



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Initial report submitted by Somalia under article  
40 of the Covenant pursuant to the optional  
reporting procedure, due in 2021<sup>\*</sup>, <sup>\*\*</sup>**

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\* The present document is being issued without formal editing.  
\*\* The annex to the present report may be accessed from the web page of the Committee.



## List of acronyms

AML/CFTA	Anti-Money Laundering and Countering the Financing of Terrorism
AGO	Attorney General's Office
BRA	Banaadir Regional Administration
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations)
CAAC	Children Affected by Armed Conflict
CAS	Comprehensive Approach to Security
CRC	Convention on the Rights of the Child (United Nations)
CID	Criminal Investigation Department
CRPD	Convention on the Rights of Persons with Disabilities (United Nations)
DINA	Drought Needs Assessment
DSS	Durable Solutions Secretariat
FGM	Female Genital Mutilation
FGC	Financial Governance Committee
FRC	Financial Reporting Center
IDPs	Internally Displaced Persons
IMCC	Inter-Ministerial Concessions Committee
INBP	Interim-National Procurement Board
MoH & DM	Ministry of Humanitarian Affairs and Disaster Management
MPCC	Mogadishu Prison and Court Complex
NAP/SVC	National Action Plan on Ending Sexual Violence in Conflict
NCA	National Constituent Assembly
NDP	National Development Plan
NDA	National Disability Agency
NIEC	National Independent Electoral Commission
NISA	National Intelligence and Security Agency
NRF	National Reconciliation Framework
NSC	National Security Council
RRF	Recovery and Resilience Framework
RMNCAH-N	Reproductive, Maternal, New-born, Child and Adolescent Health and Nutrition
SMP	Single Member Plurality
UNSOM	United Nations Assistance Mission in Somalia
UDHR	Universal Declaration of Human Rights
UNCAC	United Nations Convention Against Corruption
UPR	Universal Periodic Review
WHO	World Health Organisation
WPS	Women, Peace and Security

## Contents

	<i>Page</i>
I. Introduction .....	4
II. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant .....	4
III. Specific information on the implementation of articles 1–27 of the Covenant .....	8
A. The constitutional and legal framework within which the Covenant is implemented .....	8
B. Anti-corruption measures (art. 2 and 25) .....	11
C. The fight against impunity and past human rights violations (arts. 2, 6, 7 and 17) .....	16
D. Non-discrimination and equality between men and women (arts. 2, 3, 23, 25, 26) .....	17
E. Harmful practices and sexual violence (arts. 2, 3, 6, 7, 26) .....	19
F. Maternal and infant mortality and voluntary termination of pregnancy (arts. 3, 6, 7) .....	22
G. Death penalty (arts. 6) .....	23
H. Right to life, protection of civilians, and excessive use of force (arts. 3, 6, 7) .....	24
I. Counter-terrorism measures (arts. 2, 4, 7, 9, 10, 14 and 19) .....	26
J. Prohibition of torture and cruel, inhuman or degrading treatment (arts. 6,) .....	27
K. Treatment of persons deprived of their liberty (arts. 6, 7 and 10) .....	28
L. Administration of justice (arts. 14) .....	29
M. Persons with disability (arts. 2, 7, 9, 10 and 26) .....	33
N. Refugees, asylum seekers and displaced persons (arts. 7, 12, 13, 16, 26) .....	34
O. Freedom of expression and assembly and the protection of journalists (arts. 6, 7, 18, 19, 21) .....	36
P. Rights of the child (arts. 7, 9, 14, 23, 24, 26) .....	38
Q. Participation in public affairs (arts. 19, 25) .....	40

## **I. Introduction**

1. The Government of the Federal Republic of Somalia is pleased to present its initial and combined report as per article 40 of the Covenant, and under the simplified reporting procedure, to the United Nations Human Rights Committee. The Committee adopted a List of Issues at its 128th session, held from 2 to 27 March 2020. This report addresses the list of issues in the order raised by the Committee. Somalia is committed to the protection and promotion of human rights and welcomes the opportunity to engage in a constructive dialogue with the Human Rights Committee.
2. Somalia ratified the Covenant on 24 January 1990, and it entered into force on 24 April 1990. The initial report was due since 23 April 1991. However, it could not be submitted on account of the unique circumstances in the country with the total breakdown of the central government of the Somali Democratic Republic in January 1991. Decades of civil strife exacerbated the situation until the transition into the current period, which advances the public confidence in the rule of law.
3. Between 1991 to 2003, despite the political instability, absence of the rule of law and governance structures, Somalia embarked gradually on the road of state-building and recovery. Reconciliation conferences among key political stakeholders culminated in a governance power-sharing arrangement, and in February 2004, into the adoption of a Transitional Federal Charter, paving the way for Somalia to transition from a unitary decentralized state to a federal system of government. The Transitional Federal Charter established a Transitional Federal Government and a Federal Constitution Commission with the mandate of drafting the Federal Constitution. On 1 August 2012, pending a nationwide referendum, the Federal Constitution was provisionally adopted by a National Constituent Assembly (NCA) composed of 825 members, representing different sections of the society. The NCA also elected the 275 members of Parliament. These events marked the end of the eight-year interim period of the Transitional Federal Government.
4. In September 2012, Parliament elected the President of the Federal Republic of Somalia, creating the Federal Government of Somalia and its permanent governance structure. Since then, Somalia has renewed its commitment towards democracy, conducted inclusive elections in 2016 made progress in the creation of rights-based national institutions and cultivating an environment more conducive to the protection of human rights. Somalia has undertaken all these efforts, including strengthening its rule of law institutions in parallel to countering terrorist activities in the country and recapturing areas under their control.
5. Due to the above context, this report covers the period between 2012 to 2020. It details the measures that the Federal Government of Somalia has taken to give effect to the rights recognized under the Covenant. This report was prepared by the Ministry of Women and Human Rights Development in consultation with line ministries and relevant stakeholders. The response to the list of issues (CCPR/C/SOM/QPR/1), unless otherwise indicated, reflect the situation as applicable on the 12 October 2020. Somalia is in the process of compiling its Common Core Document detailing Somalia's historical, political, constitutional, legal and social set up. In light of this, this report provides necessary contextual information and references notable developments since the ratification of the Covenant.

## **II. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant**

### **Reply to paragraph 1 of the list of issues (CCPR/C/SOM/QPR/1)**

6. During the period reviewed in this report, Somalia renewed its commitment to the promotion and protection of human rights, which is demonstrated by the various actions highlighted in this report. This section summarizes the significant positive changes to the constitutional, legal and policy framework and practices.
7. The Federal Government established a Federal Ministry on Women and Human Rights Development in 2013. The Ministry's role is to coordinate and mainstream the

government's human rights agenda and support the implementation of Somalia's international and regional human rights commitments. In this regard, the Ministry has played a significant role.

8. In August 2013, the Federal Government adopted a Human Rights Roadmap and an Action Plan (2015–2016), consisting of 17 priority human rights issues for action with broad proposals to address them in line with Somalia's peace and state-building goals in the then "New Deal Compact". It was the first coordinated effort to mainstream government priorities in the area of human rights to safeguard the rights protected under the Provisional Constitution and Somalia's international obligations. The implementation of the Action Plan capacitated key institutions essential to the protection of human rights.

9. Between September 2013 and August 2016, the New Deal Compact for Somalia, consisting of five peace-building and state-building goals including the establishment of "independent and accountable justice institutions", acted as Somalia's development and political roadmap. It provided the foundation for the Federal Government to devise its NDP according to the priorities of the country.

10. In 2016, the Federal Government of Somalia developed its first National Development Plan (NDP 8) 2017–2019 since 1986. The plans' main focus was on rebuilding and capacitating national institutions that will consistently provide quality service to all citizens across the whole territory of the Federal Republic of Somalia<sup>1</sup> and contained specific priorities on human rights. The ninth NDP 2020–2024, completed in 2019, prioritizes socio-economic issues, justice and security related issues, institutional reform and capacity development alongside policy and legal frameworks to increase Somalia's ability to comply with international human rights law.

11. Somalia's Mutual Accountability Framework<sup>2</sup> which governs the working relationship between the government, donors and the international community, within the framework of the NDP, highlights the critical reform actions that need to be undertaken by the government in a specific timeframe. It prioritizes the launch of the National Human Rights Commission and the implementation of the Somali Women's Charter Strategic Action Plan. Additionally, it commits to the "acceleration of institutional reforms" including the integration of human rights compliant and sustainable regional security forces into the Somali Security Force and the establishment of a legal framework for the security sector including the finalization of the National Defence and Police Laws.

12. In September 2018, the Ministry of Women and Human Rights Development spearheaded an inaugural Joint Human Rights Programme informed by the Human Rights Roadmap. The prime aim of the Joint Programme is to implement the human rights priorities of the Federal Government. The Programme adheres and contributes to the National Development Plan, Somalia's commitments under the Universal Periodic Review, the Human Rights Roadmap and the Action Plans on Children in Armed Conflict including ensuring that human rights are anchored in the security architecture. Among the key activities under the Joint Programme is the provision of support to key stakeholders, including the Office of the Solicitor General, Attorney General's Office, the Parliamentary Committee on Human Rights, Civil Society Organizations, Human Rights Defenders and other Non-State Actors. The programme was envisaged to provide support to the National Human Rights Commission once it is formally established. In the meantime, it provides support to civil society organizations to strengthen their capacity and advocacy role to hold the Government accountable for its human rights obligations.

13. The Federal Government has developed Actions Plans on Children and Armed conflict to ensure that human rights are anchored in the security architecture. On 3 July 2012 and 6 August 2012, respectively, the Government signed the Action Plans against recruitment and use of children and killing and maiming of children. In October 2019, the Minister of Defence signed the roadmap to expedite the implementation of these two Action Plans.

<sup>1</sup> National Development Plan, 2017–2019, Federal Government of Somalia, p. 81.

<sup>2</sup> It is updated and endorsed at each Somalia Partnership Forum (SPF) meeting, with the 2020/2021 Mutual Accountability Framework approved in October 2019 during the SPF meeting in Mogadishu.

14. Somalia is gradually rebuilding its statistical infrastructure and seeking to restore national ownership of statistics to overcome the current practice of conflicting statistics compiled by different international partners and civil society organisations. The Upper House of the Federal Parliament passed a National Statistics Law in January 2020; and it was signed into law by the President on 24 February 2020. The law establishes the National Statistics Agency enabling the government to standardize data collection systems and tools for the development of social statistics including in the area of crime, women and human rights among others. As such, Somalia needs more capacity support in this area to ensure reliable data as this is also key in the efforts to advance human rights in the country. Somalia has provided to the extent possible to the Committee the requested data. Where it was not possible to do so, Somalia requests the Committee to take note of the contextual information provided in this paragraph.

### **Legislative developments**

15. The Federal Government has developed several laws to strengthen human rights protection. These include the draft legislation on Sexual Offences, Anti-Female Genital Mutilation (FGM), Child Rights, Juvenile Justice, Education, and Disability, which will domesticate Somalia's obligations under the international instruments it has ratified. In this regard, the timely execution of policies and legislations are impacted by the broader challenges that come with Somalia being a country emerging from conflict with cross-cutting reform priorities that build on the promotion of an inclusive environment taking into account the views of a wide range of stakeholders.

16. The Penal Code, which is currently under review, was approved by Legislative Decree No. 5 of December 16, 1962, and came into force on April 2, 1964. It entails the fundamental principles on the protection of individual liberty enshrined in the Universal Declaration of Human Rights. The Penal Code provides that in the case where a matter is governed by more than one criminal law, the special law prevails over the general law or provision;<sup>3</sup> and that the Penal Code shall still apply to matters governed by other special laws unless the special law provides otherwise.<sup>4</sup> This means that the crucial legislative reforms introduced by the Ministry of Women and Human Rights Development, such as the Child Rights Bill, the Disability Bill, FGM and Sexual Offences Bills, will once they are enacted not only provide an adequate legal framework in line with the Provisional Constitution and Somalia's international human rights obligations but also constitute special laws taking precedence over the provisions of the Penal Code.

17. Legislative enactments since the ratification of the Covenant include the:

- National Disability Agency Establishment Law, Law No. 134 of 31 December 2018;
- National Independent Human Rights Commission Establishment Law, Law No. 16 of 27 June 2016;
- National Independent Electoral Commission, Law No. 4 of 2 April 2015;
- Political Parties Law, Law No. 19 of 27 June 2016;
- National Electoral Law, which entered into force on the 20 February 2020;
- The Government submitted the amendment to the Media Law, Law No. 11 of 9 January 2016 to the Parliament in 2019. Upon passage in both houses of Parliament, the President signed it into law on 26 August 2020.

18. Other significant developments include:

- The ratification by the Government of Somalia of the Convention on the Rights of the Child on the 20 January 2015 as the 196th State Party;

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<sup>3</sup> Art.13, Penal Code, Legislative Decree No. 5 of December 16, 1962.

<sup>4</sup> Ibid. Art. 14.

- The ratification by the Government of Somalia of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on 6 August 2019 as the 178th State Party;
- The ratification by the Government of Somalia of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa (Kampala Convention) on the 26 November 2019 as the 30th African Union Member State.

19. The Provisional Constitution (2012) created the institutions which are essential to safeguarding the rights enshrined in the Constitution. The Federal Government developed a guidebook in the Somali language to ensure that Somali citizens become aware of the contents of the Constitution. The Provisional Constitution review process included civic education initiatives to facilitate the public's understanding of the constitution. The ongoing review process will. It has been extensive, involving wide-ranging consultations across the country with different sectors of the society including women, the youth, minorities and persons with disabilities

20. The Federal Government remains committed to engaging with international treaty bodies. Over the last nine years, Somalia has welcomed international scrutiny of its progress in human rights protection and increased its effort in meeting its international treaty reporting obligations.

21. Somalia has participated in all the review cycles of the Universal Periodic Review (UPR) since its establishment in 2006. In January 2019, Somalia submitted its voluntary UPR mid-term review report detailing the progress made on the implementation of the second cycle recommendations, including significant accomplishments on the civil and political rights front. Somalia has also submitted its initial State Party report to the Committee on the Rights of the Child<sup>5</sup> on 16 September 2019, making it its first treaty body report in 35 years, and on the 16 December 2019 its initial report to the Committee Against Torture,<sup>6</sup> which was due in 1991.

### **Optional Protocol**

22. With regards to the procedures in place for the implementation of the Committee's Views under the Optional Protocol, if the Human Rights Committee were to issue individual communication suggesting potential non-compliance, the Federal Government of Somalia would examine the views of the Committee on a case by cases basis. The Ministry of Women and Human Rights Development would notify all the relevant government agencies in order to respond to the Committee's concerns and take appropriate actions, if necessary.

23. The Federal Government recognizes the importance of raising awareness about the first Optional Protocol. The Government, with the leadership of the Ministry of Women and Human Rights Development, will consider practical measures to ensure that all persons in the Federal Republic of Somalia are informed about their right to submit complaints to the Human Rights Committee.

### **Reply to paragraph 2 of the list of issues**

24. The protection of human rights and the rule of law hinges on security. The evolving security environment presents one of the main impediments to the protection of human rights in Somalia. Terrorist groups seek to destabilize the country by creating a perpetual state of fear through indiscriminate attacks on public places and assassinations of government officials, civilians and activists. Al-Shabaab exercises limited territorial control in some rural areas of the country. Citizens living in those areas are subject to many human rights violations. Nonetheless, the Federal Government ensures that perpetrators of terrorist attacks are held criminally liable for their acts in compliance with their due process rights under the Provisional Constitution, Criminal Procedure Code and Covenant. The Federal Government

<sup>5</sup> <https://undocs.org/en/CRC/C/SOM/1>.

<sup>6</sup> <https://undocs.org/CAT/C/SOM/1>.

also continues to strengthen its capacity to protect its citizens, including through strengthening its security forces.

25. The Federal Government is unclear as to what information led the Committee to conclude that Puntland Federal Member State is not subject to the effective control of the Federal Government of Somalia. The Federal Government of Somalia is in the process of developing and implementing a federal governance system based on the principle of cooperative federalism enshrined in the Provisional Constitution. To this end, the Federal Government relies and cooperates with all Federal Member States to enforce federal policies and laws on the protection of human rights.

26. In the interest of national unity and democratic deliberation, the Federal Government of Somalia is currently engaged in a dialogue with Somaliland. Somaliland also has constitutional safeguards on human rights and a Human Rights Commission.

27. While the Federal Government is engaged in a non-international armed conflict with Al Shabaab, it has taken significant steps to build the capacity of the security forces to effectively protect the national security. This is part of the Government's broader efforts to uphold the rule of law and fundamental human rights. In this regard, the Government has deployed the National Army in the remaining volatile areas in the country which are under attack by the terrorist group Al-Shabaab and their associates, to progressively ensure adequate protection from human rights abuses and provide residents of those areas access to essential services. Further, another impediment to the protection of human rights has been the limited institutional capacity of the judiciary and law enforcement which continue to impact the delivery and access to justice. The Government cognizant of this challenge has gradually rehabilitated formal justice institutions and police stations and prioritized the strengthening of the capacity of the judiciary and law enforcement officials.

### **III. Specific information on the implementation of articles 1–27 of the Covenant**

#### **A. The constitutional and legal framework within which the Covenant is implemented**

##### **Reply to paragraph 3 of the list of issues**

28. Somalia is a civil law country with a pluralistic legal tradition with the interaction of Shari'ah, Statutory law and *Xeer* (Customary law). The Federal Constitution is the supreme law after Shari'ah, binding the government and guiding all legislative and policy decisions of the government.<sup>7</sup> According to the Provisional Constitution Article 40 (4), the fundamental rights set out within the Constitution “does not deny the existence of any other rights that are recognized or conferred by the Shari'ah, or by customary law or legislation to the extent that they are consistent with Shari'ah and the Constitution”.

29. With regards to the status of the Covenant within the national legal order, the Provisional Constitution (2012) does not clarify the status of international human rights treaties in domestic law. In light of the ongoing Constitutional Review Process, this may be subject to change, and more clarity may be provided in the revised Federal Constitution.

30. Nonetheless, the rights guaranteed under provisions of the Covenant and other human rights treaties which Somalia is bound by<sup>8</sup> are all enshrined in the Bill of Rights in Chapter Two of the Provisional Constitution. The Provisional Constitution of Somalia is founded on the principle of promotion of “human rights, the rule of law, general standards of international law, justice, a participatory, consultative and inclusive government, and the separation of

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<sup>7</sup> Art. 1(1), Provisional Constitution of the Federal Republic of Somalia, see: <https://villasomalia.gov.so/en/constitution/>.

<sup>8</sup> Somalia has ratified six out of the seven core human rights treaties including: Universal Declaration of Human Rights (UDHR), International Convention on Economic, Social and Cultural Rights (ICESCR) and Convention against Torture (CAT).

powers between the legislature, executive and an independent judiciary, in order to ensure accountability, efficiency and responsiveness to the interests of the people.”<sup>9</sup> Since the Constitution is above laws, the fundamental rights and freedoms promoted in the Bill of Rights take precedence over any national laws incompatible with the protections guaranteed by the Constitution. To this end, these rights must be respected by all state institutions, officials, private organizations and individuals.<sup>10</sup> Furthermore, the Provisional Constitution places an obligation on the state to not infringe upon the rights of people and to take steps to protect their fundamental freedoms.<sup>11</sup>

31. Generally, under article 90 (q) of the Provisional Constitution, treaties have to be first proposed by the Council of Minister, which is part of the Executive branch headed by the Prime Minister, and approved by the Federal Parliament’s House of the People before ratification by the President and coming into force through a Presidential decree. In Somalia, in practice, treaties are not self-executing. As such, for the provisions of international and regional treaties to have direct effect in a national court, they need to be incorporated into national law. Nonetheless, the application of the internationally accepted principles and standards have more often been invoked in the national legislative and judicial processes as relevant.

32. As provided under article 40 of the Constitution, courts may consider international law in interpreting the fundamental rights enshrined in the Constitution. This means that international law enjoys persuasive authority in national courts. Due to limitations in recording court proceedings in a standardized manner and electronically, the Federal Government is not able to provide information on the instances the Covenant was invoked or considered by national courts.

33. In order to give full effect in national law to Somalia’s obligations under the provisions of international and regional human rights treaties, including the Covenant, the Federal Government is in the process of reviewing all legislation enacted before the coming into force of the Provisional Constitution in 2012. The Federal Government has identified necessary changes and initiated numerous legislative reforms in tandem to the constitutional review process, which is timely.

34. With regards to the scope of the Government’s capability to enforce the Covenant rights, in areas not under its control, as explained in reply to paragraph 2 of the list of issues, the Federal Government is engaged in a non-international armed conflict with Al Shabaab and their associates. Due to the practical reality on the ground, the Government is progressively advancing the security and safety of its citizens in the remaining areas under terrorist attack in order to guarantee the rights provided for by the Bill of Rights in the Provisional Constitution, and the Covenant. The Government remains committed to holding all perpetrators of human rights violations accountable.

35. Training and education on human rights are mandatory for prosecutors, judges and police officers. A comprehensive national Basic Recruit Curriculum for the Somali Police Force has been endorsed by the police leadership from federal and member state governments on 11 May 2017. In order to ensure that the Police understands their role and limits of their power, the training curriculum includes modules on the practical application of national and international human rights law obligations to their work. The Office of the Attorney General and the Courts provide with the support of international partners, regular specialized training for prosecutors, judges, clerks and administrative staff members.

36. In 2017, the Ministry of Justice launched an extensive training programme aimed at training prosecutors and over 350 judicial officers including judges and registrars across the country. The training covered among other things due process rights of defendants, treatment of victims and victim-centred prosecution, civil trial procedure, criminal trial procedure as well as offering necessary skills training in court management and leadership with the support of international partners.

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<sup>9</sup> Art. 3(4) of the Provisional Constitution of the Federal Republic of Somalia.

<sup>10</sup> Ibid. Art. 12 (1).

<sup>11</sup> Ibid. Art. 12 (2).

37. The Somali Bar Association receives support and training on international human rights with the support of international organisations. The training sessions include fundamental human rights values enshrined in the Provisional Constitution, general aspects of international human rights and humanitarian law as well as practical aspects related to their professions.

38. Under the Somali Human Rights Joint Programme, judges, prosecutors, legal professionals, civil servants, law enforcement officials at federal and federal member state levels have also received training on human rights. Training under this programme includes modules on a critical understanding of international and regional human rights principles and institutions, investigating and prosecuting conflict-related sexual violence and gender-based violence cases.

39. The Government regularly includes Civil Society Organisations in consultations and workshops on issues relating to the protection of human rights. It also recognizes the importance of instilling human rights values among the youth. As such, the Education Sector Strategic Plan (2018–2020) acknowledges that schools as centres of care and support should foster a culture of tolerance, gender sensitivity and human rights.<sup>12</sup> It further notes the vital role that education plays in socializing citizen to promote tolerance, peace and the rule of law through civic education, which covers issues including the rights and responsibilities of citizens in society.<sup>13</sup>

#### **Reply to paragraph 4 of the list of issues**

40. The Federal Government of Somalia is required under Article 41 of the Provisional Constitution to establish a National Human Rights Commission, which is independent of state control and has adequate resources to carry out its mandate. Article 111B (1) of the Constitution sets out the mandate of the Commission as follows:

- a. Promote respect of human rights, and the culture of human rights;*
- b. Promote the protection, development, and attainment of human rights; and*
- c. Monitor and assess the observance of the conduct of human rights in the Federal Republic of Somalia.”*

41. The Constitution further states that the functions of the Commission include “the promotion of knowledge of human rights, and specifically Shari’ah, setting implementation standards and parameters for the fulfilment of human rights obligations, monitoring human rights within the country and investigating allegations of human rights violations.”<sup>14</sup> The Commission has a complaints mechanism enabling individuals and groups to submit their concerns. It is also authorized to deal with all human rights violation cases in Somalia, including initiating investigations into these cases.<sup>15</sup> It can also provide recommendations including on compensation measures for victims and survivors.<sup>16</sup>

42. The Provisional Constitution also prescribes that the powers and activities of the Human Rights Commission shall be specified in the National Human Rights Commission law.<sup>17</sup> The National Independent Human Rights Commission Establishment law was signed into law on 14 August 2016. It complies with the Principles relating to the Status of National Institutions (Paris Principles).

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<sup>12</sup> Federal Government of Somalia, Ministry of Education, Culture and Higher Education, Education Sector Strategic Plan (2018–2020, page 90.

<sup>13</sup> Civics is taught as a subject in Primary and General Secondary Schools.

<sup>14</sup> Art. 41, Provisional Constitution.

<sup>15</sup> Art. 6 of the Human Rights Commission law (2016).

<sup>16</sup> Ibid. Art. 6.

<sup>17</sup> Art. 111B (3) of the Provisional Constitution (2012).

43. The nine<sup>18</sup> members of the Commission, five men including one member from the disability community<sup>19</sup> and four women,<sup>20</sup> were nominated under the criteria set out in Article 8 of the law and after a public call for application.

44. The selection process of the Commission was transparent and consultative. The Government's role through the Ministry of Women and Human Rights Development was to provide logistical support and facilitate the provision of training for the technical selection panel tasked with reviewing the applications of candidates.

45. The establishment of the Human Rights Commission is pending a vetting process of its nominees by the Council of Ministers and subsequently the Parliament. The Chairperson of the Human Rights Commission will also be part of the Judicial Service Commission.<sup>21</sup> Once the Human Rights Commissioners have been formally approved, the Joint Human Rights Programme will also provide additional funding for its activities. The Federal Government is committed to ensuring strict compliance with the robust selection process required by the Establishment law, and as such envisages that the Human Rights Commission will be launched by the end of 2021.

## **B. Anti-corruption measures (arts. 2 and 25)**

### **Reply to paragraph 5 of the list of issues**

46. The Federal Government of Somalia recognizes that corruption is not only an obstacle to the eradication of poverty and economic and political stability of the country but is also detrimental to the protection of human rights. Corruption poses a serious impediment to the government's ongoing efforts to restoring confidence in its public institutions as well as building institutions governed by the principles of the rule of law, transparency and accountability.

47. To this end, the Government has adopted a robust anti-corruption agenda. The National Development Plan 2017–2019 sets forth the guiding vision of the government to achieve a substantive reduction of corruption and bribery in “all their form”, and strengthen government bodies to have more “effective, accountable and transparent institutions at all levels”.<sup>22</sup>

48. The National Development Plan 2020–2024 further stipulates a holistic approach in tackling corruption's root causes, in recognition of the fact that a robust legal framework and institutions alone are not sufficient in dealing with corruption.<sup>23</sup> It identifies corruption as a national security threat within the security sector.<sup>24</sup> It also highlights the need for independent oversight bodies and a specific law criminalizing “vote-buying”,<sup>25</sup> a practice jeopardizing the credibility of the democratic electoral process.

49. The Ministry of Justice established an Integrity Coordination Office, charged with leading the Government's efforts to strengthen anti-corruption measures and developing a national strategy on combating corruption. In June 2020, the Cabinet embraced a whole government and society approach to the prevention of acts of corruption through the endorsement of the National Anti-Corruption Strategy 2020–2023 drafted by the Integrity Coordination Office in an inclusive and transparent way. The policy underscored by five fundamental guiding pillars reform: (a) leadership; (b) strengthening accountability structures and systems; (c) strengthening public financial management; (d) strengthening public service management; and (e) promoting integrity and ethics through public awareness.

<sup>18</sup> Ibid. Art. 111B (4).

<sup>19</sup> Art. 7(1) of the Human Rights Commission Law (2016).

<sup>20</sup> Although Art. 7(1) of the Human Rights Commission law (2016) states that three of the nine members should be women; the Technical Selection Panel took an affirmative action by deciding that four of the members must be women.

<sup>21</sup> Art. 109A (e), Provisional Constitution.

<sup>22</sup> National Development Plan, 2017–2019, Federal Government of Somalia, p. 81.

<sup>23</sup> National Development Plan, 2020–2024, Federal Government of Somalia, p. 177.

<sup>24</sup> Ibid. p. 157.

<sup>25</sup> Ibid. p. 142.

It also sets out the development of an asset declaration regime for senior public officials. It recognizes training for public officials as a critical factor of a broader effort to mitigate the practice of corruption. It further outlines the factors that are a risk to undermining government legitimacy and disrupting the process of establishing a democratic political system of governance. The policy will be implemented through an action plan in coordination with governmental authorities, civil society organisations and representatives from the business community at both federal and federal member state levels.

50. The Government has also underscored its commitment to tackling corruption by considering ratifying the UN Convention Against Corruption (UNCAC). Within the framework of *Heavily Indebted Poor Countries* (HIPC) initiative, the Federal Government has also committed to tackling corruption both in the short and long-term.

51. The Government has also strengthened its public finance management sector through the passage of the Public Procurement, Concessions and Disposal Act (2015) on 9 August 2016, which re-establishes the legal and regulatory framework for the management of public procurement at all levels of government. It sets out clear procedures for the administration of concession agreements, disposal of assets by public institutions and procedures for public procurement. The law provides for the establishment of an Inter-Ministerial Concessions Committee (IMCC) and a Public Procurement Authority to regulate this process. Pending the operationalisation of the permanent Public Procurement Authority, the Cabinet established in March 2015, an Interim-National Procurement Board (INBP), tasked with reviewing and validating all procurement and concession contracts. On the completion of the operationalisation of the Public Procurement Authority, the INBP will be transformed into the Inter-Ministerial Concessions Committee.

52. As a further measure to prevent corruption and uphold transparency and accountability, the Government has developed a Federal Audit Draft Law which is currently pending enactment after passage in both Houses of Parliament. The draft law is based on international best practice standards developed by the International Organisation of Supreme Audit Institutions (INTOSAI). To increase transparency, the Ministry of Finance uses an electronic financial management system to document information and facilitate payment transactions. The Ministry is also in the process of developing internal procedures and guidelines to that effect.

#### *Financial Governance Committee*

53. In 2014, the Financial Governance Committee (FGC) was established through a mutual consultative agreement between the Federal Government of Somalia, international partners and financial institutions, to provide strategic guidance on financial governance-related issues and support to the INBP in exercising its functions. The mandate of the FGC is renewed annually by the Federal Government of Somalia and the international partners.

54. With regards to the scope of the review of government contracts by the Financial Governance Committee (FGC), the FGC, chaired by the Minister of Finance, is limited only to reviewing contracts, and issuing recommendations on issues about financial governance. The FGC has also been mandated by the Federal Government of Somalia to review and advice on all government contracts and concessions above 5 million United States dollars in value.<sup>26</sup>

#### *Legal framework*

55. There are various provisions<sup>27</sup> under the Penal Code (1962) which criminalize acts of corruption by public officials.<sup>28</sup> Articles 245 to 251 of the Penal Code forbids public officials from receiving any benefits on their official functions and accepting any benefits contrary to

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<sup>26</sup> See Annex III for a list of all Federal Government of Somalia contracts reviewed by the FGC since 2014.

<sup>27</sup> Relevant provisions include Art. 241 (Peculation), Art. 242 (Misappropriation to the Prejudice of Private Persons), Art. 243 (Peculation by Taking Advantage of the Error of Another Person), Art. 252 (Utilisation of Inventions or Discoveries Known by Reason of Office).

<sup>28</sup> Art. 240 (a) and (b) define a “public officer” and a “person entrusted with a public service”.

the integrity of their office, including benefiting own financial interest. In the context of allocation of contracts and government resources, punishment is increased for persons who grant public contracts in exchange for financial compensation or other benefits.<sup>29</sup> The Penal Code also includes provisions<sup>30</sup> relevant to countering corruption in criminal proceedings, undermining Article 33<sup>31</sup> of the Provisional Constitution protecting the right of every person to a fair trial.

56. Gaps in the Penal Code were complemented through the passage into law of the Anti-Money Laundering and Countering the Financing of Terrorism Act (2016), signed into law in February 2016, enabling the prosecution of predicate crimes giving rise to money laundering and terrorist financing. As of 2019, since the enactment of the Anti-Money Laundering Act and Countering the Financing of Terrorism Act (AMLCFTA), there have been three money laundering prosecutions, which arose from domestic predicate offences.

57. The Anti-Corruption Commission Establishment Law was signed into law on the 21 September 2019. On 7 September 2020, the Cabinet approved the nine members of the Commission. Their nomination is currently pending approval by the Federal Parliament.

#### *Institutional framework*

58. In Somalia, there are different agencies, including oversight institutions responsible for combating corruption in any of its form.

#### *Auditor General*

59. According to the currently applicable law, the Auditor General is mandated among other things to exercise:

- “*prior control over the legality of the acts of Public Administration involving financial obligations on the part of the State*” in compliance with the applicable laws in the country;<sup>32</sup>
- to conduct a “*post audit on the ordinary and development budget*”<sup>33</sup> and to ascertain whether the funds have been appropriately managed;
- In case any inconsistencies have been detected in the public management of finance and the Auditor General ascertains that “*an act constituting an offence has been committed*”, the Auditor General is required without delay to write a report and file it with the Attorney General.<sup>34</sup>

<sup>29</sup> Art. 246(2), Penal Code.

<sup>30</sup> Penal Code: Art. 291 prohibition of concealing evidence (False Evidence); Art. 293 prohibiting altering evidence (Fraud in Proceedings); Art. 277 (Violation of the Public custody) on the prohibition on removing, destroying, or wasting evidence; Art. 297 (Assistance to a Suspected Person) on the prohibition of aiding someone to evade investigation).

<sup>31</sup> Art. 33 of the Provisional Constitution states that “Every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.”

<sup>32</sup> Art. 5, Law on Magistrate of Accounts (also known as the “Audit law”), Law No. 34 of 14 April 1972.

<sup>33</sup> Ibid. Art. 6.

<sup>34</sup> Ibid. Art. 15.

*Attorney General's Office*

60. On receipt of the report, the Attorney General is mandated to initiate proceedings under articles 69,<sup>35</sup>70<sup>36</sup> and 71 of the Criminal Procedure Code.<sup>37</sup> The Attorney General's Office (AGO) is mandated with the investigation and prosecution of serious crimes including corruption, money laundering and terrorism. It is authorized to manage proceeds of crime or terrorist assets and manage seized assets before it can be subject to confiscation.<sup>38</sup>

*Police*

61. The Criminal Investigation Department (CID) is the primary investigatory body for all criminal offences. The primary responsibility for investigating financial crimes, including tax rest with the judicial police, which is a special unit part of the Somali Police Force. Despite financial and capacity constraints, they have carried out their functions.

*Financial Reporting Center*

62. The Financial Reporting Center (FRC) of Somalia, has been established under Article 20 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2016 (AML/CFTA). The FRC became operational in 2017, and its functions are set out in Article 21 of the AML/CFT Act, 2016 and can be summarized as follows:

- Receive, request, collect, collate, analyse, share and disseminate information about financial crimes;
- Assist with the detection, disruption, deterrence and prevention of financial crime, in particular, money laundering and terrorism financing;
- Cooperate with law enforcement agencies, including the office of the Attorney General and National (Judicial) Police Force.

63. Article 24 of the AML/CFT Act establishes a National Anti-Money Laundering and Countering the Financing of Terrorism Committee. This inter-agency committee is composed of 8 members including (1) the Minister of Finance who acts as the chair, (2) Attorney General, (3) Governor of the Central Bank of Somalia, (4) Minister of Justice, (5) Ministry of Commerce and Industry, (6) Minister for National Security, (7) Director of National Intelligence Service and (8) the Director of the Financial Resource Center.<sup>39</sup> Further, key functions of this committee include facilitation of information exchange, coordination and cooperation between member institutions as well as supporting capacity-building efforts within those institutions to combat money laundering and terrorism financing, and set strategic priorities for the FRC.<sup>40</sup>

*Anti-Corruption Commission*

64. The Provisional Constitution establishes the Commission, composed of a maximum of 9 members,<sup>41</sup> with the mandate to "investigate allegations of corruption that implicate the public sector"<sup>42</sup> and to "conduct enquiries at its discretion" with no requirement "to act only

<sup>35</sup> Art. 69 of the Criminal Procedure Code (Duties of the Attorney General) states: "Except as otherwise provided by law, the Attorney General shall initiate penal proceedings against an accused person".

<sup>36</sup> Art. 70 of the Criminal Procedure Code (Responsibilities of the Attorney General before a trial) describes the three possible outcomes once the Attorney General (AG) receives a Police investigation report: (a) AG can either proceed with the prosecution of the case in case of solid evidence, (b) AG has a good case for prosecution but needs further investigation to gather more evidence and (c), the crime was not committed by the accused or because the person who committed the crime cannot be held liable in accordance with Art. 50 (mental incapacity) or Art. 59 (Minors – anyone under the age of 14).

<sup>37</sup> Art. 15, Law on Magistrate of Accounts (the "Audit law"), Law No. 34 of 14 April 1972.

<sup>38</sup> Art. 33 (1), Anti-Money Laundering and Countering the Financing of Terrorism Act (AML/CFT) 2016.

<sup>39</sup> Ibid. Art. 26.

<sup>40</sup> Ibid. Art. 25.

<sup>41</sup> Art. 111c (6), Provisional Constitution.

<sup>42</sup> Ibid. Art. 111c (1).

upon a complaint”<sup>43</sup> The Constitutional mandate of the Commission under Article 111C(3) includes:

- a. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;*
- b. The advancement, facilitation and support of international cooperation related to anti-corruption policies; and*
- c. To promote integrity, accountability, and proper management of public matters and property.”*

65. The Constitution, under Article 111C (4) further provides the Commission with authority to:

- a. To prevent, investigate and publish corruption allegations;*
- b. To freeze, seize, confiscate or return any gains from criminal activity; and*
- c. To support the adoption of such laws and other measures necessary to effectively prevent and prosecute criminal offences relating to corruption.”*

66. The jurisdiction of the Anti-Corruption Commission is Constitutionally mandated under Article 111C (5) to issues on:

- a. Corruption of national or foreign public officials and officials of public international organisations;*
- b. Embezzlement, misappropriation or other diversions by a public official of any public or private property;*
- c. Trading in influence; and*
- d. Abuse of functions and illicit enrichment.”*

**Table 1: Prosecution of state officials**

	2015–2016	2016–2017	2017–2028	2018–2019	2019–2020
Number of charges prosecuted	0	0	9	3	7
Number of convictions	No data	No data	No data	No data	8

*Source:* Attorney General’s Office (AGO).

67. The Attorney General’s Office prosecuted a total of 19 cases of corruption-related charges against public officials between 2017 and 2020. In August 2020, the Banaadir Regional Court sentenced a total of eight government officials between one and 18 years of imprisonment.

#### *Management of natural resources*

68. With regards to measures taken to ensure the transparent management of natural resources in line with the Covenant, the Federal Government of Somalia is committed to enforcing the rights contained within the Covenant. Under Article 25(2) of the Provisional Constitution, the right of every person to “have a share of the natural resources of the country” while being “protected from excessive and damaging exploitation of these natural resources” is affirmed. Furthermore, Article 44 of the Provisional Constitution states that the allocation of natural resources of the country should be “negotiated by, and agreed upon, by the Federal Government and the Federal Member States”.

69. The Federal Government recognizes the importance of transparent and equitable management of natural resources. It is in the process of establishing the requisite regulatory and legal framework in this area based on the principles of cooperative and fiscal federalism

<sup>43</sup> Ibid. Art. 111c (2).

in line with the mutually agreed resource sharing formulas with all the Federal Member States as per the Constitution.

70. In the meantime, the Financial Governance Committee provides advice to the government on sustainable financial capability frameworks for the equitable and transparent management of natural resources, including management of oil and gas and distribution of fishing licenses. In January 2018, the President of the Federal Republic of Somalia and all the heads of the Federal Member States agreed on a revenue-sharing agreement on profits made from tuna licenses issued in 2018.

71. Progress within the legislative and policy framework governing natural resources includes the enactment of the Petroleum Law in February 2020, which sets out the revenue sharing formula between the Federal Government and the Federal Member States.

### **C. The fight against impunity and past human rights violations (arts. 2, 6, 7 and 17)**

#### **Reply to paragraph 6 of the list of issues**

72. The Federal Government recognizes the importance of addressing past human rights crimes committed during the long period of civil war, and providing a mechanism of redress for survivors. To this end, reconciliation is key to the ongoing peacebuilding process in Somalia. President Mohamed Abdullahi Mohamed's public acknowledgement in February 2019 of past human rights violations committed by the pre-civil war administration in the northern part of Somalia and seeking forgiveness on behalf of the State is an example of the Federal Government's determination for genuine reconciliation.

73. This is further demonstrated by the Government's endorsement of a National Reconciliation Framework (NRF) in March 2019, which has been developed through a National Reconciliation Consultative conference convened in 2017 by the Ministry of Interior, Federal Affairs and Reconciliation. The NRF is a strategic document describing the context and specific requirements to advance a credible and genuine national reconciliation process in Somalia. It has five strategic pillars outlining the main objectives of the national reconciliation process, actions that are required to meet these objectives, including policy recommendations. The NRF's second pillar on the acknowledging and addressing of the past human rights violations is the premise upon which the constitutional mandated Truth and Reconciliation Commission is based. Through this process, the Federal Government will also strive to ensure accountability for the worst crimes through a framework discussed and agreed by all national stakeholders within the peace and reconciliation framework. The Government is also in the process of developing an Amnesty law to regulate the conduct of amnesties.

74. Article 111 (I) of the Provisional Constitution establishes the National Truth and Reconciliation Commission, whose mandate is to: "foster national healing, reconciliation and unity and to ensure that matters relating to impunity, revenge and other triggers of violence are addressed through a legal and directed process";<sup>44</sup> "bearing witness to, record, and in some cases, grant amnesty to the perpetrators of crimes relating to human rights violations, and rehabilitation of the criminals";<sup>45</sup> and "promoting forgiveness, reconciliation and national unity".<sup>46</sup>

75. The Ministry of Interior, Federal Affairs and Reconciliation is in the process of developing the Truth and Reconciliation Commission Establishment Law, which will upon completion be taken to the cabinet for endorsement before tabling it in Parliament. The completion of this draft law is among the principal government priorities for 2019/2020 in the National Development Plan 2020–2024. This law will take into account any potential changes envisaged under the ongoing Constitutional Review Process. Therefore, it will be

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<sup>44</sup> Art. 111(I) (1) of the Provisional Constitution.

<sup>45</sup> Ibid. Art. 111(I) (3(a)).

<sup>46</sup> Ibid. Art.111(I) (3(b)).

responsive to the peculiarities of Somalia where, unlike other contexts, there is not yet a comprehensive peace agreement to allow for a fully-fledged transitional justice process.

#### **D. Non-discrimination and equality between men and women (arts. 2,3, 23,25 and 26)**

##### **Reply to paragraph 7 of the list of issues**

76. Issue 7(a). Somalia has not yet adopted a comprehensive piece of legislation defining discrimination and establishing tests for the concepts of direct and indirect discrimination. A general definition of discrimination is provided in the Provisional Constitution under article 11(2) as occurring “*if the effect of an action impairs or restricts a person’s rights, even if the actor did not intend this effect*”. The Federal Government of Somalia is committed to continually consider options for reform to improve the effectiveness of legislation in protecting the human rights of all persons. To that end, the Government has developed legislations on a variety of issues<sup>47</sup> which address discrimination of any kind in social, political and economic life with a view of promoting equality and non-discrimination of vulnerable groups, including women.

77. *Issue 7(b)*. Article (2) of the Provisional Constitution expressly sets out 14 prohibited grounds from discrimination: “age, race, colour, tribe, ethnicity, culture, dialect, gender, birth, disability, religion, political opinion, occupation, or wealth”. Furthermore, the constitution encompasses further safeguards on the protection of all persons at the workplace from discrimination, particularly women. Article 24(4) on labour relations stipulates that every labour law and practice shall comply with gender equality in the workplace. The Constitution, under article 127(2) also expressly states that all citizens, particularly women, who wish to join the national armed force shall be considered without discrimination. It further recognizes under article 27(5) that “women, the aged, the disabled and minorities who have long suffered discrimination get the necessary support to realize their socio-economic rights”. The Constitution, under article 31 (3) also places a special duty on the State to “*promote the cultural practices and local dialects of minorities*”.

78. *Issue 7 (c)*. Anyone whose fundamental rights contained in the Constitution has been infringed can enforce them through courts of law. To this end, article 40 of the Provisional Constitution states that when interpreting the fundamental rights contained in the Constitution, courts shall “take an approach that seeks to achieve the purpose of the rights and the values that underlie them”. Further, under article 39(3) a person or an organization may approach a court to protect the rights of others unable to do so.

79. With regards to measures taken to prevent discriminatory, stigmatization and violence against persons belonging to ethnic minorities and persons with HIV/Aids, the Government has introduced measures to combat discrimination to change attitudes within the society. The Government has conducted multi-stakeholders’ campaigns and workshops to raise awareness about the effects of discrimination in collaboration with civil society organizations and includes impacted parties in policy consultations. More recently, the Government, under the leadership of the Ministry of Women and Human Rights Development, has extended such campaigns to prevent stigmatization of persons afflicted with the COVID-19 virus. The Government recognized in its current NDP the need for procedures to ensure the participation of minority, disadvantaged groups, women and youth in the public decision-making process.

80. Members from minority communities have also been part of the ongoing Constitutional Review Process. The Constitution guarantees under article 17 (1) the freedom to practice ones’ religion and prohibits under article 17 (2) the propagation of any other religion than Islam. Further, the Penal Code prohibits inciting people to stir up hatred between social classes. Social classes include in this context, also the different cultural and ethnic groups.<sup>48</sup>

<sup>47</sup> For example, the draft Labour Code and laws on Disability, FGM, Child Rights and Sexual Offences.

<sup>48</sup> Art. 321, Penal Code.

81. Discrimination based on inter-racial or clan marriage has no foundation in Sharia law and is contrary to the fundamental rights enshrined in our Constitution. Law No. 67 of November 1, 1970, was enacted with a view to formally abolish tribalism from society. Somali's for generations have inter-married. However, the Government understands that most of the discriminatory acts with regards to marriage are against Somali's from a minority background. A tragic example of this is the case of Ahmed Mukthar Salah, who was a father of 12, heinously killed in 2019 by family members of his nephew's wife. The Government provided support to his family. The perpetrators were held criminally liable for their crime.

82. The Federal Government of Somalia strongly condemns any acts of discriminatory nature against any individual. The Government understands that there is still more room for improvement in combating discrimination and stigmatization of individuals. It is committed to continually consider options for reform to improve the effectiveness of legislation in protecting the human rights of all persons. The Government recognizes the benefits of comprehensive legislation to address discrimination and provide equality of opportunity to all persons.

#### **Reply to paragraph 8 of the list of issues**

83. Since Islam is the State religion, and the Constitution is the supreme law of the land after Shari'ah law, which is the principal source of law in Somalia, all laws have to conform with Shari'ah.

#### **Reply to paragraph 9 of the list of issues**

84. The Federal Government is committed to advancing gender equality in Somalia. Further to the constitutional safeguards on equality and freedom from discrimination provided in paragraph 77, the Government has introduced legislative measures to enforce these safeguards and advance gender equality.

85. The Government developed a draft Labour Code. It includes provisions on maternity leave, granting women three months maternity leave with full pay, and introduces the concept of paternity leave. The Code also removes the restriction imposed under the current Labour Code on night work for women. Further, while the Labour Code is pending enactment, the Government has endorsed a policy granting women workers four months maternity leave, and two hours off during the working hours to breastfeed post maternity leave period.

86. Additionally, the draft Sexual Offences Law, which was endorsed by the cabinet in May 2018, also criminalizes sexual harassment at the workplace.

87. The Government has also developed legislative measures aimed at preventing gender-based violence, including harmful practices such as female genital mutilation, which are a result of gender inequality.

88. The Government has also mainstreamed gender equality in the justice and security sectors. In 2015, the first six female prosecutors since 1991 were recruited at the Attorney General's office, and female prosecutors are gradually recruited in the Federal Member States. Women are also part of the military and hold security-related positions in government.

89. The Ministry of Women and Human Rights Development takes the lead on gender issues. It provides strategic guidance on the promotion of gender equality and women empowerment in policy and practice.

90. In March 2019, the Ministry, on behalf of the Federal Government and in close corporation with the regional governments, convened an inclusive three-day Women's Convention in Mogadishu. The Convention was attended by 350 leading women rights activists for gender equality. The primary outcome of the convention was the development of a "Women's Charter". The Government endorsed national Somali Women's Charter details a set of aspirational, but essential recommendations which are essential to closing the gender gap in employment, participation in the public decision-making at all levels of government.<sup>49</sup>

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<sup>49</sup> See Annex V for the Somali Women's Charter.

*National Gender Policy (2016)*

91. In 2016, the Government endorsed the National Gender Policy and Action Plan, making gender equality part of the Government's main agenda. The National Gender Policy (2016) aimed at improving the status of women, is currently under review, sets out key policy priorities for women's socio-economic and political empowerment. It highlights the requisite protection framework to safeguard women from violence, discrimination and harmful traditional practices. The policy review is due to be completed in the spring of 2021.

*UN Somalia Gender Equality Strategy 2018–2020*

92. The Government has ensured that all training and activities done in partnership with international partners are in accordance with the UN Gender Equality Strategy. Further, Gender Units have also been established in several line ministries, ensuring that gender-related issues are embedded in their policies and service delivery. This further strengthened through the technical level Inter-Ministerial Taskforce on human rights and gender, chaired by the Ministry of Women and Human Rights Development. On the recommendation of the Ministry of Women and Human Rights Development, a stand-alone working group on human rights, gender and inclusion has been adopted within one of the Pillars of the National Development Plan 2020–2024.

*Women's representation*

93. The Government is constitutionally mandated to ensure that women are represented in independent commissions and all national institutions. Thus women should be in elected and appointed positions in the executive, legislative and judiciary branches of government<sup>50</sup>. While the adopted Electoral Law does not provide for the implementation of a minimum quota for women, the Government endorsed Women's Charter sets out a minimum 50 per cent quota for women representatives. In the absence of a legal framework, in 2016, Somalia adopted 30 per cent quota for women's representation. Twenty-five per cent of the parliamentary seats were won by women with the highest percentage of women represented in the Council of Ministers at the time at 23 per cent.<sup>51</sup> A central theme in the ongoing discussions in the Constitutional Review Process is the inclusion of a mandatory quota for elected representatives to promote gender parity and women's political empowerment. Within the framework of the Women, Peace and Security (WPS) agenda, fulfilling United Nations Security Council resolution 1325 and its subsequent resolutions; the Federal Government led by the Ministry of Women and Human Rights Development is in the process of developing a National Action Plan on WPS as well as an implementation plan of the Cabinet endorsed Somali Women's Charter in consultation with the Federal Member States.

**E. Harmful practices and sexual violence (arts. 2, 3, 6, 7 and 26)****Reply to paragraph 10 of the list of issues***Sexual Offences Bill*

94. The Ministry of Women and Human Rights Development developed the draft law on Sexual Offences in a consultative manner. As the proposed legislation, like the FGM and Child Rights draft laws, addresses deeply rooted cultural and social issues, it is imperative to draw consensus from the community, including traditional and religious leaders. To this end, to develop the bill, the Ministry of Women and Human Rights Development has conducted several meetings with its counterparts in the regions, engaged in a dialogue with religious leaders and scholars. The Government has endorsed the Sexual Offences Bill in May 2018, and submitted it to the House of the People of the Federal Parliament in June 2018.

95. A Sexual Offences Law was enacted in Puntland in 2016, and in 2018, in Somaliland. The first court ruling under the Puntland Sexual Offences Law was in 2017 when a court

<sup>50</sup> Art. 3(5), Provisional Constitution.

<sup>51</sup> As of 2020, the number of women represented in the Council of Ministers is at 19 per cent.

sentenced five men convicted of gang-raping a 16-year-old girl to prison terms ranging from five to ten.

*Rape under the Penal Code (1962)*

96. Under the Penal Code (1962), the crimes relating to sexual violence, modesty, moral and sexual honour, have been collectively listed under the Chapter on “Crimes Against Moral’s and Decency”. The Penal Code considers rape “carnal violence”, which is defined in Article 398(4).

97. Crimes against public morals specifically relate to acts which are in open violation of the religious principles in Somalia. These include drunkenness of any individual,<sup>52</sup> causing a state of drunkenness in another person<sup>53</sup>, supplying and selling alcoholic beverages.<sup>54</sup>

*National Action Plan on Ending Sexual Violence in Conflict*

98. To strengthen and promote a coordinated approach to combating sexual violence in the country, Somalia adopted a National Action Plan on Ending Violence in Conflict (NAP/SVC) in 2014. In 2017, the Government in close cooperation with the Federal Member States,<sup>55</sup> Somali Police Force and Somali National Army conducted a comprehensive review of the NAP/SCV to strengthen its practical implementation. As a result of these consultations, priority areas for actions were identified. This included the strengthening of the legal framework of addressing sexual violence, which led to the development of the draft law on Sexual Offences. In 2019, the NAP/SVC was incorporated into the Joint Human Rights Programme. The Joint Programme mainstreams the prevention of sexual violence within the Government’s service delivery and entrenches the National Development and Comprehensive Approach to Security (CAS). Achievements of the NAP/SVC include the increased capacity and skills of criminal justice institutions, health providers and line ministries. However, progress in the implementation of the NAP/SCV has been delayed by funding gaps, among other things.

*Measures to combat sexual violence*

99. The Attorney General established a specialized prosecution unit on Sexual and Gender-Based Violence (SGBV) Crimes in 2016. The Unit is staffed by four specially trained prosecutors of whom two are female. The Attorney General’s Office has a zero-tolerance policy on the settlement of sexual crimes related cases through the customary system.

100. In this regard, the Government has also endorsed a Traditional Dispute Resolution Policy which prohibits the resolution of crimes through the traditional system and nullifies all customary law decisions which are contrary to the Constitution.

101. In September 2018, the Attorney General’s Office established a law enforcement task force on SGBV, composed of the Police, CID, Medical Professionals, a Civil-Society Organisation working with survivors of SGBV and the Bar Association. By bringing together all the key actors, the Taskforce provides the necessary multidisciplinary leadership to address specific concerns in the investigation and prosecution of SGBV crimes including the provision of social and forensic services to meet the needs of victims, specifically women, children and IDP’s.

102. To enhance the evidence collection at first instance, the Attorney General’s Office, in close consultations with regional prosecutors, judges, police and health professionals, developed a Medical Evaluation Form for Victims Alleged Victims of Sexual Violence in line with World Health Organisation (WHO) best practice guidance. The form, which has

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<sup>52</sup> Art. 412, Penal Code.

<sup>53</sup> Ibid. Art. 414.

<sup>54</sup> Ibid. Art. 410.

<sup>55</sup> This included Federal Member States who were originally not part of the NAP/SVC: Hirshabelle, Galmudug and Puntland. Jubaland and South-West, while they were the only regional signatories of NAP/SVC, they were at that time not full federal states but interim administrations.

unique security features, has been approved by the judicial council in 2019 and is pending dissemination.

103. The Government has overall strengthened its investigatory and prosecution capacity and taken measures to combat barriers to reporting. It recognizes that there is still room for improvement in increasing efforts to provide appropriate care and support to victims. While the Government is working on the feasibility of establishing support measures including the provision of compensation to victims and psycho-social services, it refers in the meantime victims to reputable local organizations on the ground providing such service.

104. In cases where acts of sexual violence are committed, by state agents, clan militias and unidentified armed men, the Government remains determined to hold all perpetrators criminally accountable and provide emergency healthcare to victims.

105. The Office of the Military Attorney General has increased its efforts to investigate sexual offences cases involving members of the security forces.

**Table 2: Training provided to the Police (including on sexual violence)**

	<i>No. of Trainings</i>	<i>No. of Persons</i>
2017	4	42
2018	3	155
2019	5	88
2020*	-	-

*Source:* Somali Police Force.

\* Due to COVID-19, all training scheduled for 2020 has been postponed.

106. Judges and Prosecutors receive regular extensive training including on the prosecution of sexual offences and conflict-related sexual violence. Thematic areas covered in these training include: establishing and securing evidence, understanding victims' behaviour and victim-centred prosecution, among others.

107. The Ministry of Health conducts training with the support of international partners for health professionals on the best practice for medical examination and forensic evidence collection in sexual violence cases.

108. The Ministry of Women and Human Rights Development has conducted a minimum of 15 annual trainings since 2018 for national security and law enforcement institutions including the Somali National Army, Somali Police Force, National Intelligence Agency and the Custodial Corps.

#### **Reply to paragraph 11 of the list of issues**

109. The Government is committed to eradicating harmful traditional practices throughout the country. These practices include Female Genital Mutilation (FGM) and early marriage.

110. The Provisional Constitution prohibits FGM and classifies it as "abuse and torture" (articles 15(4) and 29(2)). To give effect to the constitutional safeguard against FGM, Somalia has developed a draft zero-tolerance policy on FGM, guiding the implementation of the draft law on Anti-FGM, which is pending cabinet endorsement and criminalizes all types of FGM, once it is enacted.

111. Notwithstanding the absence of express provisions in the Penal Code criminalizing FGM, the Attorney General has opened the first-ever investigation into a FGM related case involving a child in 2018. Although this case has been closed due to lack of evidence, the case facilitated a crucial public debate on the legitimacy of this cultural practice which has no foundation in Sharia'h.

112. The Sexual Offences and Child Rights draft laws also criminalize child marriage and FGM. The Child Rights and FGM draft laws, prepared by the Ministry of Women and Human Rights Development, are pending approval Ministers. All these Bills faced opposition from

religious leaders who are divided on the issue of the practice of FGM being harmful to girls and women, and on the age of maturity of a child.

113. With regards to measures taken to overcome resistance to the draft laws on FGM and Child Rights, see the response under the Sexual Offences Bill in paragraph 10 of the list of issues.

## F. Maternal and infant mortality and voluntary termination of pregnancy (art. 3, 6 and 7)

### Reply to paragraph 12 of the list of issues

**Table 3: Female deaths due to maternal causes in 2017 2018**

Reproductive Age Group	No. of overall female deaths	Time of death			Cause of death	
		While pregnant	While giving birth	Within six weeks after delivery	From accident or violence	Maternal
15–19	247	144	24	4	13	159
20–24	354	215	45	33	19	274
25–29	422	236	82	39	24	334
30–34	292	94	50	19	18	209
35–39	205	38	31	14	11	128
40–44	101	38	1	4	3	40
45–49	91	22	2	3	3	24
<b>Total</b>	<b>1 712</b>	<b>907</b>	<b>236</b>	<b>115</b>	<b>91</b>	<b>1 168</b>

*Source:* Somali Health and Demographic Survey (SHDS) 2020, conducted jointly by the Directorate of National Statistics of the Ministry of Planning, Investment and Economic Development and the Ministry of Health and Human Services.

114. The Government recognizes that the ratio for maternal mortality is still high, which can be contributed among other things to the high fertility rates,<sup>56</sup> low skilled birth attendance, inadequate access to maternal health services and the use of female circumcision among other factors.

115. Somalia's target per the National Development Plan 2017–2019 includes the reduction of the Maternal Mortality Ratio from 732 to 600 per 100,000 live births by 2019. The Maternal Mortality Rate has declined from 732 in 2015 to 692 in 2019 per 100,000 live births. This means that for every 1000 live births, seven women die during pregnancy, childbirth or within two months of childbirth. One woman per 1000 live births aged 15–49 dies due to pregnancy or birth-related complications. Further, one per 20 women would be expected to die from pregnancy-related causes during their reproductive lifetime.

116. With regards to the infant mortality rate, Somalia's under-five mortality rate had significantly declined from 179 per 1000 live births in 1990 to 122 per 1000 live births in 2018.

117. With regards to the measures taken to improve access to health services, the Federal Government has taken legislative and policy measures to improve the quality of and access to health services.

118. To this end, the Government has developed a Health Bill, and is in the process of implementing the following:

<sup>56</sup> According to the Somali Health and Demographic Survey (SHDS) 2020, in Somalia, the total fertility is 6.9 children per woman.

- an Essential Package of Health Services for Primary Health Care Services;
- the National Health Policy;
- the Health Sector Strategic Plan (2017–2021);
- the Reproductive Health Strategic Plan;
- a comprehensive Immunization System Plan 2016–2020;
- Somalia Every New-born Action Plan (ENAP) 2019–2023;
- National Reproductive, Maternal, New-born, Child and Adolescent Health and Nutrition (RMNCAH-N) Strategic Plan 2019–2023.

119. With regards to measures taken to improve access to information on sexual and reproductive health, the Government's RMNCAH-N Strategic Plan 2019–2023 guides the service delivery in reproductive health. Further, the Somali Midwifery Strategy 2019–2022 strengthens the capacity of health professions.

120. Given the social and cultural reluctance to discuss issues of sexual and reproductive health and reproductive rights openly, information on contraception is not readily sought by individuals. Women in remote rural areas do not want to be attended by a male doctor; this sometimes leads to the obstruction of the provision of lifesaving procedures. To address these challenges, including impediments faced by vulnerable groups including minority and the disabled person in accessing health services, the Government has launched the RMNCAH-N strategic policy initiative in tandem with awareness-raising workshops and campaigns.

121. With regards to the application of article 15 (3) of the Provisional Constitution, in line with the Sharia principles, abortion is only permitted in cases where there is a real and substantial risk to the life of the mother. To this end, abortion is also criminalized under the Penal Code.<sup>57</sup> There have been no criminal proceedings nor convictions on abortion-related cases.

## G. Death penalty

### Reply to paragraph 13 of the list of issues

122. Somalia retains the death penalty per Shari'ah principles for a limited number of crimes. The Federal Government of Somalia, during the second cycle Universal Periodic Review, noted that the abolition of the death penalty required a long process. As such, Somalia has no immediate plans to ratify the Second Optional Protocol to the Covenant.

123. While Penal Code is still under the review, its provisions remain applicable. The following offences carry the death penalty:

- Article 434 (Murder);
- Article 436 (2) (death caused to a person with his consent);
- Article 184 (attempts against the integrity, independence or unity of the Somali state, high treason);
- Article 185 (1) (citizens who bear arms against the Somali state);
- Article 190 (favouring the enemy in time of war);
- Article 206(2) (utilization of state secrets);
- Article 224 (3) (usurpation of political powers or military command);
- Article 223 (civil war).

124. Executions are carried out in the most serious cases. The defendants due process rights are always protected. Judicial proceedings cannot proceed without the legal representation of

<sup>57</sup> See Penal Code: Art. 418 (Abortion without consent), Art. 419 (Abortion with Consent), Art. 420 (Instigation to Abortion) and Art. 422 (Abortion for Reasons of Honor).

the defendants. Executions are carried out in line with article 94 of the Penal Code, in any place prescribed by the Minister of Justice.<sup>58</sup>

## **H. Right to life, protection of civilians, and excessive use of force (arts. 3,6 and 7)**

### **Reply to paragraph 14 of the list of issues**

#### *Contextual background*

The legal framework of the Police

125. The existing competency and structure of the Police are governed by the Organization of the Police Force Law, Law No. 2 of 23 December 1972 and Police Regulations Supplementary Decree No. 14 of January 1973.

126. The Police are considered as an integral part of the Armed Forces.<sup>59</sup> Under article 14(3) 2(1) of the Organisation of Police Law, the Somali Police Force is subject to the Military Penal Code and provisions of Police Regulations.

127. The Police are also mandated to discharge economic, financial, judicial duties and exceptional duties.<sup>60</sup> This also includes the authority of the police to represent the Attorney General in prosecutions in addition to conducting criminal investigations.<sup>61</sup>

128. However, the Provisional Constitution stipulates several changes to the organization of the Police, which have not yet been implemented. Under article 126, the Constitution makes clear distinctions between the Police and the Armed Forces. It sets out the mandate of the Police<sup>62</sup> to be one of four security institutions through which the federal government can ensure peace, sovereignty, security and safety of its people.<sup>63</sup> It also mandates the police “to protect the lives and property, the peace and security of the citizens and other residents of the Federal Republic of Somalia”.<sup>64</sup>

129. The Constitution also set out a two-tier Police system. Article 126(5) permits federal member states to set up their police forces.

130. The Police has to guarantee the procedural rights of defendants, detainees and arrested persons outlined in the Criminal Procedure Code and also the Provisional Constitution.<sup>65</sup> The Provisional Constitution states under article 127 (1) that security forces, which includes the police, must respect the following principles:

- “(a) *Professionalism, discipline and patriotism;*
- “(b) *Respect for the rule of law, democratic institutions and fundamental rights;*
- “(c) *A commitment to upholding the Constitution of the Federal Republic of Somalia;*
- “(d) *Transparency and accountability;*
- “(e) *Political neutrality.”*

131. The drafting of the laws regulating the structure and functions of the federal police force and the relationship between the federal police service and federal member state police

<sup>58</sup> In accordance with Art. 248(3), Penal Code.

<sup>59</sup> Art. 2, Organisation of the Police Force Law, Law No. 2 of 23 December 1972.

<sup>60</sup> Ibid. Art. 10–12.

<sup>61</sup> Ibid. Art. 10.

<sup>62</sup> Art. 126(1)(c), Provisional Constitution.

<sup>63</sup> The other three institutions according to Art. 126(1) of the Provisional Constitution are: the armed forces, the intelligence services and the prison forces.

<sup>64</sup> Ibid. 126(4).

<sup>65</sup> Ibid. Art. 35.

forces as stipulated under paragraph 17 and 18 of Schedule 1(D) of the Provisional Constitution is pending the final adoption of a Federal Police Model.

#### *Use of Force*

132. The Somali Police Force has a zero-tolerance policy for excessive use of force against individuals and promptly investigates any allegations. The Police receive regular training on conflict management, use of force in line with the values enshrined by their professional code of conduct.

133. The Police as one of the organs constituting the security forces of the State is also required per the constitution to “be trained on the implementation of this Constitution, the laws of the land and the international treaties to which the Federal Republic of Somalia is a party”.<sup>66</sup> In line with this obligation, the Police receive regular capacity building training.

#### *Legal framework*

134. Under article 57 of the Criminal Procedure Code, Police Officers may only use force which is necessary and reasonable in the circumstances whilst carrying out a search and seizure

135. Use of force by law enforcement officials is regulated under article 32 and 33 of the Code of Military Criminal Law in Peace, Legislative Decree No. 2 of 24 December 1963. The Military Code states that it “shall not be punishable if, for the purpose of performing a duty of his office, he employs or orders the employment of arms or other means of physical coercion when he is compelled to do so by the absolute security of repelling violence or overcoming resistance”.<sup>67</sup>

136. Further, the lawful use of force is subject to conditions. Article 33 states that “if an act constituting an offence is committed by order of a superior officer or by order of another authority, the person who has given the order shall be liable for the offence”<sup>68</sup>, and the person who “carried out the order shall also be liable for the offence, when the execution of this clearly constitutes an offence”.<sup>69</sup>

#### **Reply to paragraph 15 of the list of issues**

137. The Government takes all allegations of arbitrary killings and violations of civil and political rights seriously. The Government conducts investigations into these allegations. Some of these allegations resulted in prosecutions, and others were closed due to lack of evidence without the initiation of prosecution.

138. With regards to the two cases cited, the Government is following up with the relevant agencies on the criminal investigations launched into these cases.

139. Between 2015 and 2020, according to available information so far, the Attorney General’s Office has received 526 complaints related to arbitrary killings, in 391 of these cases, prosecution has been launched.

#### **Reply to paragraph 16 of the list of issues**

140. The Government is determined to protect civilians from the acts listed which are committed by Al Shabaab. In this regard, the Government is taking measures through security sector reforms in order to ensure protection to the civilian population living in areas where Al Shabaab seeks to exert control.

141. Further to military operations against this terrorist group, the Government is determined to hold members of this terrorist organization criminally accountable for their crimes. Through the NAP/SCV, the Government is gradually working on providing an effective mechanism for victims to seek support and access civil remedies.

<sup>66</sup> Art.127(1)(f), Provisional Constitution.

<sup>67</sup> Art.32(1, Code of Military Criminal Law in Peace, Legislative Decree No. 2 of 24 December 1963.

<sup>68</sup> Ibid. Art. 33(3).

<sup>69</sup> Ibid. Art. 33(4).

**Reply to paragraph 17 of the list of issues**

142. The Federal Government takes seriously all credible allegations of civilian allegations resulting from military operations conducted by Somali security forces and investigates such claims. Somalia further implements the concept of command responsibility. This concept which is well established under international law, is incorporated in article 358 of the Military Criminal Code (1963). If the investigations show criminal conduct, all persons deemed culpable, including under command responsibility, are held accountable under the provisions of the Military Penal Code.

143. The Government has introduced several measures to protect civilians and prevent human rights violations. It ensures that military operations comply with the principles of proportionality and distinction under international humanitarian law. The Government further safeguards compliance of security forces with human rights and international humanitarian law through training of military officers including on the principles of the law of armed conflict and rules of engagement.

144. Further, programmatic activities on human rights under the Joint Human Rights Programme, the implementation of relevant Action Plans, the Code of Conduct for the Military, internal procedures, and the Comprehensive Approach to Security (CAS) frameworks also enhance the protection framework.

145. To the extent that the Government approves military operations jointly conducted with Somali security forces on its territory, these operations must adhere to the principles of proportionality and distinctions under international humanitarian law. The Government is alarmed by any civilian deaths caused by foreign forces, and accountability and investigatory measures for these deaths must be undertaken by them, and those responsible held liable under the applicable laws.

146. Victims or their families can also file a complaint with the Ministry of Justice to report civilian casualties resulting from foreign and national military operations. The Government envisages that within the broader framework of the security and justice sector reform process, that investigation of these complaints will eventually determine reparation and rehabilitation measures that could be granted to victims in the future.

**I. Counter-terrorism measures (arts 2, 4, 7, 9, 10, 14 and 19)****Reply to paragraph 18 of the list of issues**

147. The Federal Government developed a national draft law on Counter-Terrorism in 2013. The draft law has been subject to several revisions to make it compliant with international human rights standards. The Cabinet endorsed it in 2017. In 2019 Parliament, after its first reading, returned the law to the Cabinet. The law is currently under review. The review process will take stock of concerns raised with regards to some of the provisions in the law, including the definition of terrorism, terrorism finance and terrorism training.

148. In 2013, the National Intelligence and Security Agency (NISA) was established by the Federal Government. Under article 126 of the Provisional Constitution, the Intelligence Service is one of four institutions forming Somalia's security services; established with the mandate to "guarantee the peace, sovereignty and national security" of the country. The legal framework governing the intelligence service has not yet been developed.

149. The Government takes all credible allegations on the violation and infringement of human rights committed by state agencies seriously. The Government has through the Joint Human Rights Programme provided training to NISA on human rights.

150. The liberty and security of a person, including the prohibition of illegal detention, are constitutionally protected under article 15(2) of the Provisional Constitution. Further, the Criminal Procedure Code under article 66 the Supreme Court and the Court of Appeal may order the release of any individual in arbitrary detention or in cases other than provided by the law be set free.

## J. Prohibition of torture and cruel, inhuman or degrading treatment (arts.6 and 7)

### Reply to paragraph 19 of the list of issues

#### *Legislative framework*

#### Definition of torture

151. Even though the Covenant does not require State Parties to criminalize a specific crime of “torture”, Somalia does not yet have an express definition and specific crime of torture in the Penal Code in line with Article 1 of the CAT.

152. Somalia’s submission of its Initial Report to the Committee Against Torture in 2019, demonstrates the Federal Government’s commitment to combating torture, cruel, inhuman or degrading treatment or punishment and implementing domestic measures safeguarding the tenets of the CAT. In this regard, Somalia is reviewing existing laws to fully implement constitutional rights, and obligations under the Covenant. However, the Penal Code is under comprehensive review. It will be amended as to criminalize acts in line with the above, and new laws have been developed to close the existing gap in criminal law.

153. The Provisional Constitution has guarantees against torture, cruel, inhuman or degrading treatment under article 15 including the right of a person not to be subjected to medical experiments without his free consent, consistent with Article 7 of the Covenant.

154. Article 15 (2) of the Constitution states that:

*“every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment”.*

155. Article 15 (4) states explicitly that “female circumcision is a cruel and degrading customary practice, and is tantamount to torture.”.

156. Article 15 (3) recognizes the physical integrity of a person. It provides that no one “may be subjected to medical or scientific experiments without their consent or if a person lacks the legal capacity to consent, the consent of a near relative and the support of expert medical opinion.”.

157. The Penal Code criminalizes acts that could amount to torture under article 1 of the CAT:

- Article 440 (Hurt) criminalizes acts causing grievous physical and mental injury to another person with a penalty of up to 12 years imprisonment;
- Article 455 (Reduction to Slavery) ` criminalizes reducing another person to slavery or “similar condition” with up to 20 years imprisonment;
- Article 458 criminalizes “compelling” (through use of force or coercion) to submit to one’s total subjection and penalizes it with up to 15 years’ imprisonment;
- Other acts that may be prosecuted include murder, kidnapping and carnal violence (rape).

158. The draft Sexual Offences Law (2017), which has been endorsed by the Cabinet in 2018, also has provisions in accordance with Article 7 of the Covenant. Torture is defined in the draft law under article 1 as:

*“[...] any act of unlawfully inflicting severe mental, emotional, or physical pain or suffering on a person as a means of intimidation, control, coercion, or punishment for any reason based on discrimination of any kind; or for the purpose of obtaining information or a confession during an interrogation or investigation. Torture also means the use of methods to obliterate the victim’s personality or to diminish their physical or mental capacities, even if this does not cause the victim mental pain or anguish.”*

159. The Military Penal Code holds subordinate officers liable for carrying out obediently an order which is illegal and threatens human life.

#### *Oversight mechanisms*

160. The Government does not condone any acts of torture. The Attorney General Office conducts investigations into all allegations of misconduct by private persons, and state officials in and outside of their professional capacity constituting acts of torture, cruel, and inhuman and degrading treatment.

161. Once fully established, the Human Rights Commission will also be the competent authority to investigate allegations including torture or ill-treatment committed by the police, security forces and custodial corps.

162. With regards to the allegations of torture, cruel, inhuman or degrading punishment, the Government has oversight mechanism to monitor the situation in places of detention. Under article 14 of the Prison Law (1971), the Attorney General's Office is mandated to exercise supervision over prisons and penal institutions with a view of ensuring proper care and treatment of detainees. To fulfil their statutory oversight duty, the Attorney General's Office has a unit designated for conducting regular and unannounced inspections of places of detention. Accordingly, the AGO inspects these institutions, and if necessary interviews detainees and records their condition and the overall prison condition. The Commanding Officer at the Custodial Corps is required to ensure that action is duly taken on noted concerns by the Attorney General's Office. This duty is underpinned by the requirement that detainees are treated as individuals with human rights, and hence are treated with respect and dignity.

163. The Government is in the process of improving its inspection and recording mechanism to be in a better position to review inspections and monitor whether concerns were addressed and recommendations implemented.

#### *Statistics*

164. Since Somalia does not yet have a specific crime of "torture", the requested data cannot be provided.

## **K. Treatment of persons deprived of their liberty (arts. 6, 7 and 10)**

### **Reply to paragraph 20 of the list of issues**

**Table 4: Information on Prisons**

<i>Number of Prisons in Somalia</i>	68
Prison capacity in the Capital City	<i>Mogadishu Central Prison</i> : 1000 detainees <i>Mogadishu Court &amp; Prison Complex (MPCC)</i> : max. 1000 detainees but in the initial phase only 250 detainees
No. of detainees	N/A: The prison population is subject to constant changes due to release
Sections in Prisons	Women, Suspects Convicted persons Convicted persons Prison administration offices  *Minors are not detained in prisons, and there are no detainees who are minors. Hence, there is no section for minors.

*Source*: Federal Custodial Corps.

165. A recent administrative step taken was the establishment of a Human Rights Department within the Custodial Corps on 5 March 2020 to mainstream the Government's efforts to provide human rights training for federal and member state prison officials and guards under the Joint Human Rights Programme led by the Ministry of Women and Human Rights Development.

166. With regards to the number of complaints regarding the treatment of detained persons brought to the attention of the Government over the last five years, we are unable to provide this information due to lack of data.

167. With regards to the number of deaths in detention centres, the Attorney General's Office investigated a total of six cases over the past five years. The cause of death was in two cases related to diabetes, another two inmates died of HIV/Aids, and in the remaining two cases, it was related to malnutrition.

168. Independent Monitoring Groups can be granted access to prisons and detention facilities on request by the Ministry of Justice and Ministry of Internal Security, which will contact the Custodial Corps on a case-by-case basis to receive information.

## **L. Administration of justice (art. 14)**

### **Reply to paragraph 21 of the list of issues**

#### *Judiciary*

##### Organization of the Civilian Judiciary

169. In Somalia, given the transition from a unitary to a federal system of government with the adoption of the Provisional Constitution (2012), there is currently a disparity between the *de jure* and *de facto* judicial structure.

170. Article 108 of the Provisional Constitution (2012) established a new structure for the judicial system. The national court structure comprises of three levels of judicial authority: the Constitutional Court, Federal Courts (including the Federal High Court<sup>70</sup>) and Federal Member State Courts with their own high and lower courts. The Provisional Constitution vests the judicial authority in the courts. It also states under article 105 that the judicial structure should be regulated in a law enacted by the Federal Parliament. This is pending the final approval of the politically agreed *Justice and Corrections Model*<sup>71</sup> between the Government and Federal Member States by the National Security Council (NSC).<sup>72</sup>

171. In light of the ongoing reform process, the current structure of the judiciary in place is still based on the 1962 and 1974<sup>73</sup> Organisation of the Judiciary Law which operates on the basis of the 1960 Constitution and the Criminal Procedure Code. It is based on a civil law inquisitorial system. As such, the judicial system is composed in the order of precedence, of the Supreme Court, Court of Appeal, first instance courts including the Banaadir Regional Court and 13 district courts. The Attorney General's Office is considered to be part of the judiciary under the previous laws. However, the Provisional Constitution establishes it as an independent office.

<sup>70</sup> The Federal High Court shall be the highest court at Federal Level (article 108, Provisional Constitution).

<sup>71</sup> Options considered include the following systems: a mixed, hybrid and uniform.

<sup>72</sup> The National Security Council (NSC) was established on 17 April 2017 following an agreement between the Federal Government and Federal Member States (FMS) leaders. It is chaired by the President, and includes FMS leaders, the Prime Minister, Federal Ministers of Internal Security, Interior, Defence, Justice, Finance, Foreign Affairs and the Governor of Banaadir Region. The Heads of the National Armed Forces and the National Security Advisor are technical members of the NSC.

<sup>73</sup> The 1974 Organization of the Judiciary Law repealed certain provisions under the 1962 Organization of the Judiciary Law.

*Organization of the Military Judiciary*

172. The structure of the Military Judiciary is regulated in Law No. 20 of 8 April 1970 (*Emendamento all' Ordinamento Giudiziario Militare*), which amended the relevant provisions in the 1964 Code of Military Procedure in Peace and War.<sup>74</sup>

173. The Military Judiciary comprises of the Supreme Military Court,<sup>75</sup> the Military Court of the first instance<sup>76</sup> and the Military Procurator General (Attorney General).<sup>77</sup>

*Legislative framework on Independence of the judiciary*

174. Further to the constitutional framework which establishes an independent judiciary, the Government is in the process of developing legislation setting out the structure and jurisdiction of the judiciary. Relevant key legislations which have been signed into law by the President include the Constitutional Court Establishment Law, Law No. 23 of 27 June 2016 and the Judicial Service Commission Establishment Law, Law No. 28 of 8 July 2014.

175. The Judicial Service Commission, like the Higher Judicial Council<sup>78</sup> which it replaces, is mandated among other things to ensure the independence of the judiciary. The Council of Ministers has on the 31 July 2020 endorsed the list of members of the Judiciary Service Commission. Its operationalization is thus only pending the appointment of one of its members – the Chair of the Human Rights Commission.

*Legislative measures on the separation of powers between the executive, legislature and judiciary*

176. An independent and impartial judiciary, free from political and improper influence is essential in the administration of justice. The Provisional Constitution, under article 106, sets out the principle of an independent judiciary. It 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.”*

177. In light of the pending establishment of the Judiciary Service Commission, the Government recognizes in its National Development Plan 2020–2024 that one of the resulting limitations of an adequate legal framework in line with Somalia’s federal structure is that the independence of the judiciary cannot be effectively guaranteed.

178. Hence, one of the key aims under Rule of Law and Justice Sector Reform is to secure equitable access to justice and to strengthen the public confidence in the judiciary as noted in the National Development Plan 2020–2024 and to increase the capacity of justice personnel.

179. Further, the Judiciary Strategic Plan 2019–2022 sets out steps that will enhance the judiciary’s independence and accountability framework. It outlines the key contributing factors which have impacted the judiciary, and also highlights priority reform areas, including implementation of the Justice and Correction Model and increasing the capacity of the judiciary at federal and state level.

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<sup>74</sup> Legislative Decree No.1 of 31 March 1964.

<sup>75</sup> Art. 3, *Emendamento all' Ordinamento Giudiziario Militare*, Law No. 20 of 8 April 1970.

<sup>76</sup> *Ibid.* Art. 2.

<sup>77</sup> *Ibid.* Art. 6.

<sup>78</sup> The Higher Judiciary Council is an organ referred to in Art. 96 (5) of the 1960 Constitution and Art. 27 of the Organization of the Judiciary 1962.

180. The Constitutional Court, once established, will provide an essential check on the powers of the executive and legislature by striking down any laws which are incompatible with the Constitution.

*Equality and fair trial*

181. Article 34 of the Provisional Constitution provides the right of all individuals to access a court, and a fair public hearing by an independent and impartial court or tribunal to be held within a reasonable time in accordance with Article 14 of the Covenant. It further stipulates the due process rights of individuals which are also further elaborated under article 35 of the Provisional Constitution and in the Criminal Procedure Code.

182. To guarantee these rights, the Government has taken steps including the gradual implementation of a Case Management System in Courts and at the Attorney General's Office. This has significantly improved case handling, record keeping, control over the movement of case files and accelerated the process of holding proceedings in time.

*Appointment and removal of judges*

183. The legal mandate for the appointment and removal of judges is vested in the constitutionally established and legally enacted Judicial Service Commission.<sup>79</sup> Once established, the Commission will perform its functions independent of any authority and address the existing challenges in guaranteeing an equitable and transparent procedure free from political interference for the recruitment process of judges.

*Legal aid*

184. Under the current legal framework, a court-appointed lawyer is provided free of charge in cases where an accused person cannot afford legal representation.<sup>80</sup> The Criminal Procedure Code also stipulates under article 15 the right to free legal counsel. Further, the Provisional Constitution under article 34(4) states that the "state shall provide free legal defence to people who do not have the means of doing so themselves". The constitutional right to legal aid is also guaranteed to (1) every child who "might suffer otherwise from injustice";<sup>81</sup> and (2) to every arrested or detained person who cannot afford legal counsel.<sup>82</sup>

185. In line with its justice reform priorities under the National Development Plan 2020–2024 and the Justice Sector Roadmap, the Government has taken measures to increase access to justice, especially to vulnerable groups of the society.

186. In the absence of a formal legal framework on the provision of legal aid by the Government, local organizations with funding from international organizations also provide different types of legal aid services. To address this gap, the Ministry of Justice has established a Legal Aid Coordination Unit. One of its main objectives is to coordinate and cooperate with these local organizations.

187. The Government has also endorsed a National Legal Aid Policy in line with international best practice standards<sup>83</sup> prepared by the Ministry of Justice on 23 June 2016. The policy recognizes both primary and secondary legal aid. The Ministry has commenced the policy implementation process and is in the process of opening legal aid clinics across the country. Additionally, the Ministry has also opened a compliance office in Mogadishu.

188. Further, the Ministry of Justice has also developed a draft law on Legal Aid through a consultative process, intending to fulfil Somalia's constitutional and international human rights obligations. The draft law, which is currently pending cabinet endorsement before being passed on to Parliament for debate, will do as follows:

<sup>79</sup> Under Art. 5(1) (a), Judicial Service Commission Establishment Law, Law No. 28 of 8 July 2014.

<sup>80</sup> Art.14 (2) (b), Organization of the Judiciary Law (1962).

<sup>81</sup> Art. 29(5), Provisional Constitution.

<sup>82</sup> Ibid. Art. 35(6).

<sup>83</sup> This includes the UN Resolution on Legal Empowerment of the Poor (2008); the UN Principles and Guidelines on Legal Aid in Criminal Justice Systems (2013).

- Provide for the establishment of a National Independent Legal Aid body with the responsibility to administer, implement and coordinate and monitor legal aid by both the federal and regional bodies in the country;
- Stipulates the creation of legal aid bodies at federal member state levels, who will be responsible for developing their guidelines in line with the National Legal Aid body.

#### **Reply to paragraph 22 of the list of issues**

189. The jurisdiction of the Military Court is regulated under article 1 of the “Code of Military Criminal Law in Peace and War (Military Penal Code).”<sup>84</sup> It states that the Military Court can try crimes that are committed by either military personnel or crimes that are defined as military crimes. A crime is defined as an offence that is in the Military Penal Code<sup>85</sup> and not in the Somali Penal Code.<sup>86</sup> All crimes enumerated in the Military Penal Code are crimes committed only by “soldiers” and not civilians.<sup>87</sup> The Military Penal Code defines a soldier as a member of the national army and a person designated as such by law.

190. In 2011, a three months State of Emergency decree was issued by the President of the Transitional Federal Government in light of the precarious security situation in areas re-captured from Al Shabaab control in Mogadishu. The decree granted the military court jurisdiction to try civilians for terrorism-related crimes.

191. Despite the gradual improvement in the security situation since 2011, security remains the main impediment to the transfer of terrorism-related cases from military courts to civilian courts. Civilian courts lack the necessary security and infrastructure to try high-security cases. Judges and prosecutors continuously receive regular threats from Al Shabaab affiliates.

192. The 15 May 2013 terrorist attack on the Banaadir Regional Court complex, where the Attorney General’s Office is also located, and the 20 February 2019 assassination of Deputy Attorney General Mohamed Abdirahman<sup>88</sup> by Al Shabaab, are exemplary of why the practice of using the military court for terrorism trials was prolonged beyond the initial period envisaged. The military court tries terrorism cases under the Somali Penal Code and not the Code of the Military Criminal Law.

193. In light of these extraordinary circumstances, and the need to safeguard the right to life of judges, prosecutors and judicial personnel among others and to guarantee the fundamental human rights of the defendants, the Federal Government of Somalia has taken steps to progressively remove serious crimes cases from the informal jurisdiction of the military court.

194. The Government has also strengthened the security of prosecutors and judges through the provision of mobile security through armoured vehicles to the Supreme Court and the Attorney General’s Office.

195. The Federal Government has increased through extensive training programs the capacity of the civilian courts to adjudicate serious crimes cases, including terrorism in accordance with international best practice standards. In this regard, special skills training has also been provided to prosecutors and investigators.

196. Simultaneously, the Government build and established the Mogadishu Prison and Court Complex (MPCC). It was inaugurated on the 23 February 2019 and is designed to accommodate and deal with high-security cases and defendants. It provides the requisite infrastructure and a secure environment for the civilian courts to conduct trials, and contains secure accommodation for judges and prosecutors to use for the duration of their trials.

197. The Ministry of Justice has prepared a *Justice Roadmap on the transfer of serious crimes cases* from the military to civilian courts. It has been approved in a joint meeting

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<sup>84</sup> Code of Military Criminal Law in Peace and War, Legislative Decree No. 2 of 24 December 1963.

<sup>85</sup> Ibid. Art.11.

<sup>86</sup> Ibid. Art. 29(3)(1).

<sup>87</sup> Ibid. Art. 29.

<sup>88</sup> <https://www.voanews.com/africa/al-shabab-claims-killing-somali-deputy-attorney-general>.

between key stakeholders on 8 September 2019.<sup>89</sup> The Roadmap outlines the legal basis for the transfer of these cases and details the necessary actions to fulfil this objective.

198. *Issue 22(a)*. The defendants due process rights are guaranteed. Proceedings do not take place unless the defendant has legal representation. In cases where the defendant is not able to afford it, access to free legal counsel is provided by the State. Fifty military court judges have received training in Mogadishu, Garowe and Kismayo since 2017.

199. As already noted, the military judges and prosecutors also receive regular training to ensure that they uphold the fair trial safeguards enshrined in the Provisional Constitution and the Covenant.

200. *Issue 22(b)*. The Military Court is structurally placed under the Ministry of Defence, and but exercises independent authority from the Ministry of Defence.

201. *Issue 22 (c)*. The Government is committed to ensuring that all defendants are held in pre-trial detention for the maximum period stipulated under the Criminal Procedure Code. Prolonged detention may in a small number of cases be due to practical challenges caused by the necessity of thoroughly investigating high-risk cases with limited resources and staff.

202. *Issue 22(d)*. The allegation that many convicted defendants have their right to appeal denied is categorically untrue.

## **M. Persons with disabilities (arts. 2, 7, 9, 10 and 26)**

### **Reply to paragraph 23 of the list of issues**

#### *Measures to prevent and protect persons with disability against discrimination*

203. Somalia ratified the Convention on the Rights of Persons with Disability (CRPD) on 6 August 2019. The Ministry of Women and Human Rights Development, which is responsible for disability rights issues, has also drafted a Disability Law (2019) which partly domesticates the convention. The draft law is currently in the final stages of the national public consultations. Participants in the consultation process include persons living with a disability, representatives from Civil Society Organizations and the Somali Bar Association.

204. The draft law's guiding values for the implementation of the law includes the principle of non-discrimination. Article 8 of the draft law further stipulates the rights to equality and non-discrimination of disabled persons. It states that persons with disability should without being discriminated have equal protection and benefit under the law. It also prohibits discrimination both in the public and private sphere on the grounds of disability. Further, persons with disability will be guaranteed protection on other grounds as stipulated under the constitutional provisions on equal protection against discrimination. According to the draft law, the Government will be obligated to implement and develop regulations ensuring that persons with disability have equal access to education and employment in both the private and public sectors. It is also required to introduce measures to mitigate the effects of discrimination by parents, spouses, children, relatives or caregivers of the person with a disability.

205. The draft disability law also provides for punitive measures for discriminatory acts against disabled persons. Persons with a disability may also seek appropriate remedy for the vindication of their rights. The draft law accords primary responsibility to the Human Rights Commission to investigate alleged violations of the rights of disabled persons provided in the draft law.<sup>90</sup>

206. Additionally, the Ministry of Women and Human Rights Development, on behalf of the Government, is in the process of establishing the National Disability Agency following the enactment of the National Disability Agency Law, Law No. 134 of 31 December 2018.

<sup>89</sup> The Prime Minister's Office, the Ministry of Justice, the Attorney General's Office, the Ministry of Internal Security, the Somali Police Force and the Somali Bar Association.

<sup>90</sup> Art. 38 (Redress and Monitoring) of the Draft Law on Disability (2019).

207. The law affords the National Disability Agency (NDA), under article 5(3) the power to file a criminal complaint against any public and private entity which violates the rights of disabled persons espoused in the draft law on Disability (once it is enacted) and other laws of the country. As such, this would include cases of mistreatment of persons with mental health conditions in private welfare institutions.

208. Further, the NDA once established, is also mandated under article 5(2)(e) to monitor the provision of services including social services of persons with disability at both federal and federal member state.

209. With regards to social services, the Government endorsed a National Social Protection Policy developed by the Ministry of Labour and Social Affairs on 18 July 2019. It launched its implementation on the 17 September 2019. The Policy aims to progressively establish an inclusive social protection system catering to the needs of employable individuals and all vulnerable groups including the disabled; and providing them with the opportunities to overcome poverty, vulnerability and exclusions. Social service programs will be created to meet the particular needs of the vulnerable groups taking stock of existing policies, and rights stipulated under the Constitution and laws.

210. With regards to allegations of ill-treatment of persons with a disability and mental health conditions, the Government takes these seriously and instigates criminal investigations into such cases. Since these institutions are privately owned and managed, the establishment of the NDA will address this issue through their overall oversight and monitoring role of the living conditions of persons with disability. The Somali Police Force has also adopted a free emergency phone number, enabling the public to report crimes including ill-treatment and abuse committed against persons with disability.

211. The Penal Code provides a legal defence for persons with mental health issues. It states as a general rule that a person who does not “possess the capacity of understanding and of volition” at the time of committing an offence should not be punished for any act constituting a crime.<sup>91</sup> Hence, such persons are not detained for committed offences as they are not deemed culpable.

212. The Ministry of Women and Human Rights Development will engage with private mental and physical health institutions in Somalia to ensure that individuals are treated with human dignity and in line with best practice guidelines. It has also been working with line institutions to develop an all-inclusive legislative and policy framework for the protection of persons with disability.

## **N. Refugees, asylum seekers and displaced persons (arts. 7, 12, 13, 16 and 26)**

### **Reply to paragraph 24 of the list of issues**

213. The Government led 2017 Drought Needs Assessment (DINA) identified displacement as the principal challenge to recovery and development in the country. The Government has achieved some progress in preventing internal displacement, while it was dealing simultaneously with humanitarian disasters. Its main accomplishment includes the development of an inclusive policy and joint and coordinated implementation of common programs aligned with the Governments broader policy framework on poverty reduction and social protection to prevent duplication of resources.

214. Progress in the development of policy framework on internal displacement includes:

- National Policy on Refugee-Returnees and internally Displaced Persons (2019). The National Policy divides the roles and responsibilities between the Federal Government and the Federal Member States;
- Interim Protocol on Land Distribution for Housing to Eligible Refugee-Returnees and Internally Displaced Persons (2019);

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<sup>91</sup> Art. 47, Somali Penal Code.

- Banaadir Regional Administration and Municipality of Mogadishu: Internally Displaced and Refugee Returnees Policy;
- National Eviction Guidelines (2019).

215. In 2016, the Federal Government in partnership with international organizations, development actors and donors, established a Durable Solutions Initiative, adopting an integrated and comprehensive holistic, rights and needs-based approach to the reintegration of internally displaced persons in line with the National Development Plan. It identifies the causes of displacement and its protracted characteristics and develops a common durable solutions framework.

216. Further, recognizing the importance of a national coordination platform leading the government's efforts in responding and preventing humanitarian crises and internal displacement, the Government established the Ministry of Humanitarian Affairs and Disaster Management (MoH &DM) in 2017. The mandate of the Ministry includes the collection of IDP statistics to strengthen the evidence-based rapid national response to internal displacement.

217. The Government is also in the process of implementing the Recovery and Resilience Framework (RRF) and the National Disaster Management Policy (2017), which identifies the root causes of displacement. These policies ensure a coherent and coordinated framework within which the Federal Government and the Federal Member States can implement durable solutions for the internally displaced.

218. The Government has also ratified the Kampala Convention on the protection and assistance of IDPs. It is currently in the process of domesticating the convention by developing the necessary legal framework.

#### *National Evictions Guidelines*

219. The National Evictions Guidelines prohibit forced evictions and sets out safeguards and procedures that need to be complied with prior to evictions to ensure that the constitutional rights, including the right to adequate housing of people are protected.

220. The Banaadir Durable Solutions Unit has also conducted the first comprehensive risk assessment of forced evictions in Mogadishu. Since its establishment, the Unit has implemented the National Eviction Guidelines and prevented the forced eviction of 8000 households and 58 settlements of internally displaced persons.

#### *Durable Solutions Unit and Durable Solutions Secretariat*

221. In November 2018, the Federal Government established a national Durable Solutions Secretariat (DSS) which is placed under the strategic leadership of the Ministry of Planning and Investment Cooperation and is under the framework of the Social Development Road Map at the Office of the Prime Minister. The Secretariat is composed of 14 government agencies.<sup>92</sup>

222. Measures taken by the DSS include:

- Finalizing the development of the National Durable Solutions Strategy and Action Plan and ensuring the implementation of the Strategy;
- Engaging the private sector to develop long-term durable solutions;

<sup>92</sup> Members include: Office of the Prime Minister; Ministry of Planning, Investments and Economic Development; Ministry of Interior, Federal Affairs and Reconciliation; the National Commission for Refugee and IDPs; Ministry of Humanitarian Affairs and Disaster Management; Ministry of Labour and Social Affairs; Ministry of Public Works, Reconstruction, and Housing; Ministry of Women and Human Rights Development; Ministry of Agriculture and Irrigation; Ministry of Energy and Water Resources; Ministry of Fishery and Marine Resources; Ministry of Foreign Affairs; Directorate for Environment and Directorate of Immigration and Naturalization.

- Conducting capacity building training for government officials to foster a shared understanding and increase knowledge on durable solutions, its legal framework and developing measurable and coordinated durable solutions initiatives;
- Streamlined key durable solutions priorities into the ninth National Development Plan 2020–2024;
- Included key durable solutions priorities into the Government’s national agenda and priorities in the Social Development Road Map;
- Represented Somalia globally in the discussion of issues relating to displacement communities. For example, in December 2019, the DSS participated in the Global Refugee Forum held in Geneva.

223. The Banaadir Regional Administration (BRA) has established a Durable Solutions Unit on 31 January 2019. Measures taken by this Unit include:

- The Development of a BRA Strategic Plan including guidelines to tackle evictions and internal displacement;
- The launch of an IDP Policy (2019), which among other things aims to: provide land to 300 IDP households; support property developments with a view of easing the situation of IDPs and urban poor and to integrating the internally displaced into the society as contributing members to the economy.

## **O. Freedom of expression and assembly and the protection of journalists (arts. 6, 7, 18, 19 and 21)**

### **Reply to paragraph 25 of the list of issues**

#### *Legal and regulatory frameworks*

224. Article 18 of the Provisional Constitution (2012) guarantees the right to freedom of expression, entailing the freedom of all forms of media including electronic and web-based media;<sup>93</sup> freedom to receive and impart information, opinions and ideas;<sup>94</sup> freedom of artistic creativity and freedom of research.<sup>95</sup>

225. In its response to the Universal Periodic Review (UPR) lodged in the second cycle review in 2016, the Federal Government of Somalia re-affirmed its commitment to the implementation of the recommendations on the protection of the right of freedom of expression, media workers and journalists. To that end, the Government has devised specific measures in the 2015–2016 Action Plan of the Human Rights Roadmap. These included the “finalization of the media law”, training for journalists on professional media practice standards and meetings between the federal and member state governments on ensuring protection for the freedom of expressions.

226. The Government has taken steps to gradually improve the legal framework governing the right of freedom of expression. The relevant legislations include the National Communications law, Law No. 5 of 2 October 2017 and the Media amendment law of August 2020. The National Communications Law provides the regulatory framework for access to voice, broadband and postal communication in the country without causing infringement on the fundamental rights to freedom of express, information and privacy. The Government has considered the feedback on improving the Federal Media Law, Law No. 11 of 9 January 2016. The amendment of the Media law was the outcome of a wide-ranging constructive consultative process involving a variety of stakeholders. The revised law provides for a Press Council tasked with developing ethical standards, processing and conducting disciplinary action. It also prohibits public broadcast monopoly and establishes a Government Communication Center to provide access to information relating to the government.

<sup>93</sup> Art. 18(1), Provisional Constitution.

<sup>94</sup> Ibid. Art. 18(2).

<sup>95</sup> Ibid. Art. 18(3).

227. Federal Member State Constitutions will be harmonized with the final Federal Constitution which is premised on Shari'ah law and is compatible with the Covenant.

228. While the right to freedom of expression is constitutionally protected, the limitations of this right are only with regards to expressive conduct violating the rights of others, thus constituting a criminal act. This does not include the right of every person to disagree with the Government. However, the freedom of expression does not include the right to incite, to defame or cause fear and panic in the society thus endangering its security.

229. The amendment to the Puntland Media Law was approved in December 2017. Consultations are ongoing in Somaliland to amend the Press Law, Law No. 27 of 2004 to make it more compatible with Somalia's international human rights obligations.

#### **Reply to paragraph 26 of the list of issues**

230. The prevention of killings of journalist and human rights defenders remains a high priority for the government. The Attorney General's Office is committed to tackling impunity and has instituted several investigations into these killings. On 8 September 2020, enforcing an order issued by the Banaadir Regional Court, which resulted from a petition presented by the National Union of Somali Journalists, the Attorney General appointed a Special Prosecutor dedicated to the investigation and prosecution of crimes against journalists.

231. The Offices of the Police Commissioner and Deputy Commissioner are also determined to ensure the safety and the protection of journalists. The Somali Police Force has also conducted several investigations against members of the police force who have reportedly used violence against media personnel and journalists. As a result, many law enforcement officers are currently serving time in prison.

232. The Government is committed to ensuring that any arrests should be conducted in line with due process procedures enshrined in the Constitution and Criminal Procedure Code.

#### *Application of articles 208, 212 and 328 of the Penal Code*

233. While the Penal Code is undergoing a review, these provisions are only used in the most serious cases.

234. Article 208 (Political Defeatism), concerns the rebellious activity of persons with the intention of causing public alarm. This article may only be committed in times of war, such as the current situation, where the government is engaged in a non-international armed conflict with terrorist groups. The prosecution must demonstrate that the accused spread or communicated (orally or in writing, to one person or more) false or exaggerated (valid only in part) or misleading rumours or news, which may create public alarm. However, this provision should not be interpreted as curbing freedom of expression but a safeguard against conduct contrary to national security.

235. Article 212 (Anti-National Activity of a Citizen Abroad), applies only to citizens of the Somali Federal Republic abroad. The citizen abroad must wilfully want to communicate or circulate false or misleading information. If an individual deliberately circulates such information on the basis that the information is indeed accurate, it would not be an offence under this article.

236. Article 328 (Publication or Circulation of False, Exaggerated, or Tendentious News capable of Disturbing Public Order), prohibits either the publication or the circulation of certain types of news. Circulation includes distribution of published material as well as circulation of rumours by word of mouth. This article prohibits the publication or circulation of false or exaggerated news. The prosecution must prove that the purpose of such statements, which were represented as a fact, was to cause public disorder. This means that the right to freedom of expression entrenched in the constitution is not curtailed as satirical and hyperbolic materials or images and dissent on facts do not fall within this article.

#### **Reply to paragraph 27 of the list of issues**

237. The right to freedom of assembly, which is related to the rights to freedom of expression and freedom of association, is protected by article 20 of the Constitution. It

provides that “every person has the right to organize and participate in meetings, and to demonstrate and protest peacefully, without requiring prior authorization”. The only limitations to this right are in instances where such gatherings are not peaceful.

238. The Government has encouraged a cooperative approach of the management of assemblies between the organizers and the police to ensure the security and protection of the rights of the persons peacefully gathering. The Government continues its efforts to review measures to ensure that such gatherings remain peaceful. It is also committed to holding all involved police officers criminally accountable for any unlawful activity.

## **P. Rights of the child (arts. 7, 9, 10, 14, 23, 24 and 26)**

### **Reply to paragraph 28 of the list of issues**

239. The National Program for the Handling of Disengaged Fighters, which includes children as well as adult men and women formerly associated with Al-Shabaab, is a joint cooperation between the Federal Government of Somalia and international partners to enhance the coordination and management of programme activities.

240. The main areas of focus under the program are:

- Outreach;
- Reception and screening of ex-child combatants;
- Re-integration of ex-child combatants through education and psycho-social support.

241. Despite the Governments relentless efforts to stop the recruitment of children by terrorist groups through the development of comprehensive security sector reforms and policies relating to the rights of the child, Al-Shabaab manages to recruit children through force and indoctrination.

242. The Government has established several rehabilitation and reintegration centres across the country.

243. With a view of protecting the unique needs of women ex-combatants and their children, the programme adopted a gender-responsive approach in 2019.

244. The Federal Government, with the support of the United Nations Assistance Mission in Somalia (UNSOM), recently conducted several technical workshops to review the existing security procedures for screening disengaged combatants. In the implementation of the Defectors Rehabilitation Programme, the Federal Government is guided by international human rights standards of handling disengaging fighters.

### *Institutional framework*

245. Further to the Government’s commitment to providing functional Rehabilitation Centres for former child combatants and developing the relevant regulatory framework, the Government established a technical working group Committee on Children Affected by Armed Conflict (CAAC) in 2013. A Child Protection Unit was established within the Ministry of Defence in May 2014 to ensure the protection of children in armed conflict in all aspects of government’s policies in this field. The Somali National Army also established a specialized unit on child protection in May 2014 in conjunction with a United Nations Mobile Screening Unit. The unit provides standardized and systematic inspections of all army personnel with a view of ensuring that children have not been recruited into the national army. The Federal Government also endorsed Standard Operating Procedures on handling the reception and handover of former child combatants.

### *Measures to prevent child recruitment*

246. The Ministries of Defence, and Women and Human Rights Development spearheaded the government’s effort to provide a policy framework for the release, protection and reintegration of children associated with armed groups, whilst instituting preventative measures ensuring that no child is recruited into the national army. To this end, the

Government is in the process of implementing a verification and biometric registration programme in the national army to prevent child recruitment.

247. In June 2017, the Commander of the Somali National Army issued a Command Order prohibiting all six grave violations against children during military operations as well as the recruitment, association and use of anyone under the age of 18.

248. In October 2019, the Government adopted a roadmap to fast track the implementation of the Action Plan to end and prevent the recruitment and use of children by the Somali National Army, and the Action Plan to stop the killing and maiming of children by the Somali National Army.

249. The Federal Government is determined to ensure that all individuals associated with armed groups are screened, and identified children are released and reintegrated. To this end, the Government does not prosecute these children but regards them as victims of armed conflict.

### **Reply to paragraph 29 of the list of issues**

#### *Child Rights Law*

250. A draft law on Children Rights, domesticating Somalia's obligations under the Convention on the Rights of the Child (CRC), developed by the Ministry of Women and Human Rights Development, is currently pending review by the Council of Ministers. The draft law contains provisions including the definition of a child (as anyone under the age of 18) in compliance with the Provisional Constitution and CRC. The draft law will address most of the six grave violations against children in armed conflict and also criminalize different forms of ill-treatment including harmful traditional practices such as child marriage and FGM and disciplinary acts involving corporal punishment.

#### *Corporal punishment*

251. Once the Child Rights Law is enacted, it will protect children from corporal punishment in public and private setting. Current provisions permitting physical disciplinary measures<sup>96</sup> by parents in the Penal Code have been removed during the ongoing Penal Code review process.

252. The Government also recognizes the need to promote understanding about corporal punishment as a form of child abuse and its detrimental mental effect it has on children amongst guardians and caretakers.

253. The Government is also in the process of developing comprehensive Child Rights and Child Protection Policies which would pave the way for the establishment of an institutional child protection referral system.

#### *Forced Labour*

254. The Provisional Constitution guarantees under article 29 (3) that "no child may perform work or provide services that are not suitable for the child's age or create a risk to the child's health or development in any way".

255. The Ministry of Labour and Social Affairs is also in the process of developing a national Labour Code which contains provisions regulating child labour. Once enacted, the Child Rights Law will also prohibit specific types of child labour. Under section 93 of the Labour Code of 18 October 1972, the minimum age of employment is set out at 15 years. The Labour Code further provides that only the Minister of Labour can authorize the employment of anyone younger than 12 years, provided that the work conditions do not impact the health and moral welfare of the child.

256. Given the absence of a labour inspection framework, the Federal Government has taken steps to address child labour. In the context of armed conflict, the government is in the

<sup>96</sup> Arts. 439 and 442, Penal Code.

process of implementing the military Command Order prohibiting the recruitment of children into the national army.

257. The Government conducted an assessment in January 2020 on drug use among children working in urban cities in Somalia. The preliminary findings of the assessment highlight that most of these children are boys who perform work ranging from shoe shinning to cleaning commercial business offices whilst girls perform mostly domestic work. The environment in which these children operate, coupled with the circumstances compelling them to seek employment, make them more susceptible to exploitation. To respond to and prevent human rights violations resulting from child labour and exploitation, the Government has established a Human Rights Trafficking Task Force and a Child Protection Unit and Children Armed Conflict Working Group.

## **Q. Participation in public affairs (arts. 19 and 25)**

### **Reply to paragraph 30 of the list of issues**

258. Somali citizens last experienced a democratic multiparty system with a competitive electoral process in 1969. As such, the Government is committed to ensuring full political participation of all citizens. It has gradually developed and advanced over the last six years the legal framework for conducting national parliamentary elections based on direct suffrage.

These include the following pivotal laws:

- The enactment of the Establishment law of the National Independent Electoral Commission (NIEC) in 2015. The Commission has the mandate among other things to manage the electoral process, as well as establishing a voter register, and registering and vetting electoral candidates and determining the election timeline;
- The enactment of the Political Parties law (2016). The adoption of the amendments to the Political Parties law is currently pending Parliamentary approval. The NIEC is mandated to register political parties. To date, a total of 100 Political Parties have been formally registered by the NIEC;
- Draft Citizenship Amendment law, amending the provisions of the 1962 Citizenship law, which is pending approval by the Council of Ministers. One of the key improvements in the draft Citizenship Amendment law is the protection of equal nationality rights for women;
- The enactment of a Federal Electoral Law on 20 February 2020.

259. The Federal Electoral law is composed of seven chapters<sup>97</sup> and 58 articles. The law adopts a Single Member Plurality (SMP) electoral model and requires that political parties have at least 50 per cent of the seats in both houses of the Federal Parliament.<sup>98</sup> The law also stipulates the registration of voters through unique biometric identification.<sup>99</sup>

260. Further, in February 2020, the Federal Parliament appointed a joint ad-hoc committee to prepare the regulatory framework on the fair and equitable allocation of seats determining a women's quota and the elections of candidates from Somaliland and allocation of seats to representatives from Banaadir. Due to the challenges posed by COVID-19, the Committee was not able to share its recommendations as envisaged initially in April 2020.

261. The NIEC is tasked with implementing the voter registration modality prescribed in the electoral law. To this end, the NIEC has assessed the feasibility of having active biometric registration in time of the next parliamentary elections. The Chairperson of the Commission presented her findings to the Parliament in July 2020. She stated notwithstanding the financial

<sup>97</sup> The first chapter contains general provisions, the second chapter is on the management of the elections, the third chapter is on voter registration, the fourth chapter is on candidates and the election campaigns of candidates, the fifth chapter is on the preparations for elections and voting, the sixth chapter is on vote counting and election results and the seventh chapter contains miscellaneous provisions.

<sup>98</sup> Art. 10, Federal Electoral Law (2020).

<sup>99</sup> Ibid. Art. 16(4).

resources needed to carry out biometric registration, that election can only take place using this modality at the earliest in July 2021.

262. Since the ongoing process of setting up the requisite framework and technical capability for the realisation of elections based on direct suffrage will not be concluded in time, the Federal Government and federal member states leaders reached an agreement on 17 September 2020 to ensure timely federal parliamentary elections and political stability. The 2020/21 Election Agreement, which was subsequently endorsed by the Federal Parliament on 23 September 2020, sets out the overall modality for the management of indirect elections and also includes a 30 per cent women's quota. The Federal Government has announced a timetable for the different stages of the indirect elections, culminating into the Presidential elections in February 2021.

263. The 2016–2017 electoral process had only a few isolated incidents of violence, which have all been investigated.

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