

**Mandates of the Independent Expert on the situation of human rights in Somalia; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on discrimination against women and girls**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Independent Expert on the situation of human rights in Somalia; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 42/33, 42/16, 40/10, 34/16, 42/10, 34/19, 35/5, 41/17, 41/6.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the draft bill on "Sexual Intercourse Related Crimes". The purposes of the bill on "Sexual Intercourse Related Crimes", as enumerated under article 3, are to i) have a law that is in accordance with the Constitution, international human rights standards, and the general principles of justice to prevent rape and other sexual crimes; ii) ensure that victims of rape and other related crimes have access to justice; and iii) prohibit rape and other sexual offences and protect the rights of victims, defendants and witnesses.

We acknowledge the statements and comments issued in this regard by the United Nations Assistance Mission in Somalia, the United Nations Population Fund, the United Nations High Commissioner for Human Rights, the Special Representative of United Nations Secretary-General on Sexual Violence in Conflict, the Chairperson of the African Commission on Human and Peoples Rights and the African Committee of Experts on the Rights and Welfare of the Child.

We also wish to express our concern that some of the provisions contained in this bill are incompatible with Somalia's obligations under international law. These provisions are also incompatible with Somalia's 2012 Provisional Constitution, regional human rights law, including the African Charter on Human and Peoples' Rights

(ACHPR), the African Charter on the Rights and Welfare of the Child (ACERWC), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); as well as the 2013 Joint Communiqué signed between Somalia and the United Nations on the Prevention of Sexual Violence. Of particular concern, the provisions allowing for child marriage and forced marriage are negatively impacting on the rights of girls and women to the enjoyment of the highest attainable standards of physical and mental health and to education, as well as their well-being.

### **Overview of applicable international human rights law standards**

Somalia is party to a number of international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

In this regard, we respectfully call your Excellency's Government's attention to relevant provisions set forth under article 5 (d) of the CERD which Somalia ratified on 26 August 1975, namely on to the right to marriage and choice of spouse (iv); the right to freedom of thought, conscience and religion (vii); and the right to freedom of opinion and expression (viii). We also consider the following standards enshrined under ICCPR, acceded by Somalia on 24 January 1990, relating to: the right to non-discrimination and to an effective remedy (article 2); the right to equality between men and women (article 3); the right to life (article 6) and the right not be subjected to torture and other cruel, inhuman or degrading treatment or punishment (article 7); the right to privacy (article 17); the right to freedom of religion or belief (article 18); the right to freedom of expression (article 19); the right to enter a marriage freely (article 23(3)); and the right to protection, as a minor, without discrimination (article 24(1)). Relevant standards applicable set forth the ICESCR, acceded by Somalia on 24 January 1990 relate to the right to the highest attainable standard of health of young girls (article 12); the right to education (article 13); and the right to work (article 6).

Furthermore, child and forced marriages undermine a number of rights and principles guaranteed under the Convention on the Rights of the Child (CRC), ratified by Somalia on 1 October 2015, which includes non-discrimination (article 2); the best interests of the child (article 3); the right not to be separated from their parents against their will (article 9); the right of the child to be heard and express his or her views (article 12), the right to the enjoyment of the highest attainable standard of health, where States must "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children" (article 24 (3)); the right to education and to receive educational and vocational information and guidance (article 28); and the rights to protection from all forms of physical and mental violence, injury or abuse, including sexual abuse, while in the care of parents or legal guardians (article 19); sexual exploitation (article 34); sale of children (article 35) and exploitation (article 36).

Corporal punishment such as lashes constitute a violation of the right not be subjected to torture and other cruel, inhuman or degrading treatment or punishment as set forth in ICCPR (article 7) and CAT ( articles 2 and 16), acceded by Somalia on 24 January 1990. At the regional level, child marriage and the betrothal of boys and girls are also prohibited under article 21 of the ACERWC, signed by Somalia in 1991.

### **Concerns relating to the compatibility of the Sexual Intercourse Related Crimes with international human rights law**

Before addressing our concerns, we wish to begin by recalling article 5 of the Vienna Declaration and Programme of Action, which stipulates that “all human rights are universal, indivisible and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

The comments made in the present letter are not intended to provide an exhaustive analysis of the draft bill, but rather to address the provisions that we consider particularly problematic in relation to sexual violence, in accordance with Somalia’s obligations under ICCPR, ICESCR, CAT and CRC.

#### ***I. Introductory articles and definitions***

The principles of equality and non-discrimination are key tenets of international human rights law. In line with them, article 11 of the 2012 Provisional Constitution of Somalia provides that all citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect have equal rights and duties before the law. It is our view that a similar provision should be included in the bill.

As regards to article 2 on definitions, the bill would benefit from a more exhaustive glossary to include, among other, key concepts such as “gender-based violence”, “sexual violence”, as well as the notion of “consent”, which is particularly relevant to the definition of “rape”. We also note that “sexual content” is not defined, but that its dissemination is criminalized under article 19, raising concerns linked to the right to freedom of opinion and expression.

Additionally, while taking into account linguistic nuances, we are concerned that some of the definitions lack clarity and wish to emphasize that the failure to use precise and unambiguous language fundamentally affects the protection of a range of fundamental human rights and results in different interpretations. In this regard, we wish to draw your Excellency’s Government attention to the “principle of legal certainty” under international law, enshrined in article 15(1) of the International Covenant on Civil

and Political Rights and article 11 of the Universal Declaration on Human Rights. This principle requires that criminal laws must be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse.

We are particularly concerned that the definition of a child is vague as it provides that a child is any person whose age is younger than the “age of maturity”, a notion that is not defined in the bill. Furthermore, when read in conjunction with article 22, it seems to imply the age when a person “fully develops the necessary sexual capacities to prevent any health problems”, which varies from one individual to another, and could be as early as ten years old. This definition is in contradiction with article 1 of CRC, article 2 of ACERWC, article VI (b) of Maputo Protocol and with article 29 (8) of the 2012 Provisional Constitution of Somalia, which provide that a child is a person under 18 years of age. The notion of “permitted age” defined as the “age of maturity by which any person can legally have lawful sexual intercourse” is also of concern. As regards the definition of “non-recoverable/incurable injury”, we wish to emphasize the need to also recognize mental/ psychological injuries.

## *II. Substantive offences*

At the outset, we wish to note that numerous substantive offences have not been addressed by the bill. Where substantive offences have been provided (articles 4-22), they fall short of international norms and standards, for instance definitions on Rape (article 4), Sexual Offence (article 7), Sexual Exploitation (article 8), Forced Marriage (article 14), Sexual Harassment (Article 15), Marriage of Minors (Article 22).

In addition, we are concerned that the bill does not sufficiently protect against sexual offences committed against children. The CRC provides a framework for demanding legal accountability for all forms of violence and abuse, including rape and sexual abuse of children. Article 19 of the CRC exhorts States to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. In addition, article 34 requires States to protect children from all forms of sexual exploitation and sexual abuse. This is complemented and extended by article 37, which requires States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, encompassing as well the prohibition of all forms of corporal punishment of children. Article 39 also requires States to take all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of exploitation, abuse and torture, among others.

Additionally, in its General comment No. 14 (2013) on the Right of the child to have his or her best interests taken as a primary consideration, the Committee on the Rights of the Child stresses that “an adult’s judgment of a child’s best interests cannot

override the obligation to respect all the child’s rights under the Convention.” Moreover, “the “best interests of the child” is a right, a principle and a rule of procedure based on an assessment of all elements of a child’s or children’s interests in a specific situation.” Such an assessment requires the participation of the child.

The paragraphs below highlight a number of concerns with the substantive offenses mentioned in the bill.

### ***Rape***

In contrast with the 2018 Sexual Offences Bill, which complied with several international human rights standards on rape and sexual violence, many provisions of the Sexual Intercourse Related Crimes bill fail to do so. Article 2 defines rape based on the use of violence or coercion as “unlawful sexual intercourse through force, intimidation or threats against which a person subjects to another person of a different sex or same sex.” The article further stipulates that “the act of rape is considered to have occurred when the perpetrator’s genitals, no matter how much enters in the reproductive organ of or other organ of the other person’s body.” However, as noted by the Special Rapporteur on violence against women (E/CN.4/1999/68), rape should be defined in terms of non-consensual sexual relations. A consent-based approach would allow for a victim-centered legislation that would account for other types of coercive circumstances. Additionally, the crime of rape should encompass any form of penetration, including by objects or other body parts.

The bill also fails to explicitly criminalize marital rape. As the Special Rapporteur on violence against women has previously noted, this omission reflects the persistence of the public-private dichotomy, which shields certain types of violence from the legal system. Alongside passing legislation criminalizing domestic and intimate-partner violence, the Special Rapporteur has recommended that States introduce legislation to explicitly recognize marital rape as a crime (E/CN.4/1996/53).

We are also concerned that the current bill does not address the issue of statutes of limitation for the prosecution of rape and sexual violence, which had been expressly excluded by the Sexual Offences Bill. As the Special Rapporteur on violence against women has repeatedly recommended, States should ensure that the statute of limitations for initiating any legal proceedings with regard to rape and other sexual violence would continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, and to allow for the efficient initiation of proceedings after the victim has reached the age of majority in the case of children (A/HRC/35/30/Add.3; A/HRC/41/42/Add.2).

The bill fails to introduce important protections to victims that had been listed by the Sexual Offences Bill, including the victims’ right to privacy, which should be protected during investigation and prosecution (E/CN.4/1997/47). In addition, the current bill would implicitly allow a victim’s sexual history to be considered during prosecution

and trial, following a traditional view of rape as a crime against morality which leads to suspicions of victims who are not deemed “honourable”. The Special Rapporteur on violence against women has criticised these types of provisions and recommended explicit bans on the admissibility of such evidence (A/HRC/11/6/Add.5), as had been introduced by the Sexual Offences Bill.

Furthermore, we wish to draw your attention to the fact that criminalizing the transmission of HIV/AIDS, as stipulated under article 4(4) has a disproportionate impact on women given that they are more likely than men to seek testing and know their HIV status, together with the additional risk of potentially passing on HIV during pregnancy. The Special Rapporteur on the right to health has stressed that “the criminalization of HIV/AIDS transmission undermines the right to health and also infringes on many other human rights, such as the rights to privacy, to be free from discrimination and to equality, which in turn impacts upon the realization of the right to health. The criminalization of HIV transmission, or behaviours around transmission, is generally recognized as counterproductive, and should be reconsidered in the context of any comprehensive HIV/AIDS response framework.” (A/HRC/14/20, para.41). As underscored in the International Guidelines on HIV/AIDS and Human Rights (2006), “criminal and/or public health legislation should not include specific offenses against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional cases. Such application should ensure that the elements of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and /or harsher penalties.” (Guideline 4 (a)).

### ***Child, early marriage and forced marriage***

According to article 14 of the bill, “forced marriage occurs when a person strongly forces another person (woman) into a marriage without the knowledge/consent of her family.” This provision would allow for forced marriage in situations where a woman’s family gives consent to the marriage or has knowledge of the marriage. The Human Rights Committee, in paragraph 23 of its General Comment No. 28 (2000) on the equality of rights between men and women, has also specified that “Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis.” The Committee emphasized that States have an obligation to protect women’s right to marry only when they have given free and full consent. Furthermore, article 22 of the bill stipulates that “marriage of minors is allowed in the Islamic sharia in general, however, the Shafi’i School proposes that the person shall only be married off when she/he fully develops the necessary sexual capabilities to prevent any health problems that may arise from such action.” This provision is concerning because it permits the marriage of minors at the maturation of an individual’s reproductive organs, independently of the age of the child. Early and child marriage violates the freedom to exercise the right to give or withhold ‘free and full consent’ as provided by article 23(3).

Child marriage can lead to trafficking and sale of children for the purposes of child marriage, child slavery, including domestic and sexual slavery, forced labour, sexual violence, severe damage to the physical and mental health of young girls, and can prevent their access to or continuation of their education. Child marriage constitutes an obstacle to women's and girls' opportunities as it impacts on their education and employment opportunities.

Additionally, the Special Rapporteur on Freedom of Religion or Belief has repeatedly called on States to eliminate in law and practice, including in plural legal systems, all forms of marriage that restrict and/or deny women and girls' rights, well-being, and dignity, including early and forced marriage (A/HRC/43/48, para 19).

In particular, the OHCHR Commentary on Recommended Principles and Guidelines on Trafficking highlights the obligation of all States to ensure the best interests of the child, the right of children to be protected from abduction, sale or trafficking, and the right of children to be protected from other forms of exploitation. (Commentary: p.64). The ILO Convention on the Worst Forms of Child Labour prohibits practices similar to slavery, such as the sale and trafficking of children.

The Special Rapporteur on Trafficking in Persons, especially women and children, has noted that child marriages result in a high incidence of sexually transmitted diseases, including HIV/AIDS, disabilities such as fistulas, and death as a result of premature childbirth. (A/HRC/4/23, para. 22). The United Nations Working Group on Contemporary Forms of Slavery recognized forced marriage as a form of contemporary slavery, trafficking and sexual exploitation (see E/CN.4/Sub.2/2003/31). (See also, article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956).

Furthermore, the Special Rapporteur on Torture, building on the views expressed by his predecessors and the Committee Against Torture, is of the view that both the marriage of children (A/HRC/31/57, paras. 63–64; and CAT/C/YEM/CO/2, para. 31) and forced marriage (e.g. CAT/C/SEN/CO/3, para. 14; and A/HRC/31/57, paras. 58 and 63–64) amount to cruel, inhuman or degrading treatment and, where it involves the intentional and purposeful or discriminatory infliction of severe pain or suffering on a powerless person, to torture (A/74/148, para 47).

The Human Rights Committee, in paragraph 23 of its General Comment No. 28 (2000) on the equality of rights between men and women, has also specified that “States are required to treat men and women equally in regard to marriage in accordance with article 23, which has been elaborated further by general comment No. 19 (1990). Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis.”

In paragraph 9 of its General Comment No. 4 (2003) on Adolescent Health and Development in the Context of the Convention on the Rights of the Child, the Committee on the Rights of the Child has noted that “States parties need to ensure that specific legal

provisions are guaranteed under domestic law, including with regard to setting a minimum age for ... marriage”, which “should be the same for boys and girls.” In paragraph 20, the Committee strongly recommends that “State parties “review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”

The Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health, has clarified that the right to health implies freedoms and rights, including the right to control one's health and body, including sexual and reproductive freedom (para. 8). It has also stressed the need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage (para. 22). Child and forced marriages can also have a significant impact on girls' mental well-being as it often results in separation from family and friends and a lack of freedom to participate in community activities. It usually brings an end to a girl's chance of continued education and economic opportunities. The CESCR Committee has also stated that the practice of early marriage also has a negative impact on the rights to education and work.

Both the CRC and CEDAW Committees have stressed the importance of additional legal safeguards to protect the right of all individuals to freely enter into marriage, even in plural legal systems which include both customary and statutory law. In paragraph 55 of the Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful practices, the Committees recommended that States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices. In doing so, they should ensure, inter alia:

- (a) That the process of drafting legislation is fully inclusive and participatory. For that purpose, they should conduct targeted advocacy and awareness-raising and use social mobilization measures to generate broad public knowledge of and support for the drafting, adoption, dissemination and implementation of the legislation;
- (b) That they repeal without further delay all legislation that condones, allows or leads to harmful practices, including traditional, customary or religious laws and any legislation that accepts the defence of honour as a defence or mitigating factor in the commission of crimes in the name of so-called honour;
- (c) That the legislation is consistent and comprehensive and provides detailed guidance on prevention, protection, support and follow-up services and assistance for victims, including towards their physical and psychological recovery and social reintegration, and is complemented by adequate civil and/or administrative legislative provisions;



- (d) That the legislation adequately addresses, including by providing the basis for the adoption of temporary special measures, the root causes of harmful practices, including discrimination on the basis of sex, gender, age and other intersecting factors, focuses on the human rights and needs of the victims and fully takes into account the best interests of children and women.

Similar recommendations were made by African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples Rights in their Joint General Comment on Ending Child Marriage (2017).

We also consider appropriate to refer your Excellency's Government to Resolution 2005/41 of the Commission on Human Rights on the elimination of violence against women, which stresses the need to provide women with the means to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

The Working Group on discrimination against women and girls recommended States to eliminate in law and in practice all forms of marriage that restrict and/or deny women and girls' rights, well-being and dignity, including early and/or forced marriage. Furthermore, in its 2015 thematic report to the Human Rights Council (A/HRC/29/40), the Working Group on the issue of discrimination against women in law and in practice, based on international legal standards, called on States for the nonrecognition of forms of marriage that discriminate against women and/or fail to ensure equality and justice for women, whatever the legal system, religion, custom or tradition, including early and/or forced marriage (para. 26). It also recommended eliminating in law and in practice all forms of marriage that restrict and/or deny women and girls' rights, well-being and dignity, including early and/or forced marriages (para.73, c, iii).

In its 2016 thematic report to the Human Rights Council (A/HRC/32/44), the Working Group further highlighted that early marriage and adolescent pregnancy have a long-lasting impact on girls' physical integrity and mental health. Pregnancy and childbirth are together the second leading cause of death among 15- to 19-year-old girls globally, putting them at the highest risk of dying or suffering serious lifelong injuries as a result of pregnancy. For example, up to 65 per cent of women with obstetric fistula, which is a severely disabling condition and often results in social exclusion, develop this condition as adolescents (para.34). Consequently, it recommended States to take effective measures to prevent child marriage and adolescent pregnancies and provide girls with comprehensive education based on scientific evidence on matters of health, including sexuality (para. 105, d, i).

### ***Courtship***

Article 21 (1) of the bill stipulates that courtship “means a romantic interaction between two persons of opposite gender with the aim of each assessing the other's suitability as a prospective partner. If such two people willingly engage in a sexual

intercourse, this shall not be termed as a criminal offense despite being against Somali culture and the Sharia Law.

We wish to express our concern that article 21 (1) does not distinguish between consenting adults and children, and could therefore legitimize human rights violations if one of the parties is below 18.

Article 21(2) further stipulates that “courtship between two people of opposite gender with the sole aim of committing fornication shall be termed as a criminal offense in Somalia which is 100 % Muslim Country.”

In addition, we are of the view that the criminalization of sexual relations between consenting adults outside of marriage should be regarded as an interference with the privacy of the individuals concerned in violation of article 17 of ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation.

Besides, article 21 (2) raises concerns related to freedom of religion or belief. The majoritarian status of a certain religion is not a legitimate basis for the restriction of human rights. States have an obligation to respect, protect and fulfil the right of every person to freedom of thought, conscience and religion or belief, including the right not to follow or adhere to a religion or belief. The Special Rapporteur has repeatedly expressed concern that in certain States where a majority religion has been given “official” or privileged status, and its tenets are reflected in law, the human rights of individuals — especially women, persons belonging to religious minorities and lesbian, gay, bisexual, transgender and intersex persons — may be disproportionately restricted or vitiated under threat of sanctions, and has called for the repeals of any such laws. (See, A/HRC/43/48 para 77. v)

We would also like to bring to your Excellency’s Government’s attention paragraph 30 of the 2013 report of the Special Rapporteur on freedom of religion or belief to the General Assembly (A/68/290), in which he emphasizes that “... as a human right, freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls.” Furthermore, in paragraph 69 of the 2011 interim report to the General Assembly (A/65/207), the Special Rapporteur on freedom of religion or belief stresses that “... the mandate needs to continue highlighting discriminatory practices that women have had to suffer over centuries and continue to do so, sometimes in the name of religion or within their religious community. It can no longer be taboo to demand that women’s rights take priority over intolerant beliefs used to justify gender discrimination.”

### ***III. Procedural provisions***

We wish to express concern that the draft legislation only includes very limited procedural provisions. Additionally, the law does not contain provisions on the duties and responsibilities of various criminal justice institutions, nor does it provide specific guidance on investigations, legal proceedings and evidence. Articles 30 and 31 on

evidentiary rules are limited to rape and fail to address other offenses provided in the law. Thereby possibly failing to effectively protect the rights of victims, witnesses and the accused.

In particular, article 27 of the bill on the rights of victims is limited to the issue of legal assistance and does not address any other requirements. States have a responsibility to establish effective and victim-sensitive criminal justice mechanisms and take all necessary measures to ensure the victims' safety, security, and privacy. In this context, we wish to recall that the obligation to provide remedies for victims of international human rights law is set out in a number of international instruments, including ICCPR (article 2), CAT (article 14), and CRC (article 39).

Moreover, the Declaration on the Elimination of Violence against Women places upon the State the duty to develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. The Declaration states that women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered, and that States should inform women of their rights in seeking redress through such mechanisms (art. 4 (d)). Article 4(g) further notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

Furthermore, in its General Comment No.5 (2003) on General measures of implementation of the Convention, the Committee on the Rights of the Child, emphasized that "where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39 of the Convention.

While noting that article 28 of the bill on the rights of the accused recognizes the right to be presumed innocent until guilty, we are concerned that the provisions contained in this article are reduced to legal assistance and the setting of bail.

In this context, we wish to recall that article 14 paragraph 3 of ICCPR provides a number of minimum guarantees to protect the rights of persons charged with a criminal offense, including that they be informed promptly and in detail in a language which they understand the nature and cause of the charge against him; that they have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing; that they are tried without undue delay; that they are allowed to examine and cross-examine the witnesses; and that they cannot be compelled to self-

incriminate. Paragraph 5 and 6 of ICCPR further provide for the right to appeal and to receive compensation in cases of miscarriage of justice.

As regards to sentencing, we regret that the bill does not provide clear sentencing guidelines and note the inconsistent application of the different legal regimes (Civil Law, Sharia Law and Criminal Law) to address certain offenses. We also wish to express concern that articles 19 and 20 of the bill prescribe 80 lashes as appropriate sentencing penalty. We wish to remind your Excellency's Government that sentences should be commensurate with the gravity of the crimes. In this regard, we deem it appropriate to remind you of the absolute and non-derogable prohibition of torture and cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in article 5 of the UDHR, article 7 of ICCPR, articles 2 and 16 of the CAT, article 5 of the African Charter on Human and Peoples' Rights (ACHPR) which Somalia ratified on 31 July 1985. Furthermore it is provided for in Human Rights Council Resolution 25/13 and in paragraph 1 of General Assembly Resolution 68/156. In particular, we would like to draw the attention of your Excellency's Government to Rule 43 (d) of the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") which strictly prohibits the use of corporal punishment. Furthermore, General Comment No. 2 of the Committee Against Torture states that "no exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture".

### **Final considerations**

In view of the aforementioned observations, we respectfully urge your Excellency's Government to immediately withdraw the Sexual Intercourse Related Crimes Bill from consideration and work towards the adoption of the 2018 Sexual Offences Bill as a matter of priority. We also urge your Excellency's Government to repeal any discriminatory provisions in the Penal Code and put in place a comprehensive strategy, including preventive measures, to eliminate cultural practices and stereotypes that discriminate against women and girls. We also strongly encourage your Excellency's Government to ratify the United Nations Convention on the Elimination of All Forms of Discrimination against Women. This is in line with a number of recommendations made by the mandate of the Independent Expert on the situation of human rights in Somalia as well as the recommendations made by the Universal Periodic Review to Somalia in 2016.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide detailed information on how your Excellency's Government intends to proceed with regard to the aforementioned bill, as

well as how its provisions comply with Somalia's obligations under the international legal framework of human rights law and standards including, among others the ICCPR, ICESCR, CAT, and CRC.

3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms, referred to above, to bring its legislation into compliance with international human rights law.
4. Please provide any further information on additional issues such as appropriate redress mechanisms available for victims of sexual and gender-based violence including rehabilitation, counselling and reintegration, girls' education, and awareness raising campaigns, with the involvement of men and women, boys and girls, and community and religious leaders, to prevent and eliminate these violations.
5. Please provide information on the measures envisaged or undertaken to train law enforcement officers on responding to allegations of sexual and gender based violence, including within marriage.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Isha Dyfan

Independent Expert on the situation of human rights in Somalia

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ahmed Shaheed

Special Rapporteur on freedom of religion or belief

Mama Fatima Singhateh

Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

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Special Rapporteur on contemporary forms of slavery, including its causes and consequences

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Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick  
Chair-Rapporteur of the Working Group on discrimination against women and girls