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WATCH

# “It’s Like We’re Always in a Prison”

Abuses Against Boys Accused of National Security Offenses in Somalia



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**Abuses Against Boys Accused of National Security Offenses  
in Somalia**

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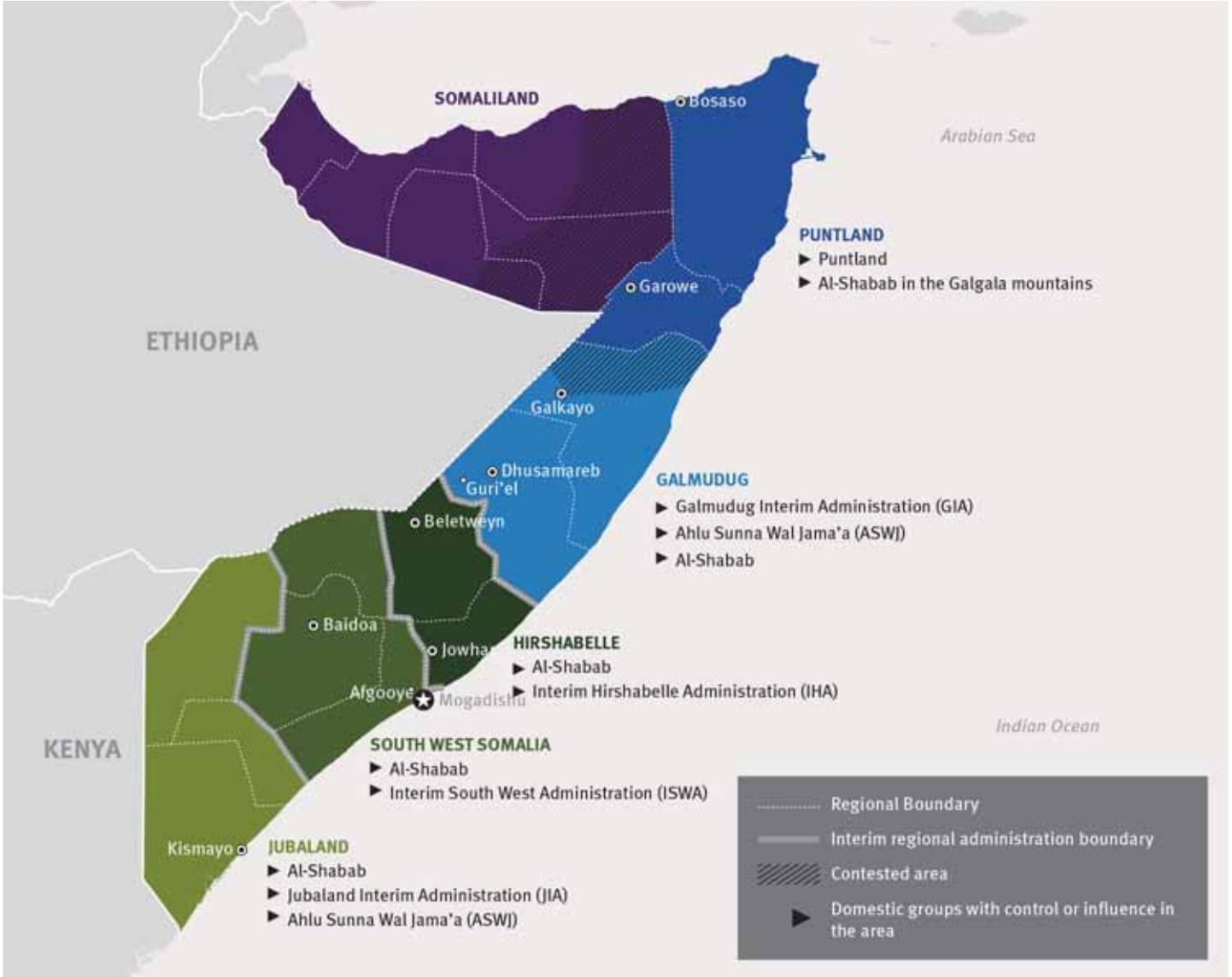
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## Glossary

|                        |  |
|------------------------|--|
| <b>Al-Shabab</b>       | Islamist armed group controlling much of the countryside and key supply routes in south-central Somalia. |
| <b>ISIS</b>            | Islamic State armed group, sometimes referred to as ISIL.  |
| <b>NISA</b>            | National Intelligence and Security Agency, Somalia's intelligence service.                               |
| <b>PIA</b>             | Puntland Intelligence Agency, also known as Puntland Intelligence Service.                               |
| <b>Barista Hisbiga</b> | Main NISA detention and investigation facility within the Presidential Palace in Mogadishu.              |
| <b>Godka Jilaow</b>    | NISA detention center.   |
| <b>MRM</b>             | United Nations Security Council's Monitoring and Reporting Mechanism on Children and Armed Conflict.     |
| <b>SEMG</b>            | UN Security Council Monitoring Group on Somalia and Eritrea.   |

# Map



## Summary

In late 2015 the Islamist armed group Al-Shabab forcibly abducted Hamza, a 15-year-old boy from the contested town of Merka in southern Somalia, and took him to one of the group's training camps. After two and half months of rudimentary training with an AK-47 assault rifle, he was among at least 64 children sent to fight for Al-Shabab in an unprecedented attack in Puntland in March 2016.

Hamza, unlike many of the boys he trained with, survived the assault. He was captured by the Puntland military and taken to jail. "Four Puntland soldiers beat me," Hamza told Human Rights Watch. "They tied my hands behind my back and legs together with a very strong rope. They beat me with their gun butts and kicked me in the chest several times. Then they threw me into their vehicle."

After six months' detention in Garowe, Puntland's administrative capital, he faced trial on charges of insurrection and terrorism before a military court. He described his trial:

The military court prosecutor asked me my name, if I had fought against Puntland, where I had been captured, and whether I had a gun. I was alone, there was no lawyer.

In court, I was asked if I was guilty, and I said, yes and that I had a gun but that I wasn't fighting. The judge said, "If you were carrying a gun, then you are part of Al-Shabab."

He was given a 10-year sentence. He has since been transferred to a child rehabilitation center, but his sentence has not been rescinded.

Hamza told Human Rights Watch he felt doubly victimized: "I feel afraid and let down. Al-Shabab forced me into this, and then the government gives me this long sentence."

All Somali parties to Somalia's 25-year-long armed conflict have recruited children, using them as combatants, porters, informants or to man checkpoints. Over the last decade, Al-Shabab has recruited thousands of children, some as young as 9, into its ranks and forced many to fight.

In 2014, Somalia's federal government committed to promptly releasing children formerly associated with Al-Shabab to the United Nations and child rehabilitation agencies.

The abuses and hardships faced by children while in the hands of Al-Shabab do not end when they come into government custody – whether surrendering, being captured, or arrested in mass sweeps. Somali government authorities hide behind an outdated and ill-functioning legal system and very real security threats to treat children alleged to have been associated with Al-Shabab first and foremost as adults and criminals, rather than as victims of the conflict.

This report is based on interviews with 15 children recruited by Al-Shabab since 2015, 10 boys held in government custody following arrests in mass sweeps, and 40 interviews with relatives of boys prosecuted by military courts, along with two dozen interviews with lawyers, advocates working with children, and senior government officials. It focuses on the government's inconsistent and at times abusive treatment of children alleged to have been associated with Al-Shabab, particularly in Mogadishu and Puntland. It finds that the arrest and detention of children alleged to have been associated with Al-Shabab by authorities are neither a measure of last resort nor are the children held for the shortest time possible.

Since 2015, authorities across Somalia have detained hundreds of boys suspected of joining or supporting Al-Shabab. In some instances, government security forces have captured boys like Hamza on the battlefield, but most boys are arrested during security operations, particularly in mass sweeps in the capital, Mogadishu.

After arrest, whether by the military, police or intelligence, children are usually transferred into the custody of Somalia's National Intelligence and Security Agency (NISA) in Mogadishu or on occasion Puntland's Intelligence Agency (PIA) in Bosaso. There they are detained and sometimes interrogated while cut off from communicating with their relatives and denied legal counsel. They are held with adult detainees and sometimes held

incommunicado. These due process violations are all detrimental to their safety and well-being and in violation of Somalia's international human rights obligations for the protection of children.

In a justice system that remains heavily reliant on forced confessions, children are not spared. Children in intelligence detention in Mogadishu and Bosasso have been coerced into signing or recording confessions and threatened and on occasion beaten, at times in ways that amount to torture.

There is no consistent government treatment of children it suspects are connected to Al-Shabab. While government officials have previously admitted to detaining boys deemed high risk, other factors, including a boy's economic status, clan affiliation and external attention to the case, also determine their fate. Many boys are eventually released without charge, often after relatives intervene and bribe officials to ensure their release. Some children are handed over to child rehabilitation and reintegration centers run by nongovernmental organizations (NGOs), while others face trial before military courts for criminal charges of Al-Shabab membership, murder or conflict-related offenses.

Under international human rights law, governments are obligated to recognize the special situation of children who have been recruited or used in armed conflict, including children involved in terrorism-related activities, and provide assistance for their physical and psychological recovery and social reintegration. While children who were members of armed groups can be tried for serious crimes, non-judicial measures should be considered, and legal proceedings should be in accordance with international juvenile justice standards, taking into consideration the best interests of the child. Sentencing should prioritize rehabilitation and reintegration into society. The UN Committee on the Rights of the Child, which interprets the Convention on the Rights of the Child that Somalia ratified in 2015, discourages countries from bringing criminal proceedings against children within the military justice system.

While prosecutions and imprisonment of children on security charges in Somalia is not widespread, children are being tried for Al-Shabab-related crimes in military courts, largely as adults. The courts have shown no consistency on dealing with these cases, yet basic due process, including the right to present a defense and the prohibition on the use of coerced evidence, is regularly flouted.

Human Rights Watch conducted research into nine cases in which children have been sentenced by the military court in Mogadishu since 2015, primarily where children have been charged with membership in Al-Shabab or allegations of providing logistical assistance to the armed group. In Puntland dozens of children including Hamza and children as young as 12 spent months in Garowe and Bosasso prisons and appeared before military courts since 2016. The bulk of the cases were linked to Al-Shabab's March 2016 attack.

The report refers in particular to the following military court trials of children:

- Five children arrested in Beletweyn, sentenced by the military court in Mogadishu on January 16, 2017 to eight years on charges of Al-Shabab membership (“armed insurrection”). Sentence reportedly upheld on appeal. They are currently serving prison sentences in Mogadishu Central Prison;
- A 16-year-old boy (aged 18 according to court documents), arrested in Mogadishu, sentenced to six years’ imprisonment in late 2016 on charges of Al-Shabab membership;
- Twenty-eight children ages 15 to 17 who took part in the March 2016 Al-Shabab operation in Puntland, sentenced by the military court on September 17, 2016, to between 10 and 20 years on charges of insurrection, terrorism and association with Al-Shabab. Handed over to a UNICEF-supported child rehabilitation center in Garowe in April, but sentences not rescinded; sentences reduced on appeal to 10 years on December 31, 2017;
- Nine children and one individual qualified as a child who took part in the March 2016 Al-Shabab operation in Puntland, sentenced on June 18, 2016 to death on charges of insurrection, terrorism, and association with Al-Shabab by the military court; sentences commuted to 20 years on January 26, 2017, after they were identified as under 18 by a joint UN-government age assessment exercise. An additional two individuals were later added to this group. Handed over to a UNICEF-supported child rehabilitation center in Garowe in April, but sentences not rescinded;
- A child and an 18-year-old among seven defendants sentenced to death for the murder of three government officials on February 15, 2017 in Bosasso; commuted to life on appeal on March 23 after they were identified as 18 and under by the authorities. Currently serving prison sentences in Bosasso prison; and;

- A child among six defendants charged with membership in ISIS in Bosasso on February 21, 2017; released in May after providing evidence to the court that they were arrested while defecting from ISIS.

In Mogadishu Central Prison, boys are detained in conditions that fail to meet basic juvenile justice standards, including with no access to education.

While Somali authorities have handed over 250 children to UNICEF-supported children's rehabilitation centers since 2015 and child protection advocates say that direct handovers from NISA have increased in 2017, this has often been only after sustained advocacy efforts by child protection advocates and following lengthy detention of the children, rather than a clear sign of the authorities' commitment to children's rehabilitation.

Once admitted to child rehabilitation programs, authorities, including from the security forces, have occasionally interrogated children, and their legal status has at times remained unclear: in Puntland 40 children handed over to a UNICEF partner for rehabilitation in 2017 are still serving prison sentences of between 10 and 20 years for insurrection and Al-Shabab membership, raising serious concerns that these centers could serve more as correctional facilities than rehabilitation centers.

Independent oversight of children held on security charges within the criminal justice system is limited. While government oversight has improved, international and Somali child protection advocates have very limited access to intelligence facilities, prisons, and military courts. Similarly, the number of children held for Al-Shabab-related crimes in government custody around the country is unknown and there is no systematic recordkeeping system in place.

The existing legal framework regulating cases of children charged with Al-Shabab-related crimes is at best limited and at times in clear contravention of Somalia's international obligations. New and draft laws and policies, including a draft anti-terrorism law, risk making it easier, not harder, to detain and prosecute children for Al-Shabab related crimes without basic juvenile justice protections for children and little consistent access to rehabilitation and reintegration.

While the Somali authorities face serious security threats, current practices are not only contrary to the best interests of children but may be counterproductive in the fight against Al-Shabab and only compound public fears and mistrust in the security forces. A 14-year-old boy who was picked up in a mass sweep and detained by NISA for two and half months in Mogadishu said: “You can get caught up in a bomb attack or you get caught up in a mass sweep by NISA. We are always being stopped, questioned. Either way, you face problems. It’s like we’re always in a prison.”

As Al-Shabab continues to unlawfully recruit and use children in its fight against the Somali government, the government, including state and regional administrations, need a coherent approach to children accused of Al-Shabab-related crimes that places the best interests of the child at the forefront.

The Somali government should immediately commit to ending arbitrary detention of children, allow for systematic independent oversight of children in custody, and transfer children to child protection advocates for rehabilitation, and when feasible, reintegration.

The government should not try children accused of crimes before military courts but bring them before civilian courts according to international juvenile justice standards, granting them full due process guarantees, including prompt access to counsel and their families. Children and adults should be detained separately. Any punishment for criminal offenses should be appropriate to their age, consider alternatives to detention, and be aimed at their rehabilitation and reintegration into society.

The government, supported by its international partners, should establish a civilian oversight system, notably a child rights’ commissioner, to review all cases of children in government custody suspected of association with Al-Shabab, while committing to limited security force interaction with children once handed over to child rehabilitation facilities. It should ensure that children are never detained with adults and not held in government custody solely for their association with al-Shabab or other armed groups.

Federal and regional authorities should commit to a thorough review, with international support, of existing and draft laws and policies that relate to treatment of children formerly associated with Al-Shabab or detained for security-related offenses.

International actors in the security sector, such as the United States, the United Kingdom, Turkey and the United Arab Emirates (UAE) should press for more concerted efforts to facilitate the handover of children to rehabilitation while helping to establish a fair and competent juvenile justice system. Partners should encourage lawmakers and authorities to criminalize and prosecute anyone found responsible for abuse of children.

# Key Recommendations

## Immediate Action for the Somali Government

- End all prosecutions in military courts of individuals accused of Al-Shabab related crimes while under age 18; direct the military chief prosecutor to transfer to the civilian courts all future cases of suspected child offenders including cases in which it is uncertain whether the individual was 18 or over at the time of the alleged offense;
- Ensure that children are not detained and prosecuted for their participation in the armed conflict or mere membership in an armed group without evidence of further criminal offense;
- Allow independent humanitarian agencies unrestricted access to facilities where children are detained, including intelligence-run detention facilities;
- Publicly support and ensure the implementation of the standard operating procedures for the reception and handover of children separated from armed groups (“SOPs on reception and handover”) and direct state security forces to ensure that children are handed over within the stipulated 72 hours to civilian rehabilitation and reintegration programs;
- Line ministries and the parliament should review existing and pending federal and regional legislation, including the Anti-Terrorism bill and re-codified penal code, and policies relating to the handling of Al-Shabab, to bring them in line with international standards on children’s rights and juvenile justice.

## Intermediate and Long-Term Actions

- Appoint a child rights’ commissioner within the future National Human Rights Commission, in charge of overseeing the caseload of children handed over to civilian rehabilitation. The appointee should be granted unfettered access to all detention facilities in which children are detained, informed of and take part in releases from child rehabilitation centers;
- Ensure, with international support, that any children accused of crimes under national or international law allegedly committed while associated with armed

groups are treated in accordance with international juvenile justice standards— notably ensuring that detention is a last resort and is used for the minimum possible time, that children are detained separately from adults, that they have access to legal counsel, that the best interest of the child is the primary consideration, and that rehabilitation and reintegration into society are prioritized.

## Methodology

This report is based on interviews and other information gathered by Human Rights Watch between November 2016 and October 2017. Interviews were conducted in Somali or English, in person in Somalia, including in Mogadishu, Baidoa and Garowe, or by telephone.

Human Rights Watch interviewed 15 boys, between ages 14 and 17, who had been recruited by the Islamist armed group Al-Shabab since 2015. Eight of these children were subsequently tried by military courts in Puntland. Human Rights Watch also interviewed a dozen adults whose children had been recruited or elders from different clans who had come under pressure to hand over children to Al-Shabab.

Human Rights Watch also interviewed 10 boys who had been detained during mass government sweeps or held in government custody on security-related offenses, and 40 family members of children tried by military courts. We also interviewed lawyers, Somali and international child protection advocates, and members of international organizations working on disarmament, demobilization and reintegration (DDR).

Human Rights Watch also conducted 10 interviews with government and judicial officials in Mogadishu, Baidoa and Garowe. In Mogadishu we met with amongst others Abdullahi Mohamed Ali “Sanbaloolshe,” the former head of NISA, Col. Liban Ali Yarow, the head of the military court, Ahmed Ali Dahir, the federal attorney general, and General Hussein Hassan Osman, the commander of the custodial corps in Mogadishu. In Garowe, we met with the late Col. Abdikarim Hassan Firdhiye, the then military court prosecutor, Mohamed Ali Farah, the director general of the Ministry of Justice, and the commander of the Garowe prison. In Baidoa, we interviewed the regional head of NISA, and Hassan Hussein Mohamed, the Interim South West Administration (ISWA) minister for disarmament, demobilization, and rehabilitation.

Human Rights Watch also sent a summary of our findings and final questions in November 2017 to the head of NISA, the Federal Minister of Justice, and the Puntland Minister of Justice but did not receive any written responses to these letters. (Copies of letters are included in the appendices section).

Human Rights Watch research focused on three military court trials in Puntland in which children were tried. While these trials have already received some level of media and international attention, they have not received scrutiny from a human rights perspective. In Mogadishu Human Rights Watch gathered information on nine military court trials implicating 16 children, since 2015. We learned about these trials, which have not received international scrutiny, through outreach to informed stakeholders, and by identifying relatives of defendants or lawyers involved in the cases. Where possible, we corroborated witness accounts with other accounts and sources, including lawyers and military court documents. Human Rights Watch did not attend any court proceedings.

This report does not document the full caseload of prosecutions of children by military courts since 2015.

Human Rights Watch informed interviewees of the nature and purpose of our research, and our intention to publish a report with the information gathered. We informed each potential interviewee that they were under no obligation to speak with us, that Human Rights Watch does not provide direct humanitarian services, and that they could stop speaking with us or decline to answer any question with no adverse consequences. We obtained oral consent for each interview and took care to avoid re-traumatizing interviewees. Interviewees did not receive material compensation for speaking with Human Rights Watch.

In this report “child,” “children,” and “boy” are used to refer to anyone under the age of 18, consistent with usage under international law. As described below, age verification in Somalia is a complicated endeavor. International standards urge authorities and judicial officials to err on the side of caution when determining ages in prosecutions. In this report, Human Rights Watch has with two exceptions relied on the age given by the child or their relatives.

The report refers to juvenile justice as the procedures, policies and laws that are applied to children who are above the minimum age of criminal responsibility and who come into conflict with the law. The Somali criminal code, which is currently being amended, sets 14 as the age of criminal responsibility. While international law does not set a minimum age of criminal responsibility, the United Nations Committee on the Rights of the Child states

that a minimum age below the age of 12 is internationally unacceptable, and encourages states not to lower the age to 12 if it is currently set higher.<sup>1</sup>

This report does not examine recruitment trends, or the use and the fate of women and girls who have allegedly been affiliated with Al-Shabab; this area requires further research.

We have used pseudonyms for interviewees referred to in this report and removed identifying information to protect their identity and to minimize the very real risk of retaliation whether by Al-Shabab or government actors. Human Rights Watch also withheld identification of organizations our researchers met with that requested anonymity in order not to jeopardize their ongoing operations.

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<sup>1</sup> UN Committee on the Rights of the Child (CRC), General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, paras. 32-33, available at: <http://www.refworld.org/docid/467ofca12.html> (accessed November 2, 2017).

# I. Context

## Somalia's Ongoing Conflict

Since the fall of Siad Barre's government in 1991, state collapse and civil war have contributed to making Somalia one of the world's most enduring human rights and humanitarian crises. Successive armed conflicts have resulted in rampant violations of the laws of war by all sides, including indiscriminate attacks, unlawful killings, rape, torture, and looting, causing massive civilian suffering and displacement.<sup>2</sup>

The selection of a new government and president, Mohamed Abdullahi Mohamed "Farmajo," following a protracted and controversial electoral process in early 2017 has not brought an end to the volatility, insecurity, and large-scale humanitarian crisis. The government, backed by the African Union Mission to Somalia (AMISOM)<sup>3</sup> and other regional and international armed forces, remains at war with the Islamist armed group Al-Shabab, which controls large swathes of territory and many key transport routes. President Farmajo announced early on in his presidency plans to step up military operations against Al-Shabab.<sup>4</sup> While US-supported actions in conjunction with the Somali government forces and unilateral actions against Al-Shabab have increased,<sup>5</sup> large-scale new military offensives by the government or AMISOM did not materialize.

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<sup>2</sup> For a description of the major domestic parties to the conflict in Somalia over the last decade see Human Rights Watch, *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government and AMISOM in Somalia*, April 19, 2010, <http://www.hrw.org/reports/2010/04/19/harsh-war-harsh-peace>.

<sup>3</sup> In 2007, the African Union Peace and Security Council deployed a regional peace support force to Somalia mandated by the UN Security Council and supported by the AU's Peace and Security Operations Division to provide protection for Somali government officials and infrastructure and contribute to the secure delivery of humanitarian assistance. AMISOM was also given a mentoring role to support the "re-establishment and training" of Somali security forces. Since then, AMISOM's mandate, size, and geographical presence have all steadily increased. See UN Security Council, Resolution 1744 (2007), S/RES/1744 (2007), <http://www.un.org/News/Press/docs/2007/sc8960.doc.htm> (accessed September 20, 2017).

<sup>4</sup> See for example, National Public Radio "Somali president offered jihadi group amnesty option for 60 days," April 9, 2017, <http://www.npr.org/2017/04/09/523203718/somali-president-offers-jihadi-group-amnesty-option-for-60-days> (accessed September 20, 2017).

<sup>5</sup> For a tally of US operations in Somalia in 2017 see Bureau of Investigative Journalism, "Somalia: Reported US actions 2017," <https://www.thebureauinvestigates.com/drone-war/data/somalia-reported-us-covert-actions-2017#strike-logs> (accessed September 20, 2017); For a tally of US operations in Somalia in 2018 see Bureau of Investigative Journalism, "Somalia: Reported US actions 2018," <https://www.thebureauinvestigates.com/drone-war/data/somalia-reported-us-actions-2018> (accessed February 12, 2018).

In 2017, Somalia faced yet another humanitarian crisis; by the year's end while the risk of famine was reduced, over half of the country's 12.4 million people were still in need of humanitarian assistance.<sup>6</sup> While the new administration said addressing the humanitarian crisis was a priority, one million people have been newly displaced,<sup>7</sup> adding to the country's existing 1.1 million internally displaced people, many of them children. Serious abuses against those internally displaced persist,<sup>8</sup> including forced evictions,<sup>9</sup> and attacks on humanitarian agencies have increased.<sup>10</sup>

The establishment of a federal framework is still underway, with political, geographic and jurisdictional boundaries still being negotiated by the federal and regional authorities.<sup>11</sup> Since 2013, four provisional interim regional states, aspiring to become federal member states, have been established: the Interim Jubaland Administration (IJA),<sup>12</sup> Interim South West Administration (ISWA),<sup>13</sup> the Galmudug Interim Administration (GIA),<sup>14</sup> and finally, in

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<sup>6</sup> See, for example, UNICEF, "Somalia Situation Report n.13," August 31, 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Somalia%20Humanitarian%20Situation%20Report%20No.%2013%20-%2016-31%20August%202017.pdf> (accessed November 6, 2017).

<sup>7</sup> OCHA, Humanitarian Bulletin, July 31, 2017 <https://reliefweb.int/sites/reliefweb.int/files/resources/FINAL%20July%202017%20Humanitarian%20Bulletin-v2.pdf> (accessed September 20, 2017); OCHA, Humanitarian Snapshot, February 5, 2018, [https://reliefweb.int/report/somalia/somalia-humanitarian-snapshot-5-february-2018?utm\\_medium=social&utm\\_campaign=shared&utm\\_source=twitter.com](https://reliefweb.int/report/somalia/somalia-humanitarian-snapshot-5-february-2018?utm_medium=social&utm_campaign=shared&utm_source=twitter.com), (accessed February 12, 2018).

<sup>8</sup> For more information on sexual violence against the internally displaced, see, for example, Amanda Sperber, "Fleeing hunger, Somali women abused in displacement camps," Agence France-Presse, June 2, 2017, [http://www.africadaily.net/reports/Fleeing\\_hunger\\_Somali\\_women\\_raped\\_in\\_displacement\\_camps\\_999.html](http://www.africadaily.net/reports/Fleeing_hunger_Somali_women_raped_in_displacement_camps_999.html) (accessed September 20, 2017); UN Security Council, "Report of the Secretary-General on Somalia," S/2017/751, September 5, 2017, para. 57, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2017/751](http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/751) (accessed September 20, 2017).

<sup>9</sup> See, for example, Moulid Hujale, "'People were Screaming:' Troops Destroy \$200,00 aid camps in Somalia," January 15, 2018, [https://www.theguardian.com/global-development/2018/jan/15/troops-destroy-aid-camps-somalia-4000-people-homeless?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.theguardian.com/global-development/2018/jan/15/troops-destroy-aid-camps-somalia-4000-people-homeless?utm_source=dlvr.it&utm_medium=twitter) (accessed January 17, 2018); "Somalia: Thousands Homeless as Settlements Razed. Government Pledge to Investigate Forced Evictions a Positive Step," Human Rights Watch news release, January 28, 2018.

<sup>10</sup> See, for example, Katy Magiro, "Aid Worker Kidnaps and Roadblocks Soar in Famine-Threatened Somalia," Thomson Reuters Foundation, May 4, 2017 (accessed September 20, 2017).

<sup>11</sup> See, for example, Jason Mosley, "Somalia's Federal Future/ Layered Agendas, Risks and Opportunities," *Chatham House*, September 2015, [https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/20150902SomaliaFederalFutureMosley.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150902SomaliaFederalFutureMosley.pdf) (accessed September 13, 2017).

<sup>12</sup> Comprising Gedo, Middle and Lower Juba regions.

<sup>13</sup> Compromising of Lower Shabelle, Bay, and Bakool.

<sup>14</sup> Made up of Galgadud and the southern part of Mudug.

October 2016, Interim Hirshabelle Administration (IHA).<sup>15</sup> Puntland, in northeastern Somalia, declared itself a semi-autonomous state in 1998, but recognizes its status as a constituent part of the Somali state; the region has the most developed political and legal framework; Somaliland in northwestern Somalia, declared independence from Somalia in 1991.

## Children in Somalia's Conflict

Children continue to be killed or maimed by targeted and indiscriminate violence, widespread insecurity, and attacks on schools.<sup>16</sup> Children, particularly vulnerable to food insecurity and disease, have been disproportionately affected by the country's humanitarian crises and large-scale displacement. During the 2011 famine, half of the 260,000 people who died were children.<sup>17</sup> In 2017, acute malnutrition rates among children increased by 50 percent.<sup>18</sup>

Throughout Somalia's 25-year-long conflict, all Somali warring parties, including government forces, clan militia, and Islamist insurgency groups have used children in combat roles, as informants and in support roles. Somali parties to the conflict, including the national army, continue to be included in the UN secretary-general's list of parties that recruit and use children in conflict.<sup>19</sup>

Poverty, destruction of livelihoods, traditional protection structures, and separation or destruction of families and lack of opportunities are key factors driving child recruitment

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<sup>15</sup> Consisting of Hiraan and Middle Shabelle. The status of the Benadir region within the federal system in which Mogadishu is located has not been resolved. See UN Security Council, "Report of the Secretary-General on Somalia," S/2017/751, September 5, 2017, para. 7.

<sup>16</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Annual Report of the Secretary-General on Children and Armed Conflict," S/2017/821, August 24, 2017, para. 137 <http://undocs.org/en/S/2017/821>, (accessed November 6, 2017).

<sup>17</sup> BBC, "Somalia famine 'killed 260,000 people,'" May 2, 2013, <http://www.bbc.com/news/world-africa-22380352> (accessed September 12, 2017).

<sup>18</sup> See, for example, UNICEF, "As famine looms, malnutrition and disease rise sharply among children in Somalia," March 30, 2017; Save the Children, "At least 20,000 children at risk of dying in drought-stricken Somalia," June 29, 2017, <https://www.savethechildren.net/article/least-20000-children-risk-dying-drought-stricken-somalia> ; UNICEF, Humanitarian Situation Report," <https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Somalia%20Humanitarian%20Situation%20Report%20No.%2013%20-%202016-31%20August%202017.pdf> (accessed September 12, 2017).

<sup>19</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Identifying Parties to the Conflict Who Commit Grave Abuses against Children," <https://childrenandarmedconflict.un.org/our-work/sg-list/> (accessed September 26, 2017).

across Somalia.<sup>20</sup> Many children have been orphaned or separated from their parents. While child labor is not a new phenomenon in Somalia, where children in rural areas have often been expected to help the family, conflict along with recurrent drought, have compelled many children to support their family by dropping out of school and becoming the sole breadwinner.<sup>21</sup>

Over the last decade, Al-Shabab has been the main perpetrator of large-scale child recruitment. Al-Shabab has used children in military operations and sought to indoctrinate children's in its campaign against the government and foreign forces in Somalia and as a means of controlling everyday lives of people living in areas under its control.

Al-Shabab's recruitment of children increases according to its military needs. Human Rights Watch documented increased forced recruitment of children, some as young as 10, between 2010 and 2012 in line with an upsurge in fighting in Mogadishu between Al-Shabab, AMISOM and Somali government forces.<sup>22</sup> Al-Shabab also used schools to recruit students and teachers to their cause and into their forces, by replacing teachers with their own members, threatening and at times killing teachers who refused to comply with restrictions on certain subjects and on their religious teachings, and at times literally pulling children off their school benches onto the front line.<sup>23</sup>

### *Ongoing Recruitment, Use of Children by Al-Shabab*

Al-Shabab continues to recruit children in significant numbers. According to United Nations data,<sup>24</sup> Al-Shabab recruitment of children increased in 2015 after a lull in 2013 and

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<sup>20</sup> Human Rights Watch interview with NISA official, Baidoa, March 6, 2017; interview with UNICEF partner, Baidoa, March 6, 2017.

<sup>21</sup> See, for example, Save the Children, "Children Face Increased Violence and Exploitation as Famine Looms in Drought-stricken Somalia," April 28, 2017, <https://www.savethechildren.net/article/children-face-increased-violence-and-exploitation-famine-looms-drought-stricken-somalia> (accessed September 12, 2017).

<sup>22</sup> Human Rights Watch, *No Place for Children: Child Recruitment, Forced Marriage and Attacks on Schools in Somalia*, February 20, 2012, <https://www.hrw.org/report/2012/02/20/no-place-children/child-recruitment-forced-marriage-and-attacks-schools-somalia>.

<sup>23</sup> Ibid.

<sup>24</sup> UN Security Council resolution 1612 called for the establishment of a monitoring and reporting system (known as MRM) into six grave violations perpetrated against children in armed conflict. The MRM was established in 2005 and now operates in 13 countries including Somalia, feeding information on abuses against children in conflict from the field to the Security Council. While a UN-led process, in Somalia the Danish Refugee Council (DRC) oversees data collection by local partners.

2014.<sup>25</sup> In the run-up to an unusual March 2016 attack by Al-Shabab in Puntland,<sup>26</sup> the group embarked on a particularly aggressive recruitment drive of children, and the UN found that during the first three months of 2017, Al-Shabab recruited 389 boys and 8 girls. The UN documented 1,915 cases of recruitment and use of children throughout 2016, double the amount documented in 2015, with 1,206 cases attributed to Al-Shabab.<sup>27</sup>

Al-Shabab relies on a range of more or less coercive measures to entice or force children into their ranks – including forcibly picking up children at gunpoint in the streets or using youth to entice others into joining, promising rewards.<sup>28</sup>

Al-Shabab has increasingly relied on the *duksis* (Quranic schools), which it manages, to indoctrinate children and coerce them into military training, particularly in areas and among communities where it seeks to reassert control.<sup>29</sup> It also recruits children into its *duksis* and training system via religious events, notably Quranic recital competitions.<sup>30</sup>

Once recruited, children are generally taken to an Al-Shabab training camp where they receive physical and light weapons training as well as religious indoctrination. Life in the

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<sup>25</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Report of the Secretary General. Children and Armed Conflict,” A/70/836–S/2016/360, April 20, 2016, para. 16, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2016/360&referer=/english/&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/360&referer=/english/&Lang=E) (accessed September 26, 2017); Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Annual Report of the Secretary-General on Children and Armed Conflict,” S/2017/821, para. 134 (accessed November 6, 2017).

<sup>26</sup> See, for example, Report of the Secretary-General on Somalia, S/2016/430, May 9, 2016, para. 58 [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2016/430](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/430) (accessed November 6, 2017); During the first three months of 2016 alone, 268 alleged abductions of children were documented, the majority attributed to Al-Shabab, according to SEMG; UN Security Council, “Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015),” S/2016/919, October 13, 2016, Annex 7.2.

<sup>27</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Annual Report of the Secretary-General on Children and Armed Conflict,” S/2017/821, para. 134 (accessed November 6, 2017), para. 134.

<sup>28</sup> Human Rights Watch multiple interviews with children formerly associated with Al-Shabab in Garowe, December 2016, Baidoa, March 2017.

<sup>29</sup> For more information on recent recruitment campaigns see “Somalia: Al-Shabab Demanding Children. Residents Threatened to Handover Boys, Girls,” Human Rights Watch news release, January 15, 2018, <https://www.hrw.org/news/2018/01/14/somalia-al-shabab-demanding-children>; also Human Rights Watch interview with Biomaal elder, Mogadishu, May 20, 2017; phone interviews with families in Adado, children in Adale August 24, 2017.

<sup>30</sup> Human Rights Watch multiple interviews with children formerly associated with Al-Shabab in Garowe, December 2016; interviews with relatives whose children or siblings were abducted, Baidoa, March 5, 2017.

camps is harsh – children who fail to obey orders, question their trainers, or attempt to escape, are often punished.<sup>31</sup>

Al-Shabab uses children to fight, including deploying them on the front line or in other military activities, or to run errands or carry food and provisions for the fighters. The extent to which Al-Shabab continues to rely on children to fill its ranks in more traditional combat operations became clear during the March 2016 operation in Puntland. From March 13 to 28, Al-Shabab conducted an unprecedented attack along the Puntland coastline, with some fighters later moving into Galmudug, involving hundreds of fighters.<sup>32</sup> The UN Security Council Somalia Eritrea Monitoring (SEMG) group described it as an apparent attempt to eliminate a faction of the Islamic State (also known as ISIS) that has been active in Puntland’s northeast.<sup>33</sup> According to the SEMG, 350 to 400 fighters took part in that operation, of which at least 109 were children. This number, however, does not include children killed during the operation.<sup>34</sup>

### *Existing Policy Framework Affecting Children Formerly with Al-Shabab*

Current and previous Somali governments in both south-central Somalia and more recently Puntland have repeatedly offered amnesties to Al-Shabab members who leave the group.<sup>35</sup> The policy framework surrounding these amnesties remains vague.<sup>36</sup>

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<sup>31</sup> Human Rights Watch multiple interviews with children formerly associated with Al-Shabab in Garowe, December 2016; interviews with children formerly associated with Al-Shabab in Baidoa, Mogadishu, March/May 2017.

<sup>32</sup> For a detailed description of events, see UN Security Council, “Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015),” S/2016/919, October 13, 2016, Annex 1.4, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2016/919](http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/919) (accessed September 22, 2017).

<sup>33</sup> Since 2015, a group led by a former Al-Shabab cleric who pledged allegiance to the Islamic State (ISIS) has been operating in northeastern Puntland around the Golis Mountains and the town of Qandala. For more information on the multiple fronts that the Puntland authorities are facing, see International Crisis Group, “The Islamic State Threat in Puntland State,” November 17, 2016, <https://www.crisisgroup.org/africa/horn-africa/somalia/islamic-state-threat-somalias-puntland-state> (accessed August 25, 2017). For more on the operation, see Abdiqani Hassan, “Somali militants seize small port in Puntland region,” Reuters, March 15, 2016, <http://af.reuters.com/article/topNews/idAFKCN0W0V9> (accessed April 19, 2016); Robyn Kriel and Briana Duggan, “Al-Shabaab child soldiers captured in Somalia firefight,” CNN, April 1, 2016, <http://edition.cnn.com/2016/03/31/africa/al-shabaab-child-soldiers/> (accessed April 19, 2016).

<sup>34</sup> UN Security Council, “Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015),” S/2016/919, October 13, 2016, Annex 1.4.

<sup>35</sup> National Public Radio, “Somali president offered jihadi group amnesty option for 60 days,” April 9, 2017; Garowe Online, “Somalia: Puntland grants renewed amnesty for Al Shabaab defectors,” August 2, 2015, <http://www.garoweonline.com/en/news/puntland/somalia-puntland-grants-renewed-amnesty-for-al-shabaab-defectors> (accessed September 22, 2017).

<sup>36</sup> A national reconciliation and amnesty policy was passed by the previous government in June 2016. The policy is vague, does not clarify linkage with existing policies, notably around disengaged combatants, and while it states that “war crimes,

In 2013, the federal government endorsed the National Programme for the Treatment and Handling of Disengaged Combatants in Somalia (National Programme) with the stated aim of supporting the rehabilitation of former combatants classified as low risk.<sup>37</sup> While the national programme stipulates that former combatants who are captured or detained also qualify for the program, the working consensus is that only former combatants who surrender to the government qualify and enter the screening process, although there is confusion among key actors as to whether or not that is the case.<sup>38</sup> The national programme states that children should be handed over to UN Children’s Fund (UNICEF) within 72 hours.<sup>39</sup>

Intelligence agencies, notably the National Intelligence and Security Agency (NISA) in Mogadishu and several other towns in south-central Somalia, take the lead in screening former combatants for the program – classifying them into high and low risk categories – and security-related investigations.<sup>40</sup> NISA is also currently determining the age of individuals who come into its custody.

According to a number of individuals working with former combatants programming, the screening process, its outcome, and the aim and nature of rehabilitation, require further clarity and consistency.<sup>41</sup>

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crimes against humanity, crimes of genocide, crimes of sexual violence, and gross violations of human rights and humanitarian law shall not be included in the scope of application of the amnesty,” it neither defines these crimes, nor spells out responsibility for these crimes as a criteria for exclusion from the amnesty. “National reconciliation and amnesty policy,” on file with Human Rights Watch.

<sup>37</sup> 2013 National Programme for the Treatment and Handling of Disengaged Combatants and Youth at Risk in Somalia, on file with Human Rights Watch, p. 8. There are many other gaps within the policy and questions about its implementation, for example the policy itself does not define whether rehabilitation is in fact compulsory, a form of alternative punishment to incarceration, or merely a form of vocational training. While participants to the programs are allowed, pending NISA approval, to leave the center on the weekends, the voluntariness of admission and exit from the center remains unclear. Human Rights Watch interview with team working with former combatants, Mogadishu, October 26, 2017.

<sup>38</sup> Human Rights Watch interview with team working with former combatants, Mogadishu, October 26, 2017; interview with UN official, Mogadishu, October 26, 2017; skype interview with international expert working on former combatant programming, September 12, 2017.

<sup>39</sup> 2013 National Programme for the Treatment and Handling of Disengaged Combatants and Youth at Risk in Somalia, on file with Human Rights Watch, p. 11.

<sup>40</sup> Human Rights Watch multiple interviews with international experts working in former combatants’ programming.

<sup>41</sup> Human Rights Watch skype interview with UNSOM official Baidoa, November 4, 2016; interview with NISA official, Baidoa, March 6, 2017 ; Human Rights Watch skype interview with UNSOM , August 3, 2017; For an overview of some of the previous gaps identified in former combatants’ programs see for example: Casey-Maslen, Stuart, ‘Disengaged Combatants,’ A Review of the Normative Framework, September 2013, <https://deanpiedmont.files.wordpress.com/2015/08/towards-a-normative->

In late 2016, the UN and other actors involved with former combatants, began to work with NISA to develop standardized screening and risk assessments to identify low versus high-level defectors.<sup>42</sup> There are currently no formal reception centers, and former combatants are generally screened in intelligence facilities.<sup>43</sup> There is no independent monitoring of the screening process.

In 2012, the then transitional federal government, signed an action plan to end and prevent child recruitment and use by the Somali National Army, which laid out a series of measures that the government should take to ensure that children associated with armed groups in government custody are accorded protection in line with international standards and not tried before military courts.<sup>44</sup>

In February 2014, the federal government in Somalia signed standard operating procedures for the reception and handover of children separated from armed groups (the “SOPs on reception and handover”) that stipulate that children, whether having escaped, been captured, or having been otherwise separated from armed groups, or in government custody should be handed over to UNICEF for rehabilitation within 72 hours of having been taken into government custody.<sup>45</sup> So far, over 250 children formerly associated with Al-Shabab have been handed over to UNICEF since 2015.<sup>46</sup>

The SOPs also state that debriefings with children in government custody should focus on facilitating the prompt return to their families, and should in no way serve to obtain

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framework-treatment-of-disengaged-combatants.pdf (accessed August 25, 2017); Vanda Felbab-Brown, “DDR-A Bridge Not Too Far: Field Report from Somalia,” June 4, 2015, <https://www.brookings.edu/research/ddr-a-bridge-not-too-far-a-field-report-from-somalia/> (accessed September 28, 2017).

<sup>42</sup> UNSOM, “Somali intelligence agency officials’ set-up harmonized screening criteria for former Al-Shabaab combatants,” December 6, 2016, <https://unsom.unmissions.org/somali-intelligence-agency-officials-set-harmonized-screening-criteria-former-al-shabaab-combatants> (accessed August 8, 2017).

<sup>43</sup> The checklists allow suspects to be held for 72 hours for screening. Human Rights Watch Skype interview with international expert working on former combatant programming, September 12, 2017.

<sup>44</sup> Action Plan Recruitment and Use, on file with Human Rights Watch. See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Somali Transitional Federal Government signed an Action Plan to end recruitment and use of children,” July 3, 2012 <https://childrenandarmedconflict.un.org/press-release/somali-action-plan-to-end-recruitment-and-use-of-children/> (accessed November 6, 2017).

<sup>45</sup> Standard operating procedures for the reception and handover of children separated from armed groups in Somalia, on file with Human Rights Watch.

<sup>46</sup> Human Rights Watch email correspondence with UNICEF staff, January 9, 2018.

information “under force or threat of force, real or implied.”<sup>47</sup> The SOPs on reception and handover do not spell out the process of release, although they do call for procedures to be established; these have not been developed to date. The SOPs do not identify or describe the role of the intelligence agencies in the process, despite the fact that in practice, as will be described below, in south-central Somalia NISA is clearly in charge of screening and interrogations of children.

The implementation of the SOPs is inconsistent, key stakeholders at times unwilling to implement them, and independent oversight of screening processes and custody is severely limited. This has left children in limbo, sometimes in intelligence facilities, prison and on other occasions in adult rehabilitation camps, for long periods.

Under its own standard operating procedures on handover of combatants, the African Union Forces in Somalia (AMISOM) have committed to ensuring a safe handover, and to keep records of any arrests and handovers.<sup>48</sup> However credible sources told Human Rights Watch that this was not done systematically by troop-contributing countries.<sup>49</sup>

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<sup>47</sup> Standard operating procedures for the reception and handover of children separated from armed groups in Somalia, on file with Human Rights Watch.

<sup>48</sup> Human Rights Watch Skype interview with children protection expert, February 23, 2017.

<sup>49</sup> Human Rights Watch Skype interview with children protection expert, February 23, 2017; Skype interview with UN official, September 18, 2017.

## II. Abuses Against Children in Pre-charge Detention

Abuses faced by children who have filled the ranks of Al-Shabab or are accused of having worked for or sympathized with Al-Shabab do not end once they escape or when government forces capture or detain them.

Under international law, governments are obligated to recognize the special situation of children who have been recruited or used in armed conflict and to treat them first and foremost as victims. The Convention on the Rights of the Child states that the arrest, detention and imprisonment of a child should be a measure of last resort and for the shortest time possible,<sup>50</sup> and calls on governments to establish alternatives to judicial proceedings for children.<sup>51</sup> Former child soldiers should be rehabilitated and reintegrated into society.

In south-central Somalia, primarily Mogadishu, and in Puntland arrest and detention of children alleged to have been associated with Al-Shabab by authorities are neither a measure of last resort nor are the children held for the shortest time possible. The process is at times abusive.

There is currently no systematic recordkeeping in place to keep track of children in government custody, and the limited data that is collected is rarely disaggregated.<sup>52</sup> While the UN through its monitoring and reporting system (MRM) is collecting information on detention of children on security-related offenses, UN officials told Human Rights Watch that they are not able to systematically follow-up on incidents.<sup>53</sup>

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<sup>50</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 37 (b).

<sup>51</sup> CRC art. 40. 3 (b).

<sup>52</sup> Human Rights Watch repeatedly requested disaggregated data from the Ministry of Justice and the Attorney General's office via email and in a November 2 letter to the Minister of Justice that can be found in this report appendices.

<sup>53</sup> Human Rights Watch interview with UNSOM official, Mogadishu, May 23, 2017.

## Pathways into Government Custody

Harsh conditions, including lack of medical care,<sup>54</sup> or merely missing home spur children to find ways to escape from Al-Shabab ranks despite fear of being caught.<sup>55</sup> An 18-year-old, recruited by Al-Shabab at 16 and later escaped, said: “There are no advantages to being with Al-Shabab. You are not with your parents. Whenever I think about my time with them, I think about all the difficulties, always fighting. Now I feel as though I have something to look forward to.”<sup>56</sup>

Three boys said that a particularly harsh battle in which they had lost friends prompted them to escape.<sup>57</sup> “There was a lot of fighting, five children died, all my friends. The rest of us got scared and ran away,” said a 16-year-old boy who escaped from Al-Shabab in late 2016. “I threw my gun away and escaped.”<sup>58</sup>

Others are captured or arrested during military operations and taken into government custody.

A 16-year-old who had been forcibly recruited by Al-Shabab and captured by Puntland forces during the March 2016 Al-Shabab attack said: “This was the first time I had fought. It was heavy fighting. Many were killed. Both my friends Hassan and Yusuf [boys he was trained with] were killed. I was so shocked when I saw their bodies.”<sup>59</sup>

Children are on occasion mistreated by authorities upon apprehension.

Four Puntland forces brutally beat me, said a 16-year-old from Merka. They tied my hands and legs together at my back with a very strong rope. They beat me with their gunbutts and kicked me on my chest several times. They

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<sup>54</sup> Human Rights Watch interview with children formerly with Al-Shabab, Baidoa, March 6, 2017; interview with children formerly with Al-Shabab, Mogadishu, May 24, 2017.

<sup>55</sup> Human Rights Watch interview multiple interviews with children formerly associated with Al-Shabab, Mogadishu, May 24, 2017; Baidoa, March 6, 2017.

<sup>56</sup> Human Rights Watch interview with 18-year-old formerly associated with Al-Shabab, Mogadishu, May 24, 2017.

<sup>57</sup> Human Rights Watch interview multiple interviews with children formerly associated with Al-Shabab, Mogadishu, May 24, 2017; Baidoa, March 6, 2017.

<sup>58</sup> Human Rights Watch interview with 16-year-old boy, Mogadishu, May 24, 2017.

<sup>59</sup> Human Rights Watch interview with 15-year-old boy, Garowe prison, December 8, 2016.

then threw me into their vehicle. The rope was tight, and I was in pain. I still have a black scar on my arm.<sup>60</sup>

The security forces, both police and intelligence, also regularly arrest boys during security operations or random mass sweeps, sometimes detaining boys on their way home from school<sup>61</sup> or during house searches, on the basis of flimsy, or no, evidence, particularly in Mogadishu and on occasion in Bosasso in Puntland.<sup>62</sup>

According to the UN, Somali security forces arrested 386 children in 2016 during operations targeting Al-Shabab.<sup>63</sup> While most are subsequently released,<sup>64</sup> often using connections,<sup>65</sup> or by paying for their release,<sup>66</sup> as is described below a number, especially those from poor economic backgrounds or from less connected and powerful clans whose cases don't receive attention, are held for prolonged periods before their release,<sup>67</sup> some are handed over to child rehabilitation centers and others handed over to military courts for prosecution for crimes of association with Al-Shabab, material support or murder.<sup>68</sup>

“The CID officials would ask me if I had any relatives,” said a 15-year-old orphan who said he worked as a motorcycle delivery boy and was picked up in a security operation in 2015 following an assassination in his neighborhood.

Once they realized I had no relatives looking out for me they would constantly insult me, they would say I was an Al-Shabab fanatic as I had no

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<sup>60</sup> Human Rights Watch interview with 17-year-old boy, Garowe prison, December 8, 2016 .

<sup>61</sup> Human Rights Watch interviews with five children stopped in security operations, May 2017, Mogadishu.

<sup>62</sup> Human Rights Watch multiple interviews with children arrested in mass sweeps in Mogadishu since 2015. Multiple Human Rights Watch interviews in Mogadishu and Garowe, December 2016, March/ May 2017.

<sup>63</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Annual Report of the Secretary-General on Children and Armed Conflict,” S/2017/821, August 24, 2017, para. 135.

<sup>64</sup> Human Rights Watch email exchange with UN official, March 6, 2017.

<sup>65</sup> Human Rights Watch interview with 17-year-old, Mogadishu, May 18, 2017; interview with 16-year-old, Mogadishu, May 18, 2017. Relatives of children sentenced by the military court repeatedly told Human Rights Watch that they believed that the fact they could not pay bribes or that their children were from the wrong clan was why their children had been sentenced to prison.

<sup>66</sup> Ibid.

<sup>67</sup> Human Rights Watch interview with 18-year-old, Mogadishu, October 27, 2017; interview with 17-year-old, Mogadishu, October 27, 2017; interview with 15-year-old, Mogadishu, October 27, 2017.

<sup>68</sup> Human Rights Watch email exchange with UN official, March 3, 2017.

family and friends. Some of the others were released, but I was kept inside as no one came for me.<sup>69</sup>

Boys apprehended during mass sweeps, even if released, don't remain unscarred.<sup>70</sup> A 15-year-old picked up by NISA and police on his way home from school during a security operation in May 2017 and held for three days with adults in a police station said:

I thought I would be protected because I am a student. But NISA and police pushed me about and put me in a car. I had never been detained before. It shook me up, I was so sad.<sup>71</sup>

Boys said they limited their movement after their release, and two boys told Human Rights Watch they dropped out of school fearing rearrest.<sup>72</sup>

Hassan, a 16-year-old detained on several occasions since 2015 during security operations, who spent over two months in NISA detention in 2015, said:

We are always being stopped, questioned. It's mainly a problem for people of my age. When a group of youth are just sitting down outside, we get told to move on by NISA, so it's like we're always in a prison. You can get caught up in a bomb attack or you get caught up in a mass sweep by NISA. So either way, you face problems.<sup>73</sup>

## Abuse of Children in Custody of Intelligence Agencies

Once in government custody, screening and interrogation of suspected Al-Shabab members or combatants, including age screening, generally happens within intelligence facilities. Human Rights Watch research found that children have been held for more than

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<sup>69</sup> Human Rights Watch interview with 15-year-old, Mogadishu, May 19, 2017.

<sup>70</sup> Human Rights Watch interview with 16-year-old, Mogadishu, May 18, 2017.

<sup>71</sup> Human Rights Watch interview with 15-year-old, Mogadishu, May 18, 2017.

<sup>72</sup> Human Rights Watch interview with 17-year-old, Mogadishu, October 27, 2017; interview with 15-year-old, Mogadishu, October 27, 2017.

<sup>73</sup> Human Rights Watch interview with 15-year-old, Mogadishu, May 19, 2017.

72 hours for Al-Shabab-related crimes in NISA facilities in Mogadishu,<sup>74</sup> Beletweyn, as well as in PIA facilities in Bosasso. Some children described being held several months, one for over four months. In a May 18 meeting, Attorney General Ahmed Ali Dahir said: “I don’t see many cases of juveniles [in NISA detention] but there are some who are 15 or 16 years old. But in terms of our law, we don’t consider them as children.”<sup>75</sup>

There is currently no independent oversight of NISA’s screening process or detention. While government officials, including the attorney general and military prosecutors have access to NISA detention facilities, independent monitoring is severely limited.<sup>76</sup> Human Rights Watch is not aware of independent monitoring of PIA facilities.<sup>77</sup> The intelligence agencies therefore generally decide how they categorize children, how long they choose to keep children for and if and when they hand them over.

### *Ill-treatment and Forced Confessions*

Human Rights Watch, the UN Security Council Somalia and Eritrea Monitoring Group (SEMG), and the United Nations Assistance Mission in Somalia (UNSOM) have all previously documented mistreatment and occasional use of torture by NISA during investigations.<sup>78</sup>

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<sup>74</sup> Human Rights Watch interview with 24-year-old man, Mogadishu, May 18, 2017; interview with Attorney General Ahmed Ali Dahir, Mogadishu, May 18, 2017; multiple interviews with relatives of children sentenced by the military court, Mogadishu, March 2017. A credible source who has visited NISA detention facilities in 2016 and 2017 confirmed seeing children in NISA’s two official detention facilities in Mogadishu, Godka jllaow and Barista Hisbiga Human Rights Watch skype interview with think-tank researcher July 24, 2017. With the exception of the children captured in Puntland in March 2016, all of the cases of children tried by military courts documented in this report were initially held by intelligence agencies.

<sup>75</sup> Human Rights Watch interview with Attorney General Ahmed Ali Dahir, Mogadishu, May 18, 2017.

<sup>76</sup> Human Rights Watch interview with UNSOM official, Mogadishu, May 23, 2017; skype interview with international expert in former combatants’ programming, August 18, 2017; interview with international expert in former combatants’ programming, September 12, 2017.

<sup>77</sup> Human Rights Watch interview with Bosasso lawyer, April 10, 2017; UNSOM Garowe official, August 7, 2017.

<sup>78</sup> See for example UNSOM, Somalia: Freedom of Expression Critical to Ongoing Political Transition – UN report,” September 4, 2016, <https://unsom.unmissions.org/somalia-freedom-expression-critical-ongoing-political-transition-%E2%80%93-un-report-o> (accessed September 21, 2017); United Nations Security Council, “Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015), S/2015/801, October 20, 2015, annex 6.1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2015/801](http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/801) (accessed October 12, 2017); United Nations Security Council, “Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015),” S/2016/919, Annex 7.3 ; for abuses in NISA detention during the Transitional Federal Government, see Human Rights Watch, “So Much to Fear.” War Crimes and the Devastation of Somalia, December 8, 2008, <https://www.hrw.org/report/2008/12/08/so-much-fear/war-crimes-and-devastation-somalia#c238bb> (accessed November 2, 2017).

NISA interrogators and guards also subjects children to coercive treatment including intimidation, threats, depriving them of the presence of their relatives, and on occasion beatings and torture, primarily to obtain confessions or sometimes as punishment.<sup>79</sup> A lawyer who has worked with the military court remarked:

NISA is not comfortable with the children being handed over to the parents, as they torture them and don't want anyone to know. They force the prisoners to confess. We see cases that are horrible, some people can't even walk.<sup>80</sup>

"The security guards kicked me and threatened me: 'I know you, I know that you are Al-Shabab,'" said Hassan who was 14 when he was picked up in a mass sweep in 2015 and held in one of NISA's detention facilities, Godka Jilaow.

They would tell me that my relatives were outside and that I just needed to sign a paper and would be released. But other inmates told me not to sign it as it was a confession, so I didn't.<sup>81</sup> He went on: The hardest part was that I was very sick, and some security guards badly mistreated us. One day, inmates had refused to use the toilets, and so the guards just beat everyone. They told us to remove our shirts, bend over and then beat us with belts.<sup>82</sup>

Hassan was released after two months when his parents paid US\$2,500 – a large amount of money in a country where half the population lives below the poverty line – via a facilitator for his release.<sup>83</sup>

Ibrahim, who was 16 when he was arrested in a mass sweep in early 2016 and held for several months in Godka Jilaow, described one bad beating:

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<sup>79</sup> Human Rights Watch multiple interview with relatives of children sentenced by the military court, Mogadishu, March 2017.

<sup>80</sup> Human Rights Watch interview with 'lawyer', Mogadishu, March 3, 2017.

<sup>81</sup> Human Rights Watch interview with 16-year-old, Mogadishu, May 19, 2017.

<sup>82</sup> Ibid.

<sup>83</sup> For background data on Somalia's economic status, see World Bank, "Somalia Overview," <http://www.worldbank.org/en/country/somalia/overview> (accessed October 16, 2017).

They would take me out of my cell at night and pressure me to confess. One night, they beat me hard with something that felt like a metal stick.<sup>84</sup> I was bleeding for two weeks, but no one treated me.<sup>85</sup>

The mother of a 16-year-old boy who was detained incommunicado for two months by NISA at Barista Hisbiga in mid-2015 described particularly bad wounds on her son's body:

I found him in Mogadishu Central Prison. When I saw him, he couldn't walk. He said he was beaten every night, and especially beaten on his legs. He had injuries on his legs. His ankles and knees were swollen, he couldn't even stand to greet me. He had to be assisted by other prisoners.<sup>86</sup>

Government officials that conduct visits to NISA facilities and a defense lawyer involved in military court proceedings told Human Rights Watch that they had not come across cases of mistreatment in the latter half of 2016, when Gen. Abdullahi Gafow Mohamud headed NISA.<sup>87</sup> Human Rights Watch received allegations of ongoing mistreatment in NISA detention and found no evidence of actions being taken to investigate past allegations of abuse.<sup>88</sup> Positively, NISA have recently appointed a legal and compliance officer; however the exact mandate of the post is unclear.<sup>89</sup>

A 15-year-old picked-up in a sweep in 2017 and held for two months in Barista Hisbiga described his interrogations: "The interrogators asked me about Al-Shabab, they asked me if I had carried a gun. I was questioned once a week, and they used to hit me on my neck with sticks and threaten me."<sup>90</sup>

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<sup>84</sup> Human Rights Watch saw a large scar matching the description of Ibrahim's testimony, but details are omitted for security reasons.

<sup>85</sup> Human Rights Watch interview with 17-year-old, Mogadishu, October 27, 2017.

<sup>86</sup> Human Rights Watch, phone interview with mother of child sentenced to 10-years imprisonment in 2015.

<sup>87</sup> Human Rights Watch interview with Attorney General Ahmed Ali Dahir, Mogadishu, May 18, 2017.

<sup>88</sup> Human Rights Watch interview with father of 16-year-old boy, Mogadishu, March 2, 2017; interview with elder of boy amongst five sentenced by military court in January 2017, Mogadishu, March 2, 2017; phone interview with lawyer, June 9, 2017.

<sup>89</sup> Human Rights Watch email communication with NISA officials, November 13, 2017.

<sup>90</sup> Human Rights Watch interview with 15-year-old, Mogadishu, October 27, 2017.

The father of 16-year-old Ali detained by NISA in 2016 said that his son was held for 10 days by NISA in a house before being brought to Godka Jilaow. “They threatened him the first-few days. He told me: ‘They said unless I confess to being with Al-Shabab they were going to beat me. To save my life, I confessed.’ They recorded his voice and then got him to sign a confession and fingerprinted him.”<sup>91</sup>

On December 28, 2016, seven individuals, most originally from south-central Somalia, were arrested in Bosasso, following the killing of three high-ranking officials.<sup>92</sup> The seven, including Mohamed Yassin Abdi who officials would later qualify as a child, were held for a month without access to their families or lawyers in PIA detention, during which they recorded and signed confessions.<sup>93</sup> Relatives and a lawyer of the seven said that at least one of the defendants (not the one officially identified as a child) had been tortured during this period, and that they saw marks from what they described as electroshocks on his scrotum.<sup>94</sup>

### *Lengthy Pre-Charge Detention*

Despite the SOPs on handovers that stipulate that children should be handed over to the UN and its partners within 72 hours of coming into custody of security forces, Human Rights Watch found that in both Mogadishu and Bosasso, children have been held with adults for prolonged periods in pre-charge detention in intelligence facilities.

International standards provide that children who are deprived of their liberty should be brought before a competent authority within 24 hours, and thereafter at least every two weeks to review decisions to extend pretrial detention. This standard applies to all forms of detention, including administrative detention on security grounds.<sup>95</sup>

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<sup>91</sup> Human Rights Watch interview with father of 16-year-old sentenced by military court, Mogadishu, March 2, 2017.

<sup>92</sup> Human Rights Watch multiple phone interviews with lawyers, and relatives of defendants, March-May 2017; For more on the killings of the three officials, including the December 25 assassination of the military court prosecutor, Col. Abdikarim Hassan Firdhiye see Reuters, Al Shabaab militants shoot prosecutor dead in Somalia’s Puntland, December 25, 2016, <http://in.reuters.com/article/somalia-attacks-idINKBN14EoBD> (accessed August 24, 2017). Al-Shabab claimed the killing of the prosecutor stating it was linked to his involvement in the prosecution of “teenagers – boys and girls”.

<sup>93</sup> Human Rights Watch phone interviews with lawyer, April 10, 2017.

<sup>94</sup> Human Rights Watch phone interviews with lawyer, April 10, 2017; with relative of defendant, phone interview May 12, 2017; with elder, phone interview May 12, 2017; interview with Mohamed Yusuf Ali, head of Human Rights Defenders, Puntland, March 2017.

<sup>95</sup> CRC General Comment No. 10, para. 83.

Somalia's federal constitution spells out that a person must be brought before a competent court within 48 hours of arrest.<sup>96</sup> According to the Code of Military Criminal Procedure, a person can be held for up to 180 days in remand (pretrial) detention.<sup>97</sup> Somalia's criminal procedure code states that an individual in custody must be brought before court every seven days.<sup>98</sup>

Several government officials acknowledged that NISA holds detainees for lengthy periods but justified this as necessary to "extract information."<sup>99</sup> A senior NISA official told Human Rights Watch: "We can't let the detainees go within three weeks. We want to extract information. But we need to find legal ways. We currently have detainees in here for more than three months. It's not our job to have people in here for three months."<sup>100</sup>

Children, their relatives and lawyers consistently told Human Rights Watch that they were held weeks and up to four months before being released or transferred to the central prison on remand or after sentencing.<sup>101</sup>

Detainees in both Mogadishu and Puntland are not systematically brought before a court during this detention, as legally required, and therefore denied the possibility to challenge their detention or seek bail.<sup>102</sup>

Military court prosecutors in Mogadishu told Human Rights Watch that they now have an office at NISA to oversee cases that fall within the court's jurisdiction, and regularly grant investigators additional time.<sup>103</sup>

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<sup>96</sup> Somalia Federal Constitution, art. 35 (5).

<sup>97</sup> The Code of Military Criminal Procedure in Peace and War, No. 1 of 1964 ("MCPC"), art. 34.

<sup>98</sup> The MCPC in article 1 states that provisions of the criminal procedure code also apply to the military courts except as otherwise provided by law.

<sup>99</sup> Human Rights Watch meeting with military court officials, Mogadishu, March 4, 2017; meeting with former deputy head of NISA, Mogadishu March 4, 2017.

<sup>100</sup> Human Rights Watch interview with former deputy head of NISA, Mogadishu March 4, 2017.

<sup>101</sup> Human Rights Watch interview with uncle of child sentenced to life for Al-Shabab membership and murder, Mogadishu, March 2, 2017; interview with 15-year-old, Mogadishu, May 19, 2017; interview with relative of 17-year-old boy arrested in Bosasso, June 6, 2017; interview with 18-year-old, Mogadishu, October 27, 2017; interview with 17-year-old, Mogadishu, October 27, 2017; interview with 15-year-old, Mogadishu, October 27, 2017.

<sup>102</sup> Human Rights Watch interview with 15-year-old, Mogadishu, May 19, 2017; interview with relative of 17-year-old boy arrested in Bosasso, June 6, 2017; interviews with lawyer, April 10, 2017; with relative of Mohamed Yassin Abdi, phone interview May 12, 2017; with elder, phone interview May 12, 2017; interview with 18-year-old, Mogadishu, October 27, 2017; interview with 17-year-old, Mogadishu, October 27, 2017; interview with 15-year-old, Mogadishu, October 27, 2017; interview with 17-year-old, Mogadishu, October 27, 2017.

<sup>103</sup> Human Rights Watch interview with Col. Liban Ali Yarow, and other military court officials, Mogadishu, March 4, 2017; interview with Attorney General Ahmed Ali Dahir, Mogadishu, May 18, 2017.

### *Lack of Access to Relatives and Lawyers*

Contrary to international standards and Somalia's provisional constitution, intelligence agencies in Mogadishu and Puntland hold children without access to family or legal counsel.<sup>104</sup> None of the boys interviewed by Human Rights Watch had seen their parents while in NISA detention. The authorities do not contact parents to inform them about their child's detention.<sup>105</sup> The handful of relatives who told Human Rights Watch that they had seen their child while in NISA detention said they had had to use personal connections within NISA,<sup>106</sup> or had paid a bribe – or both.<sup>107</sup>

Despite making numerous requests to the authorities and visits to detention facilities, relatives are often unable to even get confirmation of the location of their children, which may amount to an enforced disappearance, defined in international law as any deprivation of liberty by state agents, followed by the authorities' refusal to acknowledge the detention or concealing of the fate or whereabouts of the person.<sup>108</sup>

Most relatives told Human Rights Watch that they only found out about the whereabouts of their children and were able to visit the children once they were transferred to the central prison in Mogadishu and Bosasso, appeared before court, or were released.<sup>109</sup>

In Puntland, Human Rights Watch documented two cases since late 2016, in which the intelligence agency held children without access to their relatives or to a lawyer for over a

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<sup>104</sup> Human Rights Watch phone interview with Mohamed Yusuf Ali, head of Human Rights Defenders, Puntland, March 2017.

<sup>105</sup> Human Rights Watch interview with 18-year-old, Mogadishu, October 27, 2017; interview with 17-year-old, Mogadishu, October 27, 2017; interview with 15-year-old, Mogadishu, October 27, 2017.

<sup>106</sup> Human Rights Watch interview with 15-year-old, Mogadishu, May 19, 2017; interview with relative of 17-year-old boy arrested in Bosasso, June 6, 2017; interviews with lawyer, April 10, 2017; with relative of defendant, phone interview May 12, 2017; with elder, phone interview May 12, 2017; interview with elder, Mogadishu, March 2, 2017.

<sup>107</sup> Human Rights Watch interview with mother of child sentenced to 10 years in autumn 2015; interview with father of 16-year-old sentenced by military court, Mogadishu, March 2, 2017.

<sup>108</sup> Human Rights Watch interview with mother of child sentenced to 10 years in autumn 2015; interview with mother of child sentenced to 10 years in autumn 2015; See United Nations Declaration on the Protection of All Persons from Enforced Disappearances, adopted December 18, 1992, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992), article 2, <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx> (accessed September 29, 2017).

<sup>109</sup> Human Rights Watch with uncle of child sentenced to life for Al-Shabab membership and murder, Mogadishu, March 2, 2017; interview with mother of child sentenced to 10 years in autumn 2015; interview with mother of child sentenced to 10 years in autumn 2015.

month.<sup>110</sup> The father of a 17-year-old arrested by the Puntland security forces on December 3, 2016 reportedly when defecting from ISIS and held for over two months in PIA detention in Bosasso said: “We tried a lot to get in touch with him, but didn’t manage to speak to him. He was interrogated with no lawyer and he was not arraigned in court.”<sup>111</sup>

Intelligence officials and military court prosecutors interrogate children without the presence of lawyers.<sup>112</sup> Abdi, a 16-year-old boy who was among 54 boys held in Garowe Central Prison for six months before appearing in court, said:

We were taken to the court building five times. The first time, they asked my name, family name, how I joined Al-Shabab and where I had been taken. I was alone during the interviews. The next three times, I was interviewed by different people, most were from the court.

I was interviewed twice by two intelligence officials. They asked about how many Al-Shabab members there were, my family’s numbers, background. They also took some photos of me. I was very afraid that I would be sentenced to death. They didn’t explain to me what the interrogation was about. I found out about my 20-year sentence on the day of the hearing.<sup>113</sup>

One of the lawyers who represented Abdi, Hamza and 27 other children in Puntland in September 2016 on charges of insurrection and affiliation with Al-Shabab said: “We raised the fact with the court that there were confessions, and that these were illegal as we had not been present, but the court didn’t respond or follow up on our concerns.”<sup>114</sup>

### *Harsh Conditions, Detention with Adults*

Boys are detained in dire conditions with adults in NISA detention facilities in Mogadishu.

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<sup>110</sup> Human Rights Watch interview with 15-year-old, Mogadishu, May 19, 2017; interview with relative of 17-year-old boy arrested in Bosasso, June 6, 2017; interviews with lawyer, April 10, 2017; with relative of Mohamed Yassin Abdi, phone interview May 12, 2017.

<sup>111</sup> Human Rights Watch interview with relative of 17-year-old boy arrested in Bosasso, June 6, 2017.

<sup>112</sup> Human Rights Watch multiple interviews with boys detained in Garowe and Mogadishu and lawyers.

<sup>113</sup> Human Rights Watch interview with 16-year-old boy captured in March 2016, Garowe, December 8, 2016.

<sup>114</sup> Human Rights Watch interview with lawyer, Garowe, December 9, 2016.

Four boys detained since 2016 said they were afraid of the adult detainees in their cells and of a reigning atmosphere of violence.<sup>115</sup> Ibrahim, 16, who was detained for four months, said: “The detainees used to beat each other. This happened to new detainees, for the first few weeks. One night, when I was new to the cell, a man tried to rape me.”<sup>116</sup> Another boy said he was slapped by a guard when he raised concerns about the adult detainees.<sup>117</sup>

Detainees are held in cells with no windows, limited natural light and no fresh air. The detainees compete for space inside of the cells. “The cell was too small for us all to sleep, so we used to take turns sleeping,” explained Ibrahim.<sup>118</sup> A 15-year-old held in Barista Hisbiga in mid-2017 said he suffered from “excruciating” headaches, for which he received no medication, because he couldn’t sleep at night.<sup>119</sup>

Children have no access to educational or recreational activities and are held for days on end in their cells. Detainees are only taken outside their cells to use the toilets, or when taken for questioning. Detainees also eat inside their cells. Sometimes, access to the toilets is restricted.<sup>120</sup> A boy who had diarrhoea, he believed because of the food, while at Godka Jilaow said: “Twice the guards refused to let me go to the toilet. They accused me of plotting something while in the toilet. I held it up, suffered a lot but after I pleaded with them they eventually let me go.”<sup>121</sup>

### *Use of Children as Informants*

In a 2016 interview with *Washington Post*, a US newspaper, former NISA director Col. Abdirahman Mohamed Turyare acknowledged that NISA had used children as informants –

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<sup>115</sup> Human Rights Watch interview with 18-year-old, Mogadishu, October 27, 2017; interview with 17-year-old, Mogadishu, October 27, 2017; interview with 15-year-old, Mogadishu, October 27, 2017.

<sup>116</sup> Human Rights Watch interview with 17-year-old, Mogadishu, October 27, 2017.

<sup>117</sup> Human Rights Watch interview with 18-year-old, Mogadishu, October 27, 2017.

<sup>118</sup> Human Rights Watch interview with 17-year-old, Mogadishu, October 27, 2017.

<sup>119</sup> Human Rights Watch interview with 15-year-old, Mogadishu, October 27, 2017.

<sup>120</sup> Human Rights Watch interview with 18-year-old, Mogadishu, October 27, 2017; interview with 17-year-old, Mogadishu, October 27, 2017.

<sup>121</sup> Human Rights Watch interview with 18-year-old, Mogadishu, October 27, 2017.

notably working to “point out” suspects during security operations.<sup>122</sup> Some of the children were in Serendi rehabilitation camp, described in more detail below, at the time.<sup>123</sup>

Following the release of the article, an inter-ministerial fact-finding assessment confirmed the allegations but stated that the practice stopped in 2014.<sup>124</sup> In its June 2016 report, the inter-ministerial committee recommended that underage Al-Shabab members in custody have their cases expedited and sent to “age-appropriate centers.”<sup>125</sup>

Human Rights Watch did not find evidence of children being used as informants during recent security operations. Yet, several relatives of boys detained by NISA since 2015 told Human Rights Watch that NISA investigators had sought to coerce their children into working with them while in custody or prison.<sup>126</sup>

The father of 16-year-old Ali detained by NISA in 2016 and held by NISA for 10 days in a house and coerced into confessing said: “After my son confessed, he told me they stopped beating him. But he told me: ‘They asked me to work for them. When I refused they transferred me to Godka Jilaow.’”<sup>127</sup>

Human Rights Watch is not aware of oversight measures to ensure that children in government custody are not used as informants. In a May 2017 meeting former NISA director Abdullahi Mohamed Ali “Sanbaloolshe,” who also headed NISA for two months in 2014 when NISA was found to be using children from Serendi as informants, said: “We

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<sup>122</sup> Kevin Sieff, “US Funded Somali Intelligence Agency has been using Kids as Spies,” *Washington Post*, May 7, 2016, [https://www.washingtonpost.com/world/africa/exclusive-us-funded-somali-intelligence-agency-has-been-using-kids-as-spies/2016/05/06/974c9144-0ce3-11e6-a6b6-2e6de3695boe\\_story.html?utm\\_term=.5daf4ea7cc9b](https://www.washingtonpost.com/world/africa/exclusive-us-funded-somali-intelligence-agency-has-been-using-kids-as-spies/2016/05/06/974c9144-0ce3-11e6-a6b6-2e6de3695boe_story.html?utm_term=.5daf4ea7cc9b) (accessed September 27, 2017).

<sup>123</sup> Report of the Secretary General. Children and Armed Conflict, A/70/836–S/2016/360, April 20, 2016, p. 9.

<sup>124</sup> “Findings of the Ministerial Committee on Washington Post article regarding Somali intelligence agency and the alleged use of child defectors as spies,” June 12, 2016 on file with Human Rights Watch; United Nations Security Council, “Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015),” October 13, 2016, p. 150.

<sup>125</sup> Findings of the Ministerial Committee on Washington Post article regarding Somali intelligence agency and the alleged use of child defectors as spies,” June 12, 2016 on file with Human Rights Watch.

<sup>126</sup> Human Rights Watch interview with father of 16-year-old sentenced to 6 years, Mogadishu, March 2, 2017; phone interview with sister of child sentenced in autumn 2015, February 9, 2017.

<sup>127</sup> Human Rights Watch interview with father of 16-year-old sentenced by military court, Mogadishu, March 2, 2017.

need a degree of “professionalism” from our sources. I have the profile of everyone we use, as I need to clear them. I am not aware of children within the [informant] system.”<sup>128</sup>

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<sup>128</sup> Human Rights Watch interview with Abdullahi Mohamed Ali “Sanbaloolshe,” Mogadishu, May 19, 2017; he was dismissed on October 29, 2017 following two devastating attacks in Mogadishu within the space of two weeks that killed approximately 500 people.

### III. Military Court Prosecutions of Children

Since 2011, the military court in south-central Somalia has tried suspected Al-Shabab insurgents and supporters beyond the jurisdiction of the Somali Military Code of Criminal Procedure.<sup>129</sup> Human Rights Watch has previously documented that proceedings before Somalia's military courts restrict defendants' rights to obtain counsel of their choice, prepare and present a defense, receive a public hearing, not incriminate themselves, and appeal a conviction to a higher court.<sup>130</sup> The courts continue to sentence people to death following proceedings that fail to meet basic fair trial standards. In Puntland, the former president gave the military court jurisdiction over Al-Shabab and terrorism-related crimes in 2012.<sup>131</sup>

Throughout Somalia, intelligence officials and military prosecutors prosecute children for Al-Shabab-related crimes in military courts, typically as adults.<sup>132</sup> While trials of children for security offenses before military courts in Somalia are not common, Human Rights Watch found that since 2015, the military court in Mogadishu has sentenced at least 16 boys between 14 and 17 years old to prison time ranging from six years to life.<sup>133</sup> In Puntland, at least 40 children age 15 and above have been tried by the region's military court, and 39 sentenced to between 10 years and life imprisonment since 2016.<sup>134</sup> Ten of

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<sup>129</sup> Individuals accused of Al-Shabab membership are typically charged under article 221 of the 1964 penal code for "Armed Insurrection against the Power of the State." Military prosecutors and spokespeople consistently offer this provision as the legal basis for prosecuting Al-Shabab-related offenses, despite this being a crime that could be tried by the ordinary courts.

<sup>130</sup> Human Rights Watch, *The Courts of Absolute Power. Fair Trial Violations by Somalia's Military Court*, May 21, 2014, <https://www.hrw.org/report/2014/05/21/courts-absolute-power/fair-trial-violations-somalias-military-court>

<sup>131</sup> Human Rights Watch, *Like Fish in Poisonous Waters. Attacks on Media Freedom in Somalia*, May 3, 2016, 2016, <https://www.hrw.org/report/2016/05/03/fish-poisonous-waters/attacks-media-freedom-somalia>; Human Rights Watch, *World Report 2017*, (New York: Human Rights Watch, 2017), Somalia, <https://www.hrw.org/world-report/2017/country-chapters/somalia>.

<sup>132</sup> Senior NISA officials in Mogadishu told Human Rights Watch that they did not trust the civilian courts to ensure cases are prosecuted. Human Rights Watch interview with Abdullahi Mohamed Ali 'Sanbaloolshe,' Mogadishu, May 19, 2017.

<sup>133</sup> Human Rights Watch also identified at least three cases in which six children, age 15 and above, were tried by the Mogadishu military court between 2013 and 2014.

<sup>134</sup> In one case, a group of six suspects, including one child, were released after evidence was presented in court that the six were trying to defect from ISIS when they were arrested. At least two of the suspects were subsequently re-arrested, although not the child. Human Rights Watch multiple phone and in person interviews with lawyer, UN official, relatives of defendants, February-May 2017, 2017.

the 39 were initially sentenced to death, in violation of the international law prohibition on executing child offenders,<sup>135</sup> before their sentences were commuted on appeal.<sup>136</sup>

In Mogadishu, the cases of children involve allegations of Al-Shabab membership and material support to Al-Shabab. In Puntland, the bulk of the cases were linked to Al-Shabab's March 2016 attack and trials of children for alleged involvement in conflict-related offenses, along with one case in which children were accused of Al-Shabab membership and murder.

Independent trial monitoring is very limited. While the UN spent considerable time and resources following the detention and military court trials of the 64 children captured in Puntland after the March 2016 operation, funding legal aid for the defendants, the UN has only recently started engaging with the military court trials and officials in Mogadishu and neither the UN nor child protection advocates are currently monitoring trials, which reduces scrutiny of cases ending up before this court.<sup>137</sup>

#### **Puntland/Galmudug Caseload –Discrepancies in Practices Across the Country**

The treatment of children following the Puntland and Galmudug fighting in March 2016 highlights discrepancies in practices across the country, with only some children initially handed over to UNICEF-supported child rehabilitation centers. In contrast, in Puntland – which does not officially recognize the SOPs on handover signed by the federal government and uses its own – problematic – legal framework to try children associated with Al-Shabab.

Following the March 2016 Al-Shabab attack, Puntland authorities said they had 64 children in custody while authorities in Galmudug said they had 44.<sup>138</sup>

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<sup>135</sup> ICCPR, art. 6(5); CRC, art. 37(a).

<sup>136</sup> An additional two boys were later added to this group and transferred to Garowe reportedly due to doubts about their ages. Human Rights Watch email correspondence with UNSOM and UNICEF staff, January 8 & 9 2018.

<sup>137</sup> Human Rights Watch interview with UNSOM official, Mogadishu, May 23, 2017; interview with child protection partner, August 17, 2017.

<sup>138</sup> UN Security Council, "Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015)," October 13, 2016, Annex 1.4, para.41.

The children identified by the authorities as children in Galmudug,<sup>139</sup> were handed over to a UNICEF-supported child rehabilitation center in Mogadishu in May 2016, after two months in detention.<sup>140</sup>

In Puntland, in June 2016, 43 defendants, including 12 who would later be identified as children,<sup>141</sup> were sentenced to death and sent to Bosasso prison. On January 26, 10 had their death sentences commuted to 20-year sentences on appeal.<sup>142</sup> Two others were later identified as boys.

On September 17, 2016, 28 boys held in Garowe prison and identified as ages 15 to 17 were sentenced to between 10 and 20 years.

In October 2016, 26 children determined to be under age 15 were handed over to a UNICEF-supported rehabilitation center in Mogadishu after seven months in detention.<sup>143</sup>

In April 2017, 40 children, including the 28 sentenced in September and 12 whose death penalty sentences had been commuted, were handed over to a UNICEF-supported new child rehabilitation center in Garowe. According to the UN, their sentences have not been overturned although the sentences of the 28 were reduced on appeal on December 31, 2017.<sup>144</sup>

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<sup>139</sup> There was no independent age verification exercise. Human Rights Watch phone interview with UN official, January 23, 2017; interview with child protection actor, March 3, 2017; Human Rights Watch spoke by phone to one of the detainees transferred to the prison, who said that he was under 18.

<sup>140</sup> Human Rights Watch interview with child protection actor, Mogadishu, March 3, 2017; United Nations Security Council, "Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015)," October 13, 2016, Annex 7.2, para. 11.

<sup>141</sup> One reportedly had an intellectual disability and was included within the group of children; an additional two boys were later identified as boys and transferred to the Garowe child rehabilitation center.

<sup>142</sup> Human Rights Watch multiple interviews with UN officials.

<sup>143</sup> Report of the Secretary-General. Children and Armed Conflict, A/70/836-S/2016/360, April 20, 2016, para. 37;

<sup>144</sup> Human Rights Watch telephone interview with UN official, May 31, 2017; phone interview with UN official in Garowe, June 1, 2017; email correspondence with UNICEF staff, January 9, 2018; UN Security Council, "Report of the Secretary-General on Somalia," S/2017/751, September 5, 2017, para. 54.

## Unlawful Confessions, Evidence Obtained Under Coercion, Torture

Under the Somali criminal procedure code, confessions can only be accepted in court if the judge believes the confession was made voluntarily.<sup>145</sup> The Convention against Torture, which Somalia ratified in 1990, obligates governments to ensure that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.”<sup>146</sup>

The head of the military court in Mogadishu and other senior military court officials told Human Rights Watch at a March 4, 2017 meeting that “they recognized that confessions are problematic” and did not accept any confessions unless made before the court.<sup>147</sup> A handful of relatives of children tried by the court and a lawyer in Mogadishu said that recorded confessions obtained under coercion were still being admitted.<sup>148</sup>

The father of 16-year-old Ali attended the hearing in which his son was sentenced to six years’ imprisonment based on an alleged coerced confession:

The judge did not question my son, nor have any witnesses. I was not asked any questions. No one mentioned that the boy was under 18, the judge was only going with the confessional letter.<sup>149</sup>

Lawyers involved in the case of seven defendants sentenced for murder of three government officials in Bosasso said that the confessions obtained under duress were admitted as prime evidence before the court.<sup>150</sup> In a May 2 letter from the Ministry of Justice, Religious Affairs and Rehabilitation to International agencies and partners in response to concerns raised about the case, the minister pointed to “video evidence of their admission of the crimes” as key evidence of the fairness of the trial.<sup>151</sup> A lawyer

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<sup>145</sup> Somalia Criminal Procedure Code (1974), article 68.

<sup>146</sup> Convention against Torture, art. 15.

<sup>147</sup> Human Rights Watch interview with military court officials, Mogadishu, March 4, 2017. This was confirmed by an observer who occasionally attends military court proceedings; interview with international expert, Mogadishu, May 20, 2017.

<sup>148</sup> Human Rights Watch interview with father of 16-year-old sentenced to six years, February 9, 2017; interview with Mogadishu lawyer, June 9, 2017.

<sup>149</sup> Human Rights Watch telephone interview with relative, February 9, 2017.

<sup>150</sup> Human Rights Watch telephone interviews with Bosasso lawyers, April 10, 2017.

<sup>151</sup> Puntland Ministry of Justice, Religious Affairs and Rehabilitation Letter Ref: WCADDH/055/2017, May 2, 2017, on file with Human Rights Watch.

involved in the case said the first instance court refused to look into allegations of torture or exclude the evidence made as a result of the torture, and when concerns were raised by defense lawyers at the appeal level, the court failed to take it into account in their final decision. Human Rights Watch did not find any evidence that the authorities took steps to investigate and penalize the officers who allegedly tortured the detainees.<sup>152</sup>

In only one case documented by Human Rights Watch did the military court in Mogadishu overturn on appeal a verdict of two children for murder based on a coerced confession.<sup>153</sup> The lawyer who represented the two boys at the appeal level after the boys' relatives sought legal counsel said: "My clients were told they would be released if they confessed. They were held for three months in NISA detention where they were intimidated and beaten, and forced to confess on tape."<sup>154</sup>

## Age Determination

Wrongful age determination may prevent a child from benefiting from the rights and protection accorded to them under international law. UNICEF guidelines on age screening underline that a child's consent should be requested, call for the best interest of the child to be taken into account and benefit of the doubt to be applied, for qualified practitioners to conduct the assessment, for the child to be accompanied by a guardian and call for an appeal process to be established whereby children can dispute the outcome of the assessment.<sup>155</sup>

Judicial officials, lawyers and child protection organizations repeatedly highlighted the difficulty of age determination in a country where official documentation is scarce, and resources limited. International standards urge authorities to give the benefit of the doubt to juveniles when questions of age arise.<sup>156</sup> Prosecutors and judges in Somalia, however, don't appear to apply such caution.

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<sup>152</sup> Human Rights Watch telephone interview with Bosasso lawyer, April 10, 2017; interview with elder, May 12, 2017.

<sup>153</sup> Human Rights Watch telephone interview with Mogadishu lawyer, June 9, 2017.

<sup>154</sup> Human Rights Watch phone interview with lawyer, June 9, 2017.

<sup>155</sup> See, for example UNICEF, "Age Assessment: A Technical Note 2013", <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticles51033.aspx> (accessed November 30, 2017).

<sup>156</sup> UN Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Concluding Observations, United States of America," CRC/C/OPAC/USA/CO/1, June 25, 2008, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.USA.CO.1.pdf>, para. 30.a. (accessed November 2, 2017).

An international observer raised concerns about NISA officials' lack of expertise in age determination. The observer said: "Security forces 'prefer' to err on the side of them being adults."<sup>157</sup> For the first time, in 2017 NISA received a training on age determination provided by UNICEF and UNSOM.<sup>158</sup> UNSOM officials also told Human Rights Watch that they encouraged NISA screeners taking part in workshops around the development of screening protocols to grant children the benefit of the doubt.<sup>159</sup> Human Rights Watch's assessment of trials of children before the military court, all of which had initially been processed by NISA, raises concerns about how age is determined during investigations.

Prosecutors and courts listed children as 15 years and above, even when their families and lawyers questioned the age given to them.<sup>160</sup> Concerns raised by relatives about the age of the child don't appear to systematically factor into final judgments or sentencing.

Human Rights Watch did not identify any independent age screening processes of cases before the military court in Mogadishu.

In only one of the three cases in which children were tried by the military court in Puntland investigated by Human Rights Watch was a thorough age screening process conducted, involving government and UN officials.<sup>161</sup>

In the case of seven defendants accused of murder in Puntland, relatives of the defendants told Human Rights Watch that most of the defendants were under 18 years of age. No independent age verification exercise was conducted, although the government stated that it had followed up on the case with the military court.<sup>162</sup> A lawyer involved in the case said:

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<sup>157</sup> Human Rights Watch skype interview with international expert working on former combatant programming, August 18, 2017.

<sup>158</sup> Human Rights Watch interview with UN official, Mogadishu, May 23, 2017.

<sup>159</sup> Human Rights Watch interview with UN official, Mogadishu, October 26, 2017.

<sup>160</sup> Human Rights Watch interview with father, Mogadishu, March 3, 2017; with mother of children sentenced to 10 years in third quarter 2015.

<sup>161</sup> Multiple Human Rights Watch interviews in Garowe and Mogadishu with government and UN officials.

<sup>162</sup> Puntland Ministry of Justice, Religious Affairs and Rehabilitation Letter Ref: WCADDH/055/2017, May 2, 2017, on file with Human Rights Watch.

Ages that were said in court were exaggerated. The person determining the ages was the same person who arrested them. The parents were not asked the age. We didn't bring in doctors to determine the age.<sup>163</sup>

## Right to Legal Counsel, Guardians, Preparing and Presenting a Defense

As with adults facing military court trials in Somalia, basic procedural rights, which are strengthened for children under international law, are rarely respected. The capacity of children tried before the military court to exercise their right to counsel of their choice and prepare a defense remains minimal. In both Mogadishu and in Puntland, lawyers with limited qualifications represent defendants.<sup>164</sup> Independent counsel is rarely provided unless family members or international actors reach out to lawyers themselves to ensure representation, most often on appeal.<sup>165</sup>

In Puntland, even when legal assistance is provided to children, they often have very limited opportunities to discuss their case with their lawyer and to adequately prepare a defense. In the group trial of 28 boys sentenced on September 17 in Garowe for insurrection and terrorism, eight boys told Human Rights Watch that they only met the lawyer after sentencing, and that the lawyers only spoke to two in the group.<sup>166</sup>

In Puntland, while judges offered defendants a brief opportunity to speak in both the case of the 28 children in Garowe in September 2016, and the case of the seven sentenced in February 2017, time was very short and, in neither case did the children's testimonies appear to be taken into account.<sup>167</sup>

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<sup>163</sup> Human Rights Watch interview with Bosasso lawyer, April 10, 2017.

<sup>164</sup> Human Rights Watch interview with Military court personnel, Mogadishu, March 4, 2017; as described in Human Rights Watch's 2014 report, the two individuals serving this role in Mogadishu are not in fact qualified lawyers.

<sup>165</sup> Appeals in the military court in Somalia only consider procedural issues.

<sup>166</sup> Human Rights Watch multiple interviews, Garowe.

<sup>167</sup> Decision of the court on file with Human Rights Watch and an interview with the former military court prosecutor point to sentencing being solely on the basis of age; some of the children interviewed by Human Rights Watch and one of the lawyers that defended the children believed that in some instances other factors, notably the defendant's role within Al-Shabab, was taken into account.

While in Mogadishu, relatives are often told by prison officials and military court lawyers about forthcoming proceedings,<sup>168</sup> but parents are not systematically informed and permitted to be present when their children are tried and sentenced.<sup>169</sup> Several relatives said they only found out about their child's sentencing when it was reported on the evening news on television.<sup>170</sup> The father who said his son was 17-years-old at the time of sentencing said: "Instead of putting youth before military courts, they should be taken to civilian courts so that they have relatives and lawyers."<sup>171</sup>

## Sentencing and Right to Appeal

The criminal procedure code stipulates that children between 14 and 18 will receive reduced sentences.<sup>172</sup> However, it allows courts to impose life sentences on children for crimes against the state.<sup>173</sup> International human rights law discourages life sentences for child offenders.<sup>174</sup>

Sentences by military courts of children documented by Human Rights Watch, particularly in Puntland, were often harsh, failing the standard of last resort and shortest time necessary. On March 23, in the case of the seven defendants accused of killing three government officials, the appeal court in Bosasso upheld the death sentence against five of the defendants identified as adults and commuted the sentences of two, Mohamed Yassin Abdi and Daud Said Sahal identified as 17 and 18, to life in prison.<sup>175</sup>

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<sup>168</sup> Human Rights Watch telephone interview with relative of 14-year-old sentenced by the military court in Mogadishu in 2017, July 10, 2017; interview with uncle of child sentenced to life for Al-Shabab membership and murder, Mogadishu, March 2, 2017.

<sup>169</sup> Human Rights Watch interview with mother of child sentenced to 10 years in third quarter 2015; interview with mother of child sentenced to 10 years in autumn 2015.

<sup>170</sup> Ibid.

<sup>171</sup> Human Rights Watch interview, March 3, 2017, Mogadishu.

<sup>172</sup> Somalia Criminal Code art. 60 (on persons under age of 18); art.119 (on reduction of punishment).

<sup>173</sup> Ibid., art. 119.

<sup>174</sup> The UN Committee on the Rights of the Child recommends that states abolish all life sentences for child offenders. UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, April 25, 2007, CRC/C/GC/10, para. 77 available at: <http://www.refworld.org/docid/467ofca12.html> (accessed November 2, 2017).

<sup>175</sup> According to lawyers involved and an official government communication regarding the case, their sentence had been reduced as "one was a minor and the other very young ...these two were dealing more with the facilitation of the crime". Puntland Ministry of Justice, Religious Affairs and Rehabilitation Letter Ref: WCADDH/055/2017, May 2, 2017, on file with Human Rights Watch.

In the March 2016 attack case, the boys identified as 15 years old and above were handed heavy sentences ranging from 10 years to the death penalty. The death sentences were later commuted on appeal to 20 years and the sentences of the 28 initially held in Garowe reduced on appeal in December 2017.<sup>176</sup> According to the ruling, the sentencing was based solely on the basis of their age.<sup>177</sup> The court does not appear to have considered forced recruitment as a mitigating factor even though several children said they told the court they had been forced to join Al-Shabab and the lawyers representing the children argued for coercion to be taken into account.<sup>178</sup>

In Mogadishu, children have been sentenced as adults including solely for their membership of the group. In December 2016, security forces arrested five boys ages 14 to 15 in Beletweyn and NISA took them into custody.<sup>179</sup> According to relatives, Al-Shabab had recruited at least two of the five boys in 2016 by force.

Despite the SOPs on reception and handover, NISA did not contact the UNICEF-supported partner in Beletweyn. Instead, the boys were transferred to NISA detention facilities in Mogadishu.<sup>180</sup> On January 16, 2017, the military court in Mogadishu sentenced the five boys, and an adult arrested with them, to the standard sentence for Al-Shabab membership for adults – eight years. The boys are serving their sentences in Mogadishu Central Prison.<sup>181</sup>

In Mogadishu, relatives of children sentenced by the military court told Human Rights Watch that they were often reluctant to appeal as they had been informed, including by the court's lawyers, that appeal hearings rarely brought about a positive outcome.

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<sup>176</sup> UN Security Council, "Report of the Secretary-General on Somalia," S/2017/408, May 9, 2017, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2017/408](http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/408) (accessed November 2, 2017).

<sup>177</sup> Human Rights Watch interview with the late Col. Abdikarim Hassan Firdhiye, Garowe, December 10, 2016.

<sup>178</sup> Human Rights Watch interviews with defense lawyers, Garowe, December 2016; multiple interviews with boys in Garowe prison, December 8, 2016.

<sup>179</sup> On a charge sheet seen by Human Rights Watch, the court determines that the boys were 16-years-old. Human Rights Watch interviews with relatives and court documents on file, Mogadishu February- March 2017.

<sup>180</sup> One relative interviewed by Human Rights Watch said that they had requested the children's transfer as they were not from Beletweyn. Human Rights Watch interview with telephone interview with relative of 14-year-old sentenced by the military court in Mogadishu in 2017, July 10, 2017.

<sup>181</sup> The sentence was upheld on appeal. Human Rights Watch telephone interview with lawyer, August 17, 2017.

## Child Detention in Prisons

Record keeping in prisons in Somalia is disorganized and there is currently no systematic record keeping of children.

A UN official estimated in late 2016 that out of roughly 2500 prisoners across the country, 100 are children. He noted, “As there are no juvenile justice facilities in south-central Somalia or Puntland, courts are reluctant to confirm if an offender is under 18. Most list the juveniles as adults. Any information we have on actual numbers in prisons only refer to adults, although we know from our visits that there are clearly minors.”<sup>182</sup>

Detention monitoring is limited. UNICEF and other UN protection agencies do not have regular access to prisons in the country, require permission to visit, and do not have any access to intelligence detention facilities. Somali legal aid organizations that are visiting detention facilities in Mogadishu are generally only given access to detainees identified by officials or when relatives reach out in order to get legal counsel.<sup>183</sup>

According to Human Rights Watch research, at least 79 children have been imprisoned for Al-Shabab affiliation and related offenses since 2016 in Puntland and south-central Somalia. As of May 2017, at least nine children were serving prison sentences for Al-Shabab-related crimes, five solely for their alleged affiliation, the rest were either handed over to child rehabilitation centers or released. Given questions around age determination, described above, and lack of data, the number is likely to be much higher.

According to lawyers and monitors who have visited Bosasso prison since 2016, in which at least 13 children have been held for security offenses, children are held with adults, in violation of international legal requirements.<sup>184</sup> Human Rights Watch also received reports of four children being held for security-related offenses in Baidoa in late 2016 but was not able to confirm these reports.<sup>185</sup>

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<sup>182</sup>Human Rights Watch email exchange with UNSOM official, October 13, 2016.

<sup>183</sup> Human Rights Watch interview with lawyer, June 9, 2017.

<sup>184</sup> Human Rights Watch interview with Bosasso elder, phone interview May 12, 2017; interview with UN official; CRC, art. 37(c).

<sup>185</sup> Human Rights Watch skype interview UNSOM official, November 4, 2016; interview with UNSOM official, Baidoa, March 6, 2017.

Human Rights Watch visited two prisons in Mogadishu and in Garowe where children alleged to have been members of Al-Shabab are currently serving prison sentences.<sup>186</sup>

### *Children in Mogadishu Central Prison*

At time of Human Rights Watch's visit in May 2017, prison officials said they were holding 17 children in a juvenile cell separate from adults. Human Rights Watch counted 15 in the cell. Eight have been charged with Al-Shabab-related offenses, including the five boys arrested in Beletweyn.<sup>187</sup>

The children in the juvenile cell sleep separately from adults, but they mingle with adults in a common area during the day including during meal times,<sup>188</sup> meaning that the international legal prohibition against commingling of children and adults is not observed.<sup>189</sup> In the juveniles' cell, each child has a mattress on the cement floor, although officials pointed to bunk beds that were being built for the juvenile section. The previous commander of the prison, Maj. Gen. Bashir Gobe, had, according to officials, some relatives of detainees and observers, brought some improvements to the living conditions.<sup>190</sup>

Children appear to have little opportunity for physical exercise apart from playing in a large uncovered open-air courtyard that adults also access. When Human Rights Watch researchers visited they found all the children inside the cell on their mattresses in the middle of the day. As of May 2017, children in Mogadishu Central Prison did not have access to any form of education, although prison officials said they were planning to start classes and had allocated a cell for that purpose.<sup>191</sup>

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<sup>186</sup> Human Rights Watch interview with General Hussein Hassan Osman, Mogadishu, May 23, 2017.

<sup>187</sup> The other children were serving sentences for rape. According to prison officials, two juveniles had been discharged the week before.

<sup>188</sup> Human Rights Watch visit to Mogadishu Central Prison, May 23, 2017; Human Rights Watch email exchange with UNSOM official, October 13, 2016.

<sup>189</sup> CRC, art. 37(c).

<sup>190</sup> Human Rights Watch interview with UNSOM official, Mogadishu, May 23, 2017; interview with relative of juvenile detainee, Mogadishu, March 2, 2017.

<sup>191</sup> Human Rights Watch interview with Mogadishu Central Prison commander, May 23, 2017; in a November 2017 phone interview with the relative of a prisoner, Human Rights Watch was informed that some classes had started to take place in October 2017; Human Rights Watch phone interview, relative of prisoner, November 7, 2017.

Relatives of boys in Mogadishu Central Prison not held in the juvenile cell repeatedly said that prison officials use a solitary confinement room known as the “dark cell” as punishment, including for talking on phones.<sup>192</sup> The father of a defendant sentenced to life as a child in 2014 said: “He can’t speak about the conditions in the prison, as he is scared of being put in the dark room.”<sup>193</sup>

Others raised concerns about limited access to medical attention.<sup>194</sup>

### *Children in Garowe Prison*

At time of Human Rights Watch’s visit in December 2016, 28 children were detained in Garowe prison in a section separate from adults.<sup>195</sup>

The Puntland authorities had previously detained an additional 26 children, identified as between 12 and 14 years old, for seven months there. The children had all initially been held with adult inmates until prison officials transferred them to a separate block.<sup>196</sup>

The children sleep in bunk beds in cells based around a large uncovered courtyard.

The boys attended formal education classes in the morning five times a week, which the boys were particularly happy about. Human Rights Watch also observed the children playing football in a large courtyard, and the boys said that they regularly played both in the main courtyard and inside the juvenile section.

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<sup>192</sup> Human Rights Watch multiple interviews, phone and in person, Mogadishu, May 2017. Human Rights Watch spoke to one adult prisoner who said that he was held for 25 days in dark cell with his hands and legs chained for having used a telephone. Human Rights Watch phone interview with prisoner, March 3, 2017.

<sup>193</sup> Human Rights Watch interview with father, Mogadishu, March 3, 2017.

<sup>194</sup> Human Rights Watch phone interview with prisoner in Mogadishu Central Prison.

<sup>195</sup> The Garowe prison was opened in April 2014. It had been built with UN and international support, notably from Norway, Denmark, the United Kingdom and the Netherlands primarily to hold individuals convicted of piracy-related crimes. See UNODC, “President of Puntland inaugurates major new prison facility in Garowe, Puntland,” April 2, 2014, [http://kriminalomsorgen.custompublish.com/getfile.php/2608076.823.stwrsxtabq/Press+release++Garowe+Prison+Opening+FINAL+\\_2\\_.pdf](http://kriminalomsorgen.custompublish.com/getfile.php/2608076.823.stwrsxtabq/Press+release++Garowe+Prison+Opening+FINAL+_2_.pdf) (accessed August 24, 2017); Human Rights Watch interview with Garowe prison commander, Garowe, December 7, 2016.

<sup>196</sup> Human Rights Watch interview with Mohamed Ali Farah, Garowe, December 11, 2016.

Children complained about food and said they had three meals only three days a week, and only two meals for the remaining days, comparing this to other prisoners from the region whose families were able to bring food to them.<sup>197</sup>

Boys described one occasion either in April or May 2016 when about 10 guards beat them as a form of punishment.<sup>198</sup> One 16-year-old from Bakool told Human Rights Watch:

Everyone was beaten that day including the young kids [ages 12 to 14] who were transferred to Mogadishu. We were beaten because we were shouting inside the rooms. Some also peed inside the rooms and the guards were angry with us. They were around 10 men who were beating us. They were beating us using sticks and black plastic tubes.<sup>199</sup>

None of the children interviewed by Human Rights Watch were from Puntland originally and so none had seen their parents since being detained, although an NGO was paying for them to call relatives weekly. A 16-year-old from Lower Shabelle, who was forcibly recruited by Al-Shabab during a Quranic reading ceremony that his father had encouraged him to take part in told Human Rights Watch:

My father was sad the last time I talked to him. He told me that he couldn't help me get out. I did not call my mum because I am sure she would cry and I don't want to stress her by talking to her.<sup>200</sup>

The distance from their families weighed on most of the boys Human Rights Watch interviewed. "I miss my parents and would like to see them," said a 16-year-old who was forcibly recruited by Al-Shabab on the pretense of being taken to a *duksi*. "We wish someone could change the length and place of our sentence."<sup>201</sup>

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<sup>197</sup> Human Rights Watch interviews, Garowe prison, December 7 and 8, 2016.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Human Rights Watch interview with 16-year-old boy, Garowe prison, December 7, 2016.

<sup>201</sup> Human Rights Watch interview, Garowe prison, December 7, 2016.

## IV. Rehabilitation

The 2007 Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (the “Paris Principles”), described below, provide that the release, protection and reintegration of children unlawfully recruited or used must be sought at all times,<sup>202</sup> and that during release, children should be handed over to “an appropriate, mandated, independent civilian process.”<sup>203</sup>

### Serendi and Adult Rehabilitation Centers

As part of the government’s program for adult former combatants, it has established with international support four transition centers to host and provide rehabilitation to disengaged Al-Shabab combatants who, in theory, have been classified as low risk.<sup>204</sup>

The first rehabilitation center was set up in 2012 at Serendi in Mogadishu.<sup>205</sup> The center accommodated both adult and child former combatants.

Independent oversight and access to the center for the first two years was severely restricted.

In August 2014 the UN Special Representative of the Secretary-General (SRSG) on Children and Armed Conflict, visited the center and subsequently publicly criticized the treatment of the 55 children who were in Serendi at the time, including that they had been detained alongside adults, not been charged with any crime, and not been given the opportunity to

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<sup>202</sup> Paris Principles, principle 3.11.

<sup>203</sup> Ibid., principle 7.21.

<sup>204</sup> Human Rights Watch multiple interviews with international experts working in former combatants’ programming.

<sup>205</sup> The center received funding from Norway, Denmark and Spain and was managed by a private company. For more background on the framework in Somalia on disengaged combatants see Casey-Maslen, Stuart, “Disengaged Combatants, A Review of the Normative Framework,” September 2013, <https://deanpiedmont.files.wordpress.com/2015/08/towards-a-normative-framework-treatment-of-disengaged-combatants.pdf> (accessed August 25, 2017).

challenge their detention.<sup>206</sup> The SRSB spoke to one boy who had been in the center for three years without contact with his family.<sup>207</sup>

The SRSB questioned the process whereby children ended up in Serendi and highlighted that most children she interviewed during the visit said they were not former combatants, but children arrested by security forces during mass security operations.<sup>208</sup>

In a follow-up visit in 2016, the SRSB received allegations of other serious abuses against the children while they were detained in Serendi, including their use by intelligence forces during security operations, and sexual and physical abuse.<sup>209</sup> In September 2015, following significant international pressure on the government, 64 children in the camp were handed over to a UNICEF-supported NGO in Mogadishu.<sup>210</sup>

Several investigations were conducted both by the donor governments and the Somali government into the allegations.<sup>211</sup> None of the reports were made public. Key actors involved in former combatant programming and the Serendi camp told Human Rights Watch that they were unaware of any prosecutions for abuses that took place at the time.<sup>212</sup>

Following the international outcry of treatment of children at Serendi, at present children are not supposed to be admitted to adult rehabilitation centers.<sup>213</sup> Individuals involved in programming at Serendi told Human Rights Watch that intake procedures have been put in

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<sup>206</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “UN Special Representative for Children and Armed Conflict calls for the full implementation of the UN action plans by federal government of Somalia,” August 22, 2014 <https://childrenandarmedconflict.un.org/press-release/special-representative-calls-for-full-implementation-action-plans-somalia/>; World Report 2017, (New York: Human Rights Watch, 2017), Somalia, <https://www.hrw.org/world-report/2017/country-chapters/somalia>.

<sup>207</sup> “Report of the Secretary-General on children and armed conflict in Somalia,” S/2016/1098, December 22, 2016, para.33, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2016/1098&Lang=E&Area=UNDOC](http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/1098&Lang=E&Area=UNDOC) (accessed September 20, 2017).

<sup>208</sup> “Report of the Secretary-General on children and armed conflict in Somalia,” December 22, para. 33.

<sup>209</sup> UN Security Council, “Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015),” October 13, 2016, Annex 7.2.

<sup>210</sup> O’Neil, Siobhan, “Disengaging Children in Violent Extremist Contexts,” United Nations University, Center for Policy and Research, <https://cpr.unu.edu/disengaging-children-in-violent-extremist-contexts.html> (accessed November 2, 2017).

<sup>211</sup> In 2015, camp management was handed over to Adam Smith International (ASI), with funding from the UK and Denmark.

<sup>212</sup> Human Rights Watch skype interview with international expert in former combatant programming, August 18, 2017; interview with child protection actor, August 17, 2017; interview with team working with former combatants, Mogadishu, October 26, 2017.

<sup>213</sup> Adam Smith International (ASI), which manages the main rehabilitation center in Mogadishu, has reportedly tried to strengthen intake procedures notably based on findings of the investigations’ reports.

place to prevent children from being held there.<sup>214</sup> According to child protection advocates, NISA officials have more regularly handed over children in Mogadishu and more recently in Baidoa directly to UNICEF-supported child rehabilitation centers.<sup>215</sup>

The International Organization for Migration (IOM), which manages centers for adult former combatants in Baidoa and Kismayo, told Human Rights Watch in March 2017 that they only have an informal agreement with the authorities and UNICEF in Baidoa to hand over children to the UNICEF-supported partner if children turn up in the rehabilitation centers. IOM also said that there were no formal oversight mechanisms in place to ensure children are not being held in their centers.<sup>216</sup>

## Children Rehabilitation Centers, Programs

There are currently no state-run child or juvenile rehabilitations centers in Somalia. Alongside the adult centers for former male combatants, UNICEF-supported child rehabilitation centers run by NGOs have been established in Mogadishu, Baidoa, Beletweyn, Afgooye, Kismayo and more recently Garowe.

UNICEF and its partners told Human Rights Watch that the rehabilitation program they provide includes medical and psycho-social counseling by social workers and either formal education programs for children 15 years and under or vocational training for older children to learn a trade.<sup>217</sup> In some cases, the NGOs accommodate children in interim care centers if they cannot return to their homes or be hosted in the community during the rehabilitation period. At present, UNICEF and its partners assess when a child is ready to be reunited with their family and to return home.<sup>218</sup>

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<sup>214</sup> Human Rights Watch skype interview with international expert in former combatants' programming, August 18, 2017; interview with team working with former combatants, Mogadishu, October 26, 2017; interview with child protection actor, August 17, 2017. While third party monitors have on occasion had access to Serendi, Human Rights Watch is not aware of any systematic, unannounced monitoring systems in place.

<sup>215</sup> United Nations Security Council, "Somalia report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2244 (2015)," October 13, 2016, Annex 7.2 para 15; interview with child protection actor, August 17, 2017.

<sup>216</sup> Human Rights Watch interview with IOM official, Mogadishu, March 8, 2017.

<sup>217</sup> Human Rights Watch skype interview with UN staff, September 18, 2017; interview with UN partner organization, Baidoa, March 6, 2017.

<sup>218</sup> Human Rights Watch multiple interviews with UNICEF officials and UNICEF-supporter organizations Baidoa, Beletweyn, Mogadishu.

Interviews with children, government officials and child protection advocates highlight current challenges and gaps in existing policies and practices that risk inflicting further harm on children.

Interviews with NISA officials, child protection advocates along with interviews with children and relatives of detainees who were children when in NISA custody highlight how NISA continues to view children as national security threats rather than victims.<sup>219</sup> Senior NISA officials told Human Rights Watch that they are reluctant to hand over children to juvenile rehabilitation centers, citing the risks of re-recruitment or use by Al-Shabab. In May 2017, the then head of NISA, Abdullahi Mohamed Ali “Sanbaloolshe,” told Human Rights Watch:

We need to oversee all children who have been subjected to brainwashing. I would challenge the SOPs [on handovers] – Al-Shabab are smart, sometimes they use the surrendering program as an opportunity. We are taking a massive risk by according children special treatment. Of course, we should not exploit them [the children], but Al-Shabab are using children.<sup>220</sup>

One of his predecessors, Gen. Abdirahman Turyare, told the *Washington Post* that “high-level” child combatants were – and still are – kept in custody, because “they are dangerous and have valuable knowledge.”<sup>221</sup>

Government officials, including intelligence officers, have on occasion sought access to children and interrogated children once they had handed them over to NGO-run rehabilitation facilities and programs. In August 2017, NISA pressured the managers of a UNICEF-supported NGO in Mogadishu to bring four children it had recently handed over to the NGO for further questioning; NISA questioned the children for several hours.<sup>222</sup>

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<sup>220</sup> Human Rights Watch interview with Abdullahi Mohamed Ali ‘Sanbaloolshe,’ Mogadishu, May 19, 2017.

<sup>221</sup> Kevin Sieff, “US Funded Somali Intelligence Agency has been using Kids as Spies,” *Washington Post*, May 7, 2016, [https://www.washingtonpost.com/world/africa/exclusive-us-funded-somali-intelligence-agency-has-been-using-kids-as-spies/2016/05/06/974c9144-0ce3-11e6-a6b6-2e6de3695boe\\_story.html?utm\\_term=.5daf4ea7cc9b](https://www.washingtonpost.com/world/africa/exclusive-us-funded-somali-intelligence-agency-has-been-using-kids-as-spies/2016/05/06/974c9144-0ce3-11e6-a6b6-2e6de3695boe_story.html?utm_term=.5daf4ea7cc9b) (accessed September 27, 2017).

<sup>222</sup> Human Rights Watch multiple interviews with UN, UNICEF-partner, during and following the incident.

The legal status of children handed over by Somali authorities to NGOs for rehabilitation is also at times unclear, particularly in Puntland which does not in practice recognize the SOPs on reception and handover.

In its September 17 ruling, the military court in Puntland explicitly stated that the 26 children it ordered to be handed over for rehabilitation should not be released back into their communities, neither in Puntland nor south-central Somalia until they *are properly rehabilitated* (emphasis added).<sup>223</sup> The terms of this “sentence” were not defined. According to the UN, the sentences of the 40 children incarcerated for between 10 to 20 years who were released from prison and handed over to a new child rehabilitation center in Garowe in April 2017 have not been overturned, although the sentences of 28 were reduced on appeal in December 2017, raising serious concerns that these centers could serve more as correctional facilities than rehabilitation centers.<sup>224</sup>

Government authorities, including security forces, have on occasion sought to interfere with and control the release process of children from rehabilitation centers. In an attempt to ensure prompt release of children under 15 from Garowe prison in 2016, UNICEF agreed to allow Puntland authorities to visit the 26 children handed over to an NGO-run rehabilitation center in Mogadishu.<sup>225</sup> In May 2017, during a visit to the center in Mogadishu, Puntland’s vice president publicly criticized the release of two children back to their families and called for them to be detained once again.<sup>226</sup>

Children are often undergoing rehabilitation far from their areas of origin. Boys interviewed by Human Rights Watch in Garowe prison in December 2016 but now in a rehabilitation center in Garowe repeatedly asked Human Rights Watch to push for them to be transferred closer to home so they could see family and receive food. A 17-year-old, then reportedly serving a 15-year prison term in Garowe prison said: “I wish the Puntland government

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<sup>223</sup> Court Ref MS/CQS/DC/DPL, on file with Human Rights Watch.

<sup>224</sup> Human Rights Watch multiple phone interviews with UN officials, including UNSOM Garowe official, August 7, 2017; Human Rights Watch skype interview with UN official, May 31, 2017; an additional 2 boys were handed over to UNICEF and the child protection partner in April 2017 bringing the total number in the Garowe center to 40; Human Rights Watch email correspondence with UNSOM and UNICEF staff, January 8 & 9 2018.

<sup>225</sup> Human Rights Watch skype interview with UN official, May 31, 2017.

<sup>226</sup> Garowe Online, “Puntland VP blames Mogadishu for freeing al-Shabab prisoners, May 24, 2017, <http://www.garoweonline.com/en/news/puntland/somalia-puntland-vp-blames-mogadishu-for-freeing-al-shabaab-prisoners> (accessed August 8, 2017).

would release me or at least transfer me to another prison like in Mogadishu where my parents and relatives could come and visit me.”<sup>227</sup>

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<sup>227</sup> Human Rights Watch interview with 17-year-old boy, Garowe prison, December 7, 2016 Some child protection partners have not been taking in children who have been brought directly from the battlefield, which has on occasion resulted in them being further away from their home areas. Human Rights Watch interviews with UNICEF-supported partners in Baidoa, Beletweyn and Mogadishu.

## V. International and Somali Law

### International Legal Standards

#### *Prohibiting the Recruitment and Use of Children in Armed Conflict*

In 2015 Somalia ratified the UN Convention on the Rights of the Child (CRC), which defines a child as any person under the age of 18 and requires states to “take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”<sup>228</sup> In November 2017, the Ministry of Women and Human Rights Development announced that it was initiating a process to domesticate the CRC and draft a Child Rights Act.<sup>229</sup> International humanitarian law prohibits any recruitment of children under the age of 15 or their participation in hostilities by national armed forces and non-state armed groups.<sup>230</sup> Such recruitment or use is also considered a war crime.<sup>231</sup>

Somalia has signed, but not ratified the Optional Protocol of Convention on the Rights of the Child on the involvement of children in armed conflict (the “Optional Protocol”). The protocol prohibits any forced recruitment or conscription of children under 18 by government forces, and the participation of children under 18 in active hostilities by any party.

The Optional Protocol also places obligations upon non-state armed groups, which include insurgent and militia groups. Article 4 states that “armed groups that are distinct from the

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<sup>228</sup> CRC, art. 38.

<sup>229</sup> Ministry of Women and Human Rights Development, Somalia Statement on Universal Children’s Day, 2017, November 20, 2017, available at <https://madmimi.com/p/50ae2b/preview> (accessed November 22, 2017).

<sup>230</sup> See Protocol II, art. 4(3)(c). Although Somalia is not a party to Protocol II, this provision, art. 77(2) of Protocol I concerning international armed conflicts, and article 38 of the Convention on the Rights of the Child, are considered reflective of customary international humanitarian law. See ICRC, *Customary International Humanitarian Law*, rule 138. The Rome Statute of the International Criminal Court lists “conscripting or enlisting children under the age of 15 years” into “armed forces or groups” or “using them to participate actively in hostilities” as war crimes (arts. 8(2)(b)(xxvi) and 8(2)(e)(vii). It also prohibits children’s active participation not only in combat but also in scouting, spying, and direct support functions. Rome Statute. Several UN Security Council resolutions condemn the recruitment and use of children in hostilities, including Resolutions 1261 (1999), 1314(2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), and 1998 (2011) on children and armed conflict. See United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Resolutions by the Security Council on Children and Armed Conflict,” undated, <https://childrenandarmedconflict.un.org/virtual-library/> (accessed October 3, 2017).

<sup>231</sup> See ICRC, *Customary International Humanitarian Law*, rule 156.

armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of eighteen."<sup>232</sup>

The African Charter on the Rights and Welfare of the Child, which Somalia signed in 1991 but has not ratified, also provides that states “shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.”<sup>233</sup> The charter defines children as all persons under the age of 18.

The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (the “Paris Principles”), a set of international guidelines endorsed by Somalia and over 100 other countries, sets forth a wide range of principles relating to the protection of children from recruitment or use in armed conflict, their release, and their successful reintegration into civilian life.<sup>234</sup> The principles also address the need for long-term prevention strategies in order to definitively end child involvement with armed groups. In particular, the Paris Principles, to ensure greater protection, broaden the definition of child combatant to include “any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.”<sup>235</sup> The Paris Principles also call for a child’s right to release from armed forces or armed groups.<sup>236</sup>

### *Treatment of Captured Children*

The Convention on the Rights of the Child states that any prosecution of children for criminal acts should prioritize the best interest of the child and be conducted with the

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<sup>232</sup> The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict raised the standards set in the CRC by establishing 18 as the minimum age for any conscription, forced recruitment, or direct participation in hostilities. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted May 25, 2000, G.A. Resolution 54/263, Annex I, 54 U.N. GAOR Supp. (no.49) at 7, U.N. Doc. A/54/49, vol. III (2000), entered into force February 12, 2002. Somalia signed the Optional Protocol in 2005.

<sup>233</sup> The African Charter on the Rights and Welfare of the Child provides that states parties “shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.” African Charter on the Rights and Welfare of the Child, arts. 2 and 22(2). Somalia signed the Charter in 1991.

<sup>234</sup> Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“The Paris Principles”), January 30, 2007, <http://www.unicef.org/protection/files/ParisPrinciples310107English.pdf> (accessed August 14, 2017).

<sup>235</sup> Paris Principles, para. 2.1.

<sup>236</sup> *Ibid.*, paras. 3.11, 3.12, and 3.13.

objective of rehabilitating the child and promoting the child’s reintegration and assumption of a constructive role in society.<sup>237</sup>

The Optional Protocol calls on states to provide appropriate assistance for the physical and psychological recovery and social reintegration for children who have been recruited or used in armed conflict contrary to the protocol.<sup>238</sup>

The Paris Principles state that release and rehabilitation measures should be carried out without any conditions. During release, children should be handed over to “an appropriate, mandated, independent civilian process,” and the majority of children should be returned to their family and community or a family and community environment as soon as possible after their release.<sup>239</sup> The Paris Principles state that while children may be interviewed in order to ascertain eligibility for release programs and facilitate family tracing but that such interviews should never be conducted to collect information for military purposes.<sup>240</sup>

The Paris Principles provide that:

Children who have been associated with armed forces or armed groups should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership of those forces or groups.<sup>241</sup>

Furthermore, children who are accused of crimes committed while they were associated with armed groups “should be considered primarily as victims of offenses against international law; not only as perpetrators.”<sup>242</sup>

Children formerly associated with armed groups can be tried for serious crimes, including murder, in accordance with international juvenile justice standards and in a framework of restorative justice and social rehabilitation. States have a responsibility to

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<sup>237</sup> CRC, art. 3(1); art. 40(1).

<sup>238</sup> CRC Optional Protocol, art. 6(3).

<sup>239</sup> Paris Principles, paras. 3.11, 7.21, 7.45, 8.7, 8.8, and 8.9.

<sup>240</sup> Paris Principles, para. 7.25.

<sup>241</sup> Paris Principles 8.7.

<sup>242</sup> *Ibid.*, para 3.6.

establish child-specific procedures and ensure rule of law officials are training in juvenile justice standards.<sup>243</sup>

The UN Committee on the Rights of the Child, the independent expert body that interprets the Convention on the Rights of the Child, has stated that “the conduct of criminal proceedings against children within the military justice system should be avoided.”<sup>244</sup> The committee also recommends that “If in doubt regarding the age, young persons should be presumed to be children.”<sup>245</sup> The Paris Principles state that:

If national judicial proceedings take place, children are entitled to the highest standards of safeguards available according to international law and standards and every effort should be made to seek alternatives to placing the child in institutions.<sup>246</sup>

The International Covenant on Civil and Political Rights <sup>247</sup> and the Convention on the Rights of the Child prohibit child offenders being sentenced to death.<sup>248</sup> Life sentences without the possibility of release is prohibited under the CRC,<sup>249</sup> but the UN Committee on the Rights of the Child recommends that states abolish all life sentences for child offenders.<sup>250</sup>

### *Standards for Children Accused of Terrorism-Related Crimes*

In response to growing evidence that international humanitarian law, human rights law, and juvenile justice standards established to protect children associated with armed groups are being eroded when it comes to states’ response to children accused of

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<sup>243</sup> Paris Principles 3.6.

<sup>244</sup> UN Committee on the Rights of the Child, “Consideration of Reports Submitted by States Parties Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Concluding Observations, United States of America,” CRC/C/OPAC/USA/CO/1, June 25, 2008, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.USA.CO.1.pdf>, para. 30 (accessed August 14, 2017).

<sup>245</sup> Ibid, para.30 (a).

<sup>246</sup> Paris Principle 8.9.1.

<sup>247</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 6(5). Somalia ratified the ICCPR on January 24, 1990.

<sup>248</sup> CRC art. 37(a) (applicable to sentences after October 1, 2015, when Somalia ratified the CRC).

<sup>249</sup> CRC, art. 37(a).

<sup>250</sup> UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, April 25, 2007, CRC/C/GC/10, para. 77 available at: <http://www.refworld.org/docid/467ofca12.html> (accessed November 2, 2017).

terrorism-related activities, a number of initiatives and research promote best practices for children accused of terrorism-related activities.<sup>251</sup>

While underlining that children accused of terrorism crimes should be tried according to international juvenile justice standards and that these standards should be included within counter-terrorism frameworks, guidelines also push for individualized child-specific intake and needs assessment efforts,<sup>252</sup> and encourage prioritizing diversion options as a positive alternative to criminal prosecutions.<sup>253</sup>

The 2016 Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context puts forward guidelines for how states can uphold the rights of the child in terrorism-related cases. It identifies 13 good practices, stressing that the primary and preferred jurisdiction for children charged with terrorism-related crimes should be specialized juvenile justice systems. It reinforces that the best interests of the child should be a primary consideration, that particular attention should be paid to alternatives to prosecution, and that any justice action should aim at the child's reintegration into society.<sup>254</sup> It encourages states to develop diversion mechanisms to avoid the negative effects of formal judicial proceedings.

The guidelines state that "The successful completion of the diversion program by the child should result in a definite and final closure of the case, and no criminal or other forms of public records should be kept."<sup>255</sup> They also call on courts to ensure individualized and proportional sentencing that takes in both the gravity of the crime, but also the child's own

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<sup>251</sup> See, for example, United Nations Interregional Crime and Justice Research Institute, "Children and Counter-Terrorism," November 2015, [http://www.unicri.it/in\\_focus/files/Children\\_counter\\_terrorism.pdf](http://www.unicri.it/in_focus/files/Children_counter_terrorism.pdf); International Center for Counter-Terrorism, (accessed October 13, 2017); "Correcting the Course. Advancing Juvenile Justice Principles for Children Convicted of Violent Extremism Offences," September 2017, [https://icct.nl/wp-content/uploads/2017/09/Correcting-the-Course\\_Global-Center\\_ICCT.pdf](https://icct.nl/wp-content/uploads/2017/09/Correcting-the-Course_Global-Center_ICCT.pdf), (accessed October 13, 2017).

<sup>252</sup> "Correcting the Course: Advancing Juvenile Justice Principles for Children Convicted of Violent Extremism Offences," September 2017.

<sup>253</sup> Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, August 25, 2016, Good Practice 7, <https://toolkit.thegctf.org/document-sets/neuchatel-memorandum-juvenile-justice/document> (accessed October 16, 2017).

<sup>254</sup> Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, August 25, 2016, Good Practice 1.

<sup>255</sup> Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, August 25, 2016, Good Practice 7.

situation and to take into account mitigating factors and consider non-custodial sentences even for terrorism-related crimes.<sup>256</sup>

## Applicable Somali Law

### *Federal Law*

The federal government in Somalia has made some positive commitments to bring Somali law and policy in line with international standards regarding the treatment of children formerly associated with armed groups and prosecutions of children.

The Provisional Federal Constitution of Somalia (2012) defines a child as a person below the age of 18 and specifies that every child has the right to be protected from armed conflict, and not to be used in armed conflict.<sup>257</sup>

Somalia's provisional constitution grants children basic due process rights stating that:

Every child may be detained only as a last resort, for a limited time, in appropriate conditions, and must be detained separately from adults with the exception of the child's immediate family. The child's immediate family must be informed of the child's detention as soon as practicable.<sup>258</sup>

However, the legal framework remains weak, contains numerous gaps and contradictions, including between federal and state legislation in relation to child rights and juvenile justice. Legal ambiguities, including the legal definition of a child, persist.

There is currently no functioning juvenile justice system in Somalia. Outdated legislation, including the criminal code of 1962, which continues to be used throughout Somalia, contains some provisions and procedural guidance on cases involving children, but are vague and fail to spell out key procedural guarantees. The criminal code that is currently being amended sets 14 as the age of criminal responsibility.<sup>259</sup> The criminal code provides

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<sup>256</sup> Ibid., Good Practice 9.

<sup>257</sup> Provisional Constitution of Somalia, (2012), article 29(8) and (6).

<sup>258</sup> Ibid, article 29.

<sup>259</sup> Criminal code, art. 59; art.119 (on reduction of punishment).

for reduced sentencing for any child offender age 14 to 17, but allows for children to be sentenced to life imprisonment as a reduction for death sentences. It also allows children under 14 to be sent for two years or more to “reformatories” although no such institutions exist in Somalia.<sup>260</sup> The 1970 Juvenile Courts and Reformatories Law defines a child as under 14, and grants specialized courts’ jurisdiction over juvenile cases, except for murder.<sup>261</sup> There are no such specialized courts in Somalia.

### *Puntland*

Puntland’s transitional constitution defines a child as anyone under 15-years-old, contrary to international standards and the provisional federal constitution.<sup>262</sup>

In 2016, Puntland passed a juvenile justice law. The law provides for the establishment of key institutions, including children’s courts, rehabilitation centers, allows bail release, includes diversion options as alternatives to criminal sentences (although only for crimes punishable by five years and below), promotes reduced sentencing and prohibits the death penalty and life imprisonment. It fails to meet international standards by defining a child as 14-years-old and under, at odds with Puntland’s own constitution and the federal constitution, and does not spell out key procedural protections including prompt and free access to a lawyer, access to parents or guardians throughout proceedings, and protections against forced confessions.<sup>263</sup>

In 2010, Puntland passed a vague and problematic counter-terrorism law; in 2012 an amendment was made by the then-president of Puntland, Abdirahman Mohamud Farole, granting the military court in Puntland jurisdiction over counterterrorism cases.<sup>264</sup> There are no provisions excluding children, even age 15 and under, from this act. All the children tried by the military court in Puntland for Al-Shabab-related crimes documented in this report were tried under this law.

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<sup>260</sup> Criminal Code art. 177.

<sup>261</sup> Juvenile Courts and Reformatories Law n. 13 of 8 March 1970, articles 1 & 3 available at [http://www.somalilandlaw.com/Juvenile\\_Courts\\_and\\_Reformatories\\_1970.pdf](http://www.somalilandlaw.com/Juvenile_Courts_and_Reformatories_1970.pdf) (accessed January 8, 2018).

<sup>262</sup> Transitional Constitution of Puntland Regional Government, article 19 (1) [http://www.puntlandgovt.com/puntland-constitution/](http://www.puntlandgovt.com/puntland-constitution/http://www.puntlandgovt.com/puntland-constitution/) (accessed August 3, 2017); The draft constitution of the South West State of Somalia, on file with Human Rights Watch, in its article 27, also defines a child as under 15 years of age.

<sup>263</sup> Juvenile Justice Bill, 2015, Puntland, on file with Human Rights Watch.

<sup>264</sup> Law No. 92 of August 21, 2012.

### *Pending Legislation*

Legal reform at both the federal and state levels is ongoing and the justice model for Somalia, which will determine the role of federal and regional level jurisdiction and legislation, is still under discussion between federal and regional state authorities.

Several pending laws and policies, if not significantly amended, are likely to negatively affect children accused of crimes related to association with Al-Shabab, and risk further facilitating the detention and prosecution of children.

Somalia's pending anti-terrorism law, which the cabinet passed in August, raises due process concerns for adults that would also affect children prosecuted under the law.<sup>265</sup> It restricts due process rights more broadly notably by including caveats on access to legal counsel during pre-trial detention and access to evidence.<sup>266</sup> Positively, the draft law provides that terrorism-related cases fall under the jurisdiction of civilian courts, contrary to current practice.<sup>267</sup>

Contrary to juvenile justice standards under international law, the draft law does not specify procedural requirements for children, including presence of guardians during interrogation. It fails to spell out that detention and imprisonment of children will be a measure of last resort, alternatives to imprisonment, or to prioritize rehabilitation and social reintegration.

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<sup>265</sup> Draft CT law, on file with Human Rights Watch, art. 25(2).

<sup>266</sup> Ibid, art. 5.

<sup>267</sup> Draft CT law, on file with Human Rights Watch, article 4.

## VI. Recommendations

### To the President of Somalia

- Ensure that alleged violations of international human rights and humanitarian law by federal and regional forces and aligned armed groups are promptly, impartially, and transparently investigated, and that those responsible for serious abuses, regardless of rank, are held to account.
- Order the immediate end to all prosecutions in military courts of individuals suspected of committing crimes while under 18, including Al-Shabab related crimes.
- Direct the military chief prosecutor to transfer to the civilian courts all future cases of suspected child offenders including cases in which it is uncertain whether the individual was 18 or over at the time of the alleged offense.
- Publicly support and ensure the implementation of the standard operating procedures for the reception and handover of children separated from armed groups (“SOPs on reception and handover”) and direct state security forces to ensure that children are handed over within the stipulated 72 hours to civilian rehabilitation and reintegration programs.
- Ensure that children are not detained and prosecuted for their participation in the armed conflict or mere membership in an armed group without evidence of further criminal offenses.
- Direct the attorney general to review all cases of prisoners age 21 and below currently serving prison sentences for their alleged association with Al-Shabab to ascertain their actual ages. If found to have been child offenders, determine whether the punishment for criminal offenses was appropriate to their age and consider alternatives to incarceration, including rehabilitation, community service and community-based supervision.
- Immediately commute pending death penalty sentences as a first step toward placing a moratorium on all death sentences; urge the parliament to ban life sentences for child offenders and all use of the death penalty.

*On the capture, detention and screening of children by government forces:*

## **To the Minister for Internal Security and Head of the National Intelligence and Security Agency (NISA)**

- Investigate and appropriately discipline or prosecute any NISA officer, regardless of rank, who committed or is complicit in abuses against children including during arrest or in NISA custody.
- Ensure that arrests of children are systematically recorded, notably by establishing an alert and data recording system, and data promptly shared with the attorney general, Ministry of Justice, and the proposed child's rights commissioner.
- Order all security forces to promptly notify relatives of the whereabouts of captured or arrested children, and ensure all children in government custody are given immediate access to their relatives or a guardian and legal counsel.
- Ensure that the screening procedures of captured or arrested individuals who are not clearly age 18 or over is overseen by independent monitors including monitors specialized in child protection.
- Ensure that the screening of children takes place in safe locations, with easy access to independent monitors, and conducted by civilian authorities.
- Ensure that all children who are deprived of their liberty be brought before a competent authority within 24 hours to review the legality of their detention.
- Promptly transfer any children held by intelligence agencies to the custody of civilian judicial jurisdiction to be charged with a recognizable criminal offense or released.
- Order NISA and intelligence agencies to limit interviews with children alleged to have been previously associated with Al-Shabab to the initial screening process; interviews for criminal justice purposes should be in the presence of defense counsel.
- Allow unrestricted and unannounced monitoring by independent humanitarian agencies and the proposed child's rights commissioner of all government detention facilities, including intelligence-run detention facilities and disengaged combatants' centers where children may be held.
- When age assessments are necessary, ensure they are carried out by trained, civilian experts, and conducted in line with UNICEF guidelines notably by

prioritizing interviews with the child, their relatives and community, and if the age of the child remains unclear, apply the benefit of the doubt in favor of the child; offer training to officials in charge of conducting age assessments.

- Ensure that NISA and other officials involved in investigations and screenings receive appropriate training on juvenile justice standards.
- Thoroughly review, with other line-Ministries and international support, all existing policies relating to former Al-Shabab combatants, including the amnesty policy, the national program on former combatants and members to ensure that they are consistent with international children’s rights obligations.

### **To the Minister of Defense**

- Work with African Union Forces in Somalia (AMISOM) and all local, regional and international forces to ensure safe and prompt transfers of children captured from Al-Shabab and other armed groups.
- Promptly transfer any children held by the military over to the UN within the stipulated 72 hours to civilian rehabilitation and reintegration programs or to the custody of civilian judicial jurisdiction to be charged with a recognizable criminal offense or released.

*On trials of children for alleged crimes committed while associated with Al-Shabab or other armed groups:*

### **To the Minister of Justice**

- Ensure that children are not detained and prosecuted solely for their participation in armed conflict or association with armed groups, without evidence of further criminal offenses; such cases should be transferred to UNICEF as per the SOPs on reception and handover.
- Ensure that any individual accused of crimes committed while under age 18 under national or international law allegedly while associated with armed groups are treated in accordance with international juvenile justice standards—notably ensuring that detention is a last resort and is imposed for the minimum possible time, that children are detained separately from adults, that they have access to

- legal counsel, that the best interest of the child is the primary consideration, and that rehabilitation and reintegration into society are prioritized.
- Investigate alleged abuses by security forces against children in government custody and ensure that those responsible are appropriately disciplined or prosecuted.
  - Ensure that relatives or guardians are regularly updated about their child's detention, charges and court hearings.
  - Ensure all children charged with a criminal offense or brought to trial are given free and appropriate legal assistance.
  - Courts should promptly investigate detainee allegations of torture or ill-treatment and exclude any statements obtained as the result of such treatment.
  - Work toward the establishment of a child-focused juvenile justice system; in the medium-term ensure that an adequate number of civilian court personnel, including judges, prosecutors and defense lawyers receive training in international human rights standards for fair trials and juvenile justice.
  - Develop and establish alternatives to detention and judicial proceedings, including diversion and rehabilitation programs, community service and community-based supervision, and educational and vocational training programs.
  - Establish systematic data collection system on child offenders in prison on Al-Shabab-related crimes and on prosecutions of children for these crimes.
  - Step up, with international support, provision of education and other reintegration and rehabilitation services to children in government custody, including by ensuring children in detention have access to case workers.

### **To the Somali Federal Parliament, Including Federal-level Parliaments**

- Promptly review all regional constitutions to ensure that a child is defined as a person under 18 years of age in line with the provisional constitution and the Convention on the Rights of the Child.
- Incorporate the Convention on the Rights of the Child into Somali domestic law, and ensure that all new laws or pending laws, including the recodified penal code and a future Child Rights Act, are in line with Somalia's obligations under the Convention on the Rights of the Child, including by harmonizing the legal age of a child at under 18 throughout Somalia.

- Review existing and pending federal and regional legislation, including the Anti-Terrorism bill, and policies relating to the handling of Al-Shabab, to bring them in line with international standards on children’s rights and juvenile justice, notably by specifying the procedural rights of children arrested and tried under these laws, and underlining the principle of detention and imprisonment as a last resort and rehabilitation as a preferred option.
- Ban life sentences for child offenders and all use of the death penalty.
- Amend the draft amnesty policy to ensure it does not endorse amnesty for war crimes and other serious violations of international humanitarian and human rights law.
- Ratify and implement, with international support, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
- Adopt measures to ensure that all children are registered immediately after birth, and develop a national birth registration process including through the enactment of a civil registration law.

*On rehabilitation:*

## **To the Somali Federal Government and Federal-level Governments**

- Support the expansion of appropriate demobilization, rehabilitation, and reintegration programs for children formerly associated with armed groups to ensure that all eligible children are able to access appropriate programs; ensure that children are rehabilitated close to their areas of origin, when safe to do so.
- Support clinical mental health programs for children who require more intensive support than those offered in general community-based psycho-social programs.
- The future National Human Rights Commission should appoint a child’s rights commissioner in charge of overseeing the caseload of children handed over for civilian rehabilitation. The proposed child’s rights commissioner should have unfettered access to all detention facilities in which children are detained, and should be informed of and where feasible take part in the releases from child rehabilitation centers; the commissioner should work closely with UNICEF in fulfilling these responsibilities.

## To the Ministers for Internal Security and Justice

- All information regarding arrest and detention should be provided in NISA handover documents to child protection partners.
- Make clear that children transferred to recognized child protection partners should no longer be serving prison terms; follow-up government interviews with transferred children should be limited, include representation for the child, and prevent re-traumatization.

## To the Government of Puntland

- Support legal reforms outlined above aimed at ensuring that Puntland's constitution and legislation are in line with international standards and the federal constitution, notably to ensure that a child is defined as a person under 18 years of age.
- Immediately commute pending death penalty sentences as a first step towards placing a moratorium on all death sentences; urge the parliament to ban life sentences for child offenders and all use of the death penalty.
- Order the immediate end to all prosecutions in military courts of individuals suspected of committing crimes while under 18, including Al-Shabab related crimes.
- Direct the military chief prosecutor to transfer to the civilian courts' all future cases of suspected child offenders including cases in which it is uncertain whether the individual was 18 or over at the time of the alleged offense.
- Ensure that children are not detained and prosecuted for their participation in the armed conflict or mere membership in an armed group without evidence of further criminal offenses.
- Publicly support and ensure the full implementation of the SOPs on reception and handover and call on security forces to ensure that children are handed over within the stipulated 72 hours to civilian rehabilitation and reintegration programs.
- Investigate and appropriately discipline or prosecute any PIA officer, regardless of rank, who commits or is complicit in abuses against children in PIA detention.
- Allow independent humanitarian agencies unrestricted access to all facilities where children are detained, including intelligence-run detention facilities.
- Ensure that any children accused of crimes under national or international law allegedly committed while associated with armed groups should be treated in accordance with international juvenile justice standards—notably ensuring that

detention is a last resort and is imposed for the minimum possible time, that children are detained separate from adults, that they have access to legal counsel, that the best interest of the child is the primary consideration and that their rehabilitation and reintegration into society is prioritized.

- Ensure that children are not detained and prosecuted solely for their association with Al-Shabab or other armed groups.
- Review Puntland’s counterterrorism legislation to ensure compliance with international standards of due process, including with respect to the jurisdiction of civilian courts.
- Amend the juvenile justice law to define a child as anyone under the age of 18, and to conform with international juvenile justice standards, including due process guarantees, access to legal counsel, contact with family members, and provisions for rehabilitation and alternatives to detention.

## **To Al-Shabab**

- Immediately cease recruitment of children under age 18 and release all children currently in Al-Shabab forces who are under 18.
- Ensure that any commander found to be recruiting children or using children for other purposes in training camps and on the front lines is appropriately punished.
- Uphold the right to education by ceasing to improperly interfere in the curriculum of schools or engaging in classroom activities designed to encourage the recruitment of children into Al-Shabab forces.

## **To International Donors, Particularly those Supporting Security Sector Reform and Disarmament, Demobilization and Reintegration Programs**

- Publicly support the measures outlined above to ensure that Somalia’s authorities strengthen their commitment and procedures so that children alleged to have been formerly associated with armed groups are given the protection and support they need.
- Ensure that all counterterrorism and former combatants’ programs take into account the rights, needs and protection of children affected by armed conflict.

- Publicly press for and support the review of existing and pending federal and regional legislation, including the Anti-Terrorism bill, and policies relating to the handling of Al-Shabab, to bring them in line with international standards on children’s rights and juvenile justice; provide technical support and assistance to these efforts.
- Provide financial, technical and security assistance to ensure a prompt handover all Al-Shabab-related cases of children to the civilian justice system.
- Call on federal and regional authorities to allow regular, independent monitoring by humanitarian agencies, including child protection agencies, of all places of detention in which children are held in custody, including intelligence facilities, and including during the screening process of children alleged to have been formerly associated with Al-Shabab.
- Recommend the appointment of a civilian child’s rights commissioner within the future national human rights commission to oversee the caseload of children being held for association with Al-Shabab.
- Support efforts to establish alternatives to detention and judicial proceedings, including diversion and rehabilitation programs, community service and community-based supervision, and educational and vocational training programs.
- Assist the federal and regional authorities in ensuring that the detention of children complies with international standards—notably that detention is used only as a measure of last resort, that children are detained separately from adults, that they have access to legal counsel, and that rehabilitation and reintegration and the best interests of the child are a priority.
- Provide coordinated long-term assistance to Somali federal and regional governments in order to establish a child-focused juvenile justice system; in the medium-term support efforts to ensure that an adequate number of civilian judges, prosecutors and lawyers receive training in juvenile justice standards.
- Support efforts to provide appropriate training to NISA, PIA, and other security forces on child’s rights and child protection issues, rights respecting handling, investigating and processing, and on civilian-led rights-respecting age screening procedures.

- Ensure that strong oversight procedures are established at all adult former combatants' rehabilitation centers to ensure that children are promptly identified and handed over to appropriate juvenile rehabilitation centers.
- Support appropriate child protection activities and demobilization, rehabilitation, and reintegration programs that include vocational training programs, education programs, and medical and psycho-social counselling activities including for survivors of sexual violence.
- Support clinical mental health programs for children who require more intensive support than those offered in general community-based psycho-social programs.
- Support the Somali government to incorporate into Somali law and implement the Convention on the Rights of the Child, and to ratify and implement the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

## To the United Nations Children's Fund (UNICEF)

- Work with the UN country team to strengthen monitoring and reporting of violations against children, including abuses of children detained for alleged security-related offenses.
- Expand appropriate demobilization, rehabilitation, and reintegration programs for children formerly associated with armed groups to ensure that all eligible children are able to access appropriate programs; ensure that children are rehabilitated close to their areas of origin, when safe to do so.
- Urge the Somali government to publicly commit to clarifying the legal status of children within UNICEF-supported child rehabilitation programs.
- Give priority to developing an implementation plan for the SOPs on reception and handover that clarify procedural and legal areas of the process.
- Call on the government to establish a child's rights commissioner to oversee handling of cases of children accused of Al-Shabab-related crimes.
- Support over the long-term the establishment of a child-focused juvenile justice system, and in the medium-term help to ensure that civilian judges, prosecutors and lawyers receive training in juvenile justice standards.
- Work with authorities to implement guidelines on age assessment that prioritize interviews with the child, their relatives and community, and if the age of the child

- remains unclear, apply the benefit of the doubt in favor of the child; offer training to officials in charge of conducting age assessments.
- Support, alongside UNSOM, government and civil society efforts to ensure that all children have adequate legal help in all phases of judicial investigations.
  - Continue to offer with UNSOM training for intelligence agencies on child protection issues; and call for oversight of screening processes.

### **To the United Nations Assistance Mission in Somalia (UNSOM)**

- Commit to regularly following-up on child rights incident reporting; seek regular access to detention facilities and trials involving children, when security permits, including facilities run by NISA.
- Coordinate with UNICEF regarding advocacy calling for the release and rehabilitation of children associated with armed groups.
- Encourage AMISOM and all AMISOM troop-contributing countries to systematically record and inform the UN when its forces capture or apprehend and hand over children to the Somali authorities.
- Support the establishment, along with corrections' partners involved in detention facilities, systems to collect data on children in government custody.
- Continue to offer with UNICEF training for intelligence agencies on child protection issues; and call for oversight of screening processes.

### **To the UN Department of Political Affairs (DPA) and Office of the High Commissioner for Human Rights (OHCHR)**

- Ensure regular follow-up on child rights incident reporting, and monitoring of detention facilities and trials involving children, when security permits, including facilities run by NISA.

### **To AMISOM and Its Troop Contributing Countries**

- Ensure compliance with AMISOM's SOPs on reception and handover and systematically record and promptly share information with the UN when AMISOM forces capture or apprehend and hand over children to the Somali authorities.

## To the UN Security Council

- Retain the child protection and human rights mandate when reauthorizing UNSOM.
- Follow-up on the conclusions on children and armed conflict in Somalia, including during discussions on mandate renewals.

## Acknowledgments

This report was researched and written by Laetitia Bader, senior researcher in the Africa division of Human Rights Watch, with research assistance from Abdullahi Abdi, research assistant in the Africa division. The report was edited by Maria Burnett, associate director in the Africa division, Jo Becker, advocacy director in the children’s rights division, Michael Bochenek, senior counsel in the children’s rights division and Nadim Houry, director of the terrorism/counterterrorism division. James Ross, legal and policy director, and Babatunde Olugboji, deputy program director, provided legal and program reviews, respectively.

Abdullahi Abdi provided production assistance and support. Rebecca Rom-Frank coordinated layout and Fitzroy Hepkins prepared the report for publication.

Human Rights Watch would like to thank the many boys and their relatives who shared their experiences, making this report possible. We also wish to thank all those Somalis and others who offered information and their expertise.

## Appendix I: Letter to NISA

November 7, 2017



*Via email:*

**Re: Children in National Intelligence and Security Agency (NISA) Custody**

Dear forthcoming Director General,

I wanted to share with you the key findings of our research into treatment in government custody of children suspected of association with Al-Shabab, to follow-up on a previous meeting between former NISA director, Abdullahi Mohamed “Sanbaloolshe”, and Human Rights Watch’s senior Researcher, Ms. Laetitia Bader in May 2017 in Mogadishu.

Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses by states and non-state armed groups in over 90 countries worldwide. Human Rights Watch has long documented violations of international human rights and international humanitarian law by all parties to the conflict in Somalia.

In the interest of accurate research, Human Rights Watch strives to reflect all perspectives in our research and publications. We are therefore including the summary of our findings with some final follow-up questions below, to which we hope you or relevant staff within NISA will respond so that your views are accurately reflected in our reporting.

**Research findings:**

Our research is based on over 80 interviews with children alleged to have been associated with Al-Shabab and relatives of children detained by security forces in south-central

Somalia and Puntland. We also spoke with government and military court officials and child protection workers.

As you are aware, on February 2014, the federal government in Somalia signed Standard Operating Procedures (SOPs) for the reception and handover of children separated from armed groups. The procedures stipulate that children, whether having escaped, been captured, or having been otherwise separated from armed groups should be handed over to the United Nations for rehabilitation within 72 hours of having been taken into government custody. The SOPs also spell out, as per international standards, that debriefings with children in government custody should focus on facilitating the prompt return to their families, and should in no way serve to obtain information “under force or threat of force, real or implied.”

However, Human Rights Watch research found that NISA has been detaining different categories of children beyond the stipulated 72 hours. In addition, NISA personnel have also been interrogating children without access to legal counsel or their relatives, and subjecting them to coercion and forced confessions.

We also identified at least nine cases affecting 16 children sentenced by the military court since 2015, all of which had been transferred to the court following NISA detentions. We repeatedly found that the basis of the indictments were confessions extracted under NISA’s custody.

These cases raise grave concerns about NISA’s commitment to the implementation of the SOPs and NISA’s mistreatment of children in custody, as well as serious concerns about treatment of detainees more broadly.

**Inquiries:**

Human Rights Watch would appreciate your response to the following questions by **November 26** to ensure your views are reflected in our reporting.

*Screening Process*

1. What measures are taken by NISA screeners to ensure that children under the age of 18 are identified and separated during the screening process?
2. How do NISA screeners determine the age of a detainee?

3. When and how does NISA inform the UN of child in its custody?
4. Which categories of children are not handed over to the UN for rehabilitation within 72 hours, and why?

#### *Interrogations*

5. What is NISA's policy on access to legal counsel during NISA custody and during interrogations?
6. What measures are in place to ensure that NISA interrogators do not use coercive means during screening and interrogations, including of children, and what measures are taken when allegations of mistreatment arise?

#### *Handover*

7. How are the SOPs for the reception and on handover of children separated from armed groups currently implemented? What measures have been taken, as per the June 2016 inter-ministerial committee report, to speed up transfer of children in NISA detention?

#### *Detention*

8. How does NISA ensure that children under the age of 18 are not held with adults in NISA detention facilities?
9. What measures are taken to ensure that relatives of those in your custody under age 18 are promptly informed of their children's detention?
10. What measures are in place to ensure that children in NISA custody, official or unofficial, are not being used as informants or in other roles in NISA operations?

#### *Accountability*

11. Please describe internal disciplinary and other procedures available to NISA to hold its officials to account for abusing the rights of detainees, particularly children;
12. Please share details of any disciplinary or other actions that have been taken against NISA officials because of a failure to follow procedures during arrests, interrogations and detention of children.

Please do not hesitate to send us any other materials or information that you think would be relevant for our understanding of these issues.

As noted above, we would appreciate receiving your response to this letter by **November 26**. Please send your response to my colleague, Laetitia Bader, our senior Somalia researcher who can be reached at:

Yours Sincerely,

A handwritten signature in purple ink, appearing to read 'Mausi Segun', with a horizontal line underneath.

Mausi Segun (Ms.)  
Executive Director  
Africa Division

## Appendix II: Letter to Federal Minister of Justice

November 2, 2017

*Via email:*

**Re: Children in Detention for Security Offenses**



Dear Minister Hassan Hussein,

I am writing to express appreciation for your team's meeting with Human Rights Watch's senior Researcher, Ms. Laetitia Bader in May 2017 in Mogadishu. In addition, I wanted to share with you the key findings of our research into treatment in government custody of children suspected of association with Al-Shabab.

Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses by states and non-state armed groups in over 90 countries worldwide. Human Rights Watch has long documented violations of international human rights and international humanitarian law by all parties to the conflict in Somalia.

In the interest of accurate research, Human Rights Watch strives to reflect all perspectives in our research and publications. We are therefore including the summary of our findings with some follow-up questions below, to which we hope you or your staff will respond so that your views are accurately reflected in our reporting.

### **Research findings:**

Our research is based on over 80 interviews with children alleged to have been associated with Al-Shabab, relatives of children detained by security forces throughout south-central Somalia and Puntland, as well as with government, military court and custodial corps officials and child protection workers.

In February 2014, the federal government in Somalia signed Standard Operating Procedures (SOPs) for the reception and handover of children separated from armed

groups. These procedures stipulate that children, whether having escaped, been captured, or having been otherwise separated from armed groups should be handed over to the UN for rehabilitation within 72 hours of having been taken into government custody.

However, Human Rights Watch research found that children arrested for security-related offenses are being detained beyond the stipulated 72 hours, interrogated without access to legal counsel or their relatives, and often subjected to coercive interrogations and confessions.

We also identified at least nine cases affecting 16 children, sentenced by the military court since 2015. Positively, Human Rights Watch noted that a number of children in Mogadishu Central Prison were held in a separate juvenile cell. However, children continue to mingle with adults in the common areas, and at the time of our May 2017 visit were not receiving any education.

### **Inquiries:**

Human Rights Watch would appreciate your response in writing to the following questions by **November 26** to ensure your views are reflected in our reporting.

#### *Pre-charge/pretrial detention*

1. Does the Ministry ensure oversight of pretrial detention of children? If yes, how does the Ministry do this?
2. What oversight does the Ministry have over detentions in National Intelligence and Security Agency (NISA) including of cases considered as falling within the military court docket?
3. What measures is the Ministry taking to ensure that relatives of those in government custody under age 18 are promptly informed of their children's detention?

#### *Oversight of children in government custody, prison*

4. What measures is the Ministry taking to ensure that all children are identified and separated from adults in detention?
5. How does the Ministry currently keep track of children in government custody?

6. How many children are currently in government custody on Al-Shabab-related charges in Mogadishu, including children sentenced by the military court and serving sentences in Mogadishu Central Prison?
7. How many people currently serving prison sentences were under 18 at time of sentencing by the military court? Has the Ministry reviewed these cases to ensure that they were handed down in line with international standards concerning the trial and sentencing of child offenders?
8. Does the Ministry have information on juvenile caseloads in other detention facilities including prisons across the country? If so, please share relevant information.

*Accountability*

9. What mechanisms are in place for detainees, including children, to challenge their detention, including in intelligence facilities, or file complaints against security and custodial officials?

Please do not hesitate to send us any other materials or information that you think would be relevant for our understanding of these issues.

As noted above, we would appreciate receiving your response to this letter by **November 26**. Please send your response to my colleague, Laetitia Bader, our senior Somalia researcher who can be reached at:

Yours Sincerely,



Mausi Segun (Ms.)  
Executive Director  
Africa Division

## Appendix III: Letter to Puntland Minister of Justice

November 2, 2017

Honorable Salah Habib  
Cabinet Minister  
Ministry of Justice and Religious Affairs  
Puntland, Somalia  
Via email:



**Re: Children in Government Custody for Suspected Al-Shabab Crimes**

Dear Minister Salah,

I am writing to express appreciation for your team’s meeting with Human Rights Watch’s senior Researcher, Ms. Laetitia Bader in Garowe in December 2016. In addition, I wanted to share with you the key findings of our research into treatment in government custody of children suspected of association with Al-Shabab and during military court processes in Puntland and south-central Somalia.

Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses by state and non-state actors in over 90 countries worldwide. Human Rights Watch has long documented violations of human rights and international humanitarian law by all parties to the conflict in Somalia. The focus of our work prior to 2016 had largely been on south-central Somalia.

In the interest of accurate research, Human Rights Watch strives to reflect all perspectives in our research and publications. We are therefore including the summary of our findings with some final follow-up questions below, to which we hope you or your staff will respond so that your views are accurately reflected in our reporting.

### **Research findings:**

Our research has been conducted since December 2016 and is based on over 80 interviews with children alleged to have been associated with Al-Shabab, relatives of children detained by security forces throughout south-central Somalia and Puntland, as well as with government and military court officials and child protection workers.

In Puntland, we found that at least 40 children age 15 and above have been tried, of whom 39 were sentenced to between 10 years and life imprisonment by the region's military court since 2016. These military court trials violated basic due process standards, most notably the right to present a defense and use of unlawful confessions. Of particular concern is the treatment of detainees, including children, in Puntland Intelligence Service (PIS) detention facilities in Bosasso, including incommunicado detention, coercive interrogations without the presence of a lawyer, and in one case treatment that amounts to torture.

While recognizing efforts made by Puntland to improve the conditions of children within its custody in Garowe prison, Human Rights Watch documented a number of concerns with the treatment of this group, including prolonged detention and harsh prison sentences.

Puntland also currently has on its books several problematic laws that violate basic international legal protections on children's rights, juvenile justice, and due process rights more broadly.

### **Inquiries:**

Human Rights Watch would appreciate your response to the following questions by **November 26** to ensure your views are reflected in our reporting.

#### *Pre-charge detention*

1. Does the Ministry ensure oversight of pretrial detention of children? If yes, how does the Ministry do this?
2. What oversight does the Ministry have over detentions in PIS including of cases considered as falling within the military court docket?
3. What measures is the Ministry taking to ensure that relatives of those in government custody, including PIS detention, under age 18 are promptly informed of their children's detention?

Human Rights Watch is aware that defendants in the cases it investigated had legal counsel during the trials. Please provide more details about this:

4. How were the lawyers selected to represent these defendants?
5. When did the defendants first have access to their lawyers? Did all defendants meet with their lawyers?

#### *Military court trials*

6. What is the legal basis under Somali law for the military court to try civilian defendants?
7. What were the exact charges and sentences handed down by the military court in Garowe of 28 children sentenced on September 17, 2016? Were the sentences determined solely on the basis of age?
8. What procedures are in place to screen the ages of potential child suspects by the military court in Puntland?
9. What measures have been taken by the military court in 2017 to investigate allegations of mistreatment in pre-charge detention?

#### *Handover/ Rehabilitation*

10. What is the Puntland government's policy on which children alleged to have been associated with armed groups are eligible for rehabilitation?
11. What is the legal status of the 38 convicted children currently in rehabilitation in Garowe? Have their military court sentences been overturned by appeals courts?
12. What are the conditions for departure of the 38 children in the center? How does the government plan to prepare them for return to their communities, security permitting?

#### *Accountability*

13. Please describe internal disciplinary and other procedures in place to hold PIS officials to account for abusing the rights of detainees, along with details of any disciplinary or other actions that have been taken against PIS officials because of a failure to follow proper procedures during arrests and detention of children.

*Legislation*

14. What measures are Puntland authorities taking to ensure that the legislation regarding children in government custody is in line with international standards and Somalia's federal constitution?

Please do not hesitate to send us any other materials or information that you think would be relevant for our understanding of these issues.

As noted above, we would appreciate receiving your response to this letter by **November 26**. Please send your response to my colleague, Laetitia Bader, our senior Somalia researcher who can be reached at:

Yours Sincerely,

A handwritten signature in purple ink, appearing to read 'Mausi Segun'.

Mausi Segun (Ms.)  
Executive Director  
Africa Division

# “It’s Like We’re Always in a Prison”

## Abuses Against Boys Accused of National Security Offenses in Somalia

The Islamist armed group Al-Shabab in Somalia recruits and uses hundreds of children as fighters. But their hardships and abuses continue even after these children escape or are captured by government forces.

*“It’s Like We’re Always in a Prison”*: *Abuses Against Boys Accused of National Security Offenses in Somalia*, documents the treatment of children arrested and detained since 2015 for suspected association with Al-Shabab. It is based on over 80 interviews, including with children formerly forced to train with or support Al-Shabab, their relatives, boys who had been detained in intelligence and police custody, lawyers, child protection advocates, and government officials.

The report finds that authorities across Somalia are subjecting children in their custody to serious abuses, including coercive confessions and prohibiting access to their family members. Children handed over for prosecution are being tried in military courts in proceedings that fail to meet international juvenile justice standards. Existing and pending laws risk making it easier, not harder, to detain and prosecute children for Al-Shabab-related crimes without basic juvenile justice protections for children. When the authorities do hand children over to child rehabilitation centers, their legal status is often unclear.

Human Rights Watch calls on the Somali government to end arbitrary detention of children and allow for systematic independent oversight of children in custody. Children taken into custody should be promptly transferred to child protection actors for rehabilitation and – when feasible – reintegration. Children accused of serious crimes should be tried by civilian courts in line with juvenile justice standards.



*A prison warden at a prison in Garowe, Puntland state, in northeastern Somalia, December 2016. Fifty-four boys, some as young as 12, sent to fight by Al-Shabab in Puntland, spent months in this facility far from their homes. A military court sentenced 28 of the 54 boys to long prison terms, which they are now serving in a rehabilitation center in Garowe.*

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