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Returns to South and Central Somalia: A Violation of International Law

Amnesty International opposes attempts by Denmark, the Netherlands and Norway to forcibly return people to the Somali capital, Mogadishu, and/or any other parts of south and central Somalia. The risk of human rights violations and abuses remains real in most areas of south and central Somalia, given limited government control, the significant continued presence of al-Shabab,¹ and the ongoing armed conflict. Though there have been improvements in the security situation in Mogadishu, they remain fragile and volatile. In the circumstances prevailing at the time of writing, there is little or no indication that any improvement has resulted in a fundamental, durable and stable change of circumstances in south and central Somalia as demonstrated by the recent attacks by al-Shabab in Mogadishu on 5 May and 14 April 2013.² Therefore, in line with their *non-refoulement* obligations under international law, states should not remove individuals to these areas.

The Government of the Netherlands was the first to end a policy of suspension of returns to Mogadishu in December 2012, citing improved security as the key reason. However, in February 2013 the deportation of a Somali national to Mogadishu by the Dutch authorities was suspended by order of the European Court of Human Rights (ECtHR). Following this, the ECtHR have suspended two further removals, and in another three cases removals were suspended by an order of the Dutch Courts. On 7 January 2013 the Norwegian government announced the end of its policy of suspension of all returns to Mogadishu as well as to other areas of south and central Somalia also alluding to improved security as the reason. On 16 and 17 May 2013, the Danish Refugee Board will hear appeals against decisions from the Danish Immigration Services in five cases concerning the removal of Somali nationals to Mogadishu. These cases may act as a catalyst for Denmark to start forcibly returning people to south and central Somalia. Amnesty International has received reports that Sweden and the UK may also be considering reviewing their policy towards forcible returns to Mogadishu and other parts of south and central Somalia.

Changes in security situation do not amount to a fundamental, durable and stable change of circumstances in central and southern Somalia at present

In August 2012, the eight-year 'transitional' period in Somalia ended with the appointment of a new Somali administration, following over 20 years of conflict and state collapse after the fall of the Siad Barre regime in 1991. Since the new administration has been in place, there have been some improvements in security; however at this point, it cannot be considered that these are either substantial or durable.

Al-Shabab withdrew from Mogadishu in August 2011, leaving a power vacuum which the Transitional Federal Government (TFG) did not fill. Instead militias and powerful individuals such as district commissioners filled the void assuming power and control of large areas of the city. Today, the government has gained control of large parts of Mogadishu, and the security situation has improved. Despite this, the Somali National Armed Forces (SNAF) has extremely

limited capacity and relies heavily on the African Union Mission to Somalia (AMISOM). Together with their lack of discipline, this renders them incapable of providing protection and security to civilians.

In south and central Somalia, the government, supported by AMISOM, has made gains in dislodging al-Shabab from key towns such as Afgooye, Baidoa and Kismayo. This has led to some changes in the security situation in parts of south and central Somalia. However any improvement is limited to specific towns which the government - with heavy reliance on AMISOM or aligned forces - hold. Their control and influence is weak. Combined with an ongoing lack of discipline, this means that even in areas which the SNAF nominally controls, they provide very limited protection and security for civilians.

Civilians persistently face insecurity as a result of the risk of becoming victims of grave human rights abuses, including indiscriminate and targeted violence, rape, killings, as well as extortion. Though it is unclear who is responsible for the attacks in all circumstances, it is widely believed that all parties to the conflict, including the SNAF and allied militia, as well as al-Shabab, carry out such attacks. AMISOM and Ethiopian forces have also been responsible for attacks that have killed and injured civilians, including as a result of violations of international humanitarian law (IHL).

Regardless of the recent gains of the government, al-Shabab remains in control of large parts of rural areas, and of much of south and central Somalia. Though the government continues to hold key towns, their reliance on AMISOM and Ethiopian forces means that the gains are extremely fragile, and can neither be considered substantial, fundamental, durable or sustainable. This was demonstrated by the Ethiopian troops' withdrawal from Xudur, the provincial capital of Bakool, on 17 March 2013 which caused the SNAF to withdraw alongside them. Al-Shabab regained control within hours of their departure. Thousands of people fled towards the border with Ethiopia. A surge of abuses followed, with reports that al-Shabab carried out a series of beheadings, including of children and an elderly religious leader.³

In 1992, the UN Security Council imposed an arms embargo on Somalia, which was continuously violated with arms supplied to armed groups and armed forces on all sides of the conflict. The flow of arms to Somalia has fuelled serious human rights abuses committed during the conflict. Amnesty International is concerned that the Security Council decision of 5 March 2013 to partially lift the arms embargo to Somalia for one year runs a real risk of undermining the fragile security gains made in parts of the country and could increase the uncontrolled flow of arms - including to groups such as al-Shabab - fuelling an escalation in violations of IHL and human rights abuses.⁴ In the circumstances, Amnesty International considers that Somali civilians may be exposed to an even greater risk of serious human rights violations and abuses. The resulting greater insecurity is also very likely to lead to a worsening of the humanitarian situation, with the delivery of humanitarian assistance being negatively affected. Amnesty International considers that a worsening of the humanitarian situation as detailed above could in turn lead to further displacement.

In light of the above, the organization has no doubt that the security situation within south and central Somalia, including Mogadishu, remains extremely volatile. Lack of authority, discipline and control of government forces and its allied militias means that government forces both fail to provide protection or security for its civilians and are themselves a source of insecurity. Al-Shabab's capacity to regain control undermines the notion that the already limited improvements in the security situation will actually endure. With the possibility that Ethiopian forces could withdraw from further areas in Somalia,⁵ the limited capacity of AMISOM to support the Somali government beyond the areas they currently control, and the extremely limited capacity of the SNAF, there is a high likelihood that the fragile security situation will endure as is, or even worsen. As detailed above, the partial lifting of the arms embargo could fuel further insecurity.

Situation of generalised violence

In Mogadishu there is ongoing violence through both indiscriminate and targeted attacks. Al-Shabab, though weakened, retains influence and despite their diminished capacity is still able to carry out direct attack on civilians and indiscriminate attacks through suicide bombs, improvised explosive device (IED) and grenade attacks.

On 5 May 2013, an IED attack targeted a delegation of Qatari government officials killing at least 8 civilians and wounding many others in central Mogadishu.

On 14 April 2013, al-Shabab carried out two large-scale attacks in Mogadishu. One targeted Benadir High Court, where al-Shabab militia stormed the court. This soon became the scene of a devastating suicide attack, live fire-fights and explosions from an IED. Shortly after, a second IED attack hit a convoy of a Turkish humanitarian organization on the airport road. At least 30 people died in the two attacks, and many more were injured. Among the dead were two lawyers that had represented a woman who was arrested and charged after she had reported she was raped by government forces, and the journalist who interviewed her, in a high profile case which drew international outcry. These attacks serve as a reminder that the armed conflict continues, including in Mogadishu, and that the security situation is neither stable nor durable.

On 18 March 2013, a suicide attack took place near the President's Palace, killing at least eight people, including a journalist, and wounding several others. On 3 March 2013, two suicide attacks took place at the Indian Ocean Bar Restaurant near Mogadishu's Lido Beach. Four people were reportedly killed, and seven injured. On 17 February 2013, an IED attack took place at Lido Beach Restaurant in Xamar Weyne district killing two people and injuring four others. In September 2012, a suicide attack took place at a restaurant in Mogadishu killing at least 14 civilians, including three journalists, and injuring dozens more. In November 2012, a suicide attack on a second branch of the same restaurant in the Hodan district of the city killed one of the restaurant's guards.

Specific categories of civilians in Mogadishu, including journalists, businessmen, clan elders and politicians face a real risk of targeted killings. Since December 2011, 24 journalists have been killed within the city. In 2013 four journalists have been killed in Mogadishu; two of the deaths were a result of targeted attacks. On 21 April 2013, Mohamed Ibrahim Rageh was shot outside his home in Dharkenley district of Mogadishu after returning home from work. He had recently returned to Mogadishu having been exiled in Uganda since 2009. He was working with Radio Mogadishu and Somali National Television (SNTV). On 18 January 2013 journalist Abdihared Osman Adan, who worked for Shabelle radio, was shot and killed by unidentified gunmen.

26 April 2013 saw the killing of the most senior official since the new administration came to power, and was the second attack on the judiciary within two weeks. Deputy Chief Prosecutor Ahmad Shaykh Nur Maalin was shot and killed after coming out of a mosque.

Two clan elders were the victims of targeted attacks in 2012. Both were part of the National Constituent Assembly, which took part in approving the new Constitution and the selection of members to the new Parliament. In December 2012, Mohamed Mohamoud Yusuf, known as "Codey", was shot and killed in the Wadajir district of Mogadishu. In November 2012, Malaaq Issaq Uus was shot dead in the Waberi district. The chairman of Bakara market in Mogadishu was shot dead in November 2012 by gunmen inside the market. While in most of the killings the perpetrators remain unknown, al-Shabab is suspected in involvement in many of them.

Within Somalia, civilians including children, continue to suffer as a direct consequence of the conflict. Between 15 August 2012 and 15 January 2013, 157 civilian casualties caused by IEDs

were reported.⁶ On 17 January 2013, AMISOM opened fire on a school in Lower Shabelle region killing five children and two adults.⁷ Between August and December 2012, 100 children were reported killed, 575 children recruited into armed forces, and 13 attacks are reported to have taken place in schools. Al-Shabab are thought to be responsible for many of the attacks, however government forces and allied militia are responsible for some of the violations, particularly a large proportion of the reported 86 cases of sexual violence and rape of children.⁸ The majority of these abuses were carried out in south and central Somalia.

People who have fled their homes to seek refuge elsewhere face a real risk of becoming victims of robberies, violence, extortion and sometimes sexual violence including rape, while making their journey. While it is difficult to identify the perpetrators, it is believed that government forces and allied militia, as well as criminal groups are responsible for these attacks. Al-Shabab also commits abuses against civilians who are journeying between locations. On 1 January 2013, a man was abducted and then killed in Bay region when he was on the way to Kenya. On 2 January 2013, a local humanitarian worker was held by al-Shabab and later released. There have been reports of al-Shabab 'arrests' of people travelling to or returning from areas such as Mogadishu.

Extortion and at times violence takes place at checkpoints, including on main exit and entry points to towns under government control. These are controlled by government security forces and proxy militias, though al-Shabab also put checkpoints in areas under their control. Checkpoints are used to harass and extort money from civilians, including transporters. In November 2012, a bus driver was killed at a checkpoint after he refused to pay a bribe to Somali security forces in Mogadishu. In Baidoa, harassment, extortion and at times violence take place at checkpoints manned by government forces or allied militias. .

Amnesty International considers that the situation in areas controlled by al-Shabab has not substantially changed since the European Court of Human Rights' June 2011 judgment in the lead-case of *Sufi and Elmi v. the United Kingdom*, where the Court ruled that enforcing removals to southern and central Somalia would be lawful only in exceptional circumstances, in light of the dire human rights and humanitarian situation there.⁹

Despite the changes in some parts of south and central Somalia owing to changes in power, these are limited to small areas of government control and have not necessarily led to an improvement in security. Though civilians in such areas may be at reduced risk of certain types of abuses (such as summary killing and cruel punishments) than in areas under al-Shabab control, they nevertheless face extortion, harassment, violence and sexual violence. Some consider that the security situation under government control has worsened.

In light of the above, Amnesty International opposes any forcible returns to south and central Somalia in instances where the removing states are arguing that internal flight or relocation within south and central Somalia is a viable alternative for those returned there. The organization considers that in the circumstances prevailing in south and central Somalia, internal relocation would expose those embarking on relocation journeys to a real risk of the above-mentioned abuses.

Humanitarian conditions and the situation for IDPs

54 per cent of the Somali population is in need of assistance;¹⁰ and a sixth of the population in Somalia is still in crisis,¹¹ the majority of whom are in internally displaced persons (IDP) settlements. Though the drought of 2011 contributed to this, the ongoing humanitarian crisis is largely man-made. Of the 19,000 people recorded as newly displaced between 1 November 2012 and 1 February 2013, 89 per cent cited insecurity as one of the three key reasons for their displacement.¹² Humanitarian aid continues to be controlled and diverted by 'gatekeepers': powerful individuals, often from dominant clans and in the role of camp

managers, sometimes acting as, or linked to, district officials.¹³ Gatekeepers continue to exploit the situation of IDPs for profit. It is widely acknowledged that some IDPs are prevented from leaving the settlements as gatekeepers would stand to lose economic benefits as a result of humanitarian assistance given due to the presence of IDPs.¹⁴

The situation in IDP settlements both within and outside Mogadishu is dire. IDPs remain extremely vulnerable to ill-treatment as a result of violence and sexual violence, and suffer ongoing human rights abuses. Sexual and other gender-based violence against women and girls is reported to be endemic. The United Nations report that there were at least 1,700 cases of rape in IDP settlements in 2012,¹⁵ with at least 70 per cent of these being carried out by armed men in government uniforms.¹⁶ According to the United Nations, 800 cases of rape were reported between September and November 2012, since the new administration has been in place.¹⁷

Though there is no longer a famine, 1.05 million people remain in an acute food security emergency,¹⁸ and malnutrition levels remain at 20 per cent in parts of southern and northern Somalia,¹⁹ over the emergency threshold of 15 per cent. Many of the worst affected areas are in the IDP settlements. Humanitarian access has improved within Mogadishu, however due to diversion of aid it has not always resulted in increased access to basic services, or improved humanitarian conditions. Ongoing instability within south and central Somalia, and restrictions on access remain 'major obstacles to aid delivery'.²⁰

The humanitarian situation in IDP settlements, both in Mogadishu and in south and central Somalia shows little change, if any, from 2011 when the European Court of Human Rights found that the situation concerning the most basic needs, such as food, hygiene and shelter, and vulnerability to violence meant that the conditions in the main centres – the Afgooye Corridor in Somalia – were sufficiently dire to amount to inhuman and degrading treatment.²¹

Impunity

There is ongoing and virtually absolute impunity for decades of human rights violations and abuses in Somalia, including crimes under international law. A culture of impunity has developed which feeds the cycle of crimes under international law and other human rights violations: perpetrators can continue to commit abuses without consequences, and others see that they need not fear being brought to justice and are encouraged to commit abuses. Impunity for crimes and human rights violations must urgently be addressed if the human rights situation is to improve in Somalia.

In November 2012, President Hassan Sheikh Mohamud publicly committed to bringing to justice those members of state security forces who commit violations, including those responsible for rape. However, on 10 January 2013, in a contradictory move against this commitment, the police detained a woman who said she had been raped by government forces, and a journalist who had interviewed her. On 5 February 2013, both were found guilty of a number of charges, including 'insulting a national institution', and were sentenced to one year's imprisonment. The case was severely flawed from the outset, with significant procedural violations.²² The conviction of the woman was quashed by the appeals court on 3 March 2013, and the journalist was finally acquitted by the Supreme Court after spending 66 days in detention. Despite the quashing of the woman's conviction, her arrest and trial sent a strong message to women and girls who are raped that they may face prosecution themselves if they seek justice. The charges were also a serious setback for media freedom. It is extremely concerning that since January 2013, the number of women reporting rape in Mogadishu has significantly decreased.²³

Amnesty International welcomes the creation in February 2013 of a task force to investigate human rights abuses, including the killings of journalists and sexual violence. Amnesty International looks

forward to the taskforce taking action, in a country where over 20 cases of journalist killings remain unsolved,²⁴ and where the overwhelming majority of reported cases of rape and sexual violence are neither investigated nor prosecuted, despite the increase of reported cases in 2012.

Conclusion

Though there have been improvements in the security conditions within Somalia, these remain extremely limited in scope and are both volatile and fragile, with varying intensity between areas and at different times of day. The recent al-Shabab take-over of Xudur and the devastating attack in Mogadishu on 14 April 2013 demonstrate that improvements in security are neither fundamental, sustainable or durable. While the government controls more of Mogadishu than a year ago when the TFG was in place, their reliance on AMISOM renders them incapable of providing security or protection to their civilians. South and central Somalia, including Mogadishu, remain areas of conflict.

The situation of generalized violence in Mogadishu and in south and central Somalia, both through targeted and indiscriminate attacks is a real risk to civilians. Though some people may have some protection through clan or close family connections, many people, particularly specific categories of people such as female-headed households, single females, children, and families from minority clans, are at heightened risk, due to their specific situation. The recent killing of the journalist returning from exile is an example that those returning face a real risk of serious violence, including death. People in areas under al-Shabab control are at real risk of killings, torture or other ill-treatment. Conditions in IDP settlements remain dire, with a lack of access to basic services and high levels of violence and sexual violence, often carried out by the very people who are supposed to protect them.

Conditions in Somalia are not conducive for safe or sustainable return. Countries should under no circumstances attempt to return individuals to south and central Somalia, as the fragile security conditions have not led to a fundamental, durable and stable change. Any return to south and central Somalia would amount to *refoulement*, a violation of international law.

¹ Al-Shabab is an armed opposition group who are responsible for a wide range of human rights abuses. For more information please see Amnesty International, *Somalia: Somalia's children under attack*, July 2011 (Index: AFR 52/002/2011); Amnesty International, *Somalia: In the line of fire: Somalia's children under attack*, July 2011 (Index: AFR 52/001/2011); Amnesty International, *Somalia: Violations of human rights and international humanitarian law in Central and Southern Somalia: Amnesty International submission to the UN Universal Periodic Review*, May 2011 (Index: AFR 52/014/2010).

² For more details on this, see the section on situation of generalized violence.

³ United Nations High Commissioner for Refugees (UNHCR), Xudur Displacement, 8 April 2013, <https://data.unhcr.org/horn-of-africa/download.php?id=1168> accessed 2 May 2013.

⁴ United Nations Security Council (UNSC) Resolution 2093 (2013), S/RES/2093, 6 March 2013, articles 33 – 42, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2093\(2013\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2093(2013)) accessed 22 April 2013.

⁵ For more information see Aaron Maasho, "Ethiopia says preparing to pull troops out of Somalia", *Reuters*, 23 April 2013, <http://uk.reuters.com/article/2013/04/23/uk-somalia-ethiopia-troops-idUKBRE93M19A20130423> accessed 10 May 2013.

⁶ UNSC, *Report of the Secretary General on Somalia*, 31 January 2013, s/2013/69, para. 37. http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_69.pdf accessed on 2 May 2013.

⁷ For more information see AMISOM Daily Media Monitoring, <http://somaliamediamonitoring.org/january-17-2013-daily-monitoring-report/> accessed 10 May 2013.

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⁹ *Sufi and Elmi v The United Kingdom*, Applications nos. 8319/07 and 11449/07, European Court of Human Rights, judgment, 28 June 2011.

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- ¹³ UNSC, letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council, 13 July 2012, S/2012/544, article 84.
- ¹⁴ For more information see: UNSC, letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council, 13 July 2012, S/2012/544, p. 312, para. 13; and Human Rights Watch, *Hostages of the Gatekeepers*, March 2013, p. 27.
- ¹⁵ UNOCHA, *Humanitarian Bulletin Somalia*, March 2013, issued 12 April 2013,
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