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Human Rights Watch

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Introduction

1. Human Rights Watch submits the following information regarding Somalia's human rights record since its second Universal Periodic Review (UPR) in 2015. The submission includes efforts towards implementation of recommendations Somalia accepted as well as information about developments on the human rights situation on-the-ground not addressed during the 2015 review. This submission is not a complete review of all recommendations accepted by Somalia, nor is it a comprehensive review of Somalia's protection of human rights.

2. A protracted indirect electoral process involving traditional elders with limited popular representation and involvement in late 2016 through early 2017 brought to power a new president and government.¹ The new government ratified several pending core international and regional human rights conventions and made small steps towards legislative reforms. Yet these efforts have been undermined by infighting between the federal government and regional authorities, a failure to move forward with the review of the problematic and outdated criminal code, an overreliance on the country's military courts, and pervasive gender inequality. Military courts have tried a broad range of offenses and defendants, including children, in trials that violate basic fair trial standards. Somalia has largely failed to ensure justice for the most serious crimes.

3. All parties to the conflict in the country committed violations and abuses of international human rights and international humanitarian law. The country's massive internally displaced population continued to face serious abuses, dire living conditions, and limited access to basic services. Security forces, notably Somalia's National Intelligence and Security Agency (NISA) still restricts free expression, association and peaceful assembly. NISA also arbitrarily detains people, including children, notably on allegations of links to the Islamist armed group Al-Shabab.

Legislative Framework and Acceptance of International Norms

4. In 2019, Somalia ratified the United Nations Convention on the Rights of Persons with Disabilities and took concrete steps to start implementation.² Somalia also produced its first periodic reports to the Committee on the Rights of the Child and the Committee against Torture.³ In line with a commitment made during the previous UPR,⁴ Somalia ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) in 2020. In 2016, Somalia endorsed the Safe Schools Declaration, an international commitment by countries to do more to ensure that schools are safe places for children, even during war.

5. The current administration has failed to move forward with the planned review of the outdated criminal code, which has been pending since the previous administration. The criminal

¹ Human Rights Watch, *Somalia: Rights Priorities for New Government*, May 2, 2017, <https://www.hrw.org/news/2017/05/02/somalia-rights-priorities-new-government>.

² UN Human Rights Council, *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/42/62, September 16, 2019, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/62 (accessed October 12, 2020).

³ UN Committee on the Rights of the Child, List of issues in initial report of Somalia, CRC/C/SOM/Q/1, March 19, 2020, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqHeT0UfKympT8Ou%2f4FTzCznMg%2bKy8vWgMDwglDlMmzyz%2bOZCK0qOP0tbSn19NX3D7zpSCj1pWlw7HniqgV6VD87SUQOSSPXps1vRnC89O%2b> (accessed October 14, 2020); UN Committee Against Torture, Initial Report submitted by Somalia under article 19 of the Convention pursuant to simplified reporting procedure, due in 1991, March 13, 2020, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr5cWseZrSkQRknw1EUWL%2fRiZmyEMmiBay%2bE90WQLPscC9aCE9WeU%2bm4p1%2bcoppn3kaQWKJldj1N82%2fqP97SyJOacxEnD2jqO%2fw%2bsoKiK5J1> (accessed October 14, 2020).

⁴ Recommendation 135.10. All paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/32/12, April 13, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/075/96/PDF/G1607596.pdf?OpenElement> (accessed October 14, 2020).

code contains a range of problematic provisions that restrict the right to freedom of expression. It also classifies sexual violence as an “offense against modesty and sexual honor,” rather than as a violation of bodily integrity. The code also punishes consensual same-sex relations.

6. While Somalia cooperated with the Independent Expert on the situation of human rights in Somalia, in 2019 the federal government expelled the head of the UN mission in Somalia, Nicholas Haysom. Somalia pointed to a letter in which he had raised human rights concerns around government actions in Baidoa, a city in southwestern Somalia as reason for his expulsion.⁵

7. Despite accepting recommendations to do so in 2015,⁶ Somalia has to date, failed to establish a national human rights commission.

8. *Somalia should:*

- Promptly finalize a comprehensive review of the penal code and bring it in line with Somalia’s constitution and international human rights law and standards.
- Ensure that the national human rights commission is set up and functions in accordance with the Paris Principles on National Human Rights Institutions.
- Ratify core human rights conventions, including the Convention on the Elimination of All Forms of Discrimination against Women, the three optional protocols of the Convention on the Rights of the Child, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (“Maputo Protocol”).

Use of Excessive Force and Attacks on Civilians

9. Inter-clan and intra-security force violence, often over control of land and revenge killings, led to civilian deaths, injuries, and displacement, as did sporadic military operations against Al-Shabab by Somali government forces,⁷ the African Union Mission in Somalia (AMISOM),⁸ and other foreign forces.⁹

10. Over the last two years, Somali government forces responded to rare, largely peaceful demonstrations with unnecessary lethal force.¹⁰ In December 2018, during the run-up to regional presidential elections in Baidoa, Ethiopian forces arrested Mukhtar Robow, a former Al-Shabab leader who ran for the regional presidency, sparking protests.¹¹ Somali security forces, notably the police, responded with lethal force, killing at least 15 protesters and injuring many others between December 13 and 15, according to the UN.¹² Dozens were arbitrarily arrested, reportedly, including children.¹³

⁵ Human Rights Watch, *World Report 2020*, Somalia Chapter, January 14, 2020 <https://www.hrw.org/world-report/2020/country-chapters/somalia>.

⁶ Recommendation 136.53.

⁷ UN Human Rights Council, Report of the Independent Expert on the situation of human rights in Somalia, A/HRC/45/52, August 24, 2020, <https://undocs.org/A/HRC/45/52> (accessed October 12, 2020).

⁸ UN Security Council, Report of the Secretary General on the situation in Somalia, S/2020/798, August 13, 2020, <https://www.undocs.org/en/S/2020/798> (accessed October 12, 2020).

⁹ Human Rights Watch, *Somalia: Inadequate US Airstrikes Investigations. Apparently Unlawful Attacks, No Redress for Civilian Deaths*, June 16, 2020, <https://www.hrw.org/news/2020/06/16/somalia-inadequate-us-airstrike-investigations>.

¹⁰ Human Rights Watch, *World Report 2020*, Somalia Chapter.

¹¹ Amnesty International, *Use of Lethal Force to Quell Protests in Somalia Unjustifiable*, December 14, 2018, <https://www.amnesty.org/en/latest/news/2018/12/somalia-use-of-lethal-force-to-quell-protests-in-baidoa-unjustifiable/> (accessed October 12, 2020).

¹² Human Rights Watch, *World Report 2020*, Somalia Chapter.

¹³ UN Human Rights Council, Report of the Independent Expert on the situation of human rights in Somalia, A/HRC/42/62.

11. Al-Shabab conducted targeted and indiscriminate attacks against civilians and civilian infrastructure using improvised explosive devices (IEDs), suicide bombings, and shelling, as well as assassinations. Al-Shabab executed individuals it accused of working or spying for the government and foreign forces, often after unfair trials. The group also extorted “taxes” through threats.¹⁴

12. US military strikes primarily on alleged Al-Shabab targets have sharply increased, with some US actions killing and injuring civilians.¹⁵

13. During its previous UPR Somalia committed to “strengthen accountability mechanisms for security forces, including by ensuring these mechanisms protect the rights of victims” and to “establish clear vetting procedures to identify and prosecute individuals responsible for serious abuses of human rights such as torture, extrajudicial killings, recruitment of children and sexual violence.”¹⁶ Yet those responsible for these serious abuses have rarely been held to account.

14. *Somalia should:*

- Take all necessary measures to minimize civilian loss of life and property in military operations and otherwise abide by the laws of war applicable in Somalia.
- Promptly and transparently investigate allegations of laws-of-war violations and publicize actions taken.
- Require that foreign forces seeking permission to undertake military operations in Somalia specifically agree to abide by international humanitarian law at all times.
- Take concrete measures to improve Somali security force compliance with international law, this would include establishing civilian oversight bodies.
- Appropriately discipline or prosecute members of the military, police, and government responsible for human rights violations, including torture, extrajudicial killings, recruitment of children, and sexual violence.
- Suspend security force personnel implicated in the abuse of civilians until allegations are properly investigated and appropriate disciplinary actions or criminal prosecutions are carried out.
- Establish clear vetting procedures to identify and remove individuals responsible for serious abuses during recruitment and integration of new forces.

Abuses against Children

15. Different forces involved in the conflict, including Al-Shabab, the Somali National Army, the Somali Police Force, and regional forces have committed serious abuses against children, including killings, maiming, the recruitment and use of child soldiers, and attacks on schools.¹⁷

16. In 2018, the UN documented more cases of children recruited and used as soldiers in Somalia than in any other country in the world. Al-Shabab has continued to aggressively recruit children and has retaliated against communities that refuse to hand over children.¹⁸ While the Federal government reasserted its commitment to implementing the 2012 action plan to end and

¹⁴ Human Rights Watch, *World Report 2020*, Somalia Chapter.

¹⁵ Human Rights Watch, *Somalia: Inadequate US Airstrikes Investigations. Apparently Unlawful Attacks, No Redress for Civilian Deaths*.

¹⁶ Recommendations 135.63, 136.97.

¹⁷ UN Security Council, Report of the Secretary-General on Children and Armed Conflict, S/2020/525, June 9, 2020, <https://undocs.org/S/2020/525> (accessed October 12, 2020).

¹⁸ Human Rights Watch, *Somalia: Al-Shabab Demanding Children. Residents Threatened to Hand Over Boys, Girls, January 14, 2018*, <https://www.hrw.org/news/2018/01/14/somalia-al-shabab-demanding-children> (accessed October 12, 2020).

prevent the recruitment of children, the UN found that national and regional forces continued to recruit and use children.¹⁹

17. A 2018 Human Rights Watch report found that between 2015 and 2018, authorities across Somalia had detained hundreds of boys suspected of joining or supporting Al-Shabab without considering such detention as a measure of last resort, nor ensuring that it was for the shortest time possible.²⁰

18. Security forces, notably NISA in Mogadishu and Puntland's Intelligence Agency (PIA) in Bosaso, have subjected children in their custody to threats, ill-treatment, forced confessions, and beatings, at times in ways that amounted to torture. Boys and adults were detained together in NISA's Mogadishu detention facilities in dire conditions.

19. Human Rights Watch's 2018 report found that while prosecutions and imprisonment of children on security charges in Somalia are not widespread, dozens of children have been tried, usually as adults, for Al-Shabab-related crimes in military courts since 2015. Basic due process procedures, including the right to present a defense and the prohibition on the use of coerced evidence, have been regularly flouted. Children as young as 14 have been sentenced to serve prison terms ranging from six years to life.²¹ The UN Security Council's Panel of Experts on Somalia found that the military court in Puntland tried and sentenced four children in 2018.²²

20. The federal government drafted but failed to pass a children rights bill.²³

21. *Somalia should:*

- Continue to work towards establishing rigorous and systematic screening procedures to ensure that no one under the age of 18 is recruited into the armed forces.
- Establish a juvenile justice system in Somalia consistent with international juvenile justice standards, including for sexual violence prosecutions.
- Ensure legislation, including the penal code, is consistent with international law and juvenile justice standards, including with regard to the definition of a child as anyone under the age of 18.
- Explicitly exclude children from the jurisdiction of military courts.
- End the detention and prosecution of children for alleged involvement with armed groups without evidence of a further criminal offense.

Sexual Violence against Women and Girls

22. While the full scope of sexual violence in Somalia remains unknown due to underreporting and absence of data, it is clear that internally displaced women and girls are particularly vulnerable to rape by armed men. This includes Somali government soldiers and militia members as well as Al-Shabab.

¹⁹ UN Security Council, Report of the Secretary-General on Children and Armed Conflict, S/2020/525.

²⁰ Human Rights Watch, *"It's Like we Are Always in a Prison," Abuses Against Boys Accused of National Security Offenses in Somalia*, February 21, 2018, <https://www.hrw.org/report/2018/02/21/its-were-always-prison/abuses-against-boys-accused-national-security-offenses>.

²¹ Ibid.

²² UN Security Council, Report of the Panel of Experts on Somalia submitted in accordance with resolution 2444 (2018), S/2019/858, November 1, 2019, <https://www.un.org/securitycouncil/sanctions/751/work-and-mandate/reports> (accessed October 12, 2020).

²³ UN Security Council, Report of the Secretary-General on Children and Armed Conflict, S/2020/525.

23. In 2020, the UN documented over 100 cases of conflict-related sexual violence, mostly against girls.²⁴ Since 2019, media outlets have repeatedly reported on several violent rapes, including gang rapes of children.

24. Despite committing to strengthening the legal framework to tackle sexual violence during the previous UPR,²⁵ the government failed to move forward with penal code reform. A very progressive federal Sexual Offenses Bill was submitted before parliament in 2018 but never debated.²⁶ Instead, in August 2020, the speaker of parliament in Mogadishu put forward a highly controversial new Sexual Intercourse Related Crimes Bill, which would violate Somalia's international and regional legal obligations.²⁷ The bill would allow for child marriage by defining a child based on physical maturity instead of age, inadequate penalties for forced marriage, exclude a broad range of sexual offenses, and include weak procedural protections for survivors. The status of the bill at writing is unclear.

25. Puntland was the first region to pass a sexual offenses law that criminalizes various sexual offenses, establishes complaints procedures, and strengthens support to survivors. But it also contains problematic provisions including the definition of rape, which does not criminalize marital rape and the definition of a child as 15 years old and younger. It also includes the death penalty for aggravated cases of rape. Implementation of the law has been limited.²⁸ Judgments seen by Human Rights Watch suggest that the outdated penal code continues to be used in sexual offense cases.²⁹ Our research also suggests that procedures are not being followed to safeguard the best interests of the child.

26. *Somalia should:*

- Immediately reject the controversial Sexual Intercourse Related Crimes bill and either reintroduce for debate the federal sexual offenses bill or enact another law that prohibits all forms of violence against women and girls. Somalia should consider a law or bill which encompasses the prevention, protection, care, treatment and support for survivors, and provides remedies for survivors, as well as adequate investigations and punishment of convicted perpetrators; address potential conflicts between customary or religious law and the formal justice system so that cases are addressed to respect the human rights of the survivor and are in accordance with gender equality standards. Somalia should carry out a national plan or strategy for a comprehensive and coordinated approach to implement the legislation.

²⁴ UN Security Council, Report of the Secretary-General on the Situation in Somalia, August 13, 2020, S/2020/798, <https://www.undocs.org/en/S/2020/798> (accessed October 14, 2020); UNICEF, "As the Fifth Anniversary of Somalia's ratification of the Convention on the Rights of the Child approaches, protection violations against children continue to rise," September 21, 2020, <https://www.unicef.org/somalia/press-releases/fifth-anniversary-somalias-ratification-convention-rights-child-approaches> (accessed October 12, 2020); UN Human Rights Council, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, September 14, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226&LangID=E> (accessed October 12, 2020).

²⁵ Recommendations 135.59, 135.60, 136.59, 136.97.

²⁶ UN Human Rights Council, Report of the Independent Expert on the situation of human rights in Somalia, A/HRC/42/62.

²⁷ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *UN Special Representative of the Secretary-General on Sexual Violence in Conflict Expresses Deep Concern Regarding New Draft Somalia Legislation on Sexual Crimes*, August 11, 2020 <https://www.un.org/sexualviolenceinconflict/press-release/un-special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-expresses-deep-concern-regarding-new-draft-somali-legislation-on-sexual-crimes/> (accessed October 12, 2020).

²⁸ UNFPA, *Enforcing the Sexual Offences Law in Puntland*, September 23, 2020, <https://somalia.unfpa.org/en/news/enforcing-sexual-offences-law-puntland> (accessed October 12, 2020).

²⁹ Ibid.

- Finalize the review of the penal code to further eliminate gaps in the protection of women and girls against acts of sexual and gender-based violence.
- Ensure legislation, including Puntland's sexual offenses law, is consistent with international legal standards.
- Put in place juvenile justice procedures in sexual violence prosecutions.
- Provide adequate and comprehensive services for survivors of sexual and gender-based violence including medical treatment, counselling support, and financial assistance.

Displacement and Access to Humanitarian Assistance

27. Currently, 2.6 million Somalis were internally displaced as a result of conflict, insecurity and natural events that have increased in intensity and frequency due to climate change. In 2020, there were 893,000 new displacements, the majority of these displacements were due to flooding.³⁰

28. Displaced people face serious abuses, including sexual and gender-based violence, repeated cycles of forced evictions, dire living conditions and limited access to basic needs such as health care, food and water.³¹

29. Despite Somalia supporting a recommendation to halt all forced evictions in locations under its control during its previous UPR,³² tens of thousands of displaced persons were forcibly evicted each year throughout this reporting period. In 2020, as of September, 65,677 displaced people were evicted from their shelter in Mogadishu alone.³³ During the Covid-19 pandemic, regional governments took concrete measures to tackle forced evictions, but the federal government has not imposed a moratorium.

30. In 2018, the Benadir regional administration conducted an investigation into a large-scale forced eviction by a range of security forces in late 2017 that displaced thousands. Unfortunately, this investigation was an exception.³⁴

31. Restrictions imposed by the government to limit the spread of Covid-19, including restrictions on movement and measures to ease congestion, along with price hikes and reduced remittance flows, further limited access to livelihoods and health care for displaced communities, and exacerbated existing gender-related abuses and inequalities.³⁵

32. *Somalia should:*

- Immediately cease forcibly evicting displaced people primarily in Mogadishu.
- Systematically provide adequate notification and compensation to the communities facing eviction and provide viable relocation or local integration options – taking into account issues such as gender, age and disability among other criteria as required by international law.

³⁰ UNHCR, *Somalia: Internal Displacement*, Interactive data visualization of displacements monitored by UNHCR Protection and Return Monitoring Network (PRMN), <https://data2.unhcr.org/en/dataviz/1?sv=1&geo=192> (accessed October 12, 2020).

³¹ Human Rights Watch, *Somalia: Thousands Homeless as Settlements Razed. Government Pledges to Investigate Forced Evictions as a Positive Step*, January 28, 2018, <https://www.hrw.org/news/2018/01/28/somalia-thousands-homeless-settlements-razed>.

³² Recommendation 136.117.

³³ NRC, *Evictions Trends Statistics*, <http://evictions.nrcsystems.net/dashboard.php> (accessed October 12, 2020).

³⁴ Human Rights Watch, *Somalia: Thousands Homeless as Settlements Razed*. January 28, 2018, <https://www.hrw.org/news/2018/01/28/somalia-thousands-homeless-settlements-razed> (accessed October 12, 2020).

³⁵ Amnesty International, *Somalia Internally Displaced People Surviving by the Grace of God Amidst Covid-19*, July 21, 2020, <https://www.amnesty.org/en/latest/news/2020/07/somalia-internally-displaced-people-surviving-by-the-grace-of-god-amidst-covid19/> (accessed October 12, 2020).

- Credibly investigate and appropriately punish security force abuses in forced evictions.

Freedom of Expression

33. During its 2015 UPR, Somalia accepted several recommendations aimed at improving freedom of expression. This included committing to ending arbitrary arrests and detentions of journalists, improving the legal environment for journalists and ending impunity around journalist killings. Despite these commitments' journalism remains a very risky profession.

34. The federal government, regional authorities, notably in Puntland and Jubaland, as well as Al-Shabab continued to intimidate, harass and attack journalists. Dozens of arbitrary arrests and detentions of journalists occurred, sometimes followed by prosecutions on baseless charges under the criminal code.³⁶

35. On May 3, 2020, Somalia's President Mohamed Abdullahi Mohamed "Farmajo" committed to reforming criminal code provisions that restrict media freedoms and to ending the use of overly broad criminal law provisions against journalists for their work. As stated above, the review has not materialized.

36. In August, the president enacted a new media law, which, while providing for key rights of free expression, contains overly broad content restrictions and gives the government overly broad powers and oversight over media organizations.³⁷

37. While Somali authorities seldom investigate cases of killings or attacks on journalists, in 2018 the military court in Mogadishu reportedly sentenced a police officer *in absentia* to five years' in prison for the July 2018 killing of cameraman Abdirizak Kasim Iman.³⁸ In September 2020, the attorney general established a special prosecutor to investigate crimes against journalists.

38. *Somalia should:*

- Rein in abusive security forces and initiate credible investigations into attacks on journalists, including allegations of mistreatment by the intelligence services and fairly prosecute all those responsible.
- Immediately review and amend the problematic provisions in the new media law.

Fight Against Impunity for Serious Crimes

39. In its previous UPR, Somalia committed to working towards ensuring that the judicial system complies with international fair trial standards.³⁹

40. Military courts have continued to try defendants, including children, in a broad range of cases, including for terrorism-related offenses, in proceedings that violate fair trial standards.

³⁶ Amnesty International, *Somalia: "We Live in Perpetual Fear:" Violations and Abuses of Freedom of Expression in Somalia*, February 13, 2020, <https://www.amnesty.org/en/documents/afr52/1442/2020/en/> (accessed October 12, 2020).

³⁷ Human Rights Watch, Amnesty International, Committee to Protect Journalists, Joint Letter Re: Concerns and Recommendations On Somalia's New Media Law, October 5, 2020, <https://www.hrw.org/news/2020/10/05/joint-letter-re-concerns-and-recommendations-somalias-new-media-law>.

³⁸ Human Rights Watch, *World Report 2020*, Somalia Chapter.

³⁹ Recommendations 136.102, 136.90.

41. In 2019, the federal government established with international support, a court and prison facility in Mogadishu to facilitate the transfer of Al-Shabab related cases from military to civilian courts.⁴⁰ The handover has yet to happen. Somali authorities continue to execute convicted individuals often following unfair military court trials.

42. International support to building domestic capacity to try serious crimes has focused on security-related offenses. The Chief Justice's office in Mogadishu established benches at the Supreme Court, appeals and regional court levels to try serious crimes, but the expected focus is on security-related crimes.⁴¹

43. The government appointed individuals implicated in serious human rights abuses to high-level positions.

44. *Somalia should:*

- Ratify the Rome Statute of the International Criminal Court (ICC) and implement the statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC. Somalia should investigate and prosecute war crimes, including sexual violence, and other grave international crimes, before its national courts in accordance with international law.
- Initiate discussions around building the specialized capacity, expertise and structures needed to investigate and prosecute war crimes and other grave international crimes.
- End trials of civilians in military courts, including non-military security personnel.
- Immediately impose a moratorium on executions as a first step towards abolishing the death penalty.

⁴⁰ UNODC, "UNODC Inaugurates Mogadishu prison, court complex, in latest support to Somalia," February 25, 2019 <https://www.unodc.org/unodc/en/frontpage/2019/February/unodc-inaugurates-mogadishu-prison--court-complex-in-latest-support-to-somalia.html> (accessed October 12, 2020).

⁴¹ Laetitia Bader, "High-Profile Jail Break Undermines Somalia's Fight for Justice," African Arguments, March 24, 2020, <https://www.hrw.org/news/2020/03/24/high-profile-jailbreak-undermines-somalias-fight-justice>.