



**Joint Submission by Federation of Somali Trade Unions (FESTU) and African Regional Organisation of International Trade Union Confederation (ITUC-Africa)**

**For consideration at the 24<sup>th</sup> Session to be held in October/November 2015**

*Universal Periodic Review for Somalia*

**a) EXECUTIVE SUMMARY**

1. The Federation of Somali Trade Unions (FESTU) is the representative voice of trade unions in Somalia. There are 10 unions affiliated to FESTU, with a total membership of 130,400 of whom 29800 are dues paying members. In addition FESTU is a member of International Trade Unions Confederation (ITUC) and African Regional Organisation of International Trade Union Confederation (ITUC-Africa), which represents over 18 million workers in 49 African countries.
2. ITUC-Africa and FESTU believe that freedoms of Association, Assembly and Movement remain severely restricted in the Federal Republic of Somalia. Trade union leaders were intimidated, arrested, and threatened to death and even barred from traveling for legitimate union work.
3. The Federal Government of Somalia claims to be committed to human & trade union rights and to recognize the importance of the right to freedom of association for the socio-economic development of Somalia. However, both its practices and laws contradict these promises and perpetuate the systematic violation of the rights of Somali union members and leaders.

**b) FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING**

1. The Federal Government of Somalia is a party to several UN and regional human rights instruments, including the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the African Charter on Human and People's Rights. On 20 March 2014, the government of Somalia ratified ILO Convention 87 on Freedom of Association and Protection of the Right to Organise (1948) and ILO Convention 98 on the Right to Organise and Collective Bargaining (1949). Article 16 of provisional constitution of the Federal Republic of Somalia sufficiently guarantees freedom of association. Article 24 of provisional constitution of the Federal Republic of Somalia also guarantees on labour relations including the right to strike and collective bargaining.
2. However, public authorities frequently carried out acts of harassment, threats and intimidations against trade unionists. The facts below illustrate the violations of the right to freedom of association of Somali workers.
3. On 13 November 2011, armed police raided offices of the National Union of Somali Journalists (NUSOJ), an affiliate of FESTU, and arrested NUSOJ organizing secretary Abdiqani Sheik Mohamed. The police entered in the union's office forcefully, violently and without any warrant. He was interrogated for about 90 minutes at the Criminal Investigations Directorate (CID) and released on the same day. On 26 November 2011, he was again summoned to the CID and interrogated concerning a press release issued by the union about the raid of the union office. Furthermore, he was asked a series of questions about the management and finances of the union and the registration documents. Abdiqani Sheik Mohamed was released

on the same day but was warned that police would continue criminal investigations against the union without specifying any grounds.

4. The Federal Government of Somalia has not taken adequate measures to ensure that workers & their trade unions can exercise their rights in a climate that is free from violence, pressure or threats of any kind against union members. From 2 to 19 September 2013, death threats and intimidation against executive committee members of FESTU increased rapidly. Dates and times of the threats, names of targeted trade union officials and messages delivered to the union leaders were submitted to the CID, which failed to investigate the threats. FESTU believes that hired militias who use contract killings in the capital city were hired as mercenaries.
5. On 28 September 2013, about three hours ahead of a meeting scheduled by FESTU with ten affiliated unions about the increase of intimidation and death threats, a bomb buried at the entrance of FESTU's office was discovered. This was reported to police who came & removed the bomb but made no effort to investigate who may have planted it.
6. On 12 December 2013, police dispersed a meeting of Somali Maritime Workers Union who were discussing about predicaments of workers at Mogadishu Sea Port. The police alleged that they were acting on the orders of Ministry of Ports and the union was accused of using the meeting to entice port workers to carry out an illegal strike.
7. In February 2014, the Ministry of Labour nullified four (4) collective bargaining agreements entered by Somali Telecommunication Workers Union (STWU) and Somali Transport Workers Union (STWU). The Ministry cited that the agreements were not appropriate to the conditions in which employers are currently working and are contrary to economic growth of the country. Based on these nullifications, the employers refused to honour collectively bargained agreements. It is believed that employers used the Ministry to invalidate legally entered collective agreements.
8. In November 2014, the Ministry of Information stopped a two-day conference organized by National Union of Somali Journalists (NUSOJ) to mark the international day to end impunity on crimes against journalists. Just as participants reported and began registering for the conference, the Minister of Information Mustaf Sheikh Ali Dhuhulow, through the National Security Agency, ordered an immediate halt to the activities, citing the presence of "foreigners" at the activities as a security threat and that the meeting had not been approved by the Ministry of Information.
9. The Ministry of Labour & Social Affairs regularly interferes in internal union affairs. It has become a habit within the Ministry for a letter to be written and circulated widely; claiming a trade union leader has been removed from his position and impose puppet persons as "union leaders". Some of these letters make derogatory statements meant to discredit trade unionists.
10. Workers have been brutally targeted by Al-Shabaab terrorists group. Farm workers, buss drivers & conductors, hotel workers and journalists were among workers killed during this UPR period. Killers who committed these heinous crimes enjoy impunity as government failed to arrest or prosecute them.

#### **c) FREEDOM OF MOVEMENT**

11. The freedom of movement of legally and democratically representatives of Somali trade unions who wanted to carry out their independent and legitimate trade union work was restricted by Somali authorities.

12. On 11 December 2013, Hassan Mohamed Jama, General Secretary of Somali Nurse Workers Union was barred from leaving Mogadishu Airport to attend a workshop in Djibouti because immigration officers alleged that his union officials and Ministry of Health asked them to stop Jama from leaving until national congress of the union takes place. Following investigation, it was discovered that it wasn't his union officials who requested but officials of the Ministry wanted to frustrate the union leader.
13. Omar Faruk Osman, Secretary General of NUSOJ and the General Secretary of FESTU, had been invited by the Ministry of Labour and Social Affairs to attend the Arab Labour Conference in Cairo as a worker representative. However, Omar Faruk Osman was stopped by immigration officials when he attempted to board the plane to Cairo on 12 September 2014. He was told that the office of the Attorney General had issued an arrest warrant against him but could not be provided with the written proof. Subsequently, Mr. Osman went to the office of the Attorney General to find out why there was an arrest warrant against him. The attorney general office denied issuing an arrest warrant and informed the immigration department (in writing on 13 September 2014 with reference number 017/GIG/2014) that Osman was free to travel.

**d) FREEDOM OF ASSEMBLY**

14. When the Federal Government was formed in 2013, it imposed an order that no public meeting can take place without written approval of the Ministry of Interior & National Security (now Ministry of Internal Security). Several public meetings, including some meant to criticise government actions, were disbanded by security forces. Holding a public meeting was subjected to a political decision. Now this order was changed and any public gathering must get approval from district commissioner where the event will be held instead of Ministry of Internal Security.

**e) ACCEPTABLE CONDITIONS OF WORK**

15. The absence of an appropriate minimum wage continues to be a concern. The lack of a new minimum wage impedes the attainment of a decent standard of living for workers. Trade unions have been demanding the government to set minimum wage to protect workers. Given concerns about the potential exploitation of local workers by international corporations seeking low-wage labour, it should be a government priority to set a minimum wage that ensures workers can earn a decent living. Health and safety conditions in many workplaces are also an on-going challenge to the protection of human rights. Respect for rights to rest, leisure and reasonable limitations of working hours and the entitlement to maternity leave also remain challenges in the workplaces. Discrimination on the grounds of clan, gender and disability in all aspects of employment is common. Women and several groups face discrimination due to societal stigma and poor law enforcement.

**f) CHILD LABOUR**

16. Somalia ratified in this year Convention on the Rights of the Child (CRC). On 20 March 2014, the federal government also ratified ILO convention on the Worst Forms of Child Labour Convention. Child labour, including in its worst forms, is a problem in Somalia. Children in main cities are usually street vendors, car-washers, and domestic servants. Evidence shows that many girls involved in domestic servitude are not properly paid, if paid at all. Children domestic servants also work for long hours and are particularly vulnerable to extreme forms of exploitation. Many of orphaned children lead their own household and base their livelihoods on an informal enterprise, usually in street vending. Other orphaned children are reported to fall victims of organised crime and are coerced into armed activities.

## **g) LEGAL OBSTACLES**

17. The legal framework of Somalia is extremely inadequate when it comes to the guarantee of the right to freedom of association. In fact, the labour law imposes serious obstacles on trade unions. The right to freedom of association is stipulation in the Provisional Constitution of Federal Republic of Somalia and in Part II of the Labour Code of 1972 (LC) which imposes limitations on the freedom of choice of trade union structure, the right to draw up their constitutions and rules, the right to elect representatives in full freedom, the right to freely organize activities and formulate programmes, the subjects covered by collective bargaining, excessive requirements for the establishment of unions and allows for the dissolution and suspension of trade unions.
18. ***Freedom of choice of trade union structure:*** Somali legislation infringes workers' right to freely determine the structure and composition of their union. Workers should have the right to form unions consisting of workers from different workplaces and cities. However, article 10 LC states that workers may establish unions "in the same occupation, trade or industry." Article 19 establishes that trade unions may appoint committees in accordance with the provisions of their constitutions or rules "be those who are actually working in the same occupation or trade or in related occupations or trades." These provisions imply that workers employed in different occupations and sectors may not establish and join the same union and therefore impedes on the right of workers to decide on the composition of their union freely.
19. ***Excessive requirements for the establishment of unions:*** The minimum legal requirement for the number of founding members of a union is excessively high and poses a considerable hindrance to the unionization of workers. Article 10 LC states that a union shall have a minimum of 50 members. At the same time, Somalia's economy is by and large informal and the majority of the population is engaged in small-scale businesses. Thus, large parts of the workforce are unable to meet this requirement given the structure of the Somali labour market and are therefore excluded from the right to freedom of association at their workplace.
20. ***Internal administration of unions:*** Legal provisions allow for interference in the internal administration of unions and exceed the obligation to submit periodic reports to public authorities. Article 13 LC requires union rules to include a clause that would allow the inspection of the books and names of members by every person having an interest in its funds. This provision leaves a wide discretion to public authorities to carry out inspections and request information at any time constituting a risk to for the guarantee of the right to organize their internal administrations without any constraints.
21. ***Right to freely organize activities and to formulate programmes:*** The law allows the government to interfere in the functions of trade unions. Article 17 specifically states that the functions of unions shall include, "facilitating the normal performance of the State enterprises and participation of workers in the planning and management of such enterprises; and ensuring increase of production and labour discipline." This provision limits workers' right to freely organize activities as it imposes certain goals which can prevent unions from defending the interests of their members by obliging them to reinforce the country's political and economic systems.
22. ***Dissolution of trade unions:*** Article 27 states that the government has the power to dissolve any trade union the activities of which are considered to be detrimental to the interests of the workers or against the spirit of the revolution. This does not only mean that it is the government that has the competence to dissolve a union instead of an independent and impartial judicial body and that unions are deprived of their right of defence through due process of law. By making the existence of unions conditional on their level of conformity with the broad concept of "the spirit of the revolution," the legislation prevents the development of

free and independent trade unions that are able to challenge socio-economic policies without the threat of dissolution.

23. **Subjects covered by collective bargaining:** The legislation provides restrictions on the scope of issues that can be negotiated through collective bargaining. Article 32 (2) states that the contents of a collective labour agreement shall take into account the state's revolutionary social policy, the role of trade unions and the responsibility of workers for increasing in every possible way the national production and their participation in the planning and management of national economy. Article 33 (j) specifies that collective agreements shall specify measures promoting workers participation in the management of the undertaking. According to Article 42 (1) LC employment relationships governed by decisions of a public authority in accordance with law shall not be subject to regulation by collective labour agreement. The employment relationship can only be regulated through "special collective agreements" which are tripartite and it is the Ministry of Labour that has the right to take initiative and consult with workers and employers.

#### **h) RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

The following recommendations are made to the government of Somalia in relation to the above concerns:

1. Respect & uphold its obligations under the International Labour Organization particularly with respect to Conventions No. 87 and No. 98 on freedom of association and collective bargaining, in law and in practice.
2. Adopt measures to ensure that Ministry of Labour and other government authorities do not interfere in internal trade union affairs and prevent abuses of the right to freedom of organization, the right to freedom of movement and the right to freedom of assembly.
3. Amend the labour code of Somalia (1972) in consultation with the social partners to guarantee that it provides adequate protection for the right to freedom of association and the existence & operation of free, independent and democratic trade unions.
4. Carry out credible, immediate and trustable investigations on attacks against trade unionists and workers, and punish those responsible.
5. Work to set a minimum wage that will ensure protection against the exploitation of workers.
6. Take immediate measures to end discrimination against women in society as a whole, in particular in access to employment, vocational training and the enjoyment of all social, economic and cultural rights, and adopt positive measures to encourage the involvement of women in the labour market.
7. Enhance protections for groups whose rights are particularly affected, such as child labourers and Somali migrant workers in foreign countries.

**ENDS.**