



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### List of issues prior to submission of the initial report of Somalia\*

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

1. Please report on the main significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the ratification of the Covenant, and especially in the last 10 years. Please indicate which procedures are in place for the implementation of the Committee's Views under the Optional Protocol and to raise awareness about the Optional Protocol, in particular among those who believe that their human rights under the Covenant may have been violated.

2. Please report to what extent the State party is in a position to guarantee the rights protected by the Covenant in those areas not subject to its effective control, such as Somaliland and Puntland, as well as areas controlled by Al-Shabaab.

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

##### Constitutional and legal framework within which the Covenant is implemented (art. 2)

3. In the light of article 40 of the Provisional Constitution of Somalia, please clarify the status of the Covenant within the national legal order, in particular whether its provisions take precedence over national laws and whether provisions of the Covenant are given full effect in the domestic legal order, including in those areas not subject to the control of the Federal Government. Please also provide information on the coexistence of the statutory law alongside with the customary legal system and Sharia law and how it complies with the Covenant. Please provide examples of cases in which the Covenant has been invoked or applied by national courts and information on the measures taken to raise awareness of the Covenant among judges, prosecutors, lawyers and the public at large.

4. Please provide information on the measures taken to make the national human rights institution operational. Please also provide information on the National Human Rights Commission law (2016) and whether it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

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\* Adopted by the Committee at its 128th session (2–27 March 2020).



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

5. Please provide information on measures taken to prevent and combat corruption, which undermines the rule of law and leads to violations of the Covenant, including information on the scope of review of government contracts by the Financial Government Committee and on investigations and prosecutions of State officials involved in corruption in the last five years. In this regard, please provide information on a bill adopted in June 2019 on the establishment of an anti-corruption commission. Please also describe all the measures taken to ensure the transparent management of natural resources, in line with the provisions of article 1 (2) of the Covenant.

**Fight against impunity and past human rights violations (arts. 2, 6, 7 and 17)**

6. Please indicate all measures taken to combat impunity, in particular with respect to past serious human rights violations, such as alleged cases of war crimes and crimes against humanity, including but not limited to, cases of enforced disappearances, extrajudicial killings, torture and rape, as well as the prosecution of perpetrators and providing victims with adequate remedies. Please provide information on the establishment of the Truth and Reconciliation Commission, provided for in the Provisional Constitution.

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

7. In the light of article 11 of the Provisional Constitution, please clarify if there is comprehensive legislation that (a) provides a clear definition of and criminalizes direct and indirect discrimination; (b) contains a comprehensive list of prohibited grounds of discrimination, including sexual orientation, gender identity and disability; and (c) provides effective remedies for victims. Please describe the measures taken to combat and prevent acts of discrimination, stigmatization and violence against persons belonging to ethnic minorities and minority religions, as well as persons with HIV/AIDS. Please comment on the practice of prohibiting inter-clan marriages by local custom.

8. Please provide information on the number of people who have been arrested, detained and prosecuted for same-sex sexual activity by virtue of article 409 of the Penal Code and whether the State party intends to repeal that provision to ensure compliance with its obligations under articles 2, 17 and 26 of the Covenant. Please comment on information received that in some southern regions of Somalia, certain Islamic “courts” subject to the control of insurgents have imposed a death penalty for consensual, same-sex sexual relations, allegedly relying on Sharia law. Please also provide information on the legal and practical measures taken to combat discrimination on the basis of sexual orientation and gender identity, including any awareness-raising campaigns.

9. Please provide information on measures taken to tackle gender inequality, including information on the National Gender Policy adopted in 2016 and information on specific legislation in force addressing this issue. Please also inform about steps taken to implement the United Nations Somalia Gender Equality Strategy 2018–2020. Please indicate all the measures taken to ensure in practice that women are represented in elected positions and in political and public life, especially in decision-making positions.

**Harmful practices and sexual violence (arts. 2, 3, 6, 7 and 26)**

10. Please clarify if the Sexual Offences Bill has been enacted and its impact, including number of complaints filed and registered; investigations and prosecutions undertaken; convictions handed down; and sanctions imposed on perpetrators. In this regard, please also explain if rape is still considered as a “crime against morality”. Please provide information on the implementation of the National Action Plan on Ending Sexual Violence in Conflict and other measures taken to support the fight against sexual violence, including measures for the protection, care and support of victims of sexual violence during the ongoing armed conflict. Please comment on reports that attribute most of the conflict-related sexual violence to State agents, militias associated with clans and unidentified armed men, and provide information on the training provided by the State party to police, military, hospital and judicial personnel on the issue of sexual violence.

11. Please describe the measures taken to eliminate harmful traditional practices. Given the extremely high rate of early and forced marriage and female genital mutilation, please indicate any steps taken towards the adoption of a law and a comprehensive strategy to

address the problem and provide further information on all measures taken to overcome resistance to such a bill, including among traditional and religious leaders.

**Maternal and infant mortality and voluntary termination of pregnancy (arts. 3, 6 and 7)**

12. In view of the very high rates of maternal mortality and early pregnancy, please provide updated statistical data on maternal and infant mortality. Please also provide information on the measures taken to improve access to health services and to information on sexual and reproductive health, in particular for women belonging to ethnic minorities and those living in remote areas. Please also provide information on the application of article 15 of the Provisional Constitution and indicate if the mentioned provision allows for legal abortion when carrying a pregnancy to term would cause the woman substantial suffering, particularly if the pregnancy is the result of rape or incest or if it is not viable. Please also indicate if abortion is criminalized and the number of women convicted of intentionally terminating their pregnancies and the penalties imposed, as well as the number of persons convicted of performing an abortion.

**Death penalty (art. 6)**

13. Please indicate whether the State party intends to establish an official moratorium on the death penalty and describe the measures taken towards abolishing the death penalty and the current obstacles to such an abolition. Please indicate the crimes that are punishable by death and whether the death sentence is mandatory for any of them. Please comment on information received that executions are often carried out rapidly and publicly, after proceedings falling short of international fair trial standards. Please also indicate whether the State party is considering ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

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

14. Please provide information regarding the legal standard applied in the State party for appropriate uses of force and firearms by law enforcement officials and the source of that standard in domestic law. Please explain what steps the State party has taken to ensure that such standards are respected by law enforcement and security personnel in practice.

15. Please respond to the continuing allegations that the security forces of the State party commit unlawful and arbitrary killings. In this regard, please provide information on the killing of a parliamentarian, Abdishakur Yaqub Ibrahim, and a young boy, in a protest that occurred in December 2018, and on the violent response of the security forces against protests that erupted in April 2019 after the killing of a tuktuk driver. Please provide information on investigations and sanctions against those responsible, and also provide, for the period covering the past five years, the number of complaints filed, investigations and prosecutions undertaken, and convictions handed down for unlawful or arbitrary executions.

16. In the light of the volatile situation and attacks carried out at several locations in the State party, please specify all measures taken to strengthen the protection of the civilian population against acts committed by Al-Shabaab, which have included: (a) killings and abductions; (b) the targeting of protected civilian objects; (c) the use of children in hostilities; (d) rape and other forms of sexual violence; and (e) torture or ill-treatment. Please describe all measures taken to ensure that all perpetrators of violations of human rights and international humanitarian law are held accountable for their actions and provide victims with appropriate and effective remedies.

17. Please provide information on investigations carried out into allegations of civilian casualties resulting from military operations conducted by Somali forces. Please also provide information on the extent to which Somalia has consented to foreign military operations on its soil that have led to civilian casualties, and on appropriate measures taken to ensure that such forces comply with the provisions of the Covenant. Please also provide information on whether there is a complaint mechanism to ensure that families and communities are able to report civilian casualties resulting from foreign military air strikes and other military operations. Please provide information on measures taken to provide victims with reparation and rehabilitation measures.

**Counter-terrorism measures (arts. 2, 4, 7, 9, 10, 14 and 19)**

18. Please provide information on the draft laws on counter-terrorism and their compatibility with the Covenant. Please provide information on the functions and responsibilities of the National Intelligence and Security Agency and comment on information received by the Committee on a number of human rights violations attributed to the Agency, including extrajudicial executions, torture, arbitrary arrests and detention, and restrictions of freedoms of expression, peaceful assembly and association. Please also provide information on the extensive use of administrative detention and legal safeguards in place to contest such detentions.

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

19. Please provide information on the legislative framework to prevent and combat torture, including the definition of torture and the penalties stipulated in criminal legislation. Please indicate whether the definition of torture covers acts of torture committed by all persons acting in their official capacity, outside their official capacity or in a private capacity. What mechanisms are in place that allow for prompt, thorough and impartial investigations into allegations of torture and ill-treatment? Please also provide data on the number of (a) investigations; (b) prosecutions; (c) convictions or acquittals; and (d) punishments, as well as the nature of the sanctions imposed for the act of torture.

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

20. Please provide information on the number of prisons, the corresponding prison capacity and the number of detainees, and indicate whether prisons include separate sections for minors and women and for suspects and convicted persons in the State party. Please provide information on the mechanisms in place to monitor conditions of detention and to investigate allegations of torture and ill-treatment. Please also provide data on the number and content of complaints brought to the attention of the State party over the last five years. Please provide the Committee with data on the number of deaths in centres of detention over the previous five years, including the number of cases and causes of death, as well as the number of cases investigated, prosecutions pursued, convictions secured, punishment imposed on offenders and reparations provided to the families of the victims. Please provide information about the access of independent monitoring groups to prisons and detention centres.

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

21. Please provide information on the structure and competencies of the judiciary in the State party, particularly the jurisdiction of the military courts. Please elaborate on the legislative framework ensuring the independence, impartiality and transparency of the judiciary and effective access to the judicial system. What specific legislative measures has the State party taken to establish the separation of powers between the legislature, the executive branch and the judiciary, including ensuring that the appointment and removal of judges is in line with the Basic Principles on the Independence of the Judiciary? Please also provide information on the steps taken to ensure access to the courts for persons who cannot afford legal counsel or court fees and provide details on the number and types of cases in which legal aid has been sought, granted and denied in recent years.

22. Please inform whether the military courts have been used to try civilians and measures taken to transfer existing cases of civilians being tried in military courts to the civilian justice system. Please comment on information received that (a) individuals tried by military courts have not been provided with adequate defence and indigent defendants have not had access to free legal assistance; (b) military courts lack necessary independence and impartiality as they are structurally placed under the Minister of Defence; (c) a significant number of defendants are held in pretrial detention for long periods; and (d) in practice, a number of convicted defendants have their right to appeal denied by military courts.

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

23. Please provide information on the nature and impact of measures adopted to prevent and effectively protect persons with disabilities against discrimination. Specifically, please

provide information on the steps taken to ensure that social services are provided on the basis of free and informed consent and that persons with disabilities are protected against arbitrary deprivation of liberty, in line with article 9 of the Covenant and with the Committee's general comment No. 35 (2014) on liberty and security of person, in particular its paragraph 19. Please indicate whether there is an independent inspection mechanism to oversee the quality of care and supervision in mental health, social welfare institutions and religious healing centres. In this regard, please respond to reports that people with mental disabilities are beaten and slapped, verbally abused and confined in dark rooms for most of the day, and about reports alleging that persons with disabilities are sometimes chained or restrained in their own home setting. Please also describe the measures adopted to ensure that all complaints of ill-treatment and abuse committed against persons with disabilities are investigated, that the alleged perpetrators are prosecuted and punished and that the victims receive full compensation.

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

24. According to information before the Committee, in 2019, an estimated 2.6 million people were internally displaced in the State party. Please provide updated information on measures taken by the State party to prevent the internal displacement of persons and to ensure that adequate and effective protection is provided for internally displaced persons in camp and non-camp situations. In this regard, please provide information on the implementation of the National Evictions Guidelines and the measures taken by the Durable Solutions Unit and Durable Solutions Secretariat.

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

25. Please provide information on the legal and regulatory frameworks governing the right to freedom of expression in the State party. In this regard, please provide information on the application of legislation restricting the freedom of expression, including limitations derived from Sharia law and article 24 of the South West State Provisional Constitution, which limits activities deemed to be contrary to Islam, public safety, public order and stability. Please provide information on the amendments adopted in July 2017 to the Federal Media Law, the Puntland Media Bill and the Somaliland's media law, and inform how they comply with the Covenant.

26. Please indicate the measures taken to ensure the protection of human rights defenders, journalists and media workers. Please respond to allegations that, between September 2016 and July 2018, 8 journalists and media workers were killed; 32 journalists and media workers were injured; and 206 individuals were arbitrarily arrested and/or subjected to prolonged detention charges related to the exercise of freedom of expression, in particular in Somaliland. In addition, please respond to allegations that journalists and media workers are harassed and intimidated by security forces and that media houses were forcibly closed temporarily. In this regard, please clarify the application of articles 208, 212 and 328 of the Penal Code and comment on information received that most of the individuals arrested were accused of "broadcasting inflammatory news that threatens stability", based on allegations of affiliation with Al-Shabaab and dissemination of "false news" and propaganda.

27. Please provide information on the legal framework regulating freedom of assembly, and on measures taken to protect participants in assemblies against violence.

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

28. Please provide information on the extent of recruitment and use of children by armed groups, in particular Al-Shabaab, that subject the children to fighting, including deploying them on the front line or in other military activities, or to run errands or carry food and provisions for the fighters. Please provide information on the National Programme for the Treatment and Handling of Disengaged Combatants in Somalia and on how it has been applied to recruited children. Please also provide information on measures taken to prevent child recruitment. Please comment on reports indicating that a number of children alleged to have been associated with Al-Shabaab have been detained, prosecuted by military courts and condemned. In this regard, please also comment on information

received on abuses committed against children in detention, including being subjected to ill-treatment and torture.

29. Please provide information on the establishment of a child rights bill. Please indicate the measures taken to prohibit the use of corporal punishment against children in all situations. Please provide an update regarding the legal framework in place to protect children against corporal punishment. Please also provide information on measures taken to protect children from forced labour and begging and the worst forms of child labour.

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

30. In the light of the planned 2021 elections based on direct suffrage, please describe all measures to ensure the holding of free, reliable and transparent elections. In this regard, please provide information on the process of registering Somalis for the elections and how it complies with article 25 of the Covenant. Please also provide information on the recent enactment of the Elections Bill and its contents, in particular whether it covers the issue of corruption and complies with article 25 of the Covenant. Please comment on the human rights violations and abuses committed during the 2016–2017 electoral process and measures taken to investigate, prosecute and punish the perpetrators as well as measures to prevent such occurrences in the upcoming election.

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