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Human Rights Priorities for Somalia's New Government

The creation of a new government in Somalia in March 2017 provides an important opportunity to address with international support many of the country's pressing human rights problems.

Successive Somali governments and international supporters have not paid sufficient attention to the numerous violations of international human rights law or to violations of international humanitarian law committed by all parties to Somalia's ongoing armed conflict. The link between the climate of impunity in which these abuses occur and persistent violence and insecurity has too often been overlooked.

Somalia's previous administration and its international partners identified areas of reform to improve the human rights situation, including the Action Plan for the Implementation of the Human Rights Roadmap (2015-2016), and acknowledged the need for broad engagement across ministries and sectors.

However, important reforms were neglected or delayed in the name of political expediency. Concrete improvements in protection, justice, and access to redress for victims of past abuse and those most at risk of abuse today have been extremely limited.

While the new administration faces many challenges, immediate improvements are possible, such as ensuring members of the security forces or allied militia who have committed serious human rights abuses are removed from service or not integrated within the new security structure. The May 11, 2017 London Conference on Somalia, that will focus on security sector reform, is an important chance for the new administration with its international partners to commit and promptly adopt concrete measures that will help enhance human rights protections and accountability.

The Somali government, including governments of federal member states, and its supporters should commit to urgent reforms in the following areas:

1. Strengthen Accountability in the Security Sector

Throughout Somalia's armed conflict, Human Rights Watch has documented serious abuses by Somali security forces, including the army, police, intelligence agencies, and government-affiliated militia. These include indiscriminate attacks, murder, rape, torture, arbitrary arrest and detention, and looting. Impunity for abuses has been widespread. Providing accountability, including by establishing vetting and oversight mechanisms to remove abusive commanders and new and current personnel, as well as by strengthening national and international avenues for redress, should be central to Somalia's security sector reform plans now being discussed.

Army

Human Rights Watch has documented indiscriminate attacks, unlawful killings of civilians, and other abuses by Somali government forces and allied militia in military operations against the Islamist armed group Al-Shabab. Government forces and allied militia have also targeted civilians in the context of politicized clan fighting. For example, Human Rights Watch documented civilian casualties in 2016 from indiscriminate attacks between the Puntland forces and Galmudug Interim Regional forces. The United Nations has reported an increase in civilian casualties, including by government forces, in the last quarter of 2016. The government has said it intends to step-up operations against Al-Shabab. Conducting military operations when many civilians are on the move,

fleeing a devastating drought, poses additional risks to civilian security. In order to minimize harm to civilians, senior government and military officials should take the following short-term steps:

- Promptly issue clear and public orders that the Somali National Army (SNA) forces, regional forces and allied militias will comply with international humanitarian and human rights law;
- Ensure that new and current military personnel receive appropriate training in human rights and humanitarian law, including strict prohibitions on rape and other sexual violence;
- Ensure rapid and unhindered humanitarian assistance to all civilians in need, making clear that all forces to the conflict deliberately or arbitrarily impeding access to aid will be held to account;
- Suspend SNA personnel and allied forces implicated in abuse of civilians until the allegations are properly investigated and appropriate disciplinary sanction or criminal prosecutions are carried out;
- Collaborate with the human rights section of the United Nations Assistance Mission in Somalia (UNSOM) to implement mitigation measures and recommendations made as part of efforts to implement the secretary-general's Human Rights and Due Diligence Policy as a means of improving Somali security force compliance with international law; and
- The parliament, specifically the defence committee, should ensure effective oversight of the operations and conduct of the SNA and allied forces.

The government, primarily the Ministry of Defense and Ministry of Justice, should take the following medium-term measures:

- Establish clear vetting procedures when recruiting senior officials into the federal and state civilian and military structures in order to identify and remove individuals responsible for serious abuses;
- Establish disciplinary and oversight mechanisms, including a public complaints unit where members of the public can file grievances against military personnel, and internal oversight bodies to investigate misconduct;
- Ensure effective and impartial investigations into alleged war crimes and other abuses, and refer those found responsible, regardless of rank, for appropriate criminal prosecution; and
- Improve the capacities of the civilian and military justice systems to provide credible, independent, and impartial justice with full respect for due process rights; civilian courts should have jurisdiction over military personnel in cases involving civilians.

Somalia's international partners, particularly those involved in training of security forces such as the EU, US, UK, Turkey, and United Arab Emirates should support the abovementioned recommendations and efforts to independently monitor the human rights conduct of Somali forces, including following trainings.

Intelligence, Police

Human Rights Watch is concerned about the broad mandate granted to Somalia's National Intelligence and Security Agency (NISA) particularly regarding terrorism-related offenses and lack of accountability for abusive conduct by its agents.

NISA has conducted mass security sweeps despite having no legal mandate to arrest or detain. NISA holds detainees for prolonged periods without charge, and obstructs or curtails key due process rights, including access to legal counsel and family visits. NISA has arbitrarily detained journalists and political activists for apparent politically motivated reasons. We have documented NISA torture and other ill-treatment of terrorism suspects to extract confessions.

However, the government and its partners have not prioritized efforts to hold NISA to account. Current plans to build a national security structure in Somalia overlook the intelligence services. To date there are no effective internal oversight mechanisms to provide redress for NISA abuses, particularly in politicized cases.

In addition, only recently has attention been paid to building the capacity of the police and criminal investigation department to carry out thorough, effective, and rights-respecting investigations. Police forces continue to be implicated in serious abuses against Somalia's most vulnerable citizens. For example, in March 2015, national police, NISA forces, and city council police forcibly evicted 21,000 internally displaced people from informal camps in Mogadishu in the space of 24 hours. Security forces threatened and beat those resisting orders to vacate, and destroyed shelters and shops with a bulldozer.

Establishing competent and accountable police forces capable of providing basic security and redress, including to the most vulnerable citizens, is critical. This should not be overlooked in the effort to extend security control over areas newly vacated by Al-Shabab and plans to integrate regional forces including the paramilitary Darawish forces. In the short-term the Somali government, including the Ministries of Justice and Internal Security and the parliament, should:

- Draft a rights-respecting national security law that clearly defines the mandates of national security agencies, including NISA;
- Enact necessary legislation to establish independent disciplinary and oversight mechanisms, including a public complaints unit into which members of the public can safely file grievances against security forces, and internal oversight bodies to investigate misconduct;
- Enact laws prohibiting torture and other ill-treatment and enforced disappearances in line with international standards and ensure that relevant new legislation, including the draft Counter-Terrorism bill, include provisions prohibiting torture;
- Significantly amend the draft Counter-Terrorism bill to ensure compliance with international standards, including restrictions on due process and vague provisions on incitement that infringe on the right to free expression;
- Ensure that all forces, including the Darawish, within or being integrated into the federal and state police structure receive appropriate training on human rights and international humanitarian law including on basic principles on the use of force and firearms by law enforcement officials;
- Allow for monitoring by independent nongovernmental organizations of official and unofficial detention facilities, including NISA and police facilities; and
- The parliament, specifically the security committee, should ensure effective oversight of the police, intelligence and other security forces.

In the medium-term, as part of the reform of the intelligence services and the police, the government, notably the Ministry of Internal Security, should:

- Ensure that members of the intelligence services and the police responsible for abuses are appropriately prosecuted in civilian courts; and
- Take similar short and medium-term measures aimed at establishing vetting measures during recruitment and integration into the police and intelligence forces as outlined for the army above.

2. More Effective Justice Reform

Despite public statements promising justice reform, the previous administration relied heavily on the country's military court to try national security-related cases. The military court continues to try cases that are not within its jurisdiction, including terrorism-related offenses, and cases against civilians, contrary to international law and the provisional constitution. Proceedings fall short of international fair trial standards, including full access to a defense and prompt trials. Security and terrorism-related cases that NISA investigates are forwarded to this court.

Civilian courts have reportedly been marred by clan politics, corruption, and lack of oversight of the prosecution. Civilian prosecutors have at times failed to intervene to protect the rights of individuals whom NISA has arrested in its clampdown on critical reporting and speech.

Establishing a justice system in Somalia capable of delivering justice in accordance with international standards, both to victims of government abuses and to criminal suspects, is a long-term challenge that requires considerable commitment and resources. In the meantime, the government should take some immediate steps to improve respect for due process and fair trial rights. It should:

- Publicly commit to bringing all suspects in custody promptly before a judge to determine the lawfulness of their detention, access to legal counsel, and the opportunity to present a defense;
- Ensure that civilian courts provide judicial oversight over detentions and investigations, including review of pretrial detention;
- End trials of civilians in military courts, and ensure that civilian courts have jurisdiction over abuses and crimes by military personnel against civilians as stipulated in the provisional constitution;

- In line with the Human Rights Roadmap of the previous administration, immediately impose a moratorium on executions as a first step towards abolishing the death penalty.

In the medium-term the government and the parliament should:

- Seek support from international donors to assist in creating a credible, impartial, and independent judicial system; and
- Enact a legal aid law to establish or bolster, with the assistance of international donors, legal aid systems to provide free legal assistance to defendants if they cannot afford a lawyer and help to ensure that criminal defense assistance is available throughout the country.

3. Improve Access to Justice for Sexual Violence

Core to reforming Somalia's criminal justice system will be ensuring that those most at risk of abuse and least protected by existing systems have access to redress. Any justice sector reform needs to effectively address and respond to sexual violence and take into consideration the barriers that women and girls face in accessing justice, including stigma and victimization.

High levels of sexual and gender-based violence persist in Somalia, corroding women's rights and creating long-term threats to security and to women's health. Human Rights Watch and other international and Somali organizations have documented that women in internal displacement camps are particularly vulnerable to sexual violence by armed men, including government soldiers and militia members, and civilians. Under the previous administration, government officials and the security forces have on a number of occasions threatened rights organizations instead of working to protect women from sexual violence and prosecuting those responsible.

The previous government and international partners made commitments and adopted some measures to improve the government's capacity to tackle impunity for sexual violence. However, many challenges remain. For example, in early 2017, authorities in Somalia's northeastern region of Puntland condoned a Sharia court-hearing of a group of juveniles accused of gang-raping two girls in the town of Goldogob and prosecutors did not push for criminal justice proceedings under its newly passed sexual offences act. More meaningful steps are needed to prevent crimes against women and girls, and to provide accountability when abuses occur.

The government, with international support, should:

- Publicly commit to ensuring that the implementation of police reform plans, notably the New Policing Model and Heegan plan, includes concrete measures to significantly strengthen police capacity to prevent and respond to sexual and gender-based violence;
- Increase efforts to support specialized training of police and other security personnel to assist investigations of sexual violence;
- Strengthen procedures to protect the confidentiality of people reporting sexual assault;
- Ensure that police officers at all levels receive appropriate training on human rights as well as international best practices on investigating sexual violence;
- Increase awareness among clan and religious leaders of the importance of reporting allegations of sexual and gender-based violence to the police;
- Continue to assist prosecutors in investigating and prosecuting sexual violence cases properly and fairly; and
- Offer training to judges and defense counsel in handling sexual violence cases.

In revising the penal code and other laws, the government should revise legislation dealing with sexual violence. The government and parliament should:

- Ensure that revisions ensure that all forms of sexual violence be appropriately prosecuted and that the punishment reflects the seriousness of the crime;
- Enact the draft sexual offenses act ensuring that the version passed meets international standards; and
- Improve the means to adequately respond to survivors of sexual violence, including by providing specialized training to health professionals to provide care and treatment to survivors, and better provide for treatment including medical, psychological and rehabilitation programs, and legal support.

4. Accountability for Crimes Committed by AMISOM and Other Foreign Forces

Human Rights Watch and the UN have documented numerous abuses by African Union forces in Somalia (AMISOM) and other foreign forces, including unlawful killings of civilians and sexual exploitation and abuse. For example, in July 2016 AMISOM's Ethiopian contingent killed 14 civilians in the Bay region. AMISOM committed to investigating the incident and conducted a board of inquiry. Its findings are unknown.

Human Rights Watch in 2014 reported on cases of sexual exploitation and abuse of Somali women and girls in Mogadishu by AMISOM troops from Uganda and Burundi. In 2016, the UN reported allegations of 14 AMISOM soldiers in the Galgudud region gang-raping two girls.

Each country contributing troops to AMISOM has exclusive jurisdiction over their own forces in Somalia. However, these countries have not committed the time, resources, and political will needed for credible investigations. In addition, troop-contributing countries have failed to share information about allegations and investigations with AMISOM leadership, other stakeholders, and the victims themselves.

In its discussions with AMISOM and troop-contributing countries, the Somali government should:

- Call on the African Union to provide an update on the status of implementation of recommendations made in April 2015 following its investigations into sexual abuse and exploitation in Somalia;
- Call on troop-contributing countries to impartially and transparently investigate credible allegations of abuses by their forces in Somalia, including by deploying sufficient prosecutors, investigators to Somalia, and holding in-country court martials;
- Call on troop-contributing countries and the AMISOM leadership to take necessary measures to guarantee a “zero tolerance” approach to sexual exploitation and abuse;
- Call on troop-contributing countries to systematically share information with AMISOM regarding allegations of abuses and investigations, including with AMISOM's Civilian Casualty Tracking Analysis Research Cell;
- Call on AMISOM to implement its policy of compensation for civilian harm, and ensure that troop-contributing countries compensate victims of other abuses, including sexual exploitation and abuse; and
- Call on AMISOM's international supporters to ensure their assistance helps to contribute to better accountability for abuses committed in Somalia.

5. End Recruitment of Children, Treat Children Linked to Armed Groups According to International Standards

Somalia should take all necessary steps to exclude children from its armed forces and properly treat and protect children used by Al-Shabab and other state and non-state armed groups.

Somalia should not deploy children under 18 in its armed forces. While previous administrations have sought to prevent recruitment by federal forces, including by signing a national action plan against child recruitment and establishing a child protection unit in the Ministry of Defense, regular oversight is needed to fully remove children from its ranks.

Al-Shabab and other armed groups continue to use children in their forces for combat, as “wives,” and for other unlawful purposes. The Somali government should take all feasible measures to prevent such recruitment and use, including enacting necessary legislation. Child soldiers who are apprehended should be demobilized and given appropriate assistance for their physical and psychological recovery and their social reintegration. Somalia's donors should provide assistance for these purposes.

Children affected by armed conflict are entitled to special respect and protection. Those held for criminal offenses are entitled to separation from adults while deprived of liberty, protection against sexual violence, and to education, among other things. Children have been prosecuted for security offenses in Somalia by military courts that do not meet international juvenile justice standards.

The government, defense forces, and Ministry of Defense and Ministry of Internal Security, should immediately:

- Release all children from Somali security forces and transfer them to appropriate child protection agencies for rehabilitation and reintegration;

- Issue a new public statement to commanders and soldiers to prohibit forced recruitment or use of children under age 18, including captured or surrendered children;
- Criminalize the recruitment and use of child soldiers, and investigate and prosecute violators;
- End all prosecutions of children under 18 in Somalia's military courts;
- Commit to ensuring that the prosecution of children is only carried out in accordance with international juvenile justice standards; children should be detained only as a matter of last resort, and not with adults, unless they are family members;
- Review existing and pending federal and regional legislation, including the pending Counter-Terrorism bill, to bring them in line with international standards on child and juvenile justice, notably by defining a child as anyone under the age of 18 and spelling out specific procedural rights of children arrested and tried under these laws; and
- Ratify and implement, with international support, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which prohibits the forced recruitment of anyone under age 18 or their use in hostilities by both governmental and nongovernmental armed groups.

In the medium-term, the government, including the Ministry of Defense and Ministry of Internal Security, should:

- Ensure, with the support of the UN, that all children formerly associated with armed groups are transferred to civilian rehabilitation and reintegration programs as an alternative to detention;
- Establish a juvenile justice system in accordance with international juvenile justice standards;
- Work with AMISOM and all local and international forces to ensure safe and prompt transfers of children from Al-Shabab and other armed groups; and
- Establish rigorous and systematic age screening procedures, involving independent monitoring and spot checks, which are rolled out to ensure that all military recruits, including those integrated from regional and other clan militia, are at least 18 years old before participating in military operations.

6. Improve Protection of Internally Displaced Communities

The new government's decision to make its response to the humanitarian crisis a priority is critical for the country's displaced population. Hundreds of thousands of internally displaced people who fled the 2011 famine and subsequent fighting to Mogadishu – along with tens of thousands of communities newly displaced by fighting, insecurity and drought – live in dire conditions in Somalia's capital and other urban areas. Human Rights Watch has documented serious abuses, including forced evictions, sexual violence, and clan-based discrimination from both government and non-state actors against these communities.

Since November 2016, at least 60,000 people have been subjected to forced evictions. These evictions put those who are already displaced in even more precarious situations, further undermines their security, and makes assisting them harder. Many displaced communities remain reliant on often-unscrupulous and unaccountable camp managers, known as gatekeepers. There is little accountability for abuses.

The previous administration failed to provide leadership on displaced community issues, resulting in lack of clarity between federal and municipal oversight. A 2014 policy on displacement, which requires authorities to protect affected communities during evictions and lays out procedures largely in line with international law, was neither officially endorsed nor implemented.

As part of efforts to improve the protection of vulnerable communities, Human Rights Watch urges the government, including federal and state Ministries of Interior and the Benadir regional administration, to:

- Immediately end forced evictions of displaced people living in Mogadishu and other areas controlled by government authorities;
- Obtain cabinet approval and implement the 2014 policy on displacement;
- Clarify the roles of federal, regional, and local authorities on questions of displacement for urban populations; and
- Promptly deploy competent police around the main urban informal settlements to improve basic security and curtail serious abuses against displaced residents.

In the medium-term, with the support of Somalia's international partners and in close consultation with displaced communities, the government should:

- Help people unable or unwilling to return home to relocate or locally integrate into urban areas including by providing them with basic housing.

7. Protect Media

Federal and regional authorities and Al-Shabab continue to target members of the media via harassment, intimidation, physical assaults, and even killings.

Federal government and regional authorities, including NISA and police forces, have used a wide range of tactics to compel journalists to cover issues in a way that authorities deem acceptable. They have regularly justified restrictions on the basis of purported national security threats that appear to be attempts by authorities to obstruct legitimate reporting on key security and political developments. The tactics used are without legal basis, and place journalists at significant risk of reprisals.

Somali authorities rarely investigate complaints filed by journalists or cases of killings or physical assaults on journalists or prosecute perpetrators. The previous administration only prosecuted a handful of attacks attributed to Al-Shabab, relying on the NISA and military courts; Human Rights Watch identified due process violations in these trials that undermined the defendants' rights to a fair trial.

Human Rights Watch is not aware of any instance in recent years in which a government official or security force member was disciplined or charged for abuses against journalists, despite significant evidence of their participation in such attacks.

While the 2016 Federal media law has some positive provisions, restrictions on media in the law are overbroad and vague. They include restrictions on "propaganda against the dignity of a citizen, individuals or government institutions," and allow significant room for problematic interpretation by authorities that are likely to prompt further self-censorship by journalists. The country's criminal code, which is under review, contains vague provisions that render free speech a criminal offense, including defamation, "offending the honor and prestige of the head of state," "publication or circulation of false, exaggerated or tendentious news;" and contempt against the nation, state or flag.

Concrete action by the new administration early on would send an important message that it is committed to the safety of media and the right to free expression, including on national security issues. The government and parliament should:

- Publicly support the right to freedom of expression and media as stipulated in the provisional constitution, including public reporting of sensitive political and other issues;
- Ensure that any restrictions on media freedom are necessary, proportionate, and the least restrictive possible;
- Promptly review the 2016 media law and seek revision of any provisions that violate the right to freedom of expression;
- Ensure that the new penal code excludes articles that impose criminal penalties for speech, including defamation; offending the honor and prestige of the head of state; publication or circulation of false, exaggerated or tendentious news; or contempt against the nation, state or flag; and
- Publicly commit to ensuring that officials who are complicit in abuses or fail to adequately investigate alleged threats or violence against journalists are appropriately disciplined or prosecuted.

In the medium-term, the government should work towards ensuring that security sector and justice reforms:

- Ensure that authorities carry out effective and impartial investigations into the killings of journalists, regardless of the alleged perpetrators, and fairly prosecute them.

8. Promoting Women's Equality and Political Participation

The government should promptly adopt measures to end discrimination against women. Somali women's participation in politics and decision-making spheres remains limited, perpetuating narrow gender roles and inequalities. Political processes are controlled by

male-dominated systems, notably through the predominance of clan elders. Somalia's Provisional Constitution explicitly recognizes the importance of women's political participation and women's representation increased within the legislative and executive during the recent electoral process. However, the government should work towards ensuring that women are able as a matter of law and practice to equally and fully participate in political processes.

In the short-term Somali authorities should:

- Ratify and implement the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and
- Work with civil society organizations that protect and promote women's rights, including those acting on behalf of women's rights defenders and survivors of sexual violence.

In the medium-term the government and its international partners should:

- Promote women's political participation by building the capacity of female candidates through initiatives such as campaign management or leadership training;
- Support voter education programs that target the education and information needs of women voters; and
- Support the education of girls by tackling discriminatory attitudes regarding girls' education, including through public education campaigns.

9. Establish a Robust, Independent Human Rights Commission

Establishing an active and independent national human rights institution may help to promote and protect human rights at the national level. Such a commission cannot replace security forces' internal oversight mechanisms, an independent judiciary, or a fair and competent justice system. However, it can play an important role, particularly in cooperation with domestic and international human rights organizations.

Given the passing of a national human rights commission law in 2016, the government should:

- Ensure that the national human rights commission is set up and functions in accordance with the Paris Principles on National Human Rights Institutions;
- Permit the commission to independently initiate investigations; have unannounced access to witnesses, documents, and locations, including government officials and agencies, and official and unofficial detention facilities; and set its own priorities without government interference;
- Respect the independence of all commissioners; and
- Dedicate adequate funding and material resources to the commission for it to effectively undertake its responsibilities.

10. Establish a Mapping Exercise

Given the scale and nature of the human rights abuses committed in Somalia over recent decades, addressing them will require tackling longstanding impunity. Even a significantly strengthened national justice system will not be able to address this alone, but will need to be reinforced by international efforts. We encourage the government, as a key step toward recommending a transitional justice strategy and measures to improving accountability, to:

- Work with international partners to establish a United Nations commission of inquiry – or a comparable, appropriate mechanism – to document and map serious international crimes committed in Somalia as a follow-up to the 2009 feasibility study conducted by the UN Office of the High Commissioner for Human Rights, and similar to the mapping report conducted in the Democratic Republic of Congo.

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