



## **Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul**

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### **Country Visit to Somalia: End of Mission Statement, 21 May 2025**

#### **1. Introduction**

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul, conducted an official visit to Somalia from 10 to 20 May 2025 to assess the consistency of Somalia's counter-terrorism laws, policies and practices with international human rights law, humanitarian law and refugee law. He thanks the Government of Somalia for inviting him and engaging in a constructive dialogue. He particularly thanks the Ministry of Foreign Affairs and Ministry of Family and Human Rights Development for facilitating the visit.

The Special Rapporteur had the honour to engage with diverse stakeholders at the federal and state levels. At the federal level, he met with the Ministry of Family and Human Rights Development, the Inter-Ministerial Committee, the Special Presidential Envoy for Stabilization and Civilian Protection, the Office of the National Security, the Office of the Attorney General, the Somali Disaster Management Agency (SoDMA), and Tubsan Center National Center for Preventing and Countering Violent Extremism. In Puntland, the Special Rapporteur met with the Vice President, the Ministry of Women Development and Family Affairs, the Ministry of Interior, Federal Affairs and Democratization, the Ministry of Security and Disarmament, Demobilization and Reintegration (DDR), the Ministry of Justice, the Chief of the Military Court, the Head of the Counter-Terrorism Unit, the Deputy Commander of the Puntland Darwish Forces and the Deputy Police Commissioner. He also met with the Puntland Human Rights Defender. The Special Rapporteur visited Mogadishu and Garowe, the capital of the Federal Member State of Puntland. In Mogadishu, he visited the Mogadishu Central Prison. In Garowe, his programme included visits to an internally displaced persons (IDP) sites, a child interim care centre, a gender-based violence one-stop centre, and a police detention facility. He also held discussions with civil society organisations, journalists, IDPs, persons with disabilities, minority groups and victims of terrorism.

He also met with international stakeholders, including the African Union Support and Stabilisation Mission in Somalia and the United Nations. He expresses deep appreciation to the UN Transitional Assistance Mission in Somalia (UNTMIS).

#### **2. International and Regional Legal Frameworks**

Somalia is a party to many core international human rights, humanitarian law and refugee law instruments and is encouraged it to join other key instruments on women, enforced disappearances, children in armed conflict, and the abolition of the death penalty. It is urged to ratify the Additional Protocols I and II to the Geneva Conventions and the Rome Statute of the International Criminal Court and to prohibit international crimes in domestic law.

Somalia values multilateralism, the UN and human rights and the international rule of law, exemplified by its long engagement with UN and African Union missions, its participation in human rights instruments, its standing invitation to special procedures, its election to the Security Council in 2025-26 and its invitation to the Special Rapporteur and the Independent Expert on Somalia to visit the country. In the past two decades, it has accepted intensive human rights scrutiny by multiple UN procedures. The Special Rapporteur urges the international community to ensure that there is a coherent, robust and adequately resourced plan for a UN human rights presence to continue in Somalia after UNTMIS terminates in October 2026, as requested in the Somali Government's Human Rights Transition Plan.

The Special Rapporteur further recommends progressively acceding to 19 international counter-terrorism conventions to help define terrorist offences in a human rights-compliant manner, maximise justice for victims of terrorism, and make counter terrorism more effective. Somalia became a party to the UN Convention against Corruption in 2021 and the UN Convention against Transnational Organized Crime in 2024.

#### **3. The Somali National Legal Context**

Somalia's 2012 Provisional Constitution ("Constitution") contains a comprehensive suite of human rights, which take precedence over incompatible national laws and must be respected by all state institutions, state officials, individuals and private organizations (article 12). The Constitution does not address the status of treaties in domestic law but in practice treaties are not self-executing and must be incorporated into Somali law. However, courts may "consider" international law when interpreting the fundamental rights under the Constitution (article 40) and although it is not bound by them, international law reportedly enjoys "persuasive authority in national courts" (CCPR/C/SOM/1, para. 32). Sharia law may

prevail over other inconsistent laws (CCPR/C/SOM/CO/1, para. 5). Somalia has made strides in recent years in legislating and institutionalizing its human rights law obligations, although awareness is limited among some justice actors.

#### **4. Terrorist Threats**

The foremost terrorist threat in Somalia is **Al-Shabaab**, which has been listed under counter-terrorism sanctions by the Security Council since 2010 and pledged allegiance to Al Qaeda in 2012. Al-Shabaab has conducted a violent non-international armed conflict against the central and federal member state security forces and civilian authorities, and foreign forces supporting the Government. It accounted for 61 percent (6,586 people) of the 10,853 civilian casualties recorded between 2017 and 2023 (UNSOM/OHCHR). It continues to impose its will by violence and coercion, including public executions, forced recruitment of boys and abductions, forced marriage and sexual violence against women and girls. It reportedly generated over \$150 million in 2023, including through extortion and illicit taxation of trade and road transport. Al-Shabaab exercises substantial control in various rural areas of south-central Somalia, to the exclusion of the State authorities. The conflict has had significant adverse effects on Somalia's economy, including agriculture.

The **Islamic State in Iraq and Levant – Somalia Province (ISIL)**, also listed by the Security Council, is a further threat, concentrated in the Bari region of Puntland. Most members are foreign nationals. The Puntland authorities launched an offensive against it in December 2024. It has used improvised explosive devices (IEDs) and drones. Terrorism exists in a context of wider violence in Somalia, including inter-clan clashes, tensions between the Federal Government and some federal member states, and the Katumbo conflict between "Somaliland" National Army and the SSC-Khatumo forces.

#### **5. Somalia's Response to Terrorism**

The Special Rapporteur welcomes that Somalia takes a holistic approach to security which combines Somali ownership of a stronger, reformed security sector, coordination of security, stabilization, and development, and addressing the root causes of insecurity, including weak governance, poverty and marginalization. Formally, Somalia has adopted numerous legal and policy frameworks to prevent and counter terrorism, including the 2023 Counter-Terrorism Act and 2023 National Intelligence and Security Act, various terrorist financing laws and the Somalia National Strategy for Preventing and Countering Violent Extremism (2024-2027). There is also a draft counter-terrorism strategy under consideration since 2022. Counter-terrorism laws and policies at the federal member state level are variable.

Numerous other laws, policies and programs address relevant areas such as stabilization of recovered areas, disarmament, demobilization and reintegration (DDR) of defectors, children in armed conflict, IDPs, and sexual and gender-based violence. Human rights are often formally embedded in counter-terrorism initiatives, and the Government asserts that protecting them is a strategic necessity to build public trust, ensure legal legitimacy and promote operational effectiveness.

There have also been many initiatives on criminal justice, judicial, constitutional, political and electoral reform. Security sector reform has been pursued through the National Security Sector Development Plan, a federal/state National Security Architecture, a New Policing Model, and community policing, although public distrust persists. The Government should accelerate efforts to increase the recruitment and promotion of women into the security forces, as well as minorities.

The Special Rapporteur is concerned that the authorities have often not consulted diverse civil society organizations when designing counter-terrorism measures, including the 2023 Counter-Terrorism Act and the draft counter-terrorism strategy. He encourages the Government to more actively involve communities and civil society and publish key measures such as the draft counter-terrorism strategy, to build public trust, legitimacy and cooperation. He is concerned that the counter-terrorism strategy (which he was not able to see) reportedly emphasizes the suppression of terrorism and does not adequately address human rights, oversight and accountability.

He is further concerned that the effectiveness of Somalia's counter-terrorism response is impeded by political and constitutional instability and fragmentation between federal and member state authorities and clan divisions. These have resulted in a lack of security coordination and support between the components of the Federal Republic.

The Special Rapporteur is disturbed that UN member States have not yet agreed on the continued financing of the African Union Support and Stabilization Mission in Somalia (AUSSOM), which plays an essential stabilizing and capacity building role in transition of security responsibility to Somalia by December 2029. He encourages efforts to transition essential UNTMIS responsibilities to a UN presence continuing after 2026; and to reverse the devastating reduction in humanitarian assistance to Somalia in 2025. The world must not abandon Somalia at a time of security and humanitarian crisis, when Al-Shabaab and ISIL are regarded as international terrorist groups by the Security Council, and Somalia, as one of the world's least developed countries, has fewer resources and capacities than most to confront terrorism.

#### **6. Victims of Terrorism**

Somalia lacks specific laws or policies addressing victims of terrorism, although some may benefit from humanitarian assistance and support for IDPs, persons with disabilities, children in armed conflict and women survivors of conflict-related sexual violence and general social services. Recognizing Somalia's financial and capacity constraints, the Special Rapporteur recommends adopting further laws, policies and institutional frameworks to recognize the specific needs and vulnerabilities of victims of terrorism and better assist and protect them. Best practice is provided by the UN Model

Legislative Provisions to Support the Needs and Protect the Rights of Victims of Terrorism, which address all aspects of assistance, reparation, protection, information, access to justice, truth and recognition and accountability.

### ***Forced Displacement***

There are around 3.5 million IDPs (OCHA) at 3,700 mostly informal sites, due to terrorist and clan conflict and disasters. Many IDPs are acutely vulnerable and lack adequate access to basic services. Many have been displaced multiple times. Around 80 per cent of IDPs are women and children and there are grave risks of sexual violence and exploitation. Discrimination and stigmatization are common. About 154,000 people were forcibly evicted in 2024 (OCHA).

Guidance is provided by the 2019 National Policy on Refugee-Returnees and Internally Displaced Persons, which addresses protection, assistance, durable solutions and human rights, and the 2019 National Eviction Guidelines. Somalia should also consider adopting a law addressing IDPs. SoDMA coordinates assistance to IDPs by State authorities and other partners. The response is impeded by security, resource, logistical, funding and capacity constraints and the basic needs and security of many IDP remain unmet. The Special Rapporteur encourages Somalia and international partners to fund and enhance the implementation of the IDP Guidelines and the eviction Guidelines, with emphasis on vulnerable groups and durable solutions, including resettlement.

## **7. Children in Armed Conflict**

Persistent and widespread violations of children's rights by non-State, and to a much lesser extent by State actors, are alarming. So too are gaps in protection of displaced children, child orphans and unaccompanied minors, and children who informally disengage from terrorist groups. The Special Rapporteur is concerned at the prosecution of minors associated with terrorist groups in military courts and deplores the execution of four individuals in Puntland in 2024 who were children at the time of their offences, despite the prohibition on the death penalty for people under 18 years in the Puntland Juvenile Justice Act. He supports current efforts in Puntland to align the Anti-Terrorist Law with the Juvenile Justice Act.

Article 29 of the Constitution protects children in armed conflict. The Special Rapporteur acknowledges Somalia's considerable legal, policy and programmatic efforts to strengthen the protection of children in armed conflict. He welcomes Somalia's 2023 Age Verification Guidelines and encourages federal member states to adopt similar policies. Significant practical challenges remain in age verification, hampered by the absence of birth registration or identity documents, the inaccessibility of areas of origin, and lack of expertise and resources. Somalia should increase efforts to register births and provide free birth certificates. Inconsistencies in legal frameworks on the age of majority/maturity (18 years under international law) and of criminal responsibility should be harmonized with international law.

## **8. Women and Girls affected by Conflict**

Victims of sexual and gender-based violence by terrorist groups and other armed actors are covered by the 2022 National Action Plan on Ending Sexual Violence in Conflict, but sexual offences have not been criminalized in line with international law, police can be reluctant to investigate and accountability for violations is rare. The Special Rapporteur is concerned at the vulnerability of women and girls displaced by conflict; the closure and lack of shelters and support for victims; the stigmatization of victims; and traditional justice practices which may request the perpetrator to marry the victim and compensate male relatives. Somalia should: (a) prohibit, investigate, prosecute, punish and remedy all conflict-related sexual and gender-based violence; (b) establish accessible, effective and gender-sensitive reporting mechanisms; (c) raise public awareness and train responsible officials; and (d) adequately resource victims' shelters and services.

## **9. Conditions Conducive to Terrorism**

Pillar I of the UN Global Counter-terrorism Strategy identifies conditions conducive to terrorism as including prolonged unresolved conflicts, lack of the rule of law and violations of human rights, discrimination, political exclusion, socio-economic marginalization and poor governance, while recognizing that none of these can excuse or justify terrorism. The Somalia National Strategy for Preventing and Countering Violent Extremism (2024-2027) recognizes the relevance of such conditions, noting that economic incentives are compelling reasons for supporting Al-Shabaab.

The Government has a sophisticated understanding of the imperative to complement hard security responses with holistic measures to address the conditions conducive to terrorism and prevent local support for terrorism. The problem lies in the implementation. The Government's ambitious agenda, in part shaped by donor preferences, is often not matched by its operational, expertise and resource capacities. It is also undermined by political and federal/state tensions, clan divisions and favouritism, aid dependency and lack of local ownership, the distortions of a "war economy" and corruption. Deep, and rapid cuts by donors are also destabilizing Somali institutions, governance and the transition of security responsibility.

In relation to **conflict resolution**, the Special Rapporteur is concerned that the heavily militarized response to Al-Shabaab in recent years has not only overshadowed other elements of a comprehensive counter-terrorism response but has dampened peace-making. A conclusive military solution is unlikely. It is welcome that the Government has encouraged high-level defections and DDR. It should intensify efforts to negotiate with receptive elements of Al-Shabaab, and to seek political accommodations and reconciliation where this is feasible, rooted in Somali customs of dialogue, and consistent with international law. He encourages third parties to assist as neutral intermediaries on Somalia's request.

In relation to **governance**, the Special Rapporteur acknowledges the profound and difficult state-building, political and constitutional reforms Somalia has achieved since 2007, against the background of a generating statehood within clan-based, nomadic social structure and many decades of extremist warlord, authoritarian and colonial rule. He welcomes the commitment to a National Reconciliation Framework (although the Truth and Reconciliation Commission is yet to be established); and efforts to stabilize recovered areas through local governance, basic services and security.

The Special Rapporteur is concerned that effective efforts to counter terrorism are being impeded by tendencies towards the centralization of power; irregular and contested processes of constitutional reform, which have alienated some federal member states; the political influence of major clans, including an unrepresentative “4.5” formula which appears give a “0.5” share to the reported 30 per cent of the population who may be minorities; the lack of “one person, one vote” in direct elections, despite recent progress; limits on the number of political parties; the lack of an independent judiciary; and the chronic under-representation of women in public life. Corruption also drains government and the economy and depletes public trust, yet the Independent Anti-Corruption Commission was dissolved in 2022. The Special Rapporteur urges Somalia to embark upon an inclusive, “bottom up”, transparent and meaningful national political dialogue with all stakeholders, including all federal member states, about the political and constitutional future; to ensure power is distributed fairly and includes minorities and marginalized communities; and to redouble efforts to combat corruption.

In relation to **socio-economic marginalization**, the Special Rapporteur recognizes that Somalia faces extraordinary challenges, being ranked last of 193 countries in UNDP’s 2025 Human Development Report and facing high levels of poverty. It is estimated that 6.9 million people in Somalia require humanitarian assistance, representing around 40 percent of the population of 18.7 million. Of the \$1.4 billion required to fund the Humanitarian Response Plan for 4.6 million people in 2025, only 22 per cent is currently funded. Deep cuts to donor funding to Somalia in 2025 have left around 2 million people without assistance. The Special Rapporteur encourages donors to urgently mobilise resources to support the inter-related humanitarian, protection, development and security needs in Somalia. The drastic reduction in international supports endangers stabilization and political transition in Somalia and could fuel terrorism.

The Special Rapporteur recognizes the many efforts that Somalia has made to ensure socio-economic rights, including through the National Development Plan and National Transformation Plan. Somalia experienced positive 4 percent GDP growth in 2024. The Government is conscious of its duty under article 2 of the ICESCR to progressively realize economic, social and cultural rights to the maximum of its available resources and to fulfil the minimum content of basic rights.

The Special Rapporteur is concerned that Somalia has not taken all necessary steps to mobilise the resources at its disposal. While the revenue base remains low, the gradual expansion of domestic revenues and economic growth driven by agriculture, investment and remittances is encouraging. He recommends establishing an effective universal taxation system, better harnessing diaspora remittances, and creating an investment-friendly climate by reducing corruption and bureaucratic arbitrariness, to mobilise the necessary resources and reduce donor dependency. He further encourages the Government to regulate private sector service provisions and fill the many gaps with adequate, accessible and affordable public services. The Government should also expand inclusive and participatory engagement with local communities and civil society in development, including marginalized groups.

## **10. Criminal Justice**

The adoption of the Counter-Terrorism Act 2023 is welcome step in clarifying the law on terrorism.

### ***Definitions of terrorism***

The Counter-Terrorism Act contains a very complicated list of terrorism-related definitions and offences in articles 3 and 4, including cumulative and overlapping terrorist “purpose” elements. These definitions are unnecessarily complex and uncertain and are likely to confuse the public about the scope of their liability and lead to interpretive difficulties in the courts. The principle of legality under article 15 of the ICCPR requires that terrorism definitions and offences must be defined in a precise and narrow manner to ensure certainty and avoid arbitrary interpretation. Further, the terrorist “purpose” elements in article 3(2) and 2(4)(d), which underpin the definition of terrorist acts and offences, are vague and overbroad and prone to abuse. To conform with the principle of legality, terrorist offences should be defined in accordance with Security Council resolution 1566 (2004), which incorporates the offences in the international counter-terrorism instruments and the purposive elements in the Terrorist Financing Convention 1999 – “to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”. The Special Rapporteur’s model definition (A/HRC/16/51, para. 28) recognizes that terrorist acts may include other “serious crimes” under national law that are intended to cause death or serious injury. Somalia is also encouraged to enact three international best practice exclusions from the definition of terrorism: namely acts of protest that do not cause death or serious injury; the provision of independent and impartial humanitarian assistance to civilians in need; and the “activities of armed forces during armed conflict, as those terms are understood under international humanitarian law, which are governed by that law”.

### ***Terrorist Acts and offences***

Many of the terrorist acts in article 4 extend well beyond the best practice international standards on the definition of terrorism by encompassing acts that are not offences under the international counter-terrorism conventions or do not otherwise intend to cause death or serious personal injury (particularly article 4(3), (8), (9) and (13). Some acts or offences

conflate other types of threat with terrorism (e.g. article 4(9)) or would be more appropriately located in other legislation (e.g. article 15(2) and 20). One offence is overbroad in not requiring any terrorist purpose at all (article 8). There is confusing overlap between certain acts and offences, as between leading or organizing (article 4(4)) and managing or leading a terrorist group (article 6(1)); participating in (article 18) and engaging in (article 23) terrorist acts or a terrorist group (article 4(4)); training in relation to terrorist groups (articles 6(3)) and 10); and speech-related offences (articles 12-13 and 19, as well as incitement elements of terrorist acts under article 4(3), (9) and (10)).

While the Act defines “terrorist organization”, it does not define “membership” of a terrorist group in article 6(2)-(4), risking overbroad application. The speech-related offences in the Counter-Terrorism Act are overbroad, including spreading false information (article 13) and promoting or disseminating terrorist ideologies (article 12). The vagueness of these offences may infringe legality and enable the misuse of the law to curtail legitimate freedom of expression. The offences also do not require any objective risk or likelihood that they will provoke the commission of terrorist acts.

### ***Penalties***

Numerous offences in the Counter-Terrorism Act 2023 (articles 5-8, 15-17, 21-22 and 25-26) mandate the death penalty if the criminal act “results in death”. The Special Rapporteur is concerned that offences with such consequences do not meet the threshold of “most serious crimes” under article 6(2) of the ICCPR, which are understood as crimes of “extreme gravity involving intentional killing” (general comment No. 36, para. 39), not merely acts (including unintentional ones) which result in death. He is additionally concerned that article 6(1) of the Counter-Terrorism Act mandates the death penalty for creating, establishing, managing or leading a terrorist organisation, without requiring such conduct to cause any death or injury. He is further concerned that these offences mandate the death penalty, when the principles of proportionality and judicial discretion in sentencing should allow the punishment to fit the crime.

The Special Rapporteur is concerned that the death penalty has been imposed on civilians for terrorism after often rapid military trials which do not satisfy fair trial under the ICCPR, and also on persons under 18 years of age, contrary to article 37(a) of the Convention on the Rights of the Child. It is welcome that since 2016, Puntland authorities released for reintegration 75 children who had been sentenced to death or long-term imprisonment for associating with Al-Shabaab. In 2024, Puntland executed four young adults for terrorist crimes committed when they were under the age of 18. He emphasizes the need for robust age verification mechanisms to ensure that children are never exposed to the death penalty, particularly as many Al-Shabaab associates are children. He also calls for the abolition of the death penalty, as being incompatible with the right to life, and emphasizes that Sharia law encourages forgiveness.

## **11. Arrest, Detention and Investigation**

It is welcome that Somalia prosecutes terrorist suspects rather than administratively detaining them under a humanitarian law approach. He is nonetheless concerned that most terror suspects are investigated by an intelligence agency with policing functions, National Intelligence and Security Agency (NISA), rather than the police, and that prosecutions are conducted in military courts. Only terrorist financing offences are handled by the police and prosecuted in civilian courts.

The Constitution protects liberty (article 15), access to courts and rights of defence (article 34) and the rights of the accused (article 35), supplemented by the Code of Criminal Procedure. It is concerning that, while countering terrorism, security forces, particularly NISA, have reportedly made arbitrary arrests (including without warrants); failed to inform detainees of the reasons for arrest and promptly inform them of any charges; not brought arrested persons promptly before a court; detained people for protracted periods without charge (sometimes months); not always informed suspects of their rights; limited access to a lawyer, legal aid and family visits; and mistreated some detainees. He urges Somalia to respect due process rights, pass the Somali Legal Aid Bill and enhance investigative capacities to prevent unjustified arrests.

Article 35(11) of the Constitution and article 49 of the NISA Act prohibit illegal detention centres, but reports were received of alleged detention in informal facilities, including of high-level Al-Shabaab prisoners in “safe houses”. Such cases, along with detention in authorized facilities without access to a lawyer or notification of family, may constitute enforced disappearances. Somalia should declare all places of detention, ensure they are authorized and promptly transmit details of all detainees to the Attorney General. It is best practice for national law to prohibit intelligence agencies from operating their own detention facilities and for all suspects to be held in police facilities (A/HRC/14/46, GP 30).

### ***NISA***

It is welcome that the NISA Act 2023 brings NISA within a legal framework, commits it to respect constitutional rights and treaties (article 3) and safeguards various rights. The Special Rapporteur is concerned that the Act gives NISA excessively broad functions, including intelligence collection, arrest, detention and investigation and use of military force, (articles 8(13), 24(2) and 27(3)), when it is good practice for such functions to be performed by distinct entities with specialized competencies. NISA’s mandate problematically covers vague security-related concepts in article 7.

Certain powers may infringe on basic rights, including powers of arrest and seizure of property without warrant (article 8(6) and (8)) and warrantless interventions in unspecified emergency situations (article 36); the exclusion of article 37 rights to detainees held for less than 48 hours; the direction that certain evidence must be considered in a judicial proceeding (article 38(2)); the blanket prohibitions on NISA members (even in a personal capacity) from exercising civil, political, labour and religious rights (article 31(2)); the authority of NISA to conduct business (article 46); and limits on

National Audit Office supervision (article 45) and excessive immunities (article 26). The powers to carry and use weapons under article 25(b) should also be constrained by international standards on the lawful use of force. Obedience to superior orders (articles 21 and 22) should be conditioned on lawful orders. Personal data protections should also be included.

### ***Powers under the Counter-Terrorism Act***

Various rights are protected under the Counter-Terrorism Act, including judicial review of detention within 48 hours (article 38) and safeguards on interception of communications (article 47). However, some powers may infringe human rights. The power to deport foreigners convicted of terrorism (article 29(1)) does not require any proportionality analysis whether the seriousness of the offence justifies deportation and does not appear to safeguard due process or prohibit *refoulement*. The administrative restrictions on rights in article 29(2)-(5) should require an assessment of their necessity and proportionality and should be imposed for renewable periods of one not five years.

The procedure for listing individuals or groups as terrorists (articles 33-34) lacks adequate due process. The powers of arrest, entry and search without warrant (article 37) and urgent communications interception without warrant (article 47(2)) may be prone to abuse; and a very excessive period of up to 180 days (six months) days of pre-charge detention may be authorized by a court (article 39). The duty to bring a suspect before a court within 48 hours excludes transfer time (article 37), with no maximum limit; and the authority to stop and search vehicles and passengers (article 41) does not require reasonable suspicion. The standard of proof for issuing a communications interception warrant is not sufficiently precise (article 47); and there are insufficient safeguards on the retention of forensic samples (article 48).

### **13. Use of force**

The Special Rapporteur is concerned by reports of occasional excessive use of force and unlawful killings by security forces in counter-terrorism operations and lack of accountability. Somalia's laws on the use of force and firearms are also not fully consistent with international standards. He calls for improvements in the planning and conduct of operations to protect the right to life, enhanced training of security forces, investigation and prosecution of perpetrators, and effective remedies and compensation for victims. The duty to protect the right to life also has a preventive aspect, which requires Somalia to take all reasonable measures in response to reasonably foreseeable threats to life originating from terrorist groups (general comment No. 36, para. 21), including to prevent terrorist attacks as well as summary executions by Al-Shabaab. Somalia must ensure procedures are in place to investigate State failures to exercise due diligence.

### **14. Torture and Ill-treatment**

The Special Rapporteur is concerned at allegations of torture and cruel, inhuman or degrading treatment or punishment in countering terrorism, including resulting in death, particularly by NISA but also by the Somali National Army (SNA), Police and allied clan militias. While torture and inhumane treatment are prohibited by article 15(2) of the Constitution, Somalia should criminalize torture and ratify the Optional Protocol to Convention against Torture establishing inspections. Somalia should further enhance the accessibility and responsiveness of complaints mechanisms; conduct thorough, independent and impartial investigations into all allegations; prosecute and punish perpetrators; provide victims with effective remedies, including compensation and rehabilitation; publish data on incidents; and train justice sector officials.

### **15. Military Trials of Civilians**

The Special Rapporteur is concerned that the Armed Forces Courts have exercised jurisdiction to prosecute terrorist crimes by civilians under a 2011 presidential state of emergency decree (for criminal offences) and article 35 of the Counter-Terrorism Act 2023 (for its terrorism offences). From 2017 to 2021, the military courts reportedly tried 659 alleged terrorists, with 455 convictions and 17 executions. In 2024, 17 Al-Shabaab and ISIL prisoners were reportedly sentenced to death. International humanitarian law and human rights law do not prohibit military trials but require such courts to be independent and impartial and meet fair trial standards. Under human rights law, military trials should be limited to "exceptional" situations where they are "necessary and justified by objective and serious reasons" and where "the regular civilian courts are unable to undertake the trials." (General Comment No. 32). The Special Rapporteur highlights the more stringent requirement under African regional human rights law that prohibits military trials of civilians in all circumstances. He acknowledges the serious security risks to the administration of justice in Somalia but believes that it would be possible to protect the civilian courts to enable them to securely prosecute terrorism.

The Special Rapporteur is concerned that military courts may not be sufficiently independent from the military chain of command and trials do not appear to meet international fair trial standards. He recommends that Somalia promptly (a) transition from military to civilian trials of terrorism offences; (b) ensure the security of civilian terrorism trials and justice personnel; (c) ensure that the civilian judiciary is independent and impartial and respects fair trial, including through training, capacity building, resourcing, anti-corruption measures and independent trial monitoring. He also recommends the operationalization of an independent Judicial Service Commission for the merit-based appointment of judges.

### **16. Prisons**

Many Al-Shabaab suspects and convicted terrorists are held in Mogadishu, while ISIL suspects are mostly held in Puntland. Somalia has committed to international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules") and improved conditions, including by constructing new facilities. The Special

Rapporteur is concerned that conditions in prisons and detention facilities do not satisfy international standards. He endorses the recommendations of UNTMIS' report on Prison Conditions in Somalia (2024), including to ensure infrastructure and conditions meet international standards; reduce overcrowding through diversion and non-custodial alternatives; reform the 1971 Prison Law; restructure the Custodial Corps from a security force to a civilian institution; harmonize and coordinate federal and state systems; and enhance oversight. He is concerned at the lack of disengagement, rehabilitation and reintegration programmes for convicted terrorists, which may render them vulnerable to recidivism.

## **17. Military Operations**

Non-international armed conflicts governed by international humanitarian law exist between the Federal Government and Al-Shabaab and between Puntland and ISIL, with the African Union and its troop contributing countries, and some foreign States, also involved. Somali military forces include the SNA, Police, clan militias on an ad hoc basis, and some federal member state forces. The Somali Armed Forces have undergone significant reform since 2012, with heavy international assistance. Somalia's 2023 National Security Sector Development Plan aims to enhance the security forces. The Security Council lifted the 31-year arms embargo in 2023. The SNA still faces substantial limitations in personnel, equipment, training and funding, in the face of ambitious reforms, active hostilities, donor fatigue and political transition. Efforts to unify federal, Puntland and "Somaliland" forces have not succeeded, impeding counter-terrorism effectiveness.

The Military Behaviour Regulation Code of Conduct 2018 requires Somali National Armed Forces to act in accordance with the Constitution, humanitarian law, human rights law and all laws and regulations (article 1) and requires accountability. Somali forces also use a 2012 ICRC pocket-book Code of Conduct for Combatants (Xeera Hab-Dhaqan). Various orders and policies address children in armed conflict and prevention of sexual violence and a Civil-Military Cooperation (CIMIC) unit exists. The SNA's stabilization of areas recovered from Al Shabaab has also entailed humanitarian components, although this has led to concerns about the instrumentalization of aid.

The Special Rapporteur is concerned that Somalia has not yet established the necessary regulatory and institutional frameworks to respect humanitarian and human rights law in armed conflict. In recent years about one third of civilian casualties were caused by State forces, clan militias and international and regional forces. The Special Rapporteur is concerned that there is inadequate investigation, accountability and remedies for State violations. To strengthen compliance, the Somali Armed Forces should adopt rules of engagement for the conduct of military hostilities; establish procedures to ensure the planning of military operations takes all feasible precautions in attack; develop standard operating procedures such as on detention, protection of civilians, displacement, and investigations; consider directives on means or methods of war that endanger civilians, such as on indirect fire weapons; clarify when a law enforcement not humanitarian law approach applies; promptly finalize the proposed national protection of civilians policy and strategy; deploy legal advisers at relevant command levels; require after action review reporting, to facilitate investigations; empower military police to investigate violations; institutionalize international law training, including on the protection of women and children, and establish a civilian casualty tracking cell (as per Security Council resolution 2628, para. 11).

The Special Rapporteur is also concerned that the Somali Federal Police remain part of the military, despite essential reform proposals to separate them and differentiate their legal powers. He is further concerned that Somalia has drawn upon politicized clan militias to support hostilities against Al-Shabaab, where such arrangements are not authorized by law, militias are not integrated into the Armed Forces, their functions are not limited to self-defence, and they are not trained in or required to follow humanitarian law. The Somali authorities have also provided weapons and ammunition to clan militias, without providing for tracing and subsequent disarmament, and the supply of arms has fuelled inter-clan conflicts. Clan affiliations within the Armed Forces have also undermined the chain of command and allegiance to the State. The unstructured use by the State of clan militias arrangements heightens the risk of violations of humanitarian and human rights law, with serious violations reported (including beheadings of Al-Shabaab captives, sexual violence, and child recruitment). The Security Sector Development Plan rightly highlights that any such forces should be under Somalia's command and control. Clan militias should only be used where their members are formally incorporated by law into the Armed Forces and are thereby subject to the same legal and accountability requirements as regular forces.

Somalia should adopt an IED strategy with resources for implementation, training and equipment and urges donor support. It should also meet international standards on the safe and secure management of weapons and ammunition, particularly following the lifting of the arms embargo, to address illicit weapons trafficking and diversion, Al-Shabaab overrun of bases, lack of accountability for clan militia violence, and limited analysis and tracing capability (S/2024/748).

### ***International Partners***

International partners have influenced a positive culture of humanitarian and human rights law compliance amongst Somali security forces, including UN support subject to the UN Human Rights Due Diligence Policy. The Special Rapporteur reiterates the recommendations in his 2025 report (A/HRC/58/47) on the African Union's protection of human rights and civilians and compliance with humanitarian law in Somalia. He warns that the failure of UN member states to adequately fund AUSSOM, under the more predictable and sustainable formula in Security Council resolution 2719 (2023), could compromise the transfer of security responsibility to Somalia and undermine security and human rights.

Counter-terrorism airstrikes by foreign partners or Somalia must comply with humanitarian law, be subject to accountability mechanisms, and be publicly reported, including civilian casualties. A strike on 18 March 2024 in Lower Shabelle reportedly killed 21 civilians and injured 19, but there has been no independent investigation or remedies.

## **18. Disarmament, Demobilization and Reintegration (DDR)**

It is welcome that Somalia has pursued DDR to rehabilitate and reintegrate Al-Shabaab associates who voluntarily defect. Those captured appear ineligible. The National Programme for the Treatment and Handling of Disengaged Combatants has reportedly rehabilitated 9,000 individuals (including over 1,300 women) since it commenced for men in 2012, with women included from 2017 (in non-residential, community-based programs). Recidivism is reportedly low. DDR focuses on “low-risk” defectors, as screened by NISA. “High-risk” defectors may be detained and prosecuted in military courts. Since 2015 “high-value” individuals may negotiate leniency prior to defection and some assumed senior roles in the Government, with concerns about the transparency of the process and political and clan influence. Two of five centres for defectors, both for women, were closed in 2024 due to lack of funding. The male centres transitioned from a residential to a community-based model. There are currently 300 defectors in the program, but there is reportedly unmet demand.

The Special Rapporteur is concerned that DDR lacks a clear framework, transparent and non-politicised criteria and procedures for the screening of candidates and referrals to military courts, and sufficient legal guarantees. It appears premised on a succession of vague, ad hoc presidential amnesties since 2012. A draft amnesty bill has not been adopted. He is alarmed that defectors suspected of international crimes may be eligible, contrary to the right to effective remedy and the duty to hold perpetrators accountable for serious rights violations. Victims of terrorism and affected communities have generally not been consulted and there can be resentment that defectors receive assistance when victims may not. There is also a lack of independent oversight. The Government should adequately resource DDR so that more centres can become operational and ensure adequate services and staffing. Surrender of arms should be incentivized. Greater outreach is needed to inform Al-Shabaab associates about the program. More effort is needed to rehabilitate those who informally disengage from terrorism. Gender-responsive DDR to address the needs of women and girls is urgently needed.

While defecting children are also screened, they are not channelled into DDR but are sent to separate child reintegration centres under child protection authorities and UNICEF, or placed in the community, following the 2014 Standard Operating Procedures for the reception and handover of children separated from armed groups. Children who are captured, who are also victims, should be similarly treated. Some children are reportedly detained for lengthy periods, including irregularly, and a few have been prosecuted in military courts. Funding shortfalls have closed some reintegration programs and safehouses for children, including victims of sexual violence. Most children who informally disengage cannot access reintegration. The Government and donors must prioritise resources to address these critical needs.

## **19. Countering Terrorist Financing**

Al-Shabaab’s considerable financial activities sustain its violence. Three Somali laws counter terrorist financing: the 2016 Anti-Money Laundering and Countering the Financing of Terrorism Act; 2023 Specified Financial Sanctions Act; and 2023 Counter-Terrorism Act (articles 31, 33 and 23). There is duplication between them, particularly regarding offences, designations, and asset freezing, bringing risks of over-regulation and unjustified interference in rights; as well as contradictory definitions of financing offences between the 2016 Act and the Counter-Terrorism Act. Articles 3(9) and 23 of the latter are also overbroad in that funds are not limited to financial assets but include weapons, equipment, explosives and inflammable substances or “any other item”. It is recommended to revise, consolidate and narrow the financing offences, based on the Terrorist Financing Convention and Security Council resolutions.

### ***Impact on Humanitarian Assistance***

The Special Rapporteur is concerned that Somalia’s terrorist financing laws, and recent strong public statements from senior officials warning against engagement with terrorist groups and aid diversion, could impede or chill the essential and legitimate provision of humanitarian assistance to vulnerable populations living in Al-Shabaab controlled areas, which are already difficult to reach due to Al-Shabaab’s restrictions. Other offences in the Counter-Terrorism Act could also pose risks to humanitarians, including “cooperation” with a terrorist group (article 6(2)) and failing to report information on terrorist activities (article 14). To date no humanitarian actors have reportedly been prosecuted.

International humanitarian law requires the parties to a conflict to allow and facilitate rapid and unimpeded passage of impartial and non-discriminatory humanitarian relief for civilians, subject to control measures which do not impede its delivery (ICRC Customary IHL Rule 55). Security Council resolution 2551 (2020) excluded humanitarian assistance from Somalia sanctions (para. 22) while resolutions 2761 (2024) and 2662 (2022) exclude the provision by specified UN and related actors of humanitarian assistance or other activities that support basic human needs from all Security Council counter-terrorism sanctions. States must fully implement the exemption in relation to Somalia. Further, Somalia should legislate or otherwise exclude the provision of independent and impartial humanitarian assistance from its counter-terrorism sanctions (both unilateral and Security Council lists) and its terrorist financing and other terrorism offences that impinge on humanitarian action. Exemptions should further apply to any independent and impartial humanitarian actor.

Exemptions would provide certainty for humanitarian actors, financial institutions and donors, and ensure that counter-terrorism financing imperatives do not disproportionately interfere in the right to life and other fundamental rights which



humanitarian relief ensures. The Special Rapporteur emphasizes that more proportionate measures are available to address aid diversion, including recent Somali laws, without impeding assistance to vulnerable populations, and humanitarian actors have strong due diligence controls in place. Facilitating aid also prevents displacement to urban areas under stress, prevents grievances that may stimulate terrorism and does not legitimize Al-Shabaab territorial control.

## **20. Media Reporting**

The Special Rapporteur is deeply concerned at arbitrary arrests, assault and intimidation of journalists reporting on terrorism and counter-terrorism, as well as threats and attacks from Al-Shabaab, which have chilling and self-censoring effects on media freedom. While most people arrested were released without charge, some were prosecuted for overbroad speech-related offences such as disseminating false information. Additionally, media outlets have been suspended and their accounts frozen, and websites and social media suspended or shut down, for reporting on terrorism. State authorities have also issued numerous vaguely worded directives prohibiting the dissemination of terrorist or extremist messages. The NISA Act excessively prohibits “anyone” from disseminating information relating to NISA (article 42(3)).

The recently adopted National Media Law vaguely prohibits the dissemination of “false and unfounded information” and content “endanger[ing] national stability,” risking arbitrary interpretation and abuse. It also imposes licensing and regulatory controls that may constrain media independence. The Official Information Bill introduces broad exemptions for national security and public order and grants wide discretions to security actors. A 2025 Council of Ministers resolution regulates misuse of social media but includes vague terms that may infringe or chill media freedoms. Stakeholders expressed concerns about the independence of the National Media Council and its proposal to accredit journalists could limit media freedom. The Council has also faced pressure from the authorities and lacks resources.

The above measures, including overbroad provisions in the Counter-Terrorism Act, Penal Code and National Media Law, may unjustifiably interfere with freedoms of expression, association, peaceful assembly and access to information. Somalia should revise or repeal speech-related offences to conform with the restrictions permitted under article 19(3) of the ICCPR. It should consider alternatives to combat disinformation, including enhancing transparency, media freedom, and media and digital literacy (A/HRC/47/25). The Government should also prevent, investigate and punish all acts of intimidation or violence against journalists, human rights defenders and members of civil society organizations, and provide effective remedies to victims. International actors in Somalia should advocate strongly to protect media freedoms.

## **21. Civil Society**

Somalia should ensure that counter-terrorism measures do not restrict legitimate civil society activities, through arbitrary arrests, abuse of overbroad terrorism charges (including speech-related offences) and terrorist financing measures, and over-regulation of non-governmental organizations. Also of concern is NISA’s broad power to monitor the work and staff of foreign agencies and companies that work in humanitarian, charitable and development activities (NISA Act, article 8(12)) and the obligation on all citizens and foreigners to assist NISA in its “national work” (article 48).

Somalia should ensure that it pursues a risk-based approach to the terrorist financing risks of non-profit organizations, in accordance with FATF Revised Recommendation 8, recognizing that most do not present any risk or require regulation. In line with Security Council resolution 2178 (2014), civil society plays a critical role in preventing terrorism. Terrorist financing measures could also adversely affect the large number of people and businesses who live in areas controlled by Al-Shabaab or are otherwise coerced by them to pay illegal taxes or are victims of extortion.

## **22. Oversight and Accountability**

The Special Rapporteur is concerned that most Somali institutions involved in countering terrorism, including the police, NISA and the military, are primarily subject to internal forms of oversight and other limited types of executive scrutiny (such as the Attorney General’s Office, Ministry of Justice, Ministry of Internal Security and Ministry of Defence). Some Darawish forces and clan militias supporting the authorities appear to be outside oversight mechanisms. Article 128 of the Constitution positively requires human rights abuses allegedly committed by armed forces against civilians to be brought before a civilian court, but military courts appear to predominate.

It is regrettable that 13 years after the Constitution was adopted, and despite ongoing initiatives, Somalia has still not established the National Human Rights Commission (Constitution, article 41 and a law of 2016), the Ombudsman to investigate violations of basic rights and freedoms, abuse of power, illegality or corruption by government officials (Constitution, article 111J) and violations by security forces (article 129), or the Constitutional Court (article 109B). Somalia’s Independent Anti-Corruption Commission was dissolved in 2022.

Counter-terrorism bodies should be overseen by a combination of internal, executive, parliamentary, judicial and specialized oversight institutions whose mandates and powers are based on publicly available law, and should include civilian institutions that are independent of the executive (A/HRC/14/46, Practice 6). Oversight mechanisms should also be adequately resourced, independent and impartial, effective, and capable of ensuring transparency and accountability. They must have sufficient powers and expertise to investigate violations, unimpeded access to information, officials and facilities, and the full cooperation by the authorities in obtaining evidence. The effectiveness of oversight and accountability also depends on ensuring access to justice, including legal aid.

## **NISA**

The Special Rapporteur welcomes that the NISA Act requires the Ministry of Internal Security to monitor NISA's activities (article 47(3)), the prosecutor assigned to NISA's investigation centres must monitor conditions and rights in detention (article 37(8)), judicial warrants are required in relation to certain powers, and NISA members can file complaints for violation of their rights (article 30). The Attorney-General's Office reported that it monitors NISA's compliance with the 48-hour period of detention before judicial review.

However, the Act does not provide for any complaints mechanism, internal or external, for individuals affected by NISA's activities. The Special Rapporteur emphasizes that effective intelligence oversight should include at least one independent civilian institution. Somalia should consider the Special Rapporteur's good practices on oversight of intelligence agencies (A/HRC/14/46).<sup>1</sup> He is deeply concerned that NISA members cannot be investigated, sued or prosecuted without the permission of NISA's Director General, who also enjoys immunity (NISA Act, article 26). Such immunities are contrary to the duty to provide effective remedies and accountability (ICCPR, article 2). He is concerned that NISA members are subject to military not civilian courts (article 32) and at the limited supervision of the National Audit Office (article 45).

### ***Armed Forces***

The Special Rapporteur is concerned that article 32 of the 1963 Code of Military Criminal Law precludes a subordinate's responsibility where an act is done "by order of the superior or by a competent authority", unless the act is "clearly an offence". Article 33 of the Code precludes punishment if an official uses forces in specified exceptional circumstances. Such exceptions are inconsistent with the right to an effective remedy, which requires punishment of perpetrators.

### ***Prisons and Detention Facilities***

The Special Rapporteur acknowledges that the Attorney General's Office supervises and inspects prisons under article 14 of the Prison Law 1971, the Commanding Officer of the Custodial Corps must act on concerns raised and the Corps has internal oversight and human rights units. He also notes the monitoring role of the Parliamentary Upper House Committee on Human Rights, civilian inspection committees and the Puntland Human Rights Defender. The ICRC and UN also periodically visit prisons and NISA detention facilities. Civil society organizations reportedly have little access.

Prisoners can reportedly petition the "higher authorities" (such as the Attorney General's Office and Ministry of Justice) but these must be channelled through the prison commandant (1971 Prison Law, article 36) and there is a lack of standard procedures between procedures. Complaints can also be made to the courts. Since most monitoring procedures are part of the executive government, the Special Rapporteur strongly recommends that Somalia ensure the regular and unhindered monitoring of all places of detention by an independent oversight mechanism, without prior notice and on an unsupervised basis. The number of complaints received from prisoners and how they were resolved should also be publicly reported.

### ***Other Accountability Issues***

The Special Rapporteur is concerned that article 30 of the Counter-Terrorism Law allows judicial pardons in relation to terrorist offences even if the person committed an international crime or serious violations of human rights, contrary to the right to effective remedy. It is unclear whether the drafting of a wider amnesty bill since 2016 will enable unlawful impunity. Further, no comprehensive process of truth and accountability for past conflict-related rights violations has been pursued, including by failure to establish the independent and impartial Truth and Reconciliation Commission under article 111I of the Constitution. The Special Rapporteur is also concerned that clan affiliations can reportedly interfere with efforts by State institutions to bring perpetrators to justice, as can informal justice by non-State actors.

### ***Access to information and transparency***

Stakeholders reported difficulties in accessing information about terrorism and counter-terrorism, including arrests and transfers of detainees, court hearings, military operations, and complaints and accountability. While there may be operational security reasons for secrecy in exceptional cases, the Government is encouraged to publish as much information as possible, to ensure the right to information of the public, improve transparency and public confidence in counter-terrorism, and enable accountability and remedies.

### ***Periodic Review of Counter-terrorism Laws, Policies and Institutions***

Counter-terrorism laws and policies, and oversight and accountability mechanisms, should be periodically reviewed to ensure that they remain necessary and proportionate in the light of changing circumstances and compliant with international law. The Special Rapporteur recommends establishing by law the office of an independent reviewer of counter-terrorism laws, policies and institutions, reporting publicly to the Government and Parliament, with a requirement on the Government to consider recommendations made.

**Note:** *The final report of the Special Rapporteur's visit will be presented to the Human Rights Council in March 2026.*

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<sup>1</sup> See also Brussels Memorandum on Good Practices on Oversight and Accountability Mechanisms in the Fight against Terrorism.