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# SOMALIA

## Urgent need for effective human rights protection under the new transitional government

### 1. Introduction: making human rights a major commitment

After 14 years of state collapse, there is now a new chance for war-weary Somalis to reconstitute the state with effective institutions to secure protection of human rights in the future and to end impunity for crimes under international law, thus laying a firm foundation for lasting peace.

Two years of peace talks in neighbouring Kenya have concluded with the election by the transitional parliament of a President for the new Transitional Federal Government of Somalia. The new President, Abdullahi Yusuf Ahmed, was sworn in as Head of State on 14 October 2004. On 13 January 2005 the government formed by Prime Minister Ali Mohamed Gedi was approved by parliament and sworn in.

The Transitional Federal Government (TFG) is now beginning a five-year transitional period which is intended to bring Somalia back into the international community of nations. The TFG, inaugurated in the safety of Kenya, now has the task of making itself a reality inside a war-torn Somalia, one of the poorest countries in the world, where most infrastructure has been severely damaged in civil strife. The TFG is gradually moving to establish itself inside Somalia, despite the problems of insecurity and absence of facilities.

Many uncertainties remain, crucially whether the TFG will succeed in becoming a functioning government and restoring institutions of central government and local administration on a decentralized federal basis.

In addition to problems of preventing any recurrence of factional political violence, Somalia is currently facing a humanitarian emergency in several areas in the north-west (Sool and Sanag regions), Puntland and south-central areas, caused by drought but worsened by the absence of functioning state institutions. The Indian Ocean earthquake and tsunami disaster of 26 December 2004 hit the coast of Somalia, causing at least 150 deaths and directly affecting over 50,000 people in Puntland, mainly in the Haafun peninsular. A UN - supported relief operation has commenced.

The first year of the transition, which is planned to lead to multi-party elections and a permanent Constitution by 2010, will be a critical period for the establishment of the TFG, the

disbanding of warlords' factions and militias, and visible evidence of reconstruction sufficient to generate support for a "New Somalia". Humanitarian action, both on an emergency and a development basis, will need to be closely integrated with human rights protection - establishing the rule of law, and protecting basic human rights set out in the Transitional Charter (the interim Constitution).

The Charter contains provisions to protect the rights to freedom of expression and opinion, including freedom of the media, and the right to form political parties, civil associations and non-governmental organisation (NGOs), including human rights groups.

The rights focussed on in this report include personal security from killing by militias, rape and kidnapping for ransom; humane treatment of prisoners; protection of human rights defenders, humanitarian workers and NGOs; and protection of vulnerable groups, especially women, minorities, children and internally displaced persons. Other rights include access to sustainable livelihoods; provision of education (currently available for only 20% of children) and health facilities; protection and regulation of commerce; and protection of the country's natural resources.

Amnesty International urgently calls on the TFG to make human rights protection one of its central and constant aims. The TFG should ensure that it reflects the human rights aspirations of the Somali people and is guided throughout by the objectives of the Charter and principles of international law. Many human rights abuses in the past were linked to violent power-struggles by warlords, who are nearly all represented in the government, and any revival of such conflict would put human rights at risk again, leading to failure to consolidate peace and reconciliation and the danger of a worse disintegration to come.

This report highlights the urgent human rights issues now facing those who will govern the country. A Somali civil society that is tired of factional violence and depredations is anxious to regain a valid and meaningful citizenship. The report describes the traumatic background of state collapse and persistent patterns of massive human rights abuses (though specific details are not set out here) and the conclusion of the latest peace talks held in Kenya. Issues of impunity are discussed in respect of war crimes, crimes against humanity and gross human rights abuses committed in the past, which may yet affect the future and obstruct reconciliation.

The report concludes with Amnesty International's recommendations for human rights for the first year of the Transitional Federal Government.

## **2. Human rights abuses during state collapse (1991-2004)**

The Somali Republic collapsed in 1991 with the overthrow of the Siad Barre government, the disintegration of the state into civil war, the establishment of various and shifting warlord-controlled zones in the south, and the separation of the north-western third of the country.

Major General Mohamed Siad Barre's government originated in a military coup in 1969 after nine years of civilian multi-party government, following Somalia's independence

in 1960. His government was overthrown just over 21 years later, in 1991, by armed opposition forces based in Ethiopia. The Siad Barre government was a military-based, one-party marxist-leninist system marked by constant repression of opposition, clannism<sup>1</sup>, corruption and economic mismanagement. The government was responsible for a persistent pattern of gross human rights violations, including large-scale killings by the army in the northwest, culminating in massacres and bombing in Hargeisa in 1988; systematic torture of political prisoners by the National Security Service; arbitrary and long-term detentions of thousands of prisoners of conscience; grossly unfair trials by National Security Courts; many judicial executions (including executions of prominent sheikhs in 1975); numerous political killings; and harsh treatment of prisoners in special security prisons.<sup>3</sup>

Within months of the United Somali Congress (USC) forces capturing Mogadishu in early 1991 and the flight of the Siad Barre forces to Gedo region in the southwest (the President's Marehan sub-clan homeland), the south disintegrated into clan-based political violence and civil war. In the northwest in 1991, the Somali National Movement (SNM) force defeated the government army and declared independence for "Somaliland" from the rest of Somalia, within the borders of the former British Somaliland Protectorate.

State collapse led to massive human rights abuses by clan-based warlord factions, infrastructure collapse, refugee flows and humanitarian disaster, which had exceptionally severe effects in this impoverished country. It caused further political instability in the Horn of Africa, which was affected by other armed conflicts and humanitarian and human rights crises.

A United Nations (UN) humanitarian operation began during a horrendous famine in south-western Somalia in 1992, followed by a huge and costly armed intervention by the UN, backed by US military forces. The UN withdrew in 1995 with little achieved in terms of re-establishing peace, disarming armed factions, reconstructing a central government, local councils or the justice system, or ensuring respect for human rights.

#### **Somaliland<sup>4</sup>**

The *de facto* independent Somaliland Republic in the northwest, which was declared in 1991 under a civilian government, has not yet received international recognition. It has been the only part of the former Somalia to have achieved substantial progress towards respect for human rights, stability and reconciliation between opposed clans and political groups. The Somaliland government continues to press its demand for international recognition and has boycotted the Kenya peace talks.

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<sup>1</sup> "Clannism" (or "clanism") refers to clan favouritism in political decision-making and public resource allocation, in particular.

<sup>2</sup> See *A government at war with its own people*, Africa Watch, 1990.

<sup>3</sup> See *Somalia: A long-term human rights crisis*, Amnesty International, (AI Index: AFR 52/26/88, 1988).

<sup>4</sup> The use by Amnesty International of the term "Somaliland" does not imply Amnesty International takes a position on the recognition of Somaliland as an independent state. The UN refers to Somaliland as "the northwest" so as to avoid seeming to recognize the country, although UN agencies, as well as international NGOs neutral on the recognition issue provide development assistance.

Government institutions in Somaliland, following separation from the rest of Somalia, have developed slowly but steadily, with a peaceful transfer of power to Vice-President Dahir Riyaale Kahin (now the elected President) when President Mohamed Ibrahim Egal died in May 2002. There has generally been peace and security, although there were two outbreaks of clan-based fighting and several international humanitarian and aid workers were murdered in 2003-2004, allegedly by Islamist opponents. Multi-party elections were held in December 2002 for local councils and in April 2003 for the presidency, with parliamentary elections scheduled for late March 2005.<sup>5</sup>

Somaliland has an active NGO community and a network of human rights defenders campaigning for fuller protection of human rights, for example in some recent cases of arbitrary detention, media repression and unfair trials, including for political offences. Amnesty International expressed deep concern over the five-year prison sentence imposed in December 2004 on a 16-year-old girl jailed for espionage in a grossly unfair trial. Although a child under 18 years old, she was tried and held in custody as an adult. The judge summarily dismissed her allegations of rape and torture by police officers, and imprisoned her defence lawyers.<sup>6</sup> Amnesty International welcomed her release with a presidential pardon in February 2005, through the intervention of the visiting UN Independent Expert for Somalia. However, much more commitment and action by the Somaliland Government are needed to protect human rights and develop a fair justice system in Somaliland.<sup>7</sup>

### **Puntland**

In the northeast, the Puntland Regional State was declared in 1998 as a future part of a federal Somalia, consisting of two and a half former administrative regions of the former Somalia. Its progress and developing administration under its President, Abdullahi Yusuf Ahmed, were held back by a political and constitutional crisis in 2001 with some fighting between the forces of Abdullahi Yusuf Ahmed and Jama Ali Jama – both former army officers and former political prisoners of the Siad Barre government. Under a reconciliation accord in 2003, Abdullahi Yusuf Ahmed became the generally-recognized President of Puntland. Puntland has been autonomous in effect, with its government rejecting control by the TNG in Mogadishu, though it participated in the Somalia peace talks and intends to be part of the new federal Somalia.

In 2001 Puntland claimed jurisdiction over Sool and Sanag regions in eastern Somaliland on the grounds that they were inhabited mainly by members of Puntland's Darod

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<sup>5</sup> See *Somaliland – democratization and its discontents*, International Crisis Group, Nairobi, July 2003; *Human rights in Somaliland - awareness and action, report of a workshop*, Amnesty International and International Cooperation for Development, London, 1999; *International Cooperation for Development (ICD) reports on NGO activities in Somaliland*, [www.ciir.org](http://www.ciir.org).

<sup>6</sup> See *Somaliland: Amnesty International concerned about 16-year-old girl's trial and rape allegations, and summary imprisonment of her defence lawyers*, Amnesty International, (AI Index: AFR 52/004/2004, 20 November 2004) and *Somaliland: 16-year-old girl jailed in grossly unfair espionage trial should be released or re-tried*, Amnesty International, (AI Index: AFR 52/005/2004, 12 December 2004). The government claims that she is 17 years old, not 16.

<sup>7</sup> Recommendations about human rights in Somaliland are not included in this report.

sub-clans. This led to some fighting in the two regions between Somaliland and Puntland forces in 2003 and 2004, with continuing tension threatening further armed conflict and both sides reportedly having troops deployed.

Protection of human rights in Puntland has been limited by the absence of an effective system of administration of justice and rule of law. There have been cases of arbitrary detention, political killings of government opponents, restrictions on NGOs and detentions and unfair trials of private-media journalists.

Following the election in October 2004 of the Puntland President, Abdullahi Yusuf Ahmed, as President of Somalia and his move to this federal position, Puntland's Vice-President, Mohamed Abdi Hashi, assumed the presidency. Parliamentary elections were held in December 2004. The new parliament elected General Mohamoud Musse Hersi (know as "Adde") as President of the Puntland Regional State of Somalia.

#### **The Arta Conference (2000) and the Transitional National Government (TNG) (2000-2004)**

Numerous efforts have been made since 1991 with varied international support to try to resolve the crisis of state collapse and civil war in Somalia. The 13<sup>th</sup> peace conference was convened at Arta in Djibouti in 2000 by Djibouti's President Ismail Omar Guelleh, assembling Somali civil society but not all the warlords. The conference elected a Transitional National Assembly, which formed the TNG, installed in Mogadishu. There was continuous rivalry between, on the one hand, the TNG, which was supported by the UN, League of Arab States, European Union and some southern Somali factions; and on the other hand, the Ethiopia-backed faction coalition of the Somali Reconciliation and Restoration Council (SRRC), which included the Puntland leader Abdullahi Yusuf Ahmed. The TNG, with a three-year term, controlled only a fraction of Mogadishu and did not manage to establish a national system of administration of justice, a national army or police force. In some areas in the south Islamic courts with armed militias and prisons provided some security, but protection was mainly sought within the clan system.

Clan-based faction militias controlled different territorial areas in Mogadishu and the south. There were frequent faction fights; killings of civilians; kidnapping for ransom; robbery and rape, especially against the unarmed minorities, who had no clan protection; and total impunity for faction militias, who included child soldiers.

Many Somali NGOs, human rights groups and private media developed during the TNG period (and some earlier), despite the high risks from faction militias and criminal violence. NGOs work on a wide variety of rights issues, including political killings, rape, kidnappings, women's rights, female genital mutilation, minority rights, child rights, HIV/AIDS, social welfare and development activities. Civil society has sought to counter-balance the power of the warlords and re-establish basic security and livelihoods in the absence of state protection of human rights.

### 3. Peace Talks in Kenya (2002-2004)

Human rights issues remained largely unaddressed during numerous failed international and regional initiatives to obtain agreement between warring faction leaders on forming a government and reviving the state. In October 2002 the 14<sup>th</sup> Somalia peace talks since the 1991 disintegration of the Somali Republic opened in Eldoret in western Kenya.<sup>8</sup> The “Somali National Reconciliation Conference” was sponsored by the Intergovernmental Authority for Development (IGAD)<sup>9</sup>, funded by the European Union and League of Arab States<sup>10</sup>, hosted by the neighbouring Kenya government through its Foreign Minister, and supported administratively by the Nairobi-based European Commission-Somalia Unit.<sup>11</sup> For the first time this brought together all the relevant actors - the political factions (warlords) alongside the TNG (whose president stayed away until nearly the end), the international partners and donors, and “civil society” representatives. It had three phases: to attain a cease-fire, agree on the key issues of reconstruction in Somalia, and create a new interim inclusive government to replace the TNG, whose three-year term of office ended in August 2003.<sup>12</sup> The new government was intended to be for the whole of the former Somalia, as backed by statements supporting “the unity and integrity of the state” and the use of the former Somali Republic flag.

The Conference Facilitation Committee consisted of two neighbouring states, Ethiopia and Djibouti, and the “International Partners Forum” of relevant governments and donors, with the Kenyan Foreign Minister as chairperson. The Ethiopian diplomatic representative was an ethnic Somali, and the Djibouti representative likewise (as is the Djibouti President) – though they came from different clans to those inside Somalia. Meetings were also attended by some of the UN agencies and international NGOs concerned with Somalia. The Somalia Aid Coordination Body (SACB) was created as a grouping of donors and international and local NGOs (who also have an NGO Consortium). All the international agencies are based in Nairobi on account of the security dangers for international staff in Somalia, although some have small locally-staffed offices in Somalia.<sup>13</sup>

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<sup>8</sup> See also International Crisis Group reports, [www.icg.org](http://www.icg.org): *Salvaging Somalia's claim for peace*, International Crisis Group, 2002; *Negotiating a blueprint for peace in Somalia*, March 2003; *Biting the Somali bullet*, May 2004; *Continuation of war by other means?* December 2004.

<sup>9</sup> IGAD is the inter-governmental regional grouping in the Horn and East Africa, whose members are Djibouti, Eritrea, Ethiopia, Kenya, Sudan, Tanzania and Uganda, soon to include Somalia.

<sup>10</sup> Somalia is formally a member, though unrepresented since 1991, of the League of Arab States, as well as the African Union.

<sup>11</sup> The European Commission is the largest donor through Lomé Convention funding, including funds frozen since state collapse in 1991.

<sup>12</sup> The interim parliament extended the TNG's mandate until the conclusion of the peace talks when it expired in August 2003. .

<sup>13</sup> Somalia is the only country in the world where security considerations prevent the International Committee of the Red Cross (ICRC) from having a resident international delegation, as a result of the kidnapping of its staff in Mogadishu some years ago. International NGOs, who have had staff killed or kidnapped, mostly work through local staff (who also have security problems) and hire armed guards to protect their staff and properties at exorbitant rates and often ineffectively.



The process itself was open-ended and characterised by constant mini-crises, including trying to settle outbreaks of fighting within Somalia by militias of warlords attending the conference. There were major logistical and political issues over recognition of delegates and financial arrangements. The agreement reached about delegates (as established at the Arta conference) was to apply a “4.5 quota” system for conference delegates and future parliamentary representation. Under this system, the four main clans<sup>14</sup> received equal allocations, while the minorities received half the allocation of each clan.<sup>15</sup>

“Civil society” was a label for all delegates (who were self-appointed), except for the “leaders” (i.e. warlords). It thus included “traditional leaders”, Muslim religious leaders, prominent civilians from the time of the former government, and individuals from the diaspora or within the country. Some members of NGOs in Mogadishu, such as the Coalition of Grassroots Women Organization (COGWO) and the Dr Ismail Jumale Human Rights Organization (DIJHRO), attended but were not given any special status. Many of the “civil society delegates” were allegedly connected to factions and warlords through their clans.

Somaliland’s government and civil society boycotted the conference, as it denied Somaliland its desired independence. The conference organisers prevented discussion of this issue, so as not to damage the possibility of Somaliland being persuaded to return to a unified federal Somalia at some time in the future. There were, however, some conference delegates from Somaliland who opposed Somaliland’s independence and advocated union with the rest of the former Somalia – which was considered “treason” by the Somaliland government.<sup>16</sup> These delegates eventually became members of the new transitional parliament for Somalia through their Dir clan membership, though they were unable to return safely to Somaliland.

### **Phase I: Ending civil war and promoting reconciliation**

A Cessation of Hostilities (cease-fire) declaration was quickly achieved on 27 October 2002, and was signed by all 13 faction leaders and the TNG. It contained no mention of human rights except in brief reference to federal government structures. No measures were included to enforce the ceasefire or take action against those violating it. Ceasefire violations continued to occur frequently in inter-faction fighting or fighting between the TNG and opposed factions. The international partners informally threatened to impose “smart sanctions”, such as international visa refusals, withdrawal of foreign passports and residence permits and freezing of foreign bank accounts, against cease-fire violators or any leaders who withdrew from the conference, but the threat was never implemented. In Bay region there was fighting between sub-clan factions of the Rahenwein Resistance Army (RRA). In Gedo region,

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<sup>14</sup>These are the three pastoralist clans (Darod, Dir and Hawiye) and the agriculturalist Digil-Mirifle (or Rahenwein), each sub-divided into sub-clans and sub-sub-clans at different genealogical levels. The quotas were set through a political agreement based on the recognition of the importance of the clan structure in Somali society. There are no reliable population statistics on clan or minority membership or geographical distribution.

<sup>15</sup>See pp. 21ff for a description of the Somali minority groups, who were sometimes misleadingly labelled the “fifth clan” at the reconciliation conference.

<sup>16</sup>Those advocating re-integration of Somaliland into a federal Somalia are referred to as “federalists” or “unionists”.

Marehan sub-clans were frequently in conflict. In Kismayu and the southwest there was a tense peace under the Juba Valley Alliance (JVA), threatened by the force of General Mohamed Said Hersi “Morgan”.

In an attempt to stop the fighting, the UN Security Council set up a Panel of Experts in 2002 to investigate violations of an international arms embargo by land, air and sea, and to propose means of obtaining compliance with the embargo. The arms embargo to Somalia has been in force since 1992, but it has been constantly broken by neighbouring states and by purchase of arms by warlords through private arms dealers, along with funding by diaspora communities living in the west and the Middle East. This huge proliferation of weapons (mainly small arms, also held by many civilians) fuelled conflict, contributed to human rights abuses and raised fears that the power vacuum could be exploited by international “terrorist” groups allegedly operating in the region.

No particular attention was paid to human rights protection or impunity issues during this phase of the peace talks.

#### **Phase II: Drafting a Transitional Charter and reconstruction issues**

Human rights protection and issues of accountability for past abuses were discussed along with key constitutional and reconstruction issues during this second phase of the peace talks, commencing in late 2002. Six “technical committees” (with civil society delegates getting one-third of committee places alongside faction delegates) were established on the following issues to form the principles of future government policy, and particularly to obtain agreement on a centralised or a federal government structure:

- (1) Creation of a Transitional Charter (an interim Constitution).
- (2) Economic recovery, with international donor assistance.
- (3) Land and property rights - recovery of land, farms and houses seized by faction militias, the Siad Barre government and its officials, and pre-independence colonial interests.
- (4) Disarmament and demobilization of faction militias (who include child soldiers) and their integration into new trained and accountable government security forces.
- (5) Regional and international relations, particularly concerning resolution of conflicts in the Horn of Africa.
- (6) Conflict resolution and reconciliation, including human rights protections and issues of accountability for abuses of the past.

It was a serious deficiency that there was no human rights advisor provided by the UN or any other agency to give human rights a higher profile and assist the sixth committee, in particular.

In January 2003 the talks moved from Eldoret to Mbagathi on the outskirts of Nairobi, for a cheaper and more suitable venue and under a new Kenyan chairperson, Ambassador Bethuel Kiplagat. In April 2003 the UN Commission on Human Rights, which had been engaged with human rights issues in Somalia since the time of the Siad Barre government and works with an Independent Expert for Somalia appointed by the UN

Secretary General, adopted a strong resolution supporting the peace talks and calling on all the parties to respect human rights and international humanitarian standards.<sup>17</sup> Amnesty International called for international assistance for human rights reconstruction, and for human rights commitments from a future interim parliament.<sup>18</sup>

In May 2003 the six technical committee reports were debated by the conference plenary and adopted.<sup>19</sup> Another committee worked to harmonise conflicting positions on the “federalism” versus “centralization” constitutional issue. Only strong pressure from the IGAD foreign ministers and international partners - with former rivals Ethiopia and Djibouti now cooperating - rescued the conference from failure. A Transitional Federal Charter for the Somali Republic was finally adopted in February 2004.

The Transitional Charter specifies a decentralized federal government, with regional assemblies and administrations, the details of which will be worked out by a Federal Constitution Commission<sup>20</sup>, and election of a Transitional Federal Parliament by the clans through sub-clan and sub-sub-clan levels. Its aim is "to foster reconciliation, national unity and good governance".

Amnesty International welcomes the inclusion in the Charter of the respect, protection and fulfilment of human rights and the rule of law. The Charter affirms the principles of separation of powers and the independence of the judiciary. Chapter Five on "Protection of the Fundamental Rights and Freedoms of the People" guarantees the equality of citizens before the law; the rights to life, personal liberty and security; certain fair trial rights, including the right to be brought before a court within 48 hours of arrest; the right to form political parties (except for any of "a military character or tribal character" – meaning that armed factions are prohibited), trade unions and social organizations, including human rights organizations; the rights to assemble and demonstrate; and the right to freedom of opinion and expression, including the freedom of the press. Although the Charter does not explicitly define a child as below the age of 18 years, Amnesty International welcomes Article 26 which prohibits military service for children under 18 years of age or the imprisonment of children under 18 together with adults. Article 4 states that any person may bring an action in the Supreme Court for a declaration that any law or action of the state is inconsistent with or is in contravention of the Charter.

There are, however, a number of omissions and deficiencies in the Charter, which should be rectified by the parliament and incorporated in the eventual permanent Constitution:

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<sup>17</sup> See UN Commission on Human Rights resolution, 2003/78, [www.hchr.org](http://www.hchr.org).

<sup>18</sup> See *Somalia: Amnesty International calls on the UN Commission on Human Rights to support human rights reconstruction in Somalia*, Amnesty International, (AI Index: AFR 52/003/2003, 15 April 2003) and *Somalia: Call for a human rights committed-parliament*, Amnesty International, (AI Index: AFR 52/005/2003, July 2003).

<sup>19</sup> See [www.Somali-civilsociety.org](http://www.Somali-civilsociety.org) for these six technical committee reports.

<sup>20</sup> Puntland is the only “regional building block” established so far. The Constitutional Commission would also aim to create a dialogue with Somaliland.

- *A National Human Rights Commission*: this should be immediately established by the parliament, as recommended by the sixth “technical committee” at the peace talks.
- *Scope of rights*: some of the articles (including Articles 15 and 24) apply only to citizens, and should be amended to apply to all persons, including foreign nationals.
- *Women’s rights*: the agreed quota of 12% of parliamentary seats for women should be treated as a minimum representation only; the reference in Article 26 (i) to creating “a positive environment for women” is vague and should be revised to ensure implementation of the UN Convention on the Elimination of Discrimination against Women and other relevant international human rights law and standards.
- *Child rights*: the Charter should contain full guarantees for the respect, protection and fulfilment of child rights in accordance with the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and other relevant international human rights law and standards, for example the right to education and standards of juvenile justice.
- *Torture*: the prohibition and recognition as a crime of “any physical or moral violence or action against a person subject to restriction of personal liberty” (Article 16 (4)) should be strengthened to refer directly to “torture and other cruel, inhuman or degrading treatment or punishment”, in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- *Fair trial*: the Charter should be modified to ensure full implementation of international human rights law and standards, and clarify in particular the right to legal defence representation and the principle of non-retroactivity.
- *Freedom of religion and conscience*: this internationally-recognized right should be included, alongside the rights of opinion and association set out in Article 19.
- *Immunity of members of parliament*: Article 35 on the privileges and immunities of parliament appears to provide unlimited immunity from prosecution for members of parliament (except in a case of *flagrante delicto*): it should be amended to exclude immunity for war crimes, crimes against humanity, genocide and other crimes under international law.
- *Economic, social and cultural rights*: the Charter should be modified to reflect the relevant international human rights law and standards regarding the respect, protection and fulfilment of economic, social and cultural rights.

### **Phase III: “Power-sharing” and forming a Transitional Federal Government**

The final third phase commenced in May 2004. Its purpose was to form a new all-inclusive interim parliament and government of Somalia, based on “power-sharing” between the different factions and clans. The procedure agreed was for delegates to select an interim parliament from among themselves for a five-year term. The parliament would elect a Speaker and Deputy Speakers to organise the election by the parliament of a President of a new Transitional Federal Government (TFG) of Somalia for a four-year term. The President

would appoint a Prime Minister to form a government. The TFG would be recognized as the government of the Somali Republic and the collapse of the state would be ended.<sup>21</sup>

During Phase III, traditional clan leaders were brought in from Somalia to assert clan ownership of the conference and thus, in the hopes of many, to reduce the power of the warlords. Muslim religious leaders were also brought as advisors. The new 275 member parliament was selected on the same “4.5 quota” system<sup>22</sup> as the conference delegates. Members of parliament were selected by each clan (which had 61 seats) at sub-clan and sub-sub-clan levels, and 31 seats for the minorities were to be divided among the different minority groups. Armed factions and militias were theoretically dissolved according to the Charter, although the situation on the ground was unchanged. An Arbitration Committee was set up to resolve disputes arising from each group’s selection.

Amnesty International appealed to delegates to make human rights a priority in this process.<sup>23</sup> In April 2004 the UN Commission on Human Rights and the Independent Expert for Somalia urged all parties to respect human rights and support the peace process. The Commission called for funding for advisory services and technical assistance from the Office of the UN High Commissioner for Human Rights.<sup>24</sup> To date, however, the UN High Commissioner for Human Rights has not yet appointed a human rights advisory team for Somalia.

Somali business leaders in mid-2004 formally committed themselves to support the outcome of the conference and the new TFG. At a special meeting in Djibouti in July 2004, businesspeople who had established several profitable and mainly Middle East-based businesses agreed to accept some central government regulation within a private-sector oriented economy in exchange for governmental protection and security for commerce. Hitherto their businesses - such as telecommunications, airlines, livestock trade and consumer goods - provided no revenue for any public services. They had been protected by making “tax” payments to faction militias for security, but with a trend to setting up their own militias independently. Without their financing, factions had been weakened and said to be unable to pay their militias to fight rivals.<sup>25</sup>

The illegal arms trade and the demobilization issue were also central to whether a transitional government could achieve peace, protection of human rights and personal security

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<sup>21</sup> The status of the collapsed state of Somalia was not formally clarified. The UN seat had been left vacant but there has been a TNG Permanent Representative to the UN in New York (where the embassy never fully closed) and some embassies have been kept open in the Middle East, funded by host governments, and elsewhere. Somalia passports issued after 1991 have not been fully internationally recognized.

<sup>22</sup> See p. 7 above for an explanation of this quota system.

<sup>23</sup> See Somalia: *Urgent human rights message to the peace talks in Kenya*, Amnesty International, (AI Index: AFR 52/002/2004, 28 July 2004).

<sup>24</sup> See UN Commission on Human Rights resolution, 2004/80, [www.hchr.org](http://www.hchr.org).

<sup>25</sup> The cost of a substantial short battle was said to have risen to over US\$200,000, which warlords could not now afford. Militias, only weakly organized and totally unaccountable, otherwise supported themselves and their drug (*khat*) addictions by extortion and looting.

for citizens. The UN Panel of Experts investigating violations of the international arms embargo delivered a highly critical third report in August 2004. The UN Security Council again extended the panel's mandate for a further 6 months to refine a confidential "blacklist" of those who had violated the embargo and their supporters, including states, faction leaders and businesspeople (Somalis and non-Somalis), for possible sanctions by the Security Council. It noted links between the arms trade and the drugs trade (khat and hashish in particular), and possible links with money-laundering and "terrorist" connections. It intended the report to have a "deterrent value" for potential arms embargo violators "to help ensure that opposition groups do not destabilize the new transitional government that may emerge out of the [peace] conference....or [help to] minimize the violence that may erupt if the outcome of the conference is inconclusive".<sup>26</sup>

Demobilization of the various warlords' militias will be an essential precondition for the establishment of peace and security in Mogadishu and other areas. Demobilization will be within the mandate of the African Union's Peace Support Mission (AMISOM), providing a force of between 5,000 and 7,500 troops from various African states, which is expected to be deployed in the near future. Its proposed mandate, requiring international community support, includes protecting the new government institutions, supporting demobilization of militias, and ceasefire monitoring activities.<sup>27</sup> The African Union identified four types of militias: armed factions, businessmen-owned militias, freelance militias, and Islamic Court militias. There are said to be up to 60,000 militias, who were responsible for most human rights abuses, as well as some of the criminal violence and kidnapping. There were, however, no plans discussed during Phase III to bring any militia responsible for human rights abuses to justice.

### **The Transitional Federal Parliament**

On 22 August 2004 most of the new Transitional Federal Parliament (TFP) had been selected in "closed" clan meetings, and 194 out of the 275 Members of Parliament were sworn in at the UN compound near Nairobi. By mid-September, the full total had been selected and sworn in. It remains to be seen whether a parliament apparently dominated by the warlords and their supporters will actively address human rights issues.

An immediate problem was a women's rights issue: the women's quota of parliamentary seats was one-third short. Only 22 women were nominated and sworn in, ten less than the 12% quota of 33 seats accepted by the leadership committee. To date, this has not been rectified to meet the Charter requirement, despite complaints by women NGOs, supposedly on the grounds that it was not the most urgent problem facing the parliament. Many women also complained that the clan allocations to women (i.e. to their father's clan) were made without consulting the cross-clan women's groups and that hardly any women were involved in this selection process.

The conclusion of the peace talks, however, was at risk from the withdrawal of the powerful warlord, General Mohamed Said Hersi "Morgan", widely reported to be responsible for war crimes and massive human rights abuses since the 1980s, who was preparing his

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<sup>26</sup> See [www.reliefweb.int](http://www.reliefweb.int).

<sup>27</sup> *Communiqué of the Peace and Security Council*, African Union, Addis Ababa, 5 January 2005.

forces to attack Kismayu, controlled by the Juba Valley Alliance (JVA) which had ousted him in 1999. Ambassador Kiplagat requested IGAD to impose sanctions against General “Morgan” for withdrawing from the peace process. The JVA and other warlords began to mobilize forces to oppose him. In September there was some fighting at a distance from Kismayu and the local population fled, but within some days the conference facilitators had persuaded General “Morgan” to return to Nairobi and re-join the reconciliation conference, although he was not selected as a member of parliament. His presence at the peace talks, more than any of the other warlords, had highlighted the significance of the issue of impunity and its effect on human rights in the future.

### **The Transitional Federal Government**

Presidential elections by the parliament went ahead in Nairobi, with 26 candidates. The President of Puntland, Abdullahi Yusuf Ahmed (from the Darod clan), was elected to be President of Somalia after three rounds of balloting involving 26 presidential candidates in all. He was sworn in on 14 October 2004. On 3 November 2004 he appointed Ali Mohamed Gedi as Prime Minister - a newcomer on the political scene from the Mogadishu-based Hawiye clan, a former university lecturer in veterinary science and a member of the Somali NGO Consortium in Nairobi. However, on 11 December 2004 the parliament passed a vote of no confidence in him and the 79-member cabinet of ministers and assistant ministers he named. The President dismissed him but later re-appointed him. His re-appointment and his revised cabinet of 89 ministers and assistant ministers were accepted by the parliament on 13 January 2005 and the cabinet was sworn in.

The TFG contains several warlords holding positions, including those of the Deputy Prime Minister and Minister of Internal Affairs, Minister of National Security, and the Ministers of Justice, Religious Affairs, Public Works and Housing, Commerce, Reconstruction and Resettlement, Agriculture, and the Assistant Minister for the Disabled and Orphanages.

Women’s groups criticized the under-representation of women in the TFG (as well as in parliament). Only one minister and two deputy ministers are women (of whom two are from the minorities). The minorities were given five ministers. The government and parliament postponed bringing the representation of women into consistency with the Charter, despite the negative message this conveyed about respect for women’s rights.

There has been considerable pressure for the TFG to move quickly from Kenya to assert its presence in Somalia, even though there are security risks in Mogadishu and the demobilization of faction militias has not started. It will be some time before the projected African Union (AU) Peace Support Force (AMISOM) is deployed to begin demobilization and protect the new government institutions. Basic facilities for the government, parliament and federal administration are not yet prepared, nor do they yet have the financial resources to start functioning and recruiting staff. It may also take a long time for UN agencies and international NGOs to re-locate safely back to Mogadishu, and for foreign embassies to be established as signs of full international recognition.

Violence and lawlessness have not ended in Mogadishu or many other parts of the country. Opposition to the TFG and the deployment of AU troops (particularly over the inclusion of troops from neighbouring states, notably Ethiopia, which is regarded as supportive of former SRRC factions) has been expressed by some warlords in the TFG and by Islamic groups who were excluded from the Reconciliation Conference and continue to oppose the TFG. Following assassinations in recent months of pro-TFG former security and police officers, the former TNG police chief, General Yusuf Ahmed Sarinle, was assassinated in Mogadishu on 23 January, apparently for supporting the TFG and the deployment of AU troops. Hornafrik radio station in Mogadishu was bombed on 28 January. A British Broadcasting Corporation producer and reporter, Kate Peyton, was murdered in Mogadishu on 9 February shortly after the TFG announced its impending move there (later postponed) and just after she had met visiting members of the parliament. Her murder, condemned by the TFG and Somali civil society groups, was seen as a political threat to the international community (like the earlier desecration of an Italian colonial cemetery) and possibly to the media too. Days later, a visiting AU delegation narrowly escaped a grenade attack which killed two Somali civilians. There has also been politically-related clan fighting in Mudug and Galgaduud regions in recent months, with over 150 deaths, many of them civilians, and in Kismayu and Lower Shebelle region. Conflicts have broken out in some parts even after the TFG was established.

The TFG plans to relocate to Somalia by mid-May 2005. In February 2005 parliamentary delegations began assessment visits to Mogadishu and several other areas. The President and Prime Minister, who had already conducted diplomatic missions to countries in the region, visited Jowhar, near Mogadishu, and other areas but they avoided Mogadishu itself for security reasons.

Following a report by the UN Secretary General to the UN Security Council in February 2005 on the situation in Somalia<sup>28</sup>, the UN Security Council in March 2005 acknowledged that “it cannot be said that either peace or reconciliation has been achieved or that fighting in Somalia has ceased”. It urged all Somali factions and militia leaders to cease hostilities and called for “a comprehensive and verifiable ceasefire agreement”. It urged the TFG to ensure humanitarian access to all Somalis in need and guarantees for the safety of aid workers. The UN role in Somalia is to be upgraded with the appointment of a Special Representative of the Secretary General at Assistant Secretary General level.<sup>29</sup>

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<sup>28</sup> UN Security Council *Report of the Secretary-General on the situation in Somalia*, S/2005/89, 18 February 2005.

<sup>29</sup> UN Security Council Press Release *Security Presidential statement welcomes progress in Somali national reconciliation, notes need for expanded UN presence*, SC/8329, 7 March 2005.



## **4. Impunity and Reconciliation**

Amnesty International is concerned about certain key issues of justice in the transition from state collapse towards democratic government:

- How to ensure that those who have committed war crimes, crimes against humanity and gross human rights abuses in the past, including during the Siad Barre government or the civil conflicts since 1991, are eventually brought to justice;
- How to ensure that those who have committed crimes under international law, including leaders and members of faction militias, are excluded from new security forces;
- How to ensure that a truth commission or other form of reconciliation supplement and do not replace measures to investigate and prosecute those responsible for crimes under international law and provide reparations for victims or their families.

According to international law, governments are responsible and accountable for protecting the human rights of their citizens, according to their constitution or laws and in line with customary and conventional international human rights and humanitarian law treaties. The new government of Somalia is bound by international and regional human rights treaties ratified by the former government, as well as by customary rules of international human rights and humanitarian law. Somalia is thus party to the International Covenant on Civil and Political Rights and its First Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the four Geneva Conventions of 1949, the African Charter on Human and Peoples' Rights, the UN Convention Relating to the Status of Refugees and its 1967 Protocol, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

While Somalia was a collapsed state without functioning governmental institutions, Amnesty International made it clear that international law required armed political groups and their leaders to respect human rights of all persons within the territory and subject to their control. Amnesty International stated that the warlords were responsible for abuses by their militias and demanded that they should stop abuses of human rights and violations of international humanitarian law, establish a clear chain-of-command control over their forces, and investigate abuses by their forces impartially.

The peace talks organisers and sponsors included all the warlords in the peace and reconciliation process so that they would not oppose or derail it on the grounds of being excluded. They regarded "inclusiveness" and "power-sharing", mainly between the warlords, as the only means to secure relative peace and return Somalia to the international community of states and recognized governments. They set aside issues of impunity and justice in regard to human rights abuses committed by the warlords and their militias.

At first, the warlords were reportedly planning to grant themselves a general and unconditional amnesty. This was strongly criticized by Amnesty International and it is

unacceptable in international law. It was rejected at the reconciliation conference. However, no clear idea emerged of how to prevent impunity and yet still keep all the warlords inside the peace process, with the result that the impunity issue was temporarily set aside while the main objective of the organizers was to reverse state collapse and establish a viable government.

Some of the perpetrators of abuses were among the leaders or other delegates at the peace talks - a peculiar situation where they were in daily sight of people whose relatives had been killed by them or their forces, as well as of international observers who did not want them to escape with impunity. They had the protection of their clans, irrespective of their crimes.

Amnesty International has repeatedly emphasized in relation to all countries of the world that international law prohibits amnesties and similar measures of impunity that would prevent a judicial determination of guilt or innocence, the emergence of the truth about gross abuses of human rights, or reparations to the victims and their families.

Amnesty International, in line with its work against human rights abuses worldwide and in support of Somali human rights defenders, has repeatedly during the peace talks urged that transitional justice and human rights accountability should be integrated into the process. Amnesty International considers that lasting peace and reconciliation cannot be achieved, in Somalia or elsewhere, if there is total and permanent impunity for war crimes, crimes against humanity and gross human rights abuses, particularly when the alleged perpetrators are among those dominating the new government and the institutions responsible for establishing justice and human rights protections.

In the end, nearly all the warlords and others too who were alleged to have committed war crimes or gross human rights abuses were able to place themselves in the parliament through their influence in the clan allocations. The Prime Minister appointed several warlords to the TFG, including to ministerial positions in charge of internal affairs, national security, and law enforcement and justice. It is widely feared that other former military or security officers may be re-integrated into high posts in the new security forces without proper investigation into any alleged responsibility for crimes and human rights abuses in the past.

Amnesty International maintains in principle that individuals reasonably suspected of having committed crimes under international law or human rights abuses should be investigated, and prosecuted if sufficient admissible evidence is found. The organization considers that they should not be allowed to hold positions of authority where they could repeat their crimes or abuses. It is vital that the new government and security forces should be led by persons of the highest integrity in order for them to be able to fully undertake their responsibilities to protect human rights in every way possible.

The government must take effective action, in the course of establishing institutions of law enforcement and justice, to prevent and punish any new war crimes, crimes against humanity or other human rights abuses, and ensure that the perpetrators are held accountable. It will be up to the international community to monitor the government's performance in implementing protection of human rights according to the Charter, the international human

rights and humanitarian law treaties to which the government is party, and customary international law.

Somali human rights defenders have frequently discussed and made statements on how to deal with the human rights abuses of the past and avoid impunity, despite intimidation by warlords and risk of reprisals. Outspoken journalists and NGOs reporting and campaigning against political killings, abductions and rape by faction militias in Mogadishu have usually not dared to name the factions, individual commanders or militias suspected to be responsible. Some NGOs and journalists are believed to possess such information and evidence and there could be witnesses ready to come forward and give evidence to a future inquiry or prosecution, provided their safety was guaranteed. Faction leaders were sometimes said to be “afraid” about talk of war crimes investigations. They were reportedly ready to take any steps necessary to guarantee their own impunity, avoid sanctions silence condemnation and safeguard illegally acquired gains. The documentation of past abuses has not yet started systematically, although there is some material which was published by international NGOs at the time, such as Africa Watch.<sup>30</sup>

It is essential to begin developing a long-term comprehensive action plan to end impunity for individual criminal responsibility in Somalia. There are a number of ways in which impunity can be addressed. The first step should be to conduct an assessment of what is the scope of the problem, in a transparent process and in consultation with Somali civil society and the international community. It is unlikely that the international community will set up a special court for Somalia for war crimes and crimes against humanity. The International Criminal Court could investigate crimes under international law committed since 1 July 2002 if Somalia ratifies the Rome Statute of the International Criminal Court, or if the UN Security Council referred the situation in Somalia to the Prosecutor of the International Criminal Court. National courts in other states could exercise universal jurisdiction to prosecute persons from Somalia.

As a competent, independent and impartial criminal justice system is gradually established in Somalia, it should start to investigate individuals suspected of crimes under international law, including crimes against humanity, war crimes, extrajudicial executions, enforced disappearances and torture. Where there is sufficient admissible evidence, they should be prosecuted with internationally recognised guarantees of fair trial and without the use of the death penalty. The capacity for this does not yet exist, and there would be nothing gained for future respect for human rights through summary and unfair trials leading to executions - which would be new human rights violations.

Amnesty International recognizes that this will be a lengthy, complex and difficult project. However, as in other post-conflict situations in different parts of the world, the

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<sup>30</sup> See *A government at war with its own people*, Africa Watch, 1990. The Somaliland government set up a War Crimes Investigation Commission in 1991 focusing on crimes by non-Somalilanders and marked out mass graves of the 1988 “genocide” victims in Hargeisa. However, 14 years later the Commission has not published any findings and there have been no trials.

problems are not insurmountable in the long term, provided there is continuing progress in developing a culture of respect for human rights, and sufficient international support.

### **Truth Commission**

The importance of reconciliation in Somalia is reflected in the Charter's provision for a National Commission for Reconciliation. Whether any particular method of reconciliation such as public "truth-telling" would work in Somalia would depend on cultural and political acceptability. There is no universal model for a truth commission, of which there are at least 30 different national examples worldwide.

In the Somali context, reconciliation generally means a cultural mechanism of mediation, conflict-resolution and restitution between opposed political factions or clans within the context of a political settlement, as reflected in the reconciliation conference, rather than between individual perpetrators of abuses and their individual victims or victims' surviving families.

International law recognizes that responsibility for particular crimes is an individual and not a collective responsibility. Considering the history of clan-based conflict and clannism in Somalia, where there were perpetrators as well as victims among all clans and sub-clans, reconciliation between clans and their subdivisions would be assisted, rather than obstructed, by individualizing justice and impunity issues, and not simply categorizing or stigmatizing social groups as perpetrators.

The new parliament could consider, after public consultations, enacting a law establishing a truth commission to establish the truth about human rights abuses and allow victims and their families to give testimony. This process is often seen as a means to reconciliation where the individual perpetrators are identified and given the opportunity to express regret. International support would be needed to ensure that the commission was provided with the necessary resources and expertise.

A truth commission should be independent from the government and other political forces. It should be composed of members of the highest integrity, impartiality and independence, who could be chosen among experts in the fields of international human rights and humanitarian law, international criminal law, transitional justice and forensic sciences. It should have a clear but flexible mandate, which would not supplant the formal judicial system and would be framed in terms of international human rights standards applicable to investigations of human rights violations and abuses. For example, the commission could be mandated to establish the truth about serious violations of international human rights and humanitarian law committed in Somalia since 1969.

The commission's statute should grant it the necessary expertise, resources and time for its work, and provide it with full investigative powers (including the power to issue subpoenas). The commission should meet standards of due process for those implicated or named, and should provide adequate protection for victims, witnesses and their families. The commission's work should not obstruct or limit other criminal investigations or civil proceedings, or other processes to provide reparations. The result of the commission's work should be published and disseminated.

## **5. Human rights protection in transition**

Amnesty International does not underestimate the difficulties of setting up new government institutions in Somalia to protect human rights, particularly in the immediate situation. Its recommendations in the next section set out a minimum standard of human rights targets for the first year of transition for the new government and parliament and the international community. This section considers some particular issues of human rights protection for the transitional period.

### **Warlords in government**

The TFG has the responsibility to consolidate peace, create the federal institutions set out in the Charter, and protect human rights in accordance with the international and regional treaties ratified (though not observed) by the previous Siad Barre government. Under the Charter, armed faction militias are banned and militias are to be disbanded and replaced by national or regional security forces. Powerful and hitherto unaccountable warlords with substantial economic assets will have to detach themselves from their illegal military forces, and become recognized as no longer “warlords” but members and supporters of an open and accountable government exercising collective responsibility for the nation.

### **Forming the new security forces**

It is important that the formation of the new security forces is a process which is co-ordinated with efforts to ensure that there is no impunity for crimes under international law and other human rights abuses. Perpetrators should not be placed in command positions or lower-level positions where they could repeat their crimes and abuses. To help prevent this, the recruitment process should include an impartial screening or vetting mechanism to ensure that those reasonably suspected of crimes under international law or human rights abuses are not recruited into the new security forces, pending independent and impartial investigations.

This screening or vetting mechanism should work alongside other independent and impartial investigations to identify perpetrators. It should be ongoing, with the eventual objective of bringing perpetrators to justice. Many of the recruits into the new army, security or intelligence service, police force and prisons service are likely to be drawn from among former soldiers, security, police and prisons officers of the Siad Barre forces or the TNG forces or from among faction militias of the various warlords who are now in the government. Such screening measures should form an essential component of the creation of federal and regional security forces, if they are to be agents of support for human rights.

The new security forces should be thoroughly trained in human rights so that a culture of respect for human rights is systematically promoted from the start, on the basis of accountability and clear chains of command, responsibility to the community and with no impunity for human rights violations.

### **The parliament**

The parliament should play a key role in implementing the Charter and providing a check on the executive branch of government. In particular, it should ensure implementation and further development of the policy recommendations of the six technical committees in Phase II of the reconciliation conference.

Some of its key tasks in the field of human rights will be carrying out legal reform, monitoring human rights and ensuring action to stop abuses - for example, through setting up a National Human Rights Commission and overseeing adherence to international and regional human rights treaties, including further ratifications.

#### **International aid donors**

The UN Development Program (UNDP), other UN agencies, the European Commission and other donors have been engaged in humanitarian and development programs in Somalia (including Somaliland) for several years. Political support and financial assistance by the international community, particularly the UN, the European Commission and the World Bank, will be necessary for the reconstruction of the state, re-establishment of government and establishing human rights protections, both immediately and in the long term.

This will be conducted through a cooperation agreement between aid donors and the TFG, which was discussed at a donor meeting in Stockholm in October 2004, on a proposed phased and “benchmarked” system linked to conditionalities of peace and human rights. In November 2004, a Coordinating and Monitoring Committee (CMC) was established between the TFG and representatives of the international community, including the UN, IGAD states and the international partners.

A Declaration of Principles (DoP) was agreed by both sides. The international community undertook to “provide diplomatic, political, technical and financial support to Somalia subject to the TFG’s commitment and adherence to the principles contained in this DoP”. The TFG committed itself to abide by the following principles:

- Promotion of peace and reconciliation by:
  - a) addressing internal and external issues through dialogue;
  - b) avoiding actions which undermine existing areas of tranquility;
  - c) restoration of law and order.
- Adherence to and respect for an effective and internationally verifiable comprehensive cease-fire arrangement.
- Transition to democratic governance, *inter alia*, through the development of a constitutional process to determine the nature of the State.
- Facilitation of humanitarian access across Somalia.
- Respect for human rights and the protection of civilians.
- Respect for and endorsement of the role of civil society in the development of the country including human rights, service delivery and nation building.
- Promotion of regional co-operation and security.

A “Rapid Assistance Program” is being prepared by donors for the first year of the transition to support TFG institutions. The next stage will be a longer-term “Reconstruction and Development Program”. Prior to the tsunami disaster in December 2004, when a special emergency relief appeal for Somalia was made by the UN, the UN revised its Somalia donor appeal upwards to US\$164 millions. By early February 2005, only about 10% of the US\$80

millions budget for the first year of the transition had reportedly been contributed. An International Donor Appeal Conference is in preparation for later in 2005.

### **Protection of women's rights**

Women have been victims of the civil wars during state collapse through unprecedented violence, including killing and rape. Women have formed and joined NGOs and campaigned for peace and human rights. They have taken on new roles of family protection and decision-making, whether continuing to live in non-conflict areas such as Somaliland, in conflict zones such as Mogadishu, as internally displaced persons or as asylum-seekers in other countries,

The Charter reserved seats for women representatives in the parliament in recognition of their right to participation in public life and decision-making - as did the previous TNG and Puntland parliaments - but this has not yet been implemented, as described above. This is a serious failure and raised questions about the commitment of the TFG and parliament to supporting women's rights. Women are also under-represented in the TFG. Although there is growing awareness of women's rights, women have been marginalized in the peace talks and many obstacles remain to their full participation in government and parliament, in political activities, and in access to justice and economic opportunities and resources.

Institutionalised violence continues to be inflicted on most girls through the almost universal practice in most areas of female genital mutilation and other harmful traditional practices.<sup>31</sup>

Girls' education lags far behind boys' education - though there are only a small number of schools at any level, mostly fee-paying. A whole generation of children has been deprived of their right to education.

NGOs have also documented patterns of rape of women with impunity, particularly those who have been displaced from their homes due to civil wars and women members of the minorities. Sexual violence in the home is also reportedly a serious problem, linked to general gender discrimination.

### **Protection of minority rights**

The Somali minorities comprise principally the "African" Bantu/Jarir, who are mostly landless labourers; the Benadiri/Rer Hamar urban traders of Middle Eastern origin; and the smaller dispersed Midgan (Gaboje), Tumul and Yibro occupational groups of metal-workers, leather-workers, hairdressers, herbalists and others. There are other smaller minorities, such as the Ashraf and Shikhhal Muslim religious communities, Bajuni fishing people, and remote hunter-gatherer groups.

The minorities are customarily prohibited from inter-marrying with the pastoralist clans and thus have no clan protection from them. The most discriminated minority groups

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<sup>31</sup> See *Somalia - the untold story, the war through the eyes of Somali women*, edited by Judith Gardner and Judy El-Bushra, CIIR/Pluto Press, 2004.

are the Bantu/Jarir and the occupational groups, who are often subjected to direct or indirect verbal abuse and exploitation, and mostly live in extreme poverty.<sup>32</sup>

The minority groups, who have no armed militias, have been extremely vulnerable during the period of state collapse and absence of a justice system and rule of law to killing, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and clan members. Such incidents are still commonly reported and are being documented by local human rights NGOs.

Many members of minority groups have fled the country, to Kenya in particular, and some - including Benadiri and Bantu/Jarir - have been re-settled in special programs by the USA and other countries. The special risk status of the minorities has often been recognized in asylum determination. The majority of more than a third of a million internally displaced persons in several parts of Somalia are members of minority groups. They subsist in mainly unregulated settlements in abject conditions, with international relief assistance reportedly often diverted and stolen by members of local clans.

Somali society, while possessing a high degree of cultural unity deriving from the pastoralist economy, is pluralist in essence. It is a plurality of clans, sub-divided at many genealogical levels, but also a plurality of unequal social groups – pastoralists having traditionally dominated and discriminated against the agricultural groups (Rahenwein) and the minorities. Recognition and acceptance of this plurality, as well as suppressing the destructive elements of clannism and other forms of identity-based discrimination and exclusion, would go far towards ensuring effective implementation of social and cultural rights, and providing equality and freedoms for all groups and individuals.

Fuller respect for the rights of members of the minorities is also required through Somalia's adherence to its international human rights treaty commitments, especially Article 27 of the International Covenant on Civil and Political Rights, as well as the standards set out in the UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, which sets out the specific rights of minorities, including their economic, social and cultural rights. So far, there has been relatively little progress by donors, UN agencies or international or local NGOs to integrate minority rights issues into civil protection, reconstruction and capacity-building programs.

#### **Somali civil society and human rights defenders**

The Charter gives recognition to the rights of civil society and human rights defenders, even though they were allowed only a very restricted role in the reconciliation conference and formation of the parliament. Somali human rights defenders and independent private media will be at the forefront of civil society activists engaged in social reconstruction and demands for human rights protection at the grassroots level throughout Somalia's urban and rural areas. They should be protected by the government and encouraged by international human rights organizations. The international donor community should provide support for their activities and help to build their capacities.

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<sup>32</sup> See *A study of minority groups in Somalia*, UN Coordination Unit/OCHA, Nairobi, 2002.



### **The Somali diaspora**

There is also a role for the Somali diaspora, as the international sector of Somali civil society which has experience of other systems of governance and social activism, to support peace and human rights in Somalia. The diaspora is estimated to remit over US\$1 billion a year, especially in the form of support for families in Somalia or in refugee camps in neighbouring countries. Members of the diaspora closely follow events in Somalia through international radio stations, over 100 Somali websites (many, however, supportive of particular factions or clans), phoning and travel. Many in the diaspora look towards a time when there is sufficient peace, stability and opportunities for sustainable livelihood to encourage voluntary return.

## **6. Amnesty International's recommendations on human rights for the first year of the Transitional Federal Government (2005)**

### **Human rights commitment**

- The TFG and parliament should make regular public declarations of commitment to human rights and take visible measures to protect and support human rights.
- *Human rights treaties*: The TFG should demonstrate its commitment to human rights by announcing that it will take steps, with international assistance, to implement the international and regional human rights treaties and humanitarian law treaties already ratified. The parliament should study and ratify the following additional treaties:
  - \*The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
  - \*The Convention on the Rights of the Child and its two Optional Protocols, on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography;
  - \*The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
  - \*The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
  - \*The Convention on the Prevention and Punishment of the Crime of Genocide;
  - \*The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity;
  - \*The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
  - \*The two Additional Protocols to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts and to the Protection of Victims of Non-International Armed Conflicts;

\*The African Charter on the Rights and Welfare of the Child;

\*The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

\*The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

- *National Human Rights Commission:* The parliament should establish a National Human Rights Commission, composed of members of the highest integrity, independence and impartiality. The Commission should include civil society, in particular women's organizations, and representatives of all minorities. It should be empowered to monitor the implementation of human rights instruments to which Somalia is a party, to investigate complaints of human rights abuses and to make recommendations to the appropriate authorities for action.
- *Supporting independent human rights organizations:* Donor countries and IGOs should provide technical and financial assistance to independent human rights organizations, and support human rights defenders.
- *Human rights outreach:* The parliament should set up an effective, well-funded outreach program to familiarize communities throughout Somalia with the human rights provisions in the Charter and international human rights. This should build on the growing activities of Somali NGOs and community-based organizations in all areas and across a wide range of peace and rights activism.
- *Humanitarian activities:* The TFG and parliament should provide all necessary protection for international and local humanitarian workers, and ensure that their work is not obstructed.

### **The justice system**

- *Establishing an independent and effective national system of administration of justice:* The parliament should establish courts at the federal and regional levels which guarantee the right to fair trial consistent with international human rights law and standards, including the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the right to defence, representation and appeal, and the non-application of the death penalty.
- *Reconstructing the judicial system:* New investigators, magistrates, prosecutors, judges and other judicial officials should be recruited and trained. Both new and existing members of the judiciary should be fully trained in international human rights law and in the thorough investigation and prosecution of cases of sexual violence and of other types of violence against women.
- *Law reform:* The parliament should conduct a thorough review of the Somali Penal Code (1967) and Criminal Procedure Code in order to ensure their consistency with international human rights law and humanitarian law. Any laws which are incompatible with international and regional human rights treaties should be revised.

It should furthermore enact legislation permitting effective cooperation with international criminal courts and national courts of other states in connection with criminal and civil proceedings related to crimes under international law.

- *Death penalty:* The parliament should establish a review of the use of the death penalty with a view to abolishing it. In the meantime, it should declare a moratorium on executions following any death sentences imposed by courts.
- *Ratification and implementation of the Statute of the International Criminal Court:* The parliament should ratify and fully implement the Rome Statute and Agreement on Privileges and Immunities of the International Criminal Court. This would not only demonstrate the new government's commitment to the rule of law, but also would contribute to the prevention of crime and human rights abuses in the future.
- *Aid for reconstructing the criminal justice system:* International donors should provide financial and material resources to enable the reconstruction of the criminal justice system as quickly as possible. Donor countries should consider the possible secondment of international judicial experts to assist the Somali judiciary, to support its expansion and reform.

#### **Impunity**

- *Acknowledging past crimes:* The TFG should publicly and fully acknowledge the massive human rights abuses, including crimes under international law, committed in Somalia in the past, and start an open and transparent process towards establishing the truth and responsibility for past crimes. They should also consider means of reparations, including restitution, compensation, rehabilitation, satisfaction to victims or their families, and guarantees of non-repetition and no reprisals.
- *No impunity:* The TFG and parliament should develop and implement a comprehensive, long-term action plan for the transitional period to ensure that there is no indefinite impunity for suspected perpetrators of crimes under international law. This process should be carried out in a transparent manner in full consultation with civil society, the UN and interested states, and linked to the reconstruction of the justice system, with appropriate funding and resources.

#### **Demobilizing faction militias and forming the new security forces**

- *Disarmament, Demobilisation and Reintegration (DDR) of faction militias:* All faction militias should be disbanded. Demobilized members of faction militias should be provided with education, vocational training and medical support, including psychological counselling, as necessary.
- *Addressing the special needs of child soldiers:* A specific program of disarmament, demobilisation and reintegration into society should address the needs of child soldiers (i.e. militias aged under 18 years) and include education, vocational training, physical and psychological rehabilitation. Child soldiers should be reunited with their families.

- *Reducing the availability of arms:* The TFG should establish arms reduction programs, such as collection and destruction, in conjunction with DDR programs. New illegal in-flows of weapons in violation of the arms embargo should be prevented, and if discovered, reported to the UN Security Council for sanctions.
- *Formation of the new security forces:* The TFG should ensure that perpetrators of crimes under international law or human rights abuses are not placed in command positions or lower-level positions where they could repeat their crimes and abuses. An impartial screening or vetting mechanism should be established as part of the recruitment procedures to ensure that those reasonably suspected of crimes under international law or human rights abuses are not recruited into the new security forces, pending independent and impartial investigations.
- *Human rights training for the new security and armed forces:* The TFG should establish ongoing human rights training and monitoring program for all branches of the new security forces, including the army, police, prisons service and the security or intelligence service. The new security forces should be trained in international human rights and humanitarian law. Training programs should cover human rights protection, procedures for arrest and detention, use of lethal force and treatment of prisoners.<sup>33</sup>

#### **Women's rights**

- *Women's civil and political rights:* The TFG should promote women's participation in institutions and representative government. The TFG and parliament have the immediate task to rectify the under-representation of women in parliament (which contravenes the Charter allocations) and in the government.
- *Women's economic, social and cultural rights:* The TFG should support the elimination of female genital mutilation and the campaign to stop violence against women in the home and community. The TFG and parliament should make public commitments to protect and promote women's rights.

#### **Rights of members of minorities**

- *Rights of members of minorities:* The rights of members of minorities should be publicly supported and fully implemented, in accordance with the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The TFG and Parliament should draw up a national action plan in consultation with minority members of parliament and NGOs to combat discrimination and guarantee equal rights.
- *Violence against members of minorities:* Public officials should take immediate action to investigate and prevent arbitrary violence and discrimination against minorities and ensure that members of minorities have access to justice and equal treatment before the law.

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<sup>33</sup> See *Amnesty International's 12-Point Guide of Good Practices in Training and Education for Human Rights of Government Officials*, Amnesty International (AI Index: ACT 30/1/98, 1998).

### **The UN and human rights**

- *Human rights technical assistance:* The Office of the UN High Commissioner for Human Rights (OHCHR) should take a leading role in providing technical assistance and advice to the TFG, parliament and NGOs in the field of human rights.
- *UN Human rights advisor:* The OHCHR should immediately appoint a senior human rights advisor for Somalia with an adequately-resourced office, working closely with other UN agencies, to include the following tasks: to help establish a National Human Rights Commission for Somalia, with regional branches as appropriate; to provide expertise in judicial reconstruction and law reform; and to support human rights defenders, especially women's groups and minority groups.
- *Human rights monitors:* The expanded role of the UN in Somalia, as announced recently by the UN Secretary General<sup>34</sup>, should include the deployment, under the auspices of the OHCHR, of human rights monitors on the ground in different regions, when and where security permits, and in sufficient numbers and with adequate resources, with a clear mandate to investigate human rights abuses, monitor the protection of civilians, and make their findings and recommendations public.

### **Refugees**

- The international community should work to promote durable peace and reconciliation in Somalia that provides the full respect for and protection of human rights. These represent essential conditions for the voluntary sustainable return in safety and dignity of those who fled the country in large numbers in the past decades.
- There should be no forcible return (refoulement) of refugees or asylum seekers contrary to international refugee protection standards.
- Host governments should abide by the international and regional refugee conventions and also the policy guidelines issued by the Office of the UN High Commissioner for Refugees (UNHCR) in January 2004, which are still current while the UNHCR prepares a Comprehensive Plan of Action for Somali refugees. The guidelines state that rejected asylum seekers from Somalia should not be forcibly returned to the south (i.e. all regions south of Galkayu town) or to any area other than their place of origin where they would have clan ties and clan protection. UNHCR advised against indiscriminate or large-scale forced returns to other areas, such as Somaliland and Puntland, as this could jeopardize peace and recovery efforts, where many survival needs remain unmet. This could also adversely affect individuals in particular vulnerable categories, such as women and children (and especially minority children) who have had long stays in exile and adapted to other cultures, would face severe discrimination on return on account of not being sufficiently Somali. Furthermore, there are still 400,000 internally displaced persons in different parts of Somalia, living

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<sup>34</sup> UN Security Council: *Report of the Secretary-General on the situation in Somalia*, S/2005/89, 18 February 2005.

in extremely poor conditions, who cannot yet return safely to their homes and resume a sustainable livelihood.

**The international community**

- Amnesty International calls on the international community and aid donors to integrate the recommendations above into their emergency and long-term assistance plans for Somalia. It requests them to support these human rights through relevant international fora, including supporting UN human rights assistance through the UN Commission on Human Rights and the work of the UN Independent Expert for Somalia.
- Aid donors should make detailed and specific provisions for substantial resources to be allocated to projects in the field of human rights and justice, including addressing the issue of impunity as set out above, and providing resources and assistance to the African Union Peace Support Force to enable it to act effectively in creating a secure environment and protecting human rights.
- Members of the Coordination and Monitoring Committee should constructively assist the TFG to fulfil its human rights commitments and ensure that human rights protection is a constant priority.