



**Due Process and the Rule of Law in
Somalia:
Preliminary Key Findings and
Recommendations**

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February 2018

Cover Photo: Tobin Jones, UN Photos, Female SNA soldiers stand at attention at a camp in Belet Weyne on 19 February 2013, Flickr CC BY-NC-ND 2.0

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Executive Summary

This is the first comprehensive report on due process violations in south-central regions of Somalia. The report describes serious allegations, approximate geographic locations, primary victims and alleged perpetrators and suggests recommendations on how state actors, civil society and the international community could respond to these violations in a way which promotes the rule of law. The report focuses on allegations of due process violations committed by government security forces and formal judicial institutions in south-central regions of Somalia from the establishment of the Federal Government of Somalia (FGS) on 20 August 2012 until the publication of this report in February 2018.

Methodology: The information gathered for this report has been obtained by LAW's national and international legal team through:

- A desk review of open source material on due process frameworks and violations;
- Key-informant interviews held in Mogadishu and Nairobi from August 2017 to January 2018;
- 17 focus group discussions held with 50 male and 90 female participants aged 15 to over 50 in Rajo Wanag and Midimino IDP camps from June to November 2017.

Context: Since 2012, Somalia has made progress in increasing protection for civilians from human rights violations and improving the rule of law under extremely difficult conditions. Complex challenges include insecurity, lack of resources, serious food insecurity and political instability. The research presented in this report demonstrates that due process violations continue to occur and that much can be undertaken to address them.

Establishing functioning security and justice infrastructure in the complex environment described in this report is a challenge. As the UN Independent Expert on Somalia noted in 2015, “years of conflict in Somalia [have] affected every aspect of human rights and destroyed governance structures. A major constraint and challenge facing the Federal Government of Somalia [is] the endemic lack of financial resources, technical capacity and expertise, and infrastructure, which to a large extent [contributes] to its inability to fulfil its obligations in addressing human rights challenges.”¹ These constraints, as well as the fragile security situation have impacted heavily on the justice and security sector and created an environment ripe for due process violations.

Findings: The report examines the formal judicial system, including both civilian and military courts and the FGS and Federal Member State (FMS) security forces operating in south-central regions of Somalia. These are the Somali National Army (SNA), National Intelligence and Security Agency (NISA), Somali National Police Force (SNPF), and relevant Federal Member State Police Forces (FMSPF). While there are additional layers of security forces and multiple justice systems operating at the regional and federal level in different geographic areas and functioning at different levels, the focus and analysis of the report is limited to violations committed by the above actors.

Main due process violations reviewed include:

- Violations of the right to liberty and security of the person through arbitrary arrests and detention;
- Violations of the right to a fair trial by military courts;
- Violations of the prohibition of torture and cruel, inhuman, and degrading treatment or punishment;
- Violations of the right to life through extrajudicial killings and summary executions;

- Violations that have disproportionate impact on internally displaced persons (IDPs), including SGBV and forced evictions.

There are different groups who may be particularly targeted and/or affected by due process violations in Somalia due to exclusion and discrimination, including societal discrimination, power structures, vulnerability, age and gender.² These groups include IDPs, journalists, women, clan and ethnic minorities, persons with disabilities, and children. Communities marginalised on the basis of clan and ethnic identity can be divided into two general categories; firstly, those considered to be part of the “.5” categorisation of the “4.5” clan power sharing arrangement, secondly, Jareer and minority clan members absorbed within the four dominant clans.³ It is important to note while reading the report that complex clan dynamics play a large role in the power and political structures in south-central regions of Somalia, including in the justice and security sectors.⁴ Clan-related vulnerabilities intersect with other risk factors and put certain individuals at greater threat of becoming a victim of due process violations, with less ability to vindicate their due process rights.

For the purposes of this report, the due process rights and corresponding violations of IDPs, children, and journalists were examined in particular detail. The report finds that:

- IDPs are particularly vulnerable to specific due process violations, including sexual and gender-based violence and forced evictions.⁵
- Children are vulnerable to due process violations and are subjected to similar types of such violations as adults.⁶ Procedural protections for children exposed to the justice system are piecemeal and inconsistently enforced.⁷ There are numerous reports of children being arbitrarily arrested and detained, including in high security facilities.⁸ The FGS has shown recent commitment toward increasing the protection of child rights through the ratification of the Convention of the Rights of the Child (CRC) in 2015⁹ and commencement of the drafting of a Child Right’s Bill in November 2017.¹⁰
- Journalists are particularly targeted and subject to due process violations, including extrajudicial killings, summary executions, arbitrary arrest and detention, unfair trials, and torture and ill treatment.¹¹

Opportunities: The FGS has recognised the need for security and justice sector reform, and has identified this as a priority in documents such as the New Deal for Somalia and the FGS 2015-2016 Action Plan for the implementation of the human rights roadmap of Somalia.¹² The FGS has made progress rebuilding the security forces and formal judicial structures with the support of the international community. The rebuilding of the security forces represents an opportunity to ensure that the security forces are re-built with training, accountability and oversight structures in place to reduce and respond to due process violations. Somali civil society has also had success in raising awareness and seeking accountability for due process violations. Fledgling accountability structures, like the recently piloted Civilian Oversight Board, and other similar structures provide points of engagement between the community, civil society, security forces, and the government to ensure due process violations are identified and addressed. The rebuilding of formal judicial structures includes the construction of the new Mogadishu Prison and Court Complex (MPCC) and agreement upon a Justice and Corrections policy with Federal Member States (FMS).¹³ This also represents an opportunity and indicates that proactive measures for protecting the due process rights of arrested and detained people are already being undertaken.

Identifying, preventing and responding to due process violations is essential for the functioning of the rule of law and the protecting of human rights. Now is the time to capitalise on emphasis on security and rule of law in Somalia and strive to identify, prevent, and respond to due process violations, including through the implementation of the recommendations in this report.

Preliminary Key Findings

The below is a brief summary of the key findings of the report relating to serious and credible allegations of due process violations.

Violations of the right to liberty and security of the person

- **Legal framework:** The right to liberty and security of the person is guaranteed and protected by national law (article 15 of the Provisional Constitution of the Federal Republic of Somalia 2012, [FGS Constitution]), applicable regional law (article 6 of the African Convention on Human and People's Rights [ACHPR]) and international law (article 9 of the International Covenant on Civil and Political Rights [ICCPR] and customary international law).¹⁴ This right includes protection from and prohibition of arbitrary arrest and detention.
- **Arbitrary arrest and detention:** Since 2012, the United Nations (UN),¹⁵ civil society organisations¹⁶ and the United States (US) State Department¹⁷ have reported that government security forces, including the National Intelligence and Security Agency (NISA) have arbitrarily arrested and detained individuals in south-central Somalia.
- **At risk individuals:** The individuals most at risk of being arbitrarily arrested and detained include high profile opposition leaders, journalists, and young men and boys. For example, in 2017, the United Nations Assistance Mission in Somalia (UNSOM) reported that it is of “particular concern that political leaders, activists, journalists and media owners arrested by NISA are detained without charges in the NISA Godka Jiliow detention centre in Mogadishu, where Al-Shabaab suspects are also detained.”¹⁸
- **‘Justification’:** Government authorities frequently used allegations of Al-Shabaab affiliation to justify arbitrary arrests, as reported by the US State Department every year since 2012.¹⁹ Human Rights Watch (HRW) has also made similar findings, reporting that NISA has routinely conducted mass security sweeps, arbitrarily arresting individuals, often on the basis of little to no evidence of alleged Al-Shabaab affiliation.²⁰ In focus group discussions, 11% of participants reported that they had been arbitrarily arrested or detained by security forces or knew someone personally who had. The majority of those arrested and detained without charge or judicial oversight were young men and boys, often during and/or after security operations, on suspicion of being affiliated with Al-Shabaab.
- **Location of detention:** There have been reports of individuals being arbitrarily detained in military bases, police stations, and NISA facilities, including at Villa Somalia, according to the UN Monitoring Group on Eritrea and Somalia (UN Monitoring Group) and HRW.²¹ More information is required in respect of the exact location and duration of detention of individuals by each FGS and FMS security force, and whether secret detention facilities are in operation.
- **Incommunicado detention:** The Committee to Protect Journalists and the US State Department have reported on cases of NISA holding individuals in incommunicado detention.²² Incommunicado detention refers to a situation where a detainee is permitted no contact with the world outside the detention facility, including no contact with a lawyer or family members.²³
- **Length of detention:** The length of arbitrary detention, including pre-trial detention without sufficient judicial oversight, varies and accurate information is difficult to obtain. Numerous reports exist of individuals being held in detention by NISA for prolonged periods of time. For example, in 2017, UNSOM reported that a journalist suspected of Al-Shabaab affiliation was held in NISA custody for 15 months without

trial.²⁴ In one case reported to LAW, an individual was detained for nine months in such circumstances.²⁵ Focus group discussion participants reported detention periods ranging from weeks to months. Key factors in terms of determining the length of detention in NISA custody appear to include clan affiliation and economic factors, such as the ability to pay a bribe.

- Extortion: The UN Monitoring Group has documented that government forces and allied militias have committed arbitrary arrests and detentions, often for purposes of extortion.²⁶ Focus group discussion participants recounted that they, or the person they knew who was arbitrarily arrested and detained, were asked for bribes of sums ranging from 20 USD to 1000 USD in order to secure their release.
- Number of detainees: It is unclear how many people are currently detained in police stations, prisons, and other detention facilities. The length of their detention and the extent to which there has been judicial oversight over their detention is also unknown.

Violations of the right to a fair trial by military courts

- Legal framework: The right to a fair trial is protected with varying specificity by national law (article 34(2) and 35 of the FGS Constitution), regional law (article 7(1) of the ACHPR), and international law (article 14 of the ICCPR and customary international law²⁷).
- According to the US State Department, human rights organisations have repeatedly “questioned the military courts’ ability to enforce appropriate safeguards with regard to due process, the right to seek pardon, or commutation of sentence as well as to implement sentences in a manner that meets international standards.”²⁸
- Access to a lawyer: The US State Department reports every year since 2012 that defendants rarely had legal representation before military courts.²⁹
- Right to be tried before an impartial, independent and competent tribunal: The military courts’ lack independence and impartiality. They remain under the military chain of command and are subject to reprimand and discipline, ultimately by the Minister of Defence.³⁰
- Civilians being tried by military courts: Though national lawyers claim a 2011 emergency decree giving military courts jurisdiction over civilians in certain areas expired after three months, military courts in south-central Somalia, including in Mogadishu, continue to operate as if it were still in effect.³¹ The procedures by which civilians appear before military courts is unclear.³² The likelihood of appearing before a military court is greater depending on the type of charge(s), location of arrest, profile of defendant and arresting agency. Those arrested in large-scale security operations, particularly by NISA, are more likely to be brought before military courts.³³ Civilians tried by military courts include alleged Al-Shabaab members, including those without an operational military role, their parents, and police officers.³⁴ The African Commission has held that civilians appearing before and being tried by a military court presided over by active military officers violates the fundamental principles of fair trial.³⁵ The UN Human Rights Committee has not gone as far as the African Commission, but sets out stringent requirements to be met by a military court trying civilians and noted that such trials “may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.”³⁶ It appears that the military courts operating in south-central Somalia do not meet these requirements.
- Somali National Army (SNA) members being tried for human rights violations by military courts: SNA members are also tried before the military courts, including when

accused of human rights violations and criminal offences against civilians, such as rape.³⁷ This is contrary to article 128 of the FGS Constitution providing that “human rights abuses alleged to have been committed by the security forces against civilians shall be brought before a civilian court”.³⁸

- Right to a public hearing: Anecdotal evidence from lawyers familiar with military court procedures indicates that that prison and court officials restrict public access to hearings, primarily due to limited space in “makeshift court rooms”, that there was no regular independent monitoring of proceedings, and that information on the holding of hearings was rarely available.³⁹
- Right to an appeal: Defendants in military trials generally have not had the right to an appeal in military courts since 2012 according to the US State Department.⁴⁰
- Positive steps: Article 35 of the draft Counter-Terrorism Bill provides that that civilian courts will have jurisdiction to prosecute cases of terrorism acts. LAW has also received unconfirmed reports that an agreement has been reached to transfer cases in which the military has abused civilians, and other security forces cases, involving the police and NISA, to civilian courts.⁴¹ Further, since 2015, the construction of a Mogadishu Prison and Court Complex (MPCC) has been underway to provide for a secure court complex to process high-risk cases.⁴² This aims to such cases being transferred to military courts as a result of to security concerns.⁴³ It is also intended to provide a more appropriate space for high-risk trials to be held and may lead to more cases being heard in public.

Violations of the prohibition of torture and cruel, inhuman or degrading treatment or punishment

- Legal framework: The prohibition of torture and inhumane treatment is guaranteed in national law (article 15 of the FGS Constitution), regional law (article 5 ACPHR), and international law (article 7 ICCPR, Common Article 3 of the Geneva Conventions,⁴⁴ and customary international law).⁴⁵ Somalia has also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁴⁶
- Allegations of torture by the SNA and NISA: The UN Monitoring Group and UNSOM have reported receiving credible allegations of torture of civilians and combatants by NISA and SNA officials in detention facilities overseen by NISA.⁴⁷ The UN Monitoring Group has also received allegations of ill-treatment, including torture, occurring in Mogadishu’s Central prison, in police stations, and military bases, in addition to NISA facilities.⁴⁸
- Types of ill-treatment alleged: HRW and the UN Monitoring Group have documented allegations of torture and/or cruel, inhuman or degrading treatment or punishment, such as beatings with sticks, wires, or the butt of a gun, the pulling of finger nails and the pouring of boiling water on wounds.⁴⁹ During its 2015-2016 mandate, the UN Monitoring Group conducted detailed interviews with five civilians who reported being subject to ill treatment in security detention in Godka Jillicow and Villa Somalia. ⁵⁰ They claimed they were subject to: “restrictions on, or denial of, food and drink; confinement in small airless cells; beating and slapping; forced standing and confinement in stress positions using handcuffs or other ties making breathing difficult; interrogation while blindfolded; threats of death, sexual assault and further torture including by senior officials during questioning; hooding with plastic bags; use of electric shocks; forced partial submersion in water to induce fear of drowning; insults and general threats of violence, and denial of access to medical service.”⁵¹

- SGBV: The US State Department has noted every year since 2012 that other reports of torture included sexual and gender-based violence (“SGBV”) committed by state security forces.⁵² SGBV committed by security forces against internally displaced persons (IDPs) will be discussed below.
- Positive steps: In the 2016 UPR, the Attorney General “affirmed that the Government did not condone torture or ill-treatment of any person. All law enforcement and security agencies adhered to that principle. The Government was working to raise awareness that there could not be any circumstances in which torture was permissible.”⁵³

Violations of the right to life

- Legal framework: The right to life is a fundamental human right protected by national law (article 13 of the FGS Constitution), regional law (article 4 of the ACHPR) and international law (article 6 of the ICCPR, Common Article 3 of the Geneva Conventions, and customary international law).⁵⁴

Extrajudicial killings

- For the purposes of this report, extrajudicial killings refer to killings committed by security forces acting with impunity outside the law, including, killings due to excessive, disproportionate and illegitimate force.⁵⁵
- Extrajudicial killings by security forces, including by the SNA and Somali National Police Force (SNPF): Since 2012, the UN Monitoring Group and the US State Department have reported on extra-judicial killings undertaken by Somali government security forces personnel, including by the SNA and SNPF.⁵⁶
- Attacks on civilians: In 2013, the UN Monitoring Group collected credible testimonies and other information alleging that FGS forces participated on large-scale attacks on civilian areas in Middle Shabelle, Lower Shabelle, and Hiran. Perpetrators were described as SNA, clan militia, and individuals wearing government uniforms.⁵⁷ In its 2014 and 2015 reports, the UN Monitoring Group described how “personnel of the SNA – and sometimes the Somali Police Force alongside assets of the security forces, including vehicles, weapons and ammunition, were...deployed in attacks on civilian areas in pursuit of clan agendas or resources”.⁵⁸
- Deaths in custody: The UN Monitoring Group and US State Department have reported on the killings of civilians who were in the custody of security forces, including the custody of the police force of the Interim Jubba Administration (IJA) and NISA.⁵⁹ All deaths in custody of state officials must be investigated promptly, impartially, and independently as mandated by international human rights law and international humanitarian law.⁶⁰
- Targeting of protesters and journalists: One trend noticed is the increased number of protesters, including political protesters, and journalists who were victims of extrajudicial killings carried out with impunity.⁶¹ The US State department reported every year since 2012 that federal and regional forces have killed protesters.⁶² Fifteen journalists were killed in 2012 and since then, targeted killings and attempted assassinations have continued in government-controlled areas, particularly Mogadishu.⁶³ The majority of these killings are carried out with impunity. For example, in 2015, the Committee to Protect Journalists ranked Somalia as number one in its list of countries where journalists’ killings go un-investigated.⁶⁴

Summary execution

- For the purposes of this report, summary execution refers to situations where the death penalty is imposed under circumstances where the due process obligations of the state have not been abided by, including for example following a trial that does not comply with international fair trial standards.⁶⁵
- Somalia has consistently supported the UN General Assembly resolution on the moratorium of the death penalty despite continuing to retain it.⁶⁶
- From 2012- 2017, government authorities and military courts sentenced defendants to death. The US State Department has reported the occurrence of executions after trials that did not respect due process rights every year since 2012, including within hours or days of a court's verdict.⁶⁷
- National figures on executions are unreliable. Media reports contain details of at least seven executions carried out on the order of military courts in the period January – June 2017, representing an increase in comparison to previous years.⁶⁸

Specific violations committed against Internally Displaced Persons (IDPs)

- IDPs are particularly vulnerable to certain due process violations, including sexual and gender-based violence and forced evictions.
- According to the Brookings Institution, the FGS has made a “strong commitment on paper to address the rights and needs of displaced persons.”⁶⁹ For example, it adopted a National Policy Framework on Displacement within Somalia in 2014.⁷⁰ Somalia has also signed the African Union, Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).⁷¹

Sexual and gender-based violence (“SGBV”)

- Women and children in IDP camps are particularly vulnerable to sexual and gender-based violence (SGBV) by armed men, including government soldiers and militia members.⁷²
- In 2016, 7,293 cases of gender-based violence in Somalia were recorded by the Gender-Based Violence Information Management System (GBVIMS).⁷³ Among the affected, 99 per cent were female and 73 per cent were from IDP communities.⁷⁴ Considering that not all response providers have been trained on the GBVIMS, that it does not effectively cover survivors from rural and remote areas, and the high levels of under-reporting for sexual violence in Somalia, the true number of women, girls, men, and boys affected per year is likely to be several times higher.
- Statistics collected by the UN and other bodies indicate that sexual violence in Somalia is primarily committed by two groups of people: those known to the woman affected, and armed men in uniform.⁷⁵ For example, the 2016 UN Secretary-General Report on Children in armed conflict reported that the United Nations documented 164 incidents of sexual violence affecting 174 children, with the majority committed by clan militias (56), unknown armed elements (54), and the Somali National Army (43).⁷⁶
- 15 per cent of the focus group discussion participants reported having been the victim or knowing someone personally who had been the victim of sexual violence by security forces; the majority of which were reported by female participants. Incidents described included rape and gang rape of girls as young as seven years old by men in police uniform.

Forced evictions

- The Somalia Protection Cluster noted in December 2017 that the “regulatory environment for forced evictions in Somalia remains underdeveloped”⁷⁷ and that the current legislation on land and tenure security is outdated.⁷⁸ This is despite the fact that the FGS’s 2014 national policy on displacement “requires the authorities to protect affected communities during evictions and lays out procedures largely in line with international law.” It also includes Eviction Guidelines.⁷⁹
- IDPs have been subject to frequent forced evictions carried out in disregard to due process requirements in south central regions of Somalia. Most of those subject to eviction are notified orally, soon before the eviction, and without being given an alternative place to live.⁸⁰
- Forced evictions were a common complaint emerging from the 170 participants of the focus group discussions. 18 per cent of participants reported having been the victim or knowing someone personally who had been the victim of a forced eviction by security forces. One IDP participant reported that she had experienced three such evictions at the hands of the police in 2017 alone.
- The number of forced evictions by security forces has increased in recent years.⁸¹ In 2015, the Protection Cluster Eviction Tracker, operated by the Norwegian Refugee Council, indicated that approximately 130,000 individuals were evicted. In 2016, this rose to approximately 162,000 and in 2017 this rose to approximately 190,000 individuals.⁸²
- From 2012 to 2015, forced evictions appear to have been largely initiated by government actors.⁸³ From 2015, private individuals, business owners, and gatekeepers appear to have played a greater role, alongside government authorities, in the initiation of forced evictions.⁸⁴ Uniformed security forces, including SNPF and SNA officials, carry out most evictions.⁸⁵
- On 29, 30 December 2017, over 21 IDP settlements, including 5807 IDP households, on the outskirts of Mogadishu were destroyed⁸⁶. The evictions were done without prior consultation or adequate notification or compensation.⁸⁷ HRW estimates approximately 3000 IDP shelters were dismantled or destroyed using heavy machinery between 29 December 2017 and 19 January 2018.⁸⁸
- On 17 January 2018, the Federal Minister for Planning, Investment, and Development, Gamal Hassan, responded to growing criticism from aid and human rights organisations on recent forced evictions and announced that the government would investigate them.⁸⁹

Key Recommendations

1. Increase understanding on the nature and scale of due process violations

- Independent mapping exercise: Conduct an independent mapping exercise in order to understand the nature and scale of due process violations in south-central regions of Somalia in order to better respond to them. This will include:
 - Tracking the number of executions carried out in each FMS in the past and on an ongoing basis in order to gain reliable figures.
 - Allowing access to prisons, police stations, and other detention facilities, to independent monitors to conduct and publish an independent audit of the number of people currently in detention facilities, broken down by demographics, length of detention, and any judicial oversight of the detention.
 - Providing an effective mechanism either by the AG's office or by civil society for independent trial monitoring of civilian and military courts to identify and map fair trial violations.
 - Publishing updated organigrams describing the internal structures of the SNPF, SNA, FMSPF, and NISA and their funding sources and amounts.

2. Carry out prompt, independent and impartial investigations into credible allegations of serious due process violations

- Prompt, independent and impartial investigations: Carry out prompt, independent and impartial investigations into credible allegations of extrajudicial killings and torture.⁹⁰
 - Independent Commission: Create an independent commission to investigate due process violations and possible international crimes that ensures perpetrators are held to account for their actions.⁹¹
 - Investigation unit: Establish an investigation unit in the AG's office to specifically investigate allegations of extrajudicial killings and torture that will support the work of the Independent Commission to ensure the continuity of its work and build the AG's office capacity.
 - Investigation policy: Develop an investigations policy laying out the relevant legal frameworks, international best practice, and guidelines on the investigation of extrajudicial killings and torture for the unit to follow. This policy should take into account international best practice and guidelines, including for example, the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁹²
- Prosecute serious due process violations where there is sufficient evidence: Where investigations yield sufficient evidence of torture, extrajudicial killings, and other due process violations, the AG shall prosecute the perpetrator(s) under relevant domestic laws, guided by international laws where necessary as per article 40(2) of the FGS Constitution.⁹³ Where the legal framework is insufficient, laws should be enacted to address this, as discussed below.

3. Strengthen the legislative framework relating to due process by enacting:

- National Security Law: A national security law setting out the structure, functions and levels of the security agencies as per article 130 of the FGS Constitution. This law should include, or a separate law should be enacted (e.g. the NISA Bill), to set out the legal mandate, role, and responsibilities of NISA.

- Office of the Ombudsman Law: A law establishing the Office of the Ombudsman, as per article 129 of the FGS Constitution, an entity “where the public can lodge their complaints against abuses committed by the members of the security forces and the government administration.”⁹⁴ The Office can initiate investigations into the security forces and if they “reveal convincing results,” it can take the matter to court.
- Legal Aid Law: A law establishing a legal aid system that provides free legal assistance to indigent defendants.
- Sexual Offences Bill: The Sexual Offences Bill ensures that victims of SGBV have access to the formal justice system and perpetrators are held accountable.
- Anti-Torture Law: A law transposing the CAT obligations, including the definition of torture, criminalisation of all acts of torture, and the right to redress and fair and adequate compensation for victims to ensure that victims can rely on the CAT provisions in court.
- Counter-terrorism Bill: Amend and enact the Counter-Terrorism Bill ensuring that it does not include overly broad or vague provisions and does not provide for overly expansive powers of investigation.
- Land Law: An updated Land Law, as called for in the National Development Plan 2017-2019, ensuring land governance is adequately regulated to reduce the risk of forced evictions and enable a better legal response to them.⁹⁵

4. Improve confidence, trust, and understanding between communities, the security forces, and courts

- Pilot a Local Justice and Security Forum: Pilot a Local Justice and Security Forum in an urban district, comprised of police officers, courts staff, elders, legal aid providers, and other relevant key stakeholders. These members will meet regularly to discuss justice and security issues in the area, including the functioning of the security forces and the courts. Monitor and evaluate its impact and depending on its progress and successes, implement similar initiatives in more districts and other FMS taking best practices into account.
- Pilot a public information and education campaign: Design and pilot a public information and education campaign, designed to raise awareness among men and women about:
 - The role of the police;
 - Due process rights;
 - How to use and access the courts;
 - Complaints-receiving mechanisms.

Examples of appropriate channels may be via radio, community theatre, mosques, and schools. Monitor and evaluate the impact of this campaign’s effectiveness and develop and expand the campaign depending on the results.

5. Establish and develop the internal oversight mechanisms of the security forces

- Develop conduct and discipline policies: Develop conduct and discipline policies for the SNPF, SNA, and NISA and action plans to reduce and respond effectively to due process violations and make them publicly available.
- Establish conduct and discipline units: Create conduct and discipline units within the SNPF, SNA, and NISA. The conduct and discipline units should investigate any allegations of crime or misconduct against their officers referred to them by any means. Link these units with the external oversight mechanisms, which should

oversee the internal investigations. A generalised account of the number of investigations taken and their outcomes should be made public.

- Support internal oversight mechanisms for FMSPF: Support the establishment of internal oversight mechanisms, including conduct and discipline units, in the federal member state police forces (“FMSPF”) they are developed.

6. Develop and support external oversight systems of the security forces

- Implement Constitutional oversight mechanisms: Implement relevant provisions of the Constitution which establish external oversight mechanisms of the security forces:
 - Establish the Office of the Ombudsman to receive and investigate complaints: Under article 129 of the FGS Constitution, appoint an Ombudsman with a supporting, well-staffed and properly funded office and investigative and subpoena power.⁹⁶ The Office of the Ombudsman should both be able to receive complaints of security forces misconduct directly and from civil society led complaints-receiving mechanisms already operating within different communities.
 - Establish the Civilian Oversight Sub-Committee to seek redress from violations: Establish the Civilian Oversight Sub-Committee envisioned in article 111H of the FGS Constitution with the mandate of seeking redress from violations by security personnel.⁹⁷ This mechanism can work in collaboration with the Office of the Ombudsman and hold hearings with representatives of victims allegedly harmed by the security forces to understand their needs and what redress and justice means to them. Design further interventions to seek redress based on these collaborative discussions with the alleged victims to ensure a victim-centred approach.
 - Increase the transparency of security-related expenditure: Increase the transparency of security-related expenditure by developing a framework through which the public may provide oversight and monitor security-related expenditure as per article 111H(2)(c) of the FGS Constitution.⁹⁸
- Support civil society led Civilian Oversight mechanisms: Work with civil society organisations already undertaking monitoring and oversight of the security forces to eventually support a civil society-led Civilian Oversight mechanism, which would support civil society to monitor police stations and report findings to the Office of the Ombudsman and Independent Complaints Mechanism (see below) when necessary.

7. Increase access to justice for victims of due process violations

- Establish an Independent Complaints Mechanism in pilot IDP camps to report due process violations: Establish an Independent Complaints Receiving Mechanism through which victims can report securely due process violations, and which tracks and records violations committed by security forces, refers victims to needed services and refers the perpetrators for investigation where appropriate. It should collaborate with civil society-led civilian oversight mechanisms, including the Civilian Oversight Board, and the Office of the Ombudsman.
- Increase the jurisdiction of the Mogadishu Prison and Court Complex: The MPCC should be mandated to hear international crimes in Somalia in addition to high-risk cases. This would be welcome given the time, resources, and training that will be provided to this court and its’ personnel.

8. Increase support to the civilian courts

- Provide adequate security and protection: Ensure, in collaboration with the relevant agencies, that civilian court personnel are granted adequate security and protection. Judges and judicial staff must be provided with adequate security during travel to and from courts and within judicial compounds by security forces.
- Reinstate the Judicial Services Commission: Reinstate the Judicial Services Commission (“JSC”) and conduct research to ensure that all current judges have been legally appointed. Where judges may not have been legally appointed, the JSC shall make a determination on whether they should be confirmed or not. The JSC shall ensure that all future judges are legally appointed and that appointees have appropriate training and qualifications to serve as judges.

9. Specific interventions to reduce and respond to allegations of arbitrary arrest and detention:

- Increase the number of legal aid lawyers visiting police stations and detention facilities: Increase the number of legal aid paralegals and lawyers visiting police stations and detention facilities who provide free legal advice, assistance, and representation to detainees. This can be done through enacting a Legal Aid Law, as noted above, which requires mandatory hours of pro bono legal service for legal professionals and funding the legal aid system, as noted below.
- Only hold detainees in publicly recognised places of detention: Ensure that detainees are held only in publicly recognised places of detention.⁹⁹ To this end provide a comprehensive list of all detention facilities utilised by NISA and other state security forces, which should be backed up by a verified copy of security-related expenditure, to increase transparency and reduce the risk of secret detention centres.
- Appoint due process compliance officers: Appoint due process compliance officers in pilot police stations and other detention facilities who will be mandated to ensure that accurate information about the arrest and detention of any individual is made available promptly to family members, lawyers, and courts and monitor the length and judicial oversight of detention. Monitor and evaluate the impact of these officers and depending on its progress and successes, appoint more officers in more police stations continuing to take best practices into account.

10. Specific interventions to protect the right to a fair trial, specifically in relation to military courts:

- Ensure that military courts no longer try civilians: Enact a presidential decree and/or legislation declaring that military courts will no longer try civilians, clarifying that the 2011 emergency decree is no longer in force, and directing military court prosecutors and judges transfer cases involving civilians to the civilian justice system.
- Train military court personnel on international law standards: Ensure military justice personnel have received sufficient training, including on, international law standards.
- Conduct independent trial monitoring of hearings: As noted above, increase the openness and transparency of the operation of military courts through allowing independent trial monitoring of hearings at the trial and appellate level.
- Fund the legal aid system: Provide adequate funding for the legal aid system provided for by the Legal Aid Law to ensure that indigent defendants in both military and civilian courts have access to a lawyer, at the trial and appellate levels.

- Train defence lawyers: Provide free and comprehensive trainings for defence lawyers, including members of the Somali Bar Association and Somali Legal Aid Network (SLAN), on the functioning, laws, and operation of the military courts.

11. Specific interventions to reduce and respond to allegations of torture and ill-treatment by state security forces:

- Criminalise all acts of torture: Ensure that all acts of torture, including SGBV, are offences under criminal law as per article 4 of CAT. Criminalising SGBV can be done through enacting the Sexual Offences Bill and criminalising all acts of torture can be done through enacting an Anti-Torture Law as noted above.
- Enact and review interrogation and conditions of custody guidelines: Enact and continuously review guidelines relating to interrogation and conditions of custody for detainees adequately reduce the risk of torture as per article 11 of CAT.¹⁰⁰
- Train health care professionals on forensic documentation of torture: Train health care professionals, including doctors and nurses, on forensic documentation of torture and other ill-treatment.
- Guarantee access to all detention facilities to relevant actors to monitor detention conditions and the treatment of detainees: Guarantee health care professionals, lawyers and civil society-led civilian oversight mechanisms access to all detention facilities, including police stations, prisons, and NISA facilities to enable them to conduct regular, independent, unannounced and unrestricted visits. These actors will monitor detention conditions and the treatment of detainees.

12. Specific interventions to reduce and respond to allegations of extrajudicial killings:

- Official condemnation: The highest FGS and FMS officials, including high-ranking security officials, should demonstrate their total opposition to extrajudicial killings. They should make it clear to all members of the SNA, SNPF, NISA, FMSPF, and other state security forces that extrajudicial killings will not be tolerated under any circumstances.¹⁰¹
- Chain of command control: Ensure “strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorised by law to use force and firearms.”¹⁰² Hold officials with chain-of-command responsibility that order, permit, consent or acquiesce to extrajudicial killings by those under their command criminally responsible for these acts.¹⁰³
- Restraints and training on the use of force: Develop and train SNPF and FMSPF officers on stringent guidelines relating to the use of force, including using force only when strictly necessary and only to the minimum extent required under the circumstances. “Lethal forces should not be used except when strictly unavoidable in order to protect life.”¹⁰⁴
- Training on individual responsibility: All security forces should be trained on the prohibition of extrajudicial executions, this should include being informed that they have the right and duty to refuse to obey any order to participate in an extrajudicial killing.¹⁰⁵
- Provide compensation: Provide for a mechanism for fair and adequate redress to dependents of victims of extrajudicial killings, including financial compensation, through the Civilian Oversight Sub-Committee.¹⁰⁶

13. Specific interventions to end summary executions:

- Commute pending death penalty sentences: Enact a presidential decree immediately commuting pending death penalty sentences.
- Enforce the moratorium on the death penalty: Review the relevant criminal and military codes to remove the death penalty as a possible sentence for crimes and provide for alternative punishments, such as life imprisonment.

14. Specific recommendations to reduce and respond to sexual and gender-based violence (“SGBV”)

- Pass and implement the Sexual Offences Bill.
- Ensure vetting processes for security forces personnel include histories of sexual violence: Many any history of sexual violence mandatory grounds for exclusion from the SNPF, SNA and NISA.
- Introduce internal investigation policies and procedures for SGBV for security forces: Introduce such policies for security forces personnel accused of SGBV and other human rights abuses, subject to external monitoring and control.
- Establish SGBV specialist units: Appoint specialist judges, prosecutors, and investigators, forming an SGBV Unit in each district.

15. Specific recommendations to reduce and respond to forced evictions

- Enact a moratorium on forced evictions: Enact a moratorium with relevant federal and regional authorities on forced evictions.¹⁰⁷
- Formalise and officially adopt an updated IDP policy and Eviction Guidelines: Formalise and officially adopt an updated IDP policy and Eviction Guidelines. The IDP police will define rights of IDPs and regulate the response of authorities to displacement. This will include establishing and strengthening procedures for evictions in line with international legal standards and defining the role and responsibilities of authorities, including security forces, at all levels in relation to evictions.¹⁰⁸
- Develop an updated Land Law: As noted above, develop an updated Land Law, as called for in the National Development Plan 2017-2019 ensuring land governance is adequately regulated.¹⁰⁹
- Investigate and review the lawfulness of past forced evictions: Conduct a thorough investigation into and review of the lawfulness of past forced evictions.
- Prosecute the perpetrators of forced evictions: Where investigations yield credible evidence that forced evictions were carried out unlawfully, prosecute the perpetrators, including those who initiate and carry them out.
- Provide redress for victims of forced evictions: Where forced evictions have been carried out unlawfully, redress should be provided to victims of forced evictions. This can be done through the Civilian Oversight Sub-Committee mechanism as noted above.
- Establish mechanisms to operationalise the Eviction Guidelines: Establish relevant coordination, dissemination, consultation, and implementation mechanisms to facilitate lawful evictions.

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- ⁹¹ Human Rights Watch, *UPR Submission Somalia* (June 2015) available at <https://www.upr-info.org/sites/default/files/document/somalia/session_24_-_january_2016/hrw_upr24_som_e_main_rev.pdf>; United Nations General Assembly, Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/18/6 (11 July 2011) available at <https://www.upr-info.org/database/index.php?limit=0&f_SUR=158&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly> [98.37], [98.102].
- ⁹² Office of the High Commissioner for Human Rights (OHCHR), Professional Training Series No.8/Rev.1 *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2004) available at <<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>>.
- ⁹³ FGS Constitution art. 40(2).
- ⁹⁴ FGS Constitution art. 129.
- ⁹⁵ NRC, *Forced Evictions note 2017* p.3.
- ⁹⁶ FGS Constitution art. 129.
- ⁹⁷ FGS Constitution art. 111H.
- ⁹⁸ FGS Constitution art. 111H(2)(c).
- ⁹⁹ See United Nations, *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions*, recommended by Economic and Social Council resolution 1989/65 of 25 May 1989 (1989) available at <<http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>> (“UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions”) [6]; Amnesty International, *14-point program for the prevention of extrajudicial executions* (1992) available at <

<https://www.amnesty.org/download/Documents/192000/pol350021993en.pdf> > (hereinafter “Amnesty International, 14-point program”) recommendation 6: No secret detention.

¹⁰⁰ CAT art. 11.

¹⁰¹ Amnesty International, *14-point program for the prevention of extrajudicial executions* (1992) available at <<https://www.amnesty.org/download/Documents/192000/pol350021993en.pdf>> (hereinafter “Amnesty International, 14-point program”) recommendation 1: Official condemnation.

¹⁰² See United Nations, *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions*, recommended by Economic and Social Council resolution 1989/65 of 254 May 1989 (1989) available at <<http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>> (“UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions”) [2].

¹⁰³ Amnesty International, 14-point program recommendation 2: Chain of command control.

¹⁰⁴ *Ibid.* Recommendation 3: Restraints on use of force.

¹⁰⁵ *Ibid.* Recommendation 9: Individual responsibility

¹⁰⁶ *Ibid.* Recommendation 12: Compensation.

¹⁰⁷ Somalia NGO Consortium and Somalia Protection Cluster, *Prevention of Forced Evictions in Somalia: Joint Protection Call to the Humanitarian Coordinator*, available at <somaliangoconsortium.org/download/578571d694820> p.2.

¹⁰⁸ NRC, *Forced Evictions note 2017* p.3.

¹⁰⁹ *Ibid.*