

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
UA SOM 1/2017

16 June 2017

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 32/32 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of threats of prosecution against Mr. **Omar Faruk Osman**, Secretary-General of the National Union of Somali Journalists (NUSOJ) and human rights defender, for having organized a public demonstration in commemoration of the World Press Freedom Day, and for having expressed and published critical views on the policies on press freedom and journalists' rights of the Somalian authorities.

Concerns about Mr. Faruk Osman's situation have been previously expressed by UN Special Rapporteurs in two communications addressed to your Excellency's Government dated 13 April 2016 (SOM 1/2016) and 3 May 2016 (SOM 2/2016). We regret that to this date no reply has been received addressing the concerns expressed therein.

According to the new information received:

On 29 May 2017, Mr. Faruk Osman was summoned at the office of the Attorney General of Somalia. He was verbally told that two criminal accusations were being brought against him, in relation to the organization of a public demonstration commemorating the World Press Freedom Day, and the expression and dissemination of critical opinions regarding the Minister of Information of the Federal Government of Somalia, which amounted to defamation. The authorities did not, however, serve him with written orders, despite the request of Mr. Faruk Osman's lawyers.

On 30 May 2017, Mr. Faruk Osman received official letters of summon ordering him to present himself on 31 May 2017 and respond to accusations of "organizing on 3 May a commemoration of World Press Freedom Day without authorization

from the Ministry of Information” and “issuing and disseminating on 6 May an abusive statement, as NUSOJ, which offended and defamed the Minister of Information of the Federal Government of Somalia”.

On 31 May 2017, Mr. Faruk Osman presented himself at the office of the Attorney General and responded to interrogations. He was told that his answers would be examined, and a decision on whether he would be prosecuted would be made in the next days. Mr. Faruk Osman informed them of his upcoming travel to Geneva to attend the 106th Session of the International Labour Conference, to which they replied that a decision on whether to prosecute him or not would be notified to his lawyers. No such notification has taken place so far, and thus he has expressed fears to be arrested upon return to Somalia.

While we do not wish to prejudge the accuracy of these allegations, we express our concern about the threats of prosecution and judicial harassment against Mr. Faruk Osman for organizing a public demonstration commemorating the World Press Freedom Day, and for expressing critical views regarding the policies on press freedom and journalists’ rights of the Somali Government. We express concern at the use of defamation provisions to target the legitimate exercise of freedom of expression. These actions have the effect of limiting the space for journalists, human rights defenders and civil society in general in the country, and hinder the development of the necessary foundations needed for any democratic society.

In connection to the above alleged facts and concerns, we would like to refer your Excellency’s Government to the International Covenant on Civil and Political Rights (ICCPR), acceded to by Somalia on 24 January 1990, and in particular to articles 19 and 21, which guarantee the rights to freedom of opinion and expression and the right to freedom of peaceful assembly, respectively. We would like to recall that any restriction to freedom of expression must meet the high threshold established under article 19(3) of the ICCPR, that is, be provided by law and necessary and proportionate to achieve the legitimate aims listed in the provision.

We also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society, and states that any limitation to it must be determined by law and conform to a strict test of necessity and proportionality regarding its purposes and the specific need on which they are predicated. Similarly, we recall Human Rights Council resolution 24/5 of 2013 which reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, and 6.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information about the legal basis and the evidence that is used to charge Mr. Faruk Osman on the basis of the above-mentioned charges.
3. Please explain how these prosecutions, if ultimately undertaken by the Attorney General, would be compatible with Somalia's obligations under articles 19 and 21 of the ICCPR. In particular, please explain how these actions comply with the requirement of necessity and proportionality under article 19(3).
4. Please indicate what measures have been taken to ensure that journalists and human rights defenders in Somalia are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment or prosecution of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders