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Human Rights Agenda for the Post-Transition Somali Government

Somalia is at a crucial juncture. In August 2012, the eight-year 'transitional' period in Somalia ended with the appointment of a new Somali administration in September 2012. While this has led to a wave of optimism and hope for a new era, the new Somali government faces many challenges. Since the beginning of the conflict in 1991, civilians have been killed, beaten and otherwise abused in southern and central Somalia. Members of government forces and affiliated militias, as well as the Islamist armed group al-Shabab and affiliated militias, have carried out such abuses.

In May 2013, a conference will be co-hosted by the Somali and UK governments in London, aimed at galvanizing support for the Somali administration in taking steps to achieving the priorities of the new Somali government as laid out in its six-pillar policy.¹

Amnesty International presents this human rights agenda in the hope that human rights will be a priority for the 'post-transitional' government in Somalia and calls on the UK and the international community to prioritize the respect and protection of human rights as they support the new Somali administration in its political transition in Somalia.

Despite the new administration, in much of south and central Somalia, civilians continue to face extreme insecurity, characterized by violence, kidnappings, killings, rape and extortion by members of al-Shabab. Government forces and aligned militia are failing to protect the civilian population from abuse, and some members of these forces are themselves responsible for violations such as violence, extortion, arbitrary arrests and rape, in part a result of poor discipline and lack of command control. Civilians who have been displaced due to the conflict report that robberies, violence and rape are commonplace during their journey. Targeted attacks continue to be carried out against journalists, business owners and clan elders. At least 24 journalists have been killed since December 2011, at least four of which have occurred in 2013. While in many cases the perpetrators are unknown, many are suspected to be linked to al-Shabab.

The use of child soldiers by all sides to the conflict has been widely documented. The action plan signed by the Transitional Federal Government (TFG) in August 2012 includes a commitment to end the killing and maiming of children in conflict.² However, the government has taken few concrete measures to end the use of children in government and aligned armed groups. In addition, children are still forcibly recruited and used in combat by al-Shabab.

In 1992, the UN Security Council imposed an arms embargo on Somalia, which was continuously violated with arms supplied to armed groups on all sides of the conflict. The flow of arms to Somalia has fuelled serious human rights abuses committed during the conflict. On 5 March 2013, the UN Security Council partially lifted the arms embargo³, which could expose Somali civilians to even greater risk and may worsen the humanitarian situation.

In the last months, the government has gained greater control in Mogadishu. Though al-Shabab has been dislodged in key towns such as Afgooye, Baidoa and Kismayo, it still controls vast

swathes of the countryside. After Ethiopian troops withdrew from Xudur, the provincial capital of Bakool, on 17 March 2013, the Somali National Armed Forces (SNAF) retreated and al-Shabab regained control within hours of their departure. Following this, there was a surge in abuses against civilians in Bay and Bakool areas, and thousands of people fled the area.

Population displacement is an ongoing and serious problem, caused both by the hostilities and by the recent famine. Of the 19,000 people recorded as newly displaced between 1 November 2012 and 1 February 2013, 89 per cent cited insecurity as one of the three key reasons for their displacement.⁴ Conditions in settlements both within and outside of Mogadishu remain extremely poor with regular reports of sexual and other gender based violence against women and girls. Some rape victims say they were attacked by men wearing government uniforms. Camp managers and district officials act as 'gatekeepers' who control and divert aid.⁵ Some internally displaced people (IDPs) have returned to their place of origin, and the UN refugee agency, UNHCR are facilitating large scale programmes to support IDP returns. However, those returning to their homes in south and central Somalia face a lack of essential services including healthcare, access to clean water and to food, as humanitarian organizations are not present in much of these areas due to ongoing insecurity and as some are in areas controlled by al-Shabab, who restrict access of humanitarian organizations. This also makes it difficult to get information about the situation of some civilians who have returned.

Donor countries must support action to address wide-ranging impunity for decades of human rights violations and abuses in Somalia, including potential crimes under international law. A culture of impunity has developed which feeds the cycle of crimes under international law and other human rights violations: perpetrators have no incentive to stop, and others are encouraged to commit abuses. To date, impunity for these violations has not been addressed by the Somali government.

In November 2012, President Hassan Sheikh Mohamud publicly committed to bringing to justice those members of state security forces who commit abuses, including those responsible for rape. However, on 10 January 2013, in a move that was contrary to this commitment, the police detained a woman who said she had been raped by government forces, and a journalist who had interviewed her. On 5 February 2013, both were found guilty of a number of charges, including 'insulting a national institution', and were sentenced to one year's imprisonment. The conviction of the woman was quashed by the appeals court on 3 March 2013, and the journalist was finally acquitted by the Supreme Court after spending 66 days in detention. Despite the quashing of the woman's conviction, her arrest and trial sent a strong message to women and girls who are raped that they may face prosecution themselves if they seek justice. The charges were also a serious setback for media freedom. It is extremely concerning that since January 2013, the number of women reporting rape in Mogadishu has significantly decreased.⁶

The Transitional Federal Government (TFG) made important commitments during its Universal Periodic Review at the UN Human Rights Council. In September 2011, it adopted all 155 recommendations made by other states to improve the human rights situation in Somalia, though it later expressed reservations on four recommendations on ratification of key treaties, issuing a standing invitation to all special procedures and responding positively to all outstanding visit requests, and acceptance of the Bangkok rules on treatment of women prisoners and non-custodial measures for women offenders.⁷ Little progress has been made towards implementing any of these recommendations.

Amnesty International recognizes that the Somali authorities face numerous and difficult challenges in rebuilding a country that has been deeply affected by natural disasters, famines, and armed conflict for decades. However, the country is unlikely to experience sustained peace and stability unless the authorities guarantee effective accountability for violations of international human rights and humanitarian law. As a corollary, Somalia is likely to be more attractive to donor

states and international financial institutions if it makes and delivers on a solid commitment to the implementation of fundamental human rights.

Key Recommendations

Security Sector Reform

Improved command control: The Somali government must exercise effective control over the actions of its armed forces, hold senior officers accountable for their troops, and uphold the principle of command responsibility. The Somali government must also ensure that all those who are suspected of committing human rights abuses or other violations of international law, regardless of any official status they may enjoy, are investigated. These include members of Somali government armed forces, integrated armed groups, and militias aligned to Somali government forces. If there is sufficient admissible evidence, the government must prosecute them in fair trials without recourse to the death penalty.

Full compliance with international law and standards, including international humanitarian and human rights law: The Somali government must ensure that all members of its security forces, as well as militias aligned or in the process of integrating with the Somali government forces, receive training in international law and standards, including human rights law, international humanitarian law (IHL) and international criminal law, including on sexual and gender-based violations.

Protection of children: The government of Somalia must implement the action plan signed by the TFG in August 2012. Amnesty International urges the government to prohibit the use of children under 18 in government and allied militia forces including by ending the use of children in armed forces, to take positive measures to demobilize children who are part of government and aligned armed forces, or who were children when they were recruited or used, and ensure demobilization, disarmament and reintegration (DDR) programmes for all children who have taken a part in hostilities.

Refugees / IDPs

Return programmes: It is incumbent that returns to conflict zones are completely voluntary. The state, donors and implementing partners must ensure that returns are carried out in safety, that the protection of returnees is prioritized, and that there are monitoring mechanisms in place to ensure that the human rights of all internally displaced persons are not violated at any point, including after their return.

Relocations in Mogadishu: The authorities must guarantee the human rights of internally displaced persons who are being relocated in Mogadishu, including by ensuring the safety and security of relocation sites, by removing the gatekeeper system, and through maintaining effective oversight to ensure the safety of those relocated.

Forcible Returns: Amnesty International considers that forcible returns of refugees to south and central Somalia at this time constitutes a violation of the principle of *non-refoulement*. In future, no state should seek to remove anyone to south and central Somalia until such a time that the safety and sustainability of return can be established, and only in relation to persons who have been deemed not to be at risk of persecution or serious human rights abuses, following satisfactory procedures to determine their need for international protection.

The right to refuge and asylum: States must recognize and respect everyone's right to seek and enjoy asylum free from persecution. States must respect the principle of *non-refoulement*, including by not rejecting asylum-seekers at their borders or closing their border to those fleeing persecution and serious human rights abuses.

Justice, truth and reparation

Vetting of armed and allied militia forces: The Government of Somalia must set up impartial vetting procedures to ensure that people reasonably suspected of violations of human rights and other international law and standards, such as international humanitarian law, are suspended from service while investigations are carried out. The authorities should also carry out fair, transparent, and thorough screening of new recruits to prevent anyone convicted or credibly suspected of committing human rights abuses or other violations of international law from serving in the armed forces or the police.

Criminal justice: The authorities must conduct full and impartial investigations into all allegations of crimes under international law committed by all parties to the conflict, and when sufficient admissible evidence exists, those suspected should be prosecuted in accordance with international standards and without recourse to the death penalty.

*Implementation of the UN Human Rights and Due Diligence Policy:*⁸ The authorities must immediately implement the UN Human Rights and Due Diligence Policy with robust monitoring mechanisms to ensure that the AU Mission in Somalia (AMISOM), Somali government armed forces and associated armed groups are held to account.

Independent Task Force on Human Rights: Amnesty International welcomes the creation of a task force to investigate human rights abuses, including the killings of journalists and sexual violence in February 2013. The authorities must ensure that prompt, effective and impartial investigations of all killings are carried out and, if there is sufficient admissible evidence of individual criminal responsibility, suspects are prosecuted in fair trials in full conformity with international standards and without recourse to the death penalty. The authorities must thoroughly investigate all reports of sexual violence and rape, including allegations against the armed forces and aligned militias. The government should ensure that those who report violations are treated with dignity and full respect for their human rights, and that they are given effective protection and have access to full reparation, including healthcare, psycho-social support, legal, and other services as necessary.

Monitoring presence of the Office for the High Commissioner on Human Rights (OCHCR): In light of the upcoming review of the UN presence in Somalia, and in line with Security Council Resolution 2093, donors must insist on a strong, well resourced human rights component to the revised UN mission.

Independent Commission of Inquiry: Support the creation of an independent commission of inquiry or similar mechanism, comprised of a balance of female and male experts with authority to effectively investigate the full range of crimes under international law that may have been committed in Somalia, and recommend measures to ensure justice, truth and full reparation for victims.

Human Rights

Ratify treaties protecting the rights of children: Somalia should immediately begin the process, which it committed to in the Universal Periodic Review (UPR), to ratify the International Convention on the Rights of the Child (CRC), and its Optional Protocol on Children in Armed Conflict without reservations. In addition it should ratify the African Charter on the Rights and Welfare of the Child without reservations.

Ratify key international treaties: Somalia should immediately deliver on its voluntary commitment in the UPR to sign and ratify, without reservations, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol, the Convention on the Rights of

Persons with Disabilities (CRPD) and its Optional Protocol. In addition, it should take steps to further understanding⁹ and ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the Optional Protocol to CEDAW, the Optional Protocol to the International Covenant on Economic Social and Cultural Rights (ICESCR); and the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). It should also immediately sign and ratify the Protocol to the African Charter on Human and Peoples' Rights (ACHPR) on the Rights of Women in Africa.

Ratify the Rome Statute: Somalia should ratify and implement into national law, the Rome Statute of the International Criminal Court without delay.

¹ For more information on the six pillar policy and the London conference please see

<https://www.gov.uk/government/news/somalia-conference-aims>

² The Transitional Federal Government of Somalia signs an Action Plan to end the Killing and Maiming of Children in Contravention of International Law, United Nations Political Office for Somalia (UNPOS), press release 015/2012, available at <http://unpos.unmissions.org/LinkClick.aspx?fileticket=QmC-cm7cOAE=&tabid=9705&mid=12667&language=en-US>

³ United Nations Security Council Resolution 2093 (2013), S/RES/2093, 6 March 2013, Articles 33 – 42, available at [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2093\(2013\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2093(2013)) (accessed 22.04.13)

⁴ February 2013, UNHCR Somalia Factsheet <http://www.unhcr.org/5077cdf49.html> (accessed 10.04.13)

⁵ United Nations Security Council, Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council, 13 July 2012, S/2012/544, Article 84

⁶ Interview, Mogadishu, 10.04.13

⁷ The reservations were specifically to 1. Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) and the Rome Statute of the International Criminal Court; 2. Ratification of the Optional Protocol to CEDAW, the Convention for the Protection of All Persons from Enforced Disappearance (CED), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR); 3. In issuing a standing invitation to all special procedures and responding positively to all outstanding visit requests; 4. Ratification of the Bangkok Rules on the treatment of women prisoners and non-custodial measures for women offenders. The recommendations of the Universal Periodic Review on Somalia and the response of the TFG to these recommendations are available at:

http://www.uprinfo.org/IMG/pdf/recommendations_to_somalia_2011.pdf and

http://lib.ohchr.org/HRBodies/UPR/Documents/session11/SO/Somalia_Recommendations.doc

United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review Somalia, 11 July 2011, A/HRC/18/6

⁸ This policy is a commitment from the UN to ensure that if human rights violations are reported in the context of UN support, the UN has to intervene in order to bring the violations to an end, or to adequately address them. If violations continue despite these interventions, the UN has a responsibility to suspend or withdraw support.

⁹ The consideration by the Government of Somalia of the 155 Recommendations, Somali Permanent Mission to the United Nations Office at Geneva and other specialized institutions in Switzerland, 21 September 2011, SPR/UNOG/000431/11, Article 98.4, available at http://www.uprinfo.org/IMG/pdf/recommendations_to_somalia_2011.pdf