



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



# Protection of Civilians:

## Building the Foundation for Peace, Security and Human Rights in Somalia

December 2017



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## Mandate

This report was prepared by the Human Rights and Protection Group (HRPG) of the United Nations Assistance Mission in Somalia (UNSOM) and covers the period from 1 January 2016 to 14 October 2017.

The UNSOM HRPG prepared this report pursuant to UNSOM's mandate under United Nations Security Council Resolution 2158 (2014), which requires UNSOM "to monitor, help investigate and report to the Council on, and help prevent any abuses or violations of human rights or violations of international humanitarian law committed in Somalia". United Nations Security Council Resolution 2358 (2017) emphasises the importance of "respect for international humanitarian law and the protection of civilians, especially women and children, by all parties to the conflict."

UNSOM HRPG implements activities designed to minimize the impact of the armed conflict on civilians, including monitoring and reporting incidents involving loss of life or injury to civilians; advocacy and capacity-building to strengthen the protection of civilians affected by the armed conflict; initiatives to promote compliance among all parties to the conflict with international humanitarian and human rights law; and technical assistance to the Government to enable Somalia to fulfil its human rights obligations.

This report is jointly published by UNSOM and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

*Cover Photo: Mogadishu, 14 October 2017, Bancroft.*



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## Acronyms

<b>AMISOM:</b>	The African Union Mission in Somalia
<b>ASWJ:</b>	Ahlu Sunna Waljama'a
<b>CRSV:</b>	Conflict-Related Sexual Violence
<b>ENDF:</b>	Ethiopian National Defence Forces
<b>FGS:</b>	Federal Government of Somalia
<b>FMS:</b>	Federal Member State
<b>HRDDP:</b>	Human Rights Due Diligence Policy
<b>HRPG:</b>	Human Rights Protection Group
<b>IED:</b>	Improvised explosive device
<b>KDF:</b>	Kenyan Defence Forces
<b>MRM:</b>	Monitoring and Reporting Mechanism
<b>OHCHR:</b>	Office of the United Nations High Commissioner for Human Rights
<b>SGBV:</b>	Sexual or Gender-Based Violence
<b>SNA:</b>	Somali National Army
<b>UNHCR:</b>	United Nations High Commissioner for Refugees
<b>UNMAS:</b>	United Nations Mine Action Service
<b>UNSOM:</b>	United Nations Assistance Mission in Somalia
<b>UNSOS:</b>	United Nations Support Office in Somalia

## Executive Summary

This report focuses on violations of international humanitarian and human rights law committed in the context of Somalia's long standing armed conflict. The findings and analysis in the report are a first attempt by UNSOM to quantify civilian casualties (civilians killed and injured in the context of the armed conflict) and assess the toll of the conflict on civilians between 1 January 2016 and 14 October 2017. During this period, attacks by state and non-state actors inflicted high numbers of civilian deaths and injuries, caused damage to public and private infrastructure, loss of livestock, and impeded access to humanitarian relief for communities in need. The report is intended to serve as a baseline upon which further analyses of the impact of the conflict on civilians can be documented and contains recommendations to reduce and prevent civilian casualties, which can be monitored for implementation.

From 1 January 2016 to 14 October 2017, UNSOM documented a total of 4,585 civilian casualties (2,078 killed and 2,507 injured), 60 per cent of which were attributed to Al Shabaab, 13 per cent to militia, 11 per cent to state actors, four per cent to the African Union Mission to Somalia (AMISOM), and 12 per cent to other and undetermined or unidentified actors. In addition, 729 civilians were abducted by Al Shabaab, of whom 403 were reportedly released. Al Shabaab was also responsible for 86 targeted assassinations and executed 46 persons during the reporting period.

According to the United Nations Mine Action Service (UNMAS) civilians comprised 54 per cent of the casualties, totalling 2,298 (748 killed and 1,550 injured) caused by improvised explosive devices (IEDs). Before the devastating attack of 14 October 2017 in Mogadishu in which 512 civilians were killed and 316 were injured, the highest number of civilian casualties occurred in the months of June 2016 and January 2017, mainly in Banaadir, Bay and Lower Shabelle regions, during Ramadan and the electoral process period, respectively.

State and non-state actors also carried out extrajudicial executions, sexual and gender-based violence, arbitrary arrests and detention, and abductions. For example, arrests and detention by the National Intelligence Service Agency (NISA) routinely violate international human rights law, and it is of particular concern that journalists and Al Shabaab suspects are often detained without charges. Somali children are disproportionately affected by the conflict, and are exposed to grave violations during military operations, including killing, maiming, and arrest and detention by Somalia security forces during military or security operations. The protracted conflict has also resulted in widespread sexual and gender-based violence against women, men, boys, and girls, with women and girls particularly affected.

A significant number of the civilian casualties recorded were attributed to clan militia engaged in conflicts in the context of a non-international armed conflict, in areas where federal or state security forces were largely absent. The main trigger of clan conflicts are disputes over land and resources, compounded by an ongoing cycle of retaliation. The drought has intensified clan conflict due to competition over resources, and these conflicts are exploited by anti-government elements to further destabilize areas, diminish prospects for lasting peace and weaken civilian protection.

Attacks targeting civilians and indiscriminate attacks by non-state actors – in particular through the use of IEDs and suicide attacks in civilian-populated areas – are prohibited under international humanitarian law and in most cases likely amount to war crimes. It is imperative that the perpetrators of such acts be identified and held accountable.

While the majority of civilian casualties during the reporting period were caused by Al Shabaab and other non-state actors, a smaller number were attributed to state security actors and AMISOM. These are of utmost concern as they undermine the Somali population's trust in the Government and

the international community, which in turn expands the space in which anti-government elements continue to operate.

Some steps taken by the Federal Government and Parliament, such as establishing ad hoc investigation committees to investigate violations of a grave nature, signify a commitment to address violations although the outcomes have not been forthcoming. The implementation of the political agreement on Somalia's National Security Architecture, reached by the Federal Government and the Federal Member States in April 2017, has become central to achieving sustainable security sector reform. It provides an opportunity to ensure that Somali-led security institutions are accountable and have the capacity to provide security and protection to citizens, in accordance with international human rights law and international humanitarian law. The establishment of the independent National Human Rights Commission with a mandate to investigate violations of human rights and hold perpetrators accountable, especially for violations caused by security forces, is a crucial step in this regard.

The promotion of human rights and the protection of civilians, which are foundational elements for a legitimate state, are significant challenges in Somalia due to the extremely difficult security situation and weak or absent rule of law. To support efforts to improve civilian protection and compliance with human rights obligations, UNSOM recommends that all parties to the conflict take all feasible precautions to protect civilians in the conduct of military operations by ceasing the deliberate targeting of civilians and civilian objects, ending the use of all IEDs, and to cease firing mortars, rockets and grenades from and into civilian-populated areas.

The Federal Government of Somalia (FGS) and Federal Member States (FMS) are encouraged to adopt the legislative, policy, and law enforcement measures necessary to ensure the effective investigation and prosecution of serious violations and abuses of international human rights law and international humanitarian law. With respect to AMISOM, implementation of some measures recommended in the framework of the United Nations Human Rights Due Diligence Policy (HRDDP), such as issuance of Force Commanders' Directives on protection of civilians and compliance with international humanitarian law, training and dissemination of human rights and IHL-compliant Rules of Engagement, show some progress. However, AMISOM is urged to strengthen its accountability measures on incidents involving civilians through timely investigation and communication of outcomes, and to cooperate with all United Nations and humanitarian actors to enhance its capacity to fulfil its mandate in full compliance with participating states' obligations under international humanitarian law and international human rights law.



## Methodology

UNSOM HRPD documents civilian casualties based on international best practice, human rights monitoring methodology, the UN Monitoring and Reporting Mechanism (MRM) guidelines, and the UN field manual on grave violations against children in armed conflict. The report refers to civilian casualties where there are reasonable grounds to believe that the victims were civilians and were killed or injured as a direct result of war operations and the acts, decisions, and/or purposes causing them were closely related to the conflict.

For the purposes of this report, UNSOM follows the approach afforded by international humanitarian law and international human rights laws, or the “rights-based” approach. This is consistent with its mandate on protection of civilians, which includes monitoring, investigating and reporting on civilian protection and helping prevent violations by advocating with and supporting the Somali authorities to meet their international human rights obligations.<sup>1</sup>

UNSOM monitors allegations against all parties to the conflict and reports on violations irrespective of who committed them. It conducts interviews, on-site visits, and other means of information collection, following strict rules to ensure confidentiality of sources to avoid doing harm and ensure the credibility of the United Nations. While this report attempts to capture the total number of civilian casualties recorded during the reporting period, it should be noted that not all civilian casualties constitute violations of international humanitarian law and international human rights laws. While under international humanitarian law, parties to the conflict must at all times distinguish between civilians and combatants and civilian objects and military objectives, and must take all feasible measures to avoid civilian casualties, the incidental death or injury of civilians or destruction of civilian objects resulting from an attack that has been directed towards a legitimate military objective does not necessarily amount to a violation of international humanitarian law. UNSOM recognizes that the death of civilians and destruction of civilian objects during an armed conflict, no matter how grave, may not in and of themselves violate international law<sup>2</sup> and makes every effort to identify as precisely as possible the party responsible for a particular civilian casualty. Due to security constraints and the complex operating environment, such as blurring identities between AMISOM and non-AMISOM forces when troops of the same country operate under different umbrellas, to the inability of sources to clearly identify or distinguish between actors, or to the absence of claim of responsibility, it is not always possible for UNSOM to attribute responsibility.<sup>3</sup>

<sup>1</sup> UNSOM considers the term civilian casualties when international humanitarian law applies and victim when it refers to international human rights law.

<sup>2</sup> Recording an individual as a casualty is not always determinative of a violation of international law (although high numbers of casualties may be indicative of violations and reflect the concept of ‘patterns of harm’). UNSOM’s casualty recording is undertaken in conflict situations where there is often a high number of incidents taking place, in areas where insecurity does not allow access. Consequently, it may not be possible to identify each victim (e.g. when a suicide bombing occurs in an urban area), determine their status at the time (e.g., whether shopping or directly participating in hostilities), attribute responsibility for each casualty (e.g., where multiple armed groups are in the area) and make a determination of a violation in relation to each casualty (e.g., whether the damage to civilians and/or civilian objects was excessive in relation to the military advantage anticipated).

<sup>3</sup> Based on OHCHR monitoring methodology, allegations received by UNSOM against AMISOM are transmitted to AMISOM within the HRDDP framework. Through this, UNSOM seeks information on the incidents, actions taken to investigate and as necessary, hold perpetrators to account. Engagement with AMISOM on the incidents takes place through written exchange and different forums, including the UN-AMISOM Joint Working Group on HRDDP which then decides or advises AMISOM, the joint AMISOM-UN technical teams on the investigation and accountability measures. With respect to Sexual Exploitation and Abuse cases, reporting follows a twin-track approach with allegations shared in writing with AMISOM highlighting the victim and witness protection considerations, and in parallel with OHCHR for strategic advocacy with the AU and relevant member states. The Senior Leadership Coordination Forum (SLCF), the highest forum co-chaired by the Special Representative of the Secretary General and the Special Representative of the Chairperson of the African Union Commission may also discuss particular violations within its HRDDP standing agenda item. See para. 34 (50 allegations were transmitted to AMISOM and responses received on 26 of them during the reporting period).

The sources used to gather information vary and include victims, witnesses, and family members, and local, national and international non-governmental organizations (NGOs). UNSOM collected information from local officials, community leaders, police, military, journalists and United Nations entities. UNSOM also reviewed documentary information including official documents, records kept by Government entities and/other institutions, photographs, videos, and recordings, and open source material including media, internet, social media, and reports from NGOs. The sources were primary (direct) or secondary (indirect).

UNSOM requires at least three independent sources to verify a civilian casualty. Wherever possible, information is obtained from the primary accounts of victims and/or witnesses, although the prevailing insecurity significantly restricts UNSOM's access. UNSOM has not included information that has not been cross-checked or verified. Therefore, the actual number of casualties is likely to be higher. UNSOM has developed a range of methodologies, including building the capacity of its sources to monitor and report on human rights. In some incidents, the civilian status of the reported victims may not have been conclusively established. Disaggregated data remain largely unavailable, but in several instances, verified information includes data by sex and age. Allegations involving AMISOM troops are routinely communicated to AMISOM, along with recommended actions or requests for information on the actions that have been taken. Regarding incidents related to airstrikes, UNSOM reviews reports on the use of AMISOM air assets to determine whether the helicopters have flown in the area of the incident on the same date.

UNSOM provided advance copies of this report for verification of factual errors, and the responses received are attached as an annex.<sup>4</sup> Some comments have been addressed directly in the report.

## I. Findings

### A. Overview of Violations and Abuses

1. The reporting period saw significant political developments in Somalia, with the completion of the formation of the Somalia's five Federal Member States (Jubbaland, South West Administration, HirShabelle, and Galmudug), the electoral process in December 2016 for a bicameral Parliament with a new Upper House, and the election of a new President in February 2017. The FGS and the FMS also agreed on Somalia's National Security Architecture in April 2017, and a Security Pact was adopted at the London Somalia Conference in May 2017, which (among other things) urged all parties to uphold human rights and international humanitarian law, strengthen institutions to address impunity, and improve the protection of women and children.<sup>5</sup>

2. The security situation remained volatile during the reporting period. The main conflict was between national security forces – supported by AMISOM – and Al Shabaab, the major armed group controlling significant territory in Jubbaland, South West State, and HirShabelle. Other conflicts resulting in civilian casualties included recurrent clashes between clan militia aligned to power holders, especially in areas where national and state security forces were absent.

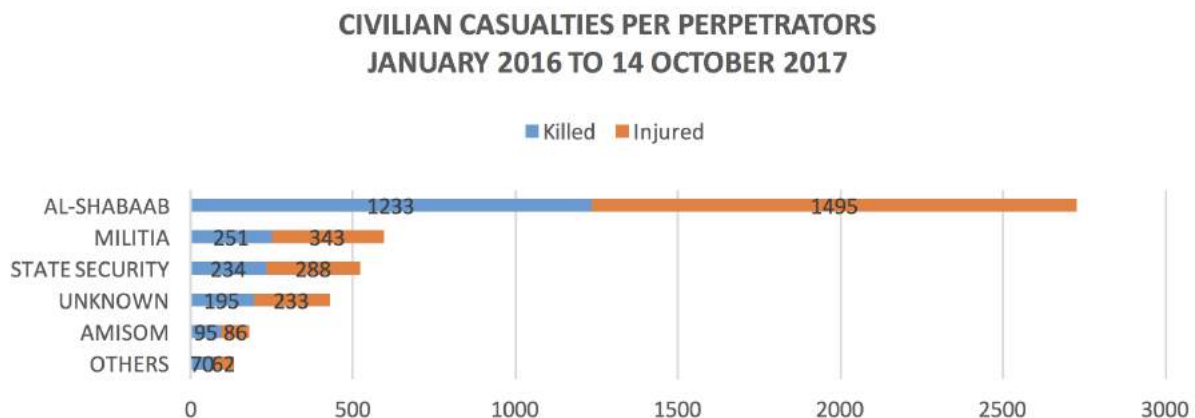
3. UNSOM documented violations by state actors including Somali National Army, Intelligence Security Agency, Somali Police, as well as AMISOM and other international forces, and violations and abuses by non-state actors such as Al Shabaab, clan militia in the broader context of armed conflict, and the militia affiliated with Islamic State in Iraq and the Levant (ISIL). Violations and abuses included

<sup>4</sup> Advance copies were provided to authorities in Jubbaland, Puntland, HirShabelle, Somaliland, and Interim South West Administration, as well as AMISOM, the FGS Ministry of Women and Human Rights Development, and the Embassies of the United States of America and the Republic of Kenya in Mogadishu. UNSOM acknowledges and appreciate the responses received.

<sup>5</sup> 11 May 2017 Security Pact, para. 10.

killings and other attacks against civilians and civilian objects, extrajudicial executions, sexual and gender-based violence, arbitrary arrest and detention, abduction, torture, as well as the six grave violations against children.

4. From 1 January 2016 to 14 October 2017, a total of 4,585 civilian casualties were recorded (2,078 killed and 2,507 injured), 60 per cent of which were attributed to Al Shabaab (2,728 casualties, 1,233 killed, 1,495 injured), 13 per cent to militia (594), 11 per cent to state actors (522), four per cent to AMISOM (181), and 12 per cent to other and unidentified actors.<sup>6</sup> In addition, 729 civilians were abducted by Al Shabaab, of whom 403 were reportedly released.



5. According to UNMAS data,<sup>7</sup> civilians comprised 54 per cent of the casualties caused by IEDs, totalling 2,298 (748 killed and 1,550 injured) by the end of September 2017.

6. Almost half of civilian casualties were attributed to complex attacks and the use of VBIEDs (49 per cent), suicide attacks using VBIEDs, PBIEDs (25 per cent), and other types of IEDs (26 per cent).<sup>8</sup> Before the attack in Mogadishu on 14 October 2017, the highest number of civilian casualties occurred during Ramadan in June 2016 and the lead-up to the elections in January 2017, mainly in Banaadir, Bay and Lower Shabelle.

## B. Human Rights Violations Attributed to State Actors or Affiliated Groups

### 1. National and International Security Forces

7. A total of 522 civilian casualties (234 killed and 288 injured) were attributed to state actors, representing 11.6 per cent of the casualties recorded by UNSOM HRP. State actors comprised SNA, SP, and FMS security forces (primarily in Puntland and in Jubbaland), as well as the national and state intelligence and security agencies.

### 2. Somali National Army

8. SNA falls under the FGS Ministry of Defence, and its presence is limited to Galmudug, HirShabelle, Interim South West Administration (ISWA), Jubbaland, and Banaadir.<sup>9</sup> Somaliland has

<sup>6</sup> The undetermined category includes unidentified perpetrators, while other comprises actors who are identified but represent perpetrators such as the Kenyan Defence Forces and Ethiopian Liyu police that are responsible for a comparatively small number of violations.

<sup>7</sup> UNMAS, 2017. Last accessed 26 October 2017, <http://www.mineaction.org/programmes/somalia>.

<sup>8</sup> Single IED explosions by using several emplacing methods (side of the route, middle of the route, concealed, elevated, etc.)

<sup>9</sup> SNA is present in the capital, Mogadishu, and in eight regions in Somalia (Lower Shabelle, Bay, Bakool, Gedo, Lower Juba,

its own security and police forces, and some of Puntland's security forces are in the process of being integrated into the SNA. In some cases, verification by UNSOM of allegations against the SNA has been challenging in the absence of a consistent use of uniforms or other form of identification.<sup>10</sup>

9. SNA were involved in 65 incidents resulting in 145 civilian casualties, with 85 killed and 60 injured. Reports of rape attributed to SNA decreased substantially, from 17 in 2015 to three in the reporting period, likely due to underreporting or the decreasing presence of SNA in regions like Bay and Bakool (ISWA), where they were replaced by regional security forces.

10. Incidents involving the SNA occurred mainly in Mogadishu (34.1 per cent), with a total of 51 civilian casualties, and in Lower Shabelle (25.6 per cent), with 37 casualties.<sup>11</sup> Forty-two casualties were linked to illegal checkpoints and extortion, 25 to indiscriminate shooting, and 26 from clashes within SNA or between SNA and other security forces, such as the intelligence services. Nine civilians were killed during security operations on suspicion of belonging to Al Shabaab, and eight casualties were related to SNA involvement in retaliatory clan attacks. Ten casualties attributed to SNA occurred under unclear circumstances.

11. Of the 65 incidents involving SNA, alleged perpetrators were arrested by SNA authorities in only 13 of the cases, while in 52 incidents (80 per cent of the cases) the alleged perpetrators were not arrested or reportedly escaped. UNSOM was unable to confirm whether all cases were submitted to the Military Court of Armed Forces, which has jurisdiction over members of the SNA. In known cases that were referred to the Military Court, punishments of perpetrators were not consistent across similar violations committed, ranging from the payment of compensation to the families of the victims to the death penalty.<sup>12</sup>

12. Fighting between State security forces resulted in a significant number of killings and injuries, and other human rights violations. The most serious incident occurred in October 2016, when 25 victims were killed and 63 were injured by crossfire between Puntland and Galmudug forces in Gaalkayo that exacerbated the existing clan conflict and displaced 180,000 people. The two security forces were also responsible for direct ground confrontations and mortar attacks in heavily populated and residential areas during the fighting.

### 3. Somali Police<sup>13</sup>

13. The National Security Architecture, outlined in the 11 May 2017 Security Pact, envisions a force

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HirShabelle). It also has limited presence in Adaado town, the interim capital of Galmudug State.

10 Individuals routinely wear SNA uniform (specifically the colour and patterns and the Somali flag on the left shoulder) without belonging to SNA, and SNA soldiers do not always wear the SNA uniform.

<sup>11</sup> Number of incidents per region: 20 incidents in Mogadishu (Banaadir region) caused 29 deaths and 22 injured; 19 incidents in Lower Shabelle caused 30 deaths and 7 injured; eight incidents in Bakool led to nine deaths and two injured; six incidents in Middle Shabelle resulted in seven deaths and 13 injured; five incidents in Hiraan caused four deaths and nine injured; four incidents in Bay led to three deaths and four injured; two incidents in Gedo resulted in two deaths and three injured; and one incident led to one death in Lower Jubba.

<sup>12</sup> On 4 August 2016, the Military Court of Armed Forces sentenced one SNA member to death for killing a civilian in Hiraan region. In another case, on 4 August 2016, the military court in Beledweyne town, ordered two SNA soldiers to pay compensation, referred to as diya, (50 camels each), to the family of a civilian who had been killed in a shoot-out between the two soldiers. On 19 June 2017, the Military Court in Mogadishu sentenced an SNA soldier to death for killing a public servant on 3 May 2017.

<sup>13</sup> The term Somali Police Force ("SPF") is used in the 2016/2017 political agreements on the New Policing Model, adopted in June 2016, that set the framework for the development of a two-tiered, federated policing system. SPF is currently the entity providing policing services in Banaadir, while a relatively small number of their staff is deployed to the FMS. The term "Somali Police" is also used in this context, designating formal policing organizations operating in Somalia, and includes SPF, the Puntland State Police, and the nascent state policing organizations such as Jubbaland State Police, South West State Police, HirShabelle State Police and Galmudug State Police. The Somali Police also comprises policing institutions that are anticipated to undertake formal civilian policing responsibilities in Somalia such as the Darawish (paramilitary or security forces carrying out policing duties at the FMS level, including militias recognized by the FMS).

of 32,000 police under a federated system for policing. It is anticipated that a “hybrid” police force will be established during the development phase, involving those currently conducting “policing” activities on the ground and those performing Darawish functions (more robust paramilitary functions).

14. Somali Police in Galmudug, HirShabelle, ISWA, Jubbaland and Banaadir are under the authority of the Federal Ministry of Internal Security, whereas police in Puntland and Somaliland are within their respective authorities.<sup>14</sup> SP are present in Banaadir,<sup>15</sup> Lower Shabelle, Bay,<sup>16</sup> Bakool, HirShabelle<sup>17</sup> and partially in Galmudug State, in the towns of Adaado and in the southern part of Gaalkayo. Dhuusamarreb, the capital of Galmudug, has been administered by Ahlu Sunna Waljama’a (ASWJ) since 2009, as a substitute for a national or State authority. SP are also present in Kismaayo and Dhobley towns in Jubbaland.<sup>18</sup> While maintaining law and order is primarily the duty of the police, arrests related to terrorism, Al Shabaab, and other criminal activity are conducted by NISA or their regional counterparts in Jubbaland and Puntland.

15. The victims attributed to the SP represented 20 per cent of the total casualties attributed to security forces during the reporting period. UNSOM documented 38 victims, with 17 deaths and 21 injuries, attributed to SP. Most of them were related to armed clashes between SP and other security forces, particularly the SNA, and occurred in Mogadishu, Lower Shabelle, HirShabelle, and Jubbaland State.

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***On 24 July 2017, four male civilians accused of being affiliated with Al Shabaab were taken from the Beled Xaawo police station and executed by Darawish forces. One of the victims was a Somali that had returned from Ethiopia and had been detained for seven months without being charged; two others had been arrested in March 2017, and the fourth was arrested on 23 July 2017. No links between the victims and Al Shabaab were confirmed, and on 25 July, the Jubbaland Minister of Security stated to the media that “in principle” their executions should have followed a determination of guilt by an established court of law. On 4 August, the Jubbaland Military Court of First Instance ordered the three officials responsible for their killing to pay blood compensation, known as Diya, equivalent to 100 camels to the families of two of the victims. These officers were released after they promised to pay the Diya.***

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16. UNSOM documented six clashes between the SP and other security forces that resulted in 23 victims (10 killed and 13 injuries), five of which involved clashes with SNA and one with NISA.<sup>19</sup> No investigations were launched into these incidents and no arrests were made. Seven other casualties resulted from indiscriminate fire by the police to disperse crowds in Mogadishu and Jowhar (Middle

<sup>14</sup> The SPF were formally under the Ministry of Interior but will now be under the new Ministry of Security. SPF are composed of regular police, a Rapid Response Unit, a Special Police Unit, and a special branch that deals with internal intelligence.

<sup>15</sup> SP has functioning police stations in the 17 districts of Mogadishu, although they are unevenly equipped.

<sup>16</sup> In ISWA, SP is operational, working hand in hand with other newly created police entities, namely, South West Special Police Force (SWSPF) (formerly Darawish) and South West State Police (SWSP). Darawish was transformed into SWSPF after a 29 March 2016 Presidential Decree. The presence of the police is limited mainly to Baidoa town where they play a role in fighting against Al Shabaab and conducting security operations.

<sup>17</sup> SP is present in HirShabelle State and police stations operate in Jowhar and Beledweyne.

<sup>18</sup> The Jubbaland Police forces (JPF) comprises 600 formally trained police officers, including 61 women. Specialised police training was provided by AMISOM Police between February 2016 and April 2017.

<sup>19</sup> In two cases, the confrontation was reportedly triggered when SNA convoys attempted to pass police checkpoints by force in Mogadishu and in Jowhar (Middle Shabelle). The two other incidents occurred in Hodan district in Mogadishu, and included one incident in which police attempted to evict squatters, and another in a khat market. The confrontation with NISA involved also security guards of a local leader fighting alongside them in Jowhar town, Middle Shabelle.

Shabelle), and one killing by a police officer in Beled Xaawo, Gedo region.<sup>20</sup>

17. Other human rights violations attributed to SP included arbitrary arrests and detention. UNSOM recorded 5,821 cases of police failing to follow due process while conducting arrests and detaining individuals beyond 48 hours without charge, in violation of Somalia's Provisional Federal Constitution and applicable international human rights law. Since March 2016, a pattern of mass arbitrary arrests and detention has emerged in Puntland in which civilians, mainly males above the age of 15 coming through the Kontrolo checkpoint in southern Puntland, were arbitrarily arrested and detained from a few days to a few months on suspicion of being members of Al Shabaab.<sup>21</sup> The police routinely fail to prevent human rights violations or to pursue accountability for them by not investigating and arresting alleged perpetrators.

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***On 7 November 2016, the police fired live ammunition to disperse a crowd during clashes between supporters of a football match at Hargeisa stadium in Somaliland, which injured 17 civilians. Despite requests by civil society organizations and opposition political parties for an independent investigation on crowd control by the police, no action had been taken as of November 2017.***<sup>22</sup>

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#### 4. Intelligence and Security Agencies

18. Three security intelligence agencies operate officially in Somalia, with different chains of command and capacity: NISA, the Puntland Security Forces (PSF),<sup>23</sup> and the Jubbaland Intelligence and Security Agency (JISA).

19. NISA, which operates in Banaadir region, HirShabelle, Galmudug, and ISWA, was created by the FGS in January 2013, although it was not established by law or Presidential decree, and its powers and obligations are therefore not clearly defined.<sup>24</sup> Nevertheless, as a security institution, NISA is bound by the Provisional Federal Constitution, which provides that the security services must be accountable, comply with the rule of law, and are subject to civilian control.<sup>25</sup> However, arrests and detentions conducted by NISA routinely disregard these provisions as well as fundamental guarantees under international human rights law, including access to legal representation and to family visits, and the right to be brought promptly before judicial authorities.<sup>26</sup> It is of particular concern that political leaders, activists, journalists and media owners arrested by NISA are detained without charges in the NISA Godka Jiliow detention centre in Mogadishu, where

<sup>20</sup> On 8 April 2017, a policeman killed a civilian who had just been released from the police station in Beled Xaawo district, Gedo region. The policeman was convicted by a civil court and executed the same day without the opportunity to appeal, as required by the Somali Penal Code.

<sup>21</sup> The mass arrests were conducted during security operations, house-to-house searches, and routine security screening at checkpoints. They targeted civilians perceived to be members of terrorist groups, and the majority were young males travelling in search of work in Puntland or abroad. Those kept in the custody of security agencies were almost always denied access to legal counsel or contact with their families, and were detained for months before being released due to lack of evidence. The Puntland Anti-Terrorism Act is used by the police and PSF to justify violations of due process that guarantee that citizens must appear in court within 48 hours.

<sup>22</sup> The Somaliland Ministry of Interior denied that the police were responsible and attributed the incident to "football hooliganism," see Annex.

<sup>23</sup> Puntland uses the terms "Puntland Intelligence Services (PIS)" and "Puntland Security Forces (PSF)" interchangeably when referring to its intelligence service.

<sup>24</sup> NISA replaced the National Security Service, which was abolished in 1990.

<sup>25</sup> Provisional Federal Constitution, Art. 126 (1). The 2017 Security Pact acknowledges that the intelligence services are part of the National Security Architecture but no further details were provided.

<sup>26</sup> International Covenant on Civil and Political Rights, Articles 9 and 14 and Provisional Federal Constitution, Art. 35 (6).

Al Shabaab suspects are also detained, with their rights to due process routinely violated, including access to judicial oversight or legal representation.

20. During the reporting period, UNSOM documented 63 human rights violations reportedly attributed to NISA, including extrajudicial executions, torture, arbitrary arrests and detention, restrictions of freedoms of expression, peaceful assembly and association. These include ten civilian casualties (seven deaths and three injured), mainly related to disputes or incidents of excessive use of force and indiscriminate fire in public places. Only one alleged perpetrator was arrested.

21. UNSOM documented the arbitrary arrest and detention by NISA of 53 male civilians, including 11 journalists and one female Al Shabaab suspect during the reporting period. All were arrested or detained without warrants ordered by a competent authority. NISA systematically holds detainees for prolonged periods, either without due process or subjecting them to military court trials within NISA facilities, which allow no independent oversight. Thus, a journalist accused of being affiliated with Al Shabaab was in NISA custody for 15 months without a trial. In two cases, UNSOM received allegations of torture during the interrogation process. The allegedly coerced confessions of the detainees were used as the main sources of evidence in court, in violation of the prohibition under international law on the use of evidence obtained by torture.

22. In three cases, NISA displayed four male suspects on national television and identified them as Al Shabaab. They were subsequently prosecuted, sentenced to death and executed. Three out of six media outlets closed in 2016 in Mogadishu were shut down by NISA without a court order, and was justified by NISA as necessary on grounds of national security.

23. PSF, formerly known as the Puntland Intelligence Services, function as Puntland's counter-terrorism unit.<sup>27</sup> They consist of 500 to 600 soldiers understood to be trained by the United States, and their mandate includes counter-terrorism activities (notably information gathering and engagement in military operations). PSF operates under the Puntland Anti-Terrorism Act, which does not define the PSF structure or jurisdiction, and the PSF commander reports directly to the President of Puntland. Accountability of PSF is further hindered by the fact that they carry out their own investigations, conduct security operations,<sup>28</sup> make arrests, and manage detention facilities in Bossaso without effective, independent oversight.

24. JISA is part of the security forces established by the Jubbaland Constitution,<sup>29</sup> although its mandate and jurisdiction are not defined.<sup>30</sup> JISA falls under the command of the Jubbaland Ministry of Security. In the absence of functioning police, it conducts law enforcement activities but is restricted to the Kismaayo district, Lower Juba region. JISA maintains a number of detention centres in Kismaayo and other locations in Jubbaland. Amongst State actors, JISA is the main perpetrator of human rights violations in Kismaayo.

25. Between January 2016 and 14 October 2017, UNSOM documented 12 civilian casualties attributed to JISA. Six of the victims (three females, including a six-year old girl, and three men) were killed and six (two women and four men) were injured. Five of the victims had reportedly not complied with an order to stop; three were killed or injured due to a land dispute involving JISA officers; two were the victims of crossfire between JISA officers; and two were the victims of the use of excessive of force.<sup>31</sup> Alleged JISA perpetrators were arrested in eight of the incidents, and one

<sup>27</sup> They are stationed in Bossaso, Garoowe and Gaalkayo.

<sup>28</sup> PSF and Darawish Forces conducted joint operations against Al Shabaab, particularly in the Galgala Mountains, in 2016 and 2017.

<sup>29</sup> Article 91 of the Jubbaland Constitution: Jubbaland security forces include the Police Custodial Corps, intelligence forces, Darawish forces, and the Coast Guard.

<sup>30</sup> Article 91(2) of the Jubbaland Constitution mandates the Jubbaland Assembly to adopt a "law which will establish the structure, operating rules and the duties of the Jubbaland Security Forces". This law has not been adopted and JISA's role remains undefined.

<sup>31</sup> One was struck by a stray bullet fired by a JISA soldier to clear a traffic jam in Kismaayo town and another was injured when a

of them was sentenced to death by a Military Court and executed on 20 January 2017. During the reporting period, UNSOM documented 73 civilians arrested and detained by JISA, including minors suspected of being affiliated with Al Shabaab.

## 5. African Union Mission in Somalia

26. The African Union Mission in Somalia<sup>32</sup> (AMISOM) was created by the African Union's Peace and Security Council in January 2007, and authorized by United Nations Security Council Resolution 1744 (2007).<sup>33</sup> It comprises troops from Burundi, Djibouti, Ethiopia, Kenya and Uganda for its military operations, and police personnel from Ghana, Kenya, Nigeria, Sierra Leone and Uganda.<sup>34</sup>

27. Separately, Ethiopia and Kenya have troops operating in Somalia outside the AMISOM command. One of the main challenges to documenting and attributing responsibility for allegations of violations allegedly committed by AMISOM is the blurring of identities between AMISOM and non-AMISOM forces, when troops of the same country operate under two different umbrellas. AMISOM and non-AMISOM troops are often located in the same camps and conduct joint military operations.<sup>35</sup>

28. From January 2016 to 14 October 2017, 178 civilian casualties<sup>36</sup> (95 killed and 83 injured) were attributed to AMISOM.<sup>37</sup> The Ugandan contingent, representing the largest contingent in AMISOM with 28 per cent of the troops, was reportedly responsible for 34.81 per cent of the casualties (38 killed and 25 injured), followed by the Ethiopian contingent (25 killed, 15 injured, two rapes, and one attempted rape), the Burundian contingent (14 killed and 11 injured), the Kenyan contingent (four killed and five injured) and the Djiboutian contingent (one killed and 10 injured). Thirty other casualties were attributed to AMISOM with no specific contingent identified as responsible (13 killed and 17 injured). The majority of the civilian casualties resulted from indiscriminate fire from AMISOM troops when their convoys were attacked by IEDs, landmines, or grenades. Other violations include extrajudicial killings, ill-treatment during detention, and sexual assault. Two gang rapes, one attempted rape, and six cases of severe beatings were attributed to AMISOM Ethiopian forces, and five cases of ill-treatment, including one death in custody, were attributed to AMISOM Djiboutian forces.

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JISA officer opened fire on the victim's house.

<sup>32</sup> AMISOM replaced the Inter-Governmental Authority on Development (IGAD) Peace Support Mission to Somalia (November 2004-March 2006), whose mandate was to ensure free movement and safe passage of those involved in the peace dialogue, maintain and monitor security in Baidoa, protect members of the Transitional Federal Government (TFG) and infrastructure, and to train the TFG institutions to provide security and enable re-establishment of national security forces.

<sup>33</sup> Security Council Resolution S/RES/1744, dated 21 February 2007.

<sup>34</sup> In 2017, AMISOM's total troop strength is at 21,435 (Ugandan People's Defence Force 6,022, Burundi National Defence Force 5,073, Kenya Defence Force 4,046, Ethiopian National Defence Force 4,323, Djibouti National Defence Force 1,872 and FHQ 119), and the mandated troop ceiling is 22,126, as set by Security Council Resolution 2232 (2015) and 2297 (2016). Security Council Resolution 2372 (30 August 2017) proposes a reduction of uniformed AMISOM personnel to a maximum level of 21,626 by 31 December 2017, to include a minimum of 1,040 AMISOM police personnel with five Formed Police Units. A further reduction of uniformed personnel to 20,626 by 31 October 2018 is also foreseen.

<sup>35</sup> Sector 2 for Kenyan Defence Forces, and sectors 3 and 4 for Ethiopian National Defence Forces.

<sup>36</sup> This figure does not include the three cases of sexual violence attributed to AMISOM ENDF documented as incomplete investigation in Special measures for protection from sexual exploitation and abuse: a new approach, A/71/818, 63 (2017).

<sup>37</sup> Allegations against AMISOM troops are routinely communicated to AMISOM by the United Nations.



*The highest civilian casualty figures in a single incident attributed to AMISOM occurred on 17 July 2016, when AMISOM reportedly killed 14 civilians and injured three in a dwelling in Wardinle town, Bay region. In a press release dated 19 July 2016, AMISOM acknowledged the incident, communicated its preliminary findings,<sup>38</sup> and committed to investigating further. UNSOM's investigations found that the victims were civilians who had gathered to pray for a man who had fallen ill and that there was no prior fighting in the area.<sup>39</sup> AMISOM subsequently established a board of inquiry, which denied the involvement of its troops and stated that the casualties resulted from cross-fire between non-AMISOM Ethiopian National Defence Forces (ENDF) and Al Shabaab. The presence of non-AMISOM ENDF in the same area of operation as AMISOM ENDF blurs the lines and makes the attribution of responsibility difficult. While taking note of the conclusions of the AMISOM Board of Inquiry, it remains difficult to rule out the involvement of AMISOM troops in the Wardinle case.*

### *AMISOM Related Prevention and Response Mechanisms*

29. In resolution 2010 (2011), the Security Council made its first specific reference to AMISOM's obligation to prevent civilian casualties during its operations, and called for the establishment of the Civilian Casualty Tracking, Analysis and Response Cell (CCTARC) to record and analyse the information gathered on civilian casualties. Subsequent resolutions encouraged AMISOM to ensure CCTARC operationalization with the support of the international community.<sup>40</sup>

30. CCTARC was established in 2015 and has been operational, albeit with capacity challenges, particularly staffing shortages.<sup>41</sup> Its core functions include analysing the information gathered on civilian casualties and supporting the planning process of AMISOM operations and decision-making. The analysis may also provide tactical guidance on minimizing civilian casualties, for example to ensure that the use of weapons is proportional to the target. Though UNSOM is informed of some analysis done by CCTARC, it is unclear how much the latter influences mission planning and tactics. The tracking of civilian casualties and responding to individual allegations is carried out through reports from sector commanders and complaints from the public or individual complaints from citizens. However, communication by CCTARC has been very limited. Within the framework of HRDDP, CCTARC and the United Nations – particularly UNSOM and the Civil-Military Working Group – share information on incidents that caused civilian casualties. The United Nations Support Office in Somalia (UNSOS) and UNSOM have also provided technical support to AMISOM with regard to the development of Standard Operating Procedures on making amends.<sup>42</sup>

<sup>38</sup> In its 19 July 2016 press release, AMISOM had noted that: "Preliminary investigations indicate that AMISOM forces received credible intelligence information of an Al-Shabaab's radicalization exercise in the village and went to investigate. The troops were ambushed as they approached the village and intensive fighting ensued. The terrorist fighters were overpowered and fled, after sustaining casualties. It is not clear at this point in time, if the fighting occasioned civilian deaths." AMISOM's preliminary findings suggest that AMISOM troops were nearby Wardinle at the time of the incident. <http://amisom-au.org/2016/07/amisom-investigates-claims-of-civilian-deaths-in-wardinle-bay-region/>.

<sup>39</sup> Human Rights Watch (HRW) found that the Ethiopian troops were reported to have directed their fire on the dwelling where the victims had gathered to pray. The victims were elders, religious leaders and Islamic school teachers [https://www.hrw.org/sites/default/files/supporting\\_resources/hrw\\_letter\\_to\\_ambassador\\_madeira\\_re\\_wardinle.pdf](https://www.hrw.org/sites/default/files/supporting_resources/hrw_letter_to_ambassador_madeira_re_wardinle.pdf).

<sup>40</sup> United Nations Security Council Resolutions 2036, 2093, 2124 and 2372.

<sup>41</sup> CCTARC lacks relevant qualified staff to collect and analyse information.

<sup>42</sup> Amends as defined in draft SOP on AMISOM civilian harm response: "the practice of warring parties providing recognition and assistance to civilians they harm within the lawful parameters of combat operations, despite having no legal obligation to do so. Making amends can take a variety of forms, including apologies, monetary payments, in-kind assistance, livelihood assistance programs, and other offerings within victims' needs and preferences. It must be gender equitable and culturally appropriate."

31. AMISOM has conducted preliminary investigations into alleged violations and, where it concluded that there was a prima facie case, established boards of inquiry to investigate violations of international human rights and humanitarian law as recommended in the HRDDP framework. However, these measures remain insufficient. Identifying dedicated investigators to participate in a board of inquiry is difficult, as officers with relevant expertise from Troop Contributing Countries (TCCs), other than those implicated, are often engaged in operations. Moreover, due to the limited feedback from AMISOM on actions it has taken in the framework of preliminary investigations and boards of inquiries, UNSOM cannot fully assess the reliability of AMISOM investigations.

32. AMISOM also faces the additional challenge of ensuring that the findings of their inquiries are accepted by troop and police contributing countries (TCCs/PCCs) and that the alleged perpetrators are promptly charged, prosecuted and, when found guilty, sentenced. In this respect, ensuring effective accountability for violations is ultimately dependent on the TCCs/PCCs, which are expected to conduct their own investigations and to take forward any recommendations from AMISOM's investigations or boards of inquiries. TCCs/PCCs have the responsibility to ensure accountability through their own justice mechanisms. For example, Uganda's Military Court sitting in Somalia has tried Ugandan troops involved in criminal activity, such as fuel scams and theft. However, prompt and transparent investigations or prosecution of alleged international human rights law or humanitarian law violations by all TCC/PCC has been insufficient. AMISOM has also not communicated to the UN outcomes of any investigations or prosecutions carried out by TCCs. Ensuring the protection of victims and witnesses of international humanitarian and human rights law violations against reprisals also represents a concern as AMISOM has yet to put in place clear measures in that regard.

#### *Mitigation Measures Proposed by the United Nations*

33. The United Nations Human Rights Due Diligence Policy is the framework through which the United Nations exercises its due diligence to ensure that violations of international humanitarian law and international human rights law are not committed by non-United Nations security forces to which it provides support. The United Nations has established<sup>43</sup> a Task Force to develop HRDDP risk assessments and identify mitigation<sup>44</sup> measures in relation to its support to non-UN security forces, including AMISOM. The United Nations has thus far conducted four risk assessments related to AMISOM operations or other troops<sup>45</sup> envisaged to come under its command and control in the framework of specific operations, and recommended prevention and response measures to violations, which are reviewed by the UN-AMISOM Joint Working Group on HRDDP.

34. UNSOM forwarded 50 cases of allegations of international human rights law and international humanitarian law violations to AMISOM, and received responses on 26 of these. AMISOM denied 14 incidents out of these 26; it acknowledged and/or referred seven to boards of inquiry it established to address these cases in particular or to CCTARC;<sup>46</sup> and it acknowledged five incidents that they either attributed to others or for which they found no culpability.

35. AMISOM's slow response to allegations remains a concern. Furthermore, responses seldom include information on the concrete actions taken to investigate, including whether interviews with victims, witnesses or local authorities have been conducted. Accountability and corrective measures are among the priority mitigation measures identified by the UN in the framework of HRDDP with

<sup>43</sup> In line with its 2014 Standard Operating Procedures on the implementation of HRDDP in Somalia, the HRDDP Task Force comprises all United Nations entities providing support to non-UN security forces.

<sup>44</sup> The UN HRDDP Task Force, established in 2016, develops risk assessments and reviews measures to prevent and respond to violations. It met five times during the reporting period.

<sup>45</sup> Risk assessments on non-AMISOM ENDF, non-AMISOM KDF and Jubbaland Darawish Forces respectively.

<sup>46</sup> In this case, reference to CCTARC related to follow-up for possible consideration in the framework of the SOPs on amends

regard to support to AMISOM. Inadequate or lack of credible investigations into allegations may lead the United Nations to reconsider and/or suspend the support to individuals or contingents allegedly involved in violations.

## 6. Militia and Armed Groups Affiliated with National and International Security Forces

36. The conflict in Somalia and the ongoing military operations against Al Shabaab, as well as the areas in which law enforcement presence is limited, have attracted different actors associated with national and international security forces and involved in violations of international human rights law and international humanitarian law. The main actors are clan militia and the Ethiopian Liyu Police.

### C. Airstrikes by International Forces

37. UNSOM documented 74 airstrikes by different forces during the period under review,<sup>47</sup> resulting in 57 civilian casualties (41 killed and 16 injured). Non-AMISOM KDF is allegedly responsible for 42 civilian casualties (36 killed, six injured).<sup>48</sup>

38. The number of civilian casualties caused by airstrikes is difficult to verify as most are conducted in Al Shabaab-controlled areas, to which the United Nations and others have limited or no access.

39. In December 2016, pursuant to the United Nations Security Council Resolution 2036 (2012), AMISOM leased three attack helicopters from Kenya that are operated by AMISOM-KDF under the command and control of the AMISOM Force Commander. In parallel and since 2016, the non-AMISOM KDF is reportedly using its own air assets. Therefore, attribution of responsibility for casualties caused by AMISOM-KDF and those caused by non-AMISOM KDF has become even more challenging.<sup>49</sup>

40. The 74 airstrikes included 19 helicopter raids conducted jointly by a special SNA unit, referred to as Danab<sup>50</sup> (Lightning), and international forces, including the US (in 14 cases) and KDF (in four cases). Nine US-supported raids reportedly occurred in Lower Shabelle, two in Bakool, and three in Lower Juba, while the four KDF airstrikes occurred in Lower Juba.<sup>51</sup>

41. The airstrikes also caused destruction of houses and livestock, and displacement of pastoralists and others living in the targeted areas. Al Shabaab reportedly abducted five civilians whom they accused of guiding the air attacks to their bases. In 27 September 2016, a US airstrike targeted Galmudug security forces, mistaking them for Al Shabaab, which further increased tensions

<sup>47</sup> Not all reported airstrikes resulted in civilian casualties.

<sup>48</sup> Please see the attached reply from the Republic of Kenya, ref. no. KES/MGD/ADM.1/31/ (03) in which it is stated that KDF does not operate bilaterally.

<sup>49</sup> For instance, see, press releases issued by the Republic of Kenya's Ministry of Defence on 2, 26 and 27 March 2017, stating that KDF troops operating under AMISOM had successfully conducted air and ground operations against Al Shabaab. The communication emanating from the Kenyan Government on AMISOM operations was unusual, as AMISOM operations are normally reported by AMISOM. The Embassy of the Republic of Kenya stated that the media releases simply confirm information received from AMISOM and are in line with Kenyan law which requires the Government to update the Kenyan population on its military activities in Somalia.

<sup>50</sup> Danab is a SNA unit of 500 well trained officers involved in security operations alongside international armed forces, mainly US and KDF. They reportedly take part in air attacks against Al Shabaab positions, and are based at an SNA airport in Lower-Shabelle managed by US forces.

<sup>51</sup> US President Donald Trump signed a directive on 29 March 2017 declaring parts of Somalia an "area of active hostilities," giving commanders at the United States - Africa Command (AFRICOM) greater latitude to carry out offensive airstrikes and raids by ground troops against militants perceived to be affiliated with al-Shabaab. The directive, which expands the military's targeting authority by applying "warzone targeting rules" had immediate effect and is valid for 180 days. It lowers the standards imposed by former President Barack Obama's 2013 "Presidential Policy Guidance," which required a "near certainty" that no civilian deaths would occur as a result of a military operation (Procedures for Approving Direct Action against Terrorist Targets, 2013.) The 2017 directive allows AFRICOM to launch attacks against people suspected of being al-Shabaab fighters on that basis alone. The guidelines also allow for collateral civilian deaths that are deemed "necessary and proportionate."

between the Galmudug and Puntland regional states. Heavy fighting erupted between Puntland and Galmudug forces in Gaalkayo and continued for more than two months, causing at least 25 deaths and 48 injuries. In several cases the United States issued press releases regarding drone or airstrikes, reporting no civilian casualties. However, it is unclear how the United States undertakes such verification.

42. With respect to violations attributed to state actors and international forces, UNSOM is not aware of the opened investigations. However, since 2016, FGS has appointed three committees to investigate three different incidents that were identified as serious protection of civilian cases. The alleged perpetrators in each of the incidents were either national security forces or foreign forces, such as KDF.<sup>52</sup> In only one case did a committee issue its findings, but these were not made public. The publication of these findings would ensure transparency and accountability, which is necessary to build citizens' trust in the Government.

#### D. Human Rights Violations and Abuses Attributed to Armed Groups

43. UNSOM has identified more than 40 armed groups in Somalia. The main actors involved in violations and abuses are Al Shabaab, Ahlu Sunna Waljama'a, and a plethora of militia mainly associated with their clans.

##### 1. Al Shabaab

44. Al Shabaab originated from the Islamic Courts Union (ICU), which once controlled most of what was referred to as Southern and Central Somalia. Between 2007 and 2011, Al Shabaab controlled significant parts of Galmudug, HirShabelle, ISWA, Jubbaland and Banaadir, including the capital, Mogadishu, before security operations conducted by SNA and AMISOM restored control of major population centres to FGS authorities. Al Shabaab then retreated to rural areas and established military training camps and bases in their strongholds in Middle Juba. The districts of Bua'le, Sakow, and Jilib remain under the de facto control of Al Shabaab.<sup>53</sup>

45. As Al Shabaab re-established itself in these areas it began employing tactics such as IEDs, suicide bombers, and targeted assassinations. Their primary targets include government officials, SNA, AMISOM and other international forces, as well as populated civilian areas such as markets, hotels and restaurants.<sup>54</sup>

46. Al Shabaab's troop strength was estimated to be between 7,000 and 9,000 in 2014, but the number has reportedly decreased as its control over major population centres has diminished. Nevertheless, at least 61 per cent of the civilian population (446,582) in Jubbaland, including internally displaced persons (IDPs) dwelling in rural areas, remain vulnerable to Al Shabaab attacks.<sup>55</sup>

47. Little information about the situation of the population living under the control of Al Shabaab is available, and verifying human rights violations and abuses in these zones remains a challenge due to the lack of access and fear of reprisals among people communicating information about human rights abuses by Al Shabaab. Al Shabaab has put in place a parallel justice system named

<sup>52</sup> On 31 January 2016, the Prime Minister appointed a committee to investigate the impact of the airstrikes, led by the Minister of Defence. On 8 May 2016, Prime Minister nominated a committee of five members to investigate the allegations of the use of children as spies. On 26 May 2016, The Ministry of Security appointed a committee to investigate the allegations of NISA officers torturing a victim.

<sup>53</sup> Estimated population of 362,921, Somalia National Development Plan, 2017.

<sup>54</sup> <http://www.sawirroTV.com/2017/02/19/ururka-al-shabaab-oo-markii-u-horeysay-ka-hadlay-madaxweyne-farmaajo/> (expressing anti-FGS sentiments following the election of President Farmaajo); <http://www.raxanreeb.com/2017/02/afhayeenka-al-shabaab-oo-u-hanjabay-madaxweynaha-dowladda-faderaalka/> (expressing intent to continue fighting the incoming Government); <https://www.youtube.com/watch?v=BJwuw-H0mgs> (Al-Shabaab spokesperson on the 2017 electoral process).

<sup>55</sup> Apart from an estimated 282,003 people living in urban areas that are under Jubbaland administration in Gedo (109,142) and Lower Juba (172,861) regions, Somalia National Development Plan, 2017.

the “Al Shabaab courts”, ordering amputations and executions. In April 2017, Al Shabaab published their first education curriculum, intended to indoctrinate on extremist ideologies, with Arabic as the language of study.<sup>56</sup> Since then, Al Shabaab has been enforcing it in schools under its control and warned parents across Somalia not to enrol their children in schools that teach a “western” curriculum.<sup>57</sup>

## 2. Other Armed Groups

### *Islamic State Affiliated Group*

48. The Islamic State affiliated group (ISAG), a rival group of Al Shabaab reportedly led by Abdul Qadir Mumin, the former spokesperson of Al Shabaab, operates in Bari region, in the north of Puntland. ISAG established its first military base in April 2016 in that region, and its troop strength was then estimated at 100.<sup>58</sup> ISAG has since tried to expand its presence in Bay, Lower Shabelle and the two Juba regions, but they were defeated in December 2016 by Al Shabaab.

49. In April 2016, ISAG claimed responsibility for several grenade and IED attacks against AMISOM and Somali security forces that resulted in several civilian casualties, mostly in Banaadir region. In October 2016, ISAG captured Qandala town in Bari region, which caused the displacement of the local population. In December 2016, Puntland forces liberated the town from ISAG without a direct confrontation. ISAG has continued to conduct attacks against military positions in different parts of Bari region, but has also engaged in criminal activities affecting the population, such as looting food and supplies from farms and villages.

### *Ahlu Sunna Waljama'a*

50. Ahlu Sunna Waljama'a (ASWJ) is a moderate Sufi militant organization in Somalia that became stronger after Al Shabaab's rise. It is an armed group acting as a de facto administration in the Galgaduud region – in Guriceel town and Dhuusamarreb district. It claims Hiraan, Galgaduud, and Mudug as its territory, and has been opposing security forces and state authorities in areas under its control. It incorporates a political movement and a militia in Galmudug, and their troop strength is estimated at 3,000-4,500.<sup>59</sup> That number fluctuates, as some ASWJ members are also part of SNA and ASWJ also calls up part-time volunteers when required.<sup>60</sup> The group has no specific clan identity.

### Clan Militias

51. The clan dynamic is complex and most clans have their own militias, which have no basis in Somali law and do not operate within formal structures. Conflicts between clans are widespread and relate to the broader non-international armed conflict, and are particularly predominant in regions where FGS or state authorities are weak or non-existent. Historical grievances, political marginalization, land disputes, and access to resources are significant conflict drivers that are often resolved with violence, and these conflicts are exploited by Al Shabaab. Clan militias engage in targeted killings, sexual violence, and the destruction of civilian property.

<sup>56</sup> Subjects include: Geography, History, Science, Mathematics, Somali, Arabic, Fiqh (Islamic Jurisprudence), Tawheed (Oneness of God), Hadith (traditions of Prophet Mohamed), and Tajweed (rules governing pronunciation during recitation of the Qur'an).

<sup>57</sup> Al Shabaab's public statement, 19 April 2017.

<sup>58</sup> UNSOM sources report that ISAG had no more than 100 fighters in Puntland, which is confirmed by the Somalia-Eritrea Monitoring Group. Other sources estimate the number of militants to be between 200 and 400.

<sup>59</sup> The United Nations estimate of security actor strength in September 2016.

<sup>60</sup> Some elements have been subsumed into SNA (2014) while the formal leadership of the group indicated a wish for ASWJ members to integrate into SNA in February 2017. On 11 February 2017, this was publicly supported by the Chief of Defence Forces of Somalia, but no further commitments have been made.

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*“At 10:30 p.m., about 10-12 armed men, all male belonging to Habar-Gadir clan militias, a sub clan of Hawiye, attacked Essow, the village where we lived with other 14 pastoralist households, all close relatives and all from Biyomaal clan, sub clan of Dir. They started with gunshots in the air at 10:30. After hearing gunshots, my mother advised me to go away with my 13-year old son to a safer place. My mother believed that herself being old and the six kids being young, they would not be targeted by the militias. I refused to leave them behind but my mother insisted that I leave, as people would kill my oldest son and me. On her insistence, together with my son, we started to run away for safety and he is the only child of mine that survived. As I was running away, I had a chance to see and identify the assailants. They started by checking into the houses one by one. From where I was hiding and seeing, I would hear the children shouting because of the gunfire. When the perpetrators heard the voices of these children, they entered our house and killed all my six children and their grandmother. The house was also set ablaze and the already dead bodies were burnt.” – Victim of an attack by Habar-Gidir clan militia in Lower Shabelle region, on 18 April 2016, that resulted in the death of six of her children and the destruction of her home.*

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52. Clan dynamics are extremely fluid and subject to changes in migration patterns, political processes and displacement.<sup>61</sup> Alliances between clans and support for Al Shabaab is often opportunistic and can change suddenly. Few (if any) clans are aligned with one party to the conflict, although SNA forces often include elements of clan militias. This can affect the chain of command within the force and amplify the clan-related conflicts. In 2014, the Somalia and Eritrea Monitoring Group (SEMG) reported allegations of the “active involvement of senior SNA officers and soldiers in clan violence [and] leakages of SNA arms to clan-based militias.”<sup>62</sup> Other violations documented by “rogue” SNA or clan-based militia among SNA soldiers included “extortion, armed robberies, torture and arrest of locals accused of supporting Al Shabaab”.<sup>63</sup> The SEMG 2014 and 2015 reports highlighted that “the political and military leadership of the federal system was also usurped to advance clan interests with the deployment of FGS security forces and assets in clan fighting.”

#### E. Types of Attacks and Violations and Abuses Attributed to Armed Groups

53. During the period under review, a total of 3,322 civilian casualties (1,484 killed and 1,838 injured) were attributed to armed groups fighting national and international actors, representing 72 per cent of the total casualties. The perpetrators were primarily Al Shabaab, but also ISAG operating in Puntland and the clan militias engaged in clan fighting in the context of the armed conflict. The civilian casualties attributed to Al Shabaab and ISAG represent 60 per cent of the total casualties. In addition, unidentified perpetrators resorted to tactics typically used by Al Shabaab, such as IEDs, mortars, and targeted killings. Therefore, approximately 10 per cent of civilian casualties could not be attributed.

<sup>61</sup> Somalia and Eritrea Monitoring Group report 2015, S/2015/801: “9. In Lower Shabelle, for example, the Monitoring Group continues to investigate individual responsibility for a series of attacks on civilians in Qoryoley district, in particular on the villages of Buulo Sheikh, Hadoman and Farhano in early January, February and March 2015. Conducted by a combination of SNA personnel (with SNA assets), clan militia and elements of Al-Shabaab, the attacks demonstrate the complexity of alliances and cross cutting interests emerging between Somalia’s conflict parties at the local level. The violations unfolded against the backdrop of an ongoing conflict between the Salaax militia and Hawiye (primarily Haber Gedir, but also Hawadle and Murosade) militia in the area and the broader conflict with Al-Shabaab. The Salaax militia are a defensive militia created by the Bantu community and led by a Bantu Digil-Mirifle/Dube, Shiekh Salaax.”

<sup>62</sup> S/2014/726, Annex 3.2. Threats to peace and security in Lower and Middle Shabelle, para. 18.

<sup>63</sup> Ibid. at para. 24.

54. The civilian casualties attributed to Al Shabaab were the result of the use of explosive weapons, ground confrontations, targeted assassinations and extrajudicial executions. The most affected regions were Banaadir, Lower Shabelle, Bay and Middle Shabelle.<sup>64</sup> Among the civilian casualties attributed to Al Shabaab, 64 per cent were caused by VBIEDs and 15 per cent by IED attacks. Ground attacks represented 15 per cent of the causes of casualties, and the rest resulted from targeted assassination (4 per cent), executions (1.8 per cent) and corporal punishment, including amputations and lashings (0.2 per cent). The majority of the VBIED and IED attacks took place in Mogadishu, while most of the ground attacks occurred in Lower Shabelle, Lower Juba and Bay regions.

55. While Al Shabaab usually claimed responsibility for attacks against Government forces and other military targets such as checkpoints and training camps, and other locations including hotels, restaurants and markets frequented by officials, it is not always clear that they did in fact carry out the attacks that they claimed. However, in some instances, Al Shabaab has declined to claim responsibility for operations that may significantly damage its public image among the Somali population. For example, the group has not claimed the attack of 14 October, when two VBIEDs exploded in a populated and urban area of Hodan and Wadajir Districts, in Mogadishu, causing at least 512 dead and 316 injured, according to a committee established by the FGS, and destroying hotels, restaurants and NGO and private offices. This was the deadliest terrorist attack in Somalia to date, and while Al Shabaab has not claimed responsibility, it has launched similar attacks on civilian targets in Mogadishu.<sup>65</sup>

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***“On 20 December 2016, in the morning, five people (two elderly men and three young boys aged 9, 12 and 13 years) were killed. They were all pastoralists. They were tending our camels in the bush when armed men attacked them, brought all the five to one place, tied them together and shot them. They also took all the camels. All were from same clan of mine (Cowmale) and one of them was my younger brother. Al Shabaab are targeting our people because the elders refused to give them camels as ‘Zakat’”. – Witness to an attack by Al Shabaab in Silow, Lower Jubba, on 20 December 2016.***

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56. From January 2016 to 14 October 2017, eight complex attacks attributed to Al Shabaab took place in Mogadishu (seven) and Baidoa (one), which resulted in 363 civilian casualties (93 killed and 270 injured).<sup>66</sup> In Jubbaland, 10 IEDs and eight hand grenade incidents were attributed to Al Shabaab in Gedo and Lower Juba regions, which resulted in 76 civilian casualties (19 killed and 57 injured).

57. Somali civil society organizations face multiple challenges and risks while they continue to play a pivotal role in the country’s development and in addressing protection issues. Only a few civil

<sup>64</sup> The IED attacks occurred primarily in south Somalia, especially in Lower Shabelle (135) and Banaadir (129). The numbers of attacks by states and region during the reporting period were as follows: 210 in ISWA (135 in Lower Shabelle, 67 in Bay and eight in Bakool), 125 in Banaadir, 84 in Jubbaland (50 in Lower Juba and 34 in Gedo), 63 in HirShabelle (36 in Middle Shabelle and 27 in Hiraan), and three in Galgaduud.

<sup>65</sup> Al Shabaab has not officially claimed responsibility for the attack, but has made reference to it on one of their affiliated websites: <http://somalimemo.net/articles/8110/Abuu-Mansuur-Oo-Magaalada-Xudur-Gaaray-iyo-Saraakiil-Itoobiyaan-Ah-Oo-Soo-Dhaweeyay-Sawirro>, <http://somalimemo.net/articles/7848/Khasaaraha-Ka-Dhashay-Qaraxii-isgoyska-Zoobe-Oo-Sii-Kordhay>, <http://somalimemo.net/articles/7897/Al-Jazeera-Qaraxii-Ka-Dhacay-Zoobe-Waxaa-Lagu-Beegsan-Rabay-Saldhigga-Turkiga>.

<sup>66</sup> Four suicide and complex attacks took place in Jubbaland and resulted in nine civilian casualties (three killed, six injured). On 31 March 2016, four civilians, including two children aged 10 to 13 years, and two businessmen, were injured when a suicide-bomber detonated an explosive belt, reportedly targeting the Puntland Director of finance in Mudug region, in Gaalkayo. On 23 May 2017, three civilians were killed and five were injured when an Islamic State suicide bomber detonated explosives at a security checkpoint in Bossaso, Bari region.

society organizations work in the areas controlled by Al Shabaab, and maintain a low profile. There is little information available on whether they have been specifically targeted, but Al Shabaab explicitly targets locations where government officials and their counterparts work and reside. For example, the Executive Director of the Organization for Somalis Protection and Development (OSPAD) was killed and three civil society activists from three different organizations were injured in a complex attack on the Ambassador Hotel in Mogadishu by Al Shabaab in June 2016.

58. A total of 594 civilian casualties (251 killed and 343 injured) were attributed to militia in the context of the armed conflict, representing 13 per cent of the total casualties. The drought has intensified clan conflict due to competition over resources, with 144 civilian casualties caused by clashes among clans in the second quarter of 2017, compared to 77 in the previous quarter. Two main conflicts, between Gaaljecel and Jejele clan militias in HirShabelle, and between the Duduble and Ayr clans in Galgaduud, caused 79 and 14 civilian casualties, respectively.

59. In Somaliland, inter-clan conflicts were the principal cause of civilian casualties. More specifically, clan fighting in the Sool region (a disputed area between Somaliland and Puntland) between Qayaad and Bahararsame sub-clans of Dhulbahante (Daarood) in Laascaanood, resulted in the killing of 78 people<sup>67</sup> (including three women) since the eruption of hostilities in 2016.<sup>68</sup>

### 1. *Other Methods of Attack*

60. During the period under review, Al Shabaab and ISAG conducted ground attacks against military positions that resulted in 383 civilian casualties (132 killed and 251 injured). Civilians are often caught in crossfire between Al Shabaab and security forces. Civilians living near military bases are particularly vulnerable, as illustrated by an incident that occurred on 8 June 2017, during which three female civilians were killed and three others injured when Al Shabaab attacked a military camp in Bari region. The victims were living beside the camp and supplying goods to the troops.

61. Several incidents involving land mines planted by armed groups were also documented. Landmines were usually placed on roads used by security convoys, AMISOM in particular. On 6 April 2017, six women were killed and four people injured when a land mine exploded near a minibus in Goweyn village, Marka district, in Lower Shabelle region. In Puntland, a roadside bomb killed two civilians in the Galgala Mountains, 37 kilometres south of Bossaso, Bari region, on 30 May 2017.

62. Al Shabaab was responsible for 86 targeted assassinations and executed 46 persons during the reporting period. Civilians were targeted by Al Shabaab because of their affiliation to state authorities, their social and political activities,<sup>69</sup> or involvement in activities banned by Al Shabaab, such as the trade of charcoal.<sup>70</sup> Victims included elected officials, civil servants, clan elders and other prominent people. Such attacks occurred mostly in Mogadishu and in the other main population centres of Somalia.

63. UNSOM documented the execution by Al Shabaab of 32 people who had been “sentenced” through its parallel justice system,<sup>71</sup> reportedly for spying and providing information to state authorities

<sup>67</sup> The Somaliland Ministry of Interior denies that the areas in Sool are “disputed territory,” and believes that the number of civilian casualties is “exaggerated” (see Annex).

<sup>68</sup> On 1 June 2016, following a decision of the Sharia Court and mediation committee to end the clan fighting in South Laascaanood, negotiations between the two parties started, in the presence of Somaliland Minister of Interior. [https://www.youtube.com/watch?v=w54mrxQj\\_0g](https://www.youtube.com/watch?v=w54mrxQj_0g)

<sup>69</sup> Ten clan elders and electoral delegates were targeted during the 2016 elections. <http://radioalfurqaan.com/wp-content/uploads/2016/03/Qeybta-1-aad-ee-wareysiga-Sh-Cali-Dheere-15-03-2016.mp3> Al Shabaab spokesperson threatening hotels and elections. [http://f.top4top.net/m\\_262mrsj1.mp3](http://f.top4top.net/m_262mrsj1.mp3) Al Shabaab spokesperson sending threats regarding the elections.

<sup>70</sup> In Jubbaland, 29 charcoal traders were injured or killed by Al Shabaab, 80 per cent of them in Badhadhe district, Lower Juba region. In March 2016, Al Shabaab killed eight and injured 13 charcoal workers in Burgabo town, Badhadhe district.

<sup>71</sup> Nineteen in 2016, and 13 in 2017.



or national and international security forces, as well as Al Shabaab members suspected of defecting. The methods of execution included firing squad and decapitation.<sup>72</sup> Most of the executions were conducted in public and the population was compelled to attend.

64. Al Shabaab also inflicted corporal punishment and amputated limbs in accordance with its interpretation of Sharia Law. Seven amputations were reported, allegedly as punishment for robbery, and five individuals (including one woman) were lashed publicly after being accused of immoral or improper behaviour.

## 2. Conflict-Related Abduction of Civilians

65. UNSOM documented 729 abductions of civilians by Al Shabaab between 1 January 2016 and 14 October 2017. The motive for abductions was typically for contravening Al Shabaab instructions or rules, such as during its taxation (Zakat) campaign when people who could not afford to pay were held until the tax was paid by the family or the clan, or abductions of children for recruitment into Al-Shabaab. In July 2017, Al Shabaab abducted 412 people, mostly children. In 2016, 86 charcoal workers were abducted in Lower Juba for being involved in the charcoal trade banned by Al Shabaab. People suspected of collaborating with the government or international forces or members of their families or community were targeted. For example, between July and December 2016, Al Shabaab accused the Awrmaale community of collaborating with the Jubbaland administration and killed 14 pastoralists in reprisal, while abducting eight others.

66. Of the 729 people abducted by Al-Shabaab, 403 were reportedly released, usually after negotiation by clan elders and likely in exchange for money or weapons.<sup>73</sup> On 3 April 2016, after negotiations with clan elders in Jubbaland, Al Shabaab released 50 charcoal workers they had abducted 10 days earlier. In 2017, Al Shabaab abducted 35 workers providing humanitarian assistance to drought victims in Gedo and Hiraan regions, all of whom were subsequently released.<sup>74</sup>

## 3. Amnesties

67. As part of its fight against Al Shabaab, the Government of Somalia has resorted to offers of amnesty as a tool to encourage defections within the group. However, there is no legal framework or clarity around the modalities of the amnesties. Records indicate that the first official amnesty offer was granted on 3 January 2011 by the former Transitional Federal Government Cabinet that was chaired by then Prime Minister and current President Mohamed Abdullahi Farmaajo. In April 2017, the President renewed, via the media, his offer of amnesty for a period of three months.<sup>75</sup> Federal Member States have also offered amnesties.<sup>76</sup>

<sup>72</sup> On 19 January 2016, Al Shabaab executed a 65-year old pastoralist in Gedo region whom they had accused of providing shelter to four AMISOM KDF soldiers after an attack on a KDF military base in El Adde. On 22 April 2016, Al Shabaab executed five newly-married women in Jilib district for allegedly spying for foreign forces and the Jubbaland administration. In October and November 2016, six men, including a Kenyan and a Tanzanian, were executed in Jilib and Saakow districts, Middle Juba. On 5 February 2017, in Jamaame town, Lower Juba region, Al Shabaab publicly beheaded four civilian men who they accused of collaborating with the Jubbaland administration.

<sup>73</sup> On 13 August 2016, Al Shabaab released five elders, reportedly in exchange for AK-47s.

<sup>74</sup> UNSOM documented the abduction of 36 humanitarian workers, 35 by Al Shabaab, and one by clan militia.

<sup>75</sup> The now former Federal Minister of Defence also announced to the media that it would be extended.

<sup>76</sup> For example, the ISWA President has announced amnesties on different occasions, such as at the opening ceremony of ISWA "Presidential palace" in Barawe, on 29 August 2016, and at the graduation ceremony of Darawish officers in Baidoa, in December 2014. In 2014 the President of Puntland, via the media, claimed that the Puntland authorities would prosecute a prominent member of Al-Shabaab (Mohamed Said Atom) who had surrendered to the Federal Government, stating he had committed grave human rights violations in Puntland as the group's Chief of Operations in Puntland. The Puntland authorities later allowed this defector to live in Mogadishu based on a Presidential pardon, announced on the eve of the 17th anniversary of Puntland's Founding Day.

68. A comprehensive policy on amnesty does not exist, although there is a National Programme on Disengaged Combatants aimed at low-risk disengaged Al Shabaab fighters. In June 2016, the Federal Cabinet approved an “amnesty policy”, prepared by the Minister of Justice, an important element of which is the exclusion of “war crimes, crimes against humanity, crimes of genocide, crimes of sexual violence, and gross violations of human rights and humanitarian law from the scope of application of the amnesty.” However, it appears that the verbal offers of amnesty, including those issued through the media before the adoption of this policy, were not grounded in this framework. For example, the Federal Government granted amnesty to at least four former prominent Al Shabaab members who have not yet been prosecuted, although they are all alleged to have committed serious violations of international human rights law and international humanitarian law, including killings, abductions, recruitment of children and use of child soldiers, and denial of humanitarian access.<sup>77</sup>

## II. Sexual Violence and Violations Affecting Children in the Conflict-Affected Areas of Somalia

### A. Sexual Violence

69. The protracted conflict in Somalia has resulted in the prevalence of sexual violence against women, men, boys and girls, with women and girls particularly affected. Continued insecurity, weak rule of law and lack of humanitarian access have aggravated sexual violence. Gender inequality, power imbalances, slow progress in fulfilling Somalia’s obligations under international human rights treaties, displacement of large populations as a result of both the conflict and the drought, as well as the return of refugees from Kenya to mainly Baidoa, Luuq and Kismayo, all contribute to an environment in which women and girls are especially vulnerable to gender-based violence, including conflict-related sexual violence and sexual exploitation and abuse. Women and girls who are displaced or from marginalized groups suffer the most due to inadequate protection mechanisms, lack of or limited access to available formal and informal justice mechanisms, and weak clan protection.

70. The Monitoring, Analysis, Reporting Arrangements (MARA)<sup>78</sup> received reports of Conflict Related Sexual Violence (CRSV) from UNSOM and the Country Task Force on the Monitoring and Reporting on Children and Armed Conflict (CTFMRM).<sup>79</sup> During the reporting period, UNSOM document 35 victims of CRSV comprising 32 females and three males, 14 of whom were children (11 girls and three boys).<sup>80</sup> Perpetrators included AMISOM ENDF, South West State Darawish forces, SP, unidentified armed men in uniform, SNA elements and Al Shabaab.<sup>81</sup> By contrast, the CTFMRM

<sup>77</sup> The following high-ranking Al Shabaab operatives have received amnesties: Hassan Dahir Aweys (Chief of Hizbullah Islam) on 30 June 2013; Zakaria Ismail Hersi (Chief of Intelligence), on December 2014; Mohamed Said Atom (Head of Al-Shabaab in Puntland), in June 2014; and Muktar Robow (Deputy Leader of Al Shabaab), on 13 August 2017. SEMG report 2016, S/2016/919, annex 1.5. Abdullahi Abdi Haji, Al Shabaab member since 2006, was arrested in August 2015 and released as part of a general amnesty granted by the Puntland President Abdiweli Mohamed Ali “Gass”. It was an example of the Puntland administration’s policy of “catch-and-release” of the Al Shabaab suspects, documented by the Monitoring Group since 2014 (see S/2014/726, annex 1.4 and S/2016/919, annex 1.5).

<sup>78</sup> The UNPFA-Gender Based Violence information management system collects additional information that is incorporated into MARA for informative purposes and programmatic response.

<sup>79</sup> The differences in the CRSV figures between MARA, UNSOM and CTFMRM is due to the ways each mechanism operates in Somalia depending on security and access. Information captured by CTFMRM is obtained from a network of monitors deployed in conflict areas. They have a much larger reach and are within the communities, which allows the most comprehensive information. The information collected by UNSOM and MARA is gathered mostly from reports from various sources that come to the United Nations. Efforts are underway to consolidate the data.

<sup>80</sup> UNSOM started documenting CRSV cases in September 2016 following the implementation of the consolidation of protection functions within its human rights component.

<sup>81</sup> On 22 July 2016, a boy was raped by two Al Shabaab members near Afgooye town, Lower Shabelle region. He was accused of possessing videos containing homosexual pornography. One of the perpetrators was stoned to death by Al Shabaab while his

documented 228 incidents of rape and other forms of sexual violence constituting CRSV affecting 230 girls.<sup>82</sup> Half of the rapes recorded by CTFMRM were attributed to unidentified armed elements.

71. The practice of forced marriage remains of concern. MRM reported 18 forced marriage cases that involved SNA elements (three),<sup>83</sup> Al Shabaab (13), and ASWJ (two). For instance, on 14 September 2017, heavily armed Al Shabaab members abducted a 15-year-old girl from her home in Waberi village, Elbur district, Galgaduud region, and took her to an unknown location after her father rejected a marriage proposal from one of the men. Before the abduction, the case of a proposed marriage was referred to an Al Shabaab “tribunal” before which the girl’s father rejected the marriage proposal on grounds that his daughter was underage. The father was subsequently arrested and the girl was abducted soon after.

72. Government authorities subjected wives of Al Shabaab to collective punishment, arbitrary arrests, and forced displacement. They justified such treatment on the grounds that Al Shabaab relatives support insurgent activity, thereby constituting a security threat. This is a recurrent issue, as such incidents had already been recorded in 2015.<sup>84</sup> In September and October 2016,<sup>85</sup> the Jubbaland Administration ordered Al Shabaab wives to leave all areas under its control and threatened to forcibly remove them if they failed to leave voluntarily.

73. On 7 May 2013, the FGS and the United Nations signed a Joint Communiqué to End Sexual Violence in Conflict in Somalia. Subsequently in May 2014, the FGS adopted the National Action Plan on Ending Sexual Violence in Conflict (NAP/SVC) and a comprehensive strategy to prevent and fight against sexual violence and conflict related sexual violence (CRSV).<sup>86</sup> The National Action Plan’s activities include free legal services to CRSV victims, Sexual and Gender Based Violence (SGBV) units under the Attorney General to prosecute CRSV cases, mobile courts in rural and remote areas to provide justice services to communities, as well as legal awareness campaigns.<sup>87</sup>

74. The main protection challenges for victims of sexual violence are related to the limited capacity of the police to address such cases as well as the lack of political will, primarily by police leadership, to use the formal justice system to address cases of sexual violence.<sup>88</sup> In November 2016, a Women and Child Protection Unit was established at the Police Force headquarters in Mogadishu<sup>89</sup> with plans to increase the number of female police officers on the ground, but resources and

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accomplice was put in Al Shabaab custody. On 10 January 2017, Al Shabaab publicly raped and executed two males, aged 15 and 20 years, for homosexual conduct, in Lower Juba region. On 14 October, three SNA soldiers raped an 11 year-old boy in Hawo tako neighbourhood, in Beledweyne, Hiraan region. SNA commander arrested the soldiers who were identified by the survivor.

<sup>82</sup> From 1 January to 30 September 2017.

<sup>83</sup> On 10 July 2016, the MRM reported that a 15-year old girl was forced to marry an SNA soldier in Busul village, Gedo region, after the soldier threatened her mother. The Jubbaland Ministry of Gender, Family Affairs, and Human Rights investigated the incident and concluded that the story as initially reported is not credible (see Annex).

<sup>84</sup> Several incidents took place in 2015 when 65 suspected Al Shabaab wives were forcibly removed from the towns of Kismaayo and Afmadow in Lower Juba region and transported by the Jubbaland Administration to Al Shabaab-controlled areas.

<sup>85</sup> In Gedo region, the Baardheere district administration of Jubbaland state issued a seven-day ultimatum for Al Shabaab wives to leave the town. Engagement between clan elders and the district administration prevented the planned expulsion and led to the ultimatum being lifted on 21 October 2016.

<sup>86</sup> Its development involved the Ministries of Defence, Health, National Security, Justice, Women, Human Rights and Development, Religious Affairs, Education, the Somalia Police Force, the Somalia National Army and civil society organizations.

<sup>87</sup> Support to survivors is a crucial part of the National Plan; 71 centres across the country provide support to GBV survivors and their families, including temporary accommodation for the protection of survivors and five safe houses across the country; 61 survivors benefited from temporary protection in safe houses in the first eight months of 2016.

<sup>88</sup> Addressing conflict-related sexual violence requires that three critical issues be addressed: physical access to large parts of the country; underreporting of sexual violence exacerbated by threats to survivors; and the insufficient legal and institutional framework for addressing sexual violence.

<sup>89</sup> In line with the New Policing Model which aims at building the capacity of the police and improving gender balance within the police. In Jubbaland, Gender Desks were established in four police stations in Kismaayo district, including two within IDP camps.

skills to investigate and report on sexual violence crimes are still lacking. Using traditional justice mechanisms is seen as an easy way for traditional elders to maintain their influence in communities and to influence policing services. Obtaining comprehensive and accurate data on CRSV cases in Somalia also remains a major challenge due to limited or no access to large parts of the country and the unavailability of services for survivors, as well as the vulnerability of survivors to possible reprisals from perpetrators.

## B. Children and Armed Conflict

75. Children continued to be disproportionately affected by the prolonged conflict. In July and August 2012, the FGS signed two Action Plans: one to end the recruitment and use of children, and another to end the killing and maiming of children. Specific policies<sup>90</sup> have been adopted and structures and mechanisms<sup>91</sup> have been put in place to build capacity, create awareness and support the efforts of the authorities. In addition, UNSOM supported SNA to sensitize and screen troops to ensure they are child-free. This includes monitoring the integration of regional forces into the SNA, as well as work with regional forces that are yet to be formalized.<sup>92</sup>

76. Most of the data presented in this chapter was documented and verified by the Country Task-force on Monitoring and Reporting (CTFMRM). The majority of the cases involved Al-Shabaab, ASWJ, and SNA, with Al Shabaab being responsible for 60 per cent of the violations.<sup>93</sup>

77. All parties to the conflict recruited children. The number of children recruited and used doubled (1,915) compared with 2015, a result of a twofold increase in cases attributed to Al-Shabaab (1,206).<sup>94</sup> As such, Al-Shabaab is listed in the Annexes of the 2016 Secretary-General's annual report on children and armed conflict for the recruitment, use, killing maiming, and abduction of children. SNA remains listed for the recruitment, use, and killing and maiming of children, while ASWJ is listed for the recruitment and use of children. In addition, children are victimized by their exposure to other grave violations during military operations, including killing and maiming, and arrest and detention by Somalia security forces during military or search operations. Reports of recruitment of children increased by 269 per cent from 2015 (903 cases) to 2017 (3,335). In 2017, 71.5 per cent of the recruitment was attributed to Al Shabaab, 14.6 per cent to clan militia, and 7.4 per cent to SNA.<sup>95</sup>

78. An Al Shabaab recruitment campaign took place in 2016 in Galmudug State and in Lower Juba region, and in Galmudug in 2017. In the latter case, Al Shabaab compelled elders from different villages to provide children to join the group and be trained in military camps.<sup>96</sup> Al Shabaab recruited children primarily in rural areas of southern and central Somalia from schools, madrasas, mosques,

<sup>90</sup> 2014 SOP for the reception and handover of children formerly associated with armed groups; standard check-list for age determination; 2016 General Staff Command Order on recruitment policy prohibiting underage recruitment

<sup>91</sup> These achievements included: i) functional joint FGS/UN steering committee that oversees the implementation of the Action Plans, ii) establishment of the Child Protection Unit at the Ministry of Defence with the nomination of military focal points, ii) the establishment of the joint FGS/CPU and United Nation mobile screening team.

<sup>92</sup> As an example, 235 out of 310 members of the South West Special Police Force (SWSPF) were screened, of which two boys aged about 16 were identified and separated on 17 May.

<sup>93</sup> Al-Shabaab is listed in the Annexes of the 2016 Secretary-General's annual report on children and armed conflict for the recruitment, use, killing maiming, and abduction of children. SNA remains listed for the recruitment and use and killing and maiming of children, while ASWJ is listed for the recruitment and use of children.

<sup>94</sup> The Secretary General Annual Report on Children and Armed Conflict - 2016, S/2017/821, para. 134

<sup>95</sup> In 2016 and 2017, 258 children were recruited by SNA. ASWJ (3.8 per cent); Galmudug, Jubbaland and ISWA represented less than 1 per cent each (CTFMRM data).

<sup>96</sup> In March 2016, Al Shabaab reportedly enrolled 60 children at an Al Shabaab training camp in Jilib, Middle Juba region. In July 2016, the group pressured elders of the Cowrmale sub-clan of Hawiye in Lower Juba to provide boys aged between 10 and 17 years. The elders refused and were reportedly ordered to provide 360 camels and 120 youths. In September 2016, Al Shabaab compelled elders in Galmudug region to provide 100 boys, who were transferred to the Khalid Bin Walid military training camp in the Ceel Buur district. In June 2017, Al Shabaab was reportedly forcibly enrolling children in Al Shabaab-managed schools in Galmudug.

and religious events. Poverty and lack of opportunities provide a platform to recruit children into the group.<sup>97</sup>

79. Notwithstanding the standard operating procedures for the reception and handover of children formerly associated with armed groups, the arbitrary deprivation of liberty of children by security forces and Al-Shabaab remains a major concern. Out of 581 children detained in 2016 (including 21 girls), 70.9 per cent were held by SNA and 14.9 per cent by Al Shabaab.<sup>98</sup> In total, 110 of these children were captured during security operations against Al Shabaab in Puntland.<sup>99</sup> They were initially tried and convicted as adults and nine were sentenced to death by a military court before their sentences were commuted to 10-20 years prison terms, while 27 others, aged between 15 and 17, were sentenced by a military court to 10 to 20 years of imprisonment. All of the children were subsequently transferred to rehabilitation centres in Mogadishu and Garoowe.<sup>100</sup>

80. In 2016, CTFMRM verified the killing and maiming of 1,847 children, attributed mainly to unidentified armed elements (44.1 per cent),<sup>101</sup> Al Shabaab (24.3 per cent), SNA (11.2 per cent), and clan militia (10.7 per cent). Most casualties resulted from crossfire between parties engaged in hostilities. Mortar attacks, IED attacks,<sup>102</sup> and incidents involving explosive remnants of war equally contributed to child casualties. Children were also victims of airstrikes<sup>103</sup> allegedly attributed to the US forces, KDF, and unidentified forces.<sup>104</sup>

81. CTFMRM documented the rape of 535<sup>105</sup> children (533 girls and two boys) and, in 35.8 per cent of the cases, the perpetrators were unidentified armed elements.<sup>106</sup> The remaining were attributed to clan militia (20.7 per cent), SNA (21.1 per cent), Al Shabaab (15.8 per cent), State forces (8.9 per cent), ASWJ (0.7 per cent), AMISOM (0.7 per cent) and ENDF (0.1 per cent).

<sup>97</sup> Children associated with Al Shabaab and captured in March 2016 by Puntland authorities reported that Al Shabaab promised them education and livelihoods to recruit, while in other cases children were used to pressure their peers to join.

<sup>98</sup> Breakdown of detention by SNA (405 boys, seven girls); Al Shabaab (76 boys, 11 girls); clan militia (15 boys, two girls); ASWJ (13 boys); Somali Police (31 boys); AMISOM (seven boys); Jubbaland forces (nine boys); and ISWA forces (two boys, one girl).

<sup>99</sup> In Puntland, despite the adoption of the Juvenile Justice Law, the definition of a child remains unclear as both the Puntland Constitution and the Juvenile Justice Law define a child as a person below the age of 15 years, contrary to the Federal Constitution and international standards.

<sup>100</sup> 44 from Galmudug and 66 from Puntland.

<sup>101</sup> Unidentified armed elements (816), Al Shabaab (449), SNA (207) clan militia (198), AMISOM (60), KDF (17), states forces (18 in Southwest, 13 in Jubbaland, 10 in Puntland and three in Galmudug), Somali Police (11), ASWJ (one) and the United States Armed Forces (one).

<sup>102</sup> On 1 June 2016, two boys (aged 16 and 17) were killed and three others injured when Al Shabaab launched a suicide attack on the Ambassador Hotel in Mogadishu. On 14 October 2017, 25 children (15 boys and 10 girls) were killed while 15 others (10 boys and five girls) were wounded. The incident occurred following a VBIED attack in Mogadishu.

<sup>103</sup> On 24 March 2016, a boy was killed and five children (aged between three and 14 years) were maimed in a KDF airstrike in Lower Juba. KDF claimed that they were targeting an Al Shabaab military camp. On 15 May 2016, a 16 year-old boy was killed in Afgooye district due to an airstrike in the Lower Shabelle. On 22 June 2016, four children were killed in a KDF airstrike in Ceel-Waaq district, Gedo region. These findings were shared with the Permanent Mission of the Republic of Kenya to the United Nations in New York, within the framework of the Secretary General's report on Children and Armed Conflict. The Government of Kenya responded and rejected the findings. See further response from the Embassy of the Republic of Kenya in the Annex.

<sup>104</sup> UNSOM documented 29 children casualties (12 killed, 17 injured) in Jubbaland; 11 were attributed to either ground operations or airstrikes conducted by foreign forces, nine to Al Shabaab, and one to Jubbaland security forces. Six casualties were related to ERW and two others to IEDs detonated by unidentified attackers.

<sup>105</sup> The scale of sexual violence affecting children is believed to be underreported due to fear of stigmatization, reprisals, and the lack of adequate support services for survivors.

<sup>106</sup> Breakdown by perpetrators: unidentified armed elements (192 victims), clan militia (111), SNA (113), Al Shabaab (83), Jubbaland forces (19), Southwest armed forces (19), ASWJ (four), Puntland forces (two), Galmudug forces (three), AMISOM Ethiopian contingent (three), AMISOM Djiboutian contingent (one) and ENDF (one).

82. CTFMRM also documented 76 incidents of attacks on schools and 20 incidents of attacks on hospitals.<sup>107</sup> Moreover, schools were destroyed and looted during confrontations between parties to the conflict. Al Shabaab was responsible for 54 attacks on schools, followed by SNA (12), ASWJ (three) and clan militia (three), while AMISOM, KDF, South West Armed Forces, and unidentified armed groups were responsible for one each.

83. CTFMRM documented the abduction of 2,265 children, mainly attributed to Al Shabaab (1,991), clan militia (119) and SNA (108).<sup>108</sup> As previously mentioned, abduction was used primarily as a tactic for recruitment by Al Shabaab. In 2016, 548 children were abducted by Al Shabaab<sup>109</sup> for recruitment. One case of abduction was related to CRSV.<sup>110</sup>

84. Between January 2016 and September 2017, the CTFMR verified 53 incidents of denial of humanitarian access. The incidents were attributed to AS (29), Clan militia (16), SNA (four), Unknown (two), Puntland Armed Forces and Southwest Armed Forces (one each). The number of children affected by these incidents could not be established due to security challenges.

### III. Recommendations

85. FGS, FMS and international forces should develop, implement and share operational policies and practical measures to enhance respect for international human rights law and international humanitarian law and avoid harm to civilians, with particular attention to the conduct of military operations in urban areas. Specifically,

86. Parties to the conflict, including AMISOM TCCs/PCCs should:

- (a) Comply with and ensure respect of international human rights and humanitarian law, including orders or directives, and hold accountable those who target, kill or injure civilians;
- (b) Take all possible precautions to protect civilians, particularly women and children, from the effects of military operations;
- (c) Avoid locating military objectives within and near civilian-populated areas;
- (d) Cease the use of irregular forces, militia and armed groups in operations of SNA and AMISOM, and disband and disarm all unlawful armed groups and militia;
- (e) Adequately support the systematic collection and analysis of information on the protection of civilians, including data disaggregated by sex and age and gender analysis, and ensure that it feeds into conflict analysis, prevention and response;
- (f) Ensure prompt, independent, impartial, thorough and effective investigations and judicial proceedings concerning serious allegations attributed to AMISOM and other international troops, hold perpetrators accountable and provide adequate assistance and effective remedies for victims;
- (g) Develop and implement effective policies for casualty mitigation, including guidance to decide on targeting.

<sup>107</sup> On 15 April 2016, a primary school was partially destroyed by a rocket fired by Al Shabaab in Lower Shabelle region. On 28 August 2016, a health centre in Hobyo district, Mudug region, was closed after the staff received death threats from Al Shabaab following clashes between Al Shabaab and Galmudug forces.

<sup>108</sup> Others include unidentified armed groups (22), ASWJ (four), AMISOM (one), South West Armed Forces (three) and police forces (17).

<sup>109</sup> In July 2016, Al Shabaab abducted 123 boys below the age of 17 from Ceel Buur and Ceel Dheer districts, Galgaduud region, and took them to Al Shabaab training camps.

<sup>110</sup> In July 2016, a 16-year old boy was abducted and raped by two Al Shabaab members in Lower Shabelle region.

87. Non-state actors should also:

- (a) Cease the use of all IEDs and complex attacks, and cease firing all explosive weapons causing wide-area effects, including mortars, rockets and grenades, from and into civilian-populated areas;
- (b) Cease the deliberate targeting of civilians (including government officials, civil servants, journalists, civil society actors, clan elders and aid workers) and civilian objects.

88. In addition, FGS and FMS should:

- (a) Join the global effort to promote greater respect of and compliance with international humanitarian law and international human rights law to enhance the protection of the civilians;
- (b) Take concrete measures to end violence against women and girls by effectively implementing the National Action Plan to End Sexual Violence in Conflict, including through frequent meetings of the Steering Committee and by investigating and prosecuting alleged violations, including when perpetrated by military and security personnel, in accordance with international law;
- (c) Support the systematic collection and analysis of information on the protection of civilians, including data disaggregated by sex, age, and gender, and ensure that it feeds into conflict analysis, prevention and response;
- (d) Adopt the legislative, policy and law enforcement measures necessary to ensure the prompt, independent, thorough and effective investigation and prosecution of violations of international humanitarian law and international human rights law, including those amounting to serious crimes;
- (e) Investigate in a prompt, independent, effective, transparent and impartial manner allegations of violations of international humanitarian law and international human rights law by security forces and armed groups and, when required, prosecute alleged perpetrators;
- (f) Establish clear vetting procedures to identify and prosecute individuals responsible for serious violations of human rights, in particular with respect to women and children;
- (g) Share the findings of bodies appointed to investigate incidents and implement their recommendations;
- (h) Ratify international instruments aimed at protecting civilians, including international and regional human rights instruments, and the Arms Trade Treaty and similar regional instruments, and ensure that national legislation and policies are in line with international obligations;
- (i) Step up the process of establishing the National Human Rights Commission which should act as an independent body that would, inter alia, investigate human rights violations committed in the context of the conflict;
- (j) Develop a comprehensive public policy on criminal accountability for gross human rights violations and other international crimes so that those who may be responsible for serious violations of international human rights law and international humanitarian law, including war crimes and crimes against humanity are held accountable, in compliance with the commitment made at the London Conference not to support blanket amnesties for grave human rights violations;
- (k) Ensure accountability for crimes committed against the people of Somalia, including by reviewing legislation and enacting new legislation to reinforce the protection of civilians;
- (l) Work towards developing/strengthening national reconciliation in order to extirpate the country from violence;
- (m) Step up existing efforts to implement the two Action Plans of 2012 on Children and Armed Conflict, including through the criminalization of child recruitment and use, the systematization of troops screening and the implementation of the SNA Chief of Defence's Force Command Order 1 prohibiting and sanctioning child recruitment and other grave violations against children;

- (n) Ensure that victims, including of sexual and gender-based violence, receive reparations, including, medical and social support;
- (o) Work with international and local partners to strengthen protection mechanisms and ensure compliance with international human rights law, including through the implementation of Somalia's 2016 National Action Strategy and Action Plan for Preventing and Countering Violent Extremism, and other non-military approaches as part of the coordinated comprehensive approach to security;
- (p) Ensure that national security reform shall be pursued in full compliance with international human rights obligations and establish relevant oversight mechanisms;
- (q) Ensure that military campaigns are synchronized with national security reform efforts as part of the restoration and extension of state authority to enhance the effective protection of civilians, and prevent and deter the recruitment and abduction of children and other grave violations by Al Shabaab.

*AMISOM:*

- (a) Strengthen cooperation with all relevant United Nations and other humanitarian actors with the view to enhancing protection of civilians, and enhance the capacity of AMISOM forces to carry out their mandate in full compliance with participating states' obligations under international humanitarian law and international human rights law;
- (b) Implement the Force Command Directives on the protection of civilians, including the Directive on protection of children's rights, and comply with Somalia's standard operating procedures on the reception and handover of children formerly associated with armed groups; and alert the United Nations whenever its forces capture children in operations to enable adequate follow-up and ensure their protection;
- (c) Investigate all allegations of violations and abuses of international human rights law and violations of international humanitarian law, and provide reports of each investigation and outcome;
- (d) Cooperate with TCCs/PCCs to ensure all AMISOM military and police personnel are adequately trained on international human rights law and international humanitarian law obligations, and consequences of violations before deployment;
- (e) Move forward with efforts to review the framework and implementation of boards of inquiry, with an emphasis on processes related to violations and abuses of international human rights law and international humanitarian law; request United Nations support, as relevant;
- (f) Strengthen the CCTARC to make it more robust in tracking and documenting civilian casualties and enhance its capacity and resources to respond to incidents.

*African Union:*

- (a) Enhance AMISOM's human rights component staffing in line with Security Council Resolution 2723 with a view to increasing its capacity to monitor and strengthen respect for international humanitarian law and international human rights law, and to immediately respond to cases of violations and abuses, including allegations of violations and abuses against children;
- (b) Finalise the review and adoption of the African Union policies on Conduct and Discipline and on the Prevention of Sexual Exploitation and Abuse; pending their formal adoption, support implementation of these policies within AMISOM ad interim;
- (c) Ensure that AMISOM mission-specific documents reflect mandates adopted by the Peace and Security Council and the United Nations Security Council, including with regard to human rights and humanitarian law compliance. In particular, strengthen cooperation on the implementation of HRDDP



through mainstreaming of mitigatory measures into Status of Mission Agreements, the Memoranda of Understanding between the African Union Commission and TCCs/PCCs, the Rules of Engagement, AMISOM mission-specific Guidelines of the protection of civilians, Standards Operating Procedures relating to AMISOM's boards of inquiry, and various directives of the Special Representative of the Chairperson of the Commission and the Force Commander or Police Commissioner in the Mission;

- (d) Consider developing human rights compliant guidelines on HRDDP in the support and joint operations of non-African Union forces, building on lessons learnt from AMISOM mentorship of SNA;
- (e) Ensure that all TCCS/PCCs have conducted training on international human rights law and international humanitarian law obligations and consequences of violations for all troops to be deployed in Somalia.

*Humanitarian Actors:*

- (a) Factor in equal access to humanitarian assistance and services, which requires paying special attention to individuals and groups who may be particularly vulnerable or have difficulty accessing such assistance;
- (b) Challenge any deliberate attempts to exclude parts of the affected population and on the basis of need and refrain from any form of direct or indirect discrimination.

*International Community:*

- (a) Continue to encourage and strengthen support to FGS and FMS on the implementation of the Security Pact, and ensure that the National Security Architecture is grounded in international human rights law and international humanitarian law;
- (b) Support FGS and FMS to strengthen the police and other rule of law institutions to guarantee protection and access to fair and affordable justice.

## ANNEXES

### Legal Framework

1. UNSOM takes the position that the armed conflict in Somalia is a non-international armed conflict between the Government of Somalia and its armed forces (Somali national security forces supported by international military forces) and non-state armed groups. All parties to the conflict – Somali armed forces, international military forces, and non-state armed groups – have clear obligations under international law to protect civilians.

#### International Legal Framework: Obligations under International Humanitarian Law and International Human Rights Law

##### Obligations under International Humanitarian Law

2. The obligation of states to respect international humanitarian law is part of their general obligation to respect international law, as outlined in the 1929 and 1949 Geneva Conventions.<sup>111</sup> While Somalia is a party to the four Geneva Conventions of 1949, it is not a party to either Additional Protocol I or Additional Protocol II of 1977, the latter of which addresses the protection of civilians in a non-international armed conflict and, inter alia, prohibits attacks against civilians and civilian objects (defined as indispensable to the survival of the civilian population). However, in the context of the non-international armed conflict, Somalia remains bound by the provisions of common Article 3 of the Geneva Conventions and Article 4 of Additional Protocol II, which have attained the status of customary international law.<sup>112</sup> Moreover, Somalia is bound by the provisions of the four Geneva Conventions of 1949 and the other rules in the Additional Protocols that are part of customary international humanitarian law applicable to non-international armed conflicts.<sup>113</sup> Non-state armed groups also have obligations under international humanitarian law as parties to a conflict.

<sup>111</sup> The 1929 Geneva Convention for the Protection of the Wounded and Sick, Article 25 (cited in Vol. II, Ch. 40, § 1); the 1929 Geneva Convention Relative to the Treatment of Prisoners of War, Article 82 (ibid. § 2); the 1949 Geneva Conventions, common Article 1 (ibid. § 3). Common Article 1 of the 1949 Geneva Conventions has enlarged the formulation of this requirement to incorporate an obligation to ensure respect for international humanitarian law. This obligation to respect and ensure respect is also found in Additional Protocol I. A state's obligation pursuant to this rule is not limited to ensuring respect for international humanitarian law by its own armed forces but extends to ensuring respect by other persons or groups acting in fact on its instructions, or under its direction or control. This is a corollary of Rule 149, according to which states incur responsibility for the acts of such persons or groups, and is supported by international case-law. This is particularly relevant to the conflict in Somalia, as AMISOM is composed of troops from Uganda, Burundi, Djibouti, Kenya, and Ethiopia. Under the standard agreement between the United Nations and the troop-contributing state, the behaviour and punishment of military personnel are under the exclusive control of the troop-contributing state.

<sup>112</sup> Common Article 3 prohibits "violence to life and person," "cruel treatment," or other "outrages upon personal dignity." Article 4 of Additional Protocol II protects civilians in an internal armed conflict from "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault." Uganda, Burundi, Djibouti, Kenya, and Ethiopia are contributing troops to AMISOM's military component, and all are parties to Additional Protocol II. Article 3 common to the four Geneva Conventions of 1949 establishes minimum standards that parties, including state and non-state actors, shall respect in non-international armed conflict. Common Article 3 explicitly prohibits violence to life and person, including murder, mutilation, cruel treatment and torture, as well as outrages against personal dignity and extrajudicial executions, at any time and in any place.

<sup>113</sup> The following are among the most relevant principles that apply to the conduct of all the parties to Somalia's non-international armed conflict: (a) Distinction: The civilian population as such, as well as individual civilians, shall not be the object of attack. (b) Proportionality: "an attack against a military objective which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited."; (c) Precautions in attack: "...civilians shall enjoy general protection against the dangers arising from military operations". "In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects" and all feasible precautions must be taken with the "view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects."

3. All states contributing to the international military forces in Somalia or intervening in Somalia are signatories to the four Geneva Conventions of 1949. While not all of AMISOM's troop-contributing countries are signatories to Additional Protocol II of 1977, they and other states intervening in Somalia are still bound by the relevant rules of customary international humanitarian law applicable in non-international armed conflicts. Finally, AMISOM adopted a mission-wide protection-of-civilians strategy in May 2013, which "provides a comprehensive Mission-wide approach towards mainstreaming protection considerations into all aspects of AMISOM operations."<sup>114</sup>

#### Obligations under International Human Rights Law

4. International human rights law applies both in peace and during armed conflict. In the latter case, international human rights law and international humanitarian law afford protection in a complementary and mutually reinforcing manner. Somalia is a party to numerous international and regional human rights treaties, including the International Covenant on Civil and Political Rights and the African Charter of Human and Peoples' Rights. All these instruments notably protect the right to life. They obligate the Government to provide basic human rights protections to all persons within the territory or jurisdiction of the state.<sup>115</sup>

5. While they cannot become parties to international human rights treaties, non-state actors, including non-state armed groups exercising government-like functions and control over a territory, such as Al Shabaab, are obliged to respect customary international human rights norms when their conduct affects the human rights of the individuals under their control. It can be stressed that the human rights obligations of non-state armed groups operating in Somalia (see below) does not affect the obligation of Somalia to uphold international human rights law in relation to their territory and other places under their jurisdiction. The State is obliged to exercise due diligence and do everything in its capacity to protect all persons within its territory and all persons subject to its jurisdiction against threats to the enjoyment of human rights posed by non-state actors, including de facto authorities and armed groups. Somalia must seek to hold perpetrators of human rights violations accountable and guarantee the rights of victims, including their right to an effective remedy and reparation.

#### Obligations under International Criminal Law

6. International criminal law exists to repress and punish individuals who have committed certain egregious acts, and Somalia has the primary responsibility to investigate and prosecute international crimes, i.e., war crimes, crimes against humanity, and genocide, within its jurisdiction. The Rome Statute obliges states parties to cooperate with the International Criminal Court in the investigation and prosecution of crimes, including the arrest and surrender of suspects. While Somalia is not a party to the Rome Statute, it has stated that it "fully supports the principles' enshrined in the Statute of the International Criminal Court and 'is committed to ending the persisting culture of impunity and ensuring that perpetrators of violations of international human rights and international humanitarian law are held accountable for their actions and that justice is done."<sup>116</sup>

7. States whose military forces are among the international military forces party to the conflict in Somalia also have a responsibility to investigate and prosecute alleged crimes that may have been

<sup>114</sup> Report of the Chairperson of the Commission on the Situation in Somalia. AU document PSC/PR/2. (CCCLXXIX), 13 June 2013.

<sup>115</sup> Under international human rights law, states must investigate the use of lethal force by their agents, particularly those involved in law enforcement. This duty, together with potential liability for failure to comply, flows from the obligation to protect the right to life. For state investigations to be effective, they must be as prompt as possible, exhaustive, impartial, independent and open to public scrutiny. A state's duty to investigate applies to all law enforcement contexts, including those arising during armed conflict. See also Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and serious violations of International Humanitarian Law; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Code of Conduct for Law Enforcement Officials.

<sup>116</sup> Somalia Response to Universal Periodic Review Recommendations, §98.1.

committed by their nationals in Somalia. For example, these states have an obligation to investigate and prosecute violations of Article 8(2)(e)(i) of the Statute of the International Criminal Court, which stipulates that “intentionally directing attacks against the civilian population as such, or against individual civilians not taking direct part in hostilities” constitutes a war crime in non-international armed conflict.

### National Legal Framework, Institutions and Action Plans

8. Somalia’s Provisional Federal Constitution protects the rights to life, liberty, security, and the freedoms to assemble, associate, and demonstrate, among others.<sup>117</sup> The legal system in Somalia is a mixed system of the common law, Sharia law, and customary law practices (the Xeer in Somali).

9. The capacity of the formal justice system to process cases is yet to be fully restored after collapsing during the civil war that began in 1991. New Federal Member States are beginning to establish their own justice institutions, although most justice personnel lack formal training. There are no oversight mechanisms and courts lack the ability to enforce decisions. Combined with a deep-rooted perception of corruption, this negatively impacts public confidence in the formal justice system. Many communities do not have access to the formal system and take their disputes to traditional justice mechanisms, including “courts” operated by Al Shabaab in some areas.

### National Framework to Address Sexual Violence

10. The Somali legal system addressing sexual violence comprises the Sharia, the traditional justice system (Xeer), and the formal justice system, although most cases are dealt with under the Xeer and the Sharia law. As currently practiced, these systems often result in further victimization of women and girls, with no justice for survivors and impunity for perpetrators.<sup>118</sup>

11. Puntland is currently the only Federal Member State (FMS) with specific legislation to address sexual violence – the Puntland Sexual Offences Act – enacted on 20 August 2016. Legislation addressing sexual offences is pending at the federal level and in Somaliland. Forensic laboratories were established in Mogadishu and Garoowe to provide the necessary medical documentation that survivors can use as evidence in criminal proceedings concerning sexual violence.<sup>119</sup>

### National Framework to Address Child Protection

12. Somalia’s 2012 Provisional Federal Constitution provides specific provisions that protect children’ rights in the context of on-going armed conflict, in particular in its article 29, which states ‘every child has the right to be protected from armed conflict, and not to be used in armed conflict’. The same article also defines a child as ‘a person under 18 years of age’.

13. Concurrent to the adoption of the Provisional Constitution in 2012, the Federal Government signed and the United Nations two Action Plans aimed at ending the recruitment and use and killing of children by its forces in military operations with the view to implement its obligations under international law.<sup>120</sup>

<sup>117</sup> Provisional Constitution of Somalia art. 126: “The Federal Government shall guarantee peace, sovereignty and national security of the Federal Republic of Somalia and the safety of its people through its security forces...”

<sup>118</sup> The traditional justice involves clan mediation of disputes, and compensation is typically paid to the clan rather than to the survivor of sexual violence. The perpetrator is then free from further punishment and the case is closed. UNSOM received reports of women or girls forced to marry the perpetrator. This traditional system is widely respected and many families and clans rely on it. The United Nations had developed a traditional dispute resolution policy that seeks to address and remedy these practices.

<sup>119</sup> As part of the Clinical Management of Rape Protocol to enhance the quality of care and service delivery for the survivors.

<sup>120</sup> Children are covered by fundamental guarantees for persons not taking direct part in hostilities in a context of non-international armed conflict (Art. 3 common to GC and Art. 4 Additional Protocol II). Special protection are extended to children and set limit to the participation in hostilities including on detention and against death penalty (Additional Protocol II, Art. 4 para 3c.; 3d. GCIV Art. 68 and Additional Protocol II Art. 6). Rules 135, 136 and 137 encompasses a series of specific provisions protecting children in armed conflict.

14. The Federal Government is achieving progress in implementing both Action Plans and, through the support of UNSOM Child Protection and the CTFMR, has adopted specific policies<sup>121</sup> and established structures and mechanisms<sup>122</sup> to build capacity, create awareness and support efforts of the authorities. In addition, support has been provided for the sensitization and screening of troops to ensure SNA units are child-free. This includes monitoring integration of regional forces into the SNA as well as work with the yet to be formalized regional forces.<sup>123</sup>

15. A landmark achievement was Somalia becoming party to the Convention on the Rights of the Child in October 2015, as well as its ratification of the ILO Convention No. 182 on the Worst Forms of Child Labour on 20 March 2014.<sup>124</sup> International Humanitarian Law also provides for the protection of children.<sup>125</sup>

16. A key challenge is the harmonization of the Federal Government's definition of a child with FMS jurisdictions. For example, the Puntland Constitution defines a child as under 15.<sup>126</sup> Following the capture of up to 100 children by Puntland and Galmudug authorities in 2016, the release of all children was eventually achieved, though charges still remain against 40 of them.

<sup>121</sup> 2014 SOP for the reception and handover of children formerly associated with armed groups; standard check-list for age determination; 2016 General Staff Command Order on recruitment policy prohibiting underage recruitment.

<sup>122</sup> These achievements included: i) functional joint FGS/UN steering committee that oversees the implementation of the Action Plans, ii) establishment of the Child Protection Unit at the Ministry of Defence with the nomination of military focal points, ii) the establishment of the joint FGS/CPU and UN mobile screening team.

<sup>123</sup> As an example, 235 out of 310 members of the South West Special Police Force (SWSPF) were screened, of which two boys aged about 16 were identified and separated on 17 May 2017.

<sup>124</sup> Significant gaps remain and efforts need to be sustained to fully domesticate provisions of these instruments in order to strengthen the existing legal framework. At the time of finalizing this report, the Ministry of Women and Human Rights Development (MoWHRD) is preparing Somalia's first state party report for submission to the Committee on the Rights of the Child, following wide consultations with Federal Member States (FMS). The Ministry also launched on 17 November, with the support of UNICEF, the process of drafting the Child Rights Bill, an important milestone in the domestication of the Convention on the Rights of the Child.

<sup>125</sup> The International Committee for the Red Cross database, rule 135: *Children affected by armed conflict are entitled to special respect and protection.*

<sup>126</sup> The domestication of the Convention on the Rights of the Child will likely resolve the legal ambiguities that persist regarding the definition of a child and thus enhance the manner in which children's issues are dealt with by societal actors.

## Responses received:



Jubaland state of Somalia

5<sup>th</sup> December, 2017

In reference to the consultation meeting of public report of the protection of the civilian date on 29<sup>th</sup> November, 2017 the Ministries of Jubaland State of Somalia appreciates for been concern to uphold the dignity of Jubaland state of Somalia. We are pleased to share with our concern regarding the public reports.

### **Paragraph 24:**

Jubaland Intelligence service agency does not control any detention centers since the Jubaland police force were trained. As far as our concern the JISA does not perpetrate any human right violation and are not completely allowed to operate in Kismayo town. The police forces are currently operational and are entitled to administration. No other forces are allowed to operate parallel with them. Jubaland Intelligence security agency is another wing of the army who fights against the terrorist group Al shabaab and collects information of the terrorist group.

### **Paragraph: 70**

Ministry of gender, family affairs and human rights is strongly committed in the protection of returnees from Kenya to uphold the dignity of the every citizen and more so the returnees. The ministry continuously makes awareness in the protection of women, girls and children at large to sexual and gender based violence. The Ministry strongly campaigns for the women political participation to address matters of power difference. The issues of poor clan protection of marginalized people do completely exist. In Jubaland all communities have equal rights no community marginalized by another community. Women and girls who are displaced are adequately protected in the areas controlled by Jubaland and no is dare to violate their rights. The Ministry takes lead to advocate for the rights any abused persons but challenge is some survivor doesn't need to share their issues and hold themselves.

### **Paragraph72:**

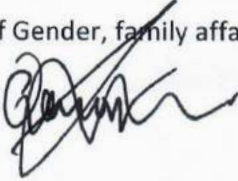
The Ministry gender, family affairs and Human rights up on receiving the report communicated with the family of the girl who confirmed to them that their daughter was not taken away by force. They also confirmed such information as false information. The Ministry also made communication with independent persons living in Busar village they as well confirmed that

they never heard such an incident of a girls married by force. Another source confirmed to the Ministry that Busar village are inhabited by people of same sub clan hence their girl cannot be taken using force. After following up the matter critically the Ministry had known that the girl and the soldier were in relationship and agreed to get married. The soldier has gone the family of the girl but father claimed to paid to a dowry worth ten camels and the man said I cannot afford to pay such a huge dowry later on the lady and the man agreed to run away with each other as an alternative solution to their marriage. The marriage agreement was made in the absence of the father up on bring the girl back home to prepare the wedding the father insisted with his decision the boycotted the decision of her father and joined husband. The father decided not share with us this information but got from other source hence that is the why they are claiming their daughter was taken away by force to suit interest. The marriage was because the girl never wanted to sold as a slave as marriage is her right

Minister Qamar Dek Khalif

Ministry of Gender, family affairs and Human rights

Signature:



Minister Abdinor Ali Aden

Minister of information, communication and Technology

Signature:



## **Somaliland**

- The reference to parts of Sool, Sanaag and Buhoodle as “Disputed Territory” is provocative and undermines the spirit of dialogue between Somaliland and Somalia. It is a well known fact that the former Italian Protectorate of Somalia and the Former British Protectorate of Somali had distinct borders recognized by the AU and UN. For your information the Political grievances of Sool and Buhoole areas has been settled that is why their leaders Ali Khalif and Dr. Saleban Hagla Tosiye (Minister of Health) are in Hargeisa. UNSOM is mandate to bring peace and governance back to the Somali but not as an agent that prolongs suffering through political destabilization.
- The Incident at Hargeisa football stadium was act of “Football Hooliganism” in which both innocent civilians and Police were victims that suffered death and injury at the hands of football gangs who could not accept defeat of their team. Any attempt to blame that situation on the police is tantamount to tarnishing our country’s image through deliberate misinformation and the presence of UNSOM in Hargeisa will be perceived as a spoiler and partisan.
- What is the use of mentioning the clan identities of the dead as Daarood, Bahararsame and Qayaad etc.? The publishing the names of victims of the inter clan fighting could be more sufficient information that could be useful to all concerned unless UNSOM has a hidden agenda of prolonging the enmity and clan fighting in Sool region. How sure are you of the number of dead as being 78 persons as MOI believes this an exaggeration and should be able to provide the real list of the dead if requested.

**Mr. Yasseir Arish Kalinle**

**Republic of Somaliland**

**Ministry of Interior.**

**Internal Security Coordinator & Senior Adviser to Minister**

**Tell +252634241116. Tell +252659104440**



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KENYA EMBASSY, MOGADISHU  
 MOGADISHU INTERNATIONAL AIRPORT  
 MOGADISHU

Ref. No. KES/ MGD /ADM.1/31/(03)

5<sup>th</sup> December, 2017

United Nations Assistance Mission in Somalia - Office  
 of the High Commissioner for Human Rights  
Of MOGADISHU

(Attn: Kirsten Young)

**KENYA GOVERNMENT RESPONSE TO THE DRAFT UNSOM (SOMALIA)  
 REPORT ON THE PROTECTION OF CIVILIANS: BUILDING THE  
 FOUNDATION FOR PEACE, SECURITY AND HUMAN RIGHTS OF  
 DECEMBER, 2017**

We refer to the above mentioned document forwarded to us via email on 28<sup>th</sup> November, 2017. In the document, accusations on violations of International Humanitarian and Human Rights Law are levelled against the AMISOM Kenya Defence Forces operating in Somalia and what the report terms as non - AMISOM KDF. Upfront, we wish to state that, the Kenya Government finds this report extremely sensational, and carries unqualified allegations which have serious implications on the Kenya Defence Forces (KDF) as a professional force. For the purposes of clarity, our response, here below, will therefore be in bold and italics. It will focus on paragraphs 28, 29, 38, 40, 41, 43, 78, and 81 of the report in which KDF is adversely mentioned. It will also include general observations on the report as follows:

A handwritten signature in blue ink, consisting of stylized, overlapping letters.

## ACCUSATIONS AGAINST AMISOM AND KDF IN SOMALIA

**Paragraph 27:** That Ethiopia and Kenya have troops in Somalia operating outside the AMISOM Command with the consent of Somalia

***Response:** The Republic of Kenya does not have non-AMISOM troops in the Federal Republic of Somalia. For a UN report to insinuate that Kenya has an occupational force in Somalia is not only incorrect, but very unfortunate, hence, need for this part of the report to be deleted forthwith.*

**Paragraph 28:** All AMISOM contingents have been involved in violations – Killings, gang rapes, attempted rape. **Kenyan contingent killing 4 and 5 injured.** The majority of the Civilian casualties resulted from indiscriminate fire by AMISOM troops when their convoys were attacked by IED, landmines or grenades. Other violations include extra judicial killings, ill-treatment during detention and sexual assault.

***Response:** This general statement does not apply to KDF which relies on best practices in the conduct of operations. In circumstances where there are civilian casualties or complaints of any nature, the procedure is to report and investigate, yet none of these procedures have been carried out, Kenya has never received any complaint of civilian deaths against KDF during the period under review. Otherwise they would have been swiftly investigated and necessary action taken. The serious allegation against KDF is not justified beyond doubt and therefore should not be retained in this report. Further, IEDs targeting convoys are augmented by ambushes by Al-Shabaab usually along the Main Supply Routes, it is improbable that the ambushes are mounted by civilians. The only possible scenario in this report is that, the combatant plays the role of a victim. The Kenya*

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*Defence Forces in AMISOM strictly comply with the principles of necessity, distinction and proportionality while conducting operations against Al-Shabaab. As mentioned earlier, attacks by Al Shabaab using IEDs, and landmines are always covered by fire. The standard anti-ambush procedure is the quick suppression of the covering fire. Any response by KDF contingent under these circumstances are primarily directed to Al Shabaab terrorists and not civilians. Further, KDF has never been implicated in any proven incidents of extra-judicial killings, rape or ill treatment of detainees. Indeed, KDF has never taken any detainees in Somalia.*

*The Kenya Defence Forces is therefore not aware of any specific allegations of extra judicial killings, ill treatment or sexual assault committed by its members in Somalia. Aware of the imperative for civilian protection and securing their support, KDF conducts CIMICS in areas of responsibilities (AOR) in an effort to win hearts and minds of the general populace. For instance, the Weekly Medical Camps across the KDF area of responsibility, Construction of Madrassa Classrooms in Busaar, Tabda, Hoosingo and also provided Public Address systems, provided desks in schools in Hoosingo, sunk Bore holes in Afmadhow, Bellis Qouqani, Taraka and Dhobley. We therefore seek the removal of the unqualified allegations against KDF from this report.*

**Paragraph 29:** Non-AMISOM KDF were responsible for 64 civilian casualties (32 deaths and 32 injuries) in 2016. In Jubbaland most of the violations attributed to KDF resulted from airstrikes, reportedly conducted with intelligence from AMISOM – KDF.

**Response:** *There are multiplicity of intelligence sources in Somalia beyond Troop Contributing Countries. To suggest airstrikes are conducted using intelligence from AMISOM-KDF is presumptuous and needs to be proven beyond doubt. The*

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*report is saddening as it seems to suggest that the AMISON – KDF directs fire on civilians, Pursuant to Security Council Resolution 2036 (2012) the Kenya Defence Forces operates three attack helicopters under the Command and Control of the AMISOM Force Commander. The attack helicopters are the only air assets deployed in situations where Al Shabaab employ or are likely to employ overwhelming force against AMISOM Contingents. It is to be noted that Al Shabaab terrorists have and employ significant weapon systems such as VBIED 'Technicals', Artillery and mortars, which necessitates the employment of the attack helicopters.*

**ACCUSATIONS ON AIRSTRIKES BY INTERNATIONAL FORCES**

**Paragraph 38:** 74 airstrikes during the period resulting in 57 casualties (23 killed and 34 injuries). 26 airstrikes by Non-AMISOM KDF resulting in 48 civilian casualties (19 killed and 29 injuries). Airstrikes were reported targeting Al Shabaab positions after the attack on the AMISOM – KDF Base in Gedo in January 2016.

**Response:** *There is no non-AMISOM KDF operating in Somalia, this allegation is factually incorrect. Deployment of Kenya Defence forces is based on legal framework in accordance with the UN charter.*

**Paragraph 40:** In December 2016, AMISOM leased three attack Helicopters from Kenya. They are operated by AMISOM KDF under the command and control of the AMISOM Force Commander. However, KDF used its own air assets which make attribution of responsibility for casualties challenging.

**Response:** *See response to paragraphs 29 and 38. Seemingly, the HRPG report has invoked press releases by Kenya Ministry of Defence as evidence of airstrikes. It should be noted that within the Kenyan legal framework, there is a requirement for the Ministry of Defence to communicate to the public on regular basis the*

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**ACCUSATIONS AGAINST VIOLATIONS TO CHILDREN**

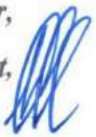
**Paragraph 81:** Children were victims of airstrikes allegedly attributed to US, KDF and unidentified forces. Note 95 – On 24<sup>th</sup> March 2016, a boy was killed and 5 were maimed by KDF airstrikes in Lower Juba. KDF claimed they were targeting an Al Shabaab military camp. On 22<sup>nd</sup> June 2016, 4 children were killed in a KDF airstrike in El Wak in Gedo region.

***Response:** KDF never conducted any airstrikes in the Federal Republic of Somalia on the alleged dates. However, as indicated in the report paragraph 78, various actors including Al-shabaab recruit children as combatants. It is therefore inconceivable that the report refers to children casualties, the children casualties in the report are likely to be members of the combatant groups, for instance, those involved in the raid in some parts of Puntland in paragraph 80 of this report. These allegations are therefore not factual.*

*It should be noted that El Wak is in Kenya and not in Gedo region of Somalia hence geographically incorrect.*

**Paragraph 83:** 76 incidents of attacks on schools and 20 on hospitals. KDF responsible for an attack on one school.

***Response:** KDF is not aware of an attack on any school in the Federal Republic of Somalia by its members. As far as schools, hospitals and social amenities are concerned, KDF has rehabilitated many schools, madrassas, dispensaries and mosques in their area of responsibility. It is therefore inconceivable that KDF destroys the same infrastructure which they have improved to secure the confidence and support of the population. The report hence is inaccurate. Further, KDF is versant with the International Humanitarian Law/ Law of Armed Conflict,*



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*hence is able to determine the legitimacy of the targets. Though Al Shabaab terrorists regularly hide and operate within the community settlement areas such as schools hospitals and residential areas, KDF deliberately avoids conducting operations in areas such as schools and hospitals to avoid collateral damage. It must also be noted that KDF is properly trained on International Humanitarian Law and general humanitarian aspects. Troops undergo refresher training on these aspects before deployment, in the Peace Support Operations Centres in Embakasi and Karen in Kenya. In the military training programmes, these aspects have been included since 1999. The pre-deployment and in-mission training on International Rules governing military operations is carried out by the International Committee of the Red Cross (ICRC), for example, the in-mission training was conducted by ICRC in Doble in September 2017. Besides, many commanders and KDF legal officers have received such training in Italy, Australia, and Ghana organised by ICRC.*

GENERAL OBSERVATIONS ON THE REPORT

*The environment in Somalia is characterized by many players with disparate objectives, but dominated by violations of International Human Rights Laws mainly by Al Shabaab. The HRPG report appears not to distinguish between combatants, civilians and victims. The report may be construed to advance Al Shabaab and other terrorist groups' agenda by demonizing counter terrorism operations while vocalizing Al Shabaab propaganda. Such constant accusations without facts are detrimental to the achievement of the UN/AU mandate as it demotivates Peacekeepers.*

*As a matter of policy, all operations by KDF comply with IHR and Humanitarian law. The Government of the Republic of Kenya in fulfilment of its international obligations, will not hesitate to subject any person suspected of violating International Humanitarian Law and International Human Rights to the*


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*applicable due process. Further, the Government of Kenya takes the necessary precaution to protect civilians in all its operations.*

*In particular, the process of targeting is highly controlled and is constrained by International Humanitarian Law and International Human Rights law. It is a continuous and comprehensive evaluation process, highly supported by human intelligence and technical reconnaissance, intelligence surveillance, and target acquisition assets. Collaboration and confirmation is also through shared intelligence with the wider intelligence community. This process is intended to ensure that operations are directed against Al Shabaab while protecting civilians.*

*The Government of Kenya is of the considered view that the focus and emphasis of the report should be on the violations of International Humanitarian Law by Al Shabaab who claim to be civilians/victims at will after causing atrocities given the asymmetric tactics they employ. Obviously, Al Shabaab and their sympathisers use these violations as a propaganda tool. The Government of Kenya is also concerned that serious allegations levelled against KDF are generalized and unsubstantiated.*

Finally, we wish to point out that Kenya Government and the people of Kenya uphold the rule of Law, and do not condone violations of International Humanitarian and Human rights law anywhere in the world, and therefore take this report seriously. The allegations levelled against KDF have serious implications on them, their families and the people of Kenya who through their government have made huge sacrifices in pursuit of regional and international obligations. Kenya Government has been steadfast in supporting the international peace and security initiatives and the international institutions behind these initiatives such as the United Nations and its field agencies, in particular, UNSOM/OHCHR. It is therefore hoped that the allegations will be dropped forthwith.

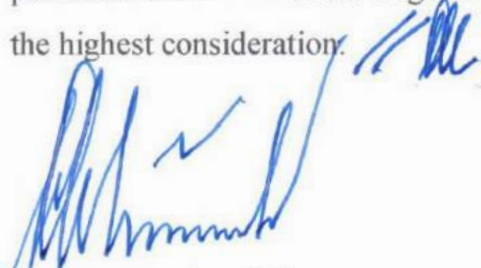


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The Embassy of the Republic of Kenya in Mogadishu, Somalia avails itself of this opportunity to renew to the United Nations Assistance Mission in Somalia, in particular the Office of the High Commissioner for Human Rights, the assurances of the highest consideration.



**Lucas K. Tumbo, CBS**  
AMBASSADOR  
Kenya Embassy in Mogadishu - Somalia



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REF: AMISOM/HOM/22/475.17

Mogadishu, 08<sup>th</sup> December 2017

Excellency,

My attention has been drawn to a report titled '*Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia*' (the Report) which has been jointly prepared by UNSOM Human Rights and Protection Group (HRPG) and the United Nations High Commission for Human Rights (OHCHR). The Report covers atrocities and violations that allegedly occurred from January 1 2016 and 14 October 2017. It outlines allegations on all parties to the Somali conflict including violations supposedly committed by AMISOM troops. We have considered the Report and whilst we recognize the prerogative of the UN to draft such, we are of the view that this particular Report contains significant misrepresentations of certain incidents that took place in Somalia as they pertain to AMISOM operations and that expected good faith may not have been exercised in some of the deductions that were made in the Report.

#### **The Allegations against AMISOM**

The broad allegations against AMISOM can be found under paragraph 28 of the Report. The allegations here are that:

- I. During the period under review, 178 civilian casualties (95 killed and 83 injured) were attributed to AMISOM forces;
- II. That two gang rapes and one attempted rape was also attributed to AMISOM;
- III. That majority of civilian casualties involving AMISOM occurred in the context of AMISOM troops responding to attacks on its convoys by way of landmines, IEDs and/or coming under grenade attacks. According to the Report, in these circumstances, AMISOM troops fired indiscriminately and extra-judicially killed civilians;

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- IV. In addition to the specific incidents mentioned above, the Report seeks to undermine the credibility of the AMISOM investigative mechanism particularly its Board of Inquiry regime and therefore discredits the BoI the Mission undertook with regards to specific allegations;
- V. Finally, the Report expresses concern over the blurring of line of accountability regarding the activities of countries who are in Somalia on bilateral agreements with the Federal Government of Somalia (FGS).

**A. The Rape and Attempted Rape allegations-**

The Report contains allegation that *'from January 2016 to 14 October 2017...two gang rapes and one attempted rape were attributed to AMISOM'*. This allegation was repeated several times in the report. Although full details of the specific rape allegations are not expressly mentioned in the Report, the Mission is indeed aware of three allegations of sexual nature against AMISOM in the period under consideration. We have therefore assumed that the Report refers to these same allegations. Allow me to therefore briefly outline what the Mission has done with regards to each of the allegations.

**I. The Ceelbuur (Elbur) Incident of 7 May 2016**

On 14 May 2016, you sent me a letter in which you raised the allegation that two minors, aged fifteen (15) and seventeen (17) years, were raped by fourteen (14) members of the Ethiopian military contingent of AMISOM. Given the seriousness AMISOM attached to such allegations, I established a team to investigate the allegation. The team comprised of three civilians (two Human Rights officers and a Gender officer) together with an officer from CCTARC and CIMIC office of AMISOM. The team visited Baidoa, Elbur, Elshil and Elqoxle and spoke with 39 witnesses who were residents of those towns. After its investigation and appraisal of all the evidence, the team concluded that the incident never took place. It is important to note that in

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your letter to me regarding the allegation, you had indicated that the alleged victims were treated at the 'Halaane Hospital' in Elqoxle town after the alleged rape incident. However, after extensive consultations, the team established that there was no single hospital or even a pharmacy in the town. The findings of the investigative team were communicated to you and I personally discussed these findings with UNICEF officials.

Allow me to reiterate the fact that the investigation was conducted despite the heightened security concern in the area. Yet despite the thoroughness of the investigation and the fact that the findings of the team were passed on to your office, the Report proceeds to treat the Elbur incident as a proven allegation against AMISOM. For the purpose of fairness and completeness, it will be helpful if those who drafted the report provide AMISOM with the following information:

- a. What independent investigation did the UN conduct that persuade the drafters of the report to come to the conclusion that the rape did take place?
- b. This incident supposedly took place in May 2016 and the findings of my investigative team was also forwarded to you in May 2016, why had the UN not provided AMISOM with the details of any investigations of its own it conducted and the findings of such investigation, especially as it contradicts AMISOM's own findings? This would have been consistent with the letters and spirit of the AMISON-UNSOM-UNSOS HRDDP Working Group, which as you know is a standing mechanism to address issues like this.

**II. The Bulo-Burto incident of April 2016**

You may recall that on the 26 April 2017 you wrote to me stating that an AMISOM soldier from the Djiboutian contingent raped a 16-year-old girl who was working as a cook for troops in an AMISOM camp in the Bulo-Burto district. Upon receipt of your letter, I set up a preliminary

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investigative team which established beyond any reasonable doubt the fact that whilst a rape incident did take place, the perpetrator was a prospective Somali recruit to the SNA and not an AMISOM soldier. The facts that were established were that the SNA was having a recruitment exercise at the AMISOM Base Camp during the period. The perpetrator was a Somali citizen who was a prospective recruit. He was arrested and handed over to the Police for further action and possible prosecution. Indeed, the perpetrator's photograph and police report were sent to your office. Yet the Report continues to refer to the incident as a proven rape allegation against AMISOM. As with the Elbur incident, it is important for the UN to provide details of whatever investigation it conducted which led its contrary conclusion to the one AMISOM reached.

### **III. The Garastan incident of 18 June 2017**

It is alleged that on the 18 June 2017, a 35- years old woman from Garastan village in the Baidoa area reported to police that she was herding camels in the bush when a group of Ethiopian soldiers arrived to collect firewood. It is alleged that one of the soldiers walked to her, grabbed her and attempted to rape her but she raised an alarm, which attracted other soldiers. In the process, her assailant let her off after stabbing her on the leg. The victim was allegedly treated and discharged at the Bay Hospital. She then reported the incident to the police in Baidoa. On the 7<sup>th</sup> July 2017, I had written to you to indicate that a preliminary investigation of the allegation would be conducted. The preliminary investigation has since been conducted but given the very serious nature of the allegation, I have subsequently set up an all-female BoI to investigate the allegations. Indeed, the Board will be contacting the relevant UNSOM colleague to provide information that may assist it to reach a fair conclusion. In this regard, since the drafters of the Report appear to have conclusive proof of AMISOM troop's culpability in this allegation, they should hopefully be willing to present the same to the Board as it seeks to get to the bottom of this allegation.

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#### **B. Allegations of unlawful killings-**

The Report makes a broad assertion that between January 2016 and 14 October 2017, AMISOM, in the course of responding to IED, landmines and grenade attacks, indiscriminately opened fire on civilians killing and maiming one hundred and seventy-eight (178) of them. The Report also states that AMISOM troops were responsible for various extrajudicial killings and ill-treatment during detention. Yet, other than the Wardinle incident, the Report fails to provide any single details to support or justify these extraordinary allegations. In the period under consideration, your office forwarded to me a number of incidents in which AMISOM was allegedly involved. Other than ones currently under investigation by AMISOM, majority of the allegations were responded to by the Mission. The Mission is therefore unaware of incidents where its troops used indiscriminate fire against civilians or extra judicially executed civilians. AMISOM will therefore be grateful for further information that may be in possession of the drafters of the Report which support the allegations contained in the Report. It is against the spirit of the AMISOM-UNSOM-UNSOS HRDDP Working Group for such allegations to be made without provision of proofs to support the same.

#### **C. The activities of non-AMISOM TCCs in Somalia and blurring of lines of attribution of responsibility.**

One of the few incidents involving AMISOM which the Report specifically mentioned is the incident that took place in Wardinle allegedly involving AMISOM. In the Report, the UN states that:

*'The presence of non-AMISOM ENDF in the same area of operation as AMISOM ENDF blurs the lines and makes the attribution of responsibilities difficult. Whilst taking note of the conclusion of the AMISOM Board of Inquiries, it remains difficult to rule out the involvement of AMISOM troops in the Wardinle case'*

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Excellency, allow me to make the following observations on this specific point:

- I. Immediately I received confirmation that there was prima facie evidence to further investigate the Wardinle incident, I established a Board of Inquiry to do so. The Board visited Baidoa, Wardinle and Awdinle and interviewed a number of interested parties in the case including Minister in the South West government, District Commissioner, Community Elders, Victims, family members of deceased, AMISOM troops and Ethiopian contingent in the area. What became clear was that the incident took place in an area where AMISOM troops were not present. Indeed, in the course of its investigation, the Board confirmed from UNSOS that they (UNSOS) were unaware of any AMISOM location in the area and weren't making any logistical provisions to the area.
- II. Whilst theoretically the concern of blurring of lines of attribution of responsibility is a possibility, however in practice, this has not been the case within AMISOM operations in Somalia. The incident in Wardinle is the only instance in which AMISOM denied responsibility and attributed the occurrence of the incident to non-AMISOM TCC force operating in the area. It is of critical importance to note that in coming to this conclusion, extensive investigation was conducted, including confirmation from UNSOS that they do not provide logistical supports to the area because AMISOM troops are not present.
- III. Bearing the above in mind, we strongly dispute the conclusion reached in the Report that AMISOM troops were somewhat involved in the Wardinle case. The presence of non- SNSF, non-AMISOM forces in Somalia is a matter within the prerogative of the Somali State to which AMISOM has no control. Rather than seeking to apportion

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responsibility to AMISOM troops in circumstances like this, we submit that the useful course of action is for the UN to take up the matter with the individual TCC that we have indicated is responsible for the incident.

**D. Criticism of AMISOM Investigation Regime**

Excellency, allow me to also state here that I notice with concern the statement in paragraph 36 of the Report which states that:

*'AMISOM's slow response to allegations remains a concern. Furthermore, responses seldom include information on the concrete actions taken to investigate, including whether interviews with victims, witnesses or local authorities have been conducted. Accountability and corrective measures are among the priority mitigations measures identified by the UN in the framework of HRDDP with regard to support to AMISOM. Inadequate or lack of credible investigations into allegations may lead the United Nations to reconsider and/or suspend the support to individuals or contingents allegedly involved in violations'*

Excellency, allow me to make the following responses to the points raised in this paragraph:

- i. Firstly, we are baffled by the allegations contained in the paragraph. In all the investigations carried out by way of Board of Inquiry, we met with pertinent witnesses. For example, as indicated above, in the Elbur case, we spoke with 39 individuals who included government officials, religious leaders, Somali Police Force officials, SNA officials and elders. In the Wardinle incident, we took statements from *Minister in the South West government, District Commissioner, Community Elders, Victims, family members of deceased, AMISOM troops and Ethiopian contingent in the area, etc.* The findings of these investigations were subsequently passed on to your office. The assertion that we are not taking steps to interview victims, witnesses and local government officials is simply baffling.

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- ii. Secondly, the Report states that AMISOM's response and investigations are slow.
- What does the UN consider as 'fast' in the context of an operational environment like Somalia where incidents may have taken place in areas of heightened insecurity? Investigations of serious allegations take time and demand thoroughness so that conclusions reached can stand the test of further scrutiny.
- iii. Thirdly, some of our investigations have reached clear conclusions that some victims of AMISOM operations should be provided with some ex gratia payments. We have in place now a Policy and SoP for CCTARC that will assist us to meet these obligations. We submitted the costs implication of this to the UN in time for the Donor Conference held earlier in October this year. This is one of practical ways the UN can assist in supporting the Mission.
- iv. We also note the point made in the concluding sentence of the paragraph quoted above. Our understanding is that the HRDDP is not intended to be punitive or a mechanism for wilful disengagement. AMISOM understands it as a mechanism for human rights engagement that require the UN to intervene with and advise the benefitting entity when there are grounds to believe that forces of such non-UN entity may be committing grave violations that are systematic and widespread in nature. Revocation of support may only be invoked, as a last resort, *where such gross violations occur and there is no evidence of any corrective and mitigatory measures taken despite UN observations*. We are of the view that none of these can be said to apply to AMISOM.



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Excellency allow me to conclude by reiterating AMISOM's commitment to carrying out its operations in Somalia in compliance with all applicable IHL and IHR laws. The operational environment is a difficult one bearing in mind the tactics of Al-Shabab. However, our troops have been trained and under clear instruction to ensure compliance with all the applicable laws. To this extent, AMISOM has put in place various policies and practical measures to guide its troops in Somalia. We invite UNSOM to support the Mission in strengthening the existing mechanisms within AMISOM in order to continue to discharge its operations in compliance with all applicable rules.

Accept, Excellency, the assurances of my highest consideration.

Ambassador Francisco C. Madeira  
*FCM*  
 Special Representative of the Chairperson of the  
 African Union Commission (SRCC) for Somalia and Head of AMISOM



H. E. Michael Keating  
 Special Representative of UN Secretary General,  
 SRSG, Mogadishu, Somalia







**Protection of Civilians:  
Building the Foundation for Peace, Security and Human Rights in Somalia**