

United Nations Nations Unies

OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR SOMALIA

REFERENCE: 2018/044

30 December 2018

Excellency,

I am writing to bring to your attention the implications under the United Nations Human Rights Due Diligence Policy (UN HRDDP) arising from the alleged involvement of UN-supported Somali security forces in the arrest of Mukhtar Robow on 13 December, the deaths of 15 civilians and injuries of at least two others on 13, 14 and 15 December 2018, and the arrest of approximately 300 people involved in the demonstrations on 13, 14 and 15 December, 254 of whom were held without being charged beyond 48 hours and released between 18 and 22 December 2018. Most of the persons detained were reportedly children.

Article 127 (1-b) of the Provisional Constitution of Somalia (2012) provides that *“security forces must respect the principles of the respect for the rule of law, democratic institutions and fundamental rights.”*

In addition, the successive UN Security Council Resolutions that set out the mandates of UNSOM and the African Union Mission in Somalia (AMISOM) direct that UN support to AMISOM and the Somali security sector must be provided in strict compliance with the HRDDP. The HRDDP requires UN entities providing support to Somali security forces to immediately investigate incidents that have implications under the policy and to bring allegations to the attention of concerned Somali authorities at the federal and regional level.

The UN provides support to the Somali Police Force (SPF) and the South West State (SWS) Police in Baidoa. The current arrangements for support include the payment of stipends to the SWS police and the SPF, and includes future support to the recruitment and training of as well as the provision of uniforms to 400 police recruits and the payment of stipends upon graduation; the construction of one police station and five police posts; upgrading the existing police training facility in Baidoa; the provision of 10 vehicles; police/community consultations; and training for station commanders. The UN delivers logistical support to 1,100 SNA members in Baidoa conducting joint operations with AMISOM, which comprise items including food, water and fuel, as well as communication support, field defence stores and medical evacuation when required. The UN also pays stipends to 453 members of the SNA 60 Division in Baidoa.

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His Excellency
Mr Mohamed Abukar Islow
Minister of Internal Security of the
Federal Republic of Somalia
Mogadishu

I received a joint letter from the European Union, Germany and the United Kingdom (annexed herewith) announcing the suspension of their support to the SWS police through the Joint Police Programme (JPP). The letter, dated 21 December 2018, cites concerns with the conduct of the police during the election period in SWS, and the statements made by the SWS Police Commissioner.

According to credible sources, Mukhtar Robow was arrested by the AMISOM Ethiopian National Defence Forces (ENDF) contingent in Baidoa on 13 December. It is understood that he was briefly detained in the AMISOM Sector 3 Headquarters and then handed over to Somali security forces. The Director of the National Intelligence and Security Agency (NISA) for Baidoa district and the SWS Police Commissioner were reportedly present when Mukhtar Robow was placed on a plane and flown to Mogadishu. He is now reportedly detained by NISA in an undisclosed location.

I take note of the press release issued by the Federal Ministry of Internal Security (MoIS) on 13 December, according to which the grounds for Mukhtar Robow's arrest appear to be that he did not honour the conditions of his rehabilitation and that he deployed arms and militia to create disorder in the country, especially in Baidoa. I also take note of the press release issued by AMISOM on 15 December 2018, which states that "*AMISOM had no part in the arrest of Mukhtar Robow and his subsequent transfer to Mogadishu.*"

If verified, the grounds for the arrest alleged in the MoIS press release may amount to serious crimes under Somali law. However, the Federal Attorney General has yet to file charges against Mukhtar Robow for these alleged crimes. Additionally, Mukhtar Robow has not yet appeared before a court, as required by the Criminal Procedure Code and Somalia's Provisional Constitution, which states that "*[e]very person who is arrested has the right to be brought before a competent court within 48 hours of the arrest*". Accordingly, the detention of Mukhtar Robow appears to be arbitrary.

Furthermore, the MoIS press release cited his failure to complete the terms of his rehabilitation among the grounds for his arrest. While Somalia has yet to enact an amnesty law, international law provides that amnesties must be established by law so as to avoid their arbitrary implementation and prevent impunity for the most serious human rights violations. The terms and conditions for the amnesty granted to Mukhtar Robow are unknown, and his arrest on the grounds that he has not completed the terms of his rehabilitation may amount to an arbitrary arrest.

Moreover, I received credible reports of at least 17 civilian casualties in the violence that occurred during demonstrations protesting the arrest of Mukhtar Robow held in Baidoa between 13 and 15 December 2018. Eleven civilians were reportedly killed on 13 December, three civilians (one woman, a child, and a member of the SWS Parliament) were killed and at least two others were injured on 14 December, and one civilian was killed on 15 December.

The SPF, the SWS police and the SWS Special Police Force were deployed in Baidoa on 13, 14 and 15 December 2018 and responded to the protests. AMISOM soldiers were reported to have been deployed during the three days. I also received reports that tyres were burnt, rocks were thrown, and that there were exchanges of

gunfire between the SPF, the SWS police, the SWS Special Police Force and unidentified individuals, some reportedly wearing civilian clothing and others dressed in uniforms. The civilian casualties may have resulted from crossfire during the exchange. Members of the SNA were also reported to have been present on 14 and 15 December 2018, but it remains unclear whether they were involved in the exchange of gunfire.

While international law does not prohibit the use of force by law enforcement agents, the State and its agents are obligated to ensure that the decision to use force complies with the principles of legality, precaution, necessity, proportionality and accountability. Additionally, an individual's right to peacefully assemble in a demonstration does not cease because of sporadic violence that may be committed by others.

It is unclear what precautionary measures the SPF, the SWS police, the SWS Special Police Force and the SNA had in place to prevent civilian casualties while dispersing protestors, whether the use of lethal force was necessary and proportional considering the circumstances during the demonstrations, and whether there was a system in place to regulate the gradual use of force, including up to lethal force.

The UN has also reviewed a videotaped interview of the SWS Police Commissioner allegedly given on 12 December 2018 and reportedly related to the 11 December protests in Baidoa, which were linked to a motion to impeach the President of the Federal Government of Somalia (FGS). In the video, the SWS police commissioner stated that *"I want to tell you that if you participate in a demonstration that we were not informed [about] and you support something bad, we will shoot you in the a** and the law allows for them [police] to kill you [demonstrators] ... no demonstration can take place in Baidoa without informing us [police]"* and that if demonstrators *"do good things, we [the police] will be good and if you [demonstrators] do bad deeds, we will respond with a bullet."*

While they were reportedly not made in the context of the protests of 13-15 December 2018, the statements of the SWS Police Commissioner may be perceived as justifying the use of lethal force regardless of the circumstances of a demonstration. His declarations therefore raise serious concerns over the security forces' compliance with the principles of legality, necessity, proportionality and precaution when using force.

As you know, the rights to life, to freedom of assembly, demonstration and protest and to personal security are guaranteed under Articles 4, 13, 15(2), and 20(1) of the Provisional Constitution of Somalia (2012). Arbitrary deprivation of life and deprivation of liberty and unreasonable restrictions on the exercise of the right to peaceful assembly are also prohibited under Articles 6(1), 9(1) and 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Somalia is a party.

Therefore, I would be grateful for your response to the following questions:

Regarding the arrest and detention of Mukhtar Robow:

- (a) What was the legal basis for the arrest of Mukhtar Robow in Baidoa?
- (b) Which Somali security forces conducted the arrest and what - if any - support was requested and/or provided by Ethiopian or AMISOM troops to carry out the arrest?
- (c) What is the legal framework under which Mukhtar Robow was to be granted amnesty and what are the conditions by which he was to abide in order to be considered successfully rehabilitated?
- (d) What steps have been taken to obtain an order to detain Mukhtar Robow beyond the 48 hours provided for in Article 39 of Somalia's Criminal Procedure Code?

Regarding the demonstrations of 13-15 December 2018:

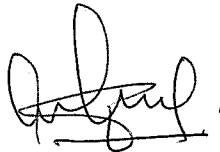
- a) What action has been taken to investigate the circumstances surrounding the deaths and injuries of civilians during the demonstrations of 13-15 December 2018?
- b) Which security forces were present during the demonstrations of 13-15 December 2018 and who had the overall command during the response to the demonstrations?
- c) What were the command and control arrangements for the SPF officers either permanently or temporarily deployed to Baidoa?
- d) What were the SPF command and control arrangements that governed SPF interactions with the SW State Police, the SWS Special Police Force police and the SNA soldiers deployed to Baidoa?
- e) What directives were given to the SPF in relation to the use of force when responding to demonstrations in Baidoa on 13, 14 and 15 December 2018?
- f) What measures were in place to prevent civilian casualties while ensuring crowd control at the demonstrations and how were those measures implemented by the SPF on the ground?
- g) What non-lethal equipment did the SPF deployed in Baidoa have at their disposal?
- h) What training in crowd control/public order did the SPF receive prior to their deployment to Baidoa?

If action has not yet been taken, I urge that the matter be thoroughly and promptly investigated and that appropriate action is taken to hold any perpetrators, including commanding officers, accountable.

My office is ready to provide you with the necessary support as you act on this urgent matter. I have also addressed a letter to the SWS Minister of Security communicating these allegations and seeking similar information, including on actions taken to investigate the allegations.

Furthermore, I have written to AMISOM and the Embassy of the Federal Democratic Republic of Ethiopia in Somalia communicating incidents related to the alleged involvement of AMISOM and Ethiopian troops in the events of 13-15 December 2018. Those letters requested information on what actions have been carried out to investigate their involvement in the allegations and to provide feedback on the findings of any inquiry that the AMISOM and Ethiopia should undertake in this regard.

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



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Nicholas Haysom
Special Representative of the Secretary-General and
Head of the United Nations Assistance Mission in Somalia

- cc: HE Mr Hassan Ali Mohamed, Minister of Defence, FGS
 HE Ms Deqa Yasin Hagi Yusuf, Minister for Women and Human Rights Development, FGS
 HE Mr Hassan Hussein Mohamed, Minister of Security, SWS
 HE Ms Nadifo Armiye Abdullahi, Minister of Women and Human Rights, SWS
 HE Mr Ibrahim Aden Ali, State Minister for the Presidency, SWS
 Gen Bashir Abdi Mohamed, Police Commissioner, FGS
 Gen Mahad Abdirahman Aadan, Police Commissioner, SWS
 Ms Lisa Filipetto, Head of the United Nations Support Office in Somalia (UNSOS)
 Mr Marco Carmignani, Director, Rule of Law & Security Institutions Group, UNSOM
 Mr George Conway, Resident Representative a.i., UNDP Somalia
 Mr Tim Lardner, Country Director, UNOPS Somalia
 Ms Kirsten Young, Chief of Human Rights and Protection Group, UNSOM
 Ms Dyane Epstein, Chief of Mission, IOM Somalia



EUROPEAN UNION
DELEGATION TO THE FEDERAL
REPUBLIC OF SOMALIA



Embassy
of the Federal Republic of Germany
Nairobi



21 December 2018

To:

Minister of Internal Security Mohamed Abukar Islow, Chair of the JPP Executive Board

CC:

Minister of Internal Security South West State Hassan Hussein Mohamed
Joint Police Programme Executive Board (JPPEB)

Dear Excellencies,

We, the donors of the Joint Police Programme (JPP), are writing to express our significant concerns with the conduct of the police during the elections period in South West State, and in particular the statements by the local police commissioner. We would very much welcome the opportunity to discuss these issues with you and the South West State authorities to understand your perspectives on police performance and conduct and to consider how we might work together to see improvements in the future.

Given the nature of these concerns, it is with regret we have taken the difficult decision to suspend our support to the police in South West State for the time being and have instructed UNOPS, as the JPP fund manager, accordingly. This suspension is limited to South West State and applies to the use of our funds for both on-going stipends payments and to the preparations for the recruitment, vetting and training of the additional 400 South West State police that were the subject of a recently approved JPP work request. We confirm that JPP funds to support the federal police and other state police services will continue to be available.

To support us to move forward swiftly in the positive and collective spirit that has underpinned our partnership on policing to date, we would like to propose that a JPP Executive Board Meeting be convened the week beginning 7 January to discuss the following linked issues:

- How to improve police conduct and respect for human rights;
- How to ensure effective police accountability – including internal discipline;
- How to develop effective and appropriate leadership of the police;
- How to establish effective and clear procedures for the deployment of the Federal Police (Somalia Police Force) alongside and in support of the state police – including establishing clear lines of accountability.

Following the outcome of these discussions and an agreement on next steps, it is our sincere hope that JPP support to South West State can resume again quickly.

We would like to take this opportunity to underline our shared commitment to supporting improved policing in Somalia as a key enabler for improved security, stability and

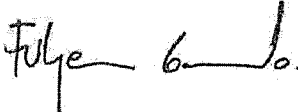
development in the country. Ensuring we work together to develop a police that is able, acceptable, accountable and affordable and delivers policing services with respect for human rights thereby helping build trust and confidence between state and citizens is, we believe, fundamental to these efforts. A strong commitment by all on the above raised issues will be essential to allow for resumed support to the police in South West State through the JPP.

Yours faithfully,

David Concar
UK Ambassador to Somalia



Fulgencio Garrido Ruiz
EU Delegation to Somalia Chargé d'Affaires a.i.



Annett Günther
German Ambassador to Somalia

