



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

Submission to the United Nations Universal Periodic Review

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Somalia

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Joint Submission by:

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and

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1. Introduction

1.1 DefendDefenders (The East and Horn of Africa Human Rights Defenders Project) is a regional civil society organisation (CSO) registered and based in Uganda. Established in 2005, DefendDefenders seeks to strengthen the work of human rights defenders (HRDs) throughout the East and Horn of Africa sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to defend human rights effectively. DefendDefenders focuses its work on 11 countries, including Somalia.

1.2 The National Coalition of Human Rights Defenders - Somalia (NCHRD-S) was founded in 2015 to provide a strong platform to protect HRDs including those working in remote areas who often lack access to protection mechanisms and support systems.

1.3 In this submission, DefendDefenders and NCHRD-S examine the Federal Government of Somalia's human rights record since its second-cycle Universal Periodic Review (UPR) in 2016. Specifically, we assess the government's fulfilment of the right to freedom of opinion and expression and the situation of HRDs, including unwarranted restrictions they face. To this end, we analyse Somalia's implementation of recommendations received relating to these issues and provide specific, action-orientated follow-up recommendations.

1.5 During its second UPR, in 2016, the Government of Somalia fully accepted 117 recommendations and noted 53.ⁱ However, an evaluation of legal resources and human rights documentation in subsequent sections illustrate that Somalia falls behind on its commitment to implement the recommendations it accepted. The slow progress of implementation could among other factors be attributed to the volatile security situation. Armed conflict between the government forces and non-state actors, including terrorist organisation Al-Shabaab, coupled with interclan violence put the lives of Somalis at risk. In 2019, the United Nations recorded 1,459 civilian casualties, a slight drop from 1,518 recorded in 2018.ⁱⁱ

1.6 The COVID-19 pandemic has had a profound impact on the realisation of human rights globally. In response to the pandemic, Somalia launched a national COVID-19 preparedness and response plan. While acknowledging several plans undertaken with the support of the United Nations (UN) and other relevant stakeholders to tackle transmission of the virus and the impact of the pandemic, it is noteworthy that some measures restricted the enjoyment of human rights.ⁱⁱⁱ

1.7 As a result of these issues, civic space in Somalia is currently classified as 'Repressed' by the CIVICUS Monitor.^{iv}

- Section 2 of this submission highlights concerns related to freedom of opinion and expression, including attacks against journalists and media houses.
- Section 3 examines intimidation, threats and attacks on HRDs.
- Section 4 contains recommendations to the Federal Government of Somalia to address the concerns identified.

An annex lists the implementation of recommendations received by Somalia during the 2nd UPR cycle that are referenced in this submission.

2. Freedom of opinion and expression and attacks against journalists and media houses

2.1 During its second UPR, the government accepted^v 16 recommendations related to freedom of opinion and expression. While acknowledging the slight improvement in Somalia's ranking in the World Press Freedom Index, Somalia remains one of the most dangerous places to be a journalist. Journalists face targeted attacks from both state and non-state actors, including Al Shabaab. In 2020, Somalia is ranked 163rd out of 180 countries, an improvement from 164th in 2019 and 168th in 2018.^{vi} The rating is based on, among others, data on abuses and acts of violence against journalists. This submission outlines several highly concerning examples that illustrate a pattern of systematic abuses and threats faced by journalists in the exercise of their right to free expression.

2.2 According to Amnesty International, the increasingly hostile environment in Somalia has left journalists living in fear of both the government and militant groups. At least eight journalists have been killed since President Mohamed Abdullahi Mohamed "Farmaajo" came to power in 2017, while others have survived assassination attempts or been targeted for arrests and censorship.^{vii}

2.3 Somalia agreed to ensure that security forces do not arbitrarily harass and arrest journalists.^{viii} Although we note the progress made, including the *in absentia* sentencing of a police officer for the murder of a journalist, the release of Abdiwahab Nur, Editor in Chief of Mogadishu-based Radio Hiigsi,^x and the appointment of a special prosecutor in charge of investigations into the killing of journalists, these reforms are not systemic.^x Cases of harassment and arbitrary arrests and detentions continue to be reported. On 24 March 2019, two soldiers were arrested and charged with torturing and intimidating two reporters who were interviewing passers-by in the streets of Mogadishu.^{xi} In his 2019 report to the UN Human Rights Council, the UN Independent Expert (IE) reported that journalists had lost confidence in the police and justice system for failure to investigate cases of police harassment, yet the system extensively prosecutes them for "defamation."^{xii}

2.4 The government agreed to ensure the right to freedom of expression in the provisional Constitution and in federal and regional media legislation.^{xiii} Luxembourg also urged Somalia to ensure that the Media Law is in line with international standards.^{xiv} Although the right to freedom of opinion and expression is enshrined in the Provisional Federal Constitution of 2012 and the 2016 Media Law, the August 2020 decision of the president to approve amendments to the latter contradict the government's commitment to respect the right to free expression. The amendments contain contentious provisions on criminal penalties that are ambiguous and prone to misinterpretation and abuse by law enforcement officers. Further, the law grants the Minister of Information excessive powers over the Media Council, which is an independent oversight body set up to oversee implementation of the media policy.^{xv} The IE also expressed concern over the unclear definition of "fake news" and "incitement of tribalism," which could arbitrarily be interpreted to stifle independent voices.^{xvi}

2.5 The 1964 Penal Code, which is routinely used to suppress media freedom and restrict free expression, is yet to be amended, despite President Farmaajo's announcement of reforms,

made on 3 May 2020 during celebrations to mark World Press Freedom Day. On 14 April 2020, the Somali police force arrested a journalist working for a private radio and television station following posts on his social media criticising the government's response to the COVID-19 pandemic. He was charged with "insulting a political, administrative or judicial body" and "publication of false news" offences found in the Penal code. He was released on bail four days later and appeared in court on 7 July.^{xvii}

2.6 Additionally, Somalia supported a recommendation to effectively address the issue of murders and harassment of journalists, media workers and professionals by eliminating the prevalence of impunity and establishing effective prosecutions.^{xviii} It further agreed to secure the defence of journalists and media personnel against attacks and prosecute the perpetrators.^{xix} On the contrary, the government has made minimal efforts to ensure the safety and protection of journalists. According to the IE, civilians, including HRDs and journalists, continue to be the targets of assassinations by both Al-Shabaab and state agencies. The Federation of Somali Journalists reports that between May 2019 and May 2020, four journalists were killed, 47 were physically tortured or harassed, seven were wounded and 64 were arbitrarily arrested across Somalia.^{xx}

2.7 On 14 August 2019, a cameraman working for the Somali National Army Radio was among several individuals killed in a car bomb attack by Al-Shabaab targeting the army base in Awdheegle.^{xxi} On 16 February 2020, a freelance journalist was killed by unidentified armed men in the town of Afgooye, Shabelle Hoose Region, after having allegedly received numerous threats.^{xxii} On 5 May, a reporter working with Kalsan TV was reportedly stabbed to death on his way home while trying to separate a couple who appeared to be fighting.^{xxiii} The perpetrators involved in the above cases are yet to be identified and lawfully prosecuted. According to Reporters Without Borders^{xxiv}, 51 journalists have been killed in Somalia in the past ten years – almost half the number of all journalists killed within the same period in all Sub-Saharan Africa.

2.8 Somalia agreed to ensure that the National Intelligence and Security Agency (NISA) refrains from detaining journalists, closing media outlets, confiscating media equipment and other law enforcement activities that are beyond its mandate. However, NISA continues to harass and intimidate journalists in the country. On 5 April 2020, it released a statement accusing renowned journalist and Al-Shabaab expert, Harun Maruf, of being "a threat to national security" and contemplated legal action against him.^{xxv} Additionally, the vague definition of what amounts to threats to "national security" aids the government's crackdown on free expression.

2.9 The 2019 Committee to Protect Journalists' Global Index on impunity^{xxvi} spotlights Somalia as the world's worst country for the fifth year in a row for condoning impunity for violations against journalists. This rating is contrary to Somalia's commitment to take measures to ensure that journalists exercise their profession freely and fight against impunity of the perpetrators of violence against them.^{xxvii}

2.10 Violations of the right to free expression have been reported in the fight against the spread of COVID-19 in Somalia. While the government acknowledged the crucial role of the media and classified it as an essential service in the fight against COVID-19, arrests and intimidation of journalists while on duty have been witnessed. On 20 March, Puntland police

arrested a journalist for seeking the views of the public on ways to prevent the spread of the virus.

3. Situation of human rights defenders

3.1 Under Somalia's second UPR, the government received three recommendations on the protection of HRDs, out of which it committed to implement only one.^{xxviii} It committed to ensure the protection of the rights of HRDs and that the perpetrators of violations against HRDs are brought to justice.^{xxix} However, as illustrated in this section, at the time of writing the government falls behind on implementation.

3.2 On 21 November 2019, prominent woman human rights defender (WHRD) Almaas Elman was hit by a stray bullet as she was travelling in a car inside the Halane compound in Mogadishu. She later succumbed to the injuries.^{xxx} Although the authorities launched an investigation into her killing, the perpetrators are yet to be brought to justice.

3.3 Women including WHRDs face multifaceted challenges ranging from representation and participation in public life, female genital mutilation (FGM), to sexual and gender-based violence (SGBV). This is despite the adoption of the 2019 Women's Charter for Somalia that provides a policy framework for advancing women's rights and promoting the political, economic and social development agenda for an inclusive society. Additionally, Somalia is yet to ratify the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women ("Maputo Protocol"), which would set standards for the protection of women.

4. Recommendations to the Federal Government of Somalia

Recognising that it may be necessary for the Government of Somalia to restrict the enjoyment of a number of human rights, including the rights to freedom of assembly and to freedom of movement, to curb the spread of COVID-19 and protect citizens, it must ensure that any restrictions are lawful, temporary, necessary, non-discriminatory, and proportionate. The restrictions should not be used to silent dissent. Against this background, DefendDefenders and NCHRD-S make the following recommendations:

4.1 Freedom of opinion and expression

1. Respect and promote the right to freedom of opinion and expression, including through public pronouncements at the highest level, and make clear that attacks against citizens peacefully exercising their rights are unacceptable and will result in consequences for the perpetrators;
2. Investigate attacks and harassment of journalists and media workers and ensure that the perpetrators are duly prosecuted and brought to justice in fair trials;
3. Establish a national protection mechanism to ensure the protection of journalists;
4. In line with President Farmaajo's May 2020 commitment, repeal Criminal Code provisions that curtail the rights to free expression, particularly of journalists and media workers;

5. Ensure that the rights of journalists and representatives of the media are protected during periods of elections and emergencies, in accordance with international standards;
6. Ensure that all the journalists still in detention are immediately and unconditionally released. In line with the authoritative interpretation of the UN Human Rights Committee, regarding defamation, Somalia should consider its decriminalization and make clear that, in any case, imprisonment is never an appropriate penalty;^{xxxii} and
7. Amend the restrictive provisions of the 2016 Media Law and the Penal Code to bring them into line with international standards.

4.2 Situation of human rights defenders

1. Adopt a comprehensive law on the protection of human rights defenders and ensure that the situation of women human rights defenders, including the specific risks and threats they face, is considered through gender-responsive strategies;
2. Thoroughly and impartially investigate all threats and attacks against HRDs and ensure that the perpetrators are duly prosecuted and brought to justice in fair trials;
3. Unconditionally release all HRDs and civil society activists arrested and detained based on their legitimate human rights activities and drop all charges against them; and
4. Ratify the Convention on Elimination of all forms of Discrimination Against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.

Annex: Assessment of Somalia’s implementation of specific recommendations under the second cycle

Recommendation – Theme	Response	Status Source (paragraph)
Freedom of opinion and expression		
135.70 Ensure that security forces do not arbitrarily harass and arrest journalists or otherwise prevent the exercise of freedom of expression (United States of America)	Supported	Not implemented 2.3
136.103 Provide greater freedom to journalism (Iraq);	Supported	Not implemented
136.44 Ensure the right to freedom of expression in the soon to be reviewed provisional constitution and in its federal and regional media legislation (Finland);	Supported	Not implemented 2.3
136.106 Take concrete measures ensuring the freedom of expression, independence of the media, protection of journalists, and adopt legislative and other measures to prevent censorship (Czech Republic);	Supported	Not implemented 2.5
136.109 Ensure that the new Media Law is in line with international standards (Luxembourg);	Supported	Not implemented 2.4
136.110 Review the media law of 28 December 2015 to ensure compliance with international standards on freedom of expression (Denmark);	Supported	Not implemented 2.4
136.111 Adopt clear by-laws	Supported	Not implemented

and regulations to the new Media Law clarifying the general clauses for the benefit of the journalists instead of further reducing the space of free media (Germany);		2.5
136.112 Implement legislative instruments in a manner that ensures full freedom of expression, leading to active and genuine civil society participation in the electoral and state-building processes (United Kingdom of Great Britain and Northern Ireland);	Supported	Not implemented 2.5
136.107 Fully guarantee freedom of expression and the press, in particular by conducting credible and effective investigations into allegations of detentions, harassment and abuses against journalists in Somalia (Spain);	Supported	Not implemented 2.6
136.104 Put an end to the restrictions on freedom of expression, including arrest of journalists and human rights activists (Portugal);	Supported	Not implemented 2.1, 2.2
136.114 Ensure that the National Intelligence and Security Agency refrains from detaining journalists, closing media outlets, confiscating media equipment and other law enforcement activities which are beyond its mandate (Netherlands);	Supported	Not implemented 2.8
135.67 Carry out judicial investigations into the crimes against journalists (Belgium);	Supported	Not implemented 2.3, 2.7

135.68 Take measures to ensure that journalists exercise their profession freely and fight against impunity of the perpetrators of violence against them (France);	Supported	Not implemented 2.9
135.69 Address effectively the issue of murders and harassment of journalists, media workers and professionals, by eliminating the prevalence of impunity and establishing effective prosecution acts (Greece);	Supported	Not implemented 2.9
136.93 Ensure the prompt, impartial and effective investigation of all attacks and violence against journalists to bring the perpetrators to justice and provide remedies for the victims and their families and, to reform the Penal Code to bring it in line with international standards on freedom of expression (Latvia);	Supported	Not implemented 2.5, 2.3
136.108 Secure the defence of journalists, media personnel and media company owners against attacks and prosecute those responsible for such attempts, and adopt an information law (Estonia);	Supported	Not implemented 2.6, 2.9
Human rights defenders		
136.96 Ensure the protection of the human rights of journalists and human rights defenders and guarantee that perpetrators of violations against human	Supported	Not implemented 3.1, 3.2

rights defenders be brought to justice (Switzerland);		
136.95 Address widespread impunity — including for attacks against journalists, civil society and human rights defenders, women and LGBTI persons — by conducting timely and impartial investigations, investigating threats of violence, and prosecuting perpetrators (Canada);	Noted	Not implemented
136.105 Release all media workers and human rights defenders arrested and detained for their human rights activities and allow the reopening of closed media outlets	Noted	Not implemented

Endnotes:

ⁱ UPR Info: <https://www.upr-info.org/en/review/Somalia>

ⁱⁱ UN Somalia country report 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/UN-Country-Results-Report-2019.pdf>

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- ⁱⁱⁱ Report of the Independent Expert on the human rights situation in Somalia, UN Doc. A/HRC/45/52, <https://undocs.org/en/A/HRC/45/52>
- ^{iv} CIVICUS Monitor: Somalia, <https://monitor.civicus.org/country/somalia/>
- ^v UPR Info: <https://www.upr-info.org/en/review/Somalia>
- ^{vi} Reporters Without Borders (RSF): World Press Freedom Index, <https://rsf.org/en/ranking>
- ^{vii} The Guardian, “Wave of violence leaves journalists in Somalia 'under siege', says Amnesty,” 14 February 2020, <https://www.theguardian.com/global-development/2020/feb/14/wave-of-violence-leaves-journalists-in-somalia-under-siege-says-amnesty>; Committee to Protect Journalists, “Somali freelancer Abdiwali Ali Hassan killed in Lower Shabelle region,” 18 February 2020, <https://cpj.org/2020/02/somali-freelancer-abdiwali-ali-hassan-killed->
- ^{viii} A/HRC/32/12, para 135 (United States of America).
- ^{ix} Fesoj relieved by the acquittal of Editor of Hiigi Radio Despite long arbitrary imprisonment <https://www.modernghana.com/news/1021219/fesoj-relieved-by-the-acquittal-of-editor-of-hiigs.html>
- ^x RSF: RSF briefs Human Rights Council on Somalia, calls for moratorium on arrests of journalists, <https://rsf.org/en/news/rsf-briefs-human-rights-council-somalia-calls-moratorium-arrests-journalists> (Accessed 12 October 2020)
- ^{xi} Report of the Independent Expert on the human rights situation in Somalia A/HRC/42/62, <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx>
- ^{xii} Report of the Independent Expert on the human rights situation in Somalia A/HRC/42/62, <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx>
- ^{xiii} A/HRC/32/12/, para 136.44 (Finland).
- ^{xiv} A/HRC/32/12/, para 136.110.
- ^{xv} IFEX: Rights groups send public letter to President Mohamed lauding positive clauses, but also expressing concern over restrictive clauses in Somalia’s new media law, <https://ifex.org/brickbats-and-bouquets-for-somalias-new-media-law/>
- ^{xvi} Report of the Independent Expert on the human rights situation in Somalia, UN Doc. A/HRC/45/52, <https://undocs.org/en/A/HRC/45/52>
- ^{xvii} HRW: Baseless charges against prominent Somali journalist, www.hrw.org/news/2020/07/06/baseless-charges-against-prominent-somali-journalist
- ^{xviii} A/HRC/32/12, para 135.69 (Greece).
- ^{xix} A/HRC/32/12, para 136.108 (Estonia).
- ^{xx} Fesoj database: From Bad to worse-Press freedom in Somalia continues to decline, <https://fesoj.org/wp-content/uploads/2020/05/FESOJ-REPORT-2020.pdf>
- ^{xxi} CPJ: Abdinasir Abdulle Gaal killed, <https://cpj.org/data/people/abdinassir-abdulle-gaal/>
- ^{xxii} CPJ: Somali freelancer Abdiwali Ali Hassan killed Lower Shabelle region, <https://cpj.org/2020/02/somali-freelancer-abdiwali-ali-hassan-killed-in-lo/>
- ^{xxiii} RSF: Somali TV reporter stabbed to death in Mogadishu, <https://rsf.org/en/news/somali-tv-reporter-stabbed-death-mogadishu>
- ^{xxiv} RSF briefs the Human Rights Council on Somalia, calls for moratorium on arrests of journalists, <https://rsf.org/en/news/rsf-briefs-human-rights-council-somalia-calls-moratorium-arrests-journalists>
- ^{xxv} DefendDefenders , Somalia ‘Respect journalists work and ensure safe space for free expression’ <https://defenddefenders.org/somalia-respect-journalists-work-ensure-safe-space-for-free-expression/>
- ^{xxvi} CPJ’S 2019 Global index on impunity spotlights countries where journalists are slain and their killers go free, <https://cpj.org/reports/2019/10/getting-away-with-murder-killed-justice/>
- ^{xxvii} A/HRC/32/12, para 135 (France).
- ^{xxviii} UPR Info: <https://www.upr-info.org/en/review/Somalia>
- ^{xxix} A/HRC/32/12/, para 136.96 (Switzerland).
- ^{xxx} Amnesty International, ‘Somalia: Killing of human rights activist underlines the need for civilian protection’ <https://www.amnesty.org/en/latest/news/2019/11/somalia-killing-of-human-rights-activist-underlines-need-for-civilian-protection/>
- ^{xxxi} UN Human Rights Committee, “General comment No. 34: Article 19: Freedoms of opinion and expression,” UN Doc. CCPR/C/GC/34, 12 September 2011, para. 47.