

The right to an effective remedy and reparation in Somalia

Mandela for Rights and Democracy

Introduction

The right to an effective remedy is a fundamental right that needs to be protected and ensured. Several factors can affect this right such as the judicial system, the political climate, laws and security agencies, among others. Nevertheless, the increase in impunity reveals a significant decrease in the right to a fair and effective remedy.

Somalia has long suffered from the absence of effective mechanisms to guarantee the right to a fair remedy, especially in the light of the ongoing rivalries between Somali's regional governments, the instability at the national level, the poor legislation, and its inadequate implementation, which contributed to the spread and increase of impunity in Somalia.

Mandela for Rights and Democracy wishes to draw the attention to a number of cases summarized as follows:

First: Continuing impunity... A widespread phenomenon in Somalia

A. Impunity for crimes against civilians

On January 28, 2020, Jubbaland former security minister Abdirashid Hassan Abdunur is alleged to have escaped from a Mogadishu prison, where he had been held since August 31, 2019, and entered Kenya through Bulahawa, where he settled in a hotel. Abdunur is wanted for several serious crimes, including international human rights violation, massacre of innocent civilians and illegally escaping government custody.¹ Currently, Mr. Abdunur is reported to be hiding in a Mandera hotel. He arrived at the hotel on Tuesday afternoon and his security was immediately taken over by Kenyan agencies. However, this has not changed his impunity.

Mandela for Rights and Democracy strongly condemns the United States air strikes in Somalia which claimed the lives of several citizens. The US army denied it at first, but as the government reports continued to flood, they admitted killing one civilian and injuring three others in an

¹ Nation, Kenya angers Somalia by hosting minister who escaped detention, March 18, 2020, available at: <https://bit.ly/3ly4sE1>

air strike on February 2, 2020, "unintentionally".²

It was the second time US command admits killing civilians in its quarterly reports issued by the US military on air raids in Somalia. Their confession was only motivated by the pressure exerted from Somalis and human rights organizations after a noticeable rise in targeting civilian³.

The organization decries the US forces' reluctance to admit all the violations they have committed against these civilians. Therefore, Mandela for Rights and Democracy calls for ensuring citizens' full access to an effective remedy and reparation.

On the other hand, in 2018, 17 prisoners in Garoowe, Somalia, spent more than two years without being brought to trial. Children between 15 and 17 years of age were detained on charges of disobedience, a penalty that had no legal basis.⁴

B. Impunity for crimes against journalists

In the impunity index, between 2016 and 2019, more than 100 journalists and media workers were reportedly targeted and killed. Fifteen cases were confirmed to have taken place within the same period, with 12 journalists and 3 media workers dead.

The index showed that in 2018, the total number of unsolved cases of impunity for murders of journalists and media workers increased from 24 cases in 2016 to 26 cases in 2017 and then decreased to 25 cases in 2018 and the same number of murders occurred in 2019.

The index also shows that Somalia ranked the third in the list of the world's worst impunity offenders against journalists over the past three years⁵. This progress, however slight, is a good sign, especially since Somalia had been the world's worst country for two years in a row, 2015 and 2016, when it comes to prosecuting murderers of journalists^{6 7}.

² Shahab News Agency, US Army Admits killing a civilian and injuring 3 others in an Air raid in Somalia, August 2020, available at: <https://shahadanews.com/?p=8714>

³ Ibid

⁴ UNSOM, HUMAN RIGHTS AND PROTECTION GROUP, April, 2018, available at: https://www.ohchr.org/Documents/Countries/SO/UNSOM_April2018.pdf

⁵ CPJ, Getting Away with Murder, Unsolved murders of journalists in countries with worst record for justice, 2019, available at: <https://cpj.org/reports/2019/10/getting-away-with-murder-killed-justice/>

⁶ CPJ, Impunity - Global Impunity Index 2016, 27 October 2016, available on: <https://cpj.org/ar/2016/10/2016/>

⁷ CPJ, 15 Journalists and Media Workers Killed in Somalia between 2016 and 2019, available at: <https://bit.ly/33KLiUC>

C. impunity for corruption

Ahmed Isse Awad, Somalia's foreign minister, was charged with corruption and falsifying diplomatic appointments in January 2020. Awad has allegedly appointed more than 27 people to work at Somali embassies abroad. He was accused of changing the appointment date and making it before the Somali People's Assembly withdrew confidence from the federal government on July 25, 2019. Besides, some of the appointees do not work for the Ministry of Foreign Affairs and are not civil servants registered with the Somali Government. Although Ahmed Issa was found guilty on all the charges brought against him, he has not been prosecuted.⁸

It is worth noting that Somalia ranked the world's most corrupt country, and remained so for ten consecutive years until 2017, according to the global corruption index⁹. Today, it remains at the bottom of the index.

D. Impunity for crimes against women

The Mandela for Rights and Democracy received updated information regarding a case that has not been resolved for years. No charges brought against anyone in three cases of rape reported to police since December 2017, in which security forces were suspected to be involved. There has been an increase in cases of sexual violence committed by police officers. A new law against sexual crimes has been issued by government, however neither police officers nor investigators are aware of, and judges continue to ignore it.

In 2018, Gabili Prison in Somaliland was hosting 162 inmates, including 37 women. The majority of women were convicted of drug trafficking and alcohol consumption. Prison officials reported that one of the women suffers from a mental disability and the inmates lack basic hygiene. Garowe's public prison includes 263 inmates, including seven women¹⁰.

Second: foreign intervention and its impact on ineffective remedies

⁸ New Somalia, Acting Foreign Minister charged with corruption, 13 August 2020, available on: <https://bit.ly/35SL6Fg>

⁹ Rusd, Between Financial Corruption and Insecurity ... Huge Tasks Awaiting the New President of Somalia, February 11, 2017, Available at: <https://rassd.com/200975.htm>

¹⁰ UNSOM, HUMAN RIGHTS AND PROTECTION GROUP, April, 2018, available at: https://www.ohchr.org/Documents/Countries/SO/UNSOM_April2018.pdf

Somalian Parliament has passed a resolution to cancel a port agreement signed last year between UAE-based operator DP World and the breakaway Somaliland region, in order to develop a free economic zone project integrated with the Berbera Port Development Project, so that the port would become a regional central and major transit point for various goods imported from regional and global markets. It attracts investors and contributes to diversifying the economy and creating hundreds of jobs.

The Government of Fergago, driven by Qatari support, intervened and tried to disrupt and cancel the agreement. The escalation of the government in Mogadishu has not stopped at this point, but has breached international laws and conventions. The Somali security authorities detained the United Arab Emirates-registered private civilian aircraft at Mogadishu International Airport, with members of the UAE duty forces are on board. And confiscated the funds allocated to support the Somali army and paying the salaries of the Somali trainees, a number of poor families and doctors of Zayed Hospital in Mogadishu. This has reduced UAE support for Somalia¹¹. All this has been carried out without any form of judicial interaction and without any investigation.

On the other hand, after the New York Times published an audio recording of a phone call in 2019, for the Qatari ambassador to Somalia while he was talking about a suicide attack against the prominent businessman, Khalifa Qayed al-Muhannadi, who is one of the inner circle of the ruling family. The recording on May 18, 2019, which came about eight days after a terrorist attack in "Bossasu", Puntland province - proved that the Doha-backed terrorist attack was to promote Qatar's interests by expelling its rival, the United Arab Emirates, from the city's port administration, so that the contract signed is not renewed. He openly acknowledged that his country was behind the attack¹². All this has gone through no investigations by the Somali government, and there has been no effective remedy to date.

In 2018, the UAE decided to close The Sheikh Zayed Hospital in Mogadishu, Somalia, without any official statement on the matter, after the Somali authorities confiscated money on an Emirati plane at Mogadishu's Adam Uday airport. Part of the funds were also allocated to

¹¹ Hafarat: The UAE adheres to the support of the Somali people, despite the conspiracies of his government, 17 April 2018 <https://bit.ly/3ca7ivL>

¹² Heidi Sabri, French radio: Qatar uses terrorism in Somalia to exert influence with Turkish support, 28 July 2019, Al Ain News, <https://al-ain.com/>

the medicines and salaries of hospital staff. The Somali authorities' detention of the UAE plane has caused a diplomatic crisis between the UAE and Somalia. These actions were also taken by the Government of Somalia at the instigation of Qatar¹³. This is also an order in which Somali officials have escaped any means of effective redress or even justification for public opinion.

Recommendations

Based on the above, Mandela for Rights and Democracy recommends to stakeholders the following points:

1. The development of Somali prisons to allow the separation of men and women, especially in Puntland and Somaliland regions.
2. Tightening control over prisoners accused of human rights violations and mass crimes.
3. Pursuing those accused of murder against journalists and media workers, and seriously investigating the murders and kidnappings against them.
4. Working to develop the legislative structure of Somali justice laws, ensuring the building of a unified judicial system for the state and reducing impunity and circumventing the law.
5. Speeding up the follow-up and implementation of the mandates of members of the Independent National Commission Against Corruption, whose names were announced on September 8, 2020, almost a year after President Vermajo approved the law on September 2, 2019.
6. Conducting all investigations into the impact of external interventions on human rights, and making their results public, particularly related to the 2019 "Bossasu" bombing.

¹³ Al Ain News, UAE Health Closes Sheikh Zayed Hospital in Somalia, April 16 2018 <https://bit.ly/2ZI7GN9>