

# SECURING POLITICAL PARTICIPATION: HUMAN RIGHTS IN SOMALIA'S ELECTORAL PROCESSES

August 2018



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



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## LIST OF ACRONYMS

BRA:	Banaadir Regional Administration
FIEIT:	Federal Indirect Electoral Implementation Team
FGS:	Federal Government of Somalia
FMS:	Federal Member States
HRPG:	Human Rights and Protection Group
IED:	Improvised explosive devices
IEDRM:	The Independent Electoral Dispute Resolution Mechanism
IESG:	Integrated Electoral Support Group
ISWA:	Interim South West Administration
JISA:	Jubbaland Intelligence and Security Agency
NCF:	National Consultative Forum
NISA:	National Intelligence and Security Agency
NLF:	National Leadership Forum
OHCHR:	Office of the United Nations High Commissioner for Human Rights
SIEIT:	State Indirect Electoral Implementation Team
SNA:	Somali National Army
UNSOM:	United Nations Assistance Mission in Somalia
UNDP:	United Nations Development Programme
VBIED:	Vehicle-borne improvised explosive devices

## Executive Summary

This report is jointly released by the United Nations Assistance Mission in Somalia (UNSOM) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), based on the monitoring work of the UNSOM Human Rights Protection Group (HRPG). The report focuses on human rights violations and abuses committed before during and after parliamentary and presidential elections that were held in Somalia in late 2016 and early 2017. It covers the period between August 2016 and February 2018.

The UNSOM HRPG prepared this report pursuant to UNSOM's mandate under United Nations Security Council Resolution 2158 (2014), which requires it "to monitor, help investigate and report to the Council on, and help prevent any abuses or violations of human rights or violations of international humanitarian law committed in Somalia".

There have been significant gains in Somalia's peace process in the last five years. This is reflected *inter alia* by the electoral process initiated in July 2015 that resulted in a new Upper House and a transformed House of the People, which is more diverse, with an increased number of women (from 14 per cent in 2012 to 24 per cent in 2016-2017), and a 50 per cent new membership including youth. However, women, persons with disabilities, minority clans, and civil society groups had limited or no access to the electoral process throughout the country, as it was a political process based on clan distribution.

The 2016 election, characterized by the United Nations as a "political process with electoral features", was a transitional process that took place before the full formation of Federal Member States (FMS) and before constitutional reforms were completed. In the absence of a specific election law or regulations, most of the modalities were developed and negotiated while the process advanced. The institutions and the framework for elections created were *ad hoc*, based on decisions by the National Leadership Forum (NLF), the main decision-making body for the electoral process that included the Federal Government of Somalia (FGS) President and FMS Presidents, the Speaker of the Federal Parliament and the FGS Prime Minister, and validated by a series of presidential decrees. Because the legal framework was not established in advance, the roles of relevant institutions were largely undefined, and the appointment of officials administering the election was not transparent, which posed significant challenges to the electoral process.

The 2016 Somali electoral process was not a universal suffrage election, as the necessary conditions were not yet in place to apply the one-person, one-vote principle. Instead, there was a system of indirect elections whereby 275 electoral colleges, each consisting of 51 delegates, elected the 275 members of the House of the People. The newly-elected Parliament elected a new President on 8 February 2017.

Despite these achievements, insecurity, weak justice institutions, and an insufficient human rights protection system contributed to the lack of accountability for human rights violations and abuses. This report includes specific corrective recommendations in that regard.

In direct connection to the 2016-2017 electoral process in Somalia, UNSOM HRPG documented cases of human rights violations and abuses committed by state security forces (including police, Somali National Army and intelligence agencies) at federal and state levels, as well as by non-State actors, including Al-Shabaab and individuals with interests in the elections.

Overall, during the period covered by the report, UNSOM HRPG documented 44 cases of elections-related killings (41 men and 3 women) and 4 injuries (all men).

During the pre-electoral and electoral period from August 2016 to February 2018, UNSOM HRPG documented 65 cases of human rights violations directly related to the electoral process, including killings and injuries, arbitrary arrest, intimidation of candidates, and other infringements of the rights of participation. Thirty-six of the cases occurred before the election of the President on 8 February 2017 and included 15 killings and 4 injuries, mainly as a result of targeted attacks by unidentified armed men in Mogadishu. The victims included electoral candidates, members of the electoral bodies, and prominent elders of clans involved in the campaign and voting process. Of the 15 men who were killed, 13 were prominent elders and 2 were electoral delegates.

Since the Somali President was elected on 8 February 2017, electoral-related violence continued and voters, clan elders and others who participated in the process have been targeted for assassination. Between 13 February 2017 and 28 February 2018, UNSOM recorded 29 killings (including 26 men and 3 women); 14 of the victims had participated in the electoral process in the Interim South West Administration (ISWA), 6 in Galmudug, and 9 in HirShabelle. While most of the killings were attributed to Al-Shabaab by different sources, Al-Shabaab officially claimed responsibility for eight killings. Some of the assassinations appear to have been reprisals by Al-Shabaab, as the group repeatedly threatened to target and kill anyone participating in the electoral process. Other assassinations seem to be linked to rivalries between political and clan factions or possible spoilers.

Somali authorities did not investigate the vast majority of the electoral process-related human rights violations and abuses. Of the 44 cases of killings of elders and electoral delegates (15 during pre-polling phase and 29 in post polling phase), only 2 cases resulted in the arrest and prosecution of 5 alleged Al-Shabaab suspects: in Mogadishu on 21 August 2017 and Baidoa on 21 June 2017.

Without prejudice to the territorial integrity of Somalia, the report also includes a section on the 2017 presidential election held in Somaliland on 13 November 2017, in which a one person, one vote system was applied, unlike in the rest of Somalia. Initially planned for June 2015, this process suffered significant delays due to political disagreements, technical issues, and the humanitarian crisis caused by the drought. In October and November 2017, UNSOM documented election-related human rights violations in Somaliland, including excessive use of force by security forces against demonstrators that caused 20 casualties (3 deaths and 17 injuries). In one incident, security forces shot and injured eight civilians in the disputed region of Sanaag during a peaceful election-related demonstration, in late October 2017. During the elections, it appears that many citizens who registered in three polling stations in the disputed areas of Sool and Sanaag were not given the opportunity to vote due to rising tensions between Puntland and Somaliland. During post-election demonstrations in mid-November 2017, police shot and killed three civilians and injured

nine in different towns in Somaliland. Other human rights concerns included harassment and arrests of opposition politicians and media personnel.

The report concludes with recommendations that the Federal Government of Somalia and the international community adopt measures to prevent human rights violations in advance of the 2020-2021 elections. This includes the development of the necessary legal and institutional frameworks to hold free, fair, transparent, inclusive and credible elections in 2020-2021 in which citizens can enjoy their right to participate in public affairs directly or through freely chosen representatives. The report also recommends that the Somaliland authorities conduct a thorough review and analysis of the electoral process of 2017, particularly of election-related human rights violations prior to, during and after polling day.

## **I. Methodology**

UNSOM HRPG prepared this report pursuant to UNSOM's mandate under United Nations Security Council Resolution 2158 (2014), which requires UNSOM "to monitor, help investigate and report to the Council on, and help prevent any abuses or violations of human rights or violations of international humanitarian law committed in Somalia."

UNSOM HRPG monitored the electoral process beginning with the parliamentary selection process, in July 2016, and the presidential election, in early February 2017, and documented continued post-election violence until February 2018. During this period, UNSOM HRPG documented 65 cases of human rights violations and abuses directly related to the electoral process, including 44 killings and 4 injuries, arbitrary arrests, intimidation of candidates, and other infringements of the rights of participation and peaceful assembly. Thirty-six of the cases, including 15 killings and 4 injuries, occurred between July 2016 and 8 February 2017. The remaining cases were all election-related targeted attacks, which resulted in 29 civilian deaths that occurred after the presidential election, from mid-February 2017 to February 2018.

UNSOM HRPG was guided by the OHCHR methodology on human rights monitoring in the context of elections. In the documentation of cases, UNSOM HRPG requires at least three independent sources to verify human rights violations and abuses.

Although the prevailing insecurity significantly restricts access, UNSOM HRPG obtained information from victims, relatives, clan elders of the victims, police, local authorities, and/or witnesses. UNSOM HRPG also used secondary sources in the gathering of information such as local, national and international non-governmental organizations (NGOs), journalists, networks of human rights defenders, and United Nations entities.

UNSOM HRPG recorded information regarding the victims who served as electoral delegates, were clan elders involved in the negotiations for the selection of delegates, or had other roles in the electoral process. It compared documented information on victims of electoral process-related attacks with the list maintained by the UNSOM/UNDP Integrated Electoral Support Group (IESG), and the two records were found to be consistent.

In addition, UNSOM HRPG reviewed documentary information, including the official lists of electoral delegates provided by IESG, and checked region-by-region and clan-by-clan to confirm whether the victims were actually voters. However, delegates' lists were not received from a small number of regions/clans and names were missing in some lists. Accordingly, UNSOM has not included information that could not be cross-checked or verified either in the delegate lists or with sources, including relatives of the victims and clan elders. Therefore, the election-related violations presented in the report are by no means comprehensive and include only those which UNSOM HRPG was able to document based on its own methodology and available resources.

In Somaliland, the presidential elections were organized in November 2017 independently from the FGS election process. UNSOM HRPG worked closely with the Somaliland authorities and other local partners to gather information on election-related human rights violations and abuses before, during and after the electoral process.

## II. Context

### Overall Human Rights Situation

1. Somalia's long-running armed conflict and the absence of State authority throughout the country continue to have an adverse impact on the human rights and humanitarian situation. Targeted attacks on civilians and civilian infrastructure, particularly by Al Shabaab, with suicide bombings and improvised explosive devices (IEDs), remain frequent. From 1 January 2017 to 31 December 2017, UNSOM documented a total of 2,811 civilian casualties (1,378 killed and 1,433 injured), 62 per cent of which were attributed to Al Shabaab, 13 per cent to militia, 8 per cent to State actors, 3 per cent to the African Union Mission to Somalia (AMISOM), and 14 per cent to other and undetermined or unidentified actors.<sup>1</sup>
2. Incidents of IEDs, vehicle-borne improvised devices (VBIEDs), and complex attacks increased from 270 in 2016 to 413 in 2017, causing 1,335 casualties that included 481 deaths (compared to 296 in 2016). Of the casualties, 595 were civilians; 391 were killed and 204 injured. In the same period (from January to 31 December 2017), IED attacks on civil servants and elected officials resulted in 53 casualties, including 17 deaths and 36 injuries. The population centres in the southern parts of Somalia were the most targeted, especially Lower Shabelle region, with 122 attacks, followed by Banaadir, with 87 attacks.
3. The armed conflict and the prevailing insecurity had a significant impact on the elections and was one of the factors that prevented the holding of one person, one vote elections. Politicians, members of government institutions, and civil society actors were (and continue to be) specifically targeted by Al Shabaab and other armed groups that oppose the political process.
4. The 2016-2017 electoral process took place at a time when Somalia had no political parties due to the delay in implementation of the Somali Political Parties Law. Existing political associations accused FGS of deliberately delaying the submission of the Political Parties Bill to the Federal Parliament and filed a case against the former Prime Minister<sup>2</sup> of Somalia in the Supreme Court on 21 January 2016. The Federal Parliament passed the Political Parties Law on 6 June 2016. The National Leadership Forum, the main decision-making body for the electoral process, agreed – as stated in a communique of 9 August 2016 – to promote the establishment of political parties within two years, starting from the day the 10<sup>th</sup> Federal Parliament was inaugurated (27 December 2016) as a means to put an end to the transitional clan-based 4.5 formula.<sup>3</sup> To achieve that objective, the National Leadership Forum agreement instructed the members of Parliament to sign a written declaration stating that they would join a political party by late 2018.

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<sup>1</sup> From 1 January 2016 to 14 October 2017, UNSOM documented a total of 4,585 civilian casualties (2,078 killed and 2,507 injured), 60 per cent of which were attributed to Al Shabaab, 13 per cent to militia, 11 per cent to state actors, four per cent to the African Union Mission to Somalia (AMISOM), and 12 per cent to other and undetermined or unidentified actors. ("Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia" issued by UNSOM/OHCHR in December 2017, at <https://www.ohchr.org/Documents/Countries/SO/ReportProtectionofCivilians.pdf>).

<sup>2</sup> Omar Abdirashid Ali Sharmarke.

<sup>3</sup> The 4.5 formula is a political power sharing agreement which divides Somalis into four major clans and a cluster of smaller clans. It gives equal quota to the four "major" clans, and a half-point to the cluster of "minority" clans. It has no legal basis and was devised as a temporary solution.



## The 2016 Electoral Process

5. Somalia's 2013 New Deal Compact identified the 2016 elections as a main priority, although it did not specify the modalities for the process.<sup>4</sup> The FGS stressed the need for a better electoral framework and broader participation from the Somali population than the 135 clan elders who elected 275 members of Federal Parliament in the 2012 elections. The New Deal Compact also stressed the need to establish a functioning and independent election commission consistent with Somalia's Provisional Constitution, and the adoption of related legislation, including on political parties and voter registration.<sup>5</sup>
6. In July 2015, it became clear that Somalia would not hold direct elections for a range of reasons, including insecurity, the lack of voter registration, the ongoing discussions on the formation of states, and the constitutional review process.<sup>6</sup> The then-FGS President also noted<sup>7</sup> that his government had never promised one person, one vote, but wanted "an easier and more dignified process"<sup>8</sup> than the one that had brought him to power.
7. Key members of the FGS and of the FMS established the National Consultative Forum (NCF), a body comprising the executive and legislative branches of FGS, representatives of the FMS and civil society, to define the framework of the 2016 elections. The NCF developed Guiding Principles that were endorsed at the High-Level Partnership Forum<sup>9</sup> held in Mogadishu in July 2015.<sup>10</sup>
8. The NCF held numerous consultations, but failed to reach consensus on the electoral model.<sup>11</sup> The FGS therefore proposed to allocate 275 parliamentary seats in the Lower House according to the clan-based 4.5 formula and set a minimum quota of 30 per cent of the seats to be reserved for women.<sup>12</sup> It was proposed that voting and counting would occur in each of the capitals of the existing and emerging FMS, with special arrangements for Somaliland.<sup>13</sup> The proposal also included the establishment of an Upper House, with 54 members (including 30 per cent women) that would be elected by the caucuses of the federal member states' assemblies.<sup>14</sup>

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<sup>4</sup> PSG1, Priority 3: Prepare for and hold credible elections by 2016.

<sup>5</sup> [http://eeas.europa.eu/archives/new-deal-for-somalia-conference/sites/default/files/the\\_somali\\_compact.pdf](http://eeas.europa.eu/archives/new-deal-for-somalia-conference/sites/default/files/the_somali_compact.pdf); Article 47 of the Provisional Constitution of Somalia mandates the Federal Parliament's House of the People to enact special laws defining the regulations concerning political parties, their registration, elections at the Federal Government level and the National Independent Electoral Commission (NIEC).

<sup>6</sup> See agreement between the Federal Government and the Federal Parliament, <http://www.villasomalia.gov.so/wp-content/uploads/2015/10/Facilitation-Guide.pdf>

<sup>7</sup> Interview on VOA Somali on 29 July 2015.

<sup>8</sup> <http://www.voanews.com/a/somalia-says-no-popular-elections-in-2016/2883749.html>

<sup>9</sup> <http://www.villasomalia.gov.so/communique-high-level-partnership-forum-mogadishu-29-30-july-2015/>

<sup>10</sup> <http://www.villasomalia.gov.so/wp-content/uploads/2015/10/Facilitation-Guide.pdf>

<sup>11</sup> Consultations were held between October 2015 and January 2016 in Mogadishu, Puntland, Jubbaland, Galmudug, Interim South West Administration (ISWA) and at the Embassy of Somalia in Nairobi, Kenya.

<sup>12</sup> FGS position for 2016 electoral model, presented during the National Leadership Forum in Mogadishu, on 24 January 2016. <http://www.villasomalia.gov.so/communique-on-the-electoral-model-for-2016/>

<sup>13</sup> While the elections of members of both Houses of the Federal Parliament were held in the capitals of FMS, representatives from Somaliland were granted a special arrangement whereby their 11 senators and 46 members of the Lower House were elected in Mogadishu because the Somaliland government boycotted the electoral process.

<sup>14</sup> <http://www.villasomalia.gov.so/communique-on-the-electoral-model-for-2016/>

9. Somali political leaders unanimously agreed during the First Somali National Consultative Constitutional Conferences of December 2011 (known as the Garowe I Principles)<sup>15</sup> that the 4.5 formula should never become the basis for power sharing in any future political process after the end of the term of the Federal Government of Somalia in 2016. Somali political leaders reiterated their support for ending the 4.5 formula in the Second Somali National Consultative Constitutional Conferences of February 2012 (Garowe II principles)<sup>16</sup> and agreed that the electoral system for the lower House should be based on the principle of proportionality.
10. Citing agreement under the Garowe Principles, the Puntland government strongly opposed the 4.5 clan-based formula and pushed for a district-based model.<sup>17</sup> The FGS and Puntland reached an agreement in April 2016 and, with the support of the international community, the 4.5 formula was adopted for the Lower House election, while it was decided that the Upper House representatives would be selected directly by FMS.<sup>18</sup>
11. The modalities for the 2016 electoral process were agreed upon during three consecutive NLF meetings.<sup>19</sup> Somali national leaders achieved consensus on the actual implementation of the electoral process, including the modalities, timelines, the list of clan elders, the number of members that would constitute the Electoral College, and how and who would administer it. One of the most contentious issues was the list of 135 clan elders responsible for selecting the candidates, which NLF confirmed in June 2016. The approved list was criticized for exclusion and inclusion “errors” and some clans claimed that NLF members interfered with their internal clan affairs which prevented them from choosing their own representatives. The then-FGS President was accused of being responsible for the omission of prominent clan leaders such as the Ugaas of Hawadle clan, who reportedly had a bitter disagreement with the President over the HirShabelle state formation.
12. Another contentious issue was the exclusion of Banaadir region (which includes Mogadishu) from the Upper House, although it is the most populated region in Somalia, as per the 2014 UNFPA population estimation survey.<sup>20</sup> This decision particularly affected the Banaadiri community, which did not find itself represented in the Upper House of the Federal Parliament.<sup>21</sup> In June 2016, NLF convened a meeting in Baidoa to address this issue and proposed that the Banaadiri community be allocated two additional seats in the Upper House.<sup>22</sup> However, the proposal was not implemented as agreed and the Banaadiri community currently has no representation in the Upper House. The main justification for the exclusion of Banaadir region was that FMS selected the members of the Upper House, while Banaadir region was

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<sup>15</sup> [https://www.hiiraan.com/PDF\\_files/GAROOWE%20CONSTITUTIONAL%20CONFERENCE%2021-23%20DEC11.pdf](https://www.hiiraan.com/PDF_files/GAROOWE%20CONSTITUTIONAL%20CONFERENCE%2021-23%20DEC11.pdf)

<sup>16</sup> <https://reliefweb.int/report/somalia/second-somali-national-consultative-constitutional-conference>

<sup>17</sup> In an interview with Voice of America on 28 February 2016, the President of Puntland criticized the formula stating that it was no longer viable.

<sup>18</sup> <https://horseedmedia.net/2016/04/04/agreement-between-the-federal-government-of-somalia-and-the-government-of-puntland-state-of-somalia/>

<sup>19</sup> The NLF meetings were held in Mogadishu (9-12 April, and 29 May-2 June) and Baidoa (22-25 June).

<sup>20</sup> <https://somalia.unfpa.org/sites/default/files/pub-pdf/Population-Estimation-Survey-of-Somalia-PESS-2013-2014.pdf>, last accessed 26 March 2018.

<sup>21</sup> A minority Somali community and among the oldest inhabitants of Mogadishu city and coastal areas near Banaadir region.

<sup>22</sup> [http://doorashada2016.so/wp-content/uploads/2016/09/NLF-Communique-Baidoa\\_June-2016\\_English.pdf](http://doorashada2016.so/wp-content/uploads/2016/09/NLF-Communique-Baidoa_June-2016_English.pdf). Last accessed 12 June 2018

not part of a FMS and the status of Mogadishu and the wider Banaadir region (to which it belongs) was not determined in the Provisional Federal Constitution.<sup>23</sup>

13. The NLF decisions on the electoral model were essential for the electoral process to take place, although the entire process was extra-constitutional and outside of existing legal frameworks. The NLF decisions were not endorsed by the Federal Parliament but were implemented by presidential decree.<sup>24</sup> Some members of the Federal Parliament challenged the presidential decree as unconstitutional,<sup>25</sup> while key members of the international community, including the United Nations and the European Union, supported it.<sup>26</sup> Despite the absence of a clear legal basis, the process was considered the only practical option for moving forward and it was endorsed and implemented on the understanding that it was a temporary solution.
14. Two *ad hoc* and temporary bodies were established to administer the election: the Federal Indirect Electoral Implementation Team (FIEIT) at the national level, and the State Indirect Electoral Implementation Teams (SIEIT) at the state level. FIEIT<sup>27</sup> consisted of 22 prominent Somalis<sup>28</sup> whose main responsibility was to oversee the planning of the electoral process.<sup>29</sup> Each SIEIT consisted of 11 members and the six SIEITs were established to implement the process at state level.<sup>30</sup> Members of FIEIT and SIEIT were required to work independently to avoid conflicts of interest. They were also required to retain the role of technical advisers and not to have any political agenda or stand as candidates in the election.<sup>31</sup> Despite these requirements, a lack of transparency in the selection of the FIEIT and SIEIT membership strengthened the widely-held perception that NLF members had influenced their selection.
15. Due to financial, security, and political challenges that included the ongoing state formation process, the 2016 electoral process lasted several months longer than originally scheduled. According to NLF,<sup>32</sup> the presidential election should have taken place on 30 October but was postponed, first to 30 November 2016, and again to 22 January 2017.<sup>33</sup> The new President was eventually elected on 8 February 2017.
16. Ultimately, the 2016 election, characterized by the United Nations as a “political process with electoral features,” was a transitional process that took place before the formation of the states

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<sup>23</sup> According to article 9 of the Provisional Constitution, the status of the capital city of Somalia shall be determined in the constitutional review process, and the two houses of the Somali Federal Parliament shall enact a special law with regards to this issue.

<sup>24</sup> [http://doorashada2016.so/wp-content/uploads/2016/09/160522-Presidential-Decree-on-Electoral-Model\\_English.pdf](http://doorashada2016.so/wp-content/uploads/2016/09/160522-Presidential-Decree-on-Electoral-Model_English.pdf) last accessed 18 December 2017.

<sup>25</sup> <http://www.voanews.com/a/somali-elections-on-track-for-august-despite-opposition/3341767.html>

<sup>26</sup> <http://www.radiodalsan.com/2016/05/22/the-international-community-welcomes-somali-president-move-to-bypass-parliament-on-elections/>

<sup>27</sup> A communique of 12 April by NLF announced that the composition of FIEIT should be of 17 members, with five members appointed by FGS and two members by each member state. Also see presidential decree on the appointment of FIEIT <http://doorashada2016.so/wp-content/uploads/2016/09/Presidential-Decree-Appointing-FIEIT-English-translation-1.pdf> last accessed 27 March 2018.

<sup>28</sup> Ten of them were appointed by FGS while the other 12 were nominated by FMS.

<sup>29</sup> <http://doorashada2016.so/en/federal-indirect-elections-implementation-team/> last accessed 27 December 2017.

<sup>30</sup> Eight of them were appointed by the relevant FMS and three by FGS.

<sup>31</sup> <http://doorashada2016.so/en/state-indirect-electoral-implementation-team-sieit/>

<sup>32</sup> Meeting held in Mogadishu from 2 to 9 August 2016: <http://www.villasomalia.gov.so/communique-national-leadership-forum/>

<sup>33</sup> FIEIT and SIEITs announced the new dates in a joint press release issued on 29 September 2016.

and constitutional reforms were completed.<sup>34</sup> In the absence of a specific election law or regulations, most of the modalities were developed and negotiated while the process advanced. The institutions and the framework created for elections were *ad hoc*, based on the NLF decisions, and validated only by a series of presidential decrees. The fact that the legal framework was not established in advance, that the roles of relevant institutions were largely undefined, and that the appointment of officials was not transparent posed significant challenges to the electoral process.

### III. Legal Framework

17. Applicable international norms and standards on elections and human rights are found in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights (ICCPR) to which Somalia is a State party.<sup>35</sup>
18. Election-related rights and other rights enshrined in the ICCPR should be guaranteed, including the fundamental rights to life,<sup>36</sup> not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment,<sup>37</sup> liberty and security,<sup>38</sup> the rights to freedoms of expression, peaceful assembly and association,<sup>39</sup> protection from arbitrary arrest and detention,<sup>40</sup> non-discrimination, the right to vote and stand for election, and the right to freedom of movement.
19. Article 25 of the ICCPR guarantees the right to “take part in the conduct of public affairs, directly or through freely chosen representatives,” and includes the right to vote and stand for “genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot”. Article 25 provides for the democratic election of governments based on the consent of the people. The principle of one person, one vote must apply, and, the vote of one elector should be equal to the vote of another within the framework of each State's electoral system.<sup>41</sup> To ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the

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<sup>34</sup> Special Representative of Secretary-General (SRSG) Michael Keating, Supporting Somalia as it Emerges from Decades of Conflict, <https://tumblr.co/ZaTV2m2COS14B>

<sup>35</sup> Somalia acceded to the ICCPR in 1990.

<sup>36</sup> Article 6 of the ICCPR.

<sup>37</sup> Article 7 of the ICCPR.

<sup>38</sup> Article 9 of the ICCPR.

<sup>39</sup> Articles 21 and 22 of the ICCPR guarantee the rights to freedom of peaceful assembly and association, respectively, which can only be exceptionally subjected to restrictions, under specific circumstances, “when in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.” This has been reaffirmed by the United Nations Human Rights Council in its resolution 15/21 on the rights to freedoms of peaceful assembly and of association which recalled the States’ obligation to “protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections”, Human Rights Council Resolution A/HRC/Res/15/21 on 6 October 2010, para 1.

<sup>40</sup> Article 9 of the ICCPR provides that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

<sup>41</sup> Human Rights Committee, General Comment 25, para. 21; General Comments under article 40, paragraph 4, of the ICCPR International Covenant on Civil and Political Rights, adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996). The Comment states that “[t]he drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely”.

full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.<sup>42</sup>

20. Article 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination guarantees that States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.
21. Somalia is a State party to the African Charter on Human and Peoples' Rights, which reinforces and protects the rights of citizens to participate freely in the government of their countries, either directly or through freely chosen representatives, and to have equal access to the public service of their countries.<sup>43</sup>
22. Somalia's Provisional Federal Constitution guarantees the inherent right to life,<sup>44</sup> the right to take part in public affairs, form political parties, participate in the activities of political parties, and be elected for any position within a political party.<sup>45</sup> Other rights enshrined in Somalia's Provisional Constitution include the prohibition of illegal detention<sup>46</sup> and the protection of freedom of expression and opinion<sup>47</sup> that encompasses freedom of speech and freedom of the media, including all forms of electronic and web-based media.
23. The Federal Parliament of Somalia passed the National Multi-Party Bill that was signed into law on 4 September 2016. The law prohibits political parties from being clan-based and requires them to have a national political agenda, representation of leadership, and membership from two-thirds of Somali regions based on the 1991 boundaries.<sup>48</sup> On 3 December 2017, the National Independent Electoral Commission (NIEC) issued certificates of temporary registration to seven political parties, including one party headed by a woman.<sup>49</sup> This is part of the preparations for the 2020-2021 elections and should be seen as a major achievement, as the multi-party political system in Somalia ended in 1969.<sup>50</sup>

#### **IV. Violations of Human Rights in the Context of the Electoral Processes**

24. From August 2016 to February 2018, UNSOM HRPD documented 36 cases of human rights violations and abuses related to the electoral process, mostly in Mogadishu, which included

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<sup>42</sup> Ibid, para. 25.

<sup>43</sup> African Charter on Human and Peoples' Rights, Article 13, ratified by Somalia on 31 July 1985.

<sup>44</sup> Provisional Federal Constitution, Article 13.

<sup>45</sup> Provisional Federal Constitution of Somalia, Article 22. Right of Political Participation.

<sup>46</sup> Provisional Federal Constitution of Somalia, Article 15. Liberty and Security of the Person.

<sup>47</sup> Provisional Federal Constitution of Somalia, Article 18. Freedom of Expression and Opinion.

<sup>48</sup> Somalia consisted of 18 regions with 90 districts before the collapse of the central government in 1991.

<sup>49</sup> Fauzia Haji Aden - Former FGS Foreign Minister.

<sup>50</sup> [http://archive.ipu.org/parline-e/reports/arc/SOMALIA\\_1969\\_E.PDF](http://archive.ipu.org/parline-e/reports/arc/SOMALIA_1969_E.PDF) last accessed 31 December 2017.

killings of and injuries to civilians, arbitrary arrests, intimidation of candidates, and other infringements of rights related to the electoral process, namely the failure to investigate and prosecute and the right to an effective remedy. Fifteen persons were killed (all men) and four others (all men) were injured, mainly as a result of targeted attacks by unknown armed men in Mogadishu. The victims included candidates for election and members of the electoral bodies, or groups or clans involved in the campaign and voting process. Of the 15 people killed, 13 were prominent elders. After the conclusion of the presidential election in Somalia, attacks against participants in the electoral process continued and UNSOM HRPG recorded the targeted killings of 29 clan elders and electoral delegates, including three women.

25. Between August 2016 and 8 February 2017, security forces, including regional police forces, intelligence agencies,<sup>51</sup> and Somali National Army (SNA) arbitrarily arrested and detained six persons (four in ISWA, one in Kismaayo and one in Beledweyne), likely to prevent them from participating in the political process. In addition, UNSOM documented five cases of intimidation and harassment of female candidates or electoral staff by members of the Government or members of their clans.
26. Women, persons with disabilities, smaller clans, minority communities, and civil society groups had limited participation in consultations to determine the electoral model and were unable to monitor the electoral process throughout the country, as it was a political process based on clan distribution.
27. Political meetings by clans and other groups were banned or limited through the issuance of orders requiring hotel owners to obtain prior authorisation for meetings from authorities, restricting the possibility to organize or campaign in key locations, including Mogadishu and Hiraan region. Moreover, media access to election-related events was restricted through the issuance of orders adducing security-related reasons by State authorities, including the FGS.

### **The Rights to Life and Physical Integrity**

28. Between August 2016 and 8 February 2017, UNSOM HRPG documented 13 incidents that resulted in the killing of 15 civilians and injuries to 4 other civilians considered to be connected to the electoral process: 11 incidents occurred in Mogadishu, 1 in Galmudug, and 1 in Kismaayo. Thirteen of the victims had participated in the electoral process and the two others were prominent elders involved in a clan dispute resolution mechanism related to the electoral process. Although the specific role and level of participation of some of the victims in these processes was not always clear, it was reported that the clan elders, if not actually on the delegate lists as voters, were key in the political process within the clan and sub-clans. Some of their roles included helping resolving disputes over election processes within the sub-clans and the selection of the 51 delegates from their sub-clans, who voted for members of the Lower House of the Federal Parliament.
29. Ten of the killings were targeted, with some occurring in the victims' homes. Three victims were killed in a complex attack by Al Shabaab at a Mogadishu hotel (causing a total of 67 civilian casualties) where they were attending an electoral process-related meeting on 25

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<sup>51</sup> National Intelligence and Security Agency (NISA), the Jubbaland Intelligence and Security Agency (JISA).

January 2017. Two killings took place at voting stations: an Electoral College delegate was shot and killed by a member of security forces following a dispute, and another Electoral College delegate was killed by another delegate.

30. While it has been established that all the victims were associated with the electoral process, the motive for the attacks is unclear. It is understood that large sums of money were exchanged during the electoral process, and some personal disputes between rival groups and politicians may result in killings. Of the 15 killings, only one case resulted in the arrest of two perpetrators who were suspected to be Al Shabaab elements. They were captured during a confrontation with security forces in Wadajir district of Mogadishu immediately after the killing of an elder on 2 November 2016.
31. In November 2016, UNSOM HRPG documented incidents resulting in injuries to four civilians (including an elder and an election staff member), in Mogadishu, Jowhar, and Garoowe. On 5 November 2016, in Garoowe, Puntland, an administrative staff member was injured in crossfire between two militias – one loyal to the former Deputy Police Commissioner and the other to the Director of Puntland Intelligence Agency. No action was taken to investigate or arrest the perpetrators. On the same day, another male citizen reported to be a delegate was injured by the Deputy Minister of Security of Puntland during a dispute over nominations in Garoowe. The victim and the Minister were from the same clan, and no action was taken to investigate the incident. On 18 November 2016, a young man was seriously injured inside a polling station when bodyguards for the FGS Minister of Youth opened fire inside the election hall in Jowhar town, Middle Shabelle. The bodyguards reportedly intended to disrupt the vote count, as it was becoming clear that the Minister was going to lose the election. The incident forced the Federal Indirect Electoral Implementation Team to suspend the election for that seat. The Minister of Youth subsequently obtained his seat when the election was re-run. On 11 December 2016, unidentified armed men shot and injured an elder in Wadajir district in Mogadishu. The elder was a voter for his sub-clan's seat in the Upper House in Jowhar, HirShabelle.
32. Since the holding of the presidential election on 8 February 2017, violence has continued and delegates and others who had participated in the process have been targeted for assassination. Between 13 February and 28 February 2018, UNSOM HRPG recorded 29 killings (26 men and three women). Fourteen of the victims had participated in the election in ISWA, six in Galmudug, and nine in HirShabelle. The victims included an 82-year old man who was publicly executed by Al Shabaab in Awdhegale, Lower Shabelle, for participating in the electoral process of an “apostate parliament.”<sup>52</sup> While the 29 killings were attributed to Al Shabaab by different sources, Al Shabaab officially claimed responsibility for only eight of the killings. Nevertheless, Al Shabaab repeatedly threatened to target and kill anyone who was involved in the electoral process.<sup>53</sup>
33. Despite accusations against Al Shabaab and their claims of killings of delegates and other participants in the electoral process, reasons other than ideology have been put forward for the

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<sup>52</sup> Interviews with key informant, 20 March 2017.

<sup>53</sup><https://www.youtube.com/watch?v=BJwuw-H0mgs> (Al Jazeera English interview with AS Spokesman Ali Mohamud Raghe in January 2017 on the electoral process and the position of AS.)

targeting of the electoral delegates, including economic, clan interests, and other motivations.<sup>54</sup> Of the 29 killings recorded during the post-polling phase, only one case resulted in an arrest and prosecution: three Al Shabaab suspects were tried in Baidoa town, ISWA, for the killing of an elder on 15 June 2017. Six days after their arrest, the Military Court in Baidoa sentenced one of them to death and two others to life imprisonment. As of 28 February 2018, no investigations had been undertaken and no arrest had been made in connection with the other 28 post-election killings.

### **The Rights to Liberty and Security and Freedom from torture, cruel, inhuman or degrading treatment**

34. Despite constitutional and international protections against arbitrary arrest and detention, six persons were arbitrarily arrested and detained by security forces in the context of the elections between 22 September 2017 and 22 November 2017: four in ISWA, one in Kismaayo, and one in Beledweyne.
35. On 24 October 2016, security forces arrested a candidate for the Lower House of the Somali Federal Parliament in Beledweyne and detained him for several hours before he was released. The candidate was arrested for holding a political meeting with his sub-clan elders to support his candidacy. The security forces reportedly threatened him and warned him to stop such activities, and the candidate consequently withdrew his candidacy. On 4 November 2016, security forces arrested a candidate for a Lower House seat without a warrant and detained him for five hours in Kismaayo. They accused him of causing a dispute among voters, which led to the murder of one of the 51 Electoral College members on 4 November 2016. On 22 November 2016, four delegates reported to UNSOM HRP that they had been arrested and detained in a police station in Baidoa to prevent them from going to the polling station on voting day. On 26 November, SNA members arrested and detained a sub-clan chief who was travelling to Mogadishu to participate in consultations on elections in Barawe town of Lower Shabelle. Sources reported that his arrest was politically motivated and initiated by a member of the Federal Parliament, who was also a FGS Deputy Minister. All of the detainees were released within 24 hours, which suggests that the arrests were likely intended to prevent them from campaigning or taking part in election-related activities.

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*“On 24 October 2016, security forces arrested me at a hotel in the center of the town where I planned to hold a meeting with my clan elders. I was taken to the police station where I was interrogated by three high ranking federal military officers about my scheduled meeting with the elders and my plan to contest for the seat allocated to my sub-clan in the Lower House of the Federal Parliament. I was released after several hours and was ordered not to hold any meetings without the permission of the local authorities. A day before that incident (23 October 2016), a man with a pistol threatened me in front of five other people. Because of these incidents I decided to withdraw my candidacy.”* UNSOM HRP interview with the victim on 11 November 2016.

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<sup>54</sup>UNSOM meeting with the International Crisis Group, 31 May 2017.



36. Five cases of election-related intimidation and harassment were also documented. All victims were women, while the alleged perpetrators were Government officials (including two Ministers in FGS), members of the security forces, and individuals linked to candidates who were supported by key leaders. Three incidents took place in Jubbaland, one in ISWA, and one in Mogadishu (involving a member of FIEIT).
37. In Jubbaland, two female candidates campaigning for Federal Parliament and another who was campaigning for the Lower House reported that they were harassed and intimidated, and consequently withdrew their candidacy. One complained that members of her sub-clan pressured her to withdraw in favour of a man who was an outgoing Member of Parliament. She received messages on her mobile phone accusing her of being “used” by another clan and ordering her to leave Jubbaland. She subsequently moved to a hotel for safety, but the impossibility to move freely impacted her ability to campaign and lobby for support. The second candidate, from Kismaayo, dropped her candidacy for the Lower House on 15 November 2016, reportedly after being intimidated by elements of the Jubbaland Intelligence and Security Agency (JISA) and some of her sub-clan members. She was warned not to participate in her sub-clan elections and not to report her case to anyone. In neither case was an official complaint filed. The third case occurred on 7 November 2016, when a female candidate in Baidoa withdrew her candidacy for the Lower House after she was reportedly intimidated and threatened by members of the Electoral College. She subsequently denounced in the public the lack of fairness in the electoral process.
38. In Baidoa, on 19 October 2016, a female candidate for parliament was harassed, intimidated and arrested in the Baidoa police station by security forces and senior regional government officials in order to prevent her from accessing the polling centre. She was, therefore, unable to participate in the elections for the Upper House in Baidoa.
39. On 19 November 2016, a female member of FIEIT claimed in an interview with a local FM radio station in Mogadishu that the State Minister of Defence - who was also the Chair of the National Integration Commission of the Somali National Army - called her and demanded that she stop monitoring election activities related to his clan, threatening to kill her if she failed to do so.<sup>55</sup> She requested protection from the Federal Government of Somalia, but the police reportedly failed to investigate the claim. The same Minister was reappointed to the same position in the new FGS on 21 March 2017.<sup>56</sup>

### **The Right to Freedom of Opinion and Expression**

40. Somali and international law guarantee the right to freedom of opinion and expression, which includes the right to be informed of matters of public interest, and for journalists and other actors to be able to conduct their activities freely to ensure that the public has access to

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<sup>55</sup> <https://goobjoog.com/dhageyso-xubin-ka-tirsan-guddiga-doorashada-oo-uu-wasiir-dowladda-ka-tirsan-handaday/> last accessed on 28 March 2018.

<sup>56</sup>The Minister and the female member of FIEIT belong to the same clan, and the threat was reportedly related to the politics within that clan rather than the right of the woman to participate in the process.

information.<sup>57</sup> This is an indispensable feature of political processes if a functioning and effective democracy is to be guaranteed, particularly during times of political transformation.<sup>58</sup>

41. Attacks, intimidation, and other forms of harassment and interference by Government security forces as well as by Al Shabaab, and other actors often tend to silence journalists and other media workers, human rights defenders and political leaders, pushing them to self-censorship on issues considered to be sensitive, including elections, corruption, the human rights situation, and public demonstrations.<sup>59</sup> This violence impeded the free flow of information, undermining the ability of citizens to benefit from and contribute to democratic processes by means of informed decisions on a wide range of issues.<sup>60</sup>
42. From August 2016 to February 2017, UNSOM HRPD documented 90 cases of violations and abuses of the right to freedom of expression, including 55 arbitrary arrests and illegal detentions, and attacks on journalists and media workers that resulted in 26 casualties (1 death and 25 injuries), and the closure of five media outlets. There was a peak of arrests in October 2016 and February 2017, with 22 and 14 arrests, respectively. While not all of the cases were directly related to the elections, and although the majority of incidents targeting journalists and media actors took place in Somaliland (which did not participate in the FGS electoral process), the shrinking of democratic space is an important indicator of State behaviour that inhibits the exercise of freedom of opinion and expression.<sup>61</sup>
43. Between August 2016 and February 2017, one journalist was killed in a targeted attack and 25 journalists and media workers were injured in two separate attacks claimed by Al Shabaab that occurred at two hotels hosting election-related events in Mogadishu.

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<sup>57</sup> Article 19 of the ICCPR provides that everyone has the right to hold opinions without interference and the right to freedom of expression, including the freedom to “seek, receive and impart information and ideas of all kinds”. Article 18 of the Somali Constitution guarantees freedom of opinion and expression, including freedom of speech and the media.

<sup>58</sup> General Comment no. 25 of the United Nations Human Rights Committee describe the rights to freedoms of expression, peaceful assembly and association as essential conditions for the effective exercise of the right to vote and underlines these rights must be fully protected. General Comment no. 34 of the same Committee stresses that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and is the basis for the full enjoyment of a wide range of other human rights. For instance, the right to freedom of expression is integral to the enjoyment of the rights to freedoms of peaceful assembly and association.

<sup>59</sup> A/HRC/24/23, para. 3. *See also* Security Council resolution 2222, para. 6 (2015) calling for the protection of journalists, media professionals and associated personnel in situations of armed conflict, and to ensure accountability for crimes committed against them, noting the important role that journalists, media professionals and associated personnel can play in “protection of civilians and conflict prevention by acting as early warning mechanisms in identifying and reporting on potential situations that could result in genocide, war crimes, ethnic cleansing and crimes against humanity.” *See also* para. 6 requiring United Nations missions to include in their mandate reporting information on specific acts of violence against journalists, media professionals and associated personnel in situations of armed conflict.

<sup>60</sup> A/HRC/24/23, para. 4.

<sup>61</sup> *See* UNSOM/OHCHR 2016 public report on Freedom of Expression: Striving to Widen Democratic Space in Somalia’s Political Transition: [http://www.ohchr.org/Documents/Countries/SO/UNSOM\\_FreedomExpressionReport\\_Aug312016.pdf](http://www.ohchr.org/Documents/Countries/SO/UNSOM_FreedomExpressionReport_Aug312016.pdf) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20445> last accessed on 28 December 2017.

44. Moreover, 55 persons were arbitrarily arrested and detained by Somali authorities in relation to the exercise of their freedom of expression, namely 49 journalists and media workers, one human rights defender and three politicians. The two young Somaliland poets were also arrested and detained due to their poems welcoming the Somali elections.

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*The Jubbaland Intelligence and Security Agency (JISA) arrested and detained three TV journalists in Kismaayo between 12 and 14 November 2016, accused of spreading false information after reporting that Jubbaland security forces had seized a polling station to protest the non-payment of their salaries. They were eventually released without being charged.*

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45. Five media outlets (four radio stations and one newspaper) were closed or suspended between August 2016 and February 2017 for reasons including accusations by authorities of “contributing to insecurity” or due to their reporting on Al Shabaab attacks.<sup>62</sup>
46. In early October 2016, FIEIT gave accreditation cards to 102 journalists from independent media to cover the elections, following security screening and signature of a media code of conduct for election coverage. In addition, three staff members of the National Union of Somali Journalists (NUSOJ) were accredited as observers by FIEIT in Jowhar, Adaado and Baidoa. While journalists and media outlets reported to have generally enjoyed free access to candidates and polling venues, sources reported that the SIEITs pressured the media over their reporting, and that friction arose between the SIEITs and individual journalists.
47. Journalists’ freedom of movement was restricted from the onset of the electoral process. On 21 September 2016, the General Manager of Security of Mogadishu International Airport (MIA) issued an order prohibiting all journalists working for all media outlets – public and private – from entering the Mogadishu International Airport (MIA) for 60 days as of 21 September, unless obtaining authorization from airport management. While the General Manager of Security of Mogadishu cited security as the reason for the restrictions, some observers concluded that the ban was intended to restrict media coverage of rival candidates, including the former Transitional Federal Government president and others who were arriving from abroad to participate in the elections.<sup>63</sup> The order was lifted on 22 September 2016, following the intervention of the FGS Prime Minister.
48. When the process for the selection of members of the Federal Parliament was concluded on 14 December 2017, the Ministry of Information and the Secretariat of the Federal Parliament informed journalists and media outlets that the accreditation cards issued by FIEIT were no

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<sup>62</sup> Afgooye FM radio station in Afgooye town, Bayaan FM Radio station in Beled-hawo town, Galgaduud FM radio station in Guriceel town, and Radio Shabelle in Mogadishu. The newspaper is the Mogadishu-based daily Xog-Ogaal.

<sup>63</sup> See Human Rights Committee, General Comment No. 34, para. 37. The comment states that restricting the number and type of written materials that may be distributed during election campaigns, blocking access during election periods to sources, including local and international media, of political commentary, and limiting access of opposition parties and politicians to media outlets are problematic. However, the general comment indicates it may be legitimate for a State party to restrict political polling immediately preceding an election in order to maintain the integrity of the electoral process.  
<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

longer valid and that they would require new accreditation to cover the inauguration ceremony of the Lower House and the elections of the Speakers and the President.

49. On 27 December 2017 (the inauguration day for the Federal Parliament), the Ministry of Information and the Secretariat of the Federal Parliament allowed 35 journalists into the venue - 23 from independent media and 12 from State media - citing security concerns. In addition, only State-owned Somali National TV (SNTV) was allowed to broadcast the event. Independent Journalists were concerned about the impartiality of the broadcast and the comments made by the journalists working for the State-owned media. During the election of the speakers of the Upper House, on 11 and 12 January 2017, the number of journalists from independent media who were granted access increased to 70. SNTV continued to enjoy a monopoly on the broadcast of electoral events, although the coverage of election of the Speakers and the President were considered by independent journalists to be transparent. Independent journalists also considered the live streaming of the events to be objective.

### **The Rights to Freedoms of Peaceful Assembly and Association**

50. With the fragile security situation and continued attacks from Al Shabaab, individuals were not able to safely exercise their rights to peaceful assembly and association during the electoral period.
51. In addition, orders restricting political meetings were issued by federal and regional authorities in Mogadishu and Beledweyne, citing the security situation. On 9 July 2016, the Federal Ministry of Internal Security ordered the hotels in Mogadishu not to host any meeting without prior notice and permission from the Ministry of Internal Security. This order was issued at a time of intense political activity in the city, with clans and sub-clans holding meetings to discuss positions and political alliances. From 29 June to 15 July 2016, three high-level meetings and political events took place in Mogadishu, all including prominent clan elders known to be opposed to the FGS President. On 15 August, the Governor of Hiraan region imposed similar restrictions on the hotels in Beledweyne town, Hiraan – an area dominated by clan leaders and politicians fiercely opposed to the FGS President. On 18 September 2016, the Banaadir Regional Administration also banned demonstrations and political rallies without prior permission. The Banaadir Regional Administration spokesperson told the media that demonstrations by members of opposition political parties would not be allowed in Mogadishu and failure to abide by the decision of the administration would result in legal action against those violating the order.
52. Three cases illustrate the challenges that elders, politicians, and clans faced in campaigning freely for the elections. On 29 June 2016, members of the Hawadle clan wrote a letter to the international community accusing FGS of violating their freedom of expression. They further accused the President of Somalia of interference with their internal clan affairs by including four elders from the Hawadle clan in the approved list of the elders who were not chosen by the clan to represent them. This reportedly prevented the Hawadle clan from choosing its own representatives. On 28 June 2016, the FGS Minister of Internal Security (from the Hawadle clan) issued an order preventing members of the Hawadle clan from meeting in Mogadishu to

discuss their position regarding the then-recently approved list of 135 clan elders who were to lead the selection process for the Federal Parliament.

53. On 14 and 15 July 2016, National Intelligence and Security Agency officers disbanded two political meetings organized in hotels in Mogadishu.<sup>64</sup> On 14 July, a public meeting was organized by Hawiye clan elders at the Maka Al Mukarama Hotel. NISA stopped the meeting on the grounds of a security threat against the elders, claiming to have seized a vehicle full of explosives targeting the hotel. The owner of the hotel informed local media that he was never informed of any security threat against his hotel. The elders eventually held their meeting in a private house.<sup>65</sup> On 15 July, NISA interrupted another meeting, organized by the Shiikhaal (a sub-clan of Hawiye) to discuss the nomination of members to the Federal Parliament. NISA stated that the organizers did not have permission to hold a political meeting.

### **The Right to Participate in Public Affairs**

54. As the security situation did not allow the implementation of universal elections, Somalia was forced to strike a balance between guaranteeing the right of citizens to participate in public affairs under the one person, one vote principle, and their rights to life and physical integrity. While the 4.5 clan formula was accepted by Somalis as the temporary basis for power-sharing in the absence of universal elections, it meant that members of smaller clans and minority communities were unable to fully participate in the decision-making processes, which is inconsistent with international standards on the protection and promotion of minorities.<sup>66</sup> Minority communities did not have representation in NLF – the key decision-making body for elections. Moreover, at the FMS level, almost all key decision-makers were from dominant clans.

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*A Somali woman who wanted to compete for a seat in the federal parliament was forced to drop her candidacy in late September 2016 after some members of her sub-clan pressured her to withdraw her candidacy in favour of a male candidate from the same sub-clan. She was forced to move to a hotel after receiving threats and text messages ordering her to leave the city. Despite support from some of her clan elders, she was unable to campaign and seek support for her candidacy as the threats impacted her freedom of movement. UNSOM Interview with the Victim on 2 October 2016.*

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<sup>64</sup> Somalia: NISA Blocks Elders from Meeting in Mogadishu <http://allafrica.com/stories/201607180273.html>, last accessed on 28 March 2018.

<sup>65</sup> The owner of the hotel informed Somali media that he was not aware of any such attack and only heard about it from the media. He called it a baseless propaganda aimed destroying his business. <http://www.universaltvsomali.net/topics/news/somali/13352> (in Somali) last accessed on 27 March 2018.

<sup>66</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992 Article 2, para 3 state that “persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.”

55. NLF was the main decision-making body for the 2016 elections, and minority communities, women, youth, and persons with disabilities were not represented in it. At the FMS level, almost all key decision-makers were from dominant clans: Hawiye in HirShabelle and Galmudug; Daarood in Puntland and Jubbaland; and Raxanweyn (Digil and Mirifle) in ISWA. The distribution of seats in the Upper House illustrates this domination. No minority groups, including the Banaadiri Community and many smaller clans, were selected in the Upper House in Galmudug, ISWA, and Puntland. Only one seat was given to the sizeable Bantu community in HirShabelle, while the Banaadir region has no representation in the Upper House.<sup>67</sup> Complaints over exclusion arose from minority communities and smaller clans, as well as from some of the sub-clans of the major clans in different regions.
56. At a press conference in Mogadishu on 9 October 2016, members of the Reer Garaad sub-clan of Marehan publicly accused the Jubbaland President of excluding them from the list of 20 candidates submitted for election to the Upper House.<sup>68</sup> An elder stated that their seat was given to the Reer Diini sub-clan of Marehan, who had already secured three seats in the Lower House. He further denounced the years of marginalization of his sub-clan and the fact they were not represented in the executive body. He added that the press conference was held in Mogadishu due to intimidation faced by his sub-clan in Kismaayo.
57. Several protests by women and youth groups demanding better representation in the election process took place across Somalia in 2016. On 6 August 2016, women's groups carried out a peaceful demonstration in central Mogadishu to highlight the need to ensure women's participation in national public affairs and to demand the implementation of the 30 per cent quota for women in the next Lower House of the Federal Parliament. Senior representatives of the Banaadir Regional Administration took part in the demonstration and made speeches in support of the 30 per cent quota, appealing to national leaders and clan elders to implement it as agreed during the NLF held in Mogadishu from 9 to 12 April 2016.<sup>69</sup> The timing of the demonstration was important, as the NLF members were meeting in Mogadishu.
58. Women ultimately secured 66 seats (24 per cent) in the Lower House of Federal Parliament, with a total of 275 members. This is a significant increase from 2012, when they represented 14 per cent. Yet, the agreed goal of 30 per cent was not achieved because some clans failed to abide by the rules on setting aside the sufficient number of women-only seats in the House of the People. Moreover, this was the outcome of a politically negotiated process championed by Somali women with the help of members of international community, including the United Nations and the European Union. According to a representative of Somali women speaking to the Security Council, the absence of a legally binding provision was the biggest obstacle to the implementation of that political decision and should be addressed before the next elections.<sup>70</sup>

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<sup>67</sup>The most populous region in Somalia, according to an UNFPA Population Estimate Survey for 2014, covering 18 pre-war regions of Somalia: <https://reliefweb.int/sites/reliefweb.int/files/resources/Population-Estimation-Survey-of-Somalia-PESS-2013-2014.pdf> last accessed on 29 December 2017.

<sup>68</sup>A sub-clan of Daarood, one of the four main clans in the 4.5 clan formula in Somalia.

<sup>69</sup> The National Leadership Forum Communique issued on 12 April 2016.

[https://unsom.unmissions.org/sites/default/files/final\\_communique\\_12\\_april\\_2016.pdf](https://unsom.unmissions.org/sites/default/files/final_communique_12_april_2016.pdf) last accessed on 28 March 2018.

<sup>70</sup> Statement by Asha Gelle Dirie, Chairperson, Committee of Goodwill Ambassadors at the United Nations Security Council on Women's Political Representation in Somalia: Achievements and Challenges, 27 January 2017.

[http://www.womenpeacesecurity.org/files/UNSC\\_Briefing\\_Somalia\\_Gelle\\_01-2017.pdf](http://www.womenpeacesecurity.org/files/UNSC_Briefing_Somalia_Gelle_01-2017.pdf) last accessed on 28 March 2018.

59. Civil society organizations complained that some of their members were excluded from the initial consultations to determine the electoral model and from standing for election. Representatives of persons with disabilities reported that they were unable to participate as delegates or to play observer roles despite a specific request to that end to FIEIT.<sup>71</sup> They claimed that FIEIT told them that the delegates (51 for each Member of Parliament) were selected and agreed upon by clans, and that it was not in a position to advocate that seats be reserved for persons with disabilities or to allow them a role as observers. Organizations representing persons with disabilities regretted that the international community did not provide them with the same support offered to women.<sup>72</sup> Internally displaced persons constitute another large segment of the Somali population, who consistently complained of marginalization in the electoral process as a result of the clan-based system.
60. With the support of UNSOM, civil society organizations, clustered into six thematic areas,<sup>73</sup> implemented outreach activities in Mogadishu between July and October 2016. Focusing on the issue of human rights and public participation in the electoral process, civil society organizations carried out public awareness and media campaigns, panel discussions, conferences, and training on the rights of all citizens to participate in the electoral process. The project particularly targeted segments of the population who are marginalized, including youth, women, persons with disabilities, internally displaced persons and minorities.

### **Judicial Response to Election-Related Human Rights Violations and Abuses**

61. There has been no judicial response to election-related human rights violations and abuses by State authorities, non-state actors and private individuals. No investigations have been launched and no arrests have been made, with the exception of two cases. The impunity enjoyed by perpetrators of human rights violations and abuses was a clear infringement of right to redress of violations of human rights as foreseen in the Provisional Federal Constitution of Somalia.<sup>74</sup>
62. The absence of judicial response has not been specific to election-related human rights violations but is a reflection of the lack of functioning justice institutions throughout the country. Lack of independence and impartiality, limited capacity and resources, weak law enforcement, and a deep-rooted public perception of corruption within the judiciary all contribute to the lack of an effective justice system.
63. The absence of judicial remedies to the election-related human rights violations are illustrated by the fact that out of the 44 cases of killings of elders and electoral delegates (15 committed during the pre-polling phase and 29 after the elections), arrests and prosecution took place in only two cases. Moreover, these cases were heard by the Military Court, which sentenced three alleged perpetrators to death and two others to life imprisonment. In addition to questions over

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<sup>71</sup> Interview with key informant, 30 November 2016.

<sup>72</sup> Interview with key informant on 12 March 2017.

<sup>73</sup> Persons with disabilities, Women and Children, Media, Youth, Humanitarian and Development, Civil and Political Rights.

<sup>74</sup> Provisional Federal Constitution of Somalia, Article 39: Redress of Violations of Human Rights.

whether the Military Courts have properly exercised jurisdiction over civilians, Military Court proceedings raise concerns over insufficient regard for due process and standards of fair trial.

### **Vetting Human Rights Records of Electoral Candidates**

64. The 2016-2017 electoral process did not include a requirement for vetting the human rights records of candidates, which raised serious concerns over the election of individuals who have been implicated in credible allegations of grave human rights violations or serious violations of international humanitarian law. On 16 October 2016, the United Nations in Somalia and other members of the international community,<sup>75</sup> including the African Union and the European Union, issued a joint statement expressing concern over parliamentary candidates with a history of criminality, violence and terrorism, and urged electoral colleges not to choose individuals with documented histories of criminality and violence to represent their clans and sub-clans in the Lower House of Parliament.<sup>76</sup>
65. Individuals whose candidacy caused concern included known former warlords and a senior military commander under Somali military regime in the 1980s, who was accused of grave human rights violations and war crimes in Hargeisa.<sup>77</sup> The failure to conduct a vetting of individuals contributes to a lack of criminal accountability, which in turn perpetuates an environment of injustice and impunity. As a result, at least four known former warlords were selected to both Houses of the Federal Parliament – two from Galmudug, one from Hirshabelle state, and one from Jubbaland, while the former Military commander was defeated in the contest in Puntland. On 7 August 2017, one of the elected former warlords was again chosen as Chair of the Parliamentary Constitutional Review Committee.
66. While the accused individuals have not been prosecuted or convicted and while they, as such, enjoy the presumption of innocence,<sup>78</sup> their election to the Federal Parliament, under the Provisional Federal Constitution, grants them immunity<sup>79</sup> and additional powers, thereby denying their victims the right to judicial remedies. This may result in the public losing confidence in the Federal Parliament – an institution that has an oversight mandate over key national processes, including the constitutional review and reconciliation initiatives.

### **Access to Remedies for Electoral Violations**

67. In the absence of national electoral laws, and as the judiciary had an undefined role to address violations, NLF approved the duties and powers of the Independent Electoral Dispute Resolution Mechanism (IEDRM) in September 2016.<sup>80</sup>

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<sup>75</sup> The United Nations, African Union, European Union, Inter-Governmental Authority on Development, Ethiopia, Italy, Sweden, the United Kingdom and the United States.

<sup>76</sup> <https://unsom.unmissions.org/international-community-expresses-concern-over-parliamentary-candidates-history-violence-and> last accessed on 4 April 2018.

<sup>77</sup> See U.S. and U.N. Policy [https://www.hrw.org/reports/1994/WR94/Africa-08.htm#P356\\_163056](https://www.hrw.org/reports/1994/WR94/Africa-08.htm#P356_163056) last accessed on April 2018

<sup>78</sup> Provisional Federal Constitution, Article 35: The Rights of The Accused.

<sup>79</sup> Provisional Federal Constitution, Article 70: The Immunity of the Members of the House of the People of the Federal Parliament.

<sup>80</sup> Communique issued by NLF meeting held in Mogadishu between 6 and 14 September 2016. <http://doorashada2016.so/wp-content/uploads/2016/10/NLF-Communique-6-14-September-2016-English.pdf> Last accessed on 28 March 2018.



68. IEDRM was established as an independent body for a period of four months, until the newly-elected members of the Parliament were sworn in on 27 December 2016. It was “specifically assigned to resolving disputes and disagreements arising from the indirect elections of 2016”,<sup>81</sup> and was mandated to address intimidation of delegates or candidates and to make decisions on disputes over results. It had authority over FIEIT and SIEIT and could summon their members and request information. IEDRM was constituted of 25 members, including 4 women - although the terms of reference called for a minimum of 6 women.
69. In practice, IEDRM was unable to effectively address all the cases brought to its attention, nor did it have the authority to request additional information from FIEIT or SIEITs, which raised significant concerns with respect to its role, power and independence. In addition, there were allegations of intimidation, political pressure, and harassment toward the members of IEDRM.
70. According to the terms of reference of IEDRM, only confirmed candidates could address complaints about electoral violations, leaving potential candidates (i.e. those declared ineligible or discouraged from running or otherwise disadvantaged), potential delegates, elders, and sub-clan elders without recourse. The credibility of IEDRM became even more of an issue when many individuals and sub-clans with genuine grievances over the outcome of the electoral process were not heard and their complaints were discarded. Out of the 1,400 complaints received by IEDRM, 1,330 were considered inadmissible due to the limited scope of the mandate. IEDRM ultimately registered 98 official complaints, although some were considered to be criminal offences that occurred outside of polling stations and therefore outside the scope of its mandate. IEDRM recommended the nullification of 11 election results, and NLF ruled that only 5 of these needed to be re-run (one from each state, including a high-profile case from Galmudug). The results of the other six cases stood and the elected members took their seats in the parliament.
71. On 10 January 2017, eight candidates, who were involved in 11 disputed elections that IEDRM recommended to be nullified, filed a case with the Supreme Court challenging the decision of the NLF overriding the IEDRM recommendations. On 16 May 2017, the Somalia Supreme Court ruled that NLF decision to overrule the IEDRM recommendation to nullify and re-run 11 election results was unconstitutional and ordered re-run of the 8 seats in which the complainant candidates were involved.<sup>82</sup> However, on 22 July 2017, members of the Lower House of Federal Parliament opposed the Supreme Court ruling and overwhelmingly voted (180/184) to keep members of parliament unchanged, citing that the electoral process was based on an inclusive political agreement validated through a presidential decree.<sup>83</sup>
72. Another obstacle was the USD 1,000 fee that was required to register a complaint, which limited accessibility and discriminated on the basis of wealth. Candidates who did not have access to that amount of money were unable to register their complaints and had no recourse.

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<sup>81</sup> Ibid.

<sup>82</sup> Supreme Court Ruling: MS/D.t/09/2017 BG dated on 16 May 2017.

<sup>83</sup> <https://www.Garooonline.com/en/news/somalia/somalia-lawmakers-reject-supreme-court-ruling-on-nullified-seats> last accessed 12 June 2017.

73. The mandate of IEDRM ended with the parliamentary inauguration, on 27 December 2016, leaving all the outstanding complaints unresolved. Even though it was not a full investigative body, and its mandate was extremely limited, IEDRM arguably failed to provide candidates with a dispute resolution system that would have brought some accountability and transparency to the electoral process and would have increased the overall credibility of the process. IEDRM proved to be dysfunctional as an accountability mechanism, inaccessible to the majority of those who had complaints, and dependent upon and influenced by political actors.

## **V. The Somaliland Presidential Election on 13 November 2017**

74. Somaliland proclaimed its independence from Somalia in 1991 but has never since been formally recognized as an independent state – either by the central government or by the international community.

75. Since 2003, Somaliland has held three presidential elections with universal suffrage. Although characterized by delays, the elections resulted in peaceful transfers of power. Somaliland has enjoyed relative peace of security, which made it possible to hold one-person, one-vote elections.

76. The Somaliland Constitution and other laws guarantee the rights to vote and stand for office, as well as the rights to freedoms of assembly and association. However, the Constitution limits the number of political parties in Somaliland to three for a period of 10 years.<sup>84</sup> This restriction contravenes the fundamental right to freedom of association enshrined in article 22 (1) of the ICCPR and article 10(1) of the African Charter on Human and Peoples' Rights, affirming that every individual shall have the right to free association, which includes the right to form and be part of a political party. Besides, no one can stand for election as an independent candidate. This restriction contravenes the right to be elected enshrined in article 25(b) of the ICCPR and article 13(1) of the African Charter on Human and Peoples' Rights, affirming that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives.

77. The Somaliland election was initially planned for June 2015 but was delayed significantly due to political disagreements, technical issues, and the humanitarian crisis caused by the drought. While the Somaliland National Electoral Commission (SNEC) initially set the election for 1 June 2016, in May 2015, the House of Elders (known as the Guurti) overruled the SNEC and officially extended the term of the President and the Parliament for 22 months, until 27 April 2017.<sup>85</sup>

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<sup>84</sup> Article 9 (2) of the Somaliland Constitution: The number of political parties shall not exceed three (3). Law No. 14 (amended in 2011) regulates political associations and parties. A nationwide electoral contest is organized for political parties (new and old) to compete every 10 years. According to Article 6, a political party that gains 20 per cent (of the votes in every region), shall be recognized as national political party. Members of the local councils, parliament and presidential candidates can only be from the recognized national parties. The previous contest had taken place in 2012.

<sup>85</sup> Article 83 of the Somaliland Constitution (Election Procedures) allows the House of Elders to extend the term of office if it is not possible to hold the election of the President and the Vice-President due to security considerations.

78. The decision of the House of Elders to extend the term of the Somaliland President prompted demonstrations and opposition parties challenged the decision by the House of Elders in the Supreme Court, which ultimately endorsed the position of the House of Elders. Following the ruling by the Supreme Court, the SNEC resumed its technical preparations for the election, and voter registration started in most Somaliland regions in January 2016. However, it was halted immediately due to the severe drought that affected most of Somaliland and caused massive displacement. On 6 March 2017, the House of Elders voted to further postpone the presidential election to November 2017. There were no political crises or demonstrations and the opposition parties accepted the new timeframe.

### **Access to Remedies for Electoral Violations**

79. Article 66 of the Somaliland Presidential and Local Council Elections (Law No. 20/2001, amended in 2017) establishes the procedures for election-related complaints. The Supreme Court has jurisdiction over claims related to the elections of the President and the Vice-President and complaints are required to be filed with the Supreme Court within seven days of the declaration of results, after which the Court must pronounce its judgement within an unspecified period of time.

80. On 17 November, two days after the polling day, the Waddani opposition party broke off contact with the SNEC, claiming that the SNEC was not addressing complaints that a large number of polling stations had incorrectly tallied the votes and that voting cards had been tampered with. However, the Waddani did not bring a complaint to the Supreme Court, reportedly because they do not consider the Court to be impartial. On 17 November, following a meeting between traditional elders, political parties and the outgoing president, the Waddani accepted the election results, reportedly for the sake of peace.

81. UNSOM HRPG monitored the human rights situation during the elections and worked closely with the local government, civil society, the Somaliland National Human Rights Commission, local stakeholders, and international actors throughout Somaliland to gather information on election-related human rights violations and abuses before, during and after the polling day.

### **Right to Participate in Public Affairs**

82. Somaliland applies a legal framework that generally guarantees the right to participate in public affairs, and the right to elect and be elected to public offices. It generally adheres to international human rights norms and standards such as prohibiting discrimination and harassment. It fails, however, to make special provisions for women, minority and youth groups who are disadvantaged when standing for election to public offices.

83. Members of civil society organizations participated in the electoral process, and the Somaliland Non-State Actors Forum recruited and managed more than 620 electoral observers from civil society. They were deployed to observe the voter registration process and were allowed to enter polling stations on polling day. Sixty international observers invited by SNEC were deployed on 3 November throughout Somaliland, ten days before polling day. One local NGO,

the Somaliland Human Rights Defenders, established an *ad hoc* working group composed of voluntary members from local and international organizations, to monitor human rights during the election and to exchange information.

### **Rights to Life and Physical Integrity**

84. UNSOM HRPD documented 3 deaths and 17 injuries caused by Somaliland security forces during the campaign period and after the conclusion of the election on 13 November 2017.
85. The deaths and injuries occurred mostly during demonstrations, typically where police forces were poorly trained and lacked adequate equipment to control crowds. Somaliland forces shot and injured eight demonstrators in Badhan district of Sanaag during a peaceful demonstration on 26 October 2017. Badhan district is located in the region disputed by Somaliland and Puntland state, and the Puntland authorities reportedly supported demonstrators. During the same period, the Puntland authorities deployed security forces at the border of Sool and Sanaag region in an effort to prevent the election from taking place.<sup>86</sup>
86. In the period leading to the announcement of the election results, each of the two main parties (Kulmiye and Waddani ) declared itself victorious, which led to rumours of possible fraud and prompted supporters of the Waddani opposition party to organize demonstrations in some districts. On 16 November 2017, the supporters of the main opposition party (Waddani) protested in Burao and Hargeisa where police used firearms and killed three civilians (two women and one youth male).
87. Police shootings also injured at least nine civilians during post-election protests, including in Hargeisa, Burao and Ceerigaabo. The Somaliland authorities did not carry out investigations to ascertain whether the use of force was proportional to any threat faced by security forces. The media reported that the Somaliland authorities pledged compensation to the families of those killed. It has not held individual security agents responsible for incidents that occurred during regular security operations but has allocated funds to pay compensation in case of loss of life or injury. This has contributed to continued impunity. The use of excessive force by the police is a common occurrence.

### **Rights to Freedoms of Association, Opinion, Expression, and of the Press**

88. UNSOM HRPD recorded violations against members of the two main political parties (Kulmiye and Waddani), including harassment, detention, and arrests without charges. Defections of members of the ruling party to the opposition parties prompted Somaliland officials to harass and intimidate them, and to arrests and detain them without charges.<sup>87</sup>

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<sup>86</sup> Various forces operate in the contested regions of Sool and Sanaag, with some areas changing hands depending on political interests of the local population. Puntland authorities were motivated to prevent the population from participating in the election as a means of keeping control over that area.

<sup>87</sup> From late 2016 until the beginning of the campaign period, several politicians and clan elders joined the main opposition party WADDANI. The defections were made public through press statements and the government reacted with intimidation and arrests.

Between June and September 2017, police arrested at least 21 members of the Waddani opposition party and two members of the Justice and Welfare opposition party in Burao, Hargeisa and Gabiley districts. In one incident in Burao, Toghdeer region, police arrested 14 politicians and supporters from the Waddani party between 10 and 15 July 2017. The Independent Expert on the Human Rights Situation in Somalia sent a letter to the Somaliland President on 29 September 2017, urging the Somaliland authorities to abide by the Constitution and refrain from infringing on the freedom of association.<sup>88</sup> On the day of the election, police briefly detained the Chief of Staff, the campaign manager, and the foreign affairs adviser of the Waddani opposition party. During the post-election demonstrations, police targeted members of the Waddani party and arrested more than 25 members between 16 and 19 November 2017. They were eventually released without charges, some after the Waddani party accepted the results of the election and conceded defeat, on 21 November 2017.

89. Somaliland has four private and one government-run television station, as well as one government-run radio station. Freedom of access to information was curtailed during the election period, with the closure of media outlets and restricted access to social media. For instance, on 12 July 2017, the Hargeisa Regional Court ordered the companies providing internet to suspend service to five news websites: (1) Karinnews.com, (2) Saylactoday.com, (3) Haleelenews.com, (4) Baraarugnews.com, and (5) Suradnews.com. On 2 July, the Criminal Investigation Department and the Hargeisa Regional Prosecutor's office requested the suspension of the five websites, alleging they were disseminating false news and propaganda that endangered national security and the peaceful coexistence of Somaliland clans by showing their support to some politicians in the lead up to the election campaign. The managers and editors of the five websites were not informed of the request and were not present when the court issued the decision. The internet provider did not implement the court decision and the websites continued to operate in spite of the order, which has not been revoked. Also, on 4 November 2017, one media outlet was suspended for two weeks in November 2017, and access to social media was blocked for four days following election day on 13 November.<sup>89</sup> On 23 November 2017, the Hargeisa Regional Court ordered the internet providers to block the Hadhwaangnews.com and Baligubadlenews.com websites on the basis of publishing false news against the President-elect.<sup>90</sup> The Hadhwaangnews.com website was subsequently unblocked, while the Baligubadlenews.com website remained blocked as of June 2018.

90. On 16 October 2017, the EC, the Ministry of Information and media associations signed the Media Code of Conduct, which imposed a legal duty on media outlets, including independent and government-run websites, television and radio broadcasters, to be politically impartial. It also required the three political parties to equitably use government-owned media during the campaign. A committee consisting of representatives from the EC, the Ministry of Information

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<sup>88</sup> Article 32 of the Somaliland Constitution protects the rights to freedoms of assembly, association and expression.

<sup>89</sup> The Somaliland Constitution, the Press Law, and regulations in the Media Code of Conduct provided safeguards against censorship during the electoral period. Nevertheless, the Somaliland Minister of Information ordered the closure of Kalsan TV in Hargeisa on 4 November 2017, reportedly for broadcasting "false news" after it broadcast video footage of police firing live bullets to disperse a crowd that attempted to disrupt the Kulmiye ruling party's presidential campaign, on 3 November in Laas Anood.

<sup>90</sup> The Attorney General presented evidence and requested the court to block the websites, which the court did without any proceedings. This action contradicts the Criminal Procedure Code as well as the Somaliland Constitution, which require that parties involved in a case be present and that the accused be granted the right to defend themselves.

and media associations was formed to ensure that the code of conduct was implemented and to monitor the impartiality of the media during the campaign and on election day.

91. The SNEC and the Ministry of Information agreed on a campaign coverage schedule for state media (Radio Hargeisa, national television, and the government newspaper). The managers of the state media endorsed the Code of Conduct, but refused to air views from the opposition parties that were critical of the management of public affairs. Local and international observers assessed that the three candidates had equal access to the media during the campaign, to national TV and radio, as well as to private media. This helped minimize tensions between the three candidates, and there were no complaints from the three political parties suggesting that access to government-run media was unfair.

## **VI. Conclusion**

92. There have been significant gains in Somalia's peace process in the last five years, although women, civil society groups, persons with disabilities, and minorities had limited access to the 2016 electoral process. While the conditions did not allow universal suffrage elections, the lack of an established legal framework for the "transitional" election process meant that the roles of relevant institutions were largely undefined, and the appointment of officials administering the election were not transparent. Insecurity, weak justice institutions, and an insufficient human rights protection system contributed to the lack of accountability for human rights violations throughout Somalia and Somaliland. Human rights violations were committed by State security forces and intelligence agencies at federal and state levels, as well as by non-State actors, including Al-Shabaab. The vast majority of the electoral process-related human rights violations were not investigated, resulting in a continuing climate of impunity.

## **VII. Recommendations**

### **To the Federal Government of Somalia:**

- a. *Conduct fair and free elections within a framework of laws guaranteeing the effective exercise of voting rights.*
- b. *Establish a system of representation for future elections that is inclusive of all citizens, including internally displaced persons, persons with disabilities, minority communities, youth and women, applying the one person, one vote principle.*
- c. *Ensure that prompt, independent, impartial and thorough investigations be conducted into human rights violations and abuses committed in the context of the electoral process from 2016 to 2018, and that the perpetrators be held accountable, and guarantee the victims' right to reparation.*

- d. *Uphold all fundamental freedoms and rights enshrined in the Somali Constitution and international law, including treaties to which Somalia is a party, including the rights to freedoms of opinion and expression, association and peaceful assembly.*
- e. *Ensure the national electoral legislation is enacted before the 2020-2021 elections and that it meets applicable international human rights standards, including vetting of the human rights records of candidates.*
- f. *Ensure that human rights principles, including non-discrimination and equality, be enshrined in national legislation and implemented. Reforms within the Government and political parties should ensure universal representation, inclusiveness, and effective participation. This should include the development of a protective framework and electoral accountability mechanisms.*
- g. *Promote mitigation measures to reduce the risk of electoral violence, including the training of law enforcement agents and security forces on the extent and limits of their mandate, and in particular with respect to the proper management of peaceful demonstrations.*
- h. *Establish a confidential and toll-free hotline to report human rights violations in the context of elections, and credible, effective mechanisms should be established to investigate election-related human rights violations and abuses and to take appropriate remedial actions.*
- i. *Ensure the participation of women as well as persons belonging to segments of the population who are marginalized, including persons with disabilities in future elections by formalizing special measures, including quotas and other temporary measures and by removing systemic barriers, including fees for candidacy and education levels. The commitments for a women's quota should be upheld and enhanced by leaders of the Federal Government and the Federal Member State administrations, including through sanctions for non-compliance.*
- j. *Investigate and prosecute attacks and acts of intimidation against any citizen, particularly women for their participation in the electoral process.*
- k. *Empower the Independent Human Rights Commission to protect and promote human rights, including of political actors, journalists and human rights defenders, with particular attention during electoral periods. The Human Rights Commission should work closely with the NIEC, particularly on awareness raising of human rights related to elections, such as political participation and freedoms of expression, association and peaceful assembly.*
- l. *Support the Independent Human Rights Commission to establish a robust complaint mechanism for election related human rights violations and abuses in all electoral phases.*
- m. *Ensure that the future electoral dispute resolution mechanism be based on a sound legal framework; be located within the jurisdiction of the National Independent Electoral*

*Commission; be competent to receive complaints and conduct investigations; and be empowered to recommend appropriate remedies to relevant bodies.*

- n. Enact a freedom of information law to allow access by the general public to information and data held by the Federal Government of Somalia and Federal Member States.*
- o. Enact specific laws on expanding civil society space in general and their participation in the electoral process, in particular as part of pre-election consultations and observers, and the protection of human rights defenders as called for by United Nations General Assembly resolution 53/144 (1999) on Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.*
- p. Strengthen human rights education for civil society and the general public to ensure that relevant actors have a good knowledge of the electoral law and about their rights to freedoms of expression, association and peaceful assembly.*

#### **To the Somaliland authorities**

- q. Conduct a thorough review and analysis of the presidential electoral process, particularly of election-related human rights violations that took place before, during and after polling day.*
- r. Enact new legislation foreseeing special arrangements to promote access for women, minority communities and youth groups to stand for public office, and to protect them from discrimination.*
- s. Review relevant legislation and enact new legislation to reinforce the protection of the rights to freedom of expression, including freedom of media.*
- t. Ensure that independent, credible and impartial investigations be promptly conducted into all attacks and acts of physical intimidation, including against female candidates, opposition parties, journalists and media workers that occurred during the election, and that the perpetrators are held accountable and that victims' right to reparation is fulfilled.*

#### **To the International Community**

- u. Provide financial and technical assistance to the Somalia National Independent Election Commission to prepare for the 2020-2021 election.*
- v. Continue to encourage leaders to apply the one person, one vote principle and to create an inclusive environment where all citizens including women, youth, persons with disabilities, internally displaced people, minority communities and others are able to safely and freely participate in public affairs, including electoral processes.*