

Mandates of the Independent Expert on the situation of human rights in Somalia; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers and human rights and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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Mr. Hassan Ahmed Adan,

We have the honour to address you in our capacities as Independent Expert on the situation of human rights in Somalia; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 45/27, 42/22, 42/16, 44/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of prolonged and indefinite arbitrary detention of five inmates in the Hargeisa Central prison who remain in prison during the COVID-19 pandemic despite having already served their prison sentences, as well as the poor conditions in Somaliland prisons.**

According to information received

Mr. **Jama Abdi Ismail** (aged 50), Mr. **Ali Muse Mohamud** (aged 36), Mr. **Ali Mohamud Awale** (aged 37), Mr. **Farhan Abdullahi Mohamud** (aged 37), and Mr. **Daud Saalah Idle** (aged 44) were convicted in 2004 to 15 years of imprisonment for terrorism-related offences. The Somaliland Penal Code allows judges to affix civil liability, whether arising out of the civil laws or customary laws, in criminal cases. For instance, in some cases, inmates are also fined or ordered to pay compensation to the aggrieved parties, in addition to the prison sentences. However, due to poverty, many inmates who face civil liabilities, are unable to pay these off. In other instances, the inmates are unable to locate the aggrieved party to whom the compensation may be paid. The five inmates were supposed to have been released in 2014, but remain in detention. They were among nine prisoners convicted of terrorism-related offences who staged a 30-day hunger strike in 2018 to protest their continued incarceration after serving their full sentence. In August 2018, the former Independent Expert on the situation of human rights in Somalia raised concern with the Somaliland authorities over the allegations of prolonged arbitrary detention of these inmates following the hunger-strike.

While there has not been any official confirmation of COVID-19 cases at the Hargeisa Central Prison, it has been alleged that a number of inmates and Custodial Corps officers have tested positive for COVID-19, including Mr. Jama Abdi Ismail, who has now recovered from the virus, without having received the necessary medical attention nor undergone any clinical isolation

protocol. Mr. Ismail's health has been deteriorating in recent years as he developed hypertension and high cholesterol levels.

As regards to prison conditions, a 2017 baseline study¹ by a nongovernmental organization revealed that prisons across Somaliland operate well above capacity, leading to severe overcrowding and that juveniles are held with adults. According to the study, prisons lack resources and rely on families for bedding, clothes and toiletries. Most prison buildings need urgent repairs, have poor ventilation, insufficient records, insufficient stationary, furniture, shortage of technology, and fuel. Currently, the Hargeisa Central Prison, where the five inmates are detained, has a capacity for 540 prisoners, but it is overcrowded, with 580 prisoners. It consists of four blocks - for pirates, juveniles, terrorists and the last for adults who committed various crimes. The block containing persons convicted of terrorism-related offences was newly built. However, unsanitary conditions, lack of adequate access to healthcare, food and water and sanitation have been reported.

Without prejudging the accuracy of the information made available to us, we herewith express serious concern over the allegations of continued prolonged and arbitrary detention of Mr. Jama Abdi Ismail, Mr. Ali Muse Mohamud, Mr. Ali Mohamud Awale, Mr. Farhan Abdullahi Mohamud , and Mr. Daud Saalah Iidle as well as the lack of regulations regarding the requirements for the fulfilment of civil liabilities, which appear to be incompatible with the Somaliland Constitution, and the right not to be arbitrarily deprived of liberty and the right to fair proceedings, established under articles 1, 2, 3 and 9 of the Universal Declaration on Human Rights (UDHR); articles 9, 10, 11, and 17 of the International Covenant on Civil and Political Rights (ICCPR) to which Somalia acceded on 24 January 1990. We are also concerned that above mentioned allegations seem to be in contravention of the right to health and the right to an adequate standard of living, established under articles 22 and 25 of the UDHR and articles 7 12, and 15 of the International Covenant on Economic Social and Cultural Rights (ICESCR) acceded to by Somalia also on 24 January 1990.

We are particularly concerned at the physical and mental integrity of Mr. Jama Abdi Ismail whose health has been deteriorating during his detention and at the potential spread of COVID-19 within the prison.

Infectious and communicable diseases may spread easily in overcrowded detention facilities due to poor hygiene and sanitation, which may adversely impact on the human rights of the detainees. If not promptly and adequately treated, infections and communicable diseases may lead to lethal consequences. We are concerned of the risk that COVID-19, once in the prison population, may spread swiftly with devastating consequences. Preventing the spread of COVID-19 in detention centres is an issue of public health and in the interest of not only the persons deprived of liberty but also of the staff of the facilities and the general public.

While acknowledging the positive measures taken by the Somaliland authorities to pardon close to 1,000 prisoners who have served their custodial sentence and owed civil liability (\$10,000 or less) during this health crisis in April and May

¹ Horizon Institute (2017) *Informed Investment in Somaliland's Justice Sector*. Available at: https://www.thehorizoninstitute.org/usr/documents/publications/document_url/10/horizon-institute-s-baseline-study-report-pdf

2020, the COVID-19 pandemic has underscored the need to prioritize the release of children; persons with underlying health conditions; persons with low-risk profiles and who have committed minor and petty offences; and persons with imminent release dates and those detained for offences not recognized under international law. The health crisis has also underscored the need to consider the possibility to apply non-custodial measures particularly for older persons, ill people, or others with specific vulnerabilities to COVID-19.

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 therefore 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 detailed information about the legal and factual basis for the continued imprisonment of the above mentioned individuals, as well as how they were provided guarantees of due process and fair trial, and indicate how the continued imprisonment of the individuals mentioned above are compatible with international human rights law.
3. Please provide detailed information on the conditions of detention in Somaliland prisons, any investigation undertaken, and if applicable results, on the reported poor material conditions and lack of adequate medical care. Please also explain how those conditions are compatible with the obligation to prohibit and prevent cruel, inhuman and degrading treatment.
4. Please provide information on the measures being taken in prisons to protect prisoners and prison staff from the COVID-19 virus, including preventing measures such as the free provision of hygiene products, physical distance, disinfecting areas which COVID-19 positive prisoners have come in contact with; testing, and treatment such as procedures to confine those who contract the virus from the rest of the prison population, and access to adequate health care.

This communication and any response received from the Somaliland authorities will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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, Mr. Hassan Ahmed Adan, the assurances of our highest consideration.

Isha Dyfan
Independent Expert on the situation of human rights in Somalia

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

Article 10 (1) of the Constitution of Somaliland recognizes the applicability of the treaties and agreements ratified by Somalia. Article 10 (2) further provides that “Somaliland recognises and shall act in conformity with the United Nations Charter and with international law, and shall respect the UDHR.” Therefore, we would like to refer to article 9 of the International Covenant on Civil and Political Rights (ICCPR) to which Somalia acceded on 24 January 1990. This article enshrines the right to liberty and security of the person and establishes in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority.

We appeal to the Somaliland authorities to take all necessary measures to guarantee the right of all detained persons not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR.

In addition, we wish to remind you that conditions of detention can amount to inhuman and degrading treatment and thus States must respect the dignity and human rights of persons deprived of their liberty by preventing conditions that are in contravention of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in Article 7 of the ICCPR.

We would like to also refer to Article 6 of the ICCPR which imposes obligations on States to particularly protect the lives and bodily integrity of individuals deprived of their liberty, including through the provision of the necessary medical care and appropriate regular monitoring of their health (Human Rights Committee, in its General Comment No. 36 (CCPR/C/GC/36)). Moreover, under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Somalia acceded on 24 January 1990, States also have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights, CESRC, General Comment 14, para. 34).

Further the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), adopted unanimously by the UN General Assembly (A/RES/70/175), establish States’ responsibility to provide equivalence of care to prisoners i.e. the same standards of health care that are available in the community (Rule 24 (1)). They require prisons to evaluate, promote and protect the physical health of detainees, paying particular attention to prisoners with special health-care needs (Rule 25 (1)), and ensure continuity of treatment and care (Rule 24.2), as well as prompt access to medical attention in urgent cases and to specialized treatment where needed (Rule 27.1). In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period (Rule 30(d)).

Several United Nations experts, mechanisms and agencies have warned against the disproportionate impact of COVID-19 on persons deprived of their liberty and on the serious risks to their health and life. The UN Inter-Agency Standing Committee (WHO and OHCHR); the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings have pointed to the specific vulnerabilities of people deprived of their liberty, including their underlying health status and the risks of mass contamination and have called on the authorities to effectively implement their obligations to respect and protect the right to life of detainees, without discrimination. They have specifically requested that relevant authorities should undertake the immediate, unconditional release of all prisoners whose incarceration is illegal or arbitrary under international law, such as political prisoners, abandon or exclude detention as a sanction for persons found to be in breach of COVID-19 related measures such as curfews, and reduce the overall size of the prison populations and help tackle associated overcrowding with a review of the prison population and consideration of alternative sentencing to imprisonment for misdemeanour.²

We also wish to draw your attention to article 12 of the Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, which calls upon all States to pay particular attention to the requirements of necessity and proportionality of deprivation of liberty in the context of public health emergencies, such as the newly emerging emergency related to the COVID-19 pandemic.

Furthermore, we also wish to reiterate the explicit recognition of the human rights to safe drinking water by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights. In addition, the UN General Assembly (resolution 70/169) and the Human Rights Council (resolution 33/10) recognized that water and sanitation are two distinct but interrelated human rights. In particular, we recall explicit recognition that “the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living”.

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https://interagencystandingcommittee.org/system/files/2020-11/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty_0.pdf;
<https://undocs.org/CAT/OP/10>;
https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.docx&action=default&DefaultItemOpen=1