



# Human rights and security in central and southern Somalia

Joint Danish, Finnish, Norwegian and British fact-finding  
mission to Nairobi, Kenya

7- 21 January 2004



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## Introduction

Since the autumn of 2000 the Danish Immigration Service, United Kingdom (UK) Home Office and the Dutch Ministry of Foreign Affairs have undertaken joint fact-finding missions to Nairobi, Kenya and to Baidoa and Belet Weyne in central Somalia.<sup>1</sup> In addition, the Danish Immigration Service undertook a fact-finding mission to Nairobi, Kenya in January 2003.<sup>2</sup> This mission collected detailed information on security and protection issues for minority populations in southern and central Somalia as well as information regarding the question of forced return of rejected asylum seekers to the same area.

The present report *Human rights and security in central and southern Somalia* is essentially an update of the above-mentioned reports and should not be seen in isolation from these reports as it does not intend to fully cover subjects and issues that have already been dealt with in previous missions. All reports are available on the Danish Immigration Service website at [www.udlst.dk](http://www.udlst.dk). The reports that are in English are also available on the website of the UK Immigration and Nationality Directorate at [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).

The present report is the result of a joint Danish, Finnish, Norwegian and British fact-finding mission to Nairobi, Kenya. The mission took place in Nairobi, Kenya from 7 – 21 January 2004. The delegation consulted a number of United Nations (UN) agencies, International Non-Governmental Organisations (INGOs), Non-Governmental Organisations (NGOs) and representatives of Somali communities as well as Somali individuals residing in Kenya as refugees. For the purpose of identifying and consulting Somali representatives and individuals in Kenya the delegation employed Mohamed Abdi Mamow, Acting Chairman of the Somali human rights organisation, Organisation for Minority Rights and Development, as its consultant and adviser.

The delegation comprised James Bennett, Somali Country Officer, Country Information and Policy Unit, Immigration and Nationality Directorate, Croydon, UK; Grethe Neufeld, Regional Adviser, Strategy and Documentation Department and Anita Fjeldsaeter, Adviser, Asylum Department, both Norwegian Directorate of Immigration, Oslo, Norway; Riku Santaharju, Adviser, Directorate of Immigration, Helsinki, Finland; Eva Singer, Deputy Head of Division, Asylum Division and Jens Weise Olesen, Senior Adviser, Documentation and Research Division, both Danish Immigration Service, Copenhagen, Denmark.

The delegation originally planned to consult human rights organisations in Mogadishu. However, on the basis of consultations with the United Nations Coordination Unit/Office for the Coordination of Humanitarian Affairs (UNCU/OCHA), and United Nations Security Coordinator

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<sup>1</sup> The findings of these missions have been reported in Danish Immigration Service, Home Office and Dutch Ministry of Foreign Affairs, *Report on minority groups in Somalia, Joint British, Danish and Dutch fact-finding mission to Nairobi, Kenya, 17 to 24 September 2000*, Copenhagen, December 2000 and in Danish Immigration Service and Home Office, *Report on political, security and human rights developments in southern and central Somalia, including South West State of Somalia, and Puntland State of Somalia, Joint British – Danish fact-finding mission to Nairobi (Kenya) and Baidoa and Belet Weyne (Somalia), 20 May to 1 June 2002*, Copenhagen, July 2002.

<sup>2</sup> The findings of this mission have been reported in Udlændingestyrelsen (Danish Immigration Service), *Sikkerheds- og beskyttelsesforhold for minoritetsbefolkninger, kvinder og børn i Somalia, Rapport fra fact-finding mission til Nairobi og Eldoret, Kenya, 11. – 25. Januar 2003*, København, marts 2003. (Part in Danish and part in English).

(UNSECOORD), the delegation decided not to visit Mogadishu. The security situation in the city is still extremely fluid and fragile and Mogadishu is still at the highest category of risk according to UNSECOORD's security assessment.

Since the late 1990s, the immigration authorities in the Nordic countries and in the UK have noted a steady increase in the number of Somali asylum seekers that claim to belong to a Somali minority group. Currently, about 50% of the total number of Somali asylum seekers in the Nordic countries and the UK claim to belong to a minority group. The purpose of the delegation's planned visit to Mogadishu was to collect updated information on the human rights and security situation of minority and other vulnerable groups in the city. However, it was stated by a number of those UN agencies and NGO's consulted in Nairobi that the human rights and security situation for minority groups in Somalia has not changed since the above-mentioned report on minority groups was published in December 2000. The same sources made it clear that no improvements regarding security and human rights has taken place in southern and central Somalia during the last four to five years.

The UN agencies, INGOs and NGOs consulted emphasised that it is difficult to monitor human rights violations in southern and central Somalia. Only very few, often very small, local NGOs are reporting human rights related issues to organisations outside Somalia. Secondly, reporting independently on human rights violations in certain areas of southern and central Somalia can be an extremely difficult task as there are no authorities to protect members of such organisations from abuses. The UN is present in very few locations in southern and central Somalia and no systematic monitoring of human rights violations take place in the region. One INGO that is involved in promoting human rights and reporting violations stated that the reports received by the organisation was only "the tip of the iceberg". None of the UN agencies, INGOs and NGOs consulted by the delegation was able to give more detailed information on human rights violations in southern and central Somalia.

A number of sources requested that their statements to the delegation should be anonymised in the text of the report. This request has been complied with, and in the text those sources are cited in the style they specified.

The delegation wishes to express its gratitude towards those agencies, organisations and individuals that contributed to the information in this report. The delegation would like to express special thanks to staff at UNCU/OCHA who helped to arrange many of the delegation's meetings in Nairobi. The delegation would also like to thank Simone Wolken, Representative, United Nations High Commissioner for Refugees (UNHCR), Branch Office Somalia for providing comments on the initial draft of the mission report.

At the end of the mission, a first draft of the delegation's report was presented to Wolken. She expressed her approval of the overall content of the draft. The comments offered by Wolken have been incorporated into the report.

## 1 Political developments

In its Consolidated Appeals Process (CAP), Somalia 2003 the UN states that “Twelve years after the collapse of the central government, and more than a dozen failed peace initiatives later, the situation in Somalia remained extremely complex. On the political front, hopes were high in 2003 that Somali leaders seeking to cobble together a national state out of the former Republic’s fluid mix of a political, economic and clan interest groups would bear fruit. But, despite some notable progress, a cloud of uncertainty continued to hang over the process at the year’s end, with the commitment of several key leaders to the agreement still in question and many of the intractable issues yet to be resolved. To date, this peace process, like all those before it, has not succeeded in attracting the participation of the secessionist northwest regions of “Somaliland”. The possible deployment of African Union (AU) military observers to oversee a much flouted 2002 cease-fire also remained in question, in part due to indications that if deployed they would be met with aggression, especially in some areas of southern and central Somalia. Meanwhile, arms continued to flow into the country, according to a panel of experts commissioned by the UN Security Council to investigate violations of arms embargo. Their initial report found evidence that weapons, equipment, militia training and financial support is being given regularly by neighbouring states and others to Somali factions and that the factions have purchased weapons on the open market. Although the panel has recommended an enhanced sanction regime and the establishment of monitoring mechanisms, there are as yet no clear indications of the level of international support for these plans.”<sup>3</sup>

### 1.1 Peace negotiations in Kenya

The current talks, sponsored by the Intergovernmental Authority on Development (IGAD), are the 14<sup>th</sup> to take place since 1991. Negotiations began in October 2002 in the western Kenyan town of Eldoret, but were relocated to Nairobi in February 2003.<sup>4</sup> Though the mandate of the three-year-old Transitional National Government (TNG) expired on 13 August 2003, “President” Abdiqassim Salad Hassan announced that his government would not stand down until a new government and parliament had been formed.<sup>5</sup> Since September 2003 the talks have been dogged by wrangles over issues such as the interim transitional federal charter, the number of participants in the talks and the selection of future parliamentarians.<sup>6</sup>

Discussions on four different versions of the draft charter continued from 5 July 2003 until 15 September 2003, and the IGAD Technical Committee, with the support of international observers strived to address the concerns raised by some Somali leaders. The chairman of the talks, Bethwell Kiplagat circulated the fourth version of the draft charter on 19 July 2003. It raised the status of the Arabic language and affirmed the sovereignty and territorial integrity of Somalia. A fifth version of

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<sup>3</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 5.

<sup>4</sup> IRIN, *Somalia: Peace talks in jeopardy following announcement of breakthrough*, 16 September 2003.

<sup>5</sup> BBC, *Trouble with Somali talks* 5 November 2003.

<sup>6</sup> IRIN, *Somalia: More twists in peace process*, 2 October 2003.

the draft charter circulated on 1 August 2003 removed the call on the future transitional federal government to enter into immediate negotiations with “Somaliland”.<sup>7</sup>

The fifth version of the draft charter was debated in the plenary, article by article, by those who continued to attend the Conference until mid-August 2003. Kiplagat commissioned a group of Somali lawyers, who were also members of the plenary, to rearrange the text of the draft charter, taking into account the issues debated in the plenary. A Kenyan constitutional expert chaired the work of the group and prepared the sixth and seventh versions of the draft charter. However, differences remained on both the content and the modalities for the implementation of federalism during the transitional period.<sup>8</sup>

At a press conference on 9 September 2003, Somali leaders and warlords, including “President” Abdiqassim Salad Hassan, Musse Sudi (“Yallahow”), United Somali Congress/Somali Salvation Alliance (USC/SSA), Osman Hassan Ali (“Atto”), USC/Somali National Alliance (USC/SNA) Mohamed Ibrahim Habsade, Rahanweyn Resistance Army (RRA) and Colonel Arre Adan Shire, Juba Valley Alliance (JVA), who had been meeting in Mogadishu, expressed dissatisfaction with the proceedings at the Conference and stated that in order to restore “Somali ownership” of the process, the chairmanship of the Conference should be transferred to a Somali citizen. They were of the view that the drafting of the charter should be done anew by the Somalis themselves, possibly assisted by foreign experts, and that reconciliation among the Somali clans that had experienced a setback as a result of the Conference should be realized before any genuine peace process could take place.<sup>9</sup>

It was reported that on 13 September 2003 Somali leaders at the Conference had reached an accord on how to address the issue of the component units of the Somali Republic in the draft charter, according to which the Somali Republic would comprise the transitional federal government, state governments, regional administrations and district administrations.<sup>10</sup>

On 15 September 2003, Kenyan officials, including Kiplagat, met with “President” Abdiqassim and other leaders to invite them to a session of the plenary scheduled for that morning to discuss the draft charter. Upon the request of “President” Abdiqassim and other leaders, Kenyan officials announced that the plenary would be postponed for two to three days to allow the just returned leaders to study the draft charter. However, the Somali leaders who had reached the 13 September 2003 accord rejected any postponement of the plenary. The IGAD Technical Committee then presented a compromise in which the plenary would meet but adoption of the draft charter would wait until the group from Mogadishu was able to join. Rejecting the proposed compromise, those leaders adopted the draft charter on the same day under the chairmanship of Kiplagat, who announced that phase III of the Conference, to select members of Parliament, would begin the following day. “President” Abdiqassim and those who had returned with him to Nairobi rejected the outcome. He declared that he and the other leaders had gone back to Nairobi in good faith, but had not been given an opportunity to express their views or even time to read the seventh version of the

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<sup>7</sup> UN Security Council, *Report of the Secretary General on the situation in Somalia*, 13 October 2003, p. 2.

<sup>8</sup> *Ibid.* p. 3.

<sup>9</sup> *Ibid.* p. 3.

<sup>10</sup> *Ibid.* p. 3.

draft charter. The peace talks broke up at this point, without agreement amongst the factions on the draft charter.<sup>11</sup>

On 2 November the vice chairman of the Somali National Salvation Council (SNSC), a new alliance of 12 factions, vowed to boycott any further talks in Nairobi. The negotiations deteriorated further on 30 November 2003 when the TNG's foreign minister Yusuf Deg stated that his government would not support the outcome of the reconciliation conference in Kenya.<sup>12</sup> In December 2003 it was announced that around 40 officials taking part in the peace talks would attend a 10-day 'retreat' in order to speed up the reconciliation process.<sup>13</sup> Initially scheduled to take place on 20 November 2003 in Mombasa, it was rescheduled for 9 December 2003 only to be postponed on a further two occasions before the end of December 2003.<sup>14</sup>

The leaders' retreat was finally launched at the Safari Park Hotel in Nairobi on 9 January 2004 by the Ugandan president, Yoweri Museveni, and the Kenyan president, Mwai Kibaki. The ceremony was a precursor to the start of formal discussions that took place between 12 –20 January 2004. The absence of 4 of the 24 signatories to the Eldoret declaration; Musse Sudi "Yalahow" (USC/SSA), Col. Abdirizak Issack Bihi, Somali National Front (SNF) Osman Hassan Ali "Atto", (USC/SNA) and Col. Arre Adan Shire (JVA), and also four leaders from the Mbagathi group; Mohamed Dhere (Jowhar administration), Mohamud Sayyid (SNF-Gedo), Abdiaziz Sheikh Yussuf, Southern Somali National Movement (SSNM) and Sheikh Adan Madobe, (RRA), at the launch was viewed with some concern by observers who considered that a major agreement without their presence was not possible. Nevertheless, in spite of the continued delays, and deterioration of relations between faction leaders, to this point the resumption of the retreat was seen by many Somalis and international observers as the last chance to salvage the peace process.<sup>15</sup>

The return of two of the eight absent leaders, Mohamud Sayyid (SNF-Gedo) and Abdiaziz Sheikh Yussuf (SSNM), to the talks on 16 January 2004 was a boost to the continuing negotiations. Their colleagues from the Mbagathi group were reported to be joining the discussions, while the four signatories to the Eldoret declaration had still yet to attend the ongoing talks, though were represented by a delegation. While the retreat was taking place increased tension was reported in several parts of Somalia – mostly in central regions; Galgadud and Galkayo, where clashes between rival militias have increased. A confrontation between two rival clans in Elbuur, Hiran resulted in 21 deaths.<sup>16</sup> Meanwhile the escalation in the confrontation between the authorities in Somaliland

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<sup>11</sup> UN Security Council, *Report of the Security General on the situation in Somalia*, 13 October 2003, p. 3.

<sup>12</sup> Somaliweyn website (via BBC Monitoring), *Interim government reiterates rejection of peace talks in Kenya*, 30 November 2003.

<sup>13</sup> Daily Nation (Nairobi), *Little trust, suspicions among factions said main obstacle to Somali peace talks*, 2 December 2003.

<sup>14</sup> IRIN, *Somalia: Leaders' retreat again postponed*, 16 December 2003.

<sup>15</sup> NOVIB Somalia, *Somalia National Reconciliation Conference. Weekly Sitrep No. 45*. Covering 3 - 9 January 2004 and IRIN, *Somalia: Peace talks get new lease of life*, 12 January 2003.

<sup>16</sup> NOVIB Somalia, *Somalia National Reconciliation Conference. Weekly Sitrep No. 46*. Covering 10 - 16 January 2004.

and Puntland over disputed border territory placed further emphasis on the brokering of a substantial agreement at the talks.<sup>17</sup>

### 1.2 Agreement on new Transitional Charter

On 26 January 2004, IGAD confirmed a breakthrough in negotiations. It was reported that the various faction leaders had resolved some of the most contentious issues that had plagued the negotiations, with the expectancy that the deliberations would soon move to a final phase; a final agreement on the issue of power sharing.<sup>18</sup>

According to a representative from the British High Commission in Nairobi present at the peace negotiations "...the negotiations have been something of a success and we appear to have brokered a reconciling agreement among the Southern Leaders of the TNG, the SNSC, the Group of Eight (G8), the Somali Reconciliation and Restoration Council (SRRC) and civil society. The basis for that agreement is a set of amendments to a draft Transitional Charter, passed in controversial circumstances in September 2003 in the absence of the TNG and SNSC leadership.... The Kenyan Foreign Minister Musyoka essentially handled the negotiations, after a two-day visit by President Museveni of Uganda.... Museveni referred to the slow genocide brought on Somalia by the years of fighting which had resulted in loss of health care and education as well as destruction of the infrastructure and the economy. He struck the right note which had them hugging in the aisles and despite subterranean rumbles by the less significant delegates, the main men have worked well."

All participants, including the TNG, on 28 January 2004 duly signed this agreement.<sup>19</sup>

In what is likely to be a lengthy and contentious process, the amended agreement outlines provision for a new parliament that will be made up of 275 members, rather than 350, with traditional elders involved in the selection process. Each of the four major clans will select 61 Members of Parliament (MPs), and a coalition of small clans will select 31. Once a parliament is eventually formed it will select a President who in turn will nominate a Prime Minister to form a government.<sup>20</sup> Following the recognition of the agreement by UN Secretary-General Kofi Annan,<sup>21</sup> TNG leader "President" Abdiqassim Salad Hassan stated that he was ready to move aside in anticipation of the appointment of a new president and Prime Minister.<sup>22</sup>

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<sup>17</sup> BBC, *Fighting 'threatens Somali talks'*, 19 January 2004.

<sup>18</sup> IRIN, *Somalia: Progress reported as leaders agree on contentious issues*, 26 January 2004.

<sup>19</sup> IRIN, *Somalia: Groups sign compromise deal*, 29 January 2004.

<sup>20</sup> BBC, *Somalis sign up for parliament*, 29 January 2004.

<sup>21</sup> UN News, *Annan hails agreement on Transitional charter for Somalia*, 30 January 2004.

<sup>22</sup> BBC, *Somali leader 'ready to quit'*, 30 January 2004.

## 2 Overall security and human rights situation

Representatives of several UN agencies, INGOs and NGOs emphasised that great care needed to be taken when gathering information relating to the security situation and human rights violations in southern and central Somalia. The representatives consulted by the delegation referred to difficulties concerning the accuracy and reliability of information.

It was suggested by a representative of an international organisation present in southern Somalia that the overall security and human rights situation in Somalia had deteriorated to an extent not seen for some years. The representative explained that the present situation, where a greater number of high-level security incidents have been reported, was more reminiscent of the immediate post-civil war period. The representative referred to the serious security incidents and human rights violations, including revenge killings on civilians taking place in Baidoa and also to a number of cases of rape (including children), abductions and savage killings of women reported to have taken place in Mogadishu recently.

Stephen Cooper, Country Director, Adventist Development and Relief Agency (ADRA) did not support the view that the overall security situation in southern and central Somalia had deteriorated during 2003. He emphasised that the security situation in Somali is cyclical. Cooper added that the vast majority of civilians in southern and central Somalia are not affected by the various localised clan-conflicts that occur in the regions.

Cooper stated that in general Somalis would be safe within his or her own sub-clan's area as long as the sub-clan is not involved in any conflict. It was added that civilians are not normally targeted by armed clan conflicts and very often they will know either how to escape or how to avoid being involved in such conflicts.

### 2.1 Security

Wolken stated that the fluid security situation and general trend in extra-judicial killings in the southern and central regions remained unchanged during the year, a trend that has been constant since 1999. She was not able to provide any further details about the numbers of killings in 2003.

Wolken provided a brief overview of trends in the human rights and security situation in the southern and central regions of Somalia in 2003. It was stressed that as the UNHCR's presence in these regions is limited to one field office in Mogadishu, it was only possible to provide limited details of events and trends observed during the year.

Wolken considered that the security situation in Somalia generally had deteriorated during 2003. She explained that this situation was caused by the time that had elapsed and because the culture of violence and weapons, and disrespect for life have become more prevalent in Somalia. It was added that the security situation in Somalia is being continuously monitored and that the overall level of violence in 2003 was high. Incidents of kidnappings and looting have increased, as many people looked to increase their resource base. The weaker clans and the minority groups are now worse off. This increase in violence and the deterioration of security in Somalia has affected not only Somali civilians, but also local UN staff. Wolken emphasised the increasing level of violence and the deteriorating human rights situation throughout Somalia.

According to the CAP “Somalia remained a largely dangerous, unstable and non-permissive environment for aid agencies and beneficiaries in 2003. Most of the southern and central regions of the country continued to exhibit chronic symptoms of complex emergencies: little to no authoritative government, high levels of criminality, sporadic armed conflict, lack of economic recovery, endemic humanitarian needs, minimal health care and education, and population displacement. By mid-year, the prolonged absence of key leaders at the peace talks, combined with the efforts by the leaders to consolidate their areas of influence during power sharing negotiations, ensured that violence and armed conflict continued throughout much of the south, in particular in Mogadishu, Baidoa and the Middle Shabelle and Gedo regions. While pockets of stability exist in the south, they remain susceptible to sudden setbacks due to armed clashes and threats, making them a difficult and largely inhospitable environment for sustainable aid interventions. At the writing of this Appeal, aid agencies could safely operate in only a handful of places in southern and central Somalia. Relatively good rains in this exceptionally flood and drought prone country allowed for overall improved food security, but conflict and lack of access in key areas of southern and central Somalia - including parts of central Mudug and Galgudud regions, Baidoa and Burhabaka town in Bay region, Buale and Jilib towns in the Lower and Middle Juba regions, and Luuq and Gabarhaley towns in Gedo Region - prevented many farmers from harvesting their crops, resulting in high malnutrition rates in many areas.”<sup>23</sup>

A representative of an international source present in southern Somalia indicated that banditry is the main problem in southern Somalia at present. Armed conflict is institutionalised in the region. It was added that conflict could restart at any time in any region in southern Somalia.

The representative stated that the main type of conflict takes the form of localised violence. The overall security situation in the second half of 2002 was at the worst level seen since 1995. The first half of 2003 was a relatively quiet period, however the situation deteriorated again in the second half of the year. It was noted that in 2003 security was manageable in the sense that the outbreaks of conflict could be anticipated.

The representative described two types of violence that characterised the incidents of conflict in the southern regions: *traditional* and *political*:

- *Traditional* violence. This has a beginning and an end. The rules are codified in *Sharia* and customary law. There is a means of mediation by way of the clan elders. This type of violence will always be present in Somalia.
- *Political* violence is based specifically on conflict between militias. The traditional mechanisms to resolve conflict do not work in this context. The representative believed that the more serious human rights violations take place in the context of political violence, rather than traditional violence.

The representative suggested that the individual incidents of militia-based conflicts in southern and central Somalia in 2003 were not large scale, but that the combined number of victims of these numerous, low-level incidents of conflict was considerable.

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<sup>23</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 5.

Cooper considered that the various clan-based conflicts throughout southern and central Somalia were as much about political influence as access to resources and explained that it is really not possible to distinguish clearly between political and economic power struggles. The most important priority for the clans is to secure and increase their power base. He was of the opinion that this is the situation in all regions in southern and central Somalia.

Jesper Mørch, Representative, United Nations Children's Fund (UNICEF) stated that the current security situation in Somalia has not been as difficult since 1995 when United Nations Operation in Somalia (UNOSOM) left. It was pointed out that the security situation has deteriorated despite the agreement on cessation of hostilities in October 2002.

Mørch added that there are an increasing number of security problems for UN flights and UN staff throughout central and southern Somalia.

Regarding the military capability of the Islamic organisation Al-Itihad in Somalia Mørch explained that according to UK and United States (US) intelligence sources this has probably been underestimated but that this does not mean that they have any great military capability. Their visible presence in Somalia remains connected to providing social services to the local communities.

### **2.2 Human rights monitoring**

In order to gather information on human rights violations in southern central Somalia, the delegation planned to consult the UN Office of the High Commissioner for Human Rights (OHCHR). For a number of years OHCHR has recorded human rights incidents throughout Somalia. However, at the time of the mission to Nairobi the position of the human rights adviser was vacant. As a consequence, the office was not operational with the result that reporting of human rights incidents has not been undertaken in any systematic way since June 2003. In light of this, the delegation consulted a number of INGOs, NGOs and UN agencies in Nairobi that are concerned with human rights issues in southern and central Somalia. It was emphasised by these organisations that they only had a limited capacity to monitor human rights violations in Somalia.

A representative of an INGO that deals specifically with the promotion of human rights in Somalia emphasised that the organisation does not have the capacity to monitor the human rights situation in a systematic way. It was highlighted that the INGO receives only a very limited number of reported violations from six NGOs based in southern and central regions. The INGO does not receive any reports from the regions of Gedo and Hiran. The documented cases recorded by the INGO were estimated to be less than 10% of the total number of violations in southern and central Somalia.

Mørch explained that today there is no reliable way of gathering systematic information from NGOs operating inside Somalia and everything happens in a piecemeal fashion.

According to Netherlands Organisation for International Development Cooperation's (NOVIB) annual report, 2003 "...Monitoring human rights violations in a collapsed state is a major challenge. Most Somalis under the age of 30 have no knowledge of democratic structures, and grew up in the culture of impunity. Investigation and documentation of human rights abuses is difficult, given the harsh terrain and isolation of the country... Technically, the protection and promotion of the rights

of the citizen of a country is the responsibility of the state, therefore a major constraint to human rights observance and protection is the absence of a legitimate government or state institutions.”<sup>24</sup>

### 2.3 Human rights

According to Professor Kenneth Menkhaus<sup>25</sup> efforts to protect and promote human rights are pursued in a unique context in Somalia,

“First, the prolonged absence of a functional recognized central government creates a unique challenge, in that the standard responsible political authority for upholding human rights law is absent from the scene. Ironically, the state in Somalia up to 1991 had been the principal source of violation of human rights. In the absence of a national government, de facto local authorities are held accountable for the human rights in the areas they control...”

“Second, local customary law (*xeer*) – which is the principal source of conflict management, conflict prevention, and justice in Somalia – occasionally conflicts with universal human rights conventions. Physical protection from assault, rape, or murder, for instance, is afforded to those who enjoy membership in a sufficiently powerful clan, not the population at large via an impartial judicial system.”

“Third, Somalia’s extraordinary levels of poverty and underdevelopment constitute a human right challenge in their own right.”<sup>26</sup>

Regarding the human rights situation in Somalia the CAP states, “Throughout the country, human rights violations remained endemic. These include murder, looting and destruction of property, child soldiering, kidnapping, discrimination against minorities, torture, unlawful arrest and detention, and denial of due process by local authorities.”<sup>27</sup>

According to Menkhaus, “Violations of human rights and humanitarian law have shifted considerably since 1991-92, the height of the civil war in Somalia. In early years of the crisis, egregious human rights violations occurred in a wide range of areas... Since then important changes have occurred in Somalia in the last few years with regard to human rights and humanitarian law. Incidents of massacres, rape, and ethnic cleansing are rare (recent examples in Baidoa are the exception rather than the rule). A gradual reintegration of communities has occurred in many areas, including Mogadishu; and there have been no instances of militias intentionally provoking famine to divert food aid. Food aid itself continues to pour into the country, but is less frequently targeted by looters. But one very negative trend has been an increase in attacks on and assassinations of national and international staff members of international relief agencies. Four international aid

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<sup>24</sup> NOVIB Somalia, *Somalia: A Human Rights Challenge*, Nairobi, April 2003. p. 6.

<sup>25</sup> Professor Menkhaus has published widely on developments in Somalia and worked as a consultant for the UN. The following is an abstract of his recent paper *Warlords and Landlords: Non-State Actors and Humanitarian Norms in Somalia* (Draft), Paper presented at the “Curbing Human Rights Violations by Armed Groups” Conference, Liu Institute for Global Issues, University of British Columbia, Canada, 14-15 November, Davidson College 2003.

<sup>26</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003, p. 3-4.

<sup>27</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 5.

workers were killed in Somalia in October 2003 alone, making Somalia one of the most dangerous sites for humanitarian work in the world. Likewise, national and international aid workers are now much more vulnerable to kidnapping than was common in the past. In an odd way, Somalia is somewhat safer today for average Somalis than in 1991-92, but much less safe for aid workers than a decade ago.<sup>28</sup>

In his inventory of human rights violations in Somalia, Menkhaus distinguishes between war crimes, criminal violations of human rights and violations committed by local authorities.<sup>29</sup> The following is an abstract of Menkhaus' inventory:

### 2.3.1 War crimes

Armed conflicts continue to produce some of the worst human rights abuses in Somalia. In the early 1990s, these crimes reached horrific levels. Today, human rights violations in armed conflict are less egregious but still serious.

- ***Targeting of civilians – arbitrary or unlawful deprivation of life***

The problem is especially acute in south central Somalia, where the Isma'il Jumale Human Rights Centre documented 530 civilian deaths in armed conflicts between July 2002 and June 2003.<sup>30</sup> Most of these occurred in conflicts in Baidoa, Middle Shabelle, Mogadishu, Puntland, and south Mudug. Recent pastoral conflicts in south Mudug, for example, have claimed an unusually high number of lives for a dispute over rangeland – 43 dead and 90 injured – most of who were civilians.

Likewise, intra-factional fighting in Baidoa in mid-2002 claimed the lives of over 100 people, wounding 200 more. Militias make no distinction between combatants and civilians, simply targeting all members of an opposing clan or sub-clan.

Entire villages are sometimes attacked simply on the basis of clan or ethnic affiliation. Militias also are often guilty of indiscriminate firing of weapons, including mortars and other heavy weaponry, into neighbourhoods where civilians are the principal casualties. Whether intentional or unintentional, the deaths of hundreds of civilians each year in armed clashes constitutes an enduring human right crisis.<sup>31</sup>

- ***Rape***

Though not as endemic as in the period 1991-1992, rape continues to be used as a weapon against enemy clans or sub-clans during armed clashes. In June 2003, for instance, clashes

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<sup>28</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003, p. 10.

<sup>29</sup> Ibid. p. 3-4.

<sup>30</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 5 and Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003, p. 4.

<sup>31</sup> Ibid. p. 4-5.

between the militia of rival RRA leaders Shatigaduud and Habsade degenerated into a series of reprisals involving abduction and rape of young girls.<sup>32</sup>

- ***Looting and destruction of property***

Villages and occasionally neighbourhoods are often intentionally sacked and burned as part of armed clashes. Armed conflicts in the Medina district of Mogadishu in 2003, between the militias of Omar Finnish and Musa Sude, culminated in one of the most severe episodes of urban looting in several years. Clashes between the Aulihan and Bartirre clans in Middle Juba in 2003 also led to entire villages being burned. Such pillaging exacerbates household food insecurity and can contribute indirectly to needless deaths due to malnutrition and disease.<sup>33</sup>

- ***Illegal occupation***

Clan militias have come to occupy important pieces of real estate in Mogadishu and parts of south Somalia. In contravention of the Geneva conventions, these valuable lands are being settled by the victorious clans at the expense of weaker clans, who have been pushed off their land, evicted from their houses, or in some instances conscripted as forced labour on the land they once owned. This has been a particular problem in parts of the Lower Shabelle and throughout the Juba valley. In several locations such as Kismayo and Mogadishu occupying militia also restrict the movement of IDPs in camps, which the militia control. IDPs may not return home, as the militia uses the IDPs as bait for foreign assistance, which they then divert.<sup>34</sup>

- ***Child soldiering***

Militias routinely recruit boys as young as 12 to fight. In January 2003, the UN Security Council adopted a resolution, which called on parties to conflicts in several countries, including Somalia, to provide information on steps they have taken to end recruitment of child soldiers.<sup>35</sup>

- ***Impunity***

In almost no instance have commanders and local authorities taken action against the militias responsible for these human rights violations. This includes instances of abuses by members of the militias of self-declared regional or national authorities such as the TNG and Puntland.<sup>36</sup>

### 2.3.2 Criminal violations of human rights

The distinction between militia and criminal activity in Somalia is very difficult to make, as warfare itself is an enterprise for looting and as armed conflict is increasingly linked to retaliation against criminal acts. Still, there are numerous instances in which crimes committed by “civilians” – be

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<sup>32</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003, p. 5.

<sup>33</sup> Ibid. p. 5.

<sup>34</sup> Ibid. p. 5.

<sup>35</sup> Ibid. p. 6.

<sup>36</sup> Ibid. p. 6.

they criminals or unpaid militia engaging in criminal acts – are generating serious human rights crises. Certain types of crimes, which qualify as human rights violations, such as murder, generally are addressed via blood payment or *sharia* courts. But some violations go almost entirely unpunished. In the case of the crimes listed below, perpetrators are rarely held accountable by local authorities:

- ***Kidnapping***

Kidnapping for ransom has become one of the most serious crimes in Mogadishu, affecting both rich and poor. A total of 185 abductions were recorded between July 2002 and June 2003. In some instances, the kidnapping is conducted by militias known to be associated with local warlords, who reportedly profit from the enterprise. In Puntland, a related problem has been piracy, in which foreign crews are held for ransom by militia equipped with armed speedboats. Those militia are in some instances linked to the Puntland administration.

- ***Rape***

In addition to the use of rape as a weapon in wartime, criminal gangs and roaming militias are committing this crime with near impunity. They target women in socially weak and vulnerable groups, which pose little or no threat of retaliation. This has been a particular human rights crisis for female Internally Displaced Persons (IDPs) in Mogadishu, Kismayo, and Bosaso, and is also a major crisis for female Somali refugees in the Kenyan refugee camps at Dabaad, where they are targeted by Somali bandits and, to a lesser extent, Kenyan police. UNHCR documented 100 cases of rape at Dabaab in a six-month period of 2002 but estimated the actual number was ten times higher.<sup>37</sup>

- ***Discrimination against minorities***

Though presented as a homogeneous society, Somalia features a number of low-status and minority groups which are frequently subject to abuse and exploitation. The Somali Bantu population is now the best known of these minorities; representing about 5% of the total population, the Bantu are prone to theft of their land, rape, forced labour, and a range of discriminatory behaviour. Minority and low status groups such as the Bantu are afforded little protection under customary clan law and have virtually no recourse to a system of justice when victimized. Those who do bring complaints to clan, legal, or religious authorities place themselves at great risk of intimidation and assault.<sup>38</sup> A report on human rights abuses by the Mogadishu-based Isma'il Jumale Human Rights Centre in 2003 concludes that most of the victims were from minority groups “who have no clan affiliations as protection.”<sup>39</sup>

### **2.3.3 Violations committed by local authorities**

Where some level of formal administration has been established – most notably in Somaliland, to a lesser extent in Puntland, the TNG, the Juba Valley Authority, and elsewhere – those local,

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<sup>37</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003, p. 6.

<sup>38</sup> *Ibid.* p. 7.

<sup>39</sup> *Ibid.* p. 9.

regional, or national administrations are themselves sometimes the source of human rights violations. In 2002-2003, some of these polities have been accused by human rights groups of several kinds of human rights infractions:

- ***Arbitrary or unlawful deprivation of life***

Police or public security forces paid by and affiliated with local administrations have in a number of cases used lethal force against civilians without just cause. In the Mogadishu area, the TNG security forces have been accused of using lethal force to stop vehicles transporting civilians.<sup>40</sup>

- ***Arbitrary arrest and detention***

All three of the largest formal administrations in Somalia – Somaliland, Puntland, and the TNG – have been accused of using arrests and detention as a weapon against political opponents. Journalists in Mogadishu, Hargeisa, and Puntland have been detained and imprisoned for stories critical of local authorities.

- ***Restrictions on civil liberties***

The print and radio media are very active throughout urban areas of Somalia, but have come under periodic harassment from local authorities. The most common form of government interference is arrest of journalists and editors linked to unfavourable stories. Freedom of assembly is not guaranteed throughout the country; in Mogadishu the TNG banned all demonstrations though with little effect.<sup>41</sup>

Mørch stated that human rights violations are just as predominant today as ever before. At the same time, one can note a growth in grassroots organisations especially in major towns. The general population seems to have grown tired of the conflicts and are not so afraid to take part in demonstrations against the insecure situation. Women seem to speak out more openly against their husbands and their sons taking part in the militias at a very young age. Although civil society does not have any power over the warlords, awareness is slowly increasing with the assistance of the local media, e.g. HornAfrik, which is a television station covering the Horn of Africa. Mørch emphasised that the grassroots' organisations are still few with limited resources and working under very difficult circumstances.

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<sup>40</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003, p. 7.

<sup>41</sup> Ibid. p. 8.

### 3 Security and human rights by region

#### 3.1 Southern Mudug and Galgadud

UN sources stated that there is virtually no international presence in the area and therefore information is very scarce. A few UN staff have been there as part of a polio project. The situation is characterised by serious insecurity and three to four ongoing low-level disputes.

The first, and most serious, conflict is between the Dir and the Marehan clans in Galgadud. Since spring 2003, 100-150 people have been killed as part of revenge killings caused by the killing of a Marehan clan member. Heavy weapons have been used and trenches have been dug, which is unusual in a Somali setting and therefore indicates the seriousness of the fighting. According to the source, the conflict might be seen as a battle for survival for the Dir clan since the Dir has a limited presence in the region.

A representative of an international source present in southern Somalia referred to the conflict in Galgadud as an example of how a traditional conflict had recently turned into a violent political conflict. According to the UN Integrated Regional Information Network (IRIN), the fighting was triggered by revenge killing for the death in May 2002 of a Marehan businessman. However, IRIN added that the conflict could also be attributed to disagreement over water and grazing rights and by December 2003 the conflicts had flared up into a fully-fledged land war.<sup>42</sup>

Regarding the recent fighting in Galgadud region, Cooper explained that the conflicts are to a large degree confined to clashes between armed militias and armed persons. Civilians are generally not involved. However, the conflict has resulted in civilians being forced to flee to safer areas. It was noted that such displacement is often to a nearby area and normally it does not last for long.

Secondly, there is a dispute concerning the control of water in the area south of Dhusa Mareeb between the Duduble and the Murusade, and thirdly there is a conflict among the Habr Gedir clans Sa'ad and Suleiman along the coastline. These conflicts are low level.

#### 3.2 Hiran and Middle Shabelle

The UN sources explained that further south towards Belet Weyne there is no administration and that the *Sharia* court has run out of money. Belet Weyne is an important trading point between North and South, which has grown for the last couple of years and is still expanding due to the trade and the remittances from the Somali diaspora. There is a split between the Hawiye and the Galjeel clans, which has caused tension in the western part of Belet Weyne.

The villages Bulu-Burti and Jalalaqsi are insecure with militias operating and banditry in the area, and the areas between Belet Weyne and Mogadishu are insecure with many freelance militias operating.

Cooper confirmed that Hiran region is relatively stable. However, since the death of *Ugas* Khalif in 2001 a power struggle between the Hawadle elders, who support *Ugas* Abdirahman, and the

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<sup>42</sup> IRIN, *Somalia: Over 50 killed in fighting in central region*, 17 November 2003 and IRIN, *Somalia: Over 60 killed as fighting resumes in central region*, 17 December 2003.

Governor of Hiran has created tensions in the region. Civilians have been victims of clashes between the competing factions, but most often this was due to them getting caught in crossfire and not because they were deliberately targeted. Regarding the traditional conflict between the Hawadle and the Galjael clans in Belet Weyne, Cooper explained that this conflict is also an internal Galjael conflict. The Galjael conflict is confined to the west bank of the Shabelle River in Belet Weyne.

Cooper confirmed that institutionalised *Sharia* courts do not exist in southern and central Somalia today. However, the *Sharia* court in Belet Weyne (Hiran region) has recently re-established itself. The presence of the *Sharia* court and its militia in Belet Weyne have added to the improvement of the security situation in Hiran, but Cooper added that there is competition between the *Sharia* militia and the clan-based Hawadle militia in the area. The local business community supports the Hawadle militia. Cooper emphasised that this explains why a *Sharia* court can only be as strong as the local clan militia (and the business community) will allow.

According to the UN sources Jowhar seems to have stabilised during the last year. Mohammed Dheere is in control of the areas down to Balad and towards Mahaday at the coast.

As a recent example of discrimination suffered by minority groups (the Bantu communities) in Middle Shabelle Dr. Osman Kamula Mofi, Chairman and Founder of Somali International Organisation for Human Rights, human rights lawyer in Somalia, and lawyer for Somali minority refugees in Kenya referred to the disarmament of some Bantu groups that had previously armed themselves in order to protect their communities against Abgal militias in Jowhar district in Middle Shabelle region. However, two to three months ago, the two Abgal-warlords Farah Wehleye Addo "Sindikoo" and Mohamed Dhereh decided to confiscate their weapons.

### 3.3 Benadir (Mogadishu)

Wolken stated that the threat to security in Mogadishu remains constant and that it was not possible to identify stable areas in the city. Wolken was unable to state how many killings took place during the year. However, it was emphasised that no improvement of the situation took place during 2003.

UN sources stated that the Mogadishu area is split between the SRRC and Muse Sude, there is no single authority and the TNG hardly controls any part of the city. In spite of this Mogadishu is an expanding town. Mørch referred to the situation in Mogadishu in a military context, and compared to other regions, ironically is rather peaceful.

According to the information given to the delegation by Wolken, there have been serious human rights violations in Mogadishu towards women and children. These violations included rape of children, savage killing and mutilation of women. Abdi Mamow believed that these acts of violence, which are against normal Somali culture, are taking place because militias are trying to provoke conflicts in order that the security situation may deteriorate, a situation that the militias are gaining from.

Wolken highlighted a notable increase in the number of reported brutal human rights violations against women and particularly children in Mogadishu in the 2<sup>nd</sup> quarter of 2003. It was estimated that 20 brutal killings, and instances of child rape, were reported to have occurred during the period. It was stressed that these incidents were unusual given that women and children are not overtly targeted in clan conflict. Wolken was unable to attribute these incidents to a specific cause, but speculated that the continuing breakdown in traditional communities and social mechanisms may

explain why these groups may not have been able to rely on traditional social structures that had previously guaranteed their protection.

When commenting on the killings of women and children in Mogadishu (and in Baidoa) in the second half of 2003, Mørch suggested that such incidents may have happened before but that they have not been reported. He suggested that these incidents may be seen as an expression of the total corruption of the perpetrators because of the longstanding conflict combining the abuse of *Qat*, the total lack of education for the militia members and the fact that they themselves have been subjected to extreme forms of violence. In connection with this, Wolken explained that most sources have reported that they had not seen these kinds of killings of women and rape of children before.

Regarding the recent killings of women and rape of children, an international NGO could confirm that women and children had become a new target of human rights violations in Mogadishu. The source added that there is a tendency that women in general have become much more cautious about their movements. Many women dare not to go to the market or other public places especially those belonging to minority groups or minor clans. It was emphasised that one's security in Mogadishu and in Somalia is directly related to the strength of one's clan. The lack of any civil administration and the absence of a police force leave civilians at the mercy of clan-based militias.

The international NGO stated that the overall security situation in Mogadishu is characterised by banditry and clan clashes. However, the source added that during the past six months no major clan fighting had taken place in Mogadishu. In general the security situation in Mogadishu did not deteriorated considerably during 2003.

A representative of an international source present in southern Somalia noted the high number of crimes related to banditry and kidnappings of Somalis (including children) in Mogadishu. The representative stated that incidents of kidnappings occurred in Mogadishu rather than the rest of the region. The representative added, however, that Mogadishu was quite peaceful during 2003. According to the CAP, kidnappings in Mogadishu in 2003 reached such alarming proportions that the public took to the streets to protest.<sup>43</sup>

Wolken estimated that around 180-200 persons are either kidnapped or in captivity in Mogadishu at any given time. She stated that this figure included local UN staff. In 2003 all UN agencies in Somalia reported a total of five national staff members kidnapped. According to an international NGO, kidnapping is still a major problem, especially in Mogadishu where doctors, business people, school children of wealthy parents and all other persons believed to be in possession of or have access to money are at risk of being kidnapped.

Abdi Mamow stated that there is no justice system in Mogadishu. The only law that is working in the city is the "jungle law". There are no courts in the city and members of minority groups would have no chance of a fair trial even if courts existed. The TNG in Mogadishu controls only a small area in the southern part of the city and citizens of Mogadishu are unable to get any help from the TNG-administration.

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<sup>43</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 5.

Regarding the position of minor clans and minority groups in Mogadishu, an international NGO explained that these groups' security and human rights position had not changed to the better or worse during 2003. They are still to be considered vulnerable, as they generally have no legal rights against members of major clans. Even if a court or Council of Elders admitted a member of a minority group his right to *Diya*-compensation, it is likely the minority member or his family would never receive such compensation.

A representative of an international organisation in Somalia explained that the organisation had worked in Mogadishu for the past 10 years and that it is based both in North and South Mogadishu. It is very difficult to move between the different areas of Mogadishu, which are totally separated from each other. As an example, the representative mentioned that there are five checkpoints between the airport of Mogadishu and the northern part of the city. In the past two years, there have been more kidnappings - even kidnappings of persons belonging to the same sub-clan if it is known that they receive money from the diaspora. The representative had no information about whether the persons who are kidnapped actually risk being killed but the source suggested that it probably does happen.

The representative explained that when the faction leaders are in Nairobi for the peace negotiations, it seems as if the militias try to make their own business deals which makes the situation in Mogadishu more "messy". Especially in the north of the city you do not see many people in the streets because of the general insecurity. The TNG does not control anything but acts like just another faction leader. The representative estimated that although many people arrive in Mogadishu from the rest of the country, more people are trying to leave the city. Young people either try to work for an NGO or a militia. They generally have no respect for the elders.

### 3.4 Lower Shabelle

An international NGO explained that in early November 2003 a self-appointed regional administration was established in Lower Shabelle region. The new administration was established after clashes between the new administration and the TNG in some areas of the region.

According to a statement dated 3 November 2003 from the new administration to UN agencies, the European Commission's (EC) Somalia Unit and NGO's in the area, the Lower Shabelle Regional Administration "carried out a security reinforcement operation on the 25 August 2003 in which a total of 45 road blocks erected by armed bandits and freelance militia were swept away and cleared from the main roads, junctions and villages from KM-60 to Jilib district of Middle Juba region in a distance of 310 kms. These armed bandits and freelance militia have used to indiscriminately kill civilians, passengers, loot civilian buses, trucks and their properties and collect extorted/forced money from the civilian transport... The Lower Shabelle regional administration is an independent authority which has its own recently established regional, district, and village level authority together with the required law reinforcement agencies including the police, judiciary, and prison systems that are also functioning now". In spite of alleged clashes between the new Lower Shabelle administration and the TNG, the new administration stated that it "is also having both political and military cooperation with the Somali Transitional National Government based in Mogadishu". The statement from the new administration was signed Yusuf Mohamed Siyad (Indha-Adde), Chairman

of the Lower Shabelle Regional Administration.<sup>44</sup> The international NGO added that Indha-Adde is closely affiliated with the SRRC.

According to the above-mentioned international NGO, the overall security situation in Lower Shabelle has improved since the establishment of the Lower Shabelle regional administration in the autumn of 2003. It was emphasised that the removal of the numerous roadblocks in the region was an important step to improved security. However, the source added that at the end of November 2003 clashes took place about 15 kms from Merka towards Mogadishu. The clashes were between the new administration's own militia, and militias controlled by businessmen with connections to the business community in Mogadishu.

According to the UN sources, Lower Shabelle has no single authority but is fairly quiet apart from a few land disputes. The new strong man Indha-Adde, who belongs to the Habr Gedir (sub-clan Ayr), has taken over control of Merka and the uppermost part of Lower Shabelle. This has provided some stability, which has been broken to some extent by a so-called "banana conflict" in November 2003. According to IRIN, the fighting was an intra-Habr Gedir conflict involving the sub-clans of Ayr and Sa'ad. The conflict erupted when Indha-Adde imposed taxes on goods imported through Merka port. Sa'ad businessmen opposed the taxes and sent in their militia and took over a checkpoint near Merka. As a result of the fighting at least eight people were killed and over 10 wounded.<sup>45</sup> There is also a conflict between the Bimaal residents in Merka and the occupiers belonging to the Habr Gedir sub-clan Ayr.

Mørch explained that the UN has no access to Merka. According to the above-mentioned international NGO the present absence of UN in Lower Shabelle is a consequence of the clashes that took place in the autumn of 2003.

Dr. Mofi stated that the security and human rights situation in Lower Shabelle is very serious. As an example of the minorities' lack of legal rights to their own property in Lower Shabelle, Dr. Mofi referred to a recent incident in Qoryoley district. In November 2003, militias controlled by "President" Abdiqassim's brother-in-law and his nephew took control of an area belonging to the Digil clans (Tunni and Jido). The militia was equipped with four technicals and consisted of an alliance of Abgal and Habr Gedir militias. The militia occupied 1.300 hectares of Tunni and Jido land. The Tunni and Jido are still living in the area but were forced to work for Habr Gedir and Abgal members that occupied their lands. Besides trying to gain political control over minority groups and using them as forced labour, the Habr Gedir and the Abgal clans are also attempting to gain control over the resources of smaller clans and minority groups in areas that are not traditional Habr Gedir- or Abgal-areas. Dr. Mofi emphasised that those Tunni and Jido agriculturalists that had lost their land to the Abgal and Habr Gedir have no access to courts or other legal institutions that could secure that they regain their land.

Dr. Mofi explained that the company LIBSOMA was responsible for the joint Habr Gedir and Abgal militia's actions in Lower Shabelle. LIBSOMA is a Libyan-Somali company that exports

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<sup>44</sup> Letter from Yusuf Mohamed Siyad (Indha-Adde), Chairman, Lower Shabelle Regional Administration to UN agencies, EU Somalia Unit and NGOs, dated 3 November 2003.

<sup>45</sup> IRIN, *Somalia: "Banana war" leaves eight dead*, 24 November 2003.

bananas from the region. An embargo against export of bananas from Lower Shabelle was imposed in 1995 and the embargo is still in force. The embargo was introduced as it became evident that banana production in the area to a large extent was based on forced labour.

### 3.5 Bay and Bakool

The UN sources stated that Baidoa is still insecure because of the leadership conflict within the RRA, which broke out in the summer of 2002. It has developed into a clan dispute, which furthermore reflects the national peace process with support for the different sides. There has been a ceasefire in Baidoa for the past 2-3 months, but there has been no real reconciliation since the Leysan clan has not participated in the negotiations. The UN sources also said that the clans might be using the ceasefire period to acquire new weapons. Mines have been used killing several people and the UN sources stated that women and young girls have also been targeted. The UN sources had no explanation to offer for this development. Furthermore it was mentioned that farmers belonging to the Hareen clan had been driven from their land.

When commenting on the killings of women and children in Baidoa (and in Mogadishu) in the second half of 2003, Mørch suggested that such incidents may have happened before but that they have not been reported. He added that these incidents may be seen as an expression of the total corruption of the perpetrators because of the longstanding conflict combining the abuse of *Qat*, the total lack of education for the militia members and the fact that they themselves have been subjected to extreme forms of violence. In connection with this Wolken explained that most sources have reported that they had not seen these kinds of killings of women and rape of children before.

Mørch stated that UNICEF pulled out of Baidoa in July 2002 because of the outbreak of hostilities, which are still ongoing. He stated that it is impossible for UNICEF to return to Baidoa at the present time. The UNICEF representative stated that there is no solution in sight in Baidoa. Wolken and McLean confirmed the deteriorating security situation in Baidoa.

Cooper explained that even though the conflicts in Baidoa have been ongoing since July 2002, and that Baidoa is still disputed many areas and districts of Bay and Bakool have not been affected by the conflict. The majority of the civilians in a number of districts throughout Bay and Bakool never experienced armed clashes and these areas have remained relatively stable. It was added that as long as clan members stay within their own sub-clan's traditional area they are considered safe.

According to the CAP the targeting of young girls featured in clan disputes in Baidoa in July 2003.<sup>46</sup> In late January the UN Resident and Humanitarian Co-ordinator for Somalia Maxwell Gaylard condemned the recent killings of women and children that took place in the autumn of 2003, including the killing in December 2003 of 10 women in the vicinity of Baidoa. Gaylard stated that "this is a very disturbing trend and one that has shocked the communities themselves for both the unusual brutality and the intentional targeting of women and children." The killings were apparently in revenge for earlier killings. The atrocity was reportedly committed by a militia group of one of the two major sub-clans of the area.<sup>47</sup>

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<sup>46</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 5.

<sup>47</sup> IRIN, *Somalia: UN condemns killings of women and children*, 27 January 2004.

### 3.6 Gedo

The UN sources explained that though a ceasefire was signed after the 2002 intra-Marehan fighting, Gedo remains a very difficult region since no single group or clan is in charge and the region is very poor. Furthermore it receives hardly any support from the outside.

A representative of an international source present in southern Somalia stated that Gedo region is still split between rival factions. The representative had no fresh information but believed the situation to be more or less quiet although he emphasised that the fighting can resume any time.

Cooper was of the opinion that the overall security situation in Gedo may have deteriorated during 2003, especially at the end of the year. However, he described that the security situation is cyclical in Gedo, and underlined that this is the case throughout southern and central Somalia.

A representative of an international NGO explained that the organisation pulled out of Gedo region in late 2003, following the killing of one of its national staff members. The incident was related to clan fighting between the Garre and the Marehan clans. It was added that in addition to the Garre-Marehan conflict, there is intra-clan conflict within the Marehan clans. The Marehan conflict has resulted in some civilians being targeted. However, the representative did not believe that the security situation in Gedo region was worse than in the other regions of southern and central Somalia, except for Mogadishu.

### 3.7 Middle and Lower Juba (Kismayo)

According to the UN sources Middle Juba has been rather quiet, however the source was uncertain about the present situation. The source confirmed that the fighting in December 2002 in Buale between the Ogaden clans resulted in displacement of Bantu farmers. The situation in Afmadow was reportedly calm and the Lower Juba further south towards the Kenyan border has been rather quiet.

The UN sources stated that there is the strong likelihood of further conflict in Kismayo. The JVA controls Kismayo. Marehan now owns most of the land and properties in the city. This could lead to a conflict when, and if, the former owners reclaim their properties.

Mørch described the situation in Kismayo as “very dangerous”. However, the JVA appeared to have gained control and had initiated disarmament campaigns.

A representative of an international source present in southern Somalia stated that there is still tension in Kismayo. The JVA claim that they provide security in Kismayo. It was stated that the JVA oversees the management of resources only. There is still no formal administration in the city.

The representative added that all groups have weaponry. It was stated that the Bantus were armed and that the Shekhal clan has established its own militia. The representative stated that the weaker groups either get protection from more powerful groups or try to arm themselves.

A UN supported study on livelihoods and protection in Kismayo states that “When human rights violations take place, in the absence of any properly functioning mechanisms for the rule of law, individuals from ‘minority’ or weak clans in Kismayo often have little recourse to systems of

justice – whether through customary law (xeer) or religious law (sharia). The subtleties of political, economic and social discrimination remain largely hidden to outsiders”.<sup>48</sup>

According to the above-mentioned study “most observers agree that Kismayo will be one of the last places in Somalia to experience peace. This is attributable, among other things, to the large number of clans (between 18 and 20), and competition for its relatively rich natural resources and the strategic and economically important seaport and airport. Although the rudimentary JVA administration in place in Kismayo has provided order in the town (though some interviewees suggested that the JVA had at most 80% control of the militia) this seems to be devised primarily to regulate the benefits of occupation and to prevent in-fighting within the dominant Marehan and Habr Gedir clan duopoly.”<sup>49</sup>

The study found that “the stability of Kismayo depends upon a fragile mix of political, militia and business actors that share a common interest – generating and using income from the “taxation” of port and airport activities. The control of these resources is highly politicised (clan-based) and highly contested.

For all its problems, the urban centre of Kismayo remains attractive for those seeking employment and income opportunities.”<sup>50</sup>

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<sup>48</sup> Simon Narbeth and Calum McLean, *Livelihoods and protection, displacement and vulnerable communities in Kismayo, southern Somalia*, Overseas Development Institute (ODI), Humanitarian Practice Network (NPA), Network Paper, Number 44, London, December 2003, p. 13.

<sup>49</sup> Ibid. p. 12.

<sup>50</sup> Ibid. p. 12.

## 4 Asylum related issues

During the preparations of the joint mission a number of specific asylum related issues was raised by some of the participating countries. Some of these issues may have general interest to a larger audience. The delegation decided to include the following issues in its joint report.

### 4.1 Availability of justice systems

According to a survey on the availability of justice systems in Somalia by the World Bank and the United Nations Development Programme (UNDP), community based justice systems carried out by clan/community elders were reported to be available by 94% of urban and 97.8% of rural and nomadic households, followed by council of elders (85% for urban and 86.4% for rural and nomadic) and Islamic *Sharia* (47.8% of urban and 37.4% of rural and nomadic). 35% of urban households and 25.6% of non-urban households reported availability of the judiciary system.<sup>51</sup>

According to Menkhaus, human rights monitors have expressed deep concern over the state of judicial processes throughout Somalia. These concerns include criticism of the multiplicity of contradictory laws on which various judicial authorities claim to base rulings; the lack of legal training of many judges; and the lack of legal authority and accountability of local *Sharia* courts, which administer justice in many areas. Human rights groups have been especially vocal about the use of inhumane punishments, including amputation, flogging, and execution, by *Sharia* courts. In practice, these *Sharia* punishments have decreased in frequency in Somalia, but still occasionally occur.<sup>52</sup>

#### 4.1.1 Customary law and Islamic *Sharia*

Jan Owe Wilback, Programme Officer, Legal & Human Rights, DIAKONIA, Regional East Africa Office provided an overview of the justice system in operation in Puntland and referred to a recent research project between DIAKONIA and Puntland Development Research Centre (PDRC) “Harmonization of Somali Legal Traditions: Customary Law, *Sharia* and Secular Law”.<sup>53</sup> It was added that another study regarding customary law (*Xeer*) would soon be published by DIAKONIA and PDRC. This study covers various aspects of the codification of *Xeer* and it might be influential on future legislative work and legislation in Somalia.

Wilback highlighted the different application of customary law, *Sharia* and secular law in Puntland and explained that customary law has become extensively applied throughout the region. He also emphasised that though the systems referred to in the above-mentioned study are based in Puntland the same principles may apply to all regions of Somalia. According to PDRC due to the absence of any functioning legal system in the country, there has been a reversion to customary practices but

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<sup>51</sup> The World Bank & United Nations Development Programme (UNDP), *Socio-Economic Survey 2002 Somalia, Report No. 1, Somalia Watching Brief*, Nairobi 2003, p. 51.

<sup>52</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003 p. 8.

<sup>53</sup> The research project has published the book *Pastoral Justice, A Participatory Action Research Project on Harmonization of Somali Legal Traditions: Customary Law, Sharia and Secular Law*, Garowe 2002.

also an extension of Islamic jurisprudence. In the legal vacuum left by the collapse of the state, many Somalis have looked to Islam as the main source of law and order.<sup>54</sup>

Wilback stated that in rural areas customary law is the only practice that enables any kind of justice system to operate, i.e. a justice system where clan elders judge on cases. It was emphasised that the only persons able to settle disputes on a regular basis are clan elders.

Dr. Mofi explained that presently there are no functioning *Sharia* or conventional courts in southern and central Somalia. In Wardigley district of Mogadishu, there is a *Sharia* court called Hararyale, but this court exists only by name. It does not have any functions at all. The only judicial system that functions in central and southern Somalia is the traditional Councils of Elders and the minority groups' own councils have no negotiating power against the major clans' councils. They have no right to *Diya* compensation (blood compensation).

### 4.1.1.1 *Diya* system

Wilback stated that the *Diya*-paying group is the base of clan power in Somalia. *Diya* compensation is not a punishment of the individual as such but a moral, collective responsibility for the clan to bear when one of its members has committed a crime. Referring to the above-mentioned study, Wilback explained that customary law is generally applied throughout Somalia and that in many places customary law and the councils of elders are the only legal systems that exist.

A representative of an international organisation present in southern Somalia explained that the traditional *Diya* compensation system has broken down due to the fact that the militias operate out of the control of the clan elders. Even if the system were still functioning in its traditional manner, it would not be able to cope with the sheer scale of the crimes and abuses currently occurring. It was added that this was the situation faced by all clans. However, in some cases, the *Diya* system might still operate.

Cooper stated that individuals in possession of money, or in high profile positions, are much more at risk of being looted, kidnapped or even killed in Somalia as a result of revenge killings. It was explained that prominent clan members often are targeted in revenge killings, as the killing of an ordinary clan member does not fulfill the offended clan's search for blood compensation (*Diya*). As mentioned above, in cases of persistent, high level conflict the *Diya* compensation system often does not function properly and the clans seek their own revenge by targeting prominent members of the opposing clan.

### 4.1.1.2 *Islamic Sharia*

Wilback stated that institutionalised *Sharia* courts function in name only and are convened on an *ad hoc* basis, when and where an appropriate family dispute arises. Today there are no *Sharia* court buildings as such.

It was explained that the existing *Sharia* courts are smaller *ad hoc* courts and they are normally applied in cases of family disputes. *Sharia* courts also apply civil law procedures in appropriate cases, and where it does not conflict with *Sharia* law. According to Wilback, the so-called secular

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<sup>54</sup> PDRC, *Pastoral Justice, A Participatory Action Research Project on Harmonization of Somali Legal Traditions: Customary Law, Sharia and Secular Law*, Garowe 2002, p. 7.

court in Garowe applies *Sharia* when appropriate. However the court also applies penal and customary codes as long as it does not conflict with *Sharia*.

Wilback indicated that the type of judicial system applied to a particular case depends on which system most favours that particular type of case. The decision on which system to apply is taken by representatives of the dominant clan in the area. It was noted that in cases where pastoralists are involved, customary law tends to be applied. It was further added that pastoralists consider *Sharia* law to be something imposed on their way of life. It was suggested that these people do not understand the system and consider it to be a system for “rich people”, i.e. people in urban areas. In recent years *Sharia* has become more important in parts of Somalia but its application is limited by the proportion of non-Arab in the country that are not familiar with *Sharia*.

#### 4.1.2 Women’s access to justice systems

According to the above-mentioned study on justice systems in Somalia, “...customary law (xeer) denies women rights that Sharia sanctions for them. These include free choice of spouse, and rights to property ownership... Sharia is against any type of forced marriage... the Xeer penalty for rape is much milder than both Sharia and secular law.”<sup>55</sup>

Wilback explained that *Sharia* courts are used particularly in the cases brought by women. He indicated that *Sharia* law is more in favour of women than customary law. Under customary law, women are not allowed to take part in decision-making procedures and women are expected to retain a domestic role only, i.e. maintaining the home and raising children. Under customary law, a man’s value is twice that of a woman. Wilback also stated that according to customary law, a woman’s father decides who she is to marry. This is not the case in *Sharia* law. He also added that domestic abuse suffered by a woman is tolerated under customary law, and that rape, though considered a crime, is not often subject to punishment. This is not the case in *Sharia* law.

#### 4.1.3 Minorities’ access to justice systems

Dr. Mofi stated that members of minority groups in Somalia have no access to a judicial system, whether it is *Sharia* courts or traditional customary law (*Diya* compensation system). Firstly, there are no conventional courts or *Sharia* courts, and secondly the minority groups have no legal rights, as they are not part of the *Diya* system. Dr. Mofi explained that if a member of a minority group kills a member of one of the major clans the murderer will lose his property and he may also be killed. The proverb *loma ooye* (meaning “no one cries for him”) reflects the lack of justice in such a situation.

It was stated that even during the Siad Barre’s regime, members of minority groups were judicially discriminated against, but that presently the situation was considerably worse. Dr. Mofi emphasised that the right to property, and the right to defend oneself against killings, physical abuse and other human rights abuses, does not exist in Somalia for members of minority groups.

Dr. Mofi strongly emphasised that it is only members of the majority clans that have access to judicial assistance. The minority groups are not part of the traditional *Diya*-system and they do not

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<sup>55</sup> PDRC, *Pastoral Justice: A Participatory Action Research Project on Harmonization of Somali Legal Traditions: Customary Law, Sharia and Secular Law*, Garowe 2002, pp. 89, 92 and 93.

receive any compensation. The only way they can hope to achieve some degree of protection is to try to establish an alliance with a dominant clan in their area. This can occur through intermarriage between a member of a minority group and a member of a major clan or when a minority group submits to be dominated by a 'noble' clan. Dr. Mofi did not believe that there is any possibility that a court in Somalia would secure a fair trial for a member of a minority group. As an example of this, Dr. Mofi explained that in 2002 the chairman of the *Sharia* court in Merka judged in favour of a Bantu in a trial against a Habr Gedir. The chairman himself was affiliated to the minority clan Bimaal (a Dir clan), and as a consequence of his judgement was dismissed on the order of a Habr Gedir warlord in Merka.

Wilback emphasised that those members of minority groups and even clans that are in a minority in a particular area have no right to justice. As an example, Wilback referred to the Harti clans in Kismayo. The Harti are Darod clans from North Eastern Somalia and they constitute a minority clan community in Kismayo. In legal disputes with other clans the Harti are dependent on the *Diya* support they may get from their fellow clan members in the North East.

### 4.1.4 Human rights and justice

According to Menkhaus, "local customary law (*xeer*) – which is the principal source of conflict management, conflict prevention, and justice in Somalia – occasionally conflicts with universal human rights conventions. Physical protection from assault, rape, or murder, for instance, is afforded to those who enjoy membership in a sufficiently powerful clan, not to the population at large via an impartial judicial system. Women's rights in customary law and Islamic jurisprudence are also not upheld to a level consistent with international human rights standards. Crimes, which violate human rights, are addressed not as a matter of individual culpability, but rather as a matter of collective responsibility, with blood payments from the accused's *diya* or blood compensation group negotiated with the family of the victim. Where blood compensation negotiations break down, the traditional response is a revenge attack, an act which can precipitate a cycle of violence and which targets innocent victims. In addition, increased reliance on *sharia* courts as a complement to traditional customs has introduced processes and punishments, which violate international human rights norms and standards. The tension between universal human rights codes and some Somali customary practices is an insufficiently appreciated problem."<sup>56</sup>

### 4.2 Double jeopardy for crimes committed by Somali refugees in Europe

Dr. Mofi explained that double jeopardy does not take place in Somalia today, as there are no functioning legal system or courts. Somalis who have committed crimes such as murder or rape in Europe, and have served their sentence, will not be subjected to a further punishment if they are deported to Somalia.

Dr. Ibrahim Hassan Isak, a lawyer from Baidoa, indicated that without a Government or authority to check the activities of someone returning to Somalia from abroad, it is not possible for a regional court or local community to know whether that person has committed a crime, let alone served a punishment, in another country. It is therefore not possible for any authority or court in Somalia to punish such a person again.

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<sup>56</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003 p. 3-4.

An international NGO confirmed that double jeopardy does not exist in central and southern Somalia. This is the case if the crime was committed against a non-Somali in a European country. It is irrelevant whether the crime is murder, rape, drug abuse or and trafficking or other violations of the penal code of a certain country or whether the crime was committed against a government employee, a civil servant or an ordinary citizen. It is only when a crime has been committed against another Somali in a European country that the offender might face problems that may pertain to a form of double jeopardy upon his or her return to Somalia. It was explained that such a problem is related to the question of blood compensation or customary law between the clans involved. It is most likely that the elders of the clans concerned will deal with such a case in the traditional way, i.e. according to customary law and blood compensation.

Wolken emphasised that whether a person would be at risk of double jeopardy upon his or her return to Somalia is dependent on what crime that person has committed. She explained that the question of double jeopardy is only relevant as long as the crime committed was between Somalis themselves.

### 4.3 Recruitment to militias

A representative of an international source present in southern Somalia was not entirely categorical on the subject of forced recruitment to militias. It was stated that joining one's own clan militia is considered an obligation. In this instance, recruitment is not forced as such. Persons may join a militia that is not affiliated to their own clan. The representative suggested that militias recruit children down to the age of between 14 and 16. Furthermore it was added that the elders have no authority over freelance militias.

When asked whether forced recruitment to militias takes place, Wolken replied, "What is defined by 'forced' when 10 year old boys are recruited"? Wolken stated that intra-clan recruitment by dominant clans into militias was normal. She suggested that the combination of warlords being unable to pay their militia and battle fatigue might have increased the prevalence of forced recruitment. In addition, Wolken emphasised that poverty is one of the driving forces behind recruitment to militias.

Abdi Mamow stated that there are three categories of militias in Somalia (including in Mogadishu). He described these as:

- *Militias supported and controlled by the business community.* These militias' agenda is to protect businesses at the markets.
- *Militias controlled by the warlords.* These militias have their own base and roadblocks in the areas they control.
- *Freelance militias.* These groups operate in no-mans-land areas where they loot and establish their own roadblocks. Minorities are targeted and persecuted by these militias. Abdi Mamow called it a kind of ethnic cleansing basing this on the fact that weaker clans within the clan system are not targeted to the same extent.

All the three categories of militias are solely clan based. By way of an example, Abdi Mamow referred to "President" Abdiqassim's own attempt to build a new police force and military in

Mogadishu from his own Abgal clan. Abdi Mamow suggested that no militia recruit fighters from other clans than their own.

It was explained that there is a close relationship between the above-mentioned militia categories. If a certain clan is involved in a conflict, all militias affiliated to the clan will be mobilised. Militias protecting the marketplaces are expected to support their clan in a conflict situation. Because of this, the markets are often closed due to security problems. In certain clan conflicts freelance militias are expected to support their own clan.

Abdi Mamow stressed that there is no forced recruitment to the militias among the Somali clans. He explained that each family of a clan is expected to support their clan by providing fighters to the militia, or by paying a certain amount of money, or simply donating a gun to the militia. It is totally unlikely that members of Somali clans would refuse to join their own clan militia. However, in such cases the evader would not be able to rely on his clan's support and protection. It was added that being a militia fighter is a full time occupation.

It was considered that each and every militia fighter has committed crimes in Somalia, including the killing of civilians, rape and looting. He stated that every member of a militia carrying a gun must either kill or be killed. Young Somali men seeking asylum in Europe may be former militia fighters as this would often be the only way they could have obtained sufficient funds to finance their travel to Europe.

According to Abdi Mamow, the Somali militias forcibly recruit members of the minority clans. However, they are not used as fighters, rather they are forced to work for the militias and they often will have to perform the domestic and menial roles. Abdi Mamow strongly emphasised that members of minority clans are not permitted to even have or carry a gun because the militias would consider them to be unreliable.

Abdiaziz Omar Daad, former Minister of Reconciliation (1986-1990), accredited as Darod (Marehan) representative to the present Somali peace negotiations in Kenya, stated that he had not seen militias recruiting members of other clans. He however stated that he knew of girls being recruited to militias in Mogadishu and surroundings. He said that families, although not approving of this, do not have any influence over their children.

Omar Daad did not believe that militias would force members of their own clan to participate. He also did not believe that a militia would train someone from a minority group to become member of a militia.

A representative of an international organisation was aware of a militia operating in Mogadishu, that consist of young men from different clans. These militias are made up of freelancers that join voluntarily. The representative had no information about women participating in militias in Mogadishu.

### **4.4 Forced labour**

Wolken indicated that members of minority groups are subject to forced labour by majority clans in the southern and central regions of Somalia. She was unable to quantify the prevalence of the practice.

According to Abdi Mamow, members of the minority clans are often forced to work for the majority clans. Members of major clans are often dependent on the skills possessed by the members of minority clans when it comes to farming. They are promised either food or money for their work, however usually no payment is given. Minority clans are not in a position to object to this practice. If they refuse to work, or if they demand payment, they can be killed.

#### 4.5 Female Genital Mutilation (FGM)

According to Menkhaus, many local religious authorities have publicly stated that the practice has no basis in the Koran and should be stopped. However, no efforts by local authorities have been taken to prevent this human rights abuse.<sup>57</sup>

Gary P. Jones, Country Director, Somalia, Kenya & Djibouti, Norwegian People's Aid (NPA), Horn of Africa Programme stated that, until recently, no NGOs worked with FGM in Somalia. Presently there are several NGOs that they are addressing the issue of FGM.

Jones explained that NPA is one of a small number of NGO's in Somalia, which attempts to educate people with the purpose of eradicating FGM. NPA seeks to change the culture of FGM by educating young girls. However, Jones explained that it is very difficult for girls in primary schools to complete their education due to them being kept at home to undertake domestic duties. It was suggested that boarding schools might be the only way to enable girls to focus on their education without their parents interfering.

According to Jones, FGM is still the norm in Somalia. The main mode of the FGM is the 'pharaonic' form, but still many would claim that they only practice 'Sunna' which is a lighter version of FGM. Jones stated that this was done from a business point of view, explaining that people promoting 'Sunna' would receive financial support. In reality, however, girls are circumcised in the same manner as usual, i.e. 'Pharaonic' style. Circumcision is when a girl is between four and seven years of age.

Nearly 100% of women are affected by FGM in Somalia. Jones did not expect that any significant change would emerge in this respect during the next 15 years, even though some modest progress has been made in some areas. It was emphasised that it is extremely difficult to change the attitude towards FGM, and providing education and information to young girls might be the only way to make any impact on the issue. Jones expressed the hope that the next generation of girls will not have to experience FGM and emphasised that today religious leaders speak more openly about FGM than before. It is extremely important to make the religious leaders realise that the holy Koran does not require FGM. FGM is in fact contrary to the holy Koran, and Jones explained that to harm a Muslim is the same as harming the Prophet Mohammed, which in turn harms Allah, according to the Koran.

According to Jones, another opportunity that may change the attitude towards FGM could be the increasing number of Somali women returning from abroad with a better awareness of women's rights and the harmfulness of FGM. However, so far this has not been very successful due to the

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<sup>57</sup> Kenneth Menkhaus, *Warlords and Landlords: Non-state Actors and Humanitarian norms in Somalia*, 14-15 November 2003, p. 6.

fact that returning women often are being considered too westernised. Jones also stressed that it is important to be aware that the concept of human rights is not accepted as such in Somalia. It is the case that an individual's right is based on the Koran. Jones added that NPA has faced very strong resistance to their work and education programmes because it is still widely believed in Somalia that FGM is part of the Muslim religion.

Mørch referred to a development with regard to the number of girls who have not been circumcised. He emphasised that avoidance of FGM is dependent on the clan and whether she lives in the city or in the countryside. If a family lives in a major city, it is possible to avoid FGM, so long as the parents agree (even if the rest of the family and/or clan do not support the idea). The UNICEF representative said that there seemed to be a tendency towards Somali men being more easily convinced not to have their daughters circumcised.

A representative of United Nations Development Fund for Women (UNIFEM) informed the delegation that UNIFEM work together with two local NGOs inside Somalia, (in Jilib and Mogadishu). The representative stated that there are many NGOs working with this issue. Almost all the organisations working with women's or health issues also address FGM. Although a lot has been done to sensitise Somalis about the harmful effects of FGM, the practice still continues. The UNIFEM representative mentioned as an example, a group of *Sheikhs* in the north of Somalia had worked together with a local NGO to prepare a declaration stating that FGM is not required by the Koran. The day before the statement was to be made public, the *Sheikhs* changed their minds because they were afraid that the women would become too powerful and claim further rights. The UNIFEM representative also told the delegation that at the ongoing peace talks one organisation had tried to lobby the delegates to take up the issue of FGM but unsuccessfully.

The UNIFEM representative confirmed that the usual age of circumcision is about 6-7 years. A mother can protect her daughter from being circumcised if she has her husband's support and he has some standing in the community to counter opposition from the rest of the family. If the husband does not support his wife's decision, her only option is to leave the community with the child, thereby forgoing her access to support and protection.

If a woman, after having given birth, does not wish to be restitched, she would have to find a private maternity clinic that would agree not to restitch her. Otherwise at most clinics, restitching takes place as a matter of course. The UNIFEM representative emphasised that the possibility of refusing to be restitched depended on the woman's means and educational level.

However, Ubah Addow Osman, Chairwoman, Horn Indigenous Women Development Network, Nairobi, emphasised that a married woman would only be able to avoid restitching with the express consent of her husband. She also stated that a mother might only prevent her daughter from being circumcised with the agreement of her husband. When asked how a mother may convince her husband on this matter, Addow Osman suggested that she might try to convince him that the holy Koran does not require circumcision.

According to customary law, a single mother (who is divorced or widowed) may request the assistance of her male relatives. Only if the other male relatives agree with the mother will the daughter not be subjected to circumcision. If the male relatives do not support her decision, the only alternative left would be for her and her daughter to leave the family and her community according to Addow Osman.

In response to the question of how the community would know whether a returning Somali woman had been circumcised, the UNIFEM representative said that “information is free” in Somalia, meaning oral communication is very strong and that it would be common knowledge. The representative also mentioned that if a woman who had given birth at a clinic, and was not already circumcised, it would be known in her community.

#### 4.6 HIV/AIDS

Mørch emphasised that the question of FGM is closely linked to the spread of HIV/AIDS, a condition which is a taboo in Somalia and described as the “devil’s disease”. Even local NGOs that work with the dissemination of information regarding HIV/AIDS, tended to disassociate themselves with the people affected by AIDS, rather than showing the community how to support the affected persons.

Mørch believed that Somalia is particularly threatened with an AIDS epidemic for three main reasons.

1. One out of three pregnant women have a sexually transmitted disease when contacting the prenatal clinics,
2. Somalia has the highest ratio of tuberculosis in the world making Somalis more susceptible to be infected and
3. Since women who have been circumcised bleed every time they have sex and the use of condoms is unheard of, there is a greater risk of being infected through even ordinary sex.

There are no formal statistics regarding the number of people infected with HIV/AIDS in Somalia, however a formal study is in the process of being drafted, and will be presented within three to six months. It was estimated that the figure would be around 1-3 %. If the figure reaches 5 % or more it would be characterised as an epidemic.

Mørch emphasised that today there is no access to treatment for HIV/AIDS inside Somalia. In a new development in the past two years, a person may be suspected of having HIV/AIDS simply by contacting a health clinic. The UNICEF representative referred to this in this connection with the murder in Bosaso in the autumn of 2003 of an Italian aid worker. The representative suggested that this murder could be seen as a reaction to her work with tuberculosis (TB) and HIV/AIDS sufferers.

When asked about treatment for HIV/AIDS, David Querol, Head of Mission and Ayham Bazid, Representative, *Médicins sans Frontières - Swiss (MSF)* highlighted that there is no social recognition of the virus in southern and central regions. It was stated that MSF does not provide treatment for the virus. It was emphasised that there is no availability of anti-retroviral medicine in Somalia.

However, according to a World Bank and UNDP survey about 76% of respondents stated that they had heard of HIV/AIDS; 20% that they had not, and 4% did not respond.<sup>58</sup> In order to appraise their perceptions and assess their understanding and basic awareness of HIV/AIDS, additional questions

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<sup>58</sup> World Bank & United Nations Development Programme (UNDP), *Socio-Economic Survey 2002 Somalia, Report No. 1, Somalia Watching Brief*, Nairobi 2003, pp. 48 and 103.

were put to those respondents who had stated to have heard of HIV/AIDS. The respondents were asked to comment as “true”, “false” and “do not know” on the following three statements:

- HIV/AIDS has a cure
- HIV/AIDS is transmittable
- HIV/AIDS only affects women

The results confirm considerable awareness among the respondents at the basic level. About 95% of the respondents who stated to have heard of HIV/AIDS confirmed that HIV/AIDS has no cure, HIV/AIDS is transmittable, and HIV/AIDS affects both men and women.

According to UNHCR, medical facilities in all parts of Somalia are not equipped to render the necessary assistance for HIV/AIDS sufferers. Except for those few who can afford to import the drugs, anti-retroviral treatment is not available in Somalia. Accordingly the UNHCR recommends that the involuntary removal of persons with HIV/AIDS should be strictly avoided.<sup>59</sup>

Wolken emphasised the severe stigma attached to the HIV/AIDS virus, stating that sufferers and their relatives are subject to complete ostracisation from families, clans, and traditional community life. She added that this perception has resulted in the continued absence of preventative measures and wider awareness of the virus. Wolken stated that HIV/AIDS sufferers might now be classed as a particular social group in the sense of the definition in the 1951 Geneva Convention.

### 4.7 Minority groups

A joint Danish, Dutch and British fact-finding mission regarding the situation of minorities in Somalia was conducted in September 2000. In addition another Danish fact-finding mission regarding the security and human rights situation of the Somalia minorities in southern and central Somalia took place in January 2003. Reports from both missions have been published.<sup>60</sup> During the present mission, the delegation asked a number of UN, INGO and NGO sources whether the security and human rights situation of the minority groups and minor clans in southern and central Somalia had undergone any significant change since 2000. The response from all sources consulted was that no change for the better had taken place, either with regard to their security or human rights situation.

Regarding the situation of vulnerable groups in Somalia the CAP states, “In both the CAP Workshop for 2003 (August 2002) and 2004 (August 2003), as well as in numerous other reports, aid actors in Somalia have re-affirmed the three most vulnerable groups in Somalia to be IDPs, returnees and minorities. While many other categories of vulnerability have been identified, these groups, which include women and children, qualify as the “most vulnerable of the vulnerable,” primarily due to having suffered from: 1) the loss of assets through exposure to a major shock,

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<sup>59</sup> UNHCR, *Position on the Return of Rejected Asylum-Seekers to Somalia*, Geneva, January 2004. p. 10.

<sup>60</sup> Danish Immigration Service, Home Office and Dutch Ministry of Foreign Affairs, *Report on minority groups in Somalia, Joint British, Danish and Dutch fact-finding mission to Nairobi, Kenya, 17 to 24 September 2000*, Copenhagen, December 2000 and Udlændingestyrelsen (Danish Immigration Service), *Sikkerheds- og beskyttelsesforhold for minoritetsbefolkninger, kvinder og børn i Somalia, Rapport fra fact-finding mission til Nairobi og Eldoret, Kenya, 11. – 25. Januar 2003*, København, marts 2003. (Danish/English).

whether it be economic, climatic or conflict-related; 2) having little to no access to protection from clan affiliations, and 3) being exposed to multiple vulnerabilities or risks.”<sup>61</sup>

Furthermore, the CAP states “In many cases, however, basic coping mechanisms, including remittances from abroad and social security networks based on clan and kinship, allow these chronically vulnerable - totalling about 750,000 individuals - to maintain a finger hold on survival, albeit often at levels far below acceptable. Within these ‘surviving’ communities are the most acutely vulnerable, many of whom have few, if any, capacities to acquire and maintain even the most basic assets needed for survival and have been dislocated from social security networks. Moreover, these groups, because they are the weakest, are also frequently subjected to an array of basic human rights violations.”<sup>62</sup>

When asked about the discrepancy which seems to exist between the information collected by the delegation on this mission and previous missions, regarding the situation in Somalia for persons belonging to minority groups, and the information provided during refugee status determination interviews in some European countries, Wolken firstly stated that she obviously did not know whether the case profile of the persons referred to by the delegation was the same profiles as the ones who approaches UNHCR in the region. With this reservation in mind, and presuming that the persons referred to are in fact coming from minority clans, Wolken said that the discrepancy could to some extent be caused by the difference in conception between the person interviewing the asylum-seeker and the asylum-seeker him/herself as to what, for example, constitutes forced labour. If an asylum seeker has been used to working for example two hours every day for someone (belonging to a ‘noble’ clan) without being paid, the asylum-seeker may consider this normal and would not define it as forced labour if asked. Wolken suggested that the interviewer would have to ask specifically about all the small details of the asylum-seekers daily life in order to assess whether the person had in fact been subjected to forced labour or other human rights violations. Specifically with regard to sexual abuse including rape, she stated that pride and status might often prevent an asylum-seeker from coming forward with this information during an asylum interview or elsewhere.

### 4.7.1 Bajuni

Bakari Abdalla Bakari, a representative of the Bajuni refugee community in Nairobi, stated that the Bajuni population in Somalia is the poorest of all minority groups. He indicated that up to 10.000 Bajuni live in the Lower Juba region; comprising 11 towns, including Kismayo and the four Bajuni islands (Koyama, Chovae, Chula and Madowa). He also referred to the indigenous and refugee Bajuni groups in Kenya.

#### 4.7.1.1 Language

When asked what languages are spoken and understood by the Bajuni in the Lower Juba, Abdalla Bakari stated that the Bajuni in Kismayo and the outlying islands speak their own dialect. He estimated that 50% of these are also able to speak Somali, but noted that the vast majority of those that can understand Somali are from the mainland (the Kismayo coast, rather than the islands). It

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<sup>61</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 12.

<sup>62</sup> *Ibid*, p. 12.

was highlighted that the island-based populations tended not to be able to speak Somali due to their social isolation from the mainland.

When asked what proportion of the younger generation of the mainland-based Bajuni was able to understand Somali, Abdalla Bakari confirmed that all such persons were able to understand and speak Somali.

Abdalla Bakari demonstrated the difference between Bajuni and Somali dialects, by referring to the alternatives for three place names: Raskamboni (*Ras Kiembo* in Bajuni), Bori Kavo (*Bure Kuwaw* in Bajuni) and Kismayo (*Kisima iyu* in Bajuni).

In a further example, Abdalla Bakari illustrated the different terms for *uncle* (mother's side) in Somali and Bajuni, and also the differences between the islands: *Mjomba* (Somali), *Umee* (Bajuni, Chovae island), *Avu* (Bajuni, Chula island). It was also noted that older Bajunis originating from the mainland were familiar with the dialectical differences between the islands, though Abdalla Bakari suggested that those born in the last 20 years would not be familiar with the linguistic nuances.

Abdalla Bakari also demonstrated how phraseology and sentence structures differ between Bajuni and Kiswahili, using the example "*Mother, I would like to go to the toilet*":

"Mama nataka ku koojowa" (Kiswahili)

"Mama imi hu taaka kundá" (Bajuni)

In a final example, Abdalla Bakari highlighted the term *soriyo*; a complex term unique to the Bajuni islanders which refers to the religiously symbolic marking of a circle around a village or settlement, during times of difficulty, as a means of praying for better times.

### 4.7.1.2 Security and human rights situation

When asked about the total number of Bajuni in Somalia not currently living on the mainland, Abdalla Bakari was unable to give a specific figure but estimated that around 6,000 persons reside on the Kismayo coastline and on the four islands. He indicated that life for the Bajuni on the islands has not changed or improved in any way in the past few years. It was stated that clan militias routinely occupy parts of the islands and force the Bajuni to work for them, demanding 50% of the revenue.

Abdalla Bakari spoke at length about the complete lack of opportunities for the Bajuni to better themselves, especially in terms of financial assistance, education and worthwhile employment. He suggested that presently there is no indication that the situation will improve for the Bajuni in the way that it has for the Bravanese/Benadiri, some of whom have had the opportunity to be included in resettlement programmes outside East Africa. Abdalla Bakari likened the position of the Bajuni to that of the Bantus, whom he suggested also suffer from a lack of opportunity or representation.

### 4.7.1.3 Bajuni refugees in Kenya

Abdalla Bakari referred to the Somali Bajuni who resided in Kakuma and Jova refugee camps in Kenya. He stated that these individuals have been forced to return to Kismayo and the Bajuni islands by the Kenyan Government and UNHCR's decision to close Jova, exacerbating the poor situation in the Kismayo region, particularly on the islands.

When asked about the numbers of Bajunis indigenous to Somalia who are refugees in Kenya, Abdalla Bakari stated that a total of 3,000 Bajuni are refugees in Kenya, 500 of who have protection status under the UNHCR mandate. He furthermore stated that all refugees in Kenya have no better opportunities, in terms of financial assistance, education and employment, to improve their situations, than the Bajuni resident in Somalia.

#### 4.7.1.4 *Bajuni indigenous to Kenya*

When asked whether it was possible to differentiate between the Bajuni indigenous to Somalia and those indigenous to Kenya, Abdalla Bakari stated that this was not formally possible, though he did indicate that a Kenyan Bajuni could immediately identify a Somali Bajuni, and vice versa. He also stated that, though he did not have any specific information about the Bajuni indigenous to Kenya, he was not aware that they endured any particular hardship that was comparable with the Somali Bajuni.

#### 4.7.2 **Rer Hamar and Bandhabow**

Abdi Mamow estimated that 90% of the Rer Hamar population in Mogadishu have left the city as a consequence of civil war and lack of security for this group. The majority of Rer Hamar who are still in Mogadishu are older people who live in Mogadishu's traditional Rer Hamar district; Hamar Weyn. However, Hamar Weyn is not controlled by the Rer Hamar but by militias of the Habr Gedir sub-clan Suleiman. Wolken had no information concerning the number of Rer Hamar still living in Mogadishu but according to two Tunni businessmen from Mogadishu, Abdulrazak Omar Nurein Scego and Omar Jailani Sheikh perhaps 2,000 persons of the Rer Hamar were still living in Mogadishu.

When asked how those Rer Hamar families still living in Mogadishu are able to cope with the situation in the city, Abdi Mamow explained that some of the families have accepted, or have been forced to marry off their daughters to members of the majority clans such as Habr Gedir. Such a marriage can provide a Rer Hamar family with some degree of security but the alliance is not an even one, as the Habr Gedir son-in-law (nicknamed "Black Cat") to a large degree controls the economy of his family-in-law. Abdi Mamow explained that if a Rer Hamar family with a "Black Cat" in the house decided to sell its house and other property in order to go abroad the family would have to hand over between a third and one half of the market price of the house to the "Black Cat". Abdi Mamow added that, by these sorts of marriages, the Habr Gedir "Black Cats" often obtain information about remittances from Rer Hamar relatives abroad and in this way they can secure some of this money for themselves or their militia. Rer Hamar families without a "Black Cat" in their family alternatively pay an amount of money to the Habr Gedir for their protection.

According to Abdi Mamow, the Rer Hamar is divided into two general categories: the so-called light-skinned and the dark-skinned. The Rer Hamar groups, the Bandhabow and Morshe, are considered dark-skinned, while Shanshi and Dharbarwayne are considered light-skinned. He considered both of these sub groups to be at risk of persecution, but the light skinned groups may enjoy a relatively better degree of security and protection because of their appearance.

The delegation met with the *Malaq* (Chief) of the Bandhabow Sufi Muudde Ali, who stated that he is also Superior Chief of all Rer Hamar and Shingani communities in Mogadishu, and Abdulkadir Shooble Dahir, a Bandhabow representative who left Mogadishu in 2000, and is currently living in

Nairobi. *Malaq* Muudde Ali is still living in Hamar Weyne in Mogadishu, but is now attending the peace talks in Nairobi.

According to the representatives, the Bandhabow are craftsmen, small traders, tailors and fishermen. The Bandhabow people are famous for making clothing called *Alindi*. It was estimated that there are about 100 Bandhabow families still living in Somalia.

Members of the Bandhabow community are both dark-skinned and light-skinned. In every sub-group there might be such a mix. There are no sub-groups that are known for being just light-skinned or just dark-skinned. The representatives informed the delegation that major Somali clans, irrespective of whether they are dark- or light-skinned, regard them equally.

According to the representatives, all Bandhabows and all other Rer Hamar people can intermarry irrespective of whether they are light- or dark-skinned and irrespective of which sub-group they belong to.

### **4.8 Persons affiliated with former Siad Barre regime**

Abdi Mamow told the delegation that members of the Darod clan Marehan are able to return safely to Mogadishu, and even regain their properties in the city as the Marehan and the Habr Gedir clans have reconciled following the establishment of the TNG in Mogadishu in 2000.

According to an international NGO, members of all major clans in the city are protected by their own clan. However, members of Darod clans such as the Marehan and the Majerteen may experience economic and security problems as they are often living as IDPs in the city even though they had been residing in Mogadishu before the war. Many persons belonging to clans that were believed to be supporters of the former Siad Barre regime have been forced out of their previous homes. These persons are now living as IDPs in Mogadishu and enjoy only a small degree of protection, due to their clan's weak political position. Nevertheless, they have preferred to stay in Mogadishu as they have better access to basic resources such as water, food and health care than if they moved to other areas of Somalia.

Omar Daad, formerly minister of reconciliation under President Siad Barre from 1986 to 1990, explained that he is a Marehan himself and the nephew of Siad Barre and next to Siad Barre's son the closest relative. Omar Daad left Mogadishu in 1991 and he has returned there several times since. Omar Daad stated that he works as a mediator in central Somalia and he has been accredited to the peace process in Kenya for the Darod clan.

Omar Daad explained that it is too difficult for Marehan to live in Mogadishu as they are conceived to be wealthy because many of them used to work for the Siad Barre regime.

He stated that all Marehan clan members would be blamed for the suffering caused by the Siad Barre regime and they risk being killed. Omar Daad estimated that approximately 200 persons of the Marehan clan live in Mogadishu today who are able to stay there only because they have intermarried with members of stronger clans. An independent Marehan could not live in Mogadishu safely and run a business.

Omar Daad stated that a Marehan who had worked for the Siad Barre regime could not return to Mogadishu. Even family members of a Marehan who had worked for Siad Barre would have problems today. Any other clan member (e.g. a Hawiye or Habr Gedir) who had worked in the

administration (including the police) of Siad Barre would not have any problems returning to Mogadishu today.

According to Abdi Mamow, members of the Darod clan Majerteen will not be able to reside safely in Mogadishu as the Hawiye clans regard them as a challenge to their power in Mogadishu. Wolken commented that members of the Darod clans may have difficulties in Mogadishu, but she had no further information on this subject.

A representative of an international organisation did not have specific information about the situation in Mogadishu for persons who have been affiliated with the former Siad Barre regime and who may wish to return there. It was stated however that return would depend on the protection they could receive there. Essentially it would be impossible to go to Mogadishu unless the person concerned could receive the protection of his own clan.

#### **4.9 Gender related human rights violations**

According to the CAP, gender-based violence is also prevalent, including rape, female genital mutilation and domestic violence. The cultural attitudes of the traditional elders and law enforcement officials also routinely result in restrictions on their access to justice, denial of their due process rights and their inhumane treatment in detention.<sup>63</sup>

A UNIFEM representative said that the collecting of data regarding rapes inside Somalia is hampered by the unwillingness to report it. She said however that the anecdotal evidence shows that the occurrences in Mogadishu were alarmingly high. She also said that commercial sex workers, although highly controversial, exist in Mogadishu. Rape takes place as a means of attacking other clans but also within the same clan or sub-clan.

If someone from an opposing clan has raped a woman the elders might negotiate compensation on her behalf. If a member of her own clan rapes a woman, she may bring her case to the *Sharia* court. The UNIFEM representative explained that some *Sheikhs* set up *ad hoc Sharia* courts in their own homes to deal with such cases. Women often prefer this setting since it is less intimidating than formal courts, and gives them a greater chance of confidentiality.

In cases where a woman who has endured rape falls pregnant, the woman's family would normally try to force her to marry the rapist. In this situation, the resulting child would not be treated different to other children. If, however, the mother does not marry the rapist (or someone else to cover up the situation), it is very common that if the child were a boy he would be left at an orphanage, as he has no clan affiliation. A girl would normally be allowed to stay with the family to work because she poses no threat to the stability of the family.

#### **4.10 Internally Displaced Persons (IDPs)**

According to UNHCR, there are more than 350,000 IDPs in Somalia mainly living in crowded urban areas, the majority of whom have been displaced for ten years or more as a result of the violent upheavals and massive human rights violations of the early 1990s. In addition, each year a number of Somalis are displaced by localised conflicts, usually temporarily and primarily in

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<sup>63</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 5.

southern and central Somalia. Against this backdrop, it is often difficult to distinguish IDPs in the traditional sense of the term from their resident urban poor neighbours and economic migrants.<sup>64</sup>

In terms of internal migration flows, Wolken noted that persons moved over relatively short distances and for limited periods of time. She also suggested that the number of persons, overwhelmingly IDPs, leaving Somalia was disproportionately low in relation to the level of security incidents reported in the southern and central regions. It was explained that this was due to the fact that most people living in these regions have established coping mechanisms as their problems have been going on for such a long period of time and that crossing a border does not bring about a change in their situation.

Wolken went on to state that the authorities in Puntland have allowed the free passage of an increasing number of migrants from southern and central Somalia. She also emphasised that a more restrictive position is taken by the authorities in Somaliland that view IDPs from the rest of Somalia as illegal foreigners and are subject to expulsion.

Regarding the vulnerability of IDPs in Somalia, a representative of an international source present in southern Somalia stated that although the IDPs in southern Somalia are considered a vulnerable group, he had the impression from the IDPs themselves that they preferred to stay in the IDP camps because they have some degree of security and access to jobs. If they returned to farming in their traditional areas their property would be looted. They pay the owners of the camps for protection and try to avoid attracting attention that may lead to them being targeted as an economic asset. The representative stated that some of the people have been in the camps for 10 years. In the camps in Mogadishu some families might have a hut, although the family is spread all over the country, and beyond (including Ethiopia), in order to earn money.

Regarding the situation in the IDP camps, Mørch emphasised that there is no control in these camps and militia members can enter the camps whenever they want to and rape or kill with impunity. The situation in the IDP camps is one of the biggest challenges facing the international community. Furthermore, the local community will steal and loot any assistance that is given to the IDPs by the international community.

Mørch compared the situation in the IDP camps in Kismayo with that of the civilian victims of the civil war in Liberia except that cutting of limbs/mutilation does not take place in these camps in Somalia.

### 4.10.1 IDPs in Kismayo area

According to a UN supported study on livelihood and protection in Kismayo "...the IDP camps of Kismayo are crowded, and most shelters are rudimentary structures made of scavenged materials. They lack adequate sanitary facilities, and the incidence of communicable diseases appears to be high, although conditions vary between camps.

There are numerous accounts of gender-based violence: of sexual abuse in IDP camps and in the workplace. General abuse takes the form of theft, beatings, the non-payment of wages and the constant reinforcement of socio-ethnic status (through the use of terms such as *adoon* or slave).

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<sup>64</sup> UNHCR, *Position on the Return of Rejected Asylum-Seekers to Somalia*, Geneva, January 2004. p. 4.

When human rights violations take place, in the absence of any properly functioning mechanisms for the rule of law, individuals from “minority” or weak clans in Kismayo often have little recourse to systems of justice – whether through customary law (xeer) or religious law (sharia). The subtleties of political, economic and social discrimination remain largely hidden to outsiders.

Aid gatekeepers are an important element of the protection environment... One interviewee suggested that the gatekeepers took as much as 75% of the aid delivered to the camps.... At the same time, however, gatekeepers offer some degree of protection to camp residents, especially those from weak or minority clans. A Somali proverb describes this situation well: *Ama buur ahaw ama mid ku-tirrsanaw* (“Either be a mountain or lean on one”). In other words, members of weak clans seek protection from a strong one, in terms of sheegata (adoption and client status) or, more immediately, the protection of a gatekeeper. Even though living conditions are extremely poor, many of the displaced feel safer as part of a group in a camp, receiving “protection” from a Marehan gatekeeper. Moreover, economic migrants might consider living in a camp as low-cost housing: rents for an *arish* (a wooden shack) are in the region of SShs 40-60,000 per month, whereas a room in a stone house would cost SShs 100,000 a month. In return for this “protection”, and in lieu of “rent”, the gatekeeper will receive a portion of the assistance packages allocated to the displaced”.<sup>65</sup>

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<sup>65</sup> Narbeth, Simon and McLean, Calum, *Livelihoods and protection, Displacement and vulnerable communities in Kismayo, southern Somalia*, Overseas Development Institute (ODI), Humanitarian Practice Network (NPA), Network Paper, Number 44, London, December 2003, p. 12 - 13.

## 5 Returns to Somalia

### 5.1 UNHCR assisted returns

Wolken stated that UNHCR arranges facilitated returns only. She stated that the numbers of returnees to southern and central Somalia vary according to region but estimated that the return of 2-3 persons is facilitated each month to all of southern and central Somalia. She emphasised that less than 100 persons return annually.

Wolken explained that returnees are at risk of robbery, extortion at roadblocks, and attack by militias in the areas to which they return. She added that the UNHCR is unable to monitor the progress of persons following their return as UNHCR only has a field office in Mogadishu. However, in areas where UNHCR has access some monitoring might be possible.

### 5.2 Return of rejected asylum seekers

Wolken stated that any Somali who returns to Somalia from abroad would be perceived as having some resources (cash or other). This will be the case both for persons returned by force and for Somalis with residence abroad who visit Somalia independently. As a result of this perception among Somalis within Somalia, a person in this category will be in a greater risk of being robbed, extorted or attacked by militia than persons permanently residing in Somalia.

When asked whether UNHCR has information about failed asylum seekers who have been the subject of enforced returns to Somalia from European countries, Wolken stated that UNHCR is not informed about such returns and do not monitor them. Her assessment of the risk they face in Somalia is based on experience with what happens with persons who return voluntarily with the assistance of UNHCR, and knowledge of persons travelling from one area to another within Somalia.

Wolken added that a number of countries have enforced the return of serious criminals, but such returns have taken place without the knowledge of UNHCR.

Wolken referred to a forthcoming UNHCR position paper regarding return of rejected asylum seekers to Somalia. UNHCR Geneva published the position paper at the end of January 2004.<sup>66</sup> According to the position paper, “UNHCR considers that persons originating from southern Somalia are in need of international protection and objects to any involuntary return of rejected asylum-seekers to the area south of Galkayo.”<sup>67</sup>

The position taken by UNHCR is based on the fact that insecurity in southern Somalia continues to be a significant problem. According to UNHCR “Lives continue to be threatened by violence, crime, clan feuds, lack of justice as well as poverty. Furthermore, humanitarian agencies have real problems gaining access to many areas. Militia loyal to different strongmen succeed one another in a perpetual move to establish a sustainable control of certain areas. There is a constant fear of abrupt change in clan balance shaking territorial power bases. This often leads to conflicts between

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<sup>66</sup> UNHCR, *Position on the Return of Rejected Asylum-Seekers to Somalia*, Geneva, January 2004.

<sup>67</sup> *Ibid.* p. 9.

clans and factions. Mines have been laid in many areas as part of current conflicts to either mark territorial control or prevent the movement of people. Moreover, the lack of any effective governing administration may render it impossible for countries with rejected Somali asylum seekers to embark on any comprehensive and co-ordinated dialogue aiming at removing such cases.”<sup>68</sup>

### 5.2.1 Return of young persons, particularly females

Wolken indicated that young Somalis returning from abroad (particularly western countries, but also neighbouring countries such as Kenya) are vulnerable to physical abuse, and are viewed with suspicion by their relatives and local communities. She referred specifically to young females who are at risk of rape and FGM. It was suggested that thousands of young girls are at risk of being outcast in this way.

An IRIN/OCHA report stated in 2003 that “Bi-cultural separated Somali minors who are returned to their homeland under duress or through deception are in danger of harassment, extortion, rape and murder.”<sup>69</sup> In addition, UNHCR has stated that “Perceived unacceptable and culturally insensitive behaviour by girls result in harsher discrimination and punishment than boys.”<sup>70</sup>

### 5.3 Internal Flight Alternative (IFA)

Wolken stated that Internal Flight Alternative (IFA) was not a viable alternative in Somalia. In addition to the fluid security situation, she cited the adverse impact such a policy would have on the already difficult IDP situation. IDPs are staying in areas away from their traditional homelands and as such they enjoy no clan protection. It was underlined that the humanitarian situation for IDPs had not improved and stressed that those returning from Somaliland to the southern and central regions of Somalia are vulnerable to attack by local militias. No formal protection framework exists for IDPs, but the authorities in Puntland have tolerated them.

According to UNHCR’s position paper on return “...The general pattern of human settlements prevailing in many parts of Africa, including Somalia, is often characterised by common ethnic, tribal religious and/or cultural factors, which enable access to land, resources and protection from members of the community. Consequently, this commonality appears to be the necessary condition to live in safety. In such situations it would not be reasonable to expect someone to take up residence in an area or community where persons with a different ethnic, tribal, religious and/or cultural background are settled, or where they would otherwise be considered aliens. ...Therefore, it would be unreasonable to expect a person to move to an area in his or her own country other than one where he or she has ethnic, tribal, religious and or/cultural ties. ...This is true in *Somaliland* and *Puntland*. ...Specifically in *Somaliland*...those not originating from this area (*non-Somalilanders*) would be considered as foreigners, and face significant acceptance and integration problems, particularly taking into account the extremely difficult socio-economic situation of those native to the territory...In this regard it should be noted that ‘place of origin’ should not necessarily be equated with ‘place of birth’...Therefore, the determining factor in defining where a person

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<sup>68</sup>UNHCR, *Position on the Return of Rejected Asylum-Seekers to Somalia*, Geneva, January 2004, p. 9.

<sup>69</sup> IRIN/OCHA, *A Gap in their Hearts: the experience of separated Somali children*, Nairobi 2003.

<sup>70</sup> UNHCR, *Position on the Return of Rejected Asylum-Seekers to Somalia*, Geneva, January 2004, p. 10.

originates from is where the person has effective clan and family ties, and where clan protection is thus available. In light of the above, especially given the prevailing clan system, UNHCR is of the view that the internal flight alternative is not applicable in the context of Somalia.”<sup>71</sup>

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<sup>71</sup> UNHCR, *Position on the Return of Rejected Asylum-Seekers to Somalia*, Geneva, January 2004.

## 6 Humanitarian related issues

In addition to the asylum-related issues, some humanitarian issues were raised during the preparation of the mission by some of the participating countries. Some of these issues may have general interest to a larger audience.

According to the CAP “the deterioration of social, economic and political systems has placed most Somalis - save for the warlords, their cadres of lieutenants, and some Somali business leaders - in a perpetual state of livelihood and social vulnerability. Even before the war, Somalia was one of the poorest countries in the world; its Gross National Product per capita was calculated at only US\$ 170, the fifth lowest on earth. Today, nearly three million Somalis, or 43.2%, live in extreme poverty on less than US\$ 1 a day, mainly in rural areas. Those living in general poverty on less than US\$ 2 per day comprise 73.4% of the population. Only 19% of the adults (aged 15 and above) can read and write. Only 16.4% of the primary school aged children are enrolled. It is estimated that nearly half of the population live without access to sanitation and nearly 80% without access to safe water. Out of every 1,000 infants born, 225 die before they reach the age of five.”<sup>72</sup>

The delegation decided to include the following issues in its joint report.

### 6.1 Primary health care system

Querol and Bazid provided an overview of the primary health care infrastructure and facilities in the southern and central regions of Somalia. They emphasised that the overall level of health care and possibilities for treatment in central and southern Somalia were very poor. They referred to the lack of basic medical training amongst the personnel (doctors and particularly nurses) operating at the limited number of hospitals and clinics in the region. It was estimated that up to 90% of the doctors and health staff in hospitals was insufficiently trained. Expensive private clinics are the main providers of healthcare in urban areas, especially Mogadishu.

Querol and Bazid explained that it was not possible to present an accurate overview of functioning hospitals and health clinics in Somalia as this is subject to availability of financial support of donors and the security situation.

It was stated that for those with the sufficient funding to pay for treatment, primary healthcare was available in all regions. Bazid indicated that women and children had a better chance of receiving treatment on the grounds that they are less likely to be the target of militias. It was explained that women and children are in a position to move more freely in Somalia, because they can cross clan-borders much easier than single men whose clan affiliation may hinder their freedom of movement. Querol and Bazid added that single men, without the financial backing of their clan, would find it very difficult to access medical treatment. It was also noted that, due to the distance, security situation, and poor road networks in most regions, referral cases are difficult to arrange without sufficient financial support from clans.

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<sup>72</sup> UN, *Somalia 2004, Consolidated Appeals Process (CAP)*, Geneva, November 2003, p. 12.

### 6.1.1 General provision by region

Querol and Bazid provided a summary of the primary healthcare infrastructures in each region:

- *Southern Mudug and Galgadud.* It was emphasised that the vastness of the region greatly limited the scope for the provision of medical facilities. Bazid referred to two areas: Galkayo (where there is a functioning hospital supported by the International Committee of the Red Cross (ICRC) and the coastal districts around Hobyo where Coordinating Committee of the Organisation for Voluntary Service (COSV) until recently supported the provision of basic medical care. It was noted that this region is particularly susceptible to cholera epidemics. There are no hospitals in Galgadud where other sources of basic healthcare are even more limited due to the prevalence of major clan conflict. Clan conflict severely hampers the freedom of movement in the conflict area and under such circumstances the availability of treatment is closely related to clan affiliation.
- *Hiran.* The hospital in Belet Weyne has been closed for a considerable length of time. There are very few private clinics. Save the Children Fund (SCF) and International Medical Corps (IMC) have established small dispensary posts in the region.
- *Middle Shabelle.* It was indicated that this was the most stable of regions in terms of the provision of medical facilities. Basic treatments are available at the large hospital in Jowhar, where surgeons operate. A number of INGOs administer dispensary posts in the region.
- *Benadir (Mogadishu).* It was stated that most medical facilities in the capital are expensive, private clinics that provide a variable standard of treatment. It was noted that the Islamic community usually establishes these clinics, with Al Islah being the dominating donor. There are two hospitals in Mogadishu; Medina and Keysane. The majority of the patients in the two hospitals are victims of clan conflicts. Bazid suggested that Keysane hospital operated more effectively than Medina, as it is located outside the centre of the city. It was also noted that maternity facilities in these hospitals are limited.
- *Lower Shabelle.* It was emphasised that access to this strategically important region is obstructed by clan conflicts. COSV provide basic dispensary posts in Merka, though these provide very basic treatments. Persons in this region mainly rely on medical facilities in Mogadishu. The region is also susceptible to cholera epidemics.
- *Bay and Bakool.* The hospital in Baidoa has been closed since August 2002 but MSF has a basic operation in Bay and ICRC has issued health kits in the region. However, the prevalence of high profile security incidents since 2002 has prevented these INGOs from maintaining a permanent presence. In Bakool there are a number of small clinics with surgery provision that are supported by MSF and the region has relatively good provision of basic healthcare. It was underlined that of those people who have undergone an operation, 50% do not survive the immediate post-operation period.

- *Gedo*. IMC operates dispensary posts in the region, providing basic medical treatments. Bazid also referred to malnutrition treatments provided by CARE International. It was noted that most persons requiring medical treatment travel to Mandera in Kenya.
- *Middle and Lower Juba (Kismayo)*. Bazid confirmed that Kismayo hospital was open and provides basic treatments and MSF operates in Marere (on the border between Middle and Lower Juba) where basic healthcare is available. Other INGOs such as ICRC provide similar treatments and TB programmes in Jamame and Kismayo. ICRC operates two to three health dispensaries in Kismayo. A number of doctors operate in private clinics in Kismayo and some are also able to perform surgery.

## 6.2 Availability of medical treatment

Querol and Bazid then informed the delegation about the basic medical treatments provided across the southern and central regions. It was emphasised that treatments provided by INGOs are primarily for infectious diseases and not chronic diseases.

It was stated that treatment for TB was of limited availability and that it was very difficult to effectively administer the six to eight months course of treatment due to the shortage/capacity of medical personnel and due to the fact that it is difficult to apply the full course of treatment for persons that do not reside in the area for the required period of time. This is especially the case for nomads and IDPs. Treatment for TB is available in Mogadishu as well as in some other places in southern and central Somalia. Querol and Bazid added that of all countries in the world Somalia was the country that suffers most by TB but that TB medicine should be freely available at least in Mogadishu.

It was stated that MSF provides medical advice to persons who have already undergone FGM. MSF normally does this through women-NGOs and it takes place in all regions of southern and central Somalia.

Jurg Drayr, Medical Co-ordinator, MSF informed the delegation that insulin is available in Mogadishu, but the availability may not be constant or guaranteed. The cost of the medicine is about one US\$ a day. Another problem is that insulin should be stored in a refrigerator and some of the insulin available at the market may not have been stored properly and therefore have been exposed to heat and sun.

There are no institutions in Mogadishu that care specifically for handicapped persons. Handicapped children are being taken care of in a single institution in Mogadishu.

Treatment for anaemia is available in Mogadishu as well as in other major cities where pharmacies are found. Drayer estimated that the medicines are relatively cheap.

For information regarding treatment of HIV/AIDS, see page 35.

## 6.3 Provision of primary and secondary school education

According to a survey of primary schools in Somalia in 2002/3, conducted by UNICEF, a total of 286,808 pupils are enrolled in primary schools in Somalia. In proportion with the primary school

age population, estimated to be at 1.6 million, this number reflects a gross enrolment rate of 17% (22% for boys and 12% for girls).<sup>73</sup>

Increases in the number of pupils, teachers and schools were registered in all regions. Compared with 2001/2, the 2002/3 survey reflects a net increase of an additional 11% in enrolments, 11% in teachers and an 8% increase in the number of schools.

It is also noted that gender gaps continue at all levels. Of the total, females comprise 36% of enrolments, 13% of teachers, and 25% of the members of the Community Education Committees (CECs) (equivalent to Boards of Governors).

In the 10 regions of southern and central Somalia, the survey lists a total of 132,711 pupils enrolled at 597 primary schools in which Somali is the medium. It also records a total of 5060 teachers, representing an average of one teacher to 26 pupils.

The number of schools in the regions of southern and central Somalia is: Benadir (113 schools), Bay (60), Galgadud (43), Gedo (52), Hiran (47), Lower Juba (54), Lower Shabelle (76) and Middle Shabelle (18). In these regions the provision for primary education covers Grades 1 to 8. In Bakool (73) and Middle Juba (61) there is only provision for Grades 1 to 5.

Of all regions in Somalia, central and southern region schools depend most on temporary structures, with only 48% of schools having permanent buildings, only 55% having access to desks and benches. School fees are largely nil or less than the equivalent of 1 US \$ per pupil per month. Teacher support is mostly in the form of cash, rather than in kind, and is largely provided by the communities/parents and particularly NGOs.

The survey indicates that Gedo registered a strong improvement in the pupil teacher ratio and pupil class ratio by raising the number of teachers and classes, but without increasing enrolments. Gedo also increased the proportion of schools with CECs up to 100% from 68% in 2001/2. The survey also records that Bay region registered a sharp decline in the number of enrolments, teachers and schools, accompanied by a decline in the female proportion of enrolments.

The survey also lists a total of 38 Arab medium primary schools in five regions (Benadir, Hiran, Lower Juba, Middle Juba and Lower Shabelle) where 19,736 pupils are taught by a total of 624 teachers, representing an average of one teacher to 39 pupils.

It was added by Mørch that the quality of the curriculum taught in Somalia is good.

### 6.3.1 Arabic primary school education

Mørch explained that the primary schools in Somalia that use Arabic as a medium are established and supported by various Arab states including Saudi Arabia, Libya and Yemen and also Arabic NGOs. Whereas these schools are not Koran schools there is a greater focus on religious affairs than in ordinary primary schools.

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<sup>73</sup> UNICEF, *Survey of Primary Schools in Somalia 2002/3*, Vol. 1: *Technical Report*, Vol. 2, *Annexes on School Level Data*, Nairobi, September 2003.

### **6.3.2 Provision of secondary school education**

With regard to the existence of secondary schools, Mørch said that they are virtually non-existent, and that this is a major problem. However he stated that UNICEF does not have the mandate to establish, or support, secondary schools.

### **6.4 Minorities' participation in the Mogadishu economy**

According to Mørch, the private sector (i.e. the business community) in southern and central Somalia is playing a leading role in various areas such as primary health care and water distribution. The private sector is the primary motor of the economy and it considers itself to possess a greater combined military capacity than the warlords do. The private sector is therefore in a position to provide protection for civilians.

Wolken stated that a rapidly expanding economy has developed in Mogadishu in recent years, based on trade between dominant clans and multinationals based in neighbouring Arab states. She stated that business and industry, particularly the telecommunications sector, have flourished in the absence of a central government and economic regulation.

Regarding the economic situation, the UN sources stated that the investment continues in Mogadishu and that various businesses and industries operate there. The assembling of computers, mobile telephone, and medical training schools were mentioned. There is a considerable trade between Mogadishu and Kenya. A University of Mogadishu has been established with money from Arab countries and they are planning to build a campus. An international NGO added that it is only members of the major clans that would benefit from these economic and educational activities.

Wolken emphasised that though members of minority groups may have benefited to some extent from a temporary boom some months ago in the Mogadishu economy – particularly in Mogadishu North – as casual labourers, the profit from the trade did not reach the general population. She also suggested that investment in Mogadishu has decreased in recent months as a result of diminishing business confidence, and the diasporas' scepticism to the ongoing peace negotiations in Kenya.

According to Abdi Mamow, any trader or businessperson in Mogadishu has to pay a tax to get access to markets. Traders and businesspeople of the Somali clans will pay the tax to their own clan militia, but members of minority groups are discriminated against, as they will have to pay taxes to clan militias, rather than to their own communities. It was stated that the payment of this tax would not secure them any protection.

If a member of a Somali clan refuses to pay taxes, a settlement between the clan of the person in question and the militia will normally be reached. However, such a disagreement is unlikely to occur as the traders and business people are willing to pay taxes in support of their own clan.

Abdi Mamow stated that members of minority clans are required to pay higher taxes and very often those collecting taxes keep half of the taxes. This is a serious problem for traders of minority groups as they very often exchange articles at the market rather than selling them for money. For this reason, traders of minority groups rarely carry enough money to pay the taxes. Abdi Mamow emphasised that a person who refuses to pay the tax would be denied access to the market and that such a person may be arrested, or even killed, by the militias.

The Tunni businessmen Nurein Scego and Jailani Sheikh stated that the militias are the main benefactors of the various businesses in Mogadishu. It was stated that none of the minorities benefit since they have nothing to do with the type of businesses being set up in Mogadishu today. The only way that minority group members can participate in business life is to produce the *Alindi* clothing and small-scale food production, mostly for their own families. Both the clothing and food are produced by the women and not by the men (due to the security problems men would face). It was explained that the situation was similar for all of the minority groups, and that none had access to the stronger economy, exemplified by the telecom business, that has developed in Mogadishu.

Before the civil war in Mogadishu, the Tunni produced shoes in small factories they owned; they produced *Alindi* clothing, sesame oil, and different sorts of leatherworks and prepared food for restaurants. This changed with the civil war and both representatives stated that these productive activities that were common for all the minority groups haven't been taken over by anyone else as nobody produces these items today. Before the war, the minority group members were the ones with technical skills, in contrast to the nomadic Somalis.

It was furthermore stated that minority group members will not be employed in the various businesses in the city and that the major Somali clans only employ their own clan members. It was stated that job opportunities were closely tied to clan affiliation. Members of minority groups are not able to participate in the business activities in Mogadishu as they are unarmed and they do not have control of any militia.

Nurein Scego explained how his father in 1995 after having started importing tea from Mombasa and investing 8,000 US\$, was kidnapped by an Ayr (sub-clan of Habr Gedir) militia in Mogadishu, when they realised that he had money. Nurein Scego's father was released after the family paid a ransom of 3,000 US\$ and he fled Mogadishu for Kenya at the end of 1995.

Both businessmen emphasised that no improvement has taken place for the minorities' economic or human rights situation during the recent years.

It was confirmed that some protection for minority families was possible through intermarriages with strong clans, for instance, Habr Gedir members. Such marriages can also take place in order to enable minority members' access to the market or to participate in business activities. Marriages between female minority members and male members of major clans were described as "Black Cat" marriages. When asked if it was likely that a Bantu woman could marry a Habr Gedir man, the two representatives stated that this would be unlikely.

### **6.5 Marriage and divorce proceedings**

Dr. Ibrahim Hassan Isak, a lawyer from Baidoa stated that marriages between majority clan members, and those affiliated to minority groups, are rare, though such marriages are not prohibited under Islamic law. Only a very few marriages between these groups take place. Dr. Hassan Isak suggested that it is possible for a man from a majority clan to marry a woman from a minority group, but the same does not apply to a woman of a majority clan who may want to marry a man from a minority group.

As an example of the problems a couple might face if the man belongs to a minority group and the woman to a major clan, Wilback referred to a case in Sweden where a man of the Midgan minority group married a woman from a major clan originating in Sool region in Somaliland. After their

marriage in Sweden, the couple travelled to the bride's original home in Sool. The bride was badly beaten and disowned by her father. Wilback added that the couple could no longer live in Somalia.

### 6.5.1 Marriage proceedings

Dr. Hassan Isak said that there are two ways by which a couple may be married:

- Firstly where the couple get together with the full knowledge of their parents who arrange for them to marry. The father of the son goes to the girl's father and asks permission for his son to marry the girl. They then arrange a time for the marriage to take place. The two sides also make an agreement on the costs of the wedding; the gifts, the bride's dowry, jewellery and house where they will live. It is frequently the case that parents arrange a couple's wedding without their knowledge. It was suggested that around 20% of marriages take place in this way. It was also noted that such marriages might be arranged for persons who are not in the same region or country.
- Secondly where a couple get together without the knowledge of their parents in a way known as 'street love'. The boy and the girl get together and prepare to get married in a secret or 'run away' marriage. It was stated that in order for the marriage to be valid, the boy and girl have to be adults (the source referred to this as being over the age of 20) and travel at least 90km away from their hometowns. The ceremony is conducted by a *Sheikh* and must be witnessed by three officials from the *Sheikh's* house. The *Sheikh* asks whether the lady agrees to marry with the man. When she gives a positive response that is heard by all three witnesses and when the couple confirm they have not been married before, the marriage is concluded. The couple must provide a picture of themselves together, which is attached to the marriage certificate.

In cases where the parents of the couple find out that their children have been married in secret (for example if the girl falls pregnant), the relatives of the boy go to the girls' parent's house to pay a compensation (*xumeyn*) for the couple's decision to get married in this way. After the offer is accepted, the respective parents agree how much the compensation should be. Once this is agreed, the meeting is concluded with a *fad* banquet. It was stated that even if the parents do not accept this, the marriage is still valid.

A UNIFEM representative found it unlikely that a girl would elope to marry someone her family did not approve of. On the other hand, the clan arranges for matchmaking discos where the different parties are approved of in advance by the clan.

### 6.5.2 Remarriage

Dr. Hassan Isak stated that if the husband dies, the widow will go through *Asai*, a period of mourning lasting four months and 10 days. During this period the widow's hair is cut and will not be washed or combed. It was stated that the widow would only bathe on Fridays. It was noted that she would not talk to any men during this period. At the end of this period, she will be soaked in oil and *Ghia*. After this she may remarry. It was stated that she has two options for remarriage: either she can marry the brother of the deceased husband or someone else. It is not compulsory for her to marry her dead husband's brother. Dr. Hassan Isak added that in accordance with the Muslim religion, the widow would receive her part of her dead husband's estate.

It was stated that in accordance with Islamic law, a man might have up to four wives. If one dies therefore, there is not the need to remarry. As an example, if a man has two wives and one dies, he will take the other as his sole wife. If he has children with a wife who dies, one of his other wives will assume responsibility for the children.

Dr. Hassan Isak explained that a man might remarry any time after he has divorced. A woman cannot remarry for three months after a divorce. Adan Abdi suggested that divorce is not very common. She estimated that around 10% of all marriages end in divorce.

### 6.5.3 Divorce proceedings

Dr. Hassan Isak indicated that divorce could occur in two ways: if a conflict develops between the couple themselves or if a conflict develops between the families of the couple. If a conflict develops between the families, it is not compulsory for the couple to divorce; however it is unusual if they do not.

In order to proceed with a divorce, the husband must consult with three *Dalaks* (equivalent to three witnesses at the marriage). The husband can only consult with one *Dalak* at a time. After he has stated that he intends to divorce, he has three months to consider his decision. If he intends to continue with the divorce, he has to consult another *Dalak* after which a further three months must elapse before the divorce is concluded following consultation with the third *Dalak*. The proceedings may be suspended or cancelled at any time during this six-month period.

It is not usual for a wife to initiate a divorce, though she may pursue a divorce in the event of exceptional circumstances, if her husband is unable to support her financially (especially if he is based elsewhere in the country or abroad), or if he is unable to meet her sexual needs or is homosexual.

### 6.5.4 Dowry

A UNIFEM representative said there are two kinds of dowries. One is paid to the father of the bride or his clan and one is paid to the bride herself as a bride gift. In times of economic hardship, the bride would often not get paid. In that case, she should get paid as a means of divorce, however the husband will often refuse to pay her. The woman has no recourse to justice in this situation. The UNIFEM representative knew of situations where women in Mogadishu were imprisoned because they had remarried before the waiting period after the divorce had elapsed, because the former husband changed his mind about the divorce.

### 6.5.5 Child custody

Mørch informed the delegation that in cases where parents divorce, a son under the age of seven, and girls up to the age of puberty, would normally be taken care of by the mother, although the father will still be the legal guardian. After this age, the children will be taken care of by the father or whomever he chooses to take care of them. In the case of a husband dying or otherwise disappearing, the custody of the children will be transferred to his family and/or clan.

A UNIFEM representative said that according to the Koran as applied in Somalia, children under the age of seven stay with their mothers in case the family is split up by divorce or other factors. After that age, boys normally return to the father or the father's family. In principle the girls also return to the fathers but often they remain with the mothers. A woman has no recourse in cases

where her husband does not conform to these rules. The UNIFEM representative mentioned a case of a woman in Beled Weyne where the *Sharia* court had actually ruled in favour of her, but did not have the capacity to enforce its decision.

In cases where a child's parents divorce, Dr. Hassan Isak stated that the mother has custody of the children and resides at the family home. The father will move away. The father will continue to provide financial support to his family. After three months it is up to the mother whether she wants to leave the family home. While she continues to stay there, the father will provide support. If the mother is pregnant, the father must provide the mother with support for two years after the birth.

In cases where one parent dies, custody of the children will go to the remaining parent. Where both parents die, the families of the deceased agree between themselves who has custody of the children.

Where parents of a child are not married, the mother's mother (grandmother) has custody of the children.

## Organisations, representatives and individuals consulted

**Abdalla Bakari**, Bakari, Bajuni representative, Nairobi.

**Adan Abdi**, Seynab, Tunni from Kismayo, refugee in Nairobi.

**Addow Osman**, Ubah, Chairwoman, Horn Indigenous Women Development Network, Nairobi.

**Bazid**, Ayham, Representative, Medecins sans Frontières-Swiss, (MSF) Nairobi.

**Cameron**, Hamish, Deputy Security Adviser, UNSECOORD, Nairobi.

**Cooper**, Stephen, Country Director, Adventist Development and Relief Agency (ADRA), Nairobi.

**Daniels**, Zoë, Somalia Liaison Officer, Concern International (Ireland) and Focal Point, Somalia NGO Consortium, Nairobi.

**Dr. Hassan Isak**, Ibrahim, lawyer from Baidoa, Nairobi.

**Dr. Kamula Mofi**, Osman, Minority rights lawyer, Chairman and Founder of Somali International Organisation for Human Rights, Nairobi.

**Drayer**, Jurg, Medical Co-ordinator, Medecins sans Frontières-Swiss (MSF), Nairobi.

**Duvillard**, Daniel, Head of Somalia Delegation, International Committee of the Red Cross (ICRC), Nairobi.

**Gordon**, Joe, Chief Security Adviser, UNSECOORD, Nairobi.

**Jailani Sheikh**, Omar, Tunni businessman (Mogadishu), Nairobi.

**Jones**, Gary P., Country Director (Somalia, Kenya, Djibouti), Norwegian People's Aid (NPA), Nairobi.

**Abdi Mamow**, Mohamed, Acting Chairman, Organisation for Minority Rights and Development, Nairobi.

**McLean**, Calum, Chief, UN Coordination Unit for Somalia/Office for the Coordination of Humanitarian Affairs (UNCU/OCHA), Nairobi.

**Mørch**, Jesper, Representative, United Nations Children's Fund (UNICEF), Nairobi.

**Muudde Ali**, Sufi, *Malaq* of the Bandhabow and Superior Chief of all Rer Hamar and Shingani communities in Mogadishu, Nairobi.

**Nurein Scego**, Abdulrazak Omar, Tunni businessman (Mogadishu), Nairobi.

**Okondo**, Hendrika, Programme Coordinator, United Nations Development Fund for Women (UNIFEM), Regional Office for East, Central & Horn of Africa, Nairobi.

**Omar Daad**, Abdiaziz, former Minister of Reconciliation 1986 to 1990. Accredited as a Darod representative to the present Somali peace negotiations in Kenya.

**Querol**, David, Head of Mission, Medecins sans Frontières-Swiss, (MSF), Nairobi.

**Rougier**, Phillippe, Country Director (Somalia), Action Contre la Faim (ACF), Nairobi.

**Shooble Dahir**, Abdulkadir, Bandhabow representative, Nairobi.

**Wilback**, Jan Owe, Programme Officer, Legal & Human Rights, DIAKONIA, Regional East Africa Office, Nairobi.

**Wolken**, Simone, Representative, UNHCR Branch Office Somalia, Nairobi.

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## **Abbreviations and acronyms**

ACF – Action Contre la Faim

ADRA – Adventist Development and Relief Agency

AU – African Union

BBC – British Broadcasting Corporation

CAP – Consolidated Appeals Process

CEC – Community Education Committee

COSV – Coordinating Committee of the Organisation for Voluntary Service

EC – European Commission

FGM – Female Genital Mutilation

G8 – Group of Eight

HIV/AIDS – Human Immuno-deficiency Virus/Acquired Immuno-deficiency Syndrome

ICRC – International Committee of the Red Cross

IDP – Internally Displaced Person

IFA – Internal Flight Alternative

IGAD – Inter-Governmental Authority on Development

IMC – International Medical Corps

INGO – International Non-Governmental Organisation

IRIN – Integrated Regional Information Network

JVA – Juba Valley Alliance

MP – Member of Parliament

MSF – Médecins sans Frontières

NGO – Non-Governmental Organisation

NOVIB – Netherlands Organisation for International Development Cooperation

NPA – Norwegian People's Aid

OCHA – Office for the Coordination of Humanitarian Affairs

OHCHR – Office of the High Commissioner for Human Rights

PDRC – Puntland Development Research Centre

RRA – Rahanweyn Resistance Army

SACB – Somalia Aid Coordination Body

SCF – Save the Children Fund

SNA – Somali National Alliance

SNF – Somali National Front

SNSC – Somali National Salvation Council

SRRC – Somali Reconciliation and Restoration Council

SSA – Somali Salvation Alliance

SSNM – Southern Somali National Movement

TB – Tuberculosis

TNG – Transitional National Government

UK – United Kingdom

UN – United Nations

UNCU – United Nations Coordination Unit

UNDP – United Nations Development Programme

UNHCR – United Nations High Commissioner for Refugee

UNICEF – United Nations Children’s Fund

UNIFEM – United Nations Development Fund for Women

UNOSOM – United Nations Operation in Somalia

UNSECOORD – United Nations Security Coordinator

US – United States

USC – United Somali Congress

Map of Somalia (regions and districts)

DISTRICTS IN SOMALIA

