

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Independent Expert on the situation of human rights in Somalia

REFERENCE:
AL OTH 55/2018

29 August 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Independent Expert on the situation of human rights in Somalia, pursuant to Human Rights Council resolutions 34/18 and 36/27.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminal prosecution of journalists and the interference with the independence of the media in Somaliland.

According to the information received:

From January 2014 to July 2016, the UN Assistance Mission in Somalia (UNSOM) recorded 60 cases of arbitrary arrest and detention of journalists and media workers, owners of media houses and publishers in Somaliland.¹ The period of detention ranged from 24 hours to several months.

Since December 2017, at least six journalists have been detained in connection with their work, on charges including criminal defamation and "fake news". While most of these journalists have been released, several others are currently in prison or are awaiting trial.

On 31 May 2018, the Somaliland authorities announced that the two TV channels, SBS and SOMNews were banned from broadcasting for being "involved in political campaigns" and for not maintaining "the neutrality they are supposed to observe" in their coverage of protests in the disputed Sool region. The ban on SOMNews was lifted on 11 June but the one of SBS TV channel is still in effect. A reporter from SBS was subsequently arrested for having covered the protests. Earlier in May 2018, two other journalist had been arrested for similar reporting. All these journalists were released later.

We express concern at the arrests and convictions of journalists, as well as interference with the independence of the media, as they are incompatible with

¹ The full report is available at
https://www.ohchr.org/Documents/Countries/SO/UNSOM_FreedomExpressionReport_Aug312016.pdf

international standards on the right to freedom of expression. We express concern that these arrests and convictions in addition to violating the right of individuals, are damaging to independent reporting and to the public's right to information.

We would also like to highlight that the Independent Expert on the situation of human rights in Somalia has also, in his previous reports to the Human Rights Council and in his forthcoming report to the Council, raised concerns regarding the violations to the right to freedom of expression. The situation does not appear to improve, particularly regarding the continued harassment, arbitrary arrests and intimidation of journalists, suspension of broadcasts of television stations and other media houses (See for instance: A/HRC/33/64, paragraphs 53 to 63 and A/HRC/36/62, paragraphs 31 to 39).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 measures taken to decriminalize defamation in order to bring the legal framework into compliance with international human rights standards.
3. Please provide information about the legal basis for the banning of SBS, and explain how this is compatible with the standards of international human rights law, in particular with the right to freedom of expression.
4. Please indicate what measures have been taken to ensure that journalists and human rights defenders in Somaliland are able to express their views and disseminate information without fear of intimidation, harassment or prosecution of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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(s) responsible for the alleged violations.

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

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

Bahame Nyanduga
Independent Expert on the situation of human rights in Somalia

Annex

Reference to international human rights law

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the rights of every individual to liberty and security of person, the rights not to be arbitrarily deprived of the liberty and to fair proceedings as well as to freedom of opinion and expression, established in articles 9 and 19 of the Universal Declaration of Human Rights (UDHR) and 9, 14 and 19 the International Covenant on Civil and Political Rights (ICCPR). 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 be necessary and proportionate to achieve the legitimate aims listed in the provision.

Regarding the right to freedom of expression, as has been interpreted by the Human Rights Committee in its General Comment 34 (CCPR/C/GC/34), article 19 requires that authorities guarantee the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, including political discourse, commentary on one's own and on public affairs, discussion of human rights, journalism, among others (paragraph 11). Article 19 also protects all forms of expression and the means of their dissemination, including all forms of audio-visual as well as electronic and internet-based modes of expression (paragraph 12). Concerning the specific issue of freedom of expression online, the Human Rights Committee also interpreted in General Comment 34 that "any restrictions on the operation of websites, blogs or any other internet-based (...) are only permissible to the extent that they are compatible with paragraph 3" (paragraph 43).

We would like to recall that, according to the Human Rights Committee in the above mentioned General Comment 34, it is contrary to article 19 to permit general prohibitions of expressions opinions of an erroneous opinion or an incorrect interpretation of past events (paragraph 49), and that the application of the criminal law should only be countenanced in the most serious of cases, imprisonment never being an appropriate penalty for sanctioning the expression of opinions (paragraph 34).

Finally, we would like to emphasize the importance of the respect of the guarantees of due process in the course of criminal proceedings. In particular, we would like to recall that articles 10 and 11 of the UDHR and 14 of the ICCPR establish the right to adequate time and facilities for the preparation of legal defense and to communicate with counsel of one's own choosing.