

The report refers to three regional trends, characterized as: zones in which there is a crisis, areas experiencing recovery, and zones going through the transition from crisis to recovery. In terms of a mid- to long-term prospect for a return to order in Somalia, the report suggests that this may depend more on the determination and initiative of the people, sustained by a more selective and sectoral approach to assistance, than the delivery of aid and assistance that remains contingent on the establishment of a central government. The report comments: the zones experiencing crisis are mainly in the south and are controlled by the faction leaders and other irregular armed forces; while conflict continues mainly in and around Mogadishu, several parts of the country fall outside the factions' control; in the more stable parts, mainly in the north-east, the communities are beginning the immense task of recovery and rehabilitation, organizing themselves in a form of local government to provide security, basic services and governance; the self-proclaimed and unrecognized state of Somaliland in the north-west has already entered this phase and, despite some occasional fighting in August 1996, appears stable; and, the remaining parts of the country are undergoing transition from crisis to recovery with a form of political authority that is weak and often localized and disputed.

The report identifies a number of factors that will directly bear on either the success or failure of the international community's efforts to assist in the establishment of a national representative government and a positive human rights regime. These factors include: an intact and powerful social structure, nomadic and clan-based, that has led to security and political contradictions; the role of custom and religion, which are interlinked; a legal structure based on tradition and mediation between families and, in some cases, Shariah courts; some regular courts also apply *Hudud* and *Qasas* and resort to corporal punishment; significant numbers of internally displaced persons arising from severe drought, lack of central planning and some instances of forced displacements; the poor state of the economy and few prospects for the development of strong industries beyond traditional agricultural enterprises, e.g., export of beef cattle; and, the lack of infrastructure to address the continuing food shortage in some parts of the country and severe health problems arising from inadequate nutrition and stable programmes in disease prevention.

The assessment of the human rights and humanitarian situation identifies a number of ongoing problems and violations, including: continued clashes between various factions leading to the deaths of civilians and displacement of families; summary executions and politically motivated assassinations; severe restrictions on freedom of movement for international and local staff members of international organizations; banditry, kidnapping and looting in areas other than the self-proclaimed state of Somaliland; violence against and repression of journalists, including detentions, harassment and assaults; restrictions on journalists imposed by the Islamic court, based in some cases on charges of publishing false information and refusal to reveal sources; reliance on traditional and customary systems of justice based on material compensation for wrong-doings; and, jurisdiction of Shariah courts in some areas over matters relating not only to "traditional Islamic crimes" (murder, theft, adultery, drinking

alcohol, apostasy, prostitution, treason) but also rendering decisions, for example, "banning businessmen from exporting contraband goods including minerals, coal and female animals".

Referring to the principle that international human rights law applies only to states, the report states that the situation within the total territory of Somalia remains governed by international humanitarian rules pertaining to internal armed conflict. Under international humanitarian rules all parties to the conflict are bound by customary international law related to internal armed conflict, aimed at protecting the civilian population from hostilities, prohibiting deliberate attacks upon civilians, outlawing indiscriminate attacks, forbidding attacks on non-military objectives, and requiring precautions when attacking military targets. The report also affirms that the Somali warring factions are bound by article 3 common to the four Geneva Conventions of 12 August 1949 under which the parties to the conflict may not deliberately impede the delivery of food and the medical supplies necessary to ensure the survival of the civilian population.

The report cautions that the warring parties should not assume *de facto* or *de jure* powers in the absence of a central government and judiciary, and refers to Security Council resolution 794 (1992) which warned that those who commit or order the commission of such acts in Somalia would be held individually responsible.

In terms of the possibility of providing technical assistance to Somalia, the report recalls that various regions or zones in the country can be divided between those experiencing conflict, those going through recovery and those in a transition from conflict to recovery. On this basis, the Independent Expert observed that there is a need to adapt assistance to the varying operating environments and needs in these zones. Following on this, the report contains a number of recommendations, including that:

- ▶ human rights principles particularly in the area of the administration of justice be introduced to emerging authorities in areas experiencing recovery;
- ▶ where possible, formal and informal educational programmes in schools be developed to cultivate a wider knowledge of human rights; and
- ▶ human rights training be incorporated into projects such as administrative training, basic education, gender issues, communications, NGO capacity-building, and participation in civil governance and rehabilitation of militias.

The Independent Expert stated the view that there are several opportunities to render useful technical assistance to Somalia in the field of human rights, in particular in the area of administration of justice. While acknowledging that the existence of a central government remains essential to securing a durable peace, economic prosperity and full respect for human rights, the Expert stated that: the absence of a central government should not remain a major obstacle; the emerging local reconstruction initiatives and the work of the non-governmental sector must be encouraged; and that there is a need for a comprehensive needs assessment in the field of human rights that considers not only this interim situation, but offers some future prospects.