



# **“Hostages to Peace”**

**Threats to Human Rights and Democracy in Somaliland**

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## Map of the Horn of Africa



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## Summary

Since declaring its independence from Somalia in 1991, Somaliland has set up its own government institutions, written its own laws and constitution, and held credible elections. No government in the world has yet recognized Somaliland's independence and for 18 years the territory has been left in legal limbo—a country that does not exist. During that time Somaliland has gone a long way towards building security and developing democratic institutions of governance. But the government's failure to hold elections planned for a year ago has laid bare the limitations of that progress and now threatens to reverse it. Somaliland is at a crossroads, and the events of the next few months could well determine whether the territory will build upon its gains or see them begin to unravel.

What Somaliland has accomplished over the years is both improbable and deeply impressive. While much of south/central Somalia remains mired in chaos and bloodshed, Somaliland has built a hard-won peace that it has now maintained for more than a decade. That peace has sheltered Somalilanders from the horrific abuses that have destroyed so many lives across Somalia. At the same time, Somaliland has done much to build the foundations of democratic governance grounded in respect for fundamental human rights. In 2003 and 2005 it held competitive and credible national elections, including parliamentary polls that put the territory's House of Representatives firmly in the hands of the political opposition. There is a vibrant print media and an active and independent civil society. Somaliland has accomplished these things primarily on its own, in one of the world's most volatile regions.

All of this stands in marked contrast not just to the chaos in Mogadishu, Somalia's capital, but also to the records of governments across the Horn of Africa. The brutal, systematic repression that characterizes governance in Ethiopia and Eritrea does not exist in Somaliland. Its elections have not been undermined by the sort of brazen fraud that delegitimized Kenya's 2007 polls or rendered meaningless by broader patterns of government repression like Ethiopia's 2008 local government elections. Somaliland's security forces have not been implicated in the kind of deliberate attacks against civilians that have taken place in Ethiopia, Kenya, and south/central Somalia in recent years.

The problem with all of these comparisons is that—given the dismal human rights situation that prevails across the region—they set the bar extremely low. Viewed objectively, Somaliland's human rights gains are both limited and fragile. Despite the achievements, human rights violations by government officials occur with impunity.

Government officials have often harassed journalists, opposition figures, and other government critics. Numerous journalists and opposition activists have been briefly detained in retaliation for their activities. Many have also been subjected to attempted bribes by government officials eager to bring them into the fold of the ruling United Democratic Peoples' Party (UDUB).

While rare, more heavy-handed acts of repression have also occurred. A former driver to Somaliland's first family who blew the whistle on alleged acts of corruption was imprisoned and released only after a public outcry resulted from photos of him lying ill in a hospital, chained to his bed. Journalists who reported on similar allegations of government corruption have been arrested and sentenced to lengthy prison terms, then released under strong public pressure.

While Somaliland's civil society and print media are both independent and vibrant, government efforts to curtail the strength of both institutions have had a chilling effect. Months after it attempted to challenge in court the constitutionality of the government's use of illegal security committees as instruments of detention, Somaliland's preeminent independent human rights monitoring organization was effectively dismantled after a leadership struggle that was characterized by overt government interference. The government has refused to permit the emergence of any independent radio broadcasters—the one media outlet capable of reaching most of Somaliland's population.

Arguably the most important caveat to everything Somaliland has achieved—and the one thing that most threatens those gains in the short term—is the presidency's consistent and brazen refusal to abide by the rule of law. Perhaps the most glaring example of the government's extralegal practices is its use of Security Committees to usurp the role of the courts across a broad range of criminal justice and other matters. The security committees, made up of government officials and security officers, exist without a sound legal basis. They completely ignore the due process rights guaranteed by Somaliland's constitution and regularly sentence defendants to prison terms en masse without even allowing the accused an opportunity to speak. During Human Rights Watch's most recent visit to Somaliland in February-March 2009, over half of the prisoners in Somaliland's main Mandhera prison, primarily alleged petty criminals and juveniles, had been sentenced by the Security Committees, not the courts.

The government's use of the Security Committees is an important human rights issue in and of itself—they have left hundreds of Somalilanders to languish in prison with no due process rights. But the committees are a symptom of a larger problem—the presidency's willingness

to run roughshod over the legal and constitutional restraints on its power. There are important and very substantial limits on the government's power, but these are mostly informal constraints rooted in the power of public opinion and traditional institutions. The formal boundaries to presidential power set down by Somaliland's laws and constitution are frequently swept aside and ignored.

The courts and legislature have shown no ability to hold the administration of Somaliland President Dahir Riyale Kahin in check. Somaliland's House of Representatives is under opposition control but the presidency largely ignores the institution and brushes aside its attempts to exercise oversight of government finances as provided for by the constitution. The Supreme Court has the power to overturn unconstitutional government actions but the court is beholden to the executive—activists who attempted to challenge the legality of the Security Committees were simply thrown out of court and arrested. Neither that case nor any other constitutional challenge to government action has ever been heard by the court.

Somaliland society at large remains able to limit the president's ability to force through deeply unpopular actions. But there are also severe limits to public willingness to openly challenge government actions for fear of threatening Somaliland's hard-won peace and stability or damaging its chances of international recognition. The president and his party have successfully exploited this widespread aversion to direct confrontation to occupy a space well past the legal limits of their power but short of what would trigger real public anger. Many Somalilanders lament that they are effectively "hostages to peace."

The extent of the danger posed by these broader trends has become apparent with the president's repeated failure to hold elections that could turn his administration out of power. Somaliland's presidential elections were originally scheduled to be held in April 2008. But the president has so far extended his own mandate by 18 months through the bicameral legislature's unelected Guurti, or House of Elders, using means whose constitutionality is questionable at best.

The president's insistence that these delays result solely from logistical problems with organizing the elections is disingenuous. Somaliland has held credible elections before with less institutional capacity than it has today. Logistical hurdles and incompetence are real problems, but they result largely from the government's total failure to meet its responsibilities. The Riyale administration obtained an initial one-year extension of its mandate in 2008 in order to have a second chance at organizing the polls—and then squandered it.



Somaliland now faces a moment of real danger. The president may be intending to prolong his mandate without elections for as long as possible, and his administration risks doing lasting damage to Somaliland's emerging democratic system in the process. There are still good reasons to believe that Somaliland will emerge from this crisis with its democratic system intact. If elections are held in September 2009 as currently scheduled, and if those polls are free and fair, the damage will be minimized. But at this crucial moment it is vital that Somaliland's international partners intervene to lend momentum in the right direction.

Most international engagement with Somaliland has been hampered by the fact that key donors and potential bilateral partners bind their relationships with Somaliland to the framework of their engagement with the radically different context prevailing in south/central Somalia. Human Rights Watch, in keeping with its organizational mandate, takes no position on whether Somaliland's independence should be recognized. But for the sake of contributing to human rights and regional security, key actors, including the African Union and western donor states, should immediately engage more deeply with Somaliland with a view to averting an electoral crisis and then maintain that deeper level of engagement over the longer term.

In the short-term, what is most needed is robust international pressure on Somaliland's government to attempt no further delay of the elections. This should be accompanied by substantial international assistance to ensure that the polls are organized by September 2009 and closely monitored by both domestic and international observers. In the longer term, Somaliland's international partners should devote themselves to addressing the root cause of the looming crisis by using both sustained and targeted pressure and institutional capacity building assistance to help ensure the government acts within the confines of its own laws and constitution.

Moving forward past the elections Somaliland's government should move urgently to strengthen the rule of law and combat human rights abuses. Important first steps include stripping the government's Security Committees of all power to order arrests and impose prison sentences, committing to improving the independence and capacity of the judiciary, and ending overbroad restrictions on the right to hold political demonstrations and other assemblies.

## Recommendations

### To the Government of Somaliland

- Publicly reaffirm that the presidential elections will hold on September 29, 2009, as scheduled, and abide by that commitment. Take all possible measures to ensure that the polls are conducted freely, fairly, and transparently, including by inviting international observers to monitor the polls.
- Immediately end the ability of the Regional and District Security Committees to order arrests and detention and impose prison sentences or other penalties. Release all persons currently imprisoned by the Security Committees or promptly charge and try them for cognizable criminal offenses before regular criminal courts.
- Take all necessary measures, with the assistance of external donors, to ensure that the judiciary is capable of conducting independent, impartial, and competent trials in accordance with international standards.
- Permit peaceful political demonstrations to take place in accordance with Somaliland's law and constitution; end the overbroad use of electoral laws to ban political assembly and association outside of campaign events.
- Lift the ban on political activity by the former leaders of the *Qaran* political organization and repeal the sections of the Penal Code that allow for the imposition of such punishments.
- Introduce legislation establishing a framework for the licensing of private radio broadcasters.
- End the practice of transferring persons to the custody of another state without ensuring basic due process rights, including judicial supervision. Ensure that all persons facing deportation have an opportunity to apply for asylum and access to the UN High Commissioner for Refugees. Do not return refugees to a place where their life or liberty are threatened, or anyone to a place where they face torture or other ill-treatment.
- Set up a permanent system for the registration of new and independent political associations that seek the right to compete in local elections, in conformity with Article 9 of Somaliland's constitution. If necessary, amend Somaliland's electoral law in order to effect this change and to clarify the consequences should new political associations displace any of Somaliland's three existing political parties in future local elections.
- Submit as soon as practicable to the House of Representatives a statement of government expenditures for 2008 as required by Article 55 of Somaliland's

constitution, and take measures to ensure that those reports are provided regularly each year.

- Fully respect the right of everyone, individually and in association with others, to form, join, and participate in non-governmental organizations for the purpose of promoting and protecting human rights and fundamental freedoms.

### **To the Members of the Guurti**

- Do not grant any further extension of President Riyale's mandate; insist that elections be held as scheduled on September 29, 2009.

### **To the African Union and Somaliland's International Partners**

- Consistently press the Somaliland government to avoid any further delay of the presidential elections, including by dispatching high-level diplomatic delegations to Hargeisa. Furnish needed assistance to contribute to holding free and fair elections on schedule.
- Request permission from the Somaliland government to deploy a sufficient contingent of international election monitors to the presidential elections in September 2009.
- While the issue of Somaliland's status remains unresolved, develop coherent policy and aid frameworks specifically tailored to Somaliland and largely de-linked from engagement with south/central Somalia. These policies should be focused primarily on improving the Somaliland government's adherence to the rule of law and providing assistance for developing the judiciary, as well as for strengthening civil society and the media.

### **To Donor Governments**

- Consistently press the Somaliland government to implement the recommendations listed above.
- As a priority, commit to providing sufficient resources to help ensure Somaliland's judiciary meets international standards of independence, impartiality, and competence.
- Provide assistance and support to build the capacity of civil society, including human rights defenders, in Somaliland.

## **Methodology**

The findings of this report are based primarily on two two-week research missions to Somaliland in July 2008 and February/March 2009. Human Rights Watch interviewed more than 70 people including Somaliland government officials, civil society activists, academics, lawyers, international aid officials, and victims of human rights abuse. The bulk of this research was carried out in the capital, Hargeisa, and supplemented by several days of research in Burco and a visit to Mandhera prison outside of Hargeisa. Human Rights Watch also consulted with Somaliland experts inside and outside of Somaliland, including interviews in Nairobi and Washington, DC.

To avoid any possibility of reprisal or at the request of individual interviewees including some government officials, the names of some interviewees have been withheld. In a few cases we also omitted the dates and locations of interviews where these details would have made the identities of interviewees easy to discern.

Somaliland's government was extremely accommodating during the course of this research. Human Rights Watch had broad access to government officials for interviews, was permitted to review the archive of Hargeisa Regional Security Committee decisions at the Central Police Station in Hargeisa, and was permitted to visit Mandhera prison and to interview prisoners there without the presence of prison officials.

## Background and Context

Somaliland has had a difficult history and its legacy lies at the center of the territory's identity today. Within days of winning its independence from Britain in 1960, Somaliland voluntarily gave up its existence as a separate state to merge with the rest of what then became Somalia.<sup>1</sup> It was a decision driven by a powerful belief in pan-Somali nationalism and by euphoria at the end of the colonial era.<sup>2</sup> Just 31 years later, in 1991, the last functional Somali government collapsed on the heels of a brutal and protracted civil war and Somaliland's leaders decided to break away and leave the rest of Somalia behind. Since then, Somaliland has for all intents and purposes been functioning as a weak but independent state even though it has yet to be recognized by any country in the world.<sup>3</sup>

The list of grievances that supporters of Somaliland independence cite to justify the decision to break away from Somalia is long. But at the center of it all is the shared horror of a war whose many atrocities were carried out by the victims' own countrymen from the south. The desperate attempts of former Somali President Siad Barre to hold on to power from the 1980s onward tore apart the whole country and devastated lives from north to south. No part of the country, though, was more thoroughly brutalized than the northwestern territories of the Issaq clan, which make up most of present-day Somaliland.

The Issaq-dominated Somali National Movement (SNM) was formed in 1981 and became one of the most formidable armed groups to challenge the Siad Barre government's power. The government fought back by waging war on the entire Issaq clan. Government intelligence services arbitrarily detained, tortured, or murdered hundreds of Issaq civilians suspected of supporting the rebel SNM from the early 1980s onward. Government forces poisoned wells and slaughtered the livestock rural Issaq depended on for their livelihoods. When the SNM captured parts of Hargeisa in 1988, the Somali government bombed the city with planes that took off from the town's own airport and strafed columns of fleeing civilians. As Issaq civilians fled, the government systematically repopulated their communities with civilians from other clans. The war claimed tens of thousands of civilian lives across Somaliland, drove at least a million people from their homes, and left the region devastated. By 1991

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<sup>1</sup> Somaliland existed as an independent state for just five days in 1960. It was formally granted independence by Britain on June 26, 1960. On July 1 Italian Somaliland also won its independence and the two countries merged on the same day to form what became the Somali Republic.

<sup>2</sup> See Mark Bradbury, *Becoming Somaliland* (London: Progression, 2008), pp. 32-35; I.M. Lewis, *A Modern History of the Somali* (Oxford: James Currey, 2002), pp. 161-165.

<sup>3</sup> The recognition issue is discussed in more detail below. See below, The Role of the International Community.

Hargeisa was little more than a bombed-out shell of the city it had been. The abuses of that period have been amply documented elsewhere, by Human Rights Watch, and by others.<sup>4</sup>

In May 1991 following the collapse of the Somali government, SNM leaders and clan elders declared Somaliland's independence.<sup>5</sup> The SNM then turned away from the rest of Somalia, which was quickly engulfed by internecine struggles for control between competing factions. A May 2001 popular referendum overwhelmingly approved a provisional constitution that reaffirmed Somaliland's independence.<sup>6</sup> In the 18 years since declaring its independence, Somaliland's government has been focused on two things above all else—winning international recognition and maintaining the fragile peace.

### “Peace and Milk”

The situation in Somaliland is inevitably compared to the violence and chaos that have prevailed across much of south/central Somalia since 1991.<sup>7</sup> Viewed against that backdrop, the contrast is hard to overstate. The country has been largely at peace for more than a decade. It has held successful parliamentary and presidential elections. And in many respects the government's human rights record compares well against any country in the region.

Somaliland's record of long-term stability, however, is not without blemish. When it fought for power against the Siad Barre government, one of the SNM's slogans was “*nabad iyo caano*”—“peace and milk,” which in Somali roughly conveys the idea of peace and prosperity. But the territory was wracked by two civil conflicts in the 1990s that threatened to

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<sup>4</sup> For a detailed account of abuses in northern Somalia during the war, see Africa Watch (now Human Rights Watch/Africa), *Somalia - A Government at War With its Own People* (New York: Human Rights Watch, 1990); see also, Robert Gersony, “Why Somalis Flee: Conflict in Northern Somalia,” *Cultural Survival Quarterly*, 13(4), 1989.

<sup>5</sup> For a detailed account of the consultative processes that led to the declaration of independence and formation of the Somaliland government, see Bradbury, *Becoming Somaliland*, pp. 77-137; International Crisis Group, “Somaliland: Time for African Union Leadership,” *Africa Report No. 110*, May 23, 2006, pp. 6-10, [http://www.crisisgroup.org/library/documents/africa/horn\\_of\\_africa/110\\_somaliland\\_\\_\\_time\\_for\\_african\\_union\\_leadership.pdf](http://www.crisisgroup.org/library/documents/africa/horn_of_africa/110_somaliland___time_for_african_union_leadership.pdf) (accessed May 13, 2009).

<sup>6</sup> The vote was 97 percent in favor of the new constitution, which most voters perceived as a referendum on Somaliland independence. That margin overstates the size of the majority of public sentiment in favor, however, due to a very low turnout among disaffected Dhulbahante and Warsangeli voters in the disputed eastern regions of Sool and Sanaag. See Initiative and Referendum Institute, “Final Report of the Initiative and Referendum Institute's (IRI) Election Monitoring Team, Somaliland National Referendum—May 31, 2001,” July 27, 2001.

<sup>7</sup> See Human Rights Watch, *Somalia - Shell Shocked: Civilians Under Siege in Mogadishu*, vol. 19, no. 12(A), August 2007, <http://www.hrw.org/en/reports/2007/08/12/shell-shocked-o>; Human Rights Watch, “*So Much to Fear: War Crimes and the Devastation of Somalia*,” December 2008, <http://www.hrw.org/en/reports/2008/12/08/so-much-fear-o>.

unravel the unity of the territory.<sup>8</sup> Both conflicts were resolved through lengthy processes of mediation and consensus-building and Somaliland has been free of serious internal conflict since 1996. Somaliland and the neighboring semi-autonomous region of Puntland each claim Somaliland's eastern regions of Sool and Sanaag and residents of those disputed territories are deeply divided on the question of Somaliland independence.<sup>9</sup> Nevertheless, Somaliland has been remarkably successful at preserving the peace. Given that Somaliland is surrounded by the chronic instability and violence of Somalia, including Puntland, the long-running insurgency across the border in Ethiopia's Somali region, and the interminable border dispute between Ethiopia and Eritrea, this is a success that requires considerable effort to maintain.

Somaliland held its first—and so far only—presidential elections in April 2003. President Dahir Riyale Kahin won the polls, defeating opposition candidate Ahmed Mohamed “Silanyo” by the razor-thin margin of 214 votes.<sup>10</sup> Silanyo protested the legitimacy of the results but ultimately chose to peacefully accept defeat after exhausting his appeals. Somaliland's first parliamentary elections were held in September 2005 and resulted in a resounding victory for the opposition—the opposition Kulmiye and Ururka Caddaalada iyo Daryeelka (Justice and Welfare Party or UCID) parties won a combined 49 of the House of Representatives' 82 seats.<sup>11</sup>

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<sup>8</sup> In January 1992 simmering factional struggles within the SNM boiled over into warfare that lasted nine months, devastated the towns of Berbera and Burco and drove tens of thousands of Somalilanders from their homes. In November 1994 nearly two years of conflict was sparked by government efforts to seize control of Hargeisa airport—and its revenues—from clan militia. See Bradbury, *Becoming Somaliland*, pp. 115-127; International Crisis Group, “Somaliland: Democratization and its Discontents,” Africa Report No. 66, July 28, 2003, <http://www.crisisgroup.org/home/index.cfm?id=1682&l=1>, pp. 9-11 (accessed May 13, 2009).

<sup>9</sup> Sool and eastern Sanaag are predominantly populated by Somalis of two Darod/Haarti clans—the Dhulbahante and the Warsangeli. Many feel a closer sense of affinity with the predominantly Darod/Haarti population of Puntland than they do with Somaliland's Isaaq majority. Many also feel that they have been politically marginalized within the context of Somaliland. See International Crisis Group, “Time for African Union Leadership,” pp. 8-10. For a discussion of human rights concerns in Sool and Sanaag, see Amnesty International, “Human Rights Challenges: Somaliland Facing Elections,” AI Index: AFR 52/001/2009, March 2009, pp. 13-14, <http://www.amnesty.org/en/library/info/AFR52/001/2009/en> (accessed May 13, 2009).

<sup>10</sup> The originally-declared margin of victory was just 80 votes. The Supreme Court, after hearing and rejecting opposition challenges to the result, declared that the actual margin was 214.

<sup>11</sup> According to the International Crisis Group: “The elections were impressive: under the auspices of Somaliland's National Electoral Commission (NEC), 246 candidates contested 82 seats in an endeavor involving 982 polling stations; 1,500 ballot boxes (bags); 1.3 million ballot papers; 4,000 polling station staff; 6,000 party agents; 3,000 police; 700 domestic observers and 76 international observers...their peaceful, orderly and transparent conduct was no small achievement.” International Crisis Group, “Time for African Union Leadership,” p. 8. The ruling UDUB party won 33 seats while the opposition Kulmiye and UCID parties won 28 and 21 seats, respectively.

Both polls were widely acknowledged to have been largely free and fair.<sup>12</sup> Together the two successful elections represented an achievement that was all the more impressive when considered in the context of the Horn of Africa—a region where elections have generally been disfigured by fraud or rendered meaningless by government repression, if they are held at all.<sup>13</sup>

## Failures and Setbacks

However, looked at from another perspective, Somaliland's accomplishments are in many respects limited. The territory has devoted itself with great success to maintaining the ever-fragile state of peace and order and a trend towards free and fair elections may—or may not—be taking root. But the government has largely failed to make progress on other fronts. Economic development has stalled and government efforts to provide basic services such as health and education run from paltry to almost nonexistent in many areas. Unemployment is a rising problem in Hargeisa and other urban centers and, according to government officials and activists, has led to a concurrent rise in street crime.<sup>14</sup>

A large part of the explanation for many of these failures lies in Somaliland's enduring poverty. Without recognition, Somaliland lacks access to many significant streams of international development assistance and outside of remittances by Somalilanders abroad finds it more difficult to convince outside investors to put their money into the local economy.<sup>15</sup> The sum total of government expenditures in recent years has hovered around US\$30 million, meaning that per capita government spending is less than nine US dollars.<sup>16</sup>

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<sup>12</sup> The result of the presidential elections was controversial and the polls were marred by flaws, but there is not much evidence to suggest that the government actually rigged the polls. See International Crisis Group, "Democratization and its Discontents," p. 26.

<sup>13</sup> Ethiopia's 2005 elections saw a limited opening up of political space but this was quickly undone by a massive post-election crackdown on opposition activity. In 2008 crucial local elections in Ethiopia were almost entirely noncompetitive because no organized opposition exists in most of the country. See Human Rights Watch, *Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia's Oromia Region*, vol. 17, no. 7(A), May 2005, <http://www.hrw.org/sites/default/files/reports/ethiopia0505.pdf>; "Ethiopia: Crackdown Spreads Beyond Capital," Human Rights Watch news release, June 14, 2005, <http://www.hrw.org/en/news/2005/06/14/ethiopia-crackdown-spreads-beyond-capital>; and "Ethiopia: Repression Sets Stage for Non-Competitive Elections," Human Rights Watch news release, April 9, 2008, <http://www.hrw.org/en/news/2008/04/09/ethiopia-repression-sets-stage-non-competitive-elections>. Kenya's landmark 2007 polls were marred by government efforts at rigging that delegitimized the polls and plunged the country into violence. Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance*, vol. 20, no. 1(A), March 2008, <http://www.hrw.org/en/reports/2008/03/16/ballots-bullets-o>. Eritrea does not hold elections at all. For more on the human rights situation in Eritrea see Human Rights Watch, *Service for Life: State Repression and Indefinite Conscriptioin in Eritrea*, April 2009, <http://www.hrw.org/en/reports/2009/04/15/service-life-o>.

<sup>14</sup> Human Rights Watch interviews, Hargeisa, February and March 2009.

<sup>15</sup> See below, The Role of the International Community, the African Union.

<sup>16</sup> Somaliland's 2009 budget anticipates US\$40.8 million in government expenditures, but most analysts believe this is a gross overestimate. Human Rights Watch interviews with local analysts, international aid officials, Hargeisa and Nairobi, March 2009. The 2009 budget on file with Human Rights Watch.



Government officials say that the rapidly expanding capital city of Hargeisa is run on a shoestring budget of roughly \$2.4 million per year.<sup>17</sup> A longstanding ban by Saudi Arabia on direct importation of livestock from Somaliland has hit the economy hard, depriving it of the natural market for its most important export.<sup>18</sup>

## “The Old Mentality”

Somaliland President Dahir Riyale Kahin came to power in 2002 when then President Mohammed Ibrahim Egal died in office. Egal had ruled Somaliland since 1993.<sup>19</sup> Riyale’s ascension to the presidency aroused considerable concern in some quarters because of his close association with some of the worst human rights violations of the Siad Barre era. Riyale served for many years in the Somali government’s feared National Security Service (NSS). He was the highest-ranking NSS officer in Berbera in the late 1980s,<sup>20</sup> a time when the NSS and other security agencies were carrying out mass arrests, torture, and extrajudicial killings of suspected SNM supporters.<sup>21</sup>

President Riyale has never offered a full accounting of the role he played in the worst abuses of that period, but he was in a position of command within an agency that oversaw massive crimes against the civilian population. Human Rights Watch reporting from the period directly implicates Riyale in the arbitrary detention of suspected SNM supporters in Berbera.<sup>22</sup>

Several other officials in the current government are also former officers of the NSS from the period when many of its worst abuses took place.<sup>23</sup> Political figures and civil society activists interviewed by Human Rights Watch cited the Barre-era backgrounds of many key officials as one of the primary obstacles to solidifying Somaliland’s nascent democracy. As one local

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<sup>17</sup> Human Rights Watch interview with Ali Assad, governor of Hargeisa Region, Hargeisa, March 3, 2009.

<sup>18</sup> The ban was originally put in place in 2000 for health-related reasons, at a time of global concern over the spread of Rift Valley Fever. Somaliland has partially negotiated a way out of the livestock ban by channeling exports through a Saudi buyer who transports the livestock to Saudi Arabia via the port of Djibouti. Many Somalilanders complain that this monopoly has led to dramatically lower prices for their livestock, however, with some preferring to travel to the port of Bosasso in Puntland to export from there. Human Rights Watch interviews with analysts and civil society activists, Hargeisa, March 2009.

<sup>19</sup> At the time he became president, Riyale had never stood for public office—Egal selected him as vice president part way into his term of office to replace his previous deputy. For more on Riyale’s succession to the presidency, see International Crisis Group, “Democratization and its Discontents,” p. 11.

<sup>20</sup> An important caveat is that many observers believe that as a member of the minority Gadabursi clan, Riyale would likely have been a de facto subordinate to a lower-ranking officer from Siad Barre’s Darod/Marehan clan.

<sup>21</sup> Africa Watch, *A Government at War with its People*, p. 151.

<sup>22</sup> Ibid.

<sup>23</sup> The Interior Minister, for example, served as an NSS officer in the *Godka* (or “the hole”), one of Siad Barre’s notorious prisons in Mogadishu. Human Rights Watch interviews with human rights activists, Hargeisa, February and March 2009.

analyst lamented to Human Rights Watch, “Many [government officials] were in the Siad Barre government and they have a tendency to backslide in that direction...for many, it is the only experience they can draw on.”<sup>24</sup>

## The Aftermath of the October 2008 Bombings

On October 29, 2008, at least 24 people were killed and 28 wounded in simultaneous suicide blasts in Hargeisa that struck the presidency; the United Nations Development Programme (UNDP) office; and the Ethiopian trade mission. In addition to the traumatic blow the attack amounted to in and of itself, it further set back Somaliland’s efforts to engage with the outside world. Heightened security concerns led to restrictions that hamper the implementation of programs providing development assistance.

The Somaliland government says that 19 people were arrested after the attacks and that 12 were still in custody as of May 2009. One senior government official acknowledged that “Some were wrongly arrested, but they were soon released.”<sup>25</sup> The Somaliland government alleges that the primary ringleader of the attacks was a man named Abdullahi Gutale, who escaped Somaliland on a Dallo airlines flight and has not been caught. At least one of the bombers was believed to have been a Somalilander.<sup>26</sup> The 12 suspects still in custody had their first appearance in court on May 23, 2009.<sup>27</sup>

The Somaliland government is currently drafting a counterterrorism law, which it hopes to introduce in Parliament for passage into law in 2009. The threat of terrorist attacks are a real fear for the Somaliland government—in January 2009 the government announced that it had seized 10 rocket launchers from a residence in Hargeisa and alleged that these were meant to be used in a terrorist attack.<sup>28</sup> In May 2009 the government claimed that it had foiled yet another planned attack.<sup>29</sup>

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<sup>24</sup> Human Rights Watch interview, Hargeisa, February 22, 2009.

<sup>25</sup> Human Rights Watch interview with senior government official, Hargeisa, February 23, 2009.

<sup>26</sup> Ibid.

<sup>27</sup> Human Rights Watch email correspondence with senior government official, May 30, 2009.

<sup>28</sup> See “Somaliland Intelligence Seize Illegal Missile Launchers,” *Somaliland Press*, January 23, 2009, <http://somalilandpress.com/1516/somaliland-intelligence-seize-portable-anti-aircraft-weapons> (accessed May 29, 2009).

<sup>29</sup> “Somaliland Police Detain Three ‘Terror Suspects,’” *Garowe Online*, May 22, 2009, <http://allafrica.com/stories/200905220388.html> (accessed May 29, 2009).

## **“Hostages to Peace”**

Somaliland’s painful memories of war have left most of its population desperate to avoid any threat to their fragile and hard-won peace. This has proven to be a double-edged sword. On the one hand this fact has helped create space for the painstaking processes of consensus-building that are at the heart of Somaliland’s continuing stability. But when the Riyale administration has pushed past the legal and constitutional limits of its power, failed to hold elections, and banned public protest of its controversial actions, the same fear of threatening the peace has often precluded any kind of effective opposition. And many Somalilanders who openly criticize the government’s human rights record or other failings find themselves confronted with accusations that they are undermining Somaliland’s chances of international recognition. Many Somalilanders describe this dilemma by saying that they are “hostages to peace”—so desperate to avoid the risk of instability that they look the other way even when their rights have been infringed.

## Flouting the Rule of Law

*“These laws we exhaust ourselves to write are useless—they don’t use them.”*

—Former SNM fighter, arrested in 2008 for protesting the Guurti’s extension of President Riyale’s term in office.<sup>30</sup>

The administration of President Riyale has consistently flouted legal and constitutional restraints on presidential power, threatening the human rights of Somalilanders. Neither the legislative nor judicial branches of government have acted as an effective check on presidential power nor pressed for greater adherence to the rule of law. As is discussed below, the president’s continuing refusal to submit to elections is a crisis made possible by the same fundamental problem.<sup>31</sup> Somaliland’s undeniable, if fragile, successes in safeguarding human rights cannot be secured, or its many failures remedied, until this pattern of lawless governance is ended and rights-respecting institutions become embedded in Somaliland.

### Somaliland’s System of Government

Somaliland’s constitution provides for a national government and six regional governments headed by governors that are each divided into several district administrations. Below is a brief description of the central government institutions that feature most prominently in this report:

**The Executive:** Somaliland’s constitution provides for a directly elected president with strong executive powers.<sup>32</sup> Under the president are the vice president and Council of Ministers, which is appointed by the president.<sup>33</sup> The president is limited to two five-year terms of office.<sup>34</sup>

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<sup>30</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

<sup>31</sup> See below, Somaliland’s Election Debacle.

<sup>32</sup> For the full list of the president’s powers, see Constitution of the Republic of Somaliland, arts. 90, 92.

<sup>33</sup> Constitution of the Republic of Somaliland, art. 81.

<sup>34</sup> Constitution of the Republic of Somaliland, art. 88.

**The Courts:** Somaliland has a four-tiered court system—a Supreme Court, Regional Appellate Courts, Regional Courts, and District Courts.<sup>35</sup> The Supreme Court is also the Constitutional Court and is empowered to overturn unconstitutional laws and government actions.<sup>36</sup> Its members are all appointed by the president for open-ended terms, though the president’s choice for the chairman of the court is subject to confirmation by the two Houses of Parliament.<sup>37</sup> In practice much of the work of the lower courts in criminal justice matters has been usurped by the executive’s **Regional Security Committees**, which are discussed in detail below.

**The House of Representatives:** One half of Somaliland’s bicameral legislature is its directly elected House of Representatives, whose members serve for five-year terms.<sup>38</sup> The first and so far only legislative elections were held in 2005 and resulted in a strong combined majority for the opposition Kulmiye and UCID parties. The constitution gives the House broad legislative powers over financial matters.<sup>39</sup> Its most potent check on executive power is its right to approve, reject, or amend the government’s annual budget and the right to inspect annual expenditure reports that the executive is obligated to prepare.<sup>40</sup>

**The Guurti:** The second half of Somaliland’s bicameral legislature is the Guurti, or House of Elders. The constitution provides that the Guurti’s members should be selected every six years according to an undefined process to be set down in law, but no such law has yet been passed and its members have been in place since 1997.<sup>41</sup> The Guurti is made up of clan elders from across Somaliland. It is an outgrowth of the council of elders used as a tool of public mobilization by the SNM during the conflict against the Siad Barre government.<sup>42</sup> To a large degree, the Guurti represents an attempt to ensure a strong link between the traditional structures of governance central to Somaliland’s maintenance of peace and the territory’s formal institutions of governance.

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<sup>35</sup> Constitution of the Republic of Somaliland, art. 100.

<sup>36</sup> Constitution of the Republic of Somaliland, art. 101; Organization of the Judiciary law of 2004.

<sup>37</sup> Constitution of the Republic of Somaliland, art. 105.

<sup>38</sup> Constitution of the Republic of Somaliland, art. 42.

<sup>39</sup> Constitution of the Republic of Somaliland, art. 54.

<sup>40</sup> Constitution of the Republic of Somaliland, art. 55.

<sup>41</sup> Constitution of the Republic of Somaliland, art. 58.

<sup>42</sup> See Bradbury, *Becoming Somaliland*, pp. 63-67; 223-224.

## **An Executive Flouting the Law**

Somaliland's president and his administration habitually ignore some of the most important formal constraints on the power of the presidency. This is partly a reflection of very low institutional capacity across all public institutions but even that lack of capacity is in large measure an issue of political will. As one prominent Somaliland academic put it to Human Rights Watch, "The government is not trying to put institutions in place that work properly. The question is, why not?"<sup>43</sup> This extralegality manifests itself in various ways that infringe on the rights of Somaliland's citizens and pose a threat to the broader protection of those rights.

### *Security Committees*

Perhaps the starkest example of the executive's broader tendency to act outside the law is its reliance on extralegal Security Committees as instruments of detention. Somaliland's Regional and District Security Committees are institutions originally set up by the Siad Barre dictatorship as blunt instruments of repression. They were resurrected by the administration of former President Egal in the 1990s and have been in use ever since. While by no means used to commit the same kind of abuses today, the committees function in much the same manner as in the past. Their members, consisting of government officials and security officers, meet to order the detention of people brought before them without trial or any pretense of due process. Hearings often last just a matter of minutes and accused individuals are regularly sentenced en masse even where their alleged crimes bear no relation to one another.

The workings of the Security Committees and the abuses that flow from them are discussed in detail below.<sup>44</sup> By using bodies that have no viable legal foundation, make no effort to conform to the rights enshrined in the Somaliland Constitution, and which elicit no rebuke from the courts, the executive has appropriated much of the power of the judiciary for itself. In the process it has stripped away most of the fundamental rights that are guaranteed to everyone brought before the courts. Activists and analysts told Human Rights Watch that they believed this was less an insidious attempt to destroy the role of the judiciary than a product of old attitudes that President Riyale and other top officials inherited from the Siad

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<sup>43</sup> Human Rights Watch interview, Somaliland, March 1, 2009.

<sup>44</sup> See below, Violations of Human Rights.

Barre era—specifically, that untrammled executive power is acceptable and even desirable, whether the law permits it or not.<sup>45</sup>

President Riyale’s administration claims that Somalia’s 1963 Public Order Law makes the Security Committees legal and gives them the power to detain anyone “seen as a menace to public order.”<sup>46</sup> The Public Order law does remain in force today, to the extent that it does not conflict with Somaliland’s constitution or fundamental human rights principles.<sup>47</sup> But the law makes no mention whatsoever of the Security Committees. As leading Somaliland legal scholar Ibrahim Hashi Jama has written, the Security Committees are “based on Siyad Barre’s draconian decrees and not the 1963 law.”<sup>48</sup> The Public Order law does grant broad powers of detention and other extraordinary powers to the authorities, but only if a state of emergency is declared.<sup>49</sup> In any event the committees are primarily used not for alleged national security offenses but to deal with ordinary criminal and juvenile cases in order to save the government the trouble of proving charges in court—which many government officials interviewed by Human Rights Watch openly acknowledged.<sup>50</sup>

The procedures of the Security Committees completely ignore fundamental rights that are guaranteed by Somaliland’s constitution.<sup>51</sup> These are described in detail below.<sup>52</sup>

### *Other Patterns of Extralegal Government Action*

The executive’s refusal to adhere to legal restraints on the handling of government expenditures has an impact on the government’s ability to address pressing national concerns, such as health care and education. The constitution empowers the House of

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<sup>45</sup> Human Rights Watch interviews with civil society activists and independent analysts, Hargeisa, February and March 2009. See above, “The Old Mentality.”

<sup>46</sup> Human Rights Watch interview with senior government official, Hargeisa, February 23, 2009.

<sup>47</sup> Article 128(2) of Somaliland’s constitution states that “The Constitution shall be the supreme law of the land, and any law which does not conform to it shall be null and void.” This is complemented by Article 130(5), which partially preserves the existing legal framework inherited from Somalia by stating that “All the laws which were current and which did not conflict with the Islamic Sharia, individual rights and fundamental freedoms shall remain in force in the country of the Republic of Somaliland until the promulgation of laws which are in accord with the Constitution of the Republic of Somaliland.”

<sup>48</sup> Ibrahim Hashi Jama, “Public Order Law in Somaliland: Learning the Lessons of Democracy,” 2004, [http://www.somalilandlaw.com/PUBLIC\\_ORDER\\_LAW\\_IN\\_SOMALILAND\\_Article.htm](http://www.somalilandlaw.com/PUBLIC_ORDER_LAW_IN_SOMALILAND_Article.htm) (accessed May 13, 2009).

<sup>49</sup> Article 92 of Somaliland’s constitution allows for the imposition of a state of emergency, which in turn allows the government to pass emergency laws, but these must be submitted to Parliament for consultation. The constitution does not allow for “emergency” powers outside of that framework.

<sup>50</sup> See below, Regional Security Committees and Violations of Due Process.

<sup>51</sup> See above, footnote 47.

<sup>52</sup> See below, Regional Security Committees and Violations of Due Process.

Representatives to approve, reject, or amend the government's annual budget.<sup>53</sup> In practice, the executive has simply ignored legislative amendments to the budget and sometimes operated without any budget at all rather than consider those amendments.<sup>54</sup> For part of 2007, the president rejected legislative amendments to the budget that would have cut allocations to the presidency and other ministries and simply employed the budget it originally submitted to the House of Representatives as though it had been passed.<sup>55</sup> The 2009 budget, however, was passed without incident.

Practically speaking, the executive's refusal to accept any legislative role in the budget process is of limited importance because there is no evidence to indicate that the administration attempts to keep its expenditures in conformity with the budget. The constitution requires the administration to submit an expenditure report to the House of Representatives at the end of each financial year, but it habitually fails to do this.<sup>56</sup> This means that there is no official record of how the government actually spends its money—or in the words of one local activist who monitors the budget process, that “all spending is extra-budgetary in practice.”<sup>57</sup> As one parliamentarian complained to Human Rights Watch, “We have never received an expenditure report since 2006. So if we approve the budget or don't approve the budget, what value does it have?”<sup>58</sup>

The net result of this lopsided approach to the budgeting and expenditures is that there is virtually no transparency around government expenditures in Somaliland. This issue is especially important given that even according to the 2009 budget most of the government's limited expenditures—more than US\$24.5 million out of a projected \$40.8 million in budgeted expenditure—is tied up with broadly worded allocations to the security forces and the executive.<sup>59</sup> Meanwhile, the budgetary allocations to the country's dilapidated schools,

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<sup>53</sup> Constitution of the Republic of Somaliland, art. 55.

<sup>54</sup> The Somaliland Constitution provides that if the House of Representatives fails to pass a budget, the previous year's budget will continue in force. Constitution of the Republic of Somaliland, art. 55(2). There is no other circumstance when it is acceptable for the government to operate without a current budget.

<sup>55</sup> Human Rights Watch interviews with parliamentarians, Hargeisa, February and March 2009.

<sup>56</sup> Constitution of the Republic of Somaliland, arts. 55(6) and 55(7).

<sup>57</sup> Human Rights Watch interview, Hargeisa, March 4, 2009.

<sup>58</sup> Human Rights Watch interview with Abdirahman Osman, chair of the Human Rights Committee, Somaliland House of Representatives, Hargeisa, February 25, 2009.

<sup>59</sup> Somaliland's 2009 budget allocates US\$12.35 million to the armed forces; \$4.6 million to the police; \$2.5 million to the Presidency; \$2.3 million to the Custodial Corps; \$1.8 million to the Ministry of Defense; \$400,000 for the official residence of the president; \$331,000 for the Coast Guard; and \$177,000 for the vice presidency. Budget on file with Human Rights Watch.



health care system, and courts total just over \$4 million.<sup>60</sup> But without any budgetary transparency, it is impossible to know whether these amounts are properly allocated.

Other examples abound of the administration's tendency to operate outside of the law to infringe on human rights, whether freedom of expression or the right to periodically choose one's government. In 2002 the president issued a decree forbidding the licensing of any private radio networks. The decree did not specify any basis in law for the exercise of this power and many Somaliland activists and lawyers argue that one does not exist.<sup>61</sup> In 2006 the president asked the Guurti, or House of Elders, to extend its own mandate by four and a half years even though a 2003 law provides that any extension of the Guurti's mandate should be carried out by the House of Representatives.<sup>62</sup> The Guurti, in turn, has twice extended the president's own term of office without much pretense of meeting the constitutional requirements for such an action.<sup>63</sup>

In 2007 the president also used the Guurti to extend the term of office of Somaliland's local district councils even though there was no legal basis for such a move.<sup>64</sup> Many activists allege that in this President Riyale colluded with Somaliland's two established opposition parties.<sup>65</sup> This move had an importance deeper than control over the councils themselves, since Somaliland's constitution stipulates that only the three strongest parties emerging from local elections can compete in national elections. By failing to hold those polls the government has frozen any potential newcomers out of the political scene and ensured that

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<sup>60</sup> The 2009 budget allocates \$1.98 million for education; \$1.1 million for health care; and a total of \$949,000 in allocations related to the judiciary. Budget on file with Human Rights Watch.

<sup>61</sup> Human Rights Watch interviews, Hargeisa, February and March 2009. The decree specifies that the government-owned Radio Hargeisa shall be the only radio station in Somaliland. The decree is available in Somali at [http://somalilandlaw.com/broadcasting\\_\\_law.html#Radiobandecree](http://somalilandlaw.com/broadcasting__law.html#Radiobandecree) (accessed May 13, 2009). Somaliland's press law (No. 27 of 2004) regulates all media including print and broadcast outlets. It provides that "no restraints can be imposed on the press" and that "any acts that can be construed as censorship are prohibited." Somaliland press law (No. 27 of 2004), arts. 3b and 3c, [http://somalilandlaw.com/press\\_\\_media\\_\\_law.htm#Title1](http://somalilandlaw.com/press__media__law.htm#Title1) (accessed May 13, 2009). The law includes procedures for registering new media outlets and a code of conduct for independent media, but does not include any reference to government powers to prohibit the registration of broadcast or other media altogether. *Ibid.*

<sup>62</sup> President Riyale requested a letter from the Supreme Court stating that the Guurti could extend its own term in office, and the court provided this. An Interpeace report that documented these events noted that "Claims by the government and Supreme Court that the move is constitutional appear to be contradicted by a law (No. 19) endorsed by both Houses and the President in March 2003, which clearly states the House of Representatives shall extend the Guurti's mandate when requested to do so by the president. This law had already been used to extend the term of the Guurti in April 2002." Interpeace, "A Vote for Peace: How Somaliland Successfully Hosted its First Parliamentary Elections in 35 years," September 2006, p. 49.

<sup>63</sup> See below, Somaliland's Election Controversy.

<sup>64</sup> While the Guurti is constitutionally empowered to extend the president's term of office "for reasons of security," the constitution provides no basis on which it can extend the mandate of the local councils. Constitution of the Republic of Somaliland, art 83 (5).

<sup>65</sup> Human Rights Watch interviews with civil society activists and analysts, Hargeisa, February and March 2009.

the same three parties—and in point of fact the same three men—that competed in 2003 will compete again in the next presidential elections.<sup>66</sup>

### *Informal Limits on Presidential Power*

None of this is to say that the president’s power is unconstrained. Unpopular government actions have on occasion been challenged and withdrawn by popular opposition and the engagement of clan elders and opinion leaders.<sup>67</sup> Somaliland’s government remains fundamentally a product of political compromise, negotiation, and consensus and the presidency is often not strong enough to defy the diverse coalition of clan and other interests that support it.

This reality imposes informal limits on presidential power which have worked well enough to partially offset the dysfunction of legal and constitutional constraints. As one prominent activist put it, “When there is a problem people come out and demand that it be changed. Many people have got it in their minds that this is what they have fought for.”<sup>68</sup> The result, as another analyst put it, is that “Some in government don’t believe in our democratic process, but no one has enough power to destroy it.”<sup>69</sup> But on their own these informal restraints are inadequate and dangerously fragile, as evidenced by the resulting human rights violations, described below.<sup>70</sup>

### **A Weak Legislature**

Somaliland’s elected House of Representatives has been under opposition control since the country’s first legislative elections in 2005. Under the constitution the House is the primary legislative arm of the government and has broad powers to check presidential power through its power to approve, reject, or amend the national budget.<sup>71</sup> In practice, however, the institution has proven almost powerless.

Part of the explanation for this state of affairs lies with the Parliament itself, which has strenuously avoided direct confrontation with the president. As Deputy House Speaker Abdiaziz Mohammed Samaleh acknowledged to Human Rights Watch:

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<sup>66</sup> For more on this see below, Somaliland’s Election Controversy.

<sup>67</sup> See below, Violations of Human Rights.

<sup>68</sup> Human Rights Watch interview with Somaliland civil society activist, Nairobi, February 20, 2009.

<sup>69</sup> Human Rights Watch interview, Hargeisa, February 22, 2009.

<sup>70</sup> See below, Violations of Human Rights.

<sup>71</sup> Constitution of the Republic of Somaliland, art. 55.

We don't have much say in what is done. Most decisions are taken by the President. We have the power to reject the budget, but it has happened that if when reviewing it we say no to this or that, the President rejects [our decision]...to avoid having any clashes we have done what he wanted us to do.<sup>72</sup>

The Riyale administration acknowledges that the House of Representatives has been relegated to a minimal role but explains this as a function of the members' own incompetence and uninterest in living up to their responsibilities. Foreign Minister Abdillahi Duale told Human Rights Watch that the House is characterized by "a lack of capacity and a lack of political maturity," adding that, "By and large they are simply doing political haggling instead of their jobs."<sup>73</sup>

However, when the House of Representatives has attempted to challenge presidential prerogatives on important issues, the executive has simply ignored it. The presidency has brushed aside and ignored attempts by legislators to exercise their powers over the budget.<sup>74</sup> This is an especially important issue since parliamentary oversight of government finances was a key concession made by former President Egal in negotiating the form and substance of Somaliland's constitution.<sup>75</sup> In 1999 the House of Representatives passed a nonbinding resolution stating that the entire 1963 Public Order law was unconstitutional, largely because of the president's assertion that it allowed for its use of the Regional Security Committees.<sup>76</sup> The government ignored the resolution and Somaliland's minister of justice insisted to Human Rights Watch that it did not even exist.<sup>77</sup>

At the same time, Somaliland's Guurti often behaves as though it has been entirely captured by the presidency. The Guurti's individual members have not faced any kind of challenge to their own mandates since 1997 and the institution's critics allege that it has become

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<sup>72</sup> Human Rights Watch interview with Abdiaziz Mohammed Samaleh, Hargeisa, February 24, 2009.

<sup>73</sup> Human Rights Watch interview with Abdillahi Mohamed Duale, Hargeisa, February 24, 2009.

<sup>74</sup> See above, *An Executive Flouting the Law*.

<sup>75</sup> Human Rights Watch interviews with civil society activists and opposition parliamentarians, Hargeisa, February and March 2009. See also International Crisis Group, "Democratization and its Discontents," p. 12.

<sup>76</sup> An unofficial English-language translation of the resolution is available online at [http://www.somalilandlaw.com/House\\_of\\_Reps\\_Resolution\\_on\\_Security\\_Committees\\_010899.htm#English](http://www.somalilandlaw.com/House_of_Reps_Resolution_on_Security_Committees_010899.htm#English) (accessed May 14, 2009).

<sup>77</sup> Human Rights Watch interview with Ahmed Hassan Ali, Somaliland minister of justice, Hargeisa, February 25, 2009.

complacent, corrupt, and overly beholden to the presidency.<sup>78</sup> Suleiman (“Gaal”) Mahmoud Adan, the Guurti’s chairman, told Human Rights Watch:

The Guurti has overstayed our usefulness. We are too old in age as well as in holding a term of office—we were neither re-elected nor re-selected by the clans. We have become too arrogant and too corrupt by overstaying in power—like parties that stay long in power anywhere in the world. I hope there will be elections in 2010 for the Guurti as well as the House of Representatives.<sup>79</sup>

As described above, the presidency and the Guurti have together acted to extend both of their terms in office repeatedly and with questionable legality, and to postpone district council elections without any legal basis at all.<sup>80</sup>

## **A Dysfunctional Judiciary**

Somaliland’s judiciary has been the subject of wide criticism by activists, independent analysts, and government officials alike. Concerns raised include the legal competency and basic functioning of the judiciary and the unwillingness of judges to hold the government to the laws and constitution.

Somaliland’s judges earn considerably more than other civil servants—roughly US\$400 per month.<sup>81</sup> Beyond this, however, the government has done little to invest in the judiciary. In 2009 the overall budget for the courts and justice ministry is roughly \$950,000—by way of comparison, the budget allocates \$400,000 to maintain the residence of President Riyale.<sup>82</sup> Somaliland’s minister of justice told Human Rights Watch that his ministry spent one third of its budget in 2008 on the purchase of six secondhand cars.<sup>83</sup> One judge interviewed by Human Rights Watch asserted that his court received no resources from the government beyond salaries and stationary and did not have access to printed copies of the laws—

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<sup>78</sup> Human Rights Watch interviews with civil society activists and opposition politicians, Hargeisa, February and March 2009.

<sup>79</sup> Human Rights Watch interview with Guurti chairman Suleiman Mahmoud Adan, Hargiesia, February 26, 2009.

<sup>80</sup> See above, *An Executive Flouting the Law*.

<sup>81</sup> Human Rights Watch interview with Ahmed Hassan Ali, Hargeisa, February 25, 2009.

<sup>82</sup> See above, footnotes 45 and 46. Budget on file with Human Rights Watch.

<sup>83</sup> Human Rights Watch interview with Ahmed Hassan Ali, Hargeisa, February 25, 2009.

though he did not see this as a major problem. “All we are doing there is judging,” he said. “What we do is just give out warrants to arrest people.”<sup>84</sup>

According to Somaliland’s minister of justice, there are roughly 100 judges employed across Somaliland.<sup>85</sup> They are mandated to employ a combination of civil, customary, and shari’a law, but only a tiny fraction of judges have appropriate legal qualifications in any of these fields. A UN official who has worked with Somaliland’s judicial system told Human Rights Watch that, “95 percent of the judges have no formal legal qualifications.”<sup>86</sup> Likewise a prominent Hargeisa attorney told Human Rights Watch that he knew of only three sitting judges in Somaliland who had law degrees. “How can you secure a fair trial from a judge who doesn’t even know the law?” he asked.<sup>87</sup> The Ministry of Justice, which is mandated to ensure that new laws are in conformity with the constitution and oversee the workings of the judiciary, employs no lawyers.<sup>88</sup>

The courts at all levels in Somaliland have consistently failed to challenge evidently illegal exercise of government power. No court has exercised any kind of oversight over the Riyale administration’s frequent bans on all political gatherings and public demonstrations.<sup>89</sup> On a day-to-day basis this is a problem reflected in the large number of remand prisoners occupying prisons across Somaliland. Somaliland’s constitution requires that individuals taken into custody be brought before a judge within 48 hours of arrest. Police officials regularly flout this requirement and judges do not challenge them. One judge told Human Rights Watch that in minor criminal cases in his jurisdiction the police simply punished defendants by imprisoning them for several days or a week rather than bothering to take them to court, and that he saw nothing wrong with this.<sup>90</sup> As one prominent activist in Hargeisa lamented, “The law says within 48 hours you must be brought before a judge—but people sit in police stations for days and weeks without even knowing why they were arrested.”<sup>91</sup>

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<sup>84</sup> Human Rights Watch interview with Regional Court Chief Judge (name withheld), Somaliland, March 2009.

<sup>85</sup> Human Rights Watch interview with Ahmed Hassan Ali, Hargeisa, February 25, 2009.

<sup>86</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

<sup>87</sup> Human Rights Watch interview, Hargeisa, February 25, 2009.

<sup>88</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

<sup>89</sup> See below, Restrictions on Free Expression and Assembly.

<sup>90</sup> Human Rights Watch interview with judge, Burco, March 1, 2009.

<sup>91</sup> Human Rights Watch interview, Hargeisa, February 23, 2009.

When police do bring criminal suspects to court, they frequently and often repeatedly ask the court to recommit the suspects for further custody without producing any evidence against them. The courts acquiesce to these remand requests with such regularity that they effectively allow indefinite detention without charge. A UN official estimated to Human Rights Watch that on average there are between 30 and 40 remand prisoners in each of Somaliland's six main prisons at any given time—a large proportion of the overall prison population.<sup>92</sup>

*Box 1—Ignoring Good Laws: The Juvenile Justice Law*

Somaliland's juvenile justice law was drafted with the help of external donors and came into force in April 2008. Its primary aim was to bring Somaliland's juvenile justice system in line with both international norms and local values. Among other key provisions, the law guarantees a wide range of due process rights to juvenile offenders including the presumption of innocence; the right to legal counsel in all proceedings; and the right of juveniles to express their views in all proceedings.<sup>93</sup> It also states that no child can be deprived of his or her liberty unless accused of committing an offense set forth by law.<sup>94</sup>

The positive aspects of the juvenile justice law have proven largely irrelevant, because the government has made no meaningful effort to implement the law.<sup>95</sup> The courts generally ignore the law altogether and many judges are entirely unaware of its existence; the chief judge of one of Somaliland's regional courts told Human Rights Watch that he had never heard of the law, which has now been in force for over a year.<sup>96</sup> Not only has the law not been employed by the courts, but the Riyale administration continues to use its Security Committees as a primary instrument of dealing with juvenile offenders—routinely incarcerating children without any pretense of due process, even where they are not accused of any criminal offense.<sup>97</sup>

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<sup>92</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

<sup>93</sup> Somaliland Juvenile Justice Law, arts. 9, 14.

<sup>94</sup> Somaliland Juvenile Justice Law, art. 8.

<sup>95</sup> Human Rights Watch interviews with lawyers, civil society activists, and a UN official, Hargeisa, February and March 2009.

<sup>96</sup> Human Rights Watch interview, Somaliland, March 2009.

<sup>97</sup> See below, Regional Security Committees and Violations of Due Process.

## The Supreme Court

Somaliland's Supreme Court has exclusive jurisdiction over issues of constitutional interpretation, including lawsuits that challenge the constitutionality of government actions.<sup>98</sup> In practice, the court has not proven itself independent of the executive and has never declared any law or government action to be unconstitutional. To some extent this is an unsurprising result of the constitution itself, which gives the president the power to appoint and dismiss the justices of the Supreme Court at his discretion. Only the appointment of the court's chairman must be confirmed by the House of Representatives.<sup>99</sup>

The Supreme Court has displayed such a strong desire to avoid political controversy that its chairman simply refused to consider the most sensitive constitutional case brought before it to date. In May 2007 SHURO-net, at the time a very active umbrella group of human rights organizations in Somaliland, sponsored a lawsuit challenging the constitutionality of the government's use of the Security Committees as instruments of detention.<sup>100</sup> According to the former SHURO-net director, the chairman of the Supreme Court, Mohamed Hersi Ismail, called SHURO-net's lawyer into his office and told him and the director that he would not allow the complaint to be registered with the clerk of the court, let alone issue a decision on its merits. After the lawyer reportedly said that the court had an obligation to receive the case even if it ultimately chose to dismiss it, he was removed from the building, arrested, and held for approximately one hour in the central police station in Hargeisa.<sup>101</sup> At the time of writing Human Rights Watch's efforts to contact the chairman have been unsuccessful. As discussed below, five months later SHURO-net was effectively dismantled following an internal leadership struggle that was characterized by blatant government interference.<sup>102</sup>

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<sup>98</sup> Constitution of the Republic of Somaliland, art. 101; Organization of the Judiciary law of 2004, arts. 6-10.

<sup>99</sup> The Supreme Court has had four different Chairmen since President Riyale came to power in 2002.

<sup>100</sup> The case was brought on behalf of nine plaintiffs—all detainees sentenced by the Security Committees—identified by SHURO-net's lawyer and made parties to the case. The claim was that the constitutional rights of the detainees to a fair trial and freedom from unlawful detention had been violated along with procedures established by the Criminal Procedure Code relating to detention and trial. It also alleged that the committees themselves were unconstitutional entities that should be disbanded altogether. SHURO-net sought to join in the suit as an interested party as provided for under Article 71 of Somaliland's Civil Procedure Code. Human Rights Watch interview with Ibrahim Edly Suleiman, Hargeisa, February 26, 2009.

<sup>101</sup> Human Rights Watch interview with former SHURO-net executive chairman, Mubarak Ibrahim Aar, Hargeisa, February 25, 2009.

<sup>102</sup> See below, Box 2—The SHURO-net Controversy: Undermining Civil Society.

## Violations of Human Rights

The Somaliland government's human rights record compares favorably with those of the governments across the Horn of Africa region. Nonetheless, the government violates the rights of Somalilanders, most notably the right to due process through Regional Security Committees; the rights to freedom of expression, association, and assembly in acts of low-level repression of journalists, opposition politicians, and others; and the right to *non-refoulement* in the forced return of Ethiopian asylum seekers.

Somaliland lacks international recognition as a state and as such cannot be party to international human rights treaties and is not a member of the United Nations, which has adopted numerous human right standards. However, in governing the population in areas over which it has effective control, the Somaliland government is bound by customary international human rights law.<sup>103</sup> This includes respecting the right to life and the prohibitions on arbitrary detention, torture, and unfair trials, and ensuring the rights to freedom of expression, association, and assembly. Moreover, Somaliland's constitution provides that the government shall act in conformity with international law and respect the Universal Declaration on Human Rights.<sup>104</sup> Somaliland's constitution also contains many human rights guarantees that are found in international law, and provides that these guarantees be interpreted in a manner consistent with international human rights conventions.<sup>105</sup>

### Regional Security Committees and Violations of Due Process

As described, Somaliland's Regional Security Committees have no basis in Somaliland law or the constitution.<sup>106</sup> Nonetheless they are routinely used to incarcerate people, including

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<sup>103</sup> According to the Human Rights Committee, the expert body that monitors compliance with the International Covenant on Civil and Political Rights, "The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in Government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant." Human Rights Committee, General Comment 26 (61), General Comments under art. 40, para. 4 of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1631<sup>st</sup> meeting, para. 4. See also Human Rights Committee, Concluding Observations on Kosovo (Serbia), CCPR/C/UNK/CO/1, August 14, 2006, para 4.

<sup>104</sup> Constitution of the Republic of Somaliland, art. 10.

<sup>105</sup> Constitution of the Republic of Somaliland, arts. 8, 21-36.

<sup>106</sup> See above, An Executive Flouting the Law and Box 1—Ignoring Good Laws: The Juvenile Justice Law.



juveniles, without any pretense of adhering to the due process guarantees enshrined in Somaliland's constitution.

Each of Somaliland's six regions has a Regional Security Committee (RSC).<sup>107</sup> As institutions, the RSCs are holdovers from the worst years of the Siad Barre era. Throughout most of the 1980s the Somali government used the RSC it set up in what is now Somaliland as a blunt instrument of repression across the territory. Under Siad Barre the RSC consisted of eight high-ranking government officials, most of them from the military and security agencies. The RSC ordered mass arrests; sentenced people without due process to punishments including imprisonment for life and the death penalty; and confiscated the property and wealth of alleged government opponents.<sup>108</sup>

Today Somaliland's Regional Security Committees do not inflict the same kind of terror and abuse on the public, but they are still first and foremost a tool of the government to imprison people without a fair trial.

The Somaliland government appears to use the Regional Security Committees to imprison people where there is no evidence of wrongdoing or where a crime or violence may have occurred but the authorities have made no effort to gather evidence that would allow them to pursue a criminal conviction in trials before the regular courts. The committees are also used as crude instruments of juvenile justice, allowing the summary detention of troublesome youth often at the request of their parents. The committees are sometimes used to incarcerate the clan relatives of individuals accused of serious crimes in order to prevent revenge killings. And in some cases the committees have been used to detain people arrested during anti-government demonstrations.

In at least some parts of Somaliland, including Hargeisa, the RSCs are used as much as or even more frequently than the courts to incarcerate people. The secretary of the RSC in Hargeisa told Human Rights Watch that the committee incarcerated 249 people in 2008 and the first months of 2009.<sup>109</sup> When Human Rights Watch visited Mandhera prison in March 2009, prison officials affirmed that more than 300 of the prison's 554 inmates had been

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<sup>107</sup> In principle, every district within Somaliland's six regions also has a District Security Committee. In practice, the regional committees are by far the more active of the two, and the following pages focus exclusively on them. Somaliland also has a National Security Committee, but this is a policy-making body rather than a quasi-judicial organ like the regional and district committees. Human Rights Watch interviews with government officials including Regional Security Committee members, Hargeisa and Burco, February and March 2009.

<sup>108</sup> Africa Watch, *A Government at War With its Own People*, p. 46.

<sup>109</sup> Human Rights Watch interview with Hargeisa Regional Security Committee Secretary Abdisalam Ali Nour, Hargeisa, March 4, 2009.

sentenced by the Regional Security Committee in Hargeisa.<sup>110</sup> A 2004 report of the House of Representatives' Social Affairs Committee found that over one-third of prisoners, excluding remand cases, had been sentenced by the Security Committees.<sup>111</sup>

Many of the cases that come before the RSC are ordinary criminal matters that would normally be dealt with in a court of law. For the most part these cases involve allegations of petty crime and public disorder—the Security Committees generally do not handle more serious cases such as murder.<sup>112</sup> The cases examined by Human Rights Watch primarily involved allegations of theft, clashes between rival youth gangs in Hargeisa, and vaguely defined allegations of causing public disorder.

Many of the government officials interviewed by Human Rights Watch were remarkably candid that the primary reason most of these cases are handled through the RSC rather than the courts is to impose prison sentences without having to produce evidence and sometimes without even bringing accusations of a specific crime.

The governor of Togdheer Region, who also serves as chairman of the region's RSC, told Human Rights Watch: "Sometimes when we cannot see evidence to convict someone—for example if there is a fight at a football pitch—we can just arrest all the people and bring them together in jail."<sup>113</sup> In February 2009 roughly 150 people were sentenced en masse to six months in prison by the Togdheer RSC as part of an operation to address a spike in street crime in Burco, the regional capital. The governor explained to Human Rights Watch that, "we did not have such an evidence as to send them to court—but we have to maintain the security of the town."<sup>114</sup>

Human Rights Watch also interviewed the governor of Hargeisa, who chairs the capital region's RSC. He said that roughly 180 people were in prison as of March 2009 after being sentenced by the RSC for involvement in clashes between rival street gangs in Hargeisa. Asked how the RSC determined that those imprisoned were guilty of a crime since they had never stood trial, he replied, "There are no secrets. Whoever was involved will be known. The

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<sup>110</sup> Human Rights Watch interview with prison officials, Mandhera prison, March 2, 2009. The prison population also included 45 prisoners who were either on death row or on trial for capital offenses. *Ibid.*

<sup>111</sup> The report found that out of 603 prisoners, 146 were sentenced by the Security Committees, 246 were sentenced by the courts, and 193 were remand cases. See Ibrahim Hashi Jama, "Public Order Law in Somaliland."

<sup>112</sup> Human Rights Watch interviews with government officials including RSC members, Hargeisa and Burco, February and March 2009.

<sup>113</sup> Human Rights Watch interview with Jama Abdullahi Bin, governor of Togdheer Region, Burco, March 1, 2009.

<sup>114</sup> *Ibid.*

children themselves will say if some were not involved. Also we rely on the police because they know the communities.”<sup>115</sup>

The authorities also use the RSCs to impose penalties on individuals without individual criminal responsibility.<sup>116</sup> When a criminal suspect absconds, the RSC will sometimes issue an order for the police to arrest a relative in order to induce the suspect to surrender themselves to the police. This is partly a reflection of the woefully low capacity of the police to investigate crimes and trace missing suspects. As the governor of Togdheer region put it to Human Rights Watch, “We are not equipped with technology. If someone kills someone we cannot find him. So we will just arrest his cousin and he will be our GPS—that person will suddenly appear.”<sup>117</sup>

The RSCs are neither independent nor impartial bodies. Each Regional Security Committee consists of six members: the regional governor, who chairs the committee; the regional police commander; the regional commander of the custodial corps; the regional attorney general; the mayor of the regional capital; and the regional army commander.<sup>118</sup> The committees can issue arrest warrants and hand down sentences if a majority of their members agree on the decision. They can only consider cases when four of their members are physically present and all meetings must include the regional attorney general and regional police commander unless either is out of the country. Their decisions are not subject to appeal but can be overturned by the minister of the interior.<sup>119</sup>

The RSCs make no pretense of providing due process rights or applying international fair trial standards. Human Rights Watch interviewed several people who were given prison terms by the Regional Security Committee in Hargeisa, including some who are still behind bars at Mandhera prison. All of them were subjected to collective “hearings” alongside other detainees. The hearings generally lasted only several minutes and none of the accused were given a chance to speak. In many cases large groups of detainees were given identical sentences, even when the group consisted of people whose alleged crimes bore no relation to one another. In many cases the only evidence presented was a brief, sweeping statement

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<sup>115</sup> Human Rights Watch interview with Ali Assad, governor of Hargeisa Region, Hargeisa, March 3, 2009.

<sup>116</sup> See African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, art. 7 (Punishment is personal and can be imposed only on the offender).

<sup>117</sup> Human Rights Watch interview with Jama Abdullahi Bin, governor of Togdheer Region, Burco, March 1, 2009.

<sup>118</sup> Human Rights Watch interview with Ali Assad, March 3, 2009; Human Rights Watch interview with Jama Abdullahi Bin, March 1, 2009.

<sup>119</sup> Human Rights Watch interview with Ali Assad, March 3, 2009. Decisions of Somaliland’s District Security Committees can be overruled by the regional governors.

by a police officer who claimed without elaboration that all of the detainees in the room were criminals.<sup>120</sup>

One 16-year-old boy who was sentenced to one year in Mandhera prison after allegedly being involved in a street fight described his hearing this way:

They took [around 20] of us to the first floor of the police station—no one of us knew the other. The only person I recognized was the mayor. They called our names and we all said “Present.” They didn’t say anything to us, and the only thing we said was that we were present. They did not make any effort to find out what happened. They then wrote a letter and sent us back to our cells. The next morning there was a truck waiting for us. A policeman was standing next to the truck, calling out names—he was reading our names and our sentences. He called my name and said, “One year.” I was not expecting it—I did not do anything, there was no court, no one asked me what happened—I was just taken by surprise when I heard that I had been sentenced to one year.

He was ultimately released four months into his sentence after his mother lobbied the Ministry of the Interior on his behalf.<sup>121</sup>

Other accounts of former RSC detainees followed the same pattern. Another young man, arrested with 11 other people while chewing *qat* one afternoon, said of his RSC hearing:

About 25 of us were there. I did not know most of them, but the policeman just referred to us as a group, and said we are all robbers and thieves. I did not have a chance to talk. When we entered they called our names—“present,” “present,” “present.” They asked the policeman, “Who are they? What did they do?” That’s all. It took less than 10 minutes.

The next day he was taken to Mandhera prison where he was told that he had been sentenced to two years in prison. “It was written in a paper that it was two years and that I

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<sup>120</sup> Human Rights Watch interviews with individuals sentenced by Hargeisa Regional Security Committee, Hargeisa, February and March 2009; written Hargeisa RSC decisions reviewed by Human Rights Watch .

<sup>121</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

am a thief,” he said. “But I have not seen the paper.” When Human Rights Watch interviewed him in prison he was two months into his sentence.<sup>122</sup>

The RSCs issue written decisions in cases that result in incarceration. The secretary of the RSC in Hargeisa permitted Human Rights Watch to review the archive of past RSC decisions in Hargeisa’s central police station, though he would not permit copies to be made. The RSC’s decisions are generally no more than two to three pages long and often a single decision serves to order and explain the imprisonment of dozens of accused individuals, even where their alleged crimes are unrelated to one another. One representative example of those decisions was a two-page decision of the committee from January 2009 sentencing 37 people to two-year prison terms and two others to three months in prison. The secretary affirmed that those sentenced were arrested at different times and in different parts of the city, on unrelated accusations of being involved in public disturbances, fighting, and petty crime. The only evidence in support of the decision was a statement by the police officer who spoke at the committee meeting where all 39 people were sentenced.<sup>123</sup>

### *Juvenile Cases*

According to government officials and civil society activists a very large proportion of the cases that come before the RSCs involve families who ask the committees to incarcerate their children—mainly boys. The head officer at Mandhera prison told Human Rights Watch that most of the more than 300 Security Committee cases among the detainees there were “robberies and parents disappointed with their children.”<sup>124</sup>

These cases are often referred to as “discipline” cases and are usually brought by parents who allege that their children are disobedient, involved with gangs, drink alcohol, or indulge in other forms of disruptive or violent behavior.<sup>125</sup> Believing it to be an effective mechanism of instilling discipline, parents ask the RSCs to incarcerate their children. Many are not accused of anything that would amount to a criminal offense under Somaliland’s laws. Sentences handed down by the RSCs in such cases generally do not exceed six months and

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<sup>122</sup> Human Rights Watch interview, Mandhera prison, March 2, 2009.

<sup>123</sup> Hargeisa RSC decision reviewed by Human Rights Watch; Human Rights Watch interview with Hargeisa Regional Security Committee Secretary Abdisalam Ali Nour, Hargeisa, March 4, 2009.

<sup>124</sup> Human Rights Watch interview with prison official, Mandhera prison, March 2, 2009.

<sup>125</sup> A child refers to anyone under the age of 18, as defined under international law. Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. Somalia/Somaliland, along with the United States, are the only states not to have ratified the convention.

are flexible—if parents return to the committees and ask that their children be released early, the committees generally oblige them.<sup>126</sup>

The sentences handed down in these “discipline” cases lead to real suffering on the part of child detainees. Conditions in detention are harsh. Human Rights Watch interviewed teenage children who were imprisoned by the Hargeisa RSC at Mandhera prison. Compared to other prisons in Somaliland, conditions in Mandhera are spartan but relatively humane and juveniles are housed separately from the adult inmate population. But juvenile detainees are housed collectively in two large cells and “discipline” detainees who have not committed any crime are placed alongside juveniles convicted of violent criminal offenses who may be several years older than themselves.

One young man who spent eight months in Mandhera prison when he was 15 told Human Rights Watch that he was routinely harassed and beaten by older juvenile detainees:

In prison the harassment by older [juvenile] prisoners was unbearable—I could not handle it. One time a week my parents would come and bring soft drinks and biscuits. When they left and I went back to the cell they would just take all of it by force—clean covers for my mattress, clean clothes, anything my parents brought. Some of my cellmates had done rape, robbery, even murder—some had done these things many times, not just once. There were also some boys even younger than me in the cell. I was old enough to defend myself even if they beat me in the end. But some were 13 or 14 and they suffered more.<sup>127</sup>

As another former young juvenile detainee said, “Some people think being in prison is good for a child but it is not. It was a nightmare for me to be there.”<sup>128</sup>

The government’s use of the RSCs to incarcerate juveniles flouts Somaliland’s own juvenile justice law, a progressive piece of legislation that the government has largely ignored since it was signed into law.<sup>129</sup>

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<sup>126</sup> Human Rights Watch interviews with civil society activists and government officials including RSC members, Hargeisa and Burco, February and March 2009.

<sup>127</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

<sup>128</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

<sup>129</sup> See above, Box 1—Ignoring Good Laws: The Juvenile Justice Law.

### *Vicarious Punishment as Conflict Prevention*

Traditional Somali law, or *Xeer*, rests partly upon principles of collective clan responsibility for criminal and civil offenses, and collective action to defend and vindicate the rights of individual clan members. *Xeer* demands that the clan relatives of a person who commits a serious crime such as murder must compensate the victim and his clan for their losses if the perpetrator of the crime does not do so himself. If no negotiated settlement is found, the victim's clan may attempt to exact revenge through violence. In some cases, such as where the perpetrator of the original crime cannot be found, that revenge will be taken against their clan relatives. Such incidents can spiral out of control into an escalating cycle of inter-clan conflict that becomes increasingly difficult to disentangle and halt. Preventing such conflicts from emerging is an endless and exhausting effort that is central to maintaining peace in Somaliland.<sup>130</sup>

Security Committee officials sometimes order the incarceration of clan relatives of a person accused of a serious crime. Such detentions are intended to cool the desire of the victim and his clan to exact revenge and thereby maintain peace until the perpetrator of the crime can be brought to justice or appropriate compensation paid. The governor of Hargeisa told Human Rights Watch that the RSC he chairs had dealt with 10 such cases between the end of 2008 and March 2009.<sup>131</sup>

Admittedly, this form of vicarious punishment reflects a complex and not easily-resolvable clash between important tenets of traditional Somali law and principles of individual human rights. But the Somaliland government has made no meaningful effort to strike an equitable balance the two; in fact it has failed to promulgate any relevant legal framework at all. Instead it carries these detentions out through Security Committees that are neither impartial nor independent and whose procedures trample the basic rights of people brought before them.

Under such circumstances it is not surprising that serious violations of human rights result. Human Rights Watch interviewed one detainee at Mandhera prison named Ahmed Hashi Jama who was put into prison because his nephew had murdered a man and fled the community. "They said, 'You will be here for just a few days until they arrest the man who committed the crime,'" he said. But when he spoke to Human Rights Watch Ahmed was days

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<sup>130</sup> For more discussions of *Xeer* and its modes of conflict prevention in particular, see Joakim Gundel, "The Predicament of the 'Oday': the role of traditional structures in security, rights, law and development in Somalia," Danish Refugee Council, November 2006; Andre Le Sage, "Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives," (Geneva: Center for Humanitarian Dialogue, 2005).

<sup>131</sup> Human Rights Watch interview with Ali Assad, governor of Hargeisa Region, Hargeisa, March 3, 2009.

shy of having spent four years behind bars. The killer had never been found, and the government had not managed to broker any kind of settlement between Ahmed's clan and that of the victim.<sup>132</sup>

The governor of Hargeisa later told Human Rights Watch that he believed the killer had fled to Kenya and had died there.<sup>133</sup> Prison officials at Mandhera said that they had repeatedly written to various government ministries over the years, asking that a solution be found to Ahmed's case, but had never received a reply.<sup>134</sup>

## **Harassment and Arbitrary Detention of Government Critics and Journalists**

On several occasions in recent years the Riyale administration has attempted to impose long prison terms on individuals seen as political threats. While such acts of heavy-handed government repression are not a regular feature of Somaliland's political landscape, government officials have on many occasions targeted journalists, government critics, and others for less severe forms of harassment and abuse.

### *Qaran*

In August 2007 three prominent leaders of an opposition political movement called Qaran were sentenced to nearly four years of imprisonment because of their political activities.<sup>135</sup> Qaran represented a direct challenge to the political establishment in Somaliland. The Somaliland constitution provides that only three nationwide political parties can exist and contest national elections. In theory these parties are chosen based on their performance in local government elections, the first of which were open to all comers.<sup>136</sup> Qaran sought the right to compete in local elections in order to displace one of the established parties and ultimately compete in the next presidential polls.

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<sup>132</sup> Human Rights Watch interview, Mandhera prison, March 2, 2009.

<sup>133</sup> Human Rights Watch interview with Ali Assad, governor of Hargeisa Region, Hargeisa, March 3, 2009.

<sup>134</sup> Human Rights Watch interview with prison officials, Mandhera prison, March 2, 2009.

<sup>135</sup> Human Rights Watch interview with Jamal Aideed Ibrahim, Hargeisa, February 27, 2009. See also Amnesty International, "Somaliland Facing Elections," pp. 8-9.

<sup>136</sup> This system has since broken down. The registration committee set up to register political associations that sought to compete in the local elections was disbanded several months after the local polls and since then there has been no way for new associations like Qaran to register. Also, the government did not schedule new local polls ahead of the national elections scheduled for later this year—guaranteeing the existing three parties the right to contest the national polls without having to compete for that right in local polls. Human Rights Watch interviews with lawyers, Hargeisa, February and March 2009; Human Rights Watch email correspondence with legal expert, May 17, 2009.



Qaran's leaders launched a public campaign in favor of their right to organize as a political association, during which they publicly criticized the government for refusing to recognize their right to do so. In response the government arrested Dr. Mohamed Gabose, Mohamed Hashi Elmi, and Jamal Aideed Ibrahim, the leader and deputies of the association. Their trial was conducted by a criminal court inside Mandhera prison. The defendants refused to participate or to retain counsel on the grounds that they had done nothing illegal and that the conditions of their trial were inherently unfair. Ultimately all three were convicted of "seditious assembly" for holding illegal political meetings, and sentenced to three years and nine months in prison. The court also imposed a five-year ban on political activity that bars all three men from standing for any public office.<sup>137</sup>

The Qaran case generated widespread public outrage and the government was soon forced by public pressure to relent somewhat. The three Qaran leaders were freed four months after beginning their sentences, in December 2007. The ban on political activity remains in place, however.<sup>138</sup>

### *Targeting Anti-Corruption Whistleblowers*

Two of the most severe cases of government repression occurred in response to public exposés of alleged acts of corruption. In January 2007 three journalists with the independent Haatuf Media Network were arrested after the Network's *Haatuf* newspaper published a series of articles detailing allegations of corruption implicating President Riyale and his wife. The articles alleged that on several occasions the first family had sold government vehicles for their own or relatives' profit. Two members of *Haatuf's* staff—Ali Abdi Dini and Mohamed Omar Sheikh Ibrahim—were charged with "offending the honor or prestige of the Head of State" and with "instigation to disobey the law." The chairman of the media network that owns the newspaper, himself a journalist, was charged with resisting arrest. Their trial was moved from Hargeisa to Mandhera prison after its first two sessions and the defendants had

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<sup>137</sup> Ibid. The ban is based on Section 102(1) of the 1962 Somali Penal Code, which provides that "A sentence of imprisonment for a crime for a term of not less than three years shall entail...disqualification from public office for a period of five years...", while Article 101(3) provides that this disqualification "shall deprive the convicted person of the capacity to acquire, exercise or enjoy during that period of disqualification rights..." including the right to vote or be elected "and every other political right." These provisions mirror Articles 32 to 38 of the 1930 Italian Penal Code.

<sup>138</sup> Human Rights Watch interview with Jamal Aideed Ibrahim, Hargeisa, February 27, 2009. See also Amnesty International, "Somaliland Facing Elections," pp. 8-9; See Ibrahim Hashi Jama, "The Delayed Release of Imprisoned QARAN Leaders: Procedural Hurdles?," [http://www.somalilandlaw.com/Delayed\\_Release\\_of\\_QARAN\\_leaders\\_2309071.pdf](http://www.somalilandlaw.com/Delayed_Release_of_QARAN_leaders_2309071.pdf) (accessed May 28, 2009).

no access to attorneys during the sessions held in prison. Yusuf was sentenced to two years' imprisonment while his two colleagues received 29-month sentences.<sup>139</sup>

The Riyale administration came under heavy domestic and international pressure to release the three journalists. All three were pardoned by President Riyale in March 2007, roughly three months after their conviction.<sup>140</sup>

A second related case followed on the heels of the *Haatuf* arrests. Abshir Hassan Hashi, a former driver to Riyale's wife and longtime confidant of the president, resigned his position and in January 2007 held a press conference where he alleged that he had witnessed gross acts of corruption by the president and his wife while in their service—essentially corroborating the general pattern of corruption alleged by the *Haatuf* exposé. In May 2008 Abshir was arrested and taken to Mandhera prison, accused of defaming the president.<sup>141</sup> He was held there for three months before falling ill and being taken to hospital in Hargeisa.<sup>142</sup> Throughout this period Abshir's wife and children staged near-daily protests in Hargeisa, wearing t-shirts demanding his release. While Abshir was in the hospital the independent newspaper *Geeska Africa* published a front-page story about his case that included a photograph of Abshir chained to his hospital bed. This led to a public outcry about the case, including by elders of Abshir's clan, and he was released less than a month after the *Geeska Africa* story was published. According to numerous sources, the terms of his release include an unofficial agreement that he will not speak on the issue of corruption again.<sup>143</sup>

### *Patterns of Low-level Repression*

The heavy-handed acts of repression described above are an exception rather than the norm. But low-level harassment and brief arbitrary detention of government critics, opposition

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<sup>139</sup> Human Rights Watch interview with Yusuf Abdi Gabobe, Hargeisa, February 26, 2009. See also Amnesty International, "Somaliland Facing Elections," p. 8; "EHAHRD-net denounces verdict against detained journalists in Somaliland," East and Horn of Africa Human Rights Defenders Project press release, March 4, 2007, <http://www.protectionline.org/Yusuf-Abdi-Gabobe-Ali-Abdi-Dini.html> (accessed May 14, 2009).

<sup>140</sup> For a detailed account of the arrests, trial and conviction of the *Haatuf* journalists, and a broader critique of the Somaliland government's use of insult laws, see Ibrahim Hashi Jama, "Using Insult Laws is an Insult to the Somaliland Media and Public—the detention and trial of Haatuf Journalists," January 20, 2007, [http://www.somalilandlaw.com/Insult\\_Law\\_\\_\\_the\\_Press\\_in\\_Somaliland.pdf](http://www.somalilandlaw.com/Insult_Law___the_Press_in_Somaliland.pdf) (accessed May 14, 2009).

<sup>141</sup> Human Rights Watch interviews, Hargeisa, February and March 2009. See "Abshir H Hashi still in detention for speaking out against corruption," *Somaliland Times*, May 10, 2008, <http://www.somalilandtimes.net/sl/2008/329/0501.shtml> (accessed May 14, 2009).

<sup>142</sup> Human Rights Watch interviews, Hargeisa, February and March 2009. See "The Driver of Huda Barkhad whisked to hospital in critical condition," *Somaliland Today*, August 15, 2008, <http://www.somalilandtoday.net/modules.php?name=News&file=article&sid=1391> (accessed May 14, 2009).

<sup>143</sup> Human Rights Watch interviews, Hargeisa, February and March 2009.

activists, and journalists is not uncommon and curtails basic freedoms. Often such abuses occur at the order of lower-level government officials rather than as part of any systematic scheme, but impunity is the norm. Where journalists and others are detained illegally on orders of government officials, many local activists believe that part of the problem is that rank-and-file police officers do not feel empowered to refuse to carry out those orders or simply do not know that they are improper. As one activist in Hargeisa put it, “The police don’t understand their role. Any minister can tell them to arrest you and they will do it.”<sup>144</sup> This problem is compounded by the government’s heavy use of the regional security committees, which lend a stamp of official legitimacy to the notion that government officials can detain anyone they like whether there is any legal basis for it or not.

Journalists have been the most frequent targets of intimidation and abuse by government officials. While the severity of the problem should not be exaggerated—arbitrary detention is usually only for very brief periods and generally the media are able to operate independently and without crippling interference. Nonetheless, low-level abuses are numerous and many journalists told Human Rights Watch that these incidents have a chilling effect on their work and on the press more generally.<sup>145</sup> As one opposition activist put it to Human Rights Watch, “On the one hand we have five dailies that come out with whatever they want. On the other hand we sometimes have journalists harassed or arrested.”<sup>146</sup>

Government officials at all levels, including the police, have on occasion ordered the arrest of journalists in response to critical reporting, or to preempt such reporting. Usually these detentions last a few hours or days. For example, during a Human Rights Watch visit to Somaliland in February and March 2009, the police detained two independent journalists near the port of Berbera who were investigating allegations of corruption related to food imports. They were quickly released but their cameras were confiscated and never returned.<sup>147</sup> Several journalists from Puntland have been detained in the disputed eastern region of Sool in connection with their reporting on the region.<sup>148</sup>

In several cases low-level government officials have threatened to use or used actual acts of violence or illegal detention in conjunction with bribery to try and influence media coverage of government actions or policies. In February 2009 a cameraman for the independent Horn

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<sup>144</sup> Human Rights Watch interview, Hargeisa, February 22, 2009.

<sup>145</sup> Human Rights Watch interviews with journalists, Hargeisa and Burco, February and March 2009.

<sup>146</sup> Human Rights Watch interview, Hargeisa, February 22, 2009.

<sup>147</sup> Human Rights Watch interview with Yusuf Abdi Gabobe, Hargeisa, February 26, 2009.

<sup>148</sup> Amnesty International, “Somaliland Facing Elections,” p. 8.

Cable TV network was assigned to film a rally of the opposition Kulmiye party in Dacar Buduq<sup>149</sup> when he was approached by local members of the ruling UDUB party and ordered to come with them to film a ruling party rally instead. They offered to pay him to do this, but he refused, telling them that the decision was not his to make. A short while later he was forced into a car by two police officers, the local district commissioner, and a prominent supporter of UDUB in the locality and driven away from the Kulmiye rally. The men forced him out of the car in an isolated location outside of town and all four threatened, punched, and kicked the cameraman before driving him back to town and leaving him.

The cameraman recounted this ordeal in an interview on Horn Cable TV, and told Human Rights Watch that he received at least five threatening phone calls from blocked numbers over the course of the next several days. “I have nowhere to go and complain to because it is the government that did this to me and it is also the government I would go and complain to,” he told Human Rights Watch. “Now I don’t know what I will do. I either have to please the government or not work.”<sup>150</sup>

Another journalist told Human Rights Watch that in February 2009 he was invited to meet with a government official who urged him to stop reporting on the president’s controversial attempts to secure a second extension of his term of office. “He said, ‘I want you and me to be together and for you to work with us and be friends and share information rather than working for the opposition,’” the journalist recalled. He explained to the official that he did not work for the opposition but as an independent journalist, and the meeting ended apparently on good terms. Less than an hour later he was arrested on the street by police officers who told him that the same official had ordered his arrest. He was freed the same evening and several days later he was approached by another government official who offered to “help and support” him if he would stop “attacking the government” in his reporting.<sup>151</sup>

Some government officials have also targeted opposition political figures with similar combinations of bribery and coercion. Ahmed Omar Haji Abdillahi, a Kulmiye politician in Hargeisa, told Human Rights Watch that he had been arrested in May 2008 after giving several media interviews denouncing President Riyale’s ultimately successful bid to secure an extension of his term in office. Ahmed said that after three nights in the Criminal Investigation Division detention facility in Hargeisa, he was visited by a prominent

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<sup>149</sup> Dacar Buduq is situated between Hargeisa and Berbera.

<sup>150</sup> Human Rights Watch interview, Hargeisa, February 22, 2009.

<sup>151</sup> Human Rights Watch interview, Hargeisa, February 22, 2009.

government official who pulled a US\$100 bill from his shirt pocket and gave it to him, saying “I am going to give you many of these. Everything can be easily facilitated if you just cooperate with [the government].” “I told him ‘Thank you, but I already have many of these in my own pocket,’” he recalled. He was released the next day.<sup>152</sup>

*Box 2—The SHURO-net Controversy: Undermining Civil Society*

Until October 2007 Somaliland had a very active umbrella organization of independent human rights groups called SHURO-Net (Somaliland Human Rights Organization Network). In that month SHURO-net was effectively dismantled following an internal leadership struggle that was marred by blatant interference by Somaliland government officials.

Five months earlier SHURO-net had attempted to file a lawsuit with Somaliland’s Supreme Court challenging the legality of the government’s use of its Regional Security Committees as instruments of extrajudicial detention. As described above, the court refused to accept the case and its chief judge had the lawyer and SHURO-net official who tried to present it to the clerk removed from the premises by police. While the case was never heard in court, SHURO-net’s attempt to file it aroused considerable ire within the government.

SHURO-net’s downfall began with an internal struggle for control of the organization. But the government played a central role in support of the new leadership that emerged from the struggle. Government officials including the deputy minister of justice attended the meeting where SHURO-net’s old leadership was toppled and many activists allege that the government helped pay for the meeting. SHURO-net’s former leadership refused to accept the outcome of the meeting that purportedly replaced them, and dozens of police officers descended upon its office demanding that its officers hand over the keys and vacate the premises. The deputy minister of justice threatened one SHURO-net official with arrest if he did not do as he was told.<sup>153</sup>

If the circumstances of the SHURO-net controversy are complicated, its consequences are not. The organization has effectively ceased to function and no other group has stepped forward to replace it. Said one prominent activist who was not involved in the controversy, “No organization is willing to challenge the government now—if they go too far the government will do the same thing they did to SHURO-net.”

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<sup>152</sup> Human Rights Watch interview, Hargeisa, February 27, 2009.

<sup>153</sup> Human Rights Watch interview with former SHURO-net executive chairman Mubarak Ibrahim Aar, Hargeisa, February 25, 2009.

## Restrictions on Free Expression and Assembly

The Somaliland government has regularly violated Somalilanders' rights to free expression and assembly. On at least several occasions the Regional Security Committees have sentenced people to prison terms for protesting government actions. For example, in March 2007, the Hargeisa Regional Security Committee sentenced 18 butchers from Hargeisa to six months in prison for protesting an increase in abattoir fees. The committee's members include the mayor, the very official whose actions the accused were protesting against.<sup>154</sup>

The government, through the Ministry of the Interior, has also issued several blanket bans on any kind of political assembly while offering no legal justification for such moves. In July 2004 the Ministry of the Interior issued a Circular addressed to the regional and district security committees across Somaliland that banned all assemblies relating to political issues.<sup>155</sup> The decree was widely viewed as unlawful but was enforced nonetheless.<sup>156</sup> Similar bans have since been imposed with some frequency. In some instances government officials have used the ban on electoral campaigning in the two months ahead of elections as a pretext to bar *all* political meetings and public protests as acts of "campaigning."<sup>157</sup> Some officials employed this rationale in interviews with Human Rights Watch. Most recently the government announced a blanket ban on public demonstrations following the Guurti's controversial six-month extension of President Riyale's mandate in March 2009. However the police did not attempt to disperse demonstrations organized by Kulmiye in several towns in April 2009 protesting the extension; the protests were discontinued when mediation efforts between Somaliland's three political parties got underway.<sup>158</sup>

## Forced Return of Asylum Seekers

The Riyale administration has forcibly returned Ethiopian asylum-seekers on several occasions. This does not reflect a general unwillingness on the part of the Somaliland government to accept persons fleeing onto its territory—Somaliland hosts some 35,000

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<sup>154</sup> Human Rights Watch interview with human rights activist, Hargeisa, February 25, 2009. See also, "Somaliland's Scandalous Justice Systems," Editorial (undated), *Somaliland Times*, <http://somalilandtimes.net/sl/2006/270/16.shtml> (accessed May 14, 2009).

<sup>155</sup> Ibrahim Hashi Jama, "Public Order Law in Somaliland."

<sup>156</sup> Prominent Somaliland legal scholar Ibrahim Hashi Jama has argued that the only way such a decree could be lawful would be through an emergency law enacted during a state of emergency as provided for by the constitution. He concluded that, "It is difficult to see how such a blanket ban which is not backed by a Presidential Decree Law under Article 92 of the Constitution can be lawful." Ibrahim Hashi Jama, "Public Order Law in Somaliland."

<sup>157</sup> Human Rights Watch interviews and email correspondence with Somaliland government officials, Hargeisa, February and May 2009.

<sup>158</sup> Human Rights Watch telephone interviews and email correspondence with activists and journalists, Hargeisa, April 2009. For more on the mediation effort, see below, Somaliland's Election Controversy.

people from south/central Somalia who fled due to conflict as well as large numbers of refugees from neighboring Ethiopia.<sup>159</sup> Rather, forcible returns of asylum seekers reflect the strong influence of the Ethiopian government over the Somaliland authorities. Ethiopia has long been Somaliland's only regional ally, a relationship premised to a large degree on close cooperation on matters of security.<sup>160</sup> In at least several cases Ethiopia's government has asked the Somaliland authorities to hand into its custody asylum-seekers who Ethiopian officials believe have ties to insurgent groups in Ethiopia, and the Somaliland authorities have generally complied with such requests.

These forced returns are in defiance of both Somaliland's constitution and international law. Article 35(1) of the Somaliland constitution grants foreign citizens the right to seek political asylum in Somaliland, and Article 35(3) provides that foreign citizens can be extradited only if an extradition treaty exists between Somaliland and the country seeking extradition (no such treaty exists with Ethiopia, which like the rest of the world does not recognize Somaliland's independence and therefore cannot enter into any treaty with it).<sup>161</sup> Furthermore, Somaliland's government considers itself bound by the 1951 Refugee Convention, which prohibits *refoulement* (return) of asylum seekers to any place where their life or freedom would be threatened because of persecution.<sup>162</sup>

Most of the Ethiopian asylum-seekers who enter Somaliland are ethnic Oromo or Somalis of the Ogadeni clan. The regions they hail from in Ethiopia, Oromia and Somali Region, are both politically volatile areas. The Ethiopian military has been waging a brutal counterinsurgency campaign against the rebel Ogadeni National Liberation Front (ONLF) in Somali Region, which borders Somaliland to the south, for several years.<sup>163</sup> Oromia has long been a hotbed of political unrest, and the Ethiopian government regularly accuses political dissidents there of belonging to the outlawed Oromo Liberation Front (OLF), which claims to be carrying out an armed struggle against the authorities in Addis Ababa.<sup>164</sup> Most of the

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<sup>159</sup> The terminology used to describe people from South/Central Somalia who have fled to Somaliland is a politically sensitive issue in Somaliland. UNHCR and other international agencies consider them to be internally displaced people because they have not crossed a recognized international boundary; the Somaliland government insists that they are refugees from a neighboring country.

<sup>160</sup> See below, the Role of the International Community.

<sup>161</sup> Constitution of the Republic of Somaliland, art. 35.

<sup>162</sup> Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, art. 33. Article 10(1) of the Somaliland Constitution states that "The Republic of Somaliland shall observe all treaties and agreements entered into by the former state of Somalia with foreign countries or corporations provided that these do not conflict with the interests and concerns of the Republic of Somaliland." Somalia ratified the Refugee Convention in 1978.

<sup>163</sup> Human Rights Watch, *Collective Punishment*.

<sup>164</sup> Human Rights Watch, *Suppressing Dissent*.

asylum-seekers who have been forcibly returned from Somaliland to Ethiopia are believed to be individuals the Ethiopian government suspects of having ties to armed opposition groups—which is often the reason why they fled Ethiopia.

Human Rights Watch does not have an estimate of the total number of asylum-seekers forcibly returned to Ethiopia but believes that numerous forced returns have taken place. Amnesty International documented the return of six Ethiopian asylum-seekers in 2007 and 2008.<sup>165</sup> Local activists and an UNHCR official alleged to Human Rights Watch that an Oromo asylum seeker was forcibly returned to Ethiopia in mid-February 2009.<sup>166</sup> A UN official told Human Rights Watch in February 2009 that “There are many deportations of refugees. Most of these deportations take place within 24 hours—so most of the cases where [UNHCR has] tried to intervene [they] have failed.”<sup>167</sup> Several local analysts and activists told Human Rights Watch that they believe the authorities in Somaliland feel they have no choice but to comply with requests from Ethiopia to forcibly return asylum seekers; ties between the two governments are close and strong, but it is difficult to overstate the power imbalance between Addis Ababa and Hargeisa.<sup>168</sup>

Based on its research on Ethiopia, Human Rights Watch believes that suspected ONLF and OLF members returned to Ethiopia face a high probability of arbitrary detention and torture. Ethiopians arrested inside the country and accused of ties to these groups are regularly subjected to such abuses. In many cases there is no evidence that victims have any ties to insurgent groups, but the allegations are used to justify the repression of peaceful political activity by people who are critical of government policies and actions.<sup>169</sup>

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<sup>165</sup> Amnesty International, “Somaliland Facing Elections,” pp. 7-8.

<sup>166</sup> Human Rights Watch interviews, Hargeisa, February 2009.

<sup>167</sup> Human Rights Watch interview with UN official, March 3, 2009.

<sup>168</sup> Human Rights Watch interviews with human rights activists and UN official, Hargeisa, February and March 2009.

<sup>169</sup> Human Rights Watch, *Collective Punishment*; Human Rights Watch, *Suppressing Dissent*.



## Somaliland's Election Controversy

In 2003 and 2005 Somaliland took enormous strides towards institutionalizing democratic governance by holding peaceful multiparty presidential and parliamentary elections. Those elections were not without their flaws, but considering the low institutional and financial capacity of the government and the dismal standards set by Somaliland's regional neighbors, both polls were remarkable accomplishments.<sup>170</sup> But the positive trends they embodied are now in real jeopardy because of the Riyale administration's repeated delay of elections that should have consolidated the gains of those first multiparty polls.

Those delays have grown in part out of irresponsible actions on the part of the opposition as well as the administration. But the Riyale government has stood aside to watch preparations for the elections unravel, doing nothing to try and put them back on track, and exploited the confusion to remain in power far beyond its mandate. The president has now managed to extend his own term of office by 18 months using means whose legality is questionable at best. The problem is not just an issue of delay—the events of recent months give rise to serious doubts as to whether the president wishes the elections to take place at all.

Somaliland's emerging democratic system may well manage to navigate the political crisis all of this has brought about. But the problems surrounding the elections provide a clear illustration of how dangerous the government's broader tendency to behave illegally and unconstitutionally is to the territory's hard-won gains in the areas of governance and human rights.

### Delaying the Presidential Polls

Somaliland's next presidential polls were originally scheduled for April 2008. Somaliland's National Electoral Commission (NEC) delayed the elections until August 2008 after securing the agreement of all three political parties to allow for more time to prepare for the polls. The NEC could not affect any further delays on its own because the constitution requires that elections take place at least one month before the end of the president's five-year term, which expired in May 2008. Since then the president has twice benefitted from the unelected Guurti's (House of Elders) decision to push that date back further still, a decision most believe was a result of the president's encouragement and of the fact he had already extended the mandate of the Guurti.

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<sup>170</sup> See above, Background and Context.

According to the constitution, the only circumstance under which the president's term of office can be extended is if it is not possible to hold an election "because of security considerations." In such a scenario the Guurti can extend the president's term of office, "taking into consideration the period in which the problems can be overcome and the election can be held."<sup>171</sup> But the Guurti has treated this constitutional provision as though it accords it the right to extend the elections for any reason and for whatever length of time it sees fit. In April 2008 the Guurti passed a resolution extending the president's term of office by one year, to May 2009, after the three political parties again agreed between themselves to postpone the polls to December 2008.

Neither the government nor the Guurti made any real effort to argue that security concerns prevented the elections from being held or to justify the length of the delay in security terms—the strict requirements explicitly imposed by the constitution.<sup>172</sup> Rather the delay was explained as necessary because too little had been done to organize voter registration and the elections themselves. Many Somaliland lawyers and activists believe that this means there was no constitutional basis for the Guurti's extension of Riyale's term.<sup>173</sup> Suleiman Mahmoud Adan, the chairman of the Guurti, admitted as much to Human Rights Watch:

At the last extension these [security-related] conditions did not exist, but it was a failure on the part of the entire system—we wrangled too much over the appointment of members of the [electoral] commission, so it was decided collectively by parties and the commission and the president to extend up to April 15.<sup>174</sup>

After an initial flurry of protest by some opposition figures, in June 2008 the three recognized parties agreed to accept the Guurti's action and hold the elections in March 2009.<sup>175</sup> Although probably unconstitutional, the move was not without precedent—in 2001 the Guurti extended then President Egal's term of office by one year because the NEC required more time to organize the local district elections that were to precede presidential polls that were ultimately held in 2003.<sup>176</sup>

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<sup>171</sup> Constitution of the Republic of Somaliland, art. 83(5).

<sup>172</sup> *Ibid.*

<sup>173</sup> Human Rights Watch interviews with lawyers and civil society activists, Hargeisa, February and March 2009.

<sup>174</sup> Human Rights Watch interview with Suleiman Mahmoud Adan, Hargeisa, February 26, 2009.

<sup>175</sup> An English-language translation of the agreement is available online at <http://www.apd-somaliland.org/news/20080603electionagreement.htm> (accessed May 14, 2009).

<sup>176</sup> Interpeace, "A Vote for Peace," p. 49.

This extension gave the government and the Riyale administration and the NEC 10 extra months to prepare to hold elections. But the NEC proved itself incapable of making good use of that broad window, partly because the Riyale government as well as both opposition parties failed to put qualified appointees onto the Commission. The Riyale administration did little or nothing to push the NEC to fulfill its responsibilities.<sup>177</sup> As the new deadline approached it became apparent that little had been done to prepare for the polls, that the voter registration process would not be completed on time, and that the March 2009 date had been made unfeasible as a result.

This engendered considerable public outrage, and many opposition politicians publicly refused to accept a further extension of the president's term in office, demanding that any further delay of the election result in the imposition of a caretaker government. Privately, however, opposition leaders signaled that since it was by then technically impossible to organize the elections by March, they were willing to accept a further delay of one or two months—but nothing more. Even the government appeared to acknowledge that a delay more lengthy than that would be an outrage. At the end of February 2009 Somaliland's foreign minister told Human Rights Watch that, "The extension of the government's term will not be more than one and a half months, maximum. The idea that the elections could happen later than May is off the table and it should be off the table."<sup>178</sup>

Two weeks later the president's supporters in the Guurti put forward a motion to extend his term of office by six full months, until October 2009.<sup>179</sup> The vote in the normally pro-administration Guurti was this time hotly contested and marred by allegations of vote-buying by both sides.<sup>180</sup> The resolution was passed by a margin of 42 votes to 35. Again, the Guurti cited Article 83(5) of the constitution as the basis for its move but made no attempt in its resolution to argue that the extension was necessary for concrete reasons of security or that six months was the necessary period for those hypothetical security concerns to be dealt

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<sup>177</sup> Human Rights Watch interviews with civil society activists and international aid officials, Hargeisa and Nairobi, February and March 2009.

<sup>178</sup> Human Rights Watch interview with Abdullahi Mohammed Duale, Hargeisa, February 24, 2009.

<sup>179</sup> The sequence of events that led to this was somewhat complex. The NEC set May 31 for the date for the elections, which was after the expiration of President Riyale's term of office. The president asked the Guurti to reconcile this and massive politicking ensued, with Kulmiye pushing a hard line that no extension should be contemplated at all and the president's supporters subsequently responding by proposing the six-month extension.

<sup>180</sup> Several sources told Human Rights Watch that individuals opposed to the presidential extension, including Kulmiye activists, spent roughly US\$120,000 on attempted bribes to members of the Guurti, and that the supporters of the term extension spent heavily as well. Human Rights Watch email correspondence with Kulmiye party member, civil society activists, and independent analyst, May 28, 2009.

with.<sup>181</sup> The extension was also in open defiance of a June 2008 agreement signed by all three political parties. This extension won opposition acceptance of the Guurti's first postponement of the polls in return for an assurance that no further delay would take place without a consensus agreement between all three parties and the NEC.<sup>182</sup> The NEC has now scheduled the elections for September 29, 2009.<sup>183</sup>

## Somaliland at a Crossroads

The continuing electoral delays initially triggered widespread fears of instability. The government issued a decree banning all public demonstrations after Kulmiye officials called for protests. Scattered demonstrations organized by Kulmiye supporters took place in defiance of the ban and police made no effort to crack down on them. As always, though, all of the key actors quickly moved towards compromise rather than risk an open confrontation that could threaten Somaliland's stability. As one opposition parliamentarian told Human Rights Watch several weeks before the latest delay was put into place, "We have avoided fighting too much about all of these issues for the security of the country. This country is hostage to peace."<sup>184</sup> At the time of writing mediation had resulted in an agreement between all three major parties that accepts the new election date and explicitly rejects any further delays.<sup>185</sup> President Riyale has repeatedly stated that he accepts the agreement but refused to sign it. In the end, the agreement was signed by officials of all three political parties, including Riyale's UDUB party.

If the elections are held in accordance with the new timetable and are conducted fairly, there is no compelling reason to believe that the past 12 months of electoral controversy poses a lasting threat to Somaliland's stability. But the actions of the Riyale administration have displayed clear and dangerous disrespect for the country's fragile democratic system. The government's insistence that the delay is primarily a problem of organization and capacity is disingenuous. The blame for those problems falls squarely on the government's own shoulders. The Riyale government has accepted and even encouraged the incompetence that has fueled the delays and done nothing to work towards timely elections or to push the

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<sup>181</sup> The text of the resolution, in Somali, is available online at [http://www.somalilandlaw.com/Guurti\\_Resolution\\_Jan\\_2002\\_extending\\_Presidential\\_Term.htm](http://www.somalilandlaw.com/Guurti_Resolution_Jan_2002_extending_Presidential_Term.htm) (accessed May 29, 2009).

<sup>182</sup> An English-language translation of the agreement is available online at <http://www.apd-somaliland.org/news/20080603electionagreement.htm> (accessed May 14, 2009).

<sup>183</sup> Article 83(2) of the Somaliland constitution requires that presidential elections be held one month before the end of the president's term of office.

<sup>184</sup> Human Rights Watch interview, Hargeisa, February 24, 2009.

<sup>185</sup> Human Rights Watch email correspondence with civil society activists, opposition activists, and a government official, June 2009.

NEC to fulfill its own responsibilities. The government had already won, and then flagrantly squandered, 10 extra months to meet its responsibility to organize the polls in 2008.

The electoral crisis puts Somaliland at a crossroads while its democratic system of government is threatened by a culmination of damaging setbacks. Somaliland's presidential elections have been delayed by 18 months by an administration that is not committed to meeting its responsibility to organize the polls. The Guurti's term in office was already extended by four and a half years, obviating the constitutional requirement that its mandate be renewed in one way or another. And the district elections that could lend greater democratic legitimacy to Somaliland's otherwise-closed three party system have simply been postponed indefinitely with the self-interested blessing of all three established parties. The emerging trend in Somaliland right now is not one of free and fair elections but of a government that refuses to hold elections at all.

Somaliland's presidential elections may well be held in September 2009 whether President Riyale would like them to or not—it is not clear that the president would succeed in obtaining a further extension of his term from the Guurti even if he were to push for one. But there is a great deal of work to be done to lay the groundwork for successful polls and this can only happen if the government commits itself now to doing so. Refraining from attempting to derail the process is not enough. It is a widely acknowledged fact that the very low capacity of Somaliland's National Electoral Commission remains a real threat to credible elections being held on schedule with international support.<sup>186</sup> That is a problem whose resolution requires active and determined government efforts to push the process forward to overcome.

If the polls take place on September 29 as scheduled, and are free and fair, the damage to Somaliland's emerging democracy will be minimized. But if the government fails yet again to organize the polls it could lead to a real and potentially destabilizing crisis, with the president unable to secure an extension of his mandate but unwilling to step down in favor of a caretaker government.

The ease with which the government has pushed aside and thwarted Somaliland's democratic system over the course of the past year underscores the importance of the broader problem highlighted in this report. For all of Somaliland's successes in holding its government in check through civic engagement and informal modes of pressure, its

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<sup>186</sup> Human Rights Watch telephone interviews and email correspondence with donor agency officials, civil society activists, and opposition political figures, June 2009.

democratic system cannot be safeguarded without the creation of democratic institutions that can ensure the government upholds the rule of law.

## The Role of the International Community

### Recognition versus Short-Term Engagement

The Somaliland government's posture towards the international community is focused first and foremost on its goal of international recognition. Government officials frequently and loudly articulate the view that this is not just a strategic goal but also a human rights issue. As one senior official put it:

We say the entire population of Somaliland's rights are violated by not respecting the self-determination of its people. Their right to travel is infringed, their right to development funds. The schools here would not be acceptable internationally. The international community is missing the main point—closing their eyes and hoping Somaliland will disappear. But it's here to stay.<sup>187</sup>

Internationally, there is a broad understanding of the practical difficulties non-recognition brings to Somaliland. An African Union (AU) fact-finding mission to Somaliland acknowledged in its 2005 resume that the lack of recognition “ties the hands of the authorities and people of Somaliland” in their pursuit of “reconstruction and development goals.”<sup>188</sup> To date, however, no country in the world has recognized Somaliland's independence or appears imminently poised to do so.

Western nations have largely insisted that the AU must take the lead on the recognition issue one way or the other.<sup>189</sup> Many AU states are reluctant to sanction what some see as a precedent that could embolden secessionist movements across the continent. Egypt and some Arab states are reluctant to empower Somaliland with recognition because they see it as an Ethiopian ally and do not wish to strengthen Ethiopia's regional position. And authorities in Somalia have consistently and implacably opposed any formal dismantling of the larger Somali state. The reconstitution of the Transitional Federal Government (TFG) in Mogadishu under the leadership of Sheikh Sharif Ahmed makes it unlikely that major external powers will shift their position on Somaliland recognition in the immediate term, as

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<sup>187</sup> Human Rights Watch interview, Hargeisa, February 23, 2009.

<sup>188</sup> “Resume: AU Fact-Finding Mission to Somaliland (30 April to 4 May 2005),” African Union Commission, para. 9.

<sup>189</sup> See, eg, David H. Shinn, “Somaliland and US policy,” *The Journal of the Anglo-Somali Society*, No. 38, Autumn 2005, p. 40, noting that, “It is highly unlikely that the US would move to recognize Somaliland before the African Union did so or, at a minimum, several key African states opted to do so.”

they focus on attempting to shore up the power of the TFG against continued threats to its existence.

*Box 3—Somaliland’s Case for Independence*

One of the most commonly articulated concerns about the idea of Somaliland’s independence is that it would set a dangerous precedent by sanctioning a redrawing of the African map. African and Western governments alike have treated the inviolability of Africa’s colonial boundaries as a core principle for the sake of preserving stability.

Somaliland’s government contends that Somaliland is a legal anomaly whose recognition would set no precedent relevant to the rest of Africa. Somaliland did exist as an independent country in 1960, albeit only for a matter of days, before voluntarily merging with the rest of Somalia. Since Somaliland currently exists within the old colonial boundaries of British Somaliland, its government argues that it is simply returning to its previous status as an independent state and that its existence in no way threatens the inviolability of inherited colonial boundaries.

Proponents of Somaliland independence must also confront the objections of many Somalis—and even some Somalilanders—who emphatically reject the prospect of formally dismantling the larger Somali state. Pro-independence Somalilanders often reply on moral and historical grounds. As Ahmed Mohamed “Silanyo,” leader of the opposition Kulmiye party, told Human Rights Watch, “Joining Somaliland and Somalia was never an end in and of itself—it was one step towards a bigger project and that project failed. As a consequence of that union we suffered more than we ever did at the hands of Britain, and we had to embark on a long struggle to liberate ourselves from it.”<sup>190</sup>

Finally, the government argues that its own accomplishments in maintaining peace, cooperating on security and other matters with bilateral partners, and showing respect for the basic rights of its citizens should be rewarded with formal recognition. Foreign Minister Abdillahi Duale told Human Rights Watch—before Somaliland’s presidential elections were pushed back to September 2009—that he believed the polls would spark a “rekindling of international interest in Somaliland.”<sup>191</sup>

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<sup>190</sup> Human Rights Watch interview with Ahmed Mohamed “Silanyo,” Hargeisa, July 10, 2008.

<sup>191</sup> Human Rights Watch interview with Abdillahi Mohamed Duale, Hargeisa, February 24, 2009.



Human Rights Watch takes no position on whether Somaliland should be recognized or which country or multilateral institution should take the lead on resolving the issue. But donors, the AU, and other key international actors should develop concrete and pragmatic policies that are tailored specifically to Somaliland's complex realities instead of continuing to shoehorn their engagement with Somaliland into the same framework as their policies on south/central Somalia. Somaliland's needs, achievements, and problems bear little resemblance to those of Somalia and Puntland. Recognition or no, Somaliland should not be saddled with donor policies that are primarily geared to the context of looming famine and endless conflict in the south.

In particular, donors and key foreign governments should move immediately to deepen their engagement with Somaliland's government, civil society, and other institutions. This engagement should focus not only on building the capacity of key institutions, but also on pressuring Somaliland's government to address key human rights concerns and to reverse the equivocal attitude to democratization it has displayed by delaying elections.

Somaliland is at a crossroads and the territory's impressive human rights and security-related gains could be jeopardized if credible presidential elections are not held without any additional delay. More robust international engagement with Somaliland now could play a key role in bringing about a positive outcome to Somaliland's lingering electoral crisis. On the other hand, if credible elections are not held, the international community may lose any chance to prevent backsliding on the issues of governance, human rights, and ultimately, stability.

## The Roles of Key International Actors

### *Ethiopia*

Ethiopia is Somaliland's closest bilateral partner. It is the only country to maintain a significant diplomatic presence in Hargeisa, a trade mission which effectively serves as a consulate. Ethiopia is one of Somaliland's most important trading partners. And Ethiopian Airways flights between Somaliland and Addis Ababa serve as one of Somaliland's primary physical links with the outside world.<sup>192</sup> Because of all this and because Ethiopia is the most militarily powerful and diplomatically influential of Somaliland's neighbors, the authorities in Hargeisa understandably regard Ethiopia as their most important ally.

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<sup>192</sup> Ethiopian Airways flights to Hargeisa were suspended following the October 2008 suicide bombings in Hargeisa, but are scheduled to resume between Addis Ababa and the more secure airport in Berbera. Flights between Addis Ababa and Hargeisa may eventually resume as well, security conditions permitting.

Ethiopia has commercial interests in Somaliland, not least its government's hope that Somaliland's port at Berbera develop into a viable hub for Ethiopian commerce.<sup>193</sup> Ethiopia also has centrally important security-related interests in Somaliland. Somaliland is surrounded by two of Ethiopia's most serious and long-running national security problems. Across Somaliland's southern border, a long-running insurgency in parts of Ethiopia's Somali Region has left the Ethiopian military mired in a brutal and seemingly intractable counterinsurgency campaign.<sup>194</sup> And to the southeast lies the rest of Somalia, which Ethiopia continues to regard as a primary external source of insecurity.

Ethiopia's security concerns have brought a human rights cost to its relationship with Somaliland. As described earlier in this report, the Somaliland government has on numerous occasions arrested Ethiopian citizens the authorities in Addis Ababa believe are linked to insurgent groups and handed them over to the Ethiopian government without due process. Those handed over have included asylum seekers turned over without being given any opportunity to seek refugee status.<sup>195</sup>

### *The African Union*

Somaliland's government wrote to the African Union (AU) in 2002 asking the organization to send a fact-finding mission to its territory. The AU dispatched that mission nearly two years later and its 2005 report was generally favorable.<sup>196</sup> In December of that year Somaliland's government submitted a formal application for admission to the AU, which appealed in emotional terms for the AU to release Somaliland from the "prison" of non-recognition. The AU has neither approved nor rejected Somaliland's request and has taken no further concrete action on the question of the territory's status since the AU fact-finding mission issued its resume in 2005.<sup>197</sup>

The AU's efforts are currently focused overwhelmingly on south/central Somalia, where a small AU peacekeeping force, the African Union Mission to Somalia (AMISOM), has been deployed since 2006 in support of the fragile Transitional Federal Government (TFG) in Mogadishu. In 2009 external donor support to AMISOM is expected to increase dramatically,

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<sup>193</sup> Since its border war with Eritrea that began in 1998, Ethiopia has been without the use of its natural outlets to the sea through Eritrean ports, forcing it to rely primarily on the port of Djibouti. Ethiopia reportedly hopes that as much as 20 percent of its trade will eventually flow through the port of Berbera in Somaliland. International Crisis Group, "Time for African Union Leadership," p. 2.

<sup>194</sup> See Human Rights Watch, *Collective Punishment*.

<sup>195</sup> See above, Forced Return of Asylum Seekers.

<sup>196</sup> "Resume: AU Fact-Finding Mission to Somaliland (30 April to 4 May 2005)," African Union Commission.

<sup>197</sup> See International Crisis Group, "Time for African Union Leadership," p. 2.

and the AU's focus is likely to remain on its efforts to stabilize south/central Somalia by supporting the TFG.<sup>198</sup>

### *Western Donor Governments*

European approaches to Somaliland have been mixed. Some countries such as Norway and Sweden have taken a direct interest in efforts to support Somaliland institutions. Others, most notably Italy, have eschewed deep engagement with the Somaliland authorities as inherently detrimental to eventual reunification of the country. A large proportion of European assistance to Somalia and Somaliland has been channeled through the European Commission (EC). Because assistance to the whole of Somalia is lumped together as one it is difficult to precisely estimate the amount of assistance flowing to Somaliland, but the total package of EC projects in Somaliland that were rolling from 2008 to 2009 totaled roughly €49.6 million, including Somaliland's share of projects meant to unfold in south/central Somalia and Puntland as well.<sup>199</sup> That total includes over €12.8 million for activities related to governance and democratization.<sup>200</sup> Somaliland's government estimates that the total annual amount of external development assistance reaching its territory is roughly US\$76 million, with most of this channeled through international NGOs and UN agencies rather than through government institutions.<sup>201</sup>

The United States government has been largely supportive of development and security efforts in Somaliland, though these efforts have been limited by the diplomatic imperative to channel assistance and dialogue through the framework of broader engagement with Somalia as a whole. US government officials interviewed by Human Rights Watch said they believe that there is a real possibility of deeper US engagement with Somaliland's government in the near term.

Some US Defense Department officials have pushed for closer US ties with Somaliland as part of a policy shift that would emphasize building stability in Somaliland and Puntland while at the same time scaling back state-building efforts in south/central Somalia and

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<sup>198</sup> In April 2009 donors meeting in Brussels pledged US\$250 million in new support for the TFG and AMISOM.

<sup>199</sup> This includes projects taking place only in Somaliland and rough estimates of the funds for projects to be implemented across the whole of Somalia, Puntland, and Somaliland that are likely to be spent in Somaliland. The total represents a significant portion of total EC assistance to the whole of Somalia, which stood at roughly €110.5 million during the same period. Human Rights Watch email correspondence with EC official, May 26, 2009; detailed figures on file with Human Rights Watch.

<sup>200</sup> Ibid.

<sup>201</sup> Human Rights Watch email correspondence with senior government official, May 30, 2009.

focusing instead on “containing” the violence and perceived security threats there.<sup>202</sup> But key policymakers outside of the Defense Department regard this approach—which essentially implies a radical break with current efforts at building stability in south/central Somalia—as both undesirable and practically unworkable.<sup>203</sup>

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<sup>202</sup> Human Rights Watch interviews with US government officials, Washington, DC, March and April 2009.

<sup>203</sup> For more on the Obama Administration’s concern about possible threats to US security rooted in Al Shabaab, see Greg Jaffe and Karen De Young, “Obama Team Mulls Aims of Somali Extremists,” *The Washington Post*, April 11, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/10/AR2009041003734.html> (accessed May 28, 2009).

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