

Submission to the UN Committee against Torture

List of Issues Prior to Reporting for Somalia



October 2017



Table of Contents:

- I. Introduction
- II. Brief context
- III. Proposed Questions
 - Articles 1 and 4: Definition and criminalization of torture in domestic law
 - Article 2: Effective legislative, administrative, judicial or other measures to prevent acts of torture
 - Article 3: Principle of non-refoulement
 - Article 10: Training of law enforcement personnel, civil or military, medical personnel, public officials and other relevant persons
 - Article 11: Review interrogation rules, methods and practices and arrangements for custody and treatment of detainees
 - Article 14: Right to redress and compensation
 - Article 15: Inadmissibility of evidence obtained through torture



I. Introduction

Legal Action Worldwide (“LAW”) is an independent non-profit network and think tank of lawyers who provide creative legal assistance in fragile and conflict-affected areas. Our aim is to bring legal assistance to the most vulnerable and place national lawyers at the forefront of legal change. LAW uses legal advocacy, research, advice and strategic litigation to bring about change. We have three key priority areas:

- Addressing sexual and gender based violence;
- Accountability of security forces; and,
- Natural resource exploitation/displacement.

LAW’s Advisory Council and Board are comprised of senior international lawyers who advise LAW on the development of innovative litigation and legal strategies.

On the basis of its mandate, expertise, and activities, LAW wishes to raise a number of issues in this submission. This submission aims to propose questions for the Committee against Torture (“CAT Committee”) to help inform the List of Issues Prior to Reporting. LAW would welcome the consideration of these questions by the Committee when drafting and adopting the List of Issues Prior to Reporting.

The submission does not provide questions on all the issues that fall under the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT Convention”). This does not imply that LAW is of the opinion that the issues it does propose questions on are sufficiently implemented by Somalia or do not merit the further attention of the Committee.

II. Brief Context

Almost three decades of protracted conflict in Somalia have caused a serious rule of law vacuum with almost total impunity for serious crimes. Somalia elected a new federal government in early 2017, which has the mandate to restore law, order, and security to Somalia. Security forces operating in Somalia include the Somali National Army (SNA), Somali Police Force (SPF), National Intelligence and Security Agency (NISA), African Union Mission in Somalia (AMISOM), clan-based and other militias. Allegations of human rights violations by these security forces include extrajudicial killings, torture, arbitrary arrest and detention, and sexual and gender-based violence. Women, children, and IDP’s are particularly vulnerable to human rights violations committed by security forces and often have the least access to legal remedies or access to justice. While there have been ambitious plans and focus on restructuring, reforming, and building the capacity of the security forces, including the recent Security Pact¹, these plans are still in process and have yet to be comprehensively implemented.

¹ London Conference Somalia, *Security Pact* (11 May 2017), available at <<https://www.gov.uk/government/publications/london-somalia-conference-2017-security-pact>>.

In the 2016 Universal Periodic Review (UPR) of Somalia, the Attorney General “affirmed that the Government did not condone torture or ill-treatment of any person. All law enforcement and security agencies adhered to that principle. The Government was working to raise awareness that there could not be any circumstances in which torture was permissible.”ⁱ Furthermore, there have been credible allegations of torture committed by the security forces, before and since this statement². More specific and detailed information from the State is necessary to understand what the gaps and problem areas are and how these can be remedied. This is why LAW has prepared the following questions.

III. Proposed Questions

Articles 1 and 4: Definition and criminalization of torture in domestic law

1. Please provide detailed information on the measures taken to adopt a definition of torture in domestic criminal law that is consistent with article 1 of the Convention and that includes appropriate penalties taking into account the grave nature of such acts.
2. Please provide information on criminal or legislative provisions covering all cases of torture and the associated penalties.
3. Please provide specific examples and data on cases, if any, in which the provisions of the Convention have been invoked or considered by the courts.

Article 2: Effective legislative, administrative, judicial or other measures to prevent acts of torture

4. Please provide information on the measures taken and procedures in force to ensure that:
 - (a) All detainees enjoy in law and in practice all legal safeguards from the outset of their deprivation of liberty, in particular the rights to have access to a lawyer, to be examined by an independent physician of their choice, to be informed of their rights and of the charges against them, to notify a relative, and to be brought promptly before a judge, regardless of the reasons for their arrest;
 - (b) The legal time limits for custody are respected in practice;
 - (c) Legal aid is available to the most disadvantaged.
5. Please indicate any legislative measures taken to ensure observance of the absolute prohibition on torture, including during states of emergency.
6. Please provide detailed information on measures taken to guarantee the full independence and impartiality of judges and prosecutors, including information on the procedure for the appointment of judges, the rules governing their tenure and the procedure according to which they may be dismissed.
7. Please provide information on the status of the establishment of the National Human Rights Commission.
8. Does the law that establishes the National Human Rights Commission ensures its independence?
9. What is the precise mandate of the National Human Rights Commission?

² United States State Department Report, *Somalia Human Rights Report*, 2016 p.4; 2015 p. 3; 2014 p.3; 2013 p. 4; *Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council Resolution 2244(2015): Somalia*, (31 October 2016) S/2016/919 annex 7.3 [18].

10. Please indicate whether there is any specific legislation with regard to the prohibition on invoking superior orders, including orders from military or police authorities, as a justification of torture. If so, please provide information on its practical implementation. Please provide information on the remedies available to subordinates whereby they can lawfully oppose an order to commit acts of torture.
11. Please provide information on whether in law and in practice, confessional evidence without any other corroborating evidence can be the basis of conviction in civilian and military courts. Please provide information on measures taken to train and build the capacity of the Somali Police Force (“SPF”) and regional police forces to conduct investigations so they do not rely unduly on confessional evidence.
12. Please provide an explanation on why Somalia has consistently supported the UN General Assembly resolution on the moratorium on the death penalty despite continuing to retain it.
13. Please provide information on the status of the Sexual Offences Bill and other steps taken to combat and punish all forms of violence against women, including domestic violence and rape.
14. Please provide up-to-date information on steps taken to criminalize harmful practices, in particular, female genital mutilation/cutting (“FGM/C”) and other measures and/or policies taken to combat it.

Article 3: Principle of non-refoulement

15. Please describe the measures taken during the period under review to ensure that no person is returned to a country where he or she would be in danger of torture. Please provide indicate the procedure followed when a person invokes this rights and whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision.
16. Please provide detailed information on the process of the extradition of Abdikarim Sheikh Muse to Ethiopia. Was there any form of judicial procedure prior to the extradition?

Article 10: Training of law enforcement personnel, civil or military, medical personnel, public officials and other relevant persons

17. Please provide up-to-date information on training and educational programmes carried out by the State or third parties for security forces (NISA, SPF, SNA, Federal member states forces) to ensure they are familiar with the provisions of the Convention.
18. Please provide detailed information on training programmes for judges, prosecutors, and medical personnel dealing with detained persons, to detect and document physical and psychological signs of torture. Please indicate whether such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”).

Article 11: Review interrogation rules, methods and practices and arrangements for custody and treatment of detainees

19. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods, and practices and arrangements for the custody of persons subjected to any form of arrest, detention or imprisonment. Please indicate the frequency with which these are reviewed.
20. Please provide information on measures to taken to investigate reports of unofficial sites of detention.

Articles 12 and 13: Prompt and impartial investigation of allegations of torture and right to complain to competent authorities

21. Please provide up-to-date statistical data disaggregated by sex, age, clan, ethnic origin or nationality and place of detention on the individuals concerned who made complaints of torture, ill-treatment, and excessive use of force.
22. Please provide information on any investigations, disciplinary and criminal proceedings, convictions, and the criminal or disciplinary sanctions applied in response to allegations of torture, ill-treatment and/or excessive use of force during the reporting period. Please also provide information on measures taken to protect victims, witnesses and judicial officials from reprisals.
23. Please provide up-to-date statistical data disaggregated by sex, age, clan, ethnic origin or nationality, location and prevalence on the individuals concerned who made complaints of sexual and gender-based violence (“SGBV”), including FGM/C, in the reporting period. Please include information on the types of SGBV alleged and the perpetrators. Please also provide information on any investigations, disciplinary and criminal proceedings, convictions, and the criminal or disciplinary sanctions applied in response to these allegations.
24. Please provide information on measures taken to investigate and prosecute any alleged perpetrators of acts of torture and cruel, inhuman or degrading treatment committed during the armed conflict in the reporting period.

Article 14: Right to redress and compensation

25. Please provide up-to-date information on any redress and compensation measures, including rehabilitation, ordered by the courts and actually delivered to victims of torture or ill-treatment or their families. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment.

Article 15: Inadmissibility of evidence obtained through torture

26. Please provide information on the legal provisions and other specific measures taken to ensure that the principle of inadmissibility of evidence obtained under torture is actually observed. Please provide examples of any cases that have been dismissed by the courts due to the introduction of evidence or testimony obtained through torture or ill-treatment.

¹ United Nations General Assembly, *Report of the Working Group on the Universal Periodic Review: Somalia* (13 April 2016) A/HRC/32/12 [32].