

Introduction

1. The National Union of Somali Journalists (NUSOJ) and the International Federation of Journalists (IFJ) make this joint submission regarding the human rights record of the Federal Republic of Somalia (Somalia) since its 2016 Universal Periodic Review (UPR).
2. NUSOJ is a potent voice of journalists which is nationally and internationally recognised as the most representative voice of Somali journalists and as a trade union organisation that organises, represents and defends journalists' rights and their welfare with a broad membership of professional journalists in all regions of Somalia. NUSOJ is a full member of the IFJ which is the global federation of national journalists' trade unions and associations, representing more than 600,000 journalists that defends and promotes freedom of the media, freedom of information and safety of journalists. IFJ has consultative status with ECOSOC. NUSOJ is also an affiliate of the Federation of African Journalists (FAJ) with 38 unions and associations in its fold.
3. This submission seeks to make a constructive contribution to the preparation process of the UPR for Somalia. Given the expertise of NUSOJ and IFJ on the media freedom situation in Somalia, this submission focuses on Somalia's compliance with its international human rights obligations in respect of freedom of expression and freedom of information, including efforts towards implementation of recommendations it accepted as well as information about the developments in the human rights situation in Somalia not addressed in the 2016 review.
4. Somalia has taken some positive actions since 2017, including the reduction of the attacks against journalists and news media organisations, attempts to reform media law, constructive engagements with media professionals to protect media freedom, including the safeguarding of the safety and security of journalists. However, the Federal Government and its Federal Member States (FMS) have often failed to effectively enforce constitutionally guaranteed rights of freedoms of expression and of information. The Federal Government of Somalia as a duty bearer has also failed to implement numerous recommendations from its previous review.

Legal repression of the right to freedom of expression

5. While the 2012 Provisional Constitution of Somalia adequately guarantees the rights to freedoms of expression & information including press freedom, several restrictive laws are contrary to the principles enshrined in the Provisional Constitution and Somalia's obligations under international law, including the International Covenant on Civil and Political Rights and the African Charter on Human & People's Rights. At present, the instances of violations of these rights are frequent and a stronger legal protection is urgently needed to protect these fundamental human rights. Such a legislative amendment has not been forthcoming and moreover, the recent media law reforms have not been sufficient and several provisions in the amended media law are even more regressive.

6. Somalia's Penal Code contains a number of criminal offences that unjustly restrict freedom of expression. The Code defines offences related to criminal defamation and false news. Charges of criminal defamation can be brought against any alleged offender even if the person who allegedly offended the said provisions is alive or dead. It also gives government officials unlimited discretion to use the Code to prosecute journalists and freedom of expression advocates.
7. The Penal Code also prohibits publication of false news - an offence termed as a serious transgression which is frequently used against journalists. In this code there are provisions that prohibit acts in the form of printing, publishing, utterance or any other form that expose power abuse or challenge wrong doings of senior officials or their own offices. Despite being an archaic draconian law, the code also has provisions that are very vague and are therefore susceptible to an unreasonably wide interpretation by both authorities both at the Federal and State levels including Somalia. NUSOJ and IFJ have consistently complained about them for their obnoxious chilling effect on freedom of expression.
8. On 3 May 2020, the President of Somalia, Mohamed Abdullahi Mohamed "Farmaajo", recognised the longstanding danger of the Penal Code of Somalia being used to suppress freedom of expression and curtail the independent practice of journalism. The President committed publicly that he wants to reform the Penal Code to decriminalise freedom of expression and journalism.
9. The amended media law signed into law in August 2020 contains a number of provisions which breach fundamental aspects of the right to freedom of expression. It also provides for the registering of journalists, including conditions on who may work as a journalist, for the issuance of press cards, for a strong judicial persecution of journalists, dictation of ethical guidelines of journalists and various sanctions for unprofessional conduct. Registering of journalists and placing conditions on who may practise journalism are not permitted under international guarantees of freedom of expression. The selection of the members of the media council, established by the law, is weak, non-transparent, gives powers to the Minister of Information and is also susceptible to influence and manipulation by the Ministry of Information; hence it fails to meet international standards.
10. Instead of improving on some of the provisions, the amended media law has several vaguely worded provisions that further exacerbate the previous shortcomings by establishing various content rules for the media, particularly for material deemed to be detrimental to national security or good culture under terms that are simply too vague to be legitimate as a restriction on freedom of expression. The amended media law also provides the Ministries of Information both at federal and State levels with excessively broad powers to grant or withhold licenses on the basis of an opaque set of conditions.
11. Article 32 of the provisional constitution of Somalia guarantees the right of access to information and stipulates that dedicated law will be enacted for the enjoyment of this fundamental right. But so far, no access to information law was drafted, thus denying Somali citizens their right to information.

Media Freedom Repression

12. The biggest media challenge in Somalia is the continued killings of journalists with impunity every year. Since the last review in 2016, there has not been a year that has passed without a journalist being killed in Somalia. Fifteen (15) journalists were murdered from 2016, instilling more fear in the hearts of working journalists and entrenching the culture of impunity of unpunished crimes against journalists.
13. The repressive legislations outlined above, specially the penal code of Somalia are often used by the Somali authorities, precisely those of the Federal Government, Somaliland, Puntland, Southwest State to prosecute journalists, restrict who can lawfully work as a journalist, and judicially threaten independent media organisations. The media professionals therefore have to operate in an intimidating atmosphere and a principal consequence of this is self-censorship by many journalists. It has also prevented journalists from accurately reporting on issues of public interest such as corruption, injustice and gender-based violence because of the risk of a prison sentence.
14. Various tactics of intimidation and harassment, through summons, interrogations, raids to media houses, charges and outright threats by security forces, increased in the past 4 years especially in the Federal Member States and Somaliland. NUSOJ has documented 284 cases of attacks against journalists and media houses of their media work. Judicial harassment against journalists has been particularly on the rise in Somaliland and Puntland.

The rights of women journalists

15. While the majority of violent attacks against journalists are mainly targeted at male journalists, women journalists were also targeted and have been victims of all forms of sexual and gender-based violence (SGBV). Since 2016, NUSOJ has recorded 72 cases of female journalists targeted with SGBV including online sexual harassment, physical assaults, sexual abuses in media houses and domestic violence due to their media related work.
16. Regrettably the Sexual Offences Bill (SOB), passed by the Council of Ministers of Somalia and submitted to the Federal Parliament in 2018, which was designed to address these sexual and gender-based attacks, was unconstitutionally and unprocedurally blocked by the leadership of the House of the People on bogus assertions, unsubstantiated information and clear misinterpretations. Women journalists are victimised with no adequate legal protection. To date there has been no justice or accountability for victims of sexual violence against women journalists.

Impunity

17. For three decades, true justice has never been done to appease the hearts and comfort families of killed journalists who have long suffered injustice. NUSOJ and IFJ have all along insisted that peace and human rights cannot be achieved without justice when Somalia has earned the bad name as the deadliest country for journalists in Sub-Saharan

Africa in the past 20 years. Particularly, impunity has fuelled a cycle of unceasing violence against journalists in almost all regions of Somalia, making it the foremost enemy of media freedom.

18. On 21 May 2020, Banadir Regional Court has for the first time issued a court order that directed the Attorney General Office (AGO) to urgently commence investigations into the killings of journalists to confront impunity and to bring the perpetrators before the court, following a petition from NUSOJ. Based on this court order, the Attorney General of Somalia Suleyman Mohamud appointed a Special Prosecutor to investigate and follow up on the killings of journalists to bring to justice those who organized, planned and carried out the killings of journalists.

Recommendations

IFJ and NUSOJ regard the problems described above as amounting to serious breaches of the right to freedom of expression and freedom of information as guaranteed under the Provisional Constitution of Somalia, international human rights law and regional legal standards. We call upon the Human Rights Council to urge the Federal Government of Somalia to:

- a) Reform all the provisions of the Penal Code that violate the right to freedom of expression, especially all provisions on criminal defamation and publication of false news.
- b) Conduct a comprehensive amendment of the Amended Media Law of 2020 in line with international freedom of expression standards, in particular to remove restrictive sanctions.
- c) Carry out serious, prompt, effective and impartial investigations into all cases of killings and violence against journalists and other media workers and bring those responsible to justice.
- d) Expeditiously process the Sexual Offence Bill in the Federal Parliament with a view to enacting it as a matter of utmost urgency to tackle sexual and gender-based violence.
- e) Ratify and domesticate ILO Convention 190 on violence and harassment in the workplace to protect working women including female journalists.
- f) Monitor, investigate and prosecute incidents of violence against women journalists, and offer protection and remedies to victims.
- g) Take direct and swift actions to draft and enact access to information legislation in line with the African and International standards.