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## **Somalia's Compliance with The International Covenant on Civil and Political Rights: The Death Penalty**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996  
and

**The World Coalition Against the Death Penalty**

**for the 138th Session of the UN Human Rights Committee  
26 June–28 June 2023**

**Submitted 29 May 2023**

**The Advocates for Human Rights** (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty** is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

## EXECUTIVE SUMMARY

1. This report addresses Somalia's compliance with its international human rights obligations with respect to the death penalty. Somalia's government institutions, including its judicial and police systems, remain in a state of flux as the nation reorganizes its government. The Federal Government of Somalia (FGS) and the Federal Member States (FMS) have failed to reach agreement on how to structure and oversee their government, and al-Shabaab's terror attacks and the ongoing civil war further complicate the legal landscape.
2. Somalia's state actors continue to implement the death penalty. This ongoing practice, along with evidence of torture and other due process violations, raises serious concerns. This report recommends that Somalia eliminate the death penalty, clarify its laws regarding terrorism, bring detention conditions and access to legal services into compliance with international human rights standards, and ensure the fair trial and due process rights of all persons suspected of committing crimes.

### **Somalia Fails to Uphold Its Obligations Under The International Covenant on Civil and Political Rights**

#### **I. Human rights violations continue to occur with impunity in Somalia, and authorities have failed to hold perpetrators accountable for many past human serious rights violations. (List of Issues paragraph 6)**

3. In its List of Issues, the Committee asked Somalia to "indicate all measures taken to combat impunity, in particular with respect to past serious human rights violations" and to provide information on the formation of the Truth and Reconciliation Commission provided for in Somalia's Provisional Constitution.<sup>1</sup>
4. In its Initial Report, Somalia responded that the government had endorsed a National Reconciliation Framework in 2019.<sup>2</sup> The Report stated the Ministry of Interior, Federal Affairs, and Reconciliation was in the process of developing a law related to the establishment of the Truth and Reconciliation Commission.<sup>3</sup> The completion of the draft law is described as a principal government priority in the National Development Plan, but the report also notes that there is "not yet a comprehensive peace agreement to allow for a fully-fledged transitional justice process."<sup>4</sup> Somalia did not directly address efforts to combat impunity for past human rights violations or any continuing violations, including extrajudicial killings or use of force or other complaints about police or military forces.
5. Reports of unlawful or arbitrary killings, including extrajudicial killings, continue to emerge from Somalia, including killings by police and military forces.<sup>5</sup> Not only have these

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<sup>1</sup> Human Rights Committee, *List of issues prior to submission of the initial report of Somalia*, (5 May 2020), U.N. Doc. CCPR/C/SOM/QPR/1, ¶ 6.

<sup>2</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 73.

<sup>3</sup> *Id.* ¶ 75.

<sup>4</sup> *Ibid.*

<sup>5</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), available online at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

extrajudicial killings occurred with impunity, some appear to have been the result of encouragement from government officials. For example, in 2022, the governor of the Hiiraan region announced rewards of up to \$25,000 for anyone who killed a member of al-Shabaab, and the governor also specifically encouraged killing the wives and mothers of members of al-Shabaab.<sup>6</sup>

6. Some Somali soldiers have faced prosecution for the killing of civilians, with several receiving a sentence of death upon their conviction.<sup>7</sup>
7. There is no dedicated, civilian body that provides oversight of the police force in Somalia.<sup>8</sup> This lack of oversight promotes impunity.

## **II. Somali authorities engage in discrimination based on sex and sexuality. (List of Issues paragraph 8)**

8. In its List of Issues, the Committee asked Somalia for information regarding the number of people arrested, detained and prosecuted for same-sex sexual activity by virtue of Article 409 of the Penal Code and whether the State party intends to repeal that provision.<sup>9</sup> It also asked about information regarding southern regions of Somalia, where certain Islamic courts, outside the formal court system and under control of insurgents, had imposed the death penalty for consensual, same-sex sexual relations.<sup>10</sup>
9. In its Initial Report, Somalia responded that all laws in Somalia have to conform with Shari'ah and did not address reports of the death penalty being imposed for consensual, same-sex sexual relations.<sup>11</sup>
10. In regions controlled by al-Shabaab, executions are carried out for crimes such as adultery and consensual same-sex sexual relations.<sup>12</sup> Additionally, some local interpretations of Shari'ah view homosexuality as a crime punishable by death, though there have been no known killings on this basis in the past year.<sup>13</sup>

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*Also see, e.g.,* Mohamed Gabobe, “War Crimes, Deception, and Impunity,” *Byline Times* (June 15, 2022) <https://bylinetimes.com/2022/06/15/killings-in-somalia-war-crimes-deception-and-impunity/> (discussing extrajudicial killings committed by AMISOM forces).

<sup>6</sup> Ahmed Mohamed, “Regional Governor in Somalia Puts Bounty on al-Shabaab Chiefs,” *VOA News* (Oct. 17, 2022) <https://www.voanews.com/a/regional-governor-in-somalia-puts-bounty-on-al-shabab-chiefs-/6794267.html>

<sup>7</sup> Ahmed Mohamed, “Somali Military Court Executes 13 Militants, 5 Soldiers,” *VOA News* (Mar. 8, 2023) <https://www.voanews.com/a/somali-military-court-executes-13-militants-5-soldiers-/6995738.html>

<sup>8</sup> The Law on Police Use of Force, *Somalia* (2021), available online at <https://www.policinglaw.info/country/somalia>.

<sup>9</sup> Human Rights Committee, *List of issues prior to submission of the initial report of Somalia*, (5 May 2020), U.N. Doc. CCPR/C/SOM/QPR/1, ¶ 8.

<sup>10</sup> *Id.* ¶ 8.

<sup>11</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 83.

<sup>12</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>13</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

### **III. Somalia retains the death penalty for many crimes, many people remain on death row, and Somalia has not and currently does not plan to ratify the Second Optional Protocol of the ICCPR. (List of Issues paragraph 13)**

11. In its List of Issues, the Committee asked Somalia whether the State Party intends to impose a moratorium on the death penalty, asked about measures it has taken toward abolition and obstacles to the same, inquired about crimes punishable by death, and requested that the State Party respond to information that death sentences were often carried out rapidly and publicly without following fair trial standards.<sup>14</sup> The Committee also asked whether Somalia intended to ratify the Second Optional Protocol to the ICCPR.<sup>15</sup>
12. In its Initial Report, Somalia responded that it has not implemented a moratorium on the death penalty and did not outline any steps toward abolition of the death penalty, observing that it “retains the death penalty per Shari’ah principles for a limited number of crimes.”<sup>16</sup> Somalia provided a list of eight crimes punishable by death, and stated that defendants’ due process rights are always protected. Somalia’s response noted that executions were carried out in line with Article 94 of the penal code, which does not prevent public executions and allows for the location to be “any other place prescribed by the Minister of Grace and Justice.”<sup>17</sup> Somalia has “no immediate plans to ratify the Second Optional Protocol to the Covenant” due to the long process required to abolish the death penalty.<sup>18</sup>
13. Somalia does not limit the death penalty to “the most serious crimes.” Beyond crimes in which the defendant committed an intentional killing, Somalia’s existing penal code permits the use of the death penalty for a host of political crimes, including espionage and “attempts against the integrity, independence or unity of the Somali state” as well as a number of crimes that involve endangering public safety, even if they do not result in death.<sup>19</sup> In addition, the Military Penal Code authorizes the death penalty for rape.<sup>20</sup>
14. A draft penal code completed in 2017 would reduce the number of capital offenses, but would retain the death penalty for at least four crimes, including taking up arms against the State,<sup>21</sup> genocide,<sup>22</sup> first degree murder,<sup>23</sup> and using a weapon of mass destruction.<sup>24</sup> The draft leaves

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<sup>14</sup> Human Rights Committee, *List of issues prior to submission of the initial report of Somalia*, (5 May 2020), U.N. Doc. CCPR/C/SOM/QPR/1, ¶ 13.

<sup>15</sup> *Ibid.*

<sup>16</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 122.

<sup>17</sup> *Id.* ¶ 124.

<sup>18</sup> *Id.* ¶ 122.

<sup>19</sup> *Id.* ¶ 123.

<sup>20</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023) available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>21</sup> *Draft Report of the Somali Criminal Law Recodification Initiative*, Art. 1101 (March 2017), <https://www.law.upenn.edu/live/files/6310-vol-1-and-2-somali-recodification>.

<sup>22</sup> *Draft Report of the Somali Criminal Law Recodification Initiative*, Art. 2101 (March 2017), <https://www.law.upenn.edu/live/files/6310-vol-1-and-2-somali-recodification>.

<sup>23</sup> *Draft Report of the Somali Criminal Law Recodification Initiative*, Art. 3101 (March 2017), <https://www.law.upenn.edu/live/files/6310-vol-1-and-2-somali-recodification>.

<sup>24</sup> *Draft Report of the Somali Criminal Law Recodification Initiative*, Art. 7303 (March 2017), <https://www.law.upenn.edu/live/files/6310-vol-1-and-2-somali-recodification>.

open the question of whether unlawful sexual intercourse should be punishable by death.<sup>25</sup> The current status of that draft penal code is unclear. Somalia noted in its Initial Report that the penal code remains “under review.”<sup>26</sup>

15. In 2021, Somalia carried out at least 21 executions, up from 11 in 2020.<sup>27</sup> All of the 2021 executions took place on the same day in Puntland.<sup>28</sup> Over 27 new death sentences were also handed down in 2021.<sup>29</sup> In 2022, Somalia carried out at least 6 executions and sentenced at least 12 people to death.<sup>30</sup> According to Amnesty International, as of the end of 2022, at least 10 people were known to be under sentence of death in Somalia.<sup>31</sup>
16. In 2023 Somalia has continued its use of the death penalty, carrying out at least 23 executions since the start of the year. All of these executions were handed down by military courts, both in Puntland and in Mogadishu. 16 of those executed were civilians believed to be al-Shabaab and Islamic State militants, and the remaining 7 were soldiers convicted of killing civilians.<sup>32</sup>
17. Executions may be carried out rapidly, with sentencing and execution sometimes occurring only days apart.<sup>33</sup> Military courts often hand down the death penalty.<sup>34</sup> In civilian courts, at least some capital cases are challenged on appeal.<sup>35</sup>

#### **IV. Somalia’s counter-terrorism measures do not comply with the ICCPR. (List of Issues paragraph 18)**

18. In its List of Issues, the Committee asked Somalia to provide further information regarding the country’s draft laws on counter-terrorism and their compatibility with the Covenant.<sup>36</sup>

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<sup>25</sup> *Draft Report of the Somali Criminal Law Recodification Initiative*, Art. 6402 note 22 (March 2017), <https://www.law.upenn.edu/live/files/6310-vol-1-and-2-somali-recodification>.

<sup>26</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure*, U.N. Doc. CCPR/C/SOM/1, (Oct. 18, 2020), ¶ 123.

<sup>27</sup> Amnesty International, *Death sentences and executions 2021* (2022) at 11, available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>28</sup> Amnesty International, *Death sentences and executions 2021* (2022) at 58, 58, available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>29</sup> Amnesty International, *Death sentences and executions 2021* (2022) at 11, available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>30</sup> Amnesty International, *Death sentences and executions 2022* (2023) at 10, 12, available at <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

<sup>31</sup> *Id.* at 34.

<sup>32</sup> Ahmed Mohamed, “Somali Military Court Executes 13 Militants, 5 Soldiers,” VOA News (Mar. 8, 2023) <https://www.voanews.com/a/somali-military-court-executes-13-militants-5-soldiers-/6995738.html>; Ahmed Mohamed, “Somalia Executes Islamist Militant ‘Doctor,’ ‘Soldiers,’” VOA News (Mar. 15, 2023) <https://www.voanews.com/a/somalia-military-court-executes-islamist-militant-doctor-soldiers-/7006245.html>.

<sup>33</sup> Laetitia Bader, “Summary Executions in Somalia,” Human Rights Watch (Aug. 25, 2014) <https://www.hrw.org/news/2014/08/25/summary-executions-somalia>.

<sup>34</sup> Harun Maruf, “Al-Shabab Fears Somalia’s Military Court, Judge Says,” VOA News (Jan. 14, 2022) <https://www.voanews.com/a/al-shabab-fears-somalia-s-military-court-judge-says-/6397204.html>

<sup>35</sup> Nita Bhalla, “Somalia Executes Two Men by Firing Squad for girl’s gang rape and murder,” Reuters (Feb. 11, 2020) <https://www.reuters.com/article/us-somalia-women-sexcrimes-trfn/somalia-executes-two-men-by-firing-squad-for-girls-gang-rape-and-murder-idUSKBN205259>

<sup>36</sup> Human Rights Committee, *List of issues prior to submission of the initial report of Somalia*, (5 May 2020), U.N. Doc. CCPR/C/SOM/QPR/1, ¶ 18.

Specifically, the Committee asked about NISA (the National Intelligence and Security Agency) and potential human rights violations attributed to that NISA, including extrajudicial executions, torture, arbitrary arrests and detention, and restrictions of freedoms of expression, peaceful assembly and association.<sup>37</sup> The Committee also inquired regarding the extensive use of administrative detention and legal safeguards in place to contest such detentions.<sup>38</sup>

19. In its Initial Response, Somalia stated that its national draft law on counter-terrorism has undergone multiple rounds of revisions to ensure compliance with international human rights standards.<sup>39</sup> This review process was intended to take stock of concerns raised with regards to some of the provisions in the law, including the definitions of terrorism, terrorism finance and terrorism training.<sup>40</sup> Recently, on March 8, 2023, the lower house of Somalia's Parliament approved a new anti-terrorism law.<sup>41</sup> The law must next proceed to the upper house of Parliament for a second round of approval, and then to the President's desk for final signing.<sup>42</sup>
20. Somalia explained that NISA was established to "guarantee the peace, sovereignty and national security" of the country.<sup>43</sup> NISA has undergone training on human rights through the Joint Programme on Human Rights, however the legal framework governing NISA had not been developed at the time of Somalia's Initial Response.<sup>44</sup> Subsequently, on February 22, 2023, Somalia's Senate passed a bill granting significant powers to the NISA.<sup>45</sup> NISA's social media indicates that the President signed this bill into law shortly thereafter.<sup>46</sup>
21. Somalia retains the death penalty for terrorism-related offenses, and the NISA law is likely to exacerbate human rights violations in capital cases. In November 2019, an FGS military court sentenced a person to death for an alleged terrorist attack.<sup>47</sup> Military courts in Somalia carried out many executions of alleged terrorists in 2020.<sup>48</sup> In September 2020, a Puntland military court sentenced to death a person accused of terrorism offenses.<sup>49</sup> In 2021, courts in Puntland sentenced at least six individuals to death, and officials executed 21 individuals by firing

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<sup>37</sup> *Ibid.*

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

<sup>39</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 147.

<sup>40</sup> *Ibid.*

<sup>41</sup> Mohamed Hassan, "Somalia's Lower House Passes Historic Anti-Terrorism Law," *VOA*, available at <https://www.voanews.com/a/somalia-s-lower-house-passes-historic-anti-terrorism-law/6996295.html>.

<sup>42</sup> Mohamed Hassan, "Somalia's Lower House Passes Historic Anti-Terrorism Law," *VOA*, available at <https://www.voanews.com/a/somalia-s-lower-house-passes-historic-anti-terrorism-law/6996295.html>.

<sup>43</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 148.

<sup>44</sup> *Id.* ¶ 149.

<sup>45</sup> Human Rights Watch, *Somalia: Revamp Intelligence Agency Bill*, <https://www.hrw.org/news/2023/02/24/somalia-revamp-intelligence-agency-bill>.

<sup>46</sup> @HSNQ\_NISA, Twitter, (March 8, 2023, 3:42 AM), [https://twitter.com/HSNQ\\_NISA/status/1633402800099979265?cxt=HHwWgsCzsanMgastAAAA](https://twitter.com/HSNQ_NISA/status/1633402800099979265?cxt=HHwWgsCzsanMgastAAAA).

<sup>47</sup> Garowe Online, *Somalia's military court sentences man to death for role in attack*, Nov. 21, 2019, available at <https://www.garoweonline.com/en/news/somalia/somalias-military-court-sentences-man-to-death-for-his-role-in-attack>.

<sup>48</sup> See, Hands Off Cain, *Somalia*, [www.handsoffcain.info](http://www.handsoffcain.info) (accessed May 3, 2023).

<sup>49</sup> Hands Off Cain, *Somalia: Puntland military court sentences activists to death and jail terms*, Sept. 29, 2020, available at <http://www.handsoffcain.info/notizia/somalia-puntland-military-court-sentences-activists-to-death-and-jail-terms-60315127>.

squad.<sup>50</sup> In July 2022, the al-Shabaab militant group executed seven individuals accused of spying.<sup>51</sup> The military also continues to carry out executions, particularly in terrorism-related cases.<sup>52</sup>

22. Despite Somalia's assertions regarding an effort to ensure its new laws governing NISA and counter-terrorism comply with international human rights standards, it is far from clear that these laws offer such protections. Human Rights Watch has identified serious concerns regarding the newly signed NISA law, which vests NISA with broad powers to arrest and detain individuals for a range of offenses including acts "that harm the security, reputation, independence, interests, and dignity of the Somali nation."<sup>53</sup> Moreover, the law grants NISA's detainees with the right to legal counsel only after 48 hours in custody, while the risks of torture and abuse are often most acute at the very beginning of detention.<sup>54</sup> While the law bans "torture and inhumane and degrading treatment" by NISA's agents, it grants NISA's director with discretionary powers to decide whether to arrest or investigate NISA officials, leaving them immune from prosecution in violation of international law.<sup>55</sup> It does not appear that individuals or communities can file complaints against NISA's officers.<sup>56</sup>
23. Separately, it is not clear how Somalia's preliminarily approved counter-terrorism bill defines "terrorism." Critics of the bill warn that the definition used is overly broad and would grant Somalia's security agencies with excessive leeway in identifying who constitutes a terrorist.<sup>57</sup>

## **V. Torture and cruel, inhuman, or degrading treatment continue in Somalia. (List of Issues paragraph 19)**

24. In its List of Issues, the Committee asked Somalia to provide information on the legislative framework to prevent and combat torture, including the definition of torture and the penalties

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<sup>50</sup> Amnesty International, *Death Penalty 2021: Facts and Figures* (May 24, 2022), 58.

<sup>51</sup> Mohamed Dhaysane, "Al-Shabab Militants Execute 7 by Firing Squad in Somalia," *VOA*, <https://www.voanews.com/a/al-shabab-militants-executes-7-by-firing-squad-in-somalia/6681012.html> (accessed May 13, 2023).

<sup>52</sup> Ahmed Mohamed, *Somali Military Court Executes 13 Militants, 5 Soldiers*, *VOA*, Mar. 8, 2023, <https://www.voanews.com/a/somali-military-court-executes-13-militants-5-soldiers-/6995738.html> (accessed May 13, 2023); Mohammed Dhaysane, *Somalia: Military court sentences policeman to death*, Anadolu Agency, Sept. 2, 2019, <https://www.aa.com.tr/en/africa/somalia-military-court-sentences-policeman-to-death/1570825> (accessed May 13, 2023); Somaliland.com, *Military Court hands down death sentence to Somaliland police officer*, Feb. 3, 2020, <https://www.somaliland.com/news/somaliland/military-court-hands-down-death-sentence-to-somaliland-police-officer/> (accessed May 13, 2023).

<sup>53</sup> Human Rights Watch, *Somalia: Revamp Intelligence Agency Bill*, available at <https://www.hrw.org/news/2023/02/24/somalia-revamp-intelligence-agency-bill>. However, note that Article 15(2) of the Provisional Constitution protects the liberty and security of a person, including the prohibition of illegal detention. And Somalia's Criminal Procedure Code established under article 66 the Supreme Court and the Court of Appeals may order the release of any individual in arbitrary detention or in cases other than provided by the law.

<sup>54</sup> Human Rights Watch, *Somalia: Revamp Intelligence Agency Bill*, available at <https://www.hrw.org/news/2023/02/24/somalia-revamp-intelligence-agency-bill>.

<sup>55</sup> Human Rights Watch, *Somalia: Revamp Intelligence Agency Bill*, available at <https://www.hrw.org/news/2023/02/24/somalia-revamp-intelligence-agency-bill>.

<sup>56</sup> Human Rights Watch, *Somalia: Revamp Intelligence Agency Bill*, available at <https://www.hrw.org/news/2023/02/24/somalia-revamp-intelligence-agency-bill>.

<sup>57</sup> Mohamed Hassan, "Somalia's Lower House Passes Historic Anti-Terrorism Law," *VOA*, available at <https://www.voanews.com/a/somalia-s-lower-house-passes-historic-anti-terrorism-law/6996295.html>.



stipulated in criminal legislation.<sup>58</sup> With regard to the definition, the Committee requested that Somalia indicate whether the definition of torture covers acts of torture committed by all persons acting in their official capacity, outside their official capacity, or in a private capacity. The Committee also requested that Somalia provide data on the number of (a) investigations, (b) prosecutions, (c) convictions or acquittals, and (d) punishments, as well as the nature of the sanctions imposed.<sup>59</sup>

25. In its Initial Response, Somalia stated that it does not have a specific definition and/or crime of “torture” in the Penal Code that aligns with Article 1 of the CAT.<sup>60</sup> Somalia indicated that it is committed to combatting torture and it is reviewing existing laws to fully implement the rights and obligations under the ICCPR.<sup>61</sup> The report lists the existing sections of the Provisional Constitution, the Penal Code, the draft Sexual Offences Law (2017), and the Military Penal Code that touch on issues of torture and cruel, inhuman, or degrading treatment.<sup>62</sup> Somalia stated that the Attorney General’s Office conducts investigations into all allegations of misconduct constituting “acts of torture, cruel, and inhuman and degrading treatment” by private persons as well as by state officials in and outside of their professional capacity.<sup>63</sup>
26. Torture and cruel, inhuman, or degrading treatment by Somali government agencies and government-affiliated clan militias remain frequent, and a culture of impunity persists.<sup>64</sup>
27. NISA has held people in detention for lengthy periods and there are reports of ill-treatment during interrogations, including forced confessions to crimes.<sup>65</sup> Multiple reports suggest that government agents, including security forces, raped and otherwise sexually abused individuals in detention.<sup>66</sup>
28. Clan militias, some of which are government-affiliated, are also reported to engage in torture with impunity.<sup>67</sup> Government forces and affiliated militias are alleged to be using excessive force, including torture, in their ongoing conflict with al-Shabaab.<sup>68</sup> Internally displaced

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<sup>58</sup> Human Rights Committee, *List of issues prior to submission of the initial report of Somalia*, (5 May 2020), U.N. Doc. CCPR/C/SOM/QPR/1, ¶ 19.

<sup>59</sup> *Ibid.*

<sup>60</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 151.

<sup>61</sup> *Id.* ¶ 152.

<sup>62</sup> *Id.* ¶¶ 153–159.

<sup>63</sup> *Id.* ¶ 160.

<sup>64</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), at section 1.A and 1.C, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>65</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), at section 1.C, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>66</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), at section 1.A and 1.C, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>67</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), at section 1.C, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>68</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20,

persons faced an increased risk of gender-based violence, including rape by armed government soldiers or militia members, and there are reports of IDPs being forced to provide sex in exchange for food or services.<sup>69</sup>

**VI. Conditions of detention in Somalia violate international human rights standards.  
(List of Issues, paragraph 20)**

29. In its List of Issues, the Committee asked Somalia to provide information on the number of prisons, their capacity and the number of detainees, and to indicate whether those prisons include separate sections for minors and women and for persons in pre-trial detention and convicted persons.<sup>70</sup> The Committee also asked for information on the mechanisms in place to monitor conditions of detention and to investigate allegations of torture and ill-treatment.<sup>71</sup> The Committee also requested data on the number and content and complaints brought to the attention of the State Party and data on the number of deaths in centers of detention over the previous five years.<sup>72</sup>
30. In its Initial Report, Somalia responded by providing the requested data on (a) the number of prisons in Somalia, (b) the prison capacity in Mogadishu, (c) the number of people detained in Somali prisons, and (d) the different sections within Somali prisons.<sup>73</sup> The report pointed to the recent establishment of a Human Rights Department within the Custodial Corps on March 5, 2020, as an effort to mainstream efforts to provide human rights training for federal and state prison officials.<sup>74</sup> With regard to the number of complaints brought to the attention of the FGS over the past five years, the report stated that Somalia does not maintain sufficient information or data to respond to this question.<sup>75</sup> The report stated that with regard to the number of deaths in detention centers, the Attorney General's Office investigated a total of six cases over the past five years, with the cause of deaths being as follows: two deaths related to diabetes, two deaths due to HIV/AIDS, and two deaths related to malnutrition.<sup>76</sup>
31. Due to the federal government's lack of control in some areas within the country's boundaries, prison data are limited. As mentioned in the preceding paragraph, the FGS did establish a Human Rights Department within the Custodial Corps on March 5, 2020, to streamline government efforts to provide human rights training for federal and member state prison

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2023), at section 1.G, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>69</sup> United States Bureau of Democracy, Human Rights and Labor, Somalia 2022 Human Rights Report (Mar. 20, 2023), at section 2.F, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>70</sup> Human Rights Committee, *List of issues prior to submission of the initial report of Somalia*, (5 May 2020), U.N. Doc. CCPR/C/SOM/QPR/1, ¶ 20.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 164.

<sup>74</sup> *Id.* ¶ 165.

<sup>75</sup> *Id.* ¶ 166.

<sup>76</sup> *Id.* ¶ 167.

officials and guards.<sup>77</sup> The Attorney General's Office and the SPF Police Oversight Committee have undertaken efforts to investigate torture perpetrated in prisons.<sup>78</sup>

32. In addition, the FGS opened a 250-bed maximum security prison in Mogadishu in February 2019.<sup>79</sup> Nonetheless, reports on prison conditions indicate that, in general, conditions for prisoners remain harsh due to overcrowding, poor sanitation and hygiene, and lack of medical care.<sup>80</sup> Families are often required to provide supplemental food and medical attention to their incarcerated family members.<sup>81</sup>
33. Mass security sweeps, such as those conducted by NISA as referenced above, lead to mass arrests, exacerbating overcrowding. In these instances, there have been reports that minors are not separated from adults. There are also reports of minors being executed. Notably, in 2017 five boys aged 14 to 17 were executed after a Military Court convicted them of participating in al-Shabaab attacks.<sup>82</sup>
34. The Committee Against Torture recently recommended that Somalia intensify efforts to improve detention conditions, in particular by considering the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offender (the Bangkok Rules). Indeed, evidence suggests that the State Party does not systematically consider the specific needs of women who are in detention, including sexual and reproductive health care, medical and mental health care, harm reduction services for women who use drugs, and protection from gender-based violence.

**VII. Somalia's judicial system remains unstructured, significant concerns exist as to its independence, and many individuals lack meaningful access to legal services. (List of Issues paragraphs 21-22)**

35. In its List of Issues, the Committee inquired about Somalia's judiciary system and asked for a particular accounting of the country's military courts. The Committee asked about Somalia's legislative framework to ensure the independence of the judiciary and effective access to justice, and regarding the "steps taken to ensure access to the courts for persons who cannot afford legal counsel or court fees and . . . the number and types of cases in which legal aid has been sought, granted and denied in recent years."<sup>83</sup>

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<sup>77</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, U.N. Doc. CCPR/C/SOM/1, (Oct. 18, 2020), 28.

<sup>78</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, U.N. Doc. CCPR/C/SOM/1, (Oct. 18, 2020), 27-28.

<sup>79</sup> United Nations Office on Drugs and Crime, *UNODC inaugurates Mogadishu prison, court complex in latest support to Somalia* (Feb. 25, 2019), available at <https://www.unodc.org/unodc/en/frontpage/2019/February/unodc-inaugurates-mogadishu-prison--court-complex-in-latest-support-to-somalia.html>.

<sup>80</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>81</sup> United States Bureau of Democracy, Human Rights and Labor, *Somalia 2022 Human Rights Report* (Mar. 20, 2023), available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>.

<sup>82</sup> Amnesty International, *Somalia: Halt execution spree of children in Puntland* (Apr. 28, 2017) available at <https://www.amnesty.org/en/latest/press-release/2017/04/somalia-halt-execution-sprees-of-children-in-puntland/>.

<sup>83</sup> Human Rights Committee, *List of issues prior to submission of the initial report of Somalia*, (5 May 2020), U.N. Doc. CCPR/C/SOM/QPR/1, ¶¶ 21-22.

36. In its Initial Report, Somalia explains that “there is currently a disparity between the *de jure* and *de facto* juridical structure.”<sup>84</sup> The nation’s justice system remains the subject of ongoing negotiations between the FGS and the FMS regarding the jurisdiction of the Supreme Court, the Constitutional Court, and the Judicial Services Commission.<sup>85</sup> Given that these negotiations are ongoing, the current judiciary structure remains based on a judiciary established in the 1960s, under the Organization of the Judiciary Law and Criminal Procedure Code, which is based on a civil law inquisitorial system.<sup>86</sup> UNSOM has said the current unfinished justice system “lacks the minimum administrative, financial and professional capacities [necessary to function]. Court decisions are rendered with scant rationale, generally referring to sharia law without elaboration.”<sup>87</sup>
37. The Provisional Constitution recognizes the need for an independent judiciary.<sup>88</sup> Yet Somalia recognizes that “the independence of the judiciary cannot be effectively guaranteed” given the nation’s current legal framework.<sup>89</sup> Somalia has strategic plans, including the National Development Plan 2020-2024 and the Judiciary Strategic Plan 2019-2022, which set forth goals for ensuring independence of the judiciary. Yet serious concerns remain about the independence of the judiciary. Without a formal agreement on the structure of the institution, the Executive on its own hires and fires judges, many judges have no degree (or solely a degree in Sharia law), and without a formal salary structure some judges seek out unauthorized court fees.<sup>90</sup> Somalia’s former Attorney General has stated that the judiciary is not independent and that judges may be subject to improper influence.<sup>91</sup>
38. Regarding access to legal services, the Provisional Constitution states, “The state shall provide free legal defence to the people who do not have the means of doing so themselves.”<sup>92</sup> Article 14(2)(b) of the prior 1962 Organization of the Judiciary Law also guarantees legal services to people who cannot afford legal counsel. Somalia explains that it has taken measures to increase

<sup>84</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 169.

<sup>85</sup> *Id.* ¶¶ 170-171, 177-180; United Nations Assistance Mission in Somalia, *Joint Justice and Corrections Service*, available at <https://unsom.unmissions.org/joint-justice-and-corrections-service>.

<sup>86</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 171.

<sup>87</sup> United Nations Assistance Mission in Somalia, *Joint Justice and Corrections Service*, available at <https://unsom.unmissions.org/joint-justice-and-corrections-service>.

<sup>88</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 176. Article 106 of the Provisional Constitution states, “1. The judiciary is independent of the legislative and executive branches of government whilst fulfilling its judicial functions. Members of the judiciary shall be subject only to the law. 2. No civil or criminal proceedings shall be instituted against a judge in respect of the exercising of any judicial function. 3. The home or person of a judge cannot be searched without the authorization of the Judicial Service Commission.” Article 34 of the Provisional Constitution states, “Every person has the right to a fair public hearing by an independent and impartial court or tribunal, to be held within a reasonable time, and to determine: (a) Any question of civil rights and obligations, or (b) Any criminal charge.”

<sup>89</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 177.

<sup>90</sup> United Nations Assistance Mission in Somalia, *Joint Justice and Corrections Service*, available at <https://unsom.unmissions.org/joint-justice-and-corrections-service>.

<sup>91</sup> Horn Observer, *Somalia's judiciary is politicized and is not independent — former AG*, July 19, 2020, available at <https://hornobserver.com/articles/518/Somalias-judiciary-is-politicized-and-is-not-independent-former-AG>.

<sup>92</sup> Art. 34(4).

such access for vulnerable groups in society.<sup>93</sup> These steps include a patchwork funding approach for legal aid, which includes local organizations using international funding to offer legal aid services.<sup>94</sup> The government has established a national Legal Aid Coordination Unit and is working to open legal aid clinics across the country. UNSOM notes some success in the region with “provision of legal aid services, mobile courts, and the establishment of community dispute resolution centers.”<sup>95</sup> But the rollout of free legal services is inconsistent across the country, and reports exist of defendants being denied access to legal counsel altogether.<sup>96</sup>

39. In its Initial Report, Somalia separately discusses the military court system. Specifically, the Military Penal Code governs the military courts and authorizes those courts to try crimes committed by soldiers and otherwise to try crimes defined as “military crimes.”<sup>97</sup> In 2011, a three-month-long emergency decree was entered that provided the military court with jurisdiction to try terrorism-related crimes. Military courts have continued to try these cases, though the federal government is apparently now taking steps to move these cases to civilian courts.<sup>98</sup> On September 8, 2019, a “roadmap” was adopted to transition terrorism and piracy cases out of the military court system and back to the civilian courts.<sup>99</sup>
40. Somalia has shown some willingness to move away from use of the death penalty. Somalia uses the Mogadishu Prison and Court Complex for high-risk piracy and Al Shabab matters and has invested in ensuring that the facility operates under the rule of law and is well protected. In this environment, Somalia was willing to sign a Memorandum of Understanding with the United Nations “which includes a landmark death penalty clause stating that nobody detained or convicted in the MPCC will be executed.”<sup>100</sup>

## VIII. Suggested recommendations for the Government of Somalia

41. The coauthors suggest the following recommendations for Somalia:
  - Immediately institute a moratorium on executions, with a view to ratifying the Second Optional Protocol and abolishing the death penalty;
  - Collect and on at least an annual basis publish data on the number of persons sentenced to death, on death row, and executed, including gender, age, ethnicity/clan, nationality, and crime of conviction, court of conviction, date of arrest and date of conviction, current location or date of execution, relationship to any codefendant, relationship (if any) to the victim, existence of any dependent children, and status of any appeals or clemency requests;

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<sup>93</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 185.

<sup>94</sup> *Id.* ¶ 186.

<sup>95</sup> United Nations Assistance Mission in Somalia, *Joint Justice and Corrections Service*, available at <https://unsom.unmissions.org/joint-justice-and-corrections-service>.

<sup>96</sup> Human Rights Watch, *Somalia: Revamp Intelligence Agency Bill*, available at <https://www.hrw.org/news/2023/02/24/somalia-revamp-intelligence-agency-bill>.

<sup>97</sup> Human Rights Committee, *Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021*, (30 June 2022), U.N. Doc. CCPR/C/SOM/1, ¶ 189.

<sup>98</sup> *Id.* ¶¶ 190-91.

<sup>99</sup> *Id.* ¶ 197.

<sup>100</sup> *Id.* ¶ 196; United Nations Assistance Mission in Somalia, *Joint Justice and Corrections Service*, available at <https://unsom.unmissions.org/joint-justice-and-corrections-service>.

- Clarify whether any women are currently under sentence of death and, if so, publish a report disclosing the crimes for which they have been convicted as well as whether the sentencing authority took into account any mitigating circumstances, particularly in the case of a history of gender-based violence or a coercive control relationship with a codefendant.
- Amend the Penal Code and the Military Penal Code to eliminate any provisions authorizing the death penalty for any crime that does not constitute an intentional killing by the defendant;
- Prohibit the death penalty for any person believed to be under the age of 18 at the time of the alleged offense, unless authorities can affirmatively prove that the person was in fact 18 or older at that time;
- Immediately commute the sentence of any person sentenced to death for an offense committed when that person was believed to be under the age of 18, unless authorities can affirmatively prove that the person was in fact 18 or older at the time of the offense;
- Immediately commute the sentence of any person sentenced to death for unlawful sexual relations;
- Publicly condemn the practice of government officials encouraging extrajudicial killings and hold those officials accountable for inciting violence;
- Ensure that all death sentences are subject to appellate review, and ensure that all persons sentenced to death have legal counsel throughout the appeals process;
- Collect and regularly publish data on the number of complaints brought to the attention of authorities regarding the treatment of detained persons, including the results of any investigation into the allegations;
- Amend the relevant NISA laws and regulations to ensure that any person in NISA custody has access to counsel immediately when taken into custody;
- Ensure that any person suspected of committing a capital offense has access to counsel from the time of arrest, through trial, and during all appellate proceedings;
- Prohibit all courts, including federal and state courts and any traditional courts, from considering any evidence obtained under torture, except as evidence to prove that a person engaged in torture;
- Create an independent body, with enforcement powers, charged with reviewing the conduct of the Somali Police Forces/NISA and its adherence to the legal frameworks governing its use of force;
- Revise the Penal Code, the Provisional Constitution and the Military Penal Code to specifically include the crime of “torture” in a manner that is in line with Article 1 of the Convention Against Torture;
- Revise all military and civilian criminal offenses related to terrorism to ensure that the definition of terrorism complies with international human rights standards;

- Collect and regularly publish data on the number of allegations of torture, cruel inhuman or degrading treatment or punishment perpetrated by private persons and by government officials in and outside of their professional capacity. In addition, publish data on the number of investigations launched in response to these allegations and the results of such investigations;
- Conduct comprehensive training among federal and state prison authorities about the Bangkok and Nelson Mandela Rules, with particular emphasis on rules relating to sanitation and hygiene, medical care, food, allegations of torture and ill-treatment of persons in detention, as well as gender-sensitive measures to ensure that detention facilities respect the specific needs of women in detention;
- Step up efforts to improve detention conditions, particularly relating to sanitation and hygiene, food, and access to medical care;
- Intensify efforts to reach an agreement with FMS on a Justice and Corrections Model;
- Prohibit military courts from trying civilians;
- Expand the roll-out of mobile courts and legal aid clinics, particularly for disadvantaged communities;
- Expand training for attorneys and paralegals providing legal aid, prioritizing training on proper handling of capital cases, including gender-specific defenses and mitigation;
- Finalize a salary structure for judges and take other concrete measures to enhance the independence of the judiciary and to prevent undue influence over the courts.