NGOs. The support of an international NGO such as IRC has enabled Somali organizations to undertake work locally and sometimes in other towns. However, clan pressure seriously restricts the scope of their potential involvement.

(98). The rehabilitation achievements of the Cross-Border Operation may be short-lived because UNHCR was unable to involve at the outset international agencies capable and willing to continue work in Somalia after the Organization’s withdrawal. The continuum approach requires the involvement of development institutions alongside UNHCR from the start. The commonly held view that UNHCR can field a programme and then “hand it over” to another agency should be questioned. International aid agencies are seldom willing to continue projects that were conceived and administered on standards which are not their own. As a result UNHCR often faces situations where it should but cannot disengage, or where it withdraws but faces the risk of seeing its achievements crumble.

### **FUTURE DIRECTIONS**

(99). The Cross-Border Operation, as it was carried out until mid-1994, has in effect ended. With the achievement of anchor’s main objectives in the north, the centre of gravity of the operation has shifted down to the Lower-Juba and Kismayo areas. Repatriation from the border sites in the Northeast Province of Lenya was completed in the first half of 1994, and the camps closed. By mid-year, returnees to the Gedo region had settled in a somewhat stable environment, and UNHCR cross-border teams were withdrawn. The compounds were handed over to international NGOs willing to continue rehabilitation work for some time, or to local forms of government.

The situation has not evolved as favourably in the southern regions to which about 30,000 refugees residing in the coastal area of Kenya wish to return.

(100). Maintaining a permanent presence in Somalia to facilitate voluntary repatriation may be the last cross-border component still needed. Prevailing instability will not allow UNHCR to continue fielding QIPs in the southern regions. Even information conditions appeared more favourable, the experience of Gedo has shown that in Somalia QIPs are not an efficient means to achieve the rehabilitation of local communities. In Gedo, QIPs were used to attract semi-nomadic populations to their homelands or to discourage them from leaving. In many instances the rehabilitation effect of QIPs vanished after the project was completed or international assistance withdrawn.

(101). Continuing the Cross-Border Operation in the south by means of a QIP programme is neither feasible nor desirable. Little progress was made by the cross-border teams in the southern regions of Lower-Juba and Kismayo. Feuding between militias and uncontrolled violence have made the region so unsafe that teams had to be withdrawn or confined to perimeters protected by the UNOSOM military contingent. Monitoring the many agricultural QIPs implemented on the banks of the Juba river has proven impossible. In Kismayo, UNHCR staff are unable to maintain regular contact with the resident communities, or to develop working relationships with their representatives.

(102). QIPs as all other forms of assistance have become additional causes of conflict among the warring factions in the Kismayo region. Despite a local peace conference held in June 1997, warlords have not been able to cooperate. As a result, UNHCR and other agencies represented in Kismayo are constantly under the pressure of opposed parties eager to derive personal benefits from assistance programmes.

(103). The prospect that conditions would improve to allow international agencies to work effectively in the region is dim. A viable agreement between the warlords is not likely to be reached in the near future. Since the withdrawal of UNOSOM has been announced, tensions have increased. Observers predict that the militias are preparing themselves for the looting of the materials and structures that will be left by UNOSOM. In addition, the warlords will fight for the control of the maritime and air ports in which they foresee a substantial source of revenues through the taxing of all aid traffic.

(104). Continuing QIPs for the sake of encouraging voluntary repatriation from the Kenyan coastal camps to the southern regions is not necessary because the refugees are determined to return home. The use of QIPs as an incentive to repatriation would be ineffective in a context where immediate survival is the prime concern. Furthermore, the populations of the Juba and Kismayo regions are either sedentary rural or semi-urban, and do not need to be stabilized by assistance.

(105). Many of the premises on which the Cross-Border Operation was developed are no longer valid. In summer 1992 planners pressed to stem the massive influx of refugees into Kenya decided on fielding assistance inside Somalia. Voluntary repatriation was not an immediate objective, and in fact UNHCR developed a repatriation programme only after refugees had begun to return spontaneously to Somalia. At present, the refugees' desire to repatriate is the main issue UNHCR must address.

## **Recommendations**

A. The operation's objectives should be redefined in light of the current situation and refugee needs. The Branch Office in Kenya should decide whether continuing a cross-border rehabilitation programme is still necessary, or whether a conventional repatriation project would better suit present needs.



B. The Branch Office in Kenya should step up the organization of voluntary repatriation to meet the pressing demands of the refugees. The official closure of the camps by the Kenyan authorities last October leaves refugees with the choice between repatriation and transfer to a closed camp in the deserts of the Northeast Province.

C. The Branch Office in Kenya should consider developing an encashment programme for those willing to return. Making cash available to returnees under the current conditions in Somalia is likely to have more of an impact on their well-being than rehabilitation activities. Encashment costs would be significantly lower than those of fielding projects. Many Somalis live of trade and would favour the cash option.

D. As security conditions in Somalia, a solid UNHCR presence in Kismayo and in Mogadishu should be maintained to ensure that repatriation movements are properly organized and monitored. Staff should be capable of developing and maintaining relations with representatives of the factions controlling the return areas. Negotiating with the local forms of government will be crucial after UNOSOM withdraws in spring 1995.

E. Re-focusing the Cross-Border Operation from rehabilitation to repatriation could require some organizational changes in the Nairobi Branch Office and in the field. It is conceivable that programme tasks pertaining to the closure of the QIPs could be assumed by the Programme Unit, while the organization of repatriation would be continued by the Protection Unit.

F. Funding appeals should clearly introduce a new and distinct repatriation programme. Major donor states officials in Nairobi are sceptical of the continuation of rehabilitation efforts in Somalia. An efficient alternative to QIPs, and a stronger emphasis on voluntary repatriation could make the appeals more convincing.

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**Annex 46**

“UNHCR’s Women Victims of Violence Project in Kenya: An Evaluation Summary”,  
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# UNHCR's Women Victims of Violence Project in Kenya: An Evaluation Summary

## EC/1995/SC.2/CRP.22

By UNHCR | 08 June 1995

### I. INTRODUCTION

1. This review examines the implementation of UNHCR's Women Victims of Violence (WVV) Project in Kenya, launched in October 1993 and to be integrated into the Office's operations in that country in July 1995. It was conducted to draw lessons learnt by UNHCR during this project, and to make recommendations on its replication in other situations where persons of concern to the High Commissioner risk physical assault.

2. The WVV Project was designed as a pilot project, deliberately out of line with UNHCR's policy of integrating (or "mainstreaming") gender issues into its regular activities. The Office chose to implement a set of theme-specific activities in parallel to its regular work to test assumptions, and clarify and reinforce the High Commissioner's efforts to integrate gender-sensitive planning into regular operations.

### II. BACKGROUND

3. Due to fighting between rival factions in Somalia in January 1991, some 219,000 Somalis had been granted refuge in Kenya by December 1993. As "Operation Restore Hope" gained ground in Somalia, bandits who had traditionally operated along the Somali/Kenyan border struck on the Kenyan side and the refugee camps in Dadaab, in north-eastern Kenya, became a target for their attacks. Through the problem identification process described below, UNHCR learnt of the rape of many refugee women before, during and after their flight into Kenya. This abuse and the extent to which they were being subjected to rape in and around the Dadaab camps were largely unknown to the international human rights community at the time. UNHCR found that, as in many other situations of civil conflict, the rape of Somali women and girls had been used as a weapon of war. In this case, the manifestations of the conflict, if not the origins, are clan-based. Although the attacks are extra-territorial, their cause is largely internal.

4. Over a year into the emergency, enough staff had been deployed to enable UNHCR to recognize a phenomenon with which the organization had significant prior experience. Information on the refugee women's medical condition indicated a serious, gender-specific protection

problem.<sup>1</sup> Because of the prevailing traditional practice of female genital mutilation in Somalia, which involves sewing up of the genitalia, many of the women and girls attacked had been cut open by their assailants and were consequently forced to seek medical assistance from the camp hospitals. The disturbing number and nature of requests for medical assistance sounded the alarm; the refugees themselves did not.

5. Following a UNHCR field staff investigation, a professional Somali woman rape counsellor was brought in to help UNHCR clarify the problem and conduct a needs assessment. She worked with the refugees and local police to identify cases and determine the causes of the sexual violence and possible preventive measures for the camps.

### III. PROJECT FORMULATION AND IMPLEMENTATION

6. As a result of this needs assessment process, the WVV Project was established with the following objectives:

- to develop measures for improving physical security in and around the refugee camps to prevent violence;
- to provide counselling and therapy to treat physical and emotional trauma;
- to provide material assistance and skills training to enhance the livelihood of rape survivors; and
- to promote consciousness-raising amongst the public and police on the emotional and physical consequences of rape.

The Project staff include a coordinator, two protection officers and two community services officers who supervise local and refugee workers to help project implementation. Project activities comprised a wide range of inter-related elements, from measures designed to improve physical security, notably the construction of thorn-bush fencing within the camps and the provision of material support to the local police, to community awareness-raising activities, such as the publication of a refugee newsletter and the training of refugee leaders. Rape survivors were assisted through family and individual counselling, legal advice and representation, and relocation or resettlement, where necessary.

7. During 1994, the emphasis of the Project's work shifted towards prevention. The Project's direct protection objectives were complemented by training of implementing partners to allow for its eventual integration into the general programme in July 1995. The impact of the Project's work in the areas of protection and community services is examined below. This has been ground-breaking work, particularly regarding the staff's ability to combine the two disciplines, thereby reinforcing their effectiveness.

8. Previous documents on progress in implementing UNHCR's Policy on Refugee Women reported persistent obstacles to the equitable provision of protection and assistance. It would appear that efforts made to reduce the gender bias in UNHCR's protection and assistance activities may sometimes be diluted by mainstreaming. Officials of one donor country involved in the funding of this project maintain that one reason for supporting a discrete activity like the WVV Project was to

focus on the problems, efforts to resolve them and their impact, in the context of a protection situation involving violence against refugee women. Had it not been for the parallel structure created by this project, many of the lessons learnt would have been less apparent, and the resulting recommendations less specifically grounded in applying policy to operations.

## A. Protection

### 1. Achievements

9. The protection work of the Project and other UNHCR collaborating staff is direct, practical and creative. Through the WVV Project, and in collaboration with the refugees and the local police, UNHCR has significantly improved security inside the camps. In the early stages of the Project, an average of 29 rapes were reported monthly, although a significant proportion of these reports were subsequently found to be false. While it is believed that reporting has improved through the Project's information campaign and rape counselling training, the problems of under- and over-reporting of rape remain. Nevertheless, indications suggest a gradual decline in the actual incidence of rape within the camps. The dramatic reduction in bandit attacks on the Dadaab camps following the construction of the thorn-bush fencing has removed one of the major causes of sexual assault within the camps.

10. Material assistance provided to local police has greatly improved their capacity and willingness to confront the bandits, address incidents of sexual violence against refugee women, and treat the survivors with respect. Police dealing directly with the survivors of rape have received training on UNHCR's mandate and the basic tenets of refugee and human rights law relevant to day-to-day camp realities, contributing significantly to the creation of a team spirit between UNHCR and the local police.

11. The protection staff have combined support for refugee initiatives with human rights education through dialogue with heads of family and elders on gender-specific protection problems of the women and girls in their community. The International Federation of Women Lawyers/Kenya, the UNHCR implementing partner in the Kenyan adjudication of cases of violence against women and girls, has provided legal assistance to survivors who choose that option. The cases brought have helped to educate, and keep the problem before the eyes of, the Kenyan authorities. They have also sensitized many refugees to the usefulness of pursuing justice through the courts of their country of asylum, rather than through the traditional form of dispute settlement practised amongst the Somali refugees, which seldom, if ever, benefits the rape survivor.

12. The decision was taken in mid-1994 that WVV Project protection and community services officers should address the protection and psycho-social needs of *all* refugees, regardless of their sex or the nature of problem raised. Yet the importance attached to the original goals of the Project has allowed its protection officers to apply UNHCR's mandate with a relatively unprecedented degree of gender-neutrality. The freedom to work on one form of gender-specific violence has opened the door to their involvement in other forms, such as domestic violence and early, forced marriage. Refugee girls, unable to escape these isolated camps, have requested UNHCR protection, ostensibly against forced marriage, revealing a challenge which protection officers and concerned refugees girls see as the next step in a process: protection against female genital mutilation and its consequences.

13. UNHCR protection staff involved with the WVV Project have been sensitized to, and generally allowed to act on, the intricate link between protection and assistance. They have been able to work with the challenge and resource of tradition, without attempting to expand the Office's mandate. The regard for UNHCR and the Project that the maintenance of this delicate balance has engendered in the police and the refugees is both patent and constructive.

## 2. Areas for improvement

14. Project activities such as thorn-bush fencing and training have improved overall security inside the camps and reduced the number of rapes. However, there has been limited improvement of the overwhelmingly gender- and age-specific protection problems occurring *outside* the camp perimeters. While the rape of refugee women during firewood collection originally alerted the international community to the situation in the Kenyan camps and in turn resulted in generous donor support for the Project, the rape and mutilation of women collecting firewood, and of girls herding goats, continue unabated.

15. While protection staff working with the Project have intervened in individual protection cases which are both gender- and age-specific, there remain a number of serious age-specific protection problems within the camps, notably early, forced marriages and female genital mutilation. Dadaab sub-office reports indicate that the rights of refugee children are increasingly being violated. Such issues have yet to receive the systematic attention that women's rights have in the WVV Project's efforts to discuss with and educate the community and its leaders.

16. UNHCR has gained considerable experience with problems which can occur to victims of sexual violence on return to their country of origin. Yet despite the dread of repatriation expressed by Somali unwed mothers of children conceived as a result of rape in Kenya, and UNHCR's focus on voluntary repatriation as the preferred durable solution, little or no information was available about the reintegration in their country of origin of the few rape survivors who had attempted return.

## B. Community services

### 1. Achievements

17. In accordance with the policy on mainstreaming, the WVV Project community services staff will distance themselves operationally from the specific beneficiaries as the Project is integrated and the implementing partners and trained refugee counsellors take over. However, the community services staff's direct and practical working methods have ensured the gender-sensitive approach and supervision necessary to give legitimacy to a form of community self-management which requires the active participation of women to be effective. In collaboration with its implementing partner in Dadaab, the Project's community services staff has improved and supported the incorporation of women and their needs into the refugee community's decision-making process on issues such as material assistance and security. It has also facilitated the training needed to launch a network of refugee men and women to counsel survivors of rape, accompany them through the procedures necessary to ensure their good health, and assist in the preservation and submission of evidence regarding their attack. The refugee counsellors also assist the survivors and their families - including babies conceived as a result of rape - to live as normal and productive lives as possible, together.

18. Other activities conducted within the community services component of the Project focused on

- improving the self-esteem of the rape survivor;
- helping survivors to recreate a support network if the rape has resulted in alienation from the family;
- enhancing survivors' capacity for economic self-sufficiency; and
- providing physical space for women to gather in support of each other without fear of identifying or stigmatizing victims, and to seek solutions to gender-specific problems as well as providing child-care.

## 2. Areas for improvement

19. Project staff indicate that Somali children who survive rape suffer more than the adult women victims but are not provided with the same level of psycho-social support given to adults. Children who have witnessed the rape of a female family member or who have been rejected by the community because of their mother's rape are not given counselling. This contrasts sharply with the counselling and play therapy the WVV Project staff provided recently uprooted Rwandese refugee children in Nairobi in the second half of 1994.

20. A similar disparity exists in providing professional psychological support for trauma victims. To date, no such support has been made available to the Somali rape survivors on the grounds that such treatment would be unjustified given the level of services available to the local population. Yet the Project provided a professional psychologist for this purpose to Rwandese refugees in Nairobi in the latter half of 1994.

21. Many refugees cited abuse of mildly narcotic *chat/miraa* leaves as the catalyst for much of the domestic and community violence against women and girls in the community. Refugee men, bored and frustrated by extended periods of inactivity and confinement, chew the substance and become aggressive as the effects wear off. Yet no efforts are envisaged to address this problem.

22. UNHCR and WVV Project staff have been made even more keenly aware of the harmful, and sometimes fatal, effects of female genital mutilation by the desperate situation of refugee girls trying to flee these effects, in particular the horrifying medical implications of prior mutilation for rape victims. Yet, to date, no organized effort has been made, through health education, to address the medical implications of this particular violation of the right to personal security.

## IV. ORGANIZATION AND MANAGEMENT

23. Managers in both the field and at Headquarters contend that because the WVV Project was a Trust Fund, free from the bureaucratic constraints of UNHCR's Annual Programme, the Office could respond flexibly to the refugees' needs and the international community's calls for action. The structure has also allowed the Project to serve as a focus for field testing of UNHCR's Policy and Guidelines on (the Protection of) Refugee Women in a way which facilitates their evaluation. In this sense, the creation of a parallel structure demonstrated foresight on the part of the decision-makers concerned. Moreover, the establishment of a separate set of activities was essential at the

time. By 1993, UNHCR had gained considerable understanding of sexual violence, but had little experience in addressing it, particularly in a preventive way.

24. There has been a downside to UNHCR's efforts to prevent and redress sexual violence. The narrowness of the Project's initial focus served to label rape victims and Project staff in the eyes of the refugee community. Fraudulent rape claims arose in the hope of gaining more protection or assistance, including resettlement, even though the last option was available to a very small number of individuals. The subsequent broadening of the scope of both the Project's beneficiaries and activities largely resolved this problem. At the Project's beginning, a separate staffing structure was created which did not lend itself to integration into the work of the Office and obscured reporting lines and responsibility for supervision.

25. In theory, such a parallel structure would not be necessary today. UNHCR now has the knowledge and tools required to deal with similar challenges within the framework of its day-to-day activities. However, while WVV Project staff perceived and personified the links between protection and assistance, they did not receive the level and quality of supervision required to act on these links with the consistency necessary for such a project.

26. The improvements in the operational emergency response system within UNHCR have resulted in the type of emergency management which probably would now permit identifying sexual violence much sooner than was the case in the Kenyan emergency. Furthermore, overall staff awareness of the high risk of sexual violence in situations of uprootedness, and the importance of gender-sensitive planning to efficient implementation, has improved considerably following training in People-Oriented Planning (POP) and exposure to numerous reports on gender-sensitive protection and assistance.

27. In the Kenyan context, however, certain management weaknesses limited the potential of the WVV Project. Project staff did not fit easily within UNHCR's functional hierarchy and traditional division of labour. Staff with little or no UNHCR experience were required to supervise staff often more experienced than themselves. Consequently, reporting lines became confused. Since the Project received little or no pro-active supervision, personality differences undermined some of its components.

28. The Project's implementation suffered from a lack of a sense of ownership among its senior managers and a lack of commitment to its objectives. In some cases there was a reluctance to accept that the protection of refugee women and girls was UNHCR's priority concern in dealing with the Somali refugee population in Kenya. The isolation of the Project and its staff has weakened its potential to influence UNHCR's work in Kenya beyond the date of its integration into general programmes.

## **V. LESSONS LEARNT AND RECOMMENDATIONS**

29. To ensure consistent and continuing support for equitable protection and assistance through gender-sensitive planning and implementation, UNHCR staff at all levels must understand and accept that the protection of women and girls from gender-based human rights violations is a legitimate and fundamental concern of the Office.



30. Gender-sensitive planning helps not only women and girls, but the community as a whole, while gender-blind planning and implementation, for its part, allows the perpetuation of gender-specific protection problems and inefficient programming.

31. Pro-active measures should be taken to ensure that UNHCR's Policy on Refugee Children (1993) and Guidelines on the Protection and Care of Refugee Children (1994) are applied to the direct and indirect child victims of rape and other forms of violence in and around the refugee camps in Kenya. Protection and rehabilitative measures should be developed to address their specific concerns.

32. To preserve the progress made by the Project after it has been integrated into the general programme, it is recommended that all staff in Kenya who have not already been trained in People-Oriented Planning should participate in a full POP workshop before the end of the year.

33. UNHCR should rotate WVV Project personnel to other duty stations where such gender-sensitive work has yet to be done, as well as to Headquarters to ensure colleagues and other country operations benefit from their experience.

34. In collaboration with the international public health community, UNHCR should design a strategy prevent health and human rights problems of early, forced marriage and female genital mutilation, as well as to alleviate community and family level damage inflicted by substance abuse.

35. In view of the re-entry of other humanitarian organizations into Somalia, UNHCR should establish mechanisms to monitor the protection and psycho-social situation of victims of violence who have repatriated.

36. Until the remaining organizational obstacles to implementing its Policy on Refugee Women have been overcome, UNHCR will continue to be obliged to resort to parallel structures so that staff are free to implement the High Commissioner's mandate in the most effective way possible. It will also be necessary to maintain gender- and age-focused posts to provide the on-the-job training and technical supervision required to ensure UNHCR's non-discriminatory fulfilment of its protection mandate and assistance function. The most effective way to obtain the necessary change in staff behaviour would be the public and pro-active pursuit at the highest levels of UNHCR of its leadership role in the international community's movement toward the equitable protection of refugee women's and children's rights.

37. Since many of the management problems identified implementing this project are common to UNHCR operations in other regions of the world, the High Commissioner should consider the following:

- mandatory POP training for all staff, at all levels, starting with emergency staff, those on the emergency roster, and those in management positions; and
- the trial implementation of a system for monitoring staff sensitivity to gender issues.

38. More flexible and effective information management is required so that all staff have direct access to guidelines and directives in cases where a lack of information or concern threatens UNHCR's ability to provide protection and assistance in a diligent, cost-effective and non-

discriminatory manner. The Centre for Documentation on Refugees and the Emergency Preparedness and Response Section should collaborate to ensure that key organizational directives and guidelines are available to every staff member from the very beginning of each emergency.

## VI. CONCLUSION

39. The Women Victims of Violence Project in Kenya has shown UNHCR's capacity to give the required attention to the protection and assistance needs of refugee women. It has also illustrated the positive effects of such gender-sensitive work on the welfare of the uprooted population as a whole. If the Project receives the necessary institutional support, it will continue to provide such benefits as it is integrated into UNHCR's regular operations in Kenya. Moreover, the WVV Project has demonstrated the practical relevance of UNHCR's Policy on Refugee Women and the need for continuing work in pursuit of that Policy's goals.

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<sup>1</sup> See e.g. *Note on Certain Aspects of Sexual Violence against Refugee Women (Note on Sexual Violence)* (A/AC.96/822, para.22).

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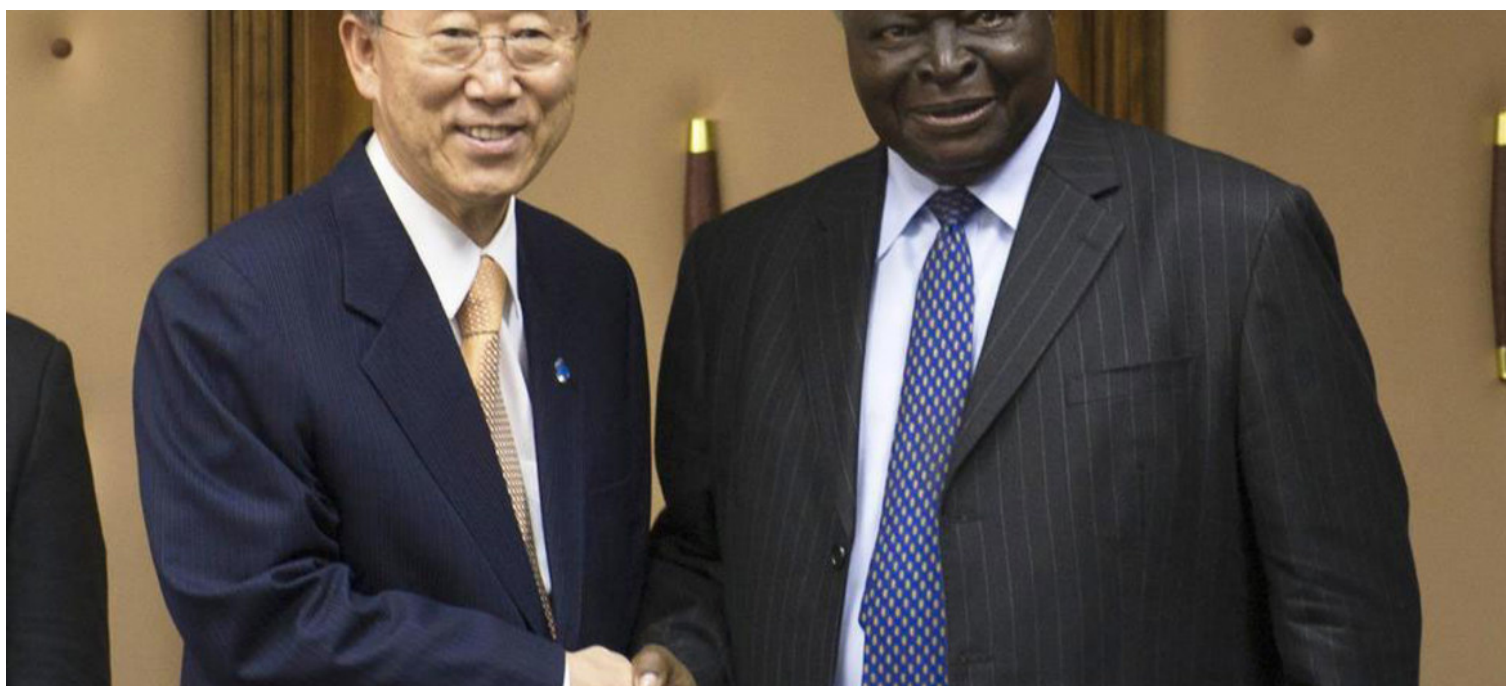
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**Annex 47**

“Somali and Sudanese issues top discussions between Ban and Kenyan leaders”, *UN News*, 8 December 2011

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## Somali and Sudanese issues top discussions between Ban and Kenyan leaders



Secretary-General Ban Ki-moon (left) meets with President Mwai Kibaki of Kenya, in the Presidential Office at Harambee House, Nairobi

**8 December 2011**

Secretary-General Ban Ki-moon today discussed the situation in Somalia and Sudan with Kenyan President Mwai Kibaki, with the United Nations chief taking note of progress since the adoption by Somalia's leadership of a political roadmap on the restoration of peace and stability in the Horn of Africa country.

Secretary-General Ban Ki-moon today discussed (<http://www.un.org/apps/sg/offthecuff.asp?nid=2125>) the situation in Somalia and Sudan with Kenyan President Mwai Kibaki, with the United Nations chief taking note of progress since the adoption by Somalia's leadership of a political roadmap on the restoration of peace and stability in the Horn of Africa country.

Mr. Ban reaffirmed UN support for the implementation of the roadmap by the Transitional Federal Government (TFG) with the support of the international community. The roadmap spells out priority measures to be implemented before the current transitional governing arrangements end next August, in the areas of security, the drafting of a new constitution and political reconciliation.

The Secretary-General welcomed the endorsement by the Kenyan Parliament yesterday of the Government's decision to have the country's troops join the African Union peacekeeping mission in Somalia (AMISOM), which he said needed to be brought to its full capacity.

In the discussions with Mr. Kibaki and Kenya's Foreign Minister Moses Wetangula, Mr. Ban noted that security developments in Somalia should be in support of the TFG, and that interventions should be aligned with Somalia's political objectives.

The Secretary-General also commended Kenya for continuing to provide support to refugees from Somalia, and welcomed the additional security measures taken in the camps hosting them.

On Sudan, Mr. Ban, the President and the Foreign Minister discussed the need to resolve outstanding issues in the Comprehensive Peace Agreement (CPA) between Sudan and South Sudan, particularly the question of the disputed area of Abyei.

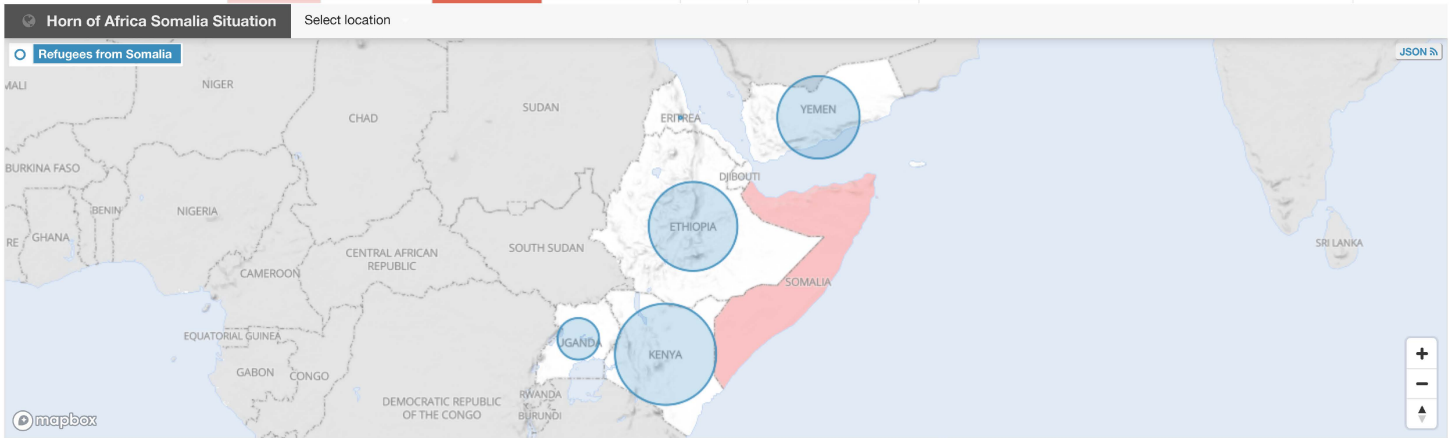
The Secretary-General underlined the importance of harmonizing the relationship between Sudan and South Sudan, including with the assistance of other countries in the region.

**SOMALI (/EN/TAGS/SOMALI)**

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**Annex 48**

“Horn of Africa Somalia Situation”, *UN High Commissioner for Refugees Operational Portal – Refugee Situations*, available at: <https://data2.unhcr.org/en/situations/horn> (last accessed: 21 December 2020)



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations

Total Refugees from Somalia

684,579

Source - UNHCR, Government of Uganda, Office of the Prime Minister

Households\*

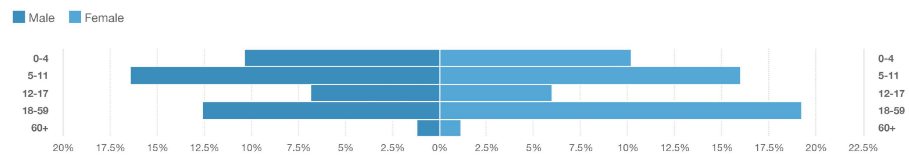
59,274

\* Household data may be unavailable for some locations.

Source - UNHCR, Government of Uganda, Office of the Prime Minister

Last updated 30 Nov 2020

Total Refugees from Somalia - Demography



Source - UNHCR, Government of Uganda, Office of the Prime Minister

Total Refugees from Somalia by Date



Source - UNHCR, Government of Uganda, Office of the Prime Minister

Refugees from Somalia

Location name	Source	Data date	Population
Kenya	UNHCR	30 Nov 2020	38.6% 264,544
Ethiopia	UNHCR	30 Nov 2020	29.5% 202,217
Yemen	UNHCR	30 Nov 2020	25.5% 174,367
Uganda	UNHCR, Government of Uganda, Office of the Prime Minister	30 Nov 2020	6.3% 43,371
Eritrea	UNHCR	30 Nov 2020	0.0% 80

Highlights

- During 2019, some 220,000 people were granted international protection in the East and Horn of Africa and the Great Lakes Region (EHAGL), bringing the total number of refugees and asylum-seekers to 4.7 million. The region hosts some 67 per cent of the refugees on the African continent and 20 per cent of the global refugee population. The largest number of refugees and asylum-seekers in the region are from South Sudan, with significant numbers also from Burundi, the Democratic Republic of the Congo, Eritrea, Somalia and Sudan. Governments have generally continued to maintain open-door asylum policies and embraced the Global Compact on Refugees by adopting progressive national refugee frameworks and promoting the inclusion of refugees into national health, education and social protection systems. 19 May 2020
- Internal displacement is also a phenomenon in countries in the EHAGL region and faced by several countries on a large scale. Over 8 million people are currently internally displaced. Efforts are underway to strengthen UNHCR's role in inter-agency IDP responses in line with the 2019 IDP policy and the High Commissioner's new Initiative on Internal Displacement which includes Ethiopia, South Sudan and Sudan. Recent opportunities to pursue solutions for IDPs in the region were bolstered by South Sudan's accession and Ethiopia and Somalia's ratification of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). 19 May 2020
- The first cases of Covid-19 in the EHAGL region were reported on 13 March and the situation continues to evolve. All 11 countries of the region have reported cases and local transmission. While there has been no large-scale outbreak amongst UNHCR's populations of concern, the need for preparedness is urgent. UNHCR is working closely with governments, the World Health Organization (WHO) and UN Country Teams to promote the inclusion of refugees, IDPs, stateless people and others of concern in national preparedness and response measures – in particular in health, hygiene and sanitation programmes, as well as distance learning and emergency social safety nets. 19 May 2020
- From January to June 2017 - 28,757 Somali refugees from Kenya were voluntarily repatriated to Somalia by UNHCR as part of its programme and benefited from an enhanced return package. 15 Sep 2017
- In total, as of 28th Feb. 52,591 Somali refugees returned home since 8th December 2014, when UNHCR started supporting voluntary return of Somali refugees. 13 Mar 2017
- As of 15th Feb. 49,376 Somali refugees from Kenya returned home since 8th December 2014 ( when Vol-rep started) out of which 10,062 were supported in 2017 alone. 07 Mar 2017

View all

**Annex 49**

Annex I: Declaration by the leaders of the Somali political organizations,  
S/1994/614, 24 March 1994





## Security Council

Distr.  
GENERAL

S/1994/614  
24 May 1994

ORIGINAL: ENGLISH

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FURTHER REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS  
OPERATION IN SOMALIA SUBMITTED IN PURSUANCE OF PARAGRAPH 14  
OF RESOLUTION 897 (1994)

### I. INTRODUCTION

1. In paragraph 14 of its resolution 897 (1994) of 4 February 1994, the Security Council requested the Secretary-General to submit to it, as soon as the situation warranted, and in any case in good time before 31 May 1994, a report on the situation in Somalia and the implementation of the resolution. After the adoption of resolution 897 (1994), the political process for national reconciliation in Somalia gained new impetus. The present report covers developments concerning that process, as well as progress achieved by other programmes of the United Nations Operation in Somalia (UNOSOM II) in helping to restore peace and stability in Somalia.

### II. POLITICAL DEVELOPMENTS

2. On 8 March 1994, Admiral Jonathan Howe completed his tour of duty in Somalia as my Special Representative, having overseen the establishment of UNOSOM II and steering it through a difficult phase of the operation. Following his appointment as the Acting Special Representative, Ambassador Lansana Kouyate launched an initiative to normalize the relationship between UNOSOM II and the Somali National Alliance (SNA), while maintaining contacts with the Somali Salvation Alliance (SSA) or Group of 12. The tone of the meetings reflected the intention of both sides to re-establish dialogue and to work out concrete arrangements, for example for security in Mogadishu, including reactivating the Police Committee, and for a cease-fire in Lower Juba. The points of contention between SNA and UNOSOM were discussed at length and understandings were reached on them, which facilitated normalization of the relationship between UNOSOM and SNA.

3. Soon afterwards, in response to the deteriorating security situation in Kismayo, UNOSOM made every effort, within the context of its new mandate, to stop the serious inter-factional and inter-clan fighting that had erupted there. In mid-February, my Acting Special Representative travelled to Kismayo, Bossasso, Bardera, Nairobi and Addis Ababa, in addition to holding meetings in

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Mogadishu, for consultations with the Somali leaders connected with the conflict. The immediate objective was to induce them to stop the fighting. He was able to persuade them to meet at Nairobi on 15 March 1994 for consultations with the objectives of securing agreement on the indefinite cessation of hostilities and long-term solution to the problems of Lower Juba. Nairobi was chosen as the venue because many of the key personalities concerned with the Lower Juba region were present there.

4. The timing of the consultations on Kismayo coincided with the return to Nairobi of the Group of 12 leaders from Cairo, where, together with leaders of SNA, they had been invited by President Hosni Mubarak, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity (OAU). With all the Somali political faction leaders assembled in Nairobi, my Acting Special Representative embarked on an effort to stimulate the national reconciliation process. He succeeded in bringing together political leaders who had not spoken to each other for a long time. The reconciliation process gained momentum once the personal relationship between the political leaders had been re-established. Most importantly, he brought together General Mohamed Farah Aidid, Chairman of SNA, and Mr. Ali Mahdi, Spokesman of the Group of 12, which resulted in a constructive proposal to establish a national Government of Somalia.

5. The two sides finalized a declaration, in the form of a manifesto on national reconciliation, which was signed at Nairobi on 24 March 1994 by Mr. Ali Mahdi and General Aidid, on behalf of the Group of 12 and SNA respectively (see annex I).

6. The Nairobi declaration stipulated that, in order to restore sovereignty of the Somali State, a national reconciliation conference should be convened on 15 May 1994 to elect a President and Vice-Presidents, and to appoint a Prime Minister. The Conference would also complete and review the formation of local authorities, where needed, and establish them, where necessary, as a basis for regional autonomy and respect for community rights.

7. To prepare for the convening of the National Reconciliation Conference, the declaration made provisions for the holding of a meeting of the signatory factions to the 1993 Addis Ababa agreement and the Somali National Movement (SNM) of the north-west on 15 April 1994 at Mogadishu to set up rules and procedures for voting and criteria for participation in the Conference. The meeting would also discuss the ways and means of establishing the National Legislative Assembly, which would be constituted after the formation of the national Government.

8. Among the declaration's general principles, the political faction leaders reached an understanding on the inviolability of the territorial integrity and sovereignty of the Somali Republic; the repudiation of any form of violence as a means of solving conflict and implementation of a cease-fire and voluntary disarmament throughout Somalia; respect for, and preservation of, fundamental human rights and democratic principles; the creation of an atmosphere conducive to brotherly coexistence among all Somalis using traditional channels, cultural and political means; and the rehabilitation and reconstruction of the country after the devastation of civil war.

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9. In an appeal, the Somali leaders expressed their gratitude to the international community, particularly the United Nations, aid donor countries and countries of the region for their valuable assistance, and requested the continuation of those efforts until Somalia could stand on its own feet.
10. It should be noted that the Somali political faction leaders are no longer talking about the formation of a transitional national council, as stipulated in the Addis Ababa accords in March 1993. Instead, they are aiming at the formation of a National Legislative Assembly.
11. In principle, the faction leaders have accepted the district and regional councils established to date. They would like however to review a number of them. Two more district councils have been established since my last report, bringing the total to 55, out of 81 districts, excluding the north-west. The total number of regional councils remains at 8, out of 13, excluding the north-west. The establishment of new councils should be accelerated after the successful conclusion of the National Reconciliation Conference.
12. The two meetings scheduled in the Nairobi declaration will be entirely Somali affairs, with a view to finding a Somali solution to the Somali problem. UNOSOM, as it has done in the past few months, will only play the role of facilitator.
13. Shortly before 15 April 1994, the date set for the preparatory meeting, the two signatories of the declaration decided to postpone it to 25 April 1994 to give the political factions more time to conclude the deliberations of the technical committees they had set up. After inter-clan fighting broke out at Merka on 5 April, the Group of 12 took the position that they would not participate in the meeting until the SNA forces withdrew from that town. They were persuaded to relent on this condition, but subsequent inter-clan fighting between two sub-clans of the Hawiye at Mogadishu and the consequent deterioration in the security situation there resulted in some of the faction leaders asking for, among other things, a change of venue. Discussions were held between the two signatories regarding a new date and a new venue. UNOSOM was initially informed of an agreement to postpone the date to 10 May 1994 and to change the venue to Nairobi, but this was not confirmed. In the meantime, General Aidid has returned to Mogadishu.
14. Meanwhile another development had prompted the signatories to choose an even later date. The leaders of SNM of the north-west had responded positively to the invitation issued by the political faction leaders in the Nairobi declaration. Mr. Abdirahman Ahmed Ali, who had been Chairman of SNM before the Boroma Conference which elected a new administration, was in touch with General Aidid and Mr. Ali Mahdi. He declared that the Somali people in the north and south of the country must sit together and resolve the issue in a manner that satisfied the desire and the rights of the people of "Somaliland" to have a separate status, on the one hand, and on the other hand maintained the unity and brotherhood of the Somali people. He announced that the Somali National Movement (SNM) would attend all future Somali reconciliation conferences as it had in the past.

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15. To allow sufficient time for SNM to undertake consultations, Mr. Ahmed Ali requested that the political factions' meeting be postponed to 30 May 1994. The response of the signatory factions to the Addis Ababa agreement was generally positive. However, Mr. Ahmed Ali's announcement was rejected by leaders in "Somaliland", including Mr. Mohamed Ibrahim Egal, its "President". Consultations among Somali political factions have since been under way to reach agreement on a new date and venue.

16. The signing of the Nairobi declaration provided an impetus for the signature on 27 March 1994 of an agreement on the process of resolving the situation in Lower Juba. The agreement was signed by members of a joint committee representing SNA and the Somali Patriotic Movement (SPM), and called for a Lower Juba Reconciliation Conference at Kismayo on 8 April 1994. The agreement stated that the principle of reconciliation should be based on dialogue and that all differences and enmities should be settled through Somali ethics and traditions. A technical committee would decide on the number of participants who would come from all the clans of the region. The faction leaders were to ensure and observe a cease-fire as from 27 March 1994; pull out the militias and restrict them to agreed locations; and establish a mechanism to restore both movable and immovable property to its rightful owners and a joint committee to supervise the implementation of the agreement, with the assistance of UNOSOM.

17. The technical committee has been meeting at Kismayo since 10 April 1994 to finalize the criteria for participation in the Lower Juba Reconciliation Conference. It was agreed that 160 representatives of all clans should be selected to participate in the Conference. With the list of clan representatives finalized, the Conference opened at Kismayo on 24 May 1994. Despite the real effort made by both SPM and SNA for the organization of the Conference, there is a threat from SPM/SNA to disturb the process since Colonel Ahmed Omar Jess, its Chairman, did not sign the agenda for the Conference in Nairobi. Meanwhile, fighting erupted at Kismayo on 21 April between two Darod sub-clans creating another obstacle to the general reconciliation process in the region.

18. There have been intra-clan and intra-factional reconciliation efforts in other regions. In February 1994, leaders of two Darod sub-clans and a Digil sub-clan, together with the Chairmen of SPM, the Somali National Front and the Somali Democratic Movement, concluded a reconciliation agreement at Bardera in the Gedo region.

### III. SECURITY ISSUES

19. Despite the political reconciliation efforts, national and regional, described above, the security situation in Somalia has been deteriorating. The various factions, in apparent anticipation of an eventual withdrawal of UNOSOM, are making efforts to rearm and have, in particular, resumed the construction of the combat vehicles known as "technical". In the Kismayo area, a number of factions are contending - without success so far - to gain control of the Lower Juba Valley. As indicated in paragraphs 16 and 17 above, however, the Lower Juba Reconciliation Conference opened on 24 May 1994. On 10 April, the SNA

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militia successfully completed its campaign to seize Merka from an SNM faction. At about the same time, the Habr Gdir sub-clan militia, which has close ties with SNA, launched an assault on the Hawadle sub-clan, gaining control of the airport area and its approaches in South Mogadishu. The same sub-clans have also been involved in a tense confrontation in the Belet Weyne area, which seems to be the next major objective of SNA. Other SNA advances have been reported at Baidoa. In short, there have been concerted attempts, especially by SNA, to improve positions on the ground before the forthcoming National Reconciliation Conference.

20. At several locations, personnel from UNOSOM, United Nations organizations and non-governmental organizations (NGOs) have been threatened, attacked or sometimes kidnapped by uncontrolled armed individuals. The most recent of these very unfortunate and serious incidents occurred on 16 May 1994 in South Mogadishu. A UNOSOM vehicle was attacked and five Nepalese soldiers were killed and one wounded. The wounded soldier was subsequently kidnapped from a local hospital. UNOSOM is working hard with local leaders to secure the release of the kidnapped soldier.

21. While the number of incidents involving United Nations organizations and NGO personnel has decreased in the past few weeks, the level of insecurity is unpredictable as disturbances and inter-clan fighting occur without warning. Banditry, especially in urban centres, is another major cause of concern. The cooperation of local elders has been very helpful in resolving difficulties relating to attacks and threats against UNOSOM and associated personnel as well as matters pertaining to their general security.

#### IV. FORCE STRUCTURE AND CAPABILITIES

22. The contingents of the following countries have completed their withdrawal from UNOSOM: Germany, Greece, Italy, Kuwait, Morocco, Norway, Republic of Korea, Saudi Arabia, Tunisia, Turkey, United Arab Emirates and United States of America. Since my last report, Pakistan has increased its contingent strength by approximately 2,000 all ranks. In its resolution 897 (1994), the Security Council revised the mandate of UNOSOM and authorized the gradual reduction of the UNOSOM force level to 22,000, including 2,500 logistics and necessary support elements.

23. The current UNOSOM force strength is 19,000 (as at 11 May 1994). In an effort to correct this shortfall, requests have been made to Member States to provide additional units, so far only Pakistan has agreed to deploy one helicopter unit.

24. The deficiencies in capacity that resulted from the withdrawal of the United States forces have not been made up in full, especially with regard to air operations and night capabilities. However, the shortfalls in the areas of armoured protection, logistics and communications have been adequately addressed.

25. Troops deployed in Somalia are committed to the following tasks in UNOSOM's present area of operations:

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- (a) Security of major airports and seaports;
- (b) Security/patrolling of the routes leading to the interior so as to keep them open for humanitarian aid convoys;
- (c) Patrolling within the major towns and cities to allow for safe movement of UNOSOM and NGO personnel;
- (d) Escorting of humanitarian aid convoys;
- (e) Security of logistics convoys and installations;
- (f) Security of personnel and installations of UNOSOM, United Nations organizations and NGOs;
- (g) Providing assistance in the training of the Somali police.

26. To meet these requirements, UNOSOM's deployment has been modified following the recent withdrawals and is now as follows:

- (a) Baidoa-Kismayo: the Indian brigade with 4 battalions and the Botswana battalion, deployed in 10 different locations;
- (b) Outside Mogadishu: three battalions provided by Bangladesh, Nigeria and Zimbabwe deployed respectively at Afgoye, Merka and Balad, three strategic positions along the main lines of communication;
- (c) Mogadishu: three battalions, from Malaysia, Nepal and Pakistan, are responsible for the security of UNOSOM personnel, installations and equipment. The three Egyptian battalions secure the port and the airport. The rest of the Pakistani brigade - four infantry battalions, one tank regiment and one helicopter squadron - provides the services of the UNOSOM Quick Reaction Force, secures the main route between the port, the airport, and UNOSOM compounds, holds nine company-size strong-points or checkpoints, and patrols the key areas of the city. The brigade also participates in escorting humanitarian convoys in the Mogadishu area;
- (d) Belet Weyne: a company from Zimbabwe.

27. Despite the troop reduction, military contingents continue to participate in humanitarian activities. The military hospitals are treating hundreds of Somali patients daily at Mogadishu, Baidoa, Oddur, Wajid and Kismayo. Military units are committed heavily on a daily basis for water, food distribution and other humanitarian operations, averaging 25 such convoys per day. Military contingents also support the activities of the newly established Police Division in reconstituting the Somali National Police, by providing basic training to Somali police instructors and logistic support.

28. Although the UNOSOM force is not at present a direct target, increased inter-clan fighting at Mogadishu, Merka, Belet Weyne and in the Lower Juba Valley may eventually pose a potential threat to UNOSOM. Over the past few weeks, information coming from different sources has indicated that all factions

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are rearming. SNA militia have been on the offensive in various parts of southern Somalia, are in full control of South Mogadishu and have launched repeated attacks to control Belet Weyne. At Kismayo, there has been hectic movement of SPM militia in anticipation of an attack by SNA. An outbreak of hostilities on a large scale cannot be ruled out and might cause the fragile humanitarian situation to deteriorate.

29. With its present strength of 19,000, the force is already stretched very thin. The size of the Quick Reaction Force has been reduced from a battalion to a mechanized company, a tank squadron and a helicopter squadron. Since January 1994, seven strong-points and checkpoints have been closed in Mogadishu because of the troop reduction and the requirement to release troops for higher priority tasks. Under the prevailing security conditions, the ability of the force to achieve its mandated tasks has become limited. The full deployment of the authorized level of 22,000 would enable UNOSOM to operate again in the middle Shabelle area, from Balad to Belet Weyne, and bring it back into the UNOSOM area of operation and also to meet fully its humanitarian convoy escort role. Any expansion of UNOSOM areas of deployment to incorporate the central region of Galcayo and ultimately the north-east would require the deployment of at least two additional battalions with integral support and logistics elements. This force does not currently exist in theatre.

#### V. POLICE AND JUSTICE PROGRAMME

30. In its resolution 865 (1993), the Security Council expressed its conviction that the re-establishment of the Somali police, judicial and penal systems was critical for the restoration of security and stability in the country. The reduction of the UNOSOM force level and the instability in the security situation referred to in the relevant parts of the present report have increased the importance and urgency of achieving the objectives of the Somali Justice Programme. Successful implementation of the programme would contribute enormously to the achievement of the goal of Somali institutions being the main agents providing for the maintenance of law and order in Somalia. The United Nations and the international community have not relented in their efforts to achieve this objective. As at 22 May 1994, the total number of police recruits was 7,799.

31. Since my last report to the Security Council (S/1994/12, paras. 17-19), UNOSOM has made considerable efforts to build up its civilian police component for providing training, equipment and assistance in the establishment of a viable national Somali police force.

32. Of the 54 civilian police personnel authorized to staff the Police Division, 41 from the following countries had arrived in the mission area as at 15 May 1994:

Egypt	6
Ghana	6
Ireland	4
Italy	5
Netherlands	6
Malaysia	5
Republic of Korea	2
Sweden	2
Zimbabwe	5

The remaining civilian police personnel are scheduled to arrive shortly from Nigeria, Sweden and Zambia.

33. The north-east region merits special mention. Three hundred and sixty-seven former policemen have now been approved for reappointment but approximately 600 militiamen operating as policemen do not meet UNOSOM's criteria for recruitment. It is recognized, however, that the current UNOSOM policy of restricting appointment to persons who had served as members of the Somali police force for at least two years needs reconsideration. After proper training, selected demobilized ex-militiamen should also be able to qualify for induction into the police force.

34. Starting from the end of March, under the overall coordination and leadership of UNOSOM, the UNOSOM military component and the United States training team, provided by the International Criminal Investigations Technical Assistance Program (ICITAP), have played an important role in assisting the police programme. They have organized weapons training, driver and mechanics maintenance training, foot and arms drill, supervisor training, administration and middle management training. ICITAP also provides logistical support in the refurbishment of police stations, as well as in training facilities. They are now in the process of refurbishing a provisional training school within the UNOSOM headquarters compound at Mogadishu to accommodate 100 trainees per session. Other locations, such as Hargeisa (north-west), Galcayo (north-east), Baidoa (central), and Kismayo (south), are being considered for training centres. Logistic support is likely to be provided by ICITAP. The main problem is that the destruction of facilities has been thorough and the lack of financial resources makes it possible to rehabilitate only one or two facilities for training the police forces of the whole country.

35. An armourer's course was started on 30 April 1994 with an initial group of 20 police officers. A training programme for trainers for refresher development courses commenced on 2 May 1994. The middle management station administration courses commenced on 14 May 1994 at Mogadishu. These courses will be replicated throughout the country. UNOSOM plans to train over 3,000 personnel by December 1994 and another 3,000 will be trained by Somali police officers who would have themselves undergone training with UNOSOM II.



36. Other training packages, including a refresher training programme, are being revised and updated to enhance the delivery mechanism. These are designed to ensure standardization of training throughout Somalia. Essentially, the police training programme involves the reinduction of a disciplined orientation into the Somali police personnel, as well as the enhancement of their capacity for general crime prevention duties and such specialist duties as investigation, criminal intelligence gathering, riot control, community policing, and human rights in law enforcement. UNOSOM Police Division is at present formulating a Darawishta (quick reaction force) training programme.

37. The UNOSOM police programme is in great part financed by voluntary contributions, in cash and in kind, from Governments. The following cash contributions have been received or pledged so far:

(Millions of United States dollars)

Denmark	0.5
Japan	9
Netherlands	0.5
Norway	1
Sweden	1.6
United Kingdom of Great Britain and Northern Ireland	0.037
United States of America	8
Total	20.637

Contributions in kind have been received from the following Governments:

(Millions of United States dollars)

Germany	1.5
Italy	4.5
United States of America	37
Total	43
Total cash and in-kind contributions	<u>63.637</u>

38. Complementary to the police programme, UNOSOM's Justice Division has developed five different work programmes: judicial, correctional, juvenile justice, crime prevention and human rights.

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39. The judicial work programme is now focused upon the repair and refurbishment of the courts, supply of equipment, stationery, furniture, statute books and training of judicial personnel. Assistance has been obtained from some Member States, regional institutions and organizations, NGOs and United Nations organizations and programmes. A mid-term assessment meeting is planned for June 1994, with a view to evaluating the progress made regarding assistance to the Somali Justice Programme, as a model for future United Nations interventions of this nature.

40. A work plan has been prepared for the refurbishment of 54 courts in 28 districts spread over 12 regions. Also, during the period from June to August 1994, the appropriate Somali authorities at the district and regional levels will be encouraged to appoint suitable personnel to staff these courts.

41. In the correctional work programme, efficient correctional management practices are being introduced into the prisons. Some projects for improvement of sanitation and prison facilities have been completed, in cooperation with the International Committee of the Red Cross (ICRC). Estimates for reconstruction or refurbishment of prisons in Somalia are being compiled.

42. Efforts have been made to relieve congestion in the two large prisons at Mogadishu and Baidoa. Constant monitoring of the cases and calling attention of the appropriate authorities to the plight of those "awaiting trial" who have been in prison for three months or more without trial, has led to judicial review of the cases and, in many instances, the release of detainees.

43. As the regional courts in some regions are now fully functioning, those offenders held for serious crime are now being tried. With the continuing improvement in the staffing of the Justice Division, it is expected that the deployment of officers to the various regions will make it possible for the Division to carry out its correctional programme throughout the country. The assistance of the United Nations Volunteers has been particularly valuable in this regard.

44. Training courses to enhance the competence and managerial skills of prison personnel are due to be held in June. This will be undertaken with the assistance of the Arab Security Studies and Training Centre, the United Nations African Regional Institute for the Prevention of Crime and the Treatment of Offenders, and the Alliance of NGOs on Crime Prevention and Criminal Justice.

45. As part of UNOSOM's juvenile justice programme, steps have been taken to improve conditions for detained juveniles. The main priority has been to secure their separation from adult prisoners, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). With the support of United Nations organizations, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) and NGOs, it is planned to establish a basic educational programme for juvenile prisoners.

46. A Street Children Redemption Educational and Recreation Pilot Project, supported by the United Nations Children's Fund (UNICEF), UNESCO and the World Food Programme (WFP), is being implemented in North Mogadishu. The first

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beneficiaries will be about 100 children, between the ages of 6 and 12 years. They will receive food and about four hours of basic education daily.

47. The United Kingdom Overseas Development Administration has agreed, in principle, to support a project formulated jointly by the Justice Division and the Save the Children Fund (UK) on the therapy of traumatized children in Somalia.

48. In its crime prevention programme, with the support of the European Forum for Urban Safety, in Paris, and the International Centre for the Prevention of Crime, at Montreal, the Division will formulate projects designed to develop institutional bonds of social control aimed at crime prevention and control. To this end, the Division is recruiting two crime prevention specialists (a social worker and a judge).

49. Through its human rights programme, the Division has investigated incidents of human rights abuses within the Somali Criminal Justice System. The results of the investigations have been discussed with the appropriate units, and mechanisms for avoiding such violations in the future have been jointly developed with such units. The Human Rights Section is currently identifying Somali human rights organizations with which it will cooperate in the promotion, protection and monitoring of human rights. Training programmes in human rights education for Somalis are also being developed with the assistance of some subregional and national institutes with specialization in this area, particularly the International Institute of Higher Studies in Criminal Sciences, at Syracuse, Italy. Finally, the Section is cooperating closely with the Centre for Human Rights of the United Nations Secretariat in the development of its work programme.

#### VI. DISARMAMENT AND DEMOBILIZATION PROGRAMME

50. In the Nairobi Declaration of 24 March 1994, the Somali political faction leaders explicitly expressed their support for the concept of voluntary disarmament. Regrettably, this commitment has not yet been honoured. Voluntary disarmament will be successful only if the Somali parties display the necessary determination to settle their disputes peacefully. In the past few weeks, on the contrary, there has, as reported above, been evidence that major factions are replenishing their weapons stockpiles. In Mogadishu, "technicals" have been spotted at different locations. Reports also indicate that clans are rebuilding defensive positions.

51. I appeal to the parties to implement the disarmament process agreed upon during the Addis Ababa meetings of 1993 and at the Nairobi meeting of March 1994. UNOSOM II is prepared to assist them in implementing their commitments. The UNOSOM force, which is already overstretched, would act as an honest broker in collecting surrendered weapons and safeguarding them for the Somali national Government. The selection of locations for the cantonment of weapons will have to be developed in concert with the Somali authorities.

52. In the north-west region, through the recently created National Demobilization Commission, an interim emergency programme for disarmament and

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demobilization was launched in February 1994. The programme, which was developed in conjunction with an advisory team established with the cooperation of the United Nations Development Programme (UNDP), focuses on two broad areas: (a) support for immediate disarmament in Hargeisa and the anticipated spread of disarmament to other areas and (b) the commencement of an interim three-month support programme for demobilization and reintegration.

#### VII. DEMINING PROGRAMME

53. UNOSOM demining policy is based on the principle of using Somali deminers only. Recent experience shows that expatriate demining firms are not necessarily acceptable to local political authorities and a disproportionate amount of the fees is used to cover the security risks faced by the expatriates. Owing to the employment of Somali deminers, many of whom know where the mines are located and who enjoy the support of the local councils or authorities, larger areas have become more accessible for demining. It is to be noted that, before any demining project is supported, the local demining NGO has to satisfy UNOSOM with documentary evidence that the local authorities have agreed that the project can be executed effectively and in reasonable safety within their community. UNOSOM also carries out the field survey of the project to ensure its viability. Periodic inspections are carried out during project implementation to ensure satisfactory completion. To increase the safety of Somali deminers, a mine clearance training facility is planned. This will be staffed by expatriate instructors, and located in North Mogadishu, with the ability to deploy instructor teams to any area in Somalia.

54. From January 1994 to date, UNOSOM has engaged six demining groups, of which three have completed their jobs, and 18 more are in the pipeline. In the last three months, the following ordnance has been destroyed:

Anti-tank mines	3 210
Anti-personnel mines	1 116
Unexploded ordnance	8 655

An additional 500 anti-tank mines have been removed. Seventy-one square kilometres of grazing/pastoral land and 318.5 kilometres of roadway have been cleared of mines.

55. With the restructuring and increased staffing of the Division, UNOSOM intends to accelerate the implementation of the demining programme. The Office of the United Nations High Commissioner for Refugees (UNHCR) and UNESCO have jointly implemented a mine awareness programme in the north-west and in the Galcayo area using posters, books and through group discussions in the communities.

## VIII. HUMANITARIAN SITUATION

56. In spite of the significant progress made in 1993, the emergency situation continues and the welfare of large numbers of Somalis remains at risk. A major priority for 1994 is the provision of relief assistance to the most vulnerable and disadvantaged groups. The Division for the Coordination of Humanitarian Affairs in UNOSOM has continued to coordinate the provision of assistance to meet relief needs, resettle refugees and internally displaced persons and to contain the prevailing cholera epidemic throughout the country. However, security problems still plague relief efforts in a number of areas, affecting both the safety of humanitarian personnel and the regularity and efficiency of delivery of assistance.

A. The continuing emergency

57. Given the volatile situation in the country, humanitarian agencies operating in Somalia have been focusing their attention on the various scenarios that affect humanitarian activities. One major concern has been the increase in inter-clan conflicts and banditry and the resulting interruptions in the provision of relief assistance. Other contingency scenarios identified include food and water shortages, human and livestock epidemics and floods. The first step taken by the Division for the Coordination of Humanitarian Affairs was to form the Contingency Operations Group comprising representatives of United Nations organizations, the NGO Consortium and the UNOSOM force command. The Group meets regularly to consider changing emergency scenarios and needs and to put into place concerted response mechanisms. Some of the specific issues with which the Group has been dealing include developing early warning arrangements; ensuring availability of contingency stocks; identification of key facilities, installations and routes; and evacuation planning.

58. Somalia is slowly recovering from an extended period of widespread famine and dramatic reductions in food production. While the overall food supply situation has improved, poor rains during the short agricultural season have resulted in food shortages in some areas. The development of forward indicators of vulnerability has been one of the most important steps taken within the emergency contingency planning mechanism. The Food Security and Crop Assessment Task Force, chaired by WFP, is currently providing data and information on crop situations and food balances. United Nations organizations, particularly FAO and WFP, and NGOs are collaborating in field monitoring and surveillance through field missions which are dispatched to assess the food supply and condition of crops produced locally. Concerted early action made it possible, for example, to detect the partial crop failure in the Bay region and to take prompt remedial action by providing special food-for-work programmes. There is a projected shortfall in domestic food production in 1994 and arrangements are being made to ensure an adequate food supply for the population.

B. Cholera outbreak

59. In early February, Somalia was faced with a health emergency resulting from an outbreak of cholera. A Cholera Task Force was formed, under the auspices of

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UNOSOM, to coordinate the efforts of United Nations organizations, particularly the World Health Organization (WHO) and UNICEF, NGOs and Somali groups to deal with the epidemic, which spread rapidly and affected many parts of the country. As at 5 May, a cumulative total of 12,444 cases and 492 fatalities had been reported. In addition to collecting and publishing statistical data on the spread of the epidemic, other actions taken include the setting up of treatment centres, chlorination of water sources, environmental sanitation, information campaigns and social mobilization. Responses to new outbreaks have been prompt resulting in a low fatality rate.

60. The recent outbreak of inter-clan fighting at Mogadishu interrupted the flow of medical supplies from the Somali Central Pharmacy at a very critical point in efforts to combat the epidemic. Consequently, UNOSOM arranged for contingency supplies of cholera kits and disinfection materials to be moved to its zonal offices in order to avoid too much reliance on supplies from Mogadishu. Earlier projections that the disease had reached a peak in April turned out to be premature and the most optimistic scenario at present is that it would not be over before the end of June 1994. It should be noted that humanitarian agencies are experiencing shortfalls in resources as a consequence of having to divert funds from their other programmes to combat the cholera epidemic.

#### C. Resettlement

61. There are still hundreds of thousands of Somali refugees in neighbouring countries who are willing to return to Somalia with assistance. The facilitation of the safe return of Somali refugees is one of the priority concerns of the United Nations. During 1993 and the first three months of 1994, some 88,000 Somalis were voluntarily repatriated from Kenya to the Gedo region. During the course of 1994, it is anticipated that another 70,000 persons will require transport facilities for resettlement - mainly to the Lower Juba region and along the Somali coastline. However, security problems and shortfalls in resources have slowed the repatriation programme, forcing UNHCR to issue an urgent appeal for additional funds without which it would not be in a position to continue the programme.

62. To date, the Humanitarian Division in UNOSOM has assisted in resettling 30,770 internally displaced persons. It is estimated that there are still over 600,000 such persons throughout Somalia. Resettlement operations will continue to rely on the relatively limited resources and personnel of international NGOs and United Nations organizations that provide food and settlement kits and also basic social services in the communities receiving the displaced persons. UNOSOM provides transport and security. It should be noted that transport is the most costly aspect in resettlement operations. Assisting Somali families to return to their homes will remain a priority. The International Organization for Migration (IOM) will be fielding an assessment mission at the end of May, at the request of the United Nations Emergency Relief Coordinator, to make it possible to develop a comprehensive programme of assistance for resettling internally displaced persons.

#### D. Impact of security problems

63. The humanitarian organizations have been working closely with the UNOSOM force command better to coordinate international humanitarian efforts, plans and strategies. The main objective for the remainder of 1994 is to ensure that whenever feasible the deployment of UNOSOM troops and the strengthening of the Somali police complement the implementation of humanitarian activities. The Humanitarian Division has been working with force command to establish standard operating procedures and to improve the support provided to humanitarian programmes and personnel.

64. In spite of concerted efforts by UNOSOM and humanitarian agencies working in Somalia to render assistance to needy sectors and vulnerable groups, humanitarian activities continue to face difficult security constraints. Increased banditry and inter-clan and inter-factional fighting, together with attacks directed at humanitarian agencies and their staff, have forced a number of United Nations organizations and NGOs to suspend their assistance programmes and reduce or withdraw their staff. Following the recent killing of one of its staff, and because of the continued insecurity, UNHCR was forced to evacuate its staff from Afmadow and to reduce its presence in Kismayo. WFP closed its operations in Kismayo as a result of persistent intimidation of its personnel. WFP had withdrawn from Belet Weyne earlier. A number of international NGOs have been obliged to take similar steps.

#### E. Rehabilitation and reconstruction

65. As a follow-up to the Addis Ababa declaration, the first meetings of the Somalia Aid Coordination Body and its Standing Committee were held at Nairobi on 1 and 2 February 1994. One of the major steps taken was the adoption of a plan of action for the first semester of 1994 on assistance for rehabilitation activities. The key elements of the plan include safety and security criteria for donors to assist in reconstruction schemes; the need for the establishment of appropriate Somali institutions in the regions; and the desirability of involving Somalis in the planning and implementation of rehabilitation programmes. To date, multi-donor missions have visited Nugal and Bakool regions to hold discussions with local authorities responsible for development activities.

66. Bearing in mind the long-term nature of reconstruction and development activities, I have approved the transfer of the United Nations Development Office from UNOSOM to UNDP, with effect from 1 May 1994. While it will be operated as a project by UNDP, the Development Office will function as an integral component of United Nations activities in Somalia. In that context, it will cooperate closely with UNOSOM and United Nations organizations operating in Somalia. The Development Office will be expected to provide institutional support and policy analysis to a future administration as an integral part of its functions.

#### IX. ADMINISTRATIVE QUESTIONS

67. Since the withdrawal of United States forces at the end of March 1994, logistic support for UNOSOM has been provided by a United States civilian contractor, Brown and Root Services Corporation, whose services were recommended and approved by the Headquarters Committee on Contracts as a sole source in accordance with the United Nations Financial Regulations and Rules until 1 October 1994, pending the effective bidding of the requirement. An Expression of Interest has been requested and several firms have responded positively. A Logistics Control Centre, staffed by 12 United States Government-loaned personnel, was established to monitor UNOSOM logistics operations and the support provided by the contractor.

68. While the overall staffing situation of UNOSOM has improved over the last six months (146 international Professional and 353 General and Field Service staff as at mid-April 1994), there still remains a large number of vacancies for which recruitment has proved to be difficult.

#### X. FINANCIAL IMPLICATIONS

69. In the event the Security Council approves the extension of the mandate as recommended in paragraph 77 below, the related financial implications, based on my report to the General Assembly (A/48/850 and Corr.1), are estimated at \$464.7 million for a six-month period and are indicated in annex II to the present report. It would be my recommendation to the General Assembly that the cost relating thereto should be considered as an expense of the Organization to be borne by Member States in accordance with Article 17, paragraph 2, of the Charter of the United Nations.

#### XI. OBSERVATIONS

70. The Nairobi declaration of 24 March 1994 has brought the United Nations Operation in Somalia to a defining moment in its complex and stormy history. The issue that now confronts the Security Council is the extension of the UNOSOM II mandate, taking into account the Council's objective, set out in resolution 897 (1994), that UNOSOM II complete its mission by March 1995. Renewal would signify the Member States' determination to fulfil the United Nations vision of assisting Somalia towards political reconciliation, national reconstruction and peace. Deciding to phase out the Somalia operation would signify abandonment of that vision and the risk of the country sliding back into the abyss from which it was barely rescued less than two years ago. The choice depends on two main factors, namely, the readiness of the Somali political and community leaders to fulfil their commitments to extricate the country from its present ordeal; and the readiness of troop and financial contributors, in the face of at times wrenching difficulties, to stay the course charted by the Security Council.

71. The present situation, though difficult, is not entirely devoid of hope. On the one hand, there is the unanimous commitment of the Somali parties to pursue the path of reconciliation and to work together to achieve voluntary



disarmament and a permanent cease-fire. On the other hand, some of the factions have used their military strength to increase the areas under their control in order to enhance their negotiating positions.

72. All the Somali leaders have appealed to UNOSOM to continue supporting their reconciliation and rehabilitation efforts, which in itself is a positive development compared to the past attitudes of certain parties toward UNOSOM. This has enabled my Acting Special Representative over the past few months to pursue a political initiative. The result, so far, has been a resumption of the dialogue, normalization of UNOSOM's relationship with SNA, and the very important declaration adopted by the parties at Nairobi.

73. Unfortunately, for reasons explained elsewhere in this report, there have been considerable delays in implementing that agreement and the preparatory meeting is now scheduled for 30 May 1994, with no date fixed for the National Reconciliation Conference itself. A major effort is now required from the faction leaders if they are to retain the confidence of the international community in the sincerity of the commitments they entered into at Nairobi.

74. Meanwhile, the situation on the ground is a matter of growing concern. The withdrawal of several major UNOSOM contingents in March did not lead to civil war, as had been feared, nor to a resurgence of organized attacks on UNOSOM and on humanitarian agency and NGO personnel. However, there has been a steady deterioration of the security situation. Militia groups are rearming and are again constructing "technical" combat vehicles in anticipation of renewed fighting, particularly since the substantial military advances scored by SNA in the Merka and the Mogadishu airport areas. Moreover, banditry is on the rise, partly as a result of the reduction in UNOSOM's strength.

75. Elsewhere in Somalia, UNOSOM's efforts to help foster reconciliation among various local clans have made some progress. This can be significant as the clans generally have much influence with the Somali political factions. Of considerable significance in this connection are the ongoing reconciliation efforts being mediated by the Imam of Hirab. If successful, these may result in reducing mistrust and hostility between General Aidid, Mr. Mohamed Ali Mahdi and Mr. Mohamed Qanyare Afrah, the leaders of the major contending factions in the United Somali Congress.

76. Despite this somewhat negative assessment of the political and security situations, I believe that the Somali people deserve a last chance. But this must be firmly tied to evidence of serious and productive pursuit of the reconciliation process. It must also entail strict observance of the cease-fire and cooperation with UNOSOM in preventing the recurrence of clashes and in resolving local clan and factional conflicts.

77. I accordingly recommend that the Security Council reaffirm its objective, set out in resolution 897 (1994), that UNOSOM II complete its mission by March 1995, and that, to this end, it now extend the UNOSOM II mandate for a period of six months. This extension would be at the present authorized strength of 22,000, and be subject to periodic reviews of the political and military situation and of progress towards reconciliation. The first such review would take place following my submission of a report on the outcome of

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the National Reconciliation Conference or on 15 July 1994 if the Conference had not taken place by then. Subsequent reviews would be scheduled at the discretion of the Security Council. I have instructed my Acting Special Representative to continue assigning top priority to his efforts for promoting political reconciliation in Somalia.

78. During the six-month period UNOSOM II would also continue to give priority to the speedy build-up of the Somali national police and justice system. This could be synchronized with a corresponding reduction of the UNOSOM military component, preferably beginning in November 1994. Until the Somali police force is in a position to shoulder its responsibilities, it is the considered opinion of the UNOSOM force Commander that the mandated level of 22,000 all ranks needs to be maintained to provide the requisite security. I have instructed my staff to make a major effort to rebuild the force to this level as soon as possible. A premature reduction in troop level would be counter-productive, since it would lead to a curtailment of the area where UNOSOM II can fulfil its mandate. The troop reduction process must at all costs be militarily sound and its execution orderly.

79. These recommendations are based on the assumption that the Somali leaders will prove able and willing to pursue the path to political reconciliation. Should this assumption prove unfounded, I will not hesitate so to report to the Security Council. In that event, I would not rule out recommending that the Council consider the withdrawal of the United Nations force in part or in full. I have accordingly instructed UNOSOM to formulate a comprehensive contingency withdrawal plan which would be ready for implementation should the Security Council so decide. There would probably be no alternative to this course of action, since, in the event of a failure of the political reconciliation process and/or a large-scale resumption of fighting, the continued flow of military and financial support for UNOSOM from Member States would surely diminish or cease altogether.

80. In my last report, I referred to the substantial resources generously made available to save hundreds of thousands of Somali lives. In spite of scarce resources and the proliferation of emergencies in other parts of the world, the international community has demonstrated compassion and patience in continuing to provide humanitarian assistance to the suffering people of Somalia. While relief requirements continue, and have recently increased because of the sudden outbreak of cholera, there is heightened concern that resources may not be available to meet those needs. The continuing security problems, in particular the threats and attacks directed at humanitarian agencies, are a growing cause for anxiety. When taken together with the prohibitive costs of delivering assistance for relief and rehabilitation, the circumstances under which humanitarian agencies are forced to operate can only be expected to lead to a reduced level of response. This in turn could leave those who are least able to help themselves in an even more precarious situation, and, worse still, result in a return to the tragic days of the worst phase of the emergency. The grave concern expressed by the donor community about the security situation should be another clear signal to the Somali political leaders to accelerate their efforts, in cooperation with UNOSOM, to achieve a political settlement and maintain peaceful conditions. If these efforts should bear fruit, there is still hope for collective international efforts to succeed in assisting Somalis

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to meet the continuing emergency needs and move towards the rebuilding of the economic and social fabric of their country.

81. In conclusion, I wish first of all to place on record again my deep appreciation for my former Special Representative, Admiral Jonathan Howe; his successor as Acting Special Representative, Ambassador Lansana Kouyate, and the two officers who have served as Force Commanders of UNOSOM II: General Cevik Bir and General Aboo Samah Bin Aboo Bakar. These officials have demonstrated the highest qualities of leadership in some of the most difficult circumstances. My appreciation further extends to all the soldiers and civilians of all ranks and from many countries, including Somalia, who have devoted themselves to the effort of the United Nations to help the Somali nation in its hour of need. I further wish to convey my appreciation to ICRC, to the NGOs and to the many Governments that have supported UNOSOM in its efforts to carry out the Security Council mandate. Above all, I pay a tribute to the soldiers of UNOSOM, United Nations staff members, Somalis working for UNOSOM, and relief workers who made the supreme sacrifice in furthering the effort of the international community, under United Nations auspices, to bring succour to Somalia and restore peace in that country.

Annex I

DECLARATION BY THE LEADERS OF THE SOMALI POLITICAL ORGANIZATIONS

General principles

1. Following the informal consultations in Nairobi, from 11 to 23 March 1994, the political leaders of Somalia have reached an understanding based on the following principles:

(a) Inviolability of the territorial integrity and sovereignty of the Somali Republic;

(b) Repudiation of any form of violence as a means of resolving conflicts and implementation of cease-fire and voluntary disarmament throughout Somalia;

(c) Respect for and preservation of fundamental human rights and democratic principles;

(d) Creation of an atmosphere conducive to brotherly coexistence among all Somalis, using traditional channels, cultural and political means;

(e) Rehabilitation and reconstruction of the country to recover from the devastation of the civil war.

2. In specific terms, the leaders have agreed to implement the following:

(a) To restore peace throughout Somalia, giving priority wherever conflicts exist;

(b) To hold a meeting of the signatory factions of the Addis Ababa peace agreement and the Somali National Movement (SNM) on 15 April 1994 in Mogadishu to set up rules and procedures of voting and criteria of participation in the National Reconciliation Conference. The meeting will also discuss the ways and the modalities to establish the National Legislative Assembly, which will be formed after the formation of the National Government;

(c) In order to restore the sovereignty of the Somali State, a National Reconciliation Conference should be convened on 15 May 1994 to elect a President and Vice-Presidents (the number to be determined) and to appoint a Prime Minister;

(d) To complete and review the formation of local authorities, where needed, and establish them, where necessary, as a basis for regional autonomy and respect for community rights;

(e) To urge SNM to attend the above and all national reconciliation conferences, meetings and consultations;

(f) To establish an independent judiciary.

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Appeal to the international community

The Somali leaders wish to express their gratitude to the international community, particularly the United Nations, aid donor countries and countries of the region, for their valuable assistance and to request the continuation of these efforts until Somalia stands on its own feet.

Signed this 24th day of March 1994 on behalf of the Group of 12 and the Somali National Alliance:

(Signed) Ali Mahdi MOHAMED  
Group of 12

(Signed) Mohamed Farah Hassan AIDID  
(SNA)

Annex II

## UNITED NATIONS OPERATION IN SOMALIA II (UNOSOM)

Summary cost estimate for a six-month period

(Thousands of United States dollars)

1. Military personnel costs	198 940
2. Civilian personnel costs	61 680
3. Premises/accommodation	7 790
4. Infrastructure repairs	7 600
5. Transport operations	11 520
6. Air operations	79 620
7. Naval operations	-
8. Communications	5 200
9. Other equipment	7 460
10. Supplies and services	38 850
11. Elections-related supplies and services	-
12. Public information programmes	2 300
13. Training programmes	6 600
14. Mine-clearing programmes	4 950
15. Assistance for disarmament and demobilization	15 400
16. Air and surface freight	5 320
17. Integrated Management Information System	250
18. Support account for peace-keeping operations	4 560
19. Staff assessment	<u>6 660</u>
Total	<u>464 700</u>

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**Annex 50**

Statement by the President of the Security Council, S/PRST/2003/2, 12 March 2003



## Security Council

Distr.: General  
12 March 2003

Original: English

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### Statement by the President of the Security Council

At the 4718th meeting of the Security Council, held on 12 March 2003, in connection with the Council's consideration of the item entitled "The situation in Somalia", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council, recalling its previous decisions concerning the situation in Somalia, in particular the statements of its President of 13 December 2002 (S/PRST/2002/35) and of 28 March 2002 (S/PRST/2002/8), and welcoming the report of the Secretary-General of 26 February 2003 (S/2003/231), reaffirms its commitment to a comprehensive and lasting settlement of the situation in Somalia, and its respect for the sovereignty, territorial integrity, political independence and unity of the country, consistent with the purposes and principles of the Charter of the United Nations.

"The Security Council reiterates its firm support for the Somali National Reconciliation Process and the ongoing Somali National Reconciliation Conference in Kenya, launched under the auspices of the Intergovernmental Authority on Development (IGAD) and led by the Government of Kenya. The Council strongly encourages all parties throughout Somalia to participate in the process, which offers a unique opportunity for all Somalis to end the suffering of their people and to restore peace and stability to their country. The Council demands the Somalia parties to abide by and implement expeditiously the decisions adopted throughout the process, including the Declaration on Cessation of Hostilities and the Structures and Principles of the Somali National Reconciliation Process, on 27 October 2002, hereafter referred to as the 'Eldoret Declaration' (S/2002/1359), as well as the December 2002 agreement reached by five Mogadishu faction leaders and the Transitional National Government regarding the restoration of peace and security in Mogadishu and a subsequent agreement among the five faction leaders which included a commitment to make efforts to reopen the International Airport and Seaport in Mogadishu, as mentioned in paragraph 26 of the report of the Secretary-General of 26 February 2003 (S/2003/231).

"The Security Council commends the Government of Kenya for its crucial role in facilitating the Somali National Reconciliation Process, and calls on the IGAD Technical Committee comprised of the three Frontline States (Djibouti, Ethiopia and Kenya) to continue their active role in promoting the Process. The Council welcomes the appointment of Ambassador



Bethuel Kiplagat as the Special Envoy of Kenya to the Process. The Council also welcomes the appointment of Mr. Muhammad Ali Fom as the Special Envoy of the African Union for Somalia, the generous financial contribution of the European Union, Norway and the US, and the sustained engagement of their envoys, as well as those of the IGAD Partners Forum and the League of Arab States. The Council strongly encourages their continued active and positive role in support of the reconciliation process.

“The Security Council notes that the six reconciliation committees of the Somali National Reconciliation Process have continued their work despite difficulties faced by the Somali participants regarding representation. The Council urges all parties involved to fully participate in the six reconciliation committees and to resolve the representation issue, and welcomes the establishment of an arbitration committee in this regard. The Council supports the Secretary-General’s commitment to assist in the work of the six reconciliation committees with technical support and relevant expertise.

“The Security Council expresses its strong regret that even after the signing of the ‘Eldoret Declaration’, fighting continued to break out in Somalia in particular in Mogadishu and Baidoa. The Council condemns all those involved in the fighting and calls for an immediate end to all acts of violence in Somalia. The Council shares the Secretary-General’s conclusion that it is those that have weapons of war who continue to hold the people of Somalia hostage to the cycle of violence. The Council also shares the Secretary-General’s view that these people will be held accountable by the Somali people and the international community for their actions if they persist on the path of confrontation and conflict. In this regard, the Security Council welcomes the establishment of a mechanism by the IGAD Frontline States to monitor compliance with the ‘Eldoret Declaration’ and their intention to consider appropriate measures against all individuals and groups violating the ‘Eldoret Declaration’ and December 2002 agreements.

“The Security Council notes with serious concern the continued flow of weapons and ammunition supplies to Somalia, as well as allegations of the role of some of the neighbouring States in breach of the arms embargo established by resolution 733 (1992) of 23 January 1992, and calls on all States and other actors to comply scrupulously with the arms embargo. The Council welcomes the work of the Panel of Experts, established pursuant to resolution 1425 (2002) of 22 July 2002, and expresses its intention to give full consideration to and take appropriate action regarding the Panel’s report as a step towards reinforcing the arms embargo and disarmament.

“The Security Council, insisting that persons and entities must not be allowed to take advantage of the situation in Somalia to finance, plan, facilitate, support or commit terrorist acts from the country, emphasizes that efforts to combat terrorism in Somalia are inseparable from the establishment of peace and governance in the country. In this spirit, the Council urges the international community to provide assistance to Somalia for the further and comprehensive implementation of resolution 1373 (2001).

“The Security Council expresses serious concern regarding the humanitarian situation in Somalia, in particular the internally displaced persons, especially in the area of Mogadishu. The Council urges the Somalia

leaders to live up to their commitments under the ‘Eldoret Declaration’, to facilitate the delivery of much-needed humanitarian assistance, to assure the safety of all international and national aid workers, to provide immediate safe access for all humanitarian personnel, and to support the return and reintegration of refugees. The Council calls on Member States to respond urgently and generously to the United Nations Consolidated Inter-Agency Appeal for 2003.

“The Security Council notes that while some parts of Somalia remain unstable, relative stability continues to prevail in significant portions of the country. The Council welcomes the evolution of the community-based peace-building activities and calls for the acceleration of comprehensive peace-building activities. The Council requests the Secretary-General to continue putting in place, in a coherent manner, preparatory activities on the ground for a comprehensive post-conflict peace-building mission in Somalia once security conditions permit, as stipulated in the statement by the President of the Council of 28 March 2002 (S/PRST/2002/8), which should take into account combating poverty and strengthening public institutions.

“The Security Council stresses that a comprehensive post-conflict peace-building programme with special emphasis on disarmament, demobilization, rehabilitation and reintegration will be an important contribution towards the restoration of peace and stability in Somalia. The Council welcomes the contribution of Ireland, Italy and Norway to the Trust Fund for Peace-building in Somalia and calls on other donors to do the same without delay.

“The Security Council commends the work done by the United Nations Country Team, the Red Cross and Red Crescent movements and non-governmental organizations in support of peace and reconciliation in Somalia. The Council encourages the Secretary-General to continue to support actively the IGAD-sponsored Somalia National Reconciliation Process and to continue to implement and enhance ongoing humanitarian and peace-building activities on the ground.

“The Security Council reiterates its commitment to assist the Somali parties and support the IGAD mediation in the implementation of the steps and conclusions for peace, as adopted throughout the Somalia National Reconciliation Process.”

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**Annex 51**

Report of the UN Secretary-General on the situation in Somalia, S/2004/115,

12 February 2004



## Security Council

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### Report of the Secretary-General on the situation in Somalia

#### I. Introduction

1. In its presidential statement of 31 October 2001 (S/PRST/2001/30), the Security Council requested me to submit reports, at least every four months, on the situation in Somalia and the efforts to promote the peace process.

2. The present report covers developments since my previous report, dated 13 October 2003 (S/2003/987). Its main focus is the challenges faced and the progress made by the Somali national reconciliation process, which has been ongoing in Kenya since October 2002 under the auspices of the Intergovernmental Authority on Development (IGAD), with support from the international community. The report also provides an update on the political and security situation in Somalia and the humanitarian and development activities of United Nations programmes and agencies in the country.

#### II. Somali national reconciliation process

3. By mid-September 2003, developments at the Somalia National Reconciliation Conference at Mbagathi, Kenya, led to an impasse over the contested adoption of a charter (see S/2003/987, paras. 13-18). Some of the leaders, including the President of the Transitional National Government, Abdikassim Salad Hassan, Colonel Barre Aden Shire of the Juba Valley Alliance (JVA), Mohamed Ibrahim Habsade of the Rahanwein Resistance Army (RRA), Osman Hassan Ali (“Atto”) and Musse Sudi (“Yalahow”) rejected the adoption, and returned to Somalia. On 30 September, a group of them announced the formation of the National Salvation Council consisting of 12 factions under the chairmanship of Musse Sudi. On 7 October, the National Salvation Council signed a memorandum of understanding with the President of the Transitional National Government, in which it acknowledged the continuance in office of the Transitional National Government. The signatories also announced their intention to convene a new national reconciliation conference separate from the one at Mbagathi. No parallel conference has been held, however.

4. At the tenth IGAD Summit, held at Kampala on 24 October under the chairmanship of the President of Uganda, Yoweri Museveni, the heads of State focused attention on ways and means to get the Somali national reconciliation process back on track. The President of Mozambique, Joachim Chissano, Chairman of the African Union, and Alpha Konaré, Chairperson of the Commission of the

African Union, also participated in the Summit. My Special Adviser, Mohamed Sahnoun, accompanied by my Representative for Somalia, Winston Tubman, collaborated actively with IGAD leaders in efforts to re-energize the stalled reconciliation process.

5. The IGAD heads of State decided to expand the membership of the IGAD Technical Committee to include Eritrea, the Sudan and Uganda, in addition to Djibouti, Ethiopia and Kenya, and renamed it the IGAD Facilitation Committee. The Special Envoy of the African Union for Somalia was made a member of the Facilitation Committee. The Summit directed the Facilitation Committee to meet in Nairobi at the ministerial level on 28 October to review the status of the Somali national reconciliation process.

6. The ministerial meeting, chaired by the Minister for Foreign Affairs of Kenya, was held in Nairobi as scheduled and was attended by ministers from Djibouti, Eritrea and Uganda as well as Ethiopian officials. The ministers agreed that Somali leaders would be invited to a Leaders' Consultation in Kenya on 20 November and that phase III of the Conference would commence only after the successful conclusion of the Leaders' Consultation.

7. The Transitional National Government and the National Salvation Council raised several objections to the proposed Leaders' Consultation. The main objection centred on the issue of representation. The group of leaders who had endorsed the adoption of a charter in mid-September wanted the Consultation to be held as scheduled and the participants limited to Abdikassim Salad Hassan and those leaders who had signed the Eldoret Declaration (S/2002/1359, annex) on 27 October 2002. On the other hand, the Transitional National Government and National Salvation Council groups wanted a larger representation of leaders and the exclusion of the former Prime Minister of the Transitional National Government and the Speaker of Transitional National Assembly (see S/2003/987, para. 9). In addition, both groups called for the postponement of the Leaders' Consultation to observe the final days of Ramadan.

8. The Minister for Foreign Affairs of Kenya, accompanied by the Kenyan Special Envoy for Somalia and Chairman of the Conference, Bethuel Kiplagat, held talks with officials in Djibouti, Ethiopia and Saudi Arabia in November to seek support for the Somali national reconciliation process.

9. The Under-Secretary-General for Political Affairs, Kieran Prendergast, visited eastern regions and the Horn of Africa from 7 to 16 November. Following in-depth briefings by my Special Adviser and my Representative for Somalia, he held discussions with a wide spectrum of Somali leaders, the Minister for Foreign Affairs of Kenya, Mr. Kiplagat, and members of the IGAD Facilitation Committee, the Executive Committee of the Somalia Aid Coordination Body, the United Nations country team for Somalia and other external actors to assess the current status and prospects for national reconciliation in Somalia, as well as planning for a future United Nations role in the country.

10. At its second meeting on 8 December, the Facilitation Committee was obliged once again to postpone the Leaders' Consultation until 18 December. In a joint communiqué, the Ministers stressed that any invited Somali leader who did not attend the meeting "shall be deemed not to be interested in the reconciliation process and will be treated as such". In view of the continuing impasse, the Minister for

Foreign Affairs of Kenya, after consultations with President Museveni, had to postpone the Leaders' Consultation for a third time, until 9 January 2004.

11. International observers at the Conference, including my Representative, engaged with all Somali stakeholders, in groups as well as individually, in efforts to reconcile divergent positions. On 4 December, the Special Envoy of the African Union led a delegation that included Kenyan, Ugandan, Swedish and United Kingdom representatives to meet with representatives of the Transitional National Government and the National Salvation Council in Mogadishu in order to persuade them to participate in the Leaders' Consultation in Nairobi. Likewise, on 12 December, international observers held a meeting with Somali leaders of opposing views in Nairobi and urged them to adopt a cooperative attitude that would ensure the participation of all Somali leaders in the Leaders' Consultation.

12. After discussions with Somali leaders in Nairobi on 8 and 9 January, President Museveni and the President of Kenya, Mwai Kibaki, launched the Somali Leaders' Consultation in Nairobi on 9 January. The former appealed to Somali leaders to reach the necessary compromises and agreement on a permanent peace in the country, the formation of a national army, the restoration of Somali sovereignty and the recovery of the economy.

13. On 29 January, the Somali leaders signed a document entitled "Declaration on the Harmonization of Various Issues Proposed by the Somali Delegates at the Somali Consultative Meetings from 9 to 29 January 2004". The document consisted of proposed amendments to the transitional federal charter adopted at the plenary meeting of the Conference on 15 September 2003. The leaders decided that the name of the charter would be transitional federal charter of the Somali republic; the name of the government would be transitional federal government; its term would last five years; and that the transitional federal parliament would consist of 275 members, 12 per cent of whom would be women. In addition, the document called for a national census to be undertaken while a new constitution was being drafted, as well as for its approval by an internationally supervised national referendum. A controversy subsequently arose, however, over the method of selection of the members of parliament, and efforts are being made to overcome the problem.

14. Regarding the financing of the Conference, the IGAD facilitation announced a severe financial crisis and renewed its appeal to donors for additional funding in December. The facilitation estimated that costs for the Conference from February 2003 to January 2004 would amount to €11 million. While donors are reported to have pledged €5 million, the Conference was considered to be carrying a deficit of €5.9 million (54 per cent) by December 2003.

15. It is noteworthy that the budget of the Conference had supported the expenses of approximately 800 Somalis at Mbagathi until November 2003. In view of the impasse in the proceedings and the precarious financial situation, the IGAD facilitation began a vigorous repatriation of many of the Somalis, with the exception of the 366 accredited delegates for phase II of the Conference and 45 Somali elders.

16. Meanwhile, Italy announced a further contribution of \$500,000. The United Kingdom of Great Britain and Northern Ireland, Sweden and the League of Arab States contributed \$100,000, \$50,000 and \$75,000 respectively. The European Commission remains the major contributor to the Conference.

17. On 19 October, Sheikh Ibrahim Ali, a delegate at the Conference, his driver and another person were found murdered in the Ngong forest in Nairobi. Another delegate, Ahmed Rashid Sheik Mohamed, a Somali Canadian, was found dead in Mbagathi on 6 November. While the death of the latter is considered to be from natural causes, the Kenyan authorities are conducting an investigation into the first incident.

### **III. Developments inside Somalia**

18. Subsequent to the removal of Hassan Abshir Farah and Abdalla Deerow Issak as Prime Minister and Speaker of the Transitional National Assembly, respectively (see S/2003/987, para. 9), Mustafa Gududow was elected as the new Speaker on 4 December. Abdikassim Salad Hassan appointed Mohamed Abdi Yussuf as the new Prime Minister of the Transitional National Government on 8 December. The latter has since appointed a cabinet of 37 ministers.

19. Abdikassim Salad Hassan and members of the National Salvation Council held talks with officials in Djibouti, the Libyan Arab Jamahiriya, Saudi Arabia and Yemen from 13 to 19 November, reportedly to seek political and financial support for the holding of a reconciliation conference in Somalia. Reports also indicate that the Presidents of Djibouti and the Libyan Arab Jamahiriya encouraged the Somali leaders to return to the IGAD-led Somali national reconciliation process.

20. Abdikassim Salad Hassan participated in the Organization of Islamic Conference Summit, held in Kuala Lumpur from 16 to 18 October. He also attended the tenth Summit of the IGAD heads of State held in Kampala on 24 October.

21. On 21 December, the "Somaliland" Parliament adopted a resolution, asserting "Somaliland's" authority over the Sool and Sanaag regions, which are also claimed by "Puntland". In a letter dated 22 December, addressed to the United Nations Political Office for Somalia, the "Puntland" administration stated that it would not fail to use all means at its disposal to defend the security and territorial integrity of "Puntland". On 27 December, forces loyal to the "Puntland" administration assumed control of Las-Anod district in Sool region. "Somaliland" considers its borders to be those of the former British Somaliland Protectorate, which included the two regions. "Puntland's" claim is based on the fact that the clans living in those regions are mostly Darod, the dominant group in "Puntland".

22. In view of the escalation of tension between the two administrations, the Kenyan Foreign Minister issued a statement on 19 January 2004 on behalf of the IGAD Facilitation Committee, calling on both parties to exercise maximum restraint.

23. I also called on the parties to refrain from the use of force. I urged them to seek a solution through political dialogue and reminded them of their responsibility to protect the civilian population and ensure unimpeded access for humanitarian assistance in their respective areas. I reiterated my call to all Somali parties to reach agreement on national reconciliation that would put an end to the fighting and bloodshed in the country.

## IV. Security

24. During the period under review, breaches in security in “Somaliland”, an area hitherto enjoying relative peace, have caused serious concern. On 5 October, Dr. Annalena Tonelli, an Italian, was shot dead at close range on the grounds of a tuberculosis treatment centre that she had founded in Boorama. Earlier, she had dedicated several years to medical work in Marka and the Lower Shabelle region. On 20 October, Richard and Enid Eyeington, a couple from the United Kingdom, who had been teaching at Sheikh Secondary School as employees of the non-governmental organization SOS Kinderdorf, were murdered in their home in Sheikh. Investigations by the “Somaliland” authorities are ongoing regarding both incidents. On 2 November, staff of an international non-governmental organization received a letter threatening them with violence, forcing the organization to remove international staff from Hargeysa.

25. On 9 December, the commander of the Hargeysa police traffic division was murdered outside his home. The motive for the attack was reportedly related to the officer’s role in the investigation of a traffic accident in which one of his clansmen had been involved.

26. There has been sporadic inter-clan fighting between Murusade and Duduble in El-Bur district of Galguduud and between members of the Dir and the Marehan in the Heraale area of the Mudug region. On 27 October, a man from the Dir clan reportedly killed a Marehan clan member in revenge for the killing of his father in 1992. This murder degenerated into inter-clan fighting in Heraale village, in Abudwaaq district. The clashes have continued intermittently and have transformed the dispute into a fight for the control of grazing lands and water in Heraale.

27. In Mogadishu, crime remains a major problem and the threat of kidnapping and direct attacks on United Nations and other humanitarian workers remains high. The city has often been tense because clans controlling different parts of the city are loyal to rival groups involved in the Somali national reconciliation process. Tensions in the reconciliation process have occasionally led to conflict in the city, although these have not escalated into major confrontations.

28. Tensions between Mohamed Dhere and Musse Sudi, both from different sub-clans of the Hawiye/Abgal, have continued. On 22 December, Mohamed Dhere’s militia attacked a convoy carrying Musse Sudi and other prominent Abgal politicians in north Mogadishu because it was travelling without permission through an area under the control of his sub-clan.

29. Early in November, the arrival of some 15 “technicals” from Mogadishu to areas near Marka in Lower Shabelle signalled rising tensions over competition to extort taxes from banana traders. On 14 November, the fighting pitted the Ayr against the Saad, both sub-clans of the Hawiye/Habr-Gedir. Many people were killed and wounded before a ceasefire was arranged by elders on 27 November. The fighting placed the lives of non-governmental organization staff in Marka at risk, especially when an airstrip that had been declared unsafe had to be used for their evacuation.

30. The intra-clan fighting that resulted from political differences among three leaders of RRA has continued in and around Baidoa. Two of them, Colonel Hassan Mohamed Nur “Shatigudud” and one of his former deputies, Sheik Aden Mohamed



Nur “Madobe”, agreed to a ceasefire in September 2003. However, the situation worsened when, on 18 October, eight women were sprayed with bullets and killed as they fetched water at a water hole in the Gofmarere area of Bay region. Some 300 Rahanwein elders have assembled in Wajid with a view to holding reconciliation talks. Since the reconciliation efforts started, the clashes have diminished in intensity in the Bay and Bakool regions.

31. Although Gedo region has been generally quiet, no clear authority has emerged and many of the clans are embroiled in disputes, resulting in occasional killings. El-Wak has been under the joint administration of the Garre and Marehan clans. In December, Garre militia wrested control of El-Wak from the Marehan. This conflict, together with the lack of any clear authority in the region, makes access by humanitarian agencies difficult.

32. Further south, in the Lower Juba region, JVA is reportedly holding a Republic of Korea fishing boat and its crew in Kismaayo port, apparently for failing to pay fishing dues. The crew includes nationals of Kenya, Indonesia and the Republic of Korea. The ship was apparently detained in June, first off the coast and then in Kismaayo port. JVA, which controls Kismaayo, has in turn been challenged by militias in Jilib who regularly set up checkpoints to extort money from travellers on the Kismaayo-Mogadishu road. Humanitarian operations in Kismaayo have been interrupted by numerous incidents of banditry and occasional fighting.

33. There have also been a number of violent incidents in other parts of the Lower Juba region. In Mararey, gunmen demanding money held up an aircraft leased by the European Commission Humanitarian Organisation (ECHO) on 12 November. The incident was resolved following the intervention of local clan elders. On 28 December, gunmen raided the offices of a local non-governmental organization in Mararey, leaving four men dead (one international staff member, two national staff and one visitor) and two more wounded.

## **V. Humanitarian situation**

34. The confidence of the international humanitarian community was severely shaken by the murder of the three humanitarian workers in “Somaliland” (see para. 24). Travel restrictions for staff have been put in place and most humanitarian activities have been reduced. Until investigations by the authorities reveal more information, United Nations international staff are restricted to Hargeysa as a precautionary measure, where the authorities are providing security for United Nations facilities.

35. In September, the “Somaliland” administration issued a directive for the deportation of “illegal immigrants” in areas under its control. Internally displaced persons from southern Somalia are also classified as illegal immigrants. Although the “Ministry of the Interior” is registering internally displaced persons who want to return to their areas of origin, the deadline has now passed without any obvious expulsions. The United Nations has registered its concern with the authorities and has stressed that the forced expulsion of asylum-seekers would be in contravention of international law.

36. Four years of drought in northern Somalia have created an acute humanitarian crisis in the northern Sool plateau, while poor rainfall in the surrounding areas could expand the affected area to the northern and central regions of Togdheer and Mudug.

37. As a result of the failure of the *deyr* season rains (September-October) in the Sool, Sanaag and Bari regions, more than 90,000 pastoralists are facing serious food shortages and the loss of livestock, pasture and food. A joint United Nations/non-governmental organization assessment of the affected area in October found that roughly 60 per cent of livestock, especially camels, had been decimated by starvation and disease, further impoverishing pastoralist families who are heavily dependent on the sale of animals and milk for income. The remaining livestock is in too poor a condition to be sold. About 3,000 families have already abandoned their livestock to move to areas with permanent water sources and to a lesser extent to urban centres, such as Las-Anod and Garoowe.

38. United Nations agencies, non-governmental organizations and local authorities have responded by providing limited health services, distributing targeted family rations, subsidizing water distribution, rehabilitating existing water sources, and providing emergency cash grants. Interventions to support the remaining livestock and longer-term livelihood support programmes (mainly cash-for-work) are currently being planned.

39. Assurances of safe access to the contested areas of the Sool and Sanaag regions by both the "Somaliland" and "Puntland" administrations have so far been respected. However, heightened tension over Las-Anod (see paras. 21-23) is already causing delays and could further undermine the humanitarian response, should the situation worsen. The United Nations Humanitarian Coordinator is taking steps to bring the two administrations together in an effort to ensure that open conflict is averted and humanitarian access is maintained. Should armed conflict occur or drought conditions widen, additional urgent donor support may be required.

40. Intense inter-clan fighting in the central region of Galguduud, in Abudwaaq and Murusade districts (see para. 26), forced some 9,000 people to flee to surrounding towns whose inhabitants are themselves suffering from food insecurity because of drought conditions. The tense security situation continues to prevent adequate interventions. So far, the International Committee of the Red Cross has provided limited health support and non-food items. UNICEF is exploring the possibility of working through local partners to provide assistance. The United Nations and non-governmental organizations continue to monitor the situation with the aim of expanding humanitarian assistance once the security situation improves.

41. In southern Somalia, where livelihoods revolve around farming and agro-pastoralism, relatively good rains, ranging from 80 to 120 per cent of normal, are likely to maintain good crop and livestock production. Violence and armed conflict throughout much of southern and central Somalia continue to hamper access and humanitarian programming, however. During the current reporting period, localized conflict and the attempts of freelance militia to control airport revenues led to the temporary closure of airstrips in the villages and towns of Afmadow, Mararey, Jamaame, Kismaayo and Beledweyne, as well as at the K-50 airstrip outside Mogadishu. Despite the humanitarian needs in Mogadishu, ongoing criminality and violence continue to restrict access and humanitarian activities.

42. In recent weeks, the tenuous ceasefire between RRA factions (see para. 30) allowed humanitarian access to more than 2,000 internally displaced persons who had fled to the villages of Bakaar Yar and Bakaar Weyn in Wajid district to escape the fighting. They are living in camps with little access to basic social services. United Nations agencies and non-governmental organizations are currently addressing their needs. They are also exploring ways to support the ongoing reconciliation efforts to ensure that access to these internally displaced persons is sustained.

43. As at 1 February 2004, less than 1 per cent of the \$113 million requested in the 2004 Consolidated Inter-Agency Appeal for Somalia has been received. Of the \$78 million requested in the 2003 appeal, 61 per cent was funded by donors.

## **VI. Operational activities in support of peace**

44. The World Bank and the United Nations Development Programme announced the launching of the Socio-Economic Survey on Somalia on 14 January 2004 in Nairobi. The two organizations are jointly implementing a programme to set up data collection systems, strengthen Somali statistical institutions and support the establishment of a statistical database to monitor macroeconomic and socio-economic conditions. It is being implemented with the support and participation of regional and local administrations and international partners. The Survey compiles baseline demographic and socio-economic data at the household level to address some of the critical needs and gaps in the social and economic sectors and for better policy formulation and planning. It will cover the areas of (a) demographics and housing; (b) employment and income; (c) basic services; (d) communication; (e) participation of women; and (f) environmental concerns.

45. The United Nations is assisting local authorities in “Somaliland” to improve the administration of justice by supporting the establishment of the rule of law, local capacity-building for law enforcement agencies and improving the application of human rights standards. The training session for members of the judiciary, which began in the last reporting period (see S/2003/987, para. 50), was completed on 21 November and provided training for 50 legal professionals in substantive law and procedure fundamental to the functioning of the judiciary. An evaluation of the training has been undertaken with the purpose of further developing the curriculum in time for the second phase of training.

46. During the current reporting period, the United Nations supported and assisted the establishment of a functional police headquarters at Hargeysa, the graduation of 130 cadets from the Mandera Police Academy, the training of judiciary and the establishment of a legal clinic at Hargeysa University.

47. The United Nations has begun the distribution of a comprehensive countrywide child protection study that was completed during the last reporting period (see S/2003/987, para. 56). The study was based on interviews with 10,000 children and adults across Somalia. Some of the study’s most salient findings were that one in 20 children interviewed had been involved or had siblings involved in militia activity, mainly in the urban areas. The data revealed that extended families made little distinction between natural and adopted children. However, adopted girls are often not sent to school and married young. Street children are exposed to violence and drug abuse in urban centres. Over 8 per cent of families reported

children with developmental problems, one third of them as a consequence of trauma. All statistics were significantly higher for children and families in settlement camps for internally displaced persons.

48. The findings of the study will enable agencies to establish a clear knowledge base on the main areas of concern regarding the protection of vulnerable children in Somalia. The participatory data collection process and analysis of results also allowed agencies to build partnerships at the community level with principal child protection stakeholders. The United Nations will undertake advocacy and awareness-raising efforts on sensitive issues such as sexual violence and abuse, the protection of internally displaced children, the recruitment of child soldiers and the protection of children without primary caregivers. During the reporting period, all parties to the conflict in Somalia continued to recruit children into their forces, as outlined in my report on children and armed conflict (S/2003/1053).

49. A new UNICEF initiative being undertaken is helping youth to maximize their leadership and organizational skills. The project focuses on youth broadcasting as a way of empowering young people in the use of electronic media for community education and mobilization. During 2003, 20 youth groups with a total of 400 members were trained in techniques for producing and broadcasting radio programmes and videos. The pilot phase of the initiative was completed in December and more than 12 radio programmes and 20 videos were produced. This project has proved very successful in tapping the potential of a cadre of young Somalis who have a keen interest in pursuing peace-building and peace-fostering activities within their communities.

50. The outcome of a United Nations study on the multiple parallel legal systems, which are inherently discriminatory against women and inhibit women's access to justice, has deepened analysis and knowledge of the subject (see S/2003/987, paras. 59-60). The United Nations carried out capacity-building for nine women's organizations in Garoowe, Hargeysa and Mogadishu so as to enhance their ability to engage with and lobby law enforcement agencies on women's rights.

51. During October 2003, 205 Somalis were repatriated from Ethiopia to "Somaliland". In addition, 19 Somali refugees were repatriated from various other countries.

52. Remittances to Somalia provide approximately \$1 billion of foreign income annually. The United Nations organized a conference in London on 3 and 4 December, which involved financial sector regulators from Europe and the United States of America and representatives from Somali remittance companies. The conference resulted in the establishment of the Somali Financial Services Association, a regulatory body which aims to fill the void in regulation caused by the limited mandate of central government, thus improving the credibility of the Somali remittance sector with foreign Governments.

53. The groundwork is being laid for the establishment of a Somali livestock export health certification system. The United Nations has recently established a project to systematically support this process, in recognition of the importance of the sector to Somali livelihoods.

54. No cases of polio were reported in Somalia at the end of 2003, thanks mainly to the joint efforts of the United Nations and partner agencies. The concerted implementation of national and subnational immunization days and cross-border

activities has increased coverage to more than 97 per cent, or nearly 1.4 million children per round, bringing Somalia closer to total eradication of the disease. In conjunction with the immunization days, nearly 1 million children received vitamin A capsules during the year.

55. Health agencies and local authorities have collaborated on improving the quality and sustainability of health facilities, health service delivery and more accountable health management systems in areas of relative stability. Technical support was provided to local authorities on the management of health-care systems and the development of sectoral policies. Through support from UNICEF, the World Health Organization and other partners, essential drugs and medical equipment were provided in over 400 health facilities, together with the training of medical staff in supervision and monitoring.

56. During the reporting period, the United Nations began work on the establishment of an HIV/AIDS sentinel surveillance system, combined with prevalence and validation studies on sexually transmitted infections, with the objective of establishing baseline data on HIV/AIDS. The United Nations facilitated training of HIV/AIDS counsellors in Boorama and facilitated access to appropriate medical, prevention and support services specifically targeting women.

57. During 2003, concerted and coordinated efforts among all stakeholders yielded a joint framework outlining HIV/AIDS issues in the country and presented clear strategies to prevent its spread. In the last quarter of the year, action plans for all administrative areas were finalized covering “Somaliland”, “Puntland” and central/southern Somalia, using the framework as a foundation. The United Nations was able to establish key partnerships and networks that are expected to act as a springboard for future interventions.

## **VII. Observations**

58. The agreement reached on amending the transitional charter at the Somali Leaders’ Consultation in Nairobi marked a breakthrough that promises to allow further progress at the Somalia National Reconciliation Conference, which has been stalled for some time. It is my hope that the Somali leaders will continue to build on the progress made towards the establishment of an inclusive government in Somalia.

59. The next and final phase of the reconciliation process will involve the selection of members of the transitional national parliament, and they in turn are to elect the president who will lead the country during the transitional period. As the Somali leaders pursue political agreement at the Conference, I wish to point out how important it is that progress in the political arena be accompanied by serious efforts on their part to realize tangible improvement in the security situation on the ground, which would be conducive to the implementation of a political agreement. That would, in turn, accord the necessary credibility to the political agreement, which would be critical if such an agreement were to receive the full support of the people of Somalia and the international community.

60. The IGAD heads of State, in particular, President Kibaki and President Museveni, their officials and international observers, should be commended for the perseverance with which they have continued strenuous efforts to facilitate the Somali national reconciliation process. The Government of Kenya has borne a heavy

burden in hosting a large number of Somali delegates and representatives at the Conference for a protracted period. The international community, in particular the European Union, has continued to make generous financial contributions for the Conference. International observers, especially the African Union, the League of Arab States, and others have undertaken important and necessary targeted interventions in support of the mediation efforts of IGAD. Such generosity and involvement by the international community has to continue for the Somali reconciliation process to succeed.

61. At the same time, if the Somali leaders are to be encouraged to stay the course and to implement agreements they may reach in good faith, it will be necessary for the IGAD front-line States to narrow differences among themselves with regard to the Somali national reconciliation process, and to speak with one voice.

62. The mission of the Security Council Committee established pursuant to resolution 751 (1992) to the region in November 2003 and the adoption of resolution 1519 (2003) on 16 December 2003 demonstrate the Council's determination to give full effect to the implementation of the arms embargo on Somalia. By that resolution, the Council, inter alia, reiterated its serious concern over the continued flow of weapons and ammunition to and through Somalia. In accordance with the Council's request, I have established a Monitoring Group composed of four experts, for a period of six months, to be based in Nairobi. The Monitoring Group is mandated, inter alia, to investigate violations of the arms embargo covering access to Somalia by land, air and sea and to provide a draft list of those who continue to violate the arms embargo inside and outside Somalia, and their active supporters, for possible future measures by the Council.

63. Insecurity and violence in many parts of the country and more recently tensions over control of the Sool and Sanaag regions underline the fact that a comprehensive peace is both urgent and necessary in Somalia. Somali leaders and their militias should also be aware that they will be held accountable for continued violations of human rights.

64. Despite significant contributions to the 2003 consolidated appeal for Somalia, many essential services are not provided to the population because of lack of funds and the precarious security situation. During 2004, the United Nations intends to step up ongoing activities as well as the planning for peace-building initiatives. In addition to the serious humanitarian needs in all parts of Somalia, the drought in the Sool plateau is threatening to expand to other regions. Increased funding may be needed to ensure a timely and effective response.

65. The United Nations and non-governmental organizations have made greater efforts to improve the consolidated inter-agency appeal by making it more participatory; strengthening the analysis and subsequent planning; conducting both technical and senior level reviews of all projects; and prioritizing projects according to jointly developed criteria. This year, 16 non-governmental organizations participated in the process, 10 of them placing projects in the appeal alongside the United Nations. It is hoped that these efforts will lead to more cooperative, effective and strategic humanitarian engagement in 2004. To this end, I encourage donors to contribute generously to the consolidated appeal in order to ensure the fullest possible implementation of the Common Humanitarian Action Plan for Somalia.

66. In conclusion, I would like to commend my Representative for Somalia, Winston Tubman, his staff and those of the United Nations country team and the many non-governmental organizations for their efforts in support of peace and reconciliation in Somalia and for undertaking humanitarian and development activities under the difficult circumstances prevailing in the country.

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**Annex 52**

Statement of the President of the Security Council at the 4915th meeting of the  
Security Council, S/PRST/2004/3, 25 February 2004





## Security Council

Distr.: General  
25 February 2004

Original: English

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### Statement by the President of the Security Council

At the 4915th meeting of the Security Council, held on 25 February 2004, in connection with the Council's consideration of the item entitled "The situation in Somalia", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council, recalling its previous decisions concerning the situation in Somalia, in particular the statement of its President of 11 November 2003 (S/PRST/2003/19) and welcoming the report of the Secretary-General of February 2004 (S/2004/115), reaffirms its commitment to a comprehensive and lasting settlement of the situation in Somalia, and its respect for the sovereignty, territorial integrity, political independence and unity of the country, consistent with the purposes and principles of the Charter of the United Nations.

"The Security Council reiterates its firm support for the Somali national reconciliation process and the ongoing Somali National Reconciliation Conference in Kenya, launched under the auspices of the Intergovernmental Authority on Development (IGAD).

"The Security Council commends President Mwai Kibaki of Kenya, President Yoweri Museveni of Uganda, other leaders of IGAD, and international supporters of the Somali National Reconciliation Conference for their perseverance to help Somalis reach national reconciliation.

"The Security Council welcomes the signing, on 29 January 2004, of the Declaration on the Harmonization of the Various Issues by the Somali Delegates at the Somali Consultative Meetings, held from 9 to 29 January 2004 in Nairobi, as an important step towards lasting peace and reconciliation in Somalia, and urges all signatories to the agreement to fully abide by their commitment to take forward the peace process.

"The Security Council calls upon the Somali parties to build on the progress achieved and swiftly conclude the Somali National Reconciliation Conference with a durable and inclusive solution to the conflict in Somalia by establishing a viable transitional government.

"The Security Council reiterates that the Somali parties should abide by and implement expeditiously the Eldoret Declaration of 27 October 2002 on cessation of hostilities, and calls on the Somali parties to continue working towards a comprehensive security arrangement for Somalia.

“The Security Council stresses the urgent need for a comprehensive ceasefire throughout Somalia, and that the Somali parties themselves bear the responsibility of achieving it. The Council calls on the Somali parties to fully implement the ceasefire, to ensure security, and to resolve their differences through peaceful means.

“The Security Council condemns those who obstruct the peace process, and stresses that those who persist on the path of confrontation and conflict will be held accountable. The Council will continue to monitor the situation closely.

“The Security Council calls upon all neighbouring states to continue their endeavour to participate fully and constructively for the success of the Somali National Reconciliation Process and the attainment of peace in the region.

“The Security Council welcomes the commitment and preparation of the African Union to deploy a military observer mission to Somalia, and calls upon the international community to support the African Union’s efforts to improve the security situation in Somalia.

“The Security Council calls on the international community to continue its efforts to support IGAD in its facilitation of the Somali National Reconciliation Conference, and calls on the donor countries to contribute to the Conference, the United Nations Trust Fund for Peace-building in Somalia and the United Nations Consolidated Inter-Agency Appeal for Somalia.

“The Security Council expresses serious concern regarding the humanitarian situation in Somalia, and calls on the Somalia leaders to facilitate the delivery of much-needed humanitarian assistance and to assure the safety of all international and national aid workers.

“The Security Council reiterates its concern over the continued flow of weapons and ammunition supplies to Somalia, welcomes the establishment of the Monitoring Group pursuant to resolution 1519 (2003) of 16 December 2003, and calls on relevant states and entities to comply scrupulously with the arms embargo and to cooperate with the Monitoring Group.

“The Security Council welcomes the readiness of the Secretary-General to enhance the attention of the United Nations to developments in Somalia within existing resources. The Council reiterates that a comprehensive peace-building programme with special emphasis on disarmament, demobilization, rehabilitation and reintegration will be important to post-conflict Somalia as stipulated in the statement of its President of 28 March 2002 (S/PRST/2002/8).

“The Security Council requests the Secretary-General to consider and to suggest in his next report ways to develop the role of the United Nations in support of the IGAD facilitated Somali reconciliation process.

“The Security Council reiterates its readiness to assist the Somali parties and support IGAD in implementation of the agreements reached in the Somalia National Reconciliation Conference.”

**Annex 53**

UN Security Council Resolution 2036 (2012), S/RES/2036, 22 February 2012



# Security Council

Distr.: General  
22 February 2012

## Resolution 2036 (2012)

**Adopted by the Security Council at its 6718th meeting, on  
22 February 2012**

*The Security Council,*

*Recalling* all previous resolutions on the situation in Somalia, in particular resolution 2010 (2011), as well as other relevant Presidential Statements and resolutions on protection of civilians in armed conflict, women and peace and security, and children and armed conflict,

*Reaffirming* its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, and *reiterating* its commitment to a comprehensive and lasting settlement of the situation in Somalia,

*Reiterating* its full support for the Djibouti Peace Process and the Transitional Federal Charter which provide the framework for reaching a lasting political solution in Somalia, *reiterating* its support for the Kampala Accord and the Roadmap to End the Transition (the “Roadmap”), and *stressing* the need for reconciliation, dialogue and broad-based, inclusive and representative Somali institutions,

*Stressing* the primary responsibility of the Transitional Federal Institutions to implement the Roadmap, *welcoming* the progress to date, including the commitment shown by the Garowe Principles, but *expressing concern* that many of the deadlines for the completion of the tasks in the Roadmap have been missed which may delay the full implementation of the Roadmap,

*Urging* the Transitional Federal Institutions and all Roadmap signatories to redouble their efforts to fully implement the Roadmap with the support of United Nations Political Office for Somalia (UNPOS) and the international community, and *noting* that future support to the Transitional Federal Institutions for the remainder of the transitional period, would be contingent upon progress in completing the tasks in the Roadmap,

*Stressing* the need for the Transitional Federal Government, with the support of the African Union Mission to Somalia (AMISOM), and as a matter of urgency, to build an enhanced level of security in areas secured by AMISOM and the Somali security forces, and to build sustainable administrative structures in these areas,



*Noting* that the transitional period in Somalia will end on 20 August 2012, *emphasising* that any further extension of the transitional period would be untenable and *calling upon* Somali parties to agree inclusive and representative post-transitional arrangements, in line with the Djibouti Agreement,

*Stressing* the need for further efforts to fight corruption, promote transparency and increase mutual accountability in Somalia, and in this regard *welcoming* initiatives aimed at the more transparent and accountable management of Somali assets and internal and external financial resources to maximise public revenues for the benefit of the Somali people,

*Stressing* the need for a comprehensive strategy in Somalia to address the political, economic, humanitarian and security problems in Somalia and the problem of piracy, including hostage taking, off the coast of Somalia through the collaborative efforts of all stakeholders, *reiterating* their full support to the Secretary-General and his Special Representative, Augustine P. Mahiga in this regard, and for their work with the African Union and international and regional partners,

*Recognising* that peace and stability in Somalia depend on reconciliation and effective governance across the whole of Somalia and *urging* all Somali parties to renounce violence and to work together to build peace and stability,

*Welcoming* the London Conference on Somalia, to be held on 23 February 2012, where coordinated international action to address the political, security, justice, stability, and piracy problems in Somalia, as well as humanitarian issues, will be further enhanced, and *welcoming* the upcoming Istanbul Conference on Somalia,

*Expressing grave concern* at the dire humanitarian situation in Somalia, and its impact on the people of Somalia, in particular on women and children, and *calling on* all parties to ensure full and unhindered access for the timely delivery of humanitarian aid to persons in need of assistance across Somalia, consistent with humanitarian, human rights and refugee law,

*Reiterating* its condemnation of all attacks on the Transitional Federal Government, the African Union Mission in Somalia (AMISOM), United Nations personnel and facilities, and the civilian population by armed opposition groups, and foreign fighters, particularly Al Shabaab, and *stressing* that Somali armed opposition groups and foreign fighters, particularly Al Shabaab, constitute a terrorist threat to Somalia, and the international community,

*Noting* the announcement that Al Shabaab has joined Al Qaeda, *stressing* that there should be no place for terrorism or violent extremism in Somalia and *reiterating* its call upon all opposition groups to lay down their arms,

*Commending* the contribution of AMISOM to lasting peace and stability in Somalia and efforts to bring stability and security to Mogadishu, *expressing* its appreciation for the continued commitment of troops and equipment to AMISOM by the Governments of Burundi and Uganda, and for the newly deployed troops from the Government of Djibouti and *recognising* the significant sacrifices made by AMISOM forces,

*Welcoming* the willingness of the Government of Kenya for Kenyan forces to be incorporated into AMISOM and so to contribute to the implementation of

AMISOM's mandate as set out in paragraph 9 of resolution 1772 (2007) and this resolution, *stressing* the importance of the prompt deployment of new AMISOM forces to reach its mandated level, and *calling* on other African Union Member States to consider contributing troops and provide support to AMISOM,

*Welcoming* the work of the joint African Union and United Nations Technical Assessment Mission on AMISOM, *noting* the agreement by the African Union Peace and Security Council on a AMISOM Strategic Concept of 5 January 2012, and *welcoming* the Secretary-General's Special Report on Somalia (S/2012/74),

*Recalling* its authorisation in paragraph 1 of resolution 2010 (2011) that the Member States of the African Union maintain the deployment of AMISOM until 31 October 2012, and that AMISOM is authorised to take all necessary measures to carry out its existing mandate as set out in paragraph 9 of resolution 1772 (2007),

*Recalling* paragraph 5 of resolution 2010 (2011) and noting its intention to review the force level of AMISOM when the mission reaches its mandated level of 12,000,

*Expressing* concern that charcoal exports from Somalia are a significant revenue source for Al Shabaab and also exacerbate the humanitarian crisis,

*Recalling* its resolutions 1950 (2010), 1976 (2011), and 2020 (2011) *expressing* its grave concern at the threat posed by piracy and armed robbery off the coast of Somalia, *recognising* that the ongoing instability in Somalia contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, *stressing* the need for a comprehensive response to tackle piracy, and hostage taking, and its underlying causes by the international community and the Transitional Federal Institutions and *welcoming* the efforts of the Contact Group for Piracy off the Coast of Somalia, States and international and regional organisations,

*Stressing* the need to investigate, prosecute, and to imprison when duly convicted pirates and those who illicitly finance, plan, organise, or unlawfully profit from pirate attacks,

*Welcoming* the relocation of the Secretary-General's Special Representative to Somalia and an UNPOS office to Mogadishu and *encouraging* the United Nations to take further steps to achieve a more permanent and full relocation to Somalia, in particular Mogadishu, consistent with the security conditions, as outlined in the Secretary-General's reports (S/2010/447) and (S/2009/210),

*Determining* that the situation in Somalia continues to constitute a threat to international peace and security in the region,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* that in addition to the tasks set out in paragraph 9 of resolution 1772 (2007) AMISOM shall include establishing a presence in the four sectors set out in the AMISOM strategic Concept of 5 January, and AMISOM shall be authorised to take all necessary measures as appropriate in those sectors in coordination with the Somali security forces to reduce the threat posed by Al Shabaab and other armed opposition groups in order to establish conditions for effective and legitimate governance across Somalia, *further decides* that AMISOM shall act in compliance with applicable international humanitarian and human rights

law, in performance of this mandate and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia;

2. *Requests* the African Union to increase AMISOM's force strength from 12,000 to a maximum of 17,731 uniformed personnel, comprised of troops and personnel of formed police units;

3. *Reiterates* that regional organisations have the responsibility to secure human, financial, logistical and other resources for the work of their organisations, including through contributions by their members and support from partners, *welcomes* the valuable financial support provided by the African Union's partners to AMISOM, including through bilateral support programmes and the African Peace Facility of the European Union, and calls upon all partners, in particular new donors, to support AMISOM through the provision of equipment, technical assistance, funding for troop stipends, and uncommitted funding to AMISOM to the United Nations Trust Fund for AMISOM;

4. *Decides* to expand the logistical support package for AMISOM, referred to in paragraphs 10 and 11 of resolution 2010 (2011), and as described in the Secretary-General's letters (S/2009/60 and S/2011/591) to the President of the Security Council, from a maximum of 12,000 uniformed personnel to a maximum of 17,731 uniformed personnel, until 31 October 2012, ensuring the accountability and transparency of expenditure of United Nations funds as set out in paragraph 4 of resolution 1910 (2010);

5. *Recalls* its request to the Secretary-General in paragraphs 10 and 12 of resolution 1863 (2009) related to transparency and proper accountability for resources provided to AMISOM, and *requests* that equal attention to resource transparency, accountability, and internal controls be applied to the additional UN support measures authorised to be provided to AMISOM and its troop contributing countries in this resolution and the annex of this resolution;

6. *Decides* on an exceptional basis and owing to the unique character of the mission, to expand the logistical support package for AMISOM to include the reimbursement of contingent owned equipment including force enablers and multipliers as described in paragraphs 28 through 36 and 43 of the Secretary-General's Special Report on Somalia (S/2012/74) and as set out in the annex to this resolution;

7. *Stresses* the importance of stabilising areas secured by AMISOM and the Somali security forces, *calls upon* all Somali stakeholders, with the support of the UN, the African Union and the international community, to promote reconciliation, law and order, the delivery of basic services and strengthen governance at district, regional, state and federal levels, including by supporting the delivery of Stabilisation Plans developed by Intergovernmental Authority on Development (IGAD) and the Transitional Federal Government;

8. *Requests* the Secretary-General to continue to provide technical and expert advice to the African Union in the planning, deployment and management of AMISOM, through the United Nations Office to the African Union, including on the implementation of the AMISOM Strategic Concept and the AMISOM Concept of Operations;

9. *Reiterates* its request to the United Nations to work with the African Union to develop a guard force of an appropriate size, within AMISOM's mandated troop levels, to provide security, escort and protection services to personnel from the international community, including the United Nations, as appropriate and without further delay;

10. *Welcomes* the intention of new troop contributing countries to contribute to AMISOM and *stresses* that all new troops shall be integrated fully into the AMISOM command and control structures, and shall operate in accordance with AMISOM's mandate as set out in paragraph 9 of resolution 1772 (2007) and this resolution;

11. *Stresses* that coordinated action by all contributors is critical for the peace, security and stability of Somalia and the region, and calls on other African Union Member States to consider contributing troops to AMISOM in order to help create the conditions when Somalia can be responsible for its own security;

12. *Recognizes* the importance of strengthening the capacity of regional and sub-regional organizations in conflict prevention, crisis management and post-conflict stabilization, and *calls upon* the African Union and donors to continue to work together to further enhance the effectiveness of African peacekeeping;

13. *Recalls* paragraph 13 of resolution 2010 (2011);

14. *Emphasises* that the development of the Somali security forces is vital to ensure Somalia's long term security and stability, *requests* AMISOM to continue to expand its efforts to help develop the capacity and effectiveness of the Somali security forces, *urges* Member States, regional, and international organisations to work with in coordination with AMISOM to provide coordinated assistance, training and support and *welcomes* in this regard the training of Somalia security forces through the bilateral support programmes of Member States and the European Union Training Mission for Somalia (EUTM);

15. *Notes* the important role an effective police presence can play in the stabilisation of Mogadishu, *stresses* the need to continue to develop an effective Somali police force and *welcomes* the desire of the African Union to develop an operational police component within AMISOM;

16. *Demands* that all parties and armed groups take appropriate steps to ensure the safety and security of humanitarian personnel and supplies, and further *demands* that all parties ensure full and unhindered access for the timely delivery of humanitarian aid to persons in need of assistance across Somalia, consistent with humanitarian, human rights and refugee law;

17. *Recalling* its resolutions 1674 (2006), 1738 (2006) and 1894 (2009) on the protection of civilians in armed conflict, *welcomes* the progress made by AMISOM in reducing civilian casualties during its operations, *urges* AMISOM to continue to undertake enhanced efforts in this regard, *commends* AMISOM's commitment to establish a Civilian Casualty Tracking, Analysis and Response Cell (CCTARC), as referenced in the Secretary-General's Report on Somalia (S/2011/759) of 9 December 2011, and *calls on* international donors and partners to further support the establishment of a CCTARC;



18. *Welcomes* the endorsement by AMISOM of the 2011 indirect fire policy and *encourages* AMISOM to adapt and implement this policy for all new troops and assets;

19. *Recalls* the Council's decision in resolution 1844 (2008) and *welcomes* the determination by the international community, including the African Union, to take measures against both internal and external actors engaged in actions aimed at undermining the peace and reconciliation process in Somalia, including the Roadmap, as well as the efforts of AMISOM and the Somali security forces;

20. *Underlines* its intention to keep the situation on the ground under review and to take into account in its future decisions progress by AMISOM in meeting the following objectives:

(a) Consolidation of security and stability throughout south central Somalia, including key towns, by the Somali security forces and AMISOM, on the basis of clear military objectives integrated into a political strategy;

(b) Effective regional coordination and cooperation on security issues by AMISOM;

(c) Assistance in the development of effective Somali security forces, with integrated units under a clear command and control structure and in coordination with the international community;

21. *Requests* the African Union to keep the Security Council regularly informed, through the Secretary-General, on the implementation of AMISOM's mandate, including on the implementation of paragraphs 1 and 2 in this resolution and on the new command and control structure and integration of forces under this structure and report to the Council, through the provision of written reports, no later than 30 days after the adoption of this resolution and every 60 days thereafter;

22. *Decides* that Somali authorities shall take the necessary measures to prevent the export of charcoal from Somalia and that all Member States shall take the necessary measures to prevent the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia; further *decides* that all Member States shall report to the Security Council Committee established pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea ("the Committee") within 120 days of the adoption of this resolution on the steps they have taken towards effective implementation of this paragraph; and *requests* the Monitoring Group re-established pursuant to resolution 2002 (2011) to assess the impact of the charcoal ban in its Final Report;

23. *Decides* that the mandate of the Committee shall apply to the measures in paragraph 22 above; *decides* that the Monitoring Group's mandate shall likewise be expanded; and *considers* that such commerce may pose a threat to the peace, security, or stability of Somalia, and therefore that the Committee may designate individuals and entities engaged in such commerce as subject to the targeted measures established by resolution 1844 (2008);

24. *Decides* to remain actively seized of the matter.

**Annex**

In accordance with paragraph 6 of this resolution, on an exceptional basis and due to the unique character of AMISOM, the UN logistical support package for AMISOM shall be extended for a maximum of 17,731 uniformed personnel and 20 AMISOM civilian personnel based in AMISOM headquarters until 31 October 2012, in line with the recommendation in paragraphs 29 and 43 of the Secretary-General's Special Report on Somalia (S/2012/74), which includes the provision of explosive threat management capacity, level II medical facilities and the reimbursement of contingent owned equipment (COE).

Eligible COE will include standard enablers and multipliers within the land component, and an aviation component of up to a maximum of 9 utility helicopters and 3 attack helicopters.

COE reimbursement should conform to UN rates and practices, including the direct transfer of funds to troop contributing countries (TCCs) as appropriate, and periodic reviews to ensure full operational capability. Letters of Assist (LOAs) should be negotiated with TCCs for equipment not covered under the UN COE framework including the aviation specified above.

As noted in paragraph 29 of the Secretary-General's Special Report on Somalia (S/2012/74), only equipment deployed by the TCCs and considered owned by TCCs should be reimbursed. Equipment gifted or donated to TCCs, AMISOM, the African Union or where the ownership still remains with the donor are not eligible for reimbursement.

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**Annex 54**

Security Council, 64<sup>th</sup> year: 6221<sup>st</sup> meeting, New York, S/PV.6221, 18 November 2009

United Nations

S/PV.6221



# Security Council

Sixty-fourth year

Provisional

## 6221<sup>st</sup> meeting

Wednesday, 18 November 2009, 10.20 a.m.  
New York

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<i>President:</i>	Mr. Mayr-Harting . . . . .	(Austria)
<i>Members:</i>	Burkina Faso . . . . .	Mr. Kafando
	China . . . . .	Mr. Liu Zhenmin
	Costa Rica . . . . .	Mr. Urbina
	Croatia . . . . .	Mr. Skračić
	France . . . . .	Mr. Araud
	Japan . . . . .	Mr. Takasu
	Libyan Arab Jamahiriya . . . . .	Mr. Dabbashi
	Mexico . . . . .	Mr. Puente
	Russian Federation . . . . .	Mr. Churkin
	Turkey . . . . .	Mr. Apakan
	Uganda . . . . .	Mr. Rugunda
	United Kingdom of Great Britain and Northern Ireland . . . . .	Sir Mark Lyall Grant
	United States of America . . . . .	Ms. DiCarlo
	Viet Nam . . . . .	Mr. Le Luong Minh

## Agenda

The situation in Somalia

Report of the Secretary-General pursuant to Security Council resolution 1846  
(2008) (S/2009/590)

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09-61200 (E)



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S/PV.6221

*The meeting was called to order at 10.20 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **The situation in Somalia**

#### **Report of the Secretary-General pursuant to Security Council resolution 1846 (2008) (S/2009/590)**

**The President:** I should like to inform the Council that I have received letters from the representatives of Norway, the Philippines, Seychelles, Somalia, Spain, Sweden and Ukraine, in which they request to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the consideration of the item, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

*At the invitation of the President, Mr. Duale (Somalia) took a seat at the Council table; the representatives of the other aforementioned countries took the seats reserved for them at the side of the Council Chamber.*

**The President:** In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Ahmedou Ould Abdallah, Special Representative of the Secretary-General and head of the United Nations Political Office for Somalia.

It is so decided.

I invite Mr. Ould Abdallah to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them document S/2009/590, which contains the report of the Secretary-General pursuant to Security Council resolution 1846 (2008).

At this meeting, the Security Council will hear a briefing by Mr. Ahmedou Ould Abdallah. I now give him the floor.

**Mr. Ould Abdallah:** I should like to start by thanking the Council for its continued interest in and attention to the situation in Somalia, and specifically to the issue of piracy there.

I should like to make it clear from the beginning that piracy is, first and foremost, a very successful business with outlets in the region and beyond. It is therefore very important that we see it as it is — a criminal activity.

Following the adoption of resolution 1846 (2008), we have been working with a number of organizations within the United Nations system, our colleagues in Vienna and here at Headquarters, and other United Nations entities, including the World Food Programme and the United Nations Development Programme (UNDP), to follow up events in Somalia.

The deployment of naval ships and military aircraft to suppress piracy and armed robbery at sea off the coast of Somalia, as well as better self-protection of ships transiting the area, have considerably reduced the number of successful incidents in the region, especially in the Gulf of Aden. This expanding maritime presence is playing a critical role in stabilizing the situation at sea, and there is no doubt that the number of successful attacks would increase again if these military assets were reduced. The naval escorts protecting World Food Programme shipments are providing crucial protection for the delivery of humanitarian aid to Somalia.

At the same time, the number of pirate attacks has in no way diminished; the threat remains and, in some ways, is becoming more entrenched as more sophisticated methods are being adopted and attacks are taking place further out at sea. However, this is a further financial cost to the pirates and their criminal business — a risk they are nevertheless still ready to take because they see it as worthwhile.

We have to recognize that the international maritime presence has dealt a serious blow to the financial profitability of this criminal activity. Therefore the approach to combating piracy cannot be limited to the containment of the problem by international naval forces alone, no matter how successful — and I do consider it to be successful. This

fight must be part of an overall plan which includes building regional capacity, on the one hand, and dealing with the root causes, on the other.

In addition to various bilateral initiatives being undertaken by Member States, regional capacity-building is also being carried out through the International Maritime Organization (IMO), a specialized United Nations agency steering the implementation of the Djibouti Code of Conduct. The Code of Conduct aims to establish a cooperation framework among regional States combating piracy at both the operational and the legal levels. This covers interdicting ships suspected of piracy, information-sharing among regional States, and the prosecution of suspected pirates. Piracy's root causes are being addressed by my Office and my colleagues in the United Nations system, whose joint action focuses on establishing sustainable peace, effective governance, creating capable rule of law and security institutions, and — as far as possible — offering the Somali people lawful alternatives to piracy and banditry. I would like to address these issues in more detail.

The report before the Council (S/2009/590) highlights the role played by IMO in promulgating guidance for Governments, seafarers and the global maritime industry in suppressing piracy and armed robbery against ships, and in developing and implementing a regional strategy for the western Indian Ocean and the Gulf of Aden. This is the essence of the Djibouti Code of Conduct, which has been signed by 10 States of the region. IMO and its member States have long recognized that piracy is a symptom of the lack of effective Government and the rule of law ashore. With this aspect in mind, IMO has been working actively, in partnership with the United Nations Office on Drugs and Crime (UNODC) in Vienna and other United Nations bodies, INTERPOL and navies, to develop regional States' capacities to enforce the law at sea and, in particular, to counter piracy and armed robbery against ships in waters off the coast of Somalia.

On the prosecution of suspected pirates caught by the international naval forces operating off the coast of Somalia, UNODC has been providing assistance to regional States. Although all agencies agree that the ideal solution to the trial of pirates is a fair and effective court system in Somalia, that goal is still out of reach. Therefore, UNODC and the Office of Legal Affairs here at Headquarters are leading on the best

alternative: ensuring trial within a sound legal framework in other regional States.

Through the delivery of support directly to the police, prosecutors, courts and prisons of Kenya and Seychelles, UNODC is creating the conditions in which the arresting States are content to pass suspects over for trial and improving overall criminal justice and standards. The programme is being expanded to other regional States through the conduct of legal assessments and the delivery of assistance and, in partnership with UNDP, will develop the prisons — and later the prosecutors and police investigators — in some entities within Somalia, such as Somaliland and Puntland, to create the conditions in which pirates convicted outside Somalia can be returned home to serve their prison sentences. The United Nations plans to implement high-impact interventions, primarily in Puntland. Civilian policing performance and infrastructure — especially communications — in the strategic corridor from Bossaso to Galkayo through Qardho and Garowe will be and should be strengthened. After that, by the middle of next year, Puntland authorities should roll out police services to the rural and coastal areas.

In addition to the United Nations working closely to contain and combat the root causes of piracy, the United Nations has been closely working with INTERPOL, whose law enforcement strategy to combat maritime piracy is threefold: to increase intelligence-sharing, build regional police capacity and cooperate with other international and regional organizations. The goal is to support efforts to identify, arrest and prosecute pirates, trace and seize ransom monies and disrupt criminal networks.

The first priority has been promoting information-sharing with all police and non-police organizations, including the United Nations and naval and shipping industry partners. The INTERPOL I-24/7 global secure communications network is designed to facilitate this type of collaboration, and INTERPOL is helping to expand access to I-24/7 in the region. INTERPOL is also working with a number of Governments, including the United States and the United Kingdom, on maritime piracy financial investigations, and will host a maritime piracy conference early next year.

I would like also to welcome the proposal made by the regional body, the Intergovernmental Authority

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on Development (IGAD), to establish a blockade of known ports that are supporting piracy. I believe that that measure should send a clear message to the criminals behind the small ports — because some port facilities are in fact small and harmless — that they cannot keep defying the law and getting away with it.

In conclusion, I would like to stress that any long-term effort to address lawlessness at sea must be complementary to the current political, security, recovery and development efforts already being undertaken by the United Nations and the African Union Mission in Somalia. In this regard I welcome the intention of the Contact Group on Piracy off the Coast of Somalia to coordinate its initiatives with the International Contact Group on Somalia. Piracy is a symptom of wider problems ashore in Somalia. The only sustainable solution will be effective governance, the establishment of the rule of law and security institutions and the creation of alternative livelihoods in Somalia for stable and inclusive economic growth. In the present Government we have a credible and legitimate partner with whom to work to achieve this. It needs more assistance to do so.

**The President:** I thank Mr. Ould Abdallah for his briefing.

I shall now give the floor to members of the Security Council who wish to make statements.

**Sir Mark Lyall Grant** (United Kingdom): I would like to thank the Special Representative of the Secretary-General, Mr. Ould Abdallah, for his realistic briefing and for introducing the report of the Secretary-General pursuant to Security Council resolution 1846 (2008) (S/2009/590). The United Kingdom expresses its appreciation of the contribution of the United Nations and its agencies to this effort, including the Special Representative and his team.

The United Kingdom also welcomes the achievements of the Contact Group on Piracy off the Coast of Somalia in coordinating the efforts of the international community to address piracy in the region and the constructive contribution being made to these efforts by the Transitional Federal Government and the regional authorities of Somalia. We are pleased to lead work in the Contact Group on operational coordination and regional capacity development.

The level of coordination being achieved in the region by naval forces from a wide range of States is

unprecedented and impressive. Close cooperation among these forces, in particular the establishment of patrolling of the internationally recommended transit corridor in the Gulf of Aden, has managed to ensure that only one ship following that route and adhering to agreed best practice has been hijacked in the Gulf since December 2008. The statistics in the Secretary-General's report on the protection of World Food Programme aid and the supplies of the African Union Mission in Somalia (AMISOM) underline the successful role of the military operations in safeguarding essential shipping. But we cannot underestimate the significant challenge that we face. Even though the proportion of successful attacks continues to fall, the overall number of pirate attacks continues to increase, and 11 ships and 254 crew members are currently hijacked.

Pirates are now willing to venture further out to sea in search of targets, and to counter that, we need a different type of military response, led by intelligence. The military commanders know what they need in terms of military capability, and the international community must help to deliver it. But one message from the military commanders remains consistent. They are shocked by the lack of adherence by sectors of the merchant shipping community to the guidance that is given by the International Maritime Organization and industry bodies. Estimates suggest that a quarter of merchant shipping fails to follow this guidance. That failure makes them much easier targets. We have joined other major flag States in signing the New York Declaration on Best Management Practices to Avoid, Deter or Delay Acts of Piracy, and we are pressing all United Kingdom ships to adopt those practices when in the region. We urge all flag States to do the same.

The release of the Spanish fishing boat *Alacrana* earlier this week is obviously a welcome development, and we hope that all other hostages will soon be free, including British nationals Paul and Rachel Chandler, who were seized from their yacht on 23 October.

We pay tribute to Kenya for its leadership within the region in taking forward the detention and prosecution of pirates. The United Kingdom also welcomes the agreement by the Republic of Seychelles to accept pirate suspects for trial and detention. We stand ready with other partners to provide assistance to signatories of the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against

Ships in the Western Indian Ocean and Gulf of Aden who have undertaken to enact national legislation to enable the prosecution of pirates. We strongly support the work being taken forward by the United Nations Office on Drugs and Crime to help the Transitional Federal Government and regional authorities of Puntland and Somaliland to deal with suspects within Somalia.

The Secretary-General's report clearly highlights the need to address the situation on land in Somalia. The Contact Group decided on a number of measures at the meeting of its working group in London this week. Donors now need to commit themselves to providing financial and technical support to Somalia and to States throughout the region, including work on governance, rule of law, justice, alternative livelihoods and strategic communications. The implementation of the Djibouti Code of Conduct remains at the heart of regional capability development, transforming regional political will into action.

Piracy is only one of the symptoms of instability in Somalia, and, as the Special Representative has said, we must also address the root causes of that instability. I pay tribute to the efforts led by the Special Representative to support the Transitional Federal Government of Somalia in developing effective political and security structures. I should like to thank AMISOM, and in particular Uganda and Burundi, its two troop-contributing countries, for their outstanding efforts to support the Government against insurgents. I hope that others will join them to bring the Mission up to full strength.

The international community has shown unity and resolve in taking action to contain the threat of piracy, but we now need to show more of the same determination and unity on shore if we are to address its roots and causes.

**Ms. DiCarlo** (United States of America): I, too, should like to thank Special Representative Ould Abdallah for his comments and for his efforts, and those of the staff of the United Nations Political Office for Somalia, on behalf of the Somali people. I should also like to welcome to the Council today the Permanent Representative of Somalia, Ambassador Duale.

The scourge of piracy off the coast of Somalia affects us all through increased risk to our citizens, the disruption of global commercial shipping routes and

damage to property and goods. This problem shows no sign of abating. As the report of the Secretary-General (S/2009/590) notes, there were 160 instances of piracy in the East Africa area from 1 January to 30 September of this year, up from 136 during the same period last year. Many of these attacks are now shifting from the Gulf of Aden to the western Indian Ocean in response to successful naval operations in the Gulf.

The deep concern of the international community over this issue has resulted in extraordinary counter-piracy cooperation off the coast of Somalia. Dozens of States and international organizations are working together to suppress piracy and protect vulnerable ships transiting Somali waters or seeking to deliver badly needed humanitarian aid to Somalia's shores. In particular, the United States commends the efforts of the European Union's Operation Atalanta, of NATO's Operation Allied Protector and Operation Ocean Shield, and of the Combined Maritime Force's Task Force 151. We also commend the role played by individual States in these important efforts. The Shared Awareness and Deconfliction initiative has allowed for excellent operational and tactical coordination, and we thank all partners for their participation.

The Contact Group on Piracy off the Coast of Somalia has also made significant contributions to the global effort to suppress piracy, and we greatly appreciate the role that the United Nations has played here. In cooperation with the Contact Group, the United Nations Office on Drugs and Crimes and the United Nations Office of the Legal Adviser have worked to enhance the judicial capacity of States in the region. We are also grateful to the International Maritime Organization (IMO) for its work to coordinate and implement the Djibouti Code of Conduct. In this regard, we should like to acknowledge Japan's generous donation to the IMO's international trust fund.

The United States believes that the international community must continue and intensify efforts to combat piracy. We should like to raise five issues today that we think are important in this regard.

First, renewing the authority of Security Council resolutions 1846 (2008) and 1851(2008) is essential. These authorities provide a basis for ongoing counter-piracy military operations and allow Member States to prevent pirates from using Somalia's territorial waters, land and air as safe havens to evade forces in the area.



Secondly, we must continue to share information and best practices. On 10 September, the United States, along with several other flag States, signed the New York Declaration, a political commitment to ensure that vessels operating under the signatory flags implement internationally recognized best management practices for self-protection. These best practices include guidance from the International Maritime Organization, the maritime industry and flag States. We encourage other States to sign the New York Declaration and require vessels to implement self-protection measures.

Thirdly, we are concerned that ransom payments have contributed to the recent increases in piracy, and encourage all States to adopt a firm no-concessions policy when dealing with hostage-takers, including pirates.

Fourthly, the United States believes that affected States should give favourable consideration to prosecuting suspected pirates. We encourage States to enact domestic legislation to enable the prosecution of piracy as a crime in their national courts. We also urge support for regional States to enhance their capacities to prosecute and incarcerate pirates, and we encourage States to utilize the Contact Group's multi-donor trust fund. And we should especially like to commend States, in particular Kenya, that have taken the lead in prosecution.

Finally, the United States believes that a focus on Somalia's economic development, political stability and humanitarian needs is critical. Piracy is closely linked to instability, weak governance and rule of law, and a lack of opportunity on land. We strongly support efforts to assist the Transitional Federal Government in developing its institutions, including its security sector, and to boost Somalia's economy and create viable livelihoods. We also applaud the forces of the African Union Mission in Somalia that are helping to stabilize Somalia and the role of the United Nations in supporting the Somali people.

We are encouraged that Somalia is taking further initiatives to address piracy, including plans to reactivate the coast guard to help patrol Somalia's waters. The United States remains committed to working with the Transitional Federal Government and the international community to combat piracy. We laud the excellent cooperation to date and look forward to seeing it continue.

**Mr. Kafando** (Burkina Faso) (*spoke in French*): I thank Mr. Ahmedou Ould Abdallah for introducing the report of the Secretary-General (S/2009/590) on piracy in the context of our consideration of the situation in Somalia. Having examined the report and paid close attention to the additional information that has just been presented to us, we should like to make some observations.

Due to their frequency and modus operandi, the activities of the maritime militias off the coast of Somalia remain a source of extreme concern, making the search for a comprehensive and viable solution to the tragedy in Somalia even more difficult. The statistics given in the report are eloquent and only confirm the gravity of the problem. Of the 300 attacks that took place around the world between 1 January and 30 September, 160 occurred in the region off the coast of East Africa. This also shows the determination of the pirates in the face of the reaction of the international forces in the Indian Ocean.

Despite their limited capacities and the consequences of the civil war that has raged in the country for more than a decade, the Somali authorities, especially those of Puntland, have launched a number of initiatives to combat piracy and prosecute those responsible. We welcome these efforts, which led to the arrest and detention of more than 100 suspects in Bossaso, and we urge the Somali authorities not to let down their guard and to continue their fight against this criminal enterprise.

We also warmly welcome the mobilization of the international community in response to this scourge, and we praise the efforts made by States and international and regional organizations in this area. The role of the Intergovernmental Authority on Development deserves particular notice. We also welcome the establishment of a Contact Group and the implementation of the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden.

While we may believe that the considerable reduction in the number of successful attacks, as stressed in the report, is the result of dynamic international cooperation, it is important nevertheless to bear in mind that the legal cooperation regime currently in place is an exception and should not be considered as replacing or modifying the provisions of

the United Nations Convention on the Law of the Sea, which remains the sole legal instrument relevant to counter-piracy activities.

However, we hope that the momentum of this international solidarity can go beyond mobilizing against piracy alone, and would like to see it manifest in other areas of concern to the population of Somalia, since it is clear that the proliferation of acts of piracy is directly related to the overall situation facing Somalia today. That is clear from the reports of the Secretary-General and of the Monitoring Group on sanctions, which establish, inter alia, a very clear causal link between piracy and the violation of the arms embargo in Somalia.

There is therefore no doubt that it was the meltdown of the internal situation in Somalia that gave birth to the maritime militias, which in turn have become an aggravating factor due precisely to the complicity between the pirates and the armed groups active in Somalia.

In that context, cooperation between civil and military actors in the fight against piracy must be broadened so that direct bilateral and multilateral assistance can be offered to the Transitional Federal Government (TFG). Some countries are already taking steps in that area and their example is worth following.

With that direct assistance, the Somali Government will be able to consolidate its police force and security services, exercise better control over its land and sea territories and facilitate the delivery of humanitarian assistance. Such assistance should work in tandem with the African Union Mission in Somalia (AMISOM), the only international presence on the ground and whose preponderant role has been demonstrated, but which sorely lacks the financial and logistical resources to carry out effectively its mandate and guarantee the implementation of the Djibouti Agreement.

We welcome efforts by the Secretariat to support AMISOM pursuant to resolutions 1863 (2009) and 1872 (2009), notably through its support for the African force. We also support the Secretary-General's appeal for a more substantive assistance to AMISOM so that it can continue to provide support to the Transitional Federal Government in the maintenance of peace and security.

The new dynamic created by several political parties participating in the Transitional Federal Government and establishing themselves now, in fact, in Mogadishu, is certainly something to be welcomed, but we have to act quickly to ensure that it does not crumble, which would plunge the country once again into chaos.

In conclusion, we would like to thank Mr. Ould Abdallah, Special Representative of the Secretary-General for Somalia, for his ongoing efforts on behalf of and commitment to the people and the authorities of Somalia.

**Mr. Le Luong Minh** (Viet Nam): I would like to begin by thanking Mr. Ould Abdallah, Special Representative of the Secretary-General for Somalia and Head of the United Nations Political Office for Somalia for his briefing and introduction of the report of the Secretary-General, as contained in document S/2009/590. I also welcome the participation of His Excellency, Ambassador Duale of Somalia in the Council's meeting today.

Viet Nam remains deeply concerned about piracy off the coast of Somalia. There has been no significant change in the number of incidents along the East African coastline, and more dangerously, there has been a recent surge of alleged attempts and attacks in the Western Indian Ocean, in which more sophisticated methods and techniques have been employed.

Against this backdrop, enhanced coordination among the international stakeholders, regional organizations and the Transitional Federal Government (TFG) is crucial so as to prevent and suppress piracy and armed robbery at sea off the coast of Somalia. We find it encouraging that Member States operating in the territorial waters and high seas off the coast of Somalia have developed complex and comprehensive military naval operations and the necessary coordination mechanisms.

We believe the Contact Group for Piracy Off the Coast of Somalia with its four supporting working groups is an effective international cooperation mechanism and a common point of contact between and among States, regional and international organizations on all aspects of the fight against piracy. Recent coordination efforts between the Contact Group and the International Contact Group on Somalia have produced tangible results. Such coordination should be encouraged and enhanced.

At the regional level, we welcome the adoption of the Djibouti Code of Conduct on the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, and we are convinced that full implementation of the Djibouti Code of Conduct will enable States in the region to develop appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, intercept suspected vessels and prosecute suspected pirates.

We welcome, in this connection, the establishment of the International Trust Fund Supporting Initiatives of the Contact Group on Piracy off the Coast of Somalia and the International Maritime Organization Djibouti Code trust fund.

Anti-piracy activities by the TFG continue to face numerous challenges, most notable of which is a lack of the capacity to thwart, curb or investigate piracy in areas under the control of the Government. We call upon the international community and regional organizations to provide technical and financial assistance to Somalia, at the request of the TFG and with notification to the Secretary-General, so as to strengthen its security institutions and its capacity to address lawlessness at sea and bring to justice, in compliance with the international law and relevant United Nations Security Council resolutions, those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea.

We commend the efforts of the European Union Naval Force Operation Atalanta and States, acting in their national capacities, in cooperation with the TFG and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia, including those transporting humanitarian supplies to Somalia and United Nations supplies to AMISOM.

We commend the significant efforts undertaken by the Government of Kenya to prosecute suspected pirates captured by the international community in its national courts. We also urge all States, especially those directly harmed by piracy, to provide the Kenyan Government with the logistical and financial support to address the challenges of prosecuting suspected pirates.

Finally, we thank the United States delegation for having prepared the draft resolution on piracy. My delegation will continue to constructively engage in the

efforts to achieve consensus on this important document.

**Mr. Takasu (Japan):** I would also like to thank Special Representative Mr. Ould Abdallah for his introduction of the Secretary-General's report, and his very helpful briefing this morning.

Piracy off the coast of Somalia continues to pose a serious threat affecting one of the most important international transport routes. Japan is deeply concerned about the loss of lives and assets owing to the sharp increase of piracy over the past year, despite our best efforts. While incidents in the Gulf of Aden have recently declined, they have moved further south and attacks in the Western Indian Ocean, closer to the Seychelles, have significantly increased. We should not tolerate piracy trying to disrupt essential United Nations activities such as the delivery of food assistance by the World Food Programme and the logistical support to the African Union Mission in Somalia (AMISOM).

The fragile security situation in Somalia produces fertile ground for piracy, and instability caused by piracy, in turn, affects the situation on land. In order to achieve stability in Somalia as a whole, international efforts and assistance must be directed towards dealing with the unstable conditions in south-central Somalia, in particular Mogadishu, and assisting counter-piracy activities along the coastline.

Given the broad scope of the negative effects of piracy, and in order to protect the vital sea route, a multifaceted and coordinated approach must be pursued at three levels: international, regional and national.

The adoption of Security Council resolution 1851 (2008) led to the establishment of the Contact Group on Piracy Off the Coast of Somalia, which has met four times at the plenary level. Japan welcomes the progress the Contact Group has made and the fact that it has now developed into a coordinating forum for various counter-piracy activities with increased membership along with substantive activities on the part of the working groups.

In recent plenary meeting chaired by Japan, the Contact Group decided to establish a new international trust fund to assist initiatives such as the prosecution of and judicial procedures against arrested pirates.

We are also pleased that a mechanism for coordinating the operational aspect of counter-piracy activities, and is known as the Shared Awareness and Deconfliction (SHADE) mechanism, is well in place. It comprises the operations of the European Union's Operation Atalanta, NATO, the Combined Maritime Forces and States such as China, India, Japan and Russia.

The challenge now is how to enhance coordination and more effectively share information to counter pirates who are always changing their tactics. In this regard, we appreciate the European Union Naval Force Operation Atalanta for escorting the delivery of the AMISOM logistical support package. For its part, Japan deploys two naval vessels and two P-3C Orion maritime patrol aircraft which are providing valuable information to all participating States. It has expanded the scope of escorts to include foreign vessels, effective June 2009.

It is also important to strengthen the capacity of ship crews to protect themselves from piracy attacks. To that end, we welcome the New York Declaration on the Commitment to Best Management Practices to Avoid, Deter or Delay Acts of Piracy, which was originally initiated by the United States and has now been signed by ten flag State countries, including Japan. We urge other flag States to join the Declaration and implement its guidelines.

Together with the global efforts, strong engagement and coordination are also indispensable at the regional level. In particular, efforts by the States in the region, such as Kenya, Yemen and Seychelles, to ensure prosecution for piracy deserve the support and assistance of the international community. The international trust fund to assist the activities of the Contact Group on Piracy off the Coast of Somalia must become operational in a timely manner.

In order to increase the capacity of these States in their anti-piracy efforts, it is also important to implement the Djibouti Code of Conduct, which was adopted by States of the region last January. Japan has contributed \$13.6 million to the Djibouti Code Trust Fund of the International Maritime Organization. We hope this support will be speedily utilized by parties concerned to expedite the launching of regional centres for information-sharing in Kenya, Tanzania and Yemen, and a training centre in Djibouti.

Piracy activities are closely related to the security situation on the land. Long-term solutions will require restoring stability and governance in Somalia. The Secretary-General's report emphasizes the crucial importance of supporting Somalia's own institutional capacity in various areas. First, it is essential to strengthen AMISOM and the Somali security institutions in south-central Somalia. Secondly, as a medium-term goal, we need to advance, stability, capacity and socio-economic development of areas outside of south-central Somalia, including Puntland, which is home to many pirates. Thirdly, we would like to see improved coordination between the Contact Group on Piracy off the Coast of Somalia and the International Contact Group chaired by Mr. Ould Abdallah. We look forward to enhanced coordination in the next plenary meeting of the Contact Group in January 2010.

In conclusion, the international community needs to intensify the coordinated, multi-faceted anti-piracy efforts at the global, regional and national levels in order to see to it that they bear fruit. Japan will contribute positively to the ongoing negotiations on a draft resolution prepared by the United States for the renewal of the Security Council authorization.

**Mr. Liu Zhenmin (China)** (*spoke in Chinese*): Mr. President, the Chinese delegation thanks you for convening today's meeting. We thank Secretary-General Ban Ki-moon for his report on piracy in Somalia (S/2009/590), as well as the Special Representative of the Secretary-General, Mr. Ould Abdallah for his briefing this morning.

Piracy activities in Somalia have become ever more rampant, posing a direct threat to the safety of international humanitarian relief activities and international navigation and a potential menace to world economic activities. In his latest report submitted to the Security Council, the Secretary-General points out that since the beginning of 2009, 34 vessels have been hijacked and 450 seafarers abducted in the waters off Somalia. China is also one of the victims of the pirate activities of Somalia. We support the collective efforts by the international community to address the problem of piracy in Somalia and hope that the international community will agree on an integrated approach to doing so at an early date.

Since December 2008, the Chinese Government has, under United Nations coordination and within the

framework of relevant Security Council resolutions, taken an active part in international cooperation in the fight against Somali piracy. The Chinese navy escort flotilla will continue to fulfil our Government's commitment to protect the safety of Chinese vessels and people travelling through the Gulf of Aden and the waters off the coast of Somalia and to protect the safety of the vessels of the World Food Programme and other international organizations that are delivering humanitarian relief supplies.

Our effective fight against piracy in Somalia still awaits an integrated solution. We believe that the international community should pay attention to the following priorities.

First, it is imperative to strictly observe international law and relevant Security Council resolutions. In fighting piracy in Somalia, we should strictly observe the relevant rules of international law as contained in the United Nations Convention on the Law of the Sea and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; act in accordance with the requirements of relevant Security Council resolutions in full respect of the sovereignty and territorial integrity of the littoral States in particular; and maintain communication and consultation with the Transitional Federal Government of Somalia.

Secondly, priority should be given to addressing the domestic problems of Somalia. Without an end to the domestic crisis in the country, the piracy problem cannot be rooted out. Only by continuing to consolidate the domestic process of political reconciliation in Somalia and promoting its economic development to enable the people to live and work in peace and happiness can the security situation in Somalia have any hope of gradual movement towards stability and the piracy problem be gradually rooted out. The fact that the political process of reconciliation has remained stagnant and the security situation has not fundamentally improved after so many years is a cause for concern. The international community should work harder in this area.

Thirdly, assistance should be rendered to the regional States for their capacity-building. Ensuring that peace, tranquillity and safety of navigation in the Gulf of Aden and Somali waters has a bearing on the interests of the littoral States and the safety of international navigation. It also requires the mutual understanding

and full cooperation between the regional States and the international community. China supports the joint efforts made by the countries in the Red Sea, the Gulf of Aden and the western Indian Ocean to address the problem of piracy in Somalia through regional arrangements. We welcome the signing of the Djibouti Code of Conduct. The international community should, through various means, help the countries concerned in boosting their capacities.

For over a year, despite intensified efforts by various naval forces to crack down on piracy in the Gulf of Aden and off the coast of Somalia, pirate attacks do occur frequently. We believe that, to put an effective end to pirate attacks, the international community should further expand maritime escort operations. Meanwhile, the relevant participating countries should also improve their coordination in these escort operations. With that in mind, the competent departments of China propose that the naval forces that provide escorts in these waters define areas of responsibility in order to improve the efficiency of escorts and to lessen the possibility of pirates succeeding in their attempts.

At the request of Working Group 1 of the Contact Group on Piracy Off the Coast of Somalia, China hosted a meeting from 6 to 7 November, on international maritime escort coordination in the Gulf of Aden with invited representatives from countries and organizations that have participated in the fight against Somali piracy. The meeting further discussed cooperation in enforcing the concept of areas of responsibility in the Gulf of Aden.

China has an open attitude towards international navigational escorts. We are ready to engage in, within the framework of international law and the relevant Security Council resolutions, multiple forms of bilateral and multilateral escort cooperation with all countries and organizations concerned in a joint response to the menace of piracy in Somalia.

**Mr. Apakan** (Turkey): I would like to thank the Special Representative of the Secretary-General, Mr. Ould Abdallah, for introducing the report of the Secretary-General (S/2009/590). I also welcome the Permanent Representative of Somalia, Ambassador Duale.

In spite of the ongoing multinational naval operations off the coast of Somalia and around the Gulf of Aden, which are aimed at increasing maritime

security and securing the delivery of international assistance, the acts of piracy in the region remain a source of concern for the international community. It is crucial to effectively and robustly address this problem. We praise the efforts of the Contact Group on Piracy off the Coast of Somalia, which is definitely an important international cooperation mechanism in all aspects of combating piracy. Turkey joined the Group as a founding member, and we have been actively contributing to its work. We are pleased to see the increased interaction between the Group and the United Nations.

Turkey is of the opinion that that it is crucial for the Contact Group to continue to play a leading role in setting up a solid legal framework and practical arrangements in order to clarify pending legal issues concerning the arrest, detention, prosecution, trial and extradition of suspected pirates and to strengthen related cooperation. Working Group 2 of the Contact Group has already gone a long way in this regard.

The increase in the number of pirate attacks in 2009 despite all efforts of the international community indicates that satisfactory deterrence has not been fully achieved. One of the main factors behind this is undoubtedly the lack of capacity to detain and punish perpetrators who are apprehended. If we want to sustain the success of the ongoing operations, we should continue to explore legal options for the effective prosecution of suspected pirates. Hence, Turkey believes that it would be useful if a mechanism were to be put in place in one of the countries in the region, under the supervision of the United Nations, to effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia. That would no doubt require the support of the international community for the enhancement of capacity in the States of the region. We believe that the newly established trust fund can be utilized in this regard.

Given the vastness of the area, Turkey believes that it is vital to improve and develop operational and intelligence support to counter-piracy operations. That said, we welcome the establishment of the Shared Awareness and Deconfliction (SHADE) group. It will no doubt help contribute to interoperability among the naval forces. Sharing of information should not be limited to the maritime area, but also be extended to relevant airspace and mainland with the active contribution of the regional countries and

organizations. We welcome the contributions of INTERPOL in this regard.

Allow me to briefly say a few words about what Turkey has done in the fight against acts of piracy and armed robbery at sea. Thus far, Turkey has taken part, with four frigates, in the efforts aimed at repressing such acts under the Standing Maritime Group 2 of NATO and Combined Task Force 151 (CTF-151). Indeed, CTF-151 was commanded by Turkish naval forces from May through August 2009. Today a Turkish frigate with air assets is operating in the region, pursuant to the provisions of the relevant Security Council resolutions. To date, the Turkish naval elements in the region have apprehended some 30 piracy suspects in various operations.

The Turkish maritime authorities are actively seized of the issue of strengthening situational awareness for commercial ships and other capabilities. For that purpose, the document on best management practices to deter piracy has been widely circulated to the industry. A national maritime armed robbery information system has also been initiated.

We should continue to concentrate and cooperate on the elimination of the root causes of piracy that are embedded in Somalia. We share the view that measures taken to combat piracy and armed robbery at sea off the coast of Somalia can yield results only if they are coupled with the efforts to strengthen the capacity of both the Transitional Federal Government of Somalia and the African Union Mission in Somalia.

**Mr. Dabbashi** (Libyan Arab Jamahiriya) (*spoke in Arabic*): At the outset, I would like to express our appreciation to the Special Representative of the Secretary-General, Ahmedou Ould Abdallah, for his briefing. We would also like to commend the significant and ongoing efforts that he and his team have been making to bring about security, peace and stability in Somalia.

Piracy off the coast of Somalia continues to threaten the security and safety of international navigation off the coast of eastern Africa. Efforts thus far have not managed to eliminate the threat, although they have greatly limited piracy. That reaffirms that piracy is a natural result of the unstable situation in Somalia in terms of security and the absence of State authority in general.

This problem will not be eliminated just by dispatching naval forces. Dealing with it requires a more comprehensive and integrated approach. We share the Secretary-General's view that one of the means to guarantee the security of marine navigation off the coast of Somalia in the long term will be to achieve stability on the ground through development, promotion of economic revival in local communities, consolidation of the rule of law, development of security institutions and provision of support to the Transitional Federal Government and the African Union Mission in Somalia (AMISOM).

Any solution must also include capacity-building, especially for Somali judicial and maritime institutions at the local and national levels and in the region in general, the prosecution of those suspected of piracy and armed robbery at sea and strict compliance with the arms embargo imposed by the Security Council.

If implemented, those measures will eventually obviate the need for the international marine presence, which is currently playing an important role in securing international marine navigation. We would like to encourage the States and organizations that participate in those forces to examine a way to implement capacity-building measures in Somalia and find a solution to the root causes of piracy. We urge those States to protect Somali sea resources, in particular from illegal fishing operations by foreign vessels, which we believe are one of the main motives for piracy.

In addition, we encourage the international community to continue to deploy such naval forces in strict compliance with the international law of the sea in order to offer protection to all shipments contracted by the United Nations and the World Food Programme, including along the routes used to deliver logistical support to AMISOM and international maritime trade routes.

We believe that suspected pirates apprehended off the Somali coast must be handed over to the Government of Somalia, which is responsible for prosecuting them. We urge the international community to help the Government of Somalia by providing technical assistance to its judicial bodies. In that connection, we encourage Member States to contribute to the international trust fund designed to help defray the expenses associated with the prosecution of suspected pirates as well as other activities related to

combating piracy. The Government of Somalia can sign agreements with other countries in the region providing for the prosecution of suspects apprehended in those countries and specify where they will serve their sentences if found guilty.

In closing, we wish to stress that providing support to the Government of Somalia to help it establish its authority throughout the country is of the utmost importance if our efforts to combat piracy and eliminate its root causes are to be successful. We also wish to encourage the Contact Group on Piracy Off the Coast of Somalia to coordinate its activities and initiatives with those of the International Contact Group on Somalia. In addition, we note the urgent need to draft an agreement that would protect Somalia's sea resources from arbitrary use and would prevent pirates from launching attacks on navigation in international waters.

**Mr. Puente (Mexico)** (*spoke in Spanish*): I wish to express appreciation for the valuable information provided by Ambassador Ahmedou Ould Abdallah, Special Representative of the Secretary-General for Somalia, and to acknowledge his commitment and efforts and those of his team in seeking solutions to the problems faced by Somalia. We also welcome the presence of Ambassador Elmi Ahmed Duale, Permanent Representative of Somalia.

We believe that the report of the Secretary-General (S/2009/590) is very clear on a number of points. One of them is that the phenomenon of piracy and armed robbery off the coast of Somalia is a challenge requiring fully coordinated urgent action by the Transitional Federal Government, the countries of the region and the international community. One year ago, the Security Council acted decisively against that threat by adopting resolutions 1846 (2008) and 1851 (2008). The cooperation, commitment and commendable work of many countries has produced a common front against such acts.

Nevertheless, the number of attacks and hijackings off the coast of Somalia, in the Gulf of Aden and in the western Indian Ocean in 2009 is higher than that recorded in 2008. We are also concerned at the fact that, in addition to the increase in the number of acts of piracy and armed robbery committed in recent days, smaller vessels, such as fishing boats and pleasure craft, are being attacked.

We acknowledge the efforts being made by the Transitional Federal Government of Somalia, in particular to promote greater coordination with the Puntland and Somaliland regions in seeking to prosecute suspected pirates. We commend the coordination and cooperation efforts between Operation Atalanta, NATO, Combined Task Force 151 and Member States and naval forces in the region to carry out monitoring and escorts. In particular, we pay tribute to Operation Atalanta for its efforts to escort and protect vessels related to the World Food Programme and the African Union Mission in Somalia.

With regard to the Contact Group on Piracy Off the Coast of Somalia, we recognize as an important step forward the establishment of the international trust fund to support the prosecution of suspected pirates and other initiatives of the Group, as well as the efforts being made in its working groups to promote greater coordination and capacity-building, to disseminate best practices and to strengthen counter-piracy legal mechanisms. Regarding the latter point, we reaffirm that those responsible for acts of piracy must be brought to justice in accordance with the applicable legal regime, including standards in the area of human rights and fundamental freedoms.

Moreover, we also highlight the work done by the International Maritime Organization in setting out guidelines and specific actions to be taken by States, as well as the joint efforts with the United Nations Office on Drugs and Crime to correct the deficiencies of national legislative systems. In that connection, the widespread implementation of the Djibouti Code of Conduct is essential. That would enable States in the region to take part in actions carried out by international forces, through the strengthening of their legal and judicial capacities.

As we have stated on previous occasions, my delegation believes that piracy off the coast of Somalia is not a phenomenon isolated from the situation on the ground and that the solution to both problems requires a comprehensive approach. This must include, among other elements, developing the rule of law and security institutions as a complement to the peace process, strengthening the Transitional Federal Institutions, building the capacity of judicial institutions and prosecuting criminal suspects in order to combat impunity.

Finally, my delegation has emphasized both in the Security Council and in the Contact Group on Piracy

the negative impact of this phenomenon on the sanctions regime with regard to Somalia. Such acts, in addition to being apparent violations of the arms embargo, undermine the stability and security of the country and directly affect access of humanitarian aid. Mexico, in its capacity as Chair of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia, reaffirms that it is essential that the States and multinational maritime coalitions deploying forces to combat piracy cooperate with the Monitoring Group on Somalia by providing information in a systematic and timely manner on actions that violate the sanctions regime and which have a particularly negative impact on efforts to promote economic and social development in Somalia and on the consolidation of the Government and the institutions of Somalia.

**Mr. Skračić** (Croatia): We, too, would like to thank Mr. Ould Abdallah, Special Representative of the Secretary-General for Somalia, for his significant contribution and for the valuable insights he presented here today. Croatia has aligned itself with the statement to be delivered later in this debate by the Swedish presidency of the European Union.

Croatia notes the recent progress that has been achieved in Somalia but, at the same time, perceives the scope and the complexity of the challenges still lying ahead for that country. Undoubtedly, piracy represents one of the burning issues, threatening not only the key international shipping lanes and commerce but also the effective provision of much-needed humanitarian assistance.

Croatia fully supports the Djibouti Peace Agreement as a necessary prerequisite for the sustainable resolution of many pressing challenges in Somalia. We are of the view that reinforcing Somali sovereignty, as well as strengthening the capacity of the Somali Government to provide law and order and sustainable livelihoods for its people, will significantly contribute to the eradication of piracy and armed robbery off the Somali coast.

Let me repeat here the evident and often reiterated conviction of this Council: there can be no security along the Somali coast without genuine security on its land. It is therefore apparent that only an integrated approach has the possibility of yielding results. In that context, Croatia commends the African Union Mission in Somalia for the important role it is



playing in supporting the Transitional Federal Government in its efforts to implement the aforementioned strategy, as well as for its endeavours to bring about a long-term political security recovery and development changes.

Croatia welcomes the continuing strong commitment of the international community to the Somali Government in accordance with the relevant Security Council resolution and applicable international law. In that context, we further welcome the Somali Government's renewed request for assistance in securing international and territorial waters off the coast of Somalia, and the continuing implementation of the provisions of resolution 1846 (2008).

Croatia believes that the Contact Group on Piracy off the Coast of Somalia is proving to be an effective coordination mechanism of the international community. We welcome its decision to establish a trust fund with the purpose of supporting adequate measures against piracy and related activities aimed at implementing the Group's objectives. Moreover, we welcome additional coordinating efforts within the naval forces operating in the region, including the establishment of Shared Awareness and Deconfliction (SHADE), as well as the continuing coordination between the Contact Group on Piracy off the Coast of Somalia and the International Contact Group on Somalia.

We are heartened to see such efforts bearing fruit, the testimony of which is the considerable reduction in the number of successful pirate attacks registered in recent months. Croatia believes that the Governments of the region should play a vital role in establishing conditions for effectively combating piracy. We commend the Government of Kenya for its significant efforts in that regard, and especially for its readiness to detain and prosecute pirates apprehended by other participants in the common efforts against piracy. It is our hope that other countries that have expressed their willingness will shortly be ready to follow suit.

Similarly, we call on regional States to fully implement the Djibouti Code of Conduct as an important step towards assuming increasing responsibility in the fight against piracy and robbery at sea. We particularly welcome further progress in the field of regional capacity-building, and call upon all States to continue logistic and financial support of such regional efforts.

**Mr. Churkin** (Russian Federation) (*spoke in Russian*): About a year and a half has now passed since the Security Council seriously took up the problem of piracy off the coast of Somalia and began to develop measures to combat this evil. We think it is now time to offer an interim assessment of the results of the work done, on the basis of the report of the Secretary-General (S/2009/590) submitted to the Council under resolution 1846 (2008).

The situation in the Gulf of Aden is still far from normal, and the danger of a further increase in piracy has not been eliminated. Yet much has been done in mobilizing the international community to counter this threat. First of all, there is now a firm understanding that the most important element in resolving the problem of piracy off the Horn of Africa is the stabilization of the situation in Somalia: bringing order on land. We believe that along with maintaining a naval presence in areas dangerous to shipping, our other priority must remain the stabilization of the military and political situation within the country. In this connection, we note the important part played by the African Union Mission in Somalia. Russia has always advocated sustainable peace and national reconciliation in Somalia on the basis of the Djibouti Agreement, in the interests of strengthening security and stability in the region.

The world community must broaden its participation in efforts in the area of security, including those of the United Nations, the African Union, the European Union and other organizations, with the focus on building up the potential of the Government of Somalia to discharge its basic functions. States and regional organizations cooperating with the Transitional Federal Government of Somalia in combating piracy are cooperating closely in military, political and legal areas, and are working to improve them through the appropriate coordination mechanisms. In this context, we would stress the key part played by the Contact Group on Piracy off the Coast of Somalia.

There has been growing awareness in the international community and the shipping industry of the methods used by pirates when they attack, and thus a growing arsenal of measures has been developed to counter such attacks. We note here the important contribution of the International Maritime Organization. We welcome the initiatives taken by the United Nations in combating piracy and call for further

strengthening of its role in this area. We are particularly grateful to the Secretariat for acting as an information exchange centre and for its valuable work relating to peace on land, as well as for its ideas in the area of capacity-building.

We must combat impunity and give greater attention to prosecuting people suspected of piracy. This is not just about ensuring that punishment is unavoidable, but also about meeting appropriate standards in the area of human rights. We note the significance of efforts to resolve this problem at the level of the national judiciary, and particularly cooperation on the part of authorities in Kenya and other countries in the region. We welcome the decision of the Contact Group on Piracy to set up a trust fund to support anti-piracy initiatives.

At the same time, as experience shows, it is not always possible to ensure criminal prosecution of pirates in national courts. Initiatives aimed at studying possible additional mechanisms concerning this problem are therefore still relevant. Work in this area not only does not contradict efforts at the national level, it is capable of organically complementing them. The Russian Federation continues to be actively involved in combating piracy off the coast of Somalia. We currently have a group of ships from the Russian Navy in the area, the third since October 2008. We intend to build up interaction with other interested parties in dealing with all aspects of this issue. It is important to ensure that international anti-piracy efforts go uninterrupted within the existing mandate. In this connection, we support the extension of Security Council sanctions, as requested by the Transitional Federal Government, on comprehensive measures to halt piracy and armed robbery at sea under resolutions 1846 (2008) and 1851 (2008).

**Mr. Araud** (France) (*spoke in French*): I should like to thank the Special Representative of the Secretary-General for Somalia, Mr. Ould Abdallah, for his briefing and for the work he is doing in Somalia.

The pirates are still a threat, first of all to the people of Somalia, since half of all Somalis are now dependent on international aid, and virtually all of this aid reaches Somalia by sea. The pirates are also a threat to the troops of the African Union Mission in Somalia (AMISOM), as their supplies, again, essentially come by sea. Lastly, they imperil international shipping off the coast of Somalia, one of

the most dense shipping areas in the world. Many of the previous speakers have indicated that the deep-rooted causes of piracy are to be sought on land, and that the insecurity prevailing after more than 20 years of conflict, the lack of a State, the absence of legal economic possibilities and the actions of criminal groups have created the conditions that have led to the appearance of piracy. We are all in agreement that security and development will in the long term prevail. In the short term, however, resolute action by the international community is essential in order to limit the effects of piracy. Any slackening in our endeavours would have immediate consequences. France notes that during the two months in two years when the World Food Programme (WFP) received no protection for its ships, it had to cut its shipments by 50 per cent, to the detriment of the civilian population.

In his report (S/2009/590) the Secretary-General described the various efforts being deployed by the international community. Through Operation Atalanta, the European Union is playing an essential role here, and regional organizations and national partners, such as the Russian Federation, China and Japan, are also involved in these activities. France is playing an active role through Operation Atalanta as well as in its national capacity.

In parallel, we have been able to improve coordination. The Contact Group on Piracy Off the Coast of Somalia, with 45 States members, is playing an essential role in making political, legal and military progress. The Shared Awareness and Deconfliction (SHADE) mechanism in the framework of the Contact Group's Working Group 1 is enhancing the exchange of operational information with a view to working together more effectively.

We have come along way since the first operations to protect World Food Programme (WFP) vessels, in November 2007. Our efforts are beginning to bear fruit. The report of the Secretary-General (S/2009/590) indicates that while the number of attacks remains high, a large proportion of them are foiled thanks to the international presence.

The European Union has committed itself to continuing Operation Atalanta, deployed in December 2008, at least through December 2010. In that way, it will continue to provide protection to WFP vessels and provide resolute support to other vulnerable vessels, including those chartered by the United Nations in

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order to supply the African Union Mission in Somalia (AMISOM). This poses a particularly significant challenge, as 80 per cent of those convoys have come under attack in the past.

Operation Atalanta and the countries of the European Union will be considering the expanded sphere of operation of the pirates in the Indian Ocean. France has provided assistance to Seychelles, and the European Union has signed an anti-piracy agreement with Seychelles, which will make it possible for pirates apprehended by Operation Atalanta to be transferred to Seychelles. Clearly, I support the statement to be made by the representative of Sweden on behalf of the European Union presidency.

As we pursuing our efforts we must retain the legal framework of our activities and extend resolutions 1846 (2008) and 1851 (2008) for a further year, which authorize participating countries, under strict conditions, to enter Somali territorial waters and take action against pirates. I am grateful to the delegation of the United States for its draft resolution and trust that the Council will adopt it in the coming days.

Effective action also requires diversification, and we have begun to do that. Beyond the military aspects, it is essential that we improve legal redress for acts of piracy, as mentioned by the representative of the Russian Federation. In the near future, the international community must provide material assistance to Somalia and other countries of the region to enable them to apprehend, prosecute and punish pirates. Here, France commends Kenya's endeavours in that regard and supports the trust fund that the Contact Group decided on 10 September to establish, to which we shall be making a contribution. We also encourage all States to amend their legislation to make it possible to try acts of piracy within their jurisdictions.

Finally, we must continue to address more directly the root causes of piracy. The European Union has begun to consider this and has indicated its willingness to provide enhanced support to the Transitional Federal Government, for instance, in combating illegal fishing. We must continue such efforts, while ensuring that naval forces combating piracy off the coast of Somalia are not faced with tasks that are too numerous, too diverse or too far from their mission.

The true significance of Security Council action off the coast of Somalia is seen when we consider the

Council's comprehensive strategy for that country. Provisions adopted by the Council include support for the Transitional Federal Government, resolute support for AMISOM, including the use of United Nations resources, and a sanctions regime that has been renewed and enhanced by resolution 1844 (2008). We still must make progress on all those fronts. France wishes in particular to see the pirates and their supporters punished as individuals.

I wish in conclusion to note that the Security Council was innovative in adopting resolution 1816 (2008) on 2 June 2008, with the aim of combating piracy off the coast of Somalia. The international community has been able to make use of the new tools that the Council has provided through its resolutions. International mobilization is strikingly broad and is complemented by the development, through the Contact Group, of a new framework for cooperation, in close association with the United Nations Secretariat. This encourages us that the Council will continue its work in Somalia, beyond the issue of piracy, in the framework of a specific and pragmatic strategy.

Once again, I thank the Special Representative of the Secretary-General for helping ensure that the international community takes consistent action on Somalia. I assure him of our full support.

**Mr. Urbina** (Costa Rica) (*spoke in Spanish*): Let me begin by thanking Mr. Ahmedou Ould Abdallah, Special Representative of the Secretary-General for Somalia, for his briefing. I wish also to welcome the presence among us of Ambassador Duale.

Over the past year, fighting piracy and armed robbery off the coast of the Horn of Africa has been a focus of the international community, leading to the implementation of a number of initiatives by States, organizations and international naval forces. We welcome those coordinated efforts. The number of attacks has fallen, and there is relative stability along this important economic route, which is also needed for the delivery of humanitarian assistance to the region.

But we have some doubts about whether these achievements can be sustained, given that this phenomenon — which began as a low-level local activity — has become a big business with sophisticated equipment for attacks and multi-million-dollar profits. It can thus be assumed that it is supported by complex transnational structures. In our view it is important that future reports the Secretary-General make reference to

that element and consider possible sources of support and financing for piracy in the area.

Alongside initiatives to deal with maritime attacks in the area, it is also important to build the capacity to investigate and prosecute those suspected of these acts. Combating impunity is without doubt a deterrent for anyone who is thinking of carrying out illegal activities. Here, we commend Kenya for its action to put suspects on trial, and we urge other countries, including Somalia, to strengthen their legislation, procedures and capacities so that they can hold such trials. Assistance from the United Nations and other international organizations, along with the implementation of legal instruments such as the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, would also be very important in achieving results.

As everyone knows, piracy and armed robbery in Somalia are symptoms of a far deeper crisis in that country. Hence, we should very carefully consider the root causes of Somalia's problems. When we analyse the situation there, we must do so in the framework of a long-term strategy for the restoration of normality that would include the humanitarian, political, security and development dimensions.

In Costa Rica's view there are four interrelated areas that demand the attention of this Council and the international community.

First, we must continue to support the Transitional Federal Government so that it can achieve an effective framework for security, augment control of the territory and of the means for cohesion and promote an inclusive political process. The Djibouti peace process offers an adequate setting for working towards those goals.

Secondly, we have to intensify efforts to further strengthen the rule of law and to provide proper training for the Somali security forces. Costa Rica recognizes the work being done by the Transitional Federal Government and by AMISOM with the support of the United Nations. Strict compliance with the arms embargo in Somalia is an indispensable instrument. Also, we support the Monitoring Group on Somalia and call for cooperation with it to help with compliance with the obligations deriving from the resolutions adopted by this Council.

Thirdly, we must maintain and strengthen efforts to deal with the humanitarian situation in Somalia. It is essential to ensure delivery of assistance for the fifty per cent of the people who depend on it. Attacks on humanitarian organs and their personnel must cease. In parallel, we have to ensure that we promote development assistance so that sustainable economic activities can grow and dependence on humanitarian aid can be reduced.

Lastly, financing the various initiatives to help Somalia overcome the crisis must continue being one of the main concerns of the international community. Costa Rica urges States and donors to continue to provide resources to the trust funds. In doing so, they will confirm their commitment to peace and stability in that region.

**Mr. Rugunda** (Uganda): I thank the Special Representative of the Secretary-General for Somalia, Mr. Ould Abdallah, for his briefing this morning, and I welcome the participation of the Permanent Representative of Somalia, Mr. Duale, in today's Council meeting.

One of the many negative consequences of the conflict in Somalia and of the absence of strong institutions in the country is piracy. It started around the coast of Somalia, but it has now expanded further out, to international waters. Piracy is negatively impacting international trade and tourism, fuelling the illegal arms trade and the financing of insurgents and terrorism in Somalia and beyond.

Given the disruptive nature of piracy, it is only fitting that the international community responds to the problem appropriately. In that regard we support multinational and regional efforts aimed at combating and suppressing piracy and armed robbery at sea.

The Secretary-General's report (S/2009/590) outlines the measures in place or being put in place and those proposed to address the problem of piracy off the coast of Somalia. The deployment of naval assets, including those under the European Union's Operation Atalanta, NATO's maritime forces, the United States-led Combined Maritime Forces and those of individual States, have all contributed to checking the incidences of piracy in the coastal region neighbouring Somalia, thus affording some level of protection for international trade and delivery of humanitarian supplies to Somalia. Furthermore, the creation of the Contact Group on Piracy Off the Coast of Somalia to

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help coordinate the various efforts is a notable contribution in the fight against piracy.

Commendable as these efforts may be, the struggle against piracy will be won not on the high seas but on land, in Somalia. The amount of resources that have been deployed either directly on the high seas or indirectly through targeting off-shore solutions to the problem of piracy is enormous and must be running in billions of dollars each year. Yet, much as the incidences have been checked, piracy persists and will persist for as long as the instability on mainland Somalia remains and State institutions remain fragile.

As outlined in Secretary-General's report, there is a big difference between, on the one hand, the robust and concrete responses by States acting either individually or in cooperation with others in deploying resources at sea and, on the other, the cautious and incremental stance by the international community when it comes to addressing the root causes of piracy on mainland Somalia.

While we support the measures that have been deployed at sea by Member States to deal effectively with the problem of piracy, equally robust measures should be put in place on mainland Somalia, backed by similar, or more, resources. Such measures should include enhancing support to the African Union Mission in Somalia (AMISOM) to enable the force to effectively implement its mandate and providing it with additional personnel so that it reaches its authorized capacity of 8,000 troops in preparation for its eventual re-hatting. Equally, it is imperative that the Transitional Federal Government be sufficiently supported to strengthen State institutions, particularly in the security sector. Strengthening State institutions is the most effective durable way of combating piracy in the waters off Somalia.

Lastly, we thank the Secretary-General's Special Representative, Mr. Ould Abdallah, and the staff of United Nations agencies and the humanitarian agencies for the support extended to the Somali people in difficult circumstances.

**The President:** I shall now deliver a statement in my national capacity.

At the outset, I would like to thank the Special Representative of the Secretary-General, Mr. Ould Abdallah, for his presentation and for his work in Somalia, as well as the efforts of the entire United

Nations family in these very difficult circumstances — including, in particular, the International Maritime Organization and the United Nations Office on Drugs and Crime. I would also like to welcome the presence of His Excellency the Permanent Representative of Somalia.

Austria aligns itself with the statement to be delivered later in this meeting by Sweden on behalf of the European Union. Allow me to add a few additional points.

My delegation agrees with previous speakers that piracy and armed robbery in the Gulf of Aden are directly linked to the lack of stability and the disastrous economic situation in Somalia. At the same time, piracy contributes to the deterioration of the security situation and may play a role in financing embargo violations. As some merchant vessels are choosing different routes, piracy also hurts the economic situation of the region. Moreover, it negatively affects the delivery of much-needed aid to Somalia.

Austria expresses its deep concern about the continuing deterioration of the humanitarian situation in Somalia and its dire consequences for the civilian population, in particular women and children.

The European Union Naval Force Operation Atalanta aims to combat piracy off the coast of Somalia, with the primary goal of protecting vessels of the World Food Programme delivering food aid. We would also like to commend the naval engagement of other States and organizations cooperating in the fight against piracy in the framework of the international Contact Group.

The implementation of the pertinent international legal regime — particularly the United Nations Convention on the Law of the Sea and the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation — presents considerable challenges for States parties to those conventions in the region.

Austria attaches great importance to full respect for all applicable norms of international law, in particular international human rights law, including the right to a fair trial and non-refoulement.

We welcome the fact that the United Nations Office on Drugs and Crime (UNODC) contributes to countering maritime piracy in the Horn of Africa through a programme to increase regional capacities to

deter, arrest, prosecute and detain pirates. As the Secretary-General noted in his report (S/2009/590), the prosecution of suspected pirates apprehended off the coast of Somalia is a burden for regional States, especially Kenya and the Seychelles. In that regard, we welcome the Contact Group's establishment of the international trust fund, administered by the UNODC.

We believe that in addition to the naval operations, the development of rule of law and security institutions in Somalia, improvement in livelihoods and education are important factors for the durable eradication of piracy off the coast of Somalia.

I now resume my function as President of the Council.

I give the floor to His Excellency Mr. Elmi Ahmed Duale, Permanent Representative of Somalia.

**Mr. Duale** (Somalia): Thank you, Mr. President, for allowing me to participate in this meeting and to make a brief statement.

First of all, I welcome the report of the Secretary-General (S/2009/590) and support the statement by the Special Representative of the Secretary-General Mr. Ahmedou Ould Abdallah. We also support the efforts by the International Maritime Organization in the implementation of the Djibouti Code of Conduct, with which we agree fully.

Before I go any further, allow me, on behalf of my Government and my Mission, to voice our grave concern and convey our sincere and heartfelt sympathy for all the crew and the two British citizens who are still at the mercy of pirates. We hope that they will soon be released.

As has been stated here by all Council members and mentioned in the Secretary-General's report, and as you, Sir, said in a nutshell, the piracy problem is a symptom of the major problems that have been bedevilling Somalia for a long time — nearly two decades. As many have stated here, that requires a concerted, coordinated effort at the international, regional and local, country level.

Towards that end I am pleased to state that Somalia has created a coast guard body and has already trained 1,000 coast guard personnel. The plan is to train and deploy up to 10,000. However, as has been mentioned, further training, equipment and other assistance is required to make them effective and so

that they can be deployed in areas where they are most needed, in north-eastern Somalia. The coast guard will be able to exert greater control if it is enabled not only to fight piracy at the local level, but also to control the illegal fishing, the dumping of toxic waste and the smuggling of arms and drugs, for which Somalia can be used as a conduit for smuggling to all neighbouring and regional countries.

Finally, I hope that the Security Council will renew the mandate, as the Transitional Federal Government has already requested. In that connection, our Government once again conveys its sincere appreciation and gratitude to Council members and the regional and international organizations assisting in the challenge of combating the scourge of piracy off the coast of Somalia. It has requested that the Council renew its approval contained in resolution 1846 (2008) and welcomes the renewal, for a period of twelve months, of the authority provided in paragraph 6 of resolution 1851 (2008) to those combating the scourge of piracy on the high seas off the coast of Somalia.

We are also grateful for the support we have so far received from our regional groups: the Intergovernmental Authority on Development and the African Union Mission in Somalia, without which, I believe, the Transitional Federal Government would have been in a much worse situation.

I also fully subscribe to the statements by Council members, particularly when you, Sir, summarized the point regarding support for the Somali Transitional Federal Government to enable it to control Somali ports against piracy and also to better control any illegal fishing or dumping of toxic waste, which are what the pirates now claim to be acting against.

**The President:** I now give the floor to the Permanent Representative of Sweden.

**Mr. Lidén** (Sweden): I have the honour to speak on behalf of the European Union. The candidate countries Turkey, Croatia, the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro, Serbia, Ukraine, the Republic of Moldova, Armenia and Georgia, align themselves with this statement.

Acts of piracy are illegal and can never be tolerated. The ongoing naval operations off the coast of Somalia have increased maritime security and secured the delivery of international assistance. The Contact

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Group on Piracy off the Coast of Somalia has facilitated policy cooperation and coordination. In this framework, we have also managed to establish an efficient coordination mechanism — the Shared Awareness and Deconfliction group — among the multinational, regional and national naval forces operating in the area. All actors should support existing coordination efforts.

More can be done besides engaging in coordinated efforts to protect vessels. We need to improve our dialogue on maritime issues with the local Somali communities. Other illegal activities besides piracy should be acknowledged and discussed. Collaboration should be encouraged between Somalia and other countries in the region with more experience in licensing of fishing and unlicensed fishing. Previous United Nations studies on Somalia regarding illegal fishing and illegal dumping should be updated.

We should continue to explore legal options for suspected pirates who are apprehended. Efficient and credible trials of suspected pirates are essential to sustaining the progress made through the ongoing operations. Kenya has made a very significant contribution through the transfer agreement with the European Union regarding prosecution. Kenya has so far agreed to detain and prosecute 75 suspected pirates whom the European Union has apprehended. The European Union appreciates that a similar arrangement was concluded recently with Seychelles. We support the decision of the Contact Group to establish a trust fund in order to support the detention, prosecution and imprisonment of pirates. Besides the pirates, we must also take measures to target the criminal networks, not only in Somalia but also beyond, that finance and organize piracy.

The European Union continues to contribute successfully to maritime security in the area through the naval Operation Atalanta. We have decided to extend the mandate until the end of 2010 subject to the decision by the Security Council to extend the authorization in resolution 1846 (2008). Since December 2008, Atalanta has provided vital protection to 50 World Food Programme vessels delivering roughly 300,000 tons of food to the direct benefit of 1.6 million Somalis. It has also provided protection to vessels carrying shipments to the African Union Mission in Somalia (AMISOM) and to other vulnerable vessels. Atalanta has also had a leading role in the coordination of the different operations in the area.

Piracy off the coast of Somalia can be eradicated only if the situation on the mainland is stabilized. We have to address the root causes. Somalia remains a country in conflict and insecurity is widespread there. Governance is fragmented. The Transitional Federal Government (TFG) is constantly under attack from insurgent groups and has not been able to protect its citizens or uphold law and order.

The European Union supports the efforts of the Transitional Federal Government and the ongoing Djibouti process. The political process has to be accompanied by a comprehensive and coordinated approach to achieving a lasting settlement. This includes covering political, security, development and humanitarian aspects of the crisis. Clearly articulated political commitments and priorities on behalf of the Transitional Federal Government are key to efficient support. In this regard, we welcome the first steps taken by the TFG to establish accountable financing systems.

In July, the European Union decided to step up its engagement in promoting peace and development in Somalia. For us, it is essential to support the TFG in its efforts to increase security and stability in its territory. Besides ongoing support to AMISOM, the European Union is therefore considering a possible mission to contribute to the training of the security forces of the Transitional Federal Government. We continue to be an active member of the International Contact Group on Somalia and to deliver substantial humanitarian and development aid.

Acts of piracy can have an impact on human life, the environment and the safety of navigation and of crew members. In Somalia, piracy can also affect the delivery of humanitarian aid to 3.8 million people in need of relief. It is a threat to international commerce, and ultimately to peace and security in the region. The regional dimension has been emphasized lately by the expanding activities of the pirates. It is in the interests of Somalia, the region and the international community to address the menace of piracy off the coast of Somalia. Together, we can do that.

**The President:** I now give the floor to the representative of Ukraine.

**Mr. Sergeyev (Ukraine):** On behalf of the Ukrainian delegation, I would like to thank you, Sir, for holding this important meeting and for inviting Ukraine to participate. I would also like to wish the

Austrian delegation and you personally every success in fulfilling your highly responsible duties as the Security Council President.

Our appreciation also goes to the Special Representative of the Secretary-General for Somalia, Mr. Ahmedou Ould Abdallah, for presenting the second report of the Secretary-General (S/2009/590) pursuant to resolution 1846 (2008), dealing with the issue of piracy off the coast of Somalia.

Aligning ourselves with the statement of the European Union, my delegation would like to point out some issues of particular relevance to Ukraine.

Like the previous report of the Secretary-General (S/2009/146), the document before the Security Council today details a worldwide surge in the number of incidents of piracy and armed robbery at sea against vessels. It convincingly testifies that this challenge is no longer confined to the Gulf of Aden. It has become global, requiring a global, coordinated and integrated response. Ukraine believes that the United Nations should play a lead role in these efforts.

Ukraine welcomes actions taken by the Security Council to counter piracy, including the adoption of resolution 1846 (2008), which my country co-sponsored. We support the adoption of its successor resolution with the aim of extending and fine-tuning the anti-piracy measures put in place by the Security Council. My delegation strongly believes that the Security Council should remain actively seized of this matter.

Ukraine commends the activity of the Contact Group on Piracy off the Coast of Somalia, which has already proved to be instrumental in facilitating coordination among the major actors, aimed at combating piracy in all its aspects. We look forward to the early launching of the trust fund to support counter-piracy initiatives off the coast of Somalia. My country appreciates the standing invitation to participate in the meetings of the Contact Group and is ready to contribute to its fulfilling its mandate in every practical way.

Ukraine considers European Union naval force Operation Atalanta to be an important element of the international community's efforts aimed at enhancing the safety of navigation and at preventing and combating piracy. We take positive note of the efforts of the North Atlantic Treaty Organization and the United States-led Combined Maritime Forces, aimed at

fighting piracy off the coast of Somalia, which have also contributed to reducing the number of successful hijackings.

Ukraine takes the challenge of piracy with the utmost seriousness. Ranking fifth among the countries whose citizens are contracted to the international merchant fleet, Ukraine is seriously suffering from acts of piracy. At the time of this meeting, Somali pirates continue to hold hostage 24 Ukrainians, the crew of the vessel *Ariana* captured on 2 May. Over the past five years, 15 vessels with Ukrainians on board have been hijacked by pirates. Sixty-seven of my compatriots have been captured by the Somali pirates, among whom one has been shot dead and one seriously injured.

In his address to international organizations, President of Ukraine Victor Yushchenko urged the international community to redouble its practical efforts to fight piracy at sea. A number of proposals have been put forward to this end, some of which, such as the establishment of regional coordination centres for navigation safety, are already being implemented.

With a focus on the legal and methodological aspects of the global anti-piracy campaign, Ukraine, in the framework of the International Maritime Organization (IMO), was one of the initiators of the IMO resolution on piracy and armed robbery of ships in waters off the coast of Somalia, which preceded relevant Security Council resolutions. The political decision was taken by the President of Ukraine to join the European Union Operation Atalanta. At this stage, we are carefully studying the modalities of our involvement in this maritime coalition, either through intelligence, logistical or military support. Ukraine is also considering making a contribution to the trust fund to support counter-piracy initiatives.

We welcome recent international meetings on piracy, which reveal the strong political resolve of the United Nations Member States to deal with this challenge. In order to maintain this positive dynamic, Ukraine is ready to host one such future event under the auspices of the United Nations.

It is obvious that the roots of piracy lie on the ground and not at sea. They are closely linked to political, economic and social conditions, mainly extreme poverty and lack of food. Fully backing the comprehensive and coherent United Nations policy recognizing the interconnected nature of security and development, this year Ukraine has become a donor to



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the World Food Programme, with contributions totalling more than \$500,000.

I would like to conclude by reaffirming the strong commitment of Ukraine to contribute to the efforts of the Security Council aimed at countering maritime piracy and armed robbery at sea off the coast of Somalia.

**The President:** I now give the floor to the Permanent Representative of Norway.

**Mr. Wetland** (Norway): I would like to thank the Special Representative of the Secretary-General, Mr. Ould Abdallah, for his important presentation here today and for the work he is doing under difficult circumstances. I am also pleased to see my colleague, the Permanent Representative of Somalia, participating in our meeting, and I listened carefully to his important statement as well.

Piracy and armed robbery off the coast of Somalia and in the Gulf of Aden continue to threaten the people of Somalia, the whole region and a series of protected interests. Those interests include innocent lives, humanitarian supplies and international commerce and navigation. Some 1,000 Norwegian-owned ships pass through the Gulf of Aden every year. We, too, are directly affected, and we are acting accordingly.

The root of piracy and armed robbery is instability and the weakening of Government institutions in Somalia. Consequently, in order to restore order on the seas we must work to restore order on land in Somalia. Bringing peace and stability to Somalia and re-establishing effective Government institutions in the country is essential to a long-term solution to piracy as well. Humanitarian, development and security assistance is therefore needed. Norway is conscious of this and we are shouldering our part. Norway will also be chairing the next meeting of the Contact Group on Piracy off the Coast of Somalia, which will take place here in New York in January.

We are beginning to see the effects of preventive measures taken by the shipping industry itself. The best management practices adopted by the Contact Group on piracy are thus serving their purpose, and implementation by all needs to be further encouraged. Moreover, the naval operations in the waters outside Somalia have prevented new captures even if we have not prevented them all. Those operations are well

coordinated and may set a good example on how nations and international organizations can cooperate in order to solve an international security problem. Norway has experienced this first-hand through our participation with a frigate in the European Union's Operation Atalanta. We appreciate the contributions of a great number of countries and organizations.

Now, we must make sure that pirates captured are brought to justice. We greatly appreciate the contributions of countries in the region, in particular Kenya and Seychelles. We recognize that there is a need for increased capacity in those, the most affected countries. That is why Norway has decided to contribute €500,000 to the trust fund established under the auspices of the Contact Group on piracy.

Public perceptions are also important. We know that many Somalis consider piracy to be a criminal activity. We know less about how the entire international engagement is perceived in Somalia. We therefore believe that the Contact Group should implement a communication and information strategy for Somalia. We must be able to convince the Somalis that this operation is also serving their interests and to counter any notion that piracy is seen as a just cause by parts of Somali society.

In conclusion, Norway will continue to support the Security Council in its efforts to address piracy off the coast of Somalia.

**The President:** I now give the floor to the representative of the Philippines.

**Mr. Gatan** (Philippines): At the outset, Mr. President, the Philippines congratulates you on Austria's assumption of the presidency of the Council for the month of November, and thanks you for convening this very important meeting to discuss piracy in the territorial waters and even on the high seas off the coast of Somalia. We also thank the Special Representative of the Secretary-General for Somalia, Mr. Ould Abdallah, for presenting the Secretary-General's report on piracy in Somalia (S/2009/590).

The Philippines is extremely alarmed and gravely concerned over the resurgence of piracy, a detestable crime condemned by the civilized world, committed against innocent vessels and their officers and crew members particularly in waters off the coast of Somalia. This resurgence, carried on with blatant disregard for the public outcry of the international

community against it, has resulted in the capture and detention as hostages of many Philippine nationals on board these vessels.

As the supplier of a third of the world's shipping manpower, with over 270,000 Filipino seafarers aboard international shipping vessels, the Philippines is directly affected by piracy off the coast of Somalia. In the first quarter of this year alone, 120 out of 300 hostages taken by pirates were from the Philippines, the largest national contingent of the group. As of 5 November, more than 160 Filipino seafarers on board various merchant vessels had been abducted by pirates off the coast of Somalia since January. This month alone, 16 Filipino seamen were abducted by these pirates in a span of just one week. Piracy in the area now constitutes a threat to the lives of many Philippines nationals.

The Philippines joins the call for concrete efforts from the international community to address piracy off the coast of Somalia and to increase efforts to assist seamen from all nations who have suffered as a result of these heinous acts. The Philippines recognizes the efforts undertaken by the Security Council to address these acts of piracy in waters off the coast of Somalia, as best evidenced by its adoption of resolutions 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (2008). The Philippines looks forward to further, bolder steps to be taken by the Security Council to counter piracy. Moreover, the Philippines expects that future actions by the Security Council will take into full consideration the safety and security of the lives of the hostages.

The Philippines also fully supports efforts led by the United Nations and concerned countries and international organizations to assist in the stabilization of Somalia, in partnership with the Government of Somalia, and in finding a long-term solution to this international crisis. The Philippines is doing its part to help Somalia. During the African Union Summit held in Tripoli on 31 August, President Gloria Macapagal-Arroyo met with Somali President Sheikh Sharif Sheikh Ahmed and offered the Philippines' assistance in training and strengthening the capabilities of the Somali coast guard. As a result, the Philippines is pleased to report that a high-level Somali delegation led by the Deputy Prime Minister and the Minister of Fisheries and Marine Resources will arrive in Manila this month of November to discuss the details of this capacity-building exercise. Somalia was also invited to

join some 80 representatives from 26 countries participating in the capacity-building workshop on regional cooperation against piracy and armed robbery in Asia, held in Manila from 10 to 12 November. The Philippines has also made a financial contribution in support of the Somali security institutions.

In conclusion, the Philippines hopes that the international community's attention and efforts to address the clear and present danger of piracy off the coast of Somalia will not wane, but instead intensify with the goal of ending this scourge.

**The President:** I call on the Permanent Representative of Seychelles.

**Mr. Jumeau (Seychelles):** I should like to thank you, Sir, for this opportunity to address the Security Council, the Secretary-General for his report (S/2009/590) and Special Representative Ahmedou Ould Abdallah for his briefing.

Seychelles is by far the smallest and most vulnerable country to be directly impacted by the spillover of the instability in Somalia. By spillover I mean, of course, the piracy that, as the Secretary-General has pointed out in his report, continues to spread farther East and South into the Indian Ocean, in and around the waters of Seychelles and beyond.

To us in Seychelles, the scourge of piracy is not just affecting the freedom of the seas, maritime trade, humanitarian aid or the security of international shipping. To Seychelles, piracy in the Indian Ocean is severely endangering our national security, territorial integrity and economic development, stability and viability.

The greatest handicap Seychelles faces in combating piracy is that its 115 far-flung islands are sprinkled over an exclusive economic zone of 1.4 million square kilometres. This vast ocean territory is larger than France, Spain, Portugal, Belgium, the Netherlands and Luxembourg combined. Despite Seychelles having a population of just 85,000 and, consequently, very limited naval and military resources, the Government has had to station troops on our outlying islands to protect our territorial integrity and national security. We are drawing up new anti-piracy legislation and beefing up our coast guard and relevant investigative, prosecutorial, judicial and custodial institutions as best we can within our limited resources.

While it is true we are receiving some help here from our bilateral and multilateral partners, including the United Nations Office on Drugs and Crime and the International Maritime Organization, more is needed. This is because Seychelles is having to divert scarce funds from its economic and social development to defend the country against pirates. This is happening at a time when the country is quickly losing much-needed revenue and suffering escalating unforeseen costs because of the pirate attacks, while at the same time struggling through difficult but vital budget-cutting economic reforms in collaboration with the International Monetary Fund.

For example, pirate attacks in and around Seychelles have slashed our revenue from fishing, the second most important pillar of our economy after tourism, by more than half. The tuna catch by fishing boats operating out of our capital Port Victoria has also tumbled by 50 per cent to the lowest figure since the 1980s. Several distant-water fishing vessels which were operating out of Port Victoria have left the Indian Ocean altogether. The number of boats seeking licences to fish in Seychelles's exclusive economic zone is declining, and even our own domestic fishermen fear putting out to sea. We finally had to allow foreign boats to take troops or armed security guards on board to protect them while fishing.

More than 80 per cent of what we consume is imported, mostly by sea. The cost of maritime insurance has shot up, and some cargo ships are now bypassing Seychelles and unloading goods destined for our islands in other ports. All this has helped push up prices and the cost of living. Some cruise ships have cancelled their cruises in and around Seychelles, and private yachting is on the decline. Sea travel to our most distant islands has to be done by convoy.

Unable to effectively protect such a vast territory on our own, we have had to turn to our friends abroad for help. As a result, our population has watched with a mixed sense of anxiety and reassurance as Seychelles has fast become an increasingly important hub in the fight against piracy as it spreads farther and farther into the Indian Ocean.

A signatory of the Djibouti Code of Conduct, Seychelles has also signed status of forces agreements and/or memorandums of understanding with the United States, the European Union, France, Britain and Belgium. Further agreements are being negotiated with

NATO and the United Arab Emirates, and we have active military cooperation with India, Russia and other friendly countries. We have allowed the United States to station unmanned aerial vehicles or drones in Seychelles to supplement the multinational military surveillance aircraft flying from our islands to seek out pirates and alert naval forces and international shipping as to their whereabouts. Meanwhile, we await various kinds of assistance that have been promised to us to help boost our own contribution to the fight against piracy, and we would welcome more.

In this regard, we welcome the establishment of an international trust fund by the Contact Group on piracy to complement the Djibouti Code of Conduct trust fund. The Seychelles Government would also support an arrangement whereby pirates convicted in other countries could serve their prison terms in Somalia.

As the Council can see, Seychelles is both in the thick of it and on the front line, but not of our own choosing. We have no choice, as we are the only country in the Indian Ocean to be under siege from pirate attacks, not against us per se, but against anything they see moving in and around our waters.

Despite the escalating international military build-up in the Indian Ocean, the biggest in any one region in recent times, we in Seychelles are under no illusion that the long-term solution to piracy in the region and to the security and economic problems it is causing our islands lies in addressing the root cause — the unrest in Somalia itself. The Seychelles Government therefore supports the Secretary-General's call to strengthen the capabilities of the Somali Transitional Federal Government and of the African Union Mission in Somalia, to restore the rule of law, peace, security and progress to Somalia and, in doing so, to also help eradicate piracy from its shores.

Peace will not return to the waters of the Indian Ocean, nor tranquillity to the paradise islands of Seychelles, until there is peace in Somalia. Until then, Seychelles will remain committed to and active in the fight against piracy in the region, but only as far as its resources allow.

**The President:** I call on then representative of Spain.

**Mr. Yáñez-Barnuevo (Spain)** (*spoke in Spanish*): My delegation, of course, endorses the statement made

earlier in this debate by the representative of Sweden on behalf of the European Union.

The incidents that continue to occur in the waters off Somalia demonstrate every day that piracy is not a problem of the past but constitutes a grave threat to international maritime navigation and legitimate fishing activities. Spain firmly condemns all acts of piracy and believes that it is necessary to join forces internationally to put an end to this scourge.

The means used in the seizures off the coast of Somalia have evolved in recent times. The pirates undertake daring and highly organized operations, perpetrating their crimes at ever-increasing distances from the coast. It is therefore necessary to enhance means of protection so that the delivery of humanitarian aid, international navigation and commercial activities can be safe once again in those waters.

As stated in the 13 November report of the Secretary-General (S/2009/590), introduced to the Council by the Special Representative of the Secretary-General, Mr. Ould Abdallah, the coordination of the efforts of the international community and the Somali authorities will be crucial in order to successfully deter pirates and armed robbery in the region.

Spain is one of the many States behind the European Union naval Operation Atalanta, a fine model for contribution to safety at sea, together with forces deployed by NATO and regional States and organizations. Through coordination of its own forces and those of third parties, the World Food Programme seeks to protect its vessels as they deliver humanitarian aid to Somalia. Secure maritime corridors have been established in the Gulf of Aden for the vessels of the African Union Mission in Somalia (AMISOM) and their provisions.

As the Permanent Representative of Sweden noted earlier, the European Union has decided to extend Operation Atalanta to December 2010. Spain and the entire European Union believe that it would be important to receive a strengthened Security Council mandate in order to provide more effective coverage to the entire area under threat.

One of the greatest challenges to be met is the rise in piracy that is affecting the security and economic development of the region as a whole. Much remains to be done, as shown by the high number of

vessels and crews still being held by pirates, including Spanish vessels. The most recent incident was the capture of the fishing vessel *Alakrana*, which was fortunately freed yesterday.

On behalf of the Government of Spain, I would like to express my thanks for the cooperation of the countries of the region in this fight, in particular Kenya, whose contribution is crucial to apprehending and trying the pirates. We would also like to thank the Republic of Seychelles for its cooperation. I would also like to emphasize the assistance of the African Union through AMISOM and of the troop-contributing countries, in particular Uganda and Burundi.

Spain has played a full part in the work of the Security Council on that issue, together with other Member States with a particular interest in combating piracy. We have sponsored the various resolutions that have been adopted on the matter. We will therefore be pleased to co-sponsor a draft resolution allowing the Council to extend the mandate set out in the provisions of resolution 1846 (2008) and subsequent resolutions.

The Government of Spain is aware that the deep-rooted causes of piracy in the waters off the coast of Somalia are to be found not at sea, but on land. Somalia continues to be beset by a cruel civil conflict that has cost the lives of hundreds of thousands of Somalis over decades of chaos and hostilities. According to the United Nations High Commissioner Office for Refugees, the number of internally displaced persons is approaching 1.5 million.

Hence, the international community must strengthen its support for the Transitional Federal Government, the legitimate Government of Somalia. The Government of Spain, inter alia, participated actively in the donor conference for Somalia held in Brussels in April. On that occasion, Spain committed nearly €8 million, which has already been disbursed.

Spain trusts that, with the resolute support of the international community, the Transitional Federal Government will be able to complete the reconciliation process under way and, pursuant to the Djibouti agreement, achieve progress on an inclusive national dialogue embracing the largest possible number of stakeholders from Somali society. We also believe it necessary to decisively address security sector reform and to work on disarmament, demobilization and reintegration projects.

We need to define a comprehensive strategy for Somalia here at the United Nations, and it is therefore necessary to rely on the African Union, the European Union, the Intergovernmental Authority on Development and other regional actors involved.

The European Union is taking important steps to reinforce security through the preparation and future approval of a joint mission to train the security forces of the Transitional Federal Government. Spain is willing to play its part in that operation and, indeed, to lead it. That will mark our ongoing contribution to the Somali police via the African Union, now standing at \$8 million.

Spain, as President of the European Union as of January 2010, will lend all its support to ensuring that identification of a common strategy for Somalia remains at the fore of the international agenda. To that end, Spain intends to convene an international conference on Somalia in the first half of 2010, in coordination with the efforts of the international community in support of the Transitional Federal Government. We trust that the outcome of that international conference will be a political strategy that will make a decisive contribution to bringing peace, good governance and reconstruction to Somalia.

**The President:** I now give the floor to the Special Representative of the Secretary-General, Mr. Ould Abdallah, to respond to comments and questions.

**Mr. Ould Abdallah:** At the outset, I would like to thank all those who have had such kind words of support for my Office and me and, in particular the Permanent Representatives of the United Kingdom and France, who I am meeting today for the first time.

Everyone agrees that in order to address the issue of piracy, land security needs to exist. There is no dispute on that point. However, how do we achieve that goal? To do so, first of all, donors must, in my opinion, deliver financial and other assistance to the Somali Transitional Federal Government, as pledged in Brussels last April. The difference between pledges and effective delivery is stark. We have to deliver what has been promised.

Secondly, it is vital that the salaries of police officers be paid. The police in Somalia have not been paid in 16 months. That is a fact, so there is little point in training more officers if we are not sure of being

able to provide them with salaries, equipment and the means to make their living. If we cannot do that, they will take it from the streets. They will turn to extortion. I have to be honest with the Council — this is a problem. How can we train if we are not sure we can pay to equip?

Thirdly, training without stipends will simply make them, as I said, more effective and violent on the street. We have to help the Government to be capable of delivering, to take responsibility vis-à-vis its population and to be able to be our partner.

To be fair, the burden of providing security in Somalia, especially in Mogadishu, should not be left to AMISOM alone, and I mean to the troops from Uganda and Burundi. They are doing a great job under difficult circumstances. Pledges made in Brussels to support them should be fulfilled without delay. And we must acknowledge the role played in this regard by the African Union Commission and its Chair, Libya, with which my Office has an excellent working relationship.

I offer many thanks for something new: countries that have initiated and put into effect a mechanism — not to analyze the crisis in Somalia, to say that it is bad or good and so on — but to pay effectively and to help. Working with an international auditing firm, they help with the mechanism.

But very few countries — China, Libya, Norway and the United States of America — have contributed. They have contributed, not with analyses but by helping the Government to deliver. Other countries — Algeria, Djibouti, Kenya and Yemen — have contributed in their own way. That is how the Government has been able to resist armed and funded external aggression.

I would also like to take this opportunity to encourage the millions in the Somali diaspora in Europe, America and Australia to do all they can to help bring peace and security to their country of origin, so that they can have a place that they would happily call home.

Finally, in terms of the political situation and peace in Somalia, I would like to remind all those who advise — and they should advise, as advice is always important — that the Government is legal and legitimate and has, on its own, survived armed and foreign-supported aggression for two months. AMISOM has helped, I should add. It needs to be

strengthened, and this is why I am grateful to the countries I mentioned earlier, which have provided immediate assistance, not only humanitarian, but with cash to pay police. That can strengthen the Government and help it continue the dialogue it is having with the opposition.

The Secretary of State for Defence is from the opposition. Many members of the Government are from the opposition. We have to continue our work — as we did in Burundi, Liberia and everywhere else — implement the Djibouti agreement and call for new reconciliation. A new conference could weaken the Government and encourage the radicals and the business around them. By that, I mean piracy.

Our problem is that many people are against peace. It prevents them from enjoying lucrative profits.

So there is a need for more discussion among Somalis in Somalia, but the so-called panacea of international conferences held externally could do more harm than help. We must always operate first and foremost under the principle of “do no harm”. Reconciliation efforts should be done in Somalia. That is what is good for the country and good for the United Nations.

I thank the presidency of the Council, as well as its embassy in Nairobi with which we work very closely, as we do with the Council here.

**The President:** There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

*The meeting rose at 12.55 p.m.*

**Annex 55**

Security Council, 67<sup>th</sup> year: 6729<sup>th</sup> meeting, New York, S/PV.6729, 5 March 2012

United Nations

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# Security Council

Sixty-seventh year

Provisional

## 6729<sup>th</sup> meeting

Monday, 5 March 2012, 10 a.m.  
New York

<i>President:</i>	Mr. Bellingham . . . . .	(United Kingdom of Great Britain and Northern Ireland)
<i>Members:</i>	Azerbaijan . . . . .	Mr. Mehdiyev
	China . . . . .	Mr. Wang Min
	Colombia . . . . .	Mr. Osorio
	France . . . . .	Mr. Briens
	Germany . . . . .	Mr. Wittig
	Guatemala . . . . .	Mr. Rosenthal
	India . . . . .	Mr. Hardeep Singh Puri
	Morocco . . . . .	Mr. Loulichki
	Pakistan . . . . .	Mr. Tarar
	Portugal . . . . .	Mr. Moraes Cabral
	Russian Federation . . . . .	Mr. Churkin
	South Africa . . . . .	Mr. Mashabane
	Togo . . . . .	Mr. Menan
	United States of America . . . . .	Mr. DeLaurentis

## Agenda

The situation in Somalia

Special report of the Secretary-General on Somalia (S/2012/74)

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*The meeting was called to order at 10.05 a.m.*

### **Expression of thanks to the outgoing President**

**The President:** As this is the first meeting of the Council for the month of March 2012, I should like to take this opportunity to pay tribute, on behalf of the Council, to His Excellency Mr. Kodjo Menan, Permanent Representative of Togo, for his service as President of the Security Council for the month of February 2012. I am sure I speak for all members of the Council in expressing deep appreciation to Ambassador Menan and his delegation for the great diplomatic skill with which they conducted the Council's business last month.

### **Adoption of the agenda**

*The agenda was adopted.*

### **The situation in Somalia**

#### **Special report of the Secretary-General on Somalia (S/2012/74)**

**The President:** Under rule 37 of the Council's provisional rules of procedure, I invite the representatives of Australia, Brazil, Denmark, Egypt, Finland, Indonesia, Italy, Japan, Kazakhstan, Kenya, Luxembourg, Norway, Somalia, Sweden, Turkey and Uganda to participate in this meeting.

Under rule 39 of the Council's provisional rules of procedure, I invite Mr. Augustine Mahiga, Special Representative of the Secretary-General for Somalia, to participate in this meeting. On behalf of the Council, I welcome Mr. Mahiga, who is joining today's meeting via video teleconference from Mogadishu.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite His Excellency Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I should like to draw the attention of the members of the Council to document S/2012/74, which contains the special report of the Secretary-General on Somalia.

I welcome the presence at this meeting of the Secretary-General, His Excellency Mr. Ban Ki-moon, and I invite him to take the floor.

**The Secretary-General:** I thank you, Sir, for this opportunity to update the Security Council on the situation in Somalia. I thank His Excellency Mr. Henry Bellingham, United Kingdom Parliamentary Under Secretary of State, for chairing this meeting during his country's presidency of the Council. I commend the leadership and efforts of the United Kingdom for sustaining international support for Somalia following the London conference.

This is a critical moment for Somalia. Since my last briefing to the Council (see S/PV.6494), three major developments have provided momentous impetus to the Somalia peace process: first, the second Somali National Garowe Consultative Constitutional Conference held last month; secondly, the adoption of resolution 2036 (2012) on an expanded and well-resourced African Union Mission in Somalia (AMISOM); and thirdly, the London conference held just 11 days ago.

These developments, coming in quick succession within less than a month, present a rare opportunity to the Somali people and the international community to rapidly advance the peace process, albeit with guarded optimism, and to bring Somalia fully back to the international arena. The Garowe Principles provide clear steps to end the transition by August of this year and launch a new political dispensation. I particularly welcome the inclusion of a requirement that women hold a minimum of 30 per cent of the seats in the Independent Electoral Commission, the Constituent Assembly and the new Federal Parliament.

The decision of the Security Council to endorse the expansion of the African Union Mission in Somalia follows major gains by AMISOM, the forces of the Transitional Federal Government and their partners in the military effort against Al-Shabaab. This new support will be crucial in enabling the Transitional Federal Government to extend its authority across a wider area of southern and central Somalia, and to significantly degrade the insurgency's military capability across the country. The military gains need to be consolidated through continued progress by Somalia's political leaders in the implementation of the road map for ending the transition, which is the basis for lasting peace and stability in Somalia.

The London conference reiterated the commitment of the international community to strongly support the establishment of the new institutions that would lead to ending the transition, to provide support to AMISOM

that would allow it to sustain the political process, and to provide sustained international support for recovery and development. London also strengthened the collective resolve to protect human rights and increase humanitarian assistance.

The London conference occurred during a respite in Somalia's humanitarian crisis. Sustained high levels of humanitarian assistance and an exceptional harvest have improved the situation. However, this progress is extremely fragile and will likely deteriorate in the coming months as we move into the lean season before the next and most important harvest period in August. Somalia is not out of danger.

In London, I held a wide range of meetings, including with President Sheikh Sharif Sheikh Ahmed, key stakeholders and regional leaders. My interlocutors thanked the United Nations, urged continued assistance and welcomed the Council's decision to support AMISOM. I received assurances that the guard force, as authorized by the Security Council, would be deployed. But of course I look forward to the day when Somalia forces themselves ensure security and that force will no longer be needed. I also discussed the challenge of Somali piracy with Mr. Koji Sekimizu, Secretary-General of the International Maritime Organization. We agreed not only on the need for security, deterrence and prosecutions, but also, and just as importantly, for education and jobs.

Following the announcement I made during my visit to Mogadishu in December, I am pleased to report that my Special Representative has relocated to the capital. The initial deployment is focusing on the core business of the United Nations Political Office for Somalia (UNPOS), which encompasses the provision of good offices to the Transitional Federal Institutions and major Somali political and security actors in Mogadishu, including the Joint Security Committee; support for the road map process; coordination with AMISOM; the Intergovernmental Authority on Development, the United Nations country team and the international community in Mogadishu; the provision of timely and accurate information and analysis on political issues; and outreach to key constituencies on fundamental mission priorities and mandated tasks. Additional staff will deploy as accommodation and other logistical facilities become available. Our intention is to move more staff from Nairobi to Somalia in the coming weeks.

Maintaining this momentum is critical. I thank Turkey for agreeing to host the second Istanbul conference, which I look forward to attending and which I encourage others to attend at the highest level. If it is to keep the Somalis committed and accountable, this Council must show its continued engagement and support in the political, security and recovery processes.

I ask the Security Council to encourage all participants in the London conference and the entire international community to support the implementation of the London communiqué. For UNPOS in particular, this will require immediate human and financial resources to put in place the processes and structures for ending the transition period in a satisfactory manner within a tight time frame. My Special Representative will elaborate on these and other developments, as well as on plans for the remaining transitional period.

As I emphasized at the London conference, in particular to Somali leaders, a new window of opportunity for peace and stability has opened. But it is a narrow window. All stakeholders must act with urgency and unity of purpose. We cannot afford to miss this opportunity.

**The President:** I thank the Secretary-General for his statement.

I now give the floor to Mr. Mahiga.

**Mr. Mahiga:** I thank you, Sir, for giving me this opportunity to update the Council on the situation in Somalia. I welcome the presence of Mr. Bellingham, who is presiding over today's meeting, as well as the presence of the Secretary-General, Mr. Ban Ki-moon.

During the first Somali National Consultative Constitutional Conference, Principles were adopted on the reform of Parliament, elections, a Constituent Assembly, the Independent Electoral Commission, the new Parliament, and the sequencing of the timelines for ending the transition in August 2012. The second Garowe Conference deliberated on operationalizing the Garowe Principles. Safeguards and oversight procedures with checks and balances in selecting memberships have been introduced. The deliberations at the second Garowe Conference also considered key constitutional provisions related to federalism, the system of Government and other important constitutional issues such as land policy, citizenship and Sharia law, which have to be included in the draft Constitution.

The challenges before us are in implementing the Garowe process within a very tight time frame. The drafting of the constitution has to be completed by the end of this month. The selection process to the 1,000-member Constituent Assembly from over eight community-based constituencies, including women, must be completed in eight weeks for the provisional adoption of the constitution by the end of April. This is an enormous exercise in political outreach and logistical organization.

The failure to consolidate control over the recovered areas could create a vacuum and allow warlords to use the instability to their advantage. Local populations must know that the departure of Al-Shabaab shall be followed with peace dividends. To that end, in January, the Transitional Federal Government (TFG) issued a national policy for reconciliation and stabilization in newly liberated areas of south-central Somalia. We aim to pursue a multipronged approach, which will reach out to the existing local actors and convince them that the only meaningful way forward is to work with the TFG; and to identify and implement, jointly with the African Union Mission in Somalia (AMISOM) and the United Nations country team, quick-impact projects that bring about immediate dividends for the local population.

Another ongoing challenge is the political stalemate within the Transitional Federal Parliament. The continuing efforts of the United Nations and the African Union to resolve the crisis have yet to bear fruit. The breakaway group of parliamentarians has rejected the Garowe process and has passed a motion bringing forward the presidential elections from July to 30 April this year. The President, the Council of Ministers and the national security committee declared that process illegal.

I am concerned that that parliamentary vote and stalemate could disrupt the painstaking gains that Somali stakeholders and their partners have achieved. Parliament has paralysed the peace process. I actively continue to engage both the TFG leadership and the two factions in Parliament to find a way out of the impasse and restore the unity and functionality of the Parliament. It is critical that we preserve the institution of Parliament, as it has a central role to play in the peace process and other matters of governance, but we should not allow the group to hold hostage the process to end the transition.

Spoilers continue to benefit from this protracted conflict, which has prevailed in Somalia during the past decade. The international community must identify the internal and external spoilers, both State and non-State actors, and take decisive action to end their obstructionist activities. Likewise, if those spoilers manifest their influence inside TFG institutions, including Parliament, the Somali political leadership, in close collaboration with the region, individual Member States and the rest of the international community, should stand ready to put in place the appropriate mechanisms to protect the implementation of the road map. That will require collective effort by the international community.

The London conference brought about unprecedented attention to the Somalia political crisis in its 21-year history. It reaffirmed the centrality of Somali ownership of the peace process and the need for coordinated and scaled up international support.

The London conference received a great boost from the decision of the Council to increase AMISOM's strength from 12,000 to a maximum of 17,731. The message to the world was that of commitment to peace, security and stability for Somalia by reducing the threat of Al-Shabaab, which has now declared itself to be an integral part of Al-Qaida. To the Somalis, the London conference brought about encouragement. The resolution brought about hope, as it also recognized the need to expand the development of the capacity and effectiveness of the Somali security forces.

I am pleased to report that the African Union Commission has already moved in earnest to advance the implementation of resolution 2036 (2012). A meeting of the Joint Coordination Committee, chaired by the African Union Commissioner for Peace and Security and with a membership that includes the AMISOM troop-contributing countries and the Force Commander, is scheduled to give advice on the implementation of AMISOM's concept of operations. The United Nations is actively supporting the African Union and AMISOM in that endeavour.

Meanwhile, on the eve of the fifth anniversary of its presence in Mogadishu tomorrow, AMISOM has captured the Al-Shabaab stronghold and terrorist base of Maslah, on the outskirts of Mogadishu. As well, on the ground, TFG forces, with Ethiopian troops, last week captured the strategic town of Baidoa, in central

Somalia. In the south, TFG forces, with Kenyan armed forces, are carrying out a steady ground offensive, supported by Kenyan air and sea assets.

The significance of the London conference lies in the comprehensiveness of its agenda and communiqué. All the salient aspects of the Somali crisis were considered, including humanitarian issues, piracy and terrorism, stability and recovery, as well as the way forward in international cooperation to support the Somali peace process.

The acute famine conditions reported from June to December last year are no longer present. Humanitarian organizations have been able to increase people's access to food, contain health and disease outbreaks and assist the hundreds of thousands of children suffering from acute and severe malnutrition. New approaches to humanitarian assistance, such as the development of more cash-based schemes, have saved many thousands of lives. Despite extremely challenging conditions, humanitarian organizations have continued to provide assistance throughout Somalia.

However, unacceptably high rates of child mortality, disease and malnutrition persist. More than 320,000 children in Somalia are still acutely malnourished. Many of the areas that were pulled out of famine remain on the cusp of falling back into it. In a village of 5,000 in those areas, a person dies every day; that victim is usually a child. Consequently, some 2.34 million people in Somalia are still categorized as being in humanitarian emergency conditions, and will require immediate life-saving assistance throughout the year.

Let us remember that humanitarian assistance in Somalia continues to be provided in the context of conflict. Somalia's conflict has disproportionately affected the civilian population through displacement, difficulties in accessing assistance and the direct impact of fighting.

My relocation from Nairobi has enabled me to engage more easily with the leaders of the Transitional Federal Institutions and other key Somali interlocutors. It is important for the international community to deploy to Mogadishu without delay, especially as we aim to speed up the implementation of the road map. I hope that my presence in the country will encourage other international organizations and diplomatic premises to follow suit.

We do not have the luxury of time. We are faced with a situation that demands urgent action. The TFG remains the international community's main Somali interlocutor. Building its capacity will be critical to transforming the country into a functioning State. Somalia today has the greatest opportunity to end the two decades-long conflict and bring lasting peace and stability to the whole country. But capitalizing on that momentum and ending the transition on time will require more efforts and support from all international actors in the coming months. We must ensure that all of us are pulling together in that regard.

I am developing a plan that will include support for the establishment of a functioning constituent assembly composed of 1,000 people and a new bicameral parliament, as well as for outreach to Somali civil society and the diaspora for the implementation of the second Garowe Conference. I also plan to ensure that the Mogadishu Stabilization and Recovery Plan and "low-hanging fruit" activities are implemented, both in Mogadishu and in newly recovered areas. For all that to happen, we need strong political and financial support from the Council.

**The President:** I thank Ambassador Mahiga for his excellent briefing.

Following consultations among members of the Security Council, I have been authorized to make the following statement on behalf of the Council:

"The Security Council welcomes the international London conference on Somalia held on 23 February 2012 and fully supports its conference communiqué. The conference demonstrated the international community's political will and determination to support the Somali people as they build peace and stability in Somalia.

"The Security Council supports the progress made at the London conference on Somalia, which affirmed international support, progress on the political process, security, increasing stability, economic development and action to address terrorism, piracy and hostage-taking. The Council emphasizes the need to build on agreement in London and continue to pursue a comprehensive strategy for the establishment of peace and stability in Somalia through the collaborative effort of all stakeholders. The Security Council also welcomes the meeting, which preceded the

London conference, on the ongoing and protracted humanitarian situation in Somalia.

“The Security Council further welcomes the consensus in London that the mandate of the Transitional Federal Institutions will end in August 2012 and that there will be no further extension of the transitional period. The Council welcomes commitments to work for a more representative Government in Somalia, in line with the Transitional Federal Charter, the Djibouti Agreement, the Kampala Accord, the end-of-transition road map and the Garowe Principles. The Security Council reaffirms its respect for the sovereignty, territorial integrity, political independence and unity of Somalia.

“The Security Council reiterates its full support for the work of the Special Representative of the Secretary-General, Augustine P. Mahiga, and the United Nations Political Office for Somalia (UNPOS) in facilitating progress towards peace and stability in Somalia, as well as that of the Intergovernmental Authority on Development and the African Union. The Council welcomes the relocation of UNPOS to Mogadishu and encourages the United Nations to achieve a more permanent, full relocation to Somalia when security conditions allow.

“The Security Council pays tribute to the contribution of AMISOM and the Somali national security forces to achieving a more peaceful and stable Somalia, and expresses its appreciation for the commitment of troops by troop-contributing countries to AMISOM and the significant sacrifices made by both AMISOM and Somali forces. In this regard, the Security Council recalls resolution 2036 (2012) authorizing an expansion of AMISOM, increasing the scale and scope of the United Nations logistical support package to enhance the predictability, sustainability and flexibility of AMISOM’s financing, and imposing an international ban on Somali charcoal. The Council welcomes the valuable financial support provided by the African Union’s partners to AMISOM, including through bilateral support programmes from the United States of America and from the African Peace Facility of the European Union. The Security Council stresses the need for continued support to AMISOM and calls for further support from existing and new

partners to provide equipment, funding for troop stipends to AMISOM and uncaveated funding, including through the United Nations Trust Fund for AMISOM.

“The Security Council recalls its resolutions 1674 (2006), 1738 (2006) and 1894 (2009) on the protection of civilians in armed conflict, welcomes the progress made by AMISOM in reducing civilian casualties during its operations and urges AMISOM to continue to undertake enhanced efforts in this regard.

“The Security Council emphasizes the importance of effective governance in Somalia and the delivery of basic services to the Somali people throughout Somalia. The Security Council underlines the need for further efforts to fight corruption and promote transparency in Somalia, and welcomes initiatives to increase transparency and accountability in the collection and efficient use of Somali public revenues.

“The Security Council underlines that the development of the Somali security forces and institutions is vital to ensure Somalia’s long-term security and stability and calls upon the international community in coordination with the United Nations and AMISOM to provide increased support to the Somali security and justice sectors. The Council fully supports the training of Somalia’s security forces through the bilateral support programmes of Member States and the European Union training mission for Somalia.

“The Security Council supports efforts to expand existing stabilization plans in Somalia to new sectors, welcomes increased international support to areas of stability, including through a new stability fund, and encourages further efforts to address Somalia’s long-term reconstruction and economic development.

“The Security Council recognizes that while the famine may have ended in Somalia, there are significant ongoing humanitarian needs. The Council underlines the high number of internally displaced persons in Somalia who urgently need support, and persons in need of emergency relief. The Council emphasizes the need for the international community to provide well coordinated, timely and sustained humanitarian

assistance to the Somali people, and to help build their resistance to future shocks, and stresses the importance of upholding and respecting the humanitarian principles of humanity, neutrality, impartiality and independence. The Security Council demands that all parties ensure full and unhindered access for the timely delivery of humanitarian aid to persons in need of assistance across Somalia, consistent with relevant humanitarian and human rights law.

“The Security Council welcomes the fact that effective countermeasures have led to a substantial reduction in the number of successful piracy-related attacks, although it notes with concern the increased incidence of attempted attacks. The Security Council remains gravely concerned about the ongoing threat posed by piracy and armed robbery off the coast of Somalia, including the issue of hostage-taking and the increasing use of violence against hostages, and the extended range of the piracy threat into the western Indian Ocean and adjacent sea areas. The Security Council recognizes that the ongoing instability in Somalia contributes to the problem of piracy and armed robbery at sea, and stresses the need for a comprehensive response to repress piracy and armed robbery at sea and tackle its underlying causes. The Council welcomes the commitments made at the London conference on new efforts to repress piracy, including efforts by bilateral donors and regional organizations to strengthen the capacity of Somalia and relevant States in the region to prosecute those responsible for acts of piracy and armed robbery off the coast of Somalia and to imprison convicted pirates.

“The Security Council remains gravely concerned about the threat posed to Somalia and the international community by terrorist attacks by Somali armed opposition groups, in particular Al-Shabaab, and welcomes the commitment made at the London conference for renewed international action to address this threat, while ensuring full respect for the rule of law, human rights and international humanitarian law. The Council also stresses the importance of addressing conditions conducive to the spread of terrorism.

“The Security Council welcomes the intention of the Government of Turkey to hold a conference on Somalia in Istanbul.

“The members of the Security Council will keep the situation in Somalia under close review.”

This statement will be issued as a document of the Security Council under the symbol S/PRST/2012/4.

I shall now give the floor to the members of the Security Council.

**Mr. Mashabane** (South Africa): We would like to congratulate you, Mr. President, and your delegation for assuming the presidency of the Security Council for the month of March. We welcome you, Minister Bellingham, and we are particularly pleased to have you preside over this important debate. Your presence here is the best testimony to the commitment of your country to the resolution of the Somali conflict. I would like to assure you of my delegation’s support during your presidency. We also want to congratulate the delegation of Togo for the manner in which it steered the work of the Council during the month of February.

We thank the Secretary-General for his participation and welcome his comments. We also wish to thank the Special Representative of the Secretary-General for Somalia, Mr. Augustine Mahiga, for his informative briefing and for his tireless work.

Today’s debate is a reaffirmation by the international community in general, and the United Nations in particular, that the people of Africa and Somalia are not alone in their quest to resolve the scourge of conflict that has ravaged the continent and their country for many years now.

Since the beginning of the year, the international community has coalesced its work around the national and regional levels to resolve the Somali conflict. In January of this year, the Security Council, under the presidency of South Africa, convened a debate with the leaders of the Intergovernmental Authority on Development (IGAD) and the African Union on their revised strategy concept for the African Union Mission in Somalia (AMISOM).

South Africa fully supports the strategic engagement and collaboration between the Security Council and the African Union on peace and security.

The meeting of the Security Council in January (see S/PV.6702) with members of IGAD and the African Union was a practical demonstration of the strategic engagement called for in resolution 2033 (2012). From 5 to 6 February, the international contact group on Somalia met, and on 23 February the international London conference on Somalia was held.

It is our hope that the London conference has given renewed impetus to what the Somali people and the Transitional Federal Government, supported by the African Union, the United Nations and IGAD, are striving to achieve. South Africa welcomes that meeting, which underscored the interrelated nature of the political, security, humanitarian challenges, as well as the piracy issue, which are directly related to the instability on land.

The adoption of resolution 2036 (2012), on the eve of the London conference, in which the Council significantly enhanced the United Nations support package for AMISOM, was an important achievement. We particularly welcomed the authorization to increase the troop level to 17,731, as requested by the African Union. The resolution was adopted at a critical time, and we hope that it will go a long way towards ensuring the consolidation of the military gains that AMISOM has made thus far.

The African Union welcomed resolution 2036 (2012) as an important milestone and further testimony to the commitment of the United Nations to help AMISOM and the Somali leadership to consolidate the important progress made towards the completion of the transition process in Somalia.

We also commend the important contribution of, and sacrifices by, troop-contributing countries, which serve under difficult conditions in AMISOM. As we welcome those important developments, we also reiterate our long-held view that the military strategy for Somalia must be in support of a broader strategic and political objective.

Investment in the military operation should not be viewed as an end, but as a means for the creation of a conducive environment for a political engagement in dialogue to take place. In that regard, the Transitional Federal Government (TFG) must continue the important task of outreach and reconciliation within Somalia. That should include persuading military elements who are willing to lay down their arms to join the peace process

and be reintegrated into the community, including through the development of a defector programme.

The adoption of the Kampala Accord, in June 2011, and the road map, in September 2011, as well as the outcomes of the first and second Garowe Conferences, are all strong indicators of the determination of the Somali people to reach peace among themselves. The Principles agreed upon during the second Garowe Conference on federalism, the system of Government and ending the transition will significantly contribute to finalizing the draft constitution by 20 April 2012. We welcome that important development, as the end of the transition is fast approaching. We wish to encourage the Transitional Federal Institutions to utilize the existing window of opportunity to achieve measurable results in all the priority areas identified in the road map.

We are mindful of the fact that the road map will require financial and technical support for its full implementation. We therefore call on the international community to continue its support to the Transitional Federal Institutions in that regard.

The extension of the TFG's authority throughout the territory of Somalia should lead to the improvement in the lives of ordinary citizens. We therefore support the expansion and full implementation of the Mogadishu Stabilization and Recovery Plan for enhancing the safety and security and economic opportunities and basic services to the population in Mogadishu and the newly liberated areas.

We also welcome the new recovery fund, which will further enhance local stability. Somalia's long-term security and stability will require a credible and effective justice system. We encourage the international community to continue its support for building the capacity of the Somali judicial system in line with the agreed Somali legal foundation.

The United Nations and the international community's support for the provision of those services and for institution-building must also support the national and the local ownership of those processes. We therefore welcome the coming Istanbul conference.

While piracy along the coast of Somalia remains a critical challenge, we call on the international community not to forget that the solution to that problem will have to come from land, not sea. The comprehensive resolution of the Somali conflict must

address all the root causes of piracy and the other challenges, including the exploitation of marine resources and the dumping of toxic wastes.

Equally, Somalia's myriad challenges, including its humanitarian situation and the terrorism plaguing it, will remain with us for as long as the instability on land is not addressed. In that regard, we welcome the continued focus of the international community on Somalia, as well as efforts geared towards addressing Somalia's challenges in a comprehensive and holistic manner.

For our part, in relation the humanitarian situation, we will continue, together with our partners in the Southern African Development Community (SADC) region, to provide whatever assistance we can to the people of Somalia. We have just provided assistance for the air-lifting of the humanitarian aid contribution from the SADC member States to the people of Somalia. We stand ready to play our part in supporting all efforts that can help bring about lasting peace, security and stability to Somalia.

As we mark the fifth anniversary of the AMISOM presence in Somalia tomorrow, we remember and honour those who have sacrificed their lives for peace and stability in that East African country. A lot of progress has been made in the past five years, and Somalia will never be the same again.

**Mr. Osorio** (Colombia) (*spoke in Spanish*): Allow me to thank Secretary-General Ban Ki-moon for his presence here and for the analysis that he has given us with regard to the situation in Somalia and the most recent developments and agreements reached at the London conference.

I would like to welcome you, Under Secretary Bellingham, as President of the Council and to congratulate your country on your assumption of the presidency this month. I assure you of Colombia's full cooperation. I would also like to recognize the magnificent work done by the representative of Togo and his team last month as they presided over the Council.

I would like to welcome the United Nations Special Representative of the Secretary-General for Somalia, Mr. Augustine Mahiga. We wish him, every success in his mission, which we very much need to be successful.

The London conference was yet another valuable demonstration of the ongoing commitment of the international community to bring about stability and development in Somalia, as it reaffirmed the ownership and responsibility of the Somali people over decisions that relate to the future of their country.

While we feel some optimism thanks to the progress in the implementation of certain tasks set down in the road map, we understand that the current political, military and humanitarian situation in Somalia, although encouraging, is not without risks. The situation is still fragile. We therefore need to consolidate the progress made in various areas in order to provide the basis for re-establishing peace and stability in order to ensure sustainable economic and social development.

Although the Transitional Federal Government has the primary responsibility for restoring security, political stability and the rule of law, it is crucial that the international community provide its support to strengthen the institutions of the State. With regard to security, the situation has improved. The African Union Mission in Somalia (AMISOM) exercises greater control over the areas of Mogadishu and is beginning to extend that control beyond Mogadishu. The work of AMISOM is, therefore, fundamental for the stabilization of Somalia. Colombia supports the incorporation of the Kenyan forces into the command and control of the AMISOM forces.

We note the adoption of resolution 2036 (2012), extending the mandate of AMISOM and authorizing an increase in the number of troops deployed to a total of 17,731. The increased capacity of AMISOM to meet its mandate will largely depend on its being provided with adequate resources, particularly enablers and force multipliers. It is therefore indispensable to continue to provide equipment, technical assistance and funding to the Mission through the United Nations Trust Fund in Support of AMISOM.

It is also important to provide more technical, financial and training capacities to the forces of the Transitional Federal Government so that it can carry out its activities on land and in its coastal waters and to play a more important role in current operations. The monitoring and identification of arms embargo violations must be stepped up, and targeted sanctions applied when necessary, in order to reduce the potential devastating effects of that dynamic in the Somali context. We are particularly concerned by the recent



violations of the arms embargo reported by the Monitoring Group, including arms maritime arms smuggling to Al-Shabaab in the north of the country, and the operations of armed maritime security companies working in Somali ports and territorial waters.

Political and military forces must be harmonized and synchronized in order to stabilize the situation. The military achievements attained to date would be more sustainable if the Transitional Federal Government were to strengthen its political management and legitimacy and work to hold on to the recently liberated areas by meeting the aspirations of the Somali people through a transparent and inclusive process.

We stress the importance of the outcome of the second Somali National Consultative Constitutional Conference, held in Garowe, as a decisive step towards finalizing the transition period by August 2012 and the establishment of constitutional order. Although we appreciate the advances that have been made towards establishing a Somali-owned Government, it will be important to ensure the territorial unity of Somalia in that process.

We are convinced that a stable and lasting solution to the problem of piracy will be very important to resolving the Somali crisis and strengthening the rule of law in the country. Therefore, all viable options will require a comprehensive approach aimed at developing national institutional capacities for addressing economic, security, legal and penitentiary matters simultaneously. In particular, the development of such activities as fishing and port industries could arise as viable economic alternatives for the population and reduce dependency on organized crime linked to piracy. We should therefore address the legal issue of maritime borders as soon as possible so that they can be brought in line with international law, enabling the definition of an exclusive maritime zone and maritime borders to be established with Kenya, Djibouti and Yemen.

Finally, I would like to encourage the Somali authorities and all other relevant actors to continue to engage constructively and to meet their obligations in the implementation of the road map, so that the deadlines established therein for the transition by August 2012 can be met. With regard to ending the transition period, and given the fragility of the situation, the United Nations should provide a comprehensive, international response that makes the stabilization of the Somali State a central and long-term objective.

**Mr. Briens** (France) (*spoke in French*): First, I would like to congratulate the United Kingdom on assuming the presidency of the Council and to ensure it of our full support. I also thank Togo for its presidency in February. I thank the Secretary-General and Special Representative Augustine Mahiga for their presentations and personal commitment to the stabilization of the situation in Somalia. I align myself with the statement to be made on behalf of the European Union.

Political and security developments in Somalia in recent months have rekindled hope. The international community and the Somali stakeholders must, however, ensure that these gains are lasting.

On the security level, the stage is now set for the Somali Government to regain control of the whole country. The adoption of resolution 2036 (2012) gives the African Union unprecedented resources to strengthen its Mission in Somalia (AMISOM), enabling it not only to better secure the capital but also to combat Al-Shabaab actively in the territories of southern Somalia that the terrorist group still controls.

To support these efforts, it is now important for troop-contributing countries to swiftly mobilize the authorized troop contingents so they can become operational and consolidate such recent progress as the taking of Baidoa by the forces of the Transitional Federal Government and Ethiopia. Moreover, the African Union will need to swiftly establish appropriate command structures to enable effective coordination among troop-contributing countries. In that respect, we note with interest the implementation of the strategic concept and of AMISOM's revised concept of operations.

Strengthening Transitional Federal Government forces must also be a priority for AMISOM. In particular, that will require the speedy establishment of a chain of command to strengthen the capacity of action of the Somali national forces that will ultimately need to ensure the stability of Somalia.

AMISOM currently relies on critical financial support from the European Union, which pays the totality of AMISOM troop salaries. The members of the European Union are currently considering the extent to which that financial support can be stepped up, given that the Union is already engaged at various levels in the region and the funds initially earmarked for AMISOM will not be enough to cover the costs incurred by increasing the troop ceiling mandated in

resolution 2036 (2012). It is therefore vital, as stated in the resolution, that new contributors pledge to join the European Union in providing financial support.

In the political realm, the steps that were expected have been taken. The two successive Conferences held in Garowe enabled us to clarify the institutional architecture of the future Somali State. All of the Somali stakeholders made significant progress on key points of the road map. These efforts will have to be pursued in order to meet the timelines set out, including the adoption in May of a draft constitution. We trust that President Sheikh Sharif Sheikh Ahmed of the Transitional Federal Government and all Somali stakeholders will adhere to that timeline. The Council has said on many occasions that there can be no new extension of the transition period.

High priority must now be accorded to the challenge of establishing local and regional administrations in regions recovered from Al-Shabaab. Such administrations will be critical to preventing the fragmentation of the country and the emergence of new warlords, as well as to offering basic services to the civilian population. They will have to support the Government, the Garowe Principles and the road map. In that context, we welcome the establishment, at the London conference of 23 February, of a stability fund for recovered zones that will complement the political stabilization of the recovered regions by contributing to their economic revival.

The support of the United Nations is key to helping Somali institutions implement the road map. The relocation of the United Nations Political Office for Somalia (UNPOS) to Mogadishu is vital in that respect. The bulk of United Nations personnel, however, remain in Nairobi, and we encourage a more general relocation to Mogadishu as soon as security conditions permit.

I conclude by addressing the issue of piracy off the coast of Somalia. This global challenge is being tackled on an unprecedented scale by the European Union through Operation Atalanta. Numerous pirates are arrested by Atalanta vessels every year. It is vital therefore for the States of the region, above all Somalia, to assume their responsibilities and establish the necessary arrangements to allow the legal and penitentiary processing of these pirates. It is utterly unacceptable that pirates arrested at great cost should be released without trial. As the final communiqué of the London conference stresses, specialized Somali

courts would satisfy these needs. Furthermore, I stress the absolute need for Somalia to adopt anti-piracy legislation, in accordance with the road map.

**Mr. Moraes Cabral** (Portugal): I congratulate the United Kingdom on assuming the presidency of the Security Council. We once again thank the Togolese delegation for a job well done over the past month. Allow me also to welcome the presence here today of Under Secretary of State Bellingham to preside over this important meeting. I also thank the Secretary-General for his presence and analysis, as well as Special Representative Mahiga for his very helpful briefing. I commend him and his team for their work and efforts.

For a period of several months we have been seeing encouraging signs and important positive developments in Somalia. Nevertheless, the overall situation remains fragile and of concern. But the international community's role and determination in continuing to support the Somali people is clear. Politically, that support was demonstrated by the London conference in bringing together key partners at this critical juncture for the country, with the aim of reaching a comprehensive strategy for the establishment of peace and stability. It has also been demonstrated by the continuous engagement of the African Union and the Intergovernmental Authority on Development, as well as by Turkey's intention to hold another high-level meeting in Istanbul in the coming months, thereby building on the momentum.

The adoption of resolution 2036 (2012) and the significant strengthening of the African Union Mission in Somalia (AMISOM) that it authorized; the support being given to develop the Somali security forces, especially by the European Union; the hard work and sacrifice of AMISOM, regional partners and the Somali security forces; as well as the commitment of troops by established and new contributing countries, all highlight the support at the security and military levels.

In that regard, allow me to acknowledge the efforts made by all parties involved in military action in Somalia to minimize the negative impact of military intervention on Somali civilians — we continue to encourage them to continue to do so — and to promote the safety and welfare of civilians fleeing conflict and meet the food needs in the country.

On the humanitarian front, despite the end of the state of famine, partners continue to be heavily

engaged in improving and addressing the ongoing, protracted needs of Somalia. However, assistance will only be fruitful if it reaches those in need in a timely way. To that end, we urge all parties to ensure full and unhindered access for humanitarian aid across the country.

Partners are also addressing the underlying causes of instability. In that regard, the relocation of the United Nations Political Office for Somalia to Mogadishu, the support aimed at building stability at the local level and the consistent stepping-up of action to tackle the threats posed by piracy and terrorism are of great importance. Portugal is engaged in multiple efforts, mainly through the outstanding contribution of the European Union. In that context, we of course share the position of the European Union, to be expressed later by Ambassador Mayr-Harting.

The engagement and additional efforts that we all have committed ourselves to are nevertheless dependent upon the will and commitment of the Somali people, in particular the Somali political leadership. Portugal welcomes the consensus on ending the transitional period in August 2012, in line with the road map for ending the transition, and takes note of the agreement on the Garowe Principles and the commitment by Somali leaders to ensure the delivery of basic services to the population, promote good governance and safeguard peace and security in Somalia.

We take this opportunity to once again urge the Transitional Federal Institutions and all road map and Garowe signatories to redouble their efforts. As Portugal has stated before, it is also vital to ensure inclusiveness and representativeness throughout the current process. We recall the constructive role that women can play towards that end, as well as in ensuring full respect for human rights. Turning those decisions into reality is another step, yet a significant one, that Somalis need to take themselves towards a stable and viable State. We call upon them also to continue to work closely with the Special Representative of the Secretary-General, Ambassador Augustine Mahiga, whose efforts I wish again to underline and commend.

In concluding, allow me to recall the need to ensure the sustainability of the progress achieved so far in Somalia. To that end, and despite the current environment of global financial constraint, we

encourage others, in particular new donors, to contribute to that collective endeavour, by ensuring the sustainability of AMISOM financing.

**Mr. Churkin** (Russian Federation) (*spoke in Russian*): We are pleased to welcome you, Mr. President, to the Security Council Chamber. We are grateful to the Secretary-General for his report (S/2012/74) and to Special Representative of the Secretary-General Mahiga for his assessment of the situation in Somalia. Above all, we would like to congratulate our British colleagues on successfully holding the London conference on Somalia. We hope that it will make a significant contribution to the process of resolving the situation in Somalia, which has entered a critical phase.

Achieving the goal of stabilization and laying the foundation for statehood in Somalia requires coordinated, dynamic efforts on the part of the international community, political will and the full commitment of the Somali Transitional Federal Government. Of paramount importance right now are the timely suppression of Al-Shabaab and the prompt completion of the main transition objectives within the deadline set.

We welcome the recent successes of Kenyan, Somali and Ethiopian troops in southern and central Somalia. However, extremists continue to control a major part of the South of the country and, judging by the latest reports, they are actively regrouping and making alliances, both with local likeminded groups — such as in Puntland — and with Al-Qaida abroad. Terrorist acts continue in Mogadishu, where the African Union Mission in Somalia (AMISOM) is an important stabilizing force.

The recent adoption of resolution 2036 (2012) creates new possibilities for strengthening AMISOM military capabilities, making possible a broader and more intensive campaign against Al-Shabaab. It is vital to begin implementing the resolution's provisions as soon as possible. Any attempts to engage Al-Shabaab in dialogue are unacceptable. It is a group on the United Nations sanctions list for Somalia. Its goals — particularly since allying with Al-Qaida — are patently clear and do not include renouncing terrorism or further attempts to destabilize the situation in Somalia.

Somalia is awash with weapons, a circumstance that inevitably provokes violence. Given that reality, it is more important than ever to strengthen the arms

embargo overall and to cut off weapons channels for the extremists, including those coming from Libya and other volatile regions in Africa and the Middle East.

We must bear in mind that force can only be a complement to a broad political process, which the Somalis themselves have the full responsibility to drive forward. In that light, they must work for unity within the Transitional Federal Institutions, put an end to personal score-settling and mobilize their energies to carry out the provisions of the road map, namely, advancing the political process and securing State authority over the recovered territories. We must reject any attempts to undermine the sovereignty and territorial integrity of Somalia.

Although the effects of the famine have somewhat abated, the humanitarian crisis in Somalia continues and the number of refugees is unfortunately growing as military action against Al-Shabaab continues, affecting even the capital Mogadishu itself. The Russian Federation provides humanitarian assistance to Somali refugees in neighbouring countries, especially Kenya, and makes significant contributions to United Nations programmes. We support measures adopted under Mr. Mahiga's leadership to coordinate and expand the United Nations presence in Somalia as required by the security situation.

The outlook for the fight against piracy off the coast of Somalia is still dim. Piracy is flourishing and continues to destabilize the region, taking a large economic and moral toll on the international community. We welcome the determination in evidence at the London conference to counteract that scourge as part of a comprehensive anti-piracy strategy, including creating an effective system aimed at bringing pirates to trial. Given the clear complications of carrying out justice in Somalia, we are in favour of creating a relevant structure with an international component.

Russia continues to participate in international operations to combat piracy off the coast of Somalia. We will continue to pursue a policy of comprehensive support to Somalia and active participation in the efforts of the international community to facilitate a solution to the Somali situation.

**Mr. Hardeep Singh Puri (India):** Let me start by congratulating the delegation of the United Kingdom on assuming the presidency of the Security Council for the month of March. I would also like to put on record

our appreciation for the delegation of Togo, and in particular Ambassador Kodjo Menan, for their stewardship of the Council during the month of February.

The political, security and humanitarian situations in Somalia and their consequences, particularly the problem of piracy and hostage-taking, are of serious concern to the international community. Today's open debate is therefore a timely endeavour to comprehensively address the situation in Somalia. We appreciate the efforts of the delegation of the United Kingdom in organizing the meeting and thank you personally, Sir, for presiding over today's deliberations. I would also like to thank the Secretary-General and his Special Representative, Mr. Augustine Mahiga, for their comprehensive and valuable briefings.

A few days back more than 50 countries, including my own, participated in the London conference on Somalia. The conference served a useful purpose in reiterating the support of the international community for the comprehensive stabilization of the situation in Somalia, while taking stock of the progress made so far in the political, security and humanitarian fields. The conference also reminded us of the difficult challenges that lie ahead.

The past year has been a mixed bag for Somalia. There have been significant gains made by the African Union Mission in Somalia (AMISOM) and Kenyan and Ethiopian forces in securing Mogadishu and other areas in southern and central Somalia. The extended transition period saw the adoption of a comprehensive road map by the Transitional Federal Institutions (TFIs), in accordance with the June 2011 Kampala Accord. The effective engagement of the international community also helped to tide over the worst phase of the humanitarian crisis. Still, millions have continued to suffer from the crisis and the implementation of the road map has left much to be desired. In spite of the pressure it is under, Al-Shabaab with its recent affiliation to Al-Qaida remains a serious threat to peace and stability in Somalia and in the larger region.

There is, however, an opportunity today in Somalia that has not been available for years. The TFIs could consolidate the gains made by AMISOM and the forces of the Transitional Federal Government of Somalia by urgently addressing the issues of governance and basic services in areas recovered from Al-Shabaab. That would also result in the emergence of

organized economic activities and employment generation. For that to materialize, the international community must persevere and continue its effort for the people of Somalia.

AMISOM, as the mainstay of security-related operations in Somalia, deserves our continued support. In that connection, we welcome the Council's adoption of resolution 2036 (2012), which provides for force enablers and multipliers for AMISOM and also expands the United Nations support package. The resolution will make available more sustainable and predictable resources for the troop-contributing countries and assist in the full implementation of the new strategic concept of AMISOM, including its limited maritime component. This would help AMISOM to sanitize the Somali coastline and deprive Al-Shabaab of revenues earned from port facilities and the export of charcoal.

We hope that the Council will agree to include naval assets for the reimbursement of contingent-owned equipment when it considers the extension of the AMISOM mandate later this year. India made an uncaveated contribution of \$2 million in 2011 to the United Nations Trust Fund in Support of AMISOM. We stand ready to provide further support to AMISOM.

In parallel with AMISOM operations, Somali stakeholders have to build on the gains made in the field of security through progress on the political track. The TFIs should rid themselves of internal divisions and focus their energies on implementing the Kampala Accord and the road map. The drafting and adoption of a new constitution and its endorsement by a constituent assembly in a timely manner, as per the Garowe Principles, should remain a priority task. That process should be as broad-based as possible, taking into consideration the traditional social structure and security situation on the ground.

Piracy off the coast of Somalia remains a serious problem for maritime security and trade. A large portion of the world's trade, including India's, estimated at about \$120 billion annually, passes through the Gulf of Aden. Piracy off the coast of Somalia is adversely affecting that trade at a cost of several billion dollars, due to the rerouting of vessels into safer routes and increased costs of insurance and security. As we speak, a number of seafarers, including 33 Indians, remain hostage to pirates. Their humanitarian condition remains a source of serious

concern to the Government and people of India. What is more worrisome is that attacks by pirates have been increasing in spite of counter-piracy operations.

Given the growing scope and expanding coverage of piracy off the coast of Somalia, the international community has to think about the adoption of a comprehensive counter-piracy strategy. Such a strategy should involve the effective sanitization of the Somali coastline, the priority enactment of national laws to criminalize piracy as defined in the United Nations Convention on the Law of the Sea, and United Nations-led anti-piracy forces to conduct naval operations and coordinate anti-piracy operations by various naval forces.

India, on its part, continues to undertake anti-piracy patrols in the Gulf of Aden and has deployed its ships in the eastern and north-eastern Arabian Sea. So far, the TFIs have paid little attention to this problem. We expect the TFIs to expeditiously implement the benchmarks on piracy contained in the road map on transitional tasks. We stand ready to help in capacity-building of the TFIs and the States of the region for effective measures to combat piracy.

In conclusion, to ensure lasting peace and security in Somalia, economic development has to form an integral part of our efforts. The international community should expand its development assistance to Somalia so that the Somali people directly benefit from the peace dividend. India, on its part, will continue to extend help to Somalia in capacity-building through human resource development. We have recently increased the number of scholarships for Somali students and experts. We have also contributed to the information technology sector in Somalia. We will continue to partner with the Somali authorities as they work towards turning a new page.

**Mr. Loulichki (Morocco)** (*spoke in French*): Let me start by congratulating the United Kingdom on its assumption of the Council presidency for the month of March. The holding of this important debate less than two weeks after the holding of the London conference, as well as your personal presence among us, Sir, attest to the importance that the United Kingdom attaches to improving the situation in that Arab-African country. I would also like to congratulate Togo on its productive, successful presidency, which did honour to the African continent.

My country pays tribute to the participation and involvement of Secretary-General Ban Ki-moon on the issue of Somalia, which reflects his commitment to peace and stability throughout our continent. His Special Representative, Mr. Augustine Mahiga, merits our full recognition for the excellent work that he has carried out in a very brief time frame.

The resurgence of interest in Somalia and its people, which have experienced more than 20 years of the ravages of civil war, aggravated by a most tragic humanitarian situation, is a strong signal of the commitment of the international community to promoting peace and stability in the country.

The increasing hope of the international community for peace and stability in Somalia has been demonstrated by the Council's adoption on 22 February of resolution 2036 (2012), increasing the troop levels, funding and mandate of the African Union Mission in Somalia (AMISOM), and by the recent holding of the London conference, which will be followed up by the conference planned for June in Istanbul.

We welcome the holding and results of the London conference, which was an important turning point in the efforts of the international community to breathe new life into the peace and stabilization process in Somalia. We support the new approach adopted at the London conference in support of a comprehensive and consistent treatment of all of Somalia's problems, whether in the political, security or humanitarian fronts or related to the fight against terrorism and piracy, on the basis of concerted international action.

A political process that is fully owned by Somalis and that involves all Somali parties who renounce violence in favour of dialogue is the only guarantee for the establishment of a sustainable political and constitutional order that will ensure the development of Somali society. In that regard, my delegation welcomes the adoption of the Garowe Principles following the second Constitutional Conference, held in February. The consensus on the important aspects related to the federal structure of the State, its system of Government and the implementation of the first Garowe Conference Principles with regard to the adoption of the constitution by the national Constituent Assembly represent a decisive step in the process of finalizing the constitution.

The six months remaining before the end of transition are crucial for laying the basis of a Somali State that is able to ensure effective governance for Somali society. It is therefore essential that the priority tasks decided in the road map for ending the Somali transition be implemented within the deadlines set forth. In that respect, we support the call of Special Representative Mahiga for unity and for the good functioning of the Somali Parliament.

With the announcement that Al-Shabaab has now joined the Al-Qaida movement, the terrorist threats targeting Somalia and the international community are even more pressing and call for substantial, rigorous and coordinated international action. Such action against Al-Shabaab should also target its sources of funding, in particular that stemming from the trade in charcoal. In that respect, particular mention should be made of the efforts and sacrifices made by Somali forces and those of the countries contributing troops to AMISOM to consolidate the security gains and to liberate more territory currently controlled by Al-Shabaab. But despite those advances, the challenges to Government authority and to its effective control over its national territory still have to be overcome.

However, the achievements in the military and security areas cannot be sustained without effective local governance and administration in the territories taken from Al-Shabaab, which is essential for success in the current political process and for obtaining the support of the local population for its implementation. In that connection, we welcome the announcement made at the London conference with regard to new local stability funds and a joint financial management board to ensure an efficient use of resources in favour of the development of Somali society.

Although we welcome the fact that Somalia is no longer in a state of famine, the situation nevertheless remains fragile. We hope that the improvement in the security situation will make it possible to establish better conditions for humanitarian operations, in particular since the Al-Shabaab movement continues to prohibit certain humanitarian organizations from operating in areas under its control, which considerably affects the ability to provide aid to populations in need. The international community should also show greater solidarity with the Somali people in terms of providing humanitarian assistance.

Finally, piracy off the coast of Somalia is still a source of major concern for the international community owing to its human cost and the fresh outbreaks of violence against hostages, with their destabilizing consequences for Somali society.

In conclusion, the Kingdom of Morocco welcomes the international community's renewed interest in solving the crisis in Somalia and welcomes the steps taken towards stabilizing that African country. We take comfort every time that Africa is on its way to resolving a conflict that is shaking our continent. We hope that the Somali authorities will redouble their efforts to contribute to returning Somalia to normality in region that is so strategic for the stability of our continent.

**Mr. Mehdiyev (Azerbaijan):** At the outset, I would like to commend the United Kingdom on assuming the responsibilities of the presidency of the Security Council for the month of March, as well as to congratulate Togo for its very successful presidency in February. I would also like to thank the United Kingdom for convening this open debate on the situation in Somalia, and to welcome the presence at this important meeting of His Excellency Under Secretary of State Henry Bellingham. We thank Secretary-General Ban Ki-moon for his statement, and Special Representative of the Secretary-General Augustine Mahiga for his briefing.

I would like to reiterate our strong support for the Transitional Federal Government of Somalia in its efforts to overcome difficulties, achieve reconciliation and build a secure, stable, united, democratic and prosperous nation. We note the holding last month in Garowe of the United Nations-facilitated second Somali National Consultative Constitutional Conference, which agreed on a set of Principles for finalizing the draft constitution and ending the transitional process by August 2012.

As Somalia moves towards the end of the transition, additional steps should be taken to protect the security and political gains of the past few years, as well as to ensure that all efforts ultimately contribute to the delivery of the road map. We believe that continued international assistance to the Transitional Federal Government of Somalia to implement the end of the transition is necessary to bring unity, peace and stability to Somalia.

Azerbaijan supports the work of the United Nations in that country. We commend the efforts of the African Union, the African Union Mission in Somalia (AMISOM) and the troop-contributing countries for their valuable support for the people and the Government of Somalia. We also commend the contribution of the Organization of Islamic Cooperation in favour of achieving peace and national reconciliation in Somalia and mobilizing assistance to meet the urgent needs of the people affected by the humanitarian crisis in the country.

Like other members of the Council, Azerbaijan welcomed the international London conference held on 23 February 2012, which demonstrated the international community's political will and determination to support Somalia and its people. It is important to use the momentum generated by the conference and build on the agreement achieved in London to continue pursuing a comprehensive strategy for the establishment of peace and stability in Somalia. We must continue to approach the complex situation in the country with care and sensitivity, on the basis of a comprehensive strategy aimed at addressing the political, humanitarian, economic and security problems in the country through the collaborative efforts.

Somalis should take over responsibility for providing their own security and developing their own justice system in order to deal with threats to their security. It is essential that political, security and institutional reforms conform to the pace of military gains. The Transitional Federal Government should be consistently supported so that it can become fully operational in the areas under its control. The measures taken by the Government to develop outreach activities in the recently recovered areas should be further encouraged.

Azerbaijan welcomes the commitment made at the London conference for renewed international action to address the threat posed by terrorist attacks from Somali armed opposition groups. It is encouraging that a combination of measures, including the efforts of the Transitional Federal Government of Somalia, actions by naval forces and the imprisonment of many suspected or convicted pirates, has contributed to the decline in the number of successful piracy-related attacks. However, further effective countermeasures and strengthened international cooperation remain crucial against the backdrop of the ongoing threat

posed by piracy and armed robbery off the coast of Somalia and the increased incidents of attempted attacks. In that regard, we note the commitments made at the London conference on new efforts to repress piracy.

The long-awaited durable peace in Somalia requires the economic recovery of the country, which is suffering from the grave consequences of the two-decade war and instability. It is important to expand the existing stabilization plans in Somalia to new sectors, to increase international support to areas of stability, including through a new stability fund, and to encourage further efforts to address Somalia's long-term reconstruction and economic development. Azerbaijan welcomes the initiative of the Government of Turkey to host a conference in Istanbul in April, focused on the economic development of Somalia.

The humanitarian situation in Somalia is a matter of serious concern. We stress the importance of lasting support to Somalia in that regard, as well as the need to redouble efforts to find long-term solutions for internally displaced persons.

In conclusion, I would like to stress that, whatever the measures being taken and assistance being provided to support Somalia, respect for and a strong commitment to its sovereignty, territorial integrity, political independence and unity are crucial and must constitute an absolute priority and indispensable prerequisite for building a secure, stable and prosperous Somalia.

**Mr. DeLaurentis** (United States of America): I would like welcome you, Mr. Minister. We extend our congratulations to the United Kingdom on assuming the Council's presidency and thank the delegation of Togo for its leadership of the Council last month. We thank the Secretary-General for his statement this morning and Special Representative Mahiga for his briefing.

Somalia stands at a critical moment. The international community has an important but limited window of opportunity. The African Union Mission in Somalia (AMISOM) and the Somali forces have driven Al-Shabaab out of Mogadishu and other areas. The mandate of the Transitional Federal Government (TFG) comes to an end in August. Somalia now has a blue print for a State after 20 years without a functional Government. At the same time, Somalia is emerging from the worst humanitarian crisis in the world.

The TFG and the international community have already taken important steps. The unanimous adoption of resolution 2036 (2012) on 22 February, immediately followed by the London conference on Somalia, shows that the international community is united in its commitment to Somalia's future. I would like to thank the United Kingdom for hosting that important conference, and commend members of the Council for giving unanimous support to AMISOM's expansion.

The AMISOM troop levels are now increasing and its funding needs have been established. The second Garowe Constitutional Conference showed the way towards more inclusive governance with clear benchmarks, and the United Nations Political Office for Somalia has now been established in Mogadishu. We have accomplished much, but this is no time to lose momentum. A number of critical tasks lie ahead before the road map's August deadline. We have six months, and we need to use them wisely.

First, the most important achievement of the London conference was to galvanize high-level and public international support to continue to keep pressure on Somali leaders to complete the road map by August. The conference participants, including the United States, concluded that the August deadline was firm. There must be no extension of the Transitional Federal Government's mandate beyond 20 August. The signatories to the road map must fulfil their commitments and complete the difficult work ahead to bring stability to Somalia for the first time in many of its people's lives.

The critical next steps are to complete the drafting of the new constitution and to establish the Constituent Assembly. Fundamental to that effort will be developing a public information and outreach process to win popular consent for the ongoing process. The United States will support the sanctioning of political spoilers and other individuals who threaten the peace, stability and security of Somalia.

Secondly, for the political process to continue, we must redouble our efforts to disrupt terrorism. Despite the military successes of AMISOM, Al-Shabaab remains dangerous. It continues to destroy the lives of innocent Somalis. We welcome the Council's decision, as requested by the TFG, to further degrade Al-Shabaab by imposing an international ban on the import and export of charcoal from Somalia. That decision targets a primary revenue stream for Al-Shabaab. However,



sanctions work only when they are implemented. We urge all Member States to take immediate steps to comply with the obligation contained in resolution 2036 (2012) to ban the trade of Somali charcoal, particularly by those most active in such trade.

We must also stop the movement of terrorists to and from Somalia, further disrupt the flow of their finances, and develop the capacity to conduct criminal investigations and prosecutions, as well as to operate secure detention facilities. The Security Council should continue advancing international cooperation to produce concrete results in those areas.

We also ask all Member States to build the capacity of the Somali security sector to pave the way for Somalis to take charge of their own security. We urge new donors to assist the Somali national security forces by providing training, equipment, salaries, infrastructure and logistical support. The United States has obligated more than \$106 million to support that effort, and we ask others to do their part.

Thirdly, to maximize the pressure on Al-Shabaab, we must implement fully and swiftly the expansion mandated in resolution 2036 (2012). The sacrifices made by AMISOM and the Somali national security forces testify to their dedication to bringing peace and stability in Somalia. We call on additional troop contributors to respond quickly to enable AMISOM to be fully staffed.

We also urge Member States to increase the voluntary support for AMISOM troop-contributing countries, particularly in the form of equipment and funding for the United Nations Trust Fund in Support of AMISOM. The United States has a long and strong tradition of support for that. Now, the support of AMISOM must become a truly international effort. Maritime assets will be critical to AMISOM's mission, and we hope that providing sustainable and reliable funding for the maritime component will be addressed in the coming months.

As we continue to reinforce AMISOM's capacity to root out Al-Shabaab and establish conditions for effective and legitimate governance, we must also ensure that timely and visible benefits accrue to ordinary Somalis in recently liberated areas and improve security, as well as access to food, water, health care and livelihoods. Stabilization programming in those areas must be expanded swiftly to cement

military gains and to lay a foundation for long-term reconstruction and economic development.

Fourthly, as we continue to press for political progress and diminish the threat of terrorism, we must sustain our humanitarian response to Somalia. All parties to the conflict must allow unrestricted humanitarian access. The United States is deeply concerned about displaced people pouring into Mogadishu. There is a widespread housing shortage, a lack of clean water and sanitation and a serious threat of disease.

We remain particularly concerned about the plight of Somali women and children, many of whom are vulnerable to increased levels of sexual and gender-based violence. We urge the international community to continue to provide life-saving assistance to those populations and others in need in Somalia and its neighbours. Secretary of State Clinton announced at the London conference that the United States would increase our humanitarian assistance to the Horn of Africa by \$64 million, bringing our total emergency assistance to the region since 2011 up to more than \$934 million. That amount includes more than \$211 million for life-saving programmes in Somalia. We urge all Member States to strongly support the \$1.5-billion United Nations consolidated appeal for Somalia, which is currently funded at only \$165 million, or 11 per cent.

Let me reiterate our strong support for AMISOM and our continued commitment to working with the international community in seeking solutions to the challenges faced by the people of Somalia, who have suffered for too long. In the six-month period, we have a unique opportunity, and we must do everything that we can to seize it.

**Mr. Wang Min** (China) (*spoke in Chinese*): I wish to thank the United Kingdom for taking the initiative to convene this open debate on the situation in Somalia. I also wish to welcome Mr. Bellingham, Under Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom, for chairing today's meeting. I wish to thank the Secretary-General Ban Ki-Moon and his Special Representative for Somalia, Mr. Mahiga, for their briefings.

At present, the peace process in Somalia has shown positive momentum. The implementation of the road map to end the transition has made progress. The second Somali National Consultative Constitutional

Conference was successfully convened. Relevant military actions are constantly making progress. The humanitarian situation in Somalia has significantly improved. China welcomes those developments.

In the meantime, we note that the peace process in Somalia remains an uphill battle. Some key tasks for the transitional period have yet to be completed. The tendency of some factions towards extremism and terrorism has grown. The humanitarian situation in Somalia remains fragile and calls for greater efforts on the part of the relevant parties in Somalia and the international community as a whole.

The achievement of national reconciliation is the ultimate means to the restoration of peace and stability in Somalia. We hope that the relevant parties in Somalia can seize the current favourable conditions, further strengthen unity and reconciliation, and actively promote and implement the Transitional Federal Charter, the Djibouti Agreement, the Kampala Accord and the Garowe Principles. We hope that they can comprehensively implement the road map and end the transitional period on time. We hope that the Transitional Federal Institutions of Somalia can further build their capacities and undertake, as soon as possible, effective governance over the entire country. We hope that the relevant factions in Somalia can forsake violence and terrorism and join the peace process.

Recently, the international community has been increasing its attention to and investment in the issue of Somalia. International regional organizations, such as the United Nations, the African Union (AU) and the Intergovernmental Authority on Development (IGAD) have stepped up their mediation efforts. The Security Council adopted resolution 2036 (2012), which raised the authorized troop level of and the support for the African Union Mission in Somalia. Troop-contributing countries such as Uganda, Burundi and Kenya have made important contributions to and sacrifices for the maintenance of stability in Somalia. Recently, the London conference on Somalia was successfully convened. We welcome its success.

China calls on the international community to continue its efforts in the following areas in order to promote the Somali peace process. It must, first, strengthen the political process and support the mediation efforts of the United Nations, AU and IGAD, and encourage relevant parties in Somalia to

substantially implement the road map; secondly, reinforce logistical support to improve the governance of the Transitional Federal Government and implement resolution 2036 (2012) in a timely and comprehensive manner; and thirdly, enhance humanitarian relief and continue to help Somalia improve its humanitarian situation. We hope that the international community can further enhance coordination and honour its commitments in order to make due contributions to the realization of lasting peace in Somalia.

**Mr. Wittig** (Germany): Let me thank you, Mr. President, for convening this important meeting on the future of Somalia and welcome you personally back to New York. We congratulate the United Kingdom on assuming the Council's presidency and assure its of Germany's support, while thanking our friends from Togo for their stewardship of the Council's work in February. A great many thanks go to the Secretary-General for his presence and his clear analysis today, as well as to Special Representative of the Secretary-General Mahiga for his briefing and his untiring commitment under very difficult circumstances. My country aligns itself with the statement to be delivered later on behalf of the European Union.

Today, I would like to focus on three points: the political situation, the security at sea off the coast of Somalia, and security on land.

First, with regard to the political situation, the London conference was indeed a milestone on the way to a better Somalia. We commend the British Government for that initiative and the efforts it put into that undertaking. It was particularly useful that all major actors from within and outside of Somalia participated and agreed to come to common solutions. We therefore look forward to the upcoming Istanbul conference, which will certainly continue this positive trend.

The sustained engagement and support of the international community should encourage the Somali leaders to move forward and to achieve tangible progress in the implementation of the road map. In this context, we recognize the important meetings in Puntland and commend the outcomes of the first and second Somali National Consultative Constitutional Conference, held in Garowe. While those are certainly steps forward, many questions still remain unresolved. Those pertain to the election of a new parliament and

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the approval of a new constitution. Further, finding administrative and security arrangements for newly liberated areas in the south and centre of Somalia remains a priority.

Somalia has no time to lose. Therefore, we see with regret and frustration, to be quite frank, the deadlock in the Transitional Federal Parliament and the ongoing infighting in the Transitional Federal Institutions. The Council has confirmed many times that it is ready to act against spoilers that slow down the country on its way forward. The time has come for the Council to discuss what type of effective action it can take against the spoilers of the Somali peace process. There are no more excuses for derailing the process, especially since the London conference and this Council have confirmed once again that the transition will end in August.

Let me now turn briefly to my second point — the military and security aspects of the situation in Somalia, including the issue of piracy. Piracy continues to pose a threat to civil navigation in the waters off Somalia and to the delivery of much-needed humanitarian aid to the people of Somalia. Due to a coordinated and resolute international response, the number of successful attacks has considerably decreased.

Lawlessness and the absence of reliable State structures in vast parts of Somalia not only provide a breeding ground for piracy, but also pose obstacles to the prosecution of apprehended suspects. Prosecution remains an element of our response to piracy that should be further strengthened. We commend the efforts of States in the region in this respect and encourage others to join them. Germany has provided substantial support to those efforts, both directly and through the Trust Fund of the Contact Group on Piracy off the Coast of Somalia. We need to disrupt the pirates' business model by increasing our efforts against the beneficiaries of piracy and improving our understanding of the financial flows generated by piracy.

Let me turn to my third point — the security situation on land. Germany commends the African Union Mission in Somalia (AMISOM), which operates under very difficult circumstances and has made enormous sacrifices. It has been the determination and commitment of those African Union (AU) forces that have improved the security situation on the ground in

recent months, thereby also creating better conditions for providing humanitarian aid.

With resolution 2036 (2012), which was adopted on the eve of the London conference, the Security Council extended considerably the mandate of AMISOM and the scope of United Nations support for the Mission. In making that decision, the members of the Security Council expressed their willingness to seize the opportunity on the ground. It is now crucial that the new strategic concept for AMISOM be implemented in a timely and comprehensive manner and that all components of AMISOM jointly work towards fulfilling its objectives. We look forward to the swift rehatting and arrival of new troops in line with the agreed schedule. The Council will closely monitor progress in this regard, based on regular reports in accordance with resolution 2036 (2012).

That resolution recognizes the support provided to AMISOM by bilateral partners and regional organizations. I would like to stress once more the substantial contributions made by the European Union currently and in the past, and reiterate the call of resolution 2036 (2012) for new donors to support AMISOM.

Finally, resolution 2036 (2012) also calls for the speedy establishment of Somali security forces. It is the Somalis themselves who will eventually need to take care of their country and provide for the safety and security of the population. Therefore, the establishment of professional and reliable Somali security forces is key. The international community needs to support Somalia in this respect. My country actively engages in the European Union training mission for the Somali security forces and encourages others to join these efforts.

For Germany, the ultimate goal of all efforts remains a peaceful and functioning Somali State with responsible State authorities that effectively serve the people of Somalia.

**Mr. Rosenthal** (Guatemala) (*spoke in Spanish*): At the outset, we congratulate the United Kingdom on its assumption of the presidency of the Council and thank it for having organized this meeting. We also reiterate our gratitude to the delegation of Togo for its outstanding management of the presidency in February.

We would like to thank Mr. Henry Bellingham, Parliamentary Under Secretary of State of the United

Kingdom, for presiding over this meeting and to congratulate him for the successful conference held in London a few days ago. We also extend a warm welcome to Special Representative of the Secretary-General Augustine Mahiga, an ex-colleague and esteemed friend, who joins us through cyberspace.

The London conference undoubtedly raised Somalia's profile in the international community, and generated good prospects for meeting the schedule established for the transition period. We believe that Somalia is facing a challenge akin to that of a marathon runner, since the drafting of the constitution must end by 20 April and its adoption completed on 22 May. Following that, on 15 June we expect the new Somali Federal Parliament to be formed and, as if that were not enough, the general elections are planned to be held on 20 August. Therefore, we understand that the next six months will be critical to the political trajectory of Somalia, and a rigid discipline on the part of the authorities and civil society of the country, as well as the strong support of the international community, will be required if this highly ambitious timetable is to be met.

Both the London conference and the recently adopted resolution 2036 (2012) — which strengthens the operations of the African Union Mission in Somalia (AMISOM) — demonstrate the commitment of the international community to supporting the national process in Somalia. This is adequately reflected in the documents that came out of the first and second Somali National Consultative Constitutional Conferences held in Garowe. The Security Council must remain vigilant to the compliance with these deadlines, since postponing the end of transition would represent a step backwards.

We hope that the new Government of Somalia that will assume power after 20 August will be more representative and inclusive of the Somali people. We appreciate that 30 per cent of the representatives in the new Somali Federal Parliament will be women. We are concerned about the tactics of one group of parliamentarians in not recognizing the Principles and road map that emerged from the second Garowe Conference, as noted by the Special Representative of the Secretary-General Mahiga in his briefing. We appreciate the efforts made by Mr. Mahiga and by the United Nations Political Office for Somalia to help these tasks be completed.

Allow me now to highlight some points about the security strategy. We are encouraged by events on the ground and by the areas recently recovered. We are grateful to all partners for their sustained support to Somalia, in particular those whose personnel have made the supreme sacrifice in helping to stabilize the country. We reiterate that financial support to AMISOM must be predictable. At the same time, we believe that the capacity-building of Somalia's security forces is essential, and that these continue to work side by side with AMISOM.

We are encouraged by the fact that Mogadishu is experiencing an environment of stability that is increasing day by day. The presence of Mr. Mahiga and his team there attest to that fact. We fully support expanding and implementing the stabilization plans to the recovered sectors. The establishment of local administrations capable of providing basic services to their local population will be essential.

Finally, we know that Somalia is endowed with an adequate base of natural resources, including one of the longest shorelines in Africa. The sustainable management of these resources must benefit the local population. We know that piracy and armed robbery on the coasts of Somalia are largely a consequence of the lack of economic opportunities for its population. That is why we are pleased that the economic development of Somalia is a key item on the agenda of the forthcoming Istanbul conference.

**Mr. Tarar** (Pakistan): We warmly felicitate the delegation of the United Kingdom on its assumption of the Security Council's presidency for this month. We welcome you, Sir, as the Parliamentary Under Secretary of State at the Foreign and Commonwealth Office of the United Kingdom. We also thank Togo for its sterling stewardship of the Council in February. We are grateful to the Secretary-General for his special report on Somalia (S/2012/74). We also thank Special Representative of the Secretary-General Augustine Mahiga for his briefing today.

At the present critical juncture in Somalia's quest for peace and stability, hope outweighs the usual skepticism associated with the country. The London conference on Somalia reflected this optimism. We commend the United Kingdom for organizing the conference. The London communiqué reflects the international community's desire to support Somalia, as well as the aspirations of the Somali people to a

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better life and future. Pakistan would join the consensus within the Security Council in support of the London communiqué.

The end of the transition period in August should mark the end of conflict spanning more than two decades. A domestic consensus among all political stakeholders is essential to oversee this critical period. We welcome the commitment of the Somali leadership, first at Garowe in December 2011 and later in London last month, to work for a representative post-transition Government in Somalia, in line with the Transitional Federal Charter, the Djibouti Agreement, the Kampala Accord and the transition road map. Such a commitment is essential to create a positive political environment to handle successfully the imminent transformation in Somalia. We hope that the leadership of Somalia will shoulder its responsibility and seize the opportunity provided by the strong engagement of the international community for achieving peace and stability in the country.

Political progress in Somalia will remain fragile without corresponding gains in the security area. In that regard, the role of the African Union Mission in Somalia (AMISOM) is crucial. Resolution 2036 (2012), adopted last month, increased the scale and scope of AMISOM. It also expanded the United Nations logistical support package to enhance the predictability, sustainability and flexibility of the Mission's financing. With that, AMISOM corresponds with the benchmarks identified in the United Nations-African Union strategic concept paper. That development constitutes a stellar model of cooperation in the field of peace and security between different organs of the United Nations and the African Union. The upgraded AMISOM, with all the requisite enablers and force multipliers, will meet the objectives set forth by the United Nations and the African Union and assume an improved profile to implement its challenging mandate.

AMISOM troop-contributing countries deserve praise for their commitment and resilience. We value the financial contributions made to AMISOM by the African Union's partners, bilateral donors and contributors to the United Nations Trust Fund for AMISOM.

Long-term security and stability in Somalia cannot be ensured without a viable security setup. The development and enhancement of Somali security

forces was also an element of the strategic concept paper. International assistance, including through wider engagement by the United Nations peacekeeping architecture, will be vital for that purpose.

Pakistan supports the addition of a maritime component to AMISOM for the prevention of piracy and armed robbery off the coast of Somalia. That would complement the efforts of the international naval forces in the Gulf of Aden and adjacent waters. The area of Somali pirate activities is mostly along the Somali coastal areas, the Gulf of Aden and adjacent waters. That is the area where the anti-piracy operations should focus strictly.

Over the years, Pakistan has played an active role in the international naval coalition against piracy by deploying its naval assets. We have participated in the operations of two naval task forces — Combined Task Force 150, for countering piracy in the Gulf of Aden, and Combined Task Force 151 (CTF-151), for countering piracy off the coast of Somalia. Pakistan, which had commanded the task force in the past, has again been in command of CTF-151 since November 2011.

As part of the international naval coalition, we can say from experience that coercive measures alone are not enough to eradicate the menace of piracy. For its complete eradication, a comprehensive strategy aimed at addressing the root causes is required. As has been stated before, the root causes of piracy exist on land, and include a complex intermix of economic breakdown caused by political and security strife as well as environmental degradation of coastal areas caused by illegal fishing and the dumping of toxic wastes. All of those factors lead to propensity among the local population to opt for piracy.

We share the concerns expressed by previous speakers about the humanitarian situation in Somalia. Despite improvement with regard to the famine situation, humanitarian challenges persist and require our sustained attention. The humanitarian situation can unravel progress achieved in political and security spheres. We therefore need to remain seized of the humanitarian needs of the Somali people.

The international community's engagement to address Somalia's myriad problems is propitious. Resolution 2036 (2012), as well as today's debate, with the presidential statement (S/PRST/2012/4) backing

the London communiqué, reflect our collective desire for peace and stability in Somalia.

Pakistan will continue to support Somalia in bilateral terms, as well as in its quality as a member of the Security Council, the Organization of Islamic Cooperation contact group on Somalia and the United Nations Contact Group on Piracy off the Coast of Somalia. We look forward to the Istanbul conference as another milestone in our collective journey for peace in Somalia. As always, our Somali brethren will find us a steadfast partner.

**Mr. Menan** (Togo) (*spoke in French*): The situation in Somalia once again has the attention of the Security Council, which has devoted today's debate to that issue. First of all, Mr. President, I would like to congratulate the United Kingdom on its accession to the presidency of the Council for the month of March. I also thank your delegation for choosing the situation in Somalia as the subject of the first debate under its presidency. I also welcome the presence in New York of Under Secretary of State Bellingham in order to preside over this debate. As well, I would like to thank the Secretary-General and Ambassador Mahiga for their very informative statements.

Taking place a few days following the holding of the international conference on Somalia in London, on 23 February, this debate is testament to the commitment and desire of the United Nations and the international community to pursue their efforts aimed at restoring peace and security in Somalia. We should recall that the outcome of the conference provides a guarantee of support for the federal transitional authorities in the effective implementation of the road map for the end of the transition, scheduled for August. Togo believes that this dynamic of solidarity vis-à-vis Somalia on the part of friendly countries and other bilateral and multilateral partners will undoubtedly have a positive impact on the future of a country that has been ravaged my many years of war.

On 22 February, prior to the holding of the London conference, the Security Council adopted resolution 2036 (2012), which authorized increasing the numbers and necessary logistical support for the African Union Mission in Somalia (AMISOM). Quite clearly, the adoption of the resolution is a sign of support for Somali officials, but it is also a signal to them to shoulder their own responsibilities. It is important that Somali officials continuously bear in

mind the fact that the numerous efforts made by the international community are but support for the efforts that they must themselves carry out to achieve the broader goals in the areas of security, humanitarian assistance, reconstruction and the economic development of their country.

With regard to the process of promoting peace and reconstruction in Somalia, my country believes that the emphasis should be on strengthening the capacities of national security forces so that they can themselves ensure security and stability in the long term, in cooperation with AMISOM and after its departure. Togo therefore encourages the implementation of the specific programmes under way, with the support of various State and institutional stakeholders. In that regard, particular emphasis should be placed on reforming the security, judicial and humanitarian sectors.

With regard to the latter, given the number of displaced persons, the needs are estimated to be quite significant. Togo also urges the international community to better coordinate humanitarian assistance so that it can reach those in greatest need in a timely manner and cover the entirety of the country.

Piracy along Somalia's coasts and in the Gulf of Aden continues to pose a serious threat to maritime security and the economic development of the countries of the region. Although the number of successful acts of piracy has decreased significantly owing to the specific measures taken, it is nevertheless worrying to note that there are still many instances of pirate attacks and hostage-taking, and that those now extend beyond Somalia's coasts.

The resolve to adopt effective measures to address those challenges, as called for in presidential statement S/PRST/2012/4, just adopted by the Council, sends a message of resolve on the part of the international community to the armed groups and perpetrators of acts of piracy and armed robbery at sea, who must be dealt with without delay. Togo believes that, within the range of appropriate responses that must be brought to bear in the fight against that scourge, there also needs to be a vision for a long-term solution that will take into account the deeper causes of the phenomenon. We therefore hope that the international conference on Somalia that the Government of Turkey has proposed to host in Istanbul will explore those issues in greater depth.

To conclude, Togo congratulates the United Kingdom for initiating the presidential statement (S/PRST/2012/4) just adopted, which constitutes an additional milestone in the actions taken by the United Nations as part of the process of restoring security, peace and stability in Somalia.

My country expresses its deep gratitude to the countries of the subregion, in particular those that contribute troops to AMISOM. We also thank the partners of the African Union, especially the European Union, which has provided AMISOM with financial and logistical support.

**The President:** I shall now make a statement in my national capacity.

At the London conference on Somalia 10 days ago, the international community set out a vision for bringing peace to Somalia and for supporting the Somali people in their search for a better future for their country. I would like to offer my thanks and sincere gratitude to all the countries that attended.

We agreed that we needed to focus on addressing the underlying causes of instability, as well as to take immediate action to address the symptoms of Somalia's problems in the form of piracy, terrorism, poverty and famine. We were clear that, while the famine in Somalia was now over, the humanitarian situation remained grave, and that we should prioritize our support to the Somalis in need.

I would like to focus today on how we can build on the platform of London to maintain our focus on those underlying causes, by sustaining the momentum of the political process, building security and justice capacity, and supporting stability at the local level.

First, with respect to the political process, as my Prime Minister said in London, the Garowe meetings have made really positive steps towards replacing the Transitional Federal Institutions in August with something more accountable, more inclusive and more representative. Our responsibility now is to support the United Nations and the Somalis in order to ensure that the Somali-led process for selecting the independent interim electoral commission and the national Constituent Assembly are truly representative. Somali leaders must work towards a political process that is open to all those prepared to reject violent opposition. Only if Somalis have a say in the shape of their future

institutions will they feel inclined to give their backing to a new Government.

We need to consider how we can support the process, both by incentivizing those currently in positions of power to be prepared to step down and allow new arrangements to be introduced, and by maintaining pressure on potential spoilers to prevent them from blocking progress. I entirely agree with remarks made by the United States representative on that particular point. The timelines set out to lead the process up to August are tight. We need to help the Somalis maintain the momentum needed to meet them.

Secondly, with regard to security and justice, I am delighted that we were able to adopt resolution 2036 (2012) ahead of the conference, thus providing a proper package of support to an expanded African Union Mission in Somalia (AMISOM). Along with a number of other speakers today, I would like to pay tribute to the brave soldiers, especially those from Uganda and Burundi, who have paid the ultimate price. They deserve proper logistics.

We now look to partners in Africa to provide the additional troops mandated and to ensure the proper coordination of efforts in Somalia under the AMISOM banner. In the meantime, we and other international partners need to continue to support elements of AMISOM not funded through the United Nations, including troop stipends. In that respect, I join with the representative of France in welcoming the European Union's announcement of an additional €100 million in funding.

The London conference sent a clear message. In addition to supporting AMISOM, the international community must redouble its support for the development of local Somali security solutions, including improved access to justice across the country, which is a vital ingredient of human security. Despite the efforts of a number of partners, Somali security and justice institutions are currently poorly resourced and lack capacity. We can and should do more. We should improve our coordination and focus in that area, in line with the principles agreed in London, and we should work closely with the United Nations Joint Security Committee. The end goal for us, as well as for Somalis, is a Somalia that can provide security for its own people without the need for international troops. The development of effective Somali judicial capacity will also enable Somalis to

tackle the scourge of terrorism and piracy. Increased capability to prosecute pirates and the kingpins of piracy will complement vital work to undermine the piracy business model. I certainly agree with what the French representative said a moment ago, when he referred to a time in the future when we do not see any more catch-and-release taking place. I particularly welcome announcements at the London conference on the establishment of an anti-piracy intelligence centre and an international task force on piracy ransoms.

Finally, with respect to building stability at the local level, the London conference saw the launch of a new stability fund as a vehicle to help deliver support in areas working to put in place accountable local authorities. It is essential that we support those areas. We must increase the number of people who feel safe and secure, and we must improve the access of Somalis to jobs, health, education and water. It is equally vital that we also help local institutions that are accountable for their actions and transparent in their management of resources and that represent the interests of all Somalis, not just the elite. That will serve as a foundation for large-scale investment in Somalia's economic development, thereby in the longer term paving a path to stability. It will demonstrate to people in areas liberated from Al-Shabaab that peace offers a real and better alternative. I welcome contributions to the stability fund announced in London, and call on others to support those efforts.

At the London conference, there was wide recognition that this is a key moment in Somalia's history. We have an opportunity, now more than ever, to build stability in Somalia. We need to take that opportunity, build on gains on the ground, and turn our consensus in London into actions and change that make life better for the Somali people. If we succeed, then people will look back on these few months as a real turning point. If we fail, then the young of Somalia will continue to grow up surrounded by violence, helplessness, evil and degradation. We owe it to them to redouble our efforts.

I now resume my functions as President of the Council.

I wish to remind speakers to limit their statements to no more than four minutes in order to enable the Council to carry on its work expeditiously. Delegations with lengthy statements are kindly requested to

circulate their texts in writing and to deliver a condensed version when speaking in the Chamber.

I now give the floor to the representative of Somalia.

**Mr. Duale** (Somalia): I wish to thank you, Mr. President, on behalf of the Somali Government and the people of Somalia, for convening this open debate on Somalia, the first general open debate of your presidency. This debate follows the successful international conference of 23 February 2012 in London, the outcome of which was applauded by most well-meaning Somalis, both inside and outside the country.

I also thank His Excellency Secretary-General Ban Ki-moon for his comprehensive special report on Somalia (S/2012/74), and Mr. Augustine Mahiga, the Special Representative of the Secretary-General for Somalia, for his thorough briefing on the situation in Somalia. The Prime Minister of the Transitional Federal Government (TFG) of Somalia, in his statement at Chatham House in London on 24 February, expressed his appreciation and thanks, on behalf of Somalia and its citizens, to the United Kingdom for holding the London international conference on Somalia, in which all of the Somali regional authorities and other stakeholders were represented.

It is worthwhile to note, in that connection, that there have been 20 international conferences on Somalia since the collapse of the central Government in 1991 — all attempting to shape a viable Government and a semblance of peace and security in the country. It is true that commendable efforts were made during those conferences, and in good faith, especially by neighbouring countries hosting these conferences, including Ethiopia, Djibouti, and Kenya. The last such conference resulted in the creation of the Transitional Federal Government.

The tangible difference of the London international conference is that, first, it was attended by 55 international leaders and all the Somali leaders from across the regions of Somalia, as well as by the Secretary-General and his top aides, and by multilateral and regional leaders and organizations. It focused on the most critical issues, such as the political process, governance, security, justice, piracy and terrorism, stability and recovery issues, international



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cooperation, effective coordination and humanitarian issues.

Furthermore, what was unprecedented was the moral commitment and expressed will of both the international community and the Somali representatives to achieve fundamental change through a new approach, and to become engaged in Somalia, and not business as usual. In addition, Somalia welcomes with appreciation the planned meeting in Istanbul in June to further discuss vital issues, including recovery and maintaining recovery. Most of the issues have already been mentioned by members of the Security Council, and we appreciate and endorse the statements made by the Security Council members, including your good self, Sir.

Today, Somalia is at a crossroads. The Somali leaders have agreed and committed themselves to delivering on schedule, as was stated, on the Transitional Federal Charter, the Djibouti Agreement, the Kampala Accord, the road map and the Garowe Principles, just as they are all fully committed to ending the protracted transition period by 20 August 2012. However, one remains a bit worried, given the past experiences of conferences on Somalia, at which good intentions were expressed and generous commitments were made that have not been seen through nor delivered in a timely as a result.

Allow me to conclude my remarks by quoting two very brief paragraphs from the statement of His Excellency the Prime Minister of the Transitional Federal Government at Chatham House in London on 24 February:

“The conference has created substantial expectations for all Somali stakeholders. The next stage is a long journey for Somalia, but I believe that we have embarked on this journey, and my Government is committed to putting in place the foundations needed to deepen peace, stability and development.

“As a result of the conference, I expect there will be a noticeable change in enhanced international coordination for key sectors, improved financial management of Somalia’s public assets, an increased African Union troop presence and enhanced support of the road map.”

Somalia’s problems are long-standing and complicated; solving them will require serious, honest,

coordinated and consensus-based partnership between the Transitional Federal Institutions, the Somali stakeholders, the African Union, the United Nations and the broader international community. More funding for local stability initiatives, including counter-piracy, security, justice and counter-terrorism, as well as funding for Somalia’s productive sector and for youth employment.

Mr. President, finally, while reiterating my Government’s appreciation and thanks to you, may I seize this opportunity also to extend through you our thanks and appreciation to the members of the Security Council for the consensus on the presidential statement that you have read today, and for their positive and very supportive statements.

**The President:** I call on the representative of Uganda.

**Mr. Ayebare** (Uganda): Let me begin by congratulating you, Sir, and the delegation of the United Kingdom on assuming the presidency of the Security Council for this month. I thank you for organizing this important and timely open debate on the situation in Somalia. I also thank the Secretary-General and his Special Representative for Somalia for their statements.

This debate is being held hardly two weeks after the Security Council adopted resolution 2036 (2012). Uganda commends the Council for that resolution, which was a demonstration of the Council’s commitment to the cause of peace and security on the African continent, and Somalia in particular.

Uganda also commends the United Kingdom for organizing the London international conference on Somalia on 23 February. We welcome the outcome of that meeting, which affirmed international support for the stabilization of Somalia. We also wish to underscore the need to build on that outcome through the collaborative effort of all stakeholders in Somalia, the region and the rest of the international community.

Uganda is convinced that durable peace and stability in Somalia are attainable. When we can look back from where we have come, I am sure we can say today, without any contradiction, that we have made visible progress in moving forward to stabilize Somalia. We commend the efforts of the Transitional Federal Government (TFG) and the Somali people aimed at restoring peace, security and stability in the

country, in spite of the challenges. We commend them because, ultimately, that is their primary responsibility. We also commend the international community for supporting the people of Somalia.

In addressing the situation in Somalia, I would like to make the following points.

First, we encourage the TFG to intensify its efforts to complete the outstanding transitional tasks. We welcome the commitments made at the London conference to work for a more representative Government in Somalia, in line with the Transitional Federal Charter, the Djibouti Agreement, the Kampala Accord, the end of transition road map and the Garowe Principles. We believe that a representative Government will lead to greater accountability and unity, which are essential to peace and stability in Somalia.

Secondly, resolution 2036 (2012) was a significant outcome because the Security Council responded positively to the request of the African Union to continue its support of the Union's ongoing stabilization efforts in Somalia. That was an example of the envisaged United Nations-African Union strategic partnership that can enhance our collective efforts in the maintenance of peace and stability on the continent.

Uganda appreciates the support that has been extended to the African Union Mission in Somalia (AMISOM) by international partners, such as the bilateral support programmes of the United States of America and the African Peace Facility of the European Union. It is essential that that support continue because there is need to consolidate the security gains made in Somalia and deny a new lease on life for extremist groups such as Al-Shabaab. We need to build on our achievements and continue to support efforts aimed at developing the Somali security forces and institutions, the role of which remains vital to ensuring Somalia's long-term security and stability.

Thirdly, the humanitarian situation in Somalia remains a matter of concern. Uganda commends the humanitarian agencies and workers who continue to operate in Somalia under very difficult conditions. We call upon the international community to redouble its support for the humanitarian effort.

Fourthly, piracy off the coast of Somalia is an international problem that requires our collective

efforts and contribution. We welcome the counter-measures that have been undertaken but also note the increased incidence of attempted attacks. As we have said before, pirates are not aquatic. They live on the mainland. We would like to reiterate, therefore, that the most effective and durable approach to combating piracy off the coast of Somalia is to address its root causes and establish State authority and control on the mainland. That is where our collective efforts should be directed.

Fifthly, the progress we see in Somalia is a signal to the Somali people and to the international community that a new phase and opportunity exist in Somalia. The people of Somalia want to be safe, to be well and to have access to basic services; and they are looking for economic opportunities. However, the Government is not in a position at this time to undertake certain critical activities. The country requires the support of the international community for its reconstruction and economic development, including for the provision of key basic services and infrastructure. That will promote resettlement, reintegration and reconciliation and lay the foundation for sustainable peace.

In conclusion, I wish to reiterate Uganda's commitment to supporting stabilization efforts in Somalia. We will continue working with our partners in the region and outside the region to that end. An opportunity exists that must not be lost.

**The President:** I now give the floor to the representative of Kenya.

**Ms. Ojiambo (Kenya):** I thank the presidency of the Council for the month of March for arranging this debate and for according Kenya the opportunity to share its views. I also wish to thank the Special Representative of the Secretary-General for Somalia, Ambassador Augustine Mahiga, for his briefing.

This meeting on Somalia could not have come at a better time. It follows closely on intense work undertaken at the regional and international levels in the past three months, which culminated in the unanimous adoption of resolution 2036 (2012). At this juncture, we wish to welcome and thank the United Kingdom for convening the London conference on Somalia, held on 23 February, at which Kenya was represented at the highest level. The conference demonstrated the United Kingdom's resolve and the

international community's commitment to rallying to the cause of Somalia.

Although Kenya welcomes resolution 2036 (2012), which reviews recommendations by the African Union for the future operations of the African Union Mission in Somalia (AMISOM), we note that the resolution does not provide for a maritime component. Yet that component is critical to the eventual success of the campaign in Somalia, as well as to the fight against piracy and international terrorism. It is our expectation that this matter will be addressed by the Council when reviewing the mandate of AMISOM later on in the year. In the meantime, the huge costs of sustaining the maritime operation continue to weigh heavily on my country, and it will be necessary to identify alternative forms of assistance to enable Kenya to continue those operations. It is our hope that our international partners will support us in this crucial endeavour.

The Somalia crisis is a matter of which Kenya has remained seized for years. While the crisis has generated a number of challenges, our determination to turn Somalia around has been unwavering. In this context, I wish to pay special tribute to Uganda and Burundi for their contribution to the search for lasting peace in Somalia. We also recognize the commitment of Ethiopia and its critical support to the Transitional Federal Government (TFG) and allied forces; to Djibouti for the deployment of its first contingent to Somalia; and to my country Kenya, for its ongoing operation, which has liberated parts of the country and populations in southern and central Somalia. Kenya's agreement to rehat its forces as part of AMISOM will strengthen the mission and give a boost to the fight to eliminate the Al-Shabaab terrorist group, especially after that group's recent declaration that they are part and parcel of Al-Qaida.

The present discussion is taking place at a time of unique opportunity for Somalia. The international community finally has before it an unprecedented window of opportunity to restore security, peace and stability in Somalia. This has been occasioned by the momentum created following the withdrawal of Al-Shabaab from Mogadishu after its defeat by AMISOM and TFG forces in August 2011, by the operations of Kenyan and TFG forces in south-central Somalia, and through assistance from Ethiopia, all of which have dealt a devastating blow to Al-Shabaab.

Kenya's operation in pursuit of Al-Shabaab and other terrorist elements has so far liberated large areas of Somalia and freed the inhabitants from Al-Shabaab control. Additionally, Kenya's operation in Somalia has significantly reduced the incidence of piracy off the coast of Somalia.

As we pursue political and military strategies in Somalia, it is also imperative that we focus attention on the humanitarian situation in Somalia. As Council members are aware, Kenya is host to more than 600,000 refugees in the Dadaab complex, who continue to face threats that require humanitarian interventions. In that regard, Kenya stands ready to work with the international community to map out a firm and durable solution, including the return of those people to their home country. Indeed Somalia, now more than ever, needs its displaced human resources to return home to work together to speed up its recovery. The humanitarian actors should now take advantage of the areas secured from the Al-Shabaab to resettle those people. This is a matter of utmost urgency, as Kenya can no longer continue carrying the burden occasioned by the situation.

Further, we must focus on restoring normalcy to Somalia by, among other things, encouraging socio-economic activities that will have an impact on the livelihoods of ordinary Somalis, especially in areas that have been liberated. Such efforts will form the basis for extending TFG governance to those regions, increase the legitimacy of the transitional process and boost reconciliation activities.

In addition, we call on all concerned to seriously reflect on the next steps for Somalia after the end of the transitional period in August 2012. In that regard, we commend the efforts of States like Turkey for showing renewed interest in organizing further meetings on Somalia and for undertaking infrastructure development in Somalia, such as the reconstruction of Mogadishu airport.

Finally, I call on the Council and the international community at large to support the efforts currently under way aimed at bringing lasting peace and stability to a country that has suffered the effects of conflict for over two decades. This time we must get it right and do right by Somalia.

**The President:** I now give the floor to the representative of Turkey.

**Mr. Apakan** (Turkey): I would like to thank you, Mr. President, for organizing today's open debate. Allow me to commend the remarks made by the Secretary-General, who has been personally committed to peace efforts in Somalia. We would also like to commend the Government of the United Kingdom for having organized the international London conference on Somalia last month. The conference was important in consolidating the determination of the international community to support the process in Somalia. Turkey welcomes the conference and fully supports its communiqué.

The Somalia issue has been on the agenda of the international community for far too long. Today, thanks to our joint efforts and those of the Somali people, we have come very close to a point of success for the first time after so many turbulent years. Now is the time to concentrate and enhance those efforts to solidify peace and stability in Somalia.

As agreed by all parties, the transition period will end on 20 August, without any further extensions. With less than six months remaining, there are a number of key tasks that must be achieved by the transitional authorities in Somalia. Those responsibilities are clearly outlined by the Kampala Accord, the road map and the Garowe Principles. We believe that transitional federal institutions should spare no effort in realizing the set objectives. In the same vein, finalizing and adopting the draft constitution on time, selecting a new and representative Parliament and choosing the new Government of Somalia are the most critical tasks to be completed. Military gains without political progress will be in vain and will create a political vacuum, which will only serve the spoilers in Somalia.

Turkey firmly believes that the main priority of the international community must be to support Somali authorities in fulfilling their responsibilities to successfully complete the transition period. In other words, Somali transitional institutions and the people of Somalia must feel the support of the international community more than ever for the remaining period.

The significant efforts and sacrifice demonstrated by the forces of the African Union Mission in Somalia (AMISOM) and the African Union in Somalia undoubtedly constitute the best and the most visible example of the support given by the international community. In that regard, Turkey commends the efforts of AMISOM and very much welcomes

resolution 2036 (2012). We also welcome the increasing political, logistical and financial support provided to AMISOM and to Somalia by donor countries and organizations.

Turkey attaches the utmost importance to the territorial integrity of Somalia. Bearing that in mind, we believe that the following steps must be taken for a better future in the country. First, all Somalis should work out their differences so as to reach genuine reconciliation, which is the recipe for long-term peace, stability and prosperity.

Secondly, the development of security sector institutions in Somalia is an urgent necessity for sustaining security in the country. Somalia should be assisted in that field.

Thirdly, it is equally important to establish public institutions, such as regulatory and administrative bodies, for a functioning State and economy.

Fourthly, special attention should be given to development and reconstruction efforts in Somalia, so that the Somali people feel a sense of normalization in their lives. Turkey believes that public services — particularly in health, education, water and sanitation and infrastructure projects, such as roads, power generation and irrigation — should be carried without delay. Likewise, policies for job creation and the promotion of industrial and agricultural development must be put in effect. Once in place, such policies will also help eradicate extremism, marginalization and piracy.

Fifthly, humanitarian assistance should continue to work to prevent a recurrence of last year's famine.

On its part, Turkey has launched a comprehensive programme to support the Somali people, including reopening our Embassy in Mogadishu in November 2011. I am particularly happy to announce that, beginning today, Turkish Airlines will start flying regularly between Istanbul and Mogadishu. Furthermore, Turkey is planning to establish regional development offices in Garowe and Galkayo. The offices will focus on development and infrastructure projects.

Finally, I would like to mention that Turkey will organize the second Istanbul conference on Somalia on 1 June. The Istanbul Conference will discuss the progress made on the conclusions of the London conference. It will also address the post-transition

strategy. In doing so, Turkey will work closely with the United Nations, especially with the United Nations Political Office for Somalia and Special Representative of the Secretary-General Mahiga, who has the full support of the Turkish Government.

Now is the time to end the two-decades long suffering of the Somali people. They deserve to see their country rise from the ashes of the past to a bright, peaceful and dignified future. It is our common responsibility to make that possible.

**The President:** I now give the floor to the representative of Brazil.

**Mrs. Dunlop (Brazil):** I thank the United Kingdom for organizing this open debate and for having hosted the London conference on Somalia on 23 February. I also express appreciation to the Secretary-General for his briefing. And I thank Mr. Mahiga for his briefing and commend his work as Special Representative.

Brazil welcomes the presidential statement just adopted (S/PRST/2012/4).

As many have been saying, we are indeed at a turning point in Somali history. As we approach the end of the transitional period in August, the outlines of a new governmental and parliamentary structure are beginning to appear. We are encouraged by the agreements reached at the Garowe meetings and by the steady advance towards political progress and reconciliation.

As Brazil stated during the London conference, the efforts of the African Union Mission in Somalia (AMISOM) and of neighbouring countries are weakening Al-Shabaab. We expect Somali authorities to consolidate their presence and stability in the recovered areas, through the provision of basic services and security. That will also be important to enable hundreds of thousands of refugees located in Kenya and Ethiopia to return to their homeland.

We welcome the adoption of resolution 2036 (2012), which authorized the expansion of AMISOM contingents and increased the support package for the Mission. As AMISOM strengthens its operations, it should redouble efforts to protect civilians from the consequences of conflict and avoid deepening humanitarian problems in the affected areas.

It would also be useful for a path to be opened for those who want to reject extremism and help rebuild their war-torn country through constructive political engagement. Making Al-Shabaab unattractive, especially to the young, will be easier if Somalis are given enhanced social and economic conditions to improve their lives.

The humanitarian situation in Somalia remains a source of major concern. Although famine has ended, Somalia continues to need assistance. As the Director-General of the Food and Agriculture Organization of the United Nations reminds us, the crisis is not over.

Progress in Somalia depends on a commitment on the part of the Somali transitional institutions to uphold the agreements reached among the stakeholders. The successful completion of the transitional period this August depends on such a commitment.

Brazil is also convinced that a stable Somalia will require a comprehensive strategy that combines security and development. Whatever progress is achieved on the political, military and humanitarian fronts will need to be consolidated through the creation of conditions for long-term development and resilience against further crises.

Generating economic opportunities for the Somali people is an issue that must be urgently addressed. The fact that Somalis have begun to exploit their natural resources is to be commended. It is of the utmost importance that the resulting wealth be used to foster development, stability and unity. The adequate management of resources is key to generating prosperity for current and future generations.

Brazil has provided significant humanitarian assistance, through food donations and financial support. We will continue to follow the situation closely so as to provide further cooperation to the best of our ability. The people of Somalia can continue to count on Brazil, as they progress towards a more stable and inclusive nation.

**The President:** I now give the floor to His Excellency Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations.

**Mr. Mayr-Harting:** I speak on behalf of the European Union (EU). The acceding country Croatia, the candidate countries Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Iceland and

Serbia, the countries of the Stabilisation and Association Process and potential candidates Albania and Bosnia and Herzegovina, as well as Ukraine, the Republic of Moldova, Armenia and Georgia, align themselves with this statement.

I would like to thank and congratulate the United Kingdom for organizing the timely and successful Somalia conference in London on 23 February. I would also like to thank the Secretary-General and Special Representative of the Secretary-General Mahiga for their briefings here today.

Allow me to begin by reiterating the European Union's deep concern about the situation in Somalia and about the regional implications of its conflict. The European Union is determined to support the people of Somalia. They need peace, a prosperous economy and a stable political future in which they are able to live in security under the rule of law. Only such improved governance in Somalia can bring to an end both Somali suffering and the consequent scourges of terrorism and piracy beyond its borders.

The EU has set out its approach to Somalia in its strategic framework for the Horn of Africa. It has been putting its words into action through a wide range of interventions — humanitarian, developmental, political, counter-piracy and maritime capacity-building — re-establishing the rule of law and coordinating counter-terrorism. The EU's overall support to Somalia amounts to more than €1 billion.

The European Union welcomes the progress that the Garowe Principles constitute in implementing the Kampala Agreement and the road map to end the transition. We look to Somalis to build a new Somalia on those Principles by putting in place a new constitution and a stable and accountable political structure that is acceptable to all, through an inclusive process that is representative of the Somali communities. All Somali groups that clearly renounce violence and allow unhindered humanitarian access should be included.

The European Union encourages and supports Somalia's reconciliation process. We will work hard to help the process move forward in accordance with the agreed benchmarks and timelines, as there can be no extension of the transitional period. But conflict resolution happens when local communities agree to live in peace together, not when outsiders impose peace.

It is reassuring that recent months have seen the withdrawal of Al-Shabaab from some key cities in the central and southern regions of Somalia. In fact, the EU's largest contribution has been in the area of security.

The European Union welcomes the recent adoption of resolution 2036 (2012). The EU remains a steadfast supporter of the African Union Mission in Somalia (AMISOM). We praise the commitment and bravery of the Mission's troops. The European Commission will propose a further financial support of €100 million to AMISOM to help fund the troop increase. That will be in addition to the €325 million given to date, provided through the African Peace Facility. The EU expects that, with that increase, AMISOM will be able to deliver security outside Mogadishu. But the decision to introduce reimbursements for contingent-owned equipment places an additional burden on EU member States, which together pay more than 40 per cent of the United Nations peacekeeping budget. Burden-sharing on a more equal basis is necessary. The European Union therefore calls on new, additional donors to ensure the sustainability of AMISOM financing.

Together with the political process, helping Somalis to establish their own effective security forces is our best exit strategy. The EU is therefore training the national security forces of Somalia through its training mission in Uganda. To date, together with partners, the mission has trained approximately 1,800 soldiers, specialists, trainers and junior leaders. We are currently training more trainers and officers to enable them to take command and control of the forces. The EU has also funded, through the United Nations Development Programme, the training and stipends of 7,000 Somali police officers.

The European Union supports security to create space for good, inclusive governance and for improving lives through development. Already the largest donor to Somalia, the European Union is increasing its development assistance, which now totals more than €500 million, to support governance, education and economic development. We are working wherever adequate security and governance permit development to hold sway, including the regions of Puntland and Somaliland. That support ought to be expanded to more regions, as circumstances permit.

The EU and its member States are encouraged by the United Nations announcement that famine conditions in Somalia have ended. However, concerns persist in relation to the 2.3 million people who remain in crisis. The onset of famine in Somalia spurred the EU to more than double its humanitarian aid to €7 million. The EU provided food, health care, water and sanitation facilities to those affected by the crisis. In tackling the humanitarian challenge, the EU and its member States emphasize how humanitarian assistance should be guided by the principles of humanity, independence, neutrality and impartiality. A clear distinction between humanitarian objectives and political and security objectives is essential.

The European Union also plays an important role in combating piracy off the coast of Somalia through its Operation Atalanta naval force. Its mission is to ensure the protection of World Food Program shipments and of vulnerable shipping, including deliveries to AMISOM. Operation Atalanta, whose mandate was very recently extended until December 2014, works to deter, prevent and repress acts of piracy.

The prosecution of suspected pirates continues to constitute a key task, to be solved in close cooperation with local and regional partners and within the longer-term goal of restoring the rule of law in Somalia. The European Union has signed memorandums of understanding with the Seychelles and Mauritius to transfer pirates arrested by Operation Atalanta, and is currently negotiating such agreements with other countries of the region. Additionally, the European Union welcomes the recent report by the Secretary-General on specialized Somali anti-piracy courts (S/2011/360).

Regional ownership is important. That is why the European Union supports the anti-piracy strategy of the Eastern and Southern Africa and Indian Ocean regions adopted in Mauritius in October 2010. A new element of the EU's anti-piracy engagement will be a civilian mission to build regional maritime capacities that will benefit the littoral countries of the Red Sea and the Horn of Africa regions.

In conclusion, the key to resolving the political impasse in Somalia lies with Somalis themselves. The EU notes the important contributions made by the European Union in Somalia under the leadership of Special Representative Augustine Mahiga. The

European Union welcomes the relocation of United Nations staff to Mogadishu. A sustained presence in Somalia's capital will facilitate the international community's work in the country.

The increased international attention, recent security improvements on the ground and the expansion of AMISOM constitute a window of opportunity in Somalia. Now is the time to redouble efforts to reach the ultimate goal, namely, the transfer of political and security responsibilities to a Somali Government with broad-based, local support.

We look forward to the United Nations and the African Union exercising decisive leadership in promoting peace in Somalia. The European Union will contribute to attaining that goal through a comprehensive approach. At the same time, it is imperative that all Somali stakeholders, especially the Transitional Federal Institutions, act upon their promises to solve the tremendous political, economic and security challenges before them.

**The President:** I now give the floor to the representative of Australia.

**Mr. Quinlan (Australia):** Australia welcomes the opportunity to participate in today's important debate and thanks the United Kingdom and you, Mr. President, for its initiative, including through the London conference, in which Australia participated.

Many today have already spoken of a window of opportunity in 2012, and Australia shares that guarded optimism. But as we all know, if Somalia is to truly turn a corner towards peace and stability, rapid, sustained and coordinated action from all stakeholders will be required.

Progress will first and foremost depend on the Somali political leadership and on the Somali people themselves. Developing governance structures that are broad-based and representative is clearly a fundamental first step. The Somali National Consultative Constitutional Conferences in Garowe have made important progress. We welcome in particular measures to ensure women's participation in the political process. It is vital that the process be inclusive and that the way be left open for Somalis to lay down their arms and join in the process. With a significant Somali community in Australia, we welcome efforts to ensure inclusion of the diaspora.

Expectations are clear; substantial progress must be made before August. Further obfuscation or delay simply cannot be tolerated. The international community has a crucial role to play in facilitating the process through the good offices of the United Nations and the African Union. Special Representative Mahiga clearly outlined the path ahead this morning, and we thank him for his clarity. We anticipate continued progress at the next National Consultative Constitutional Conference to be held this month, and welcome its proposed focus on fundamental rights.

In order to ensure the space for political progress, effort clearly must be made to consolidate and build on security gains, create a functioning justice system and to uphold the rule of law. International support for the African Union Mission in Somalia (AMISOM) in that context and for Somalia's emerging security forces is therefore fundamental.

We welcome resolution 2036 (2012) expanding AMISOM and providing more sustainable, flexible and predictable funding. We welcome the excellent cooperation between the United Nations and the African Union, including in the development of the new strategic concept, as well as the enhanced cooperation with the Intergovernmental Authority on Development. We particularly commend the Governments of Uganda, Burundi, Djibouti and Kenya for their contributions to AMISOM, and hope that the Mission can quickly reach its new authorized troop strength. Australia is pleased to have made some practical contributions, including of information technology, technical support and a further \$2 million last month. We will be making an additional contribution shortly.

Piracy, like terrorism, is not only a symptom but also a cause of Somalia's instability. Australian forces will continue their active participation in the anti-piracy coalition. Later in 2012, in just a few months, we will host a counter-piracy conference in Perth, an Indian Ocean city, which will consider ways to assist affected countries in addressing underlying drivers and root causes. The conference will draw on lessons learned from counter-piracy efforts in South-East Asia and also focus on the emerging piracy challenges in the Gulf of Guinea.

Clearly, A vital element in the fight against piracy is ending impunity. We welcome the initiative to

establish a regional anti-piracy prosecutions intelligence coordination centre in Seychelles, with which we will be cooperating closely, as well as the commitment of Mauritius, Seychelles and Tanzania to accepting suspected pirates for prosecution.

Addressing piracy requires a focus on both sea and land. We all know that sustainable development in coastal communities is critical to diminishing the lure of piracy. We must find ways for fisheries management to be effective, which needs to be a particular focus for us in the Istanbul conference.

Australia has committed over \$60 million to Somalia since March 2011 as part of a broader response of \$150 million to the Horn of Africa. That assistance is not just to meet basic needs, but is increasingly being directed to building long-term resilience, which is the key to the future. As the focus shifts from humanitarian support to longer-term development assistance, we welcome the establishment of a local stability fund. The London conference rightly identified Somalia's ability to manage revenues and aid flows as vital to securing sustainable international assistance. The joint financial management board will quickly need to focus quickly on strengthening Somali public financial management institutions.

In conclusion, as we were reminded by the Permanent Representative of Somalia just a few minutes ago, there have been many conferences on Somalia over the past 20 years, and the consequences of the failures of those conferences are clear. The international community must not let the tentative progress of recent months dissipate. We look forward to the forthcoming Istanbul conference in June, and especially its focus on longer-term economic prospects. Much work remains to be done, but we really must ensure that 2012 becomes what we all say it should be — not just a window of opportunity, but an actual turning point in Somalia's history. Australia remains committed to working with all partners towards that end.

**The President:** There are still a number of speakers remaining on my list. With the concurrence of the members of the Council, I intend to suspend the meeting until 3 p.m.

*The meeting was suspended at 1.10 p.m.*



**Annex 56**

Security Council, 66<sup>th</sup> year: 6674<sup>th</sup> meeting, New York, S/PV.6674, 5 December 2011

United Nations

S/PV.6674



# Security Council

Sixty-sixth year

Provisional

## 6674<sup>th</sup> meeting

Monday, 5 December 2011, 10 a.m.

New York

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<i>President:</i>	Mr. Churkin . . . . .	(Russian Federation)
<i>Members:</i>	Bosnia and Herzegovina . . . . .	Mr. Barbalić
	Brazil . . . . .	Mrs. Viotti
	China . . . . .	Mr. Li Baodong
	Colombia . . . . .	Mr. Alzate
	France . . . . .	Mr. Araud
	Gabon . . . . .	Mr. MOUNGARA MOUSSOTSI
	Germany . . . . .	Mr. Wittig
	India . . . . .	Mr. Hardeep Singh Puri
	Lebanon . . . . .	Mr. Salam
	Nigeria . . . . .	Mr. Onemola
	Portugal . . . . .	Mr. Moraes Cabral
	South Africa . . . . .	Mr. Laher
	United Kingdom of Great Britain and Northern Ireland . . . . .	Sir Mark Lyall Grant
	United States of America . . . . .	Ms. Rice

## Agenda

Peace and security in Africa

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*The meeting was called to order at 10.10 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **Peace and security in Africa**

**The President** (*spoke in Russian*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representatives of Djibouti, Eritrea, Ethiopia, Kenya, Somalia and Uganda to participate in this meeting.

On behalf of the Council, I welcome His Excellency Mr. Ismaël Omar Guelleh, President of the Republic of Djibouti; His Excellency Mr. Sheikh Sharif Sheikh Ahmed, President of the Republic of Somalia; His Excellency Mr. Meles Zenawi, Prime Minister of the Federal Democratic Republic of Ethiopia; His Excellency Mr. Moses Wetangula, Minister for Foreign Affairs of the Republic of Kenya; and His Excellency Mr. Mull Katende, Permanent Representative of Uganda to the African Union, who are taking part in today's meeting via video teleconference from Addis Ababa.

The Security Council will now begin its consideration of the item on its agenda.

I now give the floor to His Excellency Mr. Ismaël Omar Guelleh, President of the Republic of Djibouti.

**President Guelleh** (*spoke in French*): I would first like to thank you, Mr. President, and other Council members for having made this exchange today possible. I have twice come to brief the Council on the situation prevailing in our region, in particular in my country, since Eritrea's aggression against my country in June 2008. As is already known, that country has long denied the existence of any border conflict between our two countries, and has continued to give misleading and arrogant responses to our efforts to resolve our disputes diplomatically and peacefully.

Despite the irresponsible attitude of the Eritrean regime, the Djibouti Government and people, who are peace-loving and eager to have the best possible relations with all neighbouring countries, positively welcomed the mediation agreement proposed by our Qatari friend and signed it on 6 June 2010 under the auspices of the Emir of Qatar, His Highness the dear Sheikh Hamad bin Khalifa Al-Thani.

Unfortunately, the signing of that agreement and the efforts of our Qatari friend did not deflect the Eritrean regime from its hostilities towards my country. Worse, it flagrantly and systematically continued its destabilization activities by kidnapping and the forced military training of young Djiboutians, who then infiltrated northern Djibouti in order to carry out terrorist attacks on our land.

My country is convinced of the virtues of dialogue and mediation. However, we will not allow the Eritrean regime to violate our territorial integrity or to launch terrorist attacks on our territory with impunity. We have concrete information on Eritrean terrorist activities. In particular, we have arrested rebels trained and sent by the Eritrean regime to destabilize our country. Moreover, we also found weapons that that same regime tried to send into the northern part of the territory, again as part of its destabilization attempt. My Government immediately conveyed that information to the Intergovernmental Authority on Development (IGAD), the African Union and United Nations.

The deafening, three-year silence on the fate of our prisoners is completely intolerable and unacceptable. Article 3 of the mediation agreement stipulates that the two parties make available to mediators all information on the disappeared soldiers, on the one hand, and the various appeals of the international community, on the other. My Government was prompt to do that by inviting, in particular, the International Committee of the Red Cross to come and meet the Eritrean prisoners and deserters.

However, the dishonest and untrue remarks of the Eritrean regime, which had long stated, even sworn, not to have detained any of the 19 Djiboutian prisoners, were contradicted by the escape on 4 September of two Djiboutian soldiers, reported disappeared the night of 10 June 2008. They escaped from detention camps in Eritrea and reached the Sudan on foot. They were then transferred to Djibouti by the friendly Sudanese Government, which we would like to thank here. To date, Djibouti remains without news of the other 17 Djiboutian prisoners of war.

Such behaviour is unacceptable and reflects the complete refusal of Eritrea to abide by international norms and obligations. My Government therefore demands the immediate and unconditional freedom of the Djiboutian prisoners of war held by Eritrea.

Furthermore, my Government demands that that regime immediately refrain from involving itself in the unrest in the north of our territory.

The report of the Monitoring Group on the implementation of resolutions 1844 (2008) and 1907 (2009) is conclusive (see S/2011/433). Must I recall that the report was submitted to the Council in June? Eritrea not only threatens the peace and stability of the countries of the Horn of Africa, but also continues to flout the international community by directly supporting the acts of terrorism of Al-Shabaab. After three years of silence, denials and lies, the authorities of Eritrea seem to be moving heaven and Earth in the face of economic sanctions by wanting to explain itself before the Council. The sole purpose of that is to avoid sanctions by, as always, trying to be seen as a victim.

The conclusions on Eritrea's actions are clear and indisputable. We have given the Eritrean authorities more than ample opportunity to agree to dialogue and negotiation, but in vain. Their decision has been taken. As for their choice, it is very clear, as they continue to ignore the persistent calls of the Security Council and the regional organizations.

In conclusion, I call on all members of the Council to support the new draft resolution presented on behalf of the countries of IGAD (S/2011/744). The draft resolution seeks to remind Eritrea that the international community will never accept that the regime continues to destabilize and terrorize the countries of the subregion. Given that the weapons embargo and targeted sanctions of previous resolutions seem unable to contain the ongoing and acute aggression and hostility of the Eritrean regime, we hope that this latest draft resolution will help to better monitor it. Therefore, it is essential that members of the Security Council be vigilant and, in particular, aware of the threat that that regime poses to the stability of our subregion. It needs to live in peace with its neighbours, rejoin IGAD and stop the destabilization and interference in the internal affairs of neighbouring countries. That is all that we, the Djiboutian Government and friendly country of the region, demand of Eritrea.

**The President** (*spoke in Russian*): I thank President Guelleh for his briefing.

I now give the floor to His Excellency Mr. Sheikh Sharif Sheikh Ahmed Sheikh Sharif Sheik, President of the Republic of Somalia.

**President Ahmed** (*spoke in Arabic*): Allow me to greet all members of the Security Council and your presidency, Sir, and we thank you for having given us this opportunity to speak.

The Security Council knows how much the Somali people are suffering from terrorist groups. The Somali Government has, as far as possible, tried to reconcile with those groups. However, the support that they receive from the Eritrean regime has prevented reconciliation.

The Council is also aware of our previous relations with President Afwerki. We know that he has no desire to promote calm in the region until he has fulfilled his own expectations and ambitions. Al-Shabaab and Al-Qaida receive political, logistical and financial support from the Eritrean Government. Such support arrives by sea and air. It is known that Hassan Dahir Aweys himself was in Asmara. He then moved to Somalia by aeroplane. That shows that the Eritrean regime has the ability to deliver assistance that is used by Al-Shabaab directly from Asmara to Somalia. It is also well known that Somalia has no direct borders with Eritrea, and has not had bad relations with Eritrea in the past. In the current circumstances, however, we are suffering from the activities of Al-Shabaab and Al-Qaida and of those providing them with material support from Eritrea. I recall that, on 22 May 2009, Hassan Dahir Aweys himself took to the media to thank the Republic of Eritrea for its direct support.

The Afwerki regime is the only one that does not recognize this Government. The Eritrean Minister of information has declared that he has no objection to this Government. We have tried to resolve our problems with Eritrea by reaching out to some of its friends, including the late Muammar Al-Qadhafi, who called on Eritrea repeatedly to leave Somalia alone and to encourage Al-Shabaab and Hassan Dahir Awey's group to seek reconciliation with the Government so that the situation can calm down. His appeal was explicitly rejected. We have also sought to meet with Eritrea in the context of a conference of the Sahel countries, but Eritrea failed to attend.

When I was elected in 2009, I contacted Muammar Al-Qadhafi and asked him to mediate in order to suppress incipient problems and to convince the President of Eritrea not to intervene in my country. Mr. Al-Qadhafi informed me that his efforts had been

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rebuffed, and that the Eritrean President told him clearly that reconciliation with my country was impossible. Furthermore, our embassies in Kenya and elsewhere became aware of certain financial transactions and that military advisers were being dispatched frequently to Somalia to train terrorist elements. They provided these elements with maps and logistical support, and engaged in attacks on the Transitional Federal Government and the African Union forces in my country.

Somalia has no problem whatsoever with Eritrea, but the Eritrean regime insists on terrorizing my people. We have repeatedly tried to overcome the problem through diplomacy and dialogue, which have been rejected. I do not believe that any State in the world besides Eritrea has declared its support for those terrorist organizations. We truly regret the plight of the Eritrean people, but the interests of my country and our neighbours are being harmed by the Eritrean regime. We have therefore joined others in this gathering today, despite the fact that members of the Intergovernmental Authority on Development do not usually meet in the absence of a member unless the situation is especially dire. It is my hope that a strong decision will now be taken against the Eritrean regime.

**The President** (*spoke in Russian*): I thank President Ahmed for his statement.

I now give the floor to His Excellency Mr. Meles Zenawi, Prime Minister of the Federal Democratic Republic of Ethiopia.

**Mr. Zenawi** (Ethiopia): I would like to thank you, Mr. President, and the members of the Council for giving us this unique opportunity to express our concerns at the regional level and as individual countries. I shall speak today in my capacities as the current Chairperson of the Intergovernmental Authority on Development (IGAD) and as the Prime Minister of Ethiopia. I really have nothing much to add to what my colleagues have already said, but I wish to highlight a few points.

First, we as a region are not complaining about the domestic policies of the Eritrean Government. We may or may not like those policies, but that is not the issue we wish to raise before the Security Council. Our agenda is to address the fact that Eritrea is a prime source of instability for the region as a whole.

The second point that I wish to highlight is the fact that this is not a family quarrel between Ethiopia and Eritrea. All States members of IGAD, including the Republic of South Sudan, which joined us recently, are represented here today to express the joint opinion that Eritrea is the primary source of instability in our region.

Of course, Ethiopia itself also has a problem with Eritrea, which began when Eritrea invaded our territory. That is not an allegation made by Ethiopia; it is the finding of a neutral arbitral tribunal that was established by Ethiopia and Eritrea. The arbitral tribunal decided that Eritrea had indeed invaded Ethiopia without provocation and should therefore pay compensation. A boundary commission was established and has pronounced itself on the matter. A delimitation decision has been taken, and we in Ethiopia have accepted it without precondition. We may or may not like the delimitation decision itself, but we have made it officially and abundantly clear that we accept it unconditionally.

The Eritreans claim that the boundary commission has actually demarcated the boundary on the map. As a famous Foreign Minister of a permanent member of the Security Council told our Foreign Minister, the demarcation of boundaries on maps is a legal fiction, and a very dangerous one. What we have therefore asked the Eritreans to do is to engage us in dialogue so that we can move towards demarcation. That is what Nigeria and Cameroon did; they engaged in dialogue to implement a delimitation decision. That is what grown-up people should do. That, and nothing more, is what we have asked of Eritrea.

That is the sum total of the so-called border dispute between Ethiopia and Eritrea. It is not a family quarrel because it did not start with Ethiopia. Eritrea first invaded the Hanish Islands of Yemen. Its policy is one of shoot first, start talking later. It invaded our territory, and then started talking. It invaded Djibouti's territory, denied that it had invaded that territory, and in the end admitted that it had invaded that territory by withdrawing its troops and allowing Qatari troops to replace them.

This is not just about borders. In 1995, just one year after it had achieved its formal independence, Eritrea had a quarrel with the Government of the Sudan; it closed the Sudanese embassy in Asmara, gave it to the South Sudanese opposition, and publically

stated that it would arm and train any opposition that was prepared to remove the regime in Khartoum. It has characterized the Transitional Federal Government of Somalia as a puppet regime, and has openly and repeatedly held conferences with armed opposition groups of Somalia, including Al-Shabaab, in order to try to destabilize Somalia. It is not a family quarrel; it is a regional problem. It is not a question of lack of communication; it is a problem of the attitude of a certain clique in Asmara that has never grown up from being a rebel group. It is a problem of lawlessness and reckless disregard for international norms.

We ask the Security Council to help us to stop that lawlessness because, as it is, the Horn of Africa is a very fragile region. In the absence of the rule of law and action by the Security Council, the implication would be that we are all on our own and that we have to defend ourselves or perish. That is not a choice that we want to make. We believe in the rule of law. We believe in the mandate of the Security Council. We believe that the Security Council can, and must, act.

The Council has a draft resolution before it. We in IGAD have been very actively involved in its preparation. We would like to thank our African brothers in the Security Council, in particular Gabon and Nigeria, for working with us very closely in the drafting process and in its presentation to the Council. I am personally disappointed that many of the teeth of the draft resolution were subsequently removed. But I am convinced that, even as it is, it will convey the right message. We therefore appeal to the members of the Council, individually and collectively, to ensure that the message that the clique in Asmara gets is that it cannot continue to destabilize the region without any consequences. We ask the Council to act and to do so decisively.

**The President** (*spoke in Russian*): I now give the floor to Mr. Moses Wetangula, Minister for Foreign Affairs of Kenya.

**Mr. Wetangula** (Kenya): I speak on behalf of President Mwai Kibaki of Kenya who, regrettably, could not join his brothers at this very critical debate in the Security Council.

The imperative for the Security Council to focus sharp attention on Eritrea could not come at a better time. The Council is arguably the most important custodian of world peace and security. Kenya joins the Presidents who spoke ahead of me in placing our case

before the Security Council — a case that is not new. We are simply asking for an enhancement of the sentence and punishment already meted out on the offending party.

In the past couple of years, the region of the Horn of Africa has experienced serious peace and security challenges. Indeed, the United Nations and the African Union (AU) have partnered with the Intergovernmental Authority on Development (IGAD), our regional organization, to face some of those challenges. IGAD has been a very serious and committed player in that regard. However, we regret that one of our members, who has since disengaged from membership, namely, Eritrea, continues to engage in activities that are inconsistent with, and hostile to, the peace efforts that we all are interested in. As it is now, the region is not coming to the Security Council for the first time; neither should the argument that we have bypassed the AU hold any water. The Security Council is already seized of this matter. The Council is simply being asked to review, enhance and enforce a sentence already passed on the offending party.

My country, Kenya, alongside other countries of the region, has a whole raft of issues we can place before the Council — indeed they have been placed before the Council — that are linked to the activities of destruction of our neighbour Eritrea. As you know, Mr. President, Kenya has suffered a series of terrorist attacks — on the American Embassy in 1998, as well attacks on our tourist installations and kidnappings committed by Al-Shabaab. What do we get from our neighbour Eritrea? It says that Al-Shabaab does not constitute a significant threat in the region. Since Kenya launched Operation Protect the Nation, on 16 October, in conjunction with forces from the Transitional Federal Government, to try to clean up the Al-Shabaab menace in the region, we have evidence that Eritrea has supplied arms, ammunition and other logistics to Al-Shabaab. This is truly a hostile and enemy act by a country that ought to be an active member of IGAD.

It should not be forgotten that it is on the record that, two or three years ago, Kenya was forced to expel an Eritrean diplomat in Nairobi after establishing beyond any doubt that this diplomat was a critical link between supplies of ammunition, arms and explosive-making materials from his country to Mogadishu, sometimes through Kenya. Those materials had the effect of being used to kill and maim troops of the

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African Union Mission in Somalia, innocent civilians, women and children, some going about their legitimate business in local markets in Mogadishu.

Kenya has suffered, including today when an explosion in the Dadaab refugee camp, which is run by the Office of the United Nations High Commissioner for Refugees, killed a policeman and injured several refugees. After each of those violent incidents, what we normally get is Al-Shabaab saying that it lauds the heroic acts and that more will come. It has even said that the skyscrapers of Nairobi are now legitimate targets. Yet, Eritrea first of all says that Al-Shabaab does not pose a significant threat to any country in the region.

It is now time for the Security Council to take cognizance of and act on the draft resolution that the Intergovernmental Authority on Development has placed before it in document S/2011/744, which is unanimously supported by all countries and will in some small way help to bring Eritrea to order. I have no doubt that the Council has the will, the means and the capacity to do even more than the region is requesting. It may be too little, too late, but we believe that a step in the right direction is a step in support of peace and security in the region, of which the Security Council is the ultimate custodian.

Once again, I wish to thank you, Mr. President, for giving us the opportunity to speak to the Council, and I fully support and endorse the statements made by my senior colleagues, the Presidents who have spoken before me, and urge you and the Council to realize that a failure to act today to sanction Eritrea in the manner

requested — albeit somewhat watered down — is perhaps to add a feather to the cap of impunity. And that will not help the region in any way.

**The President** (*spoke in Russian*): I now give the floor to the representative of Uganda, His Excellency Mr. Mull Katende.

**Mr. Katende** (Uganda): Uganda has been part of the decisions taken by the Intergovernmental Authority on Development (IGAD) and the African Union concerning the situation in Somalia and the border dispute between Djibouti and Eritrea. Uganda remains committed to those decisions and hopes that the Security Council will respond positively to the requests made to it by IGAD and the African Union, including taking measures against all those countries, organizations and individuals identified as being directly or indirectly involved in providing human, financial or technical support to Al-Shabaab and Hizbul Islam militias and terrorists in the Horn of Africa.

We are particularly concerned because of what has happened to us in the past. We are also concerned, because we have troops in Somalia and with the African Union Mission in Somalia. We want those troops to do their job, accomplish that job and return home safely.

**The President** (*spoke in Russian*): There are no more speakers inscribed on my list. I intend, with the concurrence of the members of the Council, to suspend the meeting until 3 p.m.

*The meeting was suspended at 10.45 a.m.*

**Annex 57**

Security Council, 65<sup>th</sup> year: 6386<sup>th</sup> meeting, New York, S/PV.6386, 16 September 2010



United Nations

S/PV.6386



# Security Council

Sixty-fifth year

Provisional

## 6386<sup>th</sup> meeting

Thursday, 16 September 2010, 10 a.m.  
New York

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<i>President:</i>	Mr. Apakan . . . . .	(Turkey)
<i>Members:</i>	Austria . . . . .	Mr. Mayr-Harting
	Bosnia and Herzegovina . . . . .	Mr. Barbalčić
	Brazil . . . . .	Mrs. Dunlop
	China . . . . .	Mr. Li Baodong
	France . . . . .	Mr. Briens
	Gabon . . . . .	Mr. MOUNGARA MOUSSOTSI
	Japan . . . . .	Mr. Nishida
	Lebanon . . . . .	Mr. Salam
	Mexico . . . . .	Mr. Heller
	Nigeria . . . . .	Mrs. OGWU
	Russian Federation . . . . .	Mr. Churkin
	Uganda . . . . .	Mr. Rugunda
	United Kingdom of Great Britain and Northern Ireland . . . . .	Sir Mark Lyall Grant
	United States of America . . . . .	Ms. Rice

## Agenda

The situation in Somalia

Report of the Secretary-General on Somalia (S/2010/447)

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*The meeting was called to order at 10.10 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **The situation in Somalia**

#### **Report of the Secretary-General on Somalia (S/2010/447)**

**The President:** I should like to inform the Council that I have received letters from the representatives of Algeria, Ethiopia, Kenya, Norway and Somalia, in which they request to be invited to participate in the consideration of the item on the Council's agenda. In accordance with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the consideration of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

*At the invitation of the President, Mr. Duale (Somalia) took a seat at the Council table; the other aforementioned representatives took the seats reserved for them at the side of the Council chamber.*

**The President:** On behalf of the Council, I wish to extend a warm welcome to His Excellency Mr. Moses Wetangula, Minister for Foreign Affairs of the Republic of Kenya.

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Augustine Mahiga, Special Representative of the Secretary-General and head of the United Nations Political Office for Somalia.

It is so decided.

I invite Mr. Mahiga to take a seat at the Council table.

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend invitations under rule 39 of its provisional rules of procedure to His Excellency Mr. Tété António, Permanent Observer of

the African Union to the United Nations, and His Excellency Mr. Pedro Serrano, head of the delegation of the European Union to the United Nations.

There being no objection, it is so decided.

I invite Mr. Antonio and Mr. Serrano to take the seats reserved for them at the side of the Council Chamber.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

I wish to draw the attention of Council members to document S/2010/447, containing the report of the Secretary-General on Somalia.

At this meeting, the Security Council will hear a briefing by Mr. Augustine Mahiga. I now give the floor to Mr. Mahiga.

**Mr. Mahiga:** I welcome this opportunity to brief the Security Council following my appointment as Special Representative of the Secretary-General for Somalia. I wish to begin with a briefing on some of the critical developments regarding Somalia that took place since I assumed office.

For the past two months, I have held consultations with various Somali stakeholders, including the Transitional Federal Government (TFG), the Ahlu Sunna Wal Jama'a group, and regional and international organizations, as well as civil society organizations. I have just completed consultations with countries in the region, as well as with the African Union (AU) and the Intergovernmental Authority on Development (IGAD). I consult regularly with envoys and partners on the Somali crisis on how to advance the peace process.

Regional leaders have raised concern that the lack of cohesion within the transitional federal institutions encourages insurgents to intensify their military and propaganda campaign against the Government and the African Union Mission in Somalia (AMISOM). I have visited Mogadishu three times in the past 10 days to consult with the President on the political impasse. I have undertaken similar initiatives with the Prime Minister and the Speaker of Parliament, and urged them to resolve their differences and to continue working together. Under-Secretary-General Lynn Pascoe conveyed a similar message when he visited the

region earlier this month and met with President Sheikh Sharif Sheikh Ahmed in Mogadishu.

Earlier today, the Somali Parliament adopted a resolution to request the Prime Minister to come before Parliament and seek a vote of confidence. In this context, the Security Council may wish to underscore the need for unity and cohesion in the TFG in addressing insurgency and advancing the peace process.

The Transitional Federal Charter and the Djibouti Agreement provide for the establishment of a new, more inclusive and democratic dispensation following the end of the transitional period in August 2011. There are several tasks to be accomplished before the end of the transition. These include continuing the initiatives on reconciliation, building civilian and security institutions, and the completion of the constitution-making process, which could also serve as a vehicle for the Government and Parliament to reach out to the population through wide consultations within Somalia and with the diaspora. Furthermore, the leaders of the transitional federal institutions need to urgently discuss and agree on post-transition arrangements.

I have urged the TFG to reach out to more opposition groups, expand the political process and focus on delivering basic services to the people. In this context, the TFG must develop a road map of achievable objectives and clear timelines to be developed for the remaining transitional period. In this context, I have urged the TFG to convene without delay the high-level committee to define a political strategy and tasks to be accomplished prior to the end of the transition. These key elements will define the future institutions of a united, democratic and stable Somalia.

I commend AMISOM for ably defending the transitional federal institutions and the vital installations in Mogadishu, and for preventing the recurrent attacks by the terrorist insurgents, led by foreign fighters, from undermining the peace process. While the crisis in Somalia persists, positive opportunities still exist in both the political and security sectors to move the peace process forward. Scaled-up assistance from the international community is needed to make a difference.

I am concerned about the security situation in the country and its potential impact on the entire region. The suicide attacks carried out in Kampala on 11 July

evidently bear the political and operational hallmarks of the international terrorism that threatens the subregion. Kismaayo has become the entry point for foreign fighters and war materiel for the insurgents, and a scene of criminal activities and illicit trade. There is a need for increased maritime and aviation security to deter such materiel from being used against AMISOM and the TFG. I hope that the Security Council will send a message to those State and non-State actors supporting these illicit activities, deterring them from doing so. Importing radical terrorism has negative effects not only for Somalia but for the entire subregion.

The brutal attack on the Muna Hotel in Mogadishu during the holy month of Ramadan left more than 70 people dead, including six parliamentarians. On my second visit to Mogadishu, I witnessed continuous attacks on AMISOM positions by the insurgents armed with light and heavy weapons. During my third visit on 9 September, accompanied by the envoys of the African Union and IGAD, there were suicide attacks by extremists at an AMISOM checkpoint in the approaches to Mogadishu Airport. The operation was foiled but left 14 people dead, including two AMISOM peacekeepers, and several others injured. The insurgents' operation points to the need to strengthen AMISOM's defensive capabilities.

With only 11 months until the end of the transition period, the TFG and the international community should heighten their political resolve to preserve and expand the fragile peace ushered in by the Djibouti Agreement and protected by AMISOM. The military capability of the TFG should be supported and developed to expand the territorial space and widen the political space for the TFG to operate and reach out to the Somali people. Concerted regional and international support and assistance are required at this very critical stage of the peace process if the TFG is to play the role envisaged by the Djibouti Agreement. In this connection, the decision of IGAD and the AU to deploy in Mogadishu 2,000 additional troops to enable AMISOM reach its authorized strength of 8,000 must be speedily implemented. The initiative of the United States Assistant Secretary of State for African Affairs, Mr. Johnnie Carson, to help generate more troops, needed equipment and financial support to AMISOM has been well received by IGAD and the AU.

The threat level in Mogadishu and in southern Central Somalia has actually increased; therefore IGAD and the African Union foresee the need for a

new AMISOM troop level of up to 20,000 in the coming months. The AU Peace and Security Council will soon submit to the United Nations Security Council a request for authorization for increased troop levels for Mogadishu and other strategic locations in Somalia. However, this military strategy needs to be developed within the construct of an overall political strategy.

The United Nations support operation for AMISOM has discharged with distinction its mandate to deliver a support package to AMISOM. The AU and the Force Commander have on several occasions expressed their appreciation of these valuable services, which I have had the opportunity to see for myself in Mogadishu. I should also take this opportunity to thank all partners for their collective and bilateral contributions to the United Nations trust funds and direct assistance to the TFG. In the immediate future, support to the security sector and building the TFG's institutional capacities stand out as top priorities.

I should also bring to the attention of the Council the outstanding work performed by the United Nations Mine Action Service (UNMAS). This effort by UNMAS staff has dramatically reduced casualties among civilians and AMISOM peacekeepers. Through their efforts, we have significantly reduced the number of AMISOM troop casualties since last year.

It is not the number of initiatives for Somalia that is in deficit, but concrete and practical actions on the ground. As we all realize the dangerous conditions in which the TFG and AMISOM troops operate, I appeal to all Member States to move from the usual political commitments to more practical actions. While one appreciates the value of the support so far extended to AMISOM, gaps — such as lack of helicopter support for troop lift and casualty evacuation — still exist in financial and material support to the Mission. I therefore would like to stress the importance of the predictable and timely provision of these resources to AMISOM and TFG security forces during this crucial time. Furthermore, AMISOM troop allowances should match those paid under United Nations peacekeeping operations.

Of equal importance is the proper equipping of AMISOM troops with appropriate means to identify, track, deter or respond to insurgents attacks in a populated urban setting. AMISOM is currently critically short of means to prevent civilian casualties

and lacks adequate surveillance and operational intelligence systems. Pre-deployment training in humanitarian law on the protection of civilians remains an important requirement. The protection of United Nations civilian staff to be deployed under the light footprint in Mogadishu and elsewhere is also critical.

We are encouraging cooperation between the TFG, Somaliland and Puntland authorities on matters of security, including anti-piracy issues and the movement of people, such as internally displaced persons. Somaliland and Puntland indeed serve as role models to the rest of Somalia, illustrating that peace and stability can be achieved.

Additionally, we will continue to advocate for and mobilize more support to the TFG, Puntland and Somaliland in other forums, such as the forthcoming international Contact Group meeting in Madrid later this month and the mini-summit on Somalia that the Secretary-General will convene here in New York on 23 September. The Istanbul Conference earlier this year was also a useful forum for profiling Somalia's present and future needs and encouraging private-sector involvement. A follow-up implementation meeting to the Conference is envisaged.

The humanitarian situation in Somalia remains dire. The sustained attacks on TFG and AMISOM positions by the insurgents have compounded the suffering of innocent civilians, particularly in Mogadishu. A growing number of civilians, including those who had recently returned to their homes, have had to flee the capital as the fighting has intensified. Refugees continue to arrive in neighbouring countries and are a major concern to those countries. The international community ought to make more assistance available to address the persistent humanitarian crisis.

That there is a need for greater cooperation and coordination among the three United Nations entities — the United Nations Political Office for Somalia (UNPOS), the United Nations Support Office for AMISOM and the country team — cannot be overemphasized. Recommendations on approaches to integration have been laid out, but implementation has stalled. I have initiated senior policy group meetings among the heads of the three United Nations entities, and a joint planning mechanism is being put in place. However, there is a need for greater impetus in moving the integration process forward, consistent with

practices elsewhere and the prevailing trend for greater cohesion in the United Nations system. UNPOS has also initiated its regional deployment of international staff in Somaliland and Puntland.

I request and encourage the Council to remain engaged and seized with the situation in Somalia, which, unlike many African conflicts, contains multiple threats to international peace and security: a protracted civil war, international terrorism, international piracy and international trafficking. Experience in Somalia has shown that the more delayed or inadequate the response, the more complex the crisis becomes. We have to act in a comprehensive manner to address these complex challenges.

**The President:** I thank Mr. Mahiga for his briefing.

I now give the floor to the representative of Somalia.

**Mr. Duale (Somalia):** I thank you, Mr. President, for giving me the opportunity to participate in this discussion on Somalia at this Security Council meeting. I hope to be very brief, although if I could follow my emotions, I believe I would speak for an hour.

We are all aware that Somalia has been in deep trouble since the collapse of the central Government in 1990-1991, and the Security Council has been seized with the Somalia question ever since. It is no exaggeration to say that the situation in Somalia has been grave indeed for a considerable time, and is surely a threat to regional and international peace and security. In this connection, I also wish to highlight, with thanks and appreciation, the issues raised in the Secretary-General's comprehensive report (S/2010/447), as well as the departments and staff who participated in its preparation. I also thank Special Representative Mahiga for his frank, lucid and sincere presentation of the current situation in Somalia. We fully subscribe to the solutions he has just presented, to be acted upon, I submit, with the urgency the situation requires. I do not want to dwell on the details Mr. Mahiga has given; they express the gravity of the situation so well that I subscribe to them completely.

I also take this opportunity to express my gratitude for the support that Somalia has received from the United Nations to date, especially with regard to the needs of the African Union Mission in Somalia

(AMISOM). Those needs are, unfortunately, in the economic, equipment-related, administrative and financial areas, despite the fact that AMISOM is heroically defending a very critical situation, and that without it the Somali Government would have collapsed a long time ago. We therefore hope that AMISOM will be given all the support it needs to deal with the real problems facing the Transitional Federal Government (TFG) and Somalia in general.

On the issue of piracy and terrorist activities, we see a clear link between the continuing instability on land and the increased acts of terrorism and piracy. Simply put, we cannot afford to treat piracy and terrorism in isolation. We must look at the real root causes and do something about those too.

We are deeply concerned about the constant negative and hostile media coverage of the sincere efforts of the African Union (AU), the United Nations, the World Food Programme, AMISOM and the Transitional Federal Government and institutions. To us, this negative, hostile coverage is not an accident, but looks like part of a larger effort to keep Somalia destabilized and give ammunition to the propaganda machinery of the terrorists. We therefore hope that the media will collaborate with the TFG, the AU, AMISOM, the United Nations and the international community in their support of all of Somalia's efforts.

I take this opportunity to call on the Security Council to make some significant decisions on Somalia that will enable my country to stabilize, rehabilitate and reconstruct, bearing in mind Mr. Mahiga's constructive presentation. We hope that we will see more positive action this time than we have in the past 20 years.

**The President:** I now give the floor to His Excellency Mr. Moses Wetangula, Minister for Foreign Affairs of the Republic of Kenya.

**Mr. Wetangula (Kenya):** It is my privilege and honour to speak to the Council this morning on a country that has for a long time remained a source of collective shame for the international community, a country that is a source of insecurity and many difficulties in the East African and Horn of Africa region.

The situation in Somalia can be described as dire, as Mr. Mahiga put it, because we have armed groups that operate at will and are overrunning virtually the

whole country. As we all know, Somalia has not had a government for 20 years now. It is plagued by war, violence and instability. Through regional initiatives, particularly through the Intergovernmental Authority on Development (IGAD), supported by the African Union (AU) and the United Nations, negotiations were conducted in Kenya leading to the signing of the Transitional Federal Charter. The Charter gave birth to several institutions, including a parliament, a Government and other functioning institutions, albeit very weak ones.

The Transitional Federal Charter comes to an end in August next year. As we face the sunset of the Charter, there is heightened fighting, a lack of effective central government and a rapid growth in the number of incidents of terrorism and piracy. A group called Al-Shabaab has virtually overrun the Government, and were it not for the African Union Mission in Somalia (AMISOM), which continues to hold the fort around Villa Somalia, Al-Shabaab would perhaps have overrun the whole Government by now. Indeed, we know that they have carried out several successful attacks on Villa Somalia.

The situation in Somalia is now overflowing into its neighbours. On the day of the finals of the World Cup in South Africa, very devastating, cowardly and wicked attacks were carried out in our neighbouring country, Uganda, where a large number of lives was lost, lives of both Ugandan nationals and Kenyan nationals. It has turned out, as claimed by the group itself, that this attack was mounted by Al-Shabaab using collaborators and agents from within the region. In fact, some of the arrested suspects are young people, of both Somali and non-Somali ethnic backgrounds, from Kenya.

This fact brings very close to home — to my country — the real possibility of the chaos in Somalia spilling over to Kenya. Indeed, the Al-Shabaab leadership has repeatedly proclaimed that the next target of attack will be Nairobi, Kenya, Bujumbura, Burundi and other neighbouring capitals, such as Addis Ababa, Ethiopia.

As I have said, the story of Somalia is not new. There has been no lack of initiatives. I think that what has been lacking is the commitment to see those initiatives through.

I want to emphasize the need to recognize the centrality of IGAD in trying to resolve the problems of

Somalia. IGAD, as an organization, has been acting as the representative of the AU, and to some degree in collaboration with the United Nations. Through IGAD, a negotiated Charter was signed. Through IGAD, the Transitional Federal Government (TFG) was formed, and in collaboration with the United Nations the Djibouti process that put in place the current Government was undertaken.

Sometimes, as a region, we feel a little nervous to see a proliferation of initiatives and meetings and conferences in several capitals. These are helpful, but sometimes nonetheless born out of inadequate consultative processes.

I want to laud the meeting we had in Istanbul, chaired by the Secretary-General and supported by the AU, where among the many things agreed upon was that IGAD was going to remain central to the process of pushing Somali issues forward. Indeed, the Secretary-General stated then that initiatives that will come thereafter will be called IGAD-plus initiatives, for us to be able to chaperone the Somali problems.

After the Istanbul conference, we had a meeting of IGAD at the summit level in Addis Ababa where several positive and proactive pronouncements were made. First, it was acknowledged that the Government in Somalia was extremely weak and was in a state that required very urgent intervention.

Secondly, it was agreed that IGAD, the AU and the international community, including the United Nations, should shift gears from business-as-usual engagement on Somalia and take a more proactive and better defined trajectory towards seeing how to help this unfortunate neighbouring country.

Thirdly, it was agreed, that while AMISOM had an authorized required force of 8,100, even if that optimal number were achieved, it would remain inadequate. The region set a figure of a 20,000- to 22,000-strong force, but also agreed and acknowledged that the problem for Somalia was not and is not the lack of troops; it is the lack of will of the international community to bring troops together.

It was noted that there are troops that have been trained by countries of the region — Ethiopia, Djibouti, Kenya and Uganda. There are also offers from Tanzania and some other southern African countries to train more troops. It was equally noted that, through the AU peace and security architecture

and the birth of the Eastern Africa Standby Force, we have a 15,000-strong troop contingent available that can be effectively put to use in Somalia.

It was also agreed that the region, particularly IGAD and the AU, will want to see a joint approach in which we have a coordinated joint command but with AMISOM at the apex of the Eastern African Standby Force, troops trained by neighbours at the request of the TFG and the international community, and then other troops that may be available so that the approach to bringing normalcy to Somalia is not disjointed. This approach, in Kenya's view, is predicated on the fact that it is seeking not a military solution to the problems of Somalia but a process of securing the integrity of the territory of Somalia and giving capacity and strength to the Government of Somalia, because a Government is no Government if it is not able to provide for the peace and security of its people and secure the territorial integrity of its country.

We did this knowing that we have constantly encouraged the Transitional Federal Government to reach out to its opponents to discuss and find a lasting solution to the problems of their country. This was reiterated in Kampala at the African Union summit where, apart from the pronouncement by the AU, there was a mini-IGAD summit, also attended by the Assistant Secretary of State for African Affairs of the United States, Johnnie Carson, and IGAD partners, which include several European countries and the United States. This point was overwhelmingly endorsed and immediately achievable goals were set in place. Raising 2,000 troops within 20 days has not been done. We are closing in on the goal of raising an additional 2,000 troops within 60 days, but we have not met the first benchmark. There was also an undertaking by the United States to call upon our richer friends — particularly from Europe, though Japan and others were mentioned — to put some money in the basket to enable the troops we are putting together, which will not be within the framework of AMISOM but under a coordinated command with AMISOM, to be paid their monthly stipends and rations so that they will be able to carry out their duties. I hope that together we will be able to see this happen.

Since Kampala, no meeting has been called. We hope that after the General Assembly gathering of heads of State, we can return to Africa and have a meeting to be coordinated, we hope, by the United States, which co-chaired the Kampala meeting, and the

United Nations. As the Council can see, it is not lack of initiatives that is the problem in Somalia. It is the failure to fulfil our promises and the lack of a coordinated approach in our engagement with Somalia.

We fully welcome the appointment of Ambassador Mahiga. As he is a son of the region, I have no doubt that he will be able to understand even better the problems of Somalia. In our meetings, we have clearly indicated to him that it does not matter how many warships we may deploy to fight piracy; as long as Somalia remains chaotic, piracy will be born on land and manifested at sea. And if the TFG were to collapse — and god forbid that should occur — and the group called Al-Shabaab were to pursue an agenda and ideology whose foundation is the destruction of all non-Muslim people in region, as a country and as a neighbour we would be uncomfortable with a situation like that. We have no problem with Islam as a religion, and let nobody make any mistake about that because in my country we have a very large Muslim population. We have Muslim ministers, but we are a secular State and a secular State we want to remain.

I would want to urge the Security Council to enforce some of the decisions that we have made in the region. For instance, IGAD recommended the imposition of targeted sanctions on certain aspects of Somalia, including airfields in the hands of Al-Shabaab and other negative elements and the blockade of the port of Kismaayo, which is the main supply line for Al-Shabaab. The AU endorsed that, and through this process the United Nations imposed some targeted sanctions on the State of Eritrea, which to us in the region remains one of the principal collaborators and suppliers of Al-Shabaab. We want to see this process enforced.

I can assure you, Mr. President, and Ambassador Mahiga will bear witness for me on this, that if the port of Kismaayo were blockaded, 70 per cent of the strength of Al-Shabaab would be dealt a blow because it is the principal supply line and only about 70 kilometres from the international boundary with Kenya. The Council can see what type of situation that puts my country's peace in.

As I come to an end, I also want to urge the United Nations to support the region in formulating — perhaps through Mr. Mahiga's Office — a very robust and clear communication strategy to counter the propaganda from Al-Shabaab. It runs powerful radio

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stations and powerful communications tools that overshadow or overrun any Government initiative in Somalia.

The most important point is to now address the sunset days of the Transitional Federal Charter, which will expire in August 2011. It has given birth to legitimate institutions that have helped run Somalia and to legitimate engagement between nations and the Government of Somalia. IGAD has already pronounced itself on this, and we have looked at the Charter and at the clauses that might allow the extension the life of the Charter. But we do not want to extend the life of the Charter only to sustain the status quo. We would want to extend the life of the Charter on the basis of reason and thinking that will make a difference and achieve that which we probably will not have achieved during the first life of the Charter. That can be done, and the region will be able to midwife those efforts.

We hope to see the international community come together in a more coherent, proactive and sincere manner to assist the region to help Somalia.

**The President:** I shall now give the floor to the members of the Security Council.

**Sir Mark Lyall Grant** (United Kingdom): I would like to thank this morning the Special Representative of the Secretary-General for Somalia, Mr. Augustine Mahiga, for his first appearance in his new capacity in the Security Council. I would also like to thank the honourable Foreign Minister of Kenya for his very heartfelt and thoughtful and insightful contribution to our discussion today, and the Permanent Representative of Somalia for his contribution to the debate.

I would also like to thank the Secretary-General for his latest report (S/2010/447) and for the briefing that the Special Representative gave us this morning. We greatly appreciate the work of the Special Representative, including that of his predecessor, his team and all the United Nations agencies active in Somalia. The United Kingdom looks forward to working closely with him on the Somalia issue, and we offer him our full support.

The situation in Somalia continues to be of deep concern. There have been a few bright spots, as the Secretary-General's report spells out. The free and fair presidential elections in Somaliland in July led to a peaceful transfer of power from one Government to

another. But that is hugely overshadowed by some very distressing incidents, including the Kampala bombings, the attack on the Muna hotel, and the attacks by armed opposition groups in Mogadishu during the holy month of Ramadan. These have been shocking reminders of the impact of instability in Somalia, both on the Somali people and on the wider region. The Minister set out very starkly today the immediate threat to Kenya from the instability in Somalia.

We extend our deepest sympathy to the Government of Uganda, the Transitional Federal Government (TFG) and the Somali people for the tragic losses they have suffered. I pay particular tribute to Uganda and Burundi for their continuing commitment to the African Union Mission in Somalia (AMISOM) and the difficult operation they face in Somalia. We unreservedly condemn any attacks on AMISOM, including attacks on the Transitional Federal Government and the Somali people.

It is essential that all parties fully support the Djibouti peace process and join efforts to bring peace to Somalia. There are only 11 months remaining of the transitional period, as defined by the Djibouti Agreement. Important transitional tasks still need to be completed. It is imperative that the Transitional Federal Government and the international community intensify their efforts towards a more peaceful and stable Somalia.

I would like to make five points this morning on the United Nations operation in Somalia, the political situation, peacekeeping, the problem of piracy and the humanitarian situation.

First, we welcome the Secretary-General's work to review the United Nations operation in Somalia and his efforts to encourage better coordination between the United Nations agencies. We must have a more coherent and integrated United Nations approach if the United Nations is to deliver the strong leadership that we all want to see. We welcome the Secretary-General's plans to increase the United Nations presence in Somalia. We do not underestimate the difficulties, but we need all parts of the United Nations working in an integrative manner to deliver a single strategy. We look forward to seeing further details of how this can be achieved.

Secondly, greater United Nations engagement cannot deliver progress without political leadership from the TFG. We urge the TFG to intensify its efforts



towards dialogue and reconciliation and to deliver better governance and reform of the security sector. The constitutional process provides an opportunity for the TFG to reach out to those outside the Djibouti process and to give them a stake in Somalia's future. The TFG must resolve its internal differences, which are deeply damaging. There can be no successful military strategy in a political vacuum.

The actions of spoilers also need to be addressed. Arming, training and supporting armed opposition groups in Somalia, particularly Al-Shabaab, has a serious destabilizing effect. The AMISOM Force Commander made that clear when he briefed Council members on Monday this week, and the Foreign Minister has reinforced that message to the Council today. Those actions are also in contravention of Security Council resolutions. We strongly support the Special Representative of the Secretary-General in calling on all parties to abide by their obligations and work to foster peace in Somalia and the wider region, and the Council must assume its responsibilities in this respect.

Thirdly, AMISOM continues to play a vital role in providing security. We welcome the recent announcement by the African Union, the Intergovernmental Authority on Development and those in the region about plans to increase the number of AMISOM troops. And we agree with the three briefers this morning that AMISOM and the TFG security forces in Somalia need more support.

The United Kingdom was pleased to be able to contribute \$1.5 million to AMISOM earlier this year for radio support, in addition to the \$15 million we have already given via the trust fund. We will continue to look at how we can provide support in the future. It is essential that AMISOM and the TFG receive adequate funding, and we look forward to discussing this issue in more detail with the Secretary-General.

Fourthly, the international community must also continue its efforts through the Contact Group on Piracy off the Coast of Somalia, and we look forward to the comprehensive report that will be presented to the Security Council in October on this issue.

Finally, the most serious impact of the instability in Somalia is on the Somali people themselves. The humanitarian situation remains deeply worrying and has been compounded by recent fighting and attacks on humanitarian workers and their compounds by armed

opposition groups, including Al-Shabaab. We hope that the World Food Programme will be able to restore its programmes in southern central Somalia as soon as it is safe to do so.

Now more than ever, the United Nations must show strong leadership in Somalia, and the international community must do all it can to ensure that the United Nations has the support it needs. We welcome Mr. Mahiga's determination to give that leadership, and we look forward to discussing these issues further at next week's high-level meeting.

**Ms. Rice** (United States of America): I want to begin by thanking Special Representative Mahiga for his comprehensive and very informative briefing, and for his active leadership on behalf of Somalia. I also want to salute the Foreign Minister of Kenya and the Permanent Representative of Somalia for their very powerful presentations, which, as I think Council members could see, had an impact on all of us as we listened.

The United States shares the Secretary-General's view of the exceedingly dangerous situation in Somalia. Long-term security and stability in Somalia depend on a stable and effective Government. We continue to support the Djibouti peace process, and we call upon the Transitional Federal Government (TFG) to focus on completion of the transitional tasks in the spirit of inclusivity envisioned in the peace process. We also urge the TFG to work out its differences, in the interest of the people of Somalia.

Supporting the African Union Mission in Somalia (AMISOM) is key both to stabilizing Mogadishu and to advancing the Somali peace process. We welcome and we commend Uganda's and Burundi's increased troop contributions to AMISOM, which now has a force of nearly 7,000. We salute their sacrifices, and we thank the forces and their Governments for their sustained commitment and support. We call on troop-contributing countries to increase their support to AMISOM so that it can reach its mandated strength. Since AMISOM's deployment, in 2007, the United States has obligated more than \$185 million to provide logistic support, equipment and pre-deployment training to its forces. We again encourage other nations to step forward with additional bilateral contributions.

The United States recognizes the calls to increase AMISOM troop levels beyond the current mandated strength and the various proposals to expand United

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Nations assessed funding for AMISOM. We are currently reviewing those proposals and will give them thorough consideration. We look forward to receiving more details from the Secretariat, the African Union (AU) and AMISOM.

The United States condemns the increased fighting in Somalia. We also denounce the several recent Al-Shabaab attacks, including the 24 August attack at the Hotel Muna, the 30 August attack on the presidential palace in Mogadishu and the 9 September attack on the AMISOM position at the airport, which left TFG ministers, AMISOM peacekeepers and innocent civilians dead. Such incidents demonstrate the need for continued support to AMISOM to counter groups such as Al-Shabaab and others that work to destabilize the TFG and inflict further chaos on the Somali people.

We remain deeply concerned as well about piracy off the coast of Somalia. Long-term security and stability in Somalia are necessary, as has been underscored, to address the root causes of piracy, and we anticipate an active discussion of the linkages between security and development during the next meeting of the International Contact Group on Somalia later this month.

At the same time, we must respond to the immediate challenges that piracy poses. The United Nations recently published a report (S/2010/394) on options for better prosecuting and imprisoning pirates. The United States remains committed to working together to address piracy off the Somali coast, including on issues of prosecution and incarceration.

The United States is deeply concerned as well about the victims of incidents of sexual violence in camps for internally displaced persons (IDPs). Deliberately targeting vulnerable populations undermines stability and exacerbates an already dire humanitarian situation. The United States also strongly condemns the use of children to pursue violent agendas. We call on all parties to immediately release all children within their ranks, to halt child recruitment and to provide for the proper reintegration into civilian life of former child soldiers. Let me say again what I have said before: the only tolerable number of child soldiers is zero; the only tolerable amount of sexual violence is zero.

Today's briefing also underscores the extraordinary strains on the humanitarian situation in

Somalia. The United Nations Food Security and Nutrition Analysis Unit reports that approximately 2 million people will need humanitarian aid between July and December of this year and that thousands continue to be uprooted and displaced every month. The Famine Early Warning System of the United States Agency for International Development (USAID) estimates that approximately a quarter of the Somali population remains food-insecure, and malnutrition rates remain at crisis levels. Lack of security and stability continues to worsen this already troubling situation.

The United States remains deeply committed to responding to the ongoing humanitarian crisis in Somalia. We condemn Al-Shabaab's obstruction of aid delivery to more than a million Somalis. We also strongly condemn targeted attacks on humanitarian aid workers, kidnappings and extortion by Al-Shabaab and other violent extremists, which further hamper the provision of life-saving humanitarian aid.

In closing, let me reiterate that the United States remains committed to seeing peace and stability take hold in Somalia for the sake of the Somali people and the region. We continue to support the Djibouti peace process and Somalia's Transitional Federal Government and its efforts to bring security and stability to a country that has already endured far too much.

**Mrs. Dunlop** (Brazil): I thank Ambassador Mahiga for his comprehensive briefing, and I reiterate today my delegation's firm support for his difficult work. I also welcome the presence of the Minister for Foreign Affairs of Kenya and thank him for his statement, which, as rightly observed by Ambassador Susan Rice, had a very strong impact on all of us. I also welcome the presence of the Permanent Representative of Somalia among us this morning.

Less than one year before the conclusion of the transitional period in Somalia, we must make an objective assessment of where we stand and where we are headed. It is undeniable that some progress has been made, the most important elements of which are the preservation of the Transitional Federal Government (TFG) and the resumption of parliamentary activity. At the same time, it is clear that the challenges remain daunting. The heinous attacks in Kampala and the recent violence perpetrated by Al-Shabaab in Mogadishu — in defiance even of

Ramadan — provide compelling evidence of this. It is also disturbing that the African Union Mission in Somalia (AMISOM) has not yet been able to move from the initial phase of its original plan to stabilize the country.

In order to overcome the current deadly stagnation, there is a need to more firmly combine enhanced political efforts and increased military power.

Regarding the first aspect, it is very positive that the TFG has been able to reach agreements on cooperation with Ahlu Sunnah Wal Jama'a and regional administrations. Yet, for the past several months, the transitional federal institutions have been mired in disputes within and among themselves. This has deviated attention from the priorities for peace and stability in Somalia, such as expanding political outreach to further broaden the TFG's support base and completing outstanding transitional tasks. The unity, resolve and public spirit of the transitional federal institutions are indispensable elements of any successful strategy for the stabilization of Somalia. An inclusive and genuine process of consultations, as envisaged for the drafting of the constitution, can also serve as an excellent opportunity to re-energize the political process.

With regard to security, AMISOM is to be truly commended. It has been able to ensure the survival of the transitional federal institutions in Mogadishu under relentless attack, secure strategic infrastructure and facilitate the provision of humanitarian assistance. This would not have been possible without the sacrifices made by Uganda and Burundi. We also welcome the decision by the Intergovernmental Authority on Development (IGAD) to deploy 2,000 troops and enable AMISOM to reach its authorized strength, and the current planning of the African Union (AU) on new phases for the strengthening of AMISOM.

It is clear, however, that the Mission needs more help from us. The Security Council, the United Nations and the international community as a whole should complement the subregional and regional efforts.

We appreciate the progress towards a light footprint of the United Nations in Mogadishu and elsewhere in Somalia, and on the provision of the support package by the United Nations Support Office for AMISOM. Brazil looks forward to the Secretary-General's proposals on an integrated United Nations presence in the country as a means to enhance the

effectiveness and coherence of United Nations activities on the ground.

One major concern is the lack of comprehensive, coherent, predictable and sustainable financial support to AMISOM and the TFG security forces. It is worrying that, one and a half years after the Brussels Conference, the pledges made there are still not fully disbursed. In addition, the usual multiple earmarks and caveats with respect to the funds disbursed undermine the effectiveness of AMISOM and the TFG security forces in a very challenging environment. We urge donors to consider lifting them without delay.

Financial predictability is of particular importance with regard to the remuneration of soldiers. If a steady flow of funding for salaries is not ensured, there is a real danger that efforts and expenses undertaken by donors in training troops may be squandered through their desertion to others who pay better and more regularly. This must be avoided. Raising the standards of support for AMISOM to those of United Nations peacekeeping missions is also important to secure additional troops, especially when we consider the current IGAD/AU plan for increasing the Mission's authorized strength.

We should certainly also do more on the human dimension of the conflict in Somalia. We welcome the discussions among the United Nations, the AU and AMISOM on strengthening the protection of civilians. The proposal to document the most serious violations of human rights and humanitarian laws is worthy of support, especially in a situation where Al-Shabaab is recruiting children as young as nine years old and imposing cruel and degrading punishments such as beheadings, stonings and amputations.

Here as well, financing is a serious problem, as we know. Significant gaps remain in humanitarian funding for Somalia, which further worsens the situation of a people already deeply affected by years of violence and lack of effective government. The fact that key activities such as nutrition, health care and water are less than 40 per cent funded is rather troubling. Brazil is trying to do its part. We recently made a voluntary contribution to the World Food Programme (WFP), to be used in Somalia. We hope that WFP can soon be in a position to safely resume its activities in southern central Somalia, beyond Mogadishu.

Next year will not only mark the end of the transitional period in Somalia; it will also be the twentieth anniversary of a conflict that has already created a generation of Somalis who do not really know what peace is. It is time for decisive action to put an end to this situation.

**Mr. Nishida** (Japan): I would like to thank Mr. Mahiga for his first briefing to the Council as Special Representative of the Secretary-General for Somalia, and extend our appreciation for the very strong messages from the Foreign Minister of Kenya and the Permanent Representative of Somalia.

Japan continues to be concerned at the very fragile security situation in Somalia, as evidenced by the recent series of terrorist attacks against the Transitional Federal Government (TFG) and the African Union Mission in Somalia (AMISOM), including the latest attack at Mogadishu Airport. It is our view that, in order to stabilize the political and security situation in Somalia, the TFG must first of all strive for political unity and improvement of management within itself. The international community, in particular AMISOM and the United Nations, can then focus on making concerted efforts to support the TFG. Japan hopes that the mini-summit meeting on Somalia at the margins of the new General Assembly session next week will lay a foundation for countries, including donors, to further strengthen and better coordinate their cooperation in support of Somalia.

Japan takes note of the efforts of the TFG in promoting the Djibouti process, including the reorganization of its cabinet to include Ahlu Sunna Wal Jama'a, since our last briefing in the Security Council. However, we are concerned that little progress has been made in the political dialogue with moderate opposition groups. Japan believes that it is of the utmost importance that the TFG intensify its efforts to garner support from moderate opposition groups, and that the role of international community is to help to create an environment conducive to that end.

The role of AMISOM is significant for protecting the TFG and maintaining security in Mogadishu. In this regard, we pay tribute to the troop-contributing countries, Burundi and Uganda, for their dedication and commitment. Japan also appreciates the efforts of the African Union and the Inter-Governmental Authority on Development to achieve the mandated

AMISOM troop level of 8,000, as authorized by resolution 1910 (2010). In this context, we welcome the recent deployment of an additional battalion by Uganda, and hope that other countries that have pledged deployments will follow through.

We recognize that the steady implementation of United Nations logistical support to AMISOM is very important in supporting the Mission's work. In this regard, Japan is ready to continue consultations on the issue of AMISOM contingent-owned equipment, taking into account the course of discussions in the Security Council towards adopting relevant resolutions. We believe that this issue must be discussed as part of an integrated strategy, under which the strengthening of AMISOM will contribute to the political process in Somalia.

The efforts of the TFG and AMISOM need to be reinforced by the support of the international community, including the United Nations. In this regard, Japan appreciates the engagement of Mr. Mahiga and the Secretariat in establishing a light footprint presence in Mogadishu. Japan further appreciates the continuing provision of humanitarian assistance under very difficult circumstances.

Japan, for its part, has been actively engaged in discussion on Somalia issues in the Security Council, the International Contact Group on Somalia and other forums, and has provided assistance of \$124.4 million since 2007, focusing on two pillars: humanitarian assistance and restoration of infrastructure, on the one hand; and the strengthening of security in Somalia, mainly through the trust funds, in support of Somali security institutions and AMISOM, on the other. We are determined to continue our engagement to support Somalia, in cooperation with all Member States.

**Mr. Briens** (France) (*spoke in French*): First of all, I should like to thank the Special Representative of the Secretary-General, Mr. Mahiga, for the briefing he has just given us and to hail his courage when on 9 September he was confronted with an attack on the airport in Mogadishu, where he was to meet President Sharif, accompanied by the Special Representative of the Chair of the African Union Commission and the Special Envoy of the Intergovernmental Authority on Development (IGAD). I would also like to thank the Minister for Foreign Affairs of Kenya and the Permanent Representative of Somalia for the candour

and the clarity of their statements. I note their commitment to work for stability in Somalia.

As emphasized by the report of the Secretary-General (S/2010/447), the security situation in Somalia is deteriorating in a troubling way. The offensive launched by extremists in recent weeks has led to violent clashes in Mogadishu. The militias control today a significant portion of the capital, threaten the headquarters of the transitional institutions and are capable of infiltrating neighbourhoods controlled by the Transitional Federal Government (TFG). Attacks against parliamentarians on 24 August and against representatives of the international community and the President of Somalia at the airport a week ago, are evidence of that.

In Somalia the main day-to-day victims of terrorists are civilians. In the past four months, 1,600 civilians have been admitted to Mogadishu hospitals as a result of fighting, including 400 children under 5 years of age. Insecurity also undermines the TFG's reconstruction efforts and harms economic development in the country.

The capacity of Al-Shabaab to cause harm also extends beyond the borders of Somalia and involves the entire region, as shown by the bloody attacks in Kampala on 11 July. Finally, instability in Somalia is still fertile ground for the piracy that threatens offshore sea lanes.

In this context, we welcome the commitment of the Ugandan and Burundian troops of the African Union Mission in Somalia (AMISOM), which makes it possible to secure key infrastructure in the capital and that of the transitional institutions. The entire international community must continue to support them. While IGAD and the African Union announced in July an increase of AMISOM troops to 8,000, the assistance that new contributors could provide would no doubt be critical.

For its part, France is actively contributing to the efforts of the international community in Somalia. Let me recall that in 2009 we trained 500 TGF soldiers. We are working with the European Union to train 2,000 Somali soldiers. Moreover, France has trained 5,600 AMISOM soldiers over the past three years, and today, with our European partners, we are financing soldiers of the force. We are also contributing to the United Nations logistical support package for AMISOM.

Finally, France is involved in Operation Atalanta to combat piracy off the coast of Somalia.

Support for Government forces and AMISOM cannot take place without a genuine strategy coordinated with the political action of the TFG. The United Nations has a role to play in this matter. Politically and on the ground, the support of the countries of the region is necessary for success.

In the spirit of the Djibouti Agreement the TFG has in recent months made efforts to broaden its political base. The rapprochement with Ahlu Sunnah Wal Jama'a is an important step, which must be solidified. Work on drafting a constitution is also proceeding. Still, we expect more from the TFG. Disputes among the representatives of the transitional institutions have undermined their action and are unacceptable. Gestures must be made towards all who have agreed to renounce violence. Similarly, regular dialogue must be conducted by the TFG with the regions of Puntland and Somaliland. Finally, less than a year before the end of the transitional period, it is time for the TFG to prove that it is capable of offering basic services to the people: health care, education, justice and security. In all of these areas, needs remain considerable.

The United Nations is currently assisting the efforts of the TFG. At the same time, it could adapt to make its action more effective. The United Nations is currently conducting in Somalia various and complementary activities — political, logistical, humanitarian and development-related — through 25 separate bodies. We support enhanced integration of these various actions under the direct authority of the Special Representative, so that they can be more coherent, as proposed by the Secretary-General. We will carefully study the specific proposals of the Secretary-General on this matter. The initial measures of coordination — including the establishment of a Senior Policy Group bringing together the Special Representative of the Secretary-General, the Resident and Humanitarian Coordinator and the Director of the United Nations Support Office for AMISOM — are a first step, but they must go further, because our credibility is at stake.

We also encourage, as soon as possible and in particular once the security situation permits it, the establishment of a United Nations office in Mogadishu, so as to mark the continuity and involvement of the

United Nations in Somalia. In this regard, we strongly encourage the Special Representative of the Secretary-General to continue his efforts to ensure this United Nations presence in Somalia, as the Secretary-General has asked him to do.

With respect to piracy, we all agree that we need to find solutions on land; we also need to pursue our action at sea. The debate held on 25 August (see S/PV.6374) enabled us to take a look at options proposed by the Secretary-General for prosecuting and imprisoning arrested pirates. The recommendations of the Special Adviser to the Secretary-General on these issues, Mr. Jack Lang, should enable us to find a solution that is both effective and equitable, for States in the region as well as States involved at sea.

The coming months will be critical for Somalia as the transitional period draws to a close, so I would like to assure Mr. Mahiga that he will have the support and confidence of France as he carries out the complex job he has undertaken.

**Mr. Heller** (Mexico) (*spoke in Spanish*): We thank the Special Representative of the Secretary-General for Somalia, Ambassador Augustine Mahiga, for the valuable information he has provided, and we welcome him to the Council. We also welcome the Minister for Foreign Affairs of Kenya, Mr. Moses Wetangula, and the Permanent Representative of Somalia, Ambassador Elmi Ahmed Duale, to whom we listened attentively.

The recent and welcome appointment of Ambassador Mahiga as Special Representative for Somalia and head of the United Nations Political Office for Somalia offers an opportunity to fine-tune the United Nations approach towards Somalia and to review the strategy to be followed, in view of the daily threats to the security of the country and the imperative need to protect the lives and basic living conditions of its people.

Clearly, the prolonged instability in Somalia currently poses a threat to peace and security in the entire region. We reiterate our strong condemnation of the acts of violence that occurred in Kampala in July as well as of the constant indiscriminate attacks in Somalia mounted by insurgent extremist groups, including attacks against United Nations installations. It is unacceptable that agencies such as UNICEF or the World Food Programme should be the victims of direct attacks aimed at impeding their work.

We reaffirm our gratitude to the countries contributing troops to the African Union Mission in Somalia (AMISOM), Uganda and Burundi, and their ongoing commitment to peace. It is crucial that all concerned countries support the peace process and participate positively in the quest for stability in Somalia and the region as a whole.

We welcome the decision of the Intergovernmental Authority on Development and the African Union to promote the deployment of 2,000 troops to complete the Mission's strength, as well as the support of the United States in that undertaking. We hope that the increase in AMISOM's troop levels will create better security conditions in Mogadishu that will allow for the safe deployment of the United Nations presence in the field, in accordance with the incremental approach that the Council has supported. We commend efforts to achieve the integration of the United Nations presence in Somalia as a fundamental element of a coordinated and coherent approach to addressing the country's problems.

Concerning the political process, my delegation echoes the Secretary-General's call for a resolution to the political and reconstruction problems facing the Transitional Federal Government and for the accelerated adoption of the constitution before the transitional period concludes in August 2011. The Government's political unity is indispensable to guaranteeing the security of its authorities and to strengthening its credibility and legitimacy within the country and abroad. It is equally important to build on the progress made in strengthening the security sector, including through the establishment of military and police structures.

We acknowledge the support provided by Uganda, Djibouti and Ethiopia in training officers, and underscore the importance of ensuring that the support of the Security Council and the international community is focused on consolidating Somalia's institutions in accordance with its own priorities.

Mexico deplores the escalation of violence by the insurgent groups, which directly affects Somali civilians, in particular the most vulnerable groups, such as women, children and refugees. We reiterate our appeal for full respect for international humanitarian law and human rights, and call on the parties immediately to cease their attacks, to avoid situations that indiscriminately affect the civilian population, and

to permit access to and delivery of humanitarian assistance. Furthermore, in view of the ongoing recruitment and use of child soldiers in the conflict, we call on all parties to release the children remaining in their ranks, whom we recall are entitled to special protection pursuant to the norms and principles of international law. We support the decision of President Sheikh Sharif Sheikh Ahmed to investigate the presence of children within the armed forces of the Transitional Federal Government, and consider it necessary for the United Nations to assist Government authorities in developing a plan of action for the demobilization and reintegration of children into their communities. We eagerly await the report that the Secretary-General is preparing on this issue for the Working Group on Children and Armed Conflict.

In view of the indiscriminate violence in Somalia, it is necessary to remind its principal perpetrators of the international criminal liability they shall incur for such acts as those we have witnessed daily in that country.

Within the Committee established pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, my delegation reiterates its belief that the arms embargo and targeted sanctions regime, when used in a coherent and incremental manner, are a valuable instrument of benefit to the peace process as a whole through the full cooperation of the international community. We welcome the reports we have received from Members of the Organization pursuant to resolutions 1844 (2008) and 1907 (2009), as well as their commitment to the work of the Committee, in view of the sensitive relationship between its work and the humanitarian assistance activities in the country.

Finally, we trust that the upcoming high-level meeting on Somalia to be convened by the Secretary-General on 23 September will be an important opportunity to reaffirm the Organization's commitment to peace and security in Somalia, taking into account the important observations that have been made here by the Minister for Foreign Affairs of Kenya. The solution lies in Somalia itself, with international support that requires a coherent approach and a strategic, long-term vision.

**Mrs. Ogwu (Nigeria):** It is indeed a pleasure to welcome Ambassador Mahiga to the Security Council and to listen to his inaugural briefing in his capacity as Special Representative of the Secretary-General for

Somalia. I should like to congratulate him on his appointment and to wish him success in his new assignment. We take this opportunity to offer him our fullest support.

I also welcome the Foreign Minister of Kenya, whose presentation was not only very frank, but also most compelling. I thank the Permanent Representative of Somalia for his very lucid statement.

The briefing that we have heard today once again paints a mixed picture of Somalia. It is a picture of hope and a picture of apprehension. On the positive side, we note with satisfaction that, despite the tensions within the transitional federal institutions, there was considerable momentum generated by, among other things, the high-level meetings of the Intergovernmental Authority on Development, the African Union summit in Kampala, the appointment of a new Special Representative of the Secretary-General, and the joint briefings three days ago by the African Union Mission in Somalia (AMISOM) and the United Nations Support Office for AMISOM.

The formation of a new Cabinet by Prime Minister Omar Abdirashid Ali Sharmarke, which includes members of Ahlu Sunnah Wal Jama'a, demonstrates the ability of the Government to accommodate other interests. The momentum, we believe, could be appropriately utilized to galvanize more action on the ground that will be beneficial to the people of Somalia.

There is no way peace will last in Somalia if, as the Secretary-General states in his report, volatility and insecurity between the insurgents and Government forces continue to adversely affect the civilian population in Mogadishu. The terrorist attack on the Muna Hotel during the month of Ramadan, which left over 70 people dead, was both cowardly and despicable. We deplore both the attack and its perpetrators. We believe that when all parties commit to peace and take practical steps to consolidate it, the desired change will endure in the country. In that connection, Nigeria welcomes the Secretary-General's recommendations and believes that, if implemented, they will have a significant impact in Somalia. The responsibility for making progress and achieving results in Somalia lies with all the major stakeholders, including the Somali people, AMISOM, the Security Council and all relevant partners.

On AMISOM, the briefing gave a clear indication that the Mission is on the right track and that its existing strategies are helping in no small measure to deal with the challenges in Somalia. Without the presence of AMISOM, the situation in Somalia would indeed be hard to imagine. Given AMISOM's commendable role, concerted efforts should be made to provide support that is commensurate with the operational mandates. It is a recipe for failure to deploy troops without giving them the requisite support, particularly when that support is available. It is time, therefore, to rethink our support strategy.

We want to underline the need for AMISOM forces to be paid the same rates of allowance as United Nations peacekeepers. Furthermore, troop-contributing countries should be refunded early for their contingent-owned equipment. These countries are making enormous sacrifices to deploy their troops and equipment in a difficult environment. The Council should find ways to encourage countries such as Guinea and Djibouti that are planning to deploy. In this regard, we strongly appeal to donors that have placed caveats preventing the use of their contributions for any expenditure related to the military component of AMISOM to remove those caveats in order to free resources for the reimbursement of AMISOM troop contributors. We welcome in particular the Secretary-General's recommendation that, in order to overcome the resource gap, the support package for AMISOM should be identical to the support provided to United Nations peacekeeping operations. We also support his recommendation that parity be ensured between the reimbursement rates for AMISOM and United Nations contingent personnel.

Nigeria reiterates its support for the Transitional Federal Government (TFG) and welcomes the progress it has made, despite the difficulties and internal disputes it faces. The TFG needs broad and all-encompassing support to implement key transitional tasks, fight piracy and insurgency, engage in political dialogue and national reconciliation, and, indeed, extend its authority within the country, beginning with Mogadishu. It also requires support in order to engage in genuine dialogue and sustained consultation. Without adequate support, the TFG will be unable to fulfil the transitional agenda, while extremists will be emboldened to continue their attacks on both the TFG and AMISOM.

The heinous attacks of 11 July in Kampala by agents of Al-Shabaab are a grim reminder of how easily the situation in Somalia could spill over into the entire region, with dire consequences. This situation gives rise to the need for concerted and purposeful support for the TFG. A core aspect of this would be to stabilize the security environment by reinforcing the training, equipping and sustenance of the Somali police force and the national security forces. This will not be possible if efforts are not made to mobilize resources to assist Somalia. As the Secretary-General notes in his report (S/2010/447), the United Nations does not have the resources to adequately pay the police and civil servants or to reimburse countries contributing troops to AMISOM. It is needless to add that the challenges in Somalia must be able to benefit from the expertise and efficiency of an integrated United Nations system. We therefore underscore the need for the integration of the United Nations system in Somalia.

Nigeria welcomes the strong and continuing partnership between the Intergovernmental Authority on Development, the African Union and the United Nations in Somalia. Indeed, we owe a debt of gratitude to the gallant men and women of the military forces of Uganda and Burundi for their efforts and commitment to the cause of peace in Somalia. We also take this opportunity to salute the dedication of international aid and humanitarian workers in that country.

**Mr. Salam** (Lebanon) (*spoke in Arabic*): At the outset, I would like to thank the Special Representative of the Secretary-General, Mr. Mahiga, for his comprehensive briefing, and wish him every success in his work for peace and stability in Somalia. I also welcome the Minister for Foreign Affairs of Kenya and thank him for his valuable contribution, and stress the importance of the statement made the Permanent Representative of Somalia.

We support the Djibouti peace process in Somalia, and stress the need to identify a comprehensive approach to the situation in that country for a peace that addresses not only security but also economic development and the promotion of the country's institutions.

Lebanon condemns the acts of piracy and armed robbery off the shores of Somalia, which threaten navigation and international trade and obstruct the delivery of humanitarian assistance. Lebanon maintains that addressing the root causes of piracy will lead us



into the interior of Somalia, which will require building the capacities of the Transitional Federal Government (TFG) and its armed forces, and assisting it in providing employment opportunities for Somalis.

We have considered the Secretary-General's report (S/2010/447) and would like to stress the following points. In regard to the political process, we commend the work done by Somali institutions in certain areas, although their capabilities have been limited. Here, we note in particular the preparation of a draft constitution by December 2010. We call on the TFG to resolve its differences, move forward on fulfilling its commitments and implementing its main tasks, and improve the provision of basic services for the people.

With regard to security, we are greatly concerned about the acts of violence and repeated attacks by insurgents against the Government, leading to many innocent deaths. Such attacks demonstrate the need to support the Somali armed forces expeditiously, to expand the authority of the State and to reintegrate the deserting members of armed groups. We call on donor parties to promote support for the Somali security forces and to help them pay their salaries, a matter concerning which the Secretary-General agrees in his report, so as to address the dangers of extremism, and especially the threat posed by the Al-Shabaab movement not only to Somalis but to Muslims and others elsewhere.

In regard to the humanitarian situation, we express our great concern that children have been recruited by all parties and about reports of the coercive expulsion of internally displaced persons in Somalia and the increased sexual violence against them, particularly in Somaliland. We also condemn the repeated threats against journalists and humanitarian workers. In this respect, we regret the fact that the World Food Programme has been unable to deliver humanitarian assistance to areas under the control of Al-Shabaab, leading to a sense of marginalization among the people who live in those areas and creating an unintended image of politicization of humanitarian aid there.

With regard to the international presence in Somalia, we stress the need for further coordination between United Nations bodies working there. We also stress the importance of expediting the implementation of the phased efforts to strengthen the United Nations

presence, and of the Security Council's sending a message of support for the Djibouti peace process in Somalia.

In the absence of international peacekeeping forces, we call on donor entities to increase their contributions to covering the costs of the African Union Mission. We commend the contributions of the African Union, particularly Uganda and Burundi, to efforts for peace in Somalia. We also commend the United States of America for having stated its readiness to facilitate the deployment of the 2,000 additional troops pledged by the African Union.

We call for further cooperation with regional organizations in order to benefit from their comparative advantages, in particular their special in-depth understanding of conflicts in the area and their local experience. The African Union and the Intergovernmental Authority on Development have called for the preparation of a new support plan for AMISOM that would enable it to augment its forces for deployment throughout the territory of Somalia.

Should we not respond to that call from the African Union and the Intergovernmental Authority on Development? Should we not support them and back the Secretary-General in his conviction that assistance to AMISOM should be in line with assistance provided to other peacekeeping operations? Should not the rate of reimbursement for AMISOM be similar to that for peacekeeping operations elsewhere?

We believe that the cost of investing in the attainment of peace and stability in Somalia through the Djibouti peace process and the transitional federal institutions far outweighs the danger of having a Somalia in total chaos and lacking a functioning government — not to mention the human costs, which can never be recouped.

**Mr. Rugunda** (Uganda): I thank the Special Representative of the Secretary-General, Ambassador Mahiga, for his comprehensive statement to the Council this morning, and we congratulate him on his appointment. I also thank him for the gusto and energy he has deployed as he begins his work. He enjoys the unequivocal support of Uganda.

I wish also to welcome the Foreign Minister of Kenya, Mr. Wetangula, and to thank him for his down-to-earth statement on the situation in Somalia. I also

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thank the Permanent Representative of Somalia for his helpful statement.

I fully endorse the views of the Minister for Foreign Affairs of Kenya and the Permanent Representative of Nigeria, which call for parity in the treatment of peacekeepers in Somalia vis-à-vis peacekeepers elsewhere in the world. In fact, these peacekeepers, who face the harshest conditions, end up getting the least care and being poorly treated by the international community. Hence, we need to do more than we are doing.

Uganda reaffirms its support for the Djibouti peace process, as it represents the best opportunity for lasting peace in Somalia. We commend the efforts made by the Transitional Federal Government (TFG) in advancing the political process in that country. We are encouraged by its continued commitment and efforts in reaching out to opposition groups in the search for lasting peace. We therefore call upon all parties in Somalia to engage in the political process.

The security situation in Somalia remains fragile. During the holy month of Ramadan, instead of observing the edicts of Islam — which call, inter alia, for peace and generosity during the time of fasting — Al-Shabaab and other extremist groups launched an offensive with the aim of overthrowing the TFG. Moreover, they carried out these attacks, as they always do, from civilian-populated areas and facilities such as markets and hospitals. Al-Shabaab holds the people of Somalia hostage to its extremist views, obstructs the delivery of humanitarian supplies to the needy and grossly violates human rights.

The recent attacks on TFG forces and the African Union Mission in Somalia (AMISOM) and the use of civilian facilities to carry out those attacks have left scores of people dead and many more injured. Hence, Al-Shabaab and its allies and sponsors bear sole responsibility for the continuing suffering and death endured by the Somalia people and by our peacekeepers.

The launch of the recent offensive by armed opposition groups is a clear indication that they are still receiving support in various forms from their sponsors. In addition, we are concerned about the large numbers of foreign fighters coming into the country. Al-Shabaab's activities and methods increasingly mirror those of Al-Qaida in their nature and objectives. There is therefore an urgent need to strengthen the

implementation of the relevant Security Council resolutions dealing with spoilers and terrorist groups.

The continuing conflict and the deterioration of security have led to the worsening of the humanitarian situation, have increased the number of displaced persons and have negatively affected the delivery of humanitarian assistance in the country. We commend the humanitarian agencies and workers continuing to operate in Somalia in these very difficult conditions, and we call upon the international community to redouble its efforts and increase its support to those agencies.

The primary responsibility for maintaining peace, security and stability in Somalia ultimately lies with the TFG and the people of Somalia. However, without effective, working State institutions, this will remain a major challenge. We call upon the international community to support the rebuilding of State institutions in Somalia, especially in the security and justice sectors. Supporting the Government in improving service delivery will enhance its authority and legitimacy.

Without unity of purpose within the TFG, the support provided by the international community for the people of Somalia will be in vain. We therefore call upon the TFG and the other transitional institutions to work in harmony in addressing the challenges that are facing the country. We commend the efforts of the Special Representative of the Secretary-General, Ambassador Mahiga, to promote cohesion and understanding within the TFG. The Special Representative's work should also help galvanize cohesion among United Nations agencies and the international community so that they can focus on streamlined action.

At the recent African Union summit, held in Kampala, heads of State or Government reaffirmed their commitment to support the people of Somalia in their quest for peace and stability. Thus, we call upon the international community to support AMISOM in effectively fulfilling its mandate. There is now a window of opportunity in Somalia for laying the foundation for peace and stability that we cannot afford to waste.

Finally, we welcome the convening by the Secretary-General of the mini-summit on Somalia on 23 September, which is really next week. We expect that this summit will help to further mobilize the

international community to support the efforts and actions aimed at stabilizing Somalia.

**Mr. Churkin** (Russian Federation) (*spoke in Russian*): We thank the Special Representative of the Secretary-General for presenting the Secretary-General's report on the situation in Somalia (S/2010/447). We are pleased to welcome Augustine Mahiga in his new post and wish him success and pledge him our support. We listened carefully and with interest to the statements of the Minister for Foreign Affairs of Kenya and the representative of Somalia.

On the whole, we share the assessments presented in the report of the Secretary-General. We are troubled by recent outbreaks of violence in Mogadishu, which have aggravated an already unstable situation in the country. The extremists have not abandoned attempts to attack the positions of the forces of the Government and the African Union Mission in Somalia (AMISOM), which genuinely hinder the actions of the Transitional Federal Government (TFG) to establish effective leadership in the country. As a result, the civilian population and the personnel of the United Nations and humanitarian organizations remain under threat, which gives rise to grave concern and deepens the humanitarian crisis in Somalia. In these conditions, it is very important to end external support for the extremist forces in Somalia, in particular through strict compliance with Security Council resolutions.

We join in the Secretary-General's appeal to the international community's to step up its efforts to assist the TFG, especially in the area of security. There can be no doubt that in these conditions it is of special importance to ensure the unity and solidarity of transitional federal structures capable of winning the trust of Somalis. The Government needs to pursue its work to broaden its social base.

The only credible stabilizing factor in the country today is AMISOM. It is important to ensure its full staffing and its required logistical support as soon as possible. We note the relevant proposals of the Secretariat, which require some development. We believe that the phased approach to broadening the United Nations presence in the country is justified and should continue to be implemented depending on the momentum of the military and political situation. We support the desire to maintain closer contacts between United Nations agencies and the TFG and other major Somali parties. It is important to strengthen the

coordination action of United Nations agencies, including in putting together joint programmes and operations.

The problem of piracy remains pressing, and any long-term solution will depend on the prospects for advancing the political process and rebuilding Somalia. It is obvious that one of the important causes of the inadequate effectiveness of international anti-piracy efforts resides in the current imperfect mechanism for holding the pirates accountable. We must create the necessary judicial bodies, especially at the regional level. However, the search for additional opportunities to combat piracy should be conducted along other lines. In particular, we believe that effective prosecution of the leaders of the piracy industry would be assisted by placing them on Council sanctions lists.

Russia will continue to support the efforts of the President of Somalia and the TFG to achieve sustainable peace and national reconciliation in the country on the basis of the Djibouti Agreement in the interest of strengthening security and stability in the region.

**Mr. Barbalčić** (Bosnia and Herzegovina): At the outset, I would like to take this opportunity to thank Mr. Augustine Mahiga, Special Representative of the Secretary-General for Somalia, for his introduction of the Secretary-General's report (S/2010/447) and comprehensive briefing this morning.

Also, we would like to welcome His Excellency Mr. Moses Wetangula, Minister for Foreign Affairs of the Republic of Kenya. Additionally, we would like to thank the Ambassador of Somalia for his statement.

Bosnia and Herzegovina condemns in the strongest possible terms the recent suicide attacks in Somalia and expresses its condolences to the families of the victims. We also once again express condolences to the families of the victims of the terrorist attacks that took place in Kampala on 11 July. Those tragic incidents once again remind us of the fragility of the security situation in Somalia, which remains a major concern for us, and of its impact on the wider region.

Bosnia and Herzegovina reiterates its full support for the Transitional Federal Government (TFG) and the Djibouti peace process as the only legitimate and viable framework to achieve lasting peace in Somalia. As the end of the transitional period approaches, it is important that all relevant actors in the country show

their full commitment to the implementation of the key transitional tasks through unity. This challenge requires the serious dedication of Somali institutions to ensure that the transitional period is not prolonged in order to justify the confidence and efforts of the Somali people and the international community.

We call upon the TFG to intensify its efforts, especially in the areas of political reconciliation and outreach, the constitution-making process, security, stability and the delivery of services, and urge all groups outside the Djibouti peace process to join it as soon as possible. The international community has shown its devotion to assisting the Somali people in achieving lasting peace and stability in the country. We express our hope that these efforts will continue, and we reiterate our call on the international community and partners of Somalia to provide urgent military and financial support, as well as other necessary resources to the TFG.

Bosnia and Herzegovina remains concerned regarding the humanitarian situation in the country. Despite the fact that the rainy season has improved the food security situation, a large number of people still depend on food assistance. Unfortunately, the delivery of this needed assistance is still obstructed in some parts of the country.

We are deeply concerned over the recruitment and use of children in the conflict, as well as over the reports of cases of killed or injured children. We therefore urge all parties to the conflict to fully comply with international humanitarian and human rights law in order to protect the civilian population.

Once more, Bosnia and Herzegovina would like to commend the African Union, the Intergovernmental Authority on Development, and particularly the troops of the African Union Mission in Somalia (AMISOM) for their tireless efforts in stabilizing the situation in Somalia, despite the extremely difficult environment in which AMISOM troops are operating. We therefore call upon the international community to continue its support to AMISOM with the aim of fully implementing its mandate. We welcome the efforts of the Joint Security Committee to coordinate the security sector development initiatives. Strengthening the processes of the Somali police force and national security forces is vital to peace and stability in Somalia. Therefore, we would like to emphasize that the cooperation and assistance of the international

community to the TFG are crucial, and that every resource should be used to generate the political and security conditions necessary for the successful completion of the transition by 2011.

Bosnia and Herzegovina recognizes the importance of the United Nations Support Office for AMISOM and its efforts to provide a logistical support package to AMISOM, as well as the hard work of the United Nations Political Office for Somalia, the United Nations country team and all other humanitarian organizations.

Finally, on the issue of piracy off the coast of Somalia, we share the view that the piracy poses a threat to peace and security, not just in the region but globally. We reiterate our position that a long-term solution will come only through fighting the root causes of piracy by restoring stability and the rule of law in Somalia.

**Mr. Li Baodong** (China) (*spoke in Chinese*): I would like to thank you, Mr. President, for convening today's public debate to discuss the matter of Somalia. I would like to thank the Special Representative of the Secretary-General, Ambassador Mahiga, for his briefing. I would like to thank the Minister for Foreign Affairs of Kenya and the Permanent Representative of Somalia for their presence and for their statements.

In recent times, the international community has continued to work towards a solution in Somalia. The Somali Transitional Federal Government (TFG) has resolutely fought against attacks launched by armed opposition forces. Efforts to equip and train the Somali security forces are proceeding apace. The African Union Mission in Somalia (AMISOM) has been strengthened. In addition, international cooperation to combat piracy off the coast of Somalia has continued to progress. However, the security situation in Somalia has yet to show any visible sign of improvement. The humanitarian crisis has intensified and piracy has continued unabated. The question of Somalia remains a serious challenge to peace and security in the Horn of Africa and to the world at large.

Resolving internal political differences and establishing an effective central Government are the important pre-conditions for the international community's ability to play an effective role. As noted in the report of the Secretary-General (S/2010/447), the TFG is undergoing a very tense period. This situation must be quickly corrected. China supports the Djibouti

peace agreement. We hope that the TFG will duly resolve its internal problems and work to strengthen its role as a pole of attraction to the various political forces in Somalia. We sincerely hope that the various political factions in Somalia will place the interests of their country and their people above all other considerations and join the political reconciliation and negotiation processes.

We call on all relevant parties, including the countries of the region, to respect Somalia's sovereignty and territorial integrity and to support the TFG in order to facilitate early, substantive progress in the political reconciliation in Somalia.

We condemn the attacks launched against the TFG, the Somali people and AMISOM. We welcome the contributions of the Somali security forces and AMISOM to improving the security situation in Somalia. At present, the Somali security forces and AMISOM are facing serious funding gaps. China therefore calls on the international community to actively provide that assistance. China supports the deployment of United Nations peacekeeping operations in Somalia when the conditions are ripe.

The recent Istanbul Conference on Somalia demonstrated the greater understanding of the international community of the severity of the Somali issue. The African Union's contributions and tireless efforts to find a solution to the problem are indeed commendable. We call on the United Nations to further mobilize resources through various channels and to provide further practical assistance to AMISOM. It is our hope that countries will honour their commitments to assisting Somalia in a timely manner.

Two decades of war and strife in Somalia have seriously undermined the cause of peace in Africa. As an urgent matter, the international community must take early, effective action to gradually resolve the question of Somalia. In that respect, the Security Council should demonstrate a stronger sense of responsibility and purpose.

The African Union has designated 2010 the Year of Peace and Security in Africa. African countries are working tirelessly to resolve all the hot spot issues in Africa, and they maintain the fervent hope that the international community, especially the United Nations, will play a major role in finding a solution for Somalia. Here, I reiterate that in the interests of peace in Africa, China is ready to make its own contribution

to finding a solution in Somalia. China is also ready to cooperate actively with the United Nations and all of the parties concerned on this matter.

**Mr. Mougara Moussotsi** (Gabon) (*spoke in French*): I, too, thank Ambassador Mahiga, Special Representative of the Secretary-General for Somalia, for his introduction of the Secretary-General's report (S/2010/447) on the latest developments in the political, security, humanitarian and human rights fields in Somalia. Permit me to also welcome the honourable Minister for Foreign Affairs of Kenya, His Excellency Mr. Moses Wetangula, to the Council and to thank him for his highly enriching and edifying statement.

The numerous meetings held by the Security Council on the matter of Somalia and other initiatives taken in this area, in particular the Istanbul Conference, demonstrate the international community's ongoing awareness of the Somali problem. Similarly, my delegation supports the convening this month of a mini-summit directed at further involving the United Nations in the Somalia stabilization process. My delegation believes that the new options proposed by the Secretary-General provide a good basis for discussions on a coordinated and lasting solution to this crisis.

This debate is being held at a time when Somalia has become the theatre of violence that has, regrettably, led to great loss of human life, including, yet again, among the soldiers of the African Union Mission in Somalia (AMISOM). This upsurge in violence recalls the precarious security situation in a country that has faced numerous challenges for many years.

As my country has emphasized at previous meetings on this same subject, the resolution of the crisis in Somalia requires a three-pronged approach: security, institutional and humanitarian. Improving the security situation remains linked to strengthening the capacities of both the AMISOM and the Somali national security forces. While it is true that troop levels have considerably grown, reaching the 8,000 soldiers established in the mandate, it is urgent that the troops enjoy the financial, logistical and additional technical means that will allow them to counter the frequent military attacks orchestrated by the rebel movements.

Such assistance will also strengthen the authority of the Transitional Federal Government, above all at a

time when the Islamist militias are on the offensive, as demonstrated by the dual attack in Kampala on 11 July and the progressive advance of Al-Shabaab towards Mogadishu. In this context, we welcome the logistical support provided to date by the United Nations, which has significantly contributed to strengthening the operational capacities of AMISOM. We also welcome the support provided by the European Union to train 2,000 soldiers of the Somalia armed forces.

Furthermore, we support the recommendation of the Secretary-General that the remuneration of AMISOM troops be aligned with those of United Nations peacekeepers. Once enacted, this measure will contribute to strengthening motivation among AMISOM troops in the theatre of operations.

This is also an opportunity to pay particular tribute to Uganda and Burundi, whose commitment to restoring peace and stability in Somalia, at the cost of enormous human and material sacrifice, deserves recognition. The same applies to other countries, including the Republic of Guinea, which has announced a troop contribution to AMISOM.

Illicit arms circulation also fuels insecurity in Somalia. In that context, my delegation underscores the need to ensure the effective implementation of the sanctions imposed by the Council pursuant to resolutions 751 (1992) and 1907 (2009).

Institutional stability in Somalia will require strengthening the authority of the Transitional Federal Government. To that end, we support the Secretary-General's call on the international community to provide the military and financial aid necessary to strengthening the transitional federal institutions. My Government urges the Transitional Federal Government to pursue national reconciliation pursuant to the Djibouti Agreement, which is the political basis for a resolution of the Somali crisis.

The Government's inclusion of three members of the Ahlu Sunnah Wal Jama'a movement following the last reorganization of the Government and the progress made in drafting a new constitution are important steps towards concluding the transitional phase. With a view to capitalizing on this progress, my delegation invites the members of the Government to rise above their differences for the sake of the higher interests of their country.

The humanitarian situation also remains of great concern. We have the moral duty to sustain and strengthen the efforts and cooperation of humanitarian workers on the ground, and to ensure that food aid is properly transported to its final destination.

The international community's attention to the overall situation in that country — that is, security problems on land and piracy off the coasts of Somalia — will contribute to establishing a lasting peace, not only throughout the country, but in the whole Horn of Africa.

My country, for its part, will continue to support the work of AMISOM, the involvement of the IGAD countries and the role of the Special Representative of the Secretary-General for Somalia.

**Mr. Mayr-Harting** (Austria): At the outset, I would like to welcome Ambassador Augustine Mahiga as the new Special Representative of the Secretary-General. We thank him for his presentation and for the commitment he has already shown under truly challenging circumstances. I would also like to say that we welcomed the presentation by Foreign Minister Wetangula and would like to underline the key role that Kenya is playing in bringing stability to Somalia by accepting refugees as a basis for the activities of the international community and, more specifically, on the issue of piracy. We are also grateful to the Permanent Representative of Somalia for his statement.

I would like to join others in condemning the recent attacks of 9 September and the violence of recent weeks. Austria expresses its condolences to the victims and their families.

Let me underline that Austria fully aligns itself with the statement of the European Union that will be delivered later this morning. Let me now highlight a few additional points.

Austria would once again like to confirm its support for the Transitional Federal Government (TFG) and for the continuation of the Djibouti peace process. We hope that the TFG, with the support of the international community, will be able to assume its responsibilities — namely, to build security and rule of law institutions and to embark on a reconciliation process — in unity. As others have already said, the transitional period comes to an end in August 2011, and we need a clear strategy for the remainder of this time.

We are deeply concerned about the devastating effect the conflict has on the civilian population and about the lack of respect for humanitarian principles. We call on all parties to permit the delivery of assistance and aid to those in need.

I would also like to reiterate our appreciation for the dedication and engagement of the many humanitarian workers who accept very high risks in order to alleviate the plight of the civilian population in Somalia. We call upon all parties to ensure the protection of civilians, in particular that of children, in compliance with human rights law and international humanitarian law.

Austria would like to reiterate its condemnation of the recruitment of children by all parties to the conflict and request that they be released immediately. In this regard, we encourage all parties to cooperate with the Working Group of the Security Council on Children and Armed Conflict, which is to begin its consultations on the situation in Somalia in October.

Concerning the surge in piracy, it is, as others have already said, not only important to consider piracy as a threat to key international shipping lanes at sea, but also necessary to consider its root causes and to see it as a factor further aggravating the security and humanitarian situation in Somalia. Austria therefore stresses the importance of determined activities to curb piracy in the region, as is also done through the European Union naval operation, Operation Atalanta.

Let me also underline our commitment, support and admiration for the important contribution of AMISOM, its troop-contributing countries, Uganda and Burundi, the United Nations support package for AMISOM and the substantial support by the European Union to AMISOM in bringing security and stability to the country.

We welcome the progress in the integration of United Nations operations, which will also ensure a coherent United Nations approach in Somalia. It is important to enhance the role of the United Nations in Somalia, specifically in coordinating and leading the efforts of the international community. We should also aim at creating more synergies between the TFG and the international community in Somalia and make more efficient use of already established mechanisms for coordination such as the High-level Committee and the Joint Security Committee.

In conclusion, we are looking forward to the summit on Somalia on 23 September that is to be convened by the Secretary-General. It will provide an opportunity to highlight the Security Council's firm support and commitment to the remaining tasks during the transitional period and to the stabilization of the situation in Somalia.

**The President:** I shall now make a statement in my capacity as the representative of Turkey.

We too wish to thank the Special Representative of the Secretary-General, Mr. Mahiga, for introducing the report of the Secretary-General (S/2010/447). We welcome Mr. Moses Wetangula, Minister for Foreign Affairs of Kenya, and thank him for his insightful statement. We also welcome the Permanent Representative of Somalia, Mr. Duale.

As others have emphasized, the challenges we face in Somalia are great and daunting. The political and security situation is critical. Terrorism, instability and the precarious humanitarian situation continue to cause grave concern. The Transitional Federal Government (TFG) has a great many things to achieve. For that, there is a need for a strong and determined Government and functional institutions. Therefore, the existing political disputes should be solved through dialogue so that the transitional agenda can be completed in a timely fashion.

We commend the crucial role played by the African Union Mission in Somalia (AMISOM) towards achieving stability in Somalia. We thank all troop- and police-contributing countries, especially Uganda and Burundi. We also welcome the efforts of the Inter-Governmental Authority on Development, including its decision to deploy additional troops under AMISOM.

AMISOM should be fully supported, so that it can effectively implement its mandate. Turkey shares the Secretary-General's view that the support package for AMISOM should be identical to the support provided to United Nations peacekeeping operations. On the other hand, one should not expect AMISOM to provide security on its own. It is also of crucial importance that the Somali security institutions be strengthened.

There is no military solution to the Somali question, and the only road to a peaceful future is through dialogue. The TFG, which Turkey fully

supports, should continue to pursue assertively its outreach policy vis-à-vis the opposition groups. Likewise, the TFG has to appeal to the hearts and minds of the Somali public so as to minimize the adverse effects of the propaganda machine of radical elements, which have their own agenda.

We strongly condemn the terrorist attacks in Kampala and Mogadishu. We should not let radical elements drive the Djibouti peace process.

Stability in Somalia can be consolidated only if the gains in the political and security fields are supported by reconstruction activities. The Istanbul Conference on Somalia laid out a broad perspective in that regard. The critical role played by Somalia's neighbours in promoting peace, security and development in Somalia and the region is undeniable. By reaffirming the principles of good-neighbourly relations and urging Somalia's partners to continue to support efforts towards that end, the Istanbul Conference also strongly emphasized that.

For the peace process to move forward in Somalia, the active involvement and leadership of the United Nations are crucial. In that regard, we welcome the determination and tireless efforts of the Special Representative of the Secretary-General, Mr. Mahiga, to reinvigorate the process. We support him, and we are ready to work and cooperate with him. The increased presence of the United Nations in Somalia will no doubt help achieve the targets that have been set. We are encouraged by the strong commitment of the Secretary-General to that matter. The mini-summit that the Secretary-General will convene next week is a timely initiative in that respect.

Finally, with regard to the fight against piracy, we follow with satisfaction the work to date by the Contact Group on Piracy off the Coast of Somalia. The issue is also high on the agenda of the Security Council, which very recently discussed the legal aspects of the issue (see S/PV.6374). We look forward to the report of the Secretary-General on piracy, which will be submitted in October.

I now resume my functions as President of the Council.

I now give the floor to His Excellency Mr. Tété António, Permanent Observer of the African Union to the United Nations.

**Mr. António** (*spoke in French*): First, allow me, on behalf of the African Union, to thank you, Mr. President, for having convened this meeting, which gives our organization the opportunity to brief the Council once again on what the African Union is observing on the ground. It will also allow us to explain the challenges that we face in supporting the implementation of the peace process. In addition, this meeting clearly demonstrates the Security Council's commitment to remain fully seized of the situation in Somalia.

We welcome the statement made by the Minister for Foreign Affairs of Kenya and hail the pivotal role that his country is playing in the region, as well as the role played by the Intergovernmental Authority on Development (IGAD), acting in the region on behalf of the African Union.

We also welcome the briefing provided by Ambassador Mahiga, whom the African Group received yesterday. His statement to the Group and the discussions with his team fully convinced the Group that his efforts need the support not only of the Group he visited yesterday, but of the entire international community, so that results can be seen on the ground. We know his commitment to the continent, and we have known him as a colleague in New York. We think that one could not find a better person — one who knows not only the issues, but also the Organization — for this position on Somalia. But Mr. Mahiga is only one part of our driving force, and without our driving force, that part could not function.

Since May, when Mr. Ramtane Lamamra, Commissioner for Peace and Security of the African Union Commission, described the situation in Somalia to the Security Council (see S/PV.6313), we have seen a number of positive and less positive developments on the ground that have had an impact on the peace process. I will speak briefly about those developments before turning my attention to the way in which the African Union has approached the problems and challenges associated with them.

On the political front, as other delegations have said, the process of adopting a new constitution drafted by the Independent Federal Constitution Commission continues despite the tensions caused by differences among leaders of the transitional federal institutions. The Special Representative of the African Union for Somalia, Ambassador Boubacar Diarra, the Special



Representative of the Secretary-General for Somalia and the IGAD Facilitator for Somalia Peace and Reconciliation are talking with the Transitional Federal Government (TFG) with a view to reaching greater harmony and cohesion among the transitional federal institutions to help adopt more positive measures likely to facilitate achieving the tasks foreseen for the transitional period, which will end on 20 August 2011.

Security remains volatile. The Al-Shabaab and Hizbul Islam groups continue to carry out indiscriminate attacks against the positions of the TFG and the African Union Mission to Somalia (AMISOM) in Mogadishu and the surrounding areas, causing many civilian casualties. However, AMISOM remains firmly entrenched in all strategic points, including Villa Somalia, the airport, the port and Kilometre 4. Recently, it has gained ground and slightly widened its zone of influence by deploying its forces at new strategic points in the Bondere and Abdiaziz districts of Mogadishu.

As other delegations have underscored, the humanitarian situation too continues to deteriorate in Mogadishu and in other parts of Somalia, while fighting among the various armed groups continues. Thousands of civilians are directly affected by the violence, which is increasingly causing casualties and displaced persons, who urgently need humanitarian assistance. The humanitarian agencies have extremely limited access owing to the widespread insecurity, intimidation, harassment and attacks perpetrated by armed groups, in particular Al-Shabaab.

Against that very complex background, I would like to report that the situation in Somalia has received the highest political attention both in the region and on the continent. As the delegations who spoke before me have emphasized, the Conference of Heads of State and Government of the African Union, held in Kampala, at its closure reaffirmed its full support for Somalia's Transitional Federal Government and resolutely condemned the attacks and other acts of violence perpetrated by Al-Shabaab and other terrorist groups against the TFG, the Somali population and AMISOM, as well as the attacks in Kampala, Uganda, on 11 July. Moreover, the Conference endorsed the decisions contained in the Communiqué of the fifteenth Extraordinary Summit of the Heads of State and Government of the Intergovernmental Authority on Development, held in Addis Ababa on 5 July 2010, aimed at enabling AMISOM to achieve the authorized

level of its personnel of 8,100 men. And this morning, we heard that reviewing this figure upwards is being considered.

In implementing the mandate conferred on it by the Conference of Heads of State, the Commission has begun to plan new deployment phases for AMISOM. That process, including drawing up new strategic directives and a concept of operations for AMISOM, has necessitated consultations with partners, including the United Nations, and will soon be completed. The results of that process will be submitted to the Council once they have been endorsed by the Peace and Security Council of the African Union.

As we finalize the planning of new deployment phases for AMISOM, allow me to draw attention to a number of challenges that we are already facing today.

Security Council resolution 1863 (2009) of 16 January 2009 authorized a "logistical support package to AMISOM, including equipment and services" (*para. 10*). The operational aspects of that logistical support package provided to AMISOM, as noted in a letter from the Secretary-General addressed to the President of the Security Council (S/2008/804), will be funded through regular contributions from States Members of the United Nations. Other United Nations support measures for AMISOM, including reimbursement for the contingents' logistical arrangements, come from the special United Nations Trust Fund for AMISOM.

Member States are making generous contributions to the Fund and we thank them for that. At the same time, we need to find a solution to a number of conditions imposed by donors banning the use of funds in certain critical areas. With some rare exceptions, those restrictions, as some delegations have noted, have largely curbed expenditures in the military components of AMISOM. AMISOM continues to be subject to significant financial restrictions that prevent it from being operationally effective, which could discourage new troop contributors.

It is therefore vital that AMISOM financing be not only sufficient but also predictable and sustainable, and that cannot be guaranteed unless the regular budget is used to cover all key operational elements of AMISOM, including military equipment and implements of war deployed by troop-contributing countries in the highly precarious security environment of Somalia.

Obviously, the situation in Somalia poses a threat to international peace and security. Unrestrained piracy and the bomb attacks of 11 July, mentioned by many delegations, show the extent to which insecurity in Somalia has a profound impact beyond its borders. A firm response from the international community is necessary. The commitments made by the African Union to re-establish peace and security in Somalia need international support. I therefore urge the Council to consider authorizing all possible cooperation and collaboration between AMISOM and United Nations operations under way in the region in order to deliver personnel and air and maritime logistical support for AMISOM.

Let me now speak briefly about the problem of civilian casualties. The humanitarian community is expressing growing concern over the high number of casualties resulting from the fighting in Mogadishu between insurgents and Government forces. Some organizations and media have repeatedly accused AMISOM of blindly looting civilian zones in Mogadishu in reaction to attacks from Al-Shabaab insurgents in those neighbourhoods. These accusations are launched by the Al-Shabaab propaganda machine. In that regard, AMISOM is working closely with its partners, including the United Nations Support Office for AMISOM, to develop an active communication strategy targeted to counter this manoeuvre. Moreover, AMISOM and the United Nations country team agree in principle on the establishment of a working group to share information on the situation of civilian casualties and to adopt practical measures to deal with the different concerns.

In conclusion, let me reiterate the African Union's determination to assume its fair share of the responsibility for maintaining international peace and security, working closely with the Council, Member States and all our international partners in seeking and implementing our common goal — a Somalia that is stable and at peace. However, we must emphasize that AMISOM needs sufficient, predictable and lasting resources, as I have indicated. Without sufficient and predictable resources, AMISOM will not be able to guarantee the security conditions necessary to allow the Transitional Federal Government to complete its transitional tasks, including the development of Somali security forces and the establishment of conditions conducive to stability and development in Somalia.

Finally, I commend the statement made by the representative of Somalia. I would especially like to welcome the partnership to be developed among the African Union, the United Nations and IGAD. In the meantime, we will have to give substance to these partnerships. We clearly heard Mr. Mahiga when he talked about the attacks that took place during his trip to Somalia in the company of the representatives of IGAD and the African Union. Clearly, we are united through thick and thin. But we also have to give substance to these partnerships, and that substance will come only from firm action from the Council, from all States Members of the United Nations and from all partners working for Somalia — and above all with the help of Somalia itself.

**The President:** I now give the floor to His Excellency Mr. Pedro Serrano, head of the delegation of the European Union to the United Nations.

**Mr. Serrano:** The candidate countries Turkey, Croatia and the former Yugoslav Republic of Macedonia; the countries of the Stabilization and Association Process and potential candidates Bosnia and Herzegovina, Montenegro and Serbia; as well as Ukraine and the Republic of Moldova align themselves with this declaration.

Let me start by thanking the Foreign Minister of Kenya and the Ambassador of Somalia for their important statements. I also wish to warmly welcome Ambassador Mahiga and to express the full support of the European Union (EU) for his crucial mission.

The European Union strongly condemns the Al-Shabaab deadly attacks on Mogadishu's airport on 9 September, during which several people, including African Union peacekeepers, lost their lives.

Despite all the efforts of the African Union Mission in Somalia (AMISOM) and the international community, the security situation in Somalia remains fragile. The transitional federal institutions are continuously facing serious challenges to their efforts to improve security, to strengthen the political process and to intensify institution-building, as well as to deliver minimum basic services to the Somali people.

Somalia is now entering a critical phase, with the transitional period culminating in less than a year in August 2011, while the Djibouti Agreement has yet to be fully implemented. It is imperative that the Transitional Federal Government (TFG) urgently take

the necessary steps in order to address the outstanding priority transitional tasks and intensify its outreach efforts. The consultative process that should take place to win broad-based popular support for a new constitution will provide an opportunity to reach out on substantive issues of concern for the future prospects of Somalia.

The most recent Al-Shabaab terrorist attacks on Mogadishu Airport, aiming at a high-level meeting of United Nations, African Union and Somali officials taking place there, and previous attacks in Kampala in July and in Mogadishu in August pose a serious threat not only to the security situation in Somalia, but also to the wider region and all international actors. The peace process in Somalia must continue despite all the attempts to derail it by an increasingly well-organized and violent minority.

Together with international partners, the European Union has long been engaged in supporting a peaceful and sustainable solution to the Somali crisis. The European Union assists in stabilizing Somalia by providing support to such priority areas as the security sector — including support to the Somali police force — as well as the training of military personnel, humanitarian and development assistance to the population and capacity-building support. In addition the European Union is largely involved in the ongoing naval operations against piracy through deployment of its Operation Atalanta forces. The European Union and its member States continue to constitute the largest donor to Somalia. It is, however, important to underline that the role of the European Union is only to assist. The main responsibility for Somalia's future lies with the Somalis themselves, and the role and initiatives of the TFG will be decisive for Somalia's future. Without a credible and inclusive Somali-owned political process, gains will be short-lived.

The European Union, in line with the United Nations and the main international partners, considers AMISOM to be a crucial element in supporting and protecting the Transitional Federal Institutions and to help them carry out their responsibilities. AMISOM contributes to the provision of the much-needed security to allow the TFG to undertake dialogue, reconciliation and political outreach. Since 2007, the European Union contribution to AMISOM has amounted to €95 million, to which we have recently added a further €47 million. The European Union reiterates its call on the broader international

community to follow its lead and do more to support both the Somali security apparatus and AMISOM.

We recognize that security support is essential, but we understand well that there can be no purely military solution in Somalia. Whilst we support the imperative to get AMISOM to its mandated strength, such a capacity needs to be matched by corresponding and parallel political efforts by both the international community and, above all, by the TFG itself.

The European Union fully supports the current peace process led by the United Nations in Somalia. However, the international coordination urgently needs further improvement. Specifically, there is a need for stronger United Nations leadership of the international efforts, as well as closer cooperation with the African Union. The European Union calls for more effective use of the current mechanisms of coordination between the international community and the TFG, such as the High-Level Committee and the Joint Security Committee.

As for the fight against piracy, we have recently dedicated a specific session to that instance. Therefore, let me simply take this opportunity to reiterate the need for the international community to devote more attention to reversing the socio-economic drivers that feed the scourge of piracy. The European Union commends the work done so far by the Contact Group on Piracy off the Coast of Somalia and calls for an increased coordination by the United Nations on the issue of the fight against piracy on land. The European Union will continue to support the region's own leadership and efforts in finding solutions to counter piracy by helping the regional countries to develop their judicial capabilities, as envisaged in the Djibouti Code of Conduct. We invite the States of the region to make use of this offer.

In conclusion, the European Union reiterates its commitment to improving the lives, dignity and security of the Somali people, to foster reconciliation, to support human rights and good governance, to increase access to basic services, to initiate reconstruction activities, and foremost to help set Somalia firmly on the path to peace and sustainable development. In this respect, we call on the Transitional Federal Government to strengthen its efforts to address these considerable political, economic and security challenges. As the transitional period will end in less than a year, we call on the

S/PV.6386

United Nations and the TFG to immediately start working on a road map for the most urgently needed measures to be taken before August 2011 in order to avoid a prolongation of the transitional period.

Securing peace in Somalia may not be easy and will certainly demand considerable resources, but it is an effort worth of making, and one that we must make — not only for Somalia, but for peace and stability in the region, and indeed, in a very real sense, for world security.

**The President:** I give the floor to the representative of Norway.

**Mrs. Smith (Norway):** I join others in thanking Special Representative Mahiga for his thorough and comprehensive briefing.

Norway joins the Secretary-General and other Member States in strongly condemning the recent terrorist attacks carried out by extremist groups against the peacekeepers of the African Union Mission in Somalia (AMISOM) and innocent civilians in Mogadishu and Kampala.

In spite of the commendable efforts made by AMISOM under extremely difficult circumstances, we have to face the fact that the situation in Mogadishu is still fragile. And the same may also be said about the Transitional Federal Government (TFG). The threat posed by militant and extremist groups to other countries in the region underlines that what is happening in Somalia is also a serious threat to peace and security in the wider international community. It is therefore important for the Security Council to take appropriate action to boost the strength and the operational capability of AMISOM.

The main victims of the ongoing war of attrition in Mogadishu and other parts of Somalia are, of course, the Somali people, who have been compelled to live under the direst conditions for such a long time. As long as the present situation continues, there is little hope for any improvement, and those who are able to do so are fleeing Mogadishu with their families. Norway, together with other donors, is seeking to provide humanitarian assistance, but access is often difficult.

As regards piracy, Norway wishes to thank all the countries that are currently contributing to the naval capacities in the Gulf of Aden and the Indian Ocean. At the same time, we note with concern that the

prosecution of captured pirates remains insufficient and sporadic, despite our collective efforts.

Even if AMISOM should be significantly strengthened, a lasting solution to the conflict in Somalia can be achieved only by political means. Norway remains a strong supporter of the Djibouti process and the efforts to reach out and integrate those groups that are not yet party to the peace process. We believe this should be vigorously pursued. At the same time, it is vital that the TFG get its act together and show a unity of purpose. The internal dispute over political positions is seriously undermining not only security, but also any efforts to achieve peace.

Norway will continue to support the transitional federal institutions of Somalia, in particular the ongoing constitutional process. With only one more year left in the transitional period, time is now highly limited if we are to find a lasting solution in Somalia.

**The President:** I give the floor to the representative of Algeria.

**Mr. Benmehidi (Algeria):** At the outset, I should like to congratulate and thank you, Mr. President, for convening this important debate on the situation in Somalia. I would also like to congratulate Ambassador Augustine Mahiga on his appointment as Special Representative of the Secretary-General for Somalia. I thank him for his opening remarks, which provided further insights into the significant challenges in Somalia, and assure him of the full support of Algeria in his new and challenging mission. I should also like to commend the Secretary-General for producing a comprehensive and thoughtful report (S/2010/447) pursuant to resolution 1910 (2010), which provides an update on main developments in Somalia.

Algeria has always been firmly attached to a comprehensive and lasting settlement of the situation in Somalia based on respect for sovereignty, territorial integrity, political independence and national unity. As a concrete contribution, Algeria provided the logistical airlift support for the African Union Mission in Somalia (AMISOM) troops. At the International Conference on Somalia, held in Istanbul in May 2010, a high-level Algerian delegation participated to renew my country's commitment towards peace and reconstruction in Somalia. Algeria also supported the decision of the African Union summit, held in Kampala from 25 to 27 July, to deploy additional troops for strengthening AMISOM.

As Somalia's transitional period approaches its end, my delegation shares the concern of the Secretary-General, as highlighted also by his Special Representative, that the transitional agenda remains largely unfulfilled. It is time for the Transitional Federal Institutions to show determination to complete the transitional tasks. We note the Secretary-General's assessment in his report that the Transitional Federal Government (TFG) needs to develop credible Government structures to deliver services to its people. As suggested by the Secretary-General, we encourage the TFG to make more effort to implement the Djibouti Agreement, which should remain open to all Somalis seeking peace, reconciliation and development.

My delegation shares the Secretary-General's concern about the substantial resource gaps in United Nations funding for AMISOM, which continue to hinder the effectiveness of the Mission and could discourage potential troop contributors. In addition, AMISOM forces should be provided more effective operational logistics in order to strengthen their capacity.

We lend our support to an integrated, coherent United Nations approach to the challenges confronting Somalia, and welcome the Secretary-General's intention to take further steps towards establishing an integrated United Nations presence in Somalia. Algeria is pleased to note the increased level of coordination between the United Nations and the African Union.

Algeria considers that responsibility for maintaining international peace and security lies with the United Nations. We still believe that the Security Council has a critical role to play in Somalia and that the United Nations should provide a stronger mandate and more resources to those willing to assist Somalia, particularly the African Union. It is imperative that the international community provide political, financial and economic support to Somalia commensurate with the magnitude of the challenges facing that country.

In conclusion, Algeria pledges its continuing support for AMISOM, the African Union and the United Nations in their efforts to bring peace and stability to Somalia and a prosperous future for the Somali people.

**The President:** I now give the floor to the representative of Ethiopia.

**Mr. Bame (Ethiopia):** I would like to express my delegation's gratitude to Secretary-General Ban Ki-moon for his comprehensive report on Somalia (S/2010/447), and my deep appreciation to the Special Representative of the Secretary-General, Mr. Mahiga, for his efforts to engage with the main actors in the peace process. I would also like to thank the Minister for Foreign Affairs of Kenya for his detailed briefing on developments in Somalia and on the concrete efforts of the subregional organizations, the Intergovernmental Authority on Development (IGAD) and the African Union, in stabilizing that country.

Ethiopia has been doing whatever is necessary to ensure the success of the peace process in Somalia. Our regional organization, IGAD, supports the Transitional Federal Government (TFG) in its endeavours to ensure peace and stability in Somalia. IGAD underlines once again the critical need to provide the financial and logistical support to enable the African Union Mission in Somalia (AMISOM) to reach its authorized level of 8,100 troops.

The African Union Assembly, demonstrating its commitment to peace in Somalia, endorsed the decisions of the IGAD heads of State and Government in July, including the decision to deploy an additional 2,000 peacekeepers to AMISOM immediately. My delegation would like to stress the need for concerted effort on the part of the international community to assist the African Union in increasing its forces to the level necessary to enable AMISOM to carry out its mandated peacekeeping activities. Nevertheless, the ultimate solution is to transform AMISOM into a United Nations peacekeeping force.

Ethiopia calls for concrete action by the Security Council aimed at stabilizing Somalia permanently by helping the TFG and AMISOM to bring normalcy to that war-ravaged nation. The international community must continue to assist the TFG, the only legitimate body that can bring sustainable peace, which must be encouraged to show itself able to work credibly with its partners and to deliver results. No one can pretend that deploying military forces in isolation can resolve Somalia's problems. IGAD, Somalia's neighbouring States, the African Union and the TFG have all been working to move the political process forward.

Ethiopia believes that the transitional federal institutions should work to strengthen internal cohesion while avoiding the tensions to which the country has

been prone in the past, obstructing the implementation of the Transitional Federal Charter. We believe that the political leaders should resolve disputes among themselves and take tangible steps towards the fulfilment of their commitments through genuine consultation and dialogue. We applaud the commendable and tangible results achieved thus far, one of which has been the broadening of the peace process in order to bring on board others who are prepared to work for peace and stability in Somalia.

It is important to ensure that the training of security forces is conducted in a more organized and coherent way, restructuring the TFG's security institutions by making them more effective and manageable, with proper command-and-control structures. My delegation, while recognizing the constructive consultations between the TFG and Ahlu Sunnah Wal Jama'a, encourages the leadership of the TFG to show the necessary determination to resolve to work together. It is necessary to acknowledge that the TFG has consistently made it clear that it is prepared to talk to any and all groups that reject extremism and violence. The United Nations should work to maintain unity within the TFG.

Somalia continues to be the most dangerous threat to regional and international security, due to the failure of the international community to take timely action when Al-Shabaab succeeded in galvanizing the support of its partners. Ethiopia condemns the terrorist attacks on civilians in Kampala and Mogadishu by Al-Shabaab and its supporters. We would like to emphasize that the Security Council must not abandon Somalis to international terrorism. Al-Shabaab and its

allies, who are closely linked to Al-Qaida, must be defeated. The United Nations and the regional organizations and countries involved should move forward in the struggle against the international terrorist networks.

The Council is fully aware of Eritrea's support for extremist groups such as Al-Shabaab and Hizbul Islam, which continue to enjoy substantial Eritrean military and logistical backing. There is explicit evidence of Eritrea's continued involvement in the transfer of weapons to Somalia. Eritrea has yet to be deterred from violating the Council's resolutions in its ongoing support for terrorists and efforts to destabilize countries in the region.

Ethiopia considers that any investigation of human rights violations in Somalia should be undertaken within the mandate of the Human Rights Council, and particularly by the Independent Expert on the human rights situation in Somalia. We believe that the efforts at the United Nations level to fight impunity within the Djibouti peace process should be Somali-owned.

In conclusion, my delegation reiterates that the Council should work to re-hat AMISOM to United Nations peacekeeping operations.

**The President:** There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

*The meeting rose at 1.20 p.m.*

**Annex 58**

“ICAO Meetings Papers, Air Traffic Management (ATM) Contingency Plan Applicable to Mogadishu Flight Information Region (FIR)”, *Civil Aviation Caretaker Authority for Somalia*, 18 January 2015

**AIR TRAFFIC MANAGEMENT (ATM)**

**CONTINGENCY PLAN APPLICABLE TO**

**MOGADISHU FLIGHT INFORMATION REGION (FIR)**

PREPARED BY

Civil Aviation Caretaker Authority for Somalia (CACAS)

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## FOREWORD

This Contingency Plan will come into effect as determined by the Civil Aviation Caretaker Authority for Somalia (CACAS), who is the authority responsible for civil aviation operations in Somalia.

The Plan has been prepared in coordination with the International Civil Aviation Organization (ICAO) to meet the provisions of ICAO Annex 11 — *Air Traffic Services* Chapter 2 (2.30), to provide for the safe and orderly continuation of international flights through the Mogadishu FIR.

The Plan has been developed in coordination with the Somalia airspace management stakeholders (CACAS, ICAO,) and with the close co-operation and collaboration with IATA and the civil aviation authorities and air navigation service providers (ANSPs) responsible for the adjacent FIRs.

The Plan will be activated by promulgation of a NOTAM issued by Somalia (CACAS) International NOTAM Office (NOF) as far in advance as is practicable. However, when such prior notification is impracticable for any reason, the Plan will be put into effect through notification by the designated authority as authorized by CACAS or the United Nations. In the event that this is also not practical, notification may be made by ICAO in accordance with arrangements made with CACAS.

Arrangements have been made with civil aviation authorities responsible for adjacent airspaces, and action on their part in the event of activation of the Plan will be in accordance with operational *Letters of Agreement (LOAs)* established between Somalia (CACAS) and adjacent States concerned. Aircraft flying through the Mogadishu FIR during activation and operation of the Mogadishu Contingency Plan are expected to comply with the requirements of this Plan and to cooperate with other airspace users as necessary for continued safety of air navigation.

It is to be understood that contingency arrangements that constitute a temporary deviation from the approved Regional Air Navigation Plan are subject to approval as necessary, by the President of the ICAO Council on behalf of the Council.

Proposed amendments to this plan shall be forwarded to:

Mr. Kemoitse J. Mosupukwa  
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**ATM CONTINGENCY PLAN FOR INTERNATIONAL FLIGHTS  
TO TRANSIT THE AIRSPACE OF THE MOGADISHU FIR**

**Effective:** Date.....

Time.....

**1. OBJECTIVE**

1.1 This Air Traffic Management (ATM) Contingency Plan contains arrangements to ensure the continued safety of air navigation in the event of partial or total disruption of air traffic services in the Mogadishu FIR in accordance with ICAO Annex 11 — *Air Traffic Services*, Chapter 2, Section 2.30. The Contingency Plan provides the ATS procedures and contingency route structure using existing airways in most cases that will allow aircraft operators to transit the Mogadishu FIR.

1.2 This Contingency Plan does not address arrangements for aircraft arriving and departing at airports within Somalia, or for domestic flight operations within the territory of Somalia.

**2. STATES AND FLIGHT INFORMATION REGIONS AFFECTED**

2.1 In the event that the Civil Aviation Caretaker Authority for Somalia activates this Contingency Plan, adjacent States and civil aviation authorities responsible for air navigation services in the adjacent FIRs will be notified in accordance with the *Letters of Agreement* established between Somalia (CACAS) and adjacent FIRs concerned. The adjacent States' FIRs and ATS units directly affected by this Contingency Plan are as follows:

- a) **State:** Djibouti  
**Name of TMA:** Djibouti TMA  
**Name of ATS Unit:** Djibouti Approach/Tower
- b) **State:** Ethiopia  
**Name of FIR:** Addis Ababa  
**Name of ACC:** Addis Ababa Control
- c) **State:** Kenya  
**Name of FIR:** Nairobi  
**Name of ACC:** Nairobi Control
- d) **State:** India  
**Name of FIR:** Mumbai  
**Name of ACC:** Mumbai Control

- 
- e) **State:** Seychelles  
**Name of FIR:** Seychelles  
**Name of ACC:** Seychelles Control
- f) **State:** Yemen  
**Name of FIR:** Sana'a  
**Name of ACC:** Sana'a Control

2.2 The contact details of the civil aviation authorities and organizations concerned are contained in **Appendix A** to this document. These details will be kept up to date in accordance with *Letters of Agreement* and the Contingency Plan shall be updated accordingly.

### 3. MANAGEMENT OF THE CONTINGENCY PLAN

3.1 The contingency measures set out in this Plan are based on known, foreseeable or probable impact of interruptions in ATS, caused by natural occurrences or other circumstances, which, in one way or another may partially or totally disrupt the provision of ATS and/or related support services in the Mogadishu FIR, or make the airspace unavailable or unsafe for use.

3.2 The following arrangements have been put in place to support management of the Contingency Plan in order to ensure that international flights may continue in a safe and orderly manner through the Mogadishu FIR.

#### **Central Coordinating Committee**

3.3 Whenever circumstances permit, as soon as practicable in advance of, or after a contingency event has occurred, the Project Coordinator of CACAS shall convene the Central Coordinating Committee (CCC) comprising representatives from:

- 1) CACAS;
- 2) ICAO ESAF Regional Office;
- 3) ATS providers within Mogadishu FIR;
- 4) UNSOA;
- 5) Representative from the airlines;
- 6) Other UN agencies and stakeholders considered necessary.

3.4 The Central Coordinating Committee (CCC) shall oversee the conduct of the Contingency Plan and in the event that the Mogadishu FIC premises are out of service for an extended period, make arrangements for and facilitate the temporary relocation of the Mogadishu FIC at the **Temporary ACC** and the restoration of ATS services. The terms of reference for the CCC will be determined by CACAS in consultation with applicable stakeholders and will be updated periodically and circulated to members of the CCC.

3.5 Contact details of the CCC members are provided in **Appendix B** to this document.

#### **Mogadishu ATM Operational Contingency Group**

3.6 The Mogadishu ATM Operational Contingency Group (MAOCG) will be convened by the CCC with a primary responsibility to oversee the day to day operations under the contingency arrangements, and coordinate operational ATS activities 24 hours a day, throughout the contingency period. The terms of reference of the AOCG will be determined by the CCC. The MAOCG will include specialized personnel from the following disciplines:

- Air traffic services (ATS)
- Aeronautical telecommunication (COM)
- Aeronautical meteorology (MET)
- Aeronautical information services (AIS)
- Communication, navigation and surveillance (CNS)

The tasks of the MAOCG shall include taking the following action:

- i) review and update of the Mogadishu Contingency Plan as required;
- ii) keep up to date at all times of the contingency situation;
- iii) organize contingency teams in each of the specialized areas;
- iv) keep in contact with and update the ICAO ESAF Regional Office, operators and the IATA Regional Office;
- v) exchange up-to-date information with the adjacent ATS authorities concerned to coordinate contingency activities;
- vi) notify the designated ATM organizations in Djibouti, Ethiopia, Kenya, India, Seychelles and Yemen of the contingency situation sufficiently in advance and/or as soon as practical thereafter; and
- vii) issue NOTAMs according to the corresponding contingency situation related to this plan or as otherwise required. If the situation is foreseeable sufficiently in advance, a NOTAM will be issued at least 48 hours in advance.

## **4. CONTINGENCY ROUTES STRUCTURE**

4.1 In the event of disruption of air traffic services provided by Mogadishu FIC, contingency routes will be introduced to ensure safety of flight and to facilitate limited flight operations commensurate with the prevailing conditions. Existing ATS routes form the basis of the contingency routes to be used, and a flight level assignment scheme shall be introduced to minimize potential points of conflict and to limit the number of aircraft operating simultaneously in the system under reduced air traffic services, including surveillance.

4.2 The contingency route structure for international flights is detailed in **Appendix C** to this document. Additional contingency routes will be introduced as and when circumstances require, such as in the case of volcanic ash clouds formation.

4.3 In regard to domestic operations, if circumstances dictate, all flights shall be temporarily suspended until a full assessment of the prevailing conditions has been determined and sufficient air traffic services restored. A decision to curtail or restart domestic operations will be made by the CCC.

4.4 Aircraft on long-haul international flights and special operations (e.g. Search and Rescue (SAR), State aircraft, humanitarian flights, etc), shall be afforded priority for levels starting from FL290 and above.

4.5 International and domestic operators affected by the suspension of all operations from major airports in Somalia will be notified by the relevant airport authority when operations may be resumed, and flight planning information will be made available pertaining to those airports. International flights which have received such approval may be required to file flight plans via domestic routes to join international contingency routes.

4.6 International operators may elect to route around the Mogadishu FIR if this will satisfy operational requirements of their companies. In such instances, the contingency routes to be used will be provided by States providing air traffic services in the adjacent FIRs concerned.

## 5. AIR TRAFFIC MANAGEMENT AND CONTINGENCY PROCEDURES

### **Reduced ATS and provision of flight information services (FIS)**

5.1 During the contingency critical period, air traffic services (ATS), including air traffic control (ATC) may not be available, particularly with regard to availability of communications and surveillance services. In cases where such services are not available, a NOTAM will be issued by CACAS or adjacent ACCs, providing the relevant information, including an expected date and time of resumption of services. The Contingency Plan provides for limited flight information and alerting services to be provided by adjacent ACCs.

5.2 Flight information service (FIS) and flight monitoring will be provided by the designated ATS authorities for the adjacent FIRs on the contingency routes that enter their respective FIRs. A chart depicting the airspace arrangement is provided in **Appendix D** to this document.

5.3 The primary means of air-ground communication will be by HF radio except for aircraft operating automatic dependent surveillance (ADS) and controller/pilot data link communication (CPDLC) systems where this has been established and is fully operational. Where CPDLC has been established, this will become the primary means of communication, with HF as secondary. In the case of automatic position reporting, this will replace voice position reporting and CPDLC and/or HF will become the secondary means of communication.

### **ATS Responsibilities**

5.4 During the early stages of a contingency event, the Mogadishu FIC may become overloaded which may require tactical action to be taken in order to re-route aircraft on alternative routes that are not included in this Plan. Alternative routes will be designed to maximize the use of existing ATS route structures and communications, navigation and surveillance (CNS) services.

5.5 In the event that ATS cannot be provided in the Mogadishu FIR, a NOTAM shall be issued indicating the following, as a minimum requirement:

- a) time and date of the beginning of the contingency measures;
- b) airspace available for landing and overflying traffic and airspace to be avoided;



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- c) details of the facilities and services available or not available and any limits on ATS provision (e.g., ACC, APP, TWR and FIS), including an expected date of restoration of services if available;
  - d) flight level allocation scheme (FLAS) if different from those defined in **Appendix C and D** to this document;
  - e) information on the provisions made for alternative services;
  - f) any changes to the ATS contingency routes contained in this Plan;
  - g) any special procedures to be followed by neighbouring ATS units not covered by this Plan;
  - h) any special procedures to be followed by pilots; and
  - i) any other details with respect to the disruption and actions being taken that aircraft operators may find useful.

5.6 In the event that the Somalia (CACAS) International NOTAM Office is unable to issue the NOTAM, the (alternate) International NOTAM Office at Nairobi and/or Dar Es Salaam will take action to issue the NOTAM pertaining to the closure of airspace upon notification by CACAS or ICAO ESAF Regional Office. Sample NOTAMs are at **Appendix E** to this Contingency Plan.

#### **Aircraft Separation**

5.7 Aircraft separation criteria will be applied in accordance with the *Procedures for Air Navigation Services-Air Traffic Management* (PANS-ATM, Doc 4444) and the *Regional Supplementary Procedures* (Doc 7030).

5.8 The minimum longitudinal separation applicable will be **15 minutes**.

5.9 The route structure provides for a minimum lateral separation of 50 nautical miles. In cases where this is, and for crossing routes, standard vertical separation shall be applied between all aircraft transiting the Mogadishu FIR.

#### **Flight level restrictions**

5.10 Where possible, aircraft on long-haul international flights shall be given priority with respect to the assignment of cruising levels.

#### **Operational restrictions**

5.11 VFR flights shall not operate in the Mogadishu FIR if there are extensive disruptions to ATS facilities, except in special cases such as State aircraft, medivac flights, and any other essential flights authorized by CACAS.

5.12 IFR General Aviation flights will receive a lower priority than all other flights and may be suspended depending on circumstances.

5.13 IFR commercial flights will receive a high priority together with State and medivac flights.

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**Other measures**

5.14 Other measures related to the limited availability of airspace and the implementation of the contingency scheme within the Mogadishu FIR may be taken as follows:

- 5.14.1 Suspension of all VFR operations;
- 5.14.2 Delay or suspension of general aviation IFR operations; and
- 5.14.3 Delay or suspension of commercial IFR operations.

**Aircraft position reporting**

5.15 Pilots will continue to make routine position reports in line with normal ATC reporting procedures. Pilots shall also use the IFBP VHF frequency 126.9 Mhz when making routine position reports.

**Procedures to be followed by Mogadishu FIC and adjacent ATS Units**

5.16 Mogadishu FIC and adjacent ATS units will follow their emergency operating procedures and activate the appropriate level of contingency procedures in line with operational *Letters of Agreement*. These procedures shall include the following:

- a) the Mogadishu FIC, on determining that air traffic services may be reduced due to a contingency event, will inform pilots accordingly. In the event of incapacitation of the operations room/building, the appropriate emergency procedures will apply and time permitting, controllers will make an emergency evacuation transmission on the radio frequency or frequencies in use providing pilots with alternate means of communication;
- b) during the period when the contingency procedures are in effect, flight plan messages must continue to be transmitted by operators to the Mogadishu FIC via the AFTN using normal procedures;
- c) on notification of a contingency situation by CACAS, ICAO or the appropriate alternate authority of an adjacent FIR, the ATS authorities operating the ACCs of the adjacent FIRs will activate the contingency procedures in accordance with their respective *Letters of Agreement*.
- d) the adjacent ACCs responsible for aircraft entering and transiting the Mogadishu FIR must communicate to concerned ATS units not less than 30 minutes beforehand, the estimated time over the Mogadishu FIR boundary entry points;
- e) the adjacent ACCs responsible for aircraft entering the Mogadishu FIR will instruct pilots to maintain the last flight level assigned and speed (Mach number technique if applicable) or as per flight level scheme allocation in force while overflying the Mogadishu FIR;
- f) the adjacent ACCs responsible for aircraft entering the Mogadishu FIR will not authorize any change in flight level or speed (Mach number technique, if applicable) later than **10 minutes** before the aircraft enters the Mogadishu FIR, except in the case specified in (h) below;

- g) the adjacent ACCs responsible for aircraft entering the Mogadishu FIR will inform all aircraft, prior to entering the Mogadishu FIR, that they must communicate with the next (downstream) ATC unit at least **10 minutes** before the estimated time over the Mogadishu FIR boundary exit points, or as may be agreed by the accepting ATS unit downstream; and
- h) operators may also chose to route around the Mogadishu FIR, and the controlling authorities of the neighbouring FIRs concerned will provide alternative contingency routes as appropriate.

**Note:** *ATS units should recognize that when closures of airspace or airports are promulgated, individual airlines might have different company requirements regarding alternative routing arrangements. ATS units should endeavour to accommodate such requests within the confines of safety rules and procedures.*

### **Transition to contingency scheme**

5.17 During times of uncertainty (*severe weather, volcanic ash, reported seismic activity, etc*) when airspace closure seems most likely, aircraft operators should be prepared for a possible change in routing while en-route, familiarization with the alternative routes outlined in this Contingency Plan, as well as those which may be promulgated by Somalia (CACAS) via NOTAM or other form of aeronautical information.

5.18 In the event of airspace closure that has not been promulgated, Mogadishu FIC and adjacent ATS units should, to the extent possible, broadcast to all aircraft under their jurisdiction, what airspace is being closed and to standby for further instructions.

5.19 ATS providers should recognize that when closure of airspaces or airports is promulgated, individual airlines might have different company requirements as to their alternative routings. ATS providers should be alert to respond to such requests by aircraft and react commensurate with safety.

5.20 If circumstances lead to the closure of the Mogadishu FIR and no contingency routes are available throughout that FIR, aircraft will be required to route around the Mogadishu FIR. As much warning as possible will be provided by CACAS in the event of the complete closure of Mogadishu FIR.

### **Adjustment of Coordination Requirements**

5.21 CACAS and adjacent ATS providers concerned will review the effectiveness of current coordination requirements and procedures in light of contingency operations or airspace closure, and make any necessary adjustments to the Mogadishu Contingency Plan.

### **Public Health Emergencies (PHE)**

5.22 Mogadishu FIC is designated as the coordinating ATS unit in the event of a Public Health Emergency (PHE).

5.23 In the event of a PHE, such as the outbreak of a contagious airborne disease or reported existence of airborne pathogens presenting a risk of disease outbreak, the affected ATS Unit in coordination with the FIC should verify with the Department of Ports & Health (DPH), Ministry of Health, the existence and nature of the PHE, as well as procedures to be followed in relation to the specific PHE. Based on the information, guidance and instruction acquired from the DPH, the affected ATS Unit and/or FIC (as guided by the FIC for the specific PHE) should as soon as practicable and using the most expeditious means of communication, provide to air operators information on the PHE, as well as procedures to followed based on guidance and/or instructions from the DPH.

5.24 In order to avoid miscommunication that may result in inappropriate reaction from the

public including air operators, information provided by the DPH should be obtained in written form and relayed to air operators in written form. Where communication means do not enable relay of written text, the information shall be read verbatim. To minimize occupation of the aeronautical communication channels, the information, guidance and instructions applicable to air operators should whenever possible, be sent to air operators' through their company offices or agents.

*Note:*

*Focal points, contact details and agreed lines of communication with air operator are contained in local ATS procedures manual (or Local ATS Instructions (LATSI)) of each ATS Unit and letters of procedure for coordination with the air operators at the FIC and each aerodrome.*

5.25 In taking initiatives in relation to information, guidance or instruction obtained from the DPH, ATS units should:

- a) coordinate with the AIS Section with the objective of issuing NOTAM/s providing necessary detailed information as determined by the DPH; and
- b) take appropriate action to ensure close coordination with aerodrome operators, in consideration that the aerodrome operator/s actions relating to the same PHE may overlap with those taken by ATS units, and that action taken by ATS and the operators impacts on aerodrome operations.

*Note:*

1. *Further guidance to ATS units is contained in the local ATS procedures manual (or Local ATS Instructions (LATSI)) of each ATS Unit and letter of procedure for coordination between ATS and each aerodrome operator.*
2. *At aerodromes where PHE response committees have been established, the committee may be the source of information and guidance for various parties. In this case, a representative of the ATS authority participating in such a committee will be the focal point for communication and coordination between ATS units and the PHE response committee.*
3. *While it is expected that entities involved in responding to PHEs provide contact list updates whenever there are changes in their organizations, it is also the responsibility of ATS units to ensure that contact details for PHE Focal Points are updated regularly.*

## **6. TRANSFER OF CONTROL AND COORDINATION OF TRAFFIC**

6.1 The transfer of control and communication should be at the common FIR boundary between Mogadishu and its neighbouring States, unless there is mutual agreement between them. ATS providers should review current coordination requirements in light of contingency operations or notification at short notice of airspace closure.

## **7. VOLCANIC ASH CONTINGENCY PLAN (VACP)**

7.1 In the event of volcanic ash activity affecting the whole or part of the Mogadishu FIR, detailed contingency arrangements specifically related to volcanic ash are contained in **Appendix G** to this document.

## **8. PILOT AND OPERATOR PROCEDURES**

### **Filing of flight plans**

8.1 Flight planning requirements for the Mogadishu FIR are to be followed in accordance with

the ICAO the PANS-ATM (Doc 4444).

### **Overflight approval**

8.2 In a contingency situation, flights may be re-routed at short notice and it may not be possible for operators to give the required advanced notice in a timely manner to obtain overflight approval. However, the current requirements and procedures for overflight approval of the Mogadishu FIR as provided for in Somalia NOTAM 0045/12 shall continue to be applicable.

8.3 With regard to other FIRs, aircraft operators are to obtain overflight approval from States responsible for such airspaces in accordance with the procedures and requirements of such States.

8.4 Coordination for special arrangements to expedite flight approvals for aircraft transiting the Mogadishu FIR in a contingency situation may be coordinated with CACAS and adjacent ATS units on a case by case basis, as addressed in the *Letters of Agreement*. Aircraft operators should note however that overflight approval remains the responsibility of the State whose territory is to be overflown.

### **Pilot operating procedures**

8.5 Aircraft overflying the Mogadishu FIR shall follow the following procedures:

- a) all aircraft proceeding along the ATS routes established in this Contingency Plan will comply with the instrument flight rules (IFR) and will be assigned a flight level in accordance with the flight level allocation scheme (FLAS) applicable to the route(s) being flown as specified in **Appendix C** to this document;
- b) flights are to file flight plans using the Contingency Routes specified in **Appendix C** to this document, according to their airport of origin, routing and destination;
- c) pilots are to keep a continuous watch on the specified contingency radio frequencies as specified in the *Letters of Agreement* and transmit position information and estimates in accordance with normal ATC position reporting procedures using the English language;
- d) pilots are to maintain during their entire flight time within Mogadishu FIR, the flight level last assigned by the last ACC or ATS unit responsible for the provision of ATC service, prior to the aircraft entering the Mogadishu FIR. In the event that the last assigned flight level does not correspond to the flight level allocation scheme (FLAS) applicable to the Mogadishu Contingency Plan, the pilot should establish contact with the ATS unit responsible for the provision of service to clarify, and if unable, shall adjust to the FLAS as soon as possible once in the contingency airspace. The pilot shall, under no circumstances, change this level and Mach number, except in cases of emergency and for flight safety reasons. In addition, the last SSR transponder assigned shall be maintained or, if no transponder has been assigned, transmit on SSR code 2000;
- e) aircraft are to reach the flight level last assigned by the responsible ACC at least **10 minutes** before entering the Mogadishu FIR or as otherwise instructed by the appropriate ATC unit in accordance with the *Letters of Agreement*;
- f) pilots are to include in their last position report prior to entering the Mogadishu FIR, the estimated time over the entry point of the Mogadishu FIR and the estimated time of arrival over the relevant exit points of the Mogadishu FIR;
- g) pilots are to contact the next adjacent ACC as soon as possible, and at the latest, **10 minutes** before the estimated time of arrival over the FIR boundary exit points of Mogadishu FIR;
- h) whenever in-flight emergencies and/or flight safety reasons make it impossible to maintain the flight

level assigned for transit of Mogadishu FIR, pilots are to climb or descend well to the right of the centerline of the contingency route, and if deviating outside the Mogadishu FIR, to immediately inform the ACC responsible for that airspace. Pilots are to make blind transmissions on 121.5 Mhz and 126.9 Mhz of the relevant emergency level change message, indicating the aircraft call sign, the aircraft position, the flight levels being vacated and crossed, etc);

- i) recognizant of the fact that not all operational circumstances can be addressed by this Contingency Plan, pilots are to maintain a high level of alertness when operating in the Mogadishu contingency airspace and take appropriate action to ensure safety of flight; and
- j) Pilots should maintain continuous listening watch on VHF emergency frequency 121.5 Mhz and IFBP frequency 126.9 Mhz at all times when operating in the Mogadishu contingency airspace.

#### **Interception of civil aircraft**

8.6 Pilots need to be aware that in light of current international circumstances, a contingency routing requiring aircraft to operate off of normal traffic flows, could result in an intercept by military aircraft. Aircraft operators must therefore be familiar with international intercept procedures contained in ICAO Annex 2 to the Chicago Convention – *Rules of the Air, paragraph 3.8 and Appendix 2*.

8.7 Should conditions prevailing in the airspace over the territory and territorial waters of Somalia during contingency period result in the interception of civil aircraft by military aircraft, the pilot shall immediately take the following action:

- a) follow the instructions given by the intercepting aircraft, interpreting and responding to visual signals in accordance with international procedures;
- b) notify, if possible, the appropriate air traffic services unit;
- c) attempt to establish radio communication with the intercepting aircraft or with the appropriate intercept control unit, by making a general call on the emergency frequency 121.5 Mhz, giving the identity of the intercepted aircraft and the nature of the flight. If no contact has been established and if practicable, repeat this call on the emergency frequency 243 Mhz;
- d) if equipped with SSR transponder, select Mode A, Code 7700, unless otherwise instructed by the appropriate air traffic services unit;
- e) if equipped with ADS-B or ADS-C, select the appropriate emergency functionality, if available, unless otherwise instructed by the appropriate air traffic services unit;
- f) if any instructions received by radio from any sources conflict with those given by the intercepting aircraft by visual signals or by radio, the intercepted aircraft shall request immediate clarification **while continuing to comply** with the visual or radio instructions given by the intercepting aircraft.

*Note: The above interception procedures are consistent with provisions contained in Annex 2 (Section 3.8) to the Chicago Convention.*

#### **Public Health Emergencies (PHE)**

8.8 In the event of a PHE, such as the outbreak of a contagious airborne disease or existence of airborne pathogens presenting a high risk of disease outbreak, pilots should follow instructions provided by Mogadishu FIC, or as published through NOTAMs related to Mogadishu airspace and aerodromes. In the event that air operator company response requires pilots to take action that is necessarily different from that triggered by the DPH, concerned pilots or their air operator representative shall, without delay, provide

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relevant information to ATS for consideration and relay to the DPH.

### **Volcanic Ash Contingency Plan**

8.9 In the event of volcanic ash activity affecting the whole or part of the Mogadishu FIR, pilots should follow instructions from Mogadishu FIC or as published in NOTAMs related to Mogadishu airspace. Detailed contingency arrangements specifically related to volcanic ash are contained in **Appendix G** to this document.

## **9. COMMUNICATION PROCEDURES**

### **Procedures for Reduced/Loss of Radio Communication**

9.1 When operating within the contingency airspace of Mogadishu FIR, pilots should use normal radio communication procedures where ATS services are available or as otherwise notified by NOTAM.

9.2 If communication is lost on the normal ATS frequencies allocated, pilots should try the next applicable frequency, e.g. if en-route contact is lost then try the next appropriate handover frequency. It should be expected that loss of communication may be temporary. As such, if following the loss of communication pilots are still unable to establish two-way radio communication on other frequencies, pilots should consider periodic attempts on the frequency on which two-way radio communication was lost. In any case, in the absence of two-way communication with ATC, pilots should continue to make routine position reports on the appropriate frequencies, and broadcast positions on the specified contingency frequencies.

### **Communication frequencies**

9.3 A list of frequencies to be used for the contingency routes and the ATS units providing flight information service (FIS) and air-ground communication monitoring for the Mogadishu FIR is detailed at **Appendix F** to this document.

## **10. AERONAUTICAL INFORMATION SUPPORT SERVICES**

### **Aeronautical Support Information Services (AIS)**

10.1 NOTAM services will be used optimally to mitigate against loss of radio and other forms of communication in Mogadishu FIR. NOTAMs will be used as necessary to support coordination and operational procedures that would be established before, during and after any contingency phase.

10.2 In the event of unavailability of AIS services for Somalia (CACAS), NOTAM services will be provided by neighboring AIS authorities in accordance with *Letters of Agreement*.

### **Meteorological Services (MET)**

10.3 It is expected that the Somalia (CACAS) MET services would continue to be available in the event of an ATS contingency situation. However, should ATS services for the Mogadishu FIR be withdrawn, timely MET information may not be immediately available to aircraft in flight. Alternative means of obtaining up to date MET information concerning the Mogadishu FIR will be provided to the extent possible through the adjacent ATS authorities.

## 11. SEARCH AND RESCUE

### Notification and Coordination

11.1 The SAR authority responsible for the Mogadishu SRR is:

Name: Civil Aviation Caretaker Authority for Somalia (CACAS)  
Address: P.O. Box 46294, 00100  
Nairobi, Kenya  
Tel: +254 20 762 2774 / 762 2785  
Fax: +254 20 712 2340  
AFTN: HCMMYAYX  
E-mail: [icao.somalia@icao.unon.org](mailto:icao.somalia@icao.unon.org)

11.2 The SAR Point of Contact (SPOC) is:

Name: Mr. Wilson Owino  
Tel: +254 20 762 2774 / 762 2785  
Fax: +254 20 712 2340  
AFTN: HCMMYAYX  
E-mail: [Wilson.owino@icao.unon.org](mailto:Wilson.owino@icao.unon.org)

11.3 In the event that the Mogadishu FIC is not available to coordinate a given SAR operation, the responsibility for coordination with Djibouti, Ethiopia, Kenya, India, Seychelles and Yemen Rescue Coordination Centres (RCCs) for aircraft emergencies and incidents within the Mogadishu FIR will be undertaken by CACAS, in close coordination with the ICAO ESAF Regional Office in Nairobi.

## 12. RESPONSIBILITY OF THE ACCREDITED ICAO REGIONAL OFFICE (ESAF)

12.1 The ICAO ESAF Regional Office which is accredited to the State of Somalia will:

- a) Closely monitor the situation and coordinate with all affected States and organizations including the IATA Regional Office, so as to ensure to the extend practical the continuity of air navigation and the provision of air navigation services to international air traffic in the AFI Region area of accreditation;
- b) Note any incidents reported and provide support to CACAS in taking appropriate action;
- c) Provide assistance as necessary on any issues with the Civil Aviation Administrations involved with and supporting the Mogadishu Contingency Plan; and
- d) Keep the President of the Council of ICAO, the Secretary General, Director Air Navigation Bureau, and Chief Air Traffic Management in Montreal continuously informed on developments, including activation and termination of the Mogadishu Contingency Plan.



## APPENDIX A

Contact details for all concerned States, IATA and accredited ICAO Regional Office.

State/ Organization	Point of contact	Telephone	E-mail
Djibouti	Djibouti APP/TWR	Tel: +253 342130 Tel: +253 340977	<a href="mailto:twr@aeroport-jib.aero">twr@aeroport-jib.aero</a>
Ethiopia	Addis ACC/FIC	Tel: +251 11 6611156/7 Tel: +251 11 6650519	<a href="mailto:caa.eats@ethionet.et">caa.eats@ethionet.et</a>
Kenya	Nairobi ACC/FIC	Tel: +254 20827101	<a href="mailto:jomo@kcaa.or.ke">jomo@kcaa.or.ke</a>
India	Mumbai FIC	Tel: +912 226 828002 Tel: +912 226 828088	<i>Not available</i>
Seychelles	Seychelles ACC/FIC	Tel: +248 384193 Tel: + 248 4384000	<a href="mailto:atcc@scaa.sc">atcc@scaa.sc</a>
Yemen	Sana'a ACC/FIC	Tel: +967 1345914 Tel: +967 1344672	<a href="mailto:ancns1@gmail.com">ancns1@gmail.com</a>
IATA	Tanja Grobrotek	Tel : +271 15232714	<a href="mailto:grobotek@iata.org">grobotek@iata.org</a>
ICAO	Mr. M. Belayneh, Regional Director	Tel: +254 20 762 2395 Fax: +254 20 762 1092	<a href="mailto:MBelayneh@icao.int">MBelayneh@icao.int</a>
	Mr. B Sekwati Deputy Regional Director	Tel: +254 20 762 2370 Fax: +254 20 762 1092	<a href="mailto:BSekwati@icao.int">BSekwati@icao.int</a>
	Mr. S M Machobane, RO ATM/SAR	Tel: +254 20 762 2372 Fax: +254 20 762 1092	<a href="mailto:SMachobane@icao.int">SMachobane@icao.int</a>
	Mr. D Labrosse RO ATM/SAR	Tel: +254 20 762 2368 Fax: +254 20 762 1092	<a href="mailto:Dlabrosse@icao.int">Dlabrosse@icao.int</a>

## APPENDIX B

## Contact details of the CCC members

State/ Organization	Point of contact	Telephone	E-mail
CACAS	Mr. Kemoitse Mosupukwa <i>Project Coordinador</i>	Tel: +254 20 7622785/6	<a href="mailto:Kemoitse.mosupukwa@icao.unon.org">Kemoitse.mosupukwa@icao.unon.org</a>
CACAS	Mr. Wilson Owino <i>Deputy Project Coordinador</i>	Tel: +254 20 7622785/6	<a href="mailto:Wilson.owino@icao.unon.org">Wilson.owino@icao.unon.org</a>
CACAS	Mr. Humphrey Mwachoki <i>FIC Supervisor</i>	Tel: +254 20 7622785/6	<a href="mailto:Humphrey.mwachoki@icao.unon.org">Humphrey.mwachoki@icao.unon.org</a>
CACAS	Mr. Ali Jama Abdi <i>ATC Shift Supervisor</i>	Tel: +254 20 7622785/6	<a href="mailto:Ali.jama@icao.unon.org">Ali.jama@icao.unon.org</a>
CACAS	Mr. Augustine Warratho <i>Chief Meteorological Officer</i>	Tel: +254 20 7622785/6	<a href="mailto:Augustine.warratho@icao.unon.org">Augustine.warratho@icao.unon.org</a>
ICAO	Mr. Seboreso Machobane, <i>RO ATM/SAR</i>	Tel: +254 20 762 2372 Fax: +254 20 762 1092	<a href="mailto:Smachobane@icao.int">Smachobane@icao.int</a>
ICAO	Mr. David Labrosse <i>RO ATM/SAR</i>	Tel: +254 20 762 2368 Fax: +254 20 762 1092	<a href="mailto:Dlabrosse@icao.int">Dlabrosse@icao.int</a>
UNSOA	To be notified	To be notified	To be notified

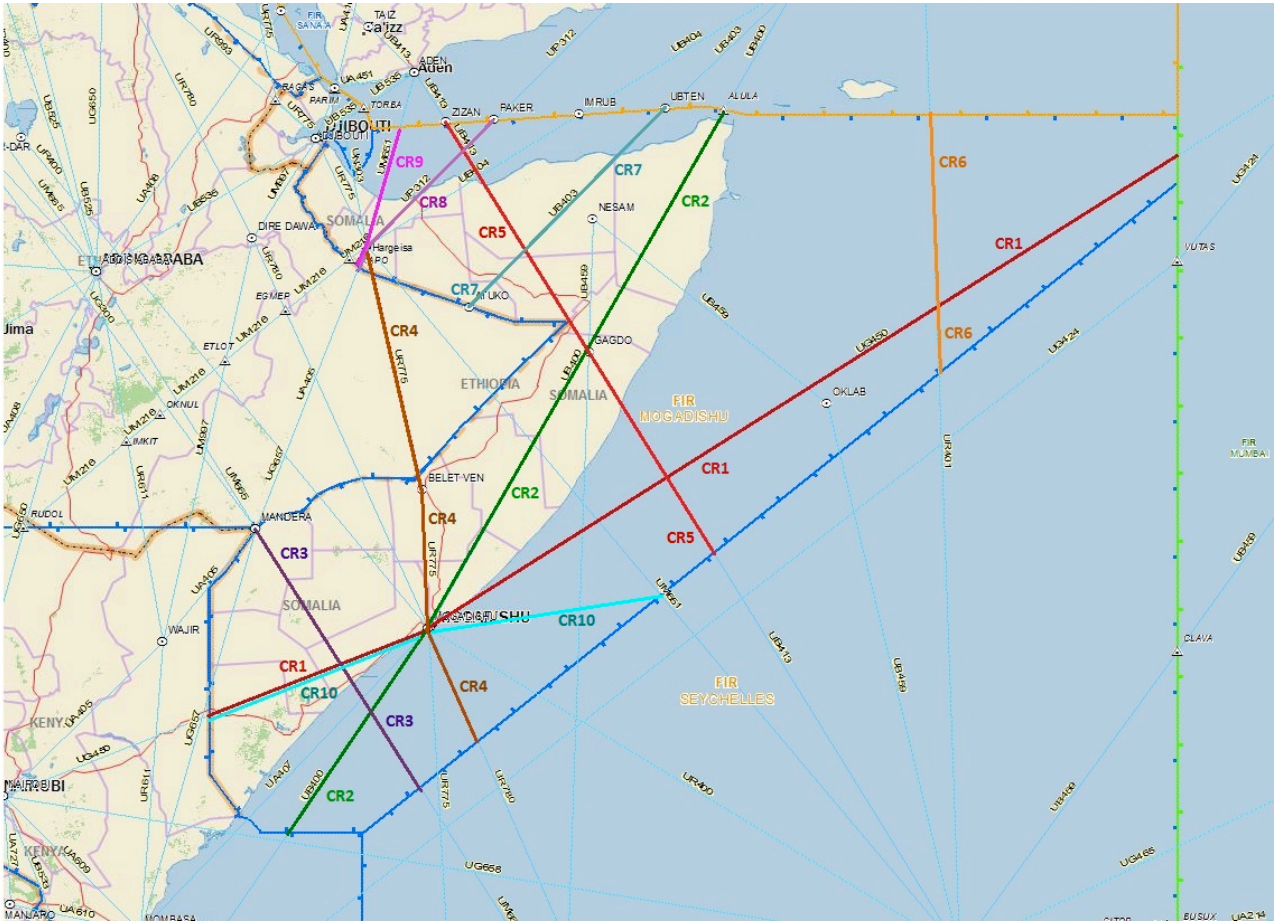
## APPENDIX C

## Contingency route structure during partial or total unavailability of the Mogadishu FIR

Present ATS Route	Contingency Route Number	Contingency Routings	FLAS	Minimum Longitudinal Separation	FIRs Involved
UG450	<b>CR1</b>	KESOM-TULAP-MOGDU -KATHY-EMALU-AMPEX -NABAM-ORLID	Eastbound FL330 Westbound FL300	15 minutes	Nairobi Mumbai
UB400	<b>CR2</b>	ITMAR-RAGGS-MOGDU -BUBEM-VEDET	Eastbound FL290/310 Westbound FL360/380	15 minutes	Nairobi Sana'a
UM665	<b>CR3</b>	ITLOX-RAGGS-TULAP -MANDERA	Eastbound FL350/390/410 Westbound FL 280/340/400	15 minutes	Addis Ababa Seychelles
UN303/ UR775/ UR780	<b>CR4</b>	APKAK-MOGDU-SOLUL -ALNAB-HARGA-NAPGO	Eastbound FL350/390/410 Westbound FL280/340/400	15 minutes	Sana'a Seychelles
UB413	<b>CR5</b>	AVIMO-EMALU-EGTUL -DAROT-MERMI-EGROV -ZIZAN	Eastbound FL370/390 Westbound FL280/340/400	15 minutes	Sana'a Seychelles
UR401	<b>CR6</b>	AXINA-AMPEX-EPSIV -EVEBU-EKBEL-SUHIL	Eastbound FL350/410/450/ 490 Westbound FL340/360/400/ 430/470	15 minutes	Sana'a Seychelles
UR403	<b>CR7</b>	MUSBI-DAROT-AXIKU -BOMIX	Eastbound FL350 Westbound FL300/360	15 minutes	Addis Ababa Sana'a
UG657/ UA405/ UB312	<b>CR8</b>	ASKEN-HARGA-EGROV -PAKER	Eastbound FL310/330 Westbound FL300	15 minutes	Addis Ababa Sana'a
UG657/ UA405 UM651	<b>CR9</b>	ASKEN-HARGA-IMVEB -OKTOB	Eastbound FL310/330 Westbound FL320/380	15 minutes	Addis Ababa Sana'a
UG450/ UL303	<b>CR10</b>	KESOM-TULAP-MOGDU -ESTOK	Eastbound FL330 Westbound FL320	15 minutes	Seychelles

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APPENDIX D



**APPENDIX E**  
**SAMPLE NOTAMS**

**MOGADISHU FIR CONTINGENCY NOTAM**

**SCENARIO 1: PARTIAL UNAVAILABILITY OF THE AIRSPACE**

**UNAVAILABILITY OF AIRSPACE IN MOGADISHU FIR WEST OF LONGITUDE 047 00 00 E**

NOTAM ..... WEF ..... TO ..... AIRSPACE WEST OF LONGITUDE 047 00 00E UNAVAILABLE WITHIN THE MOGADISHU FLIGHT INFORMATION REGION. ALL FLIGHTS SHALL COMPLY WITH THE REQUIREMENT TO SELECT SPECIFIC CONTINGENCY ROUTES AND FLIGHT LEVELS APPLICABLE TO THE CONTINGENCY ROUTES AS DETAILED HERE BELOW. ADJACENT AREA CONTROL CENTRES OF SANAA, MUMBAI AND SEYCHELLES WILL ALLOCATE ONLY THE CONTINGENCY ROUTES AND FLIGHT LEVELS SPECIFIED AS FOLLOWS:

- A) **CR5** (UB413) ZIZAN-EGROV-MERMI-DAROT-EGTUL-EMALU-AVIMO: EASTBOUND FL370/390 WESTBOUND FL 280/340/400. MINIMUM LONGITUDINALSEPARATION APPLICABLE IS 15 MINUTES.
- B) **CR6** (UR401) AXINA- AMPEX-EPSIV-EVEBU-EKBEL-SUHIL: EASTBOUND FL350/410 WESTBOUND FL340/360/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.

PILOTS WHO HAVE BEEN ASSIGNED WITH A FLIGHT LEVEL NOT IN ACCORDANCE WITH THE FLAS, SHOULD TRY TO ESTABLISH CONTACT WITH THE ATS UNIT RESPONSIBLE FOR THE PROVISION OF SERVICE TO CLARIFY, AND IF UNABLE, ADJUST TO THE FLAS AS SOON AS POSSIBLE ONCE IN THE CONTINGENCY AIRSPACE.

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**SCENARIO 2: PARTIAL UNAVAILABILITY OF THE AIRSPACE**

**UNAVAILABILITY OF AIRSPACE IN MOGADISHU FIR EAST OF  
LONGITUDE 047 00 00 E**

NOTAM ..... WEF ..... TO ..... AIRSPACE EAST OF LONGITUDE 047 00 00E UNAVAILABLE WITHIN THE MOGADISHU FLIGHT INFORMATION REGION. ALL FLIGHTS SHALL COMPLY WITH THE REQUIREMENT TO SELECT SPECIFIC CONTINGENCY ROUTES AND FLIGHT LEVELS APPLICABLE TO THE CONTINGENCY ROUTES AS DETAILED HEREBELOW. ADJACENT AREA CONTROL CENTRES OF NAIROBI, ADDIS ABABA, SANAA AND SEYCHELLES WILL ALLOCATE ONLY THE CONTINGENCY ROUTES AND FLIGHT LEVELS SPECIFIED AS FOLLOWS:

- A) **CR3** (UM665) ITLOX- RAGGS-TULAP-MANDERA (MAV): EASTBOUND FL350/390/410 WESTBOUND FL280/340/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- B) **CR4** (UN303/UR775/UR780) APKAK-MOGUD-SOLUL-ALNAB-HARGA-NAPGO: EASTBOUND FL350/390/410 WESTBOUND FL280/340/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- C) **CR8** (UG657/UA405/UB312) ASKEN-HARGA-EGROV-PAKER: EASTBOUND FL310/330 WESTBOUND FL300. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- D) **CR9** (UG657/UA405/UM651) ASKEN-HARGA-IMVEB-OKTOB: EASTBOUND FL310/330 WESTBOUND FL320/380. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.

PILOTS WHO HAVE BEEN ASSIGNED WITH A FLIGHT LEVEL NOT IN ACCORDANCE WITH THE FLAS, SHOULD TRY TO ESTABLISH CONTACT WITH THE ATS UNIT RESPONSIBLE FOR THE PROVISION OF SERVICE TO CLARIFY, AND IF UNABLE, ADJUST TO THE FLAS AS SOON AS POSSIBLE ONCE IN THE CONTINGENCY AIRSPACE.

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**SCENARIO 3: PARTIAL UNAVAILABILITY OF THE AIRSPACE**

**UNAVAILABILITY OF AIRSPACE IN MOGADISHU FIR SOUTH OF  
LATITUDE 07 00 00N**

NOTAM ..... WEF ..... TO ..... AIRSPACE SOUTH OF LATITUDE 07 00 00N UNAVAILABLE WITHIN THE MOGADISHU FLIGHT INFORMATION REGION. ALL AIRCRAFT SHALL COMPLY WITH THE REQUIREMENT TO SELECT SPECIFIC CONTINGENCY ROUTES AND FLIGHT LEVELS APPLICABLE TO THE CONTINGENCY ROUTES AS DETAILED HEREBELOW. ADJACENT AREA CONTROL CENTRES OF ADDIS ABABA, SANAA, MUMBAI AND SEYCHELLES WILL ALLOCATE ONLY THE CONTINGENCY ROUTES AND FLIGHT LEVELS SPECIFIED AS FOLLOWS:

- A) **CR6** (UR401) AXINA- AMPEX-EPSIV-EVEBU-EKBEL-SUHIL: EASTBOUND FL350/410 WESTBOUND FL340/360/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- B) **CR7** (UR403) MUSBI-DAROT-AXIKU-BOMIX: EASTBOUND FL350 WESTBOUND FL300/360. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- C) **CR8** (UG657/UA405/UB312) ASKEN-HARGA-EGROV-PAKER: EASTBOUND FL310/330 WESTBOUND FL300. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- D) **CR9** (UG657/UA405/UM651) ASKEN-HARGA-IMVEB-OKTOB: EASTBOUND FL310/330 WESTBOUND FL320/380. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.

PILOTS WHO HAVE BEEN ASSIGNED WITH A FLIGHT LEVEL NOT IN ACCORDANCE WITH THE FLAS, SHOULD TRY TO ESTABLISH CONTACT WITH THE ATS UNIT RESPONSIBLE FOR THE PROVISION OF SERVICE TO CLARIFY, AND IF UNABLE, ADJUST TO THE FLAS AS SOON AS POSSIBLE ONCE IN THE CONTINGENCY AIRSPACE.

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**SCENARIO 4: PARTIAL UNAVAILABILITY OF THE AIRSPACE****UNAVAILABILITY OF AIRSPACE IN MOGADISHU FIR NORTH OF  
LATITUDE 07 00 00N**

NOTAM ..... WEF ..... TO ..... AIRSPACE NORTH OF LATITUDE 07 00 00N UNAVAILABLE WITHIN THE MOGADISHU FLIGHT INFORMATION REGION. ALL AIRCRAFT SHALL COMPLY WITH THE REQUIREMENT TO SELECT SPECIFIC CONTINGENCY ROUTES AND FLIGHT LEVELS APPLICABLE TO THE CONTINGENCY ROUTES AS DETAILED HEREBELOW. ADJACENT AREA CONTROL CENTRES OF NAIROBI, SANAA AND SEYCHELLES WILL ALLOCATE ONLY THE CONTINGENCY ROUTES AND FLIGHT LEVELS SPECIFIED AS FOLLOWS:

- A) **CR3** (UM665) ITLOX- RAGGS-TULAP-MANDERA (MAV): EASTBOUND FL350/390/410 WESTBOUND FL280/340/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- B) **CR4** (UN303/UR775/UR780) SOLUL-MOGDU-APKAK: EASTBOUND FL350/390/410 WESTBOUND FL280/340/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- C) **CR10** (UG450/UL303) KESOM-TULAP-MOGDU-ESTOK: EASTBOUND FL330 WESTBOUND FL320. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.

PILOTS WHO HAVE BEEN ASSIGNED WITH A FLIGHT LEVEL NOT IN ACCORDANCE WITH THE FLAS, SHOULD TRY TO ESTABLISH CONTACT WITH THE ATS UNIT RESPONSIBLE FOR THE PROVISION OF SERVICE TO CLARIFY, AND IF UNABLE, ADJUST TO THE FLAS AS SOON AS POSSIBLE ONCE IN THE CONTINGENCY AIRSPACE.

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**SCENARIO 5: UNAVAILABILITY OF ATS IN MOGADISHU FIR**

NOTAM .....WEF ..... TO ..... MOGADISHU FIC TEMPORARILY UNABLE TO PROVIDE AIR TRAFFIC SERVICE IN THE ENTIRE AIRSPACE WITHIN THE MOGADISHU FIR. ALL AIRCRAFT SHALL COMPLY WITH REQUIREMENT TO SELECT SPECIFIC CONTINGENCY ROUTES AND FLIGHT LEVELS APPLICABLE TO THE CONTINGENCY ROUTES IN ACCORDANCE WITH THE FLIGHT LEVEL ALLOCATION SCHEME (FLAS) DETAILED HEREBELOW. ADJACENT AREA CONTROL CENTRES OF NAIROBI, ADDIS ABABA, SANAA, MUMBAI AND SEYCHELLES WILL ALLOCATE ONLY THE CONTINGENCY ROUTES AND FLIGHT LEVELS SPECIFIED AS FOLLOWS:

- A) **CR1** (UG450) KESOM-TULAP-MOGDU-KATHY-EMALU-AMPEX-NABAM-ORLID: EASTBOUND FL330 WESTBOUND FL320. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- B) **CR2** (UB400) ITMAR-RAGGS-MOGDU-BUBEN-VEDET: EASTBOUND FL290/310 WESTBOUND FL360/380. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- C) **CR3** (UM665) ITLOX- RAGGS-TULAP-MANDERA (MAV): EASTBOUND FL350/390/410 WESTBOUND FL280/340/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- D) **CR4** (UN303/UR775/UR780) APKAK-MOGDU-SOLUL-ALNAB-HARGA-NAPGO: EASTBOUND FL350/390/410 WESTBOUND FL280/340/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- E) **CR5** (UB413) AVIMO-EMALU-EGTUL-DAROT-MERMI-EGROV-ZIZAN: EASTBOUND FL370/390 WESTBOUND FL 280/340/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- F) **CR6** (UR401) AXINA- AMPEX-EPSIV-EVEBU-EKBEL-SUHIL: EASTBOUND FL350/410 WESTBOUND FL340/360/400. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- G) **CR7** (UR403) MUSBI-DAROT-AXIKU-BOMIX: EASTBOUND FL350 WESTBOUND FL300/360. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- H) **CR8** (UG657/UA405/UB312) ASKEN-HARGA-EGROV-PAKER: EASTBOUND FL310/330 WESTBOUND FL300. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.
- I) **CR9** (UG657/UA405/UM651) ASKEN-HARGA-IMVEB-OKTOB: EASTBOUND FL310/330 WESTBOUND FL320/380. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.

- J) **CR10** (UG450/UL303) KESOM-TULAP-MOGDU-ESTOK: EASTBOUND FL330 WESTBOUND FL320. MINIMUM LONGITUDINAL SEPARATION APPLICABLE IS 15 MINUTES.

PILOTS WHO HAVE BEEN ASSIGNED WITH A FLIGHT LEVEL NOT IN ACCORDANCE WITH THE FLAS, SHOULD TRY TO ESTABLISH CONTACT WITH THE ATS UNIT RESPONSIBLE FOR THE PROVISION OF SERVICE TO CLARIFY, AND IF UNABLE, ADJUST TO THE FLAS AS SOON AS POSSIBLE ONCE IN THE CONTINGENCY AIRSPACE.

**APPENDIX F****List of Frequencies to be used**

1. A list of frequencies to be used for the contingency routes and the ATS units providing flight information service (FIS) and air-ground communication monitoring for the Mogadishu FIR is as follows:

**Mogadishu Flight Information Centre (FIC)**

- a) Day: HF 11300 Khz or 13288 Khz
- b) Night: HF 11300 Khz or 5517 Khz

2. In the event of these frequencies are not being available, aircraft are to contact Seychelles Control on the following frequencies:

**Seychelles Area Control Centre (ACC)**

- a) Day: HF 11300 Khz, 8879 Khz
- b) HF 11300 Khz, 5634 Khz, 3476 Khz, 8879 Khz

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**Appendix G**  
**Volcanic Ash Contingency Plan (VACP)**

**Annex 59**

“Public Sector Contracts and Concessions: the FGC and the Confidential Assessments,  
Second Bi-Annual Report”, *Financial Governance Committee*, 31 October 2015

*Somalia -- Financial Governance Committee -- October 31, 2015*

**Public Sector Contracts and Concessions: the FGC and the  
Confidential Assessments**  
*Second Bi-Annual Report*

**A. Summary and Recommendations**

- a. The last public FGC report on contracts and concessions was dated January 8, 2015 (the January 8 report).
- b. After a period of inactivity coinciding with the change in Prime Minister and Council of Ministers, the past 2-3 months has seen a measurable improvement in cooperation between the Federal Government line ministries and the FGC. A significant number of FGC Confidential Assessments are now being used as a basis for Federal Government action. Getting to this point has been slower and less consistent across Ministries than desirable, but comments made by a variety of Federal Government interlocutors suggest that FGC reviews of contracts and concessions are now, for the most part, taken seriously. There are important exceptions to this trend, however. The respective line ministries have remained unresponsive to the FGC's review of the Soma Oil and Gas Exploration Ltd concession (Soma), and have failed to respond consistently or to communicate clearly on the FGC's review of the Somalia FishGuard Ltd concession (FishGuard). These were two of the most controversial concessions reviewed in 2014, and have important implications for Federal-Regional relations. It should be noted that Parliament has recently recognized and endorsed the role played by the FGC in reviewing contracts and concessions, and has supported the FGC's recommendations for these two agreements (paragraph 22).
- c. The FGC has provided Confidential Assessments or commentary on all the contracts it has so far received, and can now put more effort into helping ministries follow up on FGC recommendations. The FGC will also now focus on three new lines of contract-related work:
  - i. **Competitive procurement:** The first is helping the Federal Government introduce competitive procurement. Although this is an integral part of the draft *Public Procurement, Concessions and Disposal Act*, Somalia has very little recent experience of drawing up tender documents and managing competitive bidding. It is time to begin

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acquiring it; it is not necessary to wait until the Act has passed before establishing competitive precedents. As this report will describe, the Federal Government has established an Interim National Procurement Board (INPB) to work with the FGC. The INPB has already been tasked by H. E. the President with managing competitive bidding for future security-related food and logistics supplies, which account for at least USD7.7 million per year for rations alone. With FGC support (including technical assistance that the FGC and the African Legal Support Facility can finance, or help facilitate), the INPB can also respond to the Ministry of Power and Water's wish to create a competitive tender for Mogadishu's electricity supply, and to the urgent need to introduce open bidding into two other sectors – oil & gas (see paragraphs 47-48) and fisheries (see paragraph 70). The INPB could thereby set a major public financial management precedent for Federal Government.

- ii. **Regional Government contracts and concessions:** A second area of potential future FGC work is with the Regional Governments. There are two possible dimensions to this. The first is to offer the FGC's advisory services to any Regional Government that values an FGC opinion on new or existing contracts. To date, only Galmudug Region has approached the FGC, asking in September 2014 for FGC views on an oil Production Sharing Agreement contract between Galmudug State/Galmudug Somali Petroleum Corporation and Petro Quest Africa. The FGC consists of Federal Government officials and IFI representatives, and requesting 'advice' from this body implies a level of trust by Regional Governments. In order to build trust, and to demonstrate that the FGC's purpose is to help the public sector obtain value for money, the FGC will meet informally with Regional Government officials to explain the nature of the Confidential Assessment process and its 'arms-length' relationship with the Federal Government.
- iii. **Inter-governmental fiscal relations:** The FGC will also explore how it can help the Federal Government and the Regions forge agreements on revenue-sharing arrangements. The Terms of Reference (TORs) of the FGC include advising on fiscal federalism, and the need for revenue-sharing frameworks is clear from the FGC's work on oil & gas and fisheries contracting. The FGC does not wish to complicate discussions between the Federal Government and the Regions, or

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supplant facilitation by international partners. The FGC would seek to play a catalytic role (as it did in 2014 when initiating work on the Use of Country Systems), offering 'in-time' technical advice to all parties (for example, on successful Federal-regional revenue-sharing formulae in countries with institutional capacities and *de facto* revenue and expenditure assignments comparable to Somalia). The FGC's work on revenue-sharing would need to take account of the overall assignment of functions and distribution of resources between Federal and Regional levels.

- d. The FGC's work on contracts and concessions was always intended to be temporary, serving as a bridge until Federal Government capacity and accountability mechanisms have been established. The lengthy delays in passing the *Public Procurement, Concessions and Disposal Act* and in activating the INPB have prolonged the period in which the FGC needs to continue reviewing contracts and concessions. In view of this, and of the proposed new lines of work, it is reasonable to assume that the FGC should continue to work on public procurement for at least another year.



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**B. Overview**

1. The Financial Governance Program and the Financial Governance Committee (FGP and FGC) were established by agreement between the Federal Government of Somalia and the international community in early 2014. The April 23, 2014 TORs of the Financial Governance Program require the FGC to "*provide advice on existing concessions [and] contracts the Federal Government of Somalia has entered into*". At the FGC meeting of May 23, 2014, this remit was extended to include reviewing all *draft* concessions and contracts worth over US\$5 million, until such time as capable new national institutions can take over the review function.

2. The FGC's mandate creates an obligation by the Federal Government to deliver all relevant contracts to the Committee for review, and to take account of the substance of the FGC's reviews. FGC reviews are confidential in nature, and have been carried out by one of the International Financial Institution (IFI) delegates who sits as a member of the FGC<sup>1</sup>. This is the second report on the FGC's reviews of contracts and concessions and the Federal Government's response to these reviews (the first report was released on January 8, 2015).

3. To date, 12 signed and 3 draft *Federal* Government contracts and concessions have been identified<sup>2</sup>; of these, 10 signed contracts and the 3 drafts have so far been given to the FGC for review. The FGC has delivered 12 Confidential Assessments and 3 Supplementary Confidential Assessments<sup>3</sup>, while comments on 1 other (the ADCO Group of Companies contract) are provided in this paper: a Confidential Assessment is not warranted in this case. In addition, 1 contract signed by a *Regional* Government<sup>4</sup> has been passed on to the FGC for comment (see *Exhibit 1* for full agreement-by-agreement details).

4. The FGC's mandate was conveyed to the Council of Ministers by the Minister of Finance and Chair of the FGC in April 2014. Despite this, it has proven hard to

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<sup>1</sup> The current reviewer is the World Bank's IFI delegate to the FGC, with technical support from World Bank staff, and in some cases in 2014 from the African Development Bank's African Legal Support Facility (ALSF).

<sup>2</sup> It should be noted that this list *excludes* the asset recovery agreement between the Central bank of Somalia and Shulman, Rogers, Gandal, Pordy & Ecker PA, which was reviewed separately in November 2013 by the UNODC/World Bank's Stolen Asset Recovery (StAR) Initiative. It also excludes the various food and logistics contracts for the Somali security forces (paragraph 14), the number of which is currently unknown and the existence of which has only recently come to the attention of the FGC's IFI reviewer.

<sup>3</sup> A Supplementary Confidential Assessment is sometimes needed as a follow-up to a Confidential Assessment.

<sup>4</sup> The concession agreement between Galmudug State and Galmudug Somali Petroleum Corporation, and Petro Quest Africa.

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identify and/or to obtain some of the agreements; in fact 7 of the 15 drafts and contracts so far identified were initially brought to the FGC's attention by non-Government interlocutors<sup>5</sup>. This leaves the FGC unable to claim that it is aware of all draft and signed Federal Government contracts.

5. What is more, 4 agreements are known to have been signed by Federal Government Ministers since April 23, 2014, including one by the former FGC Chair himself in September 2014, and one as recently as May 25 this year<sup>6</sup>. This last incident, the signing of an import-export quality control concession with Proje Gözetim Mühendislik (PGM Turkey or 'Project Inspection Engineering') by the Minister of Commerce and Industry, triggered a May 18, 2015 Prime Ministerial Order which made it clear that all international agreements must be approved, prior to signature, by the Prime Minister's Office and the Council of Ministers -- though it would appear from an inspection of PGM Turkey's website that the contract has been allowed to stand, and that implementation is proceeding<sup>7</sup>. However, it is fair to say that the pace of unauthorized contract signing has slowed significantly since 2013<sup>8</sup>.

6. In 2014 and early 2015, line ministry responsiveness to FGC Confidential Assessments was poor. In 2014, only 4 Confidential Assessments provoked ministerial responses to the FGC: in each case, the line ministry in question also made attempts to renegotiate the contract<sup>9</sup>. Those various efforts were all suspended when Prime Minister Abdiweli Sheikh Ahmed and his Council of Ministers left office.

7. With the assistance of a newly-staffed FGC Secretariat, this picture has improved significantly in the past 2-3 months. Out of the 12 agreements on which the FGC has provided Confidential Assessments, 2 draft contracts have been

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<sup>5</sup> By the date of the agreement: a) *signed*: ADCO Group (2011), Atlantic Marine Offshore Group, Somalia-FishGuard, Great Horn Development Company (2013), Polaris Energy SDN BHD, Mubadala Oil and Gas Holding Company LLC (2014); b) *draft*: Spectrum ASA (2014).

<sup>6</sup> The 4 are the contract signed on June 18, 2014 by the Minister of Petroleum Resources with the Mubadala Oil and Gas Holding Company LLC; the Memorandum of Agreement signed in June 2014 by the Minister of Power and Water with Polaris Energy SDN BHD; the renewal by the Minister of Finance of the ADCO Group contract on September 2, 2014; and the contract signed on May 25, 2015 by the Minister of Industry and Commerce with Proje Gözetim Mühendislik (PGM Turkey).

<sup>7</sup> It should be noted that the TORs for the Interim National Procurement Board indicate that any contract or concession valued at US\$5 million or over signed without following INPB/FGC review procedures "will have no legal validity".

<sup>8</sup> Of the 13 signed agreements, one was signed in 2011, one in 2012, 8 in 2013, 3 in 2014 (including one renewal), and one in 2015.

<sup>9</sup> The four being the CGG/Robertson GeoSpec International, Favori LLC, Albayrak Turizm İnşaat Ticaret A.Ş and Somalia-FishGuard Ltd. agreements.

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redrafted in direct response to FGC advice<sup>10</sup>, and the FGC's recommendations are guiding ministerial action on 7 other draft or signed agreements. In 5 of these cases, ministries are now taking steps to review, cancel or curtail the contract in question<sup>11</sup>, while the process of renegotiation that stalled last November is being revived for 2 of the above-mentioned contracts<sup>12</sup>. This leaves 2 cases in which no ministerial response or action has taken place following the FGC's Confidential Assessments<sup>13</sup>, and 1 other in which the intentions of the ministry in question remain unclear<sup>14</sup>.

8. In addition to the 12 agreements for which the FGC has prepared Confidential Assessments, 4 other contracts and concessions have come to the FGC's attention. In 2 of these cases, the concerned ministry has ignored FGC efforts to obtain the contract<sup>15</sup>. A third, the Petro Quest Africa concession, was referred to the FGC after the former government of Galmudug Region asked for the Federal Government's opinion on the contract; the FGC asked some preliminary questions but is awaiting the outcome of discussions between the Federal Ministry of Petroleum and Mineral Resources and the new Government of Galmudug before carrying out any further analysis. The fourth, the ADCO Group of Companies concession, was brought to the FGC's attention only after it had been terminated.

9. Progress towards any substantive revision and/or renegotiation of an agreement has generally been very slow. There are a number of reasons for this. One is a lack of technical and negotiation capacity in the Federal Government, and an unwillingness by the donor community so far to supplement this in a convincing manner. A second is an absence of data/file storage and continuity management systems, resulting in a loss of institutional knowledge and serious delays when ministers change. In other instances, however, disagreements within the Federal Government structure have delayed remedial action. This appears to be the case with the Somalia-FishGuard Ltd and Soma Oil and Gas Exploration Ltd concessions.

10. Two points are worth re-emphasizing. First, FGC Confidential Assessments have *not* recommend wholesale cancellation of all of the contracts reviewed, even though none of them were subject to competitive tender, and by a strict

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<sup>10</sup> CGG/Robertson GeoSpec International, Spectrum ASA.

<sup>11</sup> Mogadishu Port Container Terminal and Simatech International, AMO Shipping Company Ltd, TGS-NOPEC Geophysical Company ASA, Mubadala Oil and Gas Holding Company LLC, Polaris Energy SDN BHD.

<sup>12</sup> Favori LLC, Albayrak Turizm İnşaat Ticaret A.Ş.

<sup>13</sup> Soma Oil and Gas Exploration Ltd, Great Horn Development Company.

<sup>14</sup> Somalia-FishGuard Ltd.

<sup>15</sup> Atlantic Marine and Offshore Group (Ministry of Defense), Proje Gözetim Mühendislik -- PGM Turkey (Ministry of Commerce and Industry).

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interpretation of mid-Twentieth Century legacy laws are therefore invalid. In view of the ambivalent status of the old legislation and the legal limbo caused by delays in passing the *Public Procurement, Concessions and Disposal Act*, though, the FGC has taken a pragmatic position on these agreements, looking less at process and more at the value for money to the nation embodied in a particular contract<sup>16</sup>. Second, although the Federal Government is obliged to deliver signed/draft concessions and contracts to the FGC for review, an FGC Confidential Assessment is an *advisory* opinion -- not an FGC instruction. The Federal Government is thus free to disagree with the FGC's findings. The FGC does, however, expect a considered reaction to its review from the concerned ministry, including an explanation of what it has chosen to do with the advice provided, and why it disagrees with FGC findings when it does. This expectation is substantiated by the TORs for the Interim National Procurement Board (paragraph 13), which require Government ministries and agencies to provide all draft contracts to the INPB, which will then "share all such draft contracts and concession agreements with the FGC for a Confidential Assessment of the proposed contract, and will carefully consider the FGC's recommendations, noting in writing the points with which it agrees and those with which it disagrees". To this point, line ministries have not provided any written reactions to FGC Confidential Assessments<sup>17</sup>.

11. In the January 8 report, the FGC recommended that all contracts and concessions awarded by the Federal Government should be published on the Ministry of Finance's website within two weeks of signature. This has not yet happened. Signed public contracts should be a matter of public record.

12. The same is true of the Confidential Assessments themselves -- once the dialog on a particular contract has been completed, a version of the Confidential Assessment that omits sensitive proprietary information should be made available to the public. This stage is expected to be reached soon on 6 of the agreements reviewed<sup>18</sup>.

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<sup>16</sup> Legacy legislation also makes certain stipulations which are either redundant or unrealistic (thus public procurement is covered in the *Financial and Accounting Procedures of the State*, Law No. 02 of December 29, 1961 and No. 317 of December 17, 1962, as amended by a Decree of the President of the Supreme Revolutionary Council of 23 December 1971; under Article 53 of the Stores Regulations enacted under this amendment, a Minister may only enter into a contract of up to 1,500 Somali Shillings, above which sum he/she must proceed through a National Tender Board that no longer functions).

<sup>17</sup> Except in the cases of the CGG/Robertson GeoSpec International and Spectrum ASA agreements, in the form of proposed amendments to the draft contracts.

<sup>18</sup> Mogadishu Port Container Terminal and Simatech International, AMO Shipping Company Ltd, CGG/Robertson GeoSpec International, TGS-NOPEC Geophysical Company, Polaris Energy SDN BHD and Spectrum ASA.

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13. On March 19, 2015, in a very positive move, the Council of Ministers established an Interim National Procurement Board (INPB) comprising five Cabinet ministers and chaired by the Minister of Finance, in accordance with FGC advice. Unfortunately the INPB did not hold its first meeting for almost six months, finally meeting on September 19, and has yet to get up and running. Once operational, with the TA needed to help it operate effectively, the Board can bridge the institutional gap that will continue to exist until the draft *Public Procurement, Concessions and Disposal Act* becomes law, and the institutions envisaged under it find their feet (in particular the Inter-Ministerial Concessions Committee or IMCC and the Public Procurement Agency). As a high-level Federal Government body the INPB will be able to identify and source any existing or draft contracts and concessions, broaden Federal Government ownership of the FGC's Confidential Assessments, and work with the FGC Secretariat to follow up on ministerial responses to these Confidential Assessments. The INPB is also tasked with publishing award decisions and contracts on a dedicated website within two weeks of their signature.

14. In a related positive development, H.E. the President in his September 9, 2015 speech on security sector reform indicated that "All tenders for logistic supplies will be carried out through the Interim Procurement Board" (Government Press Release), meaning that the substantial contracts for both food and logistical supplies must now be reviewed by the INPB, and in cases where the annual value of the contract exceeds US\$5 million, by the FGC as well. The FGC aims to carry out an initial set of reviews of these contracts by January 31, 2016. In order to meet this deadline, the Ministry of Defence will need to be much more responsive to the FGC's role in contract review than it has been up to now.

15. This report stresses the dangers posed to the country by the absence of a clear legal and fiscal framework for oil and gas exploitation. There is a danger that this could lead to a dangerous and destabilizing competition between the Federal Government and Regional Governments to sign oil and gas production sharing agreements with commercial companies.

16. The FGC accordingly recommends both to the Federal and the Regional Governments that no exploratory drilling by international oil companies should be permitted until a new legal and fiscal framework is in place. Exploration drilling could uncover commercially-viable oil or gas deposits, and this could cause serious discord between Federal and Regional Governments. The same principle should be applied to other natural resources attractive to foreign companies, such as minerals and marine life (see also the revised *Note on Oil and Gas Contracting* attached to this paper as *Annex 1*).

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17. This overview would not be complete without mentioning the inconsistent positions taken by some international partner governments in relation to the contracts and concessions reviewed by the FGC. The demand for transparency and competition expressed by donors in open fora is not always matched by their behavior behind closed doors. When it comes to contracts drafted or signed by companies from their own country, promotion of national commercial interest can take priority over the logic of state-building. While this is a reality of global aid diplomacy, such double standards do not go unnoticed in Somalia and lessen the impact of the donor community's messages on Federal Government contracting behavior.

18. The FGC's work on contracts and concessions was always intended to be temporary in nature, serving as a bridge until Federal Government capacity and accountability mechanisms have been established. The lengthy delays in passing the *Public Procurement, Concessions and Disposal Act* (approved by the Council of Ministers on May 22, 2014 and still pending with Parliament), and in getting the INPB up and running, have prolonged the period in which the FGC needs to continue reviewing contracts and concessions. In view of this it is reasonable to assume that the FGC should continue to work on public procurement for at least another year..

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**Exhibit 1**  
**Contracts/Concessions, and MOUs**  
*by Ministry, and by order in which they were submitted to the FGC*

Contract (CT) Concession (CN)	Sector/service provided	Date signed/by whom, inc. Fed (F) Region (R)	Sent to FGC for review	Confidential Assessment delivered	Status of the Government's response	Next steps	
<b>Central Bank of Somalia</b>							
--	Shulman, Rogers, Gandal, Pordy & Ecker PA (SR) (CN)	National frozen assets recovery agreement	Engagement Letter of July 12, 2013, worldwide Power of Attorney of July 15, 2013  Governor of Central Bank of Somalia (CBS) F		This engagement was reviewed in November 2013 by the UN Office of Drugs and Crime/ World Bank Stolen Asset Recovery (StAR) Initiative	The CBS Governor revoked SR's worldwide Power of Attorney on May 13, 2014 and cancelled the Engagement Letter on July 14, 2014. Subsequent efforts have focused on retrieving client files and information on accounts and on winding up residual financial details. CBS engaged the DC law firm Kobre and Kim to assist.  The CBS Governor sent letters to SR on July 14 and September 17, 2014 requesting return of the files. SR indicated a wish to deliver them in person to HE the President, and a meeting with SR took place in Istanbul on April 22, 2015 involving the President and the Minister of Finance. The President made it clear that the point of contact for future discussion should be the Minister of Finance. No files were returned, and it may be presumed that SR wishes to resolve all outstanding financial matters prior to, or in tandem with handing them over. On July 5, 2015 the Minister of Finance informed SR that until the FGS is able to examine the client files, the FGS possesses no basis for reviewing any claims by SR for further payment.	The planned next step is a meeting with SR involving the Minister of Finance and the Governor in their <i>ex officio</i> FGS roles in order to seek an amicable conclusion of the contractual relationship.
<b>Ministry of Petroleum and Mineral Resources</b>							
1	CGG Data Services AG/Robertson GeoSpec	Collation, analysis and marketing to oil exploration companies of data on	Draft of February 26, 2014  Minster of Petroleum and Mineral	March 1, 2014	March 8, 2014	An initial Confidential Assessment (CA) was completed in March, 2014, and the CCG contract was again reviewed alongside the TGS-NOPEC draft on September 6, 2014. These comments were passed onto the Council of Ministers but were not fully embodied in the first revised draft.	
12	International Ltd. (CN)						

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		Somalia's petroleum deposits; rebuilding of Somalia's national petroleum database and associated training	Resources <b>F</b>	May 16, 2015	Supplementary June 23, 2015	<p>A Supplementary CA of a second revision of the contract was carried out on June 23, 2015. The amendments proposed in the original CA of March 8, 2014 were substantially addressed in this draft. Some residual issues remained, principally the need to define the exclusivity period (it was 10 years in the original, and the CA had recommended this be reduced to a maximum of 5-7 years).</p> <p>A further set of changes were reviewed by the FGS on September 23. The exclusivity period has been set at 8 years. Two further amendments have been proposed by the FGC, and these have reportedly been incorporated into the final version.</p>	The agreement is ready to be sent to the Council of Ministers for approval prior to signature. At that point it should be published on FGS websites, and a redacted version of the Confidential Assessment and Supplement made available to the public.
2=	Soma Oil and Gas Exploration Limited (CN)	Seismic surveying and oil and gas production	August 6, 2013 Minister of Natural Resources <b>F</b>	March 2, 2014	April 23, 2014  The draft PSA cited by Bloomberg has been seen by the FGC. It is an amended, unsigned version of the PSA draft originally annexed to the signed Soma contract. It is not clear when the amendments were made, though the Somalia Eritrea Monitoring Group report on Soma	<p>No action has been taken on the FGC CA's recommendation that an amicable process of renegotiation of some of the contract's more troublesome clauses should be initiated by the FGS.</p> <p>On May 29, 2015 Bloomberg reported on the terms of "A draft production-sharing agreement, obtained by Bloomberg from an official close to the negotiations" which adjusted the original draft PSA attached to the agreement of August 6, 2013 and awarded Soma 90% of the earnings from the PSA.</p> <p>The Ministry of Petroleum on May 31, 2015 denied the existence of any such new draft in a Press Release, stating: "Somalia is not accepting PSA deals at the moment. When the fiscal terms design is over, Somalia will invite companies to come forward with their PSAs. The article, of Ilya Gridneff of Bloomberg talks of a draft deal but Somalia did not receive any draft deal nor it is accepting proposals for PSAs now."</p>	The FGC is still awaiting the Ministry's reaction to the Confidential Assessment of April 23, 2014.



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					suggests that it was sent to the Ministry by Soma in December 2014.	<p>AfDB's Africa Legal Support Facility (ALSF) is currently assisting the Ministry of Petroleum draft a model PSA for the sector.</p> <p>On August 3, 2015 the Somalia Eritrea Monitoring Group released a report on the Capacity Building Agreement signed with Soma by the Minister of Petroleum on April 27, 2014. The SEMG report describes how 'capacity building' in this case amounted largely to the payment of monthly stipends to serving staff of the Ministry, and alleges that this set up a conflict of interest and was likely part of a 'quid pro quo' designed to protect the Soma contract, not least from the FGC. The FGC was not aware of the existence of the Capacity Building Agreement prior to publication of the SEMG report.</p> <p>On August 13 the Ministry of Petroleum denied any wrongdoing in interviews with journalists. The Prime Minister subsequently created an investigatory committee consisting of Federal Government officials from outside the Ministry to investigate whether any laws or regulations have been transgressed, and to recommend remedies if they have been. The committee is chaired by the Prime Minister's Senior Policy Adviser and FGC Member Osman Yusuf. The committee will shortly submit its report.</p>	
7	TGS-NOPEC Geophysical Company ASA (CN, draft)	Acquisition and processing of geophysical data and its promotion, marketing and licensing to oil exploration companies and other parties	Draft of May 30, 2014  Federal Government (ministry not specified) <b>F</b>	July 15, 2014	September 6, 2015	<p>The CA recommended that the CCG/Robertson contract (2 above) was superior, and that the two contracts were incompatible.</p> <p>The Ministry has indicated to the FGC that it does not wish to pursue this contract and a letter so informing TGS-NOPEC is understood to be in process.</p>	The Ministry should inform TGS-NOPEC of its decision not to pursue this agreement. At that point a redacted version of the Confidential Assessment can be made available to the public.
11	Spectrum ASA (CN, draft)	Collation, analysis and	Draft of October, 2014	April 14, 2015	July 3, 2015	The Ministry responded to the CA on July 11, 2015, providing key clarifications and taking account of	

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		marketing of data on Somalia's petroleum deposits	Ministry of Petroleum and Natural Resources <b>F</b>		Supplementary July 15, 2015	<p>most of the recommendations of the Assessment. A Supplementary Confidential Assessment was sent on July 15, 2015 and the Ministry addressed all outstanding issues within its remit in its response/redraft of July 20, 2015. The final draft offers fair terms and provides adequate protections for the State and the Government, and is in synch with the revised draft CCG/Robertson Geospec agreement of May 11, 2015 as well as with Soma's seismic data collection work.</p> <p>Subsequent to this process, and following the publication of the SEMG report on Soma drawing attention to the Soma/Ministry of Petroleum capacity building program, it is understood that Spectrum ASA requested the removal of the capacity building elements from the agreement, and that these should be replaced by early revenue payments by Spectrum ASA to the FGS Treasury Single Account in CBS. It is also understood that MOF will allocate capacity building funds to the Ministry as part of the regular Budget process.</p> <p>The contract was signed on September 5, 2015 without referring the final version to the FGC. This appears to have occurred because the FGS wanted to respond quickly to the announcement on September 1 of the conclusion of a geophysical data acquisition contract between the Puntland Regional Government and the ION Geophysical Corporation of Houston, Texas.</p>	A copy of the signed agreement should be sent to the FGC. At that point it should be published on FGS websites, and a redacted version of the Confidential Assessment and Supplement made available to the public.
8	Petro Quest Africa (CN)	Oil production sharing agreement	February 2, 2013, Galmudug State and Galmudug Somali Petroleum Corporation <b>R</b>	September 23, 2014	Reviewed by ALSF on December 24, 2014, and initial informal FGC questions were passed on on October 16, 2014.	A full CA was not carried out. The Galmudug Regional Government has changed, and the Ministry is in the process of ascertaining what its preferences are vis-a-vis this contract. The FGC will, if requested, carry out a full Confidential Assessment.	The Ministry should inform the FGC of its discussions with the Regional Government and should propose next steps.
13	Mubadala Oil and Gas Holding	Seismic data analysis, petroleum	June 18, 2014 Minister of	July 10, 2015	October 6, 2015	The FGC was given to understand that nothing beyond an MOU existed, but the Ministry of Petroleum and Mineral Resources delivered a copy of	

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	Company LLC (CN)	exploitation, petroleum capacity building	Petroleum and Mineral Resources <b>F</b>			a signed contract for review on July 10, 2015.  The Ministry has indicated to the FGC that it wishes to reconsider the petroleum exploration model embodied in the Soma and Mubadala contracts, whereby exclusive PSA selection and negotiation rights are awarded in return for geophysical data acquisition and/or analysis.	The period of agreement will conclude on June 17, 2016.
<b>Ministry of Transportation and Aviation</b>							
2=	Favori LLC (CN)	Renovation and day-to-day operations of Mogadishu International Airport	June 30, 2013  Minister of Information, Post, Telecommunication and Transportation <b>F</b>	March 2, 2014	April 23, 2014	Parliament objected to the process of contractor selection on May 27, 2014 and has persisted in its concerns at the lack of competitive bidding for Federal Government contracts and concessions (paragraph 22).  An amicable renegotiation of the contract was proposed in the CA. The Federal Government reported in 2014 that Favori had agreed to renegotiate, but it is unclear how far this process went under the previous Council of Ministers.  After an extended hiatus, it was reported to the FGC that the Ministry and Favori agreed on August 29, 2015 to renegotiate the contract on the basis of the FGC's recommendations. Legal support is being provided by the ALSF, and technical sector support has been requested from the FGC. The Ministry hopes to conclude negotiations with Favori in Istanbul by the end of 2015.	The FGC Secretariat and World Bank are helping to source appropriate sectoral TA, using the Multi-Partner Fund's FGC Support Window.  The Ministry should submit revised drafts of the contract to the INPB and the FGC for comment prior to its finalization and submission to the PMO and Council of Ministers for their endorsement.
<b>Ministry of Defense</b>							
5	AMO Shipping Company Ltd. (CT)	Supply of marine patrol boats	July 29, 2013  Minister of Defense <b>F</b>	April 1, 2014	June 1, 2014	The CA recommended cancellation due to non-affordability, to be initiated through exploratory discussions intended to ascertain whether any patrol boat hulls had been laid down, and whether they had	

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						<p>been sold to other parties (as was reported to the FGC). No action was taken.</p> <p>In September 2015 the Ministry, now under new leadership, asked the FGC to help draft a termination letter. The FGC once again recommended that the Ministry contact AMOSC to ascertain whether any hulls were laid down, whether they were sold, and whether the company has any objection to an amicable termination of the contract.</p>	<p>The Ministry should contact AMOSC to ascertain the status of the hulls and AMOSC's views on this contract. The objective should be an amicable termination. At that point the contract should be published on FGS websites, and a redacted version of the Confidential Assessment made available to the public.</p>
--	Atlantic Marine and Offshore Group (CT)	Equipment, services and training to develop a national coast guard	July 29, 2103 Minster of Defence F	<b>Not yet provided</b>		<p>The FGC was informed that no such contract existed. The company's website, however, describes and shows a photograph of a July 29, 2013 signing ceremony with FGS officials, and claims that the ceremony relates to this specific contract.</p> <p>The Ministry of Finance has on several occasions requested a copy of the agreement for FGC review, but the Ministry of Defence has not produced it.</p>	<p>The Ministry of Defence should answer the FGC's requests for a copy of the contract and for information about whether or not the contract is still valid.</p>
--	AGETCO and others	Food and logistics supplies to the Somali National Army, the Somali Police Force, the National Intelligence and Security Agency and the Custodial Corps	Ministry of Defence	<b>Not yet provided</b>		<p>H.E. the President in his September 9, 2015 speech on security sector reform indicated that "All tenders for logistic supplies will be carried out through the Interim Procurement Board" (Government Press Release), meaning that the substantial contracts for both food and logistical supplies must now be reviewed by the INPB, and in cases where the annual value of the contract exceeds US\$5 million, by the FGC as well.</p>	<p>The Chair and Secretariat of the FGC are in the process of requesting/accessing all available written contracts (or invoices) for the supply of food and logistics (petrol, spare parts, clothing etc) to the national security forces.</p>

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Ministry of Ports and Shipping							
6	Albayrak Turizm İnşaat Ticaret A.Ş. (CN)	Renovation and day-to-day operations of Mogadishu Port	October 24, 2013  Minister of Public Works and Reconstruction, Marine Transport, Ports and Energy <b>F</b>	April 22, 2104	June 1, 2014  Supplementary Confidential Assessment of the Annexes, September 3, 2014	<p>Following receipt of the CA, the Prime Minister instructed the Cabinet Subcommittee on Infrastructure to discuss the agreement in light of the CA, and instructed the Minister of Ports and Marine Transport and the Minister of Finance to review the contract (including its implications for employment in Mogadishu Port). A report was prepared for the Prime Minister by the two ministries, and shared with the FGC on October 6, 2014. The report recommended that the "Federal Government of Somalia would be best-served to review the difficult and unclear parts of the contract", and that the agreement should be renegotiated "without compromising its overall integrity".</p> <p>Following this, the Minister of Ports visited Albayrak in Turkey in November 2014 to arrange for renegotiations. Shortly thereafter, the the Council of Ministers was dissolved, and no further negotiations have taken place since.</p> <p>The FGC has been informed that negotiations with Albayrak have been scheduled for early November 2015.</p> <p>Parts of the signed agreement have still not been located/shared with the FGC.</p>	The Minister of Ports and Shipping has appealed to the World Bank for technical advice prior to the negotiations. The Bank will assist, consistent with its remit (the Bank may not participate directly in a commercial renegotiation process).
2=	Mogadishu Port Container Terminal and Simatech International (CN)	Lease and concession for operating the Mogadishu container port	November 10, 2012  General Manager of Mogadishu Sea Port Authority <b>F</b>	March 2, 2014	April 23, 2014	<p>Overtaken by events -- i.e. by the Albayrak port management contract. A general termination letter to all contractors in the port area was sent by the Manager of the Mogadishu Port Authority on September 13, 2014.</p> <p>The FGC advised in September 2014 that a specific termination letter was needed from the Port Authority, and a proforma letter was drafted for FGS use. A letter has not yet been sent. In discussions</p>	The Ministry should inform the FGC of whether it intends to send a formal termination letter, and

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						with the Ministry in September 2015, the FGC again offered to assist with a letter.	whether it requires FGC advice in drafting this. At that point the contract should be published on FGS websites, and a redacted version of the Confidential Assessment made available to the public.
9	Great Horn Development Company (MOU, Framework Agreement)	Harbor and fishing port development, road construction	September 8, 2013 (MOU); April 29, 2014 (Framework Agreement)  Minister of Ports and Marine Transport <b>F</b>	October 10, 2014	December 4, 2014	The Ministry of Finance is still looking for the missing MOU.  The CA noted that the framework agreement provides for exclusivities in areas under the <i>de facto</i> control of Puntland and Jubbaland regional administrations, making it unclear how the FGS can deliver. No evidence of follow-up has been provided to the FGC.  Moreover, in discussion with the FGC in September 2015, an official representing the Ministry appeared unaware that his Ministry had signed this contract.	The Ministry should review the contract, read the Confidential Assessment and contact the FGC to discuss what it proposes to now do.
<b>Ministry of Fisheries and Marine Resources</b>							
7	Somalia-FishGuard Ltd. (CN)	Protection, licensing, policy and institutional development of Somali's fisheries sector	July 25, 2013  Minister of National (sic) Resources <b>F</b>	April 29, 2014	July 4, 2014	The CA recommended cancellation or renegotiation of a contract with a much more limited scope.  On November 21, 2014 the Minister of Fisheries and Marine Resources wrote to Somalia-FishGuard proposing that the agreement be replaced by a more tightly focused instrument concentrating on support for the creation of a Somalia Fisheries Protection Force.  FishGuard responded to this on March 20, 2015, and the response has been seen by the FGC, as have FishGuard's subsequent proposals for amending the contract.  The larger issue, though, is the need to rationalize the	

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						<p>issue of licensing and come to a Federal-Regional Agreement on fisheries management and revenue sharing. At present the Federal and the Puntland ministries of fisheries are issuing licenses; FishGuard, despite being contracted to do this, is not.</p> <p>Uncertainty over FishGuard's role and divided views on the contract within the Government are interfering with the orderly development of Somalia's fisheries sector. There is currently no operative agreement on the issuance of licenses or the sharing of license revenues. FAO estimates that the country as a whole can earn in excess of US\$10 million per annum from fishing licenses without compromising the sustainability of Indian Ocean tuna stocks. Attracting the more credible EU and global fishing fleets will require a resource management and revenue-sharing agreement to which Federal and Regional political leaders commit themselves. Achieving such an agreement, in today's atmosphere of competition and mistrust, will itself involve institutional and monitoring arrangements of the kind agreed to in principle in Addis Ababa last year, but never enacted.</p>	<p>The Federal Government needs to resolve FishGuard's anomalous contractual situation. It is more than 15 months since the FGC Confidential Assessment, and the observations made at that time remain valid.</p>
<b>Ministry of Power and Water</b>							
10	Polaris Energy SDN BHD (BOT CT)	Electricity generation, transmission and distribution	June 2014 (undated), Minister of Water and Energy F	November 5, 2014	February 13, 2015	<p>The CA proposed that the FGS should carry out due diligence of Polaris and should limit any contract to the first proposed phase.</p> <p>A letter covering the CA was sent to previous Finance Minister/FGC Chair on February 13, 2015 for onward transmission to new Minister of Water and Energy. This draft letter was translated and shared informally by the new Minister of Finance/Chair of the FGC. The CA recommended that Polaris focus on Phase 1.</p> <p>In July 2015, the Minister of Power and Water met with Polaris representatives and conveyed this message. He also clarified that Somalia would not be able to contemplate the proposed Phase 2 US\$1 billion "Government to Government guarantee"</p>	

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						<p>implicitly involving the PRC, and that no Afgoooye gas concession could be contemplated unless all of Phase 2's arrangements were firmly in place.</p> <p>The Minister subsequently informed the FGC that he wishes to carry out a through review of the country's and the capital's energy needs, and that he favors an open bidding process on a different and more sustainable power solution.</p>	<p>The FGC has advised the Ministry on how best to go about initiating a needs assessment and competitive bidding process. Once contractual matters are concluded with Polaris, the contract should be published on FGS websites, and a redacted version of the Confidential Assessment should be published.</p>
<b>Ministry of Commerce and Industry</b>							
--	Proje Gözetim Mühendislik (PGM Turkey) (CT?)	Import/export quality assurance contract	<p>Agreement reportedly signed on May 25, 2015</p> <p>Ministry of Industry and Commerce <b>F</b></p>	<b>Not yet provided</b>		<p>On 18 May, 2015, the Prime Minister issued an order forbidding officials from signing international contracts without the authorization of the Prime Minister's Office and the Council of Ministers .</p> <p>However, a review of the company's website in September 2015 indicates that project implementation is getting underway.</p> <p>The Ministry of Finance has requested a copy of this project for FGC review. The Ministry of Industry and Commerce has not complied.</p>	<p>The Ministry should provide the FGC with a copy of the contract. The Federal Government needs to rule on whether or not this contract should stand, in light of the manner in which it was agreed.</p>
<b>Ministry of Finance</b>							
14	The ADCO Group of Companies (CN)	Khat tax collection concession	<p>Agreement was first signed on June 6, 2011, and was subsequently amended and</p>	August 9, 2015	Not required -- discussed in the paragraphs 92-96 of this report	<p>The ADCO Group was contracted to collect the 10 percent tax due on the import of khat at Mogadishu International Airport. The original 2011 contract required that ADCO remit to the Government US\$120,000 per month, this sum increasing over</p>	



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			renewed four times, most recently on September 2, 2014 <b>F</b>			multiple contract renewals to US\$800,000 per month, with the most recent renewal of the agreement signed by the Chair of the FGC/Minister of Finance in September 2014.  The present Chair of the FGC/Minister of Finance cancelled the contract on June 15, 2015, since when the Government has been collecting the tax (at \$2 per kilo, as authorized by the Council of Ministers ) and paying it directly into the Treasury Single Account.	No further action required.
Not Known							
--	The National Theatre (unknown)	Infrastructure rehabilitation	Date not known  Counterpart authority not known <b>F</b>	No longer required		It is understood that the Chinese Government verbally offered to rehabilitate various public works that it had earlier financed, such as the National Theater and a national hospital. A grant cooperation agreement has reportedly been signed by MFA with the PRC.  This is a bilateral aid agreement, and as such does not need to be reviewed by the FGC.	No further action required.

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**C. The Somalia Eritrea Monitoring Group**

19. The Somalia Eritrea Monitoring Group (the Monitoring Group, or SEMG)'s October 2014 report discussed the phenomenon of 'secret contracting'. The report highlighted the *ad hoc*, opaque and non-competitive system of granting contracts and concessions in Somalia, and provided useful leads to the FGC; this report is discussed in more detail in *Annex 2*, as are the individual contracts that the report addressed.

20. The FGC and the Monitoring Group have different structures, mandates and methods of work, but share a common aim – to contribute to stability in Somalia. For this reason it makes sound sense for the two institutions to cooperate, and to share information that does not breach either institution's confidentiality protocols. The relationship between the Monitoring Group and the FGC is also discussed in *Annex 2*.

21. The 2015 Monitoring Group report discusses natural resource management, focusing specifically on deficiencies in the custodianship of Somalia's oil & gas reserves and fisheries stocks. It argues that foreign companies have taken advantage of weak institutional oversight and unclear policies to strike profitable deals with individual 'contract brokers' at Federal and Regional levels, and that this is fuelling mutual mistrust and adding to the risk of resource conflict in the region.

**D. Public procurement in Somalia: The Procurement Act, interim measures**

22. A *Public Procurement, Concessions and Disposal Act* was passed by the Council of Ministers on May 22, 2014, but has yet to be approved by Parliament. Parliament has received a number of technical briefings on the Act from the World Bank and has benefited from UNDP technical support to help with its review process. It remains unclear when this important Act will be passed. Parliament, in the meantime, has expressed serious concern at the current lack of competitive tendering and absence of due legal process associated with Federal Government contracts and concessions. This has led to a dialogue that has endorsed the role of the FGC and the principles of due process that it has been advocating<sup>19</sup>.

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<sup>19</sup> On August 12, 2015 several MPs submitted a motion to the Speaker of Parliament's Office, which *inter alia* objected to the Federal Government's practice of awarding contracts without observing due process; the Soma, FishGuard, Favori, and Albayrak agreements were mentioned in this motion. The Speaker decided to approach the motion through negotiation. Following this, on October 13, 2015, the Speaker's Office released a 'Resolution of the Motion' document. Among the points made in this

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23. While procurement capacity is gradually being created in preparation for the passage of the Act, particularly in the Ministry of Finance, a legal and institutional vacuum exists today. It is also clear that creating the capacity to implement the provisions of the Act presents a serious institutional challenge, particularly given the reluctance donors have shown to deploy technical assistance teams to work alongside Somali counterparts in Mogadishu.

24. In light of this, and in order to broaden out the ownership of the FGC's review work, the January 8 report recommended the creation of an interim board to review new contracts and concessions<sup>20</sup>.

25. On March 19, 2015 the Council of Ministers decided to establish an Interim National Procurement Board (INPB) with responsibility for "reviewing and advising on government contracts and concessions; in particular, on whether the contracts serve in best interest of the Somali state and its citizens and whether further renegotiations are required to achieve this objective." The TORs for the INPB establish a Board of five, chaired by the Minister of Finance<sup>21</sup>. The TORs also

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document, which needs to be brought to a plenary session of the Parliament for adoption, are a) that the INPB (paragraph 25) should submit a detailed report to the Parliamentary Sub-Committee on Finance on the financial arrangements associated with the Soma contract (paragraphs 51-53), as well as how the FGC's advice on this contract is being taken into account; b) that the FishGuard contract should be cancelled, as per the FGC's suggestion; c) that any other agreements entered into without taking account of national procurement procedures should be aligned with prevailing laws; d) that the Federal Government should report to Parliament on the progress of renegotiating the Albayrak and Favori contracts at the next session of Parliament; e) that the Parliamentary Sub-Committee on Finance should with urgency arrange for the second and third readings of the *Public Procurement, Concessions and Disposal Act*; and f) that the INPB and the Auditor General should prepare a detailed report on Federal Government contracts and concessions showing that adjustments have been made in line with due procedure, and to ensure that the recommendations of the FGC have been respected; this report is to be submitted before the end of the next session of Parliament. The document also states that the Federal Government should respect existing Somali contract and procurement law until the new legislation has been passed.

<sup>20</sup> The report stated that "it is unrealistic to try and establish competitive tendering immediately. The norm today is that private companies approach Federal Government ministries and agencies with draft contracts and concessions. Under an interim approach, the ministries/agencies could instead forward these draft contracts and concessions to a special procurement board whose operations would be linked to the review function accorded to the FGC. After board clearance, drafts valued at over US\$5 million would be forwarded to the FGC, which would provide a Confidential Assessment (which might propose further renegotiation). The ministry or agency would then send the draft contract, along with the advice provided by the board/FGC, to the Cabinet for decision. FGC Assessments would subsequently be made public. Any contracts or concessions signed without following this approach would have no validity". Almost a year has passed since the January 8 report, though, and the FGC would now argue that it is time to begin introducing competitive tendering -- see paragraph c. i on page 1, and paragraph 32.

<sup>21</sup> The four other members are the Minister of Foreign Affairs and Investment Promotion, the Minister of Justice, the Minister of Planning and International Cooperation and whichever minister is

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recognize that "establishing competitive tendering processes will be challenging, and in most cases it can be expected that private companies will continue to approach Federal Government ministries and agencies with draft concession proposals". Government ministries and agencies are obliged to provide all draft contracts to the INPB, which will "share all such draft contracts and concession agreements with the FGC for a confidential assessment of the proposed contract, and will carefully consider the FGC's recommendations, noting in writing the points with which it agrees and those with which it disagrees". Any contract or concession valued at US\$5 million or over that is signed without following these procedures "will have no legal validity". In addition to this reactive review function, the INPB is responsible for identifying any existing contracts and concessions that have not yet been passed to the FGC for review, and for publishing award decisions and contracts on a dedicated website within two weeks of their signature.

26. On September 9, 2015 His Excellency President Hassan Sheikh Mohamoud announced that future food and logistics contracting for security sector institutions will be managed by the INPB<sup>22</sup>. Given the value of past and future security supply contracts (rations for the Armed Forces alone amount to at least USD7.7 million per year), they will also need to be referred to the FGC for Confidential Assessments. The FGC will also need to obtain any prior/existing contracts that exist in written form, for its review.

27. The INPB is seen as a transitional body which aims to bridge the gap between today's situation and a future in which the procurement institutions envisaged under the Act are up and running; hence "The INPB will be gradually transitioned to a fully-fledged Inter-Ministerial Concessions Committee (IMCC) after the *Public Procurement, Disposal and Concessions Act* is passed and enacted by Parliament. Every three months from the establishment of the INBP, the Minister of Finance shall conduct a review of the INPB's work with a view to proposing to the Federal Government how the transition towards the creation of the Public Procurement Authority and the IMCC envisaged in the Act should be managed".

28. The INPB first met, after a long delay, on September 19, 2015, and reviewed its TORs. The Board decided to recommend to the Council of Ministers that the

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responsible for the contract or concession under consideration. The Board would be supported by a Technical Advisor for Concessions (non-voting) who would also act as the Board's Secretary.

<sup>22</sup> "Further to recent consultations and an internal review of the financial governance of our security sector, the Federal Government today confirmed the following commitments.....All tenders for logistic supplies will be carried out through the Interim Procurement Board" -- Government Press Release entitled *The President: We are Committed to Substantive Security Sector Reform*.

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threshold for contracts to be reviewed by the INPB review be lowered from US\$5 million to US\$2 million and to adjust the job of the proposed Concessions Advisor to include helping lay the groundwork for the formation of the IMCC.

29. The decision to create an INPB and the inception of its work are very positive steps, and respond to recommendations made by the FGC. What is now essential is to bring in the TA needed to help it operate effectively, draw up an inventory of all Federal contracts and concessions, including any that have not yet been brought to the attention of the FGC, and ensure that the FGC receives systematic feedback on each Ministry's views and actions in response to the FGC's Confidential Assessments. The World Bank has indicated that it is ready to assist with the recruitment of the Concessions Adviser, who can be financed from the Multi-Partner Fund's FGC Window. The other tasks listed in this paragraph do not need to await the arrival of this adviser, and can be pursued immediately. The FGC Secretariat is able assist with this work until such time as the INPB acquires its own capacity to do so.

**E. The FGC Confidential Assessments and Supplementary Confidential Assessments**

30. The 16 contracts that have come to the FGC's attention deal with seismic data acquisition and marketing, oil and gas exploration, fisheries development and licensing, Mogadishu port and airport development, electricity provision, regional ports and port-related infrastructure development, patrol boat construction and support to the development of a national coast guard, import-export quality assurance and khat tax collection.

31. As has been stated on many occasions, including in the January 8 report, value for money and transparency are best served through competitive public tendering, other than in exceptional cases that require clear, documented justification. None of the 16 contracts in question were tendered competitively, nor do they respond to any pre-defined terms of reference or scope of services; instead, foreign companies and their local partners have come forward with their own draft contracts, in several cases with the evident encouragement of the company's host country government.

32. In defense of this shortcoming, the Government points to the lack of functional procurement legislation and to weak institutional capacity to design complex specifications or manage competitive procurement. While this is doubtless

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true, it is an argument that carried more conviction a year ago than it does today. The slow progress towards competitive procurement over this period reflects poorly on all parties and is an example of "negative mutual accountability" at odds with the spirit of the New Deal. Parliament has failed to pass the *Public Procurement, Concessions and Disposal Act*, which was submitted for its consideration 16 months ago. The executive, for its part, has, done little to introduce competitive procurement -- while the donors' record in deploying the kind of on-site technical support needed to husband substantive change remains unimpressive, particularly now that 'third party duty of care' arrangements have been put in place to enable consultants to work in Mogadishu. What is more, pilot efforts show it is possible to manage a credible competitive procurement process even in the absence of enabling legislation. One such example is provided by the Norwegian-financed Temporary Implementation Unit in the Ministry of Finance. Backstopped by intensive TA, this project has successfully tendered and is supervising a number of medium-sized civil works contracts in Benadir Region.

33. The advice offered in the Confidential Assessments (CAs) ranges from recommending that the Federal Government negotiate an improvement in terms, to proposing the cancellation of those contracts that are of dubious benefit to the country. It is important to note that the CAs have *not* recommend wholesale cancellation of all of the contracts reviewed, even though none of them were subject to competitive tender, and all were negotiated in an unclear legal and institutional environment. The FGC has thereby taken a pragmatic position on these contracts, balancing the need for incremental transparency with a recognition that in the early years in the reconstruction of this shattered state few commercial investors were prepared to come forward to risk their capital and reputations in Somalia: and that those who were, and who are amenable to adjusting their agreements in the public interest, deserve consideration.

34. The 12 Confidential Assessments and 3 Supplementary Confidential Assessments are summarized below, and a brief analysis of the ADCO khat tax collection contract is also included. Sensitive proprietary details of contracts still under review and/or discussion are, for obvious reasons, omitted from this paper. The agreements are discussed in the order in which they were received for review.

**CGG Data Services AG/Robertson GeoSpec International Ltd.**

35. A draft of CGG Data Services AG/Robertson GeoSpec International Ltd. (CGG/Robertson) contract was given to the FGC on March 1, 2014 at the initiative of the Prime Minister. The contract sets out the terms of a partnership between the

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Ministry of Petroleum and Mineral Resources with CGG/Robertson on the collation, analysis and marketing to international oil exploration companies of data on Somalia's petroleum deposits. The Confidential Assessment of March 8, 2014 observed that the contract providers are market leaders in their field and had offered terms that, while not unreasonable, could be improved upon -- particularly in relation to the length of the exclusivity period, the specification of audit procedures and the Federal Government's contract termination rights. The Prime Minister then directed the Economic Subcommittee of the Council of Ministers to review the agreement. The Minister of Petroleum and Natural Resources subsequently informed the Council of Ministers that the contract had been modified in line with the CA and on this basis was authorized to sign.

36. However, a letter dated October 20, 2014 from the Finance Minister/FGC Chair to the FGC (reproduced in the January 8 report and attached as *Annex 3*) pointed out that an MOF analysis of the revised draft found that only a limited number of adjustments had been made, and that these did not adequately address the Confidential Assessment's concerns.

37. Subsequent to the change in Prime Minister and Council of Ministers, the new Minister of Petroleum and Mineral Resources reopened negotiations with CGG/Robertson, and a revised contract was sent to the FGC on May 16, 2015. A Supplementary Confidential Assessment (SCA) was issued on June 23, 2015. The SCA found that the revised draft addressed most of the key points made in the original Assessment, and advised that those not yet dealt with should be -- in particular, defining the length of the exclusivity (the original CA had recommended this be restricted to 5-7 years). A further set of changes was reviewed by the FGC on September 23. In this draft, the exclusivity period had been set at 8 years. The FGC proposed two final amendments: clarifying that CGG/Robertson should not act as a strategic adviser on petroleum promotion strategy, and thereby risk a potential conflict of interest, and specifying that revenue payments from CGG/Robertson should be paid into the Federal Government's Single Treasury Account. These amendments have reportedly been made, though the FGC has not yet received the final version of the contract. It is understood that the contract will be signed shortly.

38. The Monitoring Group has reported that a payment of over US\$0.5 million was made by CGG/Robertson in May 2015 to an account held by the Ministry of Petroleum and Mineral Resources in the International Bank of Somalia (IBS). This raises two concerns. The first is that a payment appears to have been made prior to contract signature. The second is that paying these funds into the IBS would

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contravene the Ministry of Finance instruction of February 2014 that all revenues should be paid into to the Federal Government's Treasury Single Account in CBS.

**Mogadishu Port Container Terminal & Simatech International**

39. A concession covering the lease and operation of the Mogadishu container port was signed on November 10, 2012 between the Mogadishu Sea Port Authority, and Mogadishu Port Container Terminal & Simatech International. It was sent to the FGC for review on March 2, 2014, and a Confidential Assessment was provided on April 23, 2014. The CA found that that the lease did not offer a solid basis for the management of container traffic at the Mogadishu Port. It did not cover the essential financial and technical issues that should form part of any such government contract; it was silent about institutional roles, the contractor's reporting and information requirements, invoicing methods, tax obligations, custodianship of the property, and end-of-lease obligations (*vis-à-vis* structures erected on the land, environmental cleanup measures, etc.). The charges specified in the lease were also abnormally high when compared with international norms.

40. This agreement was overtaken by events. On September 13, 2014, the Managing Director of the Mogadishu Ports Authority issued a circular to all companies working in Mogadishu Port informing them of the port concession signed on 24 October, 2013 between the Minister of Public Works and Reconstruction, Marine Transport, Ports and Energy and Albayrak Turizm İnşaat Ticaret A.S. (Albayrak), and asked these other companies to vacate the port premises and remove all equipment by the end of September.

41. The FGC advised the Federal Government in September 2014 and again in July 2015 to follow up this general notice with a specific termination letter from the Managing Director of the Mogadishu Port Authority to Mogadishu Port Container Terminal & Simatech International -- a letter that the FGC was prepared to help draft. No attempt to contact the company has yet been made. In discussions with the Ministry in September 2015, the FGC again offered to assist with a letter.

**Soma Oil and Gas Exploration Limited**

42. Soma Oil & Gas Exploration Limited (Soma) was established in 2013 to pursue oil and gas exploration opportunities in Somalia. A contract was signed between the Minister of Natural Resources and Soma on August 6, 2013 and embodies an 8-month period of exclusivity, now completed, in which seismic surveying would be carried out onshore and offshore in areas of Soma's choice that



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are not the subject to prior grants of petroleum rights; after delivering the survey results, the contract allows Soma a further year of exclusivity to negotiate Production Sharing Agreements (PSAs) with the Federal Government in 12 offshore blocks of “potential prospectivity” of its own choosing, up to a total of 60,000 km sq. (declared to be the maximum permissible under the Petroleum Law of 2008). The PSAs thus negotiated would remain in force for 8 years; should a “commercial discovery” be made, up to 25 years of exploitation would be permitted following agreement on a detailed development plan. A draft PSA forms part of the agreement.

43. This concession was sent to the FGC on March 2, 2014 and a Confidential Assessment was provided on April 23, 2014. The CA noted that the contract is a well-drafted and professional document. It pointed out that the agreement could be improved on from the viewpoint of the nation (e.g. by the Somali Petroleum Corporation taking an increased share in the PSAs and in the provisions made for local community development), and recommended that the Federal Government approach Soma to propose improvements.

44. To the FGC's knowledge, no attempt has been made by the Federal Government to renegotiate the terms of this concession -- nor has the Ministry of Petroleum and Mineral Resources informed the FGC of its reaction to the Confidential Assessment. This contrasts with the close and cooperative relations created between the FGC and the Ministry around the CGG/Robertson, TGS-NOPEC Geophysical Company ASA (TGS-NOPEC), Petro Quest Africa, Mubadala Oil and Gas Holding Company LLC (Mubadala) and Spectrum ASA contracts.

45. On May 29, 2015 the news agency Bloomberg reported on the terms of "a draft production-sharing agreement, obtained by Bloomberg from an official close to the negotiations" which awarded Soma up to 90 percent of the earnings from the PSA, a four-year royalty holiday for oil and gas found less than 1,000 meters below the sea, and a decade-long period of tax-free consideration.

46. The Ministry of Petroleum and Mineral Resources on May 31, 2015 denied the existence of any draft PSA with Soma, and the Minister was quoted as saying: “Somalia is not accepting PSA deals at the moment. When the fiscal terms design is over, Somalia will invite companies to come forward with their PSAs. The article, of Ilya Gridneff of Bloomberg talks of a draft deal but Somalia did not receive any draft deal nor it is accepting proposals for PSAs now.” The draft PSA cited by Bloomberg has been seen by the FGC: it is an amended, unsigned version of the PSA draft annexed to the signed Soma contract. It is not clear when it was amended, though

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the Somalia Eritrea Monitoring Group report on Soma (paragraphs 51-53) suggests that it was sent to the Ministry by Soma in December 2014.

47. The Monitoring Group has reported that the Minister of Petroleum told them in June 2015 that the Federal Government would not sign any PSAs until a resource-sharing framework has been established between the Federal Government and Somalia's Regional Governments, and that AfDB's Africa Legal Support Facility (ALSF) is assisting the Ministry to draft a model PSA for use in any negotiations on oil and gas extraction. This is an important commitment, but it does not address the exclusivity question (paragraphs 49-50).

48. The Bloomberg affair, though, underlines an important point made by the FGC in the January 8 report. While the Soma contract acknowledges the rights of the Regional States<sup>23</sup>, it also implies ambiguity on whether these are held to extend into the sea<sup>24</sup>. In a situation in which no Federal/Regional legal or fiscal regime for resource sharing yet exists and where there are legal ambiguities (see *Annex 1*) alongside mutual suspicion between the Federal Government and some Regional Governments, there is a danger of pre-emptive -- or defensive -- action by one or other party<sup>25</sup>. A foretaste of this can be seen in the September 1 announcement that the Puntland Regional Government and the ION Geophysical Corporation of Houston, Texas had concluded a geophysical data acquisition contract; this was followed on September 5 by the accelerated signature of a seismic data acquisition and brokerage contract between the Federal Government and Spectrum ASA of Norway (paragraphs 82-87)<sup>26</sup>.

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<sup>23</sup> For example: "For areas which are within the boundaries of Federal Member States or holders of prior rights where Soma expresses an interest in conducting exploration operations, the Government may initiate a process with a view to awarding a petroleum agreement once the Government has clarified its jurisdiction to do so."

<sup>24</sup> The contract also defines the 'Evaluation Area' as "the portion of the Exploration Area [which is in turn defined as "the onshore and offshore areas within Somalia which are not the subject of a prior grant of petroleum rights by the Government or a predecessor of the Government...."] to be agreed between Soma and the Government which will be evaluated by the seismic survey and (if relevant) by the reprocessing of seismic data which Soma will conduct...and which will exclude any onshore areas of Federal Member States."

<sup>25</sup> It should, however, be noted that the Soma agreement provides for the possibility of negotiating PSAs only in "areas which are available to be granted by the Government without the direct participation of the governments of Federal Member States or holders of prior rights", or where the Federal Government has clarified its jurisdiction to do award a PSA.

<sup>26</sup> Although the FGC does not have responsibility for reviewing contracts signed by Regional Governments, it is aware that this is happening. Apart from the 2014 Galmudug Region/Petro Quest Africa concession mentioned in paragraph c. ii on page 2, Galmudug is reported to have signed an oil and gas concession agreement with the UAE-based Link National Resources FZC in February 2015.

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49. The core issue with the Soma contract is one that bears on sector policy. The contract embodies exclusivity -- an automatic right for Soma to negotiate a PSA without competition. While a 'green' Federal Government might have felt in 2013 that it was unable to run a convincing bidding process and was happy to benefit from Soma's interest in reawakening oil exploration in Somalia, the precedent that the contract sets is undesirable. The data collection and brokerage agreement with Spectrum ASA , along with the draft CGG Data Services AG/Robertson GeoSpec International Ltd data brokerage contract, put Somalia in a position where it can now promote open geophysical data sales to petroleum companies, and can use this process to establish a competitive system of PSA allocations.

50. The petroleum development strategy of the previous Ministry was based on single operators offering to acquire and/or analyze seismic data free of charge, in return for exclusive negotiation rights to PSAs of their choice (see also the Cooperation Agreement with Mubadala Oil and Gas Holding Company LLC, paragraphs 88-91). This approach compromises Somalia's ability to market its petroleum resources to the highest and best-qualified bidders. By foregoing structured competition in favor of discretionary PSA grants, the Federal Government is condoning cherry-picking -- an approach likely to result in below-market offers for the best petroleum blocks, followed by weaker interest in the remainder. The only substantial justification for exclusivity is if there is either no prospect that investors will respond to a competitive bidding process, or if a particular operator offers unique advantages and is not prepared to make the investments necessary to submit a competitive bid. Neither of these conditions apply in Somalia today.

51. On August 3, 2015 the Somalia Eritrea Monitoring Group released a report on an investigation into Soma's relationship with the Ministry of Petroleum and Mineral Resources. The report focuses on a Capacity Building Agreement signed with Soma by the Minister of Petroleum on April 27, 2014 and countersigned by Soma on May 15 (some 9 months after the signing of the main agreement). The SEMG report also draws attention to a letter signed by the Minister of Petroleum on May 8, 2014 extending the offshore area available to Soma for survey to include the Jora block (which Soma may also select as one of the areas in which it chooses to negotiate a Production Sharing Agreement on an exclusive basis). The Ministry did not bring either of these subsequent agreements to the attention of the FGC.

52. The SEMG report describes how 'capacity building' in this case amounted largely to the payment of monthly stipends to serving staff of the Ministry, and alleges that this set up a conflict of interest and was likely part of a 'quid pro quo'

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designed to protect the Soma contract, not least from the FGC. On August 25, the Wall Street Journal published a story reporting on these and other facets of the SEMG report: see <http://www.wsj.com/articles/report-raises-questions-over-somali-dealings-of-firm-headed-by-u-k-s-michael-howard-1440529699>.

53. On August 13 the Ministry of Petroleum and Mineral Resources denied any wrongdoing in interviews with journalists. The Prime Minister subsequently created an investigatory committee consisting of Federal Government officials from outside the Ministry to investigate whether any laws or regulations have been transgressed, and to recommend remedies if they have been. The committee is chaired by the Prime Minister's Senior Policy Adviser and FGC Member Osman Yusuf, and will recently submit its report.

**Favori LLC**

54. This concession was signed on June 30, 2013 between the Minister of Information, Post, Telecommunication and Transportation and Favori LLC (Favori). The agreement authorizes Favori to upgrade and manage the Mogadishu International Airport for a period of 15 years; Favori is responsible for airport renovation, day-to-day management, ground handling, security, catering, terminal management, cargo management, and the operation of "governmental owned commercial units in front of the main terminal building". Airport renovation encompasses the construction of terminal buildings, the widening and paving of internal roads, lighting, and the construction of offices and other facilities necessary to the provision of the described in the agreement. An initial premium of US\$1.5 million paid by Favori will be recovered from the payments to the Federal Government of 45 percent of Favori's net earnings, which begin in Year 4 of the concession.

55. The agreement was shared with the FGC on March 2, 2014, and a Confidential Assessment was provided on April 23, 2014. The Assessment pointed out that the agreement lacks precision, and that this could give rise to misunderstandings -- for example, over the exact nature of certain planned improvements (e.g. "widening of the internal roads of the actual terminal building"), and of the equipment to be provided. Other examples of vagueness include an absence of discussion of Favori's fee structure, or of how Favori proposes to calculate its costs (other than by using "international accounting standards of profit and loss"). With respect to revenue sharing, the contract does not specify any revenue targets or financial performance benchmarks/levels of service. While either party may terminate the agreement at 90 days notice "by giving reasonable

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reasons", it is not clear who is responsible for defining what is 'reasonable'. The Assessment therefore proposed that the Federal Government approach Favori to request adjustments to those terms of the agreement that are unclear or deficient.

56. The Minister of Finance's letter of October 20, 2014 to the FGC (*Annex 3*) indicated that the Federal Government and Favori had in principle agreed to renegotiate the terms of the agreement in line with the recommendations in the Confidential Assessment, while taking account of Parliament's earlier objections to the contract, and concern that its terms should be aligned with the Interim Somali Constitution and applicable national law. The main purpose of these discussions was to achieve greater contractual clarity and precision, particularly in relation to the basis for revenue sharing between the company and the Government. The Federal Government had previously informed the FGC that it planned to begin discussions before the end of 2014 using an inter-governmental team from the ministries of Transport, Finance and Foreign Affairs. The ALSF helped prepare the groundwork for the discussions.

57. No such discussions took place. The Council of Ministers was then dissolved, and there was no further progress on contract adjustment until the new Minister agreed with Favori in July 2015 on a process of renegotiation. These negotiations have not yet begun. To support the Ministry, the ALSF has contracted legal advice, and the World Bank is seeking to recruit an aviation specialist on a short-term contract. After discussions with these experts, the Ministry plans to initiate renegotiations with Favori in Istanbul, and to conclude them prior to the end of this year.

**The Atlantic Marine Offshore Shipping Company Ltd.**

58. A service contract for the supply of six patrol vessels was signed between the Minister of Defense and the Atlantic Marine Offshore Shipping Company Ltd. (AMOSC) on July 29, 2013. The cost to the Federal Government of the contract is €132 million. It was sent to the FGC on March 2, 2014 and a Confidential Assessment was returned on June 1, 2014.

59. While the contract has certain deficiencies from a Somali perspective, the over-riding issue is its affordability. There was no provision in the 2014 or 2015 Budgets for these outlays, and there is no realistic prospect that the contract can be financed from Treasury resources. The contract stipulates that 25 percent of the contract was payable upon signature, a condition that was not met.

60. The CA advised cancellation on the grounds of unaffordability, while counseling that discussions should first take place with the company to explain the Government's fiscal circumstances and to ascertain -- as has been reported -- whether AMOSC has in fact sold the hulls that it initially laid down for Somalia. The Ministry of Defense, which had not hitherto communicated with the FGC, has recently requested FGC assistance in terminating the contract. Once initial discussions have taken place between the Ministry and the company, the FGC is prepared to assist.

**Albayrak Turizm İnşaat Ticaret A.Ş.**

61. This major concession addresses the renovation and day-to-day operation of Mogadishu Port. The agreement was signed between the Minister of Public Works and Reconstruction, Marine Transport, Ports and Energy and Albayrak Turizm İnşaat Ticaret A.Ş. (Albayrak) on October 24, 2013. It grants Albayrak the "exclusive right to finance, rehabilitate, operate, manage, maintain, develop and optimize the Port of Mogadishu" for a period of 20 years, with the possibility of renewal. The concession was sent to the FGC for review on April 22, 2014 and a Confidential Assessment was provided on June 1, 2014. This was followed on September 3 by a Supplementary Confidential Assessment (SCA) which focused on the annexes to the agreement, and recommended that the Ministry draw on the expertise of the World Bank to carry out some essential analytical work that would put the Ministry in a much better position to link the renegotiation process to a long-term vision of how Mogadishu Port can best be developed.

62. The CA and the SCA found that the agreement establishes the basic parameters of a workable commercial relationship, but lacks important clarity. There are no measurable performance indicators. There is no clear analytical basis for the division of revenue between Albayrak and the Federal Government. The agreement's dispute resolution mechanisms appear inadequate, given the inexperience of Somalia's maritime regulator. The CA also indicated that the length of the concession was worth reconsidering, with a promise of renewal if key performance indicators are met. International experience, it was noted, shows that ambiguity in a contract of this kind can lead to labor disputes, non-competitive port costs and repressed government revenues. The Confidential Assessment recommended that the Federal Government seek an amicable renegotiation of the contract's more troubling clauses.

63. The Prime Minister instructed the Cabinet Subcommittee on Infrastructure to discuss the agreement in light of the Confidential Assessment, and asked the

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Minister of Ports and Marine Transport and the Minister of Finance to undertake a review, including of the contract's implications for employment in the Port. A report was prepared for the Prime Minister by the two ministries, and shared with the FGC on October 6, 2014. The report noted that the agreement has the potential "to bring the Mogadishu port to prudent industry practices and standards", to increase Mogadishu's overall productivity, and to thereby enhance the prospect of peace and stability. It also drew attention to the lack of a "credible procurement and concessions process", and recommended that the "Federal Government of Somalia would be best-served to review the difficult and unclear parts of the contract", and that the agreement should be renegotiated "without compromising its overall integrity". The report proposed that clear performance guidelines should be introduced; costed and timed investment plans should be submitted, both by Albayrak and the Federal Government; and that steps should be taken to ensure that the performance of the company is supervised by a qualified supervising engineer (to be recruited if necessary from abroad).

64. In light of the urgent need to reorganize Mogadishu Port, the Council of Ministers endorsed the handover of the management of the port to Albayrak, and on September 13, 2014 all pre-existing port operatives were given notices of termination and requested to remove their equipment. The Minister of Finance informed the FGC that Federal Government revenues from Mogadishu Port had increased appreciably in October and November 2014.

65. In November 2014, the Minister for Ports and Marine Transport visited Albayrak in Turkey, and discussed possible amendments to the agreement. Shortly thereafter the Council of Ministers was dissolved, and no tangible progress has taken place since. The FGC was recently informed that negotiations with Albayrak have been scheduled for early November 2015. The current Minister has appealed to the World Bank for technical advice prior to the negotiations. The Bank will assist, consistent with its remit (the Bank may not participate directly in a commercial renegotiation process).

**TGS-NOPEC Geophysical Company ASA**

66. On July 15, 2014, at the initiative of the Prime Minister, a draft contract between the Federal Government and TGS-NOPEC Geophysical Company ASA (TGS-NOPEC) was shared with the FGC. The contract had been initiated by Galmudug Region, and related to the collection and marketing of oil and gas data in that region. A Confidential Assessment comparing this contract and the draft CGG/Robertson agreement was delivered on September 6, 2014. The CA found that the two

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agreements were incompatible because they overlapped with respect to services to be provided and geographical coverage. In addition, it was felt that the draft CGG/Robertson agreement offered superior terms on revenue sharing, data ownership and the length of the exclusivity – while also providing for the rebuilding of Somalia's national petroleum database and associated training.

67. The Ministry did not at first react to the CA, but after the change of Prime Minister and Council of Ministers, asked the FGC on August 9, 2015 for assistance with drafting a letter to inform the company that the Federal Government no longer wishes to pursue contract negotiations. A suggested draft was sent on August 12. The FGC is awaiting confirmation that a letter has been sent to TGS-NOPEC.

**Somalia-FishGuard Ltd.**

68. This wide-ranging concession was signed between the Minister of National Resources and Somalia-FishGuard Ltd. (FishGuard) on July 25, 2013. It was shared with the FGC on April 29, 2014 and a Confidential Assessment was delivered on July 4, 2014.

69. The CA pointed to serious difficulties in the agreement. One is its level of ambition: it is most unusual to contract a single firm to manage every aspect of a country's fisheries sector, including policy advice, legislative drafting, licensing, patrolling/enforcement, research, conservation and industrial development. The 15-year length of the exclusivity is well above industry norms. The agreement does not clearly specify the capital, equipment, facilities, training and personnel that would be provided, nor does it establish delivery schedules or embody quality standards/performance benchmarks. While the cost-sharing responsibilities of the parties are imprecise, the share of gross revenues accruing to FishGuard appears high when compared with other such contracts. The agreement also embodies a potential conflict of interest: FishGuard is responsible both for selling fisheries licenses and for conserving the country's fisheries resources (these responsibilities are typically separated in fisheries service contracts). The CA recommended either cancellation, or renegotiation of a contract with a much more limited scope.

70. On November 21, 2014 the Minister of Fisheries and Marine Resources wrote to FishGuard drawing its attention to these problems, and proposing that the current agreement be replaced by a more tightly focused instrument concentrating on support for the creation of a Somalia Fisheries Protection Force.



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71. FishGuard has subsequently suggested reducing the period of exclusivity somewhat, and addressing the above-mentioned conflict of interest by withdrawing from managing conservation matters on the Ministry's behalf. More fundamental differences between the Ministry and FishGuard have now emerged, though. Officials in the previous and the present Ministry have issued a number of tuna fishing licenses, mostly to Chinese companies, without involving FishGuard. FishGuard is claiming a share of those license fees, in accordance with the provisions of its contract -- so far without success. FishGuard has not itself managed to issue any fishing licenses.

72. Although the FishGuard contract is effectively sidelined, uncertainty over FishGuard's role and divided views on the contract within the Government are interfering with the orderly development of Somalia's fisheries sector. Despite the stipulations in the 2014 Fisheries Law and the 2014 Beau Vallon Communiqué<sup>27</sup> that revenues must be shared between the Federal and Regional governments, there is currently no operative agreement on the issuance of licenses or the sharing of license revenues, nor any evidence that revenue from the licenses sold by the Ministry has been paid to the Regions (or indeed into the Federal Government's Single Treasury Account). Puntland, moreover, has also been issuing its own fishing licenses. FAO estimates that the country as a whole should be able to earn in excess of US\$10 million per annum in fishing licenses without compromising the sustainability of Indian Ocean tuna stocks; this compares with an estimated maximum of US\$2 million earned by all parties so far this year. Attracting the more credible EU and global fishing fleets will require a revenue-sharing agreement to which Federal and Regional political leaders commit themselves. Achieving such an agreement, in today's atmosphere of competition and mistrust, will itself involve institutional and monitoring arrangements of the kind agreed to in principle in Addis Ababa last year<sup>28</sup>, but never enacted. Funding to help implement the essential structures has been made available through FAO by the Government of Italy<sup>29</sup>.

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<sup>27</sup> A communiqué was signed on April 6, 2014 in Beau Vallon, Seychelles, by representatives of the Federal Government and the governments of Puntland, Somaliland, Galmudug and Jubba (as members of the Somalia Maritime Resource and Security Fisheries Working Group), which *inter alia* stipulated that "the Federal Government of Somalia may only issue licences for offshore highly migratory pelagic stocks after prior agreement with Puntland, Somaliland, Galmudug, Jubba Administration and other states with a mutual interest in these resources, on revenue sharing, transparency and other modalities, and a robust monitoring control and surveillance system infrastructure is implemented."

<sup>28</sup> On May 3, 2014, following a meeting chaired by FAO, a communiqué was signed in Addis by the Federal Vice-Minister of Fisheries and the Ministers responsible for fisheries in Puntland, Jubbaland and Galmudug. The communiqué specified the establishment of a Federal Somali Fisheries Authority to manage, conserve and administer Somalia's offshore migratory fishing stocks as well as a split of license revenue that gave 30% each to the Federal Government and Puntland and 20% each to

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73. The Federal Government needs to resolve FishGuard's anomalous contractual situation. It is more than 15 months since the FGC Confidential Assessment, and the observations made at that time have been validated by subsequent events. It should be noted that the Parliament has now called for the cancellation of this contract (paragraph 22). Once convincing action has been taken, it is reasonable to expect that significant amounts of bilateral development financing now in limbo will be unblocked and made available to the sector<sup>30</sup>.

**Great Horn Development Company**

74. This framework agreement (FA) was signed between the Minister of Ports and Marine Transport and the Great Horn Development Company (GHDC) of Djibouti on April 29, 2014. The FA provides GHDC (and its potential sub-contractors) a six month period of exclusivity in which to plan, develop/rehabilitate and operate various ports and related road infrastructure (the ports in question are a new commercial port for Mogadishu at Elma'an, new fisheries harbors at Gara'ad, Egue and Barawe, and the existing ports of Kismayo and Bosaso). That period has now passed. The FA was shared with the FGC on October 20, 2014 and a Confidential Assessment was delivered on December 4, 2014.

75. The CA noted that the FA makes no mention of the role of any regional administration. Given that the Puntland and Jubbaland regional administrations exercise *de facto* control over the ports of Kismayo and Bosaso, it is unclear how the FGS could have delivered on the exclusivity granted GHDC in the FA. This underscores the need for a dialogue between the Federal Government, the various port authorities and the regional governments to establish the rights and obligations of different levels of government in relation to port management.

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Jubbaland and Galmudug. The agreement lacked high-level political support, however, and was not enacted. It expired on 31 December, 2014.

<sup>29</sup> Under the Addis communiqué, the Federal Somali Fisheries Authority would require licensed fishing vessels to carry a Vessel Monitoring System to provide real-time data on their movements and location to all Regional governments. The Government of Italy has committed US\$1.4 million via FAO to help set up the Federal Authority and licensing system, including provision of a Vessel Monitoring System. Of this, some US\$0.5 million was spent before FAO froze the project pending a decision by the Government on the future of the FishGuard contract. Re-Activation of these funds also depends on the Federal Government and the Regions coming to a durable agreement for the management of the sector.

<sup>30</sup> Among those donors who have previously pledged assistance to the sector are the Governments of Norway and the UK.

76. The Ministry (now the Ministry of Ports and Shipping) has not reacted to the Confidential Assessment. Moreover, in discussion with the FGC in September 2015, an official representing the Ministry appeared unaware that his Ministry had signed a contract with Great Horn Development Company. The FGC has been unable to obtain further feedback.

**Polaris Energy SDN BHD**

77. An undated Memorandum of Agreement (MOA) was signed between the former Ministry of Water and Energy and Polaris Energy SDN BHD of Malaysia (Polaris), apparently in June 2014. The contract was provided to the FGC on November 5, 2014, and a Confidential Assessment was provided on February 13, 2015.

78. The proposed project is intended to supply electricity to Mogadishu, and consists of a "fast track" Phase 1 of between 75 MW and 88 MW movable gas/diesel-fired electrical power plants, and a "long term" Phase 2 of 450 MW dual fuel/coal fired electrical power plants. For Phase 2, Polaris intends to partner with China National Electrical Engineering Corporation (CNEEC), "or equivalent". The estimated cost of Phase 1 is US\$200 million, which the MOA states will be a "grant from Polaris to the People of Somalia". Phase 2 is estimated at c. US\$1 billion, and the MOA indicates that "this option will require Government to government collaboration in which Polaris shall act as a facilitator".

79. The Confidential Assessment pointed to a number of serious concerns, including the technical design and feasibility of the projects proposed by Polaris, and the need for a careful assessment of Polaris' capacity to both finance and implement the proposed program. The CA also recommended that the MOA be adjusted to make clear that it was a *non-binding* statement of intent, and must be followed by a formal, detailed agreement that addresses key issues left unspecified in the current MOA. It was proposed that any such formal agreement should be confined to Phase 1 – and that the much larger Phase 2 project should be tendered competitively, on the basis of a specified scope of work and TORs that should only be drawn up after a power needs assessment has been carried out. In addition, the Assessment recommended that the Federal Government should reconsider the wisdom of agreeing to a Phase 1 power solution that uses gas. First of all, no gas has yet been extracted from the Afgooye field; second, alternatives to the gas/diesel plant proposed in the MOA using either diesel or HFO (heavy fuel oil) are likely to be considerably cheaper; and third, oil and gas concessions should not be handed out

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to foreign interests in the *ad hoc* manner described in Polaris' public statements about the program.

80. The current Minister of Power and Water and his staff have studied the Confidential Assessment carefully. The Minister met with officials from Polaris in July 2015 and indicated that he was unhappy with the MOA. He also clarified that Somalia would not be able to contemplate the proposed Phase 2 US\$1 billion "Government to Government guarantee" implicitly involving the PRC, and that no Afgooye gas concession could be considered unless all of Phase 2's arrangements were firmly in place. The Ministry's preference is to set the MOA aside and to tender for electricity supply for Mogadishu on an open, competitive basis.

81. The FGC was asked to offer advice on next steps. The FGC's view is that the Ministry should contract specific short-term technical assistance to help develop an electricity supply strategy for the capital, and to assist with the preparation of bidding documents. The Interim National Procurement Board should then oversee the tender process.

**Spectrum ASA**

82. After a rocky start and up to the last hurdle, the process surrounding this document offers a model of how a ministry can use the advice of the FGC.

83. A draft agreement between the then Minister of Petroleum and Mineral Resources and Spectrum ASA (Spectrum) of Norway, drawn up in October 2014, was brought to the FGC's attention by the Africa Legal Support Facility in mid-November, 2014, but was not forwarded for FGC review by the Ministry at that time. Nonetheless, after its meeting of April 12, 2015 the FGC decided to review it.

84. A Confidential Assessment was produced on July 3, 2015. The Ministry, under new leadership, responded on July 11, 2015 providing key clarifications and taking account of most of the recommendations of the Assessment. A Supplementary Confidential Assessment was sent on July 15, 2015 and the Ministry addressed all outstanding issues in its response/redraft of July 20, 2015.

85. The Spectrum draft is another seismic data collection, processing and brokerage agreement. It is of good quality, and the revised draft offers fair terms and provides adequate protections for the nation and the Federal Government. Importantly, the revised draft is in synch with the revised draft CGG/Robertson Geospec agreement of May 11, 2015, as well as with Soma's seismic data collection

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work (which Spectrum proposes to 'infill'<sup>31</sup>) -- both in terms of areas of coverage, and rights to data marketing<sup>32</sup>. In the expectation that both the Spectrum and CGG/Robertson contracts will be signed, the Confidential Assessment recommended that the Ministry of Petroleum and Mineral Resources ensure that the training and capacity building programs provided for in both draft contracts (as well as through ongoing Soma activity) should be carefully synchronized.

86. Subsequent to this process, and following the publication of the SEMG report on Soma and the attention this drew to the Soma/Ministry of Petroleum capacity building program, Spectrum requested the removal of the capacity building elements from the agreement. It is understood that this was done, and that the agreement instead provides for early revenue payments directly to the Treasury Single Account in CBS: MOF would now allocate capacity development funds to the Ministry as part of the regular Budget process.

87. The adjusted final version of the contract was signed on September 5, 2015 without further reference to the FGC. This seems to have happened out of a wish to respond quickly to the announcement on September 1 of the conclusion of a geophysical data acquisition contract between the Puntland Regional Government and the ION Geophysical Corporation of Houston, Texas (paragraph 48).

**Mubadala Oil and Gas Holding Company LLC**

88. This Cooperation Agreement was signed between the Federal Ministry of Petroleum and Mineral Resources and the (Mubadala) on June 18, 2014 (it is thus one of the contracts signed after April 23, 2014 (paragraph 5) . The agreement is valid for two years. The FGC heard of its existence in mid-2014 but was unable to obtain a copy until July 10, 2015.

89. The Mubadala Development Company Oil & Gas Holding Company LLC is a reputable petroleum company wholly owned by the government of Abu Dhabi in the United Arab Emirates (UAE). It is one of the Mubadala Development Company PJSC's group of companies.

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<sup>31</sup> By conducting more intensive seismic work in the areas surveyed by Soma.

<sup>32</sup> The May 11, 2015 CGG/Robertson Geospec draft contract makes clear that the data that CGG/Robertson can market exclusively is data collected prior to May 31, 2014. The Soma data, which Spectrum ASA would exclusively market along with the data it collects itself, was gathered after that date.

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90. The Cooperation Agreement envisages an exchange process whereby the Federal Government provides Mubadala, free of cost, with seismic and other data on Somalia's offshore blocks in return for analytical reports on that data. Mubadala is then permitted to keep a copy of the data and to select offshore blocks for which it would be provided preferential rights to negotiate Production Sharing Agreements (PSAs). The agreement is comparable to the Soma contract, in this case trading data analysis for the right to negotiate PSAs without competition. As pointed out in paragraph 49, the data collection and brokerage agreement with Spectrum ASA and CGG/Robertson GeoSpec now enable Somalia to pursue a strategy involving open geophysical data sales and a competitive system of PSA allocations.

91. The new leadership of the Ministry of Petroleum and Mineral Resources has told the FGC that it wishes to reconsider the petroleum exploration model embodied in the Soma and Mubadala contracts. The Mubadala Cooperation Agreement has not so far been activated, and will expire on June 17, 2016 unless renewed by mutual agreement.

**ADCO Group of Companies**

92. In 2011 the Transitional Federal Government (TFG) decided to invite the ADCO Group of Companies (ADCO), a Somali entity based in Mogadishu, to collect the import tariffs due on khat shipments to Mogadishu on its behalf. At that time the TFG was collecting approximately US\$75,000 per month: ADCO had proposed to remit US\$120,000 per month to the Treasury if it were granted this concession. ADCO's proposed role was supported by a letter dated May 18, 2011 signed by several other khat importers. After authorization by the Deputy Prime Minister, the Minister of Finance signed an initial agreement with ADCO on June 6, 2011. This agreement was renewed four more times, with the monthly sum payable by ADCO continually adjusted upwards until it reached US\$800,000 at the time of the final renewal on September 2, 2011.

93. The contracts are very succinct, consisting of one side of Ministry of Finance official letterhead on which MOF acknowledges that ADCO has conformed with the stipulations of the previous contract, and extends the concession while adjusting the monthly sum due to MOF. No description of ADCO's obligations is provided, nor are any details of the account(s) into which ADCO payments should be made. The contracts specify that either party can withdraw from the arrangement by giving 30 days notice. They are copied to the Director General of the Ministry of Finance, the Accountant General and the Customs Director.

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94. The TFG/FGS' decision to award a tax farming contract to a local company is not at issue, although the manner in which the contract was awarded lacked transparency, and the contract itself is more of a handshake than a serious legal agreement. It does not appear to require any independent accounting for, or verification of, the relationship between the quantities of khat imported, the taxes collected and the fees that ADCO is required to pay.

95. The most disturbing aspect of the contract from the FGC's perspective, though, is that its own Chairman signed the last renewal of the concession without mentioning its existence to the FGC (paragraph 5).

96. The present Chairman of the FGC and Minister of Finance terminated the arrangement as of June 15, 2015, in a letter dated May 14, 2015. Since mid-June, MOF has once again been collecting khat tariffs directly. MOF figures for the first 25 days of the new regime show that some US\$947,024 was collected (equivalent to \$1,136,428 for a 30-day month (compared to \$800,000 under ADCO). Even after adjusting for MOF's collection costs, this enhanced figure suggests that the Treasury will earn more revenue by collecting khat taxes directly.

*Annex 1*

**A Note on Oil and Gas Contracting**

1. **Legal Issues.** The question of whether or not Regional Governments have the authority to issue oil Production Sharing Agreements (PSAs) is disputed, in part because of legal ambiguities.
2. The Transitional Federal Charter of 2004 states that "the natural resources of the country such as the minerals.....shall be public property and a law shall be enacted which defines the manner of exploitation for the common good," (Article 67) and that "the Transitional Federal Government, shall on the coming into force of this Charter pass legislation ensuring equitable appropriation and allocation of resources in the country" (Article 13). The Federal Petroleum Law passed by the Transitional Federal Parliament in 2008 states that "Petroleum belongs to the Somali nation and will be protected and distributed by the central government " (Article 3), and that "for the conduct of petroleum operation in Somalia [petroleum companies] can only and exclusively make agreement with the central Federal Government" (Article 11).
3. Article 44 of the Provisional Constitution of the Federal Republic of Somalia , however ('Natural Resources'), indicates that "The allocation of the natural resources of the Federal Republic of Somalia shall be negotiated by, and agreed upon, by the Federal Government and the Federal Member States in accordance with this Constitution". This creates an inconsistency with the Petroleum Law over the respective roles of the Federal and Governments -- though it does *not* allow Regional Governments to grant petroleum rights unilaterally without negotiation with, and agreement from, the Federal Government. The picture is further complicated, however, by Article 142 of the Provisional Constitution, which states "Federal Member States existing prior to the provisional adoption of this Provisional Constitution by a National Constituent Assembly shall retain and exercise powers endowed by their own State Constitution".
4. Anyone concerned with the stability of the country will recognize the dangers posed by a lack of consultation and trust between the Federal and Regional Governments when granting petroleum exploration rights, particularly in a contestable legal environment. It is a fact of history that violent conflict can erupt in fragile environments where petroleum resource rights and income sharing arrangements are in dispute. A foretaste of potential trouble can be seen in the



apparent 'tit-for-tat' awards of seismic data acquisition and marketing contracts by Puntland and then the Federal Government (to ION Geophysical Corporation and Spectrum ASA respectively) in September 2015 (paragraph 49).

5. **A Shared Vision for the Sector.** The overriding issue in the oil and gas sector is the lack of a shared Federal - Regional vision on ownership, control and revenue sharing. This requires agreement on a legal and fiscal framework to govern the sector.

6. The current absence of a such a framework -- and the doubts this casts on the legality of signing oil-related contracts with any party in Somalia -- is probably inhibiting interest in the country by the larger global players. There are clear parallels with the fisheries sector (paragraphs 71-72), where the lack of any transparent licensing system and well-publicized friction between the Federal and Regional Governments has put the more reputable fishing fleets off applying for licenses, and has reduced Somali's potential fisheries income to perhaps one-fifth of what it could be.

7. The Federal authorities have informed the World Bank<sup>33</sup> and other donor partners that they are committed to achieving an acceptable agreement on oil and gas ownership, management and wealth-sharing with the Regions. They have also indicated that the initial stage of this discussion should take place at a political level among Somali officials. This phase should be time-bound, however. If 'internal' bargaining continues too long it may raise doubts about the true nature of the wealth sharing discussions underway; this will also increase the risk of unilateral action by disaffected Regional Governments.

8. By the end of this year the internal process should transition into a more public phase of discussion about ownership, resource control, wealth-sharing formulae, the design of a national regulatory authority in which Regional Governments participate, and the procedures whereby the Federal and Regional Governments will market data, invite and negotiate exploration/bids from

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<sup>33</sup> The former Minister of Petroleum and Mineral Resources formally requested the World Bank to broker a series of high-level consultative meetings on petroleum ownership, control and revenue-sharing, to take place involving both Federal and Regional stakeholders. The aim of these meetings was to reach agreements between Federal and Regional authorities that could, with appropriate technical support, be embedded into the Provisional Constitution and form a revised petroleum legal framework. The World Bank also offered petroleum negotiation support was also part of the package that the World Bank was offering. The meetings were expected kick off in Istanbul in April 2015, but the Federal Government at that point indicated that it needed to conduct a process of confidence-building of its own first.

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international oil companies, manage revenues and build capacity in the sector in a rational and comprehensive manner (in contrast to the ad hoc project-by-project offers now being received). The center-piece of the proposed World Bank Petroleum Project is to facilitate the consultative process needed to reach a shared set of Federal-Regional understandings. Decisions made will need to be formulated as adjustments to the 2008 Petroleum Law to bring it in line with the Transitional Constitution: the Petroleum Law will need to recognize the dual principles of federation and devolution. Amendments to the Transitional Constitution will also be needed to reflect the new shared vision.

9. The Somalia Eritrea Monitoring Group in its 2015 report calls once again for the implementation of clear legal and policy frameworks to govern the extractives industries in Somalia. The Monitoring Group also repeats its recommendation that the UN Security Council place a moratorium on all Somali oil and gas extraction until such time as a robust legal and fiscal framework is in place.

10. The Federal Government has not welcomed the idea of a UN-enforced moratorium<sup>34</sup>. The external imposition of such a measure is seen as an invasion of the nation's sovereignty.

11. The FGC, however, does strongly recommend both to the Federal and the Regional Governments that they do *not* permit any exploratory drilling by international oil companies until a new legal and fiscal framework for the sector is in place. Exploration drilling could uncover commercially-viable oil or gas deposits, and this could spark serious discord between Federal and Regional governments.

12. **Competitive Tendering.** The absence of open competition in the sector encourages a perpetuation of the secretive deal-making that has helped sow mistrust and suspicion between the Federal and the Regional Governments.

13. It was plausible to argue even as recently as a year ago that the nascent Federal Government was in no position to mount competitive tendering. That argument is becoming a tired one. Competitive process is enshrined in the *Public Procurement, Concessions and Disposal Act* which has been under review for a year and a half. The Interim National Procurement Board has been created, and with adequate technical support can pioneer the process of drawing up tender documents and running competitive bids (a first effort is suggested in relation to

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<sup>34</sup> See Bloomberg account of the October 2, 2015 press conference with the Minister of Finance ("Somali Government Rejects Proposed UN Moratorium on Oil Deals") as well as Bloomberg's October 9, 2015 story on Puntland's similar rejection.

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Mogadishu's electricity supply, paragraph d. on page 3). Donors are now better able to deploy in-time technical assistance on short trips to Mogadishu. Four contracts will soon be in play and together will deliver high-quality seismic data and data interpretations – the Soma, CGG/Robertson and Spectrum ASA Federal deals, and the ION deal signed by Puntland. These, if managed well and in a more cooperative inter-governmental spirit, will provide the basis for the competitive exploration of those on- and offshore blocks which are not 'spoken for' under legacy contracts.

14. In countries with no previous petroleum discoveries, the approach taken to exploration is often similar to what has happened so far in Somalia. Investors, often with their host government backing, make unsolicited applications to develop production blocks, offering data acquisition/enhancement/marketing and capacity building benefits in return for a right to select blocks for exploration. Agreements are then negotiated without any exposure to competition. Such negotiations typically lack transparency and accountability, and usually result in deals that are sub-optimal for the country.

15. Not only is it important to carry out competitive tendering; the manner in which it is organized is important. Bidders should be subject to a pre-qualification process that reviews their exploration track record and operating experience in similar environments, and the review process should be rigorous enough to filter out shady and inexperienced entrepreneurs in favor of competent and well-financed companies with reputations to protect. Open bidding allows governments to ensure that important policy outcomes, such as the maintenance of environmental safeguards and the provision of adequate benefits and opportunities to affected communities, are built into the structure of the oil & gas industry.

16. Once a decision has been made to introduce competitive tendering in the sector, the FGC will support the emergent national procurement evaluation and oversight bodies (in particular the Interim National Procurement Board, and the Inter-Ministerial Concessions Committee that will succeed it) as they structure public tendering processes. The FGC will also continue to review any draft oil and gas agreements against the new legal and fiscal framework.

**Annex 2****The Somalia Eritrea Monitoring Group and 'Secret Contracting'****The Monitoring Group's 2014 Report**

1. In its October 2014 report on Somalia, the Somalia Eritrea Monitoring Group (the Monitoring Group) discussed the phenomenon of 'secret contracting'. The report highlighted the *ad hoc*, opaque and non-competitive system of granting contracts and concessions in place in Somalia. The report also stated that many more concessions and contracts had been signed than had come to the attention to the FGC: "Sources have informed the Monitoring Group that dozens of contracts have been signed"<sup>35</sup>. Such claims could not be substantiated in the report, however.
2. Annex 5.1 of the October 2014 report lists the following examples of 'secret contracts':
  - a. The Soma Oil and Gas Exploration Limited concession (discussed in paragraphs 42 - 53);
  - b. The Mubadala Oil and Gas Holding Company LLC contract (in July 2015 this was finally shared with the FGC by the current Minister of Petroleum and Mineral Resources. The Monitoring Group report points to a potential conflict of interest in the agreement; COI issues are discussed in the FGC's Confidential Assessment. See paragraphs 88-91);
  - c. The Shell, ExxonMobil and BP pre-FGS legacy contracts (these do not need to be reviewed by the FGC until and unless specific reactivation negotiations take place, but the Monitoring Group was right to be concerned that honoring them could potentially conflict with the emerging reality of federalism);
  - d. The Turksom contract (this is a private sector deal that is not of direct concern to the FGC);
  - e. The FishGuard concession (discussed in paragraphs 68-73; the Monitoring Group report in Annex 5.1.d contains a letter authorizing FishGuard to act as the FGS' agent, which the FGC had not previously seen);
  - f. The National Theatre contract (this appears to be a bilateral arrangement between the FGS and the PRC, and thus not within the FGC's purview to

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<sup>35</sup> The report states that A footnote on page 28 of the report then cites a statement by "one senior official" that 25-30 such contracts were signed in the six months leading up to June 2014.

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review);

- g. The UNSOA contract (this is a UN contract and not within the FGC's scope of work).
3. The Monitoring Group also recommended that a moratorium should be placed on all oil licensing until legal understandings have been reached between the FGS and the regions about the ownership of/rights to Somalia's natural resources.

**The Monitoring Group and the FGC**

4. Although the Monitoring Group and the FGC have different mandates, are authorized by different bodies and use different approaches, they share some basic common goals. The Monitoring Group is empowered by the UN Security Council to investigate threats to the stability of Somalia. While its primary focus is on security issues such as illegal arms trafficking and piracy as well as the traffic in illegal substances such as charcoal, its mandate also encompasses economic mismanagement insofar as this is likely to damage state legitimacy and contribute to political discord. This is why the Monitoring Group concerns itself with evidence of public sector corruption and financial diversion. The Monitoring Group has written extensively about various aspects of corruption in its reports on the Central Bank of Somalia (2013), the Shulman Rogers asset recovery contract (2014), 'secret contracting' (2014) and the Soma Capacity Building Agreement (2015). The Monitoring Group works akin to a forensic auditor, obtaining statements and documentary evidence from a wide variety of official and unofficial sources, many of whom remain anonymous for reasons of personal or professional security.

5. The goal of the FGC is to advise on and in some cases oversee aspects of Federal Government public financial management (PFM). The theory underlying the creation of the FGC is that PFM reform is essential to legitimate state building, and that an advisory/oversight organization consisting of serving Federal officials and independent IFI delegates can contribute to the resolution of internal disputes that may not otherwise progress quickly enough to sustain a process of peaceful change. In structure, the FGC is a nine-person hybrid institution, consisting of six serving Somali officials<sup>36</sup> and three delegates appointed by the World Bank, the African Development Bank and the IMF. The FGC is principally advisory, though it has been given specific oversight duties by the Federal Government (with respect to the implementation of the National Asset Recovery Strategy and the review of all

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<sup>36</sup> Currently the Minister of Finance (Chair), the Governor of the Central Bank, the Chair of the Parliamentary Finance and Development Committee, the Solicitor-General and Senior Policy Advisers to the President and to the Prime Minister.

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concessions and contracts of over US\$5 million signed and/or drafted by Federal Government agencies). The FGC's modus operandi is to rely above all on the provision of objective information and policy recommendations to Somali policy-makers and, where appropriate, to the Somali public and the international community. The FGC's credibility derives from technical ability and political neutrality.

6. Contact between the Monitoring Group and the FGC began in April 2014, when the Coordinator of the Monitoring Group approached the FGC to offer early verbal 'visibility' of the contents of its forthcoming report on Shulman Rogers contract, and to establish a channel of communication. Since then the Monitoring Group has been a valuable source of concessions and contracts for the FGC. Specifically, the Monitoring Group has shared with the FGC the Somalia-FishGuard concession, and its knowledge of three other contracts: a contract with a Chinese company for the renovation of the National Theatre; a contract for the reconstruction of El Man port (the refurbishment of Elma'an port is one of the ports included in the Framework Agreement with the Great Horn Development Company, which the Chair of the FGC subsequently asked the FGC to review); and the ADCO khat tax collection concession. The Monitoring Group has also made the FGC aware of the existence of food and logistics contracts in the security sector; existing contracts will now require FGC Confidential Assessments, and future contracts will be tendered through the Interim National Procurement Board, with FGC support.

7. On August 3, 2015 the FGC met formally with the Monitoring Group, and agreed on a protocol for communication that is captured in the letter of September 5, 2015 from the Chair of the FGC to the Coordinator of the Monitoring Group. The letter proposes that anything of a formal nature should be addressed to the Chair of the FGC and the Coordinator of the Monitoring Group respectively, while FGC members and Monitoring Group team members should feel free to liaise informally on matters of mutual interest. The Monitoring Group had asked for observer status at future FGC meetings. The letter answers thus: "This is a request that has come the FGC's way on several occasions in the past, and for the sake of confidentiality and consistency we and the SRDF Executive Steering Committee that oversees our work have decided that aspects of FGC meetings should be kept confidential -- as our revised TORs state, "there may be occasions on which the FGC chooses to maintain confidentiality of discussions, to ensure that it can preserve a "safe space" for debate or where legal issues require it." Given the special status of the SEMG and the importance of building a substantive, trusting relationship, though, we would like to propose that the FGC should host a regular session with the SEMG in all of our future meetings".

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8. It should be noted that the FGC's Confidential Assessments have not been shared with the Monitoring Group. The FGC aims to restrict these CAs to a small circle of those who need to have them for review and renegotiation purposes, since they contain sensitive proprietary information on current contracts. Once a review/renegotiation of a contract has been completed, though, a redacted version of each CA will be released to the public by the FGC.

**Annex 3**



Jamhuuriyadda Federaalka Soomaaliya  
Wasaaradda Maaliyadda  
Xafiiska Wasiirka

جمهورية الصومال الفيدرالية  
وزارة المالية  
مكتب الوزير

The Federal Republic of Somali  
Ministry of Finance  
Office of the Minister

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October 20, 2014

**To: FGC Members**

**Re: Progress Report on the Review of Government Contracts/Concessions**

In my capacity as the chair of the Financial Governance Committee (FGC), the Ministry of Finance has been following up with the various government agencies and ministries to ensure that the recommendations made by the FGC following their review of the specified government contracts are implemented.

In addition, I would like to report that the Prime Minister has reiterated his support and the commitment of the government in ensuring transparency and accountability in all government dealings. It is in this regard, that he has directed the relevant subcommittees of the Council of Ministers to look into a number of government contracts already reviewed by the FGC. I have also issued reminder letters to the relevant ministries, seeking updates on the progress of contracts against the FGC recommendations.

This brief report sets out the actions undertaken by the government and the Ministry of Finance since the last FGC retreat meeting. A key summary of some of these actions are highlighted herein below :-

**Favori Ltd. Airport Contract**



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- FGC advice on this contract was shared with the Minister of Finance on April 23<sup>rd</sup>, 2014.
- In view of the national importance of this contract and recognizing of the urgent need for the upgrade on the Mogadishu Airport, the Government and Favori have agreed in principle to renegotiate the terms of this contract. This renegotiation is to be undertaken in line with the recommendations made by the FGC and in line with comments received from Parliament to ensure that the terms of the contract are aligned to the Somali Constitution and national laws. The amendments to be sought will seek to enhance and clarify the language of the contract especially on the provisions setting out the terms on income sharing.
- The process of renegotiation was set to be undertaken in September 2014 following certain milestones/progress in building works being achieved by Favori.
- An inter- ministerial committee comprising of representatives from the Ministry of Transport, Ministry of Finance and Ministry of Foreign Affairs has been set up to spearhead this review.
- Legal assistance is being obtained from the Africa Legal Support Facility provided by the AfDB and the new lawyer is to be engaged to assist as a priority in this review.
- Further letters and reminders seeking updates on progress made against FGC recommendations were issued by me in August 2014 to the Ministry of Transport and Civil Aviation.

**Albayrak Turizm İnşaat Ticaret A.Ş**

- FGC advice on this contract was shared with the Minister of Finance on May 27<sup>th</sup>, 2014, and advice on contract annexes was shared with the Minister of Finance at a later date.
- The Prime Minister (PM) during the weekly meetings of the Council of Ministers included discussions on this contract to the agenda of the Subcommittee on Infrastructure.

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- The PM directed the Minister in charge of Ports and the Minister of Finance to explore the economic and legal implications of this contract, to include a review on the financial benefits such as employment creation. This report was delivered to the PM and FGC members.
- Following discussions with the cabinet and in light of the urgent needs of the Port, the cabinet endorsed the handover of the Port management to the Company. However, there is also an understanding that aspects of the contract require amendment and this will continue to be pursued.

**CGG/Robertson GeoSpec**

- FGC advice on this contract was shared with the Minister of Finance on March 8<sup>th</sup>, 2014.
- The PM has directed the economic subcommittee of the Council of Ministers to report on the economic/financial implications of this contract.
- Minister of Petroleum informed the Cabinet that the contract had been modified in line with FGC advice. However, the Ministry of Finance has since undertaken an initial review of the new contract and has found that only a limited number of the changes advised have been implemented.
- The Minister of Finance plans to write to the Prime Minister, informing him that the amendments to the contract have not been made satisfactorily and on the need for negotiations in order to comply with FGC recommendations.

**AMO Shipping Company Ltd (AMOSC)**

- FGC advice on this contract was shared with the Minister of Finance on May 27<sup>th</sup>, 2014.
- No action has yet been taken, pending advice from the AfDB lawyers on the need to, and implications of, terminating this contract.

**Simatech International**

- FGC advice on this contract was shared with the Minister of Finance on April 16<sup>th</sup>, 2014.

- Reminder letters seeking updates on whether FGC recommendations have been incorporated were sent out to the Minister in charge of Ports.
- Legal advice to be sought from AfDB lawyers.

### **FishGuard**

- FGC advice on this contract was shared with the Minister of Finance on July 4<sup>th</sup>, 2014.
- Further letters attaching FGC recommendations have been sent out to the Fisheries Ministry. We have also requested an update on the progress made on the FGC recommendations so far.
- Legal advice to be sought from AfDB lawyers.

### **TGS-NOPEC Geophysical Company ASA (TGSM)**

- This contract was submitted to the FGC for review but has not been signed by the FGS.
- Initial comments and questions were submitted by the FGC to the Minister of Finance on October 16<sup>th</sup>, 2014.
- It is our understanding now that this contract is no longer being pursued by the government.

### **Shulman Rogers Contract**

- The Governor of the Central Bank of Somalia cancelled the Shulman Rogers contract for asset recovery.
- The government has selected a new attorney to represent it from a shortlist provided by the StAR Initiative.

**Hussein Abdi Halane**  
**Minister for Finance**

**Annex 60**

“Public Sector Contracts, Concessions and Procurement, Third Report”, *Financial  
Governance Committee*, 30 August 2016

*Somalia -- Financial Governance Committee -- August 30, 2016***Public Sector Contracts, Concessions and Procurement**  
***Third Report*****Summary and Recommendations**

- a) This is the third in a series of FGC reports; the First Report was released on January 8, 2015 and the Second Report on October 31, 2015. These reports can be found on the FGC portal of the Ministry of Finance's website at [mof.gov.so](http://mof.gov.so). Details on all the contracts that have come to the attention of the FGC can be found in the matrix that accompanies this report -- *Contracts and Concessions of Interest to the FGC, as of August 30, 2016*.
- b) As this report describes, the level of cooperation with the FGC by Federal Government of Somalia (FGS) line ministries continues to improve, albeit imperfectly. To date, 27 signed or draft Federal Government contracts and 1 regional contract have been identified; of these, a total of 26 have so far been handed to the FGC for review. The FGC has issued 16 Confidential Assessments (CAs), and another 4 CAs are currently in process. Although the line ministry associated with a particular contract is not obliged to follow the FGC's recommendations, ministries have by and large acted on the advice provided them. The 16 CAs have recommended a variety of improvements, from outright cancellation to allowing a contract to lapse to renegotiation, and in 15 cases out of 16 the action taken by the FGS has been compatible with this advice. Once the FGC review process and the line ministry's response to it is concluded, that particular FGC 'file' can be closed, and both the contract and the Confidential Assessment can be published on the MOF's website. So far, 10 of the 28 contract files have been closed.
- c) While the FGC will continue to carry out Confidential Assessments, increasingly positive FGS reactions to its work will allow the FGC to focus on three additional lines of procurement-related work. These are described below.
- d) The first is **supporting the work of the Interim National Procurement Board** (the INPB, see paragraph 12 ff below). The INPB was established by the Council of Ministers on March 19, 2015 as a transitional body to bridge the institutional gap that exists, and will remain, until the institutions envisaged under the *Public Procurement, Disposal and Concessions Act 2015* find their feet. *Annex 1* sets out the FGC's suggestions, current as of June 25, 2016, on how to ensure that the INPB can manage the transitional process effectively over the coming months.

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- e) The second is to **help build Federal Member States' public procurement capacity**. On January 25, 2016 the FGC held an initial meeting with the Finance Ministers of a number of Federal Member States (FMS) to explain its mandate and its work. It was agreed that this forum should continue to meet on a quarterly basis. The FGC is encouraging FMS to make use of the FGC review process on a voluntary basis<sup>1</sup>. At the same time, the FGC has requested an FGS Legal Opinion on the respective roles and obligations of the FGS and FMS in relation to procurement, with a view to discussing this with FMS at a future meeting of the FGC/FMS forum.
- f) The third is to **support the rationalization of inter-governmental fiscal relations**. The FGC will continue to explore how it can help the FGS and the FMS to agree on revenue-sharing arrangements. The Terms of Reference (TORs) of the FGC include offering advice on fiscal federalism, and the need for clear and mutually-beneficial revenue-sharing frameworks is evident from the FGC's work on oil & gas and fisheries contracting. The FGC does not wish to complicate ongoing discussions between the FGS and the FMS, or to supplant facilitation by international partners. The FGC seeks, rather, to play a catalytic role (as it did in 2014 when initiating work on the Use of Country Systems), by offering 'in-time' technical advice to all parties (for example, on successful Federal-regional revenue-sharing formulae in countries with institutional capacities and *de facto* revenue and expenditure assignments comparable to Somalia). A model Production Sharing Agreement (PSA) is nearing completion, and the FGC will need to review the proposed template, as well as any draft PSAs that are subsequently drawn up with oil and gas companies.
- g) The FGC's work on contracts and concessions was always intended to be temporary, serving as a bridge until Federal Government capacity and accountability mechanisms have been established. The lengthy delays in passing the *Public Procurement, Concessions and Disposal Act* and in activating the INPB have prolonged the period in which the FGC needs to continue reviewing contracts and concessions. The mandate of the FGC has been extended up until the end of April 2017, and it is reasonable to anticipate a continuing need for FGC involvement in procurement up to that point.

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<sup>1</sup> To date, only Galmudug Region has approached the FGC, asking in September 2014 for FGC views on an oil Production Sharing Agreement contract between Galmudug State/Galmudug Somali Petroleum Corporation and Petro Quest Africa. See also footnote 15.

## A. The FGC and Public Procurement

1. The Financial Governance Program and the Financial Governance Committee were established by agreement between the Federal Government of Somalia and the international community in early 2014. The April 23, 2014 TORs of the Financial Governance Program require the FGC to "*provide advice on existing concessions [and] contracts the Federal Government of Somalia has entered into*". At the FGC meeting of May 23, 2014, this remit was extended to include reviewing all *draft* concessions and contracts worth over US\$5 million, until such time as capable new national institutions could take over the review function.
2. The FGC's mandate creates an obligation by the Federal Government to deliver all relevant contracts to the Committee for review, and to take account of the substance of the FGC's reviews. FGC reviews are confidential in nature, and have been carried out by one of the International Financial Institution (IFI) delegates serving on the FGC<sup>2</sup>. This is the third report on FGC contract reviews; the first was dated January 8, 2015, the second October 31, 2015, and both can now be found on the FGC portal of the Somali Ministry of Finance's website at [mof.gov.so](http://mof.gov.so).
3. To date, 27 *Federal Government* contracts and concessions and 1 *Regional Government*<sup>3</sup> concession have come to the FGC's attention<sup>4</sup>; of these, 26 have so far been given to the FGC for review. To date the FGC has provided 16 Confidential Assessments<sup>5</sup>, and CAs of another 4 contracts are currently in process (see *Table 1* below and the the attached matrix, *Contracts and Concessions of Interest to the FGC, as of August 30, 2016* for more details).
4. The 28 contracts that the FGC is aware of deal with seismic data acquisition and marketing, oil and gas exploration, fisheries development and licensing, Mogadishu port and airport development, electricity provision, regional ports and port-related infrastructure development, patrol boat construction, import-export quality assurance, security sector food supply, telecommunications and revenue collection.
5. As has been stated by the FGC on many occasions, value for money and

<sup>2</sup> The reviewer is the World Bank's IFI delegate to the FGC, with technical support from World Bank staff, and in some cases in 2014 from the African Development Bank's African Legal Support Facility (ALSF).

<sup>3</sup> The concession agreement between Galmudug State, Galmudug Somali Petroleum Corporation and Petro Quest Africa.

<sup>4</sup> It should be noted that this list *excludes* the asset recovery agreement between the Central Bank of Somalia and Shulman, Rogers, Gandal, Pordy & Ecker PA, which was reviewed separately in November 2013 by the UNODC/World Bank's Stolen Asset Recovery (StAR) Initiative.

<sup>5</sup> Supplementary Confidential Assessments (SCAs) -- i.e. follow up analyses -- were also provided in 3 cases.

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transparency are best served through competitive public tendering, other than in exceptional cases (which require clear, documented justification). So far, only 2 of the contracts of which the FGC has become aware responded to a pre-defined scope of services and were tendered competitively. The slow progress towards competitive procurement reflects poorly on all development partners. Parliament took 19 months to pass the *Public Procurement, Concessions and Disposal Act 2015*; the Executive has meanwhile done little to introduce competitive procurement; donors remain hesitant to deploy the kind of on-site technical support needed to support its evolution, even though safe 'third party duty of care' arrangements can be used to field consultants outside Mogadishu International Airport.

**Table 1 -- FGC Reviews**

<b>Contracts and Concessions coming to the attention of the FGC -- by order of acquisition</b>							
	<b>Company</b>	<b>Date provided</b>	<b>FGC alerted by whom</b>	<b>Received in draft, or already signed</b>	<b>CA/Supplementary CA/other comments</b>	<b>Ministry response</b>	<b>File closed/web posted</b>
<b>2013</b>							
1	AGETCO	Documentation not available	SEMG			No action possible	
<b>2014</b>							
2	CGG/Robertson	3/1/14	FGS	D	CA/SCA	Ongoing	
3	Soma	3/2/14	FGS	S	CA	Complete	Y
4	Simatech	3/2/14	FGS	S	CA	Complete	Y
5	Favori	3/2/14	FGS	S	CA	Renegotiations ongoing	
6	AMOSC	4/1/14	SEMG	S	CA	Complete	Y
7	Spectrum	4/14/15	ALSF	D	CA/SCA	Complete	Y
8	Albayrak	4/22/14	FGS	S	CA/SCA/supp. Comments	Renegotiations ongoing	
9	FishGuard	4/29/14	Donors	S	CA/supp. comments	Complete	Y Submitted for posting
10	TGS-NOPEC	7/15/14	FGS	D	CA	Complete	Y
11	<i>Petro Quest (Regional concession)</i>	9/23/14	FGS	S	<i>Informal comments</i>	<i>Complete</i>	<i>Y</i>
12	Great Horn	10/10/14	SEMG	S	CA	Complete	Awaiting company no objection
13	Polaris	11/5/14	Donors	S	CA	Complete	Y
14	Modern Technology	2014 concession, documentation received 2016	SEMG	S (?)	CA process will be initiated once documentation translated		
<b>2015</b>							
16	Mubadala	7/10/15	SEMG	S	CA	Complete	Awaiting company no objection
17	ADCO	9/8/15	SEMG	S	Informal comments	Complete	Y
18	PGM-Proje	11/22/15	FGS	S	CA	Complete	Y
<b>2016</b>							



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19	Perkins Logistics	3/21/16	INPB	S	CA	Revised documentation to be reviewed	
20	M and T (port scanner)	3/31/16	INPB	D	CA	Awaited	
21	Horn Logistics	3/31/16	INPB	S	CA	Revised documentation to be reviewed	
22	Finsol (payroll tax collection)	7/30/16	FGS	D	Tender has been suspended		
23	Finsol (nontax revenue collection)	7/30/16	FGS	D	Tender has been suspended		
24	VBH Holdings	7/30/16	INPB	D	CA in process, to be discussed by INPB		
25	Smart	8/03/16 (English version)	SEMG	S	CA in process, to be discussed by INPB		
26	Model Oil and Gas PSA	18/8/16	FGS	D	CA in process		
27	M&T Property Transfer Tax	30/8/16	FGS	S	CA in process, to be discussed by INPB		
28	Aruba and Bulsho Hotels	Not yet; 2016 concession	FGS	D (?)			

6. As can be seen in *Table 1*, 10 of the 28 drafts and contracts so far identified were brought to the FGC's attention by non-Government interlocutors<sup>6</sup>. While the frequency of these unofficial 'sightings' has diminished significantly since 2014, the Modern Technology Ltd and Smart General Service Limited contracts were brought to the FGC's attention by the Somalia Eritrea Monitoring Group less than three months ago. This leaves the FGC unable to claim with any confidence that it is aware of all draft and signed Federal Government contracts.

7. There is clear reduction, however, in the freelancing which marked the FGS' approach to procurement in the first two years of the FGS' tenure. The change in official attitudes towards this behavior was demonstrated by the reaction to the 'unsanctioned' signing of an import-export quality control concession (with Proje Gözetim Mühendislik) by the Minister of Commerce and Industry on April 28, 2015; this triggered a May 18, 2015 Prime Ministerial Order making it clear that all international agreements must be approved, prior to signature, by the Prime Minister's Office and the Council of Ministers -- or else be considered invalid.

8. Federal Government responsiveness to FGC reviews has improved over the life of the FGC. An FGC Confidential Assessment is an advisory opinion, not an FGC instruction, but the FGC does expect a reaction to its reviews (even if is disagreement with the FGC's

<sup>6</sup> These were, as indicated in Table 1, the Somalia-Eritrea Monitoring Group (SEMG), the Africa Legal Support Facility (ALSF) and bilateral donors.

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recommendations). This expectation is substantiated by the TORs for the Interim National Procurement Board. These TORs require federal ministries and agencies to provide all draft contracts to the INPB, which must also "share all such draft contracts and concession agreements with the FGC for a Confidential Assessment of the proposed contract, and will carefully consider the FGC's recommendations, noting in writing the points with which it agrees and those with which it disagrees". To this point, no line ministry has provided any written reaction to an FGC Confidential Assessment -- other than in the cases of the CGG/Robertson GeoSpec International and Spectrum ASA agreements, in the form of proposed amendments to the draft contracts. Reactions have generally been elicited by the FGC pestering the concerned ministry until it agrees to meet and discuss the contract. What is more encouraging, though, is that ministries have by and large agreed with the FGC's recommendations, and have acted upon them, even though this has often taken time (either because of a lack of technical capacity, or because of initial resistance from officials associated with the original contract). The 16 CAs have recommended a variety of improvements, from outright cancellation, to allowing a contract to lapse; to renegotiation - - and in 15 cases out of 16, the actions taken by the FGS have been compatible with the FGC's advice<sup>7</sup>. The only instance in which the Government preferred not to follow the FGC's suggestions was in the case of the Soma Oil and Gas Exploration Limited concession.

9. FGC Confidential Assessments have *not* recommend wholesale cancellation of all of the contracts reviewed, even though almost none of them were subject to competitive tender, and under a strict interpretation of mid-Twentieth Century legacy laws are therefore invalid. In view of the ambivalent status of the old legislation and the legal limbo caused by delays in passing the *Public Procurement, Concessions and Disposal Act*, the FGC has taken a pragmatic position on these agreements, looking less at process and more at the value for money to the nation embodied in a particular contract<sup>8</sup>.

10. In its First Report of January 8, 2015, the FGC recommended that all contracts and concessions awarded by the Federal Government should be published on the Ministry of

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<sup>7</sup> It would be claiming to much to suggest that FGS action was always the *result* of FGC advice, though. In the case of the Favori LLC Mogadishu International Airport management concession, for example, pressure from Parliament played an important part in forcing the Ministry of Transportation and Aviation to approach Favori -- while in the case of the Albayrak Turizm İnşaat Ticaret A.Ş. (CN) Mogadishu Seaport management concession, renegotiations are being driven more by Albayrak's wish to revise the concession's revenue-sharing provisions. In both cases, though, the FGC's advice is providing important guidance for the renegotiation process.

<sup>8</sup> Legacy legislation also made certain stipulations which -- in the absence of the new Act -- were either redundant or unrealistic (public procurement was covered in the *Financial and Accounting Procedures of the State*, Laws No. 02 of December 29, 1961 and No. 317 of December 17, 1962, as amended by a Decree of the President of the Supreme Revolutionary Council of 23 December 1971; under Article 53 of the Stores Regulations enacted under this amendment, a Minister could only enter into a contract of up to 1,500 Somali Shillings, above which sum he/she needed to proceed through a National Tender Board that no longer functioned).

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Finance's website within two weeks of signature. This recommendation was never implemented. The current Chair of the FGC prefers that the FGC review process should conclude before the contract, and alongside it, the Confidential Assessment, is published. This process of 'closing the file' has now taken place in 9 instances, with another 3 expected to conclude shortly. These contract 'packages' can be found on the FGC portal of the Somali Ministry of Finance's website.

**B. Towards Regular Procurement: the Procurement Act, the INPB and transitional provisions**

11. **The Procurement Act.** The draft *Public Procurement, Concessions and Disposal Act 2015* (the Act) was approved by the Council of Ministers on May 22, 2014, but further progress towards its passage and ratification has been slow. The Act was finally approved by Parliament on December 12, 2015, and has just been signed into law, by HE the President on August 10, 2016. An official English translation of the Act is not yet available.

12. **The Interim National Procurement Board.** In light of the delays in passing the Act, and in order to broaden out and better institutionalize the work of the FGC on procurement, the First Report of January 8, 2015 recommended the creation of an interim public procurement body to bridge the institutional gap that existed, and will remain, until the institutions envisaged under the Act find their feet<sup>9</sup>.

13. Pursuant to this, the Council of Ministers on March 19, 2015 established an Interim National Procurement Board with responsibility for "reviewing and advising on government contracts and concessions; in particular, on whether the contracts serve the best interest of the Somali state and its citizens and whether further renegotiations are required to achieve this objective." The TORs for the INPB established a Board of five, chaired by the Minister of Finance<sup>10</sup>. The TORs also recognized that "establishing

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<sup>9</sup> The report stated that "it is unrealistic to try and establish competitive tendering immediately. The norm today is that private companies approach Federal Government ministries and agencies with draft contracts and concessions. Under an interim approach, the ministries/agencies could instead forward these draft contracts and concessions to a special procurement board whose operations would be linked to the review function accorded to the FGC. After board clearance, drafts valued at over US\$5 million would be forwarded to the FGC, which would provide a Confidential Assessment (which might propose further renegotiation). The ministry or agency would then send the draft contract, along with the advice provided by the board/FGC, to the Cabinet for decision. FGC Assessments would subsequently be made public. Any contracts or concessions signed without following this approach would have no validity". Over a year and a half has passed since the January 8 report, though, and the FGC would now argue that it is time to begin introducing competitive tendering -- see paragraph 16.

<sup>10</sup> The four other members are the Minister of Foreign Affairs and Investment Promotion, the Minister of Justice, the Minister of Planning and International Cooperation and whichever minister is responsible for the contract or concession under consideration. The Board is supported by a Technical Advisor for Concessions (non-voting) who also acts as the Board's Secretary.

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competitive tendering processes will be challenging, and in most cases it can be expected that private companies will continue to approach Federal Government ministries and agencies with draft concession proposals". Government ministries and agencies are obliged to provide all draft contracts to the INPB, which must also share these with the FGC for review, as noted in paragraph 8 above. Any contract or concession valued at US\$5 million or over that is signed without following these procedures "will have no legal validity". The TORs make clear the transitional nature of the institution: "The INPB will be gradually transitioned to a fully-fledged Inter-Ministerial Concessions Committee (IMCC) after the *Public Procurement, Disposal and Concessions Act* is passed and enacted by Parliament. Every three months from the establishment of the INBP, the Minister of Finance shall conduct a review of the INPB's work with a view to proposing to the Federal Government how the transition towards the creation of the Public Procurement Authority and the IMCC envisaged in the Act should be managed".

14. The INPB first met, after a long delay, on September 19, 2015, and reviewed its TORs. The Board decided to recommend to the Council of Ministers that the threshold for contracts to be reviewed by the INPB review be lowered from US\$5 million to US\$2 million and to adjust the job of the proposed Concessions Advisor to include helping lay the groundwork for the formation of the IMCC. The INPB has since met three times, but -- as indicated in *Annex 1* -- has yet to make much of an impact.

15. With its Technical Advisor/Secretary now on board, this situation is expected to change. *Annex 1* sets out the FGC's suggestions of June 25, 2016 on how to ensure that the INPB can be vitalized, and can manage the transitional process more effectively over the coming months.

16. In its meeting of August 9<sup>th</sup> 2016, the INPB agreed to revisit its ToRs once again in line with these proposals, and in light of the recently signed Procurement Act, to ensure their alignment with its legal provisions. The revised ToRs are expected to make a further adjustment to the INPB review thresholds, so that all concessions, irrespective of value, are subjected to INPB review. This adjustment is in line with the Procurement Act.

17. **Introducing competitive procurement.** Both the First Report of January 8, 2015 and the INPB's TORs recognize that potential suppliers will continue to approach the FGS with draft contracts, and that it is unrealistic to switch at once to a fully competitive system in which the Federal Government initiates calls for proposals on the basis of clear terms of reference. Nonetheless, it is important that competition should be introduced whenever *feasible*. This was recognized in the INPB's call for competitive bids for food supplies to the

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security forces, itself mandated by HE the President<sup>11</sup>; the FGC also stressed this principle in its April 26, 2016 Confidential Assessment of the draft M and T Solutions Limited proposal for providing and operating scanners in Mogadishu Port, stating that "this draft contract should be rejected and then put out to competitive public tender on the basis of a proper scope of work", while observing that "in 2012-14, when certain clear needs had to be met quickly, when FGS capacity to deliver services or manage competitive procurement was limited, and when the *Public Procurement, Concessions and Disposal Act* had not been passed by Parliament, extenuating circumstances existed and the non-competitive award of contracts was more acceptable. This is no longer the case".

**18. Federal Member States and the FGC.** *Annex 1* also touches on the prospective procurement relationship between the Federal Government and Federal Member States. On January 25, 2016 the FGC held an initial meeting with the Finance Ministers of various FMS to explain its mandate and work program, and it was agreed that this forum should continue to meet on a quarterly basis (with the second meeting now scheduled for August 16, 2016). The legalities of FMS procurement and of the Federal/FMS procurement relationship are somewhat ambiguous, and are not covered under the Procurement Act. The Transitional Constitution states that any exploitation of the country's natural resources by any FMS created after the promulgation of the Transitional Constitution requires consultation with the Federal Government, but this is a requirement that does not cover all procurement situations, or all FMS<sup>12</sup>. To this point the FGC has focused on encouraging FMS to avail themselves, on a voluntary basis, of the reviews undertaken by the FGC, while reassuring them that using this service will not set any legal precedents<sup>13</sup>. At the same time, the FGC has requested an FGS Legal Opinion on the respective roles and obligations of the FGS and FMS in procurement, to be discussed with the FMS at a future meeting of the FGC/FMS forum (at its June 14, 2016 meeting the FGC noted with concern that Puntland FMS had signed a concession for Berbera port without substantive

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<sup>11</sup> The President announced on September 9, 2015 that future food and logistics contracting for security sector institutions will be managed by the INPB: "Further to recent consultations and an internal review of the financial governance of our security sector, the Federal Government today confirmed the following commitments.....All tenders for logistic supplies will be carried out through the Interim Procurement Board" -- Government Press Release entitled *The President: We are Committed to Substantive Security Sector Reform*.

<sup>12</sup> Article 44 of the Provisional Constitution of the Federal Republic of Somalia ("Natural Resources"): "The allocation of the natural resources of the Federal Republic of Somalia shall be negotiated by, and agreed upon, by the Federal Government and the Federal Member States in accordance with this Constitution". Article 142: "Federal Member States existing prior to the provisional adoption of this Provisional Constitution by a National Constituent Assembly shall retain and exercise powers endowed by their own State Constitution".

<sup>13</sup> Subsequent to the January 25, 2016 meeting, the Galmudug Petroleum and Minerals Agency approached USAID to request an FGC review of a new draft oil prospecting contract with Petro Quest Africa (an earlier version of this contract was submitted to the FGC in 2014, but became redundant when the political construction and borders of the Galmudug FMS were changed in 2015 -- see paragraph 3). As yet, though, the FGC has not received a copy of the new draft.

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consultation, resolving to offer an FGC review to the Government of Somaliland in order to "help Somaliland get the best possible deal that it can").

**19. Supporting the rationalization of inter-governmental fiscal relations.** The FGC will continue to explore how it can help the FGS and the FMS to agree on revenue-sharing arrangements. The Terms of Reference (TORs) of the FGC include offering advice on fiscal federalism, and the need for clear and mutually-beneficial revenue-sharing frameworks is evident from the FGC's work on oil & gas and fisheries contracting<sup>14</sup>. The FGC does not wish to complicate ongoing discussions between the FGS and the FMS, or to supplant facilitation by international partners. The FGC seeks, rather, to play a catalytic role (as it did in 2014 when initiating work on the Use of Country Systems), by offering 'in-time' technical advice to all parties (for example, on successful Federal-regional revenue-sharing formulae in countries with institutional capacities and *de facto* revenue and expenditure assignments comparable to Somalia). A model Production Sharing Agreement (PSA) is nearing completion, and the FGC will need to review the proposed template, as well as any draft PSAs that are subsequently drawn up with oil and gas companies.

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<sup>14</sup> The First and Second FGC *Reports on Public Sector Contracts, Concessions and Procurement* dealt with this issue in some detail. In relation to oil and gas, the Second Report observed that "it is a fact of history that violent conflict can erupt in fragile environments where petroleum resource rights and income sharing arrangements are in dispute. In a situation in which no Federal/Regional legal or fiscal regime for resource sharing yet exists and where there are legal ambiguities alongside mutual suspicion between the Federal Government and some Regional Governments, there is a danger of pre-emptive -- or defensive -- action by one or other party. A foretaste of potential trouble can be seen in the apparent 'tit-for-tat' awards of seismic data acquisition and marketing contracts by Puntland and then the Federal Government in September 2015. On September 1, 2015 the Puntland Regional Government announced that it had concluded a geophysical data acquisition contract the ION Geophysical Corporation of Houston, Texas; this was followed on September 5 by the accelerated signature of a seismic data acquisition and brokerage contract between the Federal Government and Spectrum ASA of Norway". In relation to fisheries, the Second Report states that "Despite the stipulations in the 2014 Fisheries Law and the April 6, 2014 Beau Vallon Communiqué that revenues must be shared between the Federal and Regional governments, there is currently no operative agreement on the issuance of licenses or the sharing of license revenues, nor any evidence that revenue from the licenses sold by the Ministry has been paid to the Regions (or indeed into the Federal Government's Single Treasury Account). Puntland, moreover, has also been issuing its own fishing licenses. FAO estimates that the country as a whole should be able to earn in excess of US\$10 million per annum in fishing licenses without compromising the sustainability of Indian Ocean tuna stocks; this compares with an estimated maximum of US\$2 million earned by all parties so far this year. Attracting the more credible EU and global fishing fleets will require a revenue-sharing agreement to which Federal and Regional political leaders commit themselves".

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**Annex 1**

***The Somalia Financial Governance Committee***

**The Public Procurement, Disposal and Concessions Act and the transitional roles of the Interim National Procurement Board and the FGC**

*June 25, 2016*

**A. Background**

**The FGC and public procurement**

The FGC was established in early 2014, and was charged by the Federal Government of Somalia (FGS) with reviewing all contracts and concessions signed by the FGS valued at US\$5 million or above, as well as with reviewing any draft agreements meeting this criterion.

The FGC has been informed of 22 such contracts, and has received copies of 17 of these. It has prepared 16 Confidential Assessments (CAs), 3 Supplementary Confidential Assessments and 3 Notes to Files/Informal Commentaries on these agreements. The FGC does not require FGS signatories to follow its advice; it does, however, expect signatories to respond, and to explain their rationale if they decide not to accept the FGC's advice. Responsiveness of this kind has been slow to emerge, but with the exception of one ministry, which received its first FGC CAs in May 2016<sup>15</sup>, all FGS signatories have by now communicated with the FGC on the agreements reviewed.

On March 8, 2016, by mutual agreement between the FGS and the Somalia Donors Group, the FGC's mandate was renewed until the end of April 2017. The TORs for the FGC are unchanged; thus the FGC will continue to review FGS contracts and concessions valued at US\$5 million or above for another 9 months.

**The Interim National Procurement Board (INPB)**

In order to broaden out the ownership of its work, and in view of delays in passing the *Public Procurement, Disposal and Concessions Act* (the Act), the FGC recommended in January 2015<sup>16</sup> that an interim FGS advisory body be created to review new contracts and concessions. On March 19, 2015 the Council of Ministers established the Interim National Procurement Board (INPB), with responsibility for “reviewing and advising on government contracts and concessions; in particular, on whether the contracts serve in best interest of the Somali state and its citizens and whether further renegotiations are required to achieve this objective.” The TORs for the INPB (see *Attachment*) require a Board of five, chaired by the Minister of Finance (the four other members are the Minister of Foreign Affairs, the

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<sup>15</sup> The Ministry of Internal Security, in relation to the Confidential Assessments of the Perkins Logistics and Horn Logistics contracts delivered in May 4, 2016.

<sup>16</sup> See *FGC Reviews of Public Sector Contract and Concessions*, FGC, January 8, 2015.



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Minister of Justice, the Minister of Planning & International Cooperation, and whichever minister is responsible for the agreement under consideration). The Board's composition sought to prefigure that of the Inter-Ministerial Concessions Committee to be created under the Act (but see below). The Board is to be supported by an internationally-recruited Technical Advisor for Concessions (non-voting), who also acts as the Board's Secretary.

The INPB's TORs recognize that "establishing competitive tendering processes will be challenging, and in most cases it can be expected that private companies will continue to approach Federal Government ministries and agencies with draft concession proposals". Government ministries and agencies are obliged to provide all draft contracts above the established threshold (currently US\$2 million) to the INPB, which will "share all such draft contracts and concession agreements with the FGC for a Confidential Assessment of the proposed contract, and will carefully consider the FGC's recommendations, noting in writing the points with which it agrees and those with which it disagrees". Any contract or concession signed without following these procedures "will have no legal validity".

In addition to this review function, the INPB is responsible for making an inventory of "all contracts and concessions that have been entered into by the Federal Government", for identifying any new contracts and concessions and ensuring they are passed to the FGC, for monitoring "the implementation of all relevant contracts and concessions signed by Federal Government officials" and for ensuring publication of award decisions and contracts on a dedicated website "within two weeks of their signature".

With respect to contracts and concessions signed by Federal Member States, the TORs indicate that the INPB "will liaise with Regional Governments [and] will inventory all contracts valued at US\$1 million or equivalent and above, and all concessions entered into by Regional Governments, and will track their implementation".

On September 9, 2015 His Excellency President Hassan Sheikh Mohamoud announced that future food and logistics contracting for security sector institutions would be managed by the INPB<sup>17</sup>.

The INPB is a transitional body designed to bridge the gap between today and a future in which the procurement institutions envisaged under the new Procurement Act are up and running. Thus the INPB's TORs state that the INPB "will be gradually transitioned to a fully-fledged Inter-Ministerial Concessions Committee (IMCC) after the *Public Procurement, Disposal and Concessions Act* is passed and enacted by Parliament. Every three months from the establishment of the INPB, the Minister of Finance shall conduct a review of the INPB's work with a view to proposing to the Federal Government how the transition towards the creation of the Public Procurement Authority and the IMCC envisaged in the Act should be managed".

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<sup>17</sup> "Further to recent consultations and an internal review of the financial governance of our security sector, the Federal Government today confirmed the following commitments.....All tenders for logistic supplies will be carried out through the Interim Procurement Board" -- Government Press Release entitled *The President: We are Committed to Substantive Security Sector Reform*.

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The INPB has not been particularly effective so far. Its first meeting took place only six months after its creation, on September 19, 2015; it has met only twice since then. The Minister of Foreign Affairs has so far not attended any INPB meetings.

Nor have FGS ministries complied with the Council of Ministers' Decision of March 19, 2015, or the President's announcement of September 9, 2015. Since March 2015, FGS ministries have signed at least 4 contracts/concessions that ought to have been reviewed in draft both by the INPB and the FGC, but were not provided to either until after signature<sup>18</sup>.

- The first of these, between PGM Proje and the Ministry of Commerce and Industry for import-export quality control services, was signed on April 28, 2015. It took five months for the Ministry of Finance to be given a copy of the contract by the Ministry of Commerce, despite several requests. The agreement was reviewed both by the MOF's legal expert<sup>19</sup> (on behalf of the INPB) and by the FGC. These reviews led to renegotiations, and ultimately to a satisfactory contract.
- The second, between Smart General Service Ltd. and the Ministry of Finance for the collection of road tax, was signed on September 20, 2015. This concession came to light only recently, and will be reviewed by the FGC once an English translation is available.
- The third and fourth, between Perkins Logistics and Horn Logistics and the Ministry of Internal Security (MOIS), for the supply of food to the Somali National Police and the National Intelligence & Security Agency respectively, were signed on November 26, 2015. The contracts were bid competitively, in accordance with the INPB's instructions -- but were then signed without MOIS asking for an INPB or FGC review of the drafts. The signed contracts were later reviewed by the MOF (on behalf of the INPB) and by the FGC, with both recommending renegotiation. A response to these reviews is awaited.

In contrast, a fifth contract was correctly submitted to the MOF and the FGC in draft form (between M & T Solutions Limited and the Ministry of Internal Security, for scanning services at Mogadishu Port, dated December 7, 2015). Both the MOF and the FGC agreed that the agreement was flawed and required extensive revision. The FGC went further, however, and argued in its Confidential Assessment of April 26, 2016 that "this draft contract should be rejected and then put out to competitive public tender on the basis of a proper scope of work", prefacing this by observing that "in 2012-14, when certain clear needs had to be met quickly, when FGS capacity to deliver services or manage competitive procurement was limited, and when the *Public Procurement, Concessions and Disposal Act* had not been passed by Parliament, extenuating circumstances existed and the non-competitive award of contracts was more acceptable. This is no longer the case".

MOF's legal adviser, working on behalf of the INPB, produced excellent opinions that the FGC was able to complement and support. It should be noted, though, that the

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<sup>18</sup> "At least" in the sense that the FGC cannot be sure whether or not other contracts have also been signed.

<sup>19</sup> Funded by the Africa Legal Support Facility, ALSF.

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INPB *itself* did not carry out this work. As pointed out in the minutes of the January 12, 2016 INPB meeting, "members of the INPB underscored lack of its own capacity, legal as well as technical, to effectively review contracts/concessions....not much progress was made in addressing outstanding concessions/contracts already reviewed by FGC due to lack of technical and legal support...it was resolved, in the interim, for the INPB to use the services of the Solicitor General and ALSF-funded lawyer with Ministry of Finance for reviewing contracts on behalf of INPB".

The INPB has not so far made an inventory of contracts, monitored contract implementation, or established a website on which awards and contracts can be made available to the public.

The INPB's somewhat disappointing record is largely explained by two factors. The first is that several FGS ministries have chosen to ignore its mandate. The second is the lack of a dedicated Secretariat. This in turn is due to delays in agreeing a TOR for the international Concessions Adviser, and even longer delays in that person's recruitment by the World Bank. An Adviser has now been recruited, and a national counterpart is under recruitment.

### **The Public Procurement, Disposal and Concessions Act 2015**

The draft Act was approved by the Council of Ministers on May 22, 2014, and by Parliament, with certain amendments, in a third and final Reading on December 12, 2015. It has not yet been signed into law by HE the President.

The Act provides for the creation of a decentralized procurement system, in which a *Public Procurement Authority* (PPA) will be established to monitor and oversee compliance with the Act by 'Procuring Entities' -- i.e. any public institution given a budget with which to procure goods or services. The PPA will be managed by a Board consisting of 9 persons, appointed by the President on the advice of the Council of Ministers: a Chair "who shall not be in the public service", 4 public officials and 4 private sector appointees. The Board will be served by a Secretariat headed by a Director, who will also manage the PPA. In addition, an *Independent Procurement Review Panel* (IPRP) will be set up to investigate complaints and appeals from bidders. The IPRP will have 5 members, to be appointed by the Minister of Finance: 3 "from among nominees of professional, trade, or civil society organizations", and 2 selected from the private sector.

The Act also creates an *Inter-Ministerial Concessions Committee* (IMCC). According to Article 116 of the English translation<sup>20</sup>, the IMCC will comprise seven ex-officio members. Implicitly, five of these are permanent members, and two will vary depending on the concession under consideration. The IMCC Chair is the "Accounting Officer" of the Ministry

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<sup>20</sup> The English version is dated November 23, 2015, and precedes the final version approved (with certain changes) by Parliament.

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of Finance<sup>21</sup>; the other permanent members are the Accounting Officers of the Ministry of Justice, the Ministry of Planning & International Coordination, the Ministry of Federal Affairs<sup>22</sup> and the Attorney General; in addition, two other Accounting Officers will be appointed by the Council of Ministers to represent the interest of other relevant sectors; they may *not* include the "Minister responsible for the sector". The non-member Secretary of the IMCC is the Director of the Concessions Technical Unit (CTU) that will be established in the Ministry of Finance and will serve as the IMCC's technical arm. It should be noted that this composition is somewhat different from the draft, and thereby from the current composition of the INPB.

The IMCC and the CTU will review and approve concession bid documents prior to bid invitation, review evaluation reports to ensure proper procedure has been followed, evaluate bids, constitute negotiation teams, and approve negotiations benchmarks and the award of concessions. The CTU also oversees the management of concessions. The Minister of Finance, it should be noted, is charged with developing an annual concessions plan and with issuing a Certificate for Concession, without which a Procuring Entity cannot solicit a concession.

The IMCC must also ensure that regulations are issued that will bring the procedures for issuing any oil/gas or mineral concessions (for prospecting, reconnaissance and/or exploitation) in line with the Act. These regulations are to be issued within 180 days of the Act coming into force<sup>23</sup>.

### ***B. Proposed Transitional Arrangements***

#### **Timeframe and authority**

It is unclear when the Act will come into force, or how long it will take for the key institutions to become functional. At the INPB meeting of January 12, 2016 "it was resolved that the Chair [of the INPB] propose to the Federal Government how the transition towards the creation of the Public Procurement Authority and the Inter-Ministerial Concessions Committee envisaged in the Act should be managed". This paper has been written in conformity with the INPB's resolution.

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<sup>21</sup> An "Accounting Officer" is defined in the English version of the Act as "the person appointed as the Chief Executive Officer of a Procuring Entity." The definition creates ambiguity over whether this person is the Minister or the senior civil servant in a ministry, but the language of Article 116, Clause 3 (e) suggests that the term is meant to denote a Minister: to wit, "Two other Accounting Officers appointed by the Council of Ministers representing the collective interests of various sectors the economy (sic) connected with the concession other than the Minister responsible for the sector." The final Somali version of the Act is expected to clarify that the Minister is intended, though it has been pointed out that the meaning of the term "Accounting Officer" will need to be similarly defined in the PFM Act (which is still in draft form).

<sup>22</sup> This is apparently an error of translation, and should be the "Minister of Foreign Affairs", in his capacity as chairperson of the National Investment Commission.

<sup>23</sup> Under this same Article 160, it is stipulated that the Public Procurement Authority must ensure that "the issue of any license for prospecting, reconnaissance and exploitation shall be done in competitive manner and without the grant of a monopoly to any party."

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Article 177 of the Act stipulates that it will come into force not later than 12 months after signature by the President, or gazetting by the Minister of Finance, "whichever is earlier"<sup>24</sup>. This provides the legal space for the INPB and the FGC to function after the Act is signed.

It is reasonable to assume that it will take up to a year for the institutions created under the Act to become operational; it is therefore proposed that a strengthened and empowered INPB, supported by the FGC<sup>25</sup>, should oversee public procurement until the Act comes into force. At that point all procurement-related functions would be handed over to the Public Procurement Authority, the Inter-Ministerial Concessions Committee and the other entities created under the Act.

For an effective transition of this kind to take place, a number of steps are required. They are listed below.

### **Recommended actions**

1. **Increasing the authority of the INPB.** Currently the INPB is responsible for "reviewing and advising on government contracts and concessions". It now needs to be given oversight authorities similar to those accorded to the PPA and the IMCC under the Act. This will require an amendment to the INPB's TORs, and a directive from the Council of Ministers to replace the directive of March 19, 2015. This new directive should, *inter alia*, specify whether the INPB will hand over authority for *non*-concessions procurement before the end of the transition period (once the Public Procurement Authority and the first Procurement Committees and Procurement Units have come into being)<sup>26</sup>. Target date for a revision of the INPB's TORs: August 15, 2016 (INPB focal point: INPB Chair and Minister of Finance, with assistance from the Concessions Adviser). Target date for the new directive: August 31, 2016 (INPB focal point: INPB Chair and Minister of Finance).
2. **Improving the functionality of the INPB.** The following actions are recommended:
  - The INPB should meet regularly from July 2016 onwards, now that the Adviser has been recruited; summary minutes of these meetings should be made public on the MOF's website. Target date for next meeting: late July 2015 (INPB focal point: INPB Chair and Minister of Finance)
  - The composition of the INPB should be adjusted to better mirror that of the IMCC. Target date for inclusion in INPB's revised TORs : August 14, 2016 (INPB focal point: INPB Chair and Minister of Finance)

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<sup>24</sup> The gazetting requires completion of a number of tasks, including appointment of the Board of the Public Procurement Authority and its Director, appointment of the members of the Independent Procurement Review Panel and the establishment of Procurement Committees and Procurement Units in at least 12 Procuring Entities.

<sup>25</sup> The FGC's current mandate runs through April 2017.

<sup>26</sup> It should also specify that contracts redrafted under the advice of the FGC/INPB need to be reviewed again prior to signature; this point has not been clearly understood by all ministries.

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- The recruitment of a national counterpart to the Concessions Adviser should commence without delay. Until such time as this post can be filled, MOF should depute its legal expert to work with the Concessions Adviser. Target date to complete recruitment: August 31, 2015 (FGC focal point: Mariam Mohamed)
- 3-monthly reviews of INPB progress and of the transition towards the IMCC should be initiated, as per the INPB's TORs. Target date for the first such review: October 31, 2016 (INPB focal point: INPB Chair and Minister of Finance)
- The legal relationship between the INPB (and in future, the IMCC) and the Regional States should be clarified. An FGS Legal Opinion on the respective roles and obligations of the FGS and Federal States in procurement, as provided for under the Provisional Constitution and the Procurement Act, should be prepared and discussed with the Regional States by the FGC in one of its quarterly meetings with Regional Finance Ministers. Target date for the Legal Opinion: October 31, 2016 (FGC focal point: Solicitor General)

3. **Specific INPB tasks for 2016/2017.** The following are suggested:

- Working with the FGC, the INPB should quickly compile an inventory of all ongoing or proposed contracts that require INPB review<sup>27</sup>, and should schedule INPB discussions of these reviews, along with the FGC's Confidential Assessments where these are also required. Target date for inventory and schedule: July 2016 INPB meeting (INPB focal point: Concessions Adviser)
- Article 15 of the Act requires the Minister of Finance, on the advice of the Public Procurement Authority, to issue implementing Regulations. The INPB should review the sections of the Act pertaining to concessions management, and should seek to provide input into the process of developing these Regulations (through the PPA if it has been created by then). Target date: September 30, 2016 (INPB Focal point: Concessions Adviser)
- The *Roadmap for Implementation of the Procurement Act* drafted by the World Bank spells out a program of capacity building support for procurement personnel and for the new institutions created by the Act. The INPB should determine how the the INPB and the FGC can best support this Roadmap<sup>28</sup>. Target date: September 30, 2016 (INPB focal point: Concessions Adviser)

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<sup>27</sup> At the present time, and to the FGC's knowledge, these are a) the revised FAVORI and Albayrak concession contracts that will emerge from the ongoing negotiations processes; b) the Smart General Service Ltd. concession; c) in the security sector, (i) the revised Perkins Logistics and Horn Logistics contracts; (ii) additional food contracts that will be needed to cater to the Somali National Army and the Custodial Corps; (ii) fuel and other 'logistics' supply contracts for the various security services; d) a revised bidding process to provide the services offered by M&T Solutions Limited; e) the concessions under consideration for the reconstruction of the Aruba and Bulsho hotels in Mogadishu (reported in the INPB's minutes of January 12, 2016); f) two prominent contracts signed by Regional Member States: the Berbera Port concession (Somaliland), and the ION Geophysical Corporation (Puntland) and g) a proposed contract between the Galmudug Petroleum and Minerals Agency (GPMA) and Petro Quest Africa, which it is understood that GPMA will submit to the FGC for review.

<sup>28</sup> The minutes of the January 12, 2016 INPB meeting state that the INPB "reviewed and adopted the *Roadmap for Implementation of the Procurement Act* drafted by the World Bank".

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- The INPB's TORs require that it inventory all Regional concessions, and all contracts valued at US\$1 million or above, and track their implementation. The Regional States should be informed of this, and the work then initiated. The results of the work would then be discussed in the FGC's quarterly meetings with Regional Finance Ministers. Target date for initial notification: September 30, 2016 (INPB focal point: INPB Chair and Minister of Finance)

4. **Clarifying the role of the FGC through April 2017.** The main procurement-related role of the FGC during this transition will be to support the work of the INPB, and to facilitate the emergence of the Public Procurement Authority, the IMCC and other key bodies envisaged under the Act. No change in the FGC's TORs is required. In addition,

- The World Bank FGC delegate should work with the INPB to wrap up all ongoing reviews of contracts and concessions, as well as obtain and undertake reviews of known or suspected contracts that have not so far been shared with the FGC; these are listed in footnote 38. The FGC is also responsible for reviewing FGS contracts known to have been signed *before* the INPB was established in March, 2015<sup>29</sup>. Target date for completion of work on all known contracts: October 31, 2016 (FGC focal point: World Bank delegate).
- The posting of contracts and concessions reviewed by the FGC, along with the FGC's Confidential Assessments, will shortly begin on the FGC's web portal on the MOF website; the contracts/concessions will have been vetted by the Solicitor General for commercial confidentiality purposes, and if necessary redacted or summarized; the CAs will have been suitably redacted by the World Bank delegate. These postings mean that the INPB does not need to re-post the same material: INPB reviews can be posted alongside the relevant FGC Confidential Assessment. Target date for posting the first batch of 14 agreements/CAs: June 30, 2016, with the remainder to be issued as each 'file' is closed (FGC focal point: World Bank delegate).

*Saman Mohamed Dahir, MP and Chair of the Parliamentary Committee on Finance and Planning and FGC Member*

*Osman Guled, Solicitor General of Somalia and FGC Member*

*Nigel Roberts, FGC World Bank delegate and FGC Member*

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<sup>29</sup> These include the Ministry of Defence contracts with AMO Shipping Company Ltd. and the Atlantic Offshore Marine Group; the security-related food and 'logistics' supply contracts given to AGETCO and others prior to 2015; the CGG Data Services AG/Robertson Geospec International concession; and the Modern Technology Ltd. contract.

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## Contracts and Concessions of Interest to the FGC

Organized by Ministry

Updated as of August 30, 2016

Green: file closed

Light blue: only redactions and web postings are required to close the file

Purple: work remains to be done by the ministry, the company or the FGC

Red indicates serious non-cooperation by Federal Government ministries

Contract (CT) Concession (CN)	Date signed/by whom, inc. Fed (F) Region (R)	Sent to FGC for review	Confidential Assessment delivered	Status of the Government's response	Next steps	Contract to Solicitor General for review for potential commercial liability	Contract and CA published on the FGC website
Sector/service provided	If supplied as a draft, so indicated						
<b>Central Bank of Somalia</b>							
<b>Shulman, Rogers, Gandal, Pordy &amp; Ecker PA (SR) (CN)</b>  National frozen assets recovery agreement	Engagement Letter of July 12, 2013, worldwide Power of Attorney of July 15, 2013  Governor of Central Bank of Somalia (CBS) F		No Confidential Assessment.  This engagement was reviewed in November 2013 by the UN Office of Drugs and Crime/ World Bank Stolen Asset Recovery (StAR) Initiative	The CBS Governor revoked SR's worldwide Power of Attorney on May 13, 2014 and cancelled the Engagement Letter on July 14, 2014. Subsequent efforts have focused on retrieving client files and information on accounts and on winding up residual financial details. CBS engaged the DC law firm Kobre and Kim to assist.  The CBS Governor sent letters to SR on July 14 and September 17, 2014 requesting return of the files. SR indicated a wish to deliver them in person to HE the President, and a meeting with SR took place in Istanbul on April 22, 2015 involving the President and the Minister of Finance. The President made it clear that the point of contact for future discussion should be the Minister of Finance. No files were returned, and it may be presumed that SR wishes to resolve all outstanding financial matters prior to, or in tandem with handing them over. On July 5, 2015 the Minister of Finance informed SR that until the FGS is able to examine the client files, the FGS possesses no basis for reviewing any claims by SR for further payment.	No recent interaction with SR. After review by the the State Solicitor General (the SSG is member of the FGC), the contracts and correspondence were ready to be published on the FGC website.	Agreement, Power of Attorney, revocations of both sent to SSG on May 25, 2016.	August 2, 2016
<b>Ministry of Petroleum and Mineral Resources</b>							
<b>CGG Data Services AG/Robertson GeoSpec International Ltd. (CN)</b>  Collation,	Draft of February 26, 2014  Minster of Petroleum and Mineral Resources F	March 1, 2014  May 16, 2015	March 8, 2014  Supplementary June 23, 2015	An initial Confidential Assessment (CA) was completed in March, 2014, and the CCG contract was again reviewed alongside the TGS- NOPEC draft on September 6, 2014. These comments were passed onto the Council of Ministers but were not fully embodied in the first revised draft.  A Supplementary CA of a second revision of the contract was carried out on June 23, 2015. The amendments proposed in the original CA	The final version of the agreement should be sent to the FC for review before being sent to the Council of Ministers for approval prior to		



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analysis and marketing to oil exploration companies of data on Somalia's petroleum deposits; rebuilding of Somalia's national petroleum database and associated training				<p>of March 8, 2014 were substantially addressed in this draft. Some residual issues remained, principally the need to define the exclusivity period (it was 10 years in the original, and the CA had recommended this be reduced to a maximum of 5-7 years).</p> <p>A further set of changes were reviewed by the FGS on September 23. The exclusivity period has been set at 8 years. Two further amendments have been proposed by the FGC, and these have reportedly been incorporated into the final version.</p> <p>A discussion on March 8, 2016 resolved a conundrum about a clause pertaining to the FGC's financial rules.</p> <p>It is unclear to the FGC why agreement on the final version of the contract has been delayed so long. Attempts to elicit an explanation from the Ministry have not been fruitful.</p>	signature. At that point it should be reviewed by the SSG for confidentiality, and subsequently published on the FGC website; a redacted version of the Confidential Assessment and Supplementary CA should also be published there.		
<b>Soma Oil and Gas Exploration Limited (CN)</b>  Seismic surveying and oil and gas production in areas not the subject to prior grants of petroleum rights; after delivering the survey results, Soma has a year of exclusivity to negotiate Production Sharing Agreements (PSAs) with the Federal Government in 12 offshore blocks of "potential prospectivity" of	August 6, 2013  Minister of Natural Resources <b>F</b>	March 2, 2014	April 23, 2014  The draft PSA cited by Bloomberg has been seen by the FGC. It is an amended, unsigned version of the PSA draft originally annexed to the signed Soma contract. It is not clear when the amendments were made, though the Somalia Eritrea Monitoring Group report on Soma suggests that it was sent to the Ministry by Soma in December 2014.	<p>The CA recommended an amicable process of renegotiation of some of the contract's more troublesome clauses should be initiated by the FGS (e.g. by the Somali Petroleum Corporation taking an increased share in the PSAs, and in the provisions made for local community development).</p> <p>On May 29, 2015 Bloomberg reported on the terms of "A draft production-sharing agreement, obtained by Bloomberg from an official close to the negotiations" which adjusted the original draft PSA attached to the agreement of August 6, 2013 and awarded Soma 90% of the earnings from the PSA.</p> <p>The Ministry of Petroleum on May 31, 2015 denied the existence of any such new draft in a Press Release, stating: "Somalia is not accepting PSA deals at the moment. When the fiscal terms design is over, Somalia will invite companies to come forward with their PSAs. The article, of Ilya Gridneff of Bloomberg talks of a draft deal but Somalia did not receive any draft deal nor it is accepting proposals for PSAs now."</p> <p>AfDB's Africa Legal Support Facility (ALSF) and the World Bank are currently assisting the Ministry of Petroleum to draft a model PSA for the sector.</p> <p>On August 3, 2015 the Somalia Eritrea Monitoring Group released a report on the Capacity Building Agreement signed with Soma by the Minister of Petroleum on April 27, 2014. The SEMG report describes</p>	Following review by the the State Solicitor General, the contract was ready to be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.	June 30, 2016	August 2, 2016

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<p>its own choosing, up to a total of 60,000 km sq. (declared to be the maximum permissible under the Petroleum Law of 2008). The PSAs thus negotiated would remain in force for 8 years; should a "commercial discovery" be made, up to 25 years of exploitation would be permitted following agreement on a detailed development plan.</p>				<p>how 'capacity building' in this case amounted largely to the payment of monthly stipends to serving staff of the Ministry, and alleges that this set up a conflict of interest and was likely part of a 'quid pro quo' designed to protect the Soma contract, not least from the FGC. The FGC was not aware of the existence of the Capacity Building Agreement prior to publication of the SEMG report.</p> <p>On August 13 the Ministry of Petroleum denied any wrongdoing in interviews with journalists. The Prime Minister subsequently created an investigatory committee consisting of Federal Government officials from outside the Ministry to investigate whether any laws or regulations had been transgressed, and to recommend remedies if they had. The committee was chaired by the Prime Minister's Senior Policy Adviser and FGC Member Osman Yusuf. The committee's report concluded that:</p> <p>"The Committee saw no evidence that the Ministry and the company reached a deal on a 'quid pro quo' basis as claimed by SEMG, in view of the fact it is a common practice for the extractive industry to provide such an arrangement to emerging countries. It is normal for emerging countries employees to receive allowances and, in special instances, salaries from exploration companies as Soma did in the case of Somalia.</p> <p>The Committee has thoroughly examined this issue and found that the Ministry acted in good faith by requesting the capacity building arrangement and that no special interests were involved favoring Soma. The only purpose of the Ministry's request, as we were told, was to provide incentives to the employees and experts and, for some of the employees, supplementing their meager government salaries".</p> <p>Nonetheless, the report concludes by stating that "the Ministry must make sure that such mismanagement never be repeated as money intended for capacity building was used to pay for running costs without prior information and approval from Soma. The Committee recommends that the Ministry should take disciplinary measures against those involved and restructure its accounting and finance services".</p> <p>To date, no disciplinary action has taken place.</p> <p>Finally, after many requests, the Ministry provided the FGC on February 20, 2016 with responses to the April 23, 2014 Confidential Assessment. The Ministry made it clear that it did not intend to renegotiate the</p>			
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				<p>Soma contract. The Ministry's response, though, contains the following important commitments:</p> <p>"In collaboration with the World Bank, the Federal Government is working with the Federal Member States to develop a shared vision on Somali petroleum sector development. The ultimate objective of this initiative is to find durable solutions for ownership, control and revenue sharing agreement between the Federal Government and Federal State Members. Until this agreement is finalized between the Federal Member States and the Federal Government, no PSA will be granted. The entire data gathered by Soma Oil and Gas is now stored at the Data Room of the Ministry of Petroleum and Mineral Resources. The derivative of the data is with Spectrum with whom we have an agreement to broker and market data to interested companies. The Somali Government is currently not in a position to grant any award to any company, including Soma, until certain conditions are met. The strings attached to awarding blocks include revising and amending the Petroleum Law 2008 of Somalia, and Production Sharing Agreement model and fiscal terms need to be developed. The World Bank and African Development (which has hired IMMMA Associates) are assisting us in developing these documents, which are prerequisites to awarding PSAs. Regarding Soma serving a Notice of Application for any portion of the Evaluation Area, our final version of PSA will define the terms of agreement in relation to the required timeframe for starting and ending such an operation. The new PSA will set out the Government participation percentage and that percentage will be carried out by the Somali Petroleum Corporation (state owned). The new PSA will also discuss the entirety of the process of providing community development obligations".</p>			
<p><b>TGS-NOPEC Geophysical Company ASA (CN)</b></p> <p>Acquisition and processing of geophysical data and its promotion, marketing and</p>	<p><b>Draft</b> May 30, 2014</p> <p>Federal Government (ministry not specified) <b>F</b></p>	July 15, 2014	September 6, 2015	<p>The CA recommended that the CGG/Robertson contract (see above) was superior, and that the two contracts were incompatible because they overlapped with respect to services to be provided and geographical coverage. In addition, it was felt that the draft CGG/Robertson agreement offered superior terms on revenue sharing, data ownership and the length of the exclusivity – while also providing for the rebuilding of Somalia's national petroleum database and associated training.</p> <p>The Ministry indicated to the FGC that it did not wish to pursue this contract.</p>	The Ministry informed TGS-NOPEC on October 7, 2015, of its decision not to pursue this agreement, using a draft letter provided by the FGC. TGS-NOPEC acknowledged	June 30, 2016	August 2, 2016

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licensing to oil exploration companies and other parties; the contract was initiated by Galmudug Region, and related to the collection and marketing of oil and gas data in that region.					<p>this letter. This information was provided to the FGC only on January 23, 2016.</p> <p>The contract could then be reviewed by the SSG for confidentiality, and subsequently published on the FGC website, and a redacted version of the Confidential Assessment and Supplementary CA also published there.</p>		
<p><b>Spectrum ASA (CN)</b></p> <p>Collation, analysis and marketing of data on Somalia's petroleum deposits</p>	<p><b>Draft</b> September 4, 2015</p> <p>Ministry of Petroleum and Mineral Resources F</p>	April 14, 2015	<p>July 3, 2015</p> <p>Supplementary July 15, 2015</p>	<p>After a rocky start and up until the last hurdle, this contract offers an example of how the FGS and the FGC can cooperate effectively.</p> <p>A draft agreement between the then Minister of Petroleum and Mineral Resources and Spectrum ASA (Spectrum) of Norway, drawn up in October 2014, was brought to the FGC's attention by the Africa Legal Support Facility in mid-November, 2014, but was not forwarded for FGC review by the Ministry at that time. Nonetheless, after its meeting of April 12, 2015 the FGC decided to review it.</p> <p>The Ministry responded to the CA on July 11, 2015, providing key clarifications and taking account of most of the recommendations of the Assessment. A Supplementary Confidential Assessment was sent on July 15, 2015 and the Ministry addressed all outstanding issues within its remit in its response/redraft of July 20, 2015. The final draft offers fair terms and provides adequate protections for the State and the Government, and is in synch with the revised draft CGG/Robertson Geospec agreement of May 11, 2015 as well as with Soma's seismic data collection work (which Spectrum proposes to 'infill') -- both in terms of areas of coverage, and rights to data marketing. In the expectation that both the Spectrum and CGG/Robertson contracts will be signed, the Confidential</p>	<p>A copy of the signed agreement was eventually sent to the FGC for review on April 27, 2016. Apart from this delay, the review process and the final outcome represent a model of cooperation between an FGS ministry and the FGC.</p> <p>Following review by the State Solicitor General, the contract was able to be published on the</p>	July 1, 2016	August 2, 2016

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				<p>Assessment recommended that the Ministry of Petroleum and Mineral Resources ensure that the training and capacity building programs provided for in both draft contracts (as well as through ongoing Soma activity) should be carefully synchronized.</p> <p>Subsequent to this process, and following the publication of the SEMG report on Soma that criticized the Soma/Ministry of Petroleum capacity building program, Spectrum ASA requested the removal from the agreement of the capacity building Annex, which provided for US\$1.070 million in capacity payments to the Ministry over and above FGS' agreed share of license fees. In place of this, early revenue payments amounting to US\$1.35 million are to be remitted to the FGS' Treasury Single Account in CBS -- not as additional payments, as previously proposed, but to be set off against the FGS' share of licence fees. This arrangement leaves MOF free to allocate capacity building funds to the Ministry as part of the regular Budget process, and represents a more transparent and superior arrangement to what had been proposed.</p> <p>The contract was signed on September 4, 2015 without referring the final version to the FGC. This appears to have occurred because the FGS wanted to respond quickly to the announcement on September 1 of the conclusion of a geophysical data acquisition contract between the Puntland Regional Government and the ION Geophysical Corporation of Houston, Texas. The final version is consistent with the advice provided by the FGC.</p>	FGC website, and a redacted version of the Confidential Assessment and Supplementary Assessment made available to the public.		
<b>Petro Quest Africa (CN)</b>  Oil production sharing agreement	February 2, 2013, Galmudug State and Galmudug Somali Petroleum Corporation R	September 23, 2014	Reviewed by ALSF on December 24, 2014, and initial informal FGC questions were passed on on October 16, 2014.	A full CA was not carried out. The previous self-styled Galmudug Regional Government has been transformed into a larger Galmuduug Regional State, incorporating the former Galmuduug (Mudug) Region and the Galgaduud Region. The public entities that signed the contract with Petro Quest Africa no longer exist, thereby invalidating the agreement. The current Ministry of Petroleum and Mineral Resources of the Regional Federal State of Galmuduug has taken no steps to activate any substitute arrangements.	Following review by the State Solicitor General, the contract was able to be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.	July 1, 2016	August 2, 2016
<b>Mubadala Oil and Gas Holding Company LLC</b>	June 18, 2014  Minister of Petroleum and	July 10, 2015	October 6, 2015	The FGC was given to understand that nothing beyond an MOU existed, but the Ministry of Petroleum and Mineral Resources delivered a copy of a signed Cooperation Agreement for review on July 10, 2015.	The period of agreement expired on June 17, 2016.	July 1, 2016	<b>FGC chair is seeking no objection</b>

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<p><b>(CN)</b></p> <p>Seismic data analysis, petroleum exploitation, petroleum capacity building</p>	Mineral Resources <b>F</b>			<p>The Cooperation Agreement envisaged an exchange process whereby the Federal Government provided Mubadala, free of cost, with seismic and other data on Somalia's offshore blocks in return for analytical reports on that data. Mubadala was then permitted to keep a copy of the data and to select offshore blocks for which it would be provided preferential rights to negotiate Production Sharing Agreements (PSAs). The agreement was comparable to the Soma contract, in this case trading data analysis for the right to negotiate PSAs without competition. The data collection and brokerage agreements with Spectrum ASA and CGG/Robertson GeoSpec enable Somalia to pursue a strategy involving open geophysical data sales and a competitive system of PSA allocations.</p> <p>The Ministry has indicated to the FGC that it wishes to reconsider the petroleum exploration model embodied in the Soma and Mubadala contracts, whereby exclusive PSA selection and negotiation rights are awarded in return for geophysical data acquisition and/or analysis.</p>	Following review by the State Solicitor General, the contract can, subject to Mubadala's agreement, be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.		<p><b>from Mubadala to publication of the contract.</b></p>
<p><b>Model Oil and Gas Production Sharing agreement</b></p>	Supplied as draft <b>F</b>	August 18, 2016	CA in process				
<p><b>Ministry of Transportation and Aviation</b></p>							
<p><b>Favori LLC (CN)</b></p> <p>Renovation and day-to-day operations of Mogadishu International Airport for a concession period of 15 years, to include ground handling, security, catering, terminal management and cargo management. Airport renovation encompasses the</p>	<p>June 30, 2013</p> <p>Minister of Information, Post, Telecommunication and Transportation <b>F</b></p>	March 2, 2014	April 23, 2014	<p>Parliament objected to the process of contractor selection on May 27, 2014 and has persisted in its concerns with the lack of competitive bidding for Federal Government contracts and concessions.</p> <p>The CA pointed out that the agreement lacks precision, and that this could give rise to misunderstandings -- for example, over the exact nature of certain planned improvements (e.g. "widening of the internal roads of the actual terminal building"), and of the equipment to be provided. Other examples of vagueness include an absence of discussion of Favori's fee structure, or of how Favori proposed to calculate its costs (other than by using "international accounting standards of profit and loss"). With respect to revenue sharing, the contract does not specify any revenue targets or financial performance benchmarks/levels of service. While either party may terminate the agreement at 90 days notice "by giving reasonable reasons", it is not clear who is responsible for defining what is 'reasonable'.</p> <p>An amicable renegotiation of the contract was proposed in the CA.</p>	As the renegotiation process proceeds, the Ministry should submit revised drafts of the contract to the Interim National Procurement Board (INPB) and to the FGC for review, prior to contract finalization and submission to the PMO and Council of Ministers for their endorsement. When		

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construction of terminal buildings, the widening and paving of internal roads, lighting, and the construction of offices.				<p>The Federal Government reported in 2014 that Favori had agreed to renegotiate, but it is unclear how far this process went under the previous Council of Ministers.</p> <p>After an extended hiatus, it was reported to the FGC that the Ministry and Favori agreed on August 29, 2015 to renegotiate the contract on the basis of the FGC's recommendations. Legal support is being provided by the firm of Latham and Watkins, contracted through the Africa Legal Support Facility (ALSF). An initial 2-day meeting to explore the issues for renegotiation took place in Istanbul on February 15-16, 2016.</p>	interviewed by the FGC on April 26, 2016, though, the Minister did not appear aware of this requirement, nor particularly supportive of it.		
<b>Modern Technology Ltd (CN)</b> Manufacture of car licence plates	23 July 2014 Minister of Information, Post, Telecommunication and Transportation <b>F</b>	Somali version received from SEMG sent for translation 30 Aug 2016	In progress	The Somali Eritrea Monitoring Group has reported that the Ministry agreed on a concession for the manufacturing of car plates with Modern Technology Ltd.			
<b>Ministry of Defense</b>							
<b>AMO Shipping Company Ltd. (CT)</b> Supply of 6 marine patrol boats and ancillary vessels	July 29, 2013 Minister of Defence <b>F</b>	April 1, 2014	June 1, 2014	<p>The cost to the Federal Government of the contract was €132 million. There was no provision in the 2014 or 2015 Budgets for these outlays, and there is no realistic prospect that the contract can be financed from Treasury resources. The contract stipulates that 25 percent of the contract was payable upon signature, a condition that was not met.</p> <p>The CA recommended cancellation on these grounds, to be initiated through exploratory discussions intended to ascertain whether any patrol boat hulls had been laid down, and whether they had been sold to other parties (as was reported to the FGC). No such action was taken.</p> <p>In September 2015 the Ministry, now under new leadership, asked the FGC to help draft a termination letter. The FGC once again recommended that the Ministry contact AMOSC to ascertain whether any hulls were laid down, whether they were sold, and whether the company has any objection to an amicable termination of the contract.</p> <p>The Ministry remained unresponsive to FGC requests for meetings or for information until June 13, 2016, when the FGC finally met with the Minister of Defence. He explained that his predecessor had quickly ascertained that AMOSC was hoping that the FGS would raise the money to pay for these vessels from donors, and was told in early 2014 that the FGS was not interested in pursuing the</p>	<p>The Minister of Defence has assured the FGC that AMOSC hold no expectations concerning this contract, and that it is in effect defunct.</p> <p>Following review by the State Solicitor General, the contract should be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p>	July 1, 2016	August 2, 2016

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				contract on such a basis.			
<b>Atlantic Marine and Offshore Group (CT)</b>  Equipment, services and training to develop a national coast guard	Minister of Defence F	Not necessary	Not necessary	<p>The FGC was informed by the Ministry that no such contract existed. AMOG's website, however, described and shows a photograph of a July 29, 2013 signing ceremony with FGS officials, and claimed that the ceremony related to this specific contract.</p> <p>After trying for over a year to clarify the situation with the Ministry of Defence, the FGC met the Minister on June 13, 2016. It then became clear that no such contract was signed: it had been proposed by AMOG alongside the AMOSC patrol boat contract, and was abandoned when the patrol boat scheme was revealed to be infeasible.</p>		Not necessary	Not necessary
<b>AGETCO and others (CT)</b>  Food and logistics supplies to the Somali National Army, the Somali Police Force, the National Intelligence and Security Agency and the Custodial Corps	2013 onwards  Ministry of Defense, others F	Documentation not available		<p>Large transactions are known to have taken place between the various branches of Somalia's national security apparatus and various private suppliers in relation to 'rations' (i.e. basic foodstuffs) and logistics requirements (uniforms, petrol, spare parts, fuel, etc). It appears unlikely that formal contracts exist, though invoices must do. The FGC has requested that the Ministry of Finance share whatever relevant invoices it has (i.e. those likely to exceed US\$5 million in turnover during the lifetime of the contract in question).</p>	The Ministry of Finance has concluded there is no documentation relating to these legacy arrangements.	Not possible	Not possible
<b>Ministry of Ports and Shipping</b>							
<b>Albayrak Turizm İnşaat Ticaret A.Ş. (CN)</b>  Renovation and day-to-day operations of Mogadishu Port. Albayrak is granted the "exclusive right to finance, rehabilitate, operate, manage, maintain, develop and optimize the	October 24, 2013  Minister of Public Works and Reconstruction, Marine Transport, Ports and Energy F	April 22, 2014	<p>June 1, 2014</p> <p>Supplementary Confidential Assessment of the Annexes, September 3, 2014</p> <p>Parts of the signed agreement have still not been located/shared with the FGC</p>	<p>The CA and the SCA found that the agreement established the basic parameters of a workable commercial relationship, but lacked important clarity. There are no measurable performance indicators; there is no clear analytical basis for the division of revenue between Albayrak and the Federal Government; and the agreement's dispute resolution mechanisms appear inadequate, given the inexperience of Somalia's maritime regulator. The CA also indicated that the length of the concession was worth reconsidering, with a promise of renewal if key performance indicators were met. International experience, it was noted, shows that ambiguity in a contract of this kind can lead to labor disputes, non-competitive port costs and repressed government revenues. The Confidential Assessment recommended that the Federal Government seek an amicable renegotiation of the contract's more troubling clauses.</p> <p>Following receipt of the CA, the Prime Minister instructed the Cabinet Subcommittee on Infrastructure to discuss the agreement in</p>	Working with the World Bank, the FGC has provided advice to the Ministry and to the Ports Authority on how to approach the negotiations. The World Bank is ready to play a neutral third party role in the coming months, focusing on establishing an agreed set of future costs and		



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Port of Mogadishu" for a period of 20 years, with the possibility of renewal.				<p>light of the CA, and instructed the Minister of Ports and Marine Transport and the Minister of Finance to review the contract (including its implications for employment in Mogadishu Port). A report was prepared for the Prime Minister by the two ministries, and shared with the FGC on October 6, 2014. The report noted that the agreement has the potential "to bring the Mogadishu port to prudent industry practices and standards", to increase Mogadishu's overall productivity, and to thereby enhance the prospect of peace and stability. It also drew attention to the lack of a "credible procurement and concessions process", and recommended that the "Federal Government of Somalia would be best-served to review the difficult and unclear parts of the contract", and that the agreement should be renegotiated "without compromising its overall integrity". The report proposed that clear performance guidelines should be introduced; costed and timed investment plans should be submitted, both by Albayrak and the Federal Government; and that steps should be taken to ensure that the performance of the company is supervised by a qualified supervising engineer (to be recruited if necessary from abroad).</p> <p>Following this, the Minister of Ports visited Albayrak in Turkey in November 2014 to arrange for renegotiations. Shortly thereafter, the the Council of Ministers was dissolved, and no further negotiations have taken place since.</p> <p>Albayrak in late 2015 indicated to the Federal Government that it was not satisfied with the revenue sharing arrangement specified in the concession agreement, and was losing money over the contract. In January 2016, in contravention of the provisions of the contract, Albayrak limited its monthly revenue payment for December 2015 to Federal Treasury to US\$1 million, and thereafter ceased revenue payments. The Finance Minister/Chair of the FGC then took over the negotiation process, and on March 15, 2016 concluded an Interim Agreement with Albayrak, pending formal renegotiation. Under the Temporary Agreement the FGS agreed to absorb part of the costs of providing security in the port, and to reduce port handling charges.</p> <p>In preparation for full contract renegotiation, in which Albayrak is seeking a revision of the current revenue sharing arrangement, the World Bank has been asked to provide forward-looking traffic forecasts, an essential element in the calculation of the port's revenue potential. The ALSF has been asked to provide technical expertise to assist the FGS in the renegotiation process.</p>	income projections to underpin a revised agreement. As the renegotiation process proceeds, the Ministry should submit revised drafts of the contract to the Interim National Procurement Board (INPB) and to the FGC for review, prior to contract finalization and submission to the PMO and Council of Ministers for their endorsement.		
<b>Mogadishu Port Container</b>	November 10, 2012	March 2, 2014	April 23, 2014	The CA found that that the lease did not offer a solid basis for the management of container traffic at the Mogadishu Port. It did not	The Port Authority and	July 1, 2016	August 2, 2016

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<p><b>Terminal and Simatech International (CN)</b></p> <p>Lease and concession for operating the Mogadishu container port</p>	<p>General Manager of Mogadishu Sea Port Authority <b>F</b></p>			<p>cover the essential financial and technical issues that should form part of any such government contract; it was silent about institutional roles, the contractor's reporting and information requirements, invoicing methods, tax obligations, custodianship of the property, and end-of-lease obligations (vis-à-vis structures erected on the land, environmental cleanup measures, etc.). The charges specified in the lease were also abnormally high when compared with international norms.</p> <p>The contract was overtaken by events -- i.e. by the Albayrak port management contract. A general termination letter to all contractors in the port area was sent by the Manager of the Mogadishu Port Authority on September 13, 2014.</p> <p>The FGC advised in September 2014 that a specific termination letter was needed from the Port Authority, and a proforma letter was drafted for FGS use. A letter was not sent. In discussions with the Ministry in September 2015, the FGC again offered to assist with a letter.</p>	<p>Ministry on 4/26/16 informed the FGC that the matter is closed and no further action is needed, or expected by Simatech. The FGC therefore concluded that the contract could now be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p>		
<p><b>Great Horn Development Company (MOU, Framework Agreement)</b></p> <p>Harbor and fishing port development, road construction</p>	<p>September 8, 2013 (MOU); April 29, 2014 (Framework Agreement)</p> <p>Minister of Ports and Marine Transport <b>F</b></p>	<p>October 10, 2014</p>	<p>December 4, 2014</p>	<p>The Ministry of Finance is still looking for the missing MOU.</p> <p>The FA provides GHDC (and its potential sub-contractors) a six month period of exclusivity in which to plan, develop/rehabilitate and operate various ports and related road infrastructure (the ports in question are a new commercial port for Mogadishu at Elma'an, new fisheries harbors at Gara'ad, Egue and Barawe, and the existing ports of Kismayo and Bosaso). That period has now passed.</p> <p>The CA noted that the FA makes no mention of the role of any Federal Member State. Given that the framework agreement provides for exclusivities in areas under the <i>de facto</i> control of the Puntland and Jubbaland FMSs, it is unclear how the FGS and GHDC could deliver the contract. No evidence of any appropriate follow-up had been provided to the FGC.</p> <p>Moreover, in discussion with the FGC in September 2015, an official representing the Ministry appeared unaware that his Ministry had signed this contract. This position was reiterated in April 2016 when the Framework Agreement was copied to the Ministry.</p>	<p>The Ministry has confirmed that the contract is 'dead' and that no further follow up is required.</p> <p>Following review by the SSG, the contract can, after requesting GHDC's permission, be published on FGC website, and a redacted version of the Confidential Assessment made available to the public.</p>	<p>July 1, 2016</p>	<p><b>FGC Chair has written to Great Horn seeking their no objection for publication of the contract</b></p>

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Ministry of Fisheries and Marine Resources							
<p><b>Somalia-FishGuard Ltd. (CN)</b></p> <p>Protection, licensing, policy and institutional development of Somali's fisheries sector</p>	<p>July 25, 2013</p> <p>Minister of National Resources F</p>	<p>April 29, 2014</p>	<p>July 4, 2014</p>	<p>The CA pointed to serious difficulties in the agreement. One was its level of ambition: it is most unusual to contract a single firm to manage every aspect of a country's fisheries sector, including policy advice, legislative drafting, licensing, patrolling/enforcement, research, conservation and industrial development. The 15-year length of the exclusivity was well above industry norms. The agreement did not clearly specify the capital, equipment, facilities, training and personnel that would be provided, nor does it establish delivery schedules or embody quality standards/performance benchmarks. While the cost-sharing responsibilities of the parties were imprecise, the share of gross revenues accruing to FishGuard appeared high when compared with other such contracts. The agreement also embodied a potential conflict of interest: FishGuard was responsible both for selling fisheries licenses and for conserving the country's fisheries resources (these responsibilities are typically separated in fisheries service contracts). The CA recommended either cancellation, or renegotiation of a contract with a much more limited scope.</p> <p>On November 21, 2014 the (then) Minister of Fisheries and Marine Resources wrote to Somalia-FishGuard proposing that the agreement be replaced by a more tightly focused instrument concentrating on support for the creation of a Somalia Fisheries Protection Force.</p> <p>FishGuard responded to this on March 20, 2015, and suggested reducing the period of exclusivity somewhat, and addressing the above-mentioned conflict of interest by withdrawing from managing conservation matters on the Ministry's behalf. More fundamental differences between the Ministry and FishGuard had emerged, though. Officials in the previous and the present Ministry have issued a number of tuna fishing licenses, mostly to Chinese companies, without involving FishGuard. FishGuard was claiming a share of those license fees, in accordance with the provisions of its contract. FishGuard itself did not manage to issue any fishing licenses. By mid-2015 FishGuard had effectively given up on the contract.</p> <p>The larger issue is the need to rationalize the issue of licensing and</p>	<p>The Ministry of Fisheries and Marine Resources has ascertained that FishGuard has no further interest in pursuing the contract, nor in taking any form of legal action. FishGuard personnel are understood by the Ministry to have been engaged in representing a Taiwanese company in pursuit of Somali fishing licenses, which would not have been compatible with continuing the role contracted under the FishGuard contract. The Ministry now considers the file closed.</p> <p>Following review by the State Solicitor General, the contract was able to be</p>	<p>July 3, 2016</p>	<p><b>File submitted to FGC Secretariat for posting on website</b></p>

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				<p>come to a Federal-Regional Agreement on fisheries management and revenue sharing. At present the Federal and the Puntland ministries of fisheries are issuing licenses; FishGuard, despite being contracted to do this, is not.</p> <p>Uncertainty over FishGuard's role and divided views on the contract within the Government have interfered with the orderly development of Somalia's fisheries sector. There is currently no operative agreement on the issuance of licenses or the sharing of license revenues. FAO estimates that the country as a whole can earn in excess of US\$10 million per annum from fishing licenses without compromising the sustainability of Indian Ocean tuna stocks. Attracting the more credible EU and global fishing fleets will require a resource management and revenue-sharing agreement to which Federal and Regional political leaders commit themselves. Achieving such an agreement, in today's atmosphere of competition and mistrust, will itself involve institutional and monitoring arrangements of the kind agreed to in principle in Addis Ababa last year, but never enacted.</p> <p>A further complication arose with the entry into the licensing field of an NGO consortium (Secure Fisheries working with Oceans Beyond Piracy and Shuraako). The consortium proposed to the President that it assist with issuing tuna licences. This cuts across the multi-donor and agency agreements brokered over the past year by FAO; nor is it clear that the consortium has the expertise and experience to take on this task.</p>	published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.		
<b>Ministry of Power and Water</b>							
<b>Polaris Energy SDN BHD (BOT CN)</b>  Electricity generation, transmission and distribution	June 2014 (undated)  Minister of Water and Energy <b>F</b>	November 5, 2014	February 13, 2015	<p>The proposed project planned to supply electricity to Mogadishu, and consisted of a "fast track" Phase 1 of between 75 MW and 88 MW movable gas/diesel-fired electrical power plants, and a "long term" Phase 2 of 450 MW dual fuel/coal fired electrical power plants. For Phase 2, Polaris intended to partner with China National Electrical Engineering Corporation (CNEEC), "or equivalent". The estimated cost of Phase 1 was US\$200 million, which the MOA stated would be a "grant from Polaris to the People of Somalia". Phase 2 was estimated at c. US\$1 billion, and the MOA indicated that "this option will require Government to government collaboration in which Polaris shall act as a facilitator".</p> <p>The Confidential Assessment pointed to a number of serious concerns, including the technical design and feasibility of the projects proposed by Polaris, and the need for a careful assessment of Polaris' capacity to both finance and implement the proposed program. The CA also recommended that the MOA be adjusted to</p>	<p>The FGC has advised the Ministry on how best to go about initiating a needs assessment and competitive bidding process, and a sector development dialogue has been initiated by the World Bank and other donors.</p> <p>After the July 2015 meeting</p>	July 4, 2016	August 2, 2016

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				<p>make clear that it was a <i>non-binding</i> statement of intent, and must be followed by a formal, detailed agreement that addresses key issues left unspecified in the current MOA. It was proposed that any such formal agreement should be confined to Phase 1 – and that the much larger Phase 2 project should be tendered competitively, on the basis of a specified scope of work and TORs that should only be drawn up after a power needs assessment has been carried out. In addition, the Assessment recommended that the Federal Government should reconsider the wisdom of agreeing to a Phase 1 power solution that uses gas. First of all, no gas has yet been extracted from the Afgooye field; second, alternatives to the gas/diesel plant proposed in the MOA using either diesel or HFO (heavy fuel oil) are likely to be considerably cheaper; and third, oil and gas concessions should not be handed out to foreign interests in the <i>ad hoc</i> manner described in Polaris’ public statements about the program.</p> <p>A letter covering the CA was sent to previous Finance Minister/FGC Chair on February 13, 2015 for onward transmission to new Minister of Water and Energy. This draft letter was translated and shared informally by the new Minister of Finance/Chair of the FGC. The CA recommended that Polaris focus on Phase 1.</p> <p>In July 2015, the Minister of Finance and the Minister of Power and Water met with Polaris representatives and conveyed this message. They also clarified that Somalia would not be able to contemplate the proposed Phase 2 US\$1 billion "Government to Government guarantee" implicitly involving the PRC, and that no Afgooye gas concession could be considered unless all of Phase 2's arrangements were firmly in place.</p> <p>The Minister subsequently informed the FGC that he wished to carry out a thorough review of the country's and the capital's energy needs, and that he favored an open bidding process on a different and more sustainable power solution.</p>	<p>there has been no further approach by Polaris. The matter can now be considered closed. Following review by the State Solicitor General, the contract was able to be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.</p>		
<b>Ministry of Commerce and Industry</b>							
<b>Proje Gözetim Mühendislik (PGM Proje) (CN)</b>  Import/export quality assurance contract	<p>April 28, 2015</p> <p>Revised agreement signed on January 15, 2016</p> <p>Minister of Industry and Commerce <b>F</b></p>	<p>November 22, 2015</p>	<p>December 1, 2015 (Note to Files)</p> <p>April 28, 2016 (Note to Files)</p>	<p>On 18 May, 2015, the Prime Minister issued an order forbidding officials from signing international contracts without the authorization of the Prime Minister's Office and the Council of Ministers. The contract was allowed to stand, however.</p> <p>The Ministry of Finance requested a copy of the contract for review, but five months elapsed before it was provided. MOF's review was released on November 13, 2015. This review was endorsed and added to by the FC.</p>	<p>The FGC provided two Notes to Files, the first of which was shared with the Ministry of Commerce and Industry prior to final renegotiation.</p>	<p>July 4, 2016</p>	<p>August 2, 2016</p>

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				The contract was then renegotiated. Although the comments made in the MOF and FGC reviews were substantively incorporated, the contract was signed without further reference to MOF or to the FGC. This should not have happened, and the review process needs further reinforcement at the level of the COM.	Following review by the State Solicitor General, the contract should be published on the FGC website, and a redacted version of the Confidential Assessment made available to the public.		
<b>Ministry of Internal Security</b>							
<b>M and T Solutions Ltd (CN)</b>  Scanning services for Mogadishu Port	<b>Draft</b> December 7, 2015  Minister of Internal Security F	March 31, 2016	April 26, 2016	This draft was submitted for FGC review, in line with the PM's above-noted directive of 18 May, 2015. The FGC review was preceded by an MOF review conducted on behalf of the INPB, with which the FGC is in substantive agreement.  The CA found the draft poorly written and lacking in precision in a number of key areas, such as specification of the kind of scanning equipment to be used, the precise services to be performed, and how they would be delivered; the CA also recommended that the Federal Government develop standard provisions for all FGS contracts, to be used, with appropriate variations, in drafting those sections of public contracts dealing with Force Majeure, Termination, Dispute Resolution and Compensation.	The FGC recommended that the contract be cancelled and rebid competitively, since there is no apparent justification for sole-sourcing a contract of this type. The Ministry has apparently been considering this recommendation since it was provided in April, and has yet to revert to the FGC.		
<b>Perkins Logistics (CT) and Horn Logistics (CT)</b>  Supply of basic	Agreement signed on November 26, 2015  Ministry of Internal Security F	March 21, 2016	CA May 4, 2016  SCA in process	These 5-year contract are valued at US\$24 million (Perkins) and US\$16.1 million (Horn).  H.E. the President in his September 9, 2015 speech on security sector reform indicated that "All tenders for logistic supplies will be carried out through the Interim Procurement Board" (Government Press Release), meaning that the substantial contracts for both food	MOF and the FGC have both recommended that the contracts should be revised.  FGC has received		

## Somalia -- Financial Governance Committee -- August 30, 2016

<p>foodstuffs for the Somali National Police (Perkins) and the National Intelligence and Security Agency (Horn)</p>				<p>and logistical supplies must now be reviewed by the INPB, and in cases where the annual value of the contract exceeds US\$5 million, by the FGC as well. "Logistics supplies" in this context include contracts for food, petrol, spare parts and clothing for the national security forces.</p> <p>The FGC review was preceded by an MOF review conducted on behalf of the INPB, with which the FGC is in substantive agreement.</p> <p>Although both contracts were competitively bid against specifications set out by the INPB, the draft contracts were not submitted to the INPB or the FGC for review prior to signature. Both MOF and the FGC have indicated that the contracts need to be amended,. The most important point made is that a five year contract for the supply of basic commodities is excessive: the tenders should be repeated every year.</p> <p>The FGC has also requested further information on the bid award process: to date, bid documents and bid assessments have not yet been provided to the FGC for review.</p> <p>The FGC has been informed by the Minister of Finance that MOIS is receptive to the changes proposed by MOF (on behalf of the INPB) and the FGC. Depending on the extent to which the contracts have been amended, a Supplementary Confidential Assessment may or may not be needed.</p>	<p>revised documentation.</p>		
<b>Ministry of Finance</b>							
<p><b>The ADCO Group of Companies (CN)</b>  Khat tax collection concession</p>	<p>Agreement was first signed on June 6, 2011, and was subsequently amended and renewed four times, most recently on September 2, 2014</p> <p>Minister of Finance <b>F</b></p>	<p>August 9, 2015</p>	<p>The FGC's full comment on the contract were published in the <i>Public Sector Contracts and Concessions: the FGC and the Confidential Assessments Second Bi-Annual Report</i> of 31 October, 2015.</p>	<p>In 2011 the Transitional Federal Government decided to invite the ADCO to collect the import tariffs due on khat shipments to Mogadishu on its behalf. At that time the TFG was collecting approximately US\$75,000 per month: ADCO had proposed to remit US\$120,000 per month to the Treasury if it were granted this concession. ADCO's proposed role was supported by a letter dated May 18, 2011 signed by several other khat importers. After authorization by the Deputy Prime Minister, the Minister of Finance signed an initial agreement with ADCO on June 6, 2011. This agreement was renewed four more times, with the monthly sum payable by ADCO continually adjusted upwards until it reached US\$800,000 at the time of the final renewal on September 2, 2011. The most recent renewal of the agreement signed by the previous Chair of the FGC/Minister of Finance in September 2014.</p> <p>The contracts consist of one side of Ministry of Finance official letterhead on which MOF acknowledges that ADCO has conformed with the stipulations of the previous contract, and extends the</p>	<p>Following review by the the State Solicitor General, the contract and associated papers were able to be published on the FGC website.</p>	<p>July 4, 2016</p>	<p>August 2, 2016</p>

## Somalia -- Financial Governance Committee -- August 30, 2016

				<p>concession while adjusting the monthly sum due to MOF. No description of ADCO's obligations is provided, nor are any details of the account(s) into which ADCO payments should be made. The FGC found that the manner in which the contract was awarded lacked transparency, and the contract itself to be more of a handshake than a serious legal agreement.</p> <p>The most disturbing aspect of the contract from the FGC's perspective, though, is that its previous Chairman signed the last renewal of the concession without mentioning its existence to the FGC.</p>			
<p><b>Smart General Service Ltd (CN)</b></p> <p>Collection of road tax</p>	<p>September 20, 2015</p> <p>Minster of Finance F</p>	<p>Somali version provided on May 18, 2016</p> <p>English version provided on August 3, 2016</p>	CA in process	<p>The Minister of Finance signed an agreement for the collection of road tax which entitles the private Somali company to 40 percent of the tax income, in exchange for investments in an improved the system. The FGC accepts that this was an oversight by the Chair of the FGC.</p>	<p><b>Contract to be discussed at next meeting of INPB, scheduled 19<sup>th</sup> September.</b></p>		
<p><b>M and T Solutions Ltd (CN)</b></p> <p>Collection of property transfer tax</p>	<p>February 1, 2016</p> <p>Minister of Finance F</p>	30 August 2016	CA in process	<p>The Minister of Finance signed an agreement for development and management of an online Property Transfer Tax system which entitles the private Somali company to 30% of the tax income, in exchange for establishment and management of the system to December 2020.</p>	<p><b>Contract to be discussed at next meeting of INPB, scheduled 19<sup>th</sup> September.</b></p>		
<p><b>Finsol (CN)</b></p> <p>Collection of non-tax revenues (development of system, provision of software and hardware, system oversight and maintenance, staff training)</p>	<p><b>Draft</b></p> <p>July 20, 2016</p> <p>Minister of Finance F</p>	July 30, 2016	Suspended	<p>The FGC review will build on a July 27, 2016 review by MOF's legal adviser, undertaken on behalf of the INPB.</p>	<p><b>Process has been pended</b></p>		



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<b>Finsol (CN)</b> Development and operation of a payroll tax management system (development of system, provision of software and hardware, system oversight and maintenance, staff training)	<b>Draft</b> July 20, 2016  Minister of Finance <b>F</b>	July 30, 2016	Suspended	The FGC review will build on a July 27, 2016 review by MOF's legal adviser, undertaken on behalf of the INPB.	<b>Process has been pended.</b>		
<b>Ministry of Information and Tourism</b>							
<b>Bulsho Hotel (CN)</b> Rebuild and operate the Bulsho Hotel - ?	<b>2016 - ?</b> Status unknown <b>F</b>				FGC Chair has written to the Ministry of Tourism requesting copies of all concessions for FGC review		
<b>Aruba Hotel (CN)</b> Rebuild and operate the Aruba Hotel - ?	<b>2016 - ?</b> Status unknown <b>F</b>				FGC Chair has written to the Ministry of Tourism requesting copies of all concessions for FGC review		
<b>Ministry of Posts and Telecommunications</b>							
<b>VBH Holdings SPA (CN)</b> Development and operation of an international telecoms gateway	<b>Draft</b> June 20, 2016  Minister of Posts and Telecommunications <b>F</b>	July 30, 2016	CA in process		<b>Contract to be discussed at next meeting of INPB, scheduled 19<sup>th</sup> September</b>		
<b>Not Known</b>							
<b>The National Theatre</b>	Date not known	Not required	Not necessary	It is understood that the Chinese Government verbally offered to rehabilitate various public works that it had earlier financed, such as		Not necessary	Not necessary

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<p>(unknown) Infrastructure rehabilitation</p>	<p>Counterpart authority not known F</p>			<p>the National Theater and a national hospital. A grant cooperation agreement has reportedly been signed by MFA with the PRC.</p> <p>This is a bilateral grant, and does not need to be reviewed by the FGC.</p>			
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**Annex 61**

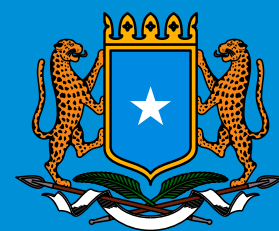
“Financial Governance Report”, *Financial Governance Committee*, May 2018



# Financial Governance Report



Financial Governance  
Committee

May 2018



THE WORLD BANK



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## 01

## About the Financial Governance Committee

The Financial Governance Committee (FGC) was established in early 2014 by mutual agreement between the Federal Government of Somalia (FGS), donors and International Financial Institutions (IFIs) to provide a forum for dialogue and advice on strategic financial governance issues. Members of the FGC are drawn from Somali institutions and international partners. The FGC is chaired by the Minister of Finance. Other FGS members include the Governor of the Central Bank of Somalia (CBS), the Minister of Fisheries and Marine Resources in his capacity as Secretariat of the Economic Committee of the Council of Ministers, representatives from the President's Office and the Prime Minister's Office, the Chair of the Parliamentary Finance Committee and the State Attorney General. The FGC has four international members, who sit as delegates on behalf of the International Monetary Fund (IMF), the World Bank<sup>1</sup>, the African Development Bank (AfDB)<sup>2</sup> and donor partners<sup>3</sup>.

The FGC was established following the resignation of the Governor of the Central Bank of Somalia, Yusur Abrar, in late 2013, amid concerns over Government's management of recovered assets and the nature of a contract FGS had entered into with a US law firm to assist the asset recovery process. The FGC's initial focus was on Central Bank Governance, asset recovery and public procurement and concessions. In response to emerging demand, the FGC has subsequently started monitoring FGS progress in implementing public financial management (PFM) reforms in the context of the IMF Staff Monitored Program (SMP). It has also provided advice on specific financial governance issues that impact on overall governance such as security sector expenditures, natural resource revenue management, public property protection and fiscal federalism.

Until such a time as the Procurement Act is under full implementation, the FGC has been mandated by the FGS to review and provide advice on all Government contracts and concessions above \$5m in value<sup>4</sup>. It also supports the work of the Interim National Procurement Board (INPB), an FGS committee mandated to approve all concessions and contracts above \$2m. The FGC's current mandate runs to the end of June 2018. Its renewal will be subject to discussion between the incoming Government and the international community.

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1 Funded through the World Bank Multi Partner Fund. The fund has ten contributing donors – for further details see: <http://somaliampf.org/development-partners>

2 The FGC is awaiting the appointment of a new AfDB delegate

3 Funded on behalf of donors by the European Union

4 See Annex 1 for a list of all FGS contracts reviewed by the FGC since 2014









## 04 Executive Summary

Good financial governance is essential to Somalia's State-building process. Somalia currently faces the following primary State-building challenges:

**1** Combating insecurity

**2** Developing a viable system of federal government

**3** Attaining fiscal sustainability

**4** Fostering inclusive growth and generating employment

**5** Delivering essential services to citizens

**6** Enabling investment in longer-term recovery and development

Corruption enabled by poor financial governance can fatally undermine the State's ability to address its State-building challenges. State corruption, perceived or actual, reinforces perceptions of inequality and State bias, reduces the State's capacity to deliver its core functions and negatively affects the willingness of third parties to co-operate with the State. Conversely, sound financial governance is expected to help reinforce the legitimacy of the State, enable the development of a viable federal system of government, promote stability, open the door to debt relief and enable access to the financial flows essential to rebuilding the country.



05

The 2017 FGR identified seven strategic challenges the Federal Government of Somalia (FGS) needs to address if it is to strengthen financial governance:



The transition in Federal Government administration in March 2017 created an initial pause in financial governance reforms, as new players familiarised themselves with the issues and determined their priorities. The new administration is to be commended for its strong commitment to implement policies and reforms under the IMF Staff-Monitored programme (SMP), which it took over from the previous administration, and the progress it has made in meeting its targets.

The transition in administration created opportunities to revisit several financial governance challenges through a new lens. The new administration took an early decision to review all existing Government contracts, with a view to renegotiating or cancelling them as appropriate. It also reinvigorated the dialogue between the Federal Government and FMS on fiscal federalism. Likewise, the political legitimacy endowed on the new administration by the transition enabled it to create momentum behind the FGS's legislative agenda and to reach out to taxpayers.



## 06

Tangible achievements over the past year include: passage of the National Communications Law, paving the way for sector regulation and revenue collection from the telecoms activities; agreement between the Federal Government and Federal Member States on an interim process for fisheries licensing; agreement to levy a common tariff on specific goods at Federal and Member State level; review and subsequent cancellation of several concessions to private sector companies for collection of non-tax revenues following a determination that they failed to deliver value for money; expansion of the federal tax base into new areas such as sales tax; and, biometric registration of around 5,000 Somali National Army (SNA) personnel as a precursor to paying their salaries direct to bank.

Some financial governance issues lost momentum in the transition. Relatively little progress was made with respect to the development of public procurement capacity and establishment of conditions for effective implementation of the 2016 Procurement Act. There was a hiatus in the implementation of interim procurement measures to guide public procurement until such a time as the Procurement Act is fully effective. It also took a while for the protection of public property to gain executive attention and there remains much to do to keep this issue alive.

Progress towards stronger financial governance is not always linear. The irregular cancellation and re-award by the SNA commander of the SNA rations contract in April 2017 was a significant setback at the outset of the new administration's tenure. The Ministry of Finance subsequently conducted a legal review which determined that the cancellation and re-award was irregular, and the Economic Committee of the Council of Ministers resolved that the contract should be retendered. However, the decision has not yet been implemented. One of the major financial governance tests of 2018 will be the extent to which the Federal Government can bring greater order and transparency to security sector expenditures.

More broadly, in spite of high-level political commitment to strengthening Government contracts and the passing of the 2016 Procurement Act, procurement capacity and understanding of procurement due process remains limited across Government. In general, putting in place new legal frameworks and establishing appropriate policies only constitute initial steps towards stronger financial governance. Effective implementation is needed for these frameworks and policies to achieve their intended objective.

Although the level of dialogue between Federal Government and Federal Member States on fiscal federalism is encouraging, the current political momentum towards reaching a comprehensive agreement on revenue sharing between FGS and FMS needs sound technical underpinning. High-level revenue sharing principles should be agreed before percentage shares are determined.



## 07

The FGC's top ten priorities for 2018 focus on short term actions that will enable the Federal Government to support its state building agenda and demonstrate its continued commitment to reducing the scope for mismanagement of public resources. Their effective implementation will be contingent on political commitment at the highest level; increased Federal Government capacity to work effectively with the Federal Member States on an agreed financial governance agenda; increasing co-ordination between individual federal agencies; a continued culture shift away from legacy practices such as sole-source contracting; and, outreach to the business community. Financial governance issues should also have a special place for discussion in the ongoing constitutional discussions focusing on fiscal federalism and resource sharing.

## Top ten Financial Governance priorities in the coming year

- ▶ **1** Complete registration and payment to bank of all security sector personnel, including cash for fresh rations ('idaan')
- ▶ **2** Re-tender SNA and Prisons rations contracts in line with interim procurement requirements and establish a strengthened rations delivery verification mechanism
- ▶ **3** Re-negotiate Port (Al Bayrak) and Airport (Favori) concessions, and resolve other outstanding legacy contracts from the previous administration (Sahel Airport Shuttle, Simatech Dry Port, Passports, Visas)
- ▶ **4** Ensure all new procurements of contracts and concessions are conducted in accordance with the interim procurement requirements
- ▶ **5** Reach an agreement between FGS and Federal Member States on the principles underpinning revenue sharing
- ▶ **6** Modernise the legislative and administrative framework for inland revenue in consultation with Federal Member States and business community
- ▶ **7** Agree a Customs Modernisation Plan with the Federal Member States which includes a roadmap for from transitioning from volume-based to value-based customs tariffs
- ▶ **8** Institute basic reporting on transfer utilisation and agree an objective basis for 2019 transfer allocations to Federal Member States and Banadir
- ▶ **9** Compile a full inventory of Federal Government property and begin to review all public property leasing and disposals since 2012
- ▶ **10** Implement the first phase of currency reform



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## 09

## Abbreviations and Acronyms

<b>AfDB</b>	African Development Bank
<b>ALSF</b>	Africa Legal Support Facility
<b>AML/CFT</b>	Anti-Money Laundering and Combatting the Financing of Terrorism
<b>BRA</b>	Banadir Regional Administration
<b>CBS</b>	Central Bank of Somalia
<b>EU</b>	European Union
<b>FGC</b>	Financial Governance Committee
<b>FGR</b>	Financial Governance Report
<b>FGS</b>	Federal Government of Somalia
<b>FMS</b>	Federal Member States
<b>GDP</b>	Gross Domestic Product
<b>HIPC</b>	Heavily Indebted Poor Countries
<b>HRP</b>	Humanitarian Response Plan
<b>ICAO</b>	International Civil Aviation Organization
<b>ICT</b>	Information and Communications Technology
<b>IFI</b>	International Financial Institutions
<b>IMF</b>	International Monetary Fund
<b>INPB</b>	Interim National Procurement Board
<b>LMTO</b>	Large and Medium Tax Payers' Office
<b>MAF</b>	Mutual Accountability Framework
<b>MoF</b>	Ministry of Finance



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<b>MTB</b>	Money Transfer Business
<b>NDP</b>	National Development Plan
<b>NISA</b>	National Intelligence and Security Agency
<b>NSRC</b>	Non-Salary Recurrent Costs
<b>PFM</b>	Public Financial Management
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>PSA</b>	Production Sharing Agreement
<b>RCRF</b>	Recurrent Cost Reform Financing
<b>SFMIS</b>	Somalia Financial Management Information System
<b>SMP</b>	Staff Monitored Program
<b>SNA</b>	Somali National Army
<b>StAR</b>	Stolen Asset Recovery Initiative
<b>ToR</b>	Terms of Reference
<b>TSA</b>	Treasury Single Account
<b>UCS</b>	Use of Country Systems
<b>UCT</b>	Upper Credit Tranche
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UN SOMA</b>	United Nations Status of Mission Agreement
<b>US</b>	United States
<b>WB</b>	World Bank



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# Introduction



In March 2017, the FGC published its first comprehensive Financial Governance Report (FGR). The 2017 FGR provided an assessment of financial governance challenges in Somalia and recommended several priority actions to strengthen financial governance and state-building efforts in the next twelve months<sup>5</sup>.

This second Financial Governance Report reviews the financial governance challenges currently facing Somalia. It then assesses the progress made in strengthening financial governance over the past year and explains the advice and support that the FGC has provided. It concludes by identifying ten priority actions for strengthening financial governance in the coming year.

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<sup>5</sup> See Annex 2 for a detailed description of progress in implementing the 2017 recommendations





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# Current financial governance challenges

Good financial governance is essential to Somalia's State-building process. Somalia currently faces the following primary State-building challenges:

**1** Combating  
insecurity

**2** Developing a  
viable system  
of federal  
government

**3** Attaining  
fiscal  
sustainability

**4** Fostering  
inclusive  
growth and  
generating  
employment

**5** Delivering  
essential  
services to  
citizens

**6** Enabling  
investment in  
longer-term  
recovery and  
development



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Corruption enabled by poor financial governance can fatally undermine the State's ability to address these challenges. State corruption, perceived or actual, reinforces perceptions of inequality and State bias. The misuse of public resources (cash, natural resources and fixed assets such as land) and public goods (commodities or services that are provided without profit for the ultimate benefit of citizens) can be expected to negatively impact on:

- Public willingness to accept the authority of the State and pay taxes
- The ability of the State to provide core functions such as security
- The degree of co-operation of regional administrations in a federal system of government
- The willingness of the international community to provide aid direct to the State and as well as other means of financing such as debt relief
- The chances of attracting high-quality private sector investment to enable economic development and job creation



Corruption ultimately undermines the public's trust in its government and can become a conflict driver.

Conversely, it is anticipated that sound financial governance will help reinforce the legitimacy of the government, enable the development of a viable federal system of government, promote stability in Somalia, open the door to debt relief and enable access to the financial flows essential to rebuilding the country.

The 2017 FGR identified seven strategic challenges that the Federal Government needs to address if it is to strengthen financial governance. These challenges remain relevant in 2018.

### Challenge 1:

#### Agreeing a coherent way forward on fiscal federalism

Fiscal federalism is the mechanism by which public sector functions and resources are allocated among different tiers of government through agreement on revenue authority, expenditure responsibility and mechanisms for resource equalisation. Current inter-governmental fiscal arrangements, including tax regimes, are not sufficiently harmonised. They have evolved by default and give a significant advantage to Federal Member States (FMS) that have access to port revenues and coastline. This runs counter to the principle of fair distribution of resources established in the Provisional Constitution and raises the risk of fragmented and uneven development across Somalia that undermines state-building. This risk, which at its most extreme tends towards 'economic balkanisation', is exacerbated by current tendencies of FMS to negotiate major concessions and infrastructure contracts unilaterally, without co-ordination with one another or FGS.

### Challenge 2:

#### Managing natural resources transparently and equitably

Somalia has significant natural resource potential across a wide range of sectors. Access to natural resources revenues could potentially have a transformational impact on the state's finances and prospects for economic development. However, unless managed transparently, equitably and sustainably, natural resource revenues also carry a substantial degree of risk. They have the potential to generate conflict between communities and their governments, and between levels of government within the federal system. Depending on how they are spent, they also have the potential to undermine fiscal sustainability, disrupt economic management, foster corruption and generate inflation.





### Challenge 3:

#### Raising domestic revenues

FGS faces a severe resource constraint that limits its ability to support fiscal federalism and deliver core State functions effectively. The tax base is narrow, tax rates are low, and the tax collection system has been predominantly informal for many years. Nonetheless, taxpayers need to be convinced that paying more taxes to the State is in their interests, and that revenues will not be misappropriated. Raising revenues therefore requires a complex set of inter-linked actions; political commitment to tax compliance, dialogue with key taxpayers in key sectors, development of appropriate legislation, and greater technical capacity for collection and compliance. Government concessions to private sector entities to manage or support the collection of non-tax revenues also need to be transparent and offer value for money.

### Challenge 4:

#### Strengthening the credibility of public procurement and concessions

Historically, the award of Government contracts has not been subject to open competition, fueling suspicions of corruption and bias in the selection of suppliers. There has been a similar lack of transparency around the disposal of public assets. The FGC has played a lead role in reviewing high-value FGS contracts and concessions since 2014. Most of the contracts reviewed by the FGC resulted from direct negotiations between FGS agencies and contractors, often instigated by the contractors themselves. Their terms rarely offered value for money to Government. Current FGS commitment to more transparent and competitive contracting needs to be sustained and deepened going forward if the Government is to strengthen the credibility of public procurement and concessions and improve value for money in the delivery of goods and services.

### Challenge 5:

#### Strengthening expenditure management

Government expenditures have historically been paid entirely in cash. While this cash-based approach has been a function of the weakness of the payment and banking systems, it lacks transparency and creates ample scope for diversion of funds. As the capacity of the payment and banking systems evolve, the management of FGS expenditures needs to improve accordingly. FGS has embarked on reforms to the payment of salaries (direct to individuals' accounts)



and non-wage expenditures (direct to suppliers) to reduce cash handling. These reforms need to be completed, particularly in the security sector. Advances to Government agencies also need to be fully accounted for before new ones are made. FGS also needs to strengthen its mechanisms for verifying the delivery of goods and services; particularly high-value rations contracts. The gains made in improving the transparency of public tendering will count for little if there is limited visibility on whether goods and services are subsequently delivered.

### **Challenge 6:**

#### **Developing the financial sector**

Reforms to the regulation and supervision of Somalia's financial system are already underway. Reform areas include regulation and supervision of Commercial Banks, Money Transfer Business and Mobile Money Services, as well as Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) compliance. It is critical that reforms in these areas continue to be supported, politically, financially and technically. They will enable the re-establishment of correspondent banking relationships with international banks, thus safeguarding the flow of remittances into Somalia. They will also improve the FGS's prospects for accessing external financing and will support economic development by enabling the private sector to access credit through the banking system, rather than relying on informal credit networks.

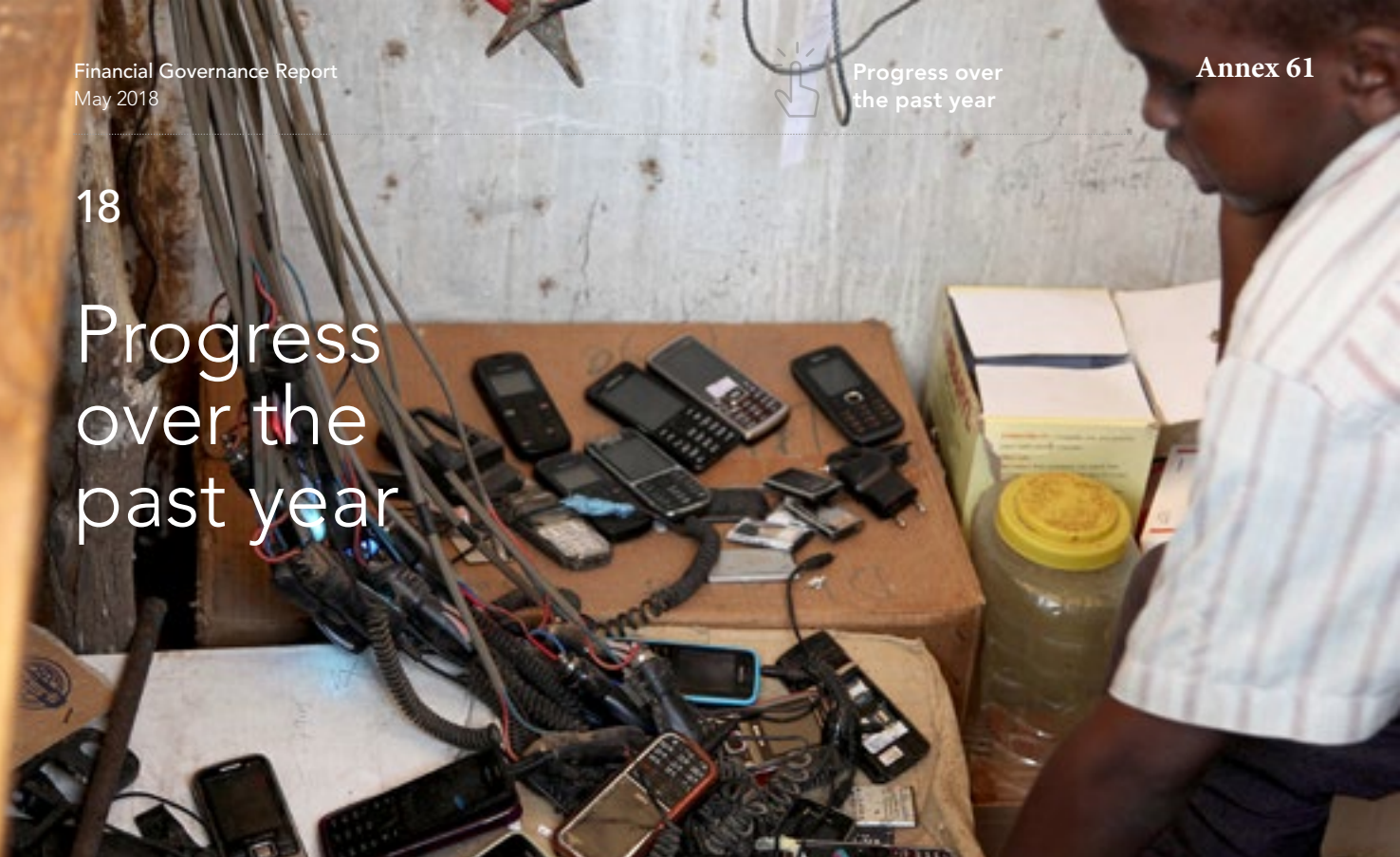
### **Challenge 7:**

#### **Increasing access to external financing**

Given its fiscal constraints, FGS needs increased access to external financing in order to consolidate the process of state-building and extend the development agenda. Good financial governance is essential to persuading creditors and donors of the value of extending additional financing to FGS. In the absence of additional financing, early stabilization gains are likely to be jeopardized. Achieving debt relief will be one way of unlocking additional external financing, as FGS will be able to access concessional loans from multilateral and bilateral lenders. FGS also needs to increase its access to grant financing.

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## Progress over the past year



### Overall Assessment

The transition in Federal Government administration in March 2017 created an initial pause in financial governance reforms, as new players familiarised themselves with the issues and determined their priorities. The new administration is to be commended for its strong commitment to implement policies and reforms under the IMF Staff-Monitored programme (SMP), which it took over from the previous administration. It has made solid progress to date in achieving the targets set under the second 12-month SMP (May 2017 – April 2018)<sup>6</sup>, including its targets for domestic revenue mobilisation. The third 12-month SMP (May 2018—April 2019) will continue to lay the foundation for Somalia to reach an Upper Credit Tranche (UCT) arrangement with the IMF, which will eventually pave the way for receiving debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative.

The transition in administration created opportunities to revisit several financial governance challenges through a new lens. The new administration took an early decision to review all existing Government contracts, with a view to renegotiating or cancelling them as appropriate. It also reinvigorated the

<sup>6</sup> <http://www.imf.org/en/Publications/CR/Issues/2018/02/26/Somalia-2017-Article-IV-Consultation-and-First-Review-Under-the-Staff-Monitored-Program-45662>



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dialogue between the Federal Government and FMS on fiscal federalism. Likewise, the political legitimacy endowed on the new administration by the transition enabled it to create momentum behind the FGS's legislative agenda and to reach out to taxpayers.

Against this backdrop, the new administration has been able to register a number of tangible achievements. The passing of the National Communications (Telecoms) Law early in the administration's tenure reflected a successful co-ordinated outreach to the legislature and the telecoms sector and paved the way for sector regulation and collection of new revenues from telecoms. The executive has demonstrated strong political commitment to achieving fiscal federalism goals, including harmonising taxes and sharing resources equitably. An interim agreement has been reached between the FGS and FMS on fisheries licensing, and the Federal Minister of Finance and his FMS counterparts have agreed to levy common tax rates on specific items<sup>7</sup>. A number of concessions to private sector companies for collection of non-tax revenues<sup>8</sup> have been cancelled following a determination that they failed to deliver value for money; in spite of resistance from the companies involved, the services have now reverted to Government with revenue benefits. Efforts to extend the tax base into new areas such as sales tax on imports met strong initial resistance from the business community and from Parliament, but now appear to be yielding fruit. Efforts to register security sector personnel and pay their salaries direct to their accounts are ongoing, with around 5,000 SNA personnel already biometrically registered, although there is some way to go before they are successfully completed.

Some financial governance issues lost momentum in the transition. Relatively little progress has been made with respect to the development of public procurement capacity and establishment of conditions for effective implementation of the 2016 Procurement Act. Likewise, the transition created a significant hiatus in the implementation of interim procurement measures, intended to guide public procurement until such a time as the Procurement Act is fully effective, including convening of the Interim National Procurement Board (INPB). It also took a while for emerging issues such as the protection of public property to gain executive attention and there remains much to do to keep this issue alive.

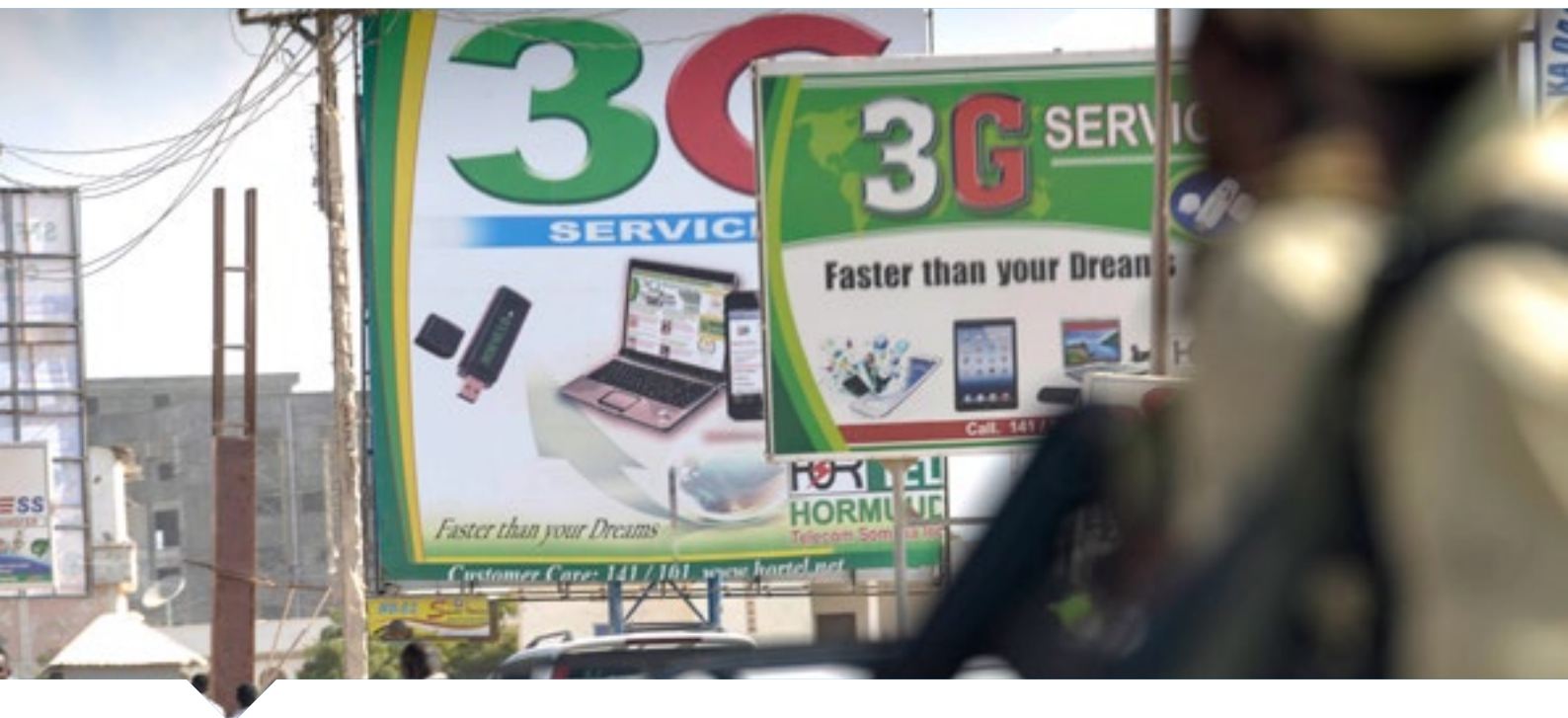
In general, most progress has been made on issues where the Ministry of Finance and the Economic Committee of the Council of Ministers are recognised as having authority to be the lead actors and decision-makers. Progress has been slower on issues that require co-ordination with other stakeholders both inside and outside of Government. The ability to co-ordinate and develop consensus across stakeholders is a key element in tackling some of the most sensitive and important financial

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<sup>7</sup> Khat, cigarettes and departure tax

<sup>8</sup> Road tax, property transfer tax, vehicle licensing





governance issues. Reforming security sector expenditures, natural resource revenue management, contract renegotiation, procurement reform, protection of public property all require concerted dialogue, openness and joint working with multiple stakeholders.

Progress towards stronger financial governance is not always linear. The irregular cancellation and re-award by the SNA commander of the SNA rations contract in April 2017 was a significant setback at the outset of the new administration's tenure. The Ministry of Finance subsequently conducted a legal review which determined that the cancellation and re-award was irregular, and the Economic Committee of the Council of Ministers resolved that the contract should be retendered. However, the decision has not yet been implemented, demonstrating the challenges inherent in acting on issues that require co-ordination across FGS agencies (in this case, the Ministry of Defence and SNA command). One of the major financial governance tests of 2018 will be the extent to which FGS can bring greater order and transparency to security sector expenditures.

More broadly, in spite of high-level political commitment to strengthening Government contracts, procurement capacity and understanding of procurement due process remains limited across Government. The majority of the expenditures submitted by FGS at the end of 2017 for reimbursement under the non-salary component of the World Bank's Recurrent Cost Reform Financing (RCRF) facility were deemed ineligible as agencies had failed to adhere to the required procurement processes. Close oversight and adequate capacity support will be needed going forward as individual FGS agencies continue to revisit old contracts



and enter into new ones. Otherwise, there is a real possibility that past contracting mistakes will be repeated, in spite of there being a new legal framework for procurement through the 2016 Procurement Act.

In general, putting in place new legal frameworks and establishing appropriate policies only constitute initial steps towards stronger financial governance. Effective implementation is needed for these frameworks and policies to achieve their intended objective. In this vein, strong follow up will be required in order for the President's policy announcement on protecting public property to be implemented effectively.<sup>9</sup> Likewise, implementation of the 2017 Telecoms Law requires appropriate establishment of the Telecommunication Authority and its Board.

Although the level of dialogue between FGS and the FMS on fiscal federalism is encouraging, the current political momentum towards reaching a comprehensive agreement on revenue sharing between FGS and FMS needs sound technical underpinning. Given the limitations on data availability, and the substantial risks associated with inappropriately designed revenue sharing agreements, particularly in sectors such as petroleum, current efforts should focus on agreement on high-level principles, rather than percentage shares. FGS also needs to engage with individual FMS as they enter into agreements for major infrastructure redevelopments (e.g. ports) to avoid political confrontation, unhealthy competition and economic balkanisation.

<sup>9</sup> [https://www.hiiraan.com/news4/2018/Jan/146312/somalia\\_exploitation\\_of\\_public\\_land\\_is\\_barred\\_gov\\_t\\_assigns\\_national\\_committee.aspx](https://www.hiiraan.com/news4/2018/Jan/146312/somalia_exploitation_of_public_land_is_barred_gov_t_assigns_national_committee.aspx)



## 22

### Fiscal Federalism

Progress	Challenges	FGC support and advice
<ul style="list-style-type: none"> <li>■ Quarterly meetings between FGS and FMS MoFs instituted</li> <li>■ Agreement on harmonisation of 'sin' taxes (khat, cigarettes) and international departure tax from 1st Jan 2018</li> <li>■ Agreement in principle to work towards harmonisation of sales tax</li> <li>■ Over \$28m of transfers made to FMS and BRA in 2017, funded by FGS own revenues, Saudi and Turkish budget support funds, RCRF and 'Surge support'</li> <li>■ 2018 Budget provides greater transparency on planned transfers to individual FMS and BRA (\$22.73m), in line with FGC advice</li> </ul>	<ul style="list-style-type: none"> <li>■ More work is needed to systematise transfers, particularly to provide an objective basis for their allocation across FMS, and between FMS and BRA</li> <li>■ Greater transparency is needed with respect to transfer utilisation</li> <li>■ Customs harmonisation remains a medium-term objective, but progress towards it can be made incrementally, for example by starting with agreement on adopting a common classification of goods in advance of transition from volume-based to value-based tariffs.</li> <li>■ FGS has limited-to-no insight into high-value infrastructure agreements entered into by the FMS</li> </ul>	<ul style="list-style-type: none"> <li>■ FGC has participated in the regular meetings between FGS and FMS MoFs</li> <li>■ Has provided advice on strengthening inter-governmental fiscal transfers in 2018.</li> </ul> <p><b>The FGC recommends that:</b></p> <ul style="list-style-type: none"> <li>■ All transfers should be sent electronically direct from the TSA to recipients' bank accounts</li> <li>■ FMS and BRA should provide basic reports to FGS on transfer utilisation</li> <li>■ A clear set of criteria should be developed for 2019 transfer allocations</li> </ul>



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## Natural Resources

Progress	Challenges	FGC support and advice
<ul style="list-style-type: none"> <li>■ Petroleum Bill has been submitted to Parliament</li> <li>■ Ministry of Petroleum has revised the Model Oil and Gas Production Sharing Agreement in line with FGC recommendations</li> <li>■ The PFM Bill that has been submitted to Parliament includes a section on natural resource revenue management, in line with FGC advice. It sets out procedures for banking and disbursing revenues, and provides for a natural resource revenue saving mechanism.</li> <li>■ In January 2018, President of FGS and the Presidents of the FMS came to an agreement on responsibility for fisheries licensing which paves the way for issuance of 2018 tuna licenses and a revenue sharing agreement.</li> </ul>	<ul style="list-style-type: none"> <li>■ There is strong political momentum to arrive at a comprehensive agreement between FGS and FMS on revenue sharing in the coming months.</li> <li>■ While the momentum is positive, it requires sound technical underpinning. Given the limitations on data availability, and the substantial risks associated of inappropriately designed revenue sharing agreements, particularly in sectors such as petroleum, current efforts should focus on agreement on high-level principles, not percentage shares.</li> </ul>	<ul style="list-style-type: none"> <li>■ FGC participated in the 2017 discussions on tuna licensing and prepared an advisory paper for FGS on international experience in natural resource revenue sharing in order to guide the way forward in Somalia.</li> <li>■ The paper and its presentation were translated into Somali and presented to the Economic Committee of Cabinet</li> </ul> <p><b>FGC advice has focused on:</b></p> <ul style="list-style-type: none"> <li>■ The risks of entering into agreements that are badly-designed or have not been sufficiently negotiated</li> <li>■ The importance of securing political agreement on the high-level principles guiding revenue sharing before entering into technical details at sectoral level</li> <li>■ The need for agreements to incorporate scope for future adjustment in light of changing circumstances</li> </ul>



## Recommendations from FGC Advisory Paper on Natural Resource Revenue Sharing

**1** The Federal Government and the Federal Member States need to discuss and agree the *overarching principles* that will guide revenue sharing, before moving towards establishing individual sector-level agreements. Issues that require high-level agreement include: the balance between equitable revenue sharing and compensation to resource-rich areas and, the balance between immediate consumption of natural resource revenues and revenue savings.

**2** Individual sector-level agreements need to identify which revenues arising from the sector are to be shared, how they are to be shared and the timeframe of the agreement.

**3** A range of Federal Government Ministries should be involved in the revenue sharing discussions and negotiation of specific agreements. Given their importance for the fiscal federalism agenda, negotiations should not be left to individual agencies.

**4** Revenue sharing discussions need to be appropriately synchronised with the Constitution re-drafting process. The Constitution should articulate the principles on which revenue sharing is based, but it is not advisable that it defines specific revenue shares or prescribes specific allocation mechanisms.



## Domestic Revenue Mobilisation

Progress	Challenges	FGC support and advice
<ul style="list-style-type: none"> <li>■ FGS has started collecting revenues from new sources (e.g. sales tax) and was able to meet SMP revenue targets for end December 2017 and end March 2018.</li> <li>■ The PFM Bill that has been submitted to Parliament vests authority to grant tax exemptions solely in MoF, in line with FGC Advice.</li> <li>■ The Telecoms Act has been passed into law, paving the way for licensing and revenue generation from the sector.</li> <li>■ FGS has embarked on revenue reforms such as automation of non-tax revenue collections and establishment of large and medium tax payers' office (LMTO).</li> <li>■ Three contracts that were known to have concessioned non-tax revenue collections to private sector firms were determined to have failed to deliver value for money for the FGC and have been cancelled (road tax, property transfer tax, vehicle licensing) with revenue benefits to FGS.</li> <li>■ However, similar contracts issued by the previous administration have subsequently emerged (for work permits and visa issuance), and their status remains unclear.</li> <li>■ MoF has engaged the UN in order to commence revenue collection from UN contractors based at the airport who are not exclusively providing services to the Mission.</li> </ul>	<ul style="list-style-type: none"> <li>■ FGS's decision to introduce sales tax on imported goods, as provided for in the 1984 Sales Tax Law, met considerable initial resistance from sections of the business community and from Parliament. One of the concerns cited was that imposition of the tax put traders in Mogadishu at a disadvantage to other areas of the country.</li> <li>■ Going forward, as FGS starts to develop updated Domestic Revenue legislation, it will need to ensure that there is thorough consultation with key stakeholders (business community, Parliament, FMS).</li> <li>■ It will also be important to secure FMS agreement on adoption of common provisions.</li> <li>■ Passage of the Telecoms Act does not automatically deliver objective and appropriate taxation of the Telecoms sector – supporting measures are needed to determine the dues owed by Telecoms firms and introduce new telecoms-related revenues.</li> </ul>	<ul style="list-style-type: none"> <li>■ Several donors are involved in supporting FGS revenue mobilisation efforts. The FGC therefore mainly provides revenue advice on specific issues that do not fall under the purview of specific donor support projects.</li> <li>■ FGC has provided advice on the UN SOMA agreement, and the extent to which its terms can be strengthened to enable taxation of UN contractors</li> <li>■ FGC is providing advice to FGS on best practice with respect to the taxation of donor-funded activities</li> <li>■ FGC continues to provide advice on all FGS concessions that have a revenue component, and monitors their revenue performance</li> <li>■ FGC is encouraging FGS to hold discussions with ICAO and the UN regarding reimbursement of Somalia's historical overflight charges</li> </ul>



## Public Procurement and Concessions

Progress	Challenges	FGC support and advice
<ul style="list-style-type: none"> <li>■ With FGC/ALSF/World Bank support, FGS is working towards renegotiating the Al Bayrak port concession and FAVORI airport concession. The objective is to secure clearer contract terms and agree performance standards.</li> <li>■ Renegotiation of the Al Bayrak port concession is expected to enable an agreement on the way forward for the Simatech dry port concession.</li> <li>■ FGS is also in the process of renegotiating the Sahel airport shuttle concession.</li> <li>■ H.E. the President has placed a moratorium on the disposal of public property.</li> <li>■ The Council of Minister's Economic Committee has approved interim procurement requirements to guide public procurement until such a time as the Procurement Act is fully implemented, in line with FGC advice</li> </ul>	<ul style="list-style-type: none"> <li>■ The SNA rations contract that had been competitively tendered by the previous administration was cancelled and re-awarded without due process by the SNA Command in April 2017. The MoF conducted a legal review which determined that the cancellation and re-award was irregular, and the Economic Committee resolved that the contract should be retendered. However, the decision has not yet been implemented.</li> <li>■ Work is needed to address several contracts entered into by the previous administration on a sole source basis without adequate scrutiny (passports, visas, prison rations)</li> <li>■ Sole source contracting for goods and services between \$2,000 - \$50,000 (as opposed to soliciting 3 quotations) was a major reason for FGS's failure in 2017 to meet RCRF NSRC reimbursement requirements</li> <li>■ There remains a risk that individual FGS agencies will award high-value contracts and concessions on a sole source basis without following established procedures or oversight from the INPB</li> <li>■ The Procurement Act, once fully implemented, will establish a highly decentralised procurement system, whereby ministries will be able to procure contracts of any value and to use non-standard bidding methods such as sole-sourcing without third party approval</li> </ul>	<ul style="list-style-type: none"> <li>■ FGC continues to provide active support to enable FGS to move towards renegotiation of the FAVORI &amp; Al Bayrak contracts, most recently helping prepare MoUs to govern the terms and timelines of the renegotiations</li> <li>■ FGC has continuously flagged the need to retender the SNA rations contract on a transparent and competitive basis</li> <li>■ FGC continues to provide advice on other FGS contracts that require renegotiation (e.g. airport taxi contract) and to request documentation on reported public property disposals</li> <li>■ FGC advised on the need to establish interim procurement requirements until such a time as the Procurement Act is fully implemented, and continues to highlight the need for adequate capacity building and oversight in the meantime</li> <li>■ FGC has presented an advisory report to FGS proposing immediate steps to strengthen the Protection of Public Property (immoveable assets), providing a platform for implementation of the President's moratorium on the disposal of public property</li> <li>■ FGC has provided advice on possible amendments to the 2016 Procurement Act, to enable contract awards above a certain value to be subject to approval by a third party within Government</li> </ul>



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## Expenditure Management

Progress	Challenges	FGC support and advice
<ul style="list-style-type: none"> <li>■ Police officers' salaries and cash allowances for fresh rations ('idaan') are being paid direct to individuals' bank accounts</li> <li>■ FGS has initiated a pilot for SNA personnel registration and salary payment direct to bank. Just over 5,000 personnel have been registered so far, and their details entered into the payroll module of SFMIS. Payment of their salaries direct to bank is due to start in May 2018.</li> <li>■ FGS has started using the Purchasing Module in SFMIS as a first step towards controlling contractual commitments in line with budget availability</li> <li>■ The PFM Bill has been submitted to Parliament</li> </ul>	<ul style="list-style-type: none"> <li>■ Significant amounts of security expenditures across all forces continue to be paid to the agencies own bank accounts; the only non-wage expenditures currently paid direct to suppliers are the rations contract payments.</li> <li>■ NISA and Prisons rations contracts continue to include a cash component for fresh rations ('idaan'). This means that the contractor delivers a cash sum equivalent to \$30 per person per month to the NISA and Prisons leaderships.</li> <li>■ SNA allowances for 'idaan' are paid direct by MoF to the SNA and released to unit commanders, rather than paid to individual personnel.</li> <li>■ Donors supporting payment of SNA stipends do not make use of FGS systems. FGS's initiative of registering security sector personnel and paying them direct to their accounts provides an opportunity to discuss the harmonisation of stipend payments with FGS systems.</li> </ul>	<ul style="list-style-type: none"> <li>■ FGC continues to closely monitor FGS progress in reforming security sector salary payments, with the objective that salaries and allowances for fresh rations ('idaan') are paid direct to individuals' accounts</li> <li>■ Given that FGS spends almost \$1m per month/\$12m per annum on security sector dry rations, FGC has provided advice on strengthening rations delivery verification mechanisms, to ensure that FGS only pays for what it receives.</li> </ul>





## Financial Sector Development and Asset Recovery

Progress	Challenges	FGC support and advice
<ul style="list-style-type: none"> <li>■ First phase of currency reform, covering issuance of smaller value notes (1000, 2000, 5000 and 10000 shillings) planned for 2018. Decision on the currency conversion factor will be made in advance of the first phase.</li> <li>■ The second phase of currency reform will cover the issuance of larger denomination notes (20000 and 50000). A decision on the exchange rate regime will be taken at this juncture.</li> <li>■ FMS have provided written commitment to prevent/combat counterfeiting in their jurisdictions</li> <li>■ Working with the World Bank StAR programme, and with advice from FGC, FGS has recovered over \$1m in frozen assets from banks abroad</li> </ul>	<ul style="list-style-type: none"> <li>■ The FGS will need to raise \$41m from the donor community to cover the cost of the first phase of currency reform</li> <li>■ The second phase of the currency reform requires significant preparatory work, including strengthening the CBS's institutional capacity and developing independent monetary policy instruments and reserve management guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>■ FGC continues to closely monitor FGS progress, and provide pertinent advice, in implementing the currency reform road map</li> <li>■ FGC continues to provide active support to FGS asset recovery efforts in conjunction with the WB STAR programme, and has acted as a conduit to further help FGS identify previously unknown legacy assets</li> <li>■ FGC advised on AML/CFT bill and its implementation.</li> <li>■ FGC to monitor development of the financial sector roadmap.</li> </ul>



## Access to Financing

Progress	Challenges	FGC support and advice
<ul style="list-style-type: none"> <li>■ FGS secured \$70m in additional budget support financing for 2017 and 2018 from Saudi Arabia and Turkey</li> <li>■ The World Bank provided \$6m of additional financing through RCRF in 2017 to enable FGS to provide 'Surge' support for infrastructure and youth employment to FMS/BRA. A further tranche of \$13m is expected in 2018 contingent on the attainment of a number of policy reforms.</li> <li>■ EU stipend payment support for Police is now routed through the FGS Treasury, although UNOPS maintains the payroll and issues the payment instructions.</li> <li>■ The EU has committed to providing Euros 100m in direct budget support to FGS</li> <li>■ FGS is making progress towards achieving debt relief by building a strong track record of economic and financial development and meeting IMF/SMP requirements.</li> </ul>	<ul style="list-style-type: none"> <li>■ The overall level of direct external financing to FGS remains low. Only 8% of development aid was delivered on treasury in 2016, against a target of 15%. For 2017, the percentage improved considerably to 14%*, but remains below target, while the target itself is extremely modest.</li> </ul>	<ul style="list-style-type: none"> <li>■ FGC provided inputs to the Use of Country Systems working group report on the risks and benefits of using country systems</li> <li>■ FGC advised on various reforms with partners to build track record in the context of the SMP</li> <li>■ FGC has advised FGS to treat external untied grants with the same oversight and transparency as regular budget funds</li> </ul>

\* <https://s3.eu-central-1.amazonaws.com/somalia-aid-flows.so/Aid+Flows+in+Somalia+-+2018FINAL.pdf>



# Financial Governance priorities in the coming year

Through mechanisms such as the IMF programme and the Mutual Accountability Framework (MAF)<sup>10</sup>, FGS has agreed a number of targets with the international community which aim to strengthen its economic and fiscal capacity and develop its public financial management system. Sound public finances underpin legitimacy and stability and are crucial to maintaining peace and a long term political settlement. It is widely acknowledged that developing institutional capacity can take years<sup>11</sup>, and some of these targets are medium to long-term in nature.

The FGC's focus is on the financial governance actions the FGS needs to take in the short term to support its state building agenda and demonstrate its continued commitment to reducing the scope for mismanagement of public resources. The FGC's top ten priorities for 2018 therefore focus on strengthening fiscal federalism, enhancing transparency in contracting and asset disposal, mobilising revenues and reducing the use of cash in the execution of government expenditures.

<sup>10</sup> <https://www.gov.uk/government/publications/new-partnership-for-somalia-for-peace-stability-and-prosperity>

<sup>11</sup> World Development Report 2011: Conflict, Security and Development, World Bank

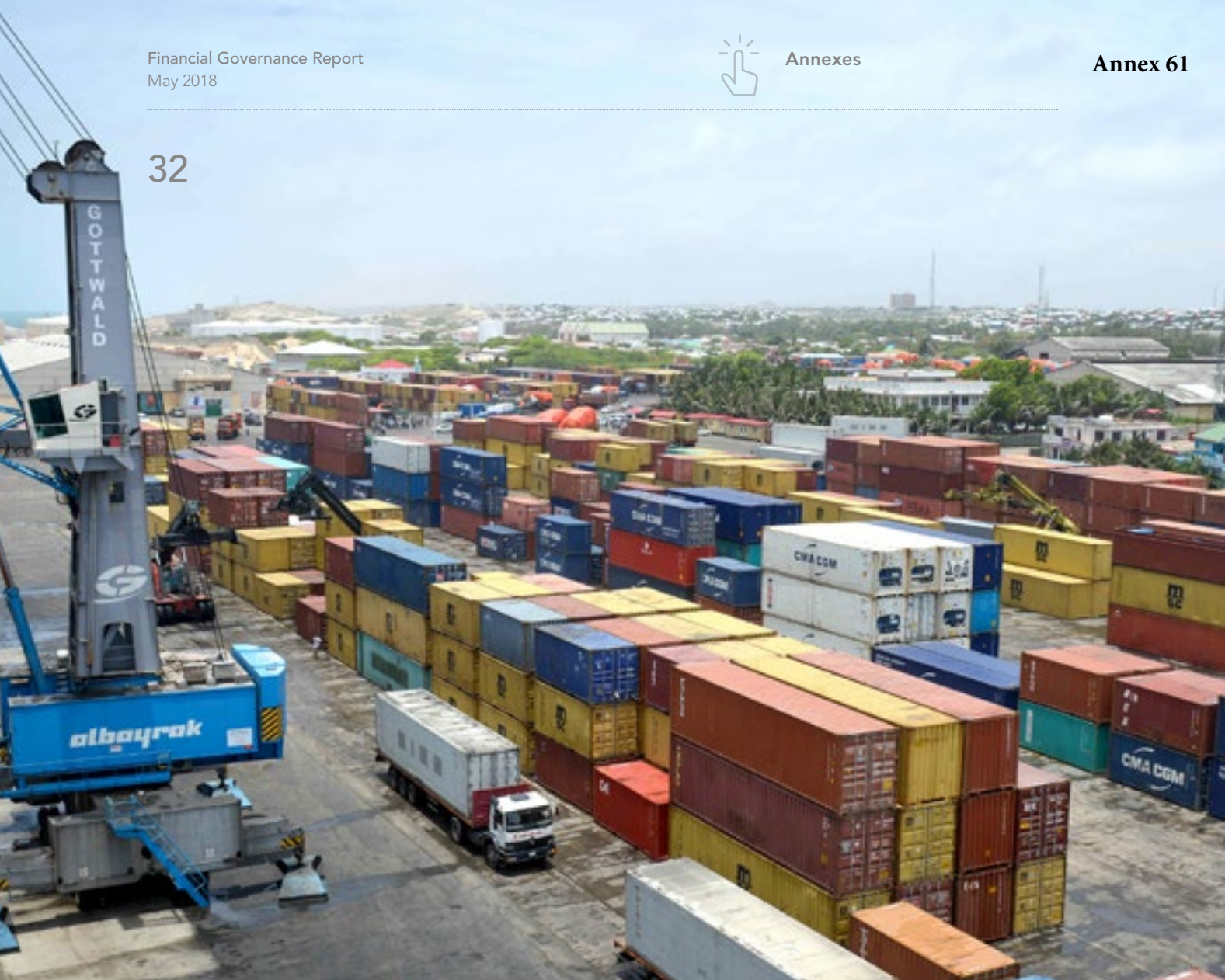


These actions are not purely technical in nature. Their effective implementation will be contingent on political commitment at the highest level; increased Federal Government capacity to work effectively with the Federal Member States on an agreed financial governance agenda; increasing co-ordination between individual federal agencies; a continued culture shift away from legacy practices such as sole-source contracting; and, outreach to the business community.

Financial governance issues should also have a special place for discussion in the ongoing constitutional discussions focusing on fiscal federalism and resource sharing.

## Top ten Financial Governance priorities in the coming year

- ▶ **1** Complete registration and payment to bank of all security sector personnel, including cash for fresh rations ('idaan')
- ▶ **2** Re-tender SNA and Prisons rations contracts in line with interim procurement requirements and establish a strengthened rations delivery verification mechanism
- ▶ **3** Re-negotiate Port (Al Bayrak) and Airport (Favori) concessions, and resolve other outstanding legacy contracts from the previous administration (Sahel Airport Shuttle, Simatech Dry Port, Passports, Visas)
- ▶ **4** Ensure all new procurements of contracts and concessions are conducted in accordance with the interim procurement requirements
- ▶ **5** Reach an agreement between FGS and Federal Member States on the principles underpinning revenue sharing
- ▶ **6** Modernise the legislative and administrative framework for inland revenue in consultation with Federal Member States and business community
- ▶ **7** Agree a Customs Modernisation Plan with the Federal Member States which includes a roadmap for from transitioning from volume-based to value-based customs tariffs
- ▶ **8** Institute basic reporting on transfer utilisation and agree an objective basis for 2019 transfer allocations to Federal Member States and Banadir
- ▶ **9** Compile a full inventory of Federal Government property and begin to review all public property leasing and disposals since 2012
- ▶ **10** Implement the first phase of currency reform



# Annexes



## Annex 1

### List of contracts and concessions reviewed by the FGC since 2014

#	FGS Agency	Contract	Contractor	FGC Official Review	Status
1	Central Bank of Somalia	Land lease and redevelopment	Riverside Holding	2016	On hold
2	Central Bank of Somalia	Asset recovery	Shulman, Rogers, Gandal, Pordy & Ecker PA	Not required	Cancelled
3	Commerce and Industry	Import/export quality assurance	Proje Gözetim Mühendislik (PGM Project)	2015 and 2016	Operational - incorporated FGC recommendations
4	Defense	SNA Rations	AGETCO	2016	Contract cancelled
5	Defense	SNA Rations	AGETCO	2017	Contract awarded following a tender under the oversight of INPB; subsequently cancelled
6	Defense	Supply of 6 marine patrol boats	AMO Shipping Company Ltd.	2014	Did not proceed
7	Defense	Equipping and training Coast Guard	Atlantic Marine and Offshore Group	Not required	Did not proceed
8	Defense	SNA Rations	Kasram	2017	Economic Committee has recommended cancellation and retendering.
9	Finance	Collection of property transfer registration tax	M&T Solutions Ltd	2016	Cancelled
10	Finance	Collection of road tax	Smart General Service Ltd	2016	Cancelled
11	Finance	Khat tax collection on behalf of FGS	The ADCO Group of Companies	2015	Cancelled -Contract replaced by direct tax
12	Fisheries and Marine Resources	Protecting, licensing, policy and institutional development of fisheries sector	Somalia-FishGuard Ltd.	2014	Did not proceed



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#	FGS Agency	Contract	Contractor	FGC Official Review	Status
13	Galmudug Regional Government	Oil production sharing agreement	Petro Quest Africa (CN)	2014	Did not proceed
14	Interior	Police rations	Perkins Logistics	2016	Operational – partially incorporated FGC recommendations
15	Internal Security	NISA rations	Horn Logistics	2016	Operational – partially incorporated FGC recommendations
16	Internal Security	Scanning services for Mogadishu Port	M&T Solutions Ltd	2016	Recommended to be retendered. Status unknown
17	Justice	Prisons Rations	Bakhaari Logistics	2018	Operational. Recommended to be retendered
18	Petroleum and Mineral Resources	Establish model terms for petroleum exploration, development and production	Model Oil and Gas Production Sharing agreement	2016	Incorporated FGC recommendations, pending final endorsement
19	Petroleum and Mineral Resources	Seismic data analysis	Mubadala Oil and Gas Holding Company LLC (CN)	2015	Agreement Expired
20	Petroleum and Mineral Resources	Seismic Exploration	Soma Oil and Gas Exploration Limited	2014	Operational - did not incorporate FGC recommendations
21	Petroleum and Mineral Resources	Geospatial Analysis	CGG Data Services AG/Robertson GeoSpec International Ltd.	2014, 2015 and 2016	Operational - incorporated FGC recommendations
22	Petroleum and Mineral Resources	Collation, analysis and marketing of petroleum data	Spectrum ASA	2015	Operational - incorporated FGC recommendations
23	Petroleum and Mineral Resources	Acquisition, processing and marketing of geophysical data	TGS-NOPEC Geophysical Company ASA	2014	Did not proceed
24	Ports and Shipping	Management of Port Operations	Albayrak Turizm İnşaat Ticaret A.Ş.	2014	Operational - under renegotiation



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#	FGS Agency	Contract	Contractor	FGC Official Review	Status
25	Ports and Shipping	Harbour, fishing port and related infrastructure developments	Great Horn Development Company	2014	Did not proceed
26	Ports and Shipping	Lease and concession for operating Mogadishu port container terminal	Mogadishu Port Container Terminal and Simatech International	2014	Did not proceed
27	Ports and Shipping	Management and operation of a container yard and freight station at Mogadishu Dry Port	Mogadishu International Port and Simatech International	2016	Construction complete, not yet operational
28	Posts and Telecoms	Telecoms gateway	VBH Holdings SPA	2016	Did not proceed
29	Power and Water	Electricity generation	Polaris Energy SDN BHD	2015	Did not proceed
30	Transport and Aviation	Airport Operations	Favori LLC	2014	Operational – under renegotiation
31	Transport and Aviation	Vehicle licensing	Modern Technology Ltd	2016	Cancelled
32	Transport and Aviation	Airport taxi shuttle service	Sahel	2017	Operational - under renegotiation
33	Transport and Aviation	Airport Hotel	Sat Service LLC	2018	Draft contract under review





## Annex 2

### Progress in implementing 2017 FGR recommendations

Achieved

Some Progress

No known progress/  
not implemented

#### Fiscal Federalism

Recommendations	Progress
1 Establish an initial agreement on revenue authority, expenditure responsibility and mechanisms for resource equalisation in advance of any Constitutional Settlement, with technical details developed with counterparts at FMS level	Communique between FGS and FMS on 5th November 2017 agreed the establishment of a Task Force to develop a consensus on Federal Affairs in 6 months
2 Establish an office responsible for coordinating the federalism agenda in either the Presidency or the Prime Minister's Office	Office expected to be established to provide logistics and advisory support to the OPM Tech Committee, and wider federalism dialogue structure. However, the exact nature, scope and institutional location of that office are not yet fully defined
3 Agree on harmonised customs tariff with FMSs while awaiting political agreement on broader principles	Agreement reached on 27 September 2017 to harmonise tariffs for cigarettes, khat and departure tax. Agreement in principle in Dec 2017 to work towards harmonising sales tax. No substantive discussion on customs.
4 Support inter-governmental fiscal system by aligning national and subnational fiscal arrangements and making small transfers to the FMSs on a regular basis	During 2017, FGS made transfers to FMS and BRA through two different FGS Agencies; the Ministry of Finance and the Ministry of Interior and Federal Affairs. These transfers used different budget and transfer mechanisms and drew on different funding. Overall, FGS transferred USD 28.7m to FMS and BRA during Fiscal Year 2017.
5 Donors need to inform FGS of the support they are providing to FMSs and involve FGS in project design to ensure it aligns to the agreed fiscal federalism principles.	



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## Transparent and Equitable Management of Natural Resources

Recommendations		Progress
1	Finalize the revisions to the legal framework for petroleum and establish the necessary regulatory institutions before entering into any production sharing agreements.	The Petroleum Bill was submitted to Cabinet for approval. Cabinet has subsequently approved the Bill and submitted it to Parliament.
2	Approve the finalised model Oil and Gas PSA in line with FGC recommendations at Cabinet level	Model Oil and Gas Production Sharing Agreement was reviewed by the FGC in December 2016 and the draft was revised by Ministry of Petroleum in February 2017 in line with FGC comments. Ministry of Petroleum to finalize/adopt the Model PSA.
3	Base discussions of specific PSAs on finalized model PSA, which should also be approved by the INPB and by Cabinet	Not yet applicable (no individual PSAs known to be under discussion)
4	Insert clauses in the draft PFM Bill that set out the principles governing natural resource revenue management as relates to fiscal policy.	The PFM Bill that has been submitted to Parliament includes a section on natural resource revenue management. It sets out procedures for banking and disbursing revenues, and provides for a natural resource revenue saving mechanism.
5	Agree a framework for sharing 2017 federal offshore fishing license revenues with FMSs, and use the inter-governmental fiscal transfer system to provide FMSs with their shares in a way that creates incentives for licensing compliance.	An agreement between the Federal Government and Federal Member States on an interim process for fisheries licensing was reached for 2018.
6	Review the revenue sharing formula proposed in the petroleum agreement, and initiate new negotiations with all FMSs.	FGC has shared advisory note to guide new discussions



Domestic Revenue Mobilization		
Recommendations		Progress
1	Conclude renegotiations of all five existing revenue collection contracts before the end of 2017, establishing clearer contract terms and ensuring stronger oversight of their revenue streams going forward.	3 contracts were cancelled, following a determination that they did not offer value for money (property transfer tax, road tax, and vehicle licensing). 2 are under renegotiation (port and airport)
2	Provide guidance to counterparts in the FMSs on how to develop and manage revenue collection contracts based on its own experience.	
3	Insert a clause into the PFM Bill stating that the power to grant tax exemptions will be vested solely in the Minister of Finance. FGS should seek to minimise the tax exemptions that it offers in its contracts and concessions, given the negative precedent such an approach sets for future tax and contract negotiations.	A clause was included stating "The Minister has the sole authority to exempt a tax or fee or charge provided for any exemption over the value prescribed in regulations, the Minister has obtained the prior approval of the Council of Ministers"
4	Political level commitment is needed to tax compliance and passage of relevant legislation (e.g. Communications Act).	ICT Act was passed by Parliament and signed into law.
5	Initiate dialogue with the private sector to secure their commitment to meeting their legal tax obligations and gain an understanding of the services they need to provide in return.	The MoF has held substantive dialogue with banks, money transfer agencies, Turkish Airlines, telecoms, cable television providers, electricity providers, and water providers, in advance of the collection of sales tax.



## Credible Public Procurement and Concessions

Recommendations	Progress
<p><b>1</b> Issue a Prime Ministerial Decree re-affirming its commitment to due process in contracting, concessions and asset leasing. The Decree should: specify procurement roles and responsibilities within FGS until such a time as the Procurement Act can be adequately implemented; extend the mandate of the INPB for the duration of the transition period; set out the steps all draft agreements must follow prior to signature; and, state the consequences of non-compliance.</p>	<p>Interim procurement requirements were approved by the Economic Committee of Cabinet in December 2017 and disseminated to all spending agencies by the Ministry of Finance.</p>
<p><b>2</b> Assign responsibility for contracting all FGS goods and services above a certain threshold to the Ministry of Finance's Procurement Unit as an interim measure until procurement units in line ministries have the necessary capabilities.</p>	<p>Covered under the Interim Procurement Requirements</p>
<p><b>3</b> Donors need to step up their support to FGS procurement; significant levels of operational support and capacity building are required both within the Ministry of Finance and across line ministries.</p>	<p></p>
<p><b>4</b> Support the continuation of the recently established Commission to Protect Public Properties, working to a clear, expanded terms of reference.</p>	<p>In mid-2017, FGC prepared a report with recommendations on how the government could immediately prevent the further loss of public land and property and protect existing public land and property in Somalia. The report was discussed by the Economic Committee of Cabinet in December 2017. The President announced in January 2018 that a Committee would be formed to Protect Public Property.</p>



## Strengthened Expenditure Management

Recommendations		Progress
1	Provide explicit backing to the Ministry of Finance to further reduce the proportion of the non-wage payments that are paid out in cash, and to require all advances to be fully accounted for before new ones are made.	There has been an increase in the amounts being paid directly to vendors since the 4th quarter of 2017
2	Place much stronger controls on the payroll, as otherwise gains made in increasing revenue and reducing funds leakage will be fully absorbed by a rising wage bill.	Draft Report on Establishment Control supported by World Bank, reviewed by FGC. Civil Service Law drafted and approved by Cabinet
3	Establish an Inspection Function responsible for verifying the delivery of goods and services above a certain value prior to the payment of invoices.	Under initial discussion with respect to rations
4	Complete the process of cleaning and consolidating the SNA payroll and undertaking biometric registration of personnel, and commence payment of salaries (and rations cash) direct to individuals' accounts.	FGS has initiated a pilot for SNA personnel registration and salary payment direct to bank. Around 5,000 personnel have been registered so far, and their details entered into the payroll module of SFMIS.
5	Donors providing stipends to the security sector should commit to becoming part of the SNA payroll and payment reform; the objective should be that all SNA salary and stipend payments are made against a single, commonly agreed payroll and paid direct to individuals' accounts through the FGS system, as already occurs with the Police.	Commitment made by both parties in MAF to plan for payroll consolidation and verification, transition to electronic payments and establishment of effective HRM systems for SNA and federal police agreed by National Security Council



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## Financial Sector Development

Recommendations		Progress
1	FGS to hold discussions with the FMSs to come to a clear, common understanding of the role of the CBS in the regions in the context of the broader fiscal federalism discussions, and with respect to currency reform.	CBS initiated discussion in the context of the currency reform and re-opening of its regional branches. FMS have signed undertakings to prevent counterfeiting in their jurisdictions
2	FGS and CBS should hold discussions in order to develop a mutual understanding of the key choices and risks associated with currency reform	MoF and CBS have discussed approach to currency conversion. Exchange rate regime will be determined during the second phase of currency reform
3	Particular attention needs to be paid to the issue of currency conversion, to ensure that currency reform does not have a negative impact on people with low incomes who currently hold old Somali shilling notes.	CBS preference is for full conversion to mitigate this risk
4	Successful completion of the currency reform will require substantial donor financing, for printing and distributing the new currency, plus any costs of converting old notes for new ones.	



Access to External Financing	
Recommendations	Progress
<p><b>1</b> FGS and its creditors should develop a milestones-based debt relief roadmap setting out how Somalia can qualify for the HIPC debt relief process. As a part of this, FGS and the IFIs should reach an agreement on the adjustments they need to make to the NDP so it can qualify as a poverty reduction strategy paper (PRSP).</p>	<p>FGS is on track with implementation with the second SMP. A third SMP is due to commence in May 2018. Subject to board approval, the World Bank will provide pre-arrears clearance financing to FGS in 2018-19.</p>
<p><b>2</b> FGS should use the London conference as an opportunity to make the case to the international community of the benefits of increasing direct grant financing, and the risks of not doing so.</p>	<p>The London Conference on Somalia took place at Lancaster House on 11 May 2017, co-chaired by the UK, the Federal Republic of Somalia, the United Nations and the African Union, and attended by 42 partners of Somalia. FGS made the case for increased direct financing.</p>
<p><b>3</b> FGS and donor partners should revise the current 15% target for development aid on budget and make it more ambitious.</p>	<p>Less than 15% of development aid currently channeled through the FGS Treasury</p>
<p><b>4</b> FGS and donors should use their forthcoming joint 'risk-benefit analysis' of the use of country systems to identify concrete risk-mitigation actions that they can implement to support the scale-up of aid through FGS.</p>	<p>Use of Country systems report contains guidance on the risks and benefits of using country systems in Somalia</p>
<p><b>5</b> FGS should hold discussions with interested IFIs on the potential scale and role of blended finance in Somalia.</p>	
<p><b>6</b> The international community should help expand government engagement with the HRP, by strengthening reporting to FGS on how HRP funds are spent, both sectorally and geographically, and by whom.</p>	







# Financial Governance Report

Financial Governance Committee  
May 2018

**Annex 62**

“Financial Governance Report”, *Financial Governance Committee*, July 2019 (Extracts)



# Financial Governance Report

Financial Governance  
Committee

July 2019



THE WORLD BANK



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# About the Financial Governance Committee

The Financial Governance Committee (FGC) was established in early 2014 by mutual agreement between the Federal Government of Somalia (FGS), donors and International Financial Institutions (IFIs) to provide a forum for dialogue and advice on strategic financial governance issues. The FGC's mandate is renewed annually, subject to agreement between the Federal Government and the international community.

Members of the FGC are drawn from Somali institutions and international partners. The FGC is chaired by the Minister of Finance of the FGS. Other FGS members include the Governor of the Central Bank of Somalia (CBS), representatives from the President's Office and the Prime Minister's Office, the Chair of the Parliamentary Finance Committee and the State Attorney General. The FGC has four international members, who sit as delegates on behalf of the International Monetary Fund (IMF), the World Bank<sup>1</sup>, the African Development Bank (AfDB) and donor partners.<sup>2</sup>

The FGC provides advice on macro-critical financial governance issues, including Central Bank governance, asset recovery, currency reform, public procurement and concessions, public asset protection, public financial management reforms, domestic revenue mobilization, resource sharing and fiscal federalism. Until such time as the Procurement Act is under full implementation, the FGC has been mandated by the FGS to review and provide advice on all Government contracts and concessions above \$5m in value.<sup>3</sup>

The FGC meets on a monthly basis in Mogadishu. FGC meetings are confidential, but the FGC regularly issues press releases and produces meeting summaries which are made publicly available. It also publishes a number of its Advisory Notes on critical near-term issues. Since 2017, the FGC has issued an annual report on Financial Governance known as the Financial Governance Report (FGR).<sup>4</sup>

1 Funded through the World Bank Multi Partner Fund. The fund has ten contributing donors – for further details see: <http://somaliampf.org/development-partners>

2 Funded on behalf of donors by the European Union

3 See Annex 1 for a list of all FGS contracts reviewed by the FGC since 2014

4 For further details, see: <http://www.mof.gov.so/fgc>







# Executive Summary

## Why sound financial governance is important

Good financial governance is an essential element of Somalia's state and institution-building process. In the absence of good financial governance, there will remain considerable scope for the misappropriation of public funds and assets for private gain, undermining the chances that state-building efforts will be sustainable. In addition, donor funding will continue largely to be provided through non-government channels, lessening the relevance of the state to its citizens. Economies cannot succeed without the trust of citizens, businesses and donors in how public money is managed. The lack of trust discourages business, deters investment and ultimately lowers tax yields. Good financial governance is the responsibility of all levels of government.

## Current financial governance challenges in Somalia

The FGC has identified seven strategic issues that the Federal Government needs to address in order to strengthen financial governance in Somalia. These challenges remain relevant in 2019, despite the good progress already made.

### 1

#### Agreeing a coherent way forward on fiscal federalism

Current inter-governmental fiscal arrangements still need improvement. In spite of the recent progress made in agreeing revenue sharing arrangements for petroleum and fisheries, further work is still required to ensure that the overall distribution of resources is equitable, and matched to expenditure responsibilities in order to minimise the risk of fragmented and uneven development across Somalia.





## 2

### Managing natural resources transparently and equitably

In the past year, FGS has commenced the process of exploiting Somalia's natural resources by conducting a tuna licensing round and launching its first oil and gas licensing round. As it moves forward, it needs to ensure that sectoral efforts to exploit natural resources are transparent, equitable and fully supported by the FMS.

## 3

### Raising domestic revenues

FGS has made significant progress in increasing its revenues over the past five years, but still faces a severe resource constraint that limits its ability to support fiscal federalism, deliver core State functions and provide services to the public effectively. Raising revenues requires a complex set of inter-linked actions; political commitment to tax compliance, dialogue with taxpayers in key sectors, development of appropriate harmonized legislation, agreement with the FMS and greater technical capacity for collection, administration and compliance.

## 4

### Strengthening the credibility of public procurement and concessions

The FGS has made a strong commitment to more transparent and competitive contracting and has made significant efforts to resolve a number of legacy contracts, to follow due process when entering into new ones and to take steps to protect public property. However, its efforts face a number of challenges, including shortcomings in the legislative framework, a significant lack of technical capacity for procurement and concessions management within Government, a general lack of understanding of procurement due process amongst most stakeholders, and the political influence of the business community in Somalia.

## 5

### Improving expenditure management

As the capacity of the payment and banking systems has improved, the FGS has embarked on reforms to the payment of salaries (direct to individuals' accounts) and non-wage expenditures (direct to suppliers) to reduce cash handling. In the past year, these reforms have been extended to the security sector with positive initial results. FGS now needs to sustain the reforms and further strengthen its mechanisms for verifying the delivery of goods and services; particularly high-value rations contracts.



## 6

### Developing the financial sector

The Central Bank of Somalia's (CBS) reform efforts are focused on capacity enhancement, organizational reforms, and system modernization including ICT infrastructure in order to improve service delivery and restore public confidence in the institution. CBS has developed and issued key regulations for Commercial and Banks and Money Transfer Businesses (MTBs) including anti-money laundering (AML/CFT) regulations. It is now working to address a number of vulnerabilities in the mobile money system in order to mitigate the risks to the wider economy. It is critical that financial sector reforms continue to be supported, politically, financially and technically.

## 7

### Increasing access to external financing

FGS has made considerable progress in bringing funding from certain institutions (EU, World Bank) on-budget, but many other donors continue to be reluctant to use country systems. Achieving debt relief will be key to unlocking additional external financing, as once FGS has achieved Completion Point under the Highly Indebted Poor Countries (HIPC) initiative, it will be able to access concessional loans from multilateral and bilateral lenders. At the same time, FGS will also need to strengthen its capacity for macroeconomic and fiscal management, to ensure that future debt and spending levels are sustainable.

## Key elements in strengthening financial governance in Somalia

In the FGC's assessment, individual initiatives towards stronger financial governance are most likely to make sustained progress when underpinned by the following:

- i. Appropriate laws, regulations and policies
- ii. Sound implementation processes
- iii. Availability of skilled human resources
- iv. Financing
- v. Clear communication by Government on the objective of the reforms
- vi. Stakeholder commitment/acceptance



Reform targets need to be formulated holistically, with a clear understanding of all the elements that need to be in place for the reform to be successful. Timelines and sequencing need to be set accordingly, and resources provided as necessary. Technical feasibility alone is not a guarantee of reform success in Somalia.

## Financial governance developments in the past year

Financial governance reforms, including FGS's commitment to tackling corruption and ending financial impunity, are cross-cutting in nature. The FGS has made tangible progress over the past year on a number of issues that are important for improving sound financial governance, including security sector registration, domestic revenue mobilization, contract renegotiation (with a successful outcome for the airport concession), tuna licensing and the development of core components of the PFM framework. This progress has played a vital role in securing additional donor financing for the FGS budget, including the first disbursement through government systems of World Bank International Development Association (IDA) resources for thirty years, demonstrating an increased trust by multilateral donors in the use of country systems. It has also enabled FGS to maintain its strong record in SMP implementation, which is in turn essential to Somalia's prospects of attaining debt relief.

FGS's determination over the past year to deliver stronger financial governance in the security sector, in the face of considerable opposition, is highly commendable. Its efforts have encompassed security sector registration and payment direct to bank of over 30,000 personnel across all forces, as well as regularization of rations contracts through competitive retendering. FGS now needs to invest in the sustainability of the registration and payment process going forward, and to make the case for alignment of donor stipend funding with the FGS system. FGS also needs to complete the process of rations retendering, and to develop a more robust internal control system for rations management.

FGS has also taken steps to strengthen the legal framework for expenditure management in the past year. The Public Financial Management (PFM) Bill has been passed by the House of the People, and is with the Upper House. It will provide a legal basis for the harmonisation of FGS and FMS budgeting and accounting procedures and establish a clear legal framework for the acquisition and management of Government debt. The latter is important for ensuring debt sustainability in light of FGS's efforts to attain debt relief in the context of HIPC initiative. The PFM Bill will also provide a framework for natural resource revenue management, including provisions for saving a portion of natural resource revenue for future investment and to ensure fiscal sustainability.



FGS's progress in raising domestic revenue over the past year has been very positive. It has been able to introduce and sustain new revenue measures, such as sales tax on imports, and its decision to require non-tax revenues collected by FGS agencies to be remitted to the Single Treasury has yielded positive results. FGS has also taken a number of steps to enhance its longer-term capacity for domestic revenue mobilisation, both from domestic taxes and from customs. Close collaboration between FGS and the FMS, supported by donors and their implementing partners, will be an important factor for the success of these reforms, particularly in customs. FGS also needs to ensure continuous communication with the public to strengthen support for revenue reforms and improve compliance.

The FGC is concerned that FGS's efforts to raise revenue could end up being absorbed by rising Government administrative costs, as opposed to enabling greater funding for service delivery, infrastructure or productive investments. The FGC has noted over the past year that ad hoc sectoral legislation and donor funding benchmarks are starting to encourage institutional proliferation, in terms of the creation of new government agencies. Institutional proliferation in a context of low capacity and constrained resources raises concerns both for government functionality and fiscal sustainability. The FGC has recommended that FGS establish a policy that determines the conditions under which the creation of a new agency is justifiable, in order to ensure the most efficient use of scarce resources and avoid fragmentation of state capability.

FGS has made extensive efforts over the past year to renegotiate or otherwise resolve a number of the contracts entered into by the previous administration without due process. The FGS's successful renegotiation of the Mogadishu airport management contract represents a significant milestone in its commitment to stronger public procurement and contracting. The revised contract represents a considerable improvement over the initial concession agreement signed in 2013. Its terms establish a clear investment plan for the airport and ensure that revenue payments to government are transparent and fair. FGS has also made considerable efforts to renegotiate the port contract, and negotiations are currently entering their final phase. The FGC has also reviewed and provided advice on a number of other legacy contracts that the FGS needs to work to resolve, including contracts for the issuance of passports and visas, a contract for curriculum development and textbook production, and six leases of Government property.

The FGS has also made considerable efforts over the past year to regularise a number of its security sector rations contracts, most of which had not been procured in line with due process, and suffered from a number of contractual deficiencies. These efforts provide further evidence of FGS's steadfast commitment to following due process in contracting, in spite of the highly



politicised business space currently prevalent in Somalia. The ongoing retendering processes need to be completed satisfactorily in the coming months, and adequate internal control and verification measures need to be put in place within the security sector agencies to ensure that rations are delivered and utilised as intended.

Nonetheless, in the FGC's view, procurement remains a financial governance priority. Current weaknesses in the legal framework and FGS's procurement capacity urgently need to be addressed before FGS experiences a significant increase in resource inflows, for example from petroleum or debt relief. Given current limitations in procurement capacity across Government, the FGS has proposed amendments to the 2016 Procurement Act to enable additional oversight of high-value contracts and non-standard bidding methods. In the FGC's opinion, these amendments propose pragmatic solutions to some of the greatest challenges that FGS currently faces in conducting procurements in accordance with the law, in an environment where procurement capacity is extremely limited. Development partners need to focus further on how their current support to the FGS and the FMS can support increased procurement capacity.

In the fisheries sector, FGS issued tuna licenses to 31 vessels operating under the Chinese Overseas Fishing Association (COFA) in July 2018. The licenses were issued at a cost of \$1.045m, and the revenues were placed on a special account in the Central Bank of Somalia, pending agreement on their distribution between the FGS and FMS. In March 2019, FGS reached an interim eighteen-month agreement on revenue sharing from tuna licensing with the FMS, enabling distribution of the revenues earned from the 2018 tuna licensing round. Although the sums yielded to date from tuna licensing are modest, the achievement is nonetheless significant, as it signals that Somalia's fishing sector is starting to be managed in accordance with the law after decades of illegal fishing. FGS and FMS agreement on fisheries revenue sharing also represents a milestone in intergovernmental fiscal relations. The gains made to date remain fragile, however, and it will be important that FGS retains the confidence of the FMS as it conducts new annual license rounds whilst continuing to actively promote artisanal fishing.

In the petroleum sector, FGS and the FMS reached an agreement in Baidoa on petroleum and minerals ownership, management and revenue sharing in June 2018. The Baidoa Agreement has also been hailed as a milestone in intergovernmental fiscal relations. The amendments to the 2008 Petroleum Act recently passed by the House of the People require petroleum revenues to be shared in line with the Baidoa Agreement. However, the revenue shares set out in the Baidoa Agreement have significant implications from a financial governance perspective, as they raise the prospect of highly unequal resource allocation



across FMS. Under the Baidoa revenue sharing terms, oil-producing FMS are likely to receive between 10 and 17 times more revenue than non-producing FMS, which is a large disparity by international standards. The Baidoa Agreement also does not clarify that revenues will be shared net of any savings for future investment or fiscal stability, as required by the PFM Bill. Given that the revenue shares set out in the Baidoa Agreement have far-reaching implications for vertical (between FGS and FMS) and horizontal (among FMS) revenue distribution and equity, as well as fiscal sustainability, it is important that space remains for the Agreement to be revisited in future. The FGC has recommended that the revised Constitution expands the current article on Natural Resources to require that revenue sharing arrangements are periodically reviewed, and to establish the principle that a portion of natural resource revenues may be saved for economic sustainability and future investment.

More broadly, the current Constitutional Review process potentially provides an opportunity to establish a mechanism for equalising revenue shares across FMS, so that overall revenue shares are not entirely determined by individual sector agreements. However, agreement between the FGS and FMS on a credible political framework for inter-governmental relations, including revenue sharing, continues to be a critical challenge. The FGC has recently provided advice on the structure and possible content of the Public Finance Chapter to help inform technical discussions between the Ministry of Finance and Ministry of Constitutional Affairs.

FGS has taken steps to start generating revenue from the Petroleum Sector. In February 2019, it launched its first oil and gas 'license round', with the aim of concessioning fifteen offshore oil blocks. The February launch was accompanied by a revised Model Production Sharing Agreement (PSA). The new Model PSA contained many changes from the previous Model PSA, which had been subject to FGC review in 2016, including changes to its fiscal terms. The launch was conducted in advance of revisions to the petroleum legal framework, which were subsequently passed by the House of the People in May 2019. A number of FMS expressed concern that they had not been adequately consulted in advance of the licence round or the revisions to the Petroleum Act. The FGC subsequently advised the Ministry of Petroleum and Mineral Resources to adjust the license round timetable so that the licensing process adheres to the requirements of the 2016 Procurement Act, and to enable time to undertake stakeholder consultation and establish the necessary regulatory institutions. The Minister of Petroleum and Mineral Resources committed to adjusting the license round timetable and agreed to an FGC review of the changes that had been made to the Model PSA. However, the Ministry of Petroleum will still require significant technical and legal support to conduct the license round effectively. While FGS's efforts to develop a significant new revenue stream are entirely understandable, revenue raising



efforts need to be compatible with sound financial governance and long-run fiscal sustainability. Adequate institutional capacity, a fully established legal framework, and stakeholder consensus are also essential pre-requisites for sound oil and gas development.

Assisting the FGS and CBS in recovering legacy assets held in banks abroad has been an area of focus for the FGC since its inception. Progress in the past year has been extremely slow. Assets have been identified in Italy and Switzerland, but little progress has been made in recovering them. The FGS is trying to use diplomatic channels to pursue further dialogue with the relevant authorities. Assets have also been identified in the UK, but their ownership has not yet been established.

FGS's solid progress under SMP implementation has been instrumental in helping it gain access to additional external financing from multilateral donors. The FGS's success over the past year in securing EU budget support and IDA pre-arrears clearance financing is a milestone in Somalia's HIPC pre-qualification journey and provides a clear sign that the country is gaining the confidence of multilateral donors in using country systems. However, FGS's success in attracting increasing multilateral financing is also bringing an associated set of co-ordination challenges, as individual financing instruments require identification of reform conditions which have to be met in order to enable funds disbursement. Benchmark co-ordination requires careful management across donors as FGS progresses towards debt relief, to avoid the risk of 'benchmark overload' in a context of relatively under-developed institutional capacity. The World Bank's Recurrent Cost and Reform Financing (RCRF) and the EU's budget support operation have tried to address this challenge by closely aligning their benchmarks. Formulation of new reform benchmarks should be clearly informed by an assessment of the various factors that are required for a reform to be successful, and reform proposals need to be assessed for their long-term cost and sustainability, particularly as regards reform benchmarks that require the creation of new government institutions.

Other donors remain reluctant to bring their funding on budget, in spite of the confidence the World Bank and EU have demonstrated in using country systems. A number of them are currently providing funding to FGS agencies outside of the budget, with funds being disbursed to accounts held in Commercial Banks. Likewise, some donors, sometimes through their implementing partners, provide funding direct to FMS, bypassing the inter-governmental transfer system. These practices lack transparency and undermine the development of country systems. They are also inconsistent with the provisions of the PFM Bill that has recently been passed by the House of the People. The FGC is encouraged that the Global Partnership for Education (GPE)



recently brought a substantial part of its funding to the Ministry of Education on-budget and on-treasury following advice from the FGC. The FGC will provide further advice to FGS on how to get other donors to bring their funding to FGS agencies and FMS on-budget in the coming year.

## Financial governance priorities for the coming year

The FGC's list of financial governance priorities for the coming year focus on the actions it believes the FGS needs to take in the short term to support its state building agenda, strengthen the legitimacy of all levels of government and demonstrate its continued commitment to reducing the scope for mismanagement of public resources.

### The priorities are as follows:

**1**

**Security sector expenditures** – maintain and build on the registration and direct-to-bank payment system for security sector salaries and rations stipends, complete the re-tendering of rations contracts, and strengthen internal security sector financial controls, including for rations verification and delivery.

**2**

**Constitutional review** – ensure the provisions of the Fiscal Chapter are informed by existing primary legislation, consult adequately on proposals for resource sharing principles and allocation mechanisms, establish a Constitutional requirement that revenue sharing arrangements are periodically reviewed.

**3**

**Procurement capacity** – adopt proposed amendments to the Procurement Act, secure donor support for procurement and concessions capacity development, start developing a separate legal framework for concessions.

**4**

**Legacy contracts** – complete seaport concession renegotiations, resolve other legacy contracts.



**5**

**Oil and gas** – adjust the licensing round timetable so that the process adheres to the requirements of the 2016 Procurement Act and allows sufficient time to establish the necessary regulatory institutions and consult with stakeholders, acquire technical capacity for the management of the license round process, assess the fiscal implications of the new Model Production Sharing Agreement.

**6**

**Fisheries** – maintain the annual tuna licensing process, and distribute the revenues to all FMS in accordance with the Addis agreement.

**7**

**Revenue mobilisation** – ensure FGS-FMS agreement on customs modernisation and harmonisation, as well as the assignment of national taxes proposed in the Domestic Revenue Harmonisation Bill.

**8**

**Bringing aid on budget** – establish clear procedures for disbursement of donor funds to FGS agencies and FMS.

**9**

**Controlling the cost of Government** – establish and implement a policy to limit institutional proliferation and monitor implementation.

**10**

**Financial sector reforms** - develop and implement Mobile Money Regulations, enhance supervision of commercial banks and MTBs to promote financial market integrity, AML/CFT compliance and connectivity to the international financial systems, strengthen the integration of the SFMIS and core banking systems.



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# Abbreviations and Acronyms

<b>AfDB</b>	African Development Bank
<b>ALSF</b>	Africa Legal Support Facility
<b>AML/CFT</b>	Anti-Money Laundering and Combating the Financing of Terrorism
<b>CBS</b>	Central Bank of Somalia
<b>CMC</b>	Cash Management Committee
<b>COFA</b>	Chinese Overseas Fishing Association
<b>DAMC</b>	Domestic Arrears Management Committee
<b>DMU</b>	Debt Management Unit
<b>DFID</b>	UK Department for International Development
<b>DRM</b>	Domestic Revenue Mobilisation
<b>EU</b>	European Union
<b>FGC</b>	Financial Governance Committee
<b>FGR</b>	Financial Governance Report
<b>FGS</b>	Federal Government of Somalia
<b>FMFF</b>	Finance Ministers' Fiscal Forum
<b>FMS</b>	Federal Member States
<b>GPE</b>	Global Partnership for Education
<b>HIPC</b>	Heavily Indebted Poor Countries
<b>ICAEW</b>	Institute of Chartered Accounts for England and Wales
<b>ICAO</b>	International Civil Aviation Organization
<b>ICT</b>	Information and Communications Technology
<b>IDA</b>	International Development Association
<b>IFI</b>	International Financial Institutions
<b>IGFFC</b>	Inter-Governmental Fiscal Federalism Committee
<b>IMCC</b>	Inter-Ministerial Concessions Committee
<b>IMF</b>	International Monetary Fund
<b>MDAs</b>	Ministries, Departments and Agencies
<b>MoF</b>	Ministry of Finance



<b>NDP</b>	National Development Plan
<b>NISA</b>	National Intelligence and Security Agency
<b>PFM</b>	Public Financial Management
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>PSA</b>	Production Sharing Agreement
<b>RCRF</b>	Recurrent Cost Reform Financing Programme
<b>SFMIS</b>	Somalia Financial Management Information System
<b>SMP</b>	Staff-Monitored Program
<b>SNA</b>	Somali National Army
<b>SRBC</b>	State and Resilience Building Contract
<b>STAR</b>	Stolen Asset Recovery Programme
<b>TSA</b>	Treasury Single Account
<b>UCS</b>	Use of Country Systems
<b>UCT</b>	Upper Credit Tranche
<b>USAID</b>	United States Agency for International Development
<b>WB</b>	World Bank
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>PSA</b>	Production Sharing Agreement
<b>RCRF</b>	Recurrent Cost Reform Financing Programme
<b>SFMIS</b>	Somalia Financial Management Information System
<b>SMP</b>	Staff-Monitored Program
<b>SNA</b>	Somali National Army
<b>SRBC</b>	State and Resilience Building Contract
<b>STAR</b>	Stolen Asset Recovery Programme
<b>TSA</b>	Treasury Single Account
<b>UCS</b>	Use of Country Systems
<b>UCT</b>	Upper Credit Tranche
<b>USAID</b>	United States Agency for International Development
<b>WB</b>	World Bank

# Annexes





## Annex 1: List of contracts and concessions reviewed by the FGC since 2014

#	FGS Agency	Contract	Contractor	FGC Official Review	Status
1	Central Bank of Somalia	Land lease and redevelopment	Riverside Holding	2016 and 2018	On hold
2	Central Bank of Somalia	Asset recovery	Shulman, Rogers, Gandal, Pordy & Ecker PA	Not required	Cancelled
3	Commerce and Industry	Import/export quality assurance	Proje Gözetim Mühendislik (PGM Project)	2015 and 2016	Operational - incorporated FGC recommendations
4	Defense	SNA Rations	AGETCO	2016	Contract cancelled
5	Defense	SNA Rations	AGETCO	2017	Contract awarded following a tender under the oversight of INPB; subsequently cancelled
6	Defense	Supply of 6 marine patrol boats	AMO Shipping Company Ltd.	2014	Subject to an arbitration claim.
7	Defense	Equipping and training Coast Guard	Atlantic Marine and Offshore Group	Not required	Subject to an arbitration claim.
8	Defense	SNA Rations	Kasram	2017	Contract cancelled, retendering in progress.
9	Defense	Logistics	SKA	2018	MoF has formally notified the PM that the contract did not follow due process and should be considered void



#	FGS Agency	Contract	Contractor	FGC Official Review	Status
10	Education	Textbooks	Beder Printing House	2018	Operational, recommended to be renegotiated and/or cancelled
11	Finance	Collection of property transfer registration tax	M&T Solutions Ltd	2016	Cancelled
12	Finance	Collection of road tax	Smart General Service Ltd	2016	Cancelled
13	Finance	Khat tax collection on behalf of FGS	The ADCO Group of Companies	2015	Cancelled -Contract replaced by direct tax
14	Fisheries and Marine Resources	Protecting, licensing, policy and institutional development of fisheries sector	Somalia-FishGuard Ltd.	2014	Did not proceed
15	Galmudug Regional Government	Oil production sharing agreement	Petro Quest Africa (CN)	2014	Did not proceed
16	Information, Culture and Tourism	6 leases for development of property in Mogadishu	Various	2019	Status unclear, recommended to be cancelled or revised
17	Interior	Police rations	Perkins Logistics	2016	Expiring – partially incorporated FGC recommendations. Tender underway.
18	Interior	Passport Production	Ebtkaraat Smart System	2018	Operational, possibly under a revised agreement which has not been reviewed. Recommended to be retendered.
19	Internal Security	NISA rations	Horn Logistics	2016	Partially incorporated FGC recommendations. The contract has now expired and a tender is underway





#	FGS Agency	Contract	Contractor	FGC Official Review	Status
20	Internal Security	Scanning services for Mogadishu Port	M&T Solutions Ltd	2016	Contract signed but inactive. Recommended to be terminated if possible.
21	Internal Security	Visas	Empire Tech Solutions Ltd.	2018	Operational. Recommended to be cancelled or revised.
22	Justice	Prisons Rations	Bakhaari Logistics	2018	Operational. Recommended to be retendered
23	Petroleum and Mineral Resources	Establish model terms for petroleum exploration, development and production	Model Oil and Gas Production Sharing agreement	2016	Previous draft (2016) incorporated FGC recommendations. More recent draft (2019) included updated terms that have not yet been reviewed by FGC
24	Petroleum and Mineral Resources	Seismic data analysis	Mubadala Oil and Gas Holding Company LLC (CN)	2015	Agreement Expired
25	Petroleum and Mineral Resources	Seismic Exploration	Soma Oil and Gas Exploration Limited	2014	Operational - did not incorporate FGC recommendations
26	Petroleum and Mineral Resources	Geospatial Analysis	CGG Data Services AG/ Robertson GeoSpec International Ltd.	2014, 2015 and 2016	Operational - incorporated FGC recommendations
27	Petroleum and Mineral Resources	Collation, analysis and marketing of petroleum data	Spectrum ASA	2015	Operational - incorporated FGC recommendations
28	Petroleum and Mineral Resources	Acquisition, processing and marketing of geophysical data	TGS-NOPEC Geophysical Company ASA	2014	Did not proceed
29	Presidency	Rations	Regional Suppliers Company Ltd	2018	Recommended to be retendered after expiry



#	FGS Agency	Contract	Contractor	FGC Official Review	Status
30	Ports and Shipping	Management of Port Operations	Albayrak Turizm Inaat Ticaret A.Ş.	2014	Operational - under renegotiation
31	Ports and Shipping	Harbour, fishing port and related infrastructure developments	Great Horn Development Company	2014	Did not proceed
32	Ports and Shipping	Lease and concession for operating Mogadishu port container terminal	Mogadishu Port Container Terminal and Simatech International	2014	Did not proceed
33	Ports and Shipping	Management and operation of a container yard and freight station at Mogadishu Dry Port	Mogadishu International Port and Simatech International	2016	Construction complete, not yet operational, pending resolution of Albayrak renegotiation
34	Posts and Telecoms	Telecoms gateway	VBH Holdings SPA	2016	Did not proceed
35	Power and Water	Electricity generation	Polaris Energy SDN BHD	2015	Did not proceed
36	Transport and Aviation	Airport Operations	Favori LLC	2014, 2019	Operational, renegotiated agreement signed May 2019
37	Transport and Aviation	Vehicle licensing	Modern Technology Ltd	2016	Cancelled
38	Transport and Aviation	Airport taxi shuttle service	Sahel	2017	Operational – recommended to be renegotiated
39	Transport and Aviation	Airport Hotel	Sat Service LLC	2018	Draft contract under review

**Annex 63**

“Financial Governance Report”, *Financial Governance Committee*, July 2020 (Extracts)



FEDERAL GOVERNMENT  
OF SOMALIA



# Financial Governance Report

July 2020



WORLD BANK GROUP

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# PREFACE

The 2020 Financial Governance Report (FGR) was prepared by the Financial Governance Committee (FGC). It presents the collective view of FGC members on recent developments in financial governance in Somalia and on priorities for the year ahead.

It is the fourth annual report by the FGC and covers the period from July 2019 to June 2020. Previous FGRs are available on the FGC website.<sup>1</sup> For the first time, this year's report includes in-depth analysis of a 'spotlight issue' that is of particular relevance to financial governance in Somalia. The topic selected for this edition is public procurement and concessions.

Work by the FGC Secretariat in producing this report is gratefully acknowledged.

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<sup>1</sup> See website for further information: <https://mof.gov.so/fgc>





# ABBREVIATIONS

<b>AfDB</b>	African Development Bank
<b>ALSF</b>	Africa Legal Support Facility
<b>AML/CFT</b>	Anti-Money Laundering/Combating the Financing of Terrorism
<b>CBS</b>	Central Bank of Somalia
<b>COVID-19</b>	Coronavirus Disease 2019
<b>ECF/EFF</b>	Extended Credit Facility/Extended Fund Facility
<b>EIIT</b>	Extractives Industries Income Tax
<b>EU</b>	European Union
<b>FGC</b>	Financial Governance Committee
<b>FGR</b>	Financial Governance Report
<b>FGS</b>	Federal Government of Somalia
<b>FMS</b>	Federal Member State(s)
<b>GPE</b>	Global Partnership for Education
<b>HIPC</b>	Highly Indebted Poor Countries (debt relief initiative)
<b>IATA</b>	International Air Transport Association
<b>ICAO</b>	International Civil Aviation Organisation
<b>ICRIC</b>	Independent Constitutional Review Commission



<b>IMCC</b>	Inter-Ministerial Concessions Committee
<b>IMF</b>	International Monetary Fund
<b>INPB</b>	Interim National Procurement Board
<b>MoF</b>	Ministry of Finance
<b>MoPMR</b>	Ministry of Petroleum and Mineral Resources
<b>MoU</b>	Memorandum of Understanding
<b>NISA</b>	National Intelligence Security Agency
<b>OAG</b>	Office of the Auditor General
<b>PFM</b>	Public Financial Management
<b>PPA</b>	Public Procurement Authority
<b>PSA</b>	Production Sharing Agreement
<b>SDR</b>	Special Drawing Rights
<b>SFMIS</b>	Somalia Financial Management Information System
<b>SNA</b>	Somalia National Army
<b>TSA</b>	Treasury Single Account
<b>UN</b>	United Nations

# EXECUTIVE SUMMARY

## Introduction

Good financial governance is an essential element of Somalia's state and institution-building process. It concerns how resources are raised and spent, and it supports multiple high-level public policy objectives. In the absence of good financial governance, there is considerable scope for wastage and misappropriation of public funds. Well-functioning and prosperous economies rely on the trust of citizens and businesses in how public money is managed. A lack of trust discourages business, deters investment, and ultimately lowers tax yields. The Federal Government of Somalia (FGS) recognises that strengthening financial governance is a vital element of its state-building efforts.

The Financial Governance Committee (FGC) is a high-level advisory panel, comprising government and international representatives. It has a core remit to advise FGS institutions on strategic financial governance and to brief the international community on emerging issues. The FGC's areas of focus include public financial management (PFM), public procurement and concessions, fiscal federalism, natural resource revenue management, central bank governance, and asset recovery. The FGC has a formal mandate to review all FGS concession agreements and all FGS procurement contracts above US\$5 million in value.

The purpose of the annual Financial Governance Report (FGR) is to assess developments and progress on issues discussed by the FGC during



the past year. A novel feature of the 2020 FGR is the inclusion of a 'spotlight issue' that allows for a deeper dive into a key topic and to describe the state of play in greater detail. It looks beyond the report's typical one-year time frame to identify lessons, persistent barriers to progress, and potential reform priorities.



## Spotlight Issue: Strengthening Public Procurement and Concessions

### Progress and challenges since 2013

Providing advice to the FGS on public procurement and concessions has been a core part of the terms of reference for the FGC since its inception in early 2014. Over the past six years, and across two FGS administrations, the FGC has formally reviewed 49 FGS procurement contracts and concessions agreements.

The FGC has documented multiple challenges arising between 2013 and February 2017. These include, notably, contracts awarded as a result of unsolicited proposals, contracts negotiated bilaterally between firms and line ministries with minimal transparency, unclear specifications for scope of work that sometimes overlapped among different contracts, few performance standards or reporting requirements to enable FGS to hold contractors to account, the absence of key contract provisions such as termination clauses, and incomplete documentation for accountability purposes. The consequences of these shortcomings were often poor value for money, considerable FGS risk exposure, and strong perceptions of corruption.

Three achievements since March 2017 stand out. First, there has been a shift towards competitive tendering for public procurements, such as ratifications contracts, allied with a stronger role for the Procurement Department of the Ministry of Finance (MoF) in managing FGS procurements

above US\$100,000. Second, FGS commenced the renegotiation of two major concession agreements. It has concluded a new agreement for that Mogadishu airport and has nearly completed renegotiations for the Mogadishu port. Third, improvements have been made to the legal framework for public procurement through an amended Procurement Act and new supporting regulations.

Yet significant challenges remain. A number of flawed and problematic contracts signed by the government between 2013 and February 2017 await resolution. Oil and gas contracting needs to be conducted in full compliance with all aspects of Somalia's legal framework. Although FGS institutions are making greater efforts to comply with the tender and approval processes for concessions agreements, understanding of the legal requirements remains limited. In addition, benefits from competitive tendering are weakened in cases where FGS procuring entities provide poor contract specifications and inadequate lead times for tender processes, and where bidders lack the capacity to comply with tender requirements. There are gaps in the legal framework covering concessions. Finally, the institutional capacity of FGS for managing concessions is extremely limited.

## Lessons and recommendations

A number of reflections and lessons emerge from the experience of the past seven years.

- Sustained political commitment to due process at the centre of government is critical to future progress.
- Building institutional capacity for stronger procurement and concessions management is a long-term undertaking, far beyond a four-year government term.
- FGS has limited scalable capacity for any increase in public procurement, yet it is likely that demand will continue to grow in line with increased revenue.
- Management of petroleum resources poses

particular financial governance risks in Somalia that make strong compliance with the legal framework critical.

- Clearer legal provisions for dealing with unsolicited proposals for government contracts would help reduce inappropriate pressure on FGS from business entities.
- International development partners have paid limited attention to the procurement agenda and, in particular, to capacity development, in spite of the evident needs.

The FGC recommends that FGS complete four sets of priority actions within the next twelve months. Central to their success will be political leadership from the top of government.

- Establish, empower, and build capacity within oversight bodies to undertake procurement and concessions.
- Build stakeholder awareness of the legal and regulatory framework for public procurement.
- Build technical expertise and capacity for conducting, or participating in, procurement processes.
- Continue to enhance the procurement and concessions framework.

## The Year in Review: July 2019 to June 2020

Two issues have dominated the policy context in Somalia over the past year. The negotiation and achievement of the Decision Point for debt relief under the Heavily Indebted Poor Countries (HIPC) initiative was a major milestone for FGS and the international community. It reflects Somalia's significant progress in strengthening financial governance over the past four years. Achievement of the HIPC Completion Point and full debt relief is expected to take an additional two years or more. The ongoing worldwide COVID-19 pandemic came hard on the heels of the Decision Point and has had severe economic consequences in Somalia, primarily as a result

of restrictions on movement and disruption to trade, but also due to the initial impacts on global remittances. FGS and its Federal Member States (FMS) are experiencing significant COVID-related shortfalls in revenues.

FGC support during 2019–20 focused on PFM, fiscal federalism, oil and gas licensing, concessions and contracts, and central banking. The FGC provided analysis, advice, and critical challenges to FGS through Advisory Notes and Contract Reviews.

## Public financial management

FGS made significant progress in passing legislation in 2019–20. The Revenue Act (October 2019) establishes the basis for modernising revenue administration and identifies the categories of revenue that are subject to FGS jurisdiction. The PFM Act (December 2019) regulates all aspects of national budget preparation and execution, and establishes procedures for borrowing, debt management, and natural resource revenue management. Amendments to the Procurement Act (February 2020) enable central oversight of high-value contracts and non-standard bidding methods. The Audit Bill has not yet been passed into law, however. The Upper House has made amendments to strengthen the role of Parliament in the appointment and removal of the Auditor General and returned it to the Lower House.

A Supplementary Budget was submitted by FGS to Parliament in June 2020. The timing was earlier than usual in response to the COVID-19 emergency and because of the need to enable debt service payments to international financial institutions following achievement of the HIPC Decision Point. FMS additional revenue needs are reflected in the Supplementary Budget, and increased intergovernmental transfers are planned.

A significant milestone for FGS in 2019 was taking over responsibility for the collection of Somalia's overflight revenues from the United Nations (UN) after more than 25 years. These

revenues are estimated at approximately US\$15–18 million per year, although revenues in 2020 will be affected by reduced air traffic as a result of COVID-19. The revenues are remitted to the Treasury Single Account (TSA) and are reflected in the Somalia Financial Management Information System (SFMIS).

FGS undertook a second round of biometric registration for national security sector personnel in 2019–20. Owing to progress made with verification and direct payments to bank accounts, it was possible to include a US\$70 monthly salary increase for all security sector personnel in the 2020 Budget. Soldiers are now paid US\$200 each month, comprising US\$170 in wages and US\$30 for rations. This is double the amount they received before the security sector registration process began, when each soldier was paid US\$100 in cash.

The Office of the Auditor General (OAG) undertook a statutory audit of the FGS's 2018 financial statements, as well as compliance audits of a number of FGS institutions. These reports were submitted to Parliament and made available online in October 2019. Completion of the 2018 audits in accordance with the International Standards of Supreme Audit Institutions was a significant milestone. It demonstrates the FGS's commitment to transparency and the progress made in strengthening the capacity of the OAG. The 2018 institutional audits indicated areas in which further system strengthening is required, including with regard to donor funds spent by FGS institutions outside the SFMIS or without supporting documentation.

Donor funding to FGS institutions received off-budget and spent outside the SFMIS remains a financial governance concern. A forensic audit conducted by the OAG into donor funds provided outside government systems to the Ministry of Health from 2017 to 2019 found multiple instances of fraudulent payments, and in June 2020 a number of senior FGS officials were arraigned in court on charges of embezzlement.

Bypassing established budgeting, treasury, and accounting processes reduces transparency and accountability and exposes donor funds to significant risk of misuse.

Furthermore, when donors provide funds to FGS institutions outside government systems, even if unintentionally, they undermine efforts to establish due process in financial management. The PFM Act requires all donor grants to FGS institutions to be appropriated in the FGS Budget and to be paid into the TSA. It also requires all donor grants to FGS institutions to be signed by the Minister of Finance and registered with the OAG. Improved compliance with the PFM Act will require strengthened efforts on the part of both FGS institutions and development partners.

Multiple new government agencies have been created or are proposed in response to sector legislation and donor benchmarks. Increases in FGS revenues risk being absorbed by rising government administrative costs, rather than being used to fund service delivery or public infrastructure. Unchecked creation of new agencies also has implications for government effectiveness. FGS has prepared a draft policy for Cabinet consideration that sets out the conditions under which the establishment of any new agency is appropriate.



## Fiscal federalism

Securing agreement between FGS and the FMS on a credible political framework for intergovernmental relations, including revenue sharing, continues to be a critical challenge.

The ongoing constitutional review process provides an opportunity to establish a mechanism for equalising revenue shares across FMS, so that overall revenue shares are not determined entirely by individual sector agreements. In January 2020, the Parliamentary Oversight Committee endorsed a draft version of the revised Federal Constitution prepared by the Independent Constitutional Review Commission (ICRIC). It proposes establishing a Revenue Sharing Commission responsible for making recommendations on fair and equitable distribution of resources between FGS and the FMS, including revenues from natural resources. Consultations on the draft commenced in the FMS in March 2020, before being interrupted by COVID-19.

FGS has received natural resource revenues in the past year from petroleum and tuna licensing. In July 2019, Shell paid US\$1.7 million in petroleum surface rental arrears to FGS, and these funds were distributed to the FMS in line with the 2018 Baidoa Agreement on petroleum revenue sharing. In February 2010, FGS received US\$1.68 million in revenue from the 2019 tuna licensing round. It will be distributed to the FMS in line with the terms of the 2019 Addis Interim Fisheries Agreement.

## Oil and gas licensing

The Ministry of Petroleum and Mineral Resources (MoPMR) conducted an oil and gas road show in London in February 2019, following which it published a Model Production Sharing Agreement (PSA). The FGC undertook a detailed review of the 2019 Model PSA and compared it with the Model PSA adopted by the MoPMR in 2017. The FGC noted that extensive changes had been made to the PSA's fiscal terms. While some of the changes in the 2019 Model PSA seemed beneficial to FGS,

others appeared to weaken its ability to protect its interests. The MoPMR has reported that it is working on a new set of revisions to the Model PSA, taking into account the recommendations made by the FGC. The new draft had not been shared with the FGC for review by the end of June 2020.

In May 2020, the MoPMR made a pre-announcement for the 2020 licensing round covering seven blocks and published an overview of its proposed PSA terms online. Further work is still required to assure the full compliance of the revised Model PSA and licence round tender protocol with Somalia's legal framework. The fiscal terms of the Model PSA must be aligned with the Extractives Industries Income Tax (EIIT) Bill drafted by the MoF. The tendering and award of oil and gas concessions is governed by the provisions of both the 2016 Procurement Act and 2020 Petroleum Act. Consistent with the requirements of the Procurement Act, all licence round documentation, including the Model PSA, must be approved by the Inter-Ministerial Concessions Committee (IMCC). FGS has also made an undertaking to its international partners that it will not issue any oil exploration licences until the Petroleum Act is made operational, the EIIT Bill is enacted into law, the Model PSA is finalised, and PFM Act regulations on natural resource management are issued. Enactment of the EIIT Bill is a HIPC Completion Point trigger. FGS adherence to commitments made to partners is critical for achieving debt relief.

## Concessions and contracts

Negotiations resumed on a revised Mogadishu port contract in August 2019. The objective is to achieve more efficient operation of the port by enabling necessary capital investment, ensuring transparency, clarifying the relevant parties' roles and responsibilities, and adjusting tariff levels and revenue shares. A revised agreement with the port concessionaire, Al Bayrak, is expected to be signed during the third quarter of 2020, following IMCC approval and registration

with the OAG. Compared to the original 2013 agreement, the revised agreement is expected to include improvements such as new provisions on port investment, commercial basis, operating requirements, taxation, monitoring and reporting, and termination.

The Ministry of Internal Security initiated a tender process in May 2020 to select a new passport supplier. The FGC advised the Ministry that substantial adjustments to the documentation and draft contract were required to ensure compliance with the Procurement Act, provide clarity to bidders and to protect FGS financial interests. With FGC support, independent external legal advice funded by the European Union (EU) was retained to recommend adjustments to the legal provisions of the draft contract, to better protect the interests of FGS.

FGS successfully concluded the competitive tender of four security sector rations contracts in September 2019. FGS monthly expenditure obligations for security sector rations contracts have been cut nearly in half as a result of these new contracts, with annual savings amounting to approximately US\$6.7 million. Some of these savings have been driven by a reduction in the volume of rations purchased as a result of a clearer specification of force numbers following the security sector registration process. Competitive tendering has also reduced the unit prices of most goods—in many cases by at least 10 percent. New tenders are being prepared to replace the current contracts, which expire in September 2020.

## Central banking

The Central Bank of Somalia (CBS) has made good progress in implementing the Financial Sector Reform Roadmap. It has strengthened the legal and regulatory framework by issuing Mobile Money Regulations and Anti-Money Laundering Regulations. A number of other bills are being drafted, including the National Payment Bill, the Insurance Bill, and the revised Financial Institutions Law.



To strengthen the governance of the CBS, the President of FGS appointed five experienced non-executive directors to the board of CBS in March 2020. Appointments were also made to three critical senior management positions in line with the CBS transition plan.

COVID-19 disruptions to remittance routes in 2020 have highlighted the difficulties faced by Somali money transfer businesses owing to the lack of correspondent banking relationships. Moreover, disruptions in global travel have exposed the vulnerability of current stop-gap remittance mechanisms, such as flying cash from remitting countries to clearance hubs. These disruptions have also highlighted the critical importance of financial sector reforms to restore Somalia's correspondent banking relationships over the medium term. As a result of the COVID-19 crisis, CBS has increased the frequency of its monitoring of financial institutions and money transfer

businesses from a quarterly to a monthly basis.

CBS managed to recover modest legacy assets held by Credit Suisse. Progress is being made in recovering legacy assets held in the United Kingdom by Crown Agents, but the process is not yet complete. No progress was made in accessing sizeable assets held in Italy by Banca Intesa Sanpaolo, which has been unresponsive to requests by CBS.

Significant progress was made by CBS in integrating its core banking system with the SFMIS. The integration, launched in October 2019, reduces operational risk and has made CBS more efficient by eliminating duplicative, paper-based processes. It allows MoF and the Accountant General to see account balances before making a payment. It prevents CBS from making a payment on behalf of FGS if an account has an insufficient balance.

## The Year Ahead: Key Priorities for 2020-21



### Strategic context

A confluence of events will shape the policy context for Somalia in the next twelve months. First, the adverse fiscal effects of the COVID-19 emergency will persist. FGS priorities will need to broaden to encompass further investments in the health system as well as socioeconomic recovery from the crisis. Second, political attention will focus increasingly on the upcoming 2021 elections

and, consequently, fiscal pressures are likely to build. Third, final negotiations and agreement are expected on a revised Federal Constitution, which will need to address the complex fiscal relationship between FGS and the FMS. Finally, the licensing round for oil and gas concessions is scheduled to launch in August 2020 and to run until March 2021. Yet uncertainties remain about the adequacy of institutional preparations for issuance of PSAs.

These events represent a highly significant year of transitions, and they carry a number of risks for financial governance in Somalia.

- Pressure for problematic procurements and concessions may rise in the coming twelve months, especially in response to the continuing COVID-19 emergency and in anticipation of a possible change in administration. Oil and gas licensing constitutes a special category of potentially high-risk concessions.
- COVID-19 appears in the short term to have increased incentives for constructive dialogue between FGS and FMS on fiscal and financial matters. The underlying political economy remains challenging, however, and could work against durable progress.
- There are high expectations of consistent progress towards the HIPC Completion Point and achievement of the floating triggers. FGS will require substantial political and technical bandwidth in 2020–21 to maintain momentum on these reforms, which will need to continue into the tenure of a new administration.

The recent passage of legislation such as the PFM Act and the Procurement Act Amendments will provide a stronger institutional basis for good financial governance and will mitigate some of the risks in the coming year. Procedures are needed for



their implementation, however, and in some cases new agencies may need to be established. In all cases, the requirement is to move beyond paper-based reforms to demonstrated implementation.

The central challenge for FGS, as it navigates this context, is how to make the gains of the past four years resilient to any political transition in 2021.

## Priorities for the year ahead

The FGC has identified four strategic priorities for FGS in strengthening financial governance in the year ahead.

***Consolidate fiscal reforms and strengthen institutional capacity.*** It will be important for FGS to conclude the enactment of relevant legislation and develop and implement supporting regulations. The Audit Bill and EIIT Bill are especially critical to financial governance. Another priority will be to clarify and deepen the arrangements for fiscal federalism through finalisation of the revised Federal Constitution. On the external financing side, FGS should use the revised and updated legal and institutional framework to ensure that all aid to FGS institutions is appropriated in the FGS Budget and managed through the TSA. Similarly, the MoF should invoke the powers given to it by the PFM Act to tackle the fiscal costs of institutional proliferation in the form of new FGS agencies.

***Maintain a continuous focus on procurement and concessions.*** FGS should deepen understanding across all federal institutions of due process in public procurement and concessions, and it should maintain a firm commitment to compliance at the ministerial level. As FGS resources continue to increase and the government further expands the range of public procurement and concessions, additional guidance and tools will be required to support and maintain a robust system. Developing the capacity of FGS procurement officials in procuring entities will be a priority.

**Ensure transparency and due process in natural resource management.** It will be important for FGS to ensure that oil and gas contracting is conducted in a manner that is fully compliant with all legal requirements, including the approval requirements set out in the concessions section of the Procurement Act. Sequencing is critical so that the Model PSA aligns with the EIIT Bill, and so that the IMCC has adequate time to scrutinise and approve the proposed tender process and documentation. Transparency will be essential so that Somali citizens and international funding providers can have confidence in the FGS process and decision making. The 2020 tuna licensing round will be an opportunity for FGS to refresh the licence holders and expand the level of revenue received.

**Continue to strengthen central bank governance and financial sector development.** Priorities in 2020–21 reflect the Roadmap for Financial Sector Development and cover the institutional strengthening of CBS, currency reform, mobile money regulations, and cross-border payment mechanisms. Work is progressing on implementation of the CBS transition plan, and further activities should continue over the next twelve months. CBS is working with the World Bank on currency exchange and reform, and it will need support from the FMS in the fight against counterfeiters. Implementation of the Mobile Money Regulations, issued in 2019, is a high priority for the year ahead. Work with the international community will need to continue to resolve any COVID-19 related obstacles to inward money transfers, notably remittances, as well as to address underlying structural constraints.

#### Financial governance priorities for 2020–21

Area of focus	Specific priorities
<b>Protect fiscal reforms</b>	<ul style="list-style-type: none"> <li>• Conclude enactment of legislation relating to financial governance and commence implementation</li> <li>• Clarify and deepen the arrangements for fiscal federalism through finalisation of the revised constitution</li> <li>• Work with the international community to bring all aid to FGS institutions on budget/on treasury</li> <li>• Review all proposed laws for their fiscal implications prior to submission to Cabinet</li> </ul>
<b>Maintain a focus on procurement and concessions</b>	<ul style="list-style-type: none"> <li>• Deepen understanding across FGS institutions of due process in public procurement and concessions</li> <li>• Maintain a firm commitment to compliance</li> <li>• Strengthen capacity of oversight bodies and technical units</li> <li>• Seek development partner support for capacity development</li> </ul>
<b>Ensure transparency and due process in natural resource management</b>	<ul style="list-style-type: none"> <li>• Align the Model PSA with the EIIT Bill</li> <li>• Ensure oil and gas contracting is compliant with all legal requirements, including the approval requirements in the Procurement Act</li> </ul>
<b>Strengthen central bank governance and financial sector development</b>	<ul style="list-style-type: none"> <li>• Continue to implement CBS transition plan</li> <li>• Implement the 2019 Mobile Money Regulations</li> <li>• Progress plans for first phase of currency reform</li> <li>• Maintain and develop the interface between CBS systems and SFMIS</li> <li>• Implement national payment and settlement system</li> <li>• Seek resolution of the obstacles to inward money transfers</li> </ul>

## ANNEXES

### ANNEX A: CONTRACTS AND CONCESSIONS REVIEWED BY THE FGS SINCE 2014

#	FGS institution	Contract	Contractor	Contract type	FGC formal review	Status
1	Central Bank of Somalia	Land lease and redevelopment	Riverside Holding	Concession	2016, 2018	On hold
2	Central Bank of Somalia	Asset recovery	Shulman, Rogers, Gandal, Pordy & Ecker PA	Concession	Not reviewed	Cancelled
3	Commerce and Industry	Import/export quality assurance	Proje Gözetim Mühendislik (PGM Project)	Concession	2015, 2016	Incorporated FGC recommendations
4	Defence	SNA Rations	AGETCO	Procurement	2016	Contract cancelled
5	Defence	SNA Rations	AGETCO	Procurement	2017	Contract awarded following a tender under the oversight of INPB; subsequently cancelled
6	Defence	SNA Rations	Kasram	Procurement	2017	Contract annulled shortly prior to expiration, on the basis that the award was irregular
7	Defence	SNA Rations – Lot 1	Scandinavian Trading	Procurement	2019	Competitively awarded; operational
8	Defence	SNA Rations – Lot 2	East Africa Trading	Procurement	2019	Competitively awarded; operational
9	Defence	Supply of 6 marine patrol boats	AMO Shipping Company Ltd.	Procurement	2014	Subject to an arbitration claim
10	Defence	Equipping and training Coast Guard	Atlantic Marine and Offshore Group	Procurement	Not reviewed	Subject to an arbitration claim
11	Defence	Logistics	SKA	Unclear	2018	Status unclear; letter to Prime Minister from MoF conveyed FGC recommendation to annul via notification to contractor
12	Education	Textbooks	Beder Printing House	Concession	2018	Operational, recommended to be renegotiated and/or cancelled
13	Education	Certificates	Security Printing Press	Concession	2019	Unknown

#	FGS institution	Contract	Contractor	Contract type	FGC formal review	Status
14	Finance	Collection of property transfer registration tax	M&T Solutions Ltd	Concession	2016	Cancelled
15	Finance	Collection of road tax	Smart General Service Ltd.	Concession	2016	Cancelled
16	Finance	Khat tax collection on behalf of FGS	The ADCO Group of Companies	Concession	2015	Cancelled; contract replaced by direct tax
17	Fisheries and Marine Resources	Protecting, licensing, and promoting policy and institutional development of fisheries sector	Somalia-FishGuard Ltd.	Concession	2014	Did not proceed
18	Galmudug Regional Government	Oil production sharing agreement	Petro Quest Africa (CN)	Concession	2014	Did not proceed
19	Information, Culture, -24 and Tourism	6 leases for development of property in Mogadishu	Various	Concession	2019	Status unclear; recommended to be cancelled or revised
25	Somali Police Force	Police rations	Perkins Logistics	Procurement	2016	Partially incorporated FGC recommendations; contract has now expired
26	Somali Police Force	Police rations	Muna Transport	Procurement	2019	Competitively awarded; operational
27	Immigration Directorate	Visas	Empire Tech Solutions Ltd.	Concession	2018	Operational; recommended to be cancelled or revised
28	Immigration Directorate	Passport Production	Ebtakarta Smart System	Concession	2018	Operational; recommended to be retendered
29	Immigration Directorate	Passport Production Tender Documents		Concession	2020	Still in draft
30	National Security Force	NISA rations	Horn Logistics	Procurement	2016	Partially incorporated FGC recommendations; contract has now expired

## ANNEX A: CONTRACTS AND CONCESSIONS REVIEWED BY THE FGC SINCE 2014

#	FGS institution	Contract	Contractor	Contract type	FGC formal review	Status
31	National Security Force	NISA rations	Express logistics	Procurement	2019	Competitively awarded; operational
32	National Security	Scanning services for Mogadishu port	M&T Solutions Ltd	Concession	2016	Contract signed but inactive; recommended to be terminated
33	Justice	Prisons rations	Bakhaari Logistics	Procurement	2018	Operational; recommended to be retendered
34	Petroleum and Mineral Resources	Model terms for petroleum exploration, development, and production	Model Oil and Gas Production Sharing agreement	Concession	2016	Incorporated FGC recommendations
35	Petroleum and Mineral Resources	Model terms for petroleum exploration, development and production	Model Oil and Gas Production Sharing agreement	Concession	2019	Unknown; no feedback on whether FGC recommendations have been considered or incorporated
36	Petroleum and Mineral Resources	Seismic data analysis	Mubadala Oil and Gas Holding Company LLC (CN)	Concession	2014	Agreement expired
37	Petroleum and Mineral Resources	Seismic exploration	Soma Oil and Gas Exploration Limited	Concession	2014	Operational; did not incorporate FGC recommendations
38	Petroleum and Mineral Resources	Geospatial analysis	CGG Data Services AG/Robertson GeoSpec International Ltd.	Concession	2014, 2015, 2016	Operational; incorporated FGC recommendations
39	Petroleum and Mineral Resources	Collation, analysis, and marketing of petroleum data	Spectrum ASA	Concession	2015	Operational; incorporated FGC recommendations
40	Petroleum and Mineral Resources	Acquisition, processing, and marketing of geophysical data	TGS-NOPEC Geophysical Company ASA	Concession	2014	Did not proceed
41	Presidency	Rations	Regional Suppliers Company Ltd.	Procurement	2018	Recommended to be retendered after expiry
42	Ports and Shipping	Management of port operations	Albayrak Turizm İnşaat Ticaret A.Ş.	Concession	2014	Operational; under renegotiation

#	FGS institution	Contract	Contractor	Contract type	FGC formal review	Status
43	Ports and Shipping	Harbour, fishing port, and related infrastructure developments	Great Horn Development Company	Concession	2014	Did not proceed
44	Ports and Shipping	Lease and concession for operating Mogadishu port container terminal	Mogadishu Port Container Terminal and Simatech International	Concession	2014	Did not proceed
45	Ports and Shipping	Management and operation of a container yard and freight station at Mogadishu dry port	Mogadishu International Port and Simatech International	Concession	2016	Construction complete, not operational; renegotiation required pending resolution of Albayrak renegotiation
46	Posts and Telecoms	Telecoms gateway	VBH Holdings SPA	Concession	2016	Did not proceed
47	Power and Water	Electricity generation	Polaris Energy SDN BHD	Concession	2015	Did not proceed
48	Transport and Aviation	Airport operations	Favori LLC	Concession	2014, 2019	Operational; renegotiated agreement signed May 2019
49	Transport and Aviation	Vehicle licensing	Modern Technology Ltd.	Concession	2016	Cancelled
50	Transport and Aviation	Airport taxi shuttle service	Sahel	Concession	2017	Operational; recommended to be renegotiated
51	Transport and Aviation	Airport hotel	Sat Service LLC	Concession	2018	Draft contract under review

#### **Annex 64**

Somalia, Financial Governance Committee, “List of contracts and concessions reviewed by the FGC since 2014”, *Financial Governance Committee*, October 2018



## List of contracts and concessions reviewed by the FGC since 2014

As at end October 2018

#	FGS Agency	Contract	Contractor	FGC Official Review	Status
1	Central Bank of Somalia	Land lease and redevelopment	Riverside Holding	2016	Signed but not yet under implementation
2	Central Bank of Somalia	Asset recovery	Shulman, Rogers, Gandal, Pordy & Ecker PA	Not required	Cancelled
3	Commerce and Industry	Import/export quality assurance	Proje Gözetim Mühendislik (PGM Project)	2015 and 2016	Contract went ahead having incorporated FGC recommendations
4	Defence	SNA Rations	AGETCO	2016	Contract cancelled
5	Defence	SNA Rations	AGETCO	2017	Contract awarded following a tender under the oversight of INPB; subsequently cancelled
6	Defence	SNA Rations	Kasram	2017	Irregularly awarded. Contractor notified of termination Sept 2018.
7	Defence	Supply of 6 marine patrol boats	AMO Shipping Company Ltd.	2014	Subject to an arbitration claim
8	Defence	Equipping and training Coast Guard	Atlantic Marine and Offshore Group	Not required	Signed but not under implementation
9	Defence	Logistics	SKA	2018	MoF has formally notified the PM that the contract did not follow due process & should be considered void
10	Education	Curriculum development & text books	Beder Printing House	2018	Operational – FGC has recommended renegotiation
11	Finance	Collection of property transfer registration tax	M&T Solutions Ltd	2016	Cancelled
12	Finance	Collection of road tax	Smart General Service Ltd	2016	Cancelled
13	Finance	Khat tax collection on behalf of FGS	The ADCO Group of Companies	2015	Cancelled - replaced by direct tax collection
14	Fisheries and Marine Resources	Protecting, licensing, policy and institutional development of fisheries sector	Somalia-FishGuard Ltd.	2014	Did not proceed
15	Galmudug Regional Government	Oil production sharing agreement	Petro Quest Africa (CN)	2014	Did not proceed
16	Interior	Police rations	Perkins Logistics	2016	Operational – partially incorporated FGC recommendations

#	FGS Agency	Contract	Contractor	FGC Official Review	Status
17	Internal Security	NISA rations	Horn Logistics	2016	Operational – partially incorporated FGC recommendations
18	Internal Security	Scanning services for Mogadishu Port	M&T Solutions Ltd	2016	Contract signed without incorporating FGC recommendations. Believed not to be operational.
19	Internal Security	Passports	Ekbaraat	2018	Operational – FGC has recommended renegotiation
20	Internal Security	Visas	Empire Tech	2018	Operational, pending FGC review
21	Justice	Prisons Rations	Bakhaari Logistics	2018	Operational. Recommended to be retendered
22	Office of the President	Rations	Regional Suppliers	2018	Operational. FGC has recommended a number of revisions.
23	Petroleum and Mineral Resources	Establish model terms for petroleum exploration, development and production	Model Oil and Gas Production Sharing agreement	2016	Incorporated FGC recommendations, pending final endorsement
24	Petroleum and Mineral Resources	Seismic data analysis	Mubadala Oil and Gas Holding Company LLC (CN)	2015	Agreement Expired
25	Petroleum and Mineral Resources	Seismic Exploration	Soma Oil and Gas Exploration Limited	2014	Operational - did not incorporate FGC recommendations
26	Petroleum and Mineral Resources	Geospatial Analysis	CGG Data Services AG/Robertson GeoSpec International Ltd.	2014, 2015 and 2016	Operational - incorporated FGC recommendations
27	Petroleum and Mineral Resources	Collation, analysis and marketing of petroleum data	Spectrum ASA	2015	Operational - incorporated FGC recommendations
28	Petroleum and Mineral Resources	Acquisition, processing and marketing of geophysical data	TGS-NOPEC Geophysical Company ASA	2014	Did not proceed
29	Ports and Shipping	Management of Port Operations	Albayrak Turizm İnşaat Ticaret A.Ş.	2014	Operational - under renegotiation
30	Ports and Shipping	Harbour, fishing port and related infrastructure developments	Great Horn Development Company	2014	Did not proceed
31	Ports and Shipping	Lease and concession for operating Mogadishu port container terminal	Simatech International	2014	Did not proceed

#	FGS Agency	Contract	Contractor	FGC Official Review	Status
32	Ports and Shipping	Management and operation of a container yard and freight station at Mogadishu Dry Port	Simatech International	2016	Construction complete, operations on hold pending possible renegotiation.
33	Posts and Telecoms	Telecoms gateway	VBH Holdings SPA	2016	Did not proceed
34	Power and Water	Electricity generation	Polaris Energy SDN BHD	2015	Did not proceed
35	Transport and Aviation	Airport Operations	Favori LLC	2014	Operational – under renegotiation
36	Transport and Aviation	Vehicle licensing	Modern Technology Ltd	2016	Cancelled
37	Transport and Aviation	Airport taxi shuttle service	Sahel	2017	Operational - under renegotiation
38	Transport and Aviation	Airport Hotel	Sat Service LLC	2018	Draft contract under review

**Annex 65**

Law of Treaties [Agenda item 4]: Document A/CN.4/101, Third Report by G. G.  
Fitzmaurice, Special Rapporteur, A/CN.4/101, 14 March 1956

YEARBOOK  
OF THE  
INTERNATIONAL  
LAW COMMISSION  
1956

*Volume II*

*Documents of the eighth session  
including the report of the Commission  
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UNITED NATIONS  
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# LAW OF TREATIES

## DOCUMENT A/CN.4/101

Report by G. G. Fitzmaurice, Special Rapporteur

[Original text: English]

[14 March 1956]

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## INTRODUCTION

## A. Basis and scope of the present report

1. The first task of the present Rapporteur was to decide whether to adopt the work of his distinguished predecessors, so far as this had proceeded, and to take the subject up at the point where they left off, or whether to review once more the topics covered by this earlier work—to which, it should be said at once, the present Rapporteur is very greatly indebted. As these topics were left, in particular by Sir Hersch Lauterpacht, they consisted of three parts entitled "Definition and nature of treaties", "Conclusion of treaties", and "Conditions of validity of treaties". It was Sir Hersch Lauterpacht's intention to prepare in due course further sections of the work: on operation and enforcement, interpretation, termination, and so on.

2. The present Rapporteur would have preferred, if

possible, to proceed with this further work at once, and was conscious, moreover, that it might seem otiose to travel once again over ground already twice covered by earlier reports. Yet this is what he has in fact been led to do, principally for two reasons. In the first place, it was suggested to him by one or two members of the Commission that, in view of the considerable differences between certain of the articles proposed by Sir Hersch Lauterpacht and those which had been adopted by the Commission during its second and third sessions (A/CN.4/L.55), which themselves differed considerably from various articles proposed by Professor Briery, a review and synthesis of these provisions would prove useful.

3. In the second place, the present Rapporteur, when considering in particular the topic of the making and conclusion of treaties, was struck by the following circumstance. His predecessors had presented an

admirably full and informative commentary, containing all that was necessary for an understanding of the law on the subject; but the articles themselves to which this commentary related were few in number and to some extent general in character—at any rate their authors had clearly not intended to go into much detail. Such a method has its advantages, but nevertheless it is bound to leave out of account a number of points—and more especially situations—that in practice tend frequently to occur in the process of treaty-making, and give rise to difficulty or uncertainty.

4. This raises the question of how specialized a code should be—a question not easily answered in the case of a topic such as the conclusion of treaties, where often no entirely clear dividing line can be drawn between what are matters of strict law, and what are matters of practice, common usage, or protocol. Nevertheless, basing himself on his own experience in treaty-making, the present Rapporteur believes that most chancelleries are probably reasonably familiar with the broad principles of treaty law, but that it is precisely on certain of the more specialized, but all the same important points, that they would welcome greater certainty and a more systematic treatment. He believes, accordingly, that a code on the law of treaties should deal with at any rate the more prominent of these points, without, on the other hand, going too far into what are fundamentally matters of practice that do not raise strictly legal issues.

5. The Rapporteur has therefore, in the present report, concentrated almost entirely on the topic of the framing and conclusion of treaties—apart from a section devoted to certain basic principles of treaty law, which, it may be thought, ought to figure at the outset of any code on the subject. Except for these and certain introductory and general articles, thirty out of the forty-two articles now presented deal entirely with the process of treaty-making. This compares with some six articles on the making or conclusion of treaties in each of the previous reports. The articles themselves are also fuller, so that much more space is given to this topic than before. The Rapporteur makes no apology for this more extensive treatment, which he believes to be necessary, although he thinks that after the Commission has given a preliminary consideration to the matter it may be possible to shorten the draft. There is a double aspect about many rules of treaty law that admittedly tends to cause overlapping. Nevertheless, even though it may be possible to summarize treaty law in the one sentence that anything can be done that the parties agree upon, it is still desirable to make clear what it is that will usually require specific agreement, and what is to be the position if there is none.

6. On the other hand, if the present Rapporteur has felt obliged to expand the articles, the work done by his predecessors, especially Sir Hersch Lauterpacht, has enabled him greatly to reduce the commentary that might otherwise have been called for. He has avoided repetition, and has confined himself to commenting on new points, or points that may be thought to be doubtful or especially controversial. He has also tried to draft the articles themselves in such a way that they are self-explanatory and their legal basis manifest.

## B. Scope of future reports

7. The next report will deal with the topics of the (essential or substantive) validity of treaties, and of the termination of treaties. In the same or a further report, the topics of interpretation, operation, enforcement, and the like will be covered, and this will still leave a number of matters to be dealt with.

8. Here a word may be said on the difficult subject of arrangement. The law of treaties lends itself to several different methods of arrangement. How different these can be will be apparent to anyone who, for instance, compares so well-known a text as the Harvard draft convention on the law of treaties with the arrangement adopted by Professor Charles Rousseau in volume I of his *Principes généraux du droit international public*.<sup>1</sup> Thus the topic of the making (conclusion) of treaties covered by the present report, can be regarded either as a process (*opération à procédure*) governed by certain legal rules, or as a substantive topic relating to the validity of treaties—i.e., so far as this is concerned, their formal validity. In the same way, termination can be regarded as a process, or equally as part of the topic of validity (validity of the treaty in point of time or duration). Chronologically, the two topics of the conclusion and termination of treaties are at opposite ends of the scale; but substantially they can be regarded as belonging (together with the topic of essential validity) to the general chapter of “validity”. In between them, chronologically, are the topics of interpretation, operation, and enforcement, the effect of the treaty as regards third parties, etc., all of which may be regarded as constituting a second main chapter of treaty law—the “effect” of treaties (interpretation, for instance, is closely allied to application). It is possible, up to a point, to combine these conceptions, though not entirely. Provisionally, the present report adopts, in the main, the arrangement adumbrated in the previous ones, since it is simplest, and most in accordance with the way in which things occur, to view a treaty as a process in time. Treaties are born, they live, produce their effects, and, perhaps, eventually die. But it may be thought desirable to displace the subject of termination, and make it part III of a first chapter on “Validity”, of which formal validity would constitute part I, and essential validity part II. Tentatively this is the arrangement now proposed. Most of the rest of the subject could then be grouped under a second chapter on “Effect”. However, a final decision on this question is probably best deferred until a comparatively late stage of the whole work.

9. Certain other matters of form or method may be mentioned. The first has already been touched on. So far as the process of treaty-making and conclusion is concerned, the problems connected with it cannot clearly emerge, unless the code attempts, within certain limits, to paint a picture—unless in fact it has a descriptive element. Secondly, the Rapporteur believes that any codification of the law of treaties, such as the Commission is called upon to carry out, should take the form of a *code*

<sup>1</sup> Charles Rousseau, *Principes généraux du droit international public* (Paris, Editions A. Pedone, 1944).

and not of a draft convention. There are two reasons for this. First, it seems inappropriate that a code on the law of treaties should itself take the form of a treaty; or rather, it seems more appropriate that it should have an independent basis. In the second place, much of the law relating to treaties is not especially suitable for framing in conventional form. It consists of enunciations of principles and abstract rules, most easily stated in the form of a code; and this also has the advantage of rendering permissible the inclusion of a certain amount of declaratory and explanatory material in the body of the code, in a way that would not be possible if this had to be confined to a strict statement of obligation. Such material has considerable utility in making clear, on the face of the code itself, the legal concepts or reasoning on which the various provisions are based.

10. Finally, reference may be made to certain inherent difficulties in drafting any code on treaty law, arising out of the attempt to give a unified treatment to the subject. This is the system apparently favoured by the Commission and the previous Rapporteurs, which the present Rapporteur has tried to follow. But in a sense it attempts too much. For instance, it may be *possible* to frame an article so as to apply indifferently to the case of a full treaty and also to that of an exchange of notes; but a certain artificiality is involved. Some expressions are suited to the one case and not to the other, and vice versa. A somewhat similar position exists as regards bilateral treaties on the one hand, and multilateral treaties on the other. Again, the same thing is found if treaty-making by or on behalf of States is related to the same process when effected by or on behalf of international organizations. It is for consideration whether, eventually, it may not be better to modify the attempt at a completely uniform treatment, and introduce a certain number of special sections on particular aspects of the subject. But in reading the present articles, it is necessary to bear in mind that they are intended to cover in one clause *all* the different forms of instruments and types of cases. The reader who, for instance, has mainly general multilateral conventions in mind, should remember that there are also such things as bilateral agreements and exchanges of notes, and, moreover, *that the latter outnumber the former by a very large margin.*

## I. TEXT OF ARTICLES OF CODE

### Introduction: scope and general principles

#### A. SCOPE AND RELATED DEFINITIONS

##### *Article 1. Scope*

1. The present Code relates to treaties and other international agreements in the nature of treaties, embodied in a single instrument, as described in paragraph 1 of article 2 below; and to international agreements embodied in other forms, as described in paragraph 2 of article 2; provided always that they are in writing. The present Code does not, as such, apply to international agreements not in written form, the validity of which is not, however, on that account to be regarded as prejudiced.

2. Subject to the provisions of article 2, paragraph 2,

the present Code applies to treaties and other international agreements regardless of their form or designation, and regardless of whether they are expressed in one or more instruments.

[3. The provisions of the present Code relating to the powers, faculties, rights and obligations of States relative to treaties, are applicable, *mutatis mutandis*, to international organizations, and to treaties made between them, or between one of them and a State, unless the contrary is indicated or results necessarily from the context.]

##### *Article 2. Definition of "Treaty"*

1. For the purposes of the application of the present Code, a treaty is an international agreement embodied in a single formal instrument (whatever its name, title or designation) made between entities both or all of which are subjects of international law possessed of international personality and treaty-making capacity, and intended to create rights and obligations, or to establish relationships, governed by international law.

2. However, there being no general rule of law requiring any particular international agreement to be cast into the form of a "treaty", as such, an international agreement intended to serve the same purposes and made between any of the above-mentioned entities, may be embodied in another form than a treaty as described in the preceding paragraph—in particular in more than one instrument, such as an exchange of notes, letters or memoranda. The term "treaty", and the provisions of the present Code, shall be regarded as applicable *mutatis mutandis* to these other forms of international agreement, unless the contrary is expressly stated, or results necessarily from the language of the provision concerned, or from the character of the agreement itself.

3. For the purposes of the present Code, a treaty implies an instrument, or complex of instruments forming an integral whole, the parties to which number two or more of the entities mentioned in paragraph 1 above. A unilateral instrument, declaration, or affirmation may be binding internationally, but it is not a treaty, though it may in some cases amount to, or constitute, an adherence to a treaty, or acceptance of a treaty or other international obligation.

4. The fact that an instrument is or is not, as the case may be, regarded as a treaty for the purposes of the present Code, does not in any way affect its status in relation to the constitutional requirements of particular States regarding the treaty-making power.

##### *Article 3. Certain related definitions*

For the purposes of the present Code:

(a) In addition to the case of entities recognized as being States on special grounds, the term "State":

(i) Means an entity consisting of a people inhabiting a defined territory, under an organized system of government, and having the capacity to enter into international relations binding the entity as such, either directly or through some other State; but this is without prejudice to the question of the methods by, or channel through

which a treaty on behalf or any given State must be negotiated—depending on its status and international affiliations;

(ii) Includes the government of the State;

[(iii) Subject to article 1, paragraph 3, includes international organizations;]

[(b) The term “international organization” means a collectivity of States established by treaty, with a constitution and common organs, having a personality distinct from that of its member-States, and being a subject of international law with treaty-making capacity;]

(c) The term “party” (to a treaty) means primarily a State actually bound by a treaty which is in force; it may on occasion be used to denote States presumptively bound by a treaty not yet in force, by reason of having taken all the steps necessary for participation.

## B. CERTAIN FUNDAMENTAL PRINCIPLES OF TREATY LAW

### Article 4. *Ex consensu advenit vinculum*

1. The foundation of the treaty obligation is consent, coupled with the fundamental principle of law that consent gives rise to obligation.

2. For the obligation to exist, the consent must be true consent. However, in certain circumstances consent is an inference from the facts, and a State may not deny the reality of its consent apparently regularly given.

### Article 5. *Pacta sunt servanda*

1. Subject to the provisions of the present Code, States are bound to carry out in good faith the obligations they have assumed by treaty.

2. All treaty rights and obligations attach to the State as an entity, and as an international personality and subject of international law, whether the treaty has actually been made in the name of the State as such, or of the Head of the State, the government, a department of government, or a Minister.

3. Since treaty obligations bind the State, they are not affected by changes of government, administration, dynasty or régime, within the State. A new government, administration, dynasty or régime, whatever its origin or the process by which it has assumed control, is bound to carry out the treaty obligations of the State, unless these can be terminated according to the terms of the treaty, or be otherwise lawfully brought to an end.

4. Territorial changes in a State, not affecting its personality as a separate international entity, do not of themselves alter its treaty rights and obligations, except in so far as these relate specifically to territory no longer under control of the State, or have otherwise become impossible of enjoyment or performance.

5. A State which has become bound by a treaty in a regular and lawful manner, is not absolved from carrying it out by reason of any requirements of, or lacunae in, its law or constitution, or any impediments resulting from its administrative or judicial system.

6. The particular form or designation of a treaty can never be a ground for not carrying it out, if it embodies

an agreement, and is valid formally, substantially and temporally.

7. Changed conditions are equally never a ground for refusing to comply with a treaty, though they may, in exceptional circumstances, cause it to be determined by operation of law.

### Article 6. *Res inter alios acta*

A treaty only creates rights, obligations or relationships for the States that are parties to it. However, in the circumstances contemplated in articles . . . of the present Code,<sup>2</sup> a State may indirectly acquire rights, come under obligations, or be placed in a relationship, by reason of a treaty to which it is not a party.

### Article 7. *The law governing treaties*

Unless the treaty itself otherwise provides, or such an intention is clearly apparent from the text, or from surrounding circumstances, all questions relating to its conclusion, validity, force, effect, application, execution, interpretation and termination, will be governed by international law.

### Article 8. *Classification of treaties*

Treaties may, on grounds of practical convenience and for certain procedural purposes, be classified in various ways, according to their form, subject matter or object, and according to whether they are bilateral, plurilateral, or multilateral contractual (*traités-contracts*) or law-making or “normative” (*traités-lois*). However, subject to the provisions of the present Code, there is no substantial juridical difference between any of these classes of treaties as regards the legal requirements governing their validity, interpretation and effect, since they are all based on agreement, and derive their legal force from its existence.

### Article 9. *The exercise of the treaty-making power*

1. Treaty-making and all other acts connected with treaties are, *on the international plane*, executive acts, and the function of the executive authority. Whatever legislative processes have to be gone through in order to make such acts effective on the domestic plane, on the international plane they are authentic.

2. On the international plane, therefore, the treaty-making power is exercised:

(a) In the case of a State, by the competent executive authority (Head of State, government): it is for each State to determine for itself what constitutional processes are necessary in order to place the executive authority in a position, on the domestic plane, to exercise this power; but, on the international plane, its exercise is the act of the executive authority;

[(b) In the case of an international organization, by such methods as are provided for in its constitution, or decided upon by its competent organs acting within the limits of their functions; but, if nothing else is indicated or decided on, by the Secretary-General of the organization.]

<sup>2</sup> The articles will figure in a later report.

3. No State is obliged, or, strictly speaking, entitled, to accept as internationally authentic the acts of another State in relation to a treaty, unless they are the acts of the executive authority; but because a State is bound to accept them if they are of this character, they necessarily bind the State whence they emanate, which, having performed them through its executive authority, may not then deny their international authenticity.

### First chapter. The validity of treaties

#### INTRODUCTORY PART: DEFINITION AND CONDITIONS OF VALIDITY

##### Article 10. Definition of validity

1. Validity is the condition necessary to give a treaty operative force and effect in law, and consists in the fulfilment of the aggregate of those requirements prescribed by the law in order that a treaty may have such force and effect.

2. Correspondingly, *mutatis mutandis*, the validity of a treaty for any particular State denotes the existence of all the conditions necessary to give a treaty, in itself valid, operative force and effect for that State.

3. Validity comprises "formal validity", "essential validity" and "temporal validity"—all of which must be present, both in respect of the treaty itself, and for any particular State said to be bound by it.

4. The term "formal validity" denotes validity in point of form, with reference to negotiation, conclusion and entry into force; "essential validity" denotes validity in point of substance, having regard to the requirements of contractual jurisprudence; "temporal validity" denotes validity in point of duration, having regard to the legal considerations governing the termination of a treaty, whether in itself or for any particular State.

##### Article 11. General conditions of the operative effect of a treaty considered in itself

1. A treaty has operative effect only if it is (a) valid, (b) in force (has temporal validity).

2. In order to be valid, a treaty must have (a) formal validity, (b) essential validity, as defined in article 10, paragraph 4, and in accordance with the requirements hereinafter specified.

3. In order to be in force (temporally valid), a treaty must (a) have entered or been brought into force; (b) remain in force—that is to say—must not have been terminated or have come to an end, according to its terms, or by operation of law as hereinafter provided.

##### Article 12. General conditions of the operative effect of a treaty for any particular State

1. A treaty is binding upon a particular State only if (a) the treaty itself has operative effect as specified in article 11 above; (b) the State concerned has the capacity to participate in the treaty; (c) there exists a valid and continuing acceptance of the treaty on behalf of that State.

2. A State has the capacity to participate in a given treaty (a) if its general treaty-making capacity is not

limited so as to exclude participation in that treaty or class of treaty; (b) if it fulfils any special conditions of participation that may be laid down by the treaty itself.

3. A continuing acceptance of a treaty on behalf of a State exists if (a) a final acceptance has been given by such means as may be prescribed by the treaty itself, or by the present Code; (b) that acceptance is (i) valid according to the provisions of the present Code, and (ii) is still in force, and has not been terminated according to the terms of the treaty, or by operation of law as hereinafter provided.

### Part I. Formal validity (framing and conclusion of treaties)

#### A. GENERAL CONDITIONS OF FORMAL VALIDITY

##### Article 13. Definitions

For the purposes of the present Code:

(a) "Negotiation", "drawing up" or "framing" is the process of *establishing* the text of a treaty; and "conclusion" is the act by which any two or more States signify, subject if necessary to eventual confirmation, their *consent* to the text as a text;

(b) "Full powers" or "credentials" means the formal instrument or document authorizing a given person to represent a State for the purpose of negotiating or concluding, or of negotiating and concluding, a treaty, as the case may be;

(c) "Establishment" or "authentication" is the act whereby the *text* of the treaty is finalized *ne varietur*;

(d) "Participation" (in a treaty) consists in having taken the final steps necessary in the particular case to become actually bound by it, if it is in force or when it comes into force;

(e) "Signature" which (subject to the provisions of article 21 of the present Code) includes initialling, is the act whereby a duly authorized representative signs or initials the text of a treaty on behalf of a State;

(f) "Signature *ad referendum*" is a signature made expressly subject to reference to the government concerned, with the consequence that it does not take effect as a full signature without subsequent confirmation by that government;

(g) A "signatory" or "signatory State" means a State on behalf of which a signature to a treaty has been given, such signature not being *ad referendum*, or, if *ad referendum*, having been duly converted by confirmation into a full signature; but the term "signatory" may sometimes be understood as denoting the individual person signing, if the context so requires;

(h) "Ratification" is the act whereby a signatory State ratifies its signature;

(i) "Accession" is the act whereby a State not a signatory to a treaty can adhere to it in certain circumstances;

(j) "Acceptance" is the act whereby, in lieu of signature, ratification or accession, or of any of these acts, as the case may be, a State "accepts" a treaty as binding, where the treaty provides for this procedure;

(k) The term "instrument of ratification", "accession" or "acceptance" denotes, as the case may be, the formal instrument embodying a ratification, accession or acceptance, transmitted to the other signatory State or States, or parties to the treaty, or deposited with the government or authority specified therein;

(l) A "reservation" is a unilateral statement appended to a signature, ratification, accession or acceptance, by which the State making it purports not to be bound by some particular substantive part or parts of the treaty, or reserves the right not to carry out, or to vary, the application of that part or parts; but it does not include mere statements as to how the State concerned proposes to implement the treaty, or declarations of understanding or interpretation, unless these imply a variation on the substantive terms or effect of the treaty;

(m) The terms "coming [or entry] into force" and "date of coming [entry] into force" mean, in relation to the treaty itself, the process by, and date on which it becomes binding and operative for the States which have already given a final acceptance of it, in whatever manner the treaty provides; and, in relation to any other State, the process by, and date on, which a treaty already in force becomes binding and operative for that particular State.

*Article 14. The treaty considered as text and as legal transaction*

1. A treaty is both a legal transaction (agreement) and a document embodying that transaction. In the latter sense, the treaty evidences but does not constitute the agreement.

2. For evidential purposes the text alone is sufficient, provided it has been duly drawn up, and established or authenticated in the manner provided for in section B below.

3. In order to be or become a legal transaction, the text, so drawn up and established or authenticated, must be concluded as an agreed text and participated in and brought into force as a legal act, in the manner provided for in section C below.

4. The process of treaty-making consequently involves four stages, though in certain cases (e.g. exchanges of notes) these may be simultaneous: (a) establishment and authentication of the text, as a text; (b) consent to the text as a potential basis of agreement (conclusion—usually by signature); (c) agreement to be bound by the text—sometimes by signature, more usually by ratification or other means; (d) entry into force of the treaty as such.

B. NEGOTIATION, DRAWING UP AND ESTABLISHMENT  
(AUTHENTICATION) OF THE TEXT

*Article 15. Drawing up of the text*

1. A treaty is drawn up by a process of negotiation which may take place through a diplomatic or other convenient administrative channel, or by means of meetings of delegates or at an international conference. Delegates and representatives must, subject to the provisions of articles 21 to 23 hereof, be duly authorized to carry out the negotiation, and except in the case of persons, such

as Heads of States, Ministers or Ambassadors, having inherent authority deriving from the nature of their functions, must furnish or exhibit credentials to that effect; but they need not be in possession of full-powers to conclude the treaty by signature or otherwise.

2. Agreement on any text or part thereof must be unanimous unless, before or at the start of the negotiation, meeting or conference, a decision has been taken, by common consent of the participants, for the adoption of texts by a majority vote.

*Article 16. Certain essentials of the text*

1. Subject to the provisions of the following paragraphs, it is not a juridical requirement of a treaty that it should contain any particular rubric, such as a preamble or conclusion, or other special clauses.

2. It is essential to the formal validity of a treaty that it should indicate the States on behalf of which it was initially drawn up. Such indication may be given by means of a preambular recital, or in connexion with the signatures affixed, or may be inferred from those signatures themselves.

3. Where a treaty is made on behalf of a dependent territory, or protected or semi-sovereign State, it must indicate the State making it, on whom will rest the international responsibility for its due execution.

4. It is conducive, but not essential, to the formal validity of a treaty that it should provide for the date and method of its entry into force, the manner of participation of the parties, the period of its duration, and for such other formal and procedural matters as may be requisite.

5. However, in the absence of any indication to the contrary in the treaty itself, or necessarily to be implied from the circumstances, or if nothing is stated or indicated, a treaty will be deemed to come into force on signature, to be binding on the signatory States *ipso facto*, to be open to participation by them alone (unless at any time they agree to admit another State or States), and to continue in force until terminated by the mutual consent of all the parties. In the same circumstances, all other questions of form or procedure will be deemed to be matters for regulation by means of *ad hoc* arrangements to be made between the signatory States, by mutual agreement.

6. In those cases where a treaty provides expressly that it shall remain open for signature, or provides for ratification, accession, acceptance, coming into force, termination or denunciation, or any other matter affecting the operation of the treaty, it must if possible indicate the methods by which, and the government or authority through whom, these processes are to be carried out and the requisite communications to the interested States are to be made. In the absence of any such indication, however, it will be for each interested State itself to carry out the necessary operations, and to furnish and request the necessary communications and information.

*Article 17. Legal consequences of drawing up the text*

1. Participation in a negotiation, even where decisions have been taken by unanimity, does not involve any



obligation to accept the text as finally agreed, or to perform or refrain from performing any act in relation to the subject matter of the text.

2. In principle, such participation equally confers no rights, other than a right to sign, if signature takes place. But, particularly where a treaty remains open for signature until a later date, or is open to accession, participation in the negotiation may confer certain ancillary or inchoate rights—e.g., a right to be consulted about any proposed reservations.

*Article 18. Establishment and authentication of the text*

1. The final establishment of the text of a treaty *ne varietur* and its authentication is effected in one of the following ways:

(a) The signature or initialling of the text on behalf of the States which have taken part in its negotiation—such signature or initialling being carried out (subject to the provisions of articles 21 to 23 hereof) by persons duly authorized to that effect;

(b) Incorporation in the Final Act of the conference at which the text was negotiated;

(c) Incorporation in a resolution of an organ of an international organization, in accordance with the constitutional practice of that organization;

(d) Such other formal means as may be prescribed in the text itself, or specially agreed upon by the negotiating States.

2. Sealing is not a necessary element of authentication or formal validity, even in those cases where a formula reciting the affixation of seals is employed.

*Article 19. Legal effects of establishment and authentication*

1. The establishment and authentication of the text of a treaty, in accordance with article 18, confer formal validity on it as a text, unless any flaw in the procedure adopted can be shown, and are a necessary condition of any further steps in connexion with it, and of its entry into force, whether immediate or eventual.

2. The text, once established, is final, and cannot subsequently be varied prior to entry into force, except by the same means as were employed for drawing it up; and after entry into force, only by such means as the treaty itself prescribes, or by the mutual consent of all the parties.

*Article 20. Signature and initialling (status)*

1. The text of a treaty may be signed or initialled. If signed, the signature may be outright (full signature) or *ad referendum* to the government concerned, by the addition of those words, or an equivalent formula, to the signature.

2. Signature *ad referendum* and initialling—except as provided in article 21, paragraph 1—have in general the same effect. They are acts of authentication, not of consent, though both may imply personal approval of the treaty on the part of the individual person signing or initialling.

3. Full signature, on the other hand, has a double

status. It is both an act of authentication of the text, and an act implying consent to the text as such, though not necessarily agreement to be bound by it. It may have a third aspect in those cases where it operates also as an agreement to be bound, and *pro tanto* brings the treaty into force.

*Article 21. Initialling and signature ad referendum as acts of authentication of the text*

1. Initialling is only equivalent to signature when carried out by persons whose status and functions will cause it to have that effect, such as Heads of States, Prime Ministers or Foreign Ministers, and provided the circumstances do not indicate a contrary intention.

2. In all other cases, initialling is equivalent to a signature *ad referendum* and is itself, *ipso facto, ad referendum*, whether stated so to be or not. In such cases the use of initialling is only justified in the following circumstances:

(a) Where the representative is acting on his own initiative in the negotiation and without specific authority from his government;

(b) Where the arrival of an authority to sign has been delayed or impeded by difficulties in transmission;

(c) Where the government concerned, although ready to participate in the establishment of a text, is not willing to be committed to the extent of a full signature.

3. Signature *ad referendum* is equally to be confined to the three cases (a), (b) and (c) specified in the preceding paragraph.

4. In the cases indicated in paragraphs 2 and 3 above, initialling and signature *ad referendum* have effect only as acts authenticating the text. They may sometimes imply a personal recommendation of the treaty by the representative concerned to his government, but do not amount to a signature on behalf of that government, and will require to be completed, either by a full signature, subsequently affixed, or by a formal intimation by the government that these acts are to be considered as a signature.

*Article 22. Authority to sign*

1. Except where made *ad referendum, signature*, which is the act of the State, can only be effected (a) under a full-power issued to the representative concerned, either specially for the particular occasion, or generally by virtue of his office as Ambassador, Minister of Foreign Affairs or otherwise; (b) by a person having inherent capacity to bind the State by virtue of his position or office as Head of State, Prime Minister or Minister of Foreign Affairs.

2. Authority to sign may be given to the representative who conducted the negotiation of the treaty, or to some other representative specially empowered to that effect, but authority to negotiate is not equivalent to authority to sign, and must, for the latter purpose, be completed or supplemented.

3. Full-powers must be communicated or exhibited, and must be verified by such means as are convenient. They must be in appropriate form, which may be Heads

of State or governmental, according to the nature of the occasion. In cases where transmission of full-powers is delayed, a telegraphic authority, or a letter from the head of the diplomatic mission of the country concerned in the country of negotiation, may be accepted, subject to eventual production of the full-powers.

4. Except in the case of exchanges of notes or letters, or of agreed minutes, or memoranda, or other cases where authority is implied by the act of signature, or is inherent in the office of the person signing, the treaty must contain a statement or recital to the effect that the representatives of the signatory States have authority to sign it, or some other indication (such as the use of the term "Plenipotentiaries") that such authority exists.

*Article 23. Subsequent validation of unauthorized acts*

The provisions of article 15 to 22 above are, wherever this is relevant, to be read subject to the understanding that the unauthorized acts of an agent are always open to validation on the part of his government, by means of a specific confirmation, or by conduct manifesting an unmistakable intention to adopt them as its own.

*Article 24. States which have a right to sign*

1. Every State participating in the negotiation of a treaty has the right to sign it, in all cases where signature is the method of authentication adopted.

2. The right of signature is, in principle, confined to the States participating in the negotiation, but other States may be admitted to sign the treaty if it so provides, or if this is agreed to by all the original signatory or (where the treaty remains open for signature) negotiating States.

*Article 25. Time and place of signature*

1. If the text of the treaty does not otherwise provide, signature takes place on the occasion of the conclusion of the negotiation, or of the meeting or conference at which the text has been drawn up. The treaty may, however, provide for signature on a subsequent occasion, or that it remain open for signature at some specified place, either indefinitely or until a certain date.

2. Unless the treaty provides otherwise, as indicated in paragraph 1 above, signature, as such, can only take place on the occasion of the negotiation, meeting or conference concerned, or on such subsequent occasion (if any) as may be specified. No further signature may thereafter be affixed, except by special agreement of the signatory States to admit it.

C. CONCLUSION OF AND PARTICIPATION IN THE TREATY

*Article 26. Conclusion of the treaty*

1. The conclusion of a treaty—which is not the same thing as bringing it into force, though the same act may do both—is the process of giving active assent to the text of the treaty as the basis of an agreement, but not necessarily a consent then and there to be bound by it.

2. Conclusion is usually effected by signature (provided it is full signature), but other acts may have a concluding aspect as provided in article 28 below.

*Article 27. Methods of participation in a treaty*

1. States take part in a treaty by an act of participation. Depending on the terms of the treaty, they may do so in the following ways:

(a) By simple signature, provided that it is full signature, or that, if given *ad referendum* or in the form of initialling, it has subsequently been converted into a full signature by confirmation; and provided it is not subject to ratification or acceptance;

(b) By signature as in sub-paragraph (a), followed by ratification or acceptance;

(c) By acceptance alone;

(d) By accession.

2. The circumstances in which any of these acts binds the State, and their legal consequences, are specified in the remaining provisions of this section.

*Article 28. Concluding and operative effect of acts of participation*

1. The same act may be concluding or operative, or both. It is concluding when it gives consent to the text, without giving the States final agreement to be bound by it. It is operative when it gives the latter. It will be both when, giving the latter, it has not been preceded by any concluding act.

2. Thus, signature subject to ratification or acceptance is concluding but not operative; signature not so subject is both concluding and operative, and is not therefore, in those circumstances, strictly an act of participation; ratification is operative but not concluding, because preceded by conclusion in the form of a signature; acceptance preceded by signature is in the same position as ratification, and finally, accession, and acceptance not preceded by signature, are acts simultaneously concluding and operative, or else are operative, in respect of a treaty already concluded *aliunde*.

*Article 29. Legal effects of signature considered as an operative act*

1. Signature brings the treaty into force:

(a) In those cases where the treaty itself specifically so provides;

(b) Where, although it is not specifically so provided, the form of the treaty or the attendant circumstances indicates an intention to bring the treaty into force on signature.

2. In general, the absence of any specific provision for, or failure to indicate any other method of, coming into force will create a presumption that the treaty is intended to come into force on signature.

3. In those cases where the representative of a State is only empowered to sign subject to ratification, and provided the conditions specified in article 32, paragraph 4, are complied with, his signature cannot bring the treaty into force for that State. However, such a limitation cannot of itself prevent the treaty coming into force for the other signatory States, except in those cases where it is a condition of the operation of the

treaty that all the signatory States shall be bound on signature.

*Article 30. Legal effects of signature considered as a concluding act only*

1. In those cases where signature does not *per se* bring the treaty into force, it has no directly operative effect, and is only concluding. In that case, it does not bind the signatory States, and does not involve for them any obligation either to ratify or finally accept the treaty, or to act in accordance with its provisions. However, the signature:

(a) Will constitute the necessary basis for any subsequent ratification or acceptance, and will involve an obligation to comply with the provisions of the treaty concerning the modalities of ratification, acceptance, and other procedural matters;

(b) May, in appropriate circumstances, imply that, subject to subsequent consideration, the government of the signatory State will, in the absence of any change in conditions or other unforeseen event, be willing to proceed to ratification or acceptance in due course, or to seek it from, or recommend it to, the competent constitutional organ;

(c) May involve an obligation for the government of the signatory State, pending a final decision about ratification, or during a reasonable period, not to take any action calculated to impair or prejudice the objects of the treaty.

2. Signature not bringing the treaty into force equally confers no substantive rights under the treaty on the signatory States. But it entitles them to certain rights inherent in the status of signatory, such as—depending on the circumstances, and the terms of the treaty—a right to object to reservations, a right to object to the admission of additional signatories, and a right to insist on the due observance of the provisions of the treaty respecting ratification, the class of States admitted to accede to it, and other procedural matters.

*Article 31. Ratification (legal character and modalities)*

1. Ratification is a confirmation of a consent to a treaty already provisionally given by signature, and signifies a final intention to be bound by it. It therefore implies a previous signature given on behalf of the ratifying State, being either full and unqualified or, if *ad referendum*, having been duly confirmed. Without signature, ratification, as such, cannot take place.

2. Ratification in the international sense, and for treaty purposes, consists in the communication, exchange or depositing, by the competent executive authority of the State, of a formal instrument embodying and conveying the ratification of the State on the international plane. Domestic processes of ratification, or other domestic steps leading up to it, are not themselves a ratification of the treaty, and require to be completed by the drawing up and transmission by the executive authority, of a formal international instrument.

3. Ratification must be unconditional. Its operative effect cannot, for instance, be made dependent on the

receipt or deposit or ratifications by other States. Any condition purported to be attached to a ratification is equivalent to a reservation, and its validity and effect will be governed by the same considerations as are applicable to a reservation made on ratification.

4. Ratification, being a confirmation of a signature already given, must relate to what the signature relates to, and must therefore relate to the treaty in its entirety, and as such, and not merely to a part of it, unless the treaty itself provides that States may elect to become bound by a certain part or parts only.

5. Ratification once made cannot, as such, be withdrawn.

6. Ratification may, exceptionally, be effected by conduct, that is to say by executing the treaty; and a State which proceeds to execute a treaty it has signed will be deemed to have given its ratification.

*Article 32. Ratification (circumstances in which necessary)*

1. Ratification, on the international plane, is, in principle, discretionary, and its exercise is facultative. Subject to article 42, paragraph 5, no State, can be obliged to ratify a treaty, and its signature can imply no undertaking to do so, even in those cases where the treaty appears to make ratification mandatory, or where the full-powers of a representative to sign contain a form of words implying a promise of eventual ratification.

2. Treaties are subject to ratification in all those cases where they so specify; otherwise, in general, they are not. There is no principle or rule of law according to which treaties are tacitly to be assumed to be subject to ratification, whether this is provided for or not.

3. Since a treaty necessarily takes effect on signature if the contrary is not provided for, or clearly to be inferred from the circumstances, it is for the prospective signatory States to insert a provision for ratification if they require one—whether on account of the character of the substantive contents of the treaty, or because they are precluded by the requirements of their domestic laws or constitutions from final participation except on a basis of ratification.

4. However, in those cases where the authority of a representative is limited to signing subject to ratification, or is made subject to a condition that his signature will not constitute a final acceptance by the State, and provided the existence of this limitation or condition has been communicated to the other prospective signatories by the exhibition of the representative's full-powers, or by other formal means, the treaty will not come into force for that State on signature. The same will apply if the signature itself is given expressly subject to ratification or further acceptance. The treaty will nevertheless so come into force for the other signatory States, unless they decide to the contrary, or unless it is a condition of the operation of the treaty that all the signatory States shall be or become bound. If, in the circumstances contemplated, the signature of the representative having a limited or conditional authority is nevertheless affixed with the agreement, express or tacit, of the other signatories, this will imply a faculty for the State concerned

to deposit a subsequent ratification, and the acceptance of that State as a party if it does.

5. An unconditional signature given on behalf of a State to a treaty that comes into force on signature, binds that State.

*Article 33. Ratification (legal effects)*

1. Ratification which, once given, cannot, as such, be withdrawn, has the effect of making the ratifying State a presumptive party to the treaty, if the latter is not yet in force, and an actual party if it is, or as soon as it comes into force. By its ratification, the State assumes an obligation to carry out the provisions of the treaty, and acquires a right to the benefits of the treaty, and to its observance by the other parties, if the treaty is in force or comes into force subsequently.

2. In the case of ratifications given prior to coming into force, the ratifying State, while bound by the treaty *in posse*, is not yet under any duty to carry it out, nor, correspondingly, can it claim the benefits of the treaty, or the observance of it by other ratifying States. In such circumstances the ratifying State is, however, under a general duty of good faith, pending the coming into force of the treaty—and provided this is not unreasonably long delayed—to take no action calculated to impede its eventual performance, or to frustrate its objects.

3. A ratification given prior to the coming into force of the treaty constitutes a final but suspensive acceptance of the treaty. Therefore, if and when the coming into force of the treaty eventually takes place, the ratification will operate *ipso facto* and automatically to bind the ratifying State at and from that moment, without the necessity of any further action or assent on its part. Correspondingly, the ratification will operate at and from that moment to entitle the ratifying State to the benefits of the treaty, and to require its observance by the other parties. A ratification given on, or subsequent to, the coming into force of the treaty, or which itself brings the treaty into force, has these effects from the moment of its communication or deposit.

4. Unless otherwise provided in the treaty, ratification, while confirming the signature, has no retroactive effect as an operative act.

*Article 34. Accession (legal character and modalities)*

1. Treaties may be closed or open—i.e., limited to the signatory, or signatory and ratifying States, as the case may be, or open to participation by other States, by means of an accession.

2. Participation in a treaty by accession is not an inherent right. It can only take place where the treaty so provides, unless (a) provision for participation by accession is specially made by a separate instrument in cases where, signature of the treaty has been entirely dispensed with—as for instance those contemplated by paragraph 5 below; or (b) exceptionally, if a treaty being in force, the parties, after consultation with any States still entitled to become parties by ratification, decide to permit accession by a State which, by reason of not having signed the treaty, or because of any limitation in

the treaty itself (e.g., the expiry of a time limit), cannot otherwise become a party.

3. The treaty may limit the right of accession to certain specified States, or to a certain class of State, or it may impose a time limit after which no further accessions can take place. In such cases, subject to the provisions of paragraph 2 above, a purported accession not in accordance with the conditions specified, will be invalid and irreceivable.

4. In contrast with ratification, which implies a pre-existent signature, accession is only open to States which did not originally sign the treaty, and cannot subsequently do so because the treaty was not left open for signature. A signatory State gives it final acceptance of a treaty by ratification; and a non-signatory State, to whom signature is still open, proceeds equally by way of signature, followed, where necessary, by ratification. Accession is permissible only where these procedures are not open to the State concerned.

5. In some cases a treaty may be neither signed, nor open to signature—for instance, if its text, after being drawn up, was embodied in the Final Act of a conference, or in a resolution of an international organization, without any provision being made for its signature as a separate instrument; or where the States concerned have otherwise intended to dispense with signature. In these cases, accession, or its equivalent, constitutes the only method of participation in the treaty.

6. Accession, which is essentially an acceptance of a contract already entered into, and not a participation in the framing of the contract, implies an operative instrument to accede to. It can therefore, properly speaking, only be made to a treaty already in force, and is a method of participation that comes into play after the entry into force of the treaty. Exceptionally, however, a treaty may provide that accession can take place prior to entry into force, on the part of non-signatory States to whom signature is not open; or where signature has been dispensed with entirely, as in the cases contemplated in paragraph 5 above.

7. Accession is carried out by the transmission or deposit of a formal instrument of accession emanating from the executive authority of the State. In so far as any question of prior authorization by the competent domestic organs of the State arises, the provisions of article 31, paragraph 2, concerning ratification, apply *mutatis mutandis*, to accession.

8. The provisions of article 31, paragraphs 3 to 5, apply equally, *mutatis mutandis*, to accessions.

*Article 35. Accession (legal effects)*

1. Accession implies in itself a final acceptance of the treaty. It may not be made subject to ratification or other form of confirmation.

2. The legal effect of accession is the same in all respects as that of ratification and there is, in principle, no difference of any kind as regards the status, rights or obligations of States participating by way of accession, as compared with those of States participating by way of signature followed by ratification. The treaty may, how-

ever, reserve certain rights to signatory or signatory and ratifying States, such as the right to effect modifications in the text.

3. The provisions of article 33 apply *mutatis mutandis* to accessions according to whether these are effected before or after the coming into force of the treaty.

*Article 36. Acceptance (character, modalities, and legal effects)*

1. Acceptance is a method of participation that may be employed when specially provided for by the treaty. A treaty may, in addition to providing for participation by signature alone, without reservation as to acceptance, provide for participation by (a) signature with reservation as to acceptance, followed by acceptance; or (b) acceptance alone. In the first case the acceptance is equivalent to a ratification, and is governed by the same rules, *mutatis mutandis*, as apply to ratification; and in the second it is equivalent to an accession, and is governed by the same rules, *mutatis mutandis*, as apply to accession, except that the provisions of the first sentence of article 34, paragraph 6, will normally be inapplicable to the procedure by way of acceptance.

2. Acceptance is effected by the transmission or deposit of a formal instrument of acceptance, emanating from the executive authority of the State. The provisions of article 31, paragraph 2, are applicable to all acceptances.

3. Acceptance is a final act, and cannot be made subject to any further confirmation.

4. The legal consequences of acceptance are the same as for ratification and accession, and the provisions of articles 33 and 35, paragraph 2, are applicable to acceptance, in the same way as to ratification and accessions, as the case may be.

*Article 37. Reservations (fundamental rule)*

1. Only those reservations which involve a derogation of some kind from the substantive provisions of the treaty concerned are properly to be regarded as such, and the term reservation herein is to be understood as limited in that sense.

2. Reservations must be formally framed and proposed in writing, or recorded in some form in the minutes of a meeting or conference; must be brought to the knowledge of the other interested States; and, subject to articles 38 and 39 below, must be assented to expressly or tacitly by all those States.

3. In those cases where the treaty itself permits certain specific reservations, or a class of reservations, to be made, there is a presumption that any other reservations are excluded and cannot be accepted.

4. In no case can a reservation be made or admitted to any article of a treaty providing for the settlement of differences or disputes concerning the interpretation or application of that treaty, by means of a reference to the International Court of Justice or other international tribunal, to arbitration, conciliation, or by other specified means.

*Article 38. Reservations to bilateral treaties and other treaties with limited participation*

In the case of bilateral treaties, or plurilateral treaties made between a limited number of States for purposes specially interesting those States, no reservations may be made, unless the treaty in terms so permits, or all the other negotiating States expressly so agree.

*Article 39. Reservation to multilateral treaties*

1. In the case of general multilateral treaties, a State may, subject to paragraphs 3 and 4 of article 37 above, make a reservation, when signing, ratifying, accepting or acceding to it:

(a) If the treaty expressly permits reservations to be made, either generally, or as regards a particular article or articles, or class of provision, and the reservation concerned falls within the terms of the treaty;

(b) Provided there is nothing to the contrary in the treaty:

(i) If the intention to make a particular reservation or reservations has been specially mentioned during the negotiation and drawing up of the treaty, and has not met with any objection (i.e., has been acquiesced in, expressly or tacitly);

(ii) If the reservation has subsequently been circulated to all the States which have taken part in the negotiation and drawing up of the treaty or which, by giving their signature, ratification, accession or acceptance, have manifested their interest in it, and the reservation has similarly not met with objection; provided that if the treaty has been in force for not less than five years, the reservation need only be circulated to and be met with absence of objection on the part of the States actually parties to the treaty at the date of circulation, so long as these number not less than twenty per cent of the States originally entitled to become parties.

2. For the purpose of these provisions, tacit acquiescence includes acquiescence *sub silentio*, and may be assumed if no objection is evinced prior to the signature of the treaty or, in the case of reservations proposed later, within three months of the date of their circulation.

3. If a reservation meets with objection, and if the objection is maintained notwithstanding any explanations or assurances given by the reserving State, the latter cannot become, or rank as, a party to the treaty unless the reservation is withdrawn.

4. Unless and until a reservation has been circulated, and is ascertained to have met with no final objection, and thus to have been accepted, the reserving State cannot be taken into account in any computation of the number of the parties to the treaty for example, if the treaty is to come into force on being ratified by a certain number of States, or for the purpose of determining the number of States parties to the treaty under the proviso to paragraph 1 (b) (ii) above.

*Article 40. Reservations (legal effects if admitted)*

1. If a reservation is admitted in accordance with the preceding articles, its effect is:

(a) To permit the reserving State to derogate from the provisions of the treaty to the extent, or in the manner, indicated in the reservation, but no more—the terms of the reservation being construed strictly for this purpose;

(b) To permit a similar derogation on the part of the other parties to the treaty in their relations with the reserving State, which cannot claim from them a greater degree of compliance with the treaty than it undertakes itself.

2. A reservation admitted for one party to a treaty, only affects relations between the reserving State and each of the other parties, and has no effect on the relations of the other parties *inter se*.

3. A reservation, though admitted, may be withdrawn by formal notice at any time. If this occurs, the previously reserving State becomes automatically bound to comply fully with the provision of the treaty to which the reservation related, and is equally entitled to claim compliance with that provision by the other parties.

#### Article 41. Entry into force (modalities)

1. A treaty enters into force on such date, or in such events, or in such manner as it may specifically provide, so long as at least two States are bound by it. In the absence of any, or of any other, provision on the subject, the treaty must be taken to enter into force on signature.

2. In those cases where a treaty provides for ratification, but makes no express provision for coming into force, it will be deemed to come into force on the date of the exchange of ratifications, or of the deposit of the last of the ratifications required.

3. In those cases where a treaty provides for ratification by a certain date, but makes no provision for coming into force, it will come into force on that date, if all the necessary ratifications have been effected. If not, it will come into force on that date for the States which have then ratified it, provided these number not less than two-thirds of those entitled to do so, or so soon as that number is reached, unless, in this situation, the signatory States otherwise specially agree, or unless it is clear from the nature of the treaty that ratification by all the signatories is necessary, in which case coming into force will be deferred until the deposit of the last such ratification.

4. For any particular State, a treaty can only enter into force (become binding) on the date when both the treaty itself is in force, according to its terms, and according to the preceding paragraphs, and also that State has signified its final intention to be bound by the treaty, by giving its signature, ratification, accession or acceptance, whichever is applicable in the particular case.

5. A treaty may come into force whatever its terms, if the signatories proceed to execute its terms, if the signatories proceed to execute it, or, *pro tanto*, if it is put into application between a limited number of them.

#### Article 42. Entry into force (legal effects)

1. Entry into force is definitive, unless it is provided that the treaty shall cease to be in force on the non-occurrence of some event considered to be essential to

its operation. A treaty may, however, provide that it shall come into force provisionally on a certain date, or upon the happening of a certain event, such as the deposit of a specified number of ratifications. In such cases an obligation to execute the treaty on a provisional basis will arise, but, subject to any special agreement to the contrary, will come to an end if final entry into force is unreasonably delayed or clearly ceases to be probable.

2. On entry into force, the treaty automatically binds all the States that have signed it (if entry into force takes place on signature) or that have, up to that date, ratified, accepted or acceded to it, as well as all States subsequently ratifying, accepting or acceding.

3. Up to the date of its entry into force, a treaty does not create any rights, obligations, or relationships for any State, though such States as have already ratified, accepted or acceded to it, may become subject to certain obligations of good faith, as stated in articles 33, paragraph 2, 35 and 36 above, deriving from their ratification, acceptance or accession.

4. Nevertheless, prior to its entry into force, a treaty has an operative effect, arising from the establishment of its text and its signature, so far as concerns those of its provisions that regulate the processes of ratification, acceptance and similar matters, and the date or manner of entry into force itself, these being matters precedent to such entry into force—unless, in any particular case, provision for regulating them is made under a separate instrument, taking immediate effect.

5. In those cases where a treaty purports to oblige the signatories to ratify by a certain date, or to impose on one or more specified States an obligation to ratify, but at the same time provides for its entry into force independently and irrespective of any such ratifications, it must be assumed that the signature of the treaty creates in itself an obligation for the signatory States, or for the States specially mentioned, to conform to these requirements. Failure to do so on their part will not prevent the treaty coming into force according to its terms, but will involve them in a breach of the treaty.

6. Entry into force can never be retroactive, either generally or for any particular State, in the absence of express provision to the contrary.

## II. COMMENTARY ON THE ARTICLES

[*Note.* The texts of the articles are not repeated in the commentary, but can easily be found by reference to the table of contents at the beginning of the report.]

*General observation.* In writing this commentary familiarity on the part of the reader with the reports of Professor Brierly and Sir Hersch Lauterpacht<sup>3</sup> has been assumed, as also with the basic principles of treaty law, and only those points calling specially for remark in connexion with the articles now proposed have been commented on.

<sup>3</sup> Professor J. L. Brierly prepared three reports: documents A/CN.4/23 of 14 April 1950, A/CN.4/43 of 10 April 1951, and A/CN.4/54 of 10 April 1952. Sir Hersch Lauterpacht prepared two reports: documents A/CN.4/63 of 24 March 1953 and A/CN.4/87 of 8 July 1954.

## Introduction: scope and general principles

### A. SCOPE AND RELATED DEFINITIONS

#### Article 1. Scope

1. This article is intended to make it clear that the draft Code relates to all forms of international agreements, provided they are in writing. A valid international agreement not in writing is of course possible, though today rare. But it is not a treaty.<sup>4</sup> On the other hand, there is no reason for confining the present Code to treaties *eo nomine*, or even to instruments that clearly are treaties though not so called—such as conventions. The designation is irrelevant. Equally, the Code should cover not only agreements that take the form of a single instrument—whatever its form or style—but also those that are made up of several instruments, such as exchanges of notes, letters or memoranda. This form of “treaty-making” is being increasingly utilized. Whether it is always appropriate to deal with both the single and the multi-instrument type by means of one and the same provision of a code is a question that has already been raised in the introduction to the present report (paragraph 10). The former type is, generally speaking (not invariably), negotiated and signed mediately, and comes into force by a *deferred* process of ratification or its equivalent. The latter type is the direct act of principal agents (Ministers, Ambassadors), signed as such, and having *immediate* effect, on signature. However, it is also possible for single instruments to be negotiated and signed directly by Heads of States, Prime Ministers or Foreign Ministers, and to come into force on signature.

2. Paragraph 3 has been placed in square brackets, the decision to include treaties entered into by international organizations being provisional.

#### Article 2. Definition of “Treaty”

3. “... made between... subjects of international law possessed of international personality and treaty-making capacity...” (paragraph 1). This formula, it is believed, includes States, and the types of international organizations that would be covered by the judgement of the International Court in the case of injuries suffered in the service of the United Nations;<sup>5</sup> but it would exclude individuals (even if these were to be regarded as subjects of international law), and all entities, private or public (including perhaps certain kinds of States<sup>6</sup>) that do not possess treaty-making capacity, and it may thus resolve some of the difficulties referred to by Sir Hersch Lauterpacht.<sup>7</sup> Since the Commission, has not excluded the idea of covering treaty-making by international organizations in the present Code,<sup>8</sup> this general formula may be

<sup>4</sup> See A/CN.4/23 (first report by Brierly), paras. 21-24. Would an oral agreement recorded (a) with the knowledge and by the intention of both parties, (b) secretly by one of them only, on a disc or tape recorder, amount to an agreement in writing?

<sup>5</sup> *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, p. 174.

<sup>6</sup> This should be read in conjunction with the definition of “State” (article 3 (a)), and with article 14, paragraph 3, and the relevant commentary.

<sup>7</sup> See A/CN.4/63, comment on article 1.

<sup>8</sup> See A/CN.4/L.55, para. 6, and A/CN.4/SR.98, paras. 1 and 20.

acceptable.

4. “... made between entities *both or all of which are* subjects of international law...” (paragraph 1). An agreement between a State and a foreign individual or corporation, for instance, is not a treaty or international agreement, though it might in certain circumstances be governed, or might in part—or as to certain aspects—be governed by international law.

5. “... entities...”. Where Heads of State make a treaty, they do so not in their capacity as persons but as agents of the State, which is the entity involved.

6. “... intended to... establish relationships...” (paragraph 1). This phrase included by Brierly, but dropped by Lauterpacht,<sup>9</sup> is re-introduced here because it seems difficult to refuse the designation of treaty to an instrument—such as for instance a treaty of peace and amity, or of alliance—even if it only establishes a bare relationship, and leaves the consequences to rest on the basis of an implication as to the rights and obligations involved, without these being expressed in any definite articles.

7. “... governed by international law” (paragraph 1). The present Rapporteur, while agreeing with much that is contained in the first report of Lauterpacht,<sup>10</sup> feels that while it may be possible to have certain agreements between States that are not governed by international law,<sup>11</sup> it is not possible to have, or admit of, a case of a *treaty* (even using that term in its widest sense) that would not be so governed. Hence, this should be explicitly stated. Not all international agreements are governed by international law, but, if they are not, or to the extent that they are not, they are not treaties within the meaning of the present Code.

8. Paragraph 3. It is obvious that a treaty must have at least two *parties*. A “treaty” within the meaning of the present Code may, of course, be constituted by two or more *instruments*, each made or given by or on behalf of one of the parties only. But a purely unilateral instrument, neither referring to or connected with any other, can never amount to an international agreement, still less a treaty. It may be the source of an international obligation<sup>12</sup> but the obligation cannot be a treaty obligation.

9. Paragraph 4. This is intended to ensure that the type of instrument considered under the domestic law of any State to be a “treaty” for the purposes of the functioning of its constitutional processes, shall not

<sup>9</sup> See A/CN.4/23 (first report by Brierly), paras. 25-30, and A/CN.4/63 (first report by Lauterpacht), comment on article 1.

<sup>10</sup> See A/CN.4/63, notes on article 1.

<sup>11</sup> Lauterpacht in his first report A/CN.4/63 is correct in saying that in the last resort all agreements between States are governed by international law. But in the intermediate sense, the agreement, or its incidents, may be governed by the domestic law of one of the parties—for instance, State A makes an agreement with State B for the purchase, for use as an Embassy, of property belonging to the public domain in State B. Furthermore such agreements although “international” may often be effected through an Ambassador or a national bank and take the form of what looks like an ordinary private law contract.

<sup>12</sup> This is arguable of course. Some would say that it cannot be so in the absence of at least a quasi-contractual element.

cease so to be *for those purposes* by reason of anything in the present Code—nor, equally, that it shall become so.

10. *Registration with the United Nations under Article 102 of the Charter.* It will be observed that the present Rapporteur has not adopted the suggestion made in Lauterpacht's second report<sup>13</sup>, that registration with the United Nations should be a partial test of whether an instrument is in fact a treaty or international agreement. There are two reasons for this, one theoretical and the other practical. Under Article 102, it is only an instrument in fact a treaty or international agreement that are registrable. They must therefore have this character before the obligation to register can arise at all. Consequently, registration cannot itself confer this character on them, though it may be some evidence that they have it. Secondly, and from the practical standpoint, such a test would have its dangers. *Either* party to an instrument can register it unilaterally, and this constantly occurs. It would be inadmissible, however, that treaty status should be conferred on an instrument merely by the unilateral act of one of the States concerned, accepted by the Secretary-General of the United Nations, who may well regard himself as not competent to reject it.

#### *Article 3. Certain related definitions*

11. Apart from the references to international organizations, and a definition of the same—reserved in square brackets for reasons already indicated—this article is mainly concerned to define the term "State", in order to make it clear by implication that semi-sovereign or protected States can be parties to treaties (though in many cases only mediately), while at the same time bringing out the limitations on, and modalities of this position. Apart from international organizations, only States can be parties to treaties; and only those entities are States that are capable *as such* (and not merely as part of a larger entity) of being bound by a treaty. For this reason, a constituent State of a Federation can never be a State *internationally* or, as such, party to a treaty—for the treaty will bind the Federation, and will bind the constituent State not as such, but only as an (internationally) indistinguishable part of the Federation.<sup>14</sup> But an internationally self-contained State, even if it is a protected State, can be bound as such, even if only with the consent, general or specific, or through the medium, of the protecting State.<sup>15</sup>

<sup>13</sup> A/CN.4/87, comment on article 1.

<sup>14</sup> The present Rapporteur feels great difficulty in accepting the view suggested in Lauterpacht's first report (A/CN.4/63, comments on articles 1 and 10). It may be true that in certain cases component parts of a Federal State, such as Swiss Cantons, have, or appear to have, concluded treaties with neighbouring German States. But *in law* these are really cases where the component part has simply acted as the agent to bind the Federation as a whole, in respect of a particular part of its territory, since a component part of a State cannot itself be a State (internationally) or have—except as agent—treaty-making capacity. Incidentally, Lauterpacht is mistaken in saying that the Sultanate of Muscat and Oman is a British Protectorate. (A/CN.4/63, comment on article 1). It is a fully sovereign independent principality.

<sup>15</sup> The point is more fully dealt with in an article by the present Rapporteur in *The British Year Book of International Law* 1953, pp. 2-5.

12. "... entities recognized as being States on special grounds...": this would include the Vatican State.

#### B. CERTAIN FUNDAMENTAL PRINCIPLES OF TREATY LAW

##### *Articles 4-9*

13. *General comment.* It is for consideration whether these articles, which may in any case require further development, should figure here or later, i.e., mainly in the sections on operation and effect which will be the subject of a future report, and to which logically they strictly belong. Yet it may seem undesirable in an international code on treaty law to defer making even a bare statement of these important general principles, fundamental to the whole subject, until a comparatively late stage of the work. However, in view of the uncertainty as to their location, the comment here offered is of the briefest, and the articles are left to speak for themselves.

14. *Article 4, paragraph 2.* One aspect of the point here involved is considered again more particularly in connexion with the topic of ratification.

15. *Article 5, paragraph 2.* This is an obvious condition of the international workability of treaties. The remaining paragraphs are really applications of the same theme.

16. *Article 6.* The articles mentioned in blank will be in the second chapter of the Code, on operation and effect. For a commentary on the point of substance involved see the last paragraph of Lauterpacht's comment on article 1 in his first report (A/CN.4/63).

17. *Article 7.* Possibly redundant, or even slightly inconsistent, in view of the definition of a treaty as an instrument governed by international law (see comment on article 2, paragraph 1, in paragraph 7 above). But something of the kind seems desirable.

18. *Article 8.* This is an attempt, while recognizing the convenience for working purposes of dividing treaties into different categories and classes, to simplify consideration of them for legal purposes by denying the existence of any fundamental juridical distinction between these categories and classes, especially as the same treaty may belong to more than one of them, under different aspects.<sup>16</sup>

19. *Article 9.* It is important to know through what organ a State or an international organization must act on the international plane, in order that its actions may be effective *vis-à-vis* other States, and, so to speak, receivable by them. Domestic processes may be necessary, but only on the domestic plane, and they only produce their direct effects on that plane. They cannot of themselves operate on the international plane, unless embodied

<sup>16</sup> For the idea of this simplification, the Rapporteur is indebted to Professor Charles Rousseau (*op. cit.*, vol. I, pp. 133-7 and 156-8). But Professor Rousseau draws attention to the *formal* distinction—in some sense also a legal one—between what he designates for his purposes as "*traités stricto sensu*" and "*accords en forme simplifiée*" (e.g., exchange of notes). This is, in effect, the distinction made in paragraphs 1 and 2 of article 2 of the present Code.



in or completed by some executive act.<sup>17</sup> The consequences of this position are (see paragraph 3 of the article) that if States are bound to accept as internationally authentic the executive acts of another State, that State (having performed such acts) may not itself subsequently deny their international authenticity, and is bound by them. By "accept as authentic" is meant of course their status as *acts of the State*, not their legal validity under treaty or general international law. The same act may be both authentic and invalid.<sup>18</sup> But if it is not authentic, it is not the act of the State at all, and the question of its validity does not arise.

### First chapter. The validity of treaties

#### General comment

20. This chapter will eventually cover all the requisites of validity, namely formal validity, conditions of essential or substantive validity, and duration (temporal validity), i.e., conditions of termination. The present report only covers the topic of formal validity.

#### INTRODUCTORY PART: DEFINITION AND CONDITIONS OF VALIDITY

##### Articles 10-12

21. These articles are intended to make clear the two essential points relative to validity in general, namely, that validity:

(a) Is a composite of three factors—form, substance and temporal existence;

(b) Has two aspects—the validity of the treaty in itself, and its validity for any particular State—which do not necessarily coincide.

### Part I. Formal validity (framing and conclusion of treaties)

#### General comment

22. The remainder of the present report deals with this topic, on which it presents a complete set of articles. They are divided into two main sections: the negotiation, drawing up and establishment of the *text*; and the conclusion of, and participation in, the *treaty*. These are preceded by a section containing definitions of relevant technical terms, and a general provision.

#### A. GENERAL CONDITIONS OF FORMAL VALIDITY

##### Article 13. Definitions

23. The various definitions are for the most part

<sup>17</sup> Even in the case of the United States, ratification by the Senate is not *per se* operative on the international plane. The international instrument of ratification has still to be framed and transmitted by the President, and is his act, though it recites the Senatorial act.

<sup>18</sup> For instance, a denunciation of a treaty, effected by the executive authority of a State and regular so far as domestic constitutional considerations are concerned, but contrary to the terms of the treaty. Conversely, a denunciation in compliance with the treaty would be "valid", but would have no effect if it did not emanate from an authority competent to act for the State internationally, since it would not be (internationally) authentic, whatever its status domestically.

self-explanatory and are not commented on at this point because such issues of substance as they may involve will recur later in connexion with particular articles. There is a *general* question, whether a definitions article, as such, is desirable at all, or whether it would not be preferable to define each term, so far as necessary, in the particular article in connexion with which it principally occurs. However, as many of these terms are liable to occur in different connexions, the Rapporteur has thought that, for the time being, they might be grouped in one article for purposes of definition.

#### Article 14. The treaty considered as text and as legal transaction

24. Formal validity has two constituents, the text and the formal acts giving the text the character of a legal transaction. Considered purely as a *text*, the treaty is a document, rather than a legal act or transaction. In all talk of treaties there is this ambiguity—a treaty is both the document embodying an agreement, and the agreement itself.<sup>19</sup> In the former sense, there can be a treaty although it is not in force, or has ceased to be in force (i.e., although there is no subsisting agreement as a legal act). Nevertheless, it is essential to the validity of the ultimate agreement that the text should have been drawn up and established or authenticated by the correct means, and in the correct form; for if the text does not itself constitute in law the agreement, it is nevertheless the indispensable, and usually the sole, evidence of what that agreement is. The primary value of the *text* of a treaty, considered purely as such, is therefore evidential. Hence, it must be authentic evidence, and must for that purpose conform to certain requirements of form and method. This aspect is dealt with in section B. Section C deals with the ensuing process of converting the text into a legal transaction, by the initial act of conclusion (usually signature)<sup>20</sup> followed where necessary by final acts of participation, such as ratification, and by the entry into force of the treaty itself.

#### B. NEGOTIATION, DRAWING UP AND ESTABLISHMENT (AUTHENTICATION) OF THE TEXT

##### Article 15. Drawing up of the text

25. "...through the diplomatic...channel..." (*Paragraph 1*). Not only can treaty engagements take the form of correspondence (exchanges of notes, letters etc.) but they can in effect be negotiated by correspondence. This can also occur with the negotiation of more formal instruments.<sup>21</sup> It is as well to record this fact in any

<sup>19</sup> See A/CN.4/23 (first report by Brierly), para. 30.

<sup>20</sup> The difficulties and ambiguities surrounding the notions of signature and conclusion are considered later—see paragraphs 47-52.

<sup>21</sup> So important an instrument as the Japanese Peace Treaty of 1951 was negotiated without any conference, by a mixed process of diplomatic interchanges and consultations. It was concluded by the signature ceremony at San Francisco.

Bilateral treaty engagements and even formal instruments of all kinds are constantly negotiated without any delegation from the one country attending at the capital of the other. The use of the local diplomatic mission, supplemented by one or two experts sent out *ad hoc*, is often all that is needed.

Code, as a corrective, since it seems often to be assumed as necessary that some sort of meeting or conference should have been held.

26. "Delegates... must be duly *authorized* to carry out the negotiation... but they need not be in possession of *full-powers to conclude* the treaty..." (Paragraph 1). Negotiation and conclusion are not the same thing. The same person may of course be authorized to do both. Or, one person having negotiated, another may be empowered to conclude, by signature or otherwise. But authority to negotiate does not *per se* include authority to sign. For negotiation, full-powers are not necessary. Any form of authority such as a letter, or an intimation to the local government through the diplomatic channel, giving the delegate's name will suffice. But for conclusion (for example, by signature) full-powers are necessary (*see*, comment on article 22).

27. Paragraph 2. It is necessary to have some fundamental rule to govern the process of the adoption of texts. This seems the only possible rule, in practice.

*Article 16. Certain essentials of the text*

28. Paragraph 1. It is necessary to make clear the absence in *general* of any juridical necessity for formal or special clauses, in order to cover the kind of case (for example, exchange of letters) where usually or often there are none.

29. Paragraph 2. However, a treaty must indicate the countries making it, though it may suffice if this can be inferred from the signatures affixed—as in a exchange of notes.<sup>22</sup>

30. Paragraph 3. Similarly, it is necessary that the quarter in which the international responsibility lies should be indicated in the case of treaties entered into mediately or through another State.

31. Paragraphs 4, 5 and 6. It is necessary to provide for those cases where either (a) the parties fail to make any, or adequate, provision for such matters as coming into force and termination, or (b) the form of the "treaty" is such (for example, an exchange of letters) that it will probably not do so. The problem is masked by the fact that most formal instruments do make provision for these things. But the treaty cannot be regarded as invalid merely because they do not, if legitimate inferences of a legal character can be drawn; and it is believed that in the absence of any indication to the contrary, these inferences must be as stated in these paragraphs, which also provide for a number of procedural matters.

*Article 17. Legal consequences of drawing up the text*

32. No comment is required on this article, which is self-explanatory. But see paragraphs 59 and 80 below.

*Article 18. Establishment and authentication of the text*

33. The text of this article is the same (with slight verbal changes, and the addition of a second paragraph) as that adopted by the Commission at its third session.<sup>23</sup>

<sup>22</sup> In the case of exchanges of notes or letters, the letter paper heading will usually afford an additional indication.

<sup>23</sup> See A/CN.4/L.28 and A/CN.4/L.55.

*Article 19. Legal effects of establishment and authentication*

34. No comment is required, except as to the words "...confer formal validity on it as a text..." (Paragraph 1). They mark the fact that the treaty is still only a text at this stage, and has no validity as an agreement.

*Article 20. Signature and initialling (status)*

35. Paragraphs 1 and 3. With signature, or initialling, a further stage in the treaty-making process is reached. But signature, if it is full signature, has a double and sometimes a treble aspect, as stated in the text. In the present section, however, it is considered only as an act of authentication of the text.

36. Paragraph 2. Initialling, on the other hand, save exceptionally (as to which see article 21, paragraph 1), and signature *ad referendum*, can never in themselves be more than acts authenticating the text. They can never be acceptances of the text in any form, by or for the State concerned, unless subsequently confirmed or completed. These matters, which have been the subject of some misconception and confusion, are elaborated in the succeeding articles.

*Article 21. Initialling and signature ad referendum as acts of authentication of the text*

37. Paragraph 1 states the cases in which initialling may constitute a signature.

38. Paragraphs 2 and 3, without being limitative, enumerate the cases to which, as a rule, initialling and signature *ad referendum* ought to be confined, if these are to be given a proper role. These are cases where signature would not be justified, but initialling (or signature *ad referendum*, which has broadly the same effect) would be appropriate.

39. Paragraph 3 states the effect of initialling and signature *ad referendum*, and requires no comment.

*Article 22. Authority to sign*

40. Paragraph 1. No comment is necessary.

41. Paragraph 2. For comment, see paragraph 26 above on article 15. Negotiation may be regarded as in some sense the act of the individual negotiator, and so may initialling and signature *ad referendum*. But full signature is the act of the State.

42. Paragraph 3. The second sentence consecrates a practice that is very usual and has great convenience.

43. Paragraph 4. No comment is necessary.

*Article 23. Subsequent validation of unauthorized acts*

44. This is believed to be good law, and it is certainly convenient practice.

*Article 24. States which have a right to sign*

45. The right to sign a treaty is necessarily circumscribed. In the absence of special provision or agreement, no State can claim to be entitled to sign a treaty in the negotiation of which it did not participate.

*Article 25. Time and place of signature*

46. There must equally be limits in principle on the time within which, or occasion on which, signature may be affixed. In the absence of special provision or agreement, no State—even a negotiating State—can claim to sign after the date or occasion appointed for that purpose.

## C. CONCLUSION OF AND PARTICIPATION IN THE TREATY

*General comment*

47. This section assumes the existence of an established and duly authenticated text. But though *established* as a text, this text has not yet received any assent. It has been authenticated as accurate, that is all, though it may have been authenticated by an act, such as full signature, that also implies assent (having a double aspect—see article 20). It is now necessary that the treaty should be concluded and participated in, and brought into force, before it can pass from the status of text or document to that of agreement or legal transaction (see comment in paragraph 24 on article 14). Conclusion of the treaty and participation in it by any State may coincide, but they are juridically separate concepts and acts. A State that signs a treaty subject to ratification or final acceptance concludes, but does not yet participate in it.<sup>24</sup> A State that ratifies a treaty participates in it, having already concluded it by signature. A State that accedes to a treaty, or gives an acceptance not preceded by a signature, simultaneously concludes it (so far as that State is concerned) and also participates in it. Or it is perhaps more accurate to say, in this last case, that the treaty being already concluded independently of that State, it proceeds to participate in it.

48. Thus, while *authentication* is the act certifying, so to speak, that the text is the text that was drawn up during a certain negotiation or at a certain conference, *conclusion* is the act by which an active assent is given to this text, as being the one by which the State is willing to be bound if it eventually decides to become finally bound. This decision may itself coincide with the conclusion, as when signature also brings the treaty into force (for example, exchanges of notes). Failing that, conclusion gives assent to the text as the basis of the agreement, but it does not itself constitute agreement. Agreement (to be bound) follows with *participation*, which is always a final act so far as the State making it is concerned. By it, that State takes all the steps open to and necessary for it to become bound. But the State may not yet be actually bound, if the treaty itself is not yet in force. *Entry into force* is then necessary, and is the final stage in the series. It may coincide with the relevant acts of participation, as when two States bring a bilateral treaty into force by exchanging their ratifications of it; or it may be independent of any particular act of participation, as when a multilateral treaty comes into force on the happening of certain specified events, and not until then, even though a number of States have previously deposited ratifications.

49. The foregoing considerations will serve in particular as a general comment on articles 26 to 28.

*Article 26. Conclusion of the treaty*

50. See general comment above. The term conclusion is ambiguous, and has always given rise to difficulties. When can a treaty be said to be “concluded”? When is it signed, for instance, or when it comes into force? If the former, there is the difficulty that the treaty may never actually come into force. Can a treaty that never comes into force be said to be concluded? On the other hand, there is no doubt that a treaty is always given the date of its signature (i.e., conclusion), never that of its entry into force unless that coincides with signature.

51. The solution lies in regarding conclusion as the process by which the States concerned definitely give their consent to the text, though not necessarily their agreement to be bound by it. It is more than authentication, which merely verifies that a certain instrument or document correctly embodies a certain text, but conveys no degree of substantive assent at all to that text. Conclusion involves a measure of substantive assent, though not final agreement. By it, States say not merely “This is the text we have established, and which we certify to be correct”, but also “This is the text by which we are willing to be bound if we become bound at all.”

52. Once it is understood that authentication, conclusion, participation and entry into force, are juridically separate concepts (see paragraph 48), no further difficulty arises, except from the confusion engendered by the fact that two or more of these acts may coincide. Thus signature, in those cases where the treaty comes into force on signature, accomplishes all four simultaneously. In other circumstances, two or three may coincide. Or all four may be separate, as when a treaty is first signed *ad referendum* or embodied in the Final Act of a conference (see article 18), then signed in full or confirmed, then ratified, and finally brought into force when so many ratifications have been deposited. But variable as practice may be, it is essential, juridically, to keep these concepts distinct, so as to be able to determine the status and exact legal effect of any given act.

*Article 27. Methods of participation in a treaty*

53. Participation by simple signature takes place in those cases (and only in those cases) where the treaty is not subject to ratification or, if the acceptance procedure is adopted (see article 36), where signature is given without reservation as to acceptance. As already noticed, the acts of participation specified in the present article 27 may or may not also be acts bringing the treaty into force, or coinciding with its entry into force. But they are all final so far as the State performing them is concerned.

*Article 28. Concluding and operative effect of acts of participation*

54. See comment in paragraphs 47 to 52 above. This article is largely formal, but its inclusion may be useful for purposes of clarification. An act purely concluding, such as signature subject to subsequent ratification or acceptance, is not of course an act of participation in the strict sense at all. Acts of participation proper pre-

<sup>24</sup> See A/CN.4/43 (second report by Brierly), comments on articles 1 and 4.

suppose conclusion, or are themselves concluding as well as operative.

*Article 29. Legal effects of signature considered as an operative act*

55. *Paragraph 1.* The case here contemplated is where the treaty comes into force on signature, or at any rate where the signature is not subject to any ratification or further acceptance, so that it will suffice to bind the State if and when any other events on which coming into force depends have duly occurred. For the reasons given in Lauterpacht's first report<sup>25</sup> it is necessary to provide for this case. There is an almost inveterate tendency, particularly in the milieu of international organizations, to view all treaties as if they consisted exclusively of general multilateral and semi-law-making conventions, of the kind that are almost always subject to ratification. In actual fact, such conventions form a minority in comparison with the hundreds which, on the bilateral or semi-multilateral or purilateral<sup>26</sup> plane, come into force on signature (exchanges of notes, protocols, acts, declarations, memorandums of understanding, *modus vivendi*, etc.).<sup>27</sup>

56. *Paragraph 2.* As is also indicated in article 32, if the parties want ratification or other confirmatory act, it is open to them to provide for it. If they fail to do so, the presumption—particularly having regard to the considerations noticed in paragraph 55 above—must be that they did not intend it. In any case, there must be some basic rule to govern the case where a treaty is clearly intended to become operative (i.e., come into force), but fails specifically to indicate the method by which it is to do so.

57. *Paragraph 3.* Equally, it is always open to any particular State to safeguard its position by authorizing its representative to sign only subject to ratification, or by limiting his full powers in that way. In that case, his signature cannot bind that State, though the treaty may nevertheless come into force on signature for the other States.

*Article 30. Legal effects of signature considered as a concluding act only*

58. *Paragraph 1.* This deals with the case where signature only concludes the treaty, and does not operate as a final acceptance of it. But it may nevertheless have certain legal consequences even on that basis, and these are set out in sub-paragraphs (a) to (c). The point made in (a) will more conveniently be considered in connexion with article 42, paragraph 4. The reasons for points (b)

<sup>25</sup> A/CN.4/63, comment and notes on article 5.

<sup>26</sup> It is equally constantly overlooked that not every multilateral treaty is a *general* multilateral treaty. Many such treaties are only plurilateral, involving three or four, or six or eight, or other limited number of States having some common interest or object affecting them only.

<sup>27</sup> See the very striking statistical data given in Lauterpacht's first and second reports (A/CN.4/63 and A/CN.4/87, comments on article 6), showing the greatly preponderating number of international agreements coming into force on signature or its equivalent, and the comparatively small number that are subject to ratification.

and (c) are fully and very cogently set out in Lauterpacht's first report.<sup>28</sup> The present Rapporteur accepts that view, but considers it desirable to state the proposition in question in somewhat cautious and qualified terms.

59. *Paragraph 2.* Equally, while a merely "concluding" signature can confer no substantive rights under the treaty, it may confer certain rights in connexion with it. This matter is also referred to in Lauterpacht's first report.<sup>29</sup> Certainly signature confers a status, and with it the rights inherent in that status. The whole balance of a treaty is capable of being altered after its signature by the admission of reservations, or of other acceding parties, so that a signatory State may find that the treaty it has signed, and which it has the right to ratify, is, in effect, no longer the same treaty.

*Article 31. Ratification (legal character and modalities)*

60. *Paragraph 1.* The main point here is that ratification implies a previous signature (to be ratified).<sup>30</sup> Where there has been no signature there can be no ratification, though other means of participation may be available (e.g. accession), or there may still be time to affix a signature, if the treaty was left open for signature (see article 25).

61. *Paragraph 2.* It is necessary to insist—in order to avoid serious confusions—that on the *international* plane ratification is an executive act, and is effected by transmitting or depositing an *instrument* of ratification, drawn up by the executive authority. "Ratification" by the legislature is a purely domestic process. It is not always necessary. In some countries it is never necessary. Basically, a parliamentary "ratification" is no more than a vote, however recorded, approving the treaty and empowering the executive to proceed to *actual* ratification. Without this further act, there is, internationally, no ratification.

62. *Paragraph 3.* This paragraph is not intended to exclude reservations made on ratification where otherwise permissible (see articles 37 to 39). It is directed to a different type of condition. It has sometimes been suggested<sup>31</sup> that the operation of a ratification may be made dependent on another State or States also ratifying. This would be liable to cause considerable difficulties, for example, in those cases where entry into force of the treaty is made dependent on the deposit of a specified number of ratifications. Again, if by chance all the ratifying States made such a condition, none would have any operative effect. Ratification may be accompanied by a reservation as to some part of the *treaty*, but must in itself—as an act—be unconditional.

63. *Paragraph 4.* This is a necessary corollary of the fact that what is ratified is a signature to the text as a whole. But sometimes a treaty (for instance the London

<sup>28</sup> A/CN.4/63, comment and notes on article 5.

<sup>29</sup> *Ibid.*, comment on article 5.

<sup>30</sup> As a matter of convenience, it is usually said that the treaty is ratified. Strictly, it is the signature given to the treaty that is ratified; or alternatively, ratification is a final confirmation of the provisional consent given by signature.

<sup>31</sup> That is, the present Rapporteur has heard it suggested.

Naval Treaty of 1930) permits States to subscribe to one part of it only, or to exclude certain parts.

64. *Paragraph 5.* For instance, if there is an interval between the deposit of the ratification and the coming into force of the treaty, the ratification cannot be withdrawn during that interval. The State concerned must await coming into force, and then take any steps open to it under the treaty to terminate its participation, or must obtain a special release by consent.

65. *Paragraph 6.* See also article 42, paragraph 5. This case is no doubt a comparatively rare one. But it can occur, especially when a State takes benefits under a treaty, or by its actions in regard to it causes other States to alter their positions, or affects those positions.

*Article 32. Ratification (circumstances in which necessary)*

66. *Paragraph 1.* This gives effect to the principle of the facultative character of ratification as an *international* act. No State can be obliged to assume treaty obligations. Therefore, even though it has signed a treaty, it cannot be obliged to ratify it. In Lauterpacht's first report cogent reasons are given for thinking that in many cases States may be under a strong moral obligation to ratify a treaty they have signed.<sup>32</sup> But this can never be a legal obligation, or ratification would lose its meaning. The reference to the case contemplated by article 42, paragraph 5, illustrates this, for in those cases the State concerned is really bound by its signature. The last few lines of the paragraph are intended to cover the fact that, for historical and traditional reasons, many common forms of full-powers imply, or seem to imply, a promise that ratification will be forthcoming in due course.<sup>33</sup>

67. *Paragraphs 2 and 3.* These paragraphs deal with the important theoretical question (a question of perhaps much lesser practical importance, however, for the reasons given in Lauterpacht's reports<sup>34</sup>) of the *residuary rule* to be applied in those cases where the treaty is either silent on the subject of ratification, or fails to indicate positively that ratification is necessary. The controversy is an old one, but as the arguments are fully set out in Lauterpacht's reports<sup>35</sup>, it is unnecessary to repeat them. The present Rapporteur holds to the view he expressed over twenty years ago,<sup>36</sup> that the residuary rule must be the one stated in the proposed text of paragraphs 2 and 3 of article 32. Writing in 1934,<sup>36</sup> the Rapporteur thought that despite the weight of text-book authority in favour of the view that ratification must be assumed to be necessary unless expressly dispensed with, this view no longer corresponded (even then) with modern practice, and he gave illustrations to that effect. This view is even

less in accordance with practice today, as is clearly brought out by the data in Lauterpacht's reports.<sup>37</sup>

68. Such a view is in fact decisively refuted by the fact that States have never been content to rely on it—to rely on the existence of any basic rule in favour of the necessity for ratification—but on the contrary have always insisted on providing expressly for ratification in those cases where they wanted it; while on the other hand being quite content to rely on silence precisely in those cases where they did not want it. This latter fact is very striking. There hardly exists—if there exists at all—a treaty providing in terms that it shall *not* be subject to ratification, as might have been expected had there been any basic rule that, in the absence of provision to the contrary,<sup>38</sup> ratification was necessary. *Per contra*, there are innumerable cases of treaties providing expressly for ratification. It is true that where ratification is to take place there are mechanical reasons for making special mention of the fact, since it has to be specified how ratification is to be effected, where, at what time, etc. But this very fact (see paragraph 70 below) adds to the difficulty of presuming a necessity for ratification in cases of silence.<sup>39</sup>

69. The above considerations, coupled with those arising from the increasing use of instruments coming into force on signature, the decreasing proportion of treaties and conventions made subject to ratification,<sup>40</sup> the fact that any necessity for ratification is largely a domestic matter, and that States which require it can always insist on express provision being made for it, or on reserving to themselves a special right of ratification—all lead to the conclusion that the residuary rule must be to the effect that, in the absence of such provision, it must be assumed that ratification was not intended. Lauterpacht in his reports indeed reaches this conclusion, so far as what might be called the weight of practice goes, but refuses finally to concede it, on the ground that the inference from practice is not an absolutely inescapable one; that although “in an increasing number of cases Governments attach importance to treaties—however designated—entering into force without ratification”, it still does not follow that they consider non-ratification to be “the presumptive rule to which, in the absence of provisions to the contrary, they must be deemed to have submitted themselves”.<sup>41</sup> To the present Rapporteur however, this inference seems to be a legitimate and necessary one, having regard to the fact that the parties are at perfect liberty to provide for ratification if they feel they require it, or to insist on a form

<sup>32</sup> A/CN.4/63 and A/CN.4/87, comments on article 6.

<sup>33</sup> Such provision no doubt results indirectly in many cases from, for example, a clause providing that the treaty is to come into force on signature. Yet its absence in any direct form is striking.

<sup>34</sup> Alternatively, it might be said that by their conduct countries have given up the protection of any general rule in favour of the necessity of ratification, if such existed, and have elected to rely on making express provision for it whenever they intend it; and this being so, they can no longer fall back on, or plead the existence of a general rule in those cases where they fail to make express provision for ratification.

<sup>40</sup> See A/CN.4/87 (Lauterpacht's second report), comment on article 6.

<sup>41</sup> *Ibid.*

<sup>32</sup> A/CN.4/63, comment and notes on article 5.

<sup>33</sup> For a discussion of this see: Harvard Law School, *Research in International Law, III. Law of Treaties*, Supplement to *The American Journal of International Law*, Vol. 29 (1935), pp. 770 and 772-775.

<sup>34</sup> A/CN.4/63 and A/CN.4/87, comments on article 6.

<sup>35</sup> *Ibid.*, comments and notes on article 6.

<sup>36</sup> “Do Treaties Need Ratification?” *The British Year Book of International Law*, 1934, especially pp. 122-9.

of treaty in which it would be natural to insert a provision for ratification<sup>42</sup>; that they often do this, but still more often do not; and that, so far as can be ascertained, they never fail to do it in those cases where they really intend ratification. As Lauterpacht in his second report points out, if there were a rule presuming the necessity for ratification, the exceptions to it would have to be so wide as almost to do away with the rule.<sup>43</sup>

70. Furthermore, no other course would be practicable. If the treaty is silent about ratification, there will *ex hypothesi* be no provision for the exchange or deposit of ratifications, not will it be specified where, or with what authority, this is to be effected. Some States will ratify—others not. There will also *ex hypothesi* be no provision about coming into force.<sup>44</sup> Some States will consider that the treaty does not come into force until it has received the necessary ratifications (but which, and how many?); others will regard it as operative from the date of signature. It must be assumed at the present day that Chancelleries and Foreign Ministries, all well versed in treaty law and practice, are aware of the inconveniences bound to result from such a position, and that if they make, and allow their representatives to sign, an international agreement not providing for ratification, this must be because they do not intend it.

71. In this connexion, it is worth remembering the changes effected by modern communications. At a time when a representative might be out of touch with his Government for prolonged periods, or unable to obtain final instructions before proceeding to signature, a fundamental rule presuming the necessity for ratification if no contrary indication was given, would be understandable and perhaps necessary.<sup>45</sup> It is so no longer.

72. *Paragraph 4.* This provides as before (see article 29 and paragraph 57 above) for the case where, whatever the treaty says, a signature is, as such, only given subject to ratification, or a representative's full powers are limited by a reservation as to ratification. Here, therefore, is another "escape clause" that Governments can always make use of if they want to, provided the correct procedure is observed—a fact further rein-

<sup>42</sup> This is perhaps the heart of the problem. It would be natural to maintain that if Governments do not want ratification they should choose some form of agreement—such as an exchange of notes—that clearly does not call for it; but that if they choose full treaty form, they must be assumed to intend it. Yet it is precisely in the full treaty cases that express provision for ratification is almost always inserted. On the other hand, it frequently does not figure in those instruments where there might be room for genuine doubt, for example, something not a full treaty, but not an exchange of notes either.

<sup>43</sup> A/CN.4/87, comment on article 6.

<sup>44</sup> Because if coming into force on signature or on a specified date were indicated, this, by inference, would exclude the idea of ratification being necessary; while if the treaty provided for entry into force on or after ratification, this would, by inference, be a provision for ratification.

<sup>45</sup> It is this that probably accounts for the fact that the older authorities predicated the existence of a presumption in favour of ratification (see paragraph 67 and footnote 36 above). But the object was far less to protect the constitutional positions of States, than to insure that Governments were not committed to a text the final version of which they might never even have seen. This can seldom happen now.

forcing the considerations set out in paragraphs 67 to 71 above.

73. *Paragraph 5.* This is merely consequential.

74. *Constitutional limitations.* The whole subject of the necessity for ratification is of course closely connected with that of constitutional or other domestic limitations on the treaty-making power. But that subject, though it most often arises with reference to the question of ratification, is not peculiar to it. It can just as well arise with reference to the question of the validity (under the domestic law or constitution) of an accession or acceptance. By some authorities<sup>46</sup> this is treated as a matter affecting the formal validity of the treaty, i.e., is the ratification or accession *operative*, or is it a nullity? On this might depend the question whether the treaty comes into force. By other authorities (par example, the *Harvard Research in International Law*), the matter seems to be treated as one of substantive or essential validity, i.e., has a true consent been given? The same view is taken in the first report of Lauterpacht where the matter is discussed under the heading of conditions of validity, and not under that of the making and conclusion of treaties.<sup>47</sup>

75. This is also the view taken by the present Rapporteur, despite the close connexion of the subject with the treaty-making process as such. His reason is as follows. *Internationally* an instrument of ratification drawn up in the prescribed form by the competent executive authority, and transmitted or deposited through the ordinary channels in an ostensibly regular manner, must be deemed to be valid—indeed is valid (as an instrument or act) internationally. Its invalidity—if it is invalid—is on the domestic plane. The issue therefore goes deeper. There is a valid (formal) act, just as there is when a contract is signed in error, or as a consequence of a misrepresentation. But is it the act of the State as a whole—or must it be deemed so to be, and if so, in what circumstances? These are questions partly of capacity, partly of the nature of consent, and involve issues of essential or substantive, rather than merely formal, validity. For the time being therefore, this question is left over for later consideration.

#### *Article 33. Ratification (legal effects)*

76. *Paragraphs 1-3.* These paragraphs are directed to making clear five points: (a) that ratification places the State in the position that it has finally accepted the treaty—a position from which it cannot now withdraw; (b) that it may nevertheless not be actually *bound* by the treaty, if the treaty itself is not yet in force; (c) that the moment the treaty does come into force, the State will *ipso facto* be bound, without further act or room for choice on its part; (d) that in the meantime it will be under certain obligations of good faith (see also article 30 and comment in paragraph 58 above); and finally (e) that should the treaty already be in force at the time of ratification, or come into force *by virtue of* that act, the obligation of the State is immediate.

<sup>46</sup> For instance Rousseau, *op. cit.*, pp. 235-248.

<sup>47</sup> A/CN.4/63.

77. *Paragraph 4.* Ratification confirms signature, but is not *operatively* retroactive. It constitutes an agreement to be bound by an assent provisionally given earlier. But it is only operative from its own date, not the earlier date.

*Article 34. Accession (legal character and modalities)*

78. *Paragraph 1* indicates that accession is *par excellence* the process employed to render participation possible on the part of States which took no part in the original negotiation or framing of the treaty. That is its real *raison d'être*. Another method, of course, is to leave the treaty open for signature, in which case later signatories will become parties by ratification, if the treaty is subject to ratification. But even where this is done, it is not usually convenient to leave the treaty open indefinitely for signature, so that at some point accession will become the only means by which a "new" State can participate.

79. *Paragraph 2.* Accession is not a right, except where it is provided for. States that took no part in the framing of a treaty, and which did not sign it, have no legal claim to be allowed to participate in it. A State cannot, *ex cathedra*, deposit a purported accession to any treaty it develops an interest in. A faculty to do so must exist under the treaty itself, or be granted by one of the methods indicated in paragraph 2 of this article.

80. "... after consultation with any States still entitled to become parties by ratification..." (paragraph 2). See article 30, paragraph 2, and paragraph 59 above. A signatory State which is entitled to ratify, and may at any time become party to the treaty by doing so, has at least a right to be consulted if it is proposed to enlarge the class or number of States entitled to participate in the treaty, or specifically to admit some particular State. Some would say that a signatory State should have a right of veto in such cases<sup>48</sup>—and probably this is the correct position as a matter of *lex lata*. However, this might enable a State which had little real intention of ratifying to block indefinitely a desirable accession, and, *de lege ferenda*, the rule proposed—i.e., a right of consultation—is probably adequate to safeguard the rights of signatories.

81. *Paragraph 3.* This is the corollary of the absence of any unfettered right to accede resulting from paragraph 2.

82. *Paragraphs 4 and 5.* These paragraphs are intended to mark the fact that, even where accession is provided for, it can only properly be resorted to by States to whom signature (followed, if necessary, by ratification) is not open as a means of participation, or where the treaty is not to be signed at all. It is incorrect and inadmissible for a State that has signed a treaty to "accede" to it. Such a State ratifies.

83. *Paragraph 6.* Strictly, accession implies, and should only be made to, a treaty already in force. It is

<sup>48</sup> For any particular signatory State, the prospective balance and possibly the utility of a treaty might, so far as it was concerned, be seriously affected (e.g. in the matter of weight of voting) by the unforeseen admission of one or more States whose participation had not originally been contemplated.

essentially a method of joining a "going concern" so to speak, and this results from the fact (which constitutes the fundamental difference between accession and signature) that accession is essentially the acceptance of something already done—not a participation in the doing of it. Exceptionally, however—and particularly in the type of case where there is no signature at all—accessions prior to coming into force may be admitted and may have to be admitted. The cases cited in Lauterpacht's first report<sup>49</sup> represent a lax practice (mainly pre-war) that ought not to be encouraged, because it is not only wrong in principle but entirely unnecessary—except in those cases where signature of the treaty has never been possible at all.

84. *Paragraphs 7 and 8* are self-explanatory.

*Article 35. Accession (legal effects)*

85. *Paragraph 1.* This is unquestionably the correct rule. "Accession", or as it is sometimes called "adherence", implies a definitive act. The treaty is adhered to. An accession subject to ratification is not an accession, and also represents an attempt to secure the status of a signatory after the moment for that has gone by<sup>50</sup> (see also comment in paragraph 83 above). It is desirable that the various acts and concepts involved in treaty-making should preserve their respective special uses and distinctive juridical characteristics, and not become blurred by being resorted to out of place.

86. *Paragraph 2.* Accession is, in its juridical nature, a very different process from signature and ratification. But broadly its *results* are the same. It makes the acceding State a party to the treaty, with all the rights and obligations of a party, and on a basis of equality.<sup>51</sup> It may be suggested, however, that as a logical corollary of the fact that an acceding State accepts, but does not make a contract, it can have no voice in any subsequent amendment of that contract, though it need not of course accept the amendment. According to this view, an acceding State would not have any right to be consulted about, or participate in, any subsequent amendments to the treaty, though it would have an automatic right to terminate its adherence to the treaty if it disagreed with the result. According to normal practice, however, an

<sup>49</sup> A/CN.4/63, comment on article 7.

<sup>50</sup> Professor Rousseau (*op. cit.*, p. 280) says "Rationnellement, la règle de la ratification paraît étrangère aux adhésions... : aucun accord de volontés du type contractuel n'intervenant en effet entre les Etats signataires et l'Etat adhérent, celui-ci n'a pas à confirmer après coup un acte qui n'est en rien l'équivalent d'une signature. Au point de vue pratique, ce serait là une procédure défectueuse entraînant des complications inutiles."

He points out, however, that in the League of Nations a practice of acceding subject to ratification was introduced, and to some extent admitted. No case is known to have occurred since 1945, and it seems desirable that a code on treaty law should rule it out.

<sup>51</sup> Pradier-Fodéré (*Traité de droit international public européen et américain* (Paris, G. Pedone-Lauriel, 1885), Vol. 2, p. 829) says "L'accession place l'Etat qui la donne sur la même ligne que les parties principales qui ont conclu et signé le traité, elle lui confère les mêmes droits comme elle lui impose les mêmes obligations réciproques envers tous les Etats intéressés: la puissance qui accède devient partie contractante directe, en obtenant par son accession tous les droits et en se chargeant de toutes les obligations qui lui seraient échues ou qui auraient été mises à sa charge si elle eût signé immédiatement le document principal".

acceding State is admitted to participate in the discussion and voting on any proposals for amendment, in exactly the same way as other parties. Therefore, unless the treaty itself reserved some privilege in this matter to signatory and ratifying States (which position the acceding State would have accepted by its accession) no difference of status can exist.

87. *Paragraph 3.* This merely provides for the case, which should be exceptional (see paragraph 83 above) where accession takes place prior to the entry into force of the treaty.

*Article 36. Acceptance (character, modalities, and legal effects)*

88. *Paragraph 1.* Acceptance, which is a permissible method of participation only where the treaty provides for it, nevertheless involves no new principle.<sup>52</sup> It is either, in effect, a ratification (where it follows on a signature given subject to reservation of acceptance) or it is an accession (where there has been no previous signature and the treaty provides for participation by simple acceptance alone). However the rule that accession implies, in general, a treaty already in force does not apply to cases of participation by simple acceptance, since it is normally clear in those cases, from the terms of the treaty, that acceptance can be given at any time.

89. *Paragraph 2* is self-explanatory.

90. *Paragraph 3.* See paragraph 85 above. A State accepts or it does not.

91. *Paragraph 4.* No comment is required.

*Article 37. Reservations (fundamental rule)*

92. *General comment.* The question of reservations has now been a controversial one for some time—though more particularly in regard to reservations to general multilateral conventions, and where the reservation is wholly unilateral and has not been agreed to by the other interested States or has been definitely objected to by some of them. A history of this controversy and a discussion of the whole matter will be found in an article by the present Rapporteur in *The International and Comparative Law Quarterly* entitled "Reservations to Multilateral Conventions".<sup>53</sup> A very full discussion will also be found in Lauterpacht's reports.<sup>54</sup> The Rapporteur feels that in any code on the law of treaties the Commission should adhere to the same basic view as that which inspired chapter II of its report on the work of its third session.<sup>55</sup> This of course had reference to multi-

lateral conventions, but the considerations involved are applicable *a fortiori* to bilateral and plurilateral agreements. The Rapporteur has thought, however, that even as a matter of *lex data*, the strict traditional rule about reservations could be regarded as mitigated in practice by the following considerations which, taken together, allow an appreciable amount of latitude to States in this matter, and should meet all reasonable needs:

(a) By definition (see article 13, paragraph (1)) mere explanatory declarations, or statements of intention (and, within limits, of interpretation) are not regarded as reservations, and are permissible;

(b) A reservation only counts as such if it purports to derogate from a substantive provision of the treaty;

(c) Any State negotiating a treaty has a faculty to seek the insertion in it of an express provision permitting specific reservations, or certain classes of reservations;

(d) Any State has the right to ask specific acquiescence in any reservation it desires to make, even in those cases where the treaty makes no provision for reservations;

(e) Provided a proposed reservation has been clearly brought to the notice of another State, either during the negotiation of the treaty or afterwards, its tacit acquiescence (or lack of actual objection) may, at any rate in the case of general multilateral treaties, be inferred from silence, and this will suffice to constitute consent;

(f) Experience has shown that States do not normally refuse consent or object to reservations, unless these are clearly unreasonable and such as ought not to be admitted.

If to these considerations, more or less *de lege data*, are added the following, *de lege ferenda*, in the case of general multilateral treaties,<sup>56</sup> all legitimate requirements should be met:

(1) That in the case of reservations proposed after the treaty has been drawn up, acquiescence on the part of any particular State will be presumed if, within three months, no objection has been received;

(2) That in the same circumstances, although normally there must be acquiescence by all the States who have shown their interest in the treaty by signing it, even if they have not actually become parties to it, when the treaty has been in force for a certain period, in order to prevent a signatory State which does not seem likely to become a party from blocking a reservation not objected to by other States, the right of objection would be confined to actual parties to the treaty, provided these represented a reasonable proportion of those entitled to become parties.

These particular ideas are embodied in article 39 of the draft.

93. *Paragraph 1.* This has already been explained.

94. *Paragraph 2.* This poses the fundamental requirement of acceptance.

<sup>52</sup> The observations in Brierly's first report (A/CN.4/23, paras. 66-75) are most pertinent and should be given full weight. Lauterpacht's first report (A/CN.4/63, comment and note on article 8) is equally correct in its implications that no real juridical issue is raised by the "acceptance" procedure. Nevertheless, it is desirable to recognize the considerable practical conveniences of this method. It has mainly been adopted with reference to treaties concluded on the American continent, though only in a limited number of cases.

<sup>53</sup> *The International and Comparative Law Quarterly*, Vol. 2 (January 1953), pp. 1-26.

<sup>54</sup> A/CN.4/63 and A/CN.4/87, comments and notes on article 9.

<sup>55</sup> *Official Records of the General Assembly, Sixth Session, Supplement No. 9.*

<sup>56</sup> Because, in the case of bilateral or plurilateral treaties, it is impossible to admit reservations that are not actively agreed to by the participating States.



95. *Paragraph 3.* If a treaty specifically permits certain reservations, or a certain class of reservations, it must be presumed that no others were intended.

96. *Paragraph 4.* It is considered inadmissible that there should be parties to a treaty who are not bound by an obligation for the settlement of disputes arising under it, if this is binding on other parties. It is one thing to make a reservation concerning a substantive obligation of the treaty, if this receives the necessary assents; but it is another thing to assume the substantive obligations of the treaty, and yet refuse to be bound by the very provision which is intended to afford some guarantee that these obligations will be carried out, or to give the other parties a right of recourse if they are not. Such a provision is too fundamental to the scheme and order of any treaty containing it to permit of any reservation, and a State purporting to make such a reservation is virtually reserving a right to execute the treaty only at its discretion. It is sometimes argued that States can only be obliged to submit disputes to arbitration or judicial settlement if they consent to do so. This is true, but such consent need not be given *ad hoc* in every individual case. It can be given generally, and in advance, for any class or classes of case, as the optional clause procedure under article 36, paragraph 2, of the Statute of the International Court of Justice shows. A State which becomes a party to a treaty containing a provision for arbitration or judicial settlement thereby *ipso facto* consents to settle by those means any dispute in which it becomes involved under the treaty.

*Article 38. Reservations to bilateral treaties and other treaties with limited participation*

97. A distinction must be drawn between general multilateral treaties and bilateral treaties or merely plurilateral treaties made between a restricted number of States having some common interest or object. Whereas in the case of general multilateral treaties there may be grounds, arising from their character and the circumstances in which such treaties are framed, for permitting a fairly liberal practice about reservations, quite different considerations apply to bilateral treaties and other treaties with restricted participation. Such treaties are almost always framed by a process involving the unanimous consent of the negotiating States to each article, and indeed each sentence; and every word in the treaty is usually the result of careful and prolonged consideration, and constitutes the *ne plus ultra* of the agreement that can be reached. The element of contract and common accord is so strong, that the admission of reservations (except where the treaty provides for them, or they are specially agreed to) would be contrary to the whole spirit of the negotiation, and to the basis and balance of the treaty itself.

*Article 39. Reservation to multilateral treaties*

98. Here some latitude may be allowed, on lines already explained (see paragraph 92 above). The period of five years, and the figure of twenty per cent specified in paragraph 1 (b) (ii), and the period of three months specified in paragraph (2), are of course matters for discussion.

99. *Paragraph 3.* This lays down the necessary consequence if a reservation is objected to, and the objection is maintained.

100. *Paragraph 4.* Despite certain mechanical difficulties, this is believed to represent the right rule, as compared with that propounded in the paragraph numbered 1 in alternative A to article 9 of the Lauterpacht draft.<sup>57</sup> A State which has entered a reservation not yet accepted—or which fails to secure acceptance—cannot be said to be a party, and its ratification or accession, etc., must remain in suspense until the reservation is either accepted or withdrawn.

*Article 40. Reservation (legal effect if admitted)*

101. It is considered useful to state these consequences, but they require no explanation.

*Article 41. Entry into force (modalities)*

102. *Paragraph 1.* This is self-explanatory. The residuary rule mentioned is the only practicable one.

103. *Paragraph 2.* This is a not uncommon case, and a rule should be provided for it.

104. *Paragraph 3.* It seems necessary to try and propound a rule *de lege ferenda* for the not uncommon case where a treaty provides that the ratifications are to be exchanged or deposited by a certain date, but says no more; and when the date arrives the ratifications are not exchanged, or not all of them have been deposited. If all are there, then the date named may be taken as the date of coming into force. If not, the problem arises whether the treaty comes into force on that date for the States which have then ratified it, or whether entry into force must await the later ratifications, which may possibly never arrive. It is thought that in such circumstances, unless it is clear from the nature of the treaty that ratification by all concerned is intended before entry into force can take place, the best rule is to bring the treaty into force on the date named for the exchange or deposit of ratifications, provided a substantial number of the States concerned have by then ratified it, or as soon as a substantial number have duly done so.

105. *Paragraphs 4 and 5.* These are self-explanatory.

*Article 42. Entry into force (legal effects)*

106. *Paragraph 1.* This covers the case of *provisional* entry into force and states the rule applicable in case this situation becomes unduly prolonged.

107. *Paragraphs 2-4.* These paragraphs are self-explanatory, and certain aspects of them have already been discussed under other headings. Strictly, a separate instrument, to come into force on signature, should deal with all such matters as ratification, entry into force, etc. Logically, a treaty which, *ex hypothesi*, is not yet in force, cannot provide for its own entry into force since, until that occurs, the clause so providing can itself have no force. The real truth is that, by a tacit assumption invariably made, the clauses of a treaty providing for ratification, accession, entry into force and certain other possible matters, are deemed to come into force separately

<sup>57</sup> See A/CN.4/63, comment on article 9, section II.

and at once, on signature—or are treated as if they did—even though the substance of the treaty does not.

108. *Paragraph 5.* This case is not a common one, but it occurs. For instance, peace treaties not infrequently provide that they must be ratified by certain States, but that they will come into force if and when they are ratified by certain other States. Ratification by States of the first group will not therefore bring the treaty into force. On the other hand, ratification by States of the second will, and will do so for the first group of States also, even if they have not yet ratified. This group is, in that event, really in breach of the treaty, and the correct legal position would seem to be that the States of the

first group are bound from the start by their signature (a) to ratify<sup>58</sup> and (b) to carry out the substantive provisions of the treaty as from the date when ratification by the second group of States brings the treaty into force.

109. *Paragraph 6.* This is self-explanatory.

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<sup>58</sup> Of course in these circumstances ratification loses its *raison d'être* juridically, and becomes strictly otiose. The real object of this procedure is a political one, namely to secure a parliamentary endorsement of the treaty, with a view to preventing any eventual attempt at a repudiation of it on such grounds as, for instance, that the representatives signing the treaty exceeded their authority, or had no right to agree to certain of its clauses.

**Annex 66**

Seventh Report on Unilateral Acts of States By Victor Rodríguez Cedeño,  
Special Rapporteur, A/CN.4/542, 22 April 2004 (Extracts)



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## International Law Commission

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### Seventh report on unilateral acts of States

By Victor Rodríguez Cedeño, Special Rapporteur

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**Abbreviations used**

Actividades ...	Actividades, Textos y Documentos de la Política Exterior Española
Afr.Y.I.L.	African Yearbook of International Law
A.D.	Annual Digest and Reports of Public International Law Cases
Yearbook ...	Yearbook of the International Law Commission
A.D.I.	Anuario de Derecho Internacional
A.F.D.I.	Annuaire Français de Droit International
A.S.D.I.	Annuaire Suisse de Droit International
A.J.I.L.	American Journal of International Law
B.E.C.	Bulletin of the European Communities
B.O.C.G.	Boletín Oficial de las Cortes Generales
B.O.E.	Boletín Oficial del Estado
B.Y.B.I.L.	British Yearbook of International Law
C.A.H.D.I.	Committee of Legal Advisers on Public International Law
Canadian Y.B.I.L.	Canadian Yearbook of International Law
D.S.C.	Diario de Sesiones del Congreso
D.S.S.	Diario de Sesiones del Senado
E.J.I.L./J.E.D.I.	European Journal of International Law/Journal Européen de Droit International
For.Aff.	Foreign Affairs
G. de M.	Gaceta de Madrid
G.Y.B.I.L.	German Yearbook of International Law
H.I.L.J.	Harvard International Law Journal
Harvard L.R.	Harvard Law Review
I.C.L.Q.	International and Comparative Law Quarterly
I.C.J. Reports	Reports of Judgements, Advisory Opinions and Orders of the International Court of Justice
I.L.M.	International Legal Materials
I.L.R.	International Law Reports
J.A.I.L.	Japanese Annual of International Law
Keesing's	Keesing's Record of World Events
N.I.L.R.	Netherlands International Law Review

N.Y.B.I.L.	Netherlands Yearbook of International Law
OID	Oficina de Información Diplomática
Pol.Ext.	Política Exterior
P.C.I.J. Publ.	Publications of the Permanent Court of International Justice (Judgements, Orders and Advisory Opinions)
R.S.A.	Recueil des Sentences Arbitrales (also referred to as R.I.A.A.)
R.I.A.A.	Reports of International Arbitral Awards
R.E.D.I.	Revista Espanola de Derecho Internacional
R.P.E.	Revista de Política Exterior
R.G.D.I.P.	Revue Générale de Droit International Public
R.H.D.I.	Revue Hellénique de Droit International
S.A.Y.I.L.	South African Yearbook of International Law
Spanish Y.B.I.L.	Spanish Yearbook of International Law

## I. Introduction

1. At its fifty-fifth session, the International Law Commission established a Working Group on unilateral acts of States, which recommended (recommendation 4) that:

“4. The report which the Special Rapporteur will submit to the Commission at its next session will be exclusively as complete a presentation as possible of the practice of States in respect of unilateral acts. It should also include information originating with the author of the act or conduct and the reactions of the other States or other actors concerned”.<sup>1</sup>

2. The question of the definition of a unilateral act is still under discussion within the Commission. As an interim measure, with a view to being able to make progress with its work, the Commission endorsed the Working Group’s recommendation and adopted the definition given below. While this is only a working definition, it will serve as a basis for the adoption in due course of a definitive definition of a unilateral act which the Commission can use for its work of codification and progressive development:

“Recommendation 1

1. For the purposes of the present study, a unilateral act of a State is a statement expressing the will or consent by which that State purports to create obligations or other legal effects under international law”.<sup>2</sup>

3. In accordance with the Commission’s regular practice, a suitable definition of a unilateral act, one that can be used for purposes of developing rules governing the functioning of this category of legal acts, must be based on adequate consideration of the practice of States. This point was made by a number of members of the Commission in 2003, with reference to the Special Rapporteur’s sixth report.

“The examination of State practice was limited. The analysis should focus on relevant State practice for each unilateral act, with regard to its legal effects, requirements for its validity and questions such as revocability and termination; State practice needed to be assessed so as to decide whether it reflected only specific elements or could provide the basis for some more general principles relating to unilateral acts”.<sup>3</sup>

“It was felt that, based on State practice, unilateral acts which create international obligations could be identified and a certain number of applicable rules developed”.<sup>4</sup>

4. Similar remarks were made by representatives of several States in the Sixth Committee of the General Assembly in 2003: that in the absence of a systematic analysis of existing State practice in that area it would be difficult, if not premature, to proceed until a wider response from States had been received;<sup>5</sup> that at the current

<sup>1</sup> See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 308.

<sup>2</sup> A/58/10, para. 306.

<sup>3</sup> A/58/10, para. 277.

<sup>4</sup> A/58/10, para. 282.

<sup>5</sup> Statement by Israel, A/C.6/58/SR.17.

stage, more information should be gathered on State practice in that field;<sup>6</sup> that information on State practice would be useful;<sup>7</sup> and that the Special Rapporteur should submit as complete a presentation as possible of the practice of States in respect of unilateral acts.<sup>8</sup>

5. The Working Group established in 2003 offered some guidelines which the Special Rapporteur has taken into consideration in preparing this report:

“Recommendation 5

5. The material assembled on an empirical basis should also include elements making it possible to identify not only the rules applicable to unilateral acts *stricto sensu*, with a view to the preparation of draft articles accompanied by commentaries, but also the rules which might apply to State conduct producing similar effects.

Recommendation 6

6. An orderly classification of State practice should, insofar as possible, provide answers to the following questions:

- What were the reasons for the unilateral act or conduct of the State?
- What are the criteria for the validity of the express or implied commitment of the State and, in particular, but not exclusively, the criteria relating to the competence responsible for the act or conduct?
- In which circumstances and under which conditions can the unilateral commitment be modified or withdrawn?

Recommendation 7

7. In his next report, the Special Rapporteur will not submit the legal rules which may be deduced from the material thus submitted. They will be dealt with in later reports so that specific draft articles or recommendations may be prepared”.<sup>9</sup>

6. As he had stated last year that he would do, the Special Rapporteur – with the invaluable assistance of the University of Málaga, to the professors and students of which he wishes to express his sincere thanks for their excellent work – undertook a study of the practice of States, based on an abundant bibliography (a full list of sources will be found in the annex to this report), from which he has selected a series of unilateral acts, some of which may be useful for the purposes of a consideration of the topic under review.

7. It is important to note that an assessment of the practice of States can only be subjective, inasmuch as Governments’ own views on the nature of their statements are not available; this, indeed, may be one of the characteristics of these acts. Consequently, acts, statements and conduct discussed in this report are essentially factual.

<sup>6</sup> Statement by Portugal, A/C.6/58/SR.19.

<sup>7</sup> Statement by Chile, A/C.6/58/SR.19.

<sup>8</sup> Statement by France, A/C.6/58/SR.19.

<sup>9</sup> A/58/10, para. 308.



from the Law of the Sea Conference, that is, the 200-mile exclusive economic zone. At the opening of the negotiations to which Mexico had been invited for this purpose, the legal dispute with the United States became more obvious, and an unfortunate chain of events was set in motion, resulting in United States ships infringing the 200-mile Mexican zone and fishing for tuna illegally. This disagreement with respect to the new situation led Mexico to resign from the Commission and to begin detaining United States fishing vessels. In response, the United States imposed an embargo on exports of Mexican tuna to the United States. Meanwhile, Mexico had adopted provisional legislation aimed at concluding a regional agreement to conserve and administer tuna in the Eastern Pacific. Since then, the two countries have been holding a series of talks, both formally and informally, aimed at settling this dispute.<sup>310</sup>

186. The existence of tense relations between countries may in turn lead to incidents: those having to do with fishing, for example, sometimes result in protests, as noted above.<sup>311</sup> This tension may also take the form of impediments to official visits.<sup>312</sup>

## E. Silence and estoppel as principles modifying some State acts

### 1. Silence and its potential international effects

187. In his first report, the Special Rapporteur considered silence to be “a reactive behaviour and a unilateral form of expression of will”, but he added that “it cannot be considered a legal act” according to much of the literature.<sup>313</sup> Moreover, it bears a close relationship to estoppel, in the sense that a given situation could make a State liable to exception if its consent to that situation, which could produce legal effects, might be inferred from its silence.

188. Strictly speaking and delineated in precise terms, silence cannot be considered a unilateral act; at times it may even produce legal effects by a “non-existent unilateral act”, where, for example, faced with a given situation, a State could have issued a protest but refrained from doing so. In one way or another, this silence,

<sup>310</sup> See *Anuario Jurídico Interamericano* (1985), p. 421.

<sup>311</sup> In late November 1967, a Chilean gunboat, the *Quidora*, entered Argentine territorial waters at Ushuaia without prior authorization. This incursion provoked a note of protest from the Chilean Minister for Foreign Affairs to the Argentine Ambassador. For more on these boundary incidents, see “Límites. El bloqueo de Ushuaia”, *Primera Plana*, Year V, No. 245, 5-11 September 1967, p. 13, and *Clarín*, 1 December 1967, p. 18.

<sup>312</sup> When German Minister of State Volmer’s visit to Cuba was cancelled, he issued the following statement: “The Cuban Government has asked me to forego my visit to Cuba scheduled for 19 February 2001 (at the invitation of Cuba). This situation is a result of statements I am alleged to have made that were critical of Cuba. I fail to understand this interpretation. But it demonstrates that for the time being Cuba is not sufficiently willing to engage in a political dialogue in the fullest sense of the word. In such circumstances my visit to Cuba would not make much sense. My scheduled visit to the Dominican Republic will not be affected by the cancellation of my visit to Cuba” (16 February 2001). ([http://www.ausswaertiges-amt.de/www/de/ausgabe\\_archiv?archiv\\_id=123](http://www.ausswaertiges-amt.de/www/de/ausgabe_archiv?archiv_id=123)).

<sup>313</sup> A/CN.4/486, para. 50. As A. J. Rodríguez Carrión notes, in *Lecciones de Derecho Internacional Público* (ed. Tecnos, Madrid, 2002), p. 171, “*silence* is more than just a different type of unilateral act: it is a means of expressing the unilateral will of the State”.

along with other aspects that may well reveal the will of the State in question, may make a retraction impossible if the conduct continues.

189. Silence as such usually has legal consequences if it is related to a prior act on the part of another subject;<sup>314</sup> we therefore incline towards the position held for some time by Sicault, whereby silence, since it cannot produce legal effects independently and requires another act in order to do so, does not come under the definition of unilateral engagement given at the beginning of his study.<sup>315</sup> Its effects are therefore relative, as French and German doctrine and jurisprudence, in particular, have traditionally suggested;<sup>316</sup> in contrast, however, the Anglo-Saxon school has defended the fiction of so-called “tacit will”, in the understanding that it facilitates the passage from facts to law and allows for the maintenance of a certain vitality in international law so that the obstacles created by the negligence of some States can be overcome.<sup>317</sup>

190. In the Commission, for example, the views expressed in this regard have been very diverse; thus, it has been noted that while some types of silence definitely do not and cannot constitute a unilateral act, others may be described as intentional “eloquent silence”, expressing acquiescence, and therefore do constitute such an act.<sup>318</sup> Moreover, it must be noted that silence produces important legal effects in some multilateral conventions.<sup>319</sup>

191. It has even been affirmed that acquiescence,<sup>320</sup> which may be (but is not always) derived from silence, is probably one of the most difficult issues and one of great practical importance, in view of its consequences. As MacGibbon has pointed out, “acquiescence ... takes the form of silence or absence of protest in

<sup>314</sup> The enormous number of protests that occur in international practice is, in our view, an important indicator that silence may have significant effects; therefore, each time there is a risk that a given situation with which a State disagrees might become more acute, the affected State or States will protest forcefully. The following is just one example (see R.G.D.I.P. (1979), vol. 83, pp. 143-144): Upon the exchange of the instruments of ratification of the treaty between Japan and the Republic of Korea on 5 February 1974 on the joint delimitation and exploitation of the continental shelf situated in the eastern part of the China Sea, the Government of China reaffirmed its opposition to this treaty, which it had already reiterated three times, on 23 April, 28 May and 13 June 1977 (*ibid.*, 1978, pp. 243-245). In a note issued on 26 June 1978, the Chinese Minister for Foreign Affairs stated that the Government of China expressed its deep indignation and raised a strong protest against the treaty, which it said undermined the sovereignty of China, and that any division of the continental shelf between different countries could be decided only after consultations between China and the countries concerned.

<sup>315</sup> Sicault, *loc. cit.*, p. 673.

<sup>316</sup> As J. Bentz has pointed out, French jurisprudence has highlighted that “the silence of one party cannot bind it in the absence of any other circumstance” (“Le silence comme manifestation de volonté en droit international public”, (R.G.D.I. P. (1963), vol. 67, p. 46).

<sup>317</sup> Idea taken from Bentz, *loc. cit.*, p. 53.

<sup>318</sup> *Official Documents of the General Assembly, fifty-fifth session, Supplement No. 10 (A/55/10)*, para. 585. That silence has very different aspects is also affirmed by Suy, who notes that “the formula ‘qui tacet consentire videtur’ has no absolute value in law. Silence may, indeed, mean that an offer, a violation or a threat leaves the recipient totally indifferent. It may also express opposition” (Suy, *op. cit.* p. 61).

<sup>319</sup> See art. 65, para. 2, of the 1969 Vienna Convention on the Law of Treaties, or art. 252 of the Convention on the Law of the Sea.

<sup>320</sup> As affirmed by J. Salmon, acquiescence is “a consent imputed to a State by reason of its conduct, whether active or passive, towards a given situation. Acquiescence is liable to occur in many circumstances” (“Les accords non formalisés or ‘solo consensu’”, A.F.D.I. (1999), vol. 45, p. 15).

circumstances which generally call for a positive reaction signifying an objection”.<sup>321</sup> What is indeed significant is that an opposable situation created by acquiescence is of particular importance for a State which enjoys a right on the basis of a customary rule which has not yet been fully consolidated, or when all aspects of its application in individual situations are still a matter of dispute.<sup>322</sup> Moreover, as Carrillo Salcedo has observed, “it may be said that acquiescence is an admission or acknowledgement of the legality of a controversial practice, or that it even serves to consolidate an originally illegal practice. The State that has admitted or consented cannot raise future objections to the claim, by virtue of the principle of estoppel or ‘contrary act’. Acquiescence thus becomes an essential element in the formation of custom or prescription”.<sup>323</sup>

192. In order for acquiescence to produce legal effects, however, it is necessary for the party whose implicit consent is involved, first of all, to have had knowledge of the facts against which it refrained from making a protest; the facts must be generally known, if they have not been officially communicated. Each of these aspects was duly taken into account, in one way or another, by the International Court of Justice in the *Fisheries* case, based on the idea that the notoriety of the facts, the general toleration of the international community, the United Kingdom’s position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway’s enforcement of her system against the United Kingdom;<sup>324</sup> however, in reality, as Carrillo Salcedo points out, in this case “two valid legal effects of the situation derive, then, not from the tacit or express consent of third States but from the notoriety of the facts. The opposable erga omnes character of these legal situations is ultimately based on their compatibility and non-contradiction with the international legal order which recognizes the coastal State as the only one competent to establish the baseline of its territorial sea”.<sup>325</sup>

<sup>321</sup> I. C. MacGibbon, “The Scope of ...”, loc. cit., p. 143

<sup>322</sup> Degan, op. cit. p. 353.

<sup>323</sup> J. A. Carrillo Salcedo, “Funciones del acto unilateral en el régimen jurídico de los espacios marítimos”, *Estudios de Derecho Internacional Marítimo* (Zaragoza, 1963), p. 22. The author rightly adds that “acquiescence thus acts as a corrective to the rigidity of the dogmas of sovereignty and voluntaristic positivism in international law. Acquiescence represents an important factor in the development and formation of customary law, like that of ‘opinio juris’ in the formation of customary obligation. ‘Opinio juris’ differs from acquiescence, but it becomes its logical consequence”.

<sup>324</sup> *Fisheries* case, Judgment of 18 December 1951 (*I.C.J. Reports 1951*, p. 138), where, with respect to the notoriety of these facts, it was pointed out that “the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose”.

<sup>325</sup> Carrillo Salcedo, op. cit., p. 12.

193. Shortly thereafter, the Court made a similar decision in *the Temple of Preah Vihear* case.<sup>326</sup> What is more, arbitral tribunals<sup>327</sup> and domestic courts<sup>328</sup> have more recently handed down decisions with respect to the effects and conditions of acquiescence.

194. To some extent, the conclusion might be drawn, in view of the above-mentioned legal precedents, that acquiescence is generally the result of the concomitance of various signs pointing to an overall conduct; the signs demonstrating acquiescence, that is agreement with a given situation, may be of many types, stemming from both active and passive State conduct.<sup>329</sup>

195. As shown by some arbitral decisions, acquiescence seems to have served as a means of clarifying certain doubtful aspects in need of interpretation. Thus, in a case concerning the Boundary Agreement of 1858 between Costa Rica and Nicaragua, settled on 22 March 1888, the arbitrator stressed that, despite the fact that acquiescence could not replace the necessary ratification of the agreement by Nicaragua, 10 or 12 years of apparently favourable conduct “is strong evidence of that contemporaneous exposition which has ever been thought valuable as a guide in determining doubtful questions of interpretation”.<sup>330</sup>

## 2. The principle of preclusion or estoppel

196. As noted by a member of the International Law Commission with respect to the principle of preclusion or estoppel, “Admittedly, a unilateral act could give rise to an estoppel, but it was a consequence of the act and, contrary to what had been stated by the Special Rapporteur in his oral introduction, no category of acts which would constitute ‘estoppel acts’ seemed to exist. The only thing that could be said was that, in certain circumstances, a unilateral act could form the basis for an estoppel ... In international law, estoppel was a consequence of the principle of good

<sup>326</sup> *I.C.J. Reports* 1962, p. 23. After considering the role of acquiescence when it results from an absence of protest against a circumstance that should have provoked such protest, the Court decided as follows: “It has been contended on behalf of Thailand that this communication of the maps by the French authorities was, so to speak, *ex parte*, and that no formal acknowledgment of it was either requested of, or given by, Thailand. In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*”.

<sup>327</sup> For example, in the arbitration concerning the *territorial dispute between Dubai and Sharjah*, of 19 October 1981 (I.L.R. (1993), vol. 91, pp. 612 et seq. or in the *Laguna del Desierto* case, of 21 October 1994 (reproduced together with the application for review in I.L.R. (1999), vol. 113, pp. 2 et seq.

<sup>328</sup> The United States Supreme Court has done so in a number of decisions, including the *Georgia v. South Carolina* case of 25 June 1990, or in *United States v. Louisiana and Others*, of 26 February 1985 (both reproduced in I.L.R. (1993), vol. 91, pp. 411 et seq. and 439 et seq.). In both cases, silence was considered the equivalent of acquiescence.

<sup>329</sup> See J. Barale, “L’acquiescement dans la jurisprudence internationale”, A.F.D.I. (1965), vol. 11, p. 393, and the jurisprudential references on pp. 394-400.

<sup>330</sup> Coussirat-Coustère, *op. cit.*, p. 5.

faith which, as Mr. Lukashuk had pointed out at the preceding session, governed the rules on the legal effects of unilateral acts".<sup>331</sup>

197. It seems that Anglo-Saxon doctrine was the origin of the principle of estoppel, as a mechanism applicable in the international sphere which primarily deals with creating a certain amount of legal security, preventing States from acting against their own acts.<sup>332</sup> As Miaja<sup>333</sup> has pointed out, this principle comes within the purview of the maxim *adversus factus suum quis venire non potest*, thereby identifying the origins of this Anglo-Saxon institution, which has been described in great detail by Díez-Picazo.<sup>334</sup>

198. Spanish doctrine has also given attention to the estoppel principle; specifically, Pecourt García starts with two basic premises that shape its essence: he assumes that "the first prerequisite for building the notion of 'estoppel' is the existence of an 'attitude' taken by one of the parties ... The second prerequisite for the applicability of estoppel is the existence of what we have called 'secondary attitude', which must have been adopted by the party opposing the principle".<sup>335</sup> The author continues: "The principle of estoppel may be related to certain types of expressions of will that are generically referred to as 'acquiescence'. Under such an assumption, estoppel works by integrating — in part or in full — the corresponding form of acquiescence, either deriving the latter from silence or omission (estoppel by silence), or by proving such acquiescence by means of certain courses of conduct or attitudes (estoppel by conduct), etc".<sup>336</sup> This attitude must be clear and unequivocal, as the Permanent Court of International Justice pointed out in the *Serbian Loans* case, of 12 July 1929: "when the requirements of the principle of estoppel to establish a loss of right are considered, it is quite clear that no sufficient basis has been shown for applying the principle in this case. There has been no clear and unequivocal representation by the bondholders upon which the debtor State was entitled to rely and has relied".<sup>337</sup>

199. Of course, there is some doctrinal confusion about the basis and scope of estoppel, together with some of the other principles mentioned. Perhaps the very diversity of effects which unilateral acts may produce, as well as their disparity, are circumstances that may explain, although not necessarily justify, all the doubts that

<sup>331</sup> A/CN.4/SR.2594, p. 7.

<sup>332</sup> For a detailed analysis of this notion, and especially its more distant origins, see A. Martin, *L'estoppel en droit international public. Précédé d'un aperçu de la théorie de l'estoppel en droit anglais* (Paris, 1979), pp. 10-14, in particular.

<sup>333</sup> Miaja, "Los actos unilaterales ...", loc. cit., p. 440, also citing L. Díez-Picazo and Ponce de León, *La doctrina de los actos propios* (Barcelona, 1963), pp. 63-65.

<sup>334</sup> In the *Dictionnaire de la Terminologie du Droit International* (Paris, 1960), p. 263, Judge Basdevant formulated the following definition of estoppel: a term of procedure, taking from English, which designates the peremptory objection which prevents one party to a proceeding from adopting a position which contradicts the one that had already been admitted, either expressly or tacitly, as well as the one which the party claims to hold in the current proceeding.

<sup>335</sup> E. Pecourt García, "El principio del estoppel en derecho internacional público", R.E.D.I. (1962), vol. 15, pp. 104-106.

<sup>336</sup> E. Pecourt García, "El principio del 'estoppel' y la sentencia de la Corte Internacional de Justicia en el caso del Templo de Preah Vihear", R.E.D.I. (1963), vol. 16, pp. 158-159. For a detailed and more recent treatment of this issue, see F. Jiménez García, *Los comportamientos recíprocos en derecho internacional. A propósito de la aquiescencia, el estoppel y la confianza legítima* (Madrid, 2002).

<sup>337</sup> *Case of Serbian Loans*, P.C.I.J., Series A, Nos. 20/21, p. 39.

arise on this issue. It seems reasonable to affirm that the basis of this principle essentially lies in good faith, which is common to various legal systems.<sup>338</sup>

200. Similarly, and directly related to the categories of unilateral acts and, specifically, to the place occupied by the principle of estoppel, the debates that have taken place in the International Law Commission are highly illustrative.<sup>339</sup> The doubts that have arisen with respect to whether or not to consider estoppel as a unilateral act were already evident in 1971, however, when it was noted that “Estoppel may perhaps more accurately be regarded as not in itself a unilateral act but as the consequence of such an act or acts”.<sup>340</sup> Moreover, the most characteristic element of estoppel is not the conduct of the State, but rather the confidence that is created in the other State. It might even be said, as pointed out in the *Temple of Preah Vihear* case,<sup>341</sup> that the principle of estoppel serves as a mechanism that eventually validates given circumstances which otherwise would have permitted the nullification of the legal act in question. Although in this decision the Court referred to the role that estoppel might play in respect of the validation of treaties, we believe that the same idea would be applicable to unilateral acts.

201. Of course, the attitude adopted by a State with regard to a specific situation to some extent forces it to continue behaving consistently,<sup>342</sup> especially if it creates a certain expectation in third parties of good faith that this activity will continue and will adjust to the same parameters.<sup>343</sup> This conduct, acknowledging as valid a given state of affairs for a certain time, led the Court to its judgment against Nicaragua in the *Case concerning the Arbitral Award Made by the King of Spain on 23 December*

<sup>338</sup> Venturini, “La portée ...”, loc. cit., p. 372; see also Pecourt García, “El principio ...”, loc. cit., p. 117.

<sup>339</sup> In this regard, see Tammes’s opinion in *Yearbook of the International Law Commission*, 1967, vol. I, p. 179, 928th meeting, para. 6, where, referring to the need for systematization of this topic, and in particular making reference to the classification that must unavoidably be carried out, said that “The topic covered recognition as a positive act acknowledging a given situation to be a legal situation and, conversely, protests rejecting changes in a legal situation. It also included the principle of estoppel applied by the International Court of Justice. Other unilateral acts which might possibly be dealt with in a systematic draft were proclamations, waivers and renunciations”.

<sup>340</sup> *Yearbook of the International Law Commission*, 1971, vol. II, Part Two, footnotes 333 and 334.

<sup>341</sup> *I.C.J. Reports 1962*, p. 32, where the Court affirms that “even if there were any doubt as to Siam’s acceptance of the map in 1908, and hence on the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct for asserting that she did not accept it. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand’s acceptance of the map”.

<sup>342</sup> See *Case concerning Right of Passage over Indian Territory*, Judgment of 12 April 1960 (*I.C.J. Reports 1960*, p. 39); under this assumption, the position maintained by a State for a certain amount of time is an indication of the consolidation of practice, leading to a perfect combination of acquiescence and the doctrine of estoppel: “For the purpose of determining whether Portugal has established the right of passage claimed by it, the Court must have regard to what happened during the British and post-British periods. During these periods, there had developed between the Portuguese and the territorial sovereign with regard to passage to the enclaves a practice upon which Portugal relies for the purpose of establishing the right of passage claimed by it”.

<sup>343</sup> That repeated non-recognition of a form of government creates an obligation was noted in the *Charles J. Jansen v. Mexico* (United States v. Mexico) case, decided on 20 November 1876, when it states: “It further results that the United States, at least, is not now at liberty to claim a government *de facto* for the Prince Maximilian, having always during the contest in Mexico recognized the republic and repudiated the empire” (Coussirat-Coustère, op. cit., p. 108).

1906.<sup>344</sup> There have even been relatively recent arbitrations in which express mention has been made of estoppel and its significance.<sup>345</sup> It is not only the case law of international tribunals that has stressed the importance of estoppel; the issue has also arisen in domestic courts.<sup>346</sup>

### III. Conclusions

202. In accordance with the Commission's request to the Special Rapporteur in 2003, this report has presented, merely as an illustration, examples of State practice, in particular a series of acts and declarations, including some equally unilateral forms of conduct which may produce legal effects similar to those of acts and declarations. Admittedly, not all of these constitute unilateral acts in the sense that interests the Commission. Some of them may not be juridical; others, although juridical, may perhaps be better categorized in the context of a treaty relationship, and therefore are not of direct interest to the consideration of the acts in question.

203. This presentation has attempted to facilitate the study of the topic and the drawing of conclusions about the possible existence of rules and principles applicable to the functioning of these acts. In some cases it might be concluded that these rules and principles are generally applicable to all unilateral expressions of will, of course being limited to juridical expressions, or, on the contrary, to only one category of such expressions, although they may not easily be qualified or classified when, as we have noted, there are no definitive criteria involved.

204. The Working Group that met during the 2003 session considered some issues which have inspired this attempt to draw some conclusions.

205. For practical and methodological reasons, declarations are divided into various categories of acts which doctrine and practice show as being expressions of the unilateral will of States, irrespective of whether other acts exist which are classified and qualified differently. By examining these acts, and noting once again that those selected are merely a sample of the range of variations of these expressions, we have observed that those related to the recognition of States, Governments and de facto and de jure situations are the most frequent, although other cases, such as

<sup>344</sup> As the Court points out, referring to actions taken by Nicaragua, "in the judgment of the Court, Nicaragua, by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award. Nicaragua's failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award had become known to it further confirms the conclusion at which the Court has arrived" (*I.C.J. Reports, 1960*, p. 213).

<sup>345</sup> See the Arbitral Tribunal which decided the *Pope and Talbot Inc. v. Government of Canada* case, in its decision of 26 June 2000 (reproduced in *I.L.R. (2002)*, vol. 22, especially p. 338). It refers to the characteristics of estoppel, in a way similar to that described earlier.

<sup>346</sup> See the judgment of 28 March 1986, in the case *Mission intérieure des catholiques suisse c. Canton de Nidwald et Tribunal administratif du canton de Nidwald*, whose most relevant paragraphs for our purposes appear in *Annuaire suisse de droit international* (1987), vol. 43, p. 140. In this case, the court stated that there was an obligation, at both the international and domestic levels, to be consistent with one's own conduct, i.e., estoppel (a prohibition of *venire contra factum proprium*). This principle was applied in international jurisprudence even in cases not involving a treaty but rather simple unilateral declarations issued, for example, by a minister for foreign affairs (see the *Eastern Greenland* case) ...

those consisting of promises, waivers and protests, are also formulated on various occasions.

206. Generally speaking, in the great majority of cases, unilateral acts and declarations of States are addressed to other States. On some occasions, however, the addressees of such acts and declarations are subjects other than the State, such as international organizations.

207. In most cases, these acts and declarations have been formulated individually, although at times they have been issued by groups of States, including States members of an international body (whether an international organization or in the context of a conference).

208. Most of these declarations are formulated without full formal powers by persons authorized to act at the international level and make commitments on behalf of the State, such as the head of State or Government, the Minister for Foreign Affairs, ambassadors, heads of delegation and representatives of the State to international organizations and bodies.

209. Although these declarations are often made in writing, in some cases they may be expressed orally. These are frequently transmitted through notes and communiqués, and at times even through an exchange of notes verbales.

210. In declarations of recognition, those relating to recognition of States are the most common; a considerable increase has been noted since the events of the 1990s in Central and Eastern Europe, which led to the creation of new, independent States.

211. In this latter context, it has also been observed that most of these declarations, at least those to which we have had access, come from European countries as part of common policies aimed at adjusting to the changes that have occurred in this region, although many States from other geographical regions have also expressly or implicitly recognized these new republics.

212. It has also been noted, in the context of declarations and acts of recognition, that they are linked with other situations, such as those having to do with boundaries, disarmament, state of war and neutrality, or an international treaty.

213. In most cases, declarations are made outside the context of negotiations, which gives them greater autonomy, as is appropriate for unilateral acts *stricto sensu*. It is true, however, that some are made as part of the processes relating to the recognition of a State or Government.

214. In some cases we found that declarations were intended to recognize a State, provided that the State complied with a series of conditions; this pattern was observed in particular in the European context.

215. Generally speaking, not all acts of recognition correspond to express acts; some are implicit in other acts such as the conclusion of agreements, or in existing situations such as the exchange of diplomatic or other representations.

216. Acts of express non-recognition may also be observed, especially in cases where statehood is controversial; such non-recognition is repeatedly underlined, for example in parliamentary debates, by a State which does not recognize the given situation.



217. It is easier to determine the result of acts of recognition, although it is not clear in all cases, than of the formulation of other unilateral acts and declarations. In the case of recognition of States, formal diplomatic relations and relations in general have been established between the recognizing State and the recognized State.

218. Many declarations have been formulated that contain promises relating to boundaries, disarmament, forgiveness of debt, pending monetary issues, granting of permits for the use of certain spaces and adoption of moratoria, among others.

219. In general, declarations containing promises are also formulated by persons who are recognized as being authorized to represent the State in its external relations, i.e., the head of State or Government or the Minister for Foreign Affairs. Some of these declarations are made orally, while others are in writing, through notes and acts of the competent State bodies.

220. In most cases, no reaction on the part of the addressee States has been observed, although at times more clear reactions have been seen in the case of boundary issues.

221. The situation is more complex in the specific case of disarmament, where reactions have not been clear. States possessing nuclear arms have not reacted positively in the sense of recognizing that the declarations under consideration contain a promise and are therefore legally binding on them. Instead, in the negotiations within the Disarmament Conference, these declarations have been imprecise, particularly with respect to their scope and nature, although some participating countries have stressed their importance and the need for them to be considered as declarations containing a promise, having legal effects for the declaring States.

222. In practice, declarations and conduct have also been observed which signify protest in various areas, particularly in the context of boundary issues and the application of treaties. Protests have been made by States against acts or declarations, including conduct related to the recognition of an entity as a State.

223. Declarations or acts containing protests are generally expressed by Governments through explicit notes from foreign ministers or ministries. Moreover, the protest may sometimes be reiterated when the situation against which the protest is made continues for some time.

224. Some protests are made by States through forms of conduct that do not constitute legal acts, but that have or may have significant legal effects. This conduct is most visible in the context of territorial disputes and the recognition or non-recognition of States and Governments, among others.

225. The same could be said of acts or declarations, including forms of conduct that contain or signify a waiver of a right or a legal claim, although it is true that these are less frequent. Renunciations involving abdication and transfer may be contained in these declarations and acts.

226. Certain courses of conduct sometimes lead to express acts by a State entity, acts which are substantially different from unilateral acts *stricto sensu*, and which are formulated with a given intention.

227. It is not easy to compare conduct with acts in the strict sense of the term; however, it is extremely useful to consider conduct in dealing with the topic of

unilateral acts and in arriving at the definition which the Commission will adopt this year, in accordance with the characteristics of the topic. Of course, it is not easy to determine these characteristics. Thus, for example, certain active types of conduct on the part of State bodies may differ from those usually seen in the conduct of foreign affairs.

228. In the case of non-active forms of conduct, such as silence understood as acquiescence, it is extremely difficult to determine which body should have formulated the act but refrained from doing so.

229. After considering the topic from the standpoint of practice, a draft definition could be elaborated on the basis of the draft adopted last year by the Working Group during the session, for which we would have to consider forms of conduct that differ from the unilateral act *stricto sensu*. The term “act” would have to be defined in relation to its legal effects rather than in terms of its formal aspects.

230. In accordance with the consideration of unilateral acts, declarations and forms of conduct of States in this report and the attempt to draw some conclusions, it would seem possible to affirm that some rules exist that are generally applicable to all unilateral acts and forms of conduct relevant to our purposes.

231. In addition to the definition that might be adopted on the above-mentioned basis, the possibility could be considered of elaborating a provision that would reflect a State’s capacity to formulate such acts and conduct and the authorization of given persons to act on behalf of the State and commit it, at this level, without the need for formal powers.

**Annex 67**

“Natural resource dependence, livelihoods and development: Perceptions from  
Kiunga, Kenya”, *IUCN Eastern and Southern Africa Regional Office*, 2008



# Natural resource dependence, livelihoods and development

Perceptions from Kiunga, Kenya

Melita A. Samoilys and Nyaga W. Kanyange



IUCN Eastern and Southern Africa Regional Office 2008



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## Acronyms and Abbreviations

AIG	Alternative Income Generating activities
BMU	Beach Management Unit
CBO	Community Based Organizations
CMA	Collaborative Management Area
CORDIO	Coastal Oceans Research and Development in the Indian Ocean
CPUE	Catch per Unit Effort
EARO	IUCN Eastern African Regional Office
EAWLS	East African Wildlife Society
EEZ	Exclusive Economic Zone
FGD	Focus Group Discussion
IUCN	International Union for the Conservation of Nature
KES	Kenya Shillings (currency)
KESCOM	Kenya Sea Turtle Conservation Committee
KMNR	Kiunga Marine National Reserve
KSV	Kiwayu Safari Village
KWS	Kenya Wildlife Service
NALEP	National Agriculture and Livestock Extension Programme
NGO	Non-governmental Organisation
ORI	Oceanographic Research Institute
USAID	United States Agency for International Development
USD	United States Dollar (currency)
WWF	World Wide Fund for Nature

## Executive Summary

Numerous marine resource management initiatives have been implemented in East Africa over the last 15 years. However, success has been limited if poverty and natural resource health are used as indicators, although the capacity to manage marine resources has improved. This study seeks to map coastal peoples' perceptions of marine resource use and their dependence on these resources, changes in resource status, and what effect conservation and natural resource management have had on coastal peoples' socio-economic development, in order to understand the bottlenecks to good governance of common pool marine resources. The Kiunga area in northern Kenya and the Tanga area in northern Tanzania were selected for case study analysis due to considerable conservation and management intervention in these areas over time. The findings of the Kiunga case study are presented herein.

The objectives of the study were to compile existing information on the link between coastal peoples' livelihoods and marine resource management in Kiunga, with a particular focus on fisheries; and to analyse past work on livelihood enhancement and associated capacity building, empowerment and participatory approaches to marine resource management. Special attention was paid to the semi-commercial invertebrate fisheries associated with this area, particularly lobster and crab, as well as shark, mollusc and sea cucumber fisheries. Attention was also paid to the level and extent of involvement of the local community in the management of their marine resources. Information was obtained through literature research; meetings with resource managers and government officials; and a combination of focus group discussions and key informant interviews in the villages in Kiunga Marine National Reserve (KMNR).

Management and conservation interventions by several institutions in KMNR have had a positive impact on the lives of the people living in the Kiunga area, primarily through providing health, education and transport services. However, the socio-economic status of the people has improved little. Also, development of the region does not appear to have changed significantly since the 1980s, especially in terms of infrastructure: the road is still a sand track, there is no public vehicle service and telecommunication north of Mkokoni village is non-existent.

With little development in the area the people living in KMNR are still highly dependent on fishing for their livelihoods - 95-100% dependency in terms of income was recorded in this study. However, fisher catch rates and earnings are declining as human population numbers increase and greater pressure is put on marine resources.

Co-management initiatives are a relatively recent introduction and are yet to reap tangible benefits in terms of improved fisheries management and improved livelihoods. The area sustains important and valuable fisheries such as the lobster and mangrove crab fisheries. With better management and effort reduction these fisheries could be sustainable and productive in the long term. This would ensure the fisheries bring an important source of income to the region as well as maintain a traditional form of livelihood. Considering the high levels of poverty and dependence on natural resources, alternative income-generating activities (AIG) now need to be vigorously pursued. The area has enormous wealth in terms of a very high aesthetic value due to minimal development and high biodiversity, and community based eco-tourism presents an opportunity. Mariculture development is also being explored.

However, a number of bottlenecks exist which, if addressed, would help create an enabling environment for livelihood enhancement and development. For example, this study found that the local communities in Kiunga Marine National Reserve view conservation efforts as somewhat separate to their primary livelihoods of fisheries and not directly benefiting them, except through side programmes such as education and health. More direct involvement and empowerment of communities is needed to address this, although ultimately it is tangible benefits stemming from conservation activities and accruing directly to communities that will ensure buy-in. An essential step in this process is the establishment of Beach Management Units that are anchored in the communities while enjoying the trust of the authorities, structured in such a way that they cover areas that are sufficiently large and reflective of traditional fishing practices in the area.



There is a risk of conservation successes already achieved becoming undone, further undermining resource management initiatives. Programmes in the area have created wide support for conservation of marine turtles, and local poaching has been significantly reduced, but mechanized, mainly foreign, fishing vessels illegally fishing near shore (within 12nm) are implicated in incidental turtle by-catch and mortality as well as habitat destruction. Communities identify this as one of the main drivers of resource degradation, and have repeatedly asked authorities and conservation agencies for assistance in tackling this problem, which is beyond their capacity to address. Intervention in the form of more coherent enforcement of regulations, more clear progress on natural resource management, as well as an increased focus on empowering and involving communities in these, are all urgently needed.

The unique natural and cultural characteristics of the area will remain its greatest opportunity for socio-economic development in the foreseeable future. In order to make possible local development that benefits all people in the area without compromising resource sustainability, the area must become more closely connected to outside markets, for sale of products such as from fisheries or local manufacturing, for attracting tourists and development capital, and for providing opportunities to build capacity and increase livelihoods development and specialization. This could e.g. allow taking a cautious approach to development, targeting specific niche markets such as high-end, low impact tourism, or sustainably farmed seafood, but must be coupled with sound planning and management.

Lastly, continued commitment to improved education in the area and empowerment of people to participate in and indeed become drivers of conservation as well as development are fundamental to sustainable development in the long term.

## 1. Introduction

Sustainable use of biodiversity has significant links to human wellbeing and poverty reduction. More than 10 years after the 1992 Rio Declaration on Environment and Development, demographic trends, health epidemics and the pressing need to reduce poverty have strained natural resources and threatened to greatly diminish the world's collective biodiversity. These trends have serious implications not only for future poverty reduction and development, but also for the health and wellbeing of the human population today.

In Africa, millions of people depend heavily on the continent's genetic, species and eco-system diversity to support their livelihoods. This biodiversity contributes both directly and indirectly to human health and nutrition. The direct contribution of biodiversity is seen as an invaluable source of food through fisheries and through ecosystem services.

Some 30 million people live in the coastal region of the Western Indian Ocean, many highly dependent on its marine resources and having a significant impact on resource status. A majority of these coastal communities are categorised as living at or below national poverty lines. In Kenya poverty appears to be strongly linked with fishing communities, with the highest poverty prevalence in the country of 62-63% (2000 national statistics) in the Coast Province.

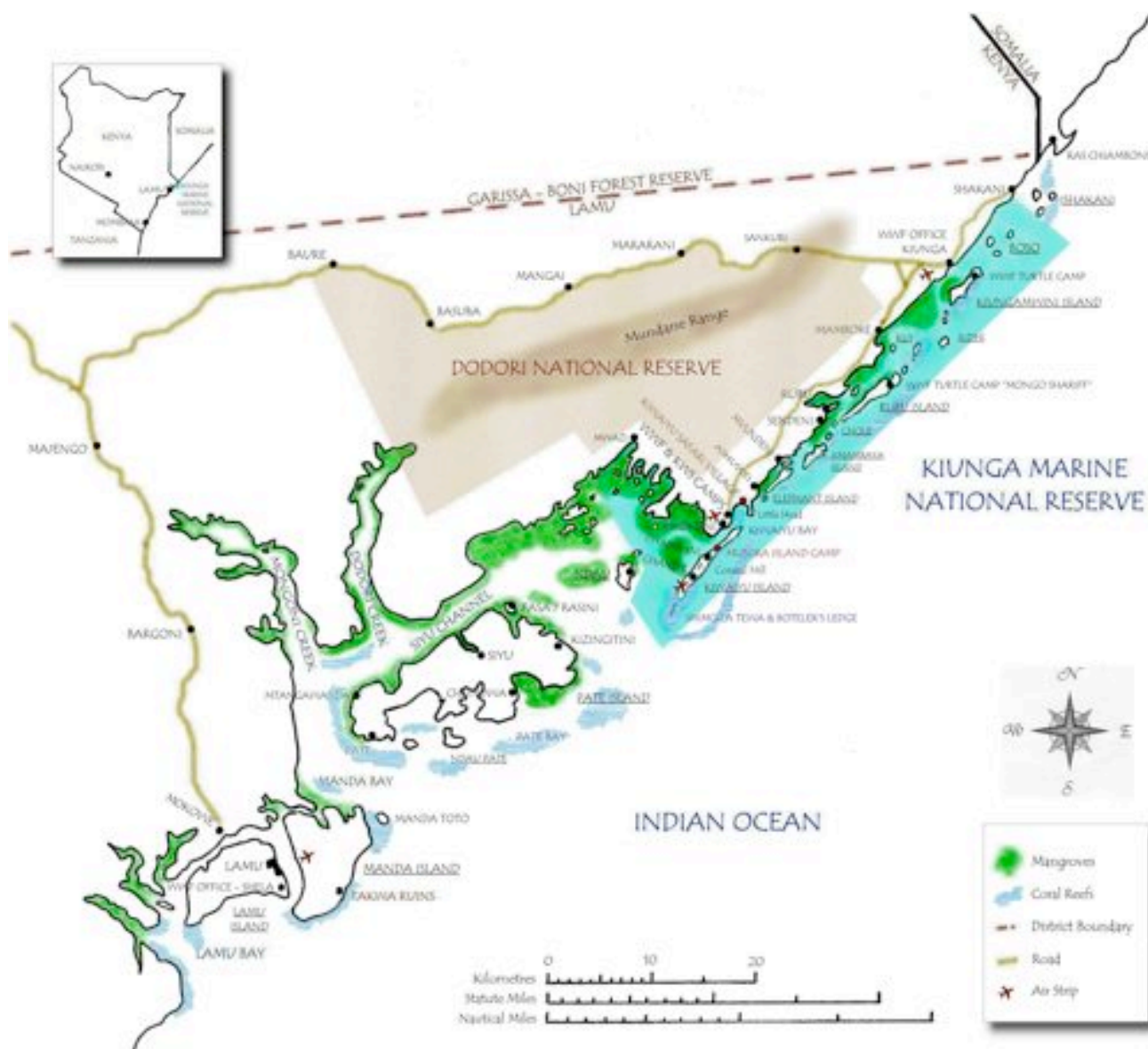
Over-fishing and destructive fishing techniques that cause habitat destruction, coupled with a rising population are of increasing concern in East Africa (Obura 2005, Weru 2007). These unsustainable practices are embedded in poverty and continue because poverty reduction strategies are failing in coastal communities in East Africa. Further, coastal communities remain disempowered in terms of having ownership over the marine resources they exploit, which remain common pool.

The link between improving the health of the marine environment and improving coastal people's livelihoods has not been quantified in East Africa (Samoilys and Church 2004), and national poverty alleviation strategies tend to neglect the importance of natural resources in peoples' livelihoods. However, it is clear that reduction of poverty through sustainable livelihood development, which in turn helps maintain biodiversity and improve conservation strategies (Ireland et al 2004, Harrison 2005), is a pressing theme that requires careful analysis, community consultation, and integration of cross-sectoral planning and management. The many marine resource management initiatives implemented in Kenya over the last 15 years have generated a considerable amount of information and know how as well as community institutions and infrastructure, but in spite of this success has been limited in terms of poverty alleviation and improved natural resource health (Kenya poverty statistics 2000, Obura 2005).

In this study we ask how dependent coastal communities are on marine resources, and what effect conservation and natural resource management has had on coastal peoples' socio-economic development, in order to understand the bottlenecks to good governance of common pool marine resources and poverty reduction in coastal communities. The study is also designed to identify locally appropriate mechanisms for enhancing and diversifying livelihoods for fishing communities. The Kiunga area in northern Kenya was chosen as a case study because of considerable conservation and management intervention in the area over time. A similar study has also been carried out in Tanga, Tanzania, with results presented in a separate report (Samoilys and Kanyange 2008).

### 1.1 Study location

The Kiunga area is located in the northernmost part of the Kenyan coast, bordering Somalia in the north and stretching to the Lamu archipelago in the south (Figure 1). It is characterised by a hot and humid climate with rainfall of around 500mm per year. There are three natural reserves within the area, two terrestrial and one marine. The terrestrial reserves Doodori and Boni were declared a UNESCO Biosphere Reserve in 1980 (Church and Palin 2003). Kiunga Marine National Reserve (KMNR), gazetted in 1979 under



**Figure 1.** The Kiunga area (Source: WWF East Africa Regional Programme Office).

the Wildlife Conservation and Management act (1976) comprises a primary fishing ground for communities living in the area and from as far south as Lamu.

The location of KMNR at the convergence of the nutrient rich and cool Somali counter current and the East African Coastal Current makes the area highly productive. Patch reefs, seagrass beds, and extensive mangrove forest together combine to form interdependent bio-complex ecosystems that support high densities of marine fauna. The coral reefs of the KMNR and the Bajun Archipelago are, unlike the continuous fringing reef of southern Kenya or the extensive reef systems of Tanzania and northern Mozambique, marginal and not well formed due to the influence of upwelling (Church and Obura 2004). Nevertheless, at least in the past they have supported high densities of large predatory reef fishes, crustaceans such as lobster, and sharks (Samoilys 1988; Fielding and Everett 2000; Obura 2000; WWF 2001). Undisturbed sand dunes and beaches provide good habitat for turtle breeding, while some marine mammals such as dolphins, whales and dugongs reside in the waters for breeding and feeding (Church and Obura 2005). Mangroves provide habitat for the mangrove crab and birds, and a breeding ground for some fish species and crustaceans. These resources, specifically fishes, crustaceans and other invertebrates, are important for the artisanal, subsistence and semi-commercial fisheries within and around KMNR (Olendo and Weru 2006).

The coastal people of Kiunga, consisting of predominantly the Boni and the Bajun, are among the most remote and marginalised communities on Kenya's coast. The primary livelihoods of the Bajun are fishing and harvesting of marine resources, as well as household level farming. The Boni people, traditionally hunter-gatherers, are dependent on the reserves in the area for hunting and fishing as well as mangrove cutting, although their economy now relies more heavily on small scale farming and honey harvesting (Church and Obura 2004; Church and Palin 2003). Other income generating activities in the region include mat weaving, lime making, coral block cutting for construction and shell collection (Gubelman and Kavu 1996). The estimated population of Bajun and Boni people is now over 30000 and 4000 respectively (Weru in prep.).

## **1.2 Marine conservation, resource management and community development**

Factors that restrict community development and contribute to unsustainable resource use cited include inadequate fresh water supply, insecurity, in large part due to the proximity to Somalia, poor infrastructure, lack of employment, and lack of incentives for sustainable utilisation of natural resources (Gubelman and Kavu 1996). Threats to marine resources include overfishing, exploitation of endangered species such as the critically endangered turtle and dugongs, global warming, and the El Niño phenomenon (Mwaluma 2003). The state of the world report by MacDonald and Nierenberg (2003) cited Kiunga as an example of the ways in which people are transforming Earth's natural systems by intensifying their use of resources in an effort to meet their needs.

Management of the Reserves in the area is the responsibility of Kenya Wildlife Service (KWS), a parastatal organization, with technical assistance provided by WWF. District level authorities in the area include the Fisheries and Forestry departments. Several non-governmental institutions operate in the area in collaboration with the national institutions, such as the Coastal Ocean Research and Development in the Indian Ocean (CORDIO) programme, and recently (2004) a community-based organisation, the Kibodo Trust, was established.

Despite the number of institutions and programmes in Kiunga region, having run separately or in collaboration for over 10 years, the socio-economic status of the local people has apparently not improved significantly, and may even be declining (pers.obs., Weru pers. comm.). Fisheries remain unsustainable (Olendo and Weru 2006). WWF (2001) identified issues such as inadequate capacity to enforce rules and regulations, lack of development policies in conservation objectives, lack of institutional coordination, conflicting interest and market failures as contributing to difficulties in managing marine resources. In addition, access rights to coastal land and sea as well as conflict between users, notably private tourism operators, government and local communities, is said to have become an issue (pers.obs.). Population growth and rising local and international demand for marine and terrestrial products, combined with decreasing stocks elsewhere in Kenya, are together taking their toll on the unique resources in KMNR that have supported local communities for centuries, putting a time limit on their traditional ways of life (Weru in prep.).

## **1.3 Study objectives**

This study set out to examine resource use and development issues in Kiunga, in order to understand what constrains sustainable development in the area. The study asked local communities for their perceptions on these issues to provide a first hand community view on the importance of marine resources in their lives, what they perceive the problems are, and how they would like to engage in addressing them. Existing information on the link between coastal peoples' livelihoods and marine resource management was compiled, with a particular focus on fisheries, and past work on livelihood enhancement and associated capacity building, empowerment and participatory approaches to marine resource management in the area was analysed.

Special attention was paid to the semi-commercial invertebrate fisheries associated with this area, particularly lobster and crab, as well as shark, mollusc and sea cucumber fisheries. Attention was also paid to the level and extent of involvement of the local community in the management of their marine resources and whether there are any user conflicts, particularly in relation to marine resource access.

## 2. Methods

The study was conducted in February 2008 covering seven coastal villages: Mkokoni, Mvundeni, Rubu, Kiunga and Ishakani on the mainland, and Kiwayu cha ndani and Kiwayu cha nje villages on Kiwayu Island. Mwambore village on the mainland has been completely abandoned due to banditry attacks in the 1970s. Residents sought refuge in Kiunga village and have never returned to Mwambore. The isolated and sparsely populated Ishakani, Rubu and Mvundeni villages were also abandoned following similar attacks but villagers have slowly returned since the early 1990s following improvement in security.

The study employed three methods: i) a literature review of recent publications and reports; ii) meetings with managers and key government officials, including village heads, KWS, Fisheries Department, WWF, and a tourism operator (Appendix 1); and iii) a mix of focus group discussions and individual key informant interviews with 5-6 people in each village in KMNR (Appendix 2) using a semi-structured interview with set questions. These group and individual discussions are hereafter referred to as focus group discussions (FGDs). Focus groups were divided into two: i) village community based organization (CBO) representatives and village chiefs/headmen; and ii) fishers, representing five fishery types of concern, namely lobster, shark, mangrove crab, sea cucumber and cowrie shells.

**Photo:** Kiunga village meeting.



The literature search and analysis and the general discussions with key managers and government officials were primarily designed to answer the following three questions:

1. What is the level of dependence of local communities on marine resources?
2. What are the benefits to local communities from conservation and management initiatives?
3. What are the key issues/problems associated with fisheries in the area?

Village focus groups comprised representatives from the fishery types being investigated as well as those engaged in conservation and management activities, brought together with facilitation from Kibodo Trust village representatives in each village. The following questions were put to the focus groups:

1. What is the current status of each fishery?
2. What is the perceived level of exploitation comparing with the past?
3. How much does a fisherman catch and earn each fishing day? How does this compare with the past?
4. Have catches increased or decreased? Why?
5. Do the earnings provide an adequate income?
6. Where are the markets for each type of fishery?
7. How are the prices dictated?
8. What can be done to improve the fishery?
9. Are you involved in the management/co-management of the fishery and/or other natural resources? What co-management activities exist in the area?
10. What benefits do you get from conservation?
11. How is the community involved in tourism?

Analyses of the information gleaned comprised assessing changes in livelihood patterns by examining changes in catch rates and market prices for the important fishery types, and making comparisons across villages in terms of community responses to questions posed. Trends in fish catch based on reports from fishers as well as published information were also analysed using Statistica 6.0 software. Both survey and analysis were framed in view of outputs and recommendations from the national coastal community lessons learning workshop held in Kilifi in December 2007 (Becha 2008, see section 3.5 below).

### 3. Results and Discussion

In this section we present aspects of the state of the marine resources and the natural environment of KMNR and the socio-economic status of the local people and their livelihoods, and assess how they are linked within the context of three management and development approaches employed in Kiunga: 1. Conservation and resource management programmes (e.g. protection of resources, fisheries management); 2. Co-management (e.g. participatory approaches, community empowerment and related capacity building); and 3. Alternative Income Generating activities (AIGs).

Section 3.1 contains an assessment of the state of the key fisheries based on information obtained from fisher interviews and the literature. In section 3.2 we present and discuss conservation and management programmes. While not strictly a conservation or management programme, we include here a brief synthesis of the tourism operators in Kiunga Marine National Reserve because their objectives are in line with conservation and management, and they have socio-economic impacts on local communities. This is followed by information obtained on co-management approaches in section 3.3. In section 3.4 we present information on AIGs. Section 3.5 summarises the key recommendations from the national coastal communities lessons learning workshop held in Kilifi in December 2007 (see Becha 2008).

### 3.1 Fisheries

Fishing by local communities in the area is subsistence, artisanal and semi-commercial, employing simple vessels and gears, and fishing within mangroves and lagoons as well as the open sea, though not usually beyond the fore-reef. Non-powered canoes, wind propelled dhows and traditional gears are in common use as the acquisition of motorised vessels and modern gear is difficult for most fishers for financial reasons. In one village, Mvundeni, all fishing is done on foot and there are no fishing vessels, thereby restricting fishing time and fishing in deeper waters.

The artisanal/subsistence fishery depends entirely on coral reef fishes such as parrot fishes, wrasses, emperors, snappers, and in some instances pelagic fish including kingfish, dorado, tunas etc. Sharks and invertebrates (lobster, crabs, sea cucumbers) form semi-commercial fisheries and are unique to this area, compared to southern Kenya where these fisheries are less developed (in some instances depleted) and fin-fish are the major part of the coastal fisheries. Despite their importance in the area, shark and invertebrate fisheries are not well documented, except for lobster, which has received reasonable attention due to its high value.

Generally it was found that majority of the population was dependent almost entirely on fishing, with 100% of the adult population dependent on fishing in Ishakani and Rubu villages (Table 1). These are among the smallest villages in the Kiunga area, with less than 50 inhabitants each. The largest village, Kiunga/Mwambore has a total population of 2,800.

Fishers are neither fully involved in fishing throughout the year, nor are they, with some exceptions, highly specialised. During the low fishing season (the rough southeast monsoon during April-August) the majority are engaged in small-scale farming. The rest of the year is spent fishing, and depending on the ability and interest of the fisher many species can be targeted using different gears. However, high specialisation was found in shell collection, which is predominantly practiced by women. Sea cucumber collection, shark and crab fishing were also found to be more specialised than lobster fishing.

The communities in the area expressed strong concern over large commercial offshore fishing vessels operating near to shore, with e.g. purse seiners reported to damage the benthic substrate, including corals, while catching fish as well as sea turtles. Dead turtles frequently wash up on the beaches. According to people interviewed the vessels come close to shore at night and attract fish using bright lights, which may also pose high risk to turtle hatchlings by disorienting them.

These fleets consist of long liners, purse seiners and trollers (District Fisheries Department, Lamu), mostly foreign vessels licensed to fish in Kenya's Exclusive Economic Zone (EEZ), although some are illegally operating without licenses, as occurs in much of Somalia's EEZ (Samoilys et al 2007a). Such commercial vessels are not allowed

**Table 1.** Numbers of fishers in the Kiunga area, based on village level focus group discussions, February 2008.

Village	Total pop.	Adult pop.	No. of fishers
Mkokoni	1200		100
Kiwayu cha ndani	150		15
Kiwayu cha nje	500	280	
Kiunga and Mwambore	2800		300
Ishakani	15	10	10
Rubu	40	30	30
Mvundeni	25		10

to fish within Kenya's 12nm territorial waters, but this is not enforced due to inadequate resources in the Fisheries Department, which has few effective patrol vessels, although the department claims to closely monitor the situation in collaboration with the Navy. Local communities report that vessels are still frequently present, and complain that action is rarely taken by the authorities in response to their reports. It is however also said that the American Navy have been stationed in the Kiunga area over the last 1-2 years and this has been every effective at deterring the large commercial fishing vessels.

Focus group discussion findings for each of the key fisheries addressed in this study are presented in the following sections.

The information is also summarised by fishery type and village in Tables 2 and 3. Distinct differences between villages were few but are noted.

### 3.1.1 Sea cucumber collection

Sea cucumber (beche de mer) trade in Kenya can be traced back to 1900 through fragmented records (Muthiga et al. 2007). Within less than a quarter of a century, there was already concern for over-fishing, and the sea cucumber fishery in Kenya is now considered under threat of over-exploitation (Muthiga and Ndirangu 2000). Sea cucumber harvesting is regulated by the Department of Fisheries and a special license is required. Collection of undersize beche de mer is prohibited under the Fisheries Act (Government of Kenya 1991), though "undersize" is not defined. Collection within marine National Parks is not allowed under the Wildlife Act (Government of Kenya 1976).

Collection is optimised at night as during the day sea cucumbers seek refuge mainly in channels, tidal pools and beneath sea grasses to avoid desiccation. Fishermen in KMNR reported current catches of between 7 and 25 pieces/fisher/day (Table 2). Muthiga and Ndirangu (2000) reported 12 to 30 pieces/fisher/day in Gazi, southern Kenya. Prices depend on the grade (species and length). According to collectors from Rubu, in the last seven years there has been an increase in price of 17 % per kilo of 1st grade sea cucumbers, while catch rates have decreased by 67%. Change in sand dynamics in the channels was cited as one of the reasons leading to decline in catches, while it was generally consented that the number of collectors has increased.

### 3.1.2 Shark fishery

Shark fishing through set gill nets (jarife) has been in practice for many decades. Shark catch rates have declined dramatically over the last 40 years, in the order of 85% (Table 2, Figure 2), but prices have not increased significantly, except for shark fin (Table 4).

The trade in shark fins dates back to the 1960s, or even earlier according to some fishermen interviewed. Shark fins, used in shark fin soup, are considered a delicacy in Asia, and this market has escalated in recent years. A saleable amount of shark fin, c.10kg dry weight, may take a fisher up to a year to accumulate, as it

**Table 2.** Fishers' perceptions of fisheries in the Kiunga area, from village focus group discussions, February 2008. Changes in catch per unit effort. A fishing event is the time a fisher goes out fishing, from departure to return to the landing site (it may exceed one day depending on the soak time of the gear, e.g. nets). Catch rates are provided from the past (years variable, as indicated) and present (2008), as reported by fishermen. Not all fisheries were represented in each village.

	Mkokoni	Kiwayu cha ndani	Mvundeni	Rubu	Mwambore/Kiunga	Ishakani
<b>Lobster</b>						
Past	10-15 (1998)	20-25 (2000)	3-5 (2003)	20-30 (1998)	5-20 (1995)	
Present	0.5-5 (2008)	2-3 (2008)	1-3 (2008)	0-8 (2008)	0-10 (2008)	
<b>Shark</b>						
Past			10-12 (2001)	10 (1980s)	20-40 (1970s)	10 (1950s)
Present			2-3 (2008)	0-2 (2008)	1-2 (2008)	1-2 (2008)
<b>Crab</b>						
Past		10 (1990s)	15-20 (1980s)			
Present		2-5 (2008)	0-10 (2008)			
<b>Sea cucumber</b>						
Past			6-17 (2004)	25-40 (2001)		
Present			7-11 (2008)	11-25 (2008)		
<b>Cowrie shells</b>						
Past			20-30 (1998)		200-300 (1980s)	200 (1970s)
Present			0-10 (2008)		50-100 (2008)	20 (2008)



**Table 3.** Fishers' perceptions of fisheries in the Kiunga area, from village focus group discussions.

Village	Mkokoni	Kiwayu cha ndani	Mvundeni	Rubu	Mwambore/ Kiunga	Ishakani
<i>Economic sustainability of fisheries</i>						
Lobster	not sustainable		a few months in a year	a few months in a year	a few months in a year	not always sustainable
Shark			not always sustainable	not sustainable	not sustainable	not sustainable
Crab		not sustainable				
Sea cucumber			not always sustainable	not always sustainable		
Cowries			not sustainable		not sustainable	not sustainable
<i>Perceived reasons for catch decline</i>						
Lobster	Tsunami		increased no. of lobster fishermen	increased no. of lobster fishermen; change in weather conditions	el Niño; tsunami; red tide; dumping*; foreign fishing vessels	el Niño; tsunami; red tide; dumping*; foreign fishing vessels; SCUBA fishers from Somalia
Shark		el Niño; red tide; foreign fishing vessels	foreign fishing vessels	el Niño; tsunami; red tide; foreign fishing vessels; fishermen from Kizingitini	el Niño; tsunami; red tide; dumping*; oil exploration	el Niño; tsunami; red tide; dumping*; oil exploration
Crab			too many crab fishermen			
Sea cucumber			increase in sand cover	increase in sand cover		
Cowries			changes in sand dynamics		sea urchin infestation; increased no. of collectors	increased sea urchin infestation
<i>Proposed solutions/responses to declining catches</i>						
Lobster	AIGs; closed areas or seasons; enforce legislation		provide fishing gear; improve transport	improve market chain, transport and communication	eliminate SCUBA fishers from Somalia; lobster aggregating devices; AIGs	provide fishing gear
Shark		provide fishing gear	provide fishing gear; AIGs		provide offshore fishing vessels	provide fishing gear, offshore vessels
Crab			coordinate fishers; rotational closures			
Sea cucumber			AIGs			
Cowries			provide market		provide market	provide market

**Table 4.** Price comparisons for the major fishery types in the Kiunga area in the last decade (in KES per kg, except for sea cucumber and cowries, in KES per piece).

Fishery	1998	2008
Lobster	300	700
Shark	100	120
Shark fin*	200	4,700
Mixed fish	5	40
Crab	-	250
Sea cucumber	-	2,500
Tiger cowries	0.7	1

requires fins from around 150 sharks. However, shark fins can fetch a high price depending on the grade, and ten kilogrammes of high-grade fins is worth at least KES 35,000 (approx. USD 555, Table 4). It should be noted that sharks landed are used fully, with e.g. liver oils applied to treat wooden boats and the meat often salted and dried, and shark is not fished purely for the fins.

### 3.1.3 Cowrie and shell collection

Cowries have been used for various reasons for millennia, including as currency as well as for decoration. A marine shell discovered in Tsavo National Park in 2003 was dated to between 1305 and 1425 years BP, concurring with the period of early development of Swahili civilisation in the Indian Ocean (Akuma 2003; Chapurukha 1999). Today, cowries are used primarily for decoration in homes, public places and for jewellery.

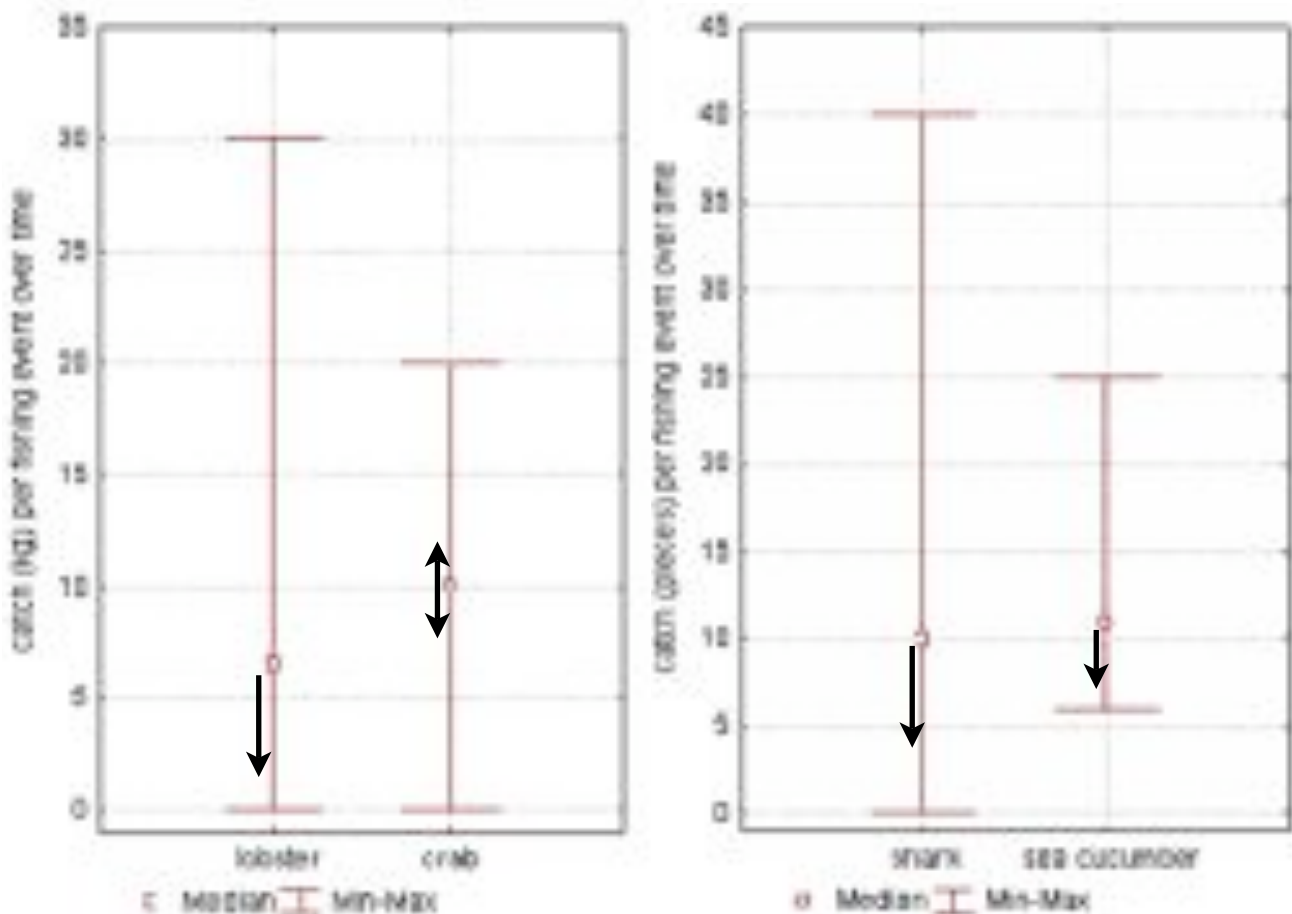
The collection of cowrie and other mollusc shells is an important income generating activity in Kiunga, especially for women (IUCN 2004), but e.g. lobster fishers may also collect cowries while searching for lobster. Small cowries (*Cypraea annulus*) are threaded on string as necklaces while individual tiger cowries (*Cypraea tigris*) are sold directly to dealers or tourists.

No specific license is required for shell collection, and there are no restrictions on national trade. However trade in some molluscs is banned or regulated by international law, especially the endangered giant triton, and there has been significant awareness campaigns over the last 30 years to reduce the trade. Some tourist companies have launched environmental programmes to discourage tourists from buying shells and shell products to promote responsible tourism.

In previous years when there was an open international trade in shells and stocks were abundant, collectors made a living out of it. In the last half century, a collector could collect 200 shells in a day worth c. KES 200,

**Photo:** Jarife fisherman and shark fins at Ishakani village.





**Figure 2.** Range in catch per fisherman per fishing event and trend over time (indicated by arrows), for lobster (over the past 13 yrs), crab (28 yrs), and shark (68 yrs) in kg, and number of sea cucumbers (7 yrs), based on values given by fishers in focus group discussions, February 2008. The box and whisker plot illustrates the range in catch rates given for the entire period between 1960 and 2008, and the median catch. The position of the median value relative to the reported present catch rates, represented by low catches, was used as an indicator of the direction of shift in catch rate over time. Thus a median value closer to the present catch rates implies a shift from high to low catch rates. Catch rates appear to be declining, as indicated by the arrows, except for crab where data were not adequate to reveal trends. Note that fishermen may experience zero catches, except with sea cucumber.

compared to the current normal daily collection of 30 shells worth only KES 30. In 1993, 70.7 metric tons of cowrie shells were collected in Kiunga, worth only KES 85,820 (Gubelman and Kavuu 1996).

Prices of tiger cowries in KMNR have remained roughly the same over the last 15 years (Table 4). Similarly, the price of cowrie chains has not changed significantly, although this could have been expected in view of the reduction in numbers collected and in view of inflation. Additionally, due to lack of an established marketing strategy, there are few buyers and they often fail to turn up for as long as a month. This suggests that shell collection trade is the economically least viable livelihood in the fishery sector within the Kiunga area.

### 3.1.4 Lobster fishery

The Kiunga area is renowned for its lobster, but the fishery is generally perceived to be over-exploited. A study conducted by the Oceanographic Research Institute (ORI) in 1999 in KMNR stated that the fishery was probably fully exploited, with mean densities of lobster similar to those of other exploited tropical lobster fisheries around the world (Fielding and Everett 2000). Catch per unit effort measured during that study (1999) was on average 0.5 kg per fisher per day, which is similar to the catches reported today (Table

2), but significantly lower than catches 10 years ago as reported by fishers in focus group discussions (up to 30kg per fisher per day, 1995/8, Table 2). Information obtained in this study suggests a decline of c 50% in catch rates in the last 13 years, depending on the season (Figure 2, Table 2), and coupled with the findings of Fielding and Everett (2000) is cause for concern.

Although a special license is required for lobster fishing, and the taking of berried (females with eggs) and undersized (<0.25kg) lobsters is banned, adequate protection is lacking, mainly due to lack of reliable monitoring data, lack of compliance by the lobster fishers and inadequate enforcement. While fishermen recognise the need to protect berried females and young lobsters, irresponsible fishermen continue to catch them, undermining the fishery.

In the last 10 years, live lobster prices have increased by c. 70% (Table 4). Frozen lobster prices ten years ago were even lower at 10% of current live prices. Increased demand has led to the entry of more dealers in live lobster onto the market and, together with a decrease in stocks, contributed to the price increase. Dealers in live lobster, reported to operate from Malindi, dictate the prices at which fishers sell their catch. They often visit landing sites for two to four weeks, gathering lobsters in cages, grading them and ferrying them to distribution centres in either Malindi or Lamu.

There is no doubt that the earnings of lobster fishers in the Kiunga area have generally decreased in spite of price increases, while effort in terms of fisher number and time spent fishing has increased. While some fishers concede that the perceived decrease in catch rates is at least in part due to an increased fishing effort, most associated it with the following:

- 1998 El Niño phenomenon that resulted in coral bleaching and mass mortality, affecting lobster population dynamics;
- 2004 tsunami that destroyed both lobster habitats and breeding grounds, and led to increased turbidity;
- General change in the state of the ocean, perhaps global warming;
- Poachers from neighboring Somalia collecting lobster illegally using SCUBA;
- Coral disturbance following incursion into the fore reef by foreign commercial fishing vessels; and
- Recent oil exploration that has disturbed habitats by drilling and noise

**Photo:** Lobster cage and berried female at Mkokoni village.



### 3.1.5 Mangrove crab fishery

Mangrove crab fishing is an important livelihood along the Kenyan coast, especially in Kiunga where the highest density of mangroves is found. However, data on the fishery is scarce. The crab market is not well established compared to that of lobsters, and fishers sell their catch mainly to nearby tourist resorts as buyers from Lamu are unreliable and transport is difficult.

Fishermen reported decreased catch rates of around 50% over the last 20 years (Table 2, Figure 2), with a price increase of 86%. However, prices have remained almost unchanged in the last two years, while catch rates have continued to decline. Fishers cited having to travel longer distances to find crabs as an example. Consequently, in the last 10 years, earnings have dropped by half (from KES 1000 to KES 500 per day) and zero catches are now common (Table 2, 3 and 4).

Focus group discussions largely attributed this decline to increased numbers of fishers (Table 2), but also mismanagement. Crab fishing requires a special license from the Fisheries Department, and fishing of <0.5kg and berried crabs is not allowed. Unfortunately, adequate monitoring and documentation is lacking. Those interviewed seemed to be aware of these regulations, even the ones operating without a license. In view of the high number of crab fishers in KMNR, fishers suggested a closed rotational system of management. This would require strong cooperation among fishers, which would in turn require strong coordination by the Fisheries Department and Kenya Wildlife Service.

### 3.1.6 Summary findings from fisher interviews

Both catch rates and income from the targeted resources of lobsters, sharks, crabs and shells were reported to be on the decrease. In the case of sea cucumbers an increased price compensates somewhat for reduced catch rates, making it an economically viable fishery, although not throughout the year. Consequently sea cucumbers are collected in most villages. A dramatic increase in lobster prices in the last five years has been accompanied by increased fishing effort and reduced catch rates, and the fishery now seems over-exploited. Shell collection, once an important income earner especially for women, is now the least viable livelihood option in the fishery sector in the Kiunga area.

Fishers reported varied reasons for the dwindling stocks for each of the fisheries, the primary ones being increased fishing effort (fisher and vessel numbers), degradation related to the 1998 El Niño phenomenon, a red tide in 2003 and the 2004 tsunami, as well as increasingly rough sea conditions.

Fishers perceived fishery declines were largely beyond their control and they would prefer to either venture further out to sea to target different fishery resources, or shift to other income generating ventures. There were some calls for improved management, particularly enforcement of Fisheries Regulations by the Fisheries Department, but on the whole this was not a major recommendation, and due to declining earnings, fishers called for intervention in alternative livelihood activities. This suggests fishers in KMNR do not perceive KWS and Fisheries Department interventions as a crucial way of ensuring their fisheries are managed sustainably.

Notably, fishers in the KMNR did not report conflict over resource use. They did state that fishers from further south, particularly Kizingitini on Pate Island, were the main reason for the increase in fishing pressure in KMNR in the last decade. However, they did not imply that these fishers had no right to fish in the KMNR. In fact, fishers from the whole Lamu archipelago have traditionally fished in the KMNR for centuries (Ali Mwachui, pers. comm.), and Kizingitini is renowned as a large centre of fishers in the region.

## **3.2 Conservation and management programmes**

WWF's KMNR Conservation and Development Project is the largest programme in the area, having been active in Kiunga since 1995 through a wide range of marine conservation initiatives. The project focuses on

“establishing institutional and regulatory frameworks for effective management of KMNR, strengthening management operations, collecting and analysing information on ecological, economic and social trends to inform management, ensuring all community stakeholders fully participate in conserving marine resources, and facilitating government agencies to support communities’ sustainable use of KMNR resources as well as exploring livelihood improvement options” (Weru 2007).

On-going initiatives that impact on marine resources in Kiunga, mainly focusing on conservation, research, health, capacity building, education and general community development are presented below. Their role and impact on local communities is also discussed.

### 3.2.1 Education and awareness

The education and awareness programme of WWF covers environment and conservation, in partnership with CORDIO, Wildlife Clubs of Kenya, Watamu Turtle Watch, Ministry of Education and KWS. Students, pupils and the local community have been involved in various environmental awareness and education activities. Nine environmental clubs have been established in schools around KNMR that deal with, among other things, tree planting and waste management (Adam 2007). In 2006 WWF supported the participation of ten students in a two week eco-holiday activity training programme, which included turtle nest monitoring and patrols, underwater surveys, mangrove identification, ecosystem walks and beach clean ups (Adam 2007). During the same year, teachers from Kiunga region were involved in a provincial coastal training programme facilitated by CORDIO where teachers were trained in environmental education and teaching methodologies. In 2007, 23 students benefited from a 50% fee subsidy by WWF’s scholarship programme that targets the top two students from each village. WWF also assisted in printing and distribution of education material to over 1,534 students within the KNMR (Weru 2007). The community continues to benefit through training on natural resource management, delivered as a package that includes health and other issues of concern.

Despite considerable support to education, especially among the youth, it is still not clear to the community who is the beneficiary (Max 2002). There was no doubt that some village members interviewed during the current study fully appreciated the school education support by WWF, yet others did not cite them at all. Max (2002) further pointed out that fishers’ perceptions of the WWF initiatives in general are not well documented and need further review. Assessing the impacts of education programmes associated with environmental conservation, and inputs to school curricula is not easy (Mzava et al 2007) and requires standardised monitoring to assess change in peoples’ behaviour in the long term, which is often beyond the scope of conservation programmes.

**Photo:** Ishakani village near the Somali border.



### 3.2.2 Sea turtle conservation initiative

The sea turtle conservation programme was initiated in February 1997 by WWF involving local communities, visitors, government departments and international institutions, following continued extraction of turtles by the local communities (Church and Palin 2003). The programme is a member of the Kenya Sea Turtle Conservation Committee (KESCOM) and its focus is on conservation of the critically endangered turtles and community education. A carefully selected youth team is responsible for monitoring and patrols. However, the initiative is faced with many challenges such as inadequate funding and lack of an enabling institutional and policy framework for youth patrols and monitoring.

Turtle protection was first encouraged through compensatory fees. Initially, a fee of KES 500 was given for sighting a nesting turtle, and KES 20 for nursing the eggs and hatchlings. WWF sent field patrols to verify the reports before paying the fees. The intention was that once community support for turtle protection was well established the fees would be gradually reduced and then removed. By 2004 fees had been reduced to KES 200 and KES 5 respectively, a move some villagers are not happy about. However, incentive payments are planned to be withdrawn completely through a community youth turtle ecotourism initiative implemented jointly by WWF and KWS.

The sustainability of compensatory conservation initiatives is always problematic, though may be the only solution to start with in such impoverished communities, and when linked to other income generating initiatives as in this case, can be very successful. WWF cite an increase in the number of brooding turtle sightings reported by the villagers in the year 2007. Many of the interviewed villagers expressed commitment to turtle conservation even if no compensation is available. One fisherman mentioned that turtle trapping for consumption no longer takes place, and when asked for his priority recommendation he requested a clean marine environment to avoid turtles eating plastic rubbish. Several villagers expressed concern over the by-catch of turtles by offshore foreign fishing vessels (purse seiners), stating that their turtle conservation efforts were being undone and the Fisheries Department were not acting to keep these vessels out of Kenya's territorial waters.

### 3.2.3 Coral reef, fish, lobster and invertebrate monitoring programme

Following mass bleaching of coral reefs in the Indian Ocean in 1998, a collaborative environmental and resource status monitoring project was initiated in KMNR in 1999 by WWF, KWS and CORDIO (Church and Obura 2004). WWF also commissioned ORI of South Africa to assess lobster populations, fishery status and to train a local team to monitor the fishery. Indicators were agreed and monitoring is still ongoing, carried out by scientific staff, project and government officers and fishers, in collaboration with the Department of Fisheries.

Community involvement in research activities by WWF, CORDIO and KWS has on the whole been limited because of the scientific nature of the work, and because much of the survey work is conducted on SCUBA, both of which require significant training. However, several fishers have remained involved in the programme since the inception. Some fishers mentioned one of the key lessons from their participation in the coral reef monitoring programme was learning about coral cover changes and the broader implications of coral bleaching.

Despite this long term research programme and the information it provides, effective management of marine resources in the KMNR is hampered by a lack of clearly defined reserve regulations and limited management activity on the ground (Church and Obura 2004).

### 3.2.4 Gear exchange programme

A fishing gear exchange programme was initiated in 2003 by WWF, in collaboration with the Fisheries Department and with funding through the Vodaphone Group Foundation. Fishermen were given gill nets (jarife) on loan after surrendering illegal gears, primarily beach seines (juya) and mosquito nets (Weru 2007, Weru pers. comm.). The programme focussed mainly on communities south of the Reserve in Kizingitini,

Faza and Pate, because most fishers using illegal gears are from these islands. About 290 fishermen benefited from the programme.

However, there have been several challenges. Fishermen report illegal gears are still being used and several have not paid back their loans received in association with gear exchanges. In addition, complaints were heard from some villages, especially Kiunga/Mwambore and Kiwayu cha nje about being excluded or given the wrong gears. These results are not surprising considering gear exchange programmes are invariably fraught with problems and difficult to manage, their impact is difficult to measure, and they are rarely successful as a fisheries management initiative (Samoilys et al 2007b).

### 3.2.5 Kibodo Trust

Kibodo Trust was established in 2004 and seeks to help conserve the Kiunga Marine National Reserve, Boni Forest Reserve and Dodori National Reserve, while improving the standard of living of the people in the area. Activities focus on capacity building and initiation of alternative livelihoods strategies for the Boni and Bajuni communities currently dependent on natural resources. Kibodo has the potential to fill a vacuum in the area of social, support and advocacy services that will be particularly important as the area opens up to development.

The Trust works in collaboration with KWS, CORDIO and WWF and has recently run village elections to appoint community representatives throughout the region. Kibodo is now installing a radio transmitter for use within the region, in response to poor communication infrastructure. Villagers are expecting to use the facility to enhance marketing of their products, among other benefits.

### 3.2.6 Private tourism operators

There are two main resorts in KMNR, Kiwayu Safari Village (KSV) near Mkokoni and Munira on Kiwayu Island. KSV was established in 1974 and has a bed capacity of 60 beds, Munira in 1992 with a bed capacity of 25. There are no other substantial tourist lodges in the region, though there is a small lodge in Kiwayu village (3-4 bed capacity) and a small eco-lodge in Mkokoni village (8 beds) owned and run by one of the villagers.

The resorts provide casual employment to local people, a market for lobsters, crabs and fish, and also emergency transport and health service, especially during illness and rescue operations of capsized or distressed boats. Munira has assisted in classroom construction in Kiwayu cha ndani village, where only lower primary school education is available. Plans are underway to construct a water-harvesting tank (jabia) in the village.

Public relations of the tourist operators are not always good, and years of antagonism between KSV and Mkokoni villagers was reported, though it was stated that this has now disappeared under the new management of the lodge. Kiwayu cha ndani villagers indicated that they wanted more benefits, especially in securing jobs, pointing out that all the skilled jobs went to outsiders who then rented houses in their village. They did however recognise that their inadequate education and skills for hotel work was an issue. Notably, none of the villagers interviewed in Kiwayu cha ndani mentioned Munira's contribution to building the classroom or the jabia.

### 3.2.7 Conclusions on management and conservation programmes

Many villagers, but not all, appreciated the benefits they received from WWF's various community programmes such as improvements in their education and health. There was no mention that WWF's or KWS's conservation and natural resource management programmes have improved the status of the fishery resources, and very few villagers stated that they had benefited from the presence of WWF and KWS in terms of improvements in their fisheries, even though these are their primary source of income. The only stakeholder who clearly stated a benefit in this regard was the tourism operator at Munira, who said that the presence of KWS had greatly improved the state of the marine resources and this was of great benefit to



**Table 5.** Village perceptions of comanagement.

	Mkokoni	Kiwayu cha ndani	Kiwayu cha nje	Mvundeni	Rubu	Mwambore/Kiunga	Ishakani
Co-management activity	WWF turtle conservation KWS tour to Malindi and Shimoni	WWF turtle conservation	WWF turtle conservation	WWF turtle conservation	WWF turtle conservation	KWS tour to Malindi and Shimoni	no active involvement
Benefits from conservation initiatives	cleaner beach	no benefits	WWF school fee subsidy program	cleaner beach	cleaner beach	no tangible benefits	no benefits
Community involvement in tourism	20 casual workers at tourist lodge	one person involved in tour guiding at tourist lodge	14 casual workers at two tourist lodges; tour guiding during peak season	no tourist activity	no tourist activity	occasional tourist visits	no tourist activity

tourism. This finding indicates that local communities appear to view conservation efforts as somewhat separate to their primary livelihoods of fisheries and not directly benefiting them, except through side programmes such as education and health. Direct benefits to the community from the participatory environmental and resource monitoring programmes were considered minimal, though there was a perception that the work was important for the management of the area.

Community support for turtle conservation was very high, even without incentives, indicating the programme has been very successful as a conservation measure, and suggesting villagers do now view turtles an important resource to be protected. This is now being built on further through developing turtle watching eco-tourism. However, this success is likely to be diminished if the by-catch of turtles from offshore foreign fishing vessels is not addressed as a matter of priority by the Fisheries Department, in partnership with KWS.

### 3.3 Comanagement

Collaborative management in Kiunga region has met with many challenges that still remain today. The key issue is that the communities living within the Reserve are highly dependent on marine resources, yet largely living at or below the poverty line. They therefore see themselves as marginalised by government and without authority, especially since natural resource management in Kenya has a history of top-down approaches. Communities tend therefore to be suspicious of the relatively recent co-management initiatives. No tangible benefits specifically associated with co-management initiatives were reported, and most villagers cited the conservation programmes as the beneficiaries (Table 5, see also section 3.2).

#### 3.3.1 Natural resource management policy

Over the last decade there has been a shift in policy both within government (KWS and Fisheries Department) and within large conservation agencies such as WWF, towards a much more participatory approach to conservation and management. The recent Fisheries legislation on locally established Beach Management Units (Government of Kenya, 2007) is an example of this.

The Environmental Management and Coordination Act (Sec 42, Part v, Government of Kenya 1999), while providing for special guidelines for access to and exploitation of living and non-living resources in the continental shelf, territorial sea and the Exclusive Economic Zone, emphasises that the interests of the people surrounding these resources shall be safeguarded. The draft Wildlife policy (Government of Kenya 2007b), although largely limited to protected areas including no-take zones, recognises the need to establish collaborative management arrangements and joint ventures that enhance local community and private sector involvement in management. Currently there is no policy or concession requiring contribution of any kind from parks and reserves revenue to the neighbourhood.

In response to these shifts in policy KWS has formed a co-management team in KMNR, comprising of three representatives from each village in the Reserve, and representation from WWF, tourism operators and the Kibodo Trust. Team members have been taken for a learning tour to Malindi, Shimoni and Baringo National Parks and Reserves. However, villagers felt it was not clear how the community will benefit from this initiative and lamented that no specific criteria were followed to elect the representatives, insisting prior consultation before further arrangements were put in place.

### 3.3.2 Beach Management Units

The Beach Management Unit (BMU) concept was borrowed from Lake Victoria fisheries management with the aim of improving fisheries resource management by incorporating the prime stakeholders into a management unit comprising of an assembly, executive committee and a sub-committee (Oluoch 2006). The subsidiary regulations were passed in 2007 after much consultation. The objectives of the BMUs are many, but include effective fisheries management including compliance with regulations, alleviation of poverty, and sustainable development of the fishery sector.

The Fisheries Department oversees the running of the units by approving management plans as a means of broadening stakeholder participation in fisheries management. The Department is also, though with limited financial and technical capacity, providing training to BMU members. Among the stipulated responsibilities of BMUs are resolving user conflicts, field patrols, ensuring a healthy fishing and landing environment, data collection, enumerating by-laws, ensuring safety in the ocean, control of illegal gears and fishing, protection of breeding sites and maintenance of high fish quality standards.

**Photo:** Focus group discussion.



One of the problems with the BMUs as currently defined in the legislation, reflecting their design for lake fisheries rather than marine fisheries, is that a BMU is meant to be established for each landing station, although there is provision for one BMU to be established for two or more landing sites. This small spatial scale focus at the landing site, which usually equates with a village, is problematic since fishing grounds are open access and fishers from several neighbouring villages may fish the same resources in the same fishing grounds. There is therefore great potential for conflict between different BMUs trying to manage the same area and the same resources. This was clearly illustrated in a long-running fisheries management project in Tanga, Tanzania, which chose to steer away from a village level approach to fisheries management in favor of “Collaborative Management Areas” (CMAs) comprising the “home fishing grounds” shared by a group of fishers (Wells et al 2007, a,b). Already, fishermen around Kiunga Marine National Reserve are under pressure from relatively well-off fishermen from Kizingitini who also fish in the Reserve. It will be essential that BMUs established in the Kiunga area cover several landing sites and involve as members residents from nearby villages who fish in the area covered by the BMU. Another approach might be to establish BMUs by fishery rather than by landing site, but coordination mechanisms between bodies would need to be sound.

The Fisheries Department-led process of establishing BMUs in the Kiunga area has not been smooth. The Department has tried to encourage fisher support through donations of out-board engines, disbursed to Kiunga, Kizingitini, Faza and Lamu with the assumption that fishermen will fit them onto their vessels for use. The Fisheries Department is also calling for assistance from private and non-governmental institutions to help in BMU establishment and management, and WWF has initiated a five-year programme in partnership with the Department.

The focus group discussions revealed that the community still perceives the BMUs as being another arm of government administration, and they are suspicious. Training and further consultation is ongoing to instill a sense of ownership, with the main focus on the formation of by-laws harmonised across different areas to see to common interests and reduce sources of conflict. Other challenges such as sustainability are being looked into. Eventually, when BMUs are fully instituted, management of marine resources is expected to improve significantly.

### 3.3.3 Land access

Villagers in the KMNR still do not own the land they live on in spite of promises from the government to address this. The government initiated a land programme in the early 1990s to give villagers title deeds, but to date this has not eventuated. There is also a lack of recognition of territorial user rights by the government of Kenya. As much as fishers would want to control resource extraction within their area, fishing is still an open access activity, and considered thus by the government – the well-known “tragedy of the commons”. Thus 'poor' fishers still remain vulnerable to exploitation by the 'richer' ones, and all have little incentive to manage their fishery resources properly. It is hoped that the BMU concept can be adapted to address this significant issue in the artisanal fisheries of Kiunga.

## **3.4 Alternative Income Generating Activities**

In recognition of the increasing human pressure on limited marine resources, some alternative income generating (AIG) activities have been carried out in the Kiunga area, and more are being initiated. For example, in 2007 KWS donated a commuter ferry to Mkokoni Women’s Group to aid its welfare activities. The ferry is now making regular trips from Mkokoni to Lamu, though not daily due to the low number of commuting passengers. However, to date there are few AIGs in the Kiunga area that have made a substantial impact on the village communities.

Projects presently under discussion will venture into eco-tourism, horticulture and mariculture. The senior chief of Mkokoni village has already successfully approached the National Agriculture and Livestock Extension Programme (NALEP), Ministry of Agriculture and Livestock Development, to train people in semi-arid horticulture. Through the chief and other collaborators, a proposal has been submitted to a donor,

which, if successful, will establish agribusiness, and mariculture as well as eco-tourism projects such as prawn and butterfly farms, game drives and mangrove boardwalks. In addition, CORDIO, in partnership with Kibodo Trust is developing a proposal to test the feasibility of aquaculture in the region, and Kibodo Trust has recently started a community development programme.

### 3.4.1 Eco-Friendly handicraft project

The Eco-friendly handicrafts project was started by WWF in 1997, with funding from the Integrated Conservation and Development Project. The project focuses on gender sensitive conservation; habitat, environmental health and waste management; and fisheries management (Flintan 2002). Flip-flops washed up on beaches are collected by youth and women and transformed into creative artefacts such as key rings, necklaces, bracelets, curtains, cushions and mosaic pictures. Several artists, both women and men, are involved, operating from their homes on Kiwayu Island and in Mkokoni village. Products are sold locally, regionally and internationally, through various channels including private companies (e.g. UniquEco Designs Ltd) and WWF and its partners such as the Kenya Gatsby Trust.

The project is one of the few alternative livelihood projects that appears to be successful from a business perspective, and has genuinely brought additional income to participants, notably women, in two villages. Many of the villagers cited this as a positive introduction from WWF and villages currently not involved expressed a wish to engage. However, some marketing and market access constraints remain.

## **3.5 National coastal community lessons learning workshop**

A national coastal community lessons learning workshop was held in Kilifi, Kenya, between 17 and 19 December 2007 (Becha 2008). The workshop brought together 26 participants from 24 community-based organisations in Kenya, representing a diversity of interests including resource user groups, advocacy and lobby groups, women's groups, conservation and resource management groups as well as alternative livelihood and income generating initiatives.

**Photo:** Flip-flop handicraft in Kiwayu cha ndani.



The workshop sought to develop a vision and strategies for a sustainable future, by putting forward concrete recommendations on improving marine resource management and enhancing the environmental and financial sustainability of livelihoods. Key recommendations are summarised below (Becha 2008):

1. The government should institute a review of all laws and policies with a bearing on marine and coastal resources in order to harmonise them and minimise contradictions, conflicts and overlapping institutional mandates.
2. Laws and policies should be written and disseminated in Kiswahili, a language a majority of the fisherfolk and local communities can read and comprehend.
3. All encroachment and illegally acquired fish landing sites and public beach land should be repossessed, surveyed, gazetted and placed under the title of the Fisheries Department for public utility.
4. Mechanisms should be established to ensure local communities play a significant role in management of Marine Protected Areas. At the same time the economic benefits of these protected areas should be ploughed back into local communities.
5. Emerging community managed marine areas should be recognised and given appropriate legal mandate.
6. Capacity building in community-based marine tourism via training and skills development should be made available through a government development fund.
7. The community should be actively involved in policy formulation through functional grassroots and national fisherfolk networks like the Kenya Marine Forum.
8. The annual budget allocation for the Ministry of Livestock and Fisheries should be increased and equitably shared between the Livestock and Fisheries sectors.
9. Studies should be commissioned as a matter of priority to demonstrate that good fisheries legislation and management is economically linked to poverty alleviation and improvement in coastal peoples' livelihood.

Only one representative from the Kiunga area (from Kiwayu cha nje) was present throughout the workshop, and therefore some of the issues in that area may have not been captured well in the national workshop. Nevertheless, the issues leading to the nine recommendations above were touched on in the focus group discussions conducted in the Kiunga area, and we conclude that the communities from Kiunga would support these recommendations. Those that were not discussed in any detail and therefore could not be assigned as representative of issues in Kiunga are 1, 7 and 8.

## 4. Conclusions and Recommendations

Management and conservation interventions by different institutions in KMNR have impacted positively on the lives of the people living in Kiunga, primarily through providing health, education and transport services. However, the socioeconomic status of the people has improved little. The reasons for this are manifold, including the remoteness of the area, very moderate infrastructural development over the past two decades, and the low connectivity with external markets this entails.

With little development in the region the people living in KMNR are still highly dependent on natural resources for their livelihoods, predominantly fishing: 95-100% dependency in terms of income was recorded. However, fisher catch rates and earnings are declining, apparently due to a deteriorating resource status caused by a number of stresses, both local, such as increasing human populations, overfishing and destructive fishing, and external, such as climate change related effects. Existing management initiatives in the area have in spite of many successes failed to turn the negative trend in resource status and income from fisheries. Co-management initiatives are still relatively recent and have yet to reap tangible benefits in terms of improved fisheries management and improved livelihoods.

It is clear that the links between natural resource health and local livelihoods, income and indeed overall quality of life are very direct. However, it is also clear that both the people in the Kiunga area and its

environment, as well as the relationship between them, are highly impacted by processes on national and global levels. This includes e.g. mechanized ships fishing illegally in near shore areas, changes in markets and commodity prices, legal and policy developments, as well as a changing climate. Solutions to the problems facing the people in the Kiunga area thus need to be sought locally as well as nationally and regionally.

Considering the high levels of poverty and dependence on natural resources, alternative income generating activities now need to be vigorously pursued as a development strategy. The area has enormous wealth in terms of eco-tourism as it has very high aesthetic value due to the minimal development and highly diverse ecosystems. Existing tourism ventures are undertaken by private investors who provide casual jobs and other crucial services, but community based eco-tourism has not yet become established. This is an area that requires input and support, including empowering the local population e.g. through addressing land tenure, as well as providing necessary capacity building and access to financing schemes.

The Kiunga region sustains some important and valuable fisheries, notably the lobster and mangrove crab. With strong regulatory control, better participatory management through effective BMUs that target these fisheries and effort reduction, the fisheries could be both sustainable and productive in the long term. This would ensure that fisheries also in the future would constitute an important source of income to the region, and traditional livelihoods would be maintained. Efforts already underway seek to address this, but will require consistent input and facilitation, and must operate in conjunction with e.g. the type of AIG schemes mentioned above.

Lastly, in order to make possible significant gains to the local population while improving environmental sustainability of livelihoods, connectivity between the Kiunga area and outside markets, whether national in the case of much of the marine produce, or international in the case of tourism and handicrafts, must be strengthened. This involves facilitating market access and promoting business linkages, as well as improving communication infrastructure, including telecommunication. The unique natural and cultural characteristics of the area will remain its greatest strength also in a “new” economy, and stand to benefit its people in the long term through higher socioeconomic development and higher environmental sustainability.

**Photo:** Beach at Kiunga village.



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## Appendix 1. Focus group discussion representatives by village

### Ishakani

Mwalimu Tajiri  
Athman Mmadi  
Mohamed Athman  
Ahmed Athman  
Nyashee Abdalla  
Mwanahalima Mwanaheri  
Juba Mohamed (Kibodo rep)

### Kiunga

Bahero Lali  
Mahadhi Omari  
Fakii Shelali  
Lali Bakupi  
Yusuf Mahadhei  
Somor Juma  
Lali Kombo (Kibodo rep)

### Kiwayu cha ndani

Athman Bakari  
Hamisi Malau  
Mzee Athman  
Dulo Bashola  
Haji Mohamed (Headman)  
Mwanahawa Bwanafae (Kibodo rep)  
Hadija Mohamed

### Kiwayu cha nje

Shally Shee (Headman)  
Mohamed Kombo  
Haroun Juma  
Abdul Mohamed  
Tima Bunu  
Halma Mohamed  
Mwanabule  
Umi Mohamed  
Ali Shali

### Mkokoni

Bwana Athmani  
Bakari Bwana  
Sale Mohamed  
Mohamed Sabiri (Kibodo rep)  
Mohamed Hassan  
Mohamed Aboud (Snr. Chief Mkokoni)

### Mvundeni

Salim Mohamed  
Abudi Athmani  
Bwana Ibahero  
Bashore Lacho  
Asha Omari  
Ali Fumo (Kibodo rep)

### Mwambore

About Harun  
Kassim Athman  
Ali Mohamed  
F. Ali  
Issa Titi  
Hidaya Amin  
Shebana Bwanakombo  
Muhasham Famau (Kibodo rep)

### Rubu

Mohamed Obo  
Mohamed Faru  
Aroi Kale  
Ahamed S. Kombo  
Shebana Bwanakombo  
Swadiki Athman (Kibodo rep)

## Appendix 2. Key stakeholders and government officials consulted

- Mr. Sam Weru, Kiunga Project Executant and Marine Coordinator, WWF, Nairobi
- Mr. Simon Komu, District Fisheries Officer, Lamu
- Mr. Ali Mwachui, Assistant Manager, WWF
- Mr. Sugow Ali, Deputy Senior Warden, Lamu
- Mr. Mike Kennedy, Director, Munira resort, Kiwayu

## IUCN, International Union for Conservation of Nature

Founded in 1948, IUCN brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: over 1000 members in all, spread across some 140 countries.

As a Union, IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.

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IUCN Eastern and Southern Africa Regional Office 2008



**Annex 68**

“Kenya Marine Fisheries and Socio-Economic Development Project (KEMFSED)  
(P163980) - Combined Project Information Documents / Integrated Safeguards  
Datasheet (PID/ISDS)”, *The World Bank*, 25 April 2019



# Combined Project Information Documents / Integrated Safeguards Datasheet (PID/ISDS)

Appraisal Stage | Date Prepared/Updated: 07-Aug-2019 | Report No: PIDISDSA25275



**BASIC INFORMATION**

**A. Basic Project Data**

Country Kenya	Project ID P163980	Project Name Kenya Marine Fisheries and Socio-Economic Development Project (KEMFSED)	Parent Project ID (if any)
Region AFRICA	Estimated Appraisal Date 19-Aug-2019	Estimated Board Date 19-Nov-2019	Practice Area (Lead) Environment & Natural Resources
Financing Instrument Investment Project Financing	Borrower(s) The Republic of Kenya	Implementing Agency Ministry of Agriculture, Livestock, Fisheries and Irrigation	

Proposed Development Objective(s)

The Project Development Objective is to improve management of priority fisheries and mariculture and increase access to complementary livelihood activities in coastal communities.

Components

- Component 1 - Governance and Management of Marine Fisheries
- Component 2 - Coastal Community Empowerment and Livelihoods
- Component 3 - Project Management, and Monitoring and Evaluation

**PROJECT FINANCING DATA (US\$, Millions)**

**SUMMARY**

<b>Total Project Cost</b>	100.00
<b>Total Financing</b>	100.00
<b>of which IBRD/IDA</b>	100.00
<b>Financing Gap</b>	0.00

**DETAILS**

**World Bank Group Financing**



International Development Association (IDA)	100.00
IDA Credit	100.00

#### Environmental Assessment Category

B-Partial Assessment

#### Decision

The review did authorize the team to appraise and negotiate

Other Decision (as needed)

## B. Introduction and Context

### Country Context

1. **A lower middle-income country since 2012, Kenya has experienced steady economic growth and declining poverty incidence, but inequality remains high.** GDP growth is projected at 5.8 and 6.0 percent in 2019 and 2020, respectively.<sup>1</sup> Following a brief slowdown in 2017 (4.8 percent), growth has been supported by a strong rebound in agricultural output, steadily recovering industrial activity, and still robust performance in the services sector. While poverty in Kenya is below the average in Sub-Saharan Africa, still about 1 in 3 people live below the international poverty line (US\$1.90 per day in 2011 PPP). Kenya's Human Development Index value for 2017 is 0.590, which put the country in the medium human development category—positioning it at 142 out of 189 countries and territories.<sup>2</sup>

2. **Kenya Vision 2030, the country's development blueprint, has set ambitious targets of transforming Kenya into a newly industrialized, globally competitive, middle-income country.** The long-term agenda, which is being implemented through successive five-year medium-term plans, has three pillars: an economic pillar that aims to achieve GDP growth of 10 percent per annum; a social and environmental pillar that aims to build a society enjoying equitable social development in a clean and secure environment; and a political pillar that aims to build a people-centered, results-oriented, accountable democratic political system. Promoting equal opportunities across the entire Kenyan territory is key to realizing this vision.

3. **One of the most ambitious changes to the governance system has been Kenya's devolution or decentralization, brought about by the 2010 Constitution and prioritized in the Second Medium-Term Plan (2013-2017).**<sup>3</sup> To narrow the deeply entrenched regional disparities and to increase government responsiveness, responsibility, and decision-making, resources and revenue generation are being transferred from the central to the local level of public authority. Under a devolved structure, county governments are envisaged to play the

<sup>1</sup> World Bank (2018). *Kenya Economic Update: In search of fiscal space - Government spending and taxation: Who benefits?* Edition No. 18.

<sup>2</sup> [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/KEN.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/KEN.pdf)

<sup>3</sup> Transition to Devolved Government (Transfer of Assets and Liabilities) Regulations, 2013.



primary on-the-ground role in delivering services, while the national government retains a policy-making, regulatory, and research role. In the fisheries sector, most of its functions are devolved to the county level, however, concurrent functions are the shared responsibility of more than one level of government. At the coastal level, beach managements units<sup>4</sup> (BMUs) play a crucial role, and the government's Fisheries BMU Regulation of 2007 has changed the perception of ownership of the resource—from a top-down government driven approach, to a co-management approach - with the natural resource considered a common property for present and future generations.

#### Sectoral and Institutional Context

**4. Kenya's marine fisheries are of strategic value given the role of the sector in supporting livelihoods and contributing to food security.** Kenya has a coastline of 640km on the Western Indian Ocean, in addition to a further 200 nautical miles Exclusive Economic Zone (EEZ) under Kenyan jurisdiction. For rural coastal communities, small-scale fishing is essential to overall household well-being, providing both income and nutrient-rich food, especially since the decline in coastal tourism in recent years due to security concerns. In 2016, the marine fisheries sector employed about 27,000 fishers, including 13,000 artisanal fishers.<sup>5</sup> The number of people supported indirectly by the sector as traders, processors, input suppliers, merchants of fishing accessories, or providers of related services, is considered much higher.<sup>6</sup> However, fishing-related activities, especially at the community level, are largely informal and dynamic, hence accurate figures are difficult to obtain. In addition, fish is a critical source of affordable animal protein<sup>7</sup> for consumption, particularly for coastal communities, and the sector is important for the preservation of culture and national heritage, including related industries such as tourism, and for recreational purposes.

**5. The Government of Kenya (GoK) recognizes the value of its marine resources, and the need for more effective management and protection.** The Second Medium-Term Plan (2013-2017) identifies the agriculture, livestock, and fisheries sector as a priority sector, and highlights the importance of the country's marine resources and fisheries for local employment, income generation, and livelihoods of coastal communities. Efforts to harness the fisheries potential and protect the country's fish stocks by establishing measures and enforcing fishing regulations and more effective management was identified as critical.

**6. The Government's Big Four Agenda,<sup>8</sup> which underpins the Third Medium-Term Plan (2018-2022), confirms Kenya's commitment to leveraging emerging opportunities in the Blue Economy.** The GoK has prioritized the blue economy as a key pillar of its Vision 2030 development agenda. Recent estimates suggest that the annual economic value of goods and services in Kenya's blue economy could be worth approximately

<sup>4</sup> See sub-component 1.2 and Box 1.

<sup>5</sup> UNEP-Nairobi Convention and WIOMSA (2015). The Regional State of the Coast Report: Western Indian Ocean. UNEP and WIOMSA, Nairobi, Kenya.

<sup>6</sup> An estimated two million people are supported directly and indirectly by the overall fisheries sector, as fishers, traders, processors, input suppliers, merchants of fishing accessories, or providers of related services. CISP and KENWEB (2018). *Women of the Blue Economy. Gender Equity and Participation in the Management of Water Resources: Lessons from the Coast of Kenya and Somalia*. Nairobi: CISP. Estimates for the marine fisheries sector alone do not exist.

<sup>7</sup> In November 2018 the President launched an 'eat more fish' campaign aimed at encouraging Kenyans to increase dietary intake of fish

<sup>8</sup> The current administration's 'Big Four' includes: i) Enhancing Manufacturing, ii) Food Security and Nutrition, iii) Universal Health Coverage; and iv) Affordable Housing (see Official Website of the President of Kenya- <http://www.president.go.ke/>).



US\$4.4 billion, beating the tourism sector share by more than US\$1.4 billion.<sup>9</sup> Blue Economy as a term emerged in Kenya in May 2016, when the GoK renamed its then State Department of Fisheries to the State Department for Fisheries and the Blue Economy,<sup>10</sup> and established a Blue Economy Committee. The 2016 Fisheries Management and Development Act (FMDA) processed key regulatory and policy changes<sup>11</sup>, and Kenya has become a leading country in Africa, in promoting sustainable blue economic development. In November 2018, Kenya hosted a high-level Global Conference on Sustainable Blue Economy, with the main theme of delivering on the UN's 2030 Agenda for Sustainable Development through a transition to a Blue Economy that is inclusive, sustainable and prosperous. The President pledged i) to adopt appropriate policies, strategies and mechanisms to harness the blue economy that will create job opportunities; ii) tackle waste management and plastic pollution; iii) ensure responsible fishing; and iv) ensure safety and security in the high seas.

7. **Kenya's marine fisheries are mostly artisanal and subsistence in nature.** It is estimated that approximately 80 percent of the total marine products come from coastal waters and reefs, while 20 percent is from offshore fishing. The artisanal sector is characterized by small crafts propelled by sail, outboard motors, and paddles. As such, artisanal fishers are restricted to reefs, estuaries and lagoons, and largely to near-shore waters, which host a large variety of fish species, including many small and pelagic species such as tuna, mackerels and demersal finfish, and invertebrate fisheries that include prawns, lobster and octopus. In 2016, artisanal marine fisheries production stood at about 24,000 metric tons, with demersals and pelagics dominating total landings.<sup>12</sup> Of the five coastal counties, Kilifi contributed the highest quantity of marine artisanal landings (12,211 metric tons, or 51 percent of total landings).<sup>13</sup> In comparison, total fish production in Kenya (including inland capture, marine capture, and aquaculture) amounted to about 150,000 metric tons,<sup>14</sup> with a market value of about US\$240,000 million. Contribution of the fisheries sector to the national economy is much larger when the full

<sup>9</sup> UNDP, 2018.

<sup>10</sup> Currently renamed to State Department for Fisheries, Aquaculture and the Blue Economy (SDFA&BE), under the Ministry of Agriculture, Livestock, Fisheries and Irrigation (MoALFI).

<sup>11</sup> In 2016, the Fisheries Management and Development Act, 2016, established several entities under SDFA&BE, with specific mandates to undertake functions in the fisheries sector. These entities include: i) the *Kenya Fisheries Service (KeFS)*: responsible for the conservation, management and development of Kenya's fisheries resources, development of standards and guidelines, monitor implementation of policies, provide education, awareness and support for conservation and sustainable use, etc.; ii) *Kenya Fisheries Advisory Council*: to advise the national government on fisheries policy related aspects, allocation and access to fisheries resources, intergovernmental agreements, etc.; iii) *Fish Levy Trust Fund*: with a mandate to provide supplementary funding of activities geared towards management, development and capacity building, awards and urgent mitigation to ensure sustainability of fisheries resource; and iv) *Kenya Fish Marketing Authority (KFMA)*: with a mandate to market fish and fisheries products from Kenya, enforce national fisheries trade laws and international fisheries related trade rules, ensure that Kenyan fishery products enjoy market access at local, national, regional and international levels, etc. In addition to the above, the *Kenya Marine and Fisheries Research Institute (KMFRI)* was established in 1979 as a State Corporation with a mandate to undertake research in marine and freshwater fisheries, aquaculture, environmental and ecological studies, and marine research including chemical and physical oceanography. The KEMFSED project will include technical expertise from above entities as needed during implementation.

<sup>12</sup> Production from artisanal marine fisheries was constant at about 9,000 metric tons, annually; in 2014, SDFA&BE introduced a new catch data collection methodology, which showed that catch data had been underreported. As a result, production from artisanal marine fisheries was recorded at about 23,000 metric tons, 22,000 metric tons, and 24,000 metric tons, in 2014, 2015, and 2016, respectively.

<sup>13</sup> Kwale county contributed 5,011 metric tons (or 21 percent of total landings), followed by Lamu county with 4,666 metric tons (or 19 percent), Mombasa with 1,726 metric tons (or 7 percent), and Tana River with 552 metric tons (or 2 percent).

<sup>14</sup> Ministry of Agriculture, Livestock, Fisheries and Irrigation Kenya (2016). *Fisheries Annual Statistical Bulletin 2016*. State Department for Fisheries and the Blue Economy.





value chain is considered.

8. **While fishing traditionally is a male activity, women play a substantial role in the fisheries sector, making up nearly half of the overall fisheries sector workforce.** Present throughout the value chain, women are found in harvesting, processing, marketing, trading, and leadership roles. However, persistent gender inequalities resulting from fewer educational and training opportunities, societal attitudes and cultural beliefs around gender roles, and lack of collateral and access to credit, prevent women from fully participating in economic opportunities and in decision making. Women are often limited in growing their business, particularly as producers and business owners, and few women are represented in management positions in organizations such as Beach Management Units (BMUs). A limited understanding of women's unique roles and contribution to the sector can result in a lack of recognition of their needs and interests, therefore affecting their full participation in the fisheries value chain, and more broadly sustainable development outcomes.<sup>15</sup> Kenya's gender inequality value is 0.549, ranking it 137 out of 160 countries in the 2017 index.<sup>16</sup>

9. **Weak governance has affected nearshore fisheries and has led to overexploitation and degradation.** Increased fishing effort driven by a growing population, unemployment and limited alternative livelihoods, coupled with open access to fisheries in near-shore and territorial waters and the use of destructive fishing gear (e.g., beach seines), are degrading critical marine habitats and affecting the country's fish stocks. Available fish biomass will be further undermined by rising sea temperatures, and consequently eroding coastal livelihood security. Several important nearshore stocks including small and medium pelagic species, siganids, prawns, and ornamental reef species are fully or over-exploited, and in most cases, catches are exceeding maximum sustainable yield (MSY).<sup>17</sup> Kenya has recently begun introducing management of fishing effort in the artisanal and commercial sectors by implementing measures articulated in national fisheries regulations, national fisheries management plans (FMP), and local co-management area (CMA) plans, some of which were prepared under the World Bank -financed Kenya Coastal Development Project (KCDP, P094692). However, compliance with these measures by local fishers has been limited as they are dependent on fisheries for livelihoods, with little incentive to voluntarily control fishing effort even in circumstances where it would be expected to enhance stocks and increase fisheries production.

10. **Mariculture, as an alternative to capture fisheries, has not taken root as projected, and requires investment and technical expertise.** Marine fish species that are most commonly farmed include milkfish and mullet, accounting for approximately 90 percent and 10 percent, respectively, though still at a pilot scale. Marine shellfish culture includes mud (mangrove) crabs, prawns, and artemia, also at pilot scale. Key constraining factors include inadequate availability of fingerlings, crablets and other seeds for stocking of existing or new farms; inadequate availability of affordable feed supply; poor husbandry and technical knowledge; water scarcity due

<sup>15</sup> J. Siles, et al. (2019). *Advancing Gender in the Environment: Gender in Fisheries—A Sea of Opportunities*. IUCN and USAID. Washington, USA: USAID.

<sup>16</sup> In Kenya, 23.3 percent of parliamentary seats are held by women, and 29.2 percent of adult women have reached at least a secondary level of education compared to 36.6 percent of their male counterparts. For every 100,000 live births, 510 women die from pregnancy related causes; and the adolescent birth rate is 80.5 births per 1,000 women of ages 15-19. Female participation in the labor market is 62.4 percent compared to 68.5 for men. [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/KEN.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/KEN.pdf)

<sup>17</sup> In fisheries terms, maximum sustainable yield (MSY) is the largest average catch that can be captured from a stock under existing environmental conditions. MSY aims at a balance between too much and too little harvest to keep the population at some intermediate abundance with a maximum replacement rate. Assessment of the stock was conducted through Weight of Evidence approach, Productivity Susceptibility Assessments (PSA) and knowledge experts.



to rainfall variability and other competing users; inadequate market information; and lack of accessible credit for fish farmers.

**11. The industrial marine fisheries sector is characterized by a few industrial prawn trawlers operating beyond 3 nautical miles offshore.** In 2016, a total of 544 metric tons of landed prawns were reported, with a bycatch of assorted finfish and many other species. The industrial sector also includes distant-water fishing vessels (i.e., purse-seiners and pelagic long-liners), in the exploitation of tuna and tuna-like species in Kenya's EEZ.<sup>18 19</sup> The Kenyan EEZ is adjacent to rich tuna grounds in the western Indian Ocean, with seasonally increased abundance of migrating tuna in Kenyan waters, including yellowfin, bigeye and skipjack tuna.<sup>20</sup>

**12. Industrial fishing in territorial and offshore waters faces governance challenges in the form of Illegal, Unreported, and Unregulated (IUU) fishing.** IUU activities include unauthorized targeting of fish species, failure to report data on catch and export products to the authorities, violation of regulations regarding bycatch, including discarding and shark finning. Capacity to monitor marine fisheries, especially offshore, is limited. Kenya is said to be losing up to US\$100 million annually to IUU fishing,<sup>21</sup> primarily through the activities of larger vessels operating offshore, and the elimination of IUU fishing in Kenyan waters is therefore a priority. A major step towards achieving this was initiated under the KCDP through the development of a monitoring, control, and surveillance (MCS) strategy that included the implementation of a vessel monitoring system (VMS) that is currently being used to monitor licensed foreign-flagged vessels.

**13. The economic value that Kenya generates from fish caught by licensed offshore industrial fishing vessels, primarily tuna-directed longline and purse seine vessels, is minimal and restricted to collection of license fees.** These catches are typically landed outside of Kenya and thus few Kenyans are employed in this sector. Appropriate fish landing and processing facilities are lacking, especially following the closing of Mombasa's tuna processing facility in 2013. However, new regulations now require fishing vessels to land part of their catch in Kenya, and it is also understood that Mombasa's facilities are being refurbished. Kenya expects to increase the presence of domestic operators in the industrial offshore sector, as reflected, for example, in its Tuna Fishery Strategy,<sup>22</sup> to increase domestically-generated revenues from both fishing and downstream value chain. Considering these efforts, it will be critical to ensure the sustainable use of Kenya's fisheries resources through activities such as monitoring of fish stocks and overall fishing effort, effective MCS, estimation of profitability or resource rents, and development of effective licensing/taxation regime towards sustainable generation of resource rents and their productive reinvestment into the economy.

**14. Impacts of climate change further compound the challenges faced by the marine fisheries sector.** While

<sup>18</sup> Kenya has not reported in full their EEZ landings to the Indian Ocean Tuna Commission (IOTC). Between 2016 and March 2018, Kenya issued 47 licenses to foreign and national tuna longline and purse seine vessels according to KeFS. While effort would have been in Kenyan waters, actual catches are not reported to the IOTC as Kenyan but are credited to the Flag State making the catch. This is an area of dispute by coastal states at the IOTC who bases catch on historical catch performance of the flag state only and does not recognize the catch as accruing to the coastal state when caught in the EEZ of the coastal state.

<sup>19</sup> The Exclusive Economic Zone (EEZ) is a sea zone prescribed by the United Nations Convention on the Law of the Sea (UNCLOS), over which a state has special rights regarding the exploration and use of marine resources. It stretches from 12 nm from the baseline, i.e., limit of the territorial sea, to 200 nm from the baseline.

<sup>20</sup> Indian Ocean Tuna Commission (2013). *Review of the statistical data and fishery trends for tropical tunas*. IOTC-2013-WPTT15-07\_Rev1.

<sup>21</sup> Marete (2018) in Benkenstein, A. (2018). *Prospects for the Kenyan Blue Economy*. South African Institute of International Affairs.

<sup>22</sup> Ministry of Agriculture, Livestock and Fisheries Kenya (2013). *Kenya Tuna Fisheries Development and Management Strategy, 2013-2018*. Kenya



the impacts of climate change are unequally known, both in terms of scope and severity, hazards posed by weather events and climate, such as sea level rise, extreme weather events, sea surface temperature change, or ocean acidification, will determine how and where fishing will be done. This will also reflect on the status of Kenya's coastal assets, both natural and socio-economic. Climate change can adversely affect the productivity of marine and coastal fisheries, affecting future catch levels and rates of recovery for fisheries, due to shifts in the availability of food, habitat, and appropriate ocean conditions for fish stocks. At the same time, coastal communities will be affected by shoreline erosion, floods, and extreme weather events, compounded by a lack of basic infrastructure and limited ability to adapt. Adaptation to climate change and resilience measures are needed to support the most vulnerable communities in their transition to alternative and more climate-resilient livelihoods.

### C. Relevance to Higher Level Objectives

15. **The project responds to the Gok's priorities and goals by supporting the Kenya Vision 2030, its associated Medium-Term Plans, and the Big Four Agenda with its focus on leveraging emerging opportunities in the Blue Economy.** The Second Medium-Term Plan and its objective of better protecting and harnessing the country's marine resources will be supported through activities targeted at strengthening institutional capacity to better safeguard marine fisheries and improving fisheries management and governance. One of the Big Four Agenda's focus areas is advancing the capacity and competitiveness of the manufacturing sector through leveraging emerging opportunities in the Blue Economy. The project responds to these goals by promoting the sustainable management of the country's marine fisheries resources and enhancing related livelihoods.

16. **In recognition of Kenya's ongoing devolution, the project is aligned with the county integrated development plans (CIDPs) of the coastal counties.** Through extensive consultation during the preparation process, coastal county priorities are integrated in project design, and coastal counties are not only represented in the project's implementation arrangements but will also be fully responsible for executing devolved sector functions.

17. **The project is addressing climate change impacts through risk mitigation and climate adaptation, in line with the Kenya National Adaptation Plan 2015-2030 (NAP),<sup>23</sup> the National Climate Change Action Plan 2013-2017 (NCCAP), and the National Climate Change Response Strategy (NCCRS).** During project preparation and with the support from the Global Finance for Disaster Risk Reduction (GFDRR) Fund, a climate and hazard risk assessment was carried out that identified future climate change impacts on coastal assets and communities and developed a set of adaptation measures that were integrated in the project design. The project is aligned with the NCCAP which aims to assess climate change impacts on various sectors including fisheries and develop priority adaptation actions. The project is also aligned with the NAP and identifies enhancing the resilience of the fisheries value chain as a priority adaptation action. The NAP represents the basis for the adaptation component of Kenya's Intended Nationally Determined Contribution (INDC, July 2015) that was submitted to the United National Framework Convention on Climate Change Secretariat.

18. **The project is consistent with the Kenya FY2014-2018 Country Partnership Strategy (CPS),<sup>24</sup> and the related 2017 Performance and Learning Review.<sup>25</sup>** The CPS highlights the importance of the country's coastal

<sup>23</sup> Government of Kenya (2013). National Climate Change Action Plan 2013 – 2017. Kenya

<sup>24</sup> World Bank (2014). Kenya - Country partnership strategy for the period FY2014-2018. Washington, D.C.: World Bank Group

<sup>25</sup> The Performance and Learning Review 2017 maintained the strategic objectives of the CPS and extended it to FY20



areas, and the need to support the region through financing and infrastructure. Strengthening the capacity of coastal communities towards better managing the risks stemming from climate change is also noted as a critical goal. The project responds to these goals by contributing to employment generation and improving the livelihoods of coastal communities. The project is aligned with the World Bank Gender Strategy FY16-23, by including specific interventions and avenues targeting women.

19. **The Kenya Inclusive Growth and Fiscal Management Development Policy Operation (DPO, P168204) is aligned with specific activities of the Project.** The DPO is expected to support selected priorities within GoK's medium-term plan, and accordingly, policy and institutional reforms proposed under the DPO complement other Bank-financed operations, including the KEMFSED project, that support the Big-Four agenda. Of the four reform pillars that are foundational to creating an enabling environment for the delivery of GoK's inclusive growth agenda, the pillar on enhancing farmer incomes and food security is of relevance to the Project. The DPO also complements the Project in the areas of issuing regulations for implementing the FMDA to support sustainable exploitation of fishery stocks; and on a surveillance system with up to date licensing information that will help in the reduction of IUU fishing and replenishment of fish stocks to the benefit of coastal fishers.

20. **The project contributes to the World Bank Group's twin goals of ending extreme poverty and boosting shared prosperity.** Being a marine fisheries project, the geographic scope includes the coastal sub-counties of the five counties that are riparian to the Indian Ocean. By focusing on improving the livelihoods of the poor communities, the project will provide direct support to these poor rural coastal communities by providing access to complementary livelihoods, and in parallel, engage with them to voluntarily participate in managing their dwindling resource thereby resulting in enhanced stocks and increased fisheries production. To achieve these objectives, the project design includes activities and interventions that are timely, high priority to these communities, and contribute to the poverty agenda. The coastal region includes some of the poorest counties in Kenya, with Tana River, Kwale, and Kilifi ranking among the 14 counties with highest overall poverty and food poverty incidence.<sup>26</sup> For example, Tana River, Kwale and Kilifi counties showing overall poverty headcount rates at 62.2, 47.4 and 46.4 percent respectively. Most of the coastal population relies on coastal and marine ecosystems for employment, livelihoods and nutrition, however, population growth, narrow diversity of income sources and mostly open-access fisheries has led to increased overfishing and near-depletion of fish stocks in nearshore and territorial waters. The project will strengthen the management of fisheries that are priority to coastal livelihoods, however, compliance with management measures by fishers has been limited as they rely on fisheries for livelihoods with little incentive to voluntarily control fishing effort. Provision of access to complementary livelihood activities will help in diversifying household income sources and reduce dependence on capture fisheries. Project activities related to marine fisheries governance and management are aligned with Kenya's long-term goals as outlined in its Vision 2030, i.e., transforming Kenya into a globally competitive middle-income country. Having a fisheries governance structure in place is key to supporting the sector transition towards becoming ecologically sustainable. Project activities related to better managing and conserving marine resources, reducing illegal fishing, and enhancing the value of fish products in value chains, will lay the foundation for increased sector contribution to the overall economy.

21. **The project is aligned with the criteria of the IDA18 Scale-Up Facility (SUF)<sup>27</sup> and supports priorities of the Africa region by addressing reforms in the sector through governance and management, among others.** As

<sup>26</sup> According to the Basic Report for Wellbeing in Kenya KNBS 2018, Tana River, Kwale, and Kilifi represent the 8<sup>th</sup>, 13<sup>th</sup>, and 14<sup>th</sup> poorest counties in Kenya in view of overall poverty incidence, and 7<sup>th</sup>, 14<sup>th</sup>, and 8<sup>th</sup> in view of food poverty incidence.

<sup>27</sup> Refer to Annex 2 for details on the project's financial returns.



designed, successful implementation of the project is expected to contribute to transforming the fisheries sector, the coastal ecosystem and coastal communities. Distinct aspects of the project that are transformational in nature and that will contribute to this change include: i) effective governance and management of the sector based on research, planning and measures that fishing communities adhere to that will reduce inefficiencies and help maintain a healthy stock, resulting in an improvement in socioeconomic status of the coastal communities and increase in sector contribution to the overall GDP in the long term; ii) supporting the increase in marine fisheries and mariculture related livelihood activities in coastal communities especially by better inclusion of youth and women will result in direct and indirect benefits to these groups in terms of employment and income; and iii) productive grants to coastal beneficiaries will have a direct impact on their socioeconomic status across the coastal counties.

22. **In addition to the above activities that will contribute to transforming the fisheries sector, the project links to several of the SUF soft prioritization filters as follows:**

- a) Being implemented in a coastal state, the project is integrated with the regionality elements of the fisheries sector by including activities that are aligned with the principles of the South West Indian Ocean Fisheries Governance and Shared Growth Project (SWIOFish) Program.<sup>28</sup> Since fisheries are a shared resource and are by nature migratory, the results supported by the project will *deliver benefits beyond borders*.
- b) The project supports *resilience building* in the coastal communities by supporting the establishment of a bad weather SMS alert system for fishers which will increase fishers' preparedness to extreme weather events and strengthening safety at sea.
- c) The project will also provide coastal/rural beneficiaries with basic services such as water supply and irrigation to help increase their *preparedness to potential impacts of climate change events*.

23. The proposed US\$100 million project will add about 0.1 percent of GDP to the stock of Kenya's debt. Given total debt levels are at about 55 percent of GDP, the amount added remains small and will not lead to a material deterioration in the current debt rating—which stands at moderate risk of debt distress.

### C. Proposed Development Objective(s)

Development Objective(s) (From PAD)

The Project Development Objective (PDO) is to improve management of priority fisheries and mariculture and increase access to complementary livelihood activities in coastal communities.

<sup>28</sup> The SWIOFish is a regional Bank-financed program operating in South West Indian Ocean countries including Comoros, Madagascar, Mozambique, Tanzania, Seychelles, and Maldives. Its component on enhanced regional collaboration includes Kenya among others, being an Indian Ocean coastal state. It aims at increasing the economic, social, and environmental benefits from sustainable marine fisheries. The KEMFSED project shares with SWIOFish a primary focus on improving management of priority marine fisheries and is aligned with regional aspects of SWIOFish in terms of strengthening governance in Kenya's EEZ; controlling IUU fishing through improved monitoring, control and surveillance and related training including on safety at sea; and strategic planning of national tuna fisheries and related fisheries research.



### Key Results

- 1) PDO Level Indicator #1: Fisheries management plans implemented
- 2) PDO Level Indicator #2: Proportion of nearshore waters under improved management
- 3) PDO Level Indicator #3: Annual production in mariculture by small-scale producers supported by the project
- 4) PDO Level Indicator #4: Beneficiaries in targeted coastal communities with access to complementary livelihood activities (disaggregated by sex)
- 5) PDO Level Indicator #5: Share of target beneficiaries with rating 'Satisfied' or above on project interventions (disaggregated by sex)

## D. Project Description

### Component 1: Governance and Management of Marine Fisheries (approx. US\$49.8 million)

24. Component 1 will support the GoK in strengthening governance and management of Kenya's renewable marine resource towards ensuring the long-term sustainability of fish stocks. Sustaining these resources, especially in view of Kenya's broader blue economy efforts, will result in optimizing the socio-economic benefits accrued by the GoK and the coastal communities who depend on these resources. This will be achieved through implementing several important interventions that are grouped into the following three sub-components: i) enhancing governance and management of marine fisheries within the broader blue economy; ii) improving management of nearshore fisheries; and iii) infrastructure development for fisheries management. Across the various activities, climate resilience and integrated climate and disaster risk reduction will be taken into consideration and where applicable integrated into sector policies, regulations, plans, and management tools supported by the project.

25. Governance of marine fisheries will be strengthened through an improved policy and regulatory framework, and implementation of specific measures intended to protect marine resources. Relevant national and county level plans and strategies will be developed and/or updated to help optimize fisheries and their management, as well as collection and input of fisheries data into an integrated fisheries management system that will contribute towards strengthening Kenya's broader MCS systems. Research and technical support will be targeted towards enhancing available marine resources, highlighting alternate methods to sustainably exploit fish stocks, and for mariculture development. A national governance framework for nearshore fisheries co-management will be developed and implemented that will cover approximately half of Kenya's nearshore waters. Construction of select national and county fisheries infrastructure will be supported with the aim of strengthening the management and administrative capacity of key fishery institutions and enabling private investment. Artisanal fishers' safety in the face of growing climate variability will be strengthened, and climate and disaster risk reduction aspects will be integrated into relevant plans.

26. **Sub-Component 1.1: Enhance Governance of Marine Fisheries and Blue Economy (approx. US\$15.6 million).** Sub-component 1.1 aims to optimize the use of, and increase the benefits derived from Kenya's marine fisheries within the broader blue economy, while simultaneously ensuring that the long-term sustainability of these resources is not compromised. This will be achieved through: i) strengthening fisheries policy and regulation; ii) marine spatial planning (MSP); iii) strengthening the management of priority fisheries including MCS in both nearshore and EEZ, and the research needed to support decision making.

- a) *Strengthening fisheries policy and related legislation.* Mariculture policy and regulations that will ensure



consistency with national objectives for aquaculture will be developed. These will be aligned with the ongoing devolution in Kenya, with regards to the specific roles that the national government and coastal counties play in the governance of marine fisheries. They will also ensure that growing climate change related impacts are adequately considered.

- b) *Marine spatial planning (MSP)*. Integrated environmental management harmonized with economic development, fiscal policy and social goals, is critical for Kenya to develop its blue economy effectively. Due consideration will be given to impacts of increasing climate variability and climate-related trends in oceanography. This sub-component will support a MSP process<sup>29</sup> with the following elements: developing an MSP framework, undertaking strategic environmental assessments (nearshore and offshore), and zoning of areas for specific use including establishing joint community management areas (JCMAs). The MSP process is critical for developing a sustainable and climate-resilient blue economy in Kenya.
- c) *Strengthening the management of priority fisheries*. The management of priority fisheries<sup>30</sup> will be strengthened through implementation of fishery improvement projects for selected priority fisheries incorporating activities aimed at systematically improving stocks and related ecosystems, and strengthening their climate resilience (e.g., stock assessments, spatial assessment of habitats). This will result in improved socio-economic benefits to the fisher communities. Kenya's national tuna strategy 2013-2018 will be updated to ensure a cohesive approach toward the management and development of tuna resources including consideration of climate change impacts, and the project will provide support for Kenya to fulfill its commitments to the Indian Ocean Tuna Commission (IOTC). Capacity will be strengthened toward implementing the MCS strategy developed under the KCDP. Monitoring capacity will be strengthened by enhancing Kenya's existing fisheries information management system (FIMS) so it becomes an integrated national and county-level system that will facilitate fisheries related data capture and analysis for effective decision-making – not only in support of MCS, but also as tool to improve management of the fisheries. This will also include developing alternate methods for registration, and monitoring of fishing effort including fishers, fishing boats and related gear types. Control will focus on the implementation of the regulatory conditions under which the exploitation of Kenya's marine resources is conducted. Surveillance will be strengthened through fulfilling port state measures agreement obligations, implementation of standard operating procedures, increased regional cooperation through data sharing protocols and vessel monitoring systems as well as land and sea patrols aimed at reducing IUU fishing.

27. **Sub-Component 1.2: Improve Management of Nearshore Fisheries (approx. US\$8.3 million)**. The sub-component will be undertaken in synergy with related priority fisheries stock assessments, MSP and FIMS developed under sub-component 1.1. A standardized national governance framework for nearshore fisheries co-management will be developed and implemented in approximately half of Kenya's nearshore waters, through direct engagement with at least 35 of the 85 Indian Ocean BMUs.

- a) *Formulate co-management governance framework*. All relevant activities under this sub-component will be consistent with, and in support of, implementation of the FAO Voluntary Guidelines for Small-Scale

<sup>29</sup> Roberts, Julian. 2018. Scoping Study on the Status of MSP in Kenyan Waters. GoK KEMFSED Project Preparation Study.

<sup>30</sup> Including those for snapper fisheries in the North Kenya Banks, small-scale purse seine (ringnet), small-scale line-caught tuna, shallow water prawn, octopus, and the inshore/creek basket trap



Fisheries. In support of the national governance framework for fisheries co-management, the project will support revision of the existing 2007 BMU Regulations and preparation of national co-management guidelines and BMU standard operating procedures (SOPs). Once completed, awareness-raising and training on these governance instruments will be conducted with all the 85 BMUs. The project will also support the national technical caucus on fisheries co-management and the Indian Ocean BMU network, to convene periodically towards ensuring a common approach across the five coastal counties.

b) *Establish joint co-management areas (JCMAs).*

Implementation of the national governance framework for fisheries co-management will include reviewing the two JCMA plans developed under the KCDP (Malindi-Ungwana Bay and Shimoni-Vanga) comprising a total of 21 BMUs and developing new JCMAs for two additional BMU clusters of approximately 15 BMUs. These planning processes will be participatory and consensus-driven, with facilitation by county fisheries staff and expert co-management consultants. Participatory identification of fisheries management measures will be informed by relevant analytics including fisheries resources and risk assessments, the latter including climate risks. Alongside that, BMU committees will receive training in principles of fisheries management and threat mitigation, including climate-related threats. Implementation of the JCMA plans will be supported through a program of regular mentoring by county fisheries staff and national-level oversight. There will be a specific focus on sustainable revenue-generation and financing of BMU activities, and on periodic performance monitoring of BMUs channeled to a national database which will be incorporated into the FIMS developed under component 1.1.

**Box 1: BMU, CMA, JCMA**

A beach management unit (BMU) is a community-level organization of fishers, fish traders, boat owners, fish processors and other stakeholders who traditionally depend on fisheries-related activities for their livelihoods. Duties and functions of BMUs are provided for in the 2007 *Fisheries (Beach Management Unit) Regulations*, which requires a BMU to be established at each site where fish are landed, (marine and freshwater). The primary objective of a BMU is to strengthen the management of fish-landing stations, fishery resources and the aquatic environment, in collaboration with county and national authorities. This includes collection and management of relevant data and improving fishers' safety-at-sea. The law also provides for designation of co-management areas (CMAs) and joint co-management areas (JCMAs) areas of marine or freshwater, including fishing grounds, within which BMUs may undertake fisheries management activities jointly with the Director of Fisheries and county authorities. Currently there

c) *Strengthening of BMU capacity.* Under the umbrella of developing JCMAs, BMU capacity will be strengthened in several areas, including on marine surveillance, safety-at-sea and boat handling and maintenance. BMUs clustered within joint co-management areas will be supported with boats and associated equipment suitable for nearshore surveillance activities, to detect and report non-compliance with agreed fisheries management measures, as well as provide capacity for sea rescue. Surveillance operations will be guided by BMU SOPs developed as part of the co-management governance framework, and by in-situ training provided to BMU surveillance teams. Safety-at-sea training will be provided to all BMUs along the Kenyan coast and, in addition, the project will collaborate with relevant institutions to bring weather related information to the coastal communities.

28. **Sub-Component 1.3: Infrastructure Development for Fisheries Management (approx. US\$25.9 million).**

The sub-component will include the construction of key fisheries-related infrastructure including: i) fisheries headquarters building in Nairobi, "Uvuvi House" or fisheries house, to house key entities undertaking and providing fisheries-related functions and services including the State Department of Fisheries, Aquaculture and





the Blue Economy (SDFA&BE), Kenya Fisheries Service (KeFS), Kenya Fish Marketing Authority (KFMA), Kenya Fish Levy Trust Fund and Kenya Fisheries Advisory Council; ii) with a devolved fisheries sector and coastal counties playing a key role in the execution of activities at the coastal and community level, where required, coastal county fisheries department offices and BMU offices will be upgraded or renovated as well as other fishery related infrastructure such as landing clusters, and iii) recognizing the need to strengthen the technological and skills capacity in mariculture in Kenya, construction of a national mariculture resource and training center (NAMARET) will be supported. This new facility will undertake the much-required research in fish breeding toward supplying commercial hatcheries with improved broodstock for fast and efficient production. The laboratory will support the scientific, experimental and technological requirements for a state-of-the-art system, and the training center will be used for capacity development and training of skills in mariculture. All construction or rehabilitation related works will be subject to detailed disaster and climate risk screening, to ensure that infrastructure investments are climate-resilient, and where feasible, promote green infrastructure technologies, and optimize adaptation benefits.

### **Component 2: Coastal Community Empowerment and Livelihoods (approx. US\$41.1 million)**

29. Component 2 will strengthen livelihoods in coastal communities through provision of a combination of technical and financial support. This will include demand-driven sub-projects and complementary capacity-building and training of beneficiaries. Women, youth and vulnerable and marginalized groups (VMGs) will be specifically targeted by creating opportunities along the value chain. The component will contribute to Kenya's devolution agenda by assigning the primary responsibility for execution of the sub-project cycle to the five coastal counties, and by providing the necessary institutional strengthening for county fisheries and agricultural departments to deliver improved services to coastal communities. The strategy to be supported under the component will enable poor coastal fisher and farmer households in 19 coastal sub-counties to increased access to non-fishing related livelihood activities. This holistic approach will be further pursued through the development of strategic partnerships with existing or new commercial enterprises, applying agriculture or mariculture related contract farming schemes benefitting smallholder out-growers.

30. The component will provide synergistic support to the implementation of component 1 and enable poor coastal households to comply with nearshore fisheries co-management regimes by improving their access to complementary livelihood activities and social welfare facilities. This recognizes that nearshore fisheries co-management plans are likely to contain measures where artisanal fishing effort may need to be managed, including for example establishing optimal small no-take replenishment zones while considering impacts of climate change, to secure the long-term productivity of fish stocks. While such measures are expected to enhance fisheries production and fish catches in the medium term and help mitigate the impacts of future climate variability, these may temporarily impact fishers' livelihoods in the short term. However, providing complementary livelihood activities and social welfare sub-projects will directly and indirectly benefit these households and provide incentive for compliance with such measures.

31. **Sub-Component 2.1: Enhance Coastal Community Livelihoods (approx. US\$29.1 million).** The sub-component will finance sub-projects to an estimated 20,000 eligible beneficiary households within two specific categories: i) productive or livelihood; and ii) social and environmental. Sub-projects will be targeted to informal common interest groups (CIGs) of households within eligible communities. Beneficiary groups could include existing micro-businesses that are not formally registered either as a company or cooperative. Existing VSLs could potentially be eligible to receive grants for sub-projects (livelihood and social) provided they meet the criteria as outlined in the Project Grant Manual (PGM). Both categories of grants will specifically target women, youth and



VMGs. As needed, there will be in-kind contribution from the beneficiary groups.

32. *Productive or Livelihood sub-projects* for small-scale producers organized into informal CIGs will be demand-driven, targeting both improved fisheries livelihood as well as complementary non-fishing livelihood activities, primarily in four areas: i) mariculture; ii) non-fishing livelihood activities such as crop and livestock production, petty trading etc.; iii) capture-fisheries value enhancement or reduction of post-harvest losses; and iv) adoption of sustainable practices in use of fishing gears as an alternative to gears contributing to over-fishing. Providing support to productive sub-projects will help bolster livelihood security in coastal communities, strengthen adaptive capacity to climate change impact related stresses, and enable communities to comply with nearshore fisheries co-management regimes. Livelihoods grants will not finance any activity that could potentially lead to overall increase in fishing effort, except where there is a clear justification that such increase relates to adoption of innovative gears to access under-exploited stocks or adoption of more sustainable fishing practices. Such gears could potentially enhance artisanal fishers' access to tuna and tuna-like species through pole-and-line or dropline gears, and to nearshore prawn stocks beyond standing depth. During implementation, women-headed households will be targeted based on findings from the project social assessment.<sup>31</sup>

33. Project preparation studies and engagement with stakeholders identified that communities in coastal sub-counties include households with fishers and farmers, or household members that practice both farming and fishing. To contribute towards socioeconomic development in poor coastal fishing communities, the project is designed with a holistic approach that embraces the broader rural coastal community, comprising both fishing and non-fishing households. The approach acknowledges that the livelihood status of coastal fishing households is inextricably linked to the wider economy in coastal sub-counties. Accordingly, the criteria and procedures for selection of beneficiaries of productive grants, outlined in the PGM, recognize that diversifying and boosting the broader rural economy in coastal sub-counties is a pre-requisite for diversifying opportunities in fishing households. Beneficiary identification procedures will ensure avoidance of elite capture, the application process will not present a barrier to less-advantaged households (e.g., lower income, lower education, single-parent), and households will have equal access to grant support and capacity-building. Similarly, women and women-headed households will be identified and targeted for livelihood sub-project grants and supported in preparing grant proposals. All sub-projects will be screened for financial, social and environmental sustainability, including having climate-smart design, where relevant.

34. *Innovative Productive Alliances* includes support for productive livelihood related activities that will support eligible smallholder outgrowers, through strategic partnerships with existing or new commercial agriculture or mariculture related enterprises. The strategic partnerships will provide a basis for long-term sustainability of project interventions. Farmers and fishers within four existing enterprises applying fair trade and social responsibility principles (Kutoka Ardhini, Equator Kenya, Kilifi Moringa Estates, and Che Shale) will be initially supported through funding of subprojects and technical assistance. The participation of these enterprises in the project will be governed by the PGM and a tripartite memorandum of understanding between each enterprise, the Client and the respective county government. Additional eligible enterprises would be identified and included during implementation once the required due diligence process is satisfactorily completed. This productive alliance activity specific to mariculture will benefit from the proposed NAMARET under sub-component 1.3, which will support emerging mariculture enterprises seeking to work with community outgrowers by providing training, technical demonstration and seed supply (target mariculture species could

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<sup>31</sup> A Social Assessment was conducted under the project (with PPA funding) that has informed the Vulnerable and Marginalized Groups Framework (VMGF) and the Environmental and Social Management Framework (ESMF)



include mud crab, prawns, artemia, sea cucumber and red seaweed).

35. *Social and Environmental sub-projects* will support investments that build social and environmental capital, similar to the successful Hazina ya Pwani Maendeleo (HMP) program implemented under the KCDP. Identification of social and environmental sub-projects will be demand-driven and requiring in-kind contribution from the beneficiary group where needed. For environment sub-projects requiring community participation in the form of labor (e.g., mangrove replanting, restoration, conservation and management), the beneficiaries will be remunerated. Sub-projects supported will be not-for-profit, however, it will be ensured that beneficiary groups develop mechanisms for sustainable operation of assets or activities in collaboration with existing county programs. Social subprojects would include for example, enhancement of community-level access to health, education, water and sanitation services. This will be especially useful to the VMGs who often have limited access to social services. Environment subprojects would include for example mangrove planting, activities relating to pollution reduction and improvement of solid waste management.

36. *Scholarships for formal vocational skills training and secondary school completion.* Complementing the grant schemes described above, a program of scholarship grants for youth will be implemented primarily to support formal vocational skills training including for example technical and vocational education and training (TVET), certificate or diploma courses, all lasting not more than two years. The type of training supported will be demand-driven with an aim to strengthen longer-term capacity of communities and counties to engage in, and benefit from, coastal and blue economy development, as well as increased understanding of climate change related impacts on marine and coastal resources and ecosystems. Secondary school completion will focus on those students with good academic standing who are otherwise unable to complete Form IV due to financial constraints. Identification of beneficiaries for short vocational training will be integrated with the process of identifying sub-project production grant recipients. Where possible, girls will be prioritized as beneficiaries of scholarships. The project's M&E system will include specific indicators to track progress of recipients of scholarship grants including for example, job placement, direct application of vocational skills gained, etc. during the life of the project.

37. **Sub-component 2.2: Support Services for Livelihood Enhancement and Capacity Development (approx. US\$12.0 million).** The sub-component will support technical assistance for the timely and successful implementation of all phases of the sub-project cycle described under sub-component 2.1, by providing capacity building and extension services in coastal counties. Support services for sub-project identification, preparation and delivery will be mainly provided by county technical officers and extension teams, and where applicable, in collaboration with staff from partner enterprises, and with training and quality-control by a specialist service provider. The sub-component will also support training of beneficiaries using a participatory integrated community development (PICD) approach. Services will include:

38. *Management and oversight of sub-project delivery.* County project implementation units (CPIUs) and extension teams in each of the five coastal counties will support the implementation of sub-projects related to productive, social and environmental objectives, in accordance with the PGM. The CPIU staff and consultants will assist during the sub-project cycle by providing support to extension teams: i) to raise awareness, identify beneficiaries, support sub-project application and approval processes, and provide technical assistance for subproject implementation; ii) in the development of smallholder outgrower partnerships (see paragraph 34); and, iii) in ensuring robust monitoring of sub-project implementation and in up-to-date record-keeping. The NPCU will oversee progress of sub-projects across the five counties.



39. *Community skills development.* Sectoral technical and extension staff in the five coastal counties (fisheries and agriculture) supported through a training of trainers' program, will organize delivery of demand-driven skills and micro-enterprise financial management training to beneficiaries of grants for livelihood, social and environmental sub-projects. The NPCU's training coordinator will aggregate training plans from each of the counties and annual training plans will guide the identification and selection of beneficiaries for targeted training. Affirmative selection will apply to women and VMGs. Regular technical assistance, mentoring and troubleshooting support for all grant beneficiaries will be implemented through the strengthened county extension services. This in turn will support sustainability of interventions, lesson-learning and monitoring.

### **Component 3: Project Management, and Monitoring and Evaluation (approx. US\$9.1 million)**

40. Consistent with the devolution framework, this Component will finance supplemental support for project management at both national and county levels to ensure coordinated and timely execution of project activities. It will include the establishment and operation of a NPCU within SDFA&BE (based in Nairobi and supported by a decentralized team located in Mombasa) and a county project implementing unit (CPIU) in each of the five participating coastal counties. With functions clearly defined in the PIM, these units will be responsible for project oversight, coordination and reporting; support to governance structures; financial and procurement management, external/internal audits and accounting; quality control and assurance systems; environmental and social safeguards compliance; development and implementation of a communications and stakeholder engagement plan; M&E, gender informed project implementation; and technical audits and evaluation studies as needed. The NPCU and CPIUs staff will operate from a dedicated office space for the project and will be adequately equipped to successfully perform their functions. Staff to these Units will be seconded on a full-time basis from the Ministry of Agriculture, Livestock, Fisheries and Irrigation (MoALFI) or County structures, except for those positions where the required skills are not available. The CPIUs in all five counties will also be instrumental in supporting the delivery of community-based activities within component 2. Specific roles and responsibilities, together with project protocols and procedures are detailed in the PIM.

## **E. Implementation**

### **Institutional and Implementation Arrangements**

41. The project design has taken into consideration devolution<sup>32</sup> aspects, considering that the fisheries sector is defined as partially devolved. Project implementation will be led by the national government with counties executing specific activities at the county level. Based on lessons learned and valuable experience from other Bank-financed projects (e.g., KCSAP, NARIG, WSDP) and in consultation with the GoK, the project is designed to have a simple and efficient implementation structure.

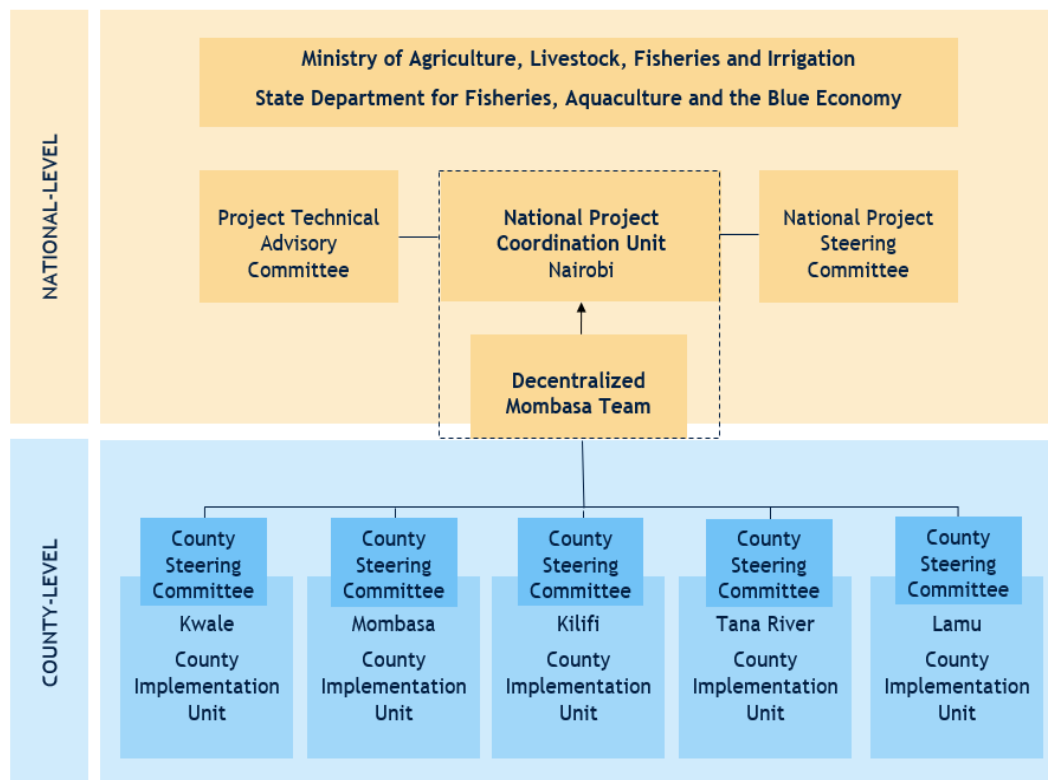
42. **National level:** The proposed project's implementing agency is the Ministry of Agriculture, Livestock, Fisheries and Irrigation (MoALFI) with its State Department for Fisheries, Aquaculture, and the Blue Economy

<sup>32</sup> Devolution in Kenya was ushered in by the 2010 Constitution and formally began in March 2013. This resulted in a shift in Kenya's institutions, as multiple powers, responsibilities, and funds have shifted from the national government to 47 elected county governments. Devolution reform seeks to tackle top-down to a more responsive, bottom-up form of government. Counties assumed responsibilities for delivering several devolved services. The fisheries sector is accepted as partially devolved, where the national and county governments have defined responsibilities, and some shared or concurrent functions.



(SDFA&BE) having the overall project implementation responsibility. Project oversight and policy guidance will be provided by a national project steering committee (NPSC),<sup>33</sup> while a project technical advisory committee (PTAC)<sup>34</sup> will be responsible for providing technical advice to the NPCU on implementation aspects.

43. A national project coordinating unit (NPCU) would be established in Nairobi to manage and coordinate project implementation activities.<sup>35</sup> Part of the NPCU functions would be decentralized to Mombasa, especially those supporting the counties for execution of community-based activities. The NPCU staff will be seconded to the project on a full-time basis by the national government, and recruitment of external staff will be done only where internal capacity is limited.



44. **County level:** The five coastal counties (Kwale, Mombasa, Kilifi, Tana River, and Lamu) would be responsible for carrying out specific activities at the county level and their engagement will be formalized through county participation agreements with the MoALFI. Each county would establish a county project steering committee (CPSC), responsible for decision making and providing oversight, and a county project implementation unit (CPIU), responsible for execution of project activities at the county level. Unless adequately justified, the composition, roles and responsibilities of these structures will be similar in all five counties. The project will provide support to each county for capacity building and institutional strengthening through a standard package of goods, equipment and training. CPIUs (through county field officers) or staff from the productive alliance

<sup>33</sup> The NPSC will be co-chaired by the Principal Secretary of SDFA&BE and the Chairman of the Agriculture Committee, Council of Governors. NPSC members will comprise of Principal Secretaries from relevant state departments of line ministries and two Governors representing participating counties.

<sup>34</sup> The PTAC will be co-chaired by the Director General of the Kenya Fisheries Service (KeFS) and the Chair of the County Executive Committee Agricultural Caucus. PTAC members will comprise directors of relevant line ministry departments, director generals of relevant government entities and representatives from the Council of Governors, private sector and civil society.

<sup>35</sup> The NPCU will be headed by the national project coordinator and staffed with coordinators for the two project components, an M&E officer, finance officer/project accountant, procurement officer, training officer, communications/public relations officer, and environmental and social safeguards officers. Other specialists will be seconded as required from relevant departments on a part-time basis.



partnerships will also provide support to communities in organizing smallholder fishing and non-fishing households into common interest groups (CIGs) for the participatory identification and preparation of livelihood, social or environmental sub-projects. Community sub-project support would be provided to beneficiaries organized into CIGs to be formed in the 19 coastal sub-counties of the five project counties. County field officers will also be responsible for identifying vulnerable and marginalized members of the community through affirmative targeting approaches. In the case of the commercial enterprises that are already engaged for participation in the productive alliances, the roles and responsibilities for the implementation of sub-projects by CIG is outlined in a tripartite Memorandum of Understanding (MoU) to be signed between the SDFA&BE, the county and each partner, prior to initiating implementation.

Additional details on national and county institutions is provided in the project implementation manual (PIM). The PIM also includes details on technical aspects of all components and activities, guidance related to data collection, M&E, supervision and reporting procedures, and the procedures to fulfil FM and procurement requirements. Documents related to environmental and social safeguards and legal agreements will be annexed to the PIM, as well as TORs for Year 1 consultancies, towards implementation readiness. Both the NPCU and CPIUs will operate as per TORs, included in the PIM. The implementation of sub-projects under component 2 will be guided by a project grant manual (PGM) which will complement the PIM by describing procedures for the sub-project cycle. The PIM and PGM will be updated as necessary during the life of the project.

#### **F. Project location and Salient physical characteristics relevant to the safeguard analysis (if known)**

Project interventions will be in the coastal sub-counties of Mombasa, Kwale, Kilifi, Tana River, and Lamu. While the exact locations of project interventions (under component 2) are not known at this stage, it is recognized that Kwale, Kilifi, Lamu and Tana River counties are home to Vulnerable and Marginalized Groups (VMGs) who meet the OP 4.10 criteria in terms of their language, culture, attachment to given lands and being subordinate to the more dominant communities among whom they live. The livelihood strategies of the VMGs within these counties range from nearshore fishing – the closer a community is located to the sea – to subsistence farming, livestock keeping and small-scale businesses, the farther a community is from the sea. Under component 1, specific location for two activities are identified at this stage—i) the national mariculture resource and training center (NAMARET) in Kwale County will be located on government-owned land (KMFRI-owned plot of land), with no potential significant social impacts, as was determined during screening and the ESIA process. The ESIA identified environmental impacts as those related to construction and waste treatment during the operational phase of the project; and ii) the fisheries headquarters building in Nairobi is also identified and will be located on government-owned land. As required, an ESIA will be prepared once the design of the facility is prepared.

#### **G. Environmental and Social Safeguards Specialists on the Team**

Svetlana Khvostova, Environmental Specialist  
Lilian Wambui Kahindo, Social Specialist



Benjamin Kithome Kilaka, Social Specialist  
Ben Okindo Ayako Miranga, Environmental Specialist

#### SAFEGUARD POLICIES THAT MIGHT APPLY

Safeguard Policies	Triggered?	Explanation (Optional)
Environmental Assessment OP/BP 4.01	Yes	<p>Environmental risk associated with proposed project activities is equivalent to environmental category B based on information obtained during project preparation. The scale of project interventions is not expected to result in significant, adverse environmental, health or social impacts. Since the exact locations and hence site-specific details of activities and scope of works are not identified at this stage (except for NAMARET as per paragraph below), the relevant environmental safeguards instrument that has been prepared through a wide set of stakeholder consultations is an Environmental and Social Management Framework (ESMF).</p> <p>The ESMF provides detailed processes for identification and screening of activities for critical environment and social risks; procedures for evaluating environmental risks and impacts; guidance for the development of site specific mitigation and monitoring plan when subproject details are identified; and describes institutional arrangements for safeguards implementation and proposes capacity building measures. The ESMF provides guidelines for the development of site-specific Environmental and Social Impact Assessments (ESIAs) and Environmental and Social Management Plans (ESMPs) that will include mitigation measures to address the potential environmental and social impacts of subprojects, once the activities, location and scope are identified. Based on the application of the procedures outlined in the ESMF, site specific ESIA and/or ESMP will be prepared for all sub projects as needed, based on the results of screening, and publicly disclosed prior to finalization of the design and commencement of</p>



any construction. During subproject preparation, the project implementing teams will apply findings from the ESIA/ESMP to further improve project designs and minimize adverse impacts, while maximizing positive impact on people and the environment.

Potential sub-project activities that could potentially cause adverse environmental impacts proposed for funding include: i) under component 1, construction of: a headquarters building in Nairobi to house the fisheries entities that are being established under the MoALFI (SDFA&BE, KeFS, KFMA, etc.); a national mariculture resource and training center in Kwale county; renovation of county government fisheries offices; and upgrading of landing sites and provision of basic services; and ii) under component 2, livelihood activities related subprojects for small-scale producers, and targeted social services delivery projects at community level. Other potential impacts may be related to mariculture activities and development of a marine spatial plan—which includes the need to develop a strategic environmental and social assessment. The only activity where the location is identified and for which a design is completed and a site-specific ESIA prepared is the national mariculture resource and training center (NAMARET). The ESMF together with the ESIA for the NAMARET (both including executive summary in Swahili) were publicly consulted and disclosed in-country and on the World Bank website

OP/BP 4.03 (World Bank Performance Standards for Private Sector Activities) is not applicable the project, as it is not expected that any of the activities would qualify as Private Sector Activities, based on the criteria set forth by the policy: i) an activity is designed, constructed, operated and/or owned, by a Private Entity, is productive and is necessary to meet the development objectives of the member country in which it is implemented; ii) the Private Entity is fully responsible for identifying, assessing and managing the environmental and social risks associated with the activity; and iii) the Private Entity has a generally recognized capacity to identify, assess and manage the environmental and social risks associated with the activity.

Performance Standards for Private Sector Activities OP/BP 4.03

No





Natural Habitats OP/BP 4.04	Yes	<p>The project will design its investments to avoid negative impacts on environmentally sensitive areas and will work with relevant stakeholders, where needed, such as the Kenya Wildlife Service, to enhance the management effectiveness of protected areas including the establishment of buffer zones and providing capacity building to the communities. The ESMF includes (i) a screening mechanism to avoid sites with potential to cause significant or irreversible conversion or degradation of natural habitats, including marine ecosystems, (ii) identification of subproject level risks and mitigation measures towards avoidance or minimization of impacts on natural habitats, which will be followed by the project.</p>
Forests OP/BP 4.36	Yes	<p>To guide during construction of the NAMARET, the ESIA includes measures to minimize impacts on natural habitats in proximity to the project site. The authorities will undertake public consultations and seek guidance from KWS and relevant CSOs on minimizing any potential negative impacts during construction and operation of the NAMARET facility. At the community level under component 2, the project may include activities of planting and/or restoring degraded mangroves in some of the coastal counties. As indicated in the ESMF, any activity related to planting and/or restoring of degraded mangroves will be undertaken in accordance with the 2017-2027 National Mangrove Ecosystem Management Plan, prepared by the Ministry of Environment and Forestry (MoEF) and Regional Development Authorities. During project preparation, no activities with large-scale impacts on forests were identified. Specific subprojects will be screened for OP 4.36 provisions to incorporate them into ESIA's, as required.</p> <p>In preparation for NAMARET construction, the ESIA requires, as one of the first steps, identification of the important trees within KMFRI plot and protecting them prior to commencement of works to ensure they remain unaffected by project activities.</p>
Pest Management OP 4.09	No	<p>Pest management policy is not triggered for this project, however, as a precautionary measure, the</p>



project ESMF includes guidelines for screening out the proposed activities which may lead to procurement of pesticides and avoiding the use of bactericides in aquaculture activities when possible, and provides guidelines and mitigation measures in cases when this would not be avoidable.

Physical Cultural Resources OP/BP 4.11      Yes

Physical cultural resources policy is triggered since some project activities may be in areas which may not have been subjected to archeological surveys whose cultural resources are therefore unknown. The screening in the ESMF includes provisions of OP4.11, including avoidance of projects with potential impacts on significant heritage sites (e.g., Old Lamu Town and Shimoni caves), relevant capacity building and monitoring requirements. In addition, the ESMF includes a sample chance find procedure to be included into sub-project specific ESIA's, and in all civil works contracts. The chance find procedure includes provisions for treatment of cultural heritage impacts (if discovered) in line with Kenyan laws.

Indigenous Peoples OP/BP 4.10      Yes

Four of the five coastal counties targeted under the proposed project (Tana River, Lamu, Kilifi and Kwale) are home to Vulnerable and Marginalized Groups (VMGs) who meet the criteria of OP 4.10 in terms of language, culture, attachment to given lands and being subordinate to the more dominant communities among whom they live, as well as other Vulnerable Groups. Under the World Bank financed-KCDP, a VMG Framework (VMGF) was prepared following a comprehensive Social Assessment (SA), which found that the livelihood strategies of the VMGs within these counties ranged from nearshore fishing, the closer a community is to the sea – to subsistence farming, livestock keeping and small scale trades, the farther a community is from the sea. The findings of the SA resulted in the development of a VMG Plan (VMGP) to mitigate risks, which was disclosed in December 2015. Activities under component 1 of the proposed project will include management or regulating fishing effort of priority fisheries, to enhance stock productivity to result in medium-to-long-term benefits to the coastal communities. However in the short term, it may negatively impact the livelihoods



of the fishing VMG communities. Since the exact location of project interventions is unknown at this point in time and in order to continue addressing the livelihood needs, strategies and aspirations of the VMGs, the project undertook a social assessment and prepared a VMGF. The VMGF therefore builds on the project's SA as well as the VMGF and SA that was developed under KCDP. The VMGF accommodates lessons learned, and was publicly disclosed in Kenya and on the World Bank website. Furthermore, the proposed project will build on the KCDP best practices and engage the VMGs at all stages of the project including during implementation. Findings of the SA and VMGF have been incorporated in the project design and under component 2, county field officers and extensionists will be responsible for identifying VMG members of the community through affirmative targeting approaches.

The project does not anticipate any large scale involuntary resettlement and land acquisition under the proposed types of investments including construction and rehabilitation of infrastructure. Any new construction (e.g., fisheries building NAMARET) will be on public/government land. While resettlement of households can be avoided, some economic displacement may be expected for example, at landing sites. Since the exact locations of project interventions are unknown at this stage, a framework approach has been adopted through which the project developed a Resettlement Policy Framework to outline the types of compensation required for the project activities and guide the preparation of Resettlement Action Plans as needed during project implementation. Restriction of access to resources could be expected, for which a Process Framework has been prepared.

As part of the screening and follow up ESIA process for the proposed NAMARET facility, it was confirmed that construction of the hatchery and training center will not trigger OP4.12 policy, as the buildings will be located on KMFRI-owned plot of land, with no encroachment on site.

Involuntary Resettlement OP/BP 4.12

Yes



Safety of Dams OP/BP 4.37	No	The policy will not be triggered, based on the screening of proposed project activities conducted during preparation.
Projects on International Waterways OP/BP 7.50	No	The policy will not be triggered, based on the screening of proposed project activities conducted during preparation.
Projects in Disputed Areas OP/BP 7.60	Yes	<p>The Project has triggered the WB's policy on Projects in Disputed Areas (OP/BP 7.60). Kenya and Somalia are in dispute over the delimitation of maritime spaces claimed by both states in the Indian Ocean. Kenya claims the maritime boundary as being parallel to the line of latitude, whereas Somalia is of the view that the boundary should extend to the southeast as an extension of the land border. As required by OP 7.60, the GoK sent a letter to Somalia, on September 6, 2018, informing of the proposed Project, its objective and scope, and requesting Somalia's no objection to carrying out the Project. Somalia responded on October 31, 2018, by referring to the pending proceedings before the International Court of Justice (ICJ) and suggesting that neither party should conduct any activities, including those associated with the Project, in any area that is under dispute, until the ICJ renders its judgement. In view of the continued dispute and Somalia's response to the notification of the Project, the Project has been redesigned to ensure relevant activities exclude interventions in the area under dispute. Specific interventions that were redesigned include i) activities targeted at collecting fisheries catch and effort data; ii) strengthening of surveillance and enforcement capacity; iii) implementation of activities targeting emerging fisheries; and iv) implementation of Kenya's national monitoring, control, and surveillance strategy including surveillance patrols and preparation of action plans. In line with paragraph 3(b)(ii) of OP 7.60, the Project documentation bears a disclaimer stating that, by supporting the Project, the WB does not intend to make a judgment on the legal or other status of the territories concerned or to prejudice the final determination of the parties' claims. At the same time, it is expected that the two countries continue working together at the technical level toward finding a solution that may include</p>



implementing the Project in the disputed area, despite the ongoing process at the ICJ. If, at some point in the future, an agreement was to be found, the Project will be restructured to include the disputed area.

## KEY SAFEGUARD POLICY ISSUES AND THEIR MANAGEMENT

### A. Summary of Key Safeguard Issues

1. Describe any safeguard issues and impacts associated with the proposed project. Identify and describe any potential large scale, significant and/or irreversible impacts:

Preparation of Environmental and Social Management Framework (ESMF), Process Framework (PF), Resettlement Policy Framework (RPF), Social Assessment (SA), confirmed that the proposed project activities can be assigned EA Category B. Based on a wide set of public consultations and field review of the types of proposed activities, in addition to a significant number of positive impacts, potential negative impacts were also identified. Such impacts can occur if recommended mitigation measures are not put into place, and may include:

1. Environmental issues: Solid and effluent waste pollution of water and soil; destruction of mangroves and other pressures on ecologically sensitive areas; increased rates of sedimentation and erosion; decreased fresh water quality and quantity; introduction of invasive plant species; damage to physical cultural resources; occupational health and safety issues; potential spread of communicable and water borne diseases, etc.
2. Social issues: traffic safety issues; impacts on cultural heritage; impacts on women's access to water for household use and access to household plots; physical and economic displacement (with potential impacts on VMGs); loss of livelihoods; risks of Gender Based Violence, labor and employment related impacts; and restricted access to resources due to project implementation, etc.

2. Describe any potential indirect and/or long term impacts due to anticipated future activities in the project area: All potential negative impacts identified during preparation are expected to be site specific and temporary and potential large scale, significant and/or irreversible impacts are not expected as a result of implementation of project activities.

3. Describe any project alternatives (if relevant) considered to help avoid or minimize adverse impacts. The ESMF provides guidance to site-specific ESIA's to include analysis of alternatives, including selection of location and technologies used. This includes not only guidance for infrastructure development for fisheries management (sub-component 1.3), but also subproject specific environmental and social due-diligence for activities under component 2, which covers livelihood projects for informal small-scale producers, and targeted social services delivery projects at the community level. Physical and economic displacement will be avoided and minimized, where displacement will occur, compensation will be provided for all the affected persons as guided by OP 4.12.

4. Describe measures taken by the borrower to address safeguard policy issues. Provide an assessment of borrower capacity to plan and implement the measures described. The overall implementation arrangements are based on lessons learned from other Bank-financed projects, including the KCSAP, KCDP, NARIG and WSDP, among others. The national PCU that will be responsible for managing and coordinating overall project implementation activities, will be headed by the national project coordinator, and include,



among other staff, Environmental and Social Safeguards Officers. Overall, the NPCU is familiar with WB safeguards policy requirements and their implementation, as several of the NPCU staff have experience with other Bank-financed projects.

At the County level, project implementation arrangements will replicate the governance and operational functions of the national level, and each county will establish a county project implementing unit (CPIU). Counties will have the primary responsibility for executing community-related initiatives (component 2). The project will provide support to each county for capacity building and institutional strengthening, including safeguards training and sensitization.

At the community level sub-project support would be provided to eligible beneficiaries organized into Common Interest Groups to be formed in 19 coastal sub-counties of the five project counties. County field officers will be responsible for identifying vulnerable and marginalized members of the community through affirmative targeting approaches.

For any subprojects that include physical infrastructure, ESIA/RAPs/VMGPs will be developed as needed. In addition, safeguards oversight for civil works will be done at the county level by the relevant county government departments. For component 2 grants, screening of proposals will first be conducted by the CPIU. Regular internal meetings convened by the county project coordinator will be held to endorse the approval of sub-project proposals by the relevant departments within the county government.

5. Identify the key stakeholders and describe the mechanisms for consultation and disclosure on safeguard policies, with an emphasis on potentially affected people.

Participatory approach is one of the central methods utilized by the project and will be utilized throughout the project implementation. The preparation of safeguards instruments included a wide set of stakeholder consultations with groups such as county and national level government, sub-county level stakeholders, communities, local fishers beach management units (BMUs), community based organizations (CBOs), non-governmental organizations (NGOs), research, conservation groups and local communities, relevant state and non-state institutions at county and national level. Each consultative meeting was designed to incorporate inputs from women, youth and VMGs. Free Prior and Informed Consultations that lead to broad community support for the project was carried out for the VMGs. During implementation, the environmental and social due diligence reports (ESIAs, ESMPs, RAPs, VMGPs, and others as needed) will be prepared where needed and disclosed (following subproject specific consultations) at the community, county and national levels, as well on the World Bank website.

## B. Disclosure Requirements

### Environmental Assessment/Audit/Management Plan/Other

Date of receipt by the Bank	Date of submission for disclosure	For category A projects, date of distributing the Executive Summary of the EA to the Executive Directors
03-Jun-2019	27-Jun-2019	
<b>"In country" Disclosure</b>		
Kenya		
27-Jun-2019		
Comments		



**Resettlement Action Plan/Framework/Policy Process**

Date of receipt by the Bank  
03-Jun-2019

Date of submission for disclosure  
27-Jun-2019

**"In country" Disclosure**

Kenya  
27-Jun-2019

Comments

**Indigenous Peoples Development Plan/Framework**

Date of receipt by the Bank  
05-Jun-2019

Date of submission for disclosure  
27-Jun-2019

**"In country" Disclosure**

Kenya  
27-Jun-2019

Comments

**C. Compliance Monitoring Indicators at the Corporate Level (to be filled in when the ISDS is finalized by the project decision meeting)**

**OP/BP/GP 4.01 - Environment Assessment**

Does the project require a stand-alone EA (including EMP) report?

Yes

If yes, then did the Regional Environment Unit or Practice Manager (PM) review and approve the EA report?

Yes

Are the cost and the accountabilities for the EMP incorporated in the credit/loan?

Yes

**OP/BP 4.04 - Natural Habitats**



Would the project result in any significant conversion or degradation of critical natural habitats?

No

If the project would result in significant conversion or degradation of other (non-critical) natural habitats, does the project include mitigation measures acceptable to the Bank?

NA

#### **OP/BP 4.11 - Physical Cultural Resources**

Does the EA include adequate measures related to cultural property?

Yes

Does the credit/loan incorporate mechanisms to mitigate the potential adverse impacts on cultural property?

Yes

#### **OP/BP 4.10 - Indigenous Peoples**

Has a separate Indigenous Peoples Plan/Planning Framework (as appropriate) been prepared in consultation with affected Indigenous Peoples?

Yes

If yes, then did the Regional unit responsible for safeguards or Practice Manager review the plan?

Yes

If the whole project is designed to benefit IP, has the design been reviewed and approved by the Regional Social Development Unit or Practice Manager?

Yes

#### **OP/BP 4.12 - Involuntary Resettlement**

Has a resettlement plan/abbreviated plan/policy framework/process framework (as appropriate) been prepared?

Yes

If yes, then did the Regional unit responsible for safeguards or Practice Manager review the plan?

Yes

#### **OP/BP 4.36 - Forests**

Has the sector-wide analysis of policy and institutional issues and constraints been carried out?

No

Does the project design include satisfactory measures to overcome these constraints?

NA

Does the project finance commercial harvesting, and if so, does it include provisions for certification system?

No

#### **OP 7.60 - Projects in Disputed Areas**





Has the memo conveying all pertinent information on the international aspects of the project, including the procedures to be followed, and the recommendations for dealing with the issue, been prepared

Yes

Does the PAD/MOP include the standard disclaimer referred to in the OP?

Yes

### The World Bank Policy on Disclosure of Information

Have relevant safeguard policies documents been sent to the World Bank for disclosure?

Yes

Have relevant documents been disclosed in-country in a public place in a form and language that are understandable and accessible to project-affected groups and local NGOs?

Yes

### All Safeguard Policies

Have satisfactory calendar, budget and clear institutional responsibilities been prepared for the implementation of measures related to safeguard policies?

Yes

Have costs related to safeguard policy measures been included in the project cost?

Yes

Does the Monitoring and Evaluation system of the project include the monitoring of safeguard impacts and measures related to safeguard policies?

Yes

Have satisfactory implementation arrangements been agreed with the borrower and the same been adequately reflected in the project legal documents?

Yes

## CONTACT POINT

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**APPROVAL**

Task Team Leader(s):	Banu Setlur Veruschka Schmidt
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**Approved By**

Safeguards Advisor:	Nathalie S. Munzberg	08-Aug-2019
Practice Manager/Manager:	Ruxandra Maria Floroiu	08-Aug-2019
Country Director:	Allen Dennis	09-Aug-2019

**Annex 69**

UN Security Council Resolution 2554 (2020), S/RES/2554, 4 December 2020



## Resolution 2554 (2020)

### Adopted by the Security Council on 4 December 2020

*The Security Council,*

*Recalling* its previous resolutions concerning the situation in Somalia, especially resolutions [1814 \(2008\)](#), [1816 \(2008\)](#), [1838 \(2008\)](#), [1844 \(2008\)](#), [1846 \(2008\)](#), [1851 \(2008\)](#), [1897 \(2009\)](#), [1918 \(2010\)](#), [1950 \(2010\)](#), [1976 \(2011\)](#), [2015 \(2011\)](#), [2020 \(2011\)](#), [2077 \(2012\)](#), [2125 \(2013\)](#), [2184 \(2014\)](#), [2246 \(2015\)](#), [2316 \(2016\)](#), [2383 \(2017\)](#), [2442 \(2018\)](#), and [2500 \(2019\)](#), as well as the Statements of its President ([S/PRST/2010/16](#)) of 25 August 2010 and ([S/PRST/2012/24](#)) of 19 November 2012,

*Welcoming* the report of the Secretary-General ([S/2020/1072](#)), as requested by resolution [2500 \(2019\)](#), on the implementation of that resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia,

*Reaffirming* its respect for the sovereignty, territorial integrity, political independence, and unity of Somalia, including Somalia's sovereign rights in accordance with international law, with respect to offshore natural resources, including fisheries,

*Welcoming* that there were no successful piracy attacks off the coast of Somalia in the prior 12 months, and *noting* that joint counter-piracy efforts have resulted in a steady decline in pirate attacks as well as in hijackings since 2011, with no successful ship hijackings for ransom reported off the coast of Somalia since March 2017 however, *recognizing* the ongoing threat that resurgent piracy and armed robbery at sea poses, *noting* the letter of 2 December 2020 from the Permanent Representative of the Permanent Mission of Somalia to the United Nations requesting international assistance to counter piracy off its coast, *and recalling* reports of the Secretary General and communiqués of the Contact Group on Piracy off the Coast of Somalia (CGPCS), which continue to illustrate that piracy off the coast of Somalia has been repressed but not eradicated, and *commending* countries and organizations that have deployed naval counter-piracy missions in the region to suppress piracy and protect ships transiting through the waters off the coast of Somalia and the region,

*Reaffirming* that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework within which all activities in the oceans and seas must be carried out, including countering piracy and armed robbery at sea,



*Recognizing* the need and *commending* the efforts of States, including in particular States in the region, to investigate and prosecute not only suspects captured at sea, but also anyone who incites or intentionally facilitates piracy operations, including key figures of criminal networks involved in piracy including those who plan, organize, facilitate or illicitly finance or profit from such attacks, and *reiterating* its concern over persons suspected of piracy having been released without facing justice, or released prematurely, *reaffirming* that the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts,

*Welcoming* the work of the CGPCS and the Law Enforcement Task Force (LETF) to facilitate the prosecution of suspected pirates and facilitators, and international efforts to coordinate the work of investigators and prosecutors, inter alia, through the LETF and collect and share information to disrupt the pirate enterprise, as exemplified by INTERPOL's Global Database on Maritime Piracy, *further commending* the Padang Communique and Maritime Cooperation Declaration adopted by the Indian Ocean Rim Association (IORA), and the operationalization of the Regional Maritime Information Fusion Center (RMIFC) in Madagascar and *emphasizing* the need for States and international organizations to further enhance international efforts in this regard,

*Welcoming* efforts by the CGPCS, the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), the Maritime Security Coordination Committee (MSCC), the financing mechanism provided by the Trust Fund to Support Initiatives of States Combating Piracy off the Coast of Somalia (the Trust Fund), and donors to strengthen regional judicial and law enforcement capacity to investigate, arrest, and prosecute suspected pirates as well as those associated with facilitating piracy and to incarcerate those convicted consistent with applicable international human rights law, *noting* with appreciation the assistance and capacity-building provided by UNODC Global Maritime Crime Programme, the Trust Fund, the International Maritime Organization (IMO), the funded Djibouti Code of Conduct, and the European Union Capacity Building Mission in Somalia (EUCAP Somalia), and *recognizing* the need for all engaged international and regional organizations to coordinate and cooperate fully,

*Commending* the efforts of the European Union Naval Forces (EUNAVFOR) Operation ATALANTA and EUCAP Somalia, Combined Maritime Forces' Combined Task Force 151 (CMF), the counter piracy activities of the African Union onshore in Somalia and other States acting in a national capacity in cooperation with Somali authorities to suppress piracy and to protect ships transiting through the waters off the coast of Somalia, and *welcoming* the Shared Awareness and Deconfliction Initiative (SHADE), and the efforts of individual countries, including China, India, Japan, the Republic of Korea, and the Russian Federation, which have deployed naval counter-piracy missions in the region,

*Commending* the efforts of the CGPCS and Kenya, which assumed the Chair of the CGPCS for the period 2020 to 2022, and despite their work being severely restrained due to the COVID-19 pandemic welcoming their efforts to convene a successful virtual Friends of the CGPCS Chair meeting, with participants from over 50 countries as well as regional and international organizations, to update on maritime threats and activities off the coast of Somalia and finalise the Terms of Reference for the Strategic Planning Steering Group that will develop a strategic plan on future priorities of the CGPCS, and explore the possibility of establishing a financial mechanism to replace the Trust Fund in consultation with FGS and in line with its policies,

*Underlining* the importance of cooperation between the Federal Government of Somalia and the Federal Member States in the development of a coast guard in Somalia, *noting* with appreciation the efforts made by the IMO and the shipping industry to develop and update guidance, best management practices, recommendations to assist ships to prevent and suppress piracy attacks off the coast of Somalia, and publishing the fifth version of the Best Management Practices to deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and the Arabian Sea (BMP5),

*Reaffirming* international condemnation of acts of kidnapping and hostage-taking, including offences contained within the International Convention against the Taking of Hostages, and *expressing serious concern* at the inhumane conditions hostages face in captivity, and *noting* the importance of cooperation between Member States on the issue of hostage-taking and the prosecution of suspected pirates for taking hostages,

*Welcoming* the readiness of the Federal Government of Somalia and Federal Member States to cooperate with each other and with States who have prosecuted suspected pirates with a view to enabling convicted pirates to be repatriated back to Somalia under suitable prisoner transfer arrangements, consistent with applicable international law, including international human rights law, to serve the full terms of their sentences, but *expresses serious concern* regarding the premature release of any convicted prisoners returned from Seychelles to Somalia and reiterates that sentences served must be those passed by the courts of the prosecuting states and that any proposal to vary the sentences must be in conformity with agreements with Seychelles on the transfer of sentenced persons and consistent with applicable international law, including international human rights law,

*Expressing* serious concern over reports of illegal, unreported and unregulated fishing (IUU) in Somalia's Exclusive Economic Zone (EEZ), *recognizing* that IUU fishing can contribute to destabilization among coastal communities, and *noting* the complex relationship between IUU fishing and piracy, *welcoming* Somalia's accession to the Food and Agriculture Organization (FAO)'s Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, and the ongoing efforts of the Federal Government of Somalia towards the development of a legal regime for the distribution and enforcement of fishing licences,

*Welcoming* the release of the three Iranian seafarers from the FV Siraj as a result of the efforts of the Islamic Republic of Iran and the Hostage Support Partnership who were held as hostages inside Somalia in appalling conditions, and *appreciating* the work of the International Seafarers Welfare and Assistance Network (ISWAN), the Maritime Piracy Response Programme (MPHRP), and the CGPCS Piracy Survivors Family Fund (PSFF) in providing support to victims of piracy and their families, and recognizing the need to continue supporting these initiatives and contributions to funds,

*Emphasizing* that peace and stability within Somalia, the strengthening of State institutions, economic and social development, and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy and armed robbery at sea off the coast of Somalia, and further *emphasizing* that Somalia's long-term security rests with the effective development by Somali authorities of the Somali Coast Guard and Maritime Police Units, Somali National Army, and Somali Police Force,

*Determining* that the incidents of piracy and armed robbery at sea off the coast of Somalia, as well as the activity of pirate groups in Somalia, are an important factor

exacerbating the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplors all acts of piracy and armed robbery at sea off the coast of Somalia;

2. *While noting* improvements in Somalia, *recognizes* that piracy exacerbates instability in Somalia by introducing large amounts of illicit cash that fuels additional crime, corruption, and terrorism;

3. *Stresses* the need for a comprehensive response to prevent and suppress piracy and tackle its underlying causes by the international community in collaboration with Somali authorities and other relevant actors, and *encourages* Member States to continue to cooperate with Somali authorities in the fight against piracy and armed robbery at sea, without impeding the exercise of high seas freedoms or other navigational rights and freedoms by ships of any State, consistent with international law, as reflected in UNCLOS;

4. *Underlines* the primary responsibility of the Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia, *values* the recent launch of the Department of Somali Maritime Administration, and *welcomes* the National Maritime Coordination Committee (NMCC) meeting convened by the FGS to initiate a mapping process of all maritime activities, including international support;

5. *Recognizes* the need to continue investigating and prosecuting those who plan, organize, illicitly finance or profit from pirate attacks off the coast of Somalia, including key figures of criminal networks involved in piracy, and to develop the capacity of Somali authorities to investigate and prosecute such persons, and the capacity of Somalia's Financial Intelligence Unit to identify illicit financial activity and support the prosecution of pirate financiers, and *urges* States, working in conjunction with relevant international organizations, to adopt legislation to facilitate prosecution of suspected pirates off the coast of Somalia;

6. *Calls upon* the Somali authorities to interdict, and upon interdiction to have mechanisms in place to safely return effects seized by pirates, investigate and prosecute pirates and to patrol the waters off the coast of Somalia to prevent and suppress acts of piracy and armed robbery at sea;

7. *Calls upon* the Somali authorities to make all efforts to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and calls upon Member States to assist Somalia, at the request of Somali authorities and with notification to the Secretary-General, to strengthen maritime capacity in Somalia, including regional authorities and, stresses that any measures undertaken pursuant to this paragraph shall be consistent with applicable international law, in particular international human rights law;

8. *Encourages* the Federal Government of Somalia to accede to the United Nations Convention against Transnational Organized Crime, and develop a corresponding legal architecture as part of its efforts to target money laundering and financial support structures on which piracy networks survive;

9. *Calls upon* States to cooperate, as appropriate, on the issue of hostage taking, and the prosecution of suspected pirates for taking hostages;

10. *Recognizes* the need for Member States, international and regional organizations, and other appropriate partners to exchange evidence and information for anti-piracy law enforcement purposes with a view to ensuring effective arrest,

prosecution of suspected, and imprisonment of convicted pirates and key figures of criminal networks involved in piracy who plan, organize, facilitate, or illicitly finance and profit from piracy operations, and keeps under review the possibility of applying targeted sanctions against individuals or entities that plan, organize, facilitate, or illicitly finance or profit from piracy operations if they meet the listing criteria set out in paragraph 43 of resolution [2093 \(2013\)](#), and *calls* upon all States to cooperate fully with the Panel of Experts on Somalia, including on information-sharing regarding possible violations of the arms embargo or charcoal ban;

11. *Recognizes* the importance of capacity building and request donors to consider providing support to reinforce Somalia's national coast guard capacities through Human Resources development, training, equipping and building of coastal guard stations;

12. *Renews* its call upon States and regional organizations that are able to do so to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms, and military aircraft, by providing basing and logistical support for counter-piracy forces, and by seizing and disposing of boats, vessels, arms, and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;

13. *Highlights* the importance of coordination among Member states and international organizations in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, commends the work of the CGPCS to facilitate such coordination in cooperation with the IMO, flag States, and Somali authorities, encourages the full participation of Somalia in all coordination efforts and urges continued support of these efforts;

14. *Decides* that, for a further period of 12 months from the date of this resolution to renew the authorizations as set out in paragraph 14 of resolution [2500 \(2019\)](#) granted to States and regional organizations cooperating with Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by Somali authorities to the Secretary-General;

15. *Affirms* that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights, obligations, or responsibilities of Member States under international law, including any rights or obligations under The Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and affirms further that such authorizations have been renewed in response to the 2 December 2020 letter conveying the request of Somali authorities;

16. *Decides* that the arms embargo on Somalia imposed by paragraph 5 of resolution [733 \(1992\)](#) and further elaborated upon by paragraphs 1 and 2 of resolution [1425 \(2002\)](#) and modified by paragraphs 33 to 38 of resolution [2093](#) does not apply to supplies of weapons and military equipment or the provision of assistance destined for the sole use of Member States, international, regional, and sub-regional organizations undertaking measures in accordance with paragraph 14 above, as most recently reaffirmed by OP 19(b) of resolution [2551 \(2020\)](#);

17. *Calls upon* all States to take appropriate actions under their existing domestic law, or develop legislative processes, to prevent the illicit financing of acts of piracy and the laundering of its proceeds;



18. *Calls upon* all States, and in particular flag, port, and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, to criminalize piracy under their domestic law, and to favourably consider the prosecution of suspected, and imprisonment of those convicted, pirates apprehended off the coast of Somalia, and their facilitators and financiers ashore, decides to keep these matters under review, including, as appropriate, the establishment of specialized anti-piracy courts in Somalia with substantial international participation and/or support as set forth in resolution 2015 (2011), and encourages the CGPCS to continue its discussions in this regard;

19. *Further calls upon* all States to cooperate in the investigation and prosecution of all persons responsible for or associated with acts of piracy and armed robbery off the coast of Somalia, including international criminal networks involved in piracy who plan, organize, facilitate, or illicitly finance or profit from such attack, consistent with applicable international law including international human rights law; to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims, witnesses, and persons detained as a result of operations conducted under this resolution;

20. *Urges* all States to ensure that counter-piracy activities, particularly land-based activities, take into consideration the need to protect women and children from exploitation, including sexual exploitation;

21. *Urges* all States to share information with INTERPOL for use in the global piracy database, through appropriate channels;

22. *Welcomes* the UNODC Global Maritime Crime Programme's continued work with authorities in Somalia and in neighbouring States to ensure that individuals suspected of piracy are prosecuted and those convicted are imprisoned in a manner consistent with applicable international law, including international human rights law, and *welcomes* the work of international and regional organizations to strengthen the capacity of financial intelligence units in Somalia and neighbouring states;

23. *Recognizes* the successful prosecution of piracy cases by Seychelles and *implores* regional authorities to honour transfer agreements;

24. *Urges* States parties to The Convention and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) and its protocols to implement fully their relevant obligations under these conventions and customary international law and to cooperate with the UNODC, IMO, and other States and international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

25. *Acknowledges* the recommendations and guidance provided by the IMO on preventing and suppressing piracy and armed robbery at sea; and *urges* States, in collaboration with the shipping and insurance industries and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further *urges* States to make their citizens and vessels available for forensic investigation as appropriate at the first suitable port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

26. *Welcomes and encourages* efforts by flag States and port States to further consider the development of safety and security measures on board vessels, including,

where applicable, developing regulations for the use of privately contracted armed security personnel (PCASP) on board ships, aimed at preventing and suppressing piracy off the coast of Somalia, through a consultative process, including through the IMO and ISO;

27. *Invites* the IMO to continue its contributions to the prevention and suppression of acts of piracy and armed robbery against ships, in coordination, in particular, with the UNODC, the World Food Program (WFP), the shipping industry, and all other parties concerned, and recognizes the IMO's role concerning privately contracted armed security personnel on board ships in high-risk areas;

28. *Notes* the importance of securing the safe delivery of WFP assistance by sea, and welcomes the ongoing work by the WFP, EUNAVFOR Operation Atalanta, and flag States with regard to Vessel Protection Detachments on WFP vessels;

29. *Requests* the Secretary-General to report to the Security Council within eleven months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia, including assessment of National Coast Guard capabilities as well as voluntary reports by cooperating States and regional organizations;

30. *Expresses its intention* to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 14 above for additional periods upon the request of Somali authority;

31. *Decides* to remain seized of the matter.

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**Annex 70**

Gambia, Ghana, Ivory Coast, Kenya, Lesotho, Liberia, Libyan Arab Republic,  
Madagascar, Mali, Mauritania, Morocco, Senegal, Sierra Leone, Sudan, Tunisia,  
United Republic of Cameroon, United Republic of Tanzania and Zaire: draft  
articles on the exclusive economic zone, A/CONF.62/C.2/L.82, 26 August 1974

**Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/C.2/L.82**

**Gambia, Ghana, Ivory Coast, Kenya, Lesotho, Liberia, Libyan Arab Republic,  
Madagascar, Mali, Mauritania, Morocco, Senegal, Sierra Leone, Sudan, Tunisia,  
United Republic of Cameroon, United Republic of Tanzania and Zaire: draft  
articles on the exclusive economic zone**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

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## Third United Nations Conference on the Law of the Sea

## DOCUMENT A/CONF.62/C.2/L.81

## Canada: working paper on the special case of salmon—the most important anadromous species

[Original: English]  
[23 August 1974]

This paper summarizes the unique position of the various species of salmon in the world of fisheries management. It is submitted to provide the basis in fact and in equity for the development of an appropriate régime for the best use of this valuable resource.

Salmon are unique in returning from the sea to the same fresh waters where they were born, to spawn and leave their fertilized eggs to develop in the same gravel beds. Following hatching, some salmon migrate directly to the sea as small fry; other species must live for one to several years in fresh water lakes or streams.

While salmon grow and mature in the open sea, they occupy the upper layers of cold northern waters where they are not serious competitors for the food supply of other valuable species. In the open sea they are found mainly in areas within the proposed 200-mile economic zones, but also, to a considerable degree, in areas beyond national jurisdiction.

Salmon are the only fish occurring in the open sea which man can and does increase by positive cultural measures. Such measures can be taken only by the State of origin.

Mixed in distant waters, salmon runs separate to return unerringly to their home streams. In distant waters salmon runs which need special protection are mixed with runs which are abundant; only as they approach their home streams (the very streams where they were bred) can the salmon runs be cropped separately and in accordance with the catches each run can support.

Salmon reach their greatest weight as they approach their home streams. During their migrations from the open sea to the spawning grounds, salmon grow faster than they die off. The greatest yield can be obtained by fishing the runs close to their home streams.

Strict regulations are needed to let the right number of spawners through the fishery to the spawning streams. This must be done by assessments of the runs as they appear, and prompt and often drastic restriction of fishing to let the optimum spawning run through. This requires costly supervision and enforcement, as well as co-operation of the fishermen. Only the State of origin of the salmon can carry out this essential function.

Salmon must have unobstructed access to their spawning grounds, which may be as much as 1,500 miles inland from the

sea. This involves heavy direct expenses in removal of natural obstructions (e.g. landslides) and construction of fish passes. There is also much indirect cost to the State of origin in fore-going hydroelectric development, irrigation projects, flood control and other benefits, all of which would involve dams obstructing the passage of salmon. For example, power dams of great potential value have been kept off the Fraser River in British Columbia in order to maintain the productivity of one of the world's great salmon rivers. The State of origin must also protect salmon waters from pollution.

Artificial means of increasing salmon production are becoming ever more effective. Large-scale projects to increase salmon production include provision of artificial channels where natural spawning grounds are inadequate, hatcheries to increase the numbers and proportions of fry produced from salmon eggs, and associated facilities for rearing small salmon safe from the enemies and fluctuations in water levels which threaten them in nature. These salmon culture techniques have, in recent years, passed the experimental stage to that of demonstrated effectiveness. In North America alone, hundreds of millions of dollars will be spent in such efforts.

Both the management of the fishery and the development of artificial means of producing more salmon have required and continue to require intensive scientific research. The States of origin of salmon have already spent hundreds of millions of dollars in research on salmon.

Only the State of origin can protect and culture salmon and effectively manage the fishery. All the steps noted above can be carried out only by the State in whose rivers the salmon breed—the State of origin. No other State can see that the right number of salmon get through the fishery to spawn. No other State can keep salmon rivers and lakes unobstructed and unpolluted. No other State can take positive measures to increase salmon production by artificial means such as man-made spawning channels, hatcheries and rearing facilities. Without these effective and costly actions by the State of origin, there would be no commercial salmon runs.

A régime must be found which assures for the State of origin the fruits of its efforts and so encourages it to continue to bear the costs. This requires curtailment of the fishing of salmon in the open sea outside national jurisdiction and co-operation with the State of origin by other States through whose zones the salmon may migrate.

## DOCUMENT A/CONF.62/C.2/L.82

## Gambia, Ghana, Ivory Coast, Kenya, Lesotho, Liberia, Libyan Arab Republic, Madagascar, Mali, Mauritania, Morocco, Senegal, Sierra Leone, Sudan, Tunisia, United Republic of Cameroon, United Republic of Tanzania and Zaire: draft articles on the exclusive economic zone

[Original: English]  
[26 August 1974]

## Article 1

A coastal State has the right to establish beyond its territorial sea an exclusive economic zone which shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

## Article 2

1. In the exclusive economic zone a coastal State shall have sovereignty over the living and non-living resources. It shall have sovereign rights for the purpose of regulation, control,

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exploration, exploitation, protection and preservation of all living and non-living resources therein.

2. The resources referred to in paragraph 1 of this article, shall encompass the living and non-living resources of the water column, the sea-bed and the subsoil.

3. Subject to article 6, no other State has the right to explore and exploit the resources therein without the consent or agreement of the coastal State.

#### Article 3

A coastal State shall also have exclusive jurisdiction within the exclusive economic zone, *inter alia*, for the purposes of:

(a) Control, regulation and preservation of the marine environment including pollution control and abatement;

(b) Control, authorization and regulation of scientific research;

(c) Control and regulation of customs and fiscal matters related to economic activities in the zone.

#### Article 4

A coastal State shall have the exclusive right to make and enforce regulations relating to, *inter alia*, the following:

(a) The authorization and regulation of drilling for all purposes;

(b) The construction, emplacement, operation and use of artificial islands and other installations;

(c) Establishment and regulation of safety zones around such off-shore islands and installations;

(d) The licensing of fishing vessels and gear;

(e) Closed fishing seasons;

(f) Types, sizes and amount of gear; and numbers, sizes and types of fishing vessels;

(g) Quota and sizes of fish that may be caught;

(h) The conduct of research, disposition of samples and reporting of associated scientific data.

#### Article 5

1. In the exclusive economic zone all States shall enjoy the freedom of navigation, overflight and laying of submarine cables and pipelines.

2. In the exercise of the freedoms referred to in paragraph 1 of this article, States shall ensure that their activities in the exclusive economic zone are carried out in such a manner as not to interfere with the rights and interests of the coastal State.

#### Article 6

1. Developing land-locked and other geographically disadvantaged States have the right to exploit the living resources of

the exclusive economic zones of neighbouring States and shall bear the corresponding obligations.

2. Nationals of land-locked and other geographically disadvantaged States shall enjoy the same rights and bear the same obligations as nationals of coastal States in the exploitation of the living resources of the exclusive economic zone.

3. Bilateral, subregional or regional arrangements shall be worked out for the purposes of ensuring the enjoyment of the rights and the carrying out of the obligations referred to in paragraphs 1 and 2 of this article in full respect of the sovereignty of the States concerned.

#### Article 7

States in a region may establish regional or subregional arrangements for the purposes of developing and managing the living resources, promoting scientific research, preventing and controlling pollution, and for the purpose of peaceful settlement of disputes.

#### Article 8

1. The delimitation of the exclusive economic zone between adjacent or opposite States shall be done by agreements between them on the basis of principles of equity, the median line not being the only method of delimitation.

2. For this purpose, special account shall be taken of geological and geomorphological factors as well as other special circumstances which prevail.

#### Article 9

Each State shall ensure that any exploration or exploitation activities within its exclusive economic zone is carried out exclusively for peaceful purposes and in such a manner as not to interfere with the legitimate interests of other States in the region or those of the international community.

#### Article 10

No State shall be entitled to construct, maintain, deploy or operate, in the exclusive economic zone of another State, any military installation or device or any other installation or device for whatever purposes without the consent of the coastal State.

#### Article 11

In respect of a territory whose people have not achieved full independence or some other self-governing status recognized by the United Nations, the rights to the resources of its exclusive economic zone belong to the people of that territory. These rights shall be exercised by such people for their benefits and in accordance with their needs and requirements. Such rights may not be assumed, exercised or benefited from or in any way be infringed upon by a foreign Power administering or occupying or purporting to administer or to occupy such territory.

### DOCUMENT A/CONF.62/C.2/L.83

#### Canada: draft article on a definition of an international strait

[Original: English]  
[26 August 1974]

An international strait is a natural passage between land formations which:

(a) (i) Lies within the territorial sea of one or more States at any point in its length and  
(ii) Joins . . .

(b) Has traditionally been used for international navigation.

**Annex 71**

Kenya and Tunisia: draft article on the delimitation of the continental shelf or  
the exclusive economic zone, A/CONF.62/C.2/L.28, 30 July 1974

**Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/C.2/L.28**

**Kenya and Tunisia: draft article on the delimitation of the continental shelf or the exclusive economic zone**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*



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the measures referred to in this article may be applied to them only with the consent of the State whose flag the ship flies.

C. RULES APPLICABLE TO GOVERNMENT SHIPS OPERATED FOR NON-COMMERCIAL PURPOSES

*Article 25*

1. The rules contained in subsection A shall apply to government ships operated for non-commercial purposes.
2. Except in the cases provided for in the provisions referred to in the previous paragraph nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

D. RULES APPLICABLE TO WARSHIPS

*Article 26*

The rules contained in subsection A shall apply to foreign warships, but nothing in this Convention shall affect the immunity which warships enjoy in accordance with the generally accepted rules of international law.

*Article 27*

If any warship does not comply with the regulations of the coastal State relating to passage through the territorial sea and disregards a request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

DOCUMENT A/CONF.62/C.2/L.27

Byelorussian Soviet Socialist Republic, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland and Union of Soviet Socialist Republics: draft article on the contiguous zone

[*Original: English*]  
[29 July 1974]

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:
  - (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
  - (b) Punish infringement of the above regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured.
3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

DOCUMENT A/CONF.62/C.2/L.28

Kenya and Tunisia: draft article on the delimitation of the continental shelf or the exclusive economic zone

[*Original: French*]  
[30 July 1974]

1. The delimitation of the continental shelf or the exclusive economic zone between adjacent and/or opposite States must be done by agreement between them, in accordance with an equitable dividing line, the median or equidistance line not being necessarily the only method of delimitation.
2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all the special circumstances, including the existence of islands or islets in the area to be delimited.

**Annex 72**

France: draft article on the delimitation of the continental shelf or of the economic zone, A/CONF.62/C.2/L.74, 22 August 1974

**Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/C.2/L.74**

**France: draft article on the delimitation of the continental shelf or of the economic zone**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

## DOCUMENT A/CONF.62/C.2/L.72\*

Iran: draft articles on enclosed and semi-enclosed seas

[Original: English]  
[21 August 1974]*Article 1*  
(Definitions)

For the purpose of these articles:

(a) The term "enclosed sea" shall refer to a small body of inland waters surrounded by two or more States which is connected to the open seas by a narrow outlet;

(b) The term "semi-enclosed sea" shall refer to a sea basin located along the margins of the main ocean basins and enclosed by the land territories of two or more States.

*Article 2*

The general rules set out in this Convention shall apply to an enclosed or semi-enclosed sea in a manner consistent with the special characteristics of these seas and the needs and interests of their coastal States.

\*Incorporating document A/CONF.62/C.2/L.72/Corr.1 of 26 August 1974.

*Article 3*

The preservation and protection of the marine environment of an enclosed or semi-enclosed sea and the management of its resources shall be the responsibility of the coastal States. To this end the coastal States may, in addition to global norms:

(a) Adopt regional rules and standards aimed at the better protection of their environment against marine pollution;

(b) Co-ordinate their activities in relation to the management and exploitation of the renewable resources of the enclosed or semi-enclosed sea under regional arrangements.

*Article 4*

Scientific research in an enclosed or semi-enclosed sea shall be conducted only with the consent of the coastal State concerned.

## DOCUMENT A/CONF.62/C.2/L.73

Cuba: amendment to document A/CONF.62/C.2/L.70

[Original: Spanish]  
[22 August 1974]

Replace article 2 by the following text:

*Article 2*

"1. In drawing the baselines from which the extent of the territorial sea is to be measured, an archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands of the archipelago, provided that these lines follow the general configuration of the main island or islands and are not drawn to or from isolated islets or reefs. The areas of sea situated on the landward side of the lines must be linked to the land territory and the navigation therein must be connected with the ports of the archipelagic State.

"2. The drawing of such baselines shall not enclose as archipelagic waters any waterways or straits used for international navigation or areas of sea traditionally used by a neighbouring and adjacent State for direct communication from one part of its territory to another part or between its territory and the high seas."

## DOCUMENT A/CONF.62/C.2/L.74

France: draft article on the delimitation of the continental shelf  
or of the economic zone[Original: French]  
[22 August 1974]

1. The delimitation of the continental shelf or of the economic zone between adjacent and/or opposite States shall be effected by agreement between them in accordance with an equitable dividing line, the median or equidistance line not being the only method of delimitation.

2. For this purpose, account shall be taken, *inter alia*, of the special nature of certain circumstances, including the existence of islands or islets situated in the area to be delimited or of such a kind that they might affect the delimitation to be carried out.

**Annex 73**

UN Security Council Resolution 2498 (2019), S/RES/2498, 15 November 2019



## Resolution 2498 (2019)

### Adopted by the Security Council at its 8665th meeting, on 15 November 2019

*The Security Council,*

*Recalling* all its previous resolutions and statements of its President on the situation in Somalia,

*Reaffirming* its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, and *underscoring* the importance of working to prevent destabilising effects of regional disputes from spilling over into Somalia,

*Expressing* its support for the Federal Government of Somalia (FGS) in their efforts to reconstruct the country, counter the threat of terrorism and tackle the flow of illegal arms and armed groups, *further expressing* its intention to ensure the arms embargo in this resolution will enable the FGS in the realisation of these objectives, and *noting* its intention to set out all of the provisions of the arms embargo in this text,

*Condemning* Al-Shabaab attacks in Somalia and beyond, *expressing* grave concern that Al-Shabaab continues to pose a serious threat to the peace, security and stability of Somalia and the region, particularly through their increased use of improvised explosive devices (IEDs), and *further expressing* grave concern at the continued presence in Somalia of affiliates linked to Islamic State in Iraq and the Levant (ISIL also known as Da'esh),

*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations and international law, including applicable international human rights law, international refugee law, and international humanitarian law, threats to international peace and security caused by terrorist acts,

*Condemning* any flows of weapons and ammunition supplies to and through Somalia in violation of the arms embargo, including when they result in supplies to Al-Shabaab and affiliates linked to ISIL, and when they undermine the sovereignty and territorial integrity of Somalia as a serious threat to peace and stability in the region, and *further condemning* continued illegal flows of weapons and ammunition from Yemen to Somalia,

*Expressing* serious concern at reports of increased exploitation of Somalia, by Al-Shabaab and transnational organized crime networks, as a transit and transshipment point for the trade in sub-standard, illicit and dual-use goods and the revenues this trade generates for Al-Shabaab, and *further expressing* concern at continued reports



of illegal, unreported and unregulated fishing in waters where Somalia has jurisdiction, and *encourages* the FGS, with support from the international community, to ensure fishing licenses are issued in accordance with the appropriate Somali legislation,

*Reiterating* the importance of co-operation and coordination between the FGS and the Federal Member States (FMS) and implementation of the National Security Architecture and *noting* that a successful transition to Somali-led security from the African Union Mission in Somalia (AMISOM) as set out under the Transition Plan is fundamental to the maintenance of peace and stability in the region,

*Expressing* concern at the continued reports of corruption and diversion of public resources in Somalia, *welcoming* efforts made by the FGS to reduce corruption including the enactment of the Anti-Corruption Law on 21 September 2019, progress made by the FGS in strengthening public financial management and the positive work of the Financial Reporting Centre, and *calling* for the FGS to continue its efforts to address corruption and to continue to accelerate the pace of reform,

*Expressing* serious concern at the humanitarian situation in Somalia, and *condemning* in the strongest terms any party obstructing the safe delivery of humanitarian assistance, any misappropriation or diversion of any humanitarian funds or supplies, and acts of violence against and harassment of humanitarian workers,

*Further expressing* serious concern over the widespread nature and persistence of sexual and gender-based violence in Somalia, and *encouraging* the Somali authorities to further strengthen efforts to address it, including by implementing measures in line with resolution [2467 \(2019\)](#),

*Taking note with appreciation* of the final report of the Panel of Experts (the Panel) on Somalia ([S/2019/858](#)) and the technical assessment mission report of the Secretary-General ([S/2019/616](#)), *expressing* serious concern that the FGS has not been cooperating with the Panel during the majority of their mandate, *welcoming* the FGS's collaboration and active participation with the technical assessment team on their visit, *urging* the FGS to engage on a way forward which will enable the Security Council to better assess and monitor compliance with the sanctions regime, and *recalling* that panels of experts operate pursuant to mandates from the Security Council,

*Welcoming* regional efforts with a view to supporting the normalisation of relations between Eritrea and Djibouti including disputes regarding their shared border, and *expressing* concern at continuing reports of Djiboutian combatants missing in action,

*Determining* that the situation in Somalia continues to constitute a threat to international peace and security in the region,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Condemns* Al-Shabaab's extraction of revenue from natural resources in addition to the charcoal trade, including the taxing of the illicit sugar trade, agricultural production and livestock, *notes with concern* their ability to store and transfer resources, and *requests* the Panel, with input from FGS and UNODC, to conduct an analysis of all of Al-Shabaab's revenue sources, their methods of storage and transfer, and mapping of illegal taxation systems, and to provide recommendations to the Committee pursuant to resolution [751 \(1992\)](#) concerning Somalia (the Committee);

2. *Requests* the FGS to strengthen cooperation and coordination with other Member States, particularly other Member States in the region, and with international partners to prevent and counter the financing of terrorism, including compliance with

resolution [1373 \(2001\)](#), resolution [2178 \(2014\)](#), resolution [2462 \(2019\)](#), and relevant domestic and international law, and *requests* the FGS to submit, in their regular reporting to the Committee, an update on concrete actions taken by the FGS to counter the financing of terrorism;

3. *Calls upon* the FGS, in coordination with the FMS, to accelerate the implementation of the National Security Architecture, including decisions around the composition, distribution and command and control of the security forces, and to take further steps to deliver the Somali-led Transition Plan, and *underlines* the responsibility of the FGS to ensure the safe and effective management, storage and security of their stockpiles of weapons, ammunition and other military equipment and their distribution, including implementation of a system which allows tracking of all such military equipment and supplies to the unit level;

4. *Reiterates* the importance of the FGS and FMS enhancing civilian oversight of all their security institutions and implementing appropriate vetting of all defence and security personnel, including human rights vetting, *calls upon* the FGS to continue to investigate promptly and as appropriate prosecute individuals responsible for violations of international law, including international humanitarian law and international human rights law, and *recalls* the importance of the Secretary-General's Human Rights and Due Diligence Policy in relation to the support provided by the United Nations to the Somali security forces and AMISOM;

5. *Calls upon* the international community to support implementation of the Somali-led Transition Plan to help develop credible, professional and representative Somali security forces, including providing additional and coordinated support to develop the weapons and ammunition management capacity of the FGS and FMS, with a particular focus on training, storage, support for infrastructure and distribution, technical assistance and capacity building with regard to countering financing of terrorism, and support in tackling the threat of IEDs;

### **Arms Embargo**

6. *Reaffirms* that all States shall for the purposes of establishing peace and stability in Somalia, implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia, including prohibiting the financing of all acquisitions and deliveries of weapons and military equipment and the direct or indirect supply of technical advice, financial and other assistance, and training related to military activities, until the Council decides otherwise (as initially imposed by paragraph 5 of its resolution [733 \(1992\)](#) and paragraphs 1 and 2 of resolution [1425 \(2002\)](#));

7. *Decides* that weapons and military equipment sold or supplied solely for the development of the Somali National Security Forces or Somali security sector institutions other than those of the FGS in accordance with paragraph 9 of this resolution shall not be resold to, transferred to, or made available for use by any individual or entity not in the service of the Somali National Security Forces or Somali security sector institution to which it was originally sold or supplied or the selling or supplying State or international, regional or subregional organisation;

8. *Reaffirms* that the FGS, in cooperation with the FMS, and AMISOM shall document and register all weapons and military equipment captured as part of offensive operations or in the course of carrying out their mandates, including recording the type and serial number of the weapon and/or ammunition, photographing all items and relevant markings and facilitating inspection by the Panel of all military items before their redistribution or destruction;



(i) **Exemptions, advance approvals and notifications**

9. *Decides* that until 15 November 2020 the arms embargo on Somalia shall not apply to deliveries of weapons and military equipment or the provision of technical advice, financial and other assistance, and training related to military activities, intended solely for the development of the Somali National Security Forces or Somalia security sector institutions other than those of the FGS to provide security for the Somali people, except in relation to items in Annex A and B to this resolution and the delivery of technical advice, financial and other assistance, and training related to military activities, which are subject to the relevant advance approvals and notification procedures as set out in paragraphs 10–17;

10. *Decides* that deliveries of items in Annex A to this resolution intended solely for the development of the Somali National Security Forces, or Somali security sector institutions other than those of the FGS, to provide security for the Somali people, require an advance approval by the Committee on a case by-case basis, submitted at least five working days in advance by the FGS or the State or international, regional or subregional organisation delivering assistance;

11. *Decides* that deliveries of items in Annex B to this resolution and the delivery of technical advice, financial and other assistance, and training related to military activities intended solely for the development of the Somali National Security Forces to provide security for the Somali people are subject to notifications to the Committee for information submitted at least five working days in advance by the FGS or the State or international, regional or subregional organisation delivering assistance;

12. *Decides* that deliveries of weapons and military equipment listed in Annex B to this resolution or the delivery of technical advice, financial and other assistance, and training related to military activities, intended solely for the purposes of helping develop Somali security sector institutions other than those of the FGS, may be provided in the absence of a negative decision by the Committee within five working days of receiving a notification from the supplying State or international, regional and sub-regional organisation and *requests* States or international, regional and sub-regional organisations to inform the FGS in parallel of any such deliveries at least five working days in advance;

13. *Decides* that the FGS has the primary responsibility to seek approval from or notify the Committee pursuant to paragraph 10 or 11, as applicable of any deliveries of weapons and military equipment or the delivery of technical advice, financial and other assistance, and training related to military activities to the Somali National Security Forces, at least five days in advance, and that all requests for approvals and notifications should include: details of the manufacturer and supplier of the weapons and military equipment, a description of the arms and ammunition including the type, calibre and ammunition, proposed date and place of delivery, and all relevant information concerning the intended destination unit in the Somali National Security Forces, or the intended place of storage;

14. *Decides* that the State or international, regional or subregional organisation delivering weapons and military equipment or technical advice, financial and other assistance, and training related to military activities to the Somali National Security Forces pursuant to paragraph 10 or 11, may alternatively, make an advance request for approval or notification, as applicable, in consultation with the FGS, *decides* that a State or international, regional or subregional organisation choosing to do so should inform the appropriate national coordinating body within the FGS of the advance request for approval or notification and provide the FGS with technical support with notification procedures where appropriate, and *requests* the Committee

to transmit advance requests for approval and notifications from States or international, regional or subregional organisations to the appropriate national coordinating body in the FGS;

15. *Decides* that a State or international, regional or subregional organisation delivering any weapon and military equipment, technical advice, financial and other assistance, and training related to military activities to Somali security sector institutions other than those of the FGS, pursuant to paragraph 10 or 12, has responsibility for seeking approval from or notifying the Committee, as applicable, for any deliveries of those items, advice, assistance or training, and informing the FGS in parallel at least five working days in advance;

16. *Decides* that where paragraphs 10 or 11 apply, that the FGS shall no later than 30 days after the delivery of weapons and military equipment, submit to the Committee a post-delivery notification in the form of written confirmation of the completion of any delivery to the Somali National Security Forces, including the serial numbers for the weapons and military equipment delivered, shipping information, bill of lading, cargo manifests or packing lists, and the specific place of storage, and recognises the value of the supplying State or international, regional or subregional organisation doing the same, in cooperation with the FGS;

17. *Reaffirms* that the delivery of non-lethal military equipment intended solely for humanitarian or protective use shall be notified to the Committee five days in advance for its information only, by the supplying State or international, regional or subregional organisation;

18. *Notes with concern* reports that States were not adequately following the notification procedures set out in prior resolutions, *reminds* States of their obligations pursuant to the notification procedures, set out in paragraph 10–17, and *further urges* States to follow strictly the notification procedures for providing assistance to develop Somali security sector institutions other than those of the FGS;

**(ii) Exceptions**

19. *Reaffirms* that the embargo shall not apply to:

(a) Supplies of weapons or military equipment or the provision of technical advice, financial and other assistance, and training related to military activities intended solely for the support of or use by United Nations personnel, including the United Nations Assistance Mission in Somalia (UNSOM), the African Union Mission in Somalia (AMISOM); AMISOM's strategic partners, operating solely under the latest African Union Strategic Concept of Operations, and in cooperation and coordination with AMISOM; and the European Union Training Mission (EUTM) in Somalia, all as per paragraph 10 (a)–(d) of resolution [2111 \(2013\)](#);

(b) Supplies of weapons and military equipment destined for the sole use of States or international, regional and subregional organisations undertaking measures to suppress acts of piracy and armed robbery at sea off the coast of Somalia, upon the request of the FGS for which it has notified the Secretary-General, and provided that any measures undertaken shall be consistent with applicable international humanitarian and international human rights law;

(c) Supplies of protective clothing, including flak jackets and military helmets, temporarily exported to Somalia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only;

(d) Entry into Somali ports for temporary visits of vessels carrying weapons and military equipment for defensive purposes provided that such items remain at all

times aboard such vessels (as previously affirmed by paragraph 3 of resolution [2244 \(2015\)](#));

#### **Targeted sanctions in Somalia**

20. *Recalls* its decisions in its resolution [1844 \(2008\)](#) which imposed targeted sanctions and its resolutions [2002 \(2011\)](#), and [2093 \(2013\)](#) which expanded the listing criteria, and recalls its decisions in its resolutions [2060 \(2012\)](#) and [2444 \(2018\)](#), and *further recalls* that the listing criteria includes, but is not limited to, planning, directing or committing acts involving sexual and gender based violence;

21. *Requests* the Special Representative of the Secretary-General for Children and Armed Conflict and the Special Representative for Sexual Violence in Conflict to share relevant information with the Committee in accordance with paragraph 7 of resolution [1960 \(2010\)](#) and paragraph 9 of resolution [1998 \(2011\)](#), and *invites* the Office of the United Nations High Commissioner for Human Rights to share relevant information with the Committee, as appropriate;

22. *Decides* that until 15 November 2020 and without prejudice to humanitarian assistance programmes conducted elsewhere, the measures imposed by paragraph 3 of its resolution [1844 \(2008\)](#) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialised agencies or programmes, humanitarian organisations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners including bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plan for Somalia;

#### **Somalia Charcoal ban**

23. *Condemns any* exports of charcoal from Somalia in violation of the total ban on the export of charcoal, *reaffirms* its decision regarding the ban on the import and export of Somali charcoal, as set out in paragraph 22 of its resolution [2036 \(2012\)](#) (“the charcoal ban”), and paragraphs 11 to 21 of resolution [2182 \(2014\)](#), and *decides* to renew the provisions set out in paragraph 15 of resolution [2182 \(2014\)](#) until 15 November 2020;

24. *Reiterates* its requests that AMISOM support and assist the FGS and FMSs in implementing the total ban on the export of charcoal from Somalia, and *calls upon* AMISOM to facilitate regular access for the Panel to charcoal exporting ports;

25. *Reaffirms* the importance of the efforts of the Combined Maritime Forces (CMF) to disrupt the export and import of charcoal to and from Somalia, and *encourages* the United Nations Office on Drugs and Crime to continue its work with the FGS and FMS, within its current mandate, under the Indian Ocean Forum on Maritime Crime to bring together relevant States and international organisations to develop strategies to disrupt the trade in Somali charcoal, and the trafficking of other licit and illicit goods that may finance terrorist activities in Somalia;

#### **IED components ban**

26. *Noting* the increase in IED attacks undertaken by Al-Shabaab, *decides* that all States shall prevent the direct or indirect sale, supply or transfer of the items in part I of Annex C to this resolution to Somalia from their territories or by their nationals outside their territories, or using their flag vessels or aircraft if there is sufficient evidence to demonstrate that the item(s) will be used, or a significant risk they may be used, in the manufacture in Somalia of improvised explosive devices;

27. *Further decides* that, where an item in part I of Annex C to this resolution is directly or indirectly sold, supplied or transferred to Somalia consistent with paragraph 27, the State shall notify the Committee of the sale, supply or transfer no more than 15 working days after the sale, supply or transfer takes place, and *stresses* the importance that notifications pursuant to this paragraph contain all relevant information, including the purpose of the use of the item(s), the end user, the technical specifications and the quantity of the item(s) to be shipped;

28. *Calls upon* Member States to undertake appropriate measures to promote the exercise of vigilance by their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction that are involved in the sale, supply, or transfer of explosive precursors and materials to Somalia that may be used in the manufacture of improvised explosive devices, including inter alia items in part II of Annex C, to keep records of transactions and share information with the FGS, the Committee and the Panel regarding suspicious purchases of or enquiries into these chemicals by individuals in Somalia and to ensure that the FGS and FMS are provided with adequate financial and technical assistance to establish appropriate safeguards for the storage and distribution of materials;

#### **Panel of Experts on Somalia**

29. *Decides* to renew, with effect from the date of adoption of this resolution, until 15 December 2020, the Panel on Somalia and that the mandate of the Panel shall include the tasks referred to in paragraph 11 of resolution 2444 (2018) and paragraph 1 of this resolution, *requests* the Secretary-General to include dedicated gender expertise, in line with paragraph 11 of its resolution 2467 (2019), and *expresses* its intention to review the mandate of the Panel and take appropriate action regarding any extension to the mandate no later than 15 November 2020;

30. *Urges* the FGS to cooperate with the Panel to facilitate interviews of suspected members of Al-Shabaab and ISIL held in custody, *reiterates the importance* of cooperation between the Panel and the FGS, *urges the* FGS to resume full cooperation with the Panel, including setting a date for a visit by the incoming Panel to Somalia without further delay, *notes* the importance of the Panel carrying out their mandate in line with document S/2006/997, and *requests* the Panel to give recommendations to the Committee on how to support the FGS in weapons and ammunition management including efforts towards establishing a National Small Arms and Light Weapons Commission;

31. *Reiterates its request* for States, the FGS, the FMS and AMISOM to provide information to the Panel, and assist them in their investigations, *urges* the FGS and the FMS to facilitate access for the Panel, on the basis of written requests to the FGS by the Panel, to all FGS armouries in Mogadishu, all FGS-imported weapons and ammunition prior to distribution, all FGS military storage facilities in Somalia National Army (SNA) sectors and all captured weaponry in FGS and FMS custody, and to allow photographs of weapons and ammunition in FGS and FMS custody and access to all FGS and FMS logbooks and distribution records, in order to enable the Security Council to monitor and assess implementation of this resolution;

#### **Reporting**

32. *Requests* the Secretary-General to provide the Security Council with an update, no later than the 31 July 2020 on any further developments towards the normalisation of relations between Eritrea and Djibouti;

33. *Requests* the Panel to provide monthly updates to the Committee, including a comprehensive mid-term update as well as to submit, for the Security Council's consideration, through the Committee, a final report by 15 October 2020 to

include a focused analysis on the financial revenues of Al-Shabaab pursuant to paragraph 1;

34. *Requests* the Emergency Relief Coordinator to report to the Security Council by 15 October 2020 on the delivery of humanitarian assistance in Somalia and on any impediments to the delivery of humanitarian assistance in Somalia;

35. *Requests* the FGS to report to the Security Council in accordance with paragraph 9 of resolution [2182 \(2014\)](#) and as requested in paragraph 7 of resolution [2244 \(2015\)](#), by 15 February 2020 and then by 15 August 2020, on the structure, composition, strength and disposition of its security forces, and the status of regional and militia forces, including as annexes the reports of the Joint Verification Team (JVT) requested in paragraph 7 of resolution [2182 \(2014\)](#), and incorporating the notifications regarding the destination unit in the Somali National Security Forces or the place of storage of military equipment upon distribution of imported arms and ammunition, and *requests* future reports of the JVT to cross-reference serial numbers of weapons documented by the JVT with available records detailing the distribution of arms to the security forces;

36. *Decides* to remain seized of the matter.

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**Annex A****Items subject to the Committee's advance approval**

1. Surface to air missiles, including Man-Portable Air-Defence Systems (MANPADS);

2. Weapons with a calibre greater than 12.7 mm, and components specially designed for these, and associated ammunition;

Note: (This does not include shoulder fired anti-tank rocket launchers such as RPGs or LAWs (light anti-tank weapon), rifle grenades, or grenade launchers.);

3. Mortars with a calibre greater than 82 mm and associated ammunition;

4. Anti-tank guided weapons, including Anti-tank Guided Missiles (ATGMs) and ammunition and components specially designed for these items;

5. Charges and devices specifically designed or modified for military use; mines and related materiel;

6. Weapon sights with a night vision capability;

7. Aircraft, specifically designed or modified for military use;

Note: 'Aircraft' means fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing vehicle, or helicopter.

8. 'Vessels' and amphibious vehicles specifically designed or modified for military use;

Note: 'Vessel' includes any ship, surface effect vehicle, vessel of small waterplane area or hydrofoil and the hull or part of the hull of a vessel.

9. Unmanned combat aerial vehicles (listed as Category IV in the UN Register of Conventional Arms).

**Annex B****Equipment requiring a notification with regard to deliveries to the Somali National Security Forces and Committee approval for Somalia security sector institutions other than those of the FGS**

- All types of weapons with a calibre up to 12.7mm: and associated ammunition;
- RPG-7 and recoilless rifles, and associated ammunition;
- Helmets manufactured according to military standards or specification, or comparable national standards;
- Body armour or protective garments, as follows:
  - o Soft body armour or protective garments, manufactured to military standards or specifications, or their equivalents;  
*Note: military standards or specifications include, as a minimum, specifications for fragmentation protection.*
  - o Hard body armour plates providing ballistic protection equal to or greater than level III (NIJ 0101.06 July 2008) or national equivalents;
- Ground vehicles specifically designed or modified for military use;
- Communication equipment specifically designed or modified for military use;
- Global Navigation Satellite Systems (GNSS) positioning equipment, specifically designed or modified for military use.

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**Annex C****Improvised Explosive Devices (IED) Components****Explosive materials, explosives precursors, explosive-related equipment, and related technology****Part I**

1. Explosive materials, as follows, and mixtures containing one or more thereof:
  - a. Nitrocellulose (containing more than 12.5% nitrogen w/w);
  - b. Trinitrophenylmethylnitramine (tetryl);
2. Explosive-related goods:
  - a. Equipment and devices specially designed to initiate explosives by electrical or non-electrical means (e.g. firing sets, detonators, igniters, detonating chord).
3. “Technology” required for the “production” or “use” of the items listed at paras. 1, 2 & 3.

**Part II**

1. Explosive materials, as follows, and mixtures containing one or more thereof:
    - a. Ammonium Nitrate Fuel Oil (ANFO);
    - b. Nitroglycol;
    - c. Pentaerythritol tetranitrate (PETN);
    - d. Picryl chloride;
    - e. 2,4,6-Trinitrotoluene (TNT).
  2. Explosives precursors:
    - a. Ammonium nitrate;
    - b. Potassium nitrate;
    - c. Sodium chlorate;
    - d. Nitric acid;
    - e. Sulphuric acid.
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**Annex 74**

Report of the UN Secretary-General on the Situation in Somalia, S/2020/798,

13 August 2020



# Security Council

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## Situation in Somalia

### Report of the Secretary-General

#### I. Introduction

1. The present report is submitted pursuant to paragraph 2 of Security Council resolution [2527 \(2020\)](#) and paragraph 37 of Council resolution [2520 \(2020\)](#) and provides updates on the implementation of those resolutions, including on the mandates of the United Nations Assistance Mission in Somalia (UNSOM) and the United Nations Support Office in Somalia (UNSOS). The report covers major developments in Somalia from 5 May to 4 August 2020.

#### II. Political, security and economic overview

##### A. Political developments

2. On 22 June, the President of Somalia, Mohamed Abdullahi Mohamed “Farmajo”, held a virtual meeting with the leaders of the federal member states and the Governor of Banaadir Region. It was the first time all federal and state leaders had met in a decision-making forum since June 2018, marking an important step towards the resumption of dialogue and collaboration. The leaders agreed to hold a face-to-face summit in July.

3. To prepare the ground for the July summit, the leaders of the federal member states held a consultative meeting on 11 and 12 July in Dhuusamarreeb. The state leaders issued a communiqué calling for timely elections with no term extension. They also called for inclusive consultations to agree on a viable electoral model that could be implemented within the remaining period of the current Administration’s term.

4. The summit was held in Dhuusamarreeb from 18 to 22 July, with the participation of Mr. Farmajo and the Prime Minister, Hassan Ali Khayre. The leaders’ discussions focused on the 2020/21 elections. On 22 July, the heads of the Federal Government and the federal member states issued a communiqué, agreeing to hold timely and credible elections acceptable to all Somali stakeholders. They also decided to establish a technical committee comprising representatives of the Federal Government and the federal member states to prepare recommendations on modalities for the holding of elections. They agreed to meet again on 15 August, in Dhuusamarreeb, to consider those recommendations.



5. On 25 July, the House of the People of the Federal Parliament passed a motion of no confidence against Mr. Khayre, with 170 votes in favour and 8 against. Introducing the motion, the Speaker, Mohamed Sheikh Mursal Abdirahman, accused the Prime Minister of failing to prepare a clear plan for the holding of one person, one vote elections; to complete federalism; to decide on the status of Mogadishu; to complete the review of the Constitution and hold a referendum on it; and to implement the political party system. In a statement immediately following the vote, Mr. Farmajo announced his acceptance of the Parliament's decision and said that he would appoint a new Prime Minister. In an address to the nation, Mr. Khayre questioned the legality of the procedure followed by Parliament but said that he accepted the President's decision for the sake of preserving the unity of the nation.

6. The Federal Parliament had reconvened on 6 June following a two-month delay owing to restrictions imposed as a result of the coronavirus disease (COVID-19) pandemic. Soon after resuming the session, a rift emerged between the Lower and Upper Houses of Parliament over how to process recommendations from the joint ad hoc committee they had tasked with addressing the gaps in the electoral code. On 12 June, the Speaker of the Upper House appointed a nine-member committee to facilitate consultation among federal and state leaders and called for consultations with federal member states before deciding on the ad hoc committee's recommendations. Meanwhile, the Speaker of the Lower House emphasized the primacy of Parliament in deciding on electoral modalities.

7. On 27 June, the National Independent Electoral Commission presented to the Lower House of Parliament a report on its plans for the upcoming federal elections. Given the delays in electoral preparations and readiness, the Commission proposed two possible options for the conduct of parliamentary elections: same day paper-based voter registration and polling, which could take place in March 2021; or elections with standard biometric voter registration, to be held in August 2021.

8. Following the presentation of the Commission's report, my Special Representative held intensive consultations with federal and state leaders, as well as with leaders of the Federal Parliament, political parties and civil society, and called for inclusive dialogue to reach political consensus on the modalities and timing of the elections. He also coordinated with international partners to ensure a unified approach to engaging the divided Somali stakeholders.

9. On 30 July, the Cabinet approved the appointment of five members to the Judicial Service Commission. Somali civil society organizations, the Somali Bar Association and the Forum for National Parties publicly opposed the appointments, stating that the Cabinet was currently a "caretaker government" and lacked the authority to appoint senior government officials.

10. At the initiative of the President of Djibouti, Ismaël Omar Guelleh, Mr. Farmajo and the President of "Somaliland", Muse Bihi Abdi, held a consultative meeting in Djibouti on 14 June, aimed at facilitating the resumption of dialogue between Somalia and "Somaliland". The Prime Minister of Ethiopia, Abiy Ahmed, also attended the meeting. The two sides agreed to form a joint committee, which met in Djibouti from 15 to 17 June, under the mediation of the Minister for Foreign Affairs of Djibouti and facilitators from the United States of America and the European Union. The committee discussed the way forward for talks, established three technical subcommittees on aid coordination, airspace management and security cooperation, and agreed to resume its work in Djibouti within 45 days. However, further talks scheduled to take place on 12 July were postponed for an indefinite period owing to "Somaliland" objecting to the alleged inclusion of two members from "Somaliland" in the delegation of the Federal Government of Somalia.

11. In “Somaliland”, the House of Representatives approved the final composition of the National Election Commission on 27 June. On 11 July, the President of “Somaliland” and the Chairpersons of the two opposition parties requested that the Commission prepare an election timeline for the holding of parliamentary and local council elections in 2020. The House of Representatives began considering the revised electoral law on 25 July.

12. In Galmudug, the state assembly approved, on 17 May, the nominations of the President of Galmudug, Ahmed Abdi Karie, to the 61-member state cabinet, including five women.

13. The President of Puntland, Said Abdullahi Mohamed Deni, and the President of Galmudug, Mr. Karie, met in Gaalkacyo on 27 June and jointly committed to cooperating on the maintenance of peace, security and economic development, notably in Mudug Region, which spans both Galmudug and Puntland. On 15 June, at the opening of the forty-sixth session of the Puntland state assembly in Garoowe, Mr. Deni announced that he would not accept the outcome of any dialogue between Somalia and “Somaliland” that excluded Puntland.

14. On 14 June, the President of Jubbaland, Ahmed Mohamed Islam “Madobe”, was formally recognized by the Federal Government as “President of the interim Jubbaland administration” for a period of two years from August 2019. On the same day, the Jubbaland administration rebutted the conditional recognition and stated that Mr. Madobe would complete his four-year term of office in accordance with the Constitution of Jubbaland.

15. On 30 May, the South-West State Police reinstated a 2019 ban on the holding of political meetings without prior authorization by the South-West State administration.

16. On 28 May, the President of Hirshabelle, Mohamed Abdi Ware, established a committee to investigate the circumstances surrounding the abduction and killing of seven health workers from a local non-governmental organization and another person in Shabelle Dhexe Region on 27 May.

17. On 22 May, the International Court of Justice announced that it would postpone oral proceedings in the case *Maritime delimitation in the Indian Ocean (Somalia v. Kenya)* to the week beginning 15 March 2021.

## B. Security developments

18. The security situation remained volatile, with 288 incidents in May, 269 in June and 218 in July. Most of those incidents were crime-related killings and shootings and Al-Shabaab attacks, including those using improvised explosive devices. Levels of crime and armed conflict-related incidents have remained steady since January, with a slight decline in June and July. The number of terrorism-related incidents remained at an average of around 75 per month in May and June, with 53 incidents in July.

19. Mortar attacks declined slightly countrywide, with a total of 23 between May and August, compared with 28 between February and April. The attacks mainly targeted African Union Mission in Somalia (AMISOM) and local security forces in Hiraan, Shabelle Dhexe and Banaadir Regions. On 9 May, Al-Shabaab carried out an attack with 60 mm mortars against the Aden Adde International Airport zone in Mogadishu, where the United Nations compound is located. While the United Nations infrastructure was damaged, no casualties were reported. The attack was the sixth targeting the Aden Adde International Airport zone in 2020, the highest frequency of such attacks on the zone ever recorded. On 30 June, Al-Shabaab carried out an attack on a stadium in the Wardhingley district of Mogadishu during a ceremony attended by Mr. Farmajo. No casualties were recorded.

20. Al-Shabaab maintained the capability to use vehicle-borne and person-borne improvised explosive devices to carry out high-profile attacks. On 13 July, the Chief of Defence Forces of Somalia, Brigadier General Odawa Yusuf Rage, survived a vehicle-borne improvised explosive device attack on his convoy in Hodan district. At least six people – three Somali National Army soldiers escorting the convoy and three civilian bystanders – were killed, and 10 others were injured. On 4 July, a vehicle-borne improvised explosive device detonated at a security post manned by the Somali Police Force in Xamar Jajab district, resulting in five police officers and an unconfirmed number of civilian bystanders being injured. On 23 June, a suicide bomber detonated his explosive vest near a Turkish military training facility, killing two Somalis. On 17 May and 27 June, vehicle-borne improvised explosive devices targeted government officials in Mogadishu but there were no casualties.

21. On 3 August, a suicide bomber detonated his explosive vest inside Luul Bar and Yameni Restaurant, near the seaport in Xamar Jajab district. Three people were reportedly killed, including the perpetrator and two guards. Three civilian bystanders were injured in the explosion.

22. An increase in Al-Shabaab activity was also recorded in the northern regions. In Mudug, on 17 May, a vehicle-borne improvised explosive device targeted the convoy of the Governor of Mudug in Gaalkacyo, killing the Governor and four of his bodyguards. It is the second high-profile attack claimed by Al-Shabaab in northern Somalia in 2020, after the killing of the Governor of Nugaal in Garoowe on 29 March. On 21 June, a vehicle-borne improvised explosive device exploded at a checkpoint near a police station in Hobyo district, killing two soldiers. On 5 July, in Shabelle Dhexe, the group abducted and killed a Member of Parliament from Hirshabelle.

23. While security operations have been ongoing in Shabelle Hoose since the resumption of Operation Badbaado in March, Al-Shabaab continued to target recovered areas with attacks on the Somali National Army and AMISOM forces. Pressure on Al-Shabaab in Shabelle Hoose appears to have forced the group to adapt and increase its presence in the Bay and Shabelle Dhexe Regions. In Bay, Al-Shabaab intensified an improvised explosive device campaign targeting AMISOM convoys on the main supply routes. Two Al-Shabaab attacks on 23 and 24 May targeted civilians during Eid celebrations in Baidoa and Diinsoor, reportedly resulting in seven people being killed and over 40 injured. A World Health Organization contractor was injured in a hand grenade attack at a restaurant on 10 July in Kismaayo.

24. Three attacks against government security forces were attributed to pro-Islamic State in Iraq and the Levant (ISIL) elements: two in Mogadishu and one in Boosaaso, Bari Region. This represents a decrease compared with the previous period, when six incidents were recorded. A total of seven air strikes in May, two in June and three in July were recorded in the Gedo, Juba Dhexe, Lower Juba, Shabelle Hoose and Bari Regions, targeting Al-Shabaab and ISIL. In the first seven months of 2020, there were a total of 45 air strikes, compared with 47 in all of 2018 and 63 in all of 2019.

25. On 25 May, a commercial aircraft, contracted by the World Food Programme to carry humanitarian cargo, was shot at during its approach to land in Qansaxdheere, Bay Region. The crew managed to land the aircraft and no casualties were reported. Investigations into the crash of an African Express Airways aircraft registered in Kenya on 4 May in Bardaale, South-West State, are ongoing. UNSOS supported the movement of officials and investigators from Kenya, Somalia, Ethiopia and AMISOM during several joint visits to the crash site.

## C. Economic developments

26. The triple shock of COVID-19, the desert locust infestation and flooding has disrupted the trajectory of Somalia towards economic recovery. According to World Bank estimates from June, gross domestic product is projected to decline by 2.5 per cent in 2020 to \$4.6 billion, compared with an estimated pre-crisis growth of 3.2 per cent to \$5.2 billion. It is estimated that remittances will fall by 17 per cent in 2020 owing to the reduced financial capacity of the Somali diaspora and increased difficulties sending funds to Somalia.

27. On 28 May, the federal Cabinet approved revisions to the 2020 budget. Federal, state and local governments expect shortfalls in domestic revenue. On 23 June, the World Bank approved \$55 million in supplemental financing to help the Federal Government to bridge the fiscal gap caused by the triple shock and to continue the implementation of fiscal and economic policy reforms. The supplemental financing follows the approval by the Executive Board of the International Monetary Fund (IMF) of a three-year financing package of \$395 million under the Extended Credit Facility and the Extended Fund Facility, in support of policies and reforms between the decision and completion points under the Heavily Indebted Poor Countries Initiative and in support of the implementation of the ninth national development plan. Prior to the decision point, arrears to IMF were cleared, thanks to the contributions of IMF members and bridge financing from Italy.

28. The United Nations updated the socioeconomic component of the Somalia COVID-19 country preparedness and response plan to align it with the global framework of the United Nations. The revised plan consists of an integrated support package for the humanitarian, development and political workstreams of the United Nations, and seeks to adapt existing programmes to the changing context and the socioeconomic impact of COVID-19. It is also aligned with the Global Humanitarian Response Plan for COVID-19 and the Federal Government's comprehensive socioeconomic impact and response plan for COVID-19. The funding appeal for the Somalia COVID-19 country preparedness and response plan is \$526.8 million (\$255.7 million for the humanitarian component and \$271.1 million for the socioeconomic component).

29. The Ministry of Petroleum and Mineral Resources announced the virtual launch of an offshore licensing round that will run from 4 August 2020 to 12 March 2021. The Forum for National Parties opposed the initiative.

## III. Support for peacebuilding and state-building efforts

### A. Establishment of a functional federal state

#### 1. Preparations for elections

30. The report of the joint parliamentary ad hoc committee tasked with addressing gaps in the electoral code was submitted to the House of the People on 17 June.

31. Between 22 and 30 June, the House of the People debated the committee's recommendations and adopted four resolutions that, respectively, guaranteed a minimum 24 per cent quota for the representation of women in Parliament; outlined a separate modality for electing members of both houses from "Somaliland"; allocated 13 additional seats to the Upper House for representation of the Banaadir Region; and confirmed the allocation of seats to constituencies for both houses. The House of the People also adopted the amendments to the political parties law on 22 July.

32. Progress on elections security planning has been slow since the National Electoral Security Task Force met from 15 to 18 March. My Special Representative, together with other international partners, engaged with the leadership of the Somali Police Force and offered support to put security arrangements in place. A mapping tool with proposed voter registration and polling sites was developed by the National Independent Electoral Commission and shared with the National Electoral Security Task Force to allow for ongoing site assessments by the federal member states and Banaadir police chiefs.

## **2. Deepening federalism**

33. Concerted efforts, including virtual meetings at the technical and political levels, were undertaken by the United Nations and international partners to promote collaboration and foster political consensus among the federal and state leaders, with a view to advancing the implementation of national priorities. Following the agreement of Mr. Farmajo to designate a focal point for relations between the Federal Government and the federal member states, the federal member states also appointed their representatives to a joint secretariat that was tasked with preparing for a meeting between federal and state leaders. The secretariat held three virtual meetings between 27 May and 4 June but did not reach an agreement on the timing and agenda of the envisaged summit, prompting the representatives of Puntland and Jubbaland to withdraw from the secretariat. Subsequent engagement by my Special Representative and other international partners helped to elevate the consultations to the level of the federal and state leaders, which culminated in an agreement to hold the virtual summit on 22 June.

34. On 14 June, the Ministry of the Interior, Federal Affairs and Reconciliation convened an interministerial consultation to review and analyse the draft intergovernmental relations act, which aims to define the vertical, horizontal and sectoral dimensions of different levels of government. Participants agreed to form a technical working group with federal and state representatives to identify institutional, administrative and technical aspects of the draft act. Meanwhile, the establishment of key national institutions identified in the Federal Government's political road map and in the Mutual Accountability Framework, including the federal Constitutional Court and the Human Rights Commission, is yet to be completed.

## **3. Constitutional review**

35. Efforts by the Ministry of Constitutional Affairs, the joint parliamentary Oversight Committee and the Independent Constitutional Review and Implementation Commission to conclude the constitutional review process continued. The three implementing entities prepared a workplan covering the period from July to December 2020 after the 30 June deadline set in the Mutual Accountability Framework for the adoption of the revised constitution was not met.

36. On 23 June, my Special Representative hosted a virtual meeting with international partners and the three entities to take stock of the review process and agreed to explore ways of facilitating the resumption of high-level dialogue between federal and state leaders to reach the political agreement required to complete the review process.

## **4. Prevention and resolution of conflicts**

37. On 18 May, the Ministry of the Interior, Federal Affairs and Reconciliation convened a virtual meeting of the National Reconciliation Framework Advisory Board with international partners to move the reconciliation agenda forward. For the first time, the federal member states participated in the meeting.

38. Security cooperation between Galmudug and Puntland improved markedly in Gaalkacyo, Mudug Region, which resulted in the arrest of suspected Al-Shabaab elements and the death of an Al-Shabaab official on 6 June. In the aftermath of armed clashes on 3 May in the villages of Taaroge and Saho-Kurun, the Leelkase and Sa'ad clans held a peace conference from 5 to 12 June in Bandiiradley and signed an agreement to end the cycle of violence and promote peace in west Mudug. The second phase of the reconciliation conference, held from 28 June to 5 July in Galdogob, concluded with the exchange of compensation and the signing of a cooperation agreement for peaceful coexistence between the clans.

39. On 5 July, a South-West State ministerial delegation secured an agreement on the cessation of hostilities between the Shamta-Alemod and Galjel sub-clans of the Digil and Hawiye clans, respectively, in Wanlaweyn district, Shabelle Hoose, allowing displaced people to return, and the recruitment from both communities of a 250-member special police force, working closely with Somali National Army units.

40. In Jubbaland, reconciliation talks, facilitated by the state administration and the Soransoor clan, took place between the Majerten and Awramale clans. From 10 May to 4 June, the two clans agreed to withdraw armed militia from the affected areas. A meeting of Hawadle clan elders was convened in Beledweyne on 11 June by the President of Hirshabelle, Mr. Ware, with a view to minimizing conflict over district council formation processes. Mr. Ware also intervened to end clashes over land between the Reer Hassan and Hawadle sub-clans in Hiraan Region, which had resulted in the killing of nine persons on 16 June. The Hirshabelle administration also arranged a ceasefire on 14 June between the Hawadle and Habergidar sub-clans concerning a land dispute in Matabaan district.

## **B. Cross-cutting issues**

### **1. Gender equality and the empowerment of women**

41. On 17 June, UNSOM and the United Nations Development Programme provided a virtual training session on gender awareness and on the women and peace and security agenda for 16 staff members (11 women and 5 men) of the Security Analysis Unit of the Office of the Prime Minister.

42. On 14 June, women leaders in Xuddur met the President of South-West State, Abdiaziz Hassan Mohamed "Laftagareen", to discuss the lack of female representation in the current district council. The President assured them that the next elections in Xuddur would follow a model implemented in Diinsoor district, which achieved female representation of 47 per cent.

43. On 14 May, the state assembly of South-West State established a parliamentary committee on women, human rights and humanitarian issues. The committee is chaired by a female Member of Parliament and could increase opportunities for women and help to promote legislation that empowers women and boosts gender equality.

### **2. Youth empowerment**

44. From 20 March to 15 June, with support from the United Nations Population Fund and in partnership with the Somali Youth Peer Education Network, a youth-led caravan travelled to parts of Hargeysa, Gebiley, Halaya, Arabsiyo, Wajaale, Garoowe, Buuhoodle, Boosaaso and Baidoa, delivering education and communication materials relating to sexual and reproductive health, HIV and COVID-19. The caravan reached 27,000 people (19,000 females and 8,000 males). Another youth caravan visited 42 villages in Jubbaland with the support of a local non-governmental organization,



Somali Lifeline Organization, reaching 1,539 men and 3,155 women with messaging aimed at countering female genital mutilation and raising awareness of COVID-19.

### **C. Development coordination**

45. The Federal Government began operationalizing the revised aid architecture in June to streamline coordination structures and focus on the priorities stipulated in the Mutual Accountability Framework. The new architecture is simpler than the previous one and is expected to be cost-effective and more agile and strategic. The Somalia Partnership Forum will continue as the apex of the aid architecture. However, plans for the next forum are currently on hold owing to uncertainty around travel restrictions.

46. On 25 June, Mr. Khayre wrote to me endorsing the request for Somalia to continue to receive support from the Peacebuilding Fund. On 21 July, I declared Somalia eligible for support from the Peacebuilding Fund for a period of five years to enable continued funding for new peacebuilding and sustaining peace initiatives in line with national priorities. The endorsement of the Prime Minister was preceded by virtual consultations on peacebuilding priorities involving 383 people from across Somalia. The consultations concluded on 14 May. A closed phase of the consultations included participation from the Federal Government, the federal member states, civil society, members of the diplomatic community and the United Nations system in Somalia. Participants agreed that future interventions under the Peacebuilding Fund would focus on reconciliation, justice, governance and security. In the new eligibility phase, funding will be prioritized for initiatives supporting gender equality and women's empowerment, in line with the Somali Women's Charter.

47. Since the endorsement of the National Environmental Policy of Somalia in February 2020, the Federal Government has drafted a climate change policy and a national environmental act. Both documents are with Parliament for approval and are expected to strengthen legislation on environmental protection. On 30 June, the World Bank released the Somalia Country Environmental Analysis, which contains short-, medium- and long-term recommendations on such issues as stemming the depletion of natural wealth, resource protection, capital accumulation and diversifying the economy.

48. The United Nations in Somalia prepared a draft common country analysis of the situation in the country, undertaken within the framework of the Sustainable Development Goals and the development, humanitarian and peacebuilding nexus, and shared it with the Federal Government for feedback. The common country analysis will inform the next United Nations Sustainable Development Cooperation Framework for the period 2021–2025, which will be aligned with the ninth national development plan of Somalia and the 2030 Agenda for Sustainable Development.

## **IV. Human rights and protection**

### **A. Human rights**

49. UNSOM recorded 319 civilian casualties, including 138 killed and 181 injured, compared with 170 killed and 120 injured during the previous reporting period. Al-Shabaab was the main perpetrator, responsible for 41 per cent of civilian casualties (132), followed by unknown actors with 31 per cent (98). Other perpetrators included State security forces with 12 per cent (39), clan militias with 12 per cent (39) and AMISOM with 2 per cent (7). Unidentified aerial attacks accounted for 1 per cent of civilian casualties (4).

50. Journalists and media workers in Somalia continued to face challenges exercising their right to freedom of expression. A total of six journalists were arrested: one in Hirshabelle, two in Jubbaland and three in “Somaliland”. On 21 May, the Chair of the Banaadir Regional Court ordered the Office of the Attorney General to conduct an urgent investigation into complaints by journalists. On 29 July, the Banaadir Regional Court sentenced the Deputy Director of the Goobjoog Media Group to six months’ imprisonment and imposed a fine for insulting a judicial body of the Federal Government and for publishing fake news related to COVID-19. He was released a day later, after paying the fine and an additional amount in lieu of the imprisonment term.

51. A total of 85 individuals, including 70 Al-Shabaab suspects, were arbitrarily arrested and/or held in prolonged detention, which constitutes a 4 per cent decrease from the previous reporting period, when 89 individuals were arbitrarily arrested or detained. A total of 37 individuals, including six journalists, were released without charge or being brought before a court, as required under the Code of Criminal Procedure.

52. Two members of the Somali security forces were executed on 16 and 28 May in Kismaayo and Boosaaso, respectively, after being sentenced to death for the killing of their colleagues. Eight death sentences were handed down by the Somali military courts in Jubbaland, Puntland and Mogadishu to four Al-Shabaab suspects and four members of the Somali security forces.

53. To ease overcrowding in prisons, Somali authorities pardoned and released 380 inmates (365 in “Somaliland” and 15 in Hirshabelle).

## **B. Compliance with the human rights due diligence policy**

54. In May and June, UNSOM provided support for the implementation of the human rights due diligence policy mitigation measures under the Mine Action Service Somali police mobile vehicle checkpoint project. Support to strengthen internal compliance and reporting systems was provided to the Mine Action Service as part of the preparations for UNSOS support to an additional 3,000 Somali security forces, as mandated by Security Council resolution [2520 \(2020\)](#). UNSOM also communicated to AMISOM two incidents of alleged violations of human rights and international humanitarian law by AMISOM involving seven civilian casualties.

## **C. Children in armed conflict**

55. The country task force on monitoring and reporting on grave violations against children in armed conflict verified 546 grave violations affecting 495 children (376 boys and 119 girls), one attack on schools, one attack on a hospital and three cases of denial of humanitarian assistance. A total of 143 children were abducted, 185 children were victims of killing and maiming, 165 were victims of recruitment and use and 48 were victims of conflict-related sexual violence.

56. The violations were attributed to Al-Shabaab (320, or 58.6 per cent), unknown armed elements (108, or 19.78 per cent), clan militia (31, or 5.68 per cent), federal and state armed forces (83, or 15.2 per cent), AMISOM (2, or 0.37 per cent) and unidentified aerial attacks (2, or 0.37 per cent). A total of 17 incidents of deprivation of liberty affecting 31 boys were recorded, with 26 boys detained by the Somali Police Force, 2 by Puntland state forces, 2 by Jubbaland state forces and 1 by Galmudug state forces. Reintegration programmes supported 986 children associated with armed

forces or armed groups, and 299 vulnerable children continued to receive support from reintegration programmes supported by the United Nations Children's Fund.

57. On 7 June, a meeting of the working group on children and armed conflict was convened. Participants reviewed the steps taken by the Federal Government to implement the 2019 road map on children and armed conflict and agreed on strategies for strengthening child protection measures. Following the issuance of the report of the Secretary-General on children and armed conflict (A/74/845-S/2020/525), specific and time-bound measures have been developed in collaboration with the Somali Police Force to address the reported violations committed against children.

#### **D. Prevention of sexual and gender-based violence**

58. Forty incidents affecting 45 victims and survivors of conflict-related sexual violence were documented. All those affected were women and girls (41 minors and 4 adults). While the majority of the perpetrators (31) were reportedly unidentified armed men, four incidents were attributed to Somali National Army personnel, one to South-West Special Force personnel, one to clan militia members, one to Somali Police Force personnel, one to Al-Shabaab and one to Ethiopian National Defence Forces personnel.

59. On 14 May, in the Wadajir district of Mogadishu, a four-year-old girl was reportedly raped by a Somali National Army officer. Upon the arrest of the alleged perpetrator on 17 May, UNSOM worked closely with the Office of the Attorney General to ensure that the perpetrator was held accountable.

60. On 19 June, Somalia commemorated the International Day for the Elimination of Sexual Violence in Conflict. My Special Representative issued a statement commending the work of front-line health workers and emphasized the need to support the victims and survivors of conflict-related sexual violence.

61. A motion to return the sexual offences bill to Parliament for its first reading was dismissed by the Speaker in June. An alternative bill, entitled the law on sexual intercourse-related crimes, was recently drafted by Parliament. The bill is narrow in scope and contravenes a number of the country's obligations under international human rights law, in particular the Convention on the Rights of the Child. UNSOM and other international partners have engaged with the Speaker to bring the shortcomings of the bill to his attention and proposed ways to address them.

#### **V. Humanitarian situation**

62. Multiple shocks, including COVID-19, desert locusts and floods, have deepened the humanitarian crisis in Somalia. Since 16 March, COVID-19 has affected 3,212 people, including 133 health workers, with 93 associated deaths and 1,598 recoveries. COVID-19 has exacerbated pre-existing vulnerabilities, disrupted socioeconomic gains and affected livelihoods. It has also reduced the humanitarian footprint in Somalia, with most staff working in restricted environments, including from home or remotely.

63. Humanitarian partners have expanded their support to the Somali authorities to detect, prevent and interrupt transmission of COVID-19. Polymerase chain reaction (PCR) testing laboratories are operational in Mogadishu, Garoowe and Hargeysa. GeneXpert testing capacity has been established in Mogadishu, Kismaayo, Beledxaawo, Baidoa, Dhuusamarreeb and Jawhar and is being established in Beledweyne. In addition, hospitals and isolation centres have been equipped and risk communication and community engagement have reached 10.9 million people. At the

same time, 279 humanitarian organizations are implementing humanitarian programmes in all 18 regions. In May, 2.3 million people received food assistance, a more than three-fold increase from the 700,000 people reached per month from January to March. A total of 1.8 million people were reached in June.

64. The *gu* rains (from April to June) have eased and most displaced people have returned to their homes, but the impact of flooding owing to climate change remains widespread. At least 1.3 million people in 39 districts were affected by flooding, with over half a million displaced. Riverine and flash floods since late June have also affected almost 198,000 people. The rains washed away crops, thereby exacerbating food insecurity, and contributed to the current outbreak of acute watery diarrhoea and cholera. From January to mid-July, there were 5,177 confirmed cholera cases and 29 deaths reported in 23 districts, which is a more than three-fold increase compared with the same period in 2019.

65. The *gu* rains created favourable conditions for desert locust breeding in “Somaliland”, Puntland and Galmudug. With support from the Food and Agriculture Organization of the United Nations (FAO) and the Ministry of Agriculture and Irrigation, the implementation of the joint desert locust crisis – Somalia action plan has expanded local surveillance and control capacities. FAO and the Federal Government have sprayed 43,655 hectares with bio-pesticides to reduce desert locust populations. Those efforts have saved an estimated 87,255 metric tons of staple foods, valued at \$26.2 million, which will be sufficient to feed 581,700 people for a year. The spraying has further protected feed and pasture sources needed by 40,505 pastoral households. Of the \$56.9 million required for the action plan, \$34.3 million had been received as at 4 August.

66. Preliminary estimates indicate that the overall 2020 *gu* season crop harvest could be 30–40 per cent lower than the long-term average owing to the combined impact of locusts, other pests and climate change. An estimated 3.5 million people are projected to face crisis or emergency food insecurity (Integrated Food Security Phase Classification phase 3 or higher) between July and September. The Central Emergency Response Fund has made a \$15 million anticipatory action allocation to Somalia to mitigate the impact of the triple shock of COVID-19, the desert locust infestation and flooding.

67. In recognition of multiple compounding vulnerabilities, the Somalia humanitarian country team launched a reprioritization of the Humanitarian Response Plan for Somalia, which resulted in revised requirements and numbers of people targeted. On 26 May, the humanitarian country team endorsed the new financial requirements, which decreased from \$1.05 billion requested in the original 2020 Humanitarian Response Plan to \$1.01 billion. The decreased financial requirements do not imply an improved humanitarian situation but rather a reprioritization of the response towards addressing the most vulnerable. As at 3 August, the 2020 Humanitarian Response Plan is 49.5 per cent funded. Additional funding is urgently needed to continue to deliver humanitarian assistance.

68. Security remains a major constraint to humanitarian operations. From 5 May to 4 August, 76 incidents against humanitarian operations were recorded, in which 9 humanitarian workers were killed, 4 were injured, 17 were abducted and 11 were detained or temporarily arrested.

## VI. Comprehensive approach to security

69. The Federal Government aligned the comprehensive approach to security structures with the revised aid coordination architecture. On 25 May, the

Comprehensive Approach to Security Executive Committee was renamed the Security and Justice Committee, and on 29 July, its new secretariat was formed within the Office of the Prime Minister. Internal consultations on updating the transition plan continued among relevant federal institutions and federal member states.

## A. Operations

70. The Somali National Army continue to secure recovered areas in Shabelle Hoose. Its positions in and around Jannaale are becoming more established with the building of an additional forward operating base in the town, despite numerous Al-Shabaab attacks, including improvised explosive devices, ambushes and indirect fire. The extended *gu* rains have affected the expansion of some security activities. Joint planning for the final phase of operations in Shabelle Hoose, addressing the inland town of Mubaarak and the coastal town of Gandarshe, has begun. However, generating sufficient Somali security forces remains a critical issue that has been affected by COVID-19.

71. Stabilization activities in Shabelle Hoose continued to focus on supporting the local administration's outreach activities to communities in Jannaale and the surrounding villages.

72. There are currently 525 Federal Darwish Police and 376 South-West State Police in Mogadishu waiting to be supplied with small arms prior to their deployment to Shabelle Hoose as part of stabilization and transition operations in that region. Complementary non-lethal support, such as vehicles and other equipment, is being provided through the joint police programme.

## B. Institutional capacity-building

73. Together with the Somali Police Force and in close cooperation with the respective line ministries, the United Nations assisted in developing general orders on the police response to COVID-19, with an emphasis on human rights protection during operations and detention. The Somali Police Force was also given support to calculate its requirements for protective equipment.

74. The United Nations supported the development of the new Galmudug administration's action plan for building the Galmudug state police, including the state Darwish (special armed police units), and expanding the state's maritime police capacity.

75. Although the COVID-19 pandemic has slowed the implementation of capacity-building activities, the Federal Supreme Court concluded a six-week training programme in July for 21 newly recruited judges from the Banaadir Regional Court. The training programme focused on ethics, court administration, human rights and cases of sexual and gender-based violence.

76. UNSOM, in conjunction with the Central Bank, assisted the Office of the Attorney General in developing its strategic plan for 2020–2024. The plan includes the establishment of a financial crimes agency to address money-laundering and other financial crimes.

77. With support from UNSOM and the European Union Capacity-Building Mission in Somalia, eight federal ministries and the respective state ministries started implementing the action plan for women in the maritime sector by establishing a network of officials, civil society members and academics to advance the women and peace and security agenda within the country's maritime domain.

78. In June, as part of continued efforts to ensure that the Somali security forces are better equipped to assume responsibility for security, 39 officers from the Somali Police Force (28 men and 11 women) were provided with online training on searches, improvised explosive device component parts and the human rights due diligence policy mitigation measures under the mobile vehicle checkpoint project. That was followed by face-to-face training, which commenced on 4 July. In addition, the Mine Action Service continued to support the Federal Government in the area of improvised explosive device threat analysis, providing regular awareness reports on such devices.

### **C. Supporting activities**

79. On 6 June, the Fragility Index and Maturity Model for 2020, which provides a dashboard and analysis on progress and conditions in 32 districts on the issues of local governance, social reconciliation, community recovery, security and rule of law, was issued. Coverage has been expanded from 24 districts in 2019 to 32 districts in 2020.

80. From 5 May to 4 August, the Mine Action Service continued to contribute to reducing the threat posed by explosive ordnance to the civilian population by providing risk education to 17,706 individuals (5,108 women, 3,767 men, 3,535 girls and 5,296 boys).

81. In an effort to counter Al-Shabaab's narratives around COVID-19, the Ministry of Endowments and Religious Affairs and the Ministry of Health, in coordination with the Office of the Prime Minister, developed joint prevention and social distancing messaging, prepared religious burial guidelines and mobilized burial teams of trained front-line health workers.

82. The International Organization for Migration and UNSOM continued to work with women-led civil society organizations that provide rehabilitation and reintegration support to women formerly associated with Al-Shabaab who are survivors of conflict-related sexual violence. In June, the five rehabilitation centres in Mogadishu, Baidoa and Kismaayo reopened fully, albeit under strict COVID-19 mitigation measures. As at 4 August, the three male rehabilitation centres are supporting 222 male Al-Shabaab defectors, while the two female rehabilitation centres in Baidoa and Kismaayo have 52 female beneficiaries.

## **VII. United Nations Support Office in Somalia support for the African Union Mission in Somalia and the Somali National Army**

### **A. Support for African Union Mission in Somalia operations**

83. UNSOS provided support for the continuity of AMISOM operations and ensured the availability of critical life support logistics capacities, despite the challenges posed by the COVID-19 pandemic and the associated restrictions imposed by the host and neighbouring Governments on the movement of personnel and cargo. The support of the Somali, Kenyan and Ethiopian Governments was instrumental in enabling UNSOS to move essential cargo and personnel across borders. Heavy rains and flooding restricted the movement of supplies by road and resulted in the increased use of aviation assets to supply AMISOM sectors.

84. AMISOM established a COVID-19 task force in all sectors and participated in the United Nations Somalia COVID-19 task force. The response efforts of the AMISOM COVID-19 task force are guided by projected transmission rates, enabling

rapid and coherent implementation of preventive measures and treatment capacity across the AMISOM area of operations. UNSOS continued to strengthen medical treatment capacities, including by providing COVID-19-related supplies to all AMISOM sectors, such as personal protective equipment, cleaning and sanitizing materials, 10-person tents for isolation facilities and wash basins. By early June, AMISOM and the United Nations in Somalia had achieved a substantive level of treatment capacity, including additional hospital beds and intensive care units to be able to transfer and treat multiple serious cases in Mogadishu. Efforts are also under way to establish more robust practices. UNSOS support to the African Union Commission, AMISOM and AMISOM troop- and police-contributing countries includes reinforcing existing prevention and containment practices by establishing a joint mechanism to monitor measures taken by AMISOM, in particular in areas where the risks of contracting or spreading COVID-19 are high. The United Nations also invited the African Union to align its troop rotation mechanisms and COVID-19 mitigation measures.

85. UNSOS also supported the conversion of its training centre in Mogadishu into an isolation facility, supplementing the existing AMISOM transit camp capacity, and commenced work to upgrade the AMISOM Level 1 plus medical clinic in Kismaayo, augmented by additional medical personnel provided by Kenya.

86. UNSOS continued to support AMISOM to mitigate the threat of indirect fire in Mogadishu by prioritizing construction projects to build hard-walled structures, strengthening perimeter surveillance and defences, and installing early warning systems, with additional systems planned for deployment to AMISOM sector headquarter locations.

87. UNSOS support for water borehole drilling and improving forward operating bases has slowed owing to the COVID-19 pandemic and the high security threat. UNSOS capacity to undertake optimum oversight and accountability measures for support to AMISOM, including certification and inspection activities, has also been adversely affected.

88. The deployment of the AMISOM formed police unit to Baidoa, provided by Ghana, continues to be delayed owing to the rains, which have affected roads. The contingent-owned equipment for the unit has been in Mogadishu since October 2019, resulting in UNSOS incurring high demurrage charges.

89. As at 4 August, the balance of the United Nations trust fund in support of AMISOM was \$2,717,712.

90. The Mine Action Service, with assistance from UNSOS, continued to support AMISOM security operations and stabilization efforts by providing advice, analysis, training and mentoring concerning the use of specialized equipment, explosive detection dogs, community liaison officers and explosive ordnance clearance teams.

91. The Mine Action Service also supported AMISOM to reduce the threat posed by improvised explosive devices and explosive ordnance. From 5 May to 4 August, the Mine Action Service delivered training to 548 AMISOM uniformed personnel to enhance their ability to find and destroy improvised explosive devices and to safely operate within the threat environment. The Mine Action Service also supported AMISOM predeployment training for 142 troops in Mudubugu, Burundi, from 4 May to 9 July. The Mine Action Service further contributed to the safety and security of strategic infrastructure through the deployment of 24 teams to conduct searches of 16,306 pieces of luggage, 45,057 vehicles, 254 buildings, 168,840 m<sup>2</sup> of built-up areas and 10,717,040 m<sup>2</sup> of open areas throughout the sectors.

## **B. Support for Somali national armed forces operations**

92. UNSOS delivered field defence stores, communication equipment and life support supplies to Somali National Army troops deployed to Operation Badbaado in Sabiid, Ceel Saliini, Awdheegle and Jannaale. UNSOS also supported the establishment of a Somali National Army logistics hub in the AMISOM forward operating base at KM50 and provided field defence stores to the same location, enabling the Somali National Army to establish field headquarters for the 14th October Brigade.

93. The Federal Government has not yet advised on the modality to enable the United Nations non-lethal support package to be extended to an additional 3,000 members of the Somali security forces, including an appropriate share of state and federal police, as authorized by the Security Council in resolution [2520 \(2020\)](#). The Head of UNSOS continued to consult regularly the Minister of Defence and Commander of the Somali Armed Forces on the current support to 10,900 Somali National Army personnel.

94. On 16 June, the Head of UNSOS wrote to the embassies of Member States accredited to Somalia in an appeal for contributions to the trust fund in support of the Somali security forces. As at 4 August, the balance of the fund was \$9,191,430, which is sufficient to provide mandated support to 10,900 Somali security forces for seven months.

## **VIII. United Nations presence in Somalia**

95. United Nations entities continued to be present in Baidoa, Beledweyne, Berbera, Boosaaso, Dhooble, Dhuusamarreeb, Doolow, Gaalkacyo, Garoowe, Hargeysa, Jawhar, Kismaayo and Mogadishu. As at 4 August, 308 international staff and 1,261 national staff were deployed throughout Somalia. Approximately 65 per cent of United Nations staff in Somalia have transitioned to remote work owing to COVID-19.

96. Following the unprecedented number of mortar attacks since the beginning of the year, the United Nations enhanced safety measures within the Aden Adde International Airport zone and strengthened security cooperation with AMISOM and the host Government. The frequency of the attacks highlights the intent and capability of Al-Shabaab to target the United Nations and adjacent compounds in the Aden Adde International Airport zone. The likelihood of further attacks remains high.

## **IX. Observations**

97. I welcome the long-awaited resumption of dialogue between the Federal Government and the leaders of the federal member states and the steps taken towards normalizing Federal Government relations with Jubbaland, which is critical for the restoration of collaboration between federal and state levels of government. I also commend the work of the country's nascent institutions, in particular the Federal Parliament, which has made some progress towards developing an electoral code, and the National Independent Electoral Commission, for its efforts to advance technical preparations for the 2020/21 elections in the face of significant political challenges.

98. Somalia is at a critical juncture. The preparations for the 2020/21 elections have suffered significant delays, the legal framework remains incomplete and security arrangements are not yet in place. The provisional Federal Constitution mandates that parliamentary elections must be held through direct universal suffrage and must occur on a four-year cycle, which ends in November. Broad-based agreement among the



major stakeholders is necessary to chart a viable way forward, as any electoral modalities pursued by a single stakeholder, including the Federal Parliament, will not be implementable without the support and buy-in of other key stakeholders. I therefore welcome the discussions held by the federal and state leaders in Dhuusamarreeb as an important first step towards building the essential political consensus on the electoral modalities. As the work of the technical committee established by the leaders in Dhuusamarreeb moves forward, it is important to devise options for electoral modalities that not only move the country away from selection processes and towards direct elections, as codified in the provisional Constitution, but also keep the country on a stable political path, in the interests of the Somali people.

99. I am concerned that the abrupt removal of Mr. Khayre might disrupt the implementation of the agreements reached in Dhuusamarreeb, as well as the ongoing security transition operations and the political, security and economic reforms the Prime Minister was leading. It is vital to continue to honour the agreements reached by the federal and state leaders in Dhuusamarreeb and the timelines for follow-up meetings, and to ensure that all Somali stakeholders, including the federal and state leaders, Parliament, political parties and civil society representatives, undertake urgent and concerted efforts to reach a broad-based inclusive agreement on the way forward on elections.

100. The federal and state leaders all have a responsibility to keep the nation together and steer it towards the essential political consensus, not only on the modalities for peaceful elections, but also on how to advance cooperation on security and economic development and how to complete the review of the Constitution.

101. I encourage the Federal Government to accelerate the updating of the transition plan to allow for continued progress on the transition of security responsibilities to Somalia. The inclusion of federal member states, AMISOM and key security partners in the revision of the transition plan will ensure greater success in meeting updated targets and timelines. I also look forward to the revitalization of strategic level engagement on the comprehensive approach to security to provide the necessary assistance towards achieving holistic security for the Somali people. This will build on the encouraging work undertaken at the technical level between the ministries concerned and international partners to define strategic priorities and operational objectives.

102. Further reform in the security and justice sectors will require political will and cooperation between the Federal Government and the federal member states. I call upon the Federal Government and the state authorities to ensure that federal Darwish units and South-West police personnel are appropriately equipped and deployed to Shabelle Hoose to support stabilization efforts following successful operations. I urge the Somali authorities to complete the transfer of high-risk cases from military to civilian courts as a matter of priority.

103. I condemn attacks by Al-Shabaab on Somali civilians, security forces, AMISOM, the United Nations and the international community. I call upon international partners to continue to extend support to the Somali security sector through training and capacity-building, as well as contributions to the trust fund in support of the Somali security forces, including through funding earmarked for the training, equipping and mentoring of Somali security forces to counter the threat of improvised explosive devices.

104. In addition to the impact of conflict on civilians, I remain concerned about attacks on freedom of expression, with the killing, assaulting and intimidation of journalists and media workers. I commend the national authorities for recognizing the

hostile environment in which journalists carry out their vital work by committing to undertake investigations into attacks on the media.

105. The occurrence of sexual and gender-based violence, which disproportionately affects women and girls, is also concerning. With regard to the deterrence of such crimes, I am alarmed by the alternative draft law on sexual intercourse-related crimes and urge the Cabinet to reintroduce the sexual offences bill in Parliament so that it can be adopted and enacted, while ensuring that any amendments are in line with international standards. I also urge the Federal Government to take steps towards establishing the national human rights commission, which has a key role to play in promoting and protecting human rights.

106. I welcome the meeting between Mr. Farmajo and Mr. Bihi and the technical talks between Somalia and “Somaliland” held in Djibouti. Following the earlier meeting between the two leaders in Addis Ababa, the Djibouti talks constitute a further positive step towards the improvement of relations and the resumption of dialogue between the two sides. I urge the two parties to agree on concrete actions to advance confidence-building efforts.

107. I commend the ongoing response of the Somali authorities to the COVID-19 pandemic at both the federal and state levels, which the United Nations continues to assist. Somalia will continue to need the support of the international community in these efforts, including to alleviate the economic impact of the pandemic on Somali households and to address the humanitarian needs resulting from recurring floods and the desert locust infestation. I call for donor support for these efforts.

108. I thank the African Union, the Intergovernmental Authority on Development, the European Union, Member States, non-governmental organizations and other partners for their invaluable support and engagement in Somalia. I pay tribute to the brave personnel of AMISOM, the Somali National Army and the Somali Police Force for their sacrifices in pursuit of peace and stability in the country.

109. I also thank my Special Representative, James Swan, and all United Nations personnel in Somalia for their dedication and untiring efforts, working in very challenging conditions, in support of Somalia and its people.

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**Annex 75**

Security Council, 75<sup>th</sup> year: 8755<sup>th</sup> meeting, New York, S/PV.8755, 20 August 2020

United Nations

S/PV.8755



# Security Council

Seventy-fifth year

Provisional

## 8755<sup>th</sup> meeting

Thursday, 20 August 2020, 10 a.m.

New York

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<i>President:</i>	Mr. Syihab . . . . .	(Indonesia)
<i>Members:</i>	Belgium . . . . .	Mr. Kridelka
	China . . . . .	Mr. Dai Bing
	Dominican Republic . . . . .	Mr. Singer Weisinger
	Estonia . . . . .	Ms. Lõuk
	France . . . . .	Mrs. Gueguen
	Germany . . . . .	Mr. Sautter
	Niger . . . . .	Mr. Abarry
	Russian Federation . . . . .	Mr. Nebenzia
	Saint Vincent and the Grenadines . . . . .	Ms. DeShong
	South Africa . . . . .	Mr. Matjila
	Tunisia . . . . .	Mr. Kabtani
	United Kingdom of Great Britain and Northern Ireland . . . . .	Mr. Roscoe
	United States of America . . . . .	Ms. Norman-Chalet
	Viet Nam . . . . .	Mr. Dang

## Agenda

The situation in Somalia

Report of the Secretary-General on the situation in Somalia (S/2020/798)

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*The meeting was called to order at 10.10 a.m.*

### **Expression of welcome to the new Permanent Representative of Belgium**

**The President:** I would like to extend, on behalf of the Council, a warm welcome to the new Permanent Representative of Belgium to the United Nations, Mr. Philippe Kridelka, on the occasion of his first in-person meeting of the Security Council.

### **Adoption of the agenda**

*The agenda was adopted.*

### **The situation in Somalia**

#### **Report of the Secretary-General on the situation in Somalia (S/2020/798)**

**The President:** In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of Somalia to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite the following briefers to participate in the meeting: Mr. James Swan, Special Representative of the Secretary-General and Head of the United Nations Assistance Mission in Somalia; and Mr. Francisco Caetano José Madeira, Special Representative of the Chairperson of the African Union Commission for Somalia and Head of the African Union Mission in Somalia.

Mr. Madeira is joining this meeting via video-teleconference from Mogadishu.

The Security Council will now begin its consideration of the item of the agenda.

I wish to draw the attention of Council members to document S/2020/798, which contains the report of the Secretary-General on the situation in Somalia.

I now give the floor to Mr. Swan

**Mr. Swan:** I thank you, Mr. President, for this opportunity to brief the Security Council on the situation in Somalia. Members have received a detailed written update in the latest report of the Secretary-General (S/2020/798). So I will focus on just a few key points regarding elections, relations between the Federal Government and federal member states, the security situation and humanitarian developments.

This very week, top Somali leaders convened in Dhuusamarreeb in an effort to reach a compromise on how to proceed with the 2020/2021 elections. We commend the leaders who participated in that meeting, including President Mohamed Abdullahi Mohamed Farmajo and the Presidents of the federal member states of Galmudug, Hirshabelle and South-West. Although much more work remains to be done, we are encouraged that their discussions are taking place in a conciliatory spirit and that they are examining a diverse range of electoral options.

We therefore regret the absence of Puntland President Said Deni and Jubaland President Ahmed Islam Madobe from that important meeting. It is disappointing that they declined to participate despite repeated appeals from other Somali political leaders and international partners. We understand that there are strongly held divergent views among the leaders and that political tensions are high in this pre-electoral period. Yet it is precisely during such moments that it is most necessary for the nation's leaders to engage in dialogue and present their best ideas to find solutions in the interest of the Somali people.

On 27 June, the Chairperson of the National Independent Electoral Commission briefed the House of the People that, at this late stage, one-person-one-vote elections could take place no earlier than March 2021, and then only if manual voter registration were used, or in August 2021 if the Commission used biometric registration.

The Chairperson's briefing underscored the dilemma facing Somalia's political leaders. Under the provisional Federal Constitution, Parliament must be elected through universal direct suffrage. But the Constitution also stipulates that parliamentary elections must be held every four years according to a prescribed deadline. That means that parliamentary elections are due by the end of November 2020. It is now clear that it is impossible to satisfy both those constitutional requirements.

As the constitutional court has never been formed, there is no credible judicial body to resolve this constitutional dilemma. A solution therefore requires broad-based political agreement. Unilateral action by any Somali stakeholder is unlikely to garner the support and legitimacy necessary for implementation.

Members of the Council have for more than a year urged dialogue and cooperation between the leaders of

the Federal Government of Somalia and those of the federal member states. I am pleased to report that, since my previous briefing to the Council (see S/2020/436), those leaders met virtually on 22 June, and then in person in Dhuusamarreeb from 18 to 22 July. Those meetings became possible following a conciliatory initiative by President Farmajo to reach out to Jubaland President Ahmed Madobe. I commend both leaders for accepting the dialogue despite their significant remaining political differences.

In Dhuusamarreeb in July, leaders of the Federal Government of Somalia and of the federal member states agreed on the goal of timely and credible elections acceptable to all, and they authorized a technical committee to develop and present detailed options for consideration at their follow-up summit, which started on 15 August. The climate of cooperation in July was regrettably somewhat undermined by subsequent political events, as some federal member states and political parties reacted negatively to the abrupt removal of the Prime Minister from office, among other developments.

President Farmajo and three federal member state leaders returned on schedule to Dhuusamarreeb on 15 August, as agreed, to continue discussions. Again, we regret the absence of the other leaders.

It is of course up to Somali stakeholders to determine the model that will guide the electoral process. Nevertheless, we also urge that such a model be arrived at through inclusive dialogue and compromise. It should also be informed by principles, including that it must preserve the tradition of peaceful rotation in office every four years, be implementable in practice, ensure far broader representation than the 2016 model, be inclusive of women and advance progress towards the goal of one-person-one-vote elections.

Somalis and their international partners are closely watching the discussion currently under way in Dhuusamarreeb. It is incumbent on Somalia's leaders to rise to this moment in history and pursue agreement in the national interest. At the request of many Somali stakeholders, we have contributed ideas and options for a compromise electoral model, and international partners stand ready to offer support if requested by the participants.

Turning to another important dialogue, we welcome the summit of the leaders of Somalia and Somaliland convened by Djibouti President Ismaël Omar Guelleh

on 14 June, with facilitation by the European Union and the United States. We urge that the planned follow-up discussions by the technical committee and subcommittees proceed.

We are now witnessing a worrisome upsurge in attacks by Al-Shabaab, particularly in Mogadishu but also in several regions. The vicious Al-Shabaab attack on innocent civilians at the Elite Hotel on 16 August was one of an increasing number of recent attacks across Somalia and is a tragic reminder of the continued imperative to improve security in Somalia. Long-term security of course includes many aspects, such as improved governance and justice systems and inclusive economic development. Yet unquestionably there also remains a requirement for hard security capabilities and operations to counter Al-Shabaab. In my May briefing to the Council, I commended the Somali National Army and the African Union Mission in Somalia (AMISOM) for their capture of Janaale, Lower Shabelle region, in March. Since then, efforts have focused on stabilizing the recovered areas and consolidating a presence in the area. I again salute the courage and commitment of the Somali and African Union troops.

The year 2021 will see a critical transition, in which Somalia takes the lead on its security matters. Last week, the Federal Government of Somalia completed a concept note for updating the Somalia transition plan, and technical teams comprising Somali security leaders and international partners began work on the update this week. Force generation has faced some setbacks in meeting the projections for 2020 as a consequence of the coronavirus disease (COVID-19). The comprehensive approach to security continues to operate at the technical level but it would be enhanced by additional strategic-level guidance, as called for by the Council in resolution 2520 (2020).

Throughout this reporting period, despite the impact of COVID-19, the United Nations Support Office for Somalia has continued to contribute reliably to the sustainment and the operations of AMISOM forces and 10,900 Somali National Army troops. In preparation for key security-related decisions to be taken in 2021, we look forward to the independent assessment called for by the Council.

Somalia continues to suffer chronic humanitarian crises, with recurring destructive cycles of floods and drought, compounded this year by desert locusts and COVID-19. More than five million people — one

third of Somalia's population — still require life-saving humanitarian assistance. The 2020 humanitarian appeal, for just over \$1 billion, is currently funded at only slightly more than 50 per cent. We thank international donors and request their continued generosity in support of the Somali people.

COVID-19 has of course undermined health, economic and development gains in Somalia. The achievement in March of the decision point under the Heavily Indebted Poor Countries Initiative was crucial to Somalia's ability to secure funding to mitigate the impact of COVID-19. We hope the new Government and the Prime Minister, once appointed, will continue, and indeed accelerate, Somalia's reform agenda for national development.

While today's briefing has focused on immediate, pressing issues, we remain mindful that progress in Somalia requires a long-term commitment to governance, justice, respect for human rights and the inclusion of women, youth and minorities to build the nation.

With regard to efforts to counter sexual and gender-based violence, I note with concern the recent initiative by some parliamentarians to introduce a new bill entitled "the law on sexual intercourse-related crimes". We have brought our concerns to the attention of the Speaker of the House of the People and, at his request, we have provided him details of many troubling elements in the proposed draft. Among them, the draft bill would violate protections against child marriage and forced marriage, and it is not in conformity with international human rights commitments to which Somalia is a party. We urge that the previous 2018 sexual offences bill be reintroduced for consideration.

Finally, on a positive note, I am pleased to report that the Secretary-General has approved Somalia's request for renewed eligibility for the Peacebuilding Fund. The next period of programming will focus on the important topic of women and peace and security.

**The President:** I thank Mr. Swan for his briefing.

I now give the floor to Mr. Madeira.

**Mr. Madeira:** I thank you very much, Mr. President, for this opportunity to brief the Security Council on a Somalia. I am particularly pleased to do so again with my colleague Ambassador James Swan. Our partnership is proof of the strong cooperation that exists between the

African Union and the United Nations, which remains vital to our collective support to Somalia.

Let me begin by recognizing that there have been significant developments in Somalia since I last the briefed the Council in May (see S/2020/436). Those developments are, in large part, due to the determination of Somalia's leaders to get together and consult on the bold steps required to strengthen the country's capacity to fight Al-Shabaab and other armed opposition groups, build the State of Somalia and strengthen its institutions and stabilize the country through the provision of essential goods and the services to the people.

The emerging resumption of dialogue and collaboration between the leaders of the Federal Government and those of the federal member states is the most salient political development that happened in the period under consideration. If harnessed and facilitated, this development can unlock the great potential of the Somali people to put in the second plan what divides them and build on the factors that bring them together and strengthen the unity and solidarity of their people.

I commend the personal efforts of President Mohamed Abdullahi Mohamed Farmajo and those of the Presidents of the federal member states, who, through emissaries, direct and indirect contacts, consultations, exchanges and mutual reassurances, have laid the groundwork that made those crucial developments a reality: the Dhuusamarreeb process.

In Dhuusamarreeb, we saw President Farmajo meeting bilaterally with President Ahmed Mohamed Islam Madobe of Jubtaland and discussing their issues. We witnessed President Farmajo exchanging views one on one with President Said Abdullahi Mohamed Deni of Puntland, with President Mohamed Abdi Ware of Hirshabelle and President Abdiiaziz Hassan Mohamed Laftagareen of South-West State. We saw President Ahmed Abdi Kariye Qoor Qoor preparing the ground and welcoming President Farmajo and all the other Presidents to the big meeting.

Those meetings are important and necessary. They should cease to be historical developments. They must be made to repeat themselves with such frequency that they become normal events — regular encounters of leaders united in a common purpose of making their country a better place for all their people.

We regret that, for the meeting that started on 15 August, two of those leaders have not been there. We the international partners and friends of Somalia have an important role to play to make peace a necessary presence and transformation a necessary reality.

Then Dhuusamarreeb process deserves our unwavering support, as it represents a clear signal of the intent of Somali leaders to work towards a political consensus. This was the missing link, and now it seems to be close. We should not miss this opportunity.

The African Union, through the African Union Mission in Somalia (AMISOM), is there in Somalia supporting the Somali security forces in ensuring security for those encounters on the ground. While the parties will require more commitment and trust to assure that the Dhuusamarreeb talks are a success, the African Union will continue not only to secure the process but also to offer its political support, where and when needed.

The African Union welcomes the developing dialogue between President Farmajo and the “Somaliland” leader, Mr. Muse Bihi Abdi. The latest round of talks, held in June, brokered by President Ismaël Omar Guelleh of Djibouti, stands as the second this year. More important, this is evidence of Somalia’s commitment to dialogue as a means of resolving its national differences. We are equally aware that the talks’ joint technical committee is yet to meet again, and we underscore the importance that those talks continue.

The resumption of dialogue between the Federal Government and the federal member states has real potential to act as a catalyst for achieving critical national priorities. I am encouraged so far that the resumption of dialogue has already allowed for Somali stakeholders at all levels to engage in frank and inclusive discussions in search of a consensual approach to the issue of elections and its modalities. We partners of Somalia must strive to ensure that the discussions will remain all-inclusive, because it is that inclusivity that lends legitimacy and will determine the consistence and implementability of the consensus that may be reached in the Dhuusamarreeb process.

Following the National Independent Electoral Commission (NIEC) report to Parliament on 27 June, AMISOM, at the request of the Commission’s Chairperson, has enhanced its discussions on election security, the securing of the new NIEC premises and

the African Union Commission’s technical support to NIEC prior to and during the elections.

I am also pleased to report that AMISOM’s police component, which will play a critical role in election security, is regularly engaging its Somali counterparts on areas of support. In that context, AMISOM police are currently training Somali police on the use of mapping tools for election security threat assessments. Despite that support, it remains essential, as part of election preparation, that the important work of the National Electoral Security Task Force resume as soon as practically possible.

I remain concerned at the threat of Al-Shabaab across Somalia, which is demonstrated by the extremist group’s sustained attacks against Government officials, businesses, civilians, security forces and international personnel. The fight against Al-Shabaab will continue to require concerted efforts. At the centre of peace efforts must be enhanced collaboration, coordination, coherence, improved information-sharing and complementarity between the Federal Government and the federal member states, particularly as Somalia prepares to hold elections.

More must be done to degrade Al-Shabaab’s operational capacities. It is our assessment that as Somalia’s national dialogue continues to edge towards political consensus, Al-Shabaab will seek to derail those efforts. Already Al-Shabaab, in its public statements, has unsuccessfully attempted to undermine the Dhuusamarreeb process and foment national discord.

In line with AMISOM’s tasks, as stipulated in the African Union Peace and Security Council communiqué 923 and Security Council resolution 2520 (2020), I can report that despite the ongoing impact of the coronavirus disease, AMISOM has continued to implement the transition plan. Since May, AMISOM, jointly with our partners in the Somali security forces, has been continuing to conduct several targeted operations to disrupt, degrade and disrupt Al-Shabaab’s freedom of movement and action. In addition to these operations, we have jointly secured and maintained key supply routes.

As part of our transition tasks, we have also mentored various Somali security forces battalions through our ongoing colocation, particularly in Lower Shabelle. In Lower Shabelle, as the Council is aware, recovered areas remain secure thanks to the continued



joint operations and the bravery of our Somali security forces and AMISOM soldiers.

The African Union, through AMISOM, has been the foundation of progress on security in Somalia since 2007, but with this we have thankfully witnessed the capabilities of the Somali security institutions gradually increase. These increases must continue in earnest so that Somalia is eventually able to take the lead on its security responsibilities by 2021. To that effect, it is with satisfaction that we note that the work towards the revision of the transitional plan is ongoing and the Government has set a clear vision of what the revision should entail, the strategic priorities it should pursue, the actions that need to be implemented to make each strategic priority a reality and the specific tasks that need to be fulfilled and by whom.

Clearly, improved and enhanced coordination and coherence, information-sharing and accountability, transparency and complementarity will be necessary for the adopted revised transition plan to be fully implemented in a timely manner. We are happy that this revision is taking place in tandem with efforts to revitalize the comprehensive approach to security mechanisms, which will be more aligned with the revised transition plan activities.

A very positive feature in the current revision is that the elements of all-inclusiveness have been enhanced and the federal member states have been fully included and involved from the outset in the preparation of this new revised transition plan. They are participating directly and actively, and their views are being noted and reflected in the baseline documents that are being produced. Their seats are assured and reserved in the three technical committees tasked with producing the draft revised transition plan. This is of extreme importance, as no realistically sustainable peace operation in Somalia can succeed without the involvement of the regions concerned.

As we begin to review the transition plan, under the leadership of the Federal Government, it remains critical that a reviewed plan must focus on practical elements. These must include consensus on priority locations for transition and agreement on the realignment of tasks, particularly for international partners, as called for in African Union Peace and Security Council communiqué 923. Agreements on those elements will in part inform our collective assessment on what comprehensive support Somalia would require from key international

partners in the lead-up to 2021 and post-2021, as called for in both African Union Peace and Security Council communiqué 923 and Security Council 2520 (2020).

In terms of operations, one of the pressing issues that needs to be tackled head-on and addressed as a matter of urgency is the lack of commensurate Somali security forces to take over and hold areas under AMISOM control and those projected for liberation from Al-Shabaab. This is making it difficult for AMISOM forces in various sectors to reconfigure and create mobile forces for targeted offensive operations against Al-Shabaab, as they are forced by circumstance to keep holding and protecting the populations in the towns and habitational centres they have liberated from Al-Shabaab.

Therefore, realistic and feasible approaches need to be identified to effectively address the issue of the slow pace of generation of the Somali National Army forces.

As I conclude, I should like to draw the Council's attention to the fact that African Union Peace and Security Council communiqué 923 is broadly in line with paragraph 38 of Security Council resolution 2520 (2020) on the need for a comprehensive, independent assessment. In the spirit of the African Union-United Nations shared vision for Somalia, the African Union continues to call for a joint African Union-United Nations effort in delivering on this important assessment.

**The President:** I thank Mr. Madeira for his briefing.

I now give the floor to those Council members wishing to make statements.

**Mr. Roscoe** (United Kingdom): Let me begin by thanking Special Representative of the Secretary-General Swan for his briefing and welcoming Ambassador Madeira and also thanking him for his comprehensive briefing, as well as Ambassador Osman.

On behalf of the United Kingdom, I want to first express my condolences to the families and friends of those killed in the recent Al-Shabaab attack on the Elite hotel in Mogadishu. I want also to reaffirm our solidarity with all Somalis in the face of such attacks. Deplorably, those attacks, despite coronavirus disease (COVID-19) and the Secretary-General's call for a ceasefire, continue to undermine peace and security in Somalia. We condemn those attacks, and we pay tribute to the ongoing commitment and sacrifices of troop-contributing countries to the African Union Mission

in Somalia (AMISOM) and the efforts of the Somali security forces to counter Al-Shabaab.

As we have heard today, Somalia is at a critical juncture on its journey towards a long-term political settlement and the peace, security and stability that will enable. Somali leaders and international partners have committed to supporting and advancing democracy in Somalia. With the deadline for elections fast approaching, an agreement on a way forward is urgently needed. A timely and inclusive way forward is also critical — a way forward that respects the principles and commitments agreed to in the Mutual Accountability Framework, including at least a 30 per cent quota for woman parliamentarians. That agreement should represent clear progress from the 2016 election model, moving Somalia away from clan-based selection processes to direct elections, and enable as many citizens to vote as possible, as set out in the provisional Federal Constitution.

We therefore welcome the ongoing consultations between leaders of the Federal Government and the federal member states at Dhuusamarreeb. We have always been clear that the electoral model will require broad-based support among all Somali stakeholders. To that end, we regret — as Special Representative Swan and Ambassador Madeira both said — that President Deni of Puntland and President Madobe of Jubaland have not yet joined the talks. We call for them to attend as a matter of urgency. It is vital that all stakeholders — the Federal Government, federal member states, Parliament, the National Independent Electoral Commission and the joint parliamentary committee — work together in a spirit of compromise to reach agreement and avoid unilateral or provocative acts that would undermine the hard-won stability in Somalia and the partnership with the international community. We stand ready to support agreed outcomes that strengthen inclusive politics and include a significant element of direct voting.

Turning to the human rights situation, we too share the concerns expressed today by the United Nations and the Special Representative of the Secretary-General about the bill regarding sexual-intercourse crimes. It was encouraging to see so many Somalis speak out against it. We urge the Parliament to give first reading to the original sexual offences bill submitted by the Cabinet. Any bill passed by the Somali Parliament must reflect its international obligations and commitments on the protection of children, women and girls.

I want also to express our deep concern about attacks on the freedom of expression and against journalists and media workers in Somalia. Media freedom is a vital component of our democratic society, and the media has a vital role to play in Somalia. We call for journalists and media workers to be able to perform their work freely and safely.

Somalia faces a protracted climate- and conflict-induced humanitarian crisis. That crisis has been exacerbated by the global COVID-19 pandemic, floods and locust infestation. We call on the international community to provide more funding for the humanitarian response and to step up efforts to build resilience and mitigate the long-term effects of climate change. The United Kingdom gave \$420 million to Somalia in the past financial year and is now working to support the COVID-19 response. It is vital that the Federal Government and the federal member states facilitate the delivery of relief aid to all those in need, and ensure the safety of aid workers in line with international humanitarian law.

I return to the security situation in Somalia. The country has made important progress in recent years, but the security situation, as we have heard, remains difficult. Next year's deadline for transition of greater responsibility to the Somali security authorities presents both a challenge and an opportunity.

It is vital that all those that are invested in supporting AMISOM and building Somalia's security forces now work together to agree to a future of international support for the security of Somalia. Without that, we risk wasting the progress and sacrifices made to date. A United Nations-led independent assessment on post-2021 security should offer the forum for such discussions, and I urge all partners to engage proactively with it.

In conclusion, I want to emphasize three points. First, I want to reiterate our call, which the Security Council has made many times, for the Federal Government and all federal member states to reach a decisive and inclusive agreement on elections, soon. Secondly, I want to underline the importance of the Council, the United Nations, the African Union and the wider international community continuing to support Somalia to achieve progress and political and security reform. Finally, I want to stress the importance of a united response in supporting Somalia in its fight against COVID-19 and protracted humanitarian crises.

Through the determination of the its people and the support of the international community, Somalia has come a long way. We should not lose sight of that. We stand ready to lend our support to navigate this next stage and to help Somalia realize its goal of peace and security.

**Mr. Kridelka** (Belgium) (*spoke in French*): I would like to thank the Special Representative of the Secretary-General and the Special Representative of the Chairperson of the African Union Commission for Somalia for their briefings and actions. I would like to reiterate Belgium's full support.

Before saying a few words on the political situation and on human rights and security issues, I would like to offer, through Ambassador Osman, my condolences to the families of the victims of the attack on a hotel in the capital on Sunday. Such terrorist acts are unacceptable and demonstrate once again that the Somali Government and the Somali armed forces must prioritize the country's security.

With regard to the political situation, I wish to welcome the resumption, in July, of a high-level political dialogue between the Federal Government and the federal member states. That is an encouraging and entirely necessary development to address the urgent issues facing Somalia. We must ensure that the dialogue continues and that a consensus is reached between the Federal Government and all the federal member states. We hope that the removal of Prime Minister Khayre, in problematic circumstances, does not signal a change of direction. Time is running out to take important decisions on the organization of the elections, but such decisions must absolutely be the result of a compromise, not a unilateral decision taken by a Somali political institution or actor. We also encourage the authorities to broaden the democratic space in order to allow for the participation of a large part of the population, including women, young people and internally displaced persons, in those processes, which are crucial for the future of the country. In that context, Belgium also echoes the representative of the United Kingdom in expressing our concern about the attacks on journalists who are doing their work and exercising their freedom of expression.

With regard to human rights, we remain concerned about the grave violations against children. As Chair of the Working Group on Children in Armed Conflict, I am pleased to confirm that the Group very recently adopted conclusions on Somalia, with the ongoing

support of Assistant Secretary-General Virginia Gamba de Potgieter. The group welcomes those conclusions, in particular the efforts made by the Federal Government. Belgium encourages the Government to continue its efforts aimed at implementing the necessary legislation to combat several types of violations, including the draft law on sexual violence. On this point, we are concerned about the introduction in Parliament of a new text that appears to be incompatible with Somalia's international obligations.

Finally, Sunday's attack reminds us that Al-Shabaab remains the primary threat to the security and stability of the country. The development and deployment of the Somali army is essential to containing this threat and protecting the population. We await the review of the transition plan, which will be the key document to guiding Somalia, with the help of its partners, towards regaining control of its security and reconfiguring the African Union Mission in Somalia (AMISOM). I wish to recall the support that the European Union is providing to Somalia through the financing of AMISOM, the European Union Training Mission and the European Union Capacity-Building Mission in Somalia and the anti-maritime-piracy Operation Atalanta.

The support of the international community is not limited to the security sector. There is of course also humanitarian aid, which is badly needed by the population, as the number of food-insecure people is in the millions. There is also support for institutional capacity-building, as the restoration of State authority is not simply a military operation; it is a matter of the Somali authorities providing the population with the basic services and freedoms to which they aspire.

**Mr. Singer Weisinger** (Dominican Republic) (*spoke in Spanish*): We would like to thank Mr. James Swan and Mr. Francisco Caetano José Madeira for the valuable and detailed information they provided.

The Dominican Republic welcomes the resumption of dialogue and collaboration between the Federal Government and the leaders of the federal member states in July and the agreement to establish a technical committee to make recommendations on the modalities of the upcoming elections. In this regard, we commend the efforts of the United Nations and international partners aimed at fostering political consensus among Federal and state leaders in order to advance the implementation of national priorities in Somalia.

A key element in achieving that objective is the adoption of the reformed constitution. We therefore urge the parties to continue to make the necessary efforts for the resumption of a constructive, inclusive and transparent dialogue in order to reach the political agreement that will make it possible to conclude the review process. Similarly, we commend the meeting between the Presidents of Puntland and Galmudug and their commitment to cooperating in the maintenance of peace, security and economic development, in particular in Mudug Region. We also commend the initiative of the President of Djibouti, Mr. Ismaël Omar Guelleh, to facilitate the resumption of dialogue between Somalia and “Somaliland”. We are convinced that achieving consensus through dialogue among political actors in Somalia will be the driving force for unifying the country and making the upcoming elections viable and based on electoral modalities acceptable to all Somalis.

We express our concern about the security situation in Somalia and condemn the attacks perpetrated by the Al-Shabaab terrorist group, some of which were carried out using improvised explosive devices. We particularly condemn the attack on 16 August on the Elite Hotel in Mogadishu. We extend our condolences to the families of the victims and hope that those responsible will be brought to justice.

In addition, we recognize the efforts made by the United Nations Assistance Mission in Somalia (UNSAM) and the United Nations Development Programme to train and raise awareness among the population on gender issues and on the women and peace and security agenda. Similarly, we welcome the establishment by the South-West state assembly of a parliamentary committee on women, human rights and humanitarian issues that could spearhead the promotion of legislation that empowers women and promotes gender equality.

We understand that greater participation by women in the various areas of public and political practice is vital. Women have the power to change communities. Their representation in the political system is key to achieving sustainable peace. Similarly, the participation of young people is necessary to help overcome the challenges in Somalia. That is why care must be taken to ensure an enabling environment for their development.

We also express our concern about the fragile humanitarian situation in Somalia resulting from the triple threat posed by coronavirus disease, the desert

locust infestation and the floods that have affected thousands of displaced persons in recent months. In this regard, we would like to acknowledge the tireless efforts of humanitarian partners in Somalia despite the difficult situation in the country. Accordingly, we also encourage the international community to contribute to the humanitarian assistance fund for Somalia in order to save lives and alleviate the needs of the most vulnerable.

In conclusion, we would like to highlight the role that the United Nations Support Office in Somalia, the African Union Mission in Somalia and UNSOM have been playing. At the same time, we recognize all the actors whose actions promote peace and stability in the country.

**Ms. Norman-Chalet** (United States of America): I thank Special Representative Swan and Special Representative Madeira for joining us today and for their comprehensive updates and briefings.

I also join you, Mr. President, in welcoming our new Belgian colleague, Ambassador Kridelka. It is really good to see him in person. Although I saw him on the screen yesterday, I want to welcome him officially to the Security Council today.

Somalia stands before a moment of profound opportunity. The country faces difficult circumstances and security challenges to get there, however, including in the attack on the hotel in Mogadishu last weekend, which the United States condemns. We express our condolences to the victims and their families. This and other attacks highlight the need for Somalia to keep the upcoming elections on track. Those elections are fundamental to advancing stability and security in the country. Uncertainties and delays in holding elections will have the opposite effect.

The challenges Somalia faces require concerted and unified efforts by its leaders. Unfortunately, the withdrawal of confidence in the former Prime Minister and his Government in July by the President and the Lower House of Parliament has only heightened the political tensions. We are concerned that such action has undermined the process of dialogue and negotiation among the Federal Government of Somalia, federal member states and other key stakeholders. We strongly encourage Somalia’s Federal Government and member states to hammer out a way forward for the upcoming elections.

Elections need to be credible, timely, secure, practical, implementable and built on broad-based consensus in a Somali-owned and Somali-led process. We welcome the discussions under way in Dhuusamarreeb and encourage the parties to reach agreement on a model that meets the criteria and can be implemented by early 2021.

The United States further encourages Somali authorities to maintain momentum on the reform efforts that brought about the re-establishment of ties with the World Bank and the International Monetary Fund in March of this year. Reaching the heavily indebted poor country decision point is an important milestone for Somalia, as it lays the foundation for inclusive economic growth. But such reforms must continue as Somalia seeks to build long-term inclusive economic growth and resiliency.

The United States is and will continue to be a close partner of Somalia. I meant to say earlier that it is very good to have Ambassador Osman here in the Council with us. With more than \$5.3 billion in bilateral foreign assistance over the past 20 years, we are working alongside the Somali people in support of improved food security, health-care services, water, sanitation and hygiene. United States humanitarian assistance is helping Somalis overcome flooding, drought, locust infestation and food insecurity, affecting nearly half the population, with a quarter of the people also displaced by natural calamities and conflict.

The United States is also working alongside its Somali partners to mitigate the impact of the coronavirus disease (COVID-19). Since the crisis began, we have provided more than \$23 million to support Somalia's COVID-19 response, including for masks, hospital beds, testing-centre equipment and communication efforts.

Finally, as other colleagues have already highlighted this morning, Al-Shabaab remains a destabilizing force in Somalia that has also repeatedly demonstrated the will and capability to launch attacks against neighbouring States. We are encouraged that the Somali and African Union Mission in Somalia forces have made progress on the battlefield, and that those military gains have been followed up with vital stabilization efforts to hold liberated territory. We remain concerned, however, that the implementation of key elements of the Somalia transition plan are behind schedule. We urge all parties to take the necessary steps

to accelerate the transfer of security responsibilities to the Somali military and civilian authorities.

The United States remains steadfast in its commitments to promoting peace and stability in Somalia and to working with our international partners in assisting the country to reach its goals for a peaceful and prosperous future.

**Mr. Matjila** (South Africa): I would like to thank you, Mr. President, for convening this important and timely meeting on the situation in Somalia. I have the distinct honour to deliver this statement on behalf of the Niger, Tunisia and South Africa, as well as Saint Vincent and the Grenadines (A3+1).

At the outset, the A3+1 would like to thank the Secretary-General for his report on the situation in Somalia (S/2020/798). We would also like to thank Mr. James Swan, Special Representative of the Secretary-General and Head of United Nations Assistance Mission in Somalia (UNSAM), and Mr. Francisco Madeira, Special Representative of the Chairperson of the African Union Commission for Somalia and Head of the African Union Mission in Somalia (AMISOM), for their briefings. We commend them for their efforts in Somalia. We would also like to welcome our colleague, Ambassador Osman of Somalia, to our meeting today. We pay tribute to all Somalis who have perished since our previous meeting on the situation in Somalia (see S/2020/573).

The A3+1 statement will focus on four important issues and developments in Somalia, namely, first, political developments; secondly, election preparations; thirdly, security; and, fourthly, the humanitarian situation.

First, on political developments, the A3+1 welcomes and commends the Federal Government of Somalia and federal member states for their recent meetings and consultations, which constitute an important first step towards building the political consensus necessary for the transition in Somalia.

We agree with the Secretary-General's observation that the long-awaited resumption of dialogue between the leaders of the Federal Government and the federal member states and the steps taken towards normalizing the Federal Government's relations with Jubaland are critical to the restoration of collaboration between the Federal and state levels of Government.

In that regard, the A3+1 further welcomes the meeting between President Farmajo and Somaliland President Muse Bihi Abdi in Djibouti, following their initial meeting in Addis Ababa, Ethiopia. We appreciate the continued regional and subregional efforts, as well as those of the international community, in bringing political stability to Somalia and the Horn of Africa. That is a positive development towards consolidating peace, security and development in the region.

The Niger, Tunisia, Saint Vincent and the Grenadines and South Africa urge all major stakeholders in Somalia to maintain that spirit of inclusive consultations and cooperation in all follow-up meetings in order to reach a broad-based agreement on critical matters. We regard that and other developments in the relations between the Federal Government and the federal member states as a critical step towards building the essential political consensus on various important issues, including agreement on the electoral modalities, security arrangements, constitutional review and power-sharing.

As the Security Council and the international community, we should all support the recent discussions held by the Federal and state leaders in Dhuusamarreeb. The international community and partners of Somali leaders and stakeholders should also allow them to lead and determine their future, without interference or imposition.

Furthermore, we appeal to the Somali stakeholders to undertake urgent and concerted efforts to reach a broad-based, inclusive political agreement, including on the way forward on elections and the finalization of the revised Constitution, among other key priorities.

Secondly, on the preparations for the elections, the Niger, Tunisia and South Africa, as well as Saint Vincent and the Grenadines, recall their previous statement to the Council, in which they noted that the preparations and holding of one-person-one-vote elections in Somalia was a critical priority (see S/2020/436, annex XII). We further underlined the importance of dialogue, inclusive political participation and the resolution of political differences between the Federal Government of Somalia and the federal member states, which are critical to the success of the elections and national cohesion. We reiterate that those observations remain valid today.

Therefore, the A3+1 commends the recent developments related to the preparations for the elections

in Somalia, in particular the adoption by the House of the People of the amendments to the political parties law and four resolutions that address the representation in Parliament of all federal member states, including the allocation of seats to constituencies for both Houses and a minimum of 24 per cent representation of women in Parliament,

We are also pleased that the National Independent Electoral Commission continues its preparations for the national elections. That is evidenced by the two possible options for conducting the elections either in March or in August 2021, depending on whether the elections are held through paper-based voter registration and polling or standard biometric voter registration.

The A3+1 urges all the stakeholders in Somalia to engage constructively in an inclusive dialogue to reach a political consensus on the modalities and timing of the elections. We further appeal to the international partners to coordinate their support to ensure inclusive, credible and secure elections in Somalia.

Thirdly, on the security situation, the A3+1 remains concerned about the volatile security situation in Somalia. We strongly condemn the attacks by Al-Shabaab on Somali civilians, the security forces, AMISOM, the United Nations and the international community. We pay tribute to the ultimate sacrifices of AMISOM and the Somali National Army in their quest to bring about peace, stability and development in Somalia.

We reiterate our previous calls urging the Federal Government of Somalia, with the support of the United Nations, AMISOM and international partners, to continue the generation, training and resourcing of capable and effective Somali national forces, which will ultimately take over the security responsibilities in line with the revised Somali transitional plan and the national security architecture.

To that end, we again appeal for the international community and partners to mobilize the necessary resources, including the replenishment of the United Nations trust fund in support of AMISOM and the trust fund to support the Somali security forces, as they continue to make commendable progress towards restoring State authority, peacebuilding and State-building.

We commend in particular the efforts of the Somali National Army in securing all recovered areas thus far.

However, we recognize the challenges created by the coronavirus disease (COVID-19) pandemic, as well as the rains, from April to June, that have impacted the expansion of some security activities, including the liberation of more zones.

We are heartened by the number of reconciliation efforts made by the State Administration and communities aimed at ending the cycle of violence among clans. We support the peaceful resolution of tensions among the communities and peaceful coexistence between the clans.

We strongly condemn the reported incidents of civilian casualties and conflict-related sexual violence, particularly those affecting women and girls. We also strongly condemn the grave violations against children in armed conflict, including the use, abduction, recruitment, killing and maiming of children, that have been registered during the period under review. We support the calls urging that all perpetrators of such crimes be identified and held accountable.

Furthermore, we have taken note of the developments in Parliament relating to the draft sexual-offences bill and the introduction of an alternative bill. Although we recognize the prerogative of the Somali Parliament to draft legislation, we call on the authorities to ensure that any new piece of legislation remains consistent with Somalia's international law obligations.

Fourthly, concerning the humanitarian situation, Somalia has been impacted by the triple threat and shock of the COVID-19 pandemic, an infestation by desert locusts and floods. Those challenges have deepened Somalia's humanitarian crisis. COVID-19 in particular has exacerbated pre-existing vulnerabilities, disrupted socioeconomic gains and affected the livelihoods of ordinary Somalis. We commend the actions taken by the humanitarian partners for the expansion of their support to Somali authorities to address the impact of COVID-19.

The A3+1 notes that the adverse impact of flooding due to climate change remained widespread in Somalia during the period under review. We are concerned that that situation will continue to exacerbate the displacement of people, food insecurity and the outbreak of water-borne diseases, as well as to adversely affect the livelihoods of those made most vulnerable across the country.

In that respect, Somalia requires continued support by the international community and humanitarian partners to mitigate the impact of that triple threat. We support the call by the Secretary-General for the additional funding that is urgently needed to continue to deliver humanitarian assistance.

We deplore the fact that the security situation remains a major constraint to humanitarian operations. We are concerned at and condemn the recorded incidents against humanitarian operations and providers, including recorded incidents that led to the killing, abduction and, in some instances, detaining of humanitarian workers.

Finally, the Niger, Tunisia, Saint Vincent and the Grenadines and South Africa commend the efforts and commitment of the United Nations through UNSOM and the United Nations Support Office in Somalia, AMISOM, the United Nations Mine Action Service, the Federal Government and the federal member states of Somalia and the international partners for their continual efforts and progress in bringing about stabilization and deepening federalism and State-building in Somalia.

We urge a continued and strengthened working relationship between AMISOM and UNSOM in order to assist Somalia to take ownership of addressing its own security challenges, as envisaged by the transition plan. We reiterate that the withdrawal of AMISOM from Somalia should be condition-based, as the security situation remains volatile and is characterized by frequent terrorist attacks.

To conclude, the Niger, Tunisia, Saint Vincent and the Grenadines and South Africa support the continued presence of AMISOM and UNSOM in Somalia. In that regard, we support the renewal of the mandate of UNSOM for another 12 months when it ends on 31 August 2020.

**Ms. Lõuk** (Estonia): We join others in offering our deepest condolences to the families of the victims of the recent attack on the Elite Hotel. We also join others in thanking the briefers for their insightful overviews.

It is important that despite the multiple challenges, including the coronavirus disease (COVID-19) pandemic, Somalia keep moving ahead with the long-term goals of State-building. We commend Somalia on the progress made thus far and encourage them to stay on course.

Estonia warmly welcomes the resumption of dialogue between the Federal Government of Somalia and the federal member states, and strongly encourages all stakeholders to continue their talks to pursue national priorities, including the modalities of timely and peaceful elections. Given the high stakes of the upcoming elections, it is crucial that no unilateral actions be taken and that broad-based political agreements be reached. We hope that the stakeholders can agree on timely and inclusive elections, which represent progress beyond the 2016 model.

We are concerned about the sexual-intercourse-related crimes bill proposed by the parliamentary committee and urge the Parliament not to pass any legislation that is in violation of international standards. We also call on the authorities to address the attacks on freedom of expression and to investigate attacks on journalists and media workers accordingly.

Lastly, we call on the Federal Government to take steps towards establishing the national human rights commission, which has a key role in promoting and protecting human rights. Estonia welcomes the fact that the Working Group on Children in Armed Conflict has agreed its most recent conclusions on Somalia, and we are looking forward to their implementation.

The security situation remains a major challenge. We condemn in the strongest terms the attacks by Al-Shabaab and offer condolences to the victims of the attacks. Despite the COVID-19 pandemic, all stakeholders must ensure that progress is also made on the security front. We further call on the Federal Government of Somalia to accelerate the updating of the transition plan. Clear timelines, clear tasks and a clear vision are crucial in order to achieve the end goal of Somalia taking full responsibility for its security.

Finally, Estonia is deeply concerned about the current humanitarian situation, which has suffered the triple shock of the COVID-19 pandemic, a locust infestation and floods. We are concerned that the humanitarian response plan remains underfunded, with 3.5 million people facing severe food insecurity for the remainder of the year. We call on the international community to address the funding gap.

I would like to conclude by expressing Estonia's gratitude and support to United Nations personnel in Somalia, the African Union Mission in Somalia and the Somali security forces for their efforts, commitment and sacrifices to bring peace and stability to Somalia.

**Mr. Nebenzia** (Russian Federation) (*spoke in Russian*): I wish to begin, if I may, by extending my heartfelt condolences to our Somali colleagues in the wake of the terrorist attack perpetrated by Al-Shabaab last weekend at the Elite Hotel in Mogadishu. I ask my dear friends to please accept our heartfelt condolences.

We are thankful to the Special Representative of the Secretary-General, James Swan, as well as to the Special Representative of the Chairperson of the African Union Commission and Head of the African Union Mission in Somalia, Mr. Madeira, for their comprehensive briefings on the situation in Somalia. We also welcome to his first meeting in person the new Permanent Representative of Belgium, Philippe Kridelka.

The Russian Federation welcomes the efforts made by Mogadishu to achieve political stability, the normalization of the socioeconomic situation and the phased establishment of democratic institutions in the country. We steadfastly champion the maintenance of the territorial integrity and unity of Somalia.

In recent months, the Federal Government has achieved concrete results in its dialogue with the federal member states in the run-up to next year's scheduled elections. We trust that this week's summit in Galmudug will help to identify the modalities of the future vote.

The Security Council should fully support Mogadishu's commitment to holding one-person, one-vote elections. We remain convinced that the broadest possible implementation of the electoral model could potentially help extricate Somalia from the current political impasse and a state of permanent, all-out war. It could also deal a heavy blow to the positions of Al-Shabaab, which is keen on maintaining the traditional clan-based system of voting.

We value the now regular virtual consultations between the Federal Government and the leadership of the states of Jubaland, Galmudug, Puntland, Hirshabelle and South-West. We are concerned about the breakdown in August of the second round of talks between the delegations of Somalia and the self-proclaimed Somaliland. We urge both sides to explore possible compromises as a way of resolving their differences.

We concur with the conclusions of the Secretary-General's latest report (S/2020/798) that the security situation in Somalia remains volatile. Al-Shabaab has not stopped its terrorist activities. The fight against



extremists has been adversely affected by the poor supply of weaponry to the African Union Mission in Somalia (AMISOM) and its inability to procure military equipment, in particular helicopters, and is further compounded by the lack of engagement with the Somali National Army and the general passivity of the Somali authorities on the issues of restoring the local administration and security structures in the liberated areas.

We believe that it is our common task to identify the proper response to the threat posed to the country by improvised explosive devices, which Al-Shabaab increasingly relies on in its operations.

In these circumstances, AMISOM remains the linchpin in the fight against terrorism. We supported the extension of the mandate of the African peacekeepers until the end of February 2021. Given the prospects of the phased closure of the Mission, strengthening the capacity of the Somali National Army is critical. At the same time, we object to attempts by a number of countries to forcibly expedite the drawdown of AMISOM.

Given the current situation, we deem it judicious for the Security Council to jointly and systematically pursue its efforts to reach agreement on multifaceted assistance to the country's authorities with a view to achieving a definitive end to the internal crisis in Somalia.

**Mr. Dang** (Viet Nam): At the outset, I would like to thank Mr. James Swan, Special Representative of the Secretary-General, and Mr. Madeira for their informative briefings and for their work on the ground at this very challenging time. I warmly welcome Ambassador Osman, Permanent Representative of Somalia, to our meeting today.

I join others in extending our deepest condolences to those who lost family members in Sunday's attack in Mogadishu or in other incidents in the country since our last meeting on Somalia (see S/2020/573).

Somalia is now at a historical turning point thanks to positive developments in the dialogue and collaboration between the Federal Government and federal member states, improved security and economic conditions, and the preparations for upcoming elections. However, the country is still facing substantial insecurity and challenges resulting from the coronavirus disease (COVID-19) pandemic and weather-related crises.

On the matters under discussion today, I would like to share the following points.

First, on the election process, we welcome the communiqué issued at the July meeting between the leaders of the Federal Government of Somalia and the federal member states. It calls for timely and credible elections acceptable to all Somali stakeholders. We also welcome the adoption of the amendments to the political parties law by the House of the People.

Nevertheless, the threat of attacks and the impact of the COVID-19 pandemic have delayed preparations for the election and have made them more difficult. We support the election process and the implementation plan set out by the Government of Somalia and other stakeholders to ensure the participation of all people and political parties in elections. In that connection, we urge the Federal Government, federal member states and political parties to make further efforts to engage in inclusive dialogue to reach political consensus on the modalities and timing of the elections, including the political representation of women and minorities.

We call on the United Nations and the international community to provide further technical assistance and necessary measures to protect Somali citizens and political parties on the road ahead.

Secondly, we would like to stress the importance of national unity and reconciliation in Somalia as it moves forward. Given the recent positive developments, this is a precious time for the Federal Government of Somalia and the federal member states, especially Somaliland state, to work together in mutual trust and for the benefit of the Somali people. In that connection, we support the efforts of the Government and political leaders of Somalia to maintain a stable environment for dialogue. We therefore commend the recent consultative meeting in Djibouti between President Farmajo and the Somaliland President, Mr. Muse Bihi Abdi, and look forward to seeing their continued confidence-building efforts and specific follow-up actions, under the mediation of Djibouti and facilitation of the United States of America and the European Union.

Thirdly, on the fight against the triple shock, Somalia continues facing a number of long-standing threats and challenges. The triple shock of desert locusts, floods and the COVID-19 pandemic has severely impacted socioeconomic gains, livelihoods, food security and the humanitarian footprint in the country. The consequences of the desert locusts and

floods remain widespread and have affected at least 1.3 million people, of whom nearly a million are displaced and in need of humanitarian assistance. The risk of exponential COVID-19 infection also remains high across the country. Somalis need continued support to overcome these difficulties. We call on international partners to assist the Federal Government of Somalia in alleviating the socioeconomic impact of this triple threat.

Fourthly, on resilience for security, we condemn the attacks by Al-Shabaab against Somali civilians, local security forces, as well as the United Nations and personnel and facilities of the African Union Mission in Somalia. The suicide car-bombing attack on the Elite Hotel in Mogadishu on Sunday killed 15 people and injured more than 20. In that connection, we call upon international partners to continue to support Somali security forces through training, equipment provision and capacity-building. It is also incumbent upon international partners and relevant parties to uphold their responsibilities to strengthen cooperation measures and to take all necessary security measures against Al-Shabaab in order to protect civilians, especially women and children.

To that end, we commend the unceasing work and untiring efforts of the United Nations Assistance Mission in Somalia. We reiterate our support for its mandate and are committed to working constructively with the United Nations, regional and international organizations and relevant parties to promote peace, stability and development in Somalia.

**Mr. Sautter** (Germany): I would like to thank Mr. James Swan and Mr. Francisco Madeira for their briefings, and I welcome Ambassador Osman to today's meeting.

I would like to make five points.

First, with regard to the electoral process, we would like to underscore that credible, free, fair and direct elections in late 2020 will be key to the building of a democratic State in Somalia. The elections will be the yardstick by which the current Somali Administration will be measured. We acknowledge that the coronavirus disease (COVID-19) makes this much more difficult, yet the existing proposals on the table are, in our view, not sufficient. That has been made clear by other delegations, and we agree with them. A return to previous forms of governance, where a few groups decide for the whole country, must be avoided.

What we need to see now is concrete progress towards implementing the principle of one-person, one-vote, wherever possible.

Secondly, with regard to the political cooperation between the federal Government and the federal member states, such cooperation is key. We take note of some positive developments, including the July leaders' summit. At the same time, we feel that more progress will be necessary. The speedy nomination of the new prime minister would be an important step towards ensuring an inclusive process. At the same time, it is a basis for achieving sustainable progress, including on the question of elections and the transition plan.

Thirdly, with respect to human rights, we are, like others, deeply concerned about the bill entitled "law on sexual intercourse-related crimes", proposed by a parliamentary committee. This is particularly concerning given that Somalia does not, unfortunately, have a good track record on sexual violence. Let me remind my colleagues that the Secretary-General, in his most recent report on children and armed conflict in Somalia (S/2020/174), reports that Somali security forces and regional forces were responsible for one in three crimes involving sexual violence between 2016 and 2019. We therefore strongly urge Somalia to respect its international human rights obligations and return to an inclusive and non-discriminatory text. In this context, we would like to welcome the agreement in the Working Group on Children and Armed Conflict on the Somalia conclusions. These conclusions must now be implemented.

Fourthly, with regard to security, the complex attack on the Elite Hotel this past weekend shows that the security situation remains a major challenge. We condemn attacks by Al-Shabaab on Somali civilians, security forces, the African Union Mission in Somalia (AMISOM), the United Nations and the international community. We extend our condolences to the victims and their families. We encourage all stakeholders to increase their efforts and speed up the work on the update and implementation of the security-transition plan. In this respect, we are looking forward to the AMISOM independent assessment, which will contribute to the assessment of the abilities and gaps in the Somali security forces. While this is no replacement for a stakeholder agreement it is still important.

Fifthly, and briefly, on climate and security, we appreciate and support the work the United Nations

Assistance Mission in Somalia has been doing in this field in particular.

**Mr. Bing Dai** (China) (*spoke in Chinese*): China thanks the Special Representative of the Secretary-General, Mr. James Swan, and the Special Representative of the Chairperson of the African Union Commission for Somalia, Mr. Francisco Caetano José Madeira, for their briefings.

Somalia is entering a critical stage in its achievement of peace and reconstruction. Over the past three months, the Somali federal Government has made earnest efforts to advance the national reconstruction process and tackle the coronavirus disease (COVID-19) pandemic. It has gradually resumed dialogue with leaders of the federal member states. At the same time, the country's security and humanitarian situation has remained fragile, as evidenced by frequent terrorist and other violent incidents. In this regard, I would like to make the following four points.

First, efforts to advance Somali's critical process must ensure that it is Somali-owned and Somali-led. China encourages the relevant Somali parties to further build mutual trust and gather momentum for dialogue, enhance federal institutions and move ahead with the constitutional review and other critical reform processes. China supports regional and subregional organizations, such as the African Union and the Intergovernmental Authority on Development, in playing a mediation role for the political settlement of the Somali issue. The United Nations Mission in Somalia has been actively coordinating the various efforts of the international community and has played a constructive role. China supports the renewal of its mandate for 12 months.

Secondly, a critical task of the Somali political process is to hold successful elections. China welcomes the dialogue between the Somali Federal Government and the federal member states on specific electoral arrangements and encourages them to design electoral processes in the light of the situation on the ground and the people's wishes. The international community should respect the leading role of the Somali Government and support full consultation among the Somali parties in order to create conditions favourable to well-run elections.

Thirdly, eliminating the threat of terrorism is prerequisite for the long-term peace and stability of Somalia. China strongly condemns terrorist and violent incidents, which often claim innocent civilians as their

victims. We commend the African Union Mission in Somalia for its important role in maintaining stability. The ability of the Somali security forces to assume primary responsibility for maintaining national security is key to the timely completion of the Somali transition plan. The international community should assist Somalia in capacity-building in the security sector and continue to provide the necessary security support on the basis of a full assessment of local security situations.

Fourthly, the triple shock of COVID-19, flooding and locust infestations has had a grave impact on Somalia's economic and social development and aggravated its humanitarian crisis. China welcomes the supplemental financing from the World Bank and the International Monetary Fund and calls on the international community to step up efforts to help plug the gaps in Somalia's humanitarian aid, enhance its capacity to respond to the pandemics and disasters, and support the advancement of its national development plan.

China has always been an active contributor to the Somali peace process and a long-time provider of humanitarian assistance and economic and social development support. This year alone, we have donated two batches of medical supplies to Somalia and will continue to help to the best of our abilities. China stands ready to work with the international community in playing a constructive role in realizing the goal of peace, stability and development in Somalia.

**Mrs. Gueguen** (France) (*spoke in French*): I join in others in congratulating and welcoming Ambassador Philippe Kridelka, to whom I wish every success.

I also wish to join in expressing condolences, through the Somali authorities, to the families of the victims of the attack on the Elite Hotel in Mogadishu last weekend, which we very strongly condemn, of course.

I would also like to thank our briefers and make three points.

First, on the political level, France believes that Somalia remains at a critical juncture. We are closely following the ongoing discussions between the Federal Government and the federated member States. We note that those discussions led last month to an agreement to hold elections on time, but without specifying the modalities of the elections. For France, it is imperative that all Somali actors continue to work constructively in preparing for presidential and legislative elections

that are peaceful, inclusive, free and transparent and that enjoy the support of the United Nations Assistance Mission in Somalia. It is also essential for the stability of Somalia that these elections be held as soon as possible, in early 2021. We regret the removal of Prime Minister Hassan Ali Khayre by the Somali Parliament, whose vote did not respect the institutional rules that we support. Unfortunately, this decision is not conducive to reconciliation in the country.

Secondly, on the security front, France also believes that Somalia remains at a critical juncture, since the Somalis themselves will have to assume responsibility for the security of their country by the end of 2021. In that context, it is necessary that the transfer of security responsibilities from the African Union Mission in Somalia (AMISOM) to the Somali federal and regional security forces continue. The Somali authorities must also update their transition plan for September, with a view to fully engaging in that process by 2021. We expect the authorities to accelerate the implementation of a plan for the generation of additional forces and to integrate the regional forces into the Somali National Army.

Thirdly, France calls on the Somali authorities and their main partners, including the European Union, the United Nations, the African Union and AMISOM troop-contributing countries, as well as bilateral donors involved in the security sector in Somalia, to seriously engage in discussions on international support to the Somali security sector after 2021. The European Union has shown its readiness to actively participate in such discussions. For our part, we would like to see a more proactive approach to the issue. It is critical that the Somali authorities implement the benchmarks established by the Security Council in resolution 2520 (2020), adopted in May. Decisions on international support for the security sector in Somalia after 2021 must indeed be directly linked to the progress made on those benchmarks.

Finally, France would like to recall that the current model of support for Somalia cannot be taken for granted. All options must be considered, including alternatives to AMISOM. In particular, we recall that the European Union's current financing model for AMISOM is not sustainable. If the European Union is to continue to support the security sector in Somalia, that support will be dependent on the establishment of accountability mechanisms, the participation of the

European Union in AMISOM's strategic decisions and the financial contribution of other partners.

Before concluding, I would like to reiterate our concern about the humanitarian situation in Somalia, which is exacerbated by the spread of the coronavirus disease pandemic. I also fully share the concerns expressed by the representatives of Germany and Belgium over sexual violence and violations committed against children. The protection of civilian populations and respect for their rights are key requirements that must be fully taken into account in the reform process in Somalia. We commend the efforts of United Nations, in coordination with other partners, to adapt their action and support the response of the Somali authorities.

**The President:** I shall now make a statement in my capacity as the representative of Indonesia.

I would like to thank Mr. Swan, Special Representative of the Secretary-General, and Mr. Madeira, Special Representative of the Chairperson of the African Union Commission for Somalia, for their insightful briefings. I would also like to welcome Ambassador Abukar Osman, Permanent Representative of Somalia, to this meeting.

As the Secretary-General has summed up, Somalia is at a critical juncture. It is therefore crucial for all Somali stakeholders, supported by the international partners, to work together constructively. In that regard, I would like to highlight three points.

First, we welcome the discussions between federal and state leaders in Dhuusamarreeb in July. The Security Council has repeatedly highlighted the need for Somalia's federal and state leaders to come together in a spirit of unity and compromise. We would like to stress that only through dialogue can Somali stakeholders move forward with the reform agenda that it has committed to undertaking. We are hopeful that a consensus on the electoral modalities that enjoys the support of all stakeholders, particularly the Somali population, can be reached. It is also important to advance the implementation of national priorities and State-building efforts.

Secondly, we remain concerned over the security situation. We once again condemn all recent attacks by Al-Shabaab, including the attack on the Elite Hotel in Mogadishu last Sunday, as well as the mortar attack targeting the United Nations compound. In that regard, let me join others in extending our condolences to the

people and the Government of Somalia, in particular the families of the victims. We would ask that the perpetrators be brought to justice. We would like to reiterate that any attack on United Nations personnel is unacceptable and that all perpetrators must be brought to justice.

We are concerned that, despite the continued operations against Al-Shabaab and the coronavirus disease (COVID-19) pandemic, Al-Shabaab remains capable of conducting larger, more complex high-profile attacks. It is therefore important to continue to build the capacity of the Somali National Army (SNA) and to equip it with the necessary training, including in countering improvised explosive devices.

We commend the continued operations by the SNA and the African Union Mission in Somalia (AMISOM) to recover areas under Al-Shabaab's control, as well as to disrupt its capacity to conduct terror attacks. In our view, it is important to accelerate force generation efforts so as to hold the recovered areas and pave the way for further stabilization activities.

Thirdly, Somalia is facing the triple challenge of COVID-19, flooding and desert locusts. Increased support from international partners is needed now more than ever, particularly in support of the humanitarian response plan. Sustained support is also necessary to alleviate the economic impacts of the COVID-19 pandemic in order to ensure the long-term recovery and resilience of the people of Somalia. We would also like to reiterate the importance of ensuring unimpeded humanitarian assistance and relief.

I reaffirm Indonesia's respect for Somalia's sovereignty and territorial integrity, and I convey our utmost tribute to the United Nations Assistance Mission in Somalia, the United Nations Support Office in Somalia, AMISOM and all actors working to ensure lasting peace and stability in Somalia. What happens in the next few months will determine the future of Somalia. We hope that all Somali stakeholders will remain committed in their pursuit of dialogue and reconciliation to ensure peace and prosperity in the country.

I now resume my functions as President of the Council.

I give the floor to the Permanent Representative of Somalia.

**Mr. Osman** (Somalia): Allow me to begin by commending the Permanent Representative of the Republic of Indonesia and the Permanent Mission of Indonesia for their leadership as President of the Council for this month of August. I would also like to welcome Ambassador Kridelka of Belgium to New York and to the Security Council and to being a member of the United Nations family.

It is an honour to address the Security Council at this gathering of Somalia's partners at the Security Council. I want to reiterate that the Somali Government is strongly committed to its ambitious peace and State-building agenda. We are making very clear strides towards achieving inclusive politics, strengthening democracy and constructing the very rights-based institutions that are the pillars of strong societies. I am happy to report that we have held successful regional elections in some federal member states in the build-up to the planned one-person-one-vote national parliamentary election. We are determined to facilitate the success of that process through the electoral law recently adopted by the legislature.

The challenge for Somalia has been the monopolization of legitimate power by a few at the expense of the Somali people. Our Government, led by His Excellency Mr. Mohamed Abdullahi Farmajo, is determined to bring the people of Somalia to the centre of their democracy by giving them a historic opportunity to vote on their future path. That is a noble endeavour, which will strengthen the civic engagement and public trust in policy, while firmly instilling accountability within the Somali policy.

Today President Mohamed Abdullahi Farmajo is sitting in Dhuusamarreeb, a city in central Somalia, with key leaders of federal member states to discuss the modalities and strategies for making the ambition of universal suffrage a genuine possibility. The President also addressed the House of the People immediately before the Dhuusamarreeb meeting and promised to respect its constitutional mandate to legislate for the Somali people by bringing all electoral decisions back to it to deliberate and vote on to move forward from the Dhuusamarreeb meeting. For democracy and stability to thrive in Somalia, it is a must that we respect the key roles of Parliament, the Upper House and other mandatory electoral bodies, most specifically the National Independent Electoral Commission and the intergovernmental committee established to address the outcomes of the Dhuusamarreeb process.

Accordingly, we are determined to move Somalia away from the exclusive and exclusionary processes that determined our politics and shackled our people to voicelessness, especially our young people, our women and our minorities.

Of course, we in Somalia understand the need for negotiations and consensus-building to achieve our democratic goals, and through the Federal Government's commitment to the Dhuusamarreeb process, we have proved this. A stable, democratic and prosperous Somalia is in the interest of each and every Somali, and the achievement of this will be the best way to celebrate our joint effort with our valuable international partners in delivering a better tomorrow for Somalia and the world.

However, I am very sad that there are those who seek to derail the democratic processes that our Government envisages for Somalia with a narrow focus on old, broken, exclusive politics. Our Government will continue the engagement with all stakeholders openly and fairly but will not and cannot tolerate spoilers at this critical time in Somalia's history.

The international community should continue to support and encourage the Government's programmes of inclusive politics and democratization, and it must not give in to the unjust pressures of spoilers.

Security has been our Government's focus and its greatest public expenditure since it took office, because achieving other endeavours, including poverty eradication, quality education, climate action and inclusion depend on security.

Today we are building a well-trained armed force, rights-based security and accountable security institutions to take over the responsibility of securing Somalia. Our Government, in partnership with AMISOM and other key international supporters, is working hard to achieve this through the transition plan in line with the national security architecture.

These comprehensive reforms are not easy, but thanks to the commitment and absolute determination of the Federal Government of Somalia and its partners, I am convinced that Somalia's successful security-sector reforms will provide us with the best possible security apparatuses to safeguard the well-being and progress of the Somali people.

The Government of Somalia is working hard with its people to build a more sustainable future free from poverty, with strong social protections. Our approach to eradicating poverty is to create economic opportunities for our people, especially young people, and, to do so, we are engaged in an ambitious and successful fiscal and economic reform programme guided by the International Monetary Fund Staff-Monitored Program. We are proud of the fact that throughout the reform-focused benchmarks, we managed to achieve debt relief in the first quarter of this year, and we are working to further strengthen our economy to make it work for all our people. A key benefit of debt relief has been renewed confidence in Somalia's ability to change and the access to grant resources that have proved valuable through the coronavirus disease pandemic.

In conclusion, the Somali Federal Government is absolutely committed to socioeconomic and political reforms to improve the lives of the Somali people. It is our mandate and duty to do the heavy lifting to deliver stability, inclusive politics and opportunities for our people by working closely with our international partners. That is a commitment that we will continue to deliver on, God permitting. I thank all present for their partnership and friendship.

**The President:** There are no more names inscribed on the list of speakers. I will now adjourn the meeting so that the Council can continue its discussion on the subject in closed consultations. I would kindly ask all observers to promptly exit the Chamber directly upon the adjournment of the meeting.

*The meeting rose at 11.55 a.m.*

**Annex 76**

Final Report of the UN Panel of Experts on Somalia to the UN Security Council,  
S/2020/949, 28 September 2020 (Extracts)



## Security Council

Distr.: General  
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### **Letter dated 28 September 2020 from the Chair of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council**

On behalf of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia, and in accordance with paragraph 33 of Security Council resolution 2498 (2019), I have the honour to transmit herewith the final report of the Panel of Experts on Somalia.

In this connection, the Committee would appreciate it if the present letter and the report were brought to the attention of the members of the Security Council and issued as a document of the Council.

*(Signed)* Philip **Kridelka**  
Chair

Security Council Committee pursuant to  
resolution 751 (1992) concerning Somalia





**Letter dated 28 September 2020 from the Panel of Experts on Somalia addressed to the Chair of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia**

In accordance with paragraph 33 of Security Council resolution 2498 (2019), we have the honour to transmit herewith the final report of the Panel of Experts on Somalia.

*(Signed)* Natascha **Hryckow**  
Coordinator  
Panel of Experts on Somalia

*(Signed)* Brian **O’Sullivan**  
Armed groups/natural resources expert

*(Signed)* Irene **Raciti**  
Humanitarian expert

*(Signed)* Matthew **Rosbottom**  
Finance expert

*(Signed)* Richard **Zabot**  
Arms expert

## *Summary*

The threat posed by Al-Shabaab to peace, security and stability in Somalia goes beyond the impact of the group's conventional military action and asymmetric warfare to include sophisticated extortion and "taxation" systems, child recruitment practices and an effective propaganda machine. Similarly, Al-Shabaab's control of populations extends beyond the areas in which it has a geographical presence, through threats and violence enacted against individuals or communities, infiltration and control of information sources, and the manipulation of formal institutions such as the financial sector. The military operations to counter Al-Shabaab must be accompanied by non-military efforts to degrade the group's capacity and combat its propaganda. The Federal Government of Somalia and the federal member states have recognized that need in their formal review of the Somali transition plan, in which the vision is set for the transition of security responsibilities to Somali authorities and the drawdown of African Union Mission in Somalia (AMISOM) forces.

During the reporting period, a primary focus of investigations by the Panel of Experts on Somalia was Al-Shabaab's "taxation" system, including revenue sources and methods of storage and transfer of funds using formal financial institutions. Al-Shabaab "taxation" methods range in complexity from basic checkpoint controls to financial assessments of businesses through the group's access to information sources such as business registrations, property assets and shipping cargo manifests. The Panel assesses that Al-Shabaab remains in a strong financial position and is generating a significant budgetary surplus, some of which is invested in property purchases and businesses in Mogadishu.

In line with Somali society as a whole, Al-Shabaab has transitioned from a cash-based economy to using the nascent formal financial sector in Somalia to collect and transfer funds. The Federal Government of Somalia has taken steps to strengthen the Somali financial sector in order to combat terrorism financing through legislation and oversight, and the private sector has also implemented measures to protect its systems. The Federal Government, with support from the United Nations Office on Drugs and Crime and the Panel, is developing a disruption plan for Al-Shabaab finances that builds on current reforms and requires engagement from across government, the private sector and the international community.

Military operations against Al-Shabaab by the Somali National Army and AMISOM, and the increased intensity of air strikes by international actors, resulted in territorial losses for the group, including the significant stronghold of Janale, Lower Shabelle, in March 2020. Despite this military progress, Al-Shabaab has retained its ability to produce and conduct improvised explosive device attacks, although it has carried out fewer large-scale complex attacks to date in 2020 compared with the same period in 2019. The group continues its intimidation campaign, including assassinations and executions, targeting public figures and communities, while maintaining its agility of action to exploit weaknesses in security as they arise.

Tensions between the Federal Government of Somalia and the federal member states continue to disrupt political progress and provide opportunities for Al-Shabaab to exploit. Electoral processes have been the primary source of such tensions, both in the aftermath of disputed regional elections in Jubbaland and Galmudug and in the preparations for national parliamentary and presidential elections. As observed during the last national election period in 2016, Al-Shabaab may attempt to sabotage the upcoming electoral process, including through targeted political assassinations.

The Federal Government of Somalia has focused on strengthening its weapons and ammunition management system through the development of a national strategy with the involvement of federal member states. Weapons and ammunition management priorities are also incorporated broadly into overall security sector development and included in the review of the Somali transition plan. The implementation of weapons and ammunition management priorities by the Federal Government will require joint action by the Federal Government and the federal member states, alongside support from the international community. Operationalizing the improvised explosive device components ban, imposed by Security Council resolution 2498 (2019), remains in an early phase, and an implementation assistance notice was issued by the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia in August 2020 to support this process. Enabling Federal Government visibility of potential improvised explosive device components entering Somalia and of Al-Shabaab improvised explosive device production capabilities will also be important.

In the context of the ongoing humanitarian crisis in Somalia, 2020 has been a particularly challenging year. Humanitarian responders have been faced with the worst locust plague in 25 years, the coronavirus disease (COVID-19) pandemic, significant flooding and more than 150,000 internally displaced persons as a result of conflict and insecurity in the first half of 2020, as reported by the Office of the United Nations High Commissioner for Refugees. Denial of access by Al-Shabaab, including abduction, extortion and targeted killings of humanitarian workers, have exacerbated the crisis.

Efforts by the Federal Government of Somalia, Jubbaland and the international community have ensured that charcoal exports have remained on hold over the reporting period. Political pressure on both the export and import sides, monitoring and surveillance, including by international naval forces, have combined to provide strong deterrence. However, as networks for the export of Somali charcoal remain in place and a variety of political and security actors stand to benefit from any sales, the stockpiles around Kismayo, which have a wholesale value of some \$40 million, therefore continue to pose a threat. Reducing the risks posed by the existing stockpiles will require political engagement among the Federal Government, Jubbaland and the business owners of the charcoal. Reducing the potential for renewed charcoal production targeted at export markets will require a further understanding of internal charcoal usage and potential fuel alternatives.

A reset in the relationship between the Federal Government of Somalia and the Panel has enhanced cooperation and information exchange in support of the Panel's ability to fulfil its mandate.

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\* Circulated in the language of submission only and without formal editing.

## **I. Introduction**

### **A. Background**

1. The present report contains the findings of the Panel of Experts on Somalia covering the period from 16 December 2019 to 17 August 2020. An overview of the Somalia sanctions regime, mandate, appointment of the Panel and countries visited during the reporting period can be found in annex 1.1.

### **B. Methodology**

2. The Panel endeavours to ensure compliance with the standards recommended by the Informal Working Group of the Security Council on General Issues of Sanctions in its report of December 2006 (see [S/2006/997](#)) and the Secretary-General's bulletin on information sensitivity, classification and handling ([ST/SGB/2007/6](#)). The evidentiary standards and verification processes include:

- (a) Collecting information on events and topics from multiple sources, where possible;
- (b) Collecting information from sources with first-hand knowledge of events, where possible;
- (c) Identifying consistency in patterns of information and comparing existing knowledge with new information and emerging trends;
- (d) Obtaining physical, photographic, audio, video and/or documentary evidence in support of the information collected;
- (e) Analysing satellite imagery, where applicable.

## **II. Harakat Al-Shabaab Al-Mujaahidiin finance**

3. Al-Shabaab employs a diversified "taxation" system across southern and central Somalia, dividing the territory into 10 distinct regions of revenue collection. The Panel's investigations indicate that the revenues earned in each of the 10 regions are directed to a centralized location near the Al-Shabaab controlled town of Jilib, Lower Juba region. The funds are then at the disposal of Al-Shabaab's governing council, the Shura.

4. Al-Shabaab derives its domestic revenue through a number of sources, including checkpoint "taxation" across the country, business extortion, the "taxation" of imports at major seaports and forced zakat collection. Al-Shabaab's "taxation" system is underpinned by intimidation and violence in the case of non-compliance. The group collects its revenue through cash payments, electronic mobile money transfers and direct bank transfers. The Panel's examination of Al-Shabaab's financial system found that the group utilizes domestic financial institutions, bank accounts and electronic mobile money services to facilitate the safe storage and onward transfer of revenues generated. Al-Shabaab's use of formal banking systems enables the immediate transfer and distribution of large amounts, including in areas it no longer directly controls, eliminating the risk of physically transporting cash across hostile territory.

5. During the reporting period, the Panel focused its investigations on one Al-Shabaab "taxation" checkpoint in Lower Juba and the group's extortion of businesses in Kismayo. The Panel also examined two bank accounts associated with

the group's collection of "taxes" on imports into Mogadishu seaport and zakat collected by Al-Shabaab in Mogadishu. The investigations found that Al-Shabaab generated approximately \$13 million in these four case studies alone. In only 10 weeks, the zakat account controlled by Al-Shabaab showed deposits of \$1.7 million, with the entire balance being transferred onward during that period.

6. Despite territorial losses and increased aerial strikes targeting the group, Al-Shabaab operates multiple checkpoints across Somalia, extorts businesses in numerous cities and holds multiple bank accounts to facilitate its system of "taxation". The Panel assesses that the group is in a strong financial position and is generating a significant budgetary surplus, investing these funds in various enterprises, including property purchases and market investments in Mogadishu.

7. The Federal Government of Somalia is developing a financial disruption plan to address Al-Shabaab's systematic use of domestic financial systems. The Panel's systematic approach to understanding Al-Shabaab's financial systems may support disruption programming. The current Somali financial sector is limited to eight reporting banks. As Somalia transitions to formal financial systems, all operators can expect to be exploited by Al-Shabaab, which has consistently operated a flexible business model and is likely institution agnostic. The Panel's investigations have focused on the manner in which Al-Shabaab operates, detailing specific organizational mechanisms that serve to enable a fuller understanding of this exploitation.

8. Annex 2 (strictly confidential) includes associated documentation related to Al-Shabaab financing, including Al-Shabaab receipts, banking receipts and further account analysis.

## A. Funding streams

### Checkpoint "taxation" in Lower Juba

9. Al-Shabaab employs a predictable system of checkpoint "taxation" across main supply routes in southern and central Somalia. The group applies a standard rate of "taxation" based on the type of transiting vehicle and the goods carried. An additional, one-off charge is applied for the registration of a new vehicle.<sup>1</sup> Al-Shabaab provides receipts to all individuals who pass through their checkpoints.

10. In March 2020, the Panel interviewed two former Al-Shabaab officials who were responsible for collecting taxes at the Lebikus checkpoint (25 km west of Kismayo) in the Lower Juba region.<sup>2</sup> Lebikus is located along the main supply route between Kismayo and the Kenya-Somalia border. The checkpoint was staffed by these two officials alone in 2018 and 2019. The interviewees stated that they collected between \$150,000 and \$200,000 per month in "taxes" at the Lebikus checkpoint in 2019, totalling an estimated \$1.8 million to \$2.4 million over the year.<sup>3</sup> Al-Shabaab operates at least six similar checkpoints in the Juba region alone.

<sup>1</sup> Registration fee ranges from \$200 to \$500 depending on the type of vehicle.

<sup>2</sup> Telephone interviews conducted with Al-Shabaab defectors in Kismayo from 21 to 25 March 2020.

<sup>3</sup> In April 2020, the Panel collected Al-Shabaab "taxation" receipts from the Lebikus checkpoint (see annex 2 (strictly confidential)).

### **Business “taxation” in Kismayo**

11. From 31 March to 4 April 2020, the Panel conducted 15 interviews with business entities in Kismayo to investigate Al-Shabaab extortion practices in the city.<sup>4</sup> The businesses were identified as six wholesale companies and nine local retail outlets. Of the 15 businesses interviewed, 12 stated that they paid Al-Shabaab a monthly remittance regardless of the commodity sold. Wholesale companies were required to make a monthly payment of \$600, while smaller retail outlets paid \$300. Payments were made through electronic mobile money transfers.<sup>5</sup> The Panel notes that if Al-Shabaab were to apply its minimum monthly taxation rate of \$300 to all 1,600 registered businesses in Kismayo, the group stands to earn \$480,000 a month or \$5.8 million annually from the taxation of Kismayo businesses alone.<sup>6</sup> Al-Shabaab is understood to apply similar “taxation” practices in population centres across Somalia.

### **Mogadishu port “taxation”**

12. According to members of the Mogadishu business community, Al-Shabaab has infiltrated Mogadishu port, accessing data held by commercial shipping agents and demanding “taxation” payments from businesses who import goods into the port.<sup>7</sup> Al-Shabaab has gained access to cargo manifests, detailing the nature, value and ownership of imported goods.<sup>8</sup> Business owners stated that fears over business continuity and personal safety were key motivating factors in their compliance with Al-Shabaab’s demands.<sup>9</sup> The business community also pays government taxes on imports through Mogadishu port, so Al-Shabaab’s additional “taxes” result in a double taxation burden.

13. In early 2020, an international business imported approximately 10,000 tons of food supplies into Mogadishu port.<sup>10</sup> Two weeks after the importation, Al-Shabaab contacted the business in Mogadishu by telephone and ordered the business to make a “taxation” payment in excess of \$40,000 to the group for the goods imported, which it calculated based on a “taxation” rate of \$4 per ton.<sup>11</sup> Al-Shabaab informed the business that it was in the possession of shipping cargo manifests from Mogadishu port and shared the details of the company’s recent import to verify the shipment.<sup>12</sup>

14. The Panel investigated two additional port “taxation” payments made by businesses in Mogadishu to Al-Shabaab in 2020, which followed an identical pattern. Al-Shabaab again demanded “taxation” payments based on the process and rate outlined above. In each of the three cases, the businesses made the payment via a direct bank transfer into a single receiving bank account.<sup>13</sup>

### *Port “taxation” bank account*

15. In July 2020, the Panel reviewed financial transactions made through this receiving bank account from mid-February to the end of June 2020. Deposits were made by businesses and individuals with a presence in Mogadishu, including general stores, service industries and car dealerships. Mogadishu shipping and cargo agencies

<sup>4</sup> Telephone interviews with businesses in Kismayo from 31 March to 4 April 2020.

<sup>5</sup> Receipts for transactions are provided in annex 2 (strictly confidential).

<sup>6</sup> Registered business data provided by the Jubbaland Ministry of Finance on 9 April 2020.

<sup>7</sup> Interviews with businesses based in Mogadishu from 14 to 16 June 2020.

<sup>8</sup> Interview with an international trading company on 26 May 2020.

<sup>9</sup> Ibid.

<sup>10</sup> On 21 July 2020, the Panel reviewed customs documentation, which confirmed the shipment.

<sup>11</sup> Interview with an international trading company on 4 March 2020.

<sup>12</sup> Ibid.

<sup>13</sup> Receipts for transaction are provided for in annex 2 (strictly confidential).



also made payments into the account. The account analysis also verified the three “taxation” payments made to Al-Shabaab by the business entities outlined above.

16. During the four-and-a-half-month period analysed, a total of \$1,198,933 was deposited into the account. By late June 2020, most of those funds, approximately \$1.1 million, were transferred onward to other accounts. On the basis of this analysis, the group generates more than \$3 million annually through this account alone. Al-Shabaab is understood to operate multiple bank accounts to facilitate “taxation” payments at Mogadishu port.

### **Mogadishu zakat collection**

17. Zakat (alms collection) is an annual religious obligation to pay a specific percentage of a person’s wealth to the poor. Zakat is usually levied at an annual rate of 2.5 per cent of the net wealth of an individual or business. Al-Shabaab exploits the religious obligation of zakat to further justify its “taxation” of the population.

18. From April to June 2020, Al-Shabaab collected zakat payments from communities and businesses across Somalia. In May, Al-Shabaab contacted over 70 business traders in Mogadishu, reiterating their obligation to pay zakat to the group.<sup>14</sup> Al-Shabaab maintains a registry of citizens, which includes financial assessments on individuals and businesses.<sup>15</sup>

19. During May 2020, the Panel interviewed five business owners based in Mogadishu who had paid zakat to the group.<sup>16</sup> One interviewee stated that Al-Shabaab had contacted him by telephone in regard to zakat payments due and had ordered him to present himself at Al-Shabaab’s court at Mubarak, Lower Shabelle region.<sup>17</sup> The business owner travelled to Mubarak, where he found Al-Shabaab in possession of an assessment of his business’s earnings and assets.

20. The interviewee was instructed to pay more than \$100,000 in zakat to the group, based on the annual turnover of his business. The Panel reviewed two documents provided to the business owner by Al-Shabaab after the zakat payment. The first was an Al-Shabaab receipt confirming payment of more than \$100,000 by the business owner to the group. The second was a banking slip showing a cash deposit of the same amount made into another receiving bank account.<sup>18</sup>

### *Mogadishu zakat bank account*

21. In July 2020, the Panel examined the account activity associated with the second bank account identified above. The account was opened in early May 2020, with records available until mid-July 2020. Deposits were made by multiple individuals and businesses with a presence in Mogadishu. The account analysis also verified the zakat payment made to Al-Shabaab by the business mentioned above.

22. During the 10-week period, a total of \$1,696,993 was deposited into the account. By mid-July 2020, all funds had been transferred onward to other bank accounts. Al-Shabaab is understood to operate multiple bank accounts to facilitate zakat payments in Mogadishu and across Somalia.

<sup>14</sup> Horn Observer, “Al-Shabaab summons more than 70 Mogadishu businesses owners over unpaid taxes”, 15 May 2020.

<sup>15</sup> See S/2018/1002, annex 2.4.

<sup>16</sup> Interviews with Mogadishu-based trading companies from 28 to 30 May 2020.

<sup>17</sup> Interview with a Mogadishu-based trading company on 20 July 2020.

<sup>18</sup> Receipts for the transaction are provided for in annex 2 (strictly confidential).

## B. Storage and onward transfer of funds

23. Al-Shabaab utilizes formal domestic banking systems to facilitate the storage and onward transfer of its finances. Al-Shabaab runs multiple bank accounts for the storage and transfer of “taxation” money. The port “taxation” and zakat accounts reviewed by the Panel were operated by a Somali banking institution, one of the eight reporting banks operating in Somalia (see para. 7 above). In addition, the Panel reviewed evidence of a further 38 bank accounts associated with the group. Bank accounts are held by approximately 15 per cent of the Somali population and they are used primarily by businesses.

24. The port “taxation” and zakat accounts demonstrated similar patterns of suspicious financial activity, such as continuous large cash deposits and frequent transfers of more than \$10,000. A review of the accounts revealed no obvious legitimate outgoings or expenditures. The pattern of withdrawal is almost identical for both accounts, whereby onward transfers in multiples of \$50,000 are regularly made. In the zakat “taxation” account the entire \$1.7 million was transferred onward in 87 transactions. Thirty-eight of those were transactions of more than \$10,000 made to additional bank accounts within the same banking institution. For instance, in mid-May 2020, \$358,608 was transferred from the zakat account to three recipients, with one individual alone receiving \$310,000. In the port “taxation” account, the majority of the \$1.2 million was also transferred onward in 40 transactions. Twenty-four of these were transactions of more than \$10,000 made to other bank accounts.

25. The Panel recorded one instance of a linkage between the zakat and port “taxation” accounts. Over a two-day period in May 2020, a combined total of \$322,721 was transferred from these two accounts to a third bank account. Transfers within this two-day period indicated an institutional link between the accounts and an organized approach to the distribution of funds.

### Countering money-laundering and the financing of terrorism

26. In accordance with article 14 (2) of the Somali Anti-Money-Laundering and Countering the Financing of Terrorism Act of 2016, a reporting entity must expediently report to the Financial Reporting Centre any transactions or series of transactions that appear to be linked that exceed the designated threshold of \$10,000 or the equivalent in any currency. The port and zakat “taxation” accounts reviewed by the Panel recorded a total of 128 transactions of more than \$10,000, all of which were required to be reported to the Financial Reporting Centre.<sup>19</sup>

27. The 128 transactions of more than \$10,000 reviewed by the Panel included cash deposits and direct bank transfers. Fifty-three of those transactions were made in cash. For instance, in April 2020 a cash deposit of nearly \$25,000 was made into the port “taxation” account at a Somali banking institution branch in Mogadishu from an individual named “A B C”, rendering the deposit difficult to trace.

28. Traditionally, the three stages of money-laundering are placement, layering and integration. The initial placement phase normally represents the most challenging for individuals laundering money as the origins and purpose of large cash deposits may be difficult to justify to financial institutions. The establishment of the two accounts and the investigations of the transactions made highlight the challenges that banking institutions in Somalia face in implementing the Anti-Money-Laundering and Countering the Financing of Terrorism Act.

<sup>19</sup> Fifty transactions within the port “taxation” account spanning a five-month period and 78 in the zakat “taxation” account within a 10-week period.

*Mobile banking and account-to-account transfers*

29. The port “taxation” and zakat bank accounts reviewed by the Panel were also linked to the mobile transaction service of a Somali banking institution. This service provided to account holders allows the transfer of funds to accounts via the Bank’s mobile telephone app. The first outgoing transaction made from the port and zakat accounts was a \$5 registration fee linking a mobile telephone number to each of the bank accounts. Most importantly, this service allows for money transfer transactions between bank accounts via a mobile telephone app, up to a transfer limit of \$50,000 per transaction. The usage of mobile telephones linked to bank accounts offers greater mobility and flexibility in making financial transactions. The current gaps in implementation of “mobile money” and know your customer<sup>20</sup> regulations result in anonymity of the controller of the mobile account, which Al-Shabaab also exploits. In its previous reports, the Panel has also highlighted Al-Shabaab’s usage of mobile money platforms for their financial transactions (see S/2018/1002, annex 2.4).

*Identification documents associated with bank accounts*

30. To open a bank account in Somalia, know your customer processes require customers to produce formal identification documents. A minority of Somalis possess the required identification documents, with over 77 per cent of the population lacking an official proof of identity.<sup>21</sup> Investigations by the Panel found that the identification documents used to open the port “taxation” and zakat bank accounts were obtained shortly before the accounts were opened. For instance, the identity documents for the zakat account were issued through official channels four days before the account was opened.

## C. Expenditure

31. Al-Shabaab’s annual operational expenditure in 2019 was approximately \$21 million.<sup>22</sup> Of that total, \$16.5 million was allocated to Al-Shabaab’s military and logistical support units, with 40 per cent of the funds allocated to the purchase of weapons and ammunition. A further \$4.9 million was apportioned to the Al-Shabaab intelligence arm, the Amniyat.

32. The four case studies investigated by the Panel (see para. 5 above) generated approximately \$13 million annually for Al-Shabaab. Al-Shabaab runs multiple checkpoints across Somalia and has numerous bank accounts to facilitate its finances.<sup>23</sup> The Panel assesses that Al-Shabaab is running a significant budgetary surplus.

33. The Panel’s investigations indicate that Al-Shabaab is investing surplus funds in various enterprises, including small to medium-sized businesses within Bakara market in Mogadishu. The review of the port “taxation” bank account highlighted two areas related to external financial investments. On 28 May 2020, \$50,000 was transferred out of the port “taxation” account under a reference of “*dhul lakala gatay*” or “land transaction”. A total of \$90,000 was transferred out of the account in four tranches for market investment referenced as “*badeeco*” or “market”.

<sup>20</sup> “Know your customer” is the process of a business verifying the identity of its clients through documents such as a passport.

<sup>21</sup> See World Bank, Identification for Development (ID4D) Dataset. Available at <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset>.

<sup>22</sup> Confidential report provided by a Member State, July 2020.

<sup>23</sup> For additional information on Al-Shabaab checkpoints, see S/2018/1002, annex 2.4.

## D. Al-Shabaab's financial governance

34. The Panel's investigations found that Al-Shabaab's financial system remains centralized. The group generates revenues earned from 10 separate regions and forwards funds to its financial centre near Jilib, Middle Juba. The collected funds are at the disposal of the Al-Shabaab governing council, the Shura, for onward distribution to each of Al-Shabaab's departments, such as its military, police and justice departments.

35. In 2018, the Panel identified Hassan Afgooye as the head of Al-Shabaab's finance department (S/2018/1002, para. 82 and annex 2.4). Hassan Afgooye continues to exercise an oversight and monitoring role over this department. However, operational control and day-to-day management is under the leadership of Abdikarim Horseed, "Jaffar". Al-Shabaab's zakat operations, managed under the leadership of Mohamed Mire, are independent of its commercial "taxation" department.<sup>24</sup>

36. The group has an accountable and predictable financial system, including the provision of receipts. Al-Shabaab's regional collection departments control revenue collection and hold financial records that are audited by the Amniyat to ensure the safeguarding of the funds collected. Al-Shabaab's financial officers receive regular training on financial administration from the group's leadership. The training provided is focused on accounting, documentation and effective communication between finance officers and communities.

## E. Federal Government of Somalia and international measures to counter Al-Shabaab financing

### Financial Reporting Centre of the Federal Government of Somalia

37. The Financial Reporting Centre is responsible for the receipt, analysis and dissemination of information related to money-laundering and terrorism financing in Somalia. The Centre is mandated to investigate and enforce compliance with the Anti-Money-Laundering and Countering the Financing of Terrorism Act of 2016. In 2019, the Centre received nine suspicious transaction reports and 113 large cash transaction reports from private financial institutions.<sup>25</sup> Recent figures indicate a significant increase in reporting to the Centre over the last 12 months.

38. Effective reporting and investigation are dependent on compliance by domestic financial institutions and political support of the reporting entities.<sup>26</sup> New mobile money regulations introduced by the Federal Government of Somalia in June 2019 provide additional oversight to tackle Al-Shabaab's use of the formal financial sector, however, the new measures have yet to be implemented.

### Removal of the Chair of the Benadir Chamber of Commerce

39. On 23 January 2020, the National Intelligence and Security Agency of Somalia arrested the Chair of the Benadir Chamber of Commerce, Ahmed Abdullahi Hassan, after receiving reports that Al-Shabaab had a role in his nomination to the office.<sup>27</sup> The Benadir Chamber of Commerce is responsible for the registration of local

<sup>24</sup> Interview with a Member State on 18 July 2020. See also S/2018/1002, annex 2.4.

<sup>25</sup> Figures downloaded from the Financial Reporting Centre website, available at <https://frc.gov.so/lctr-received/#>. Data for January to October 2019; data for November and December not available.

<sup>26</sup> Report sent to the Panel by the Financial Reporting Centre, March 2020.

<sup>27</sup> Radio Dalsan, "Government dissolves Benadir Chamber of Commerce over link to Al-Shabaab", 26 January 2020.

businesses in Mogadishu. Infiltration by Al-Shabaab would provide the group with access to a comprehensive database of businesses operating in Mogadishu. On 25 January 2020, the Federal Government of Somalia dismissed the Chair and his two deputies from the Benadir Chamber of Commerce. He was later released without charge.

**Coordination group comprising the Federal Government of Somalia, the United Nations Office on Drugs and Crime and the Panel of Experts**

40. The Federal Government of Somalia, the United Nations Office on Drugs and Crime (UNODC) and the Panel have formed a coordination group to better manage the tasks set out in paragraph 1 of Security Council resolution 2498 (2019), in which the Security Council requested the Panel, with input from the Federal Government and UNODC, to conduct an analysis of all of Al-Shabaab’s revenue sources, their methods of storage and transfer, and mapping of illegal taxation systems, and to provide recommendations to the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia.<sup>28</sup>

41. Development of a comprehensive Al-Shabaab financing disruption plan is ongoing as part of the coordination group’s work. The coordination group supports the review by the Federal Government of Somalia of the transition plan, specifically capacity- and systems-building by financial institutions of the Federal Government of Somalia and the federal member states to detect, counter and prevent money-laundering and the financing of terrorism, and the assessment of the value of degrading Al-Shabaab’s operational capability through non-military means.

**Military operations targeting Al-Shabaab “taxation” officers**

42. During the reporting period, the Panel noted an upsurge in the targeting of Al-Shabaab financial officers and “taxation” checkpoints by both Federal Government of Somalia forces and air strikes conducted by international actors. For example, on 21 May 2020, a senior Al-Shabaab tax collector, Cabbas Cali Nuur Kulan, was killed in Leego town in a targeted operation by Somali National Army forces (see annex 2 (strictly confidential)). Kulan was operating as head of taxation for Walanweyn district, Lower Shabelle, and previously served in Galkayo, Mudug region. Found in his possession were receipt books, finance ledgers, banking details and a number of records pertaining to weapons purchases and travel. Despite the increase in targeted attacks, Al-Shabaab has displayed an ability to systematically replace members with trained alternates.

<sup>28</sup> The participation of the Federal Government of Somalia is led by the Office of the National Security Advisor and to date has included the Financial Reporting Centre, the Attorney General’s Office, the Central Bank of Somalia and the Office of the Prime Minister, either in group meetings or consultations. The participation of the United Nations Office on Drugs and Crime (UNODC) is led by the UNODC Regional Office for Eastern Africa and has included input from the Somalia office and across the relevant global programmes.

### III. Acts that threaten the peace, security and stability of Somalia

#### A. Harakat Al-Shabaab Al-Mujaahidiin

##### Al-Shabaab attacks in Somalia

43. Al-Shabaab was limited in its ability to carry out large-scale complex attacks during the reporting period, with three notable exceptions: its vehicle-borne improvised explosive device attack in Mogadishu on 28 December 2019, its attack on the United States-Kenyan military base Camp Simba in Manda Bay, Kenya, on 5 January 2020 and its attack on the Elite Hotel in Mogadishu on 16 August 2020. However, the group continued to conduct smaller-scale attacks across the country using improvised explosive devices, suicide bombings and indirect fire attacks to maintain its presence on the ground and in the media.

##### *Al-Shabaab's use of improvised explosive devices*

44. Improvised explosive devices continue to be Al-Shabaab's primary weapon of choice. However, the Panel noted a shift during the first half of 2020 in its improvised explosive device activity from Mogadishu to other parts of Somalia. The shift could be the result of military operations by the Somali National Army and the African Union Mission in Somalia (AMISOM) in the southern part of Somalia that included the recapture of Janale in Lower Shabelle on 16 March 2020.<sup>29</sup> Janale, located in relative proximity to Mogadishu, provided a strategic base for the group to launch military actions, including moving Al-Shabaab fighters and improvised explosive device components into Mogadishu.

45. Furthermore, the Panel has noted a year-on-year decrease in vehicle-borne improvised explosive device incidents: between January and June 2020 seven vehicle-borne improvised explosive device incidents were reported, with 93 casualties, mostly outside Mogadishu, compared with 27 incidents causing 895 casualties over the year 2019 as a whole.<sup>30</sup>

46. The use of person-borne improvised explosive devices or suicide vests remained a concern during the reporting period, during which the Panel noted eight incidents, including two seizures.<sup>31</sup> While person-borne improvised explosive devices are usually smaller than improvised explosive devices transported in vehicles, access to the desired target might be easier, particularly in cases in which Al-Shabaab has managed to infiltrate the target's immediate environment, as was the case with the attack on the Benadir Regional Administration on 24 July 2019 (S/2019/858, para. 11).

47. It is of note that 48 per cent of improvised explosive devices were found and defused by Somali and international security forces during the second quarter of 2020 (71 of the 149 incidents), highlighting the continued security efforts by those actors.<sup>32</sup> Evidence that Al-Shabaab continues to manufacture its own explosives is detailed in section V.

<sup>29</sup> Interviews and emails from international experts working on Somalia in February, March and July 2020 and the United Nations Mine Action Service monthly reports.

<sup>30</sup> Figures from the United Nations Mine Action Service in Somalia.

<sup>31</sup> Reports from the United Nations Mine Action Service in Somalia.

<sup>32</sup> Ibid.

*Large-scale and complex attacks*

48. On 16 August 2020, a complex attack was carried out at the Elite Hotel, located in the Lido Beach neighbourhood of Mogadishu.<sup>33</sup> At around 5.20 p.m., a suicide vehicle-borne improvised explosive device hit the hotel compound wall and exploded, followed by the entry of four Al-Shabaab gunmen dressed in Somali Police Force uniforms.<sup>34</sup> Security forces engaged the Al-Shabaab fighters, over several hours, killing all four and regaining control of the hotel at approximately 10.25 p.m. The incident resulted in the deaths of 12 civilians and 1 Somali National Army soldier, and 24 people were injured. Al-Shabaab, via Shahada News Agency, claimed responsibility for the attack. This was the first complex attack in Mogadishu since the attack on 23 March 2019 on the Ministries of Labour and Public Works in Shangani district, Mogadishu (S/2019/858, para. 139).

49. In addition, the Panel has noted a further three suicide vehicle-borne improvised explosive device incidents across the country in the third quarter of 2020 to date.<sup>35</sup>

50. On 28 December 2019, a large vehicle-borne improvised explosive device bombing in Mogadishu killed at least 94 people and injured 147. The vehicle detonated at the ex-control Afgoye junction, a key security checkpoint of the Federal Government of Somalia on the outskirts of Mogadishu. It was the deadliest attack in the country since the bombing on 14 October 2017, which killed 600 people (S/2018/1002, annex 2.2). Based on an initial assessment of the blast site, in its report, the United Nations Mine Action Service in Somalia estimated the weight of the device to be approximately 250 kg, which is double the size of the majority of vehicle-borne improvised explosive devices detonated in Mogadishu since 14 October 2017. It took Al-Shabaab two days to claim responsibility for the attack, with the delay likely attributable to the high number of civilian casualties. In an audio recording on 30 December 2019, the group's spokesperson, Ali Mohamud Rage "Ali Dhere", claimed responsibility and stated that Turkish and Somali military convoys were the intended targets.<sup>36</sup> Unusually, Al-Shabaab apologized to the civilian victims of the attack, justifying the bombing as necessary in its fight against the Federal Government of Somalia and its foreign supporters.<sup>37</sup>

*Mortar attacks*

51. During the reporting period, Al-Shabaab carried out six separate mortar attacks on the Aden Adde International Airport complex in Mogadishu, representing the highest number of incidents recorded over such a short time period in the last six years (see annex 3.1 for details on the attacks). The launching areas for most of these attacks were assessed to be located in the Wadajir district of Mogadishu. Al-Shabaab is also constantly harassing Federal Government of Somalia and AMISOM troops across Somalia, with up to nine attacks per month.<sup>38</sup> Annex 3.1 provides additional details on Al-Shabaab attacks within Somalia.

<sup>33</sup> Confidential United Nations report, August 2020.

<sup>34</sup> Prior to the explosion, these four men disembarked from the vehicle at a safe distance from the hotel.

<sup>35</sup> Confidential United Nations report, August 2020.

<sup>36</sup> See Site Intelligence Group, "Accepting heavy civilian casualties, Shabaab takes responsibility for Mogadishu blast killing dozens", 30 December 2019.

<sup>37</sup> Ibid.

<sup>38</sup> In June 2020, 9 mortar attacks were reported against the African Union Mission in Somalia (AMISOM) and the Somali National Army forces.

## Al-Shabaab regional capabilities

### *Al-Shabaab attacks in Kenya*

#### (a) Manda Bay attack

52. In a pre-dawn raid on 5 January 2020, heavily armed Al-Shabaab operatives, dressed in military fatigues, launched an attack on the United States Camp Simba in Manda Bay, Kenya. The base is located approximately 100 km from Somalia. According to a statement issued by the United States Africa Command, three United States citizens were killed in the attack and several assets, including aircraft and vehicles, were destroyed.<sup>39</sup> At least five Al-Shabaab operatives were killed.

53. The assault was part of Al-Shabaab's "Jerusalem will never be Judaized" campaign, the same banner under which the DusitD2 attack was conducted on 15 January 2019 (S/2019/858, paras. 36–44). In November 2019, Al-Shabaab leader Ahmad Umar urged members of the group to carry out attacks against United States targets in response to United States drone strikes in Somalia.<sup>40</sup> In this context, the group also referred to its attack on Baledogle military base in Lower Shabelle on 30 September 2019. The base hosts United States military special forces and serves as a training centre for Federal Government of Somalia soldiers.<sup>41</sup>

54. The mastermind behind the attack, Bashir Mohamed "Qorgab" (SOi.006), was killed in a United States air strike on 22 February 2020.<sup>42</sup> Military equipment was captured from Al-Shabaab operatives during the attack (see section IV.A below and annex 3.2 on the Manda Bay attack).

#### (b) Kenyan border attacks

55. Al-Shabaab continues to pose a threat inside Kenya, with attacks occurring across the Kenya-Somalia border during the reporting period.<sup>43</sup> Al-Shabaab retains the ability to launch attacks that span the length of the 700 km border between Kenya and Somalia from Mandera in the north to Lamu in the south. Al-Shabaab targets security forces, teachers, and health workers identified by the group as non-locals. From December 2019 to July 2020, Al-Shabaab carried out 67 attacks in the border region.<sup>44</sup>

56. The deadliest attack occurred on 6 December 2019 in Wargadud, Wajir County, when Al-Shabaab executed 11 people; eight police officers, two teachers and a doctor, identified by the assailants as "non-local", were separated and killed.<sup>45</sup>

57. The targeting of non-locals is seen by Al-Shabaab as a way to find favour with the local communities who have a distrust of Kenyan security services. This is combined with Al-Shabaab's releasing numerous propaganda messages linking the attacks in Kenya to the presence of Kenyan troops in Somalia, as well as to long-

<sup>39</sup> United States Africa Command, "Update: U.S. statement on Manda Bay terrorist attack", press release, 5 January 2020.

<sup>40</sup> Site Intelligence Group, "Shabaab media unit presents detailed report on Nairobi attack, suggests that attack bears message to Jerusalem", 16 January 2019.

<sup>41</sup> Ibid.

<sup>42</sup> Further information on "Qorgab" can be found in the section below on regional networks.

<sup>43</sup> The Panel previously highlighted the increased frequency of Al-Shabaab incursions into Kenya, which was possibly connected to an attempt to aggravate the strained relations between Kenya and Somalia (S/2019/858, paras. 52–55).

<sup>44</sup> Data collected from confidential international agency security reports, police reports and open source media.

<sup>45</sup> Confidential international agency security report, 7 December 2020.



standing grievances in the former North-Eastern Province of Kenya.<sup>46</sup> On 28 February 2020, the Al-Shabaab spokesperson, “Ali Dhere”, released a radio message calling on the Muslims in the former North-Eastern Province of Kenya (Garissa, Mandera and Wajir Counties) to cease any cooperation with non-locals and the Government of Kenya. Al-Shabaab also threatened to target non-Muslims in the region, including teachers, doctors, shopkeepers and drivers.<sup>47</sup>

58. Attacks perpetrated by Al-Shabaab have had a significant impact on public services, especially schools, many of which have closed owing to teachers leaving because of insecurity in the border region.<sup>48</sup> In January 2020, all non-local teachers were ordered to leave north-eastern Kenya by Kenyan authorities. This was in response to two attacks on schools in one week in January 2020 in Garissa County; four students and one teacher were killed in one school, and three teachers were killed in the other.

59. Cross-border attacks have decreased in frequency since April 2020. The Panel assesses that the long rainy season starting in April and possible effects of the restrictions on movement introduced in response to the coronavirus disease (COVID-19) pandemic contributed to the decrease. The reorganization of Al-Shabaab regional units owing to the killing of a key commander and the dismantling of regional cells have also had an impact on the group’s operational capabilities.

#### *Regional networks*

60. In its 2019 report, the Panel highlighted Al-Shabaab regional cells uncovered during investigations into the DusitD2 attack in Kenya (S/2019/858, paras. 46–51). At least four cells have since been successfully disbanded by the Kenyan Anti-Terrorism Police Unit, thus leaving a vacuum in Al-Shabaab’s regional capabilities.<sup>49</sup>

61. Another setback to regional operations occurred when a United States strike in Sakow Town, Middle Juba, killed Bashir Mohamed “Qorgab” in his home on 22 February 2020.<sup>50</sup> “Qorgab”, identified as the mastermind of the Manda Bay attack on 5 January 2020, was a senior member of Al-Shabaab, listed by the Committee pursuant to the individual sanctions measures imposed by and designation criteria elaborated in Security Council resolution 1844 (2008) and had a \$5 million bounty on his head.<sup>51</sup> At the time of his death, he was in charge of Al-Shabaab operations within Kenya and commanded at least three *Jabhat* (military) units including the *Jaysh Al-Ayman* unit operating near the Boni Forest, Lamu, Kenya (S/2016/919, para. 45). Before commanding the *Jabhat*, he led Al-Shabaab’s special militia commandos, known as *Jugta Ulus*. “Qorgab” also served on Al-Shabaab’s Shura in the foundational years of the group.<sup>52</sup>

62. In response, the Al-Shabaab leader, Ahmed Umar, appointed Malin Khaled “Mohamed Ibrahim”, also known as “Madey”, in early 2020 as deputy military chief for Al-Shabaab’s Kenyan *Jabhat* units and to also lead the training of regional

<sup>46</sup> Site Intelligence Group, “Shabaab leadership urges fighters in East Africa make U.S. interests their ‘first priority’ in speech on Manda Bay raid”, 8 January 2020. Available at <https://ent.siteintelgroup.com/> (subscription needed).

<sup>47</sup> Site Intelligence Group, “Shabaab spokesman threatens non-Muslims in northeastern Kenya, cautions Muslims from supporting Government”, 28 February 2020.

<sup>48</sup> Moulid Hujale, “Schools close in north-east Kenya after al-Shabaab targets teachers”, *Guardian*, 10 March 2020.

<sup>49</sup> Interview with a regional security source, January 2020.

<sup>50</sup> United States Africa Command, “Precision airstrike eliminated Al-Shabaab leader associated with Manda Bay attack”, press release, 25 February 2010.

<sup>51</sup> In 2008, the United States issued a reward of \$5 million. Available at <https://rewardsforjustice.net/>.

<sup>52</sup> Telephone interview with a Somali security source, 10 May 2020.

operatives to be dispatched to Kenya and other countries.<sup>53</sup> “Madey” previously served as the head of the Amniyat in Bakool region under the supervision of Ahmed Umar.<sup>54</sup>

63. Since his appointment, “Madey” has been running an Al-Shabaab training camp called “Ibrahim” near Sakow town, Middle Juba.<sup>55</sup> The first group of about 70 operatives, comprising both Somali and Kenyan-Somali recruits, completed its three-month training period during the first quarter of 2020.<sup>56</sup>

#### *Al-Shabaab foreign terrorist fighters*

64. The Panel continues to monitor the recruitment of foreign terrorist fighters into Al-Shabaab’s ranks and the status of existing foreign terrorist fighters. Al-Shabaab attracts fighters primarily from the East African region but also globally. In late 2019, three subject matter experts in combat, information technology and software from Algeria, Kuwait and Morocco arrived in Harardhere by boat to join Al-Shabaab.<sup>57</sup>

65. Al-Shabaab lost some significant foreign terrorist fighters in combat operations during the reporting period, including Abu Ayman, a Malian Commander killed near Buale in May 2020, and a Pakistani Commander killed in Abal in June 2020. In January 2020, Zubair al-Muhajir, a senior Al-Shabaab foreign terrorist fighter figure and former member of the Shura from Côte d’Ivoire defected to the Federal Government of Somalia.<sup>58</sup>

66. In December 2019, the United States Federal Bureau of Investigation brought new terror charges against Jihad Serwan Mostafa, a United States national and senior member of Al-Shabaab.<sup>59</sup> Mostafa currently holds a key leadership role within Al-Shabaab’s explosives department. Mostafa joined Al-Shabaab in 2008, occupying various high-ranking roles and today is believed to be the highest-ranking United States citizen fighting overseas within a terrorist organization.

## **B. Islamic State in Iraq and the Levant faction in Somalia**

67. In November 2019, the Islamic State in Iraq and the Levant (ISIL) faction in Somalia pledged allegiance to the new ISIL leader, Abu Ibrahim al-Hashimi al-Qurashi.<sup>60</sup> The current emir of the ISIL faction in Somalia is Abdulkadir Mumin, while his deputy, Abu Zubeir Alhabashi, from Ethiopia, was reportedly killed in 2020 during a battle with Al-Shabaab. The faction’s new deputy is Abdirahman Fahiye, and Abdirashid Luqman is head of proselytizing and indoctrination.

68. The number of United States air strikes against the ISIL faction in Somalia fell from nine in 2019 to one, to date, in 2020. On 21 July 2020, a United States air strike against ISIL bases in the Galgala mountains, in cooperation with the Puntland Security Force, killed seven members of the group.<sup>61</sup> The ISIL faction in Somalia has carried out sporadic attacks in Puntland and Mogadishu, but its ability to conduct

<sup>53</sup> Interview with a regional security source, March 2020.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Confidential security report, December 2019.

<sup>58</sup> Harun Maruf, “Senior Al-Shabaab foreign fighter defects in Somalia”, 21 January 2020.

<sup>59</sup> United States Department of Justice, “Indictment unsealed charging former San Diego resident Jihad Serwan Mostafa with providing material support to militant Islamic terrorist organization Al-Shabaab”, 2 December 2019.

<sup>60</sup> Site Intelligence Group, “Pledges to new IS “Caliph” continue to come from group fighters, this time from Pakistan, Somalia, and Yemen”, 4 November 2019.

<sup>61</sup> United States Africa Command, “Somali, U.S. forces engage insurgents in support of the Federal Government of Somalia”, press release, 22 July 2020.

activities have been impeded by Puntland Security Force operations and the group's ongoing conflict with Al-Shabaab.

### **Former Islamic State in Iraq and the Levant fighter transfers to Islamic State Central Africa Province**

69. In late 2018, as a result of a violent leadership power struggle within the ISIL faction in Somalia, the then deputy leader Mahad Moalim was killed and a senior commander, Mohamed Ahmed "Qahiye", fled to Ethiopia.<sup>62</sup> In early 2020, "Qahiye" travelled from Ethiopia to Mozambique to join Islamic State Central Africa Province.<sup>63</sup> There has been a surge in attacks by Islamic State Central Africa Province in Mozambique, with increased frequency and lethality.<sup>64</sup> The arrival of "Qahiye", a veteran military operator, into the ranks of Islamic State Central Africa Province is a significant acquisition for the group and highlights the linkages between terrorist networks across the African continent.<sup>65</sup>

### **Islamic State in Iraq and the Levant recruitment**

70. In 2020, the ISIL faction in Somalia attempted to enlist new fighters. The group petitioned sub-clan elders in the Bari region to provide fighters. In February 2020, reports indicated that about 30 fighters, including seven foreign fighters, joined the ISIL faction in Bari region.<sup>66</sup> A propaganda video was released on 16 February 2020, aimed at recruiting Muslims in East Africa, with particular references made to Ethiopia.<sup>67</sup>

## **C. Relations between the Federal Government of Somalia and the federal member states**

71. During the reporting period, political relations between the Federal Government of Somalia and the federal member states remained volatile. Electoral processes were the primary source of the tensions, both in the lead-up to and aftermath of disputed regional elections in Jubbaland and Galmudug, and in the preparations for national parliamentary and presidential elections. The constitutional mechanisms and technical institutions, such as the National Independent Electoral Commission, require strengthening, as does the commitment to continual consultative political engagement. Cohesion between the Federal Government and the federal member states is important as Al-Shabaab retains the ability to exploit ruptures between the federal and regional authorities.

### **Federal Government of Somalia and Jubbaland administration**

72. On 22 August 2019, Ahmed Mohamed Islam "Madobe" was elected President of Jubbaland by the Jubbaland Parliament (S/2019/858, para. 86). The result was initially rejected by the Federal Government of Somalia and Jubbaland opposition

<sup>62</sup> "Qahiye" received an amnesty from then President of Puntland, Abdiweli Mohamed Ali "Gaas", and thereafter left Puntland for Ethiopia (S/2019/858, para. 57).

<sup>63</sup> Interview with a regional security source, Nairobi, June 2020.

<sup>64</sup> See Bulama Bukarti and Sandun Munasinghe, "The Mozambique conflict and deteriorating security situation" (London, Tony Blair Institute for Global Change, 2020).

<sup>65</sup> Mohamed Ahmed "Qahiye" was reportedly the mastermind of the 8 February 2017 attack on the International Village Hotel in Bosaso (see S/2017/924, annex 2.4).

<sup>66</sup> Interview with a security source in Bari region, Puntland, on 3 March 2020. A fighter speaking Amharic, identified as "Mus'ab Al-Ethiobi" (the Ethiopian) addresses Muslims in Ethiopia and refers to two Ethiopians who allegedly died in battle for the group against Al-Shabaab.

<sup>67</sup> Memri, "ISIS Somalia calls upon Muslims from East Africa to join its ranks, threatens U.S.", 1 March 2020.

figures, who cited irregularities in the regional electoral process.<sup>68</sup> Heightened political tensions in the aftermath of the disputed electoral process resulted in a deterioration of the security environment in Gedo region. The borders of Jubbaland with Ethiopia and Kenya also provide a geographical focus for regional interests and tensions to be played out.

*Armed conflict in Gedo*

73. On 28 January 2020, the former Jubbaland Minister of Security, Abdirashid Hassan Abdinur “Janan”, escaped from prison in Mogadishu where he was awaiting trial.<sup>69</sup> In February 2020, the Federal Government of Somalia cited reports that “Janan” was residing in Gedo region, near the Kenya-Somalia border.<sup>70</sup> In February and March 2020, the Federal Government airlifted approximately 1,000 military and police units from Mogadishu to Belet Hawo, Dolow and Luq in Gedo region.<sup>71</sup> Jubbaland, which is responsible for the administration of Gedo, responded to the Federal Government deployment by transporting its own security forces to Belet Hawo.

74. On 22 February 2020, Somali National Army soldiers from Bardhere, Gedo region, relocated to Belet Hawo to reinforce the Federal Government of Somalia troops deployed from Mogadishu. Two days later, on 24 February 2020, Al-Shabaab entered the vacated town of Bardhere and executed three district officials.<sup>72</sup>

75. On 2 March 2020, tensions between Federal Government of Somalia and Jubbaland forces manifested in armed conflict in Belet Hawo and spilled over into Mandera, Kenya. At least nine civilians were killed during the fighting among the forces, which also had an impact on an already fragile humanitarian situation and prompted the displacement of an estimated 56,000 people at the peak of the crisis.<sup>73</sup>

76. On 23 April 2020, “Madobe” and Jubbaland opposition leaders, Abdinasir Serrar and Abdirashid Hiddig, signed a peace deal, which reduced political tensions among local stakeholders in Jubbaland.<sup>74</sup> On 14 June 2020, the Federal Government of Somalia formally recognized “Madobe” as “interim” President of Jubbaland. This formal recognition and the participation of Jubbaland in the Dhusamareb talks represented a further de-escalation of the political and security tensions between the Federal Government and Jubbaland.<sup>75</sup>

<sup>68</sup> Interviews with Members of the Federal Parliament of Somalia in Nairobi on 28 February 2020.

<sup>69</sup> In its 2016 and 2017 reports, the Monitoring Group on Somalia and Eritrea reported allegations relating to the responsibility of Abdirashid Hassan Abdinur “Janan”, for acts of torture and degrading treatment in Gedo (see S/2017/924, annex 11.3, and S/2016/919, annex 7.8).

<sup>70</sup> Walter Menya and Manase Otsialo, “Kenya angers Somalia by hosting Minister who escaped”, *Nation*, 8 February 2020.

<sup>71</sup> Interviews with Gedo administration representatives in Nairobi on 5 April 2020. Information provided by authorities was cross-referenced by local sources in Gedo from 7 to 9 April 2020.

<sup>72</sup> Interviews with three officials from the Jubbaland administration in Nairobi from 3 to 5 April 2020. See also *Hiiraan Online*, “Three district officials killed in suspected Al-Shabaab attack in Bardheere”, 25 February 2020.

<sup>73</sup> Interviews with Gedo administration representatives in Nairobi on 5 April 2020. Statement by the United Nations Resident and Humanitarian Coordinator for Somalia on 3 March 2020. Interviews with humanitarian organizations on 16 March 2020.

<sup>74</sup> Aggrey Mutambo, “Madobe signs unity pact with Jubbaland rivals”, *East African*, 25 April 2020.

<sup>75</sup> Garowe Online, “Somalia: FGS recognizes Madobe as ‘interim president’, invites FMS leaders to meeting”, 14 June 2020.

### **Talks between the Federal Government of Somalia and the federal member states in Dhusamareb**

77. In June 2020, the National Independent Electoral Commission proposed technical electoral models for the national parliamentary and presidential elections scheduled for November 2020.<sup>76</sup> Most notably, the Commission announced that the arrangements required for one-person-one-vote elections would not be in place until March 2021 at the earliest. The Commission proposals highlighted that it would not be possible to meet both constitutional requirements: to hold the elections on time and in accordance with the one-person-one-vote principle. In the absence of a constitutional court, there is no credible judicial body to resolve this issue and instead Somalia must seek a broad-based political consensus.

78. On 22 July 2020, the Federal Government of Somalia and the federal member states met in Dhusamareb, Galmudug, to discuss security issues and election modalities in the first such gathering since May 2019. Subsequent talks, both in person and remote, appear to have resulted in an agreement on an indirect caucus-based electoral model that will allow elections to take place on time. The talks in Dhusamareb represented an important step but require ongoing political engagement from all actors to ensure the credibility and timeliness of the country's upcoming elections.

#### *Removal of the Prime Minister of the Federal Government of Somalia*

79. In the immediate aftermath of the Dhusamareb meetings, on 25 July 2020, the Prime Minister of the Federal Government of Somalia, Hassan Ali Khaire, faced a vote of no-confidence in the Federal Parliament, ostensibly over his handling of election preparations.<sup>77</sup> One hundred and seventy Members of Parliament voted for his removal, while eight voted against the no-confidence motion. While questions were raised over the legitimacy of the process, the Prime Minister immediately announced his resignation.<sup>78</sup> Constitutional rules require the President to name a new Prime Minister within one month. The Deputy Prime Minister, Mahdi Mohamed Guled, is acting as Prime Minister and the ministerial cabinet is also functioning in an acting capacity.

### **Somaliland talks**

80. From 14 to 16 July 2020, the President of Djibouti, Ismaël Omar Guelleh, chaired presidential-level talks between the Federal Government of Somalia and Somaliland in Djibouti. The meetings were also attended by the Prime Minister of Ethiopia, Abiy Ahmed, while the European Union and the United States acted as facilitators. The talks followed an "icebreaker" meeting between the two leaders on 11 February 2020 in Addis Ababa. According to the joint communiqué, the parties formed three technical subcommittees to address humanitarian aid and international financial assistance, security and airspace control.<sup>79</sup> Meetings at the technical level are currently on hold as a direct repercussion of the removal of the Prime Minister of the Federal Government.<sup>80</sup>

<sup>76</sup> The terms of the parliament and the executive are due to end in November 2020 and February 2021, respectively.

<sup>77</sup> See Abdi Sheikh, "Somalia's parliament ousts Prime Minister in no-confidence vote", Reuters, 25 July 2020.

<sup>78</sup> See Al-Jazeera, "Somalia's parliament votes to remove PM Hassan Ali Khaire", 25 July 2020.

<sup>79</sup> See Jama Farah, "Joint communiqué on Djibouti talks between Somalia and Somaliland", *Horn Diplomat*, 23 June 2020.

<sup>80</sup> Interview with a regionally based diplomat on 10 August 2020.

## D. Security sector

### Transition plan review

81. In March 2018, the Federal Government of Somalia adopted the Somali transition plan, setting out the objectives, priorities and vision for the transition of security responsibilities to Somali authorities and the drawdown of AMISOM forces. The transition plan operates across three pillars: operations, institutional capacity-building and support activities for the period up until December 2021 (see [S/2018/674](#)). At the midpoint of the plan and at the recommendation of the Security Council, the Federal Government and the federal member states have undertaken a review of the plan, which is to be completed by the end of September 2020 (see Security Council resolution [2520 \(2020\)](#)).

82. In addition to examining the progress of the transition, the review has highlighted several areas of relevance to the work of the Panel. These include assessments on the intelligence-gathering and counter-improvised explosive device capabilities of Somali security forces; the value of degrading Al-Shabaab's operational capacity through non-military means; the weapons and ammunition storage facilities at the level of the Federal Government of Somalia and the federal member states; and the capacity of the financial institutions of the Federal Government and the federal member states to detect, counter and prevent money-laundering and terrorist financing.<sup>81</sup>

### Registration of federal and state-level forces

83. In its previous reports, the Panel highlighted the incidence of misappropriation of funds intended for Somali security forces (see [S/2016/919](#), annex 2.2). The Federal Government of Somalia has taken a number of steps in this regard.

84. The Somali National Army completed the first phase of the biometric registration on 3 March 2019.<sup>82</sup> The second phase, which includes physical confirmation of a soldier's presence in garrison and a medical check-up, was finalized this year. In February 2020, 21,209 soldiers were registered in the human resources management system of the Ministry of Defence of the Federal Government of Somalia.<sup>83</sup> A payroll register linked to the Somali Financial Management Information System henceforth allows soldiers to receive their salary directly in their bank account.<sup>84</sup>

85. In a step towards more transparent expenditure management, the payment of half of the Somali National Army soldiers' monthly rations stipend (\$30) is also transferred to an individual soldier's bank account, while the other half is distributed in the form of dry and fresh rations.<sup>85</sup>

86. See annex 4.6 (strictly confidential) for more details on the registration of federal and state-level forces.

<sup>81</sup> "Concept note: the review of the Somali transition plan", shared with the Panel by the Office of the National Security Advisor of the Federal Government of Somalia on 2 August 2020.

<sup>82</sup> [S/2019/858](#), para. 94, and the Somali-African Union-United Nations Joint Threat Assessment dated January 2020 (confidential).

<sup>83</sup> Interview with a Member State representative providing financial support to Somali security forces on 28 February 2020 in Nairobi.

<sup>84</sup> Financial Governance Report of the World Bank (confidential), July 2019.

<sup>85</sup> Interview with an expert from the World Bank, 14 July 2020.

### Lower Shabelle operations

87. On 16 and 17 March 2020, a joint Somali National Army and AMISOM operation led to the recapture of the village of Janale (Lower Shabelle, 90 km south-west of Mogadishu), after six years of Al-Shabaab control. This operation was part of the joint Somali National Army and AMISOM Operation Badbaado, with the objective of recovering territory from Al-Shabaab in Lower Shabelle region, in line with phase one of the Somali transition plan.<sup>86</sup>

88. The long-term success of the Lower Shabelle operations is dependent on the ability of the Federal Government of Somalia to provide an effective stabilizing force, establish inclusive governance and ensure basic services are provided to residents. Regional security forces and police recruits from South-West State have been trained to hold the liberated areas.<sup>87</sup> However, these regional forces have yet to be equipped before they can be deployed.<sup>88</sup> Consequently, the Somali National Army battalions that conducted the operation are holding the area and performing garrisoning tasks and are not available to implement further phases of the transition plan.

89. The Panel received several accounts of civilians killed or injured during the recapture of Janale as a result of mortar attacks and exchanges of gunfire between Al-Shabaab and Somali National Army forces and continues to investigate.<sup>89</sup> An estimated 8,000 people were also displaced from villages around Janale.<sup>90</sup>

90. See annex 3.3 for further details on the Lower Shabelle operations.

## E. Public financial management

### Misappropriation of COVID-19 response funds

91. On 4 April 2020, the Director of Finance for the Ministry of Health of the Federal Government of Somalia, Mohamud Mohamed Buule, was arrested over allegations of missing aid money, some of which was designated for the country's COVID-19 response.<sup>91</sup>

92. On 16 May 2020, the Attorney General of Somalia, Saleban Mohamed Mohamud, announced a wider investigation into corruption within all Federal Government of Somalia ministries and offices.<sup>92</sup> The investigation led to the arrest of more than 20 Ministry of Health officials and the freezing of several bank accounts, with the Somali national police seizing evidence, including fake receipts, payment slips and cheques. The investigation follows the signing into Somali law of an anti-corruption bill in September 2019.

93. In June 2020, nine suspects from the Ministry of Health were arraigned in the Benadir court, charged with eight offences, among them abuse of office and stealing from the public. During the hearing, Justice Abdirahman Saed Ahmed said that the prosecution had presented over 900 allegedly fake receipts, vouchers and invoices

<sup>86</sup> One of the tasks assigned is to degrade Al-Shabaab in Lower Shabelle and to reopen the main supply road to Marka.

<sup>87</sup> Federal Government of Somalia periodic report to the Security Council dated 18 February 2020.

<sup>88</sup> Interviews with United Nations Assistance Mission in Somalia senior staff members on 13 August 2020.

<sup>89</sup> Telephone interviews with members of the Janale community displaced in Marka, May 2020.

<sup>90</sup> United Nations and non-governmental organization humanitarian reports, March 2020.

<sup>91</sup> Somali Dispatch, "Health Minister confirms the arrest of the director Buule", 6 April 2020.

<sup>92</sup> Garowe Online, "Somalia: Attorney General probes missing millions in dramatic crackdown targeting FGS officials", 18 May 2020.

that it was claimed had been used by the suspects.<sup>93</sup> To date, four Ministry of Health officials have received jail terms.<sup>94</sup>

### **Debt relief**

94. During the reporting period, the Ministry of Finance of the Federal Government of Somalia achieved significant milestones towards debt relief and the normalization of financial relations with the international donor community by qualifying for assistance, under the enhanced Heavily Indebted Poor Countries Initiative.<sup>95</sup>

95. The debt of Somalia will be reduced from \$5.2 billion to \$557 million when it reaches the completion point under the Heavily Indebted Poor Countries Initiative in three years' time. The Paris Club of creditors agreed to cancel \$1.4 billion of the debt immediately.<sup>96</sup> Requirements for qualification for the Heavily Indebted Poor Countries Initiative include strengthening of the financial system in such a way that it can better respond to threats of exploitation by Al-Shabaab.

## **IV. Arms embargo**

### **A. Military equipment in the possession of Al-Shabaab**

#### **Weapons and ammunition captured from Al-Shabaab**

##### *Manda Bay*

96. Weapons and ammunition retrieved in the aftermath of the Manda Bay attack on 28 December 2019 have characteristics consistent with equipment previously owned by the Federal Government of Somalia and AMISOM.<sup>97</sup> The Panel has traced one assault rifle to a consignment delivered to the Federal Government on 22 July 2017.<sup>98</sup> The weapon, which bears apparent Federal Government markings, was distributed to the Somali National Army in sector 60, in Baidoa, South-West State, between November and December 2017.<sup>99</sup>

97. On 27 April 2020, the Panel provided the Federal Government of Somalia with all information regarding its investigation into the military materiel used by Al-Shabaab in the Manda Bay attack. The Panel continues to investigate, with the cooperation of the Federal Government, at which point Federal Government-owned weapons could have gone into the illicit sphere (see also "Al-Shabaab regional capabilities" in section III.A above).

<sup>93</sup> Telephone interview with a judicial source, Mogadishu, 24 June 2020.

<sup>94</sup> Telephone call with a Federal Government of Somalia official on 24 August 2020.

<sup>95</sup> See International Monetary Fund, "IMF and World Bank consider Somalia eligible for assistance under the Enhanced Heavily Indebted Poor Countries (HIPC) initiative", press release No. 20/48, 13 February 2020. See also International Monetary Fund, "IMF Managing Director, Kristalina Georgieva, welcomes progress towards securing a financing plan for debt relief for Somalia", press release No. 19/470, 18 December 2019.

<sup>96</sup> Ibid. See also Andrea Shalal and Leigh Thomas, "Paris Club creditors agree to cancel \$1.4 billion of Somali debt", Reuters, 31 March 2020.

<sup>97</sup> Documentation provided to the Panel by a Member State in March 2020.

<sup>98</sup> Annex F to the Federal Government of Somalia post-delivery notification dated 2 February 2018.

<sup>99</sup> Documentation on the distribution of weapons in sector 60, reviewed by the Panel on 14 March 2018, indicating the names and fingerprints of soldiers, as well as serial numbers of weapons.