

Mandates of the Special Rapporteur on extreme poverty and human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Independent Expert on the situation of human rights in Somalia; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Independent Expert on the situation of human rights in Somalia; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Human Rights Council resolutions 26/3, 26/22, 24/30, and 22/8.

We wish to bring to the attention of your Excellency's Government information we have received regarding the **termination of accounts of Somali money transfer operators (MTOs) by commercial banks in the United States, the United Kingdom, and Australia as a consequence of government anti-money laundering and counter-terrorism measures**. Similar letters about this issue have also been sent to the Governments of the United States, the United Kingdom and Australia.

According to information we have received:

Somalia has a large diaspora of people living in foreign countries. It is estimated that at least 1 million Somalis live abroad, concentrated in the Horn of Africa and Yemen, the Gulf States, Western Europe and North America.¹ The total annual amount of remittances sent to Somalia by the worldwide Somali diaspora is estimated at USD 1.2 billion,² which represents at least 20% of the country's GDP,³ making it one of the most remittances-dependent countries in the world.⁴

¹ UNDP Somalia, 'Somalia's Missing Million: The Somali Diaspora and its Role in Development' (March 2009).

² Food Security and Nutrition Analysis Unit – Somalia, 'Assessment of External Remittances in Selected Urban Areas and Among Displaced Populations Across Somalia' (September 2015), p. 1.

³ United States Undersecretary of State for Political Affairs, Wendy Sherman, has publicly stated that remittances represent one-third of the Somali economy, http://www.americanbanker.com/issues/179_169/us-officials-caught-flat-footed-on-somali-money-transfers-1069713-1.html

⁴ Based on GDP data from the CIA World Factbook, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>.

Somalia has experienced more than two decades of chaos after the overthrow of President Barre in 1991. The country has only recently gained more stability after a new Government was installed in 2012. UNDP calculates the multidimensional poverty rate in the country at around 82% and Somalis have a life expectancy at birth of 55 years, making Somalia one of the least developed countries in the world. Given the fragile state of Somalia, remittances are vital for its development at this stage. Remittances represent “a primary source of private capital, foreign exchange and driver of economic development, while providing a vital safety net for households”.⁵ A recent report states that the bulk of money sent to Somalia is used by families to cover basic household expenses – rent, food, clothing, education and medical care.⁶ Another report states that one out of every three Somalis would not be able to pay for these necessities without these remittance flows.⁷ Remittances therefore provide an “essential lifeline” to Somali households, many of which are highly dependent on a single remittance sender.⁸ Remittances are further used to invest in new businesses and development projects.⁹

Remittances are channeled from the Somali diaspora to recipients in Somalia via MTOs. These Somali MTOs have serviced the diaspora since the 1990s and offer a practical and relatively inexpensive way for Somalis living abroad to send money to their country of origin. MTOs use commercial banks in diaspora countries to wire money to banks in the region, from where the remittances are delivered to MTO locations in Somalia. This system developed in the absence of a formal banking system in Somalia, which is non-existent due to the long period of instability in the country. Among other things, this means that recipients in Somalia do not possess bank accounts and that payments to recipients in Somalia are not regulated by the Central Bank of Somalia.

In recent years, commercial banks in the United States, the United Kingdom and Australia have increasingly closed the accounts of Somali MTOs. In February 2015, Merchants Bank of California, which was said to have handled 60 to 80 per cent of remittances from the United States to Somalia, terminated all bank accounts of Somali MTOs. In 2013, Barclays announced that it would stop servicing remittances companies, including Somali MTOs, in the United Kingdom. Barclays was the last major bank in the United Kingdom to offer services to MTOs. On March 31, 2015, Westpac Bank, one of the largest commercial banks in Australia, ceased to provide banking services to Somali MTOs.

⁵ UK Government/Beechwood International, ‘Safer Corridors, Rapid Assessment. Case Study: Somalia and UK Banking’, September 2013, p. 16.

⁶ Food Security and Nutrition Analysis Unit – Somalia, ‘Assessment of External Remittances in Selected Urban Areas and Among Displaced Populations Across Somalia’ (September 2015), pp. 1, 6.

⁷ Adeso, Global Center on Cooperative Security & Oxfam, ‘Hanging by a Thread: The Ongoing Threat to Somalia’s Remittance Lifeline’, February 2015, p. 4.

⁸ Food Security and Nutrition Analysis Unit – Somalia, ‘Assessment of External Remittances in Selected Urban Areas and Among Displaced Populations Across Somalia’ (September 2015), p. 1.

⁹ Samuel Munzele Maimbo (ed.), ‘Remittances and Economic Development in Somalia: An Overview’, World Bank Working Paper No. 38 (November 2006), p. 7.

The closure of bank accounts of Somali MTOs by commercial banks is a structural phenomenon occurring in many diaspora countries. The root causes lie with the implementation and, especially, enforcement of domestic and international anti-money laundering and counter-terrorism (AML/CFT) legislation and regulations that were introduced after the terrorist attacks on the United States on September 11, 2001.

Recommendations by the Financial Action Task Force (FATF) have furthermore had a significant impact on AML/CFT laws and regulations worldwide, including as a result of their endorsement by the UN Security Council, the World Bank and the IMF. In addition, commercial banks in diaspora countries have felt the reach of the United States Government. Since the United States holds that its AML/CFT laws and regulations have extraterritorial effect when foreign banks conduct business in US dollars, non-US banks have also been fined by US regulators.

Commercial banks in diaspora countries have responded to these regulatory risks by closing the accounts of customers that are considered high-risk. The closing of accounts of Somali MTOs by commercial banks in diaspora countries are reportedly caused, at least in part, by both domestic and foreign AML/CFT laws and regulations. The fear of enforcement of those laws and regulations and the accompanying financial and reputational risks have apparently led banks to end their business relationships with these MTOs.

Despite several attempts by Governments in diaspora countries to tackle the problem of the closure of bank accounts of Somali MTOs, these actions do not adequately address the most pressing issue for Somali MTOs at this time, which is access to bank accounts in order to continue transferring remittances to Somalia. It remains to be seen to what extent the interventions in these diaspora countries will stop the trend of the closure of bank accounts of Somali MTOs. In addition, actions to improve oversight of the financial system in Somalia by way of foreign assistance, while laudable and necessary, are not likely to produce results in the short-term and are therefore not likely to address the immediate problems that MTOs are facing and the associated dire consequences for remittance flows to Somalia. Foreign assistance also does not take away the responsibility of the Somali State to improve oversight of its financial system.

The cumulative effect of the closing of bank accounts of MTOs may be disrupting the vital flow of remittances to Somalia, despite the initiatives undertaken by diaspora Governments. A September 2015 survey in Somalia by the Food and Agriculture Organization (FAO) indicated that around 25% of those interviewed reported a decline in remittance receipts in the period January to June 2015.¹⁰ The same survey indicates that one of the reasons for the decline is that money transfer from the diaspora country in question is no longer possible. Although no definite

¹⁰ Food Security and Nutrition Analysis Unit – Somalia, ‘Assessment of External Remittances in Selected Urban Areas and Among Displaced Populations Across Somalia’ (September 2015), p. 4.

conclusions can be drawn from this survey, the outcomes are worrying and merit close monitoring of the situation.

The cumulative effect of the closing of these MTO bank accounts may not only have a devastating impact on the lives of the Somalis who are dependent on the remittances they receive through these MTOs and the Somali economy as a whole, but may ultimately also undermine the purpose of AML/CFT laws and regulations. Closing off this route may force Somali families to transfer their money to relatives and friends in Somalia through other, more informal, routes that may be more difficult to monitor and have a higher risk of being used for money laundering and the financing of terrorism.¹¹ Alternative routes may also significantly increase the cost of sending money to Somalia, which may further decrease the flow of money to an already fragile economy.¹²

While we do not wish to prejudge the accuracy of these allegations, we express our deep concern with the widespread and increasing closure of bank accounts of Somali MTOs. While the closures involve decisions by private corporations in diaspora countries and there are strong indications that these decisions are influenced to a large degree by the regulatory environment in the diaspora countries, this trend also seems to be influenced by the current state of Somalia's banking system, for which your Excellency's Government is ultimately responsible. The closing of bank accounts of Somali MTOs and the accompanying reduction in the level of remittances to Somalia is likely to have a direct and significant impact on the enjoyment of human rights of people living in Somalia who are dependent on remittances from diaspora countries.

Thus the starting point for the analysis that follows is that the actions taken by commercial banks in diaspora countries in response to the domestic and international regulatory environment, together with the current state of Somalia's banking system, have directly affected the human rights of people living in Somalia. In particular, the cumulative effect of account closures in diaspora countries appear to have severely affected the realization of the economic, social and cultural rights as well as the civil and political rights of Somalis, including their rights to food, health, education and life. The following human rights of people living in Somalia appear to be especially affected by bank account closures in diaspora countries.

First, the bank account closures appear to affect the right of Somalis to an adequate standard of living, including adequate food and their fundamental right to be free from hunger. Hunger and a lack of access to adequate food are significant problems in Somalia. In 2011, an estimated 250,000 people were killed in a famine and the United Nations World Food Programme estimates that 731,000 Somalis currently require urgent lifesaving humanitarian assistance to help meet immediate food needs. The Somali Prime Minister has warned that as a result of the reduction of the flow of remittances to his country, "many Somalis risk to lose their autonomy and ability to pay rent, buy food and

¹¹ World Bank, 'Anti-Money Laundering Regulations: Can Somalia survive without remittances?', 2 November 2014.

¹² Foreign Affairs, 'Money Keeps Moving Toward Somalia, Sometimes In Suitcases', 15 May 2015.

clothes, access medical services or even afford to send their children to school.”¹³ Second, the drying up of remittance flows from diaspora countries may directly affect the right of Somalis to the enjoyment of the highest attainable standard of physical and mental health. Remittances are used by Somalis to pay for basic healthcare and medicines. Third, against the backdrop of the precarious humanitarian situation in Somalia, the restriction of remittances may well be the last straw for Somalis who depend on remittance money to buy food, basic health care and medicines. The possibility should not be excluded that, for those who are heavily dependent on remittances, the closure of bank accounts in diaspora countries may be tantamount to a deprivation of the right to life.¹⁴

Somalia is a State Party to the ICESCR, and bears the primary responsibility to respect, protect and fulfill the human rights of this Covenant for people living in its territory. We acknowledge that, in light of the extremely fragile state of Somalia and its heavy dependence on remittances at this time, it is unlikely that Somalia can compensate for the impact of the drying up of remittances from diaspora countries. It is nevertheless important to point to the relevant obligations of Somalia under the ICESCR, even in hard times. Article 2 (1) of the ICESCR obliges Somalia “to take steps, individually and through international assistance and co-operation [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means [...]” Article 2 (1) of the ICESCR, although allowing for progressive realization, imposes an obligation “to move as expeditiously and effectively as possible towards that goal”.¹⁵ Somalia furthermore has a ‘minimum core obligation’ to ensure the satisfaction of, at the very least, minimum essential levels of the economic, social and cultural rights enumerated in the Covenant.¹⁶ Somalia can only attribute its failure to meet its minimum core obligations to a lack of available resources if it demonstrates “that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”¹⁷ And even where Somalia’s resources would be demonstrably inadequate, it still has to “strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.”¹⁸ Finally, it should be underlined that, even in times of severe resources constraints, “the vulnerable members of society can and indeed must be protected by the adoption of relatively low cost targeted programmes.”¹⁹ Somalia is furthermore a State Party to the ICCPR, which includes the right to life.

¹³ Available at: <http://diplomat.so/2015/02/08/somalias-prime-minister-we-call-on-the-united-states-to-reconsider-on-remittances-to-somalia/>

¹⁴ “[...]there is a clear correlation between the enjoyment of the right to food and the right to life.” Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, 2 September 2009, A/HRC/12/22, para. 18.

¹⁵ CESCR, General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant) (1990), para. 9.

¹⁶ CESCR, General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant) (1990), para. 10.

¹⁷ CESCR, General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant) (1990), para. 10.

¹⁸ CESCR, General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant) (1990), para. 11.

¹⁹ CESCR, General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant) (1990), para. 12.

It is up to the Government to ensure that these obligations are met, regardless of the difficult external environment in which Somalia operates and its heavy dependence on remittances and other forms of assistance. There are furthermore several things Somalia can do to encourage the flow of remittances from abroad. It has been pointed out in various studies that the development of the Somali banking system, including transparent and adequate monitoring and oversight by the Somali authorities, is a crucial longer-term step towards ensuring that foreign banks can continue to channel money to Somalia.²⁰ Under the ICESCR, Somalia furthermore has the obligation to co-operate internationally. According to the Committee of Economic, Social and Cultural Rights (CESCR) “international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of *all States*”²¹ based on Articles 55 and 56 of the Charter of the United Nations, well-established principles of international law, and the ICESCR. This means that Somalia should do everything in its power to cooperate with other States in order to facilitate the channeling of remittances from diaspora countries to Somalia as long as the Government does not have alternative measures and means to fulfill the human rights of the people living on its territory.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. What actions, if any, is Somalia taking in the context of international organizations and fora, including, but not limited to, FATF, G7, G20, and World Bank, to address the issue of the closure of bank accounts of Somali MTOs?
3. Is Somalia contemplating addressing the issue of the closure of bank accounts of Somali MTO through bilateral or multilateral cooperation with the most affected States, including the United States, the United Kingdom, Australia and other diaspora States?
4. Please indicate what measures Somalia intends to take to facilitate the flow of remittances from diaspora countries, including through improvements to its domestic banking system, independently and through international cooperation.
5. Could you provide us with an overview of the flow of remittances from diaspora countries to Somalia over the last five years?

We would appreciate receiving a response within 60 days.

²⁰ Adeso, Global Center on Cooperative Security & Oxfam, ‘Hanging by a Thread: The Ongoing Threat to Somalia’s Remittance Lifeline’, February 2015, p. 15; Capitalizing on Trust: Harnessing Somali Remittances for Counterterrorism, Human Rights and State Building’ (2012), p. 56.

²¹ CESCR, General Comment No. 3 (1990), para. 14.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

It is our intention to publicly express our concerns in the near future as, in our view, the information upon which a press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Philip Alston
Special Rapporteur on extreme poverty and human rights

Dante Pesce
Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Bahame Nyanduga
Independent Expert on the situation of human rights in Somalia

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism