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## **Report of the Independent Expert on the situation of human rights in Somalia, Bahame Tom Nyanduga\***

### *Summary*

The Independent Expert on the human rights situation in Somalia assumed his mandate in early June 2014, following his appointment by the Human Rights Council on 8 May 2014. As soon as he was appointed, the Independent Expert undertook extensive background research on the prevailing socioeconomic, political, security, humanitarian and human rights situation in Somalia. He also held meetings in Geneva and Nairobi with various stakeholders, including United Nations agencies, permanent missions, international organizations, donor countries, non-governmental organizations and civil society organizations, with whom he exchanged a broad range of ideas and views on his mandate and the human rights situation in Somalia. The present report contains a summary of the meetings held, a brief analysis of the human rights situation and of the emerging issues in Somalia as well as some recommendations.

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\* Late submission.



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## I. Introduction

1. The Independent Expert on the human rights situation in Somalia assumed his mandate in early June 2014, following his appointment by the Human Rights Council on 8 May 2014. The Independent Expert wishes to thank the Council for its confidence in entrusting him with the mandate and also wishes to pay tribute to his predecessor for his work. The Independent Expert pledges to continue working with the Federal Government of Somalia, the subnational authorities, the international community and civil society partners towards enhancing the enjoyment of the basic rights and fundamental freedoms by the people of Somalia, as they yearn to live in a peaceful and democratic society.

2. In view of the reporting obligation under Human Rights Council resolution 24/30, the Independent Expert made preliminary inquiries of the Office of the United Nations High Commissioner for Human Rights, to organize a visit to Somalia in June-July 2014 following his appointment. However, it was not feasible to undertake a visit that would yield any meaningful outcomes, as the holy month of Ramadan was approaching. The Independent Expert also needed to complete the requisite security training prior to travelling to Somalia. As it turned out, Al-Shabaab insurgents increased their attacks on Mogadishu at that time of the year, another factor which would have made such a mission unlikely.

3. In the light of those constraints, the Independent Expert undertook extensive background research on the prevailing socioeconomic, political, security, humanitarian and human rights situation in Somalia. This included reviewing reports by the outgoing independent experts, key Security Council resolutions, Human Rights Council resolutions, in particular Human Rights Council resolution 24/30 on assistance to Somalia in the field of human rights, the reports of the High Commissioner on high-level dialogues on assistance to Somalia in the field of human rights, as well as other reports by various international non-governmental organizations (NGOs) on the human rights situation in Somalia.

4. The Independent Expert also took advantage of his presence from 18 to 19 July in Nairobi, where he was undertaking security training, to meet with various stakeholders including United Nations agencies, donor countries and civil society organizations with which he exchanged a broad range of ideas and views on his mandate and the human rights situation in Somalia. Thereafter, between 21 and 24 July, the Independent Expert held discussions with relevant United Nations agencies, permanent missions, international organizations and international NGOs based in Geneva. The Independent Expert also held extensive discussions with the Permanent Representative of the Federal Republic of Somalia to the United Nations Office and other international organizations in Geneva.

5. The visits to Geneva and Nairobi were undertaken at a time when reports of a sustained Al-Shabaab campaign of terror and violence were impacting on the human rights situation. In recent months, Mogadishu in particular has witnessed targeted assassinations of government officials, members of the Somali Federal Parliament and attacks on vital institutions such as the Parliament and the Villa Somalia, the seat of Government. The attacks caused loss of life to members of the security forces and civilians, including women and children.

6. In spite of the violence, celebrations were held on 1 July 2014 throughout the country to mark the fifty-fourth anniversary of Somalia's independence from colonial rule. The violence carried out by Al-Shabaab did not deter the Somali people from celebrating and exercising their right to freedom of assembly.

## II. Situating the mandate of the Independent Expert

7. The Independent Expert intends to embark on his mandate guided by Human Rights Council resolution 24/30 on assistance to Somalia in the field of human rights and mindful of the recommendations that emanated from the stand-alone high-level interactive dialogue that was held on 24 September 2013. The Independent Expert acknowledges that the human rights situation in Somalia is complex, born out of the conflict which has affected Somalia for over two decades. The Independent Expert also firmly believes that the adoption of the Provisional Constitution of the Federal Republic of Somalia and the establishment of the Federal Government which marks its second year in office in September 2014 are key landmarks setting Somalia on the course for stability and reconciliation.

## III. Summary of the meetings

8. During his meetings in Geneva and Nairobi, the Independent Expert communicated his intention to prioritize support for efforts to reform and strengthen the institutional capacity of the security, rule of law and justice sectors so that those sectors continue to play an important role in the reconciliation and stabilization processes in Somalia.

9. Many of the interlocutors that the Independent Expert met agreed with him that the judiciary had an important role to play in fighting impunity and establishing accountability in Somalia. The question of how ex-Al-Shabaab combatants are handled was raised, with some noting that failure to handle such cases through properly established legal and judicial structures might have serious implications on impunity, accountability and future transitional justice processes. The Independent Expert learned about the challenges and tensions that existed between the formal legal system and Xeer (the customary legal system) and how that posed considerable challenges to the reform programmes within the justice sector. However, it was also noted that the positive aspects within Xeer should be identified and retained, and that it would be necessary to engage with clan elders on how Xeer can be made more human-rights compliant. The fight against impunity requires a linkage to be developed between the formal and customary justice systems. For Somalia to stabilize, it was emphasized that security and justice sector reforms were necessary and urgent.

10. With regard to the security situation, the Independent Expert learned that Al-Shabaab still controlled vast territories, particularly in south central Somalia. With no effective control over large parts of the country, the Federal Government of Somalia was constrained in ensuring human rights for its population. The Independent Expert was informed that, while the African Union Mission in Somalia (AMISOM) working jointly with the Somali National Armed Forces continued to liberate new areas, its capacity was overstretched and it was not able to adequately protect the newly recovered areas. This had not only affected the ability of humanitarian actors to provide supplies and services to the vulnerable populations, but impeded Government and other stakeholders from conducting programmes that would be beneficial to the populations in those regions. The Federal Government needed to be supported in building strong federal institutions, ensuring development and delivering services. A warning was sounded that any perceived vacuum in service delivery risked a relapse into chaos.

11. Regarding the concerns raised about the repatriation of Somali refugees into the country, the Independent Expert was informed that a moratorium had been placed on the implementation of the 10 November 2013 Tripartite Agreement signed between the Government of Kenya, the Federal Government of Somalia and the Office of the United Nations High Commissioner for Refugees (UNHCR) on repatriation of refugees to Somalia. The Independent Expert learned from UNHCR that it had not assisted any

repatriation because the security situation in Somalia did not guarantee voluntary repatriation and that both the Kenyan and Somali Governments were committed to adhering to that principle.

12. In the context of displacement and migration, the Independent Expert heard about the problem of irregular mixed migration flows across Somalia, due to push factors such as conflict and drought. Somalia is both a country of origin and a transit route for migrants. The Independent Expert was informed that human trafficking was a cause for concern. Also highlighted were the challenges facing the Somali nationals repatriated from Saudi Arabia, some of whom had reportedly been severely abused and who, upon return did not have anywhere to go.

13. The plight of internally displaced persons (IDPs) was also raised with the Independent Expert. Police protection within IDP settlements was reported to be lacking or inadequate and as such, reports of sexual violence against women and recruitment of child soldiers continued to be made notwithstanding other violations of their basic rights. In addition, the phenomenon of “gatekeepers” and the practice of diversion of humanitarian assistance continued to negatively affect access of IDPs to such assistance. It was highlighted that internal displacement had brought to the fore the problem of land and property rights, since IDPs continued to face evictions and relocations from lands they occupied either by returning owners or the Government, and returnees wanted to reoccupy their lands and properties which had been occupied by displaced persons.

14. There were also allegations that IDPs were being forcibly returned to their areas of origin which were still under Al-Shabaab control. It was also pointed out that, while necessary, military operations by AMISOM and the Somali National Armed Forces had inevitably caused internal and external displacement of civilian populations and also interfered with the planting season. This combination of factors coupled with high food prices, and late and below normal rains was likely to lead to food shortages. The United Nations Office for the Coordination of Humanitarian Affairs reported to the Independent Expert that early warning indicators showed that food insecurity and malnutrition were likely to increase during the second half of 2014. The worst affected areas in which the food security situation was expected to deteriorate in the months ahead included parts of Bakool, Gedo, Hiraan, Lower Shabelle and Middle Juba regions. Meanwhile, assessments indicated that about 203,000 children under the age of 5 were acutely malnourished while about 2.9 million people in the country needed urgent life-saving and livelihood support. The urgent need for humanitarian assistance was reiterated. As at the end of July 2014 there was still a funding gap of US\$663 million towards the humanitarian needs outlined in the Strategic Response Plan for Somalia.

15. In several meetings, concerns about AMISOM military operations and their impact on civilian populations were brought to the attention of the Independent Expert. It was stated that credible reports indicated that during the March 2014 offensive against Al-Shabaab in Jubaland, transgressions against civilians had been witnessed. The responsibility of AMISOM and other troop-contributing countries to protect civilian populations and adhere to international human rights and humanitarian law was underscored. In this regard, the Independent Expert was encouraged to follow up with AMISOM forces and the Somalia National Armed Forces to ensure that they adhered to human rights principles and norms. The Independent Expert was also urged to encourage AMISOM to establish a credible framework to track casualties, investigate violations, take measures to mitigate violations and hold persons accountable for violations.

16. With respect to the AMISOM engagement in humanitarian assistance, concerns were raised about the tension that was bound to be created between the stabilization and development approach employed by AMISOM in the wake of its military operations and the humanitarian approach based on the neutrality principle applicable to humanitarian

assistance in newly recovered areas. Some interlocutors were of the opinion that AMISOM or other military forces in Somalia should not engage in directly providing humanitarian assistance as this could blur the distinction between military forces and humanitarian actors and undermine the principles of neutrality, impartiality and operational independence which underpin the work of humanitarian actors.

17. The Permanent Representative of Somalia informed the Independent Expert that despite the number of resolutions adopted by the Human Rights Council on Somalia, there had been little improvement in the human rights situation in the country. He emphasized the importance of studying the root causes of the conflict if durable solutions and a sustainable mechanism for peace and reconciliation were to be found. He also stated that implementation of the human rights road map which had been adopted by his Government had stalled and that there was need for the Independent Expert to bring added value to ensure its implementation. The Permanent Representative further encouraged the Independent Expert to support Somalia as it prepared for the second cycle of the universal periodic review.

#### **IV. Emerging issues, analysis and recommendations**

18. A number of issues emerged from the meetings held, which the Independent Expert intends to raise with the authorities of the Federal Government of Somalia and other stakeholders. Those issues touch on the various recommendations made under resolution 24/30 as well as the commitments made by the Federal Government with a view to a better realization of human rights in Somalia.

19. The Independent Expert holds the view that it is necessary to identify and prioritize urgent technical assistance for Somalia. The Independent Expert intends to consult the Federal Government of Somalia and other international and bilateral partners on the need to prioritize implementation of reforms in the justice and security sectors, since they constitute an important component, during the short, medium and long term, for building a sustainable democratic system in Somalia. These sectors are also targeted under the first pillar of the Federal Government's Six Pillar Policy which concerns ensuring full stability and the supremacy of the law and good governance

##### **A. Justice sector reforms**

20. The consequence of an ineffective judicial system is the denial of the right to equality before the law, the equal protection of the law, and access to justice by all, under conditions of equality before an independent judiciary, rights which are guaranteed not only in the Provisional Constitution of the Federal Republic of Somalia, but by international human rights law. The National Strategic Plan for Justice Reform for the period 2013 to 2014 recognizes that there is no universally coherent and functioning judicial system in the country, due to the crisis that has spanned two decades. It recognizes the difficulty of rebuilding the system due to multiple, overlapping, and sometimes contradictory legal systems since pre-independence, namely the secular statutory-based laws, Islamic sharia and Xeer all of which currently apply in an uncoordinated manner.

21. The Independent Expert learned that under the National Strategic Plan for Justice Reform, implementation of reforms would cost an estimated US\$42,495,000. Under the Plan, the Federal Government of Somalia will establish an integrated justice sector reform process in which all relevant actors in the sector will work to: provide speedy and just criminal trials, better access to criminal justice for vulnerable groups, and reduce the number of detainees. The Plan also seeks to establish: a human rights compliant legislative

framework that also promotes accountability, justice sector institutions that are accountable and support the rule of law, timely and equitable access to justice and effective enforcement of laws and rights as well as stronger cooperation between State and non-State institutions.

## **B. Police reforms**

22. The Independent Expert was informed of concerns about the inefficacy of the Somali Police Force in carrying out its protection activities, in particular its investigative functions. The Police Force is a key component of the justice and security sectors and must be prioritized for resource mobilization, technical assistance and capacity-building if Somalia is to make the transition to a culture of respect for the rule of law and the fight against impunity. In February 2013, the Federal Government of Somalia adopted the Somali Police Force Strategic Action Plan for Policing for the period 2013 to 2017. In the Action Plan, the Federal Government recognizes the challenges facing the Police Force and indicates that its comprehensive development programme would require an estimated US\$50 million to bring it up to international standards.

23. That estimate, however, does not include operational costs or the development of the necessary oversight and coordination functions for operational and accountability requirements. Key action points under the Somali Police Force Strategic Action Plan include: conducting joint planning and coordination by all security forces to establish the rule of law in newly liberated areas, strengthening management capabilities and skills of the Somali police leadership, developing human resources and improving infrastructure and equipment. In the Action Plan it is estimated that it would cost between US\$9 million and US\$12 million to re-establish policing in newly liberated areas in the first year.

24. The Independent Expert believes that it is important that international partners identify areas that require support from among the two above-mentioned action plans' activities and objectives, resource, management and skills issues. For instance the Independent Expert was advised that some reforms in the justice sector were being implemented with the support of various partners, such as the United Nations Development Programme (UNDP), the Government of Italy and the International Development Law Organization.

## **C. African Union Mission in Somalia**

25. The Independent Expert notes that a stable Somalia is the key to the realization of all human rights. The Independent Expert commends AMISOM and the Somali National Armed Forces for their sacrifices in deploying troops to fight Al-Shabaab and bring stability to Somalia. However, the Independent Expert is concerned that, in spite of their obligations to respect human rights law and international humanitarian law, reports allege that those troops were responsible for violations, during and after their operations in the newly liberated areas. Military operations have exacerbated internal and external displacement of the civilian population. The Independent Expert was disappointed to learn that as a probable result of improper planning, the recent offensives against Al-Shabaab might have interfered with the planting season, hence contributing to the current food insecurity.

26. The Independent Expert urges AMISOM and the Somali National Armed Forces to comply with human rights and international humanitarian law and practise zero tolerance to sexual exploitation and abuse. All reported violations should be fully investigated and the perpetrators brought to account.

27. The Independent Expert learned that from 31 July to 1 August 2014 AMISOM, in collaboration with the International Committee of the Red Cross, organized a workshop in Nairobi on the implementation of the AMISOM standard operating procedures on the handling of persons detained by AMISOM. The procedures take into account relevant international humanitarian and human rights law. Among issues raised were the practicalities of setting up transfer review boards in cases where detainees challenge a decision to be transferred to the competent Somali authorities, how to deal with issues concerning the non-refoulement of detainees, and to ensure that detainees who are transferred to the Somali authorities do not face capital punishment following a trial that does not respect internationally recognized judicial guarantees. The Independent Expert welcomes these discussions and urges AMISOM to implement the outcomes and recommendations from the meeting with immediate effect.

#### **D. Internally displaced persons**

28. Continued reports of IDPs facing generalized insecurity, lack of access to humanitarian assistance and human rights abuses, including evictions from settlements, rape and sexual violence, remain a concern. The Independent Expert was informed that the Somali National Police Force was unable to provide protection in IDP camps, hence the phenomenon of “gatekeepers” who are self-appointed camp guards from clans within the territory where an IDP camp or settlement is situated.

29. Access to land and property rights have become a sensitive issue in Somalia. In a recent report, the International Organization for Migration stated:

Land ownership is a highly emotive and complex issue in Somalia, particularly in Mogadishu. The rush to access land across the city has sparked several disputes. Much of the premium land is contested as large portions of the land were appropriated during the 1991 civil war and the previous owners have returned to reclaim it. New occupants have resisted vacating the property and the Somali government has yet to create a legal body to handle the issue. Local courts in Mogadishu claim they are overwhelmed by the sheer size and complexity of the cases. Compounding the problem is the lack of reliable documentation that can be used to verify and adjudicate rightful ownership of land given the years of absent central governance and the fact that there is a history of communal land ownership.<sup>1</sup>

30. This raises the pertinent question of the extent and effect of the institutional capacity to address issues related to property rights, in particular questions of access to land by IDPs and refugees, some of whom have suffered displacement more than once. Land is critical for the livelihood of a large number of Somalis many of whom are currently internally displaced. In the absence of a well-established justice system, there is a likelihood of conflicts over land and property ownership emerging as the country moves towards stability.

#### **E. Neutrality and impartiality of humanitarian workers**

31. It will be recalled that during the high-level interactive dialogue on assistance to Somalia in the field of human rights held in September 2013 the Special Representative of the African Union, Chair and Head of AMISOM, informed the Human Rights Council that

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<sup>1</sup> International Organization for Migration, Department of Operations and Emergencies, *Dimension of Crisis on Migration in Somalia*, Working Paper February 2014 (Geneva), p. 25.

AMISOM was providing humanitarian assistance to the civilian population, such as rebuilding schools and health infrastructure and providing medical services and medicines. During his meetings with various interlocutors, the Independent Expert heard concerns about the AMISOM involvement in the delivery of humanitarian assistance, particularly how it was likely to have a negative impact on the humanitarian principles of neutrality and impartiality of humanitarian actors. It was pointed out that humanitarian actors could be put in danger as combatants might not distinguish them from the fighting forces. The matter requires urgent consultations between AMISOM and the humanitarian actors. The Independent Expert urges all parties concerned to work out acceptable operational guidelines in order to ensure that, in the interest of promoting and protecting their human rights, the people of Somalia continue to benefit from, in particular, the right to health, education and a safe environment.

## **F. Humanitarian appeal**

32. The Independent Expert recalls that Somalia experienced a severe famine in 2011 and wishes to add his voice to the appeal by humanitarian agencies to the donor community to meet the current funding gap of US\$663 million in order to avert a humanitarian disaster in Somalia and ensure the basic right to life. The Independent Expert holds the firm view that for long-term and sustainable peace and stability in Somalia, the improvement of the economic well-being of youth, women including girls, through providing education and vocational training, soft loans for small businesses, the establishment of economic activities such as fishing, support to agriculture and the improvement of the livestock sector, are crucial to underpinning the peace that has been established in newly recovered areas. The international community should therefore consider shifting from predominantly providing food relief which enables people to resist shocks and famine, to investing in financing livelihood projects, including vocational training, tailoring, fishing, and other economic activities.

## **G. Protecting freedom of expression**

33. Continuing reports of harassment, intimidation and arbitrary killing of journalists and threats directed at media houses such as the recent directives to one of the private radio stations to close in Jowhar remain a concern for the Independent Expert. He urges all Somalis of different shades of political opinion and creed to respect the rights of journalists and the media to exercise their right to freedom of expression, as a fundamental right and as a critical component towards establishing a stable and democratic society in Somalia. In early July 2014, the Prime Minister of the Federal Government of Somalia, together with the Minister for Information, launched a three-day stakeholders' consultative conference to finalize views and adopt a draft media bill prior to tabling it before Parliament.

34. The Independent Expert sent a letter to the President of the Federal Government of Somalia noting that adoption of a media law was a key step towards the implementation of the human rights road map and encouraged the adoption of a law which guarantees and protects the right to freedom of expression, access to information and existence of free media. The Independent Expert also welcomes initiatives aimed at strengthening the capacity of media practitioners such as the workshop on the draft national gender policy and gender-based violence organized in May 2014 by the AMISOM Gender Unit in collaboration with the Ministry of Women and Human Rights Development and the Ministry of Information.

## **H. Civil society and freedom of association**

35. The Independent Expert is concerned about allegations in some quarters that the Federal Government of Somalia is reticent about the prominent role played by civil society organizations in the delivery of services. The Independent Expert believes that NGOs and other civil society organizations play a critical role in enabling the Government to implement its Six Pillar Policy.

## **I. National human rights commission**

36. The Independent Expert understands that the process of establishing a national human rights commission is ongoing and that consultations on the draft bill are taking place. The Ministry of Women and Human Rights Development has given the matter priority, and will require technical assistance to ensure that the legislation establishing the national human rights commission reflects the Paris Principles.

## **J. Constitutional review**

37. The Independent Expert was informed that the constitutional review process was under way. The United Nations Assistance Mission in Somalia and UNDP have provided technical and financial support to the Ministry of Justice and the Constitution Implementation and Review Commission. In view of the importance, urgency and enormity of the work needed for the adoption of the Constitution in 2015 and the holding of elections in 2016, additional funds and technical assistance are urgently required.

## **K. Respect for the principle of non-refoulement**

38. The Independent Expert heard very strong opposition to the forced return or repatriation of refugees from Kenya. The Independent Expert was assured by UNHCR that any return of refugees, under the 10 November Tripartite Agreement, would be based on voluntariness, dignity and safety; conditions which do not appear to exist in south central Somalia, from where most of the refugees currently in Kenya originate.

## **L. The clan system**

39. The Independent Expert was informed by several interlocutors how deeply the clan structure was embedded in Somali society and of the positive roles those structures played and continued to play during conflict. For instance, some humanitarian actors noted that, with the assistance of the clans, they had been able to deliver humanitarian services and assistance to populations in rural areas including areas controlled by Al-Shabaab. Such positive aspects of the clan structure should be used for the benefit of the Somali population.

## **M. A cursory look at Xeer**

40. The National Strategic Plan for Justice Reform states that the sharia and Xeer systems are deeply rooted in Somali society. The main justice mechanism for the majority of Somalis is Xeer. It is administered by clan elders and covers a variety of issues including: payment of blood money to compensate victims in murder, assault and theft cases; regulation of the use of natural resources, such as grazing and water rights, and

personal law matters of dowry and widow inheritance. It is stated that in recent times the influence of Xeer in some parts of the country has declined owing to previous co-option by pre-crisis governments, the advent of fee-charging by elders administering Xeer, and other factors, such as its decisions being ignored by powerful clans owing to the lack of an enforcement authority.

41. The Independent Expert has reviewed some case studies on the application of Xeer in “Somaliland” and Puntland where a three-tier legal system applies. One study states that Xeer is respected by the secular courts. It is reported that clan elders in “Somaliland” have been engaged in discussing how Xeer could be responsive to women, children and minority rights and to human rights.<sup>2</sup> In Puntland, UNDP organized a conference from 7 to 11 February 2009, at Puntland University, composed of parliamentarians, ministers, government officials, representatives of international organizations, elders, traditional leaders, intellectuals, cultural leaders, youth, women and professionals and members of civil society from across Puntland, to, inter alia, revise, unify and standardize the Xeer/customary law system, and to make a declaration on its role in enhancing peace, and protect human rights and the environment.<sup>3</sup>

42. The traditional leaders at that conference agreed to subject Xeer to a standardized code that protects human rights, especially those of women, children and minorities. They also agreed to submit the Xeer aspects of criminal law to judicial control. Parliament was tasked with adopting the necessary legislation to implement the declaration. The Independent Expert shall be keen to follow up on how the system operates in “Somaliland” and Puntland after these initiatives.

43. The Special Rapporteur on violence against women, its causes and consequences, discusses the role of the customary justice system in her report to the Human Rights Council following her mission to Somalia in December 2011 (A/HRC/20/16/Add.3), and points to some of its shortcomings, such as the rationale of preserving social harmony rather than punishing the individual or upholding the rights of the victim. She observed that the use of material compensation owing to the payment of blood money for homicides, makes families seek justice through that system rather than pursue formal criminal proceedings. She states that Xeer has been found wanting in addressing cases concerning the rights of women, sexual offences or domestic violence against women where the rights of the victims are subjugated to the rights of the clan. In her recommendations, she called on the Government to clarify the relationship and boundaries between customary law and institutions, and the civil and criminal justice system. She stated further that the application and interpretation of sharia should also be in conformity with international human rights and gender equality standards.

44. The Independent Expert similarly believes that it should be possible to ensure that Xeer complies with international human rights law, by ensuring that all the negative aspects of its application are addressed. During his meetings, many interlocutors urged the Independent Expert to encourage human rights awareness among the clan elders. The Independent Expert views this as a possible entry point into addressing Xeer compliance with human rights law.

45. One of the activities of the National Strategic Plan for Justice Reform concerns developing a policy and legal framework for traditional dispute resolution, through

<sup>2</sup> See Joakim Gundel/Somali counterpart: Ahmed A. Omar “Dharbaxo”, *The Predicament of the “Oday”: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia* (Nairobi, Danish Refugee Council and Oxfam Novib, November 2006), pp. 20–21. NB: “Oday” is the Somali word for an elder.

<sup>3</sup> The declaration is available from the UNDP website ([www.undp.org](http://www.undp.org)).

collection, analysis and dissemination of traditional dispute resolution data, and establishing a policy on traditional dispute resolution. It also requires designing and implementing a system for monitoring outcomes and implementing the traditional dispute resolution policy. The estimated cost of this activity is US\$600,000.<sup>4</sup>

46. The Independent Expert believes that that activity is critical to a sustainable judicial system. It responds to the urgent needs of access to justice by all. The challenge shall be to ensure that the policy and legal framework for traditional dispute resolution meets international human rights standards. The Independent Expert holds the view that any support towards this initiative should endeavour to ensure that the policy and its implementation are in line with international human rights standards.

47. The Independent Expert also holds the view that since the Xeer system is understood by the vast majority of Somali people, it could be part of a judicial system, to underpin the peace and reconciliation programme. If this view is acceptable in principle, a thorough study and analysis should be undertaken involving the Federal Government, parliamentarians, the judiciary, politicians, elders, scholars, professionals, both local and from the diaspora, and civil society in general, assisted by reputable institutions knowledgeable in Islamic sharia, Somali culture and history. In this regard, countries which form part of the Organization of Islamic Cooperation such as Mauritania could have experiences to share on how they have applied sharia, statutory law and customary laws. Subsequently a reform process of Xeer could be implemented on a medium to long-term basis.

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<sup>4</sup> See National Strategic Plan for Justice Reform, part 4.2, p. 38.