

I. EXECUTIVE SUMMARY

1. This report outlines human rights violations in Somalia in the context of the death penalty and persons charged with capital crimes. As explained in further detail below, the government of Somalia, and other actors within the jurisdiction of Somalia, continue to impose and carry out death sentences, including for offenses that do not constitute the “most serious crimes.” In addition, military courts often pronounce death sentences against civilians, and civilian courts lack independence and impartiality. Minors continue to be subject to the death penalty.

II. BACKGROUND AND FRAMEWORK

A. 2016 Universal Periodic Review of Somalia

2. During its second-cycle Universal Periodic Review, Somalia received 12 recommendations on the death penalty, and 4 recommendations on fair trials and judicial independence. Somalia did not accept or implement any of the recommendations on the death penalty. It did accept two recommendations on fair trials and judicial independence. While Somalia is to be commended for accepting these recommendations, it has only partially implemented them.
 1. *Death Penalty: Adopt a moratorium on the application of the death penalty.*
Status of Implementation: Not Accepted, Not Implemented
 3. Somalia did not accept or implement the recommendations it received to adopt a moratorium on the application of the death penalty.¹
 2. *Death Penalty: Abolish the death penalty for child-offenders.*
Status of Implementation: Not Accepted, Not Implemented
 4. Somalia did not accept or implement the recommendation of Mexico that it prohibit the death penalty for offenses committed by minors.² Somalia allows persons to be executed for crimes committed when under the age of 18, and since the last review it has continued to carry out executions of minors.
 3. *Death Penalty: Ratify the Second Optional Protocol to the ICCPR.*
Status of Implementation: Not Accepted, Not Implemented
 5. Somalia did not accept or implement the recommendations of Montenegro, Namibia, and Australia that it ratify the Second Optional Protocol to the ICCPR.³
 4. *Fair Trial: Ensure access to competent legal assistance and an impartial and independent tribunal.*
Status of Implementation: Accepted, Partially Implemented
 6. Somalia accepted the recommendation of Afghanistan to take steps to ensure that all citizens have access to competent legal aid. In addition, it accepted the recommendation of the Republic of Korea to take steps to ensure that the judicial system is impartial and independent.⁴ Somalia has only partially implemented these recommendations.

5. *Fair Trial: End the practice of conducting trials of civilians before military tribunals.*

Status of Implementation: Not Accepted, Partially Implemented

7. Somalia did not accept the recommendations of the State of Palestine and France that it cease the practice of bringing civilians to trial before military courts.⁵ Nonetheless, Somalia has recently taken some steps toward moving the cases of civilians from military to civilian courts.

B. Domestic Legal Framework

8. The domestic legal structure in Somalia includes a patchwork of both civilian and military courts, and other less formal tribunals, including at least five different judicial systems in which the death penalty can be imposed.⁶ The Federal Government of Somalia (FGS) includes a federal judiciary system for civilian cases, as well as military courts, both of which are empowered to impose death sentences where the law so provides. In many parts of the country, however, the FGS structure functions weakly, or not at all, permitting other actors to exercise judicial authority in those areas.⁷ The autonomous state of Puntland, despite considering itself a part of Somalia, operates a separate system of civilian courts, and the autonomous region of Somaliland has both civilian and military courts. Throughout Somalia, particularly in rural areas where none of these entities exercises judicial authority, a traditional “Xeer” customary law system of tribunals hears cases, and in some instances issues death sentences.⁸ The courts of Puntland have reportedly applied the Xeer customary law together with the penal code.⁹ Finally, the terrorist group Al-Shabaab controls territory within Somalia, has its own military courts, and enacts judgments that frequently include the death penalty.¹⁰ This report considers death penalty cases arising from the FGS, Puntland, Somaliland, and Xeer courts, and where possible notes the distinctions among them.
9. Article 13 of Somalia’s Provisional Constitution provides that everyone has the right to life. Article 34 protects the right to a fair trial before an impartial and independent tribunal, and a free legal defense for those who cannot afford to pay. Article 35 also contains a fair trial guarantee for any person accused of a crime.¹¹ Somalia is currently in the process of completing a review of the provisional constitution.
10. The current Somali penal code,¹² enacted in 1962, is used by the civilian courts of the FGS, as well as courts that operate in Puntland and Somaliland. It retains the death penalty for twenty crimes, including many that do not constitute the “most serious” crimes involving intentional killing. In addition to murder,¹³ they include crimes against the State, such as treason, espionage, bearing arms against the State, and disclosure of State secrets,¹⁴ and crimes endangering public safety, such as polluting the food or water supply, or causing an epidemic, resulting in death.¹⁵ In 2017, Somali authorities promulgated a draft revised penal code.
11. Pursuant to the Penal Code, the method of carrying out a death sentence is shooting.¹⁶ The Criminal Procedure Code of 1963 also provides for executions to be carried out by shooting, and specifies that they are not to be carried out in public unless otherwise permitted by the Minister of Justice.¹⁷
12. The Penal Code provides that persons under 14 years of age are not be held liable for the commission of a crime, and where a person between 14 and 18 years of age commits a

crime, he may be held liable “but the punishment shall be reduced.”¹⁸

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Right or area 12.4. Death Penalty

13. The death penalty is not limited to “the most serious crimes” in Somalia. In addition to crimes in which the defendant committed an intentional killing, Somalia’s existing penal code permits the use of the death penalty for a host of political crimes, including espionage and many other acts deemed hostile to the State, as well as a number of crimes that involve endangering public safety, even if they do not result in death.
14. A draft penal code completed in 2017 would reduce the number of death penalty offenses, but nevertheless retain the death penalty for at least four crimes, including taking up arms against the State,¹⁹ genocide,²⁰ first degree murder,²¹ and using a weapon of mass destruction.²² In addition, the draft indicates that there remained an open question regarding whether unlawful sexual intercourse should be punishable by death.²³ The current status of the draft penal code is unclear. In its Mid-Term Universal Periodic Review Report, the FGS reported that the new penal code was under review and expected to be ready in early 2020, but it did not specifically address the 2016 recommendations that had called for the penal code to exclude the death penalty.²⁴
15. Authorities continue to impose and carry out death sentences in Somalia. At least 12 executions were carried out, and at least 24 new death sentences handed down, in 2019, a substantial increase over the 15 death sentences pronounced in 2018.²⁵ These death sentences emanated not from a single judicial system, but from all of the myriad systems that continue to operate due to the lack of a strong federal government.²⁶ Approximately 150 persons are believed to be under sentence of death in Somalia.²⁷
16. During 2019, Puntland executed five men, and one case in Puntland resulted in new death sentences for three men.²⁸ As of 2 October 2020, 11 executions had been reported in Somalia in 2020. Of those, the FGS carried out two, Puntland carried out three, and Somaliland carried out six.²⁹
17. Children were among the people who have been executed since the last review. For example, in April 2017, authorities in Puntland executed five boys aged 14 to 17 after a military court convicted them of participating in killings carried out by Al-Shabaab. Two other boys who had also been convicted in the case told their families they were coerced through torture into confessing to the crimes.³⁰

Right or area 12.6. Conditions of detention

18. Overcrowding is a significant problem in some Somali prisons, and conditions are believed to be particularly severe in remote areas that are under the control of armed groups and traditional authorities. Most prisons provide people with inadequate food and water, forcing them to rely on family members to supplement their diet.³¹

19. The new Mogadishu Prison and Courts Complex opened in February 2019.³² The inclusion of a newly constructed 250 bed high-security prison³³ is likely to be helpful in alleviating overcrowding and other infrastructure problems, assuming that other needed court reforms prevent an increase in the rate of new incarcerations.

Right or area 15.1. Administration of justice & fair trial

20. The civilian courts of the FGS are not functional in many areas of Somalia. The FGS has made efforts, in cooperation with the United Nations Development Programme, to increase the number and geographic reach of federal courts, including into recently liberated territories. Although there have also been some efforts to increase the provision of legal aid, there remains a substantial gap in the availability of legal representation.³⁴
21. Judicial authorities in many areas are subject to improper external influences and corruption, especially in areas controlled by powerful clans. The separately operated court systems in Puntland and Somaliland are more functional, but lack sufficient and adequately trained judges and, in individual cases, face interference by their respective governments.³⁵
22. Civilians continue to be tried in military courts. A 2011 temporary emergency decree giving FGS military courts jurisdiction over some civilian criminal matters expired after three months, but the FGS currently authorizes military courts to try civilian cases. Military courts generally do not provide defendants with legal representation and their proceedings lack transparency.³⁶ Defendants in FGS military courts do not have a right to appeal.³⁷
23. In its Mid-Term Universal Periodic Review Report, the FGS stated that it was working to ensure that the judiciary system is strengthened so that it will have the ability to handle all cases that should be categorized as civilian. The FGS reported that the new Mogadishu Prison and Courts Complex, then under construction, would “mean the end of trying civilian cases in military courts.”³⁸ As noted in paragraph 19, the complex opened in February 2019.³⁹
24. During 2019, however, separate military courts in Mogadishu and in Somaliland issued death sentences in murder cases. In November 2019, an FGS military court sentenced a person to death for an alleged terrorist attack.⁴⁰ Military courts in Somalia have carried out many executions of alleged terrorists in 2020.⁴¹ As recently as September 2020, a Puntland military court sentenced to death a person accused of terrorism offenses.⁴² The military also continues to carry out executions, particularly in terrorism-related cases,⁴³ and carries out death sentences at a higher rate than that of civilian courts.⁴⁴ Somali military authorities have reportedly carried out public executions.⁴⁵

IV. RECOMMENDATIONS

25. This stakeholder report suggests the following recommendations for the Government of Somalia:
- Adopt a moratorium on executions, with a view to the abolition of the death penalty.
 - Commute all existing death sentences to penalties that are fair, proportionate, and in compliance with international human rights standards.

- Issue an immediate decree prohibiting the execution of any person under the age of 18.
- Amend the penal code to ensure that no person may be sentenced to death or executed for a crime committed when the person was under the age of 18.
- Ratify the Second Optional Protocol to the ICCPR and the Optional Protocol to the Convention Against Torture.
- Finalize the transfer of all civilian criminal cases from military courts to civilian courts, bar military courts from trying civilians, restrict the jurisdiction of the military courts to offences of an exclusively military nature, and ensure that military and state security courts comply with the fair trial standards set forth in Article 14 of the ICCPR.
- Adopt a new penal code that does not provide for the death penalty or, at a minimum, reserves the death penalty only for the “most serious crimes” involving intentional killing by the person sentenced to death, and work to promote the adoption of such penal code as a unified model for any other court system that continues to operate within the territory or jurisdiction of the government of Somalia.
- Ensure that individuals charged with capital crimes are provided with effective legal representation.
- Prohibit the introduction of evidence obtained under duress, and issue guidelines on the steps judges must take when a defendant alleges torture, including investigating all credible allegations and taking immediate steps to protect individuals alleging torture or ill-treatment from retaliation.
- Ensure that the judiciary is provided with adequate resources and is protected from improper influences from other branches of government and from external sources.
- Establish an independent monitoring mechanism to visit all places where persons may be deprived of their liberty, including military and national security facilities, and extend an open invitation to international observers such as the International Committee of the Red Cross to visit and inspect detention facilities.
- Ensure that detention conditions comply with the Nelson Mandela Rules.

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Somalia*, (June 7, 2016), U.N. Doc. A/HRC/32/12/Add.1, ¶¶ 136.3, 136.45, 136.6, 136.63-136.70.

² *Id.*, ¶ 136.73.

³ *Id.*, ¶¶ 136.5, 136.6, 136.71.

⁴ *Id.*, ¶¶ 136.21, 136.90.

⁵ *Id.*, ¶¶ 136.91, 136.92.

⁶ Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*, Centre for Humanitarian Dialogue, accessed October 1, 2020, https://media.africaportal.org/documents/Stateless_Justice_in_Somalia.pdf.

⁷ U.S. Department of State, *2019 Country Reports on Human Rights Practices: Somalia*, 8, accessed October 6, 2020, <https://www.state.gov/wp-content/uploads/2020/03/SOMALIA-2019-HUMAN-RIGHTS-REPORT.pdf>; Interview with expert on Somali law and court systems, September 25, 2020. Notes on the interview are on file at The Advocates for Human Rights.

⁸ Will Ross, *Somali clans secure peace with death sentences and hefty fines*, BBC News, accessed October 1, 2020, <https://www.bbc.com/news/world-africa-43450535>.

-
- ⁹ Death Penalty Worldwide, *Somalia*, accessed October 1, 2020, <https://dpw.pointjupiter.co/country-search-post.cfm?country=Somalia>.
- ¹⁰ Mohamed Olad Hassan, *Executions Increase in Somalia*, Voice of America, accessed October 1, 2020, <https://www.voanews.com/africa/executions-increase-somalia>.
- ¹¹ Federal Republic of Somalia, *Provisional Constitution*, August 1, 2012, <https://villasomalia.gov.so/en/constitution/>.
- ¹² THE PENAL CODE, Legislative Decree No. 5 of 16 December 1962, English translation available at http://www.nuhanovicfoundation.org/user/file/1962_somali_penal_code_english_-_editted_13_august_12.pdf.
- ¹³ *Id.*, Art. 434 and 436.
- ¹⁴ *Id.*, Art. 184-186, 190, 196, 198-201, 204-206, 221-223.
- ¹⁵ *Id.*, Art. 329, 334 and 335.
- ¹⁶ *Id.*, Art. 94.
- ¹⁷ *Criminal Procedure Code of 1963*, Art. 248, available at http://www.somalilandlaw.com/CRCP_BOOK_FOUR.pdf.
- ¹⁸ Penal Code, *supra*, Art. 59-60.
- ¹⁹ *Draft Report of the Somali Criminal Law Recodification Initiative*, Art. 1101, March 2017, <https://www.law.upenn.edu/live/files/6310-vol-1-and-2-somali-recodification>.
- ²⁰ *Id.*, Art. 2101.
- ²¹ *Id.*, Art. 3101.
- ²² *Id.*, Art. 7303.
- ²³ *Id.*, Art. 6402, note 22.
- ²⁴ Federal Republic of Somalia, *Mid-Term Review Report on Progress Made by Somalia on the Implementation of Accepted Recommendations From the Second Cycle Review in January 2016 Under the Universal Period Review (UPR) Mechanism of the United Nations Human Rights Council*, at 9, ¶ 3.3.1.
- ²⁵ Amnesty International, *Global Report: Death Sentences and Executions 2019*, 44, <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.
- ²⁶ Hassan, *Executions Increase in Somalia*, *supra*.
- ²⁷ Death Penalty Worldwide, *Somalia*, *supra*.
- ²⁸ Death Penalty Worldwide, *Somalia*, *supra*; The East African, *Death sentences upheld for Somali child rapists*, accessed October 6, 2020, <https://www.theeastafrican.co.ke/tea/news/east-africa/death-sentences-upheld-for-somali-child-rapists-1425526>.
- ²⁹ Death Penalty Worldwide, *Somalia*, *supra*.
- ³⁰ Amnesty International, *Somalia: Halt execution spree of children in Puntland*, accessed October 6, 2020, <https://www.amnesty.org/en/latest/news/2017/04/somalia-halt-execution-spreed-of-children-in-puntland/>.
- ³¹ U.S. Department of State, *2019 Country Reports on Human Rights Practices: Somalia*, at 5-6.
- ³² United Nations Office on Drugs and Crime, *UNODC inaugurates Mogadishu prison, court complex in latest support to Somalia*, accessed October 6, 2020, <https://www.unodc.org/unodc/en/frontpage/2019/February/unodc-inaugurates-mogadishu-prison--court-complex-in-latest-support-to-somalia.html>.
- ³³ United Nations Assistance Missions in Somalia, *Somalia Inaugurates a New Prison and Court Complex*, accessed October 6, 2020, <https://unsom.unmissions.org/somalia-inaugurates-new-prison-and-court-complex>.
- ³⁴ Human Rights Council, *Report of the Independent Expert on the situation of human rights in Somalia*, (August 24, 2020), U.N. Doc. A/HRC/45/52, at 13.
- ³⁵ U.S. Department of State, *2019 Country Report*, *supra*, at 8.
- ³⁶ *Report of the Independent Expert*, *supra*, at 13.
- ³⁷ Legal Action Worldwide, *Due Process and the Rule of Law in Somalia: Preliminary Key Findings and Recommendations*, 4, accessed October 6, 2020, <http://www.legalactionworldwide.org/wp-content/uploads/2018/02/Key-Findings-and-Recommendations-Final-For-Printing-1.pdf>.
- ³⁸ *Mid-Term Review Report*, *supra*, at 10-11, ¶ 3.3.6.

³⁹ United Nations Office on Drugs and Crime, *UNODC inaugurates Mogadishu prison, court complex in latest support to Somalia*, accessed October 6, 2020, <https://www.unodc.org/unodc/en/frontpage/2019/February/unodc-inaugurates-mogadishu-prison--court-complex-in-latest-support-to-somalia.html>.

⁴⁰ Garowe Online, *Somalia's military court sentences man to death for role in attack*, accessed October 6, 2020, <https://www.garoweonline.com/en/news/somalia/somalias-military-court-sentences-man-to-death-for-his-role-in-attack>.

⁴¹ *See*, Hands Off Cain, *Somalia*, accessed October 6, 2020, www.handsoffcain.info.

⁴² Hands Off Cain, *Somalia: Puntland military court sentences activists to death and jail terms*, accessed October 6, 2020, <http://www.handsoffcain.info/notizia/somalia-puntland-military-court-sentences-activists-to-death-and-jail-terms-60315127>.

⁴³ Anadolu Agency, *Somalia: Military court sentences policeman to death*, accessed October 6, 2020, <https://www.aa.com.tr/en/africa/somalia-military-court-sentences-policeman-to-death/1570825>; Somaliland.com, *Military Court hands down death sentence to Somaliland police officer*, accessed October 6, 2020, <https://www.somaliland.com/news/somaliland/military-court-hands-down-death-sentence-to-somaliland-police-officer/>.

⁴⁴ Interview with expert on Somali law and court systems, September 25, 2020. Notes of the interview are on file at The Advocates for Human Rights.

⁴⁵ Hassan, *Executions Increase in Somalia*, *supra*.