



ARTICLE 19 Individual Submission to the Universal Periodic Review of Somalia

**For consideration at the 24th session of the
UPR Working Group to be held in January/February 2016**

Executive summary

ARTICLE 19 welcomes the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of Somalia. This submission focuses on Somalia's compliance with its obligations under international human rights law to protect and promote the right to freedom of expression and information, with a focus on the legal framework and impunity for attacks on journalists. The submission considers the situations in Federal Somalia, Somaliland, and Puntland separately and concentrates on the following specific areas:

- Laws restricting freedom of expression
- Attacks against journalists and media workers
- Freedom of expression in Somaliland
- Freedom of expression in Puntland

ARTICLE 19 notes that little progress has been made to implement recommendations to which Somalia committed relating to freedom of expression since its first UPR, held in May 2011.

Laws restricting freedom of expression

During the previous UPR, Canada recommended that Somalia finalise the Federal Constitution by the end of 2011. Somalia committed to guarantee freedom of expression and protection of journalists and human rights defenders in accordance with the transitional federal charter. While there have been some positive reforms with the adoption of the Constitution, there remains a restrictive environment for freedom of expression.

Constitution

ARTICLE 19 welcomes the adoption of the August 2012 Constitution, including the protection it affords to the right to freedom of expression and opinion under Article 18, and references it makes to media freedom.

Draft National Media Law

During the previous UPR, Spain, Belgium, and the USA made recommendations to: guarantee the practice of freedom of expression and of the press; put an end to all forms of media censorship; and uphold freedom of expression in all cases, respectively.

The enactment of a National Media Law in order to implement Article 18 of the Constitution has stalled. A proposed law, approved by Cabinet on 1 September 2014, has not been submitted to parliament despite numerous promises by the Federal Government to do so.

Although the draft National Media Law has some positive elements, such as guarantees for media freedom and safeguards for transparency of media ownership, it violates international human rights law on freedom of expression, particularly Article 19 of the International Covenant on Civil and Political Rights, and Article 9 of the African Charter on Human and Peoples' Rights. The draft Law reinforces state control over the media by allowing censorship of state media, and giving powers to the Ministry of Information to authorise private media, and give permission for the operation of foreign media. Specific Articles of concern in terms of freedom of expression standards within the draft Law are as follows:

- Article 3.4 provides for punitive penalties ranging from approximately \$5000 USD to \$10,000 USD for media houses and/or journalists found propagating “falsification”, “incitement or hatred”, “baseless propaganda” and “spreading extremist ideologies”. These criminal charges are framed too broadly, and could be abused to restrict legitimate expression.
- Article 6 establishes the National Media Council (NMC). However, membership of the Council is dominated by members of the Ministry of Information, severely jeopardising its independence.
- Article 15 specifies that the Ministry of Information and the National Media Council shall set a code of ethics based on respect for “Islamic religion” and “Somalia's good tradition”. However, any code of ethics should be voluntary, and developed by the media themselves without interference from the government.
- Article 19 prohibits dissemination of “false news” or “propaganda” against the dignity of the citizen, individuals, organisations or government. While the penalties are not criminal, and are subject to resolution by the NMC, the prohibitions are vague and subjective, and are likely to have a chilling effect on the media.
- Upon enactment of the law, all media organizations including those already established must register with the Ministry of Information and pay an unspecified annual license fee. This opens the door for the Ministry to politicize the issuance of licenses and deny any licenses to media house that the Ministry may deem to be critical of the government.

While the importance of having a media law cannot be over emphasised, the current draft does not offer sufficient safeguards for protecting freedom of expression and media freedom.

Penal Code

There is an urgent need to reform the Somali Penal Code, in particular to:

- repeal Article 220, which criminalises offense against the honour and prestige of the Head of State;
- repeal Article 328, which criminalises the publication or dissemination of false, exaggerated or misleading information likely to disturb public order.

Attacks against journalists and media workers

More than two decades of civil war in Somalia have created extreme challenges for the media, with the country remaining one of the deadliest for journalists in the world. Since 2011, at least 35 media professionals have been killed in Somalia and only three cases have been held to account so far at the Federal and regional levels.

During the first UPR, Austria, Canada, Denmark, Indonesia, Switzerland, and the Netherlands all made recommendations in direct relation to the protection of journalists and media workers.

Journalists are routinely harassed in the course of their work, arbitrarily arrested and detained by Somali security forces and third parties. The high number of murdered journalists, complete lack of

convictions for most of these murders, and continued harassment has led to many media workers and journalists fleeing the country. Self-censorship is rife due to the high levels of impunity.

Killings and attacks:

- On 30 April 2015, unknown gunmen shot and killed Radio Baidoa producer, Daud Ali Omar, and his pregnant wife, Hawa Abdi Adan, in the town of Baidoa.
- On 12 May 2015, Radio Barkulan reporter, Nimo Hassan, narrowly escaped death when two gunmen shot the Tuk-Tuk in which she was travelling, in Mogadishu Waberi district.
- On 10 April 2015, armed gunmen, believed to be Al-Shabaab members, shot at Farhan Saleban Dahir five times near Casa Popolare, known as KPP, in Hodan district. Farhan Saleban Dahir, a young photographer at the state-run radio Mogadishu and SNTV, survived the attack. The attackers fled the scene immediately.
- On 7 September 2012, Al-Shabaab claimed responsibility for the suicide bombing of The Village, a Mogadishu restaurant frequented by journalists and politicians. Liban Ali Nur of Somali National TV, Abdisatar Daher Sabriye of Radio Mogadishu, and Abdirahman Yasin Ali of Radio Hamar (Voice of Democracy) were all killed, and at least four other journalists were injured.
- On 8 September 2012, Hassan Yusuf Absuge, a reporter and producer for the private Radio Maanta, was shot in the head three times near a high school in Yaqshid District in Mogadishu. The unidentified armed assailants fled before the police arrived at the scene.

Arbitrary detentions

- On 6 April 2015, Somali Police released Abdifatah Hassan Ahmed, a blind journalist working with Radio Goobjoog, after detaining him for six days without charge.
- On 3 January 2015, Mohamed Abdiwahab Abdullahi, Mohamed Kafi Sheik Abukar and Mohamed Abdi Ali, journalists with Radio Risaala, were arrested after broadcasting a story on a suspected Ebola case in Lower Shabelle. They were released two days later without charge.
- On 3 September 2014, Somali Independent Media Houses Association (SIMHA) Chairman and Director of Dalsan Radio, Hassan Ali Gesey, and staff member Abukar Moheydin Hashara were arrested by the Somali intelligence agency in Mogadishu. Their arrests were linked to a press statement by SIMHA condemning an order issued by the Ministry of Interior prohibiting the media from covering any issues related to Al Shabaab. They were later released without charge.
- On 15 August 2014, Somali security forces raided and shut down Radio Shabelle and Sky FM Radio in Mogadishu and arrested 19 journalists and staff working for the two stations. Most journalists were later released except radio station owner Abdimalik Yusuf Mohamud, Sky FM director Mohamud Mohamed Dahir, and Shabelle deputy news editor Ahmed Abdi Hassan. They were later charged with inciting violence. Journalists who visited those in custody reported that the detained journalists had been tortured. The stations resumed broadcasting on 19 August 2014.
- On 17 August 2014, 11 journalists who were attending a press conference organized by opposition leader Ali Mohamed Nuh in a Mogadishu hotel, were taken into custody for more than three hours before being released and subsequently ordered to report to the Somali Intelligence headquarters every Wednesday. No crime was identified and it appears that the motivation for their detention was their coverage of the opposition press conference.

Blocking radio and Internet communications

Al-Shabaab and other armed militias continues to place unlawful and arbitrary limits on freedom of expression, including by blocking radio signals and prohibiting listening to certain radio stations and news.

- On 8 January 2014, Al-Shabaab banned use of the Internet in the areas of Somalia that it controls. The militia group gave Internet Service Providers 15 days to terminate their service and warned of sanctions for non-compliance.
- On 28 October 2013, Al Shabaab banned television viewing in the coastal town of Barawe, in the Lower Shabelle region of southern Somalia. The group gave the inhabitants of Barawe five days to hand in their TV sets and satellite dishes at the Barawe municipal office for collection by Al-Shabaab representatives.

Freedom of expression in Somaliland

Somaliland has long agitated for independence from the larger Somalia federal state. Its Constitution was approved by referendum and adopted on 31 May 2001. Article 32 of the Constitution provides the “freedom of public demonstration, expression of opinion, press and other media.”

Despite Constitutional guarantees for freedom of expression, defamation is a criminal offence in Somaliland, and is routinely used as the basis to harass, arbitrarily detain, and convict journalists.

- On 1 April 2015, Ahmed Said of Kalsan TV was arrested by Somaliland police after he reported on corruption and nepotism in the Ministry of Finance and the Berbera port. He was released five days later without charge.
- On 8 March 2015, Mubaarik Cismaan Siciid of Star TV was arrested after the Governor of Berbera accused him of defamation and spreading false information. He was released the same day without charge.
- On 25 June 2014, Yusuf Abdi Gabobe and Ahmed Ali Igeh, chairman and chief editor of the Haatuf Media Network, respectively, were each jailed for three years and fined 50 Million Somaliland Shillings (approximately \$8,000USD) after the Hargeisa regional court found them guilty of defamation and spreading false information. The court also revoked the license of the Haatuf media network which publishes *Haatuf* and *Somaliland Times*. The journalists were released on presidential pardon but the media house remains closed.
- On 3 February 2014, Universal TV was banned from Somaliland after it aired a satirical program with a performance of an impersonation of the president of Somaliland. The ban was lifted in November 2014.

Freedom of expression in Puntland

The Puntland State of Somalia considers itself part of the federal structure of Somalia and adopted a new Constitution on 18 April 2012, which the High Court approved on 22 April 2012. Article 14 protects “freedom of thought”, and is articulated in a manner to also protect the right to freedom of expression and information.

In spite of Constitutional protections, journalists face arbitrary arrest, convictions, closures of media outlets and blocking of online news portals.

- On 21 January 2015, Puntland authorities arrested Hussein Yasin, editor of *Shacabkamedia* website in the administration’s capital in Garowe. Puntland authorities did not comment on the

reasons behind the arrest, but many journalists believe he was arrested for his critical reporting against the administration. He was later released shortly afterwards.

- On 10 December 2014, four websites, *Puntlandnow*, *Puntlandtoday*, *Galgalanews* and *Puntlander*, were blocked by Golis Telecom Somalia, Puntland's biggest telecom company.
- On 7 December 2014, Police chief Ahmed Abdullahi Samatar, accompanied by soldiers, stormed into Radio Garowe, a station based in Puntland's capital, Garowe, and cut short the news programme presented by Ali Abdi Du'alle. Ali Abdi Du'alle was threatened with arrest, after he broadcast a report about a protest against a government tax.
- In January 2013, the Somaliland government closed the headquarters of Horn Cable TV and detained 22 reporters who were demonstrating against the closure of the network. They were released after the Somaliland Journalists Association (SOLJA) intervened.

Recommendations

In light of these concerns, ARTICLE 19 calls upon Member States to put forward clear and strong recommendations to the government of Somalia to:

- End impunity for murders, violence and other attacks against journalists and media workers by ensuring impartial, speedy and effective investigations, to bring perpetrators to justice, and to ensure that victims and their families have access to appropriate remedies;
- Prevent and protect against attacks and violence against journalists and media workers through impartial, speedy and effective investigations, to bring perpetrators to justice for attacks against journalists and media workers;
- Cease the abuse of the legal framework to harass, intimidate and arbitrarily detain journalists and media workers, and release all those currently in custody;
- Reform the Penal Code to bring it in line with international standards on freedom of expression, including by repealing criminal defamation, libel, insult, and offences that protect the honour of the State and its officials, and in particular repeal:
 - Article 220, which criminalises offense against the honour and prestige of the Head of State; and
 - Article 328, which criminalises the publication or dissemination of false, exaggerated or misleading information likely to disturb public order;
- Ensure that the Somalia National Media Law protects media freedom, removes State control over media content, guarantees the independence of the National Media Council, and that any licensing process for media organisations or outlets is fully independent and in line with international standards;
- Extend a standing invitation to the UN Special Rapporteur on the promotion and protection of the right to freedom of expression to allow for an independent review of freedom of expression and to assist in guiding a reform process;
- Ensure all stakeholders, including a breadth of media and independent civil society, are meaningfully included in full and proper consultation processes when reforming or introducing legislation that would impact on freedom of expression or the enabling environment for civil society;
- Ensure collaboration with all stakeholders, including a breadth of media and independent civil society, when developing legislation or policies to address issues of security and violence against journalists, media workers, human rights defenders or civil society.