

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on the situation of human rights in Somalia and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL SOM 5/2022
(Please use this reference in your reply)

28 December 2022

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; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on the situation of human rights in Somalia and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/4, 51/8, 50/17, 43/16, 51/38 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention, and charges against journalist, Mr. **Abdalle Ahmed Mumin** in relation to the exercise of his right to freedom of expression in the context of his participation in a public event where he read out a statement issued on behalf of numerous media associations relating to public affairs.

Mr. Mumin, from the Middle Shabelle region, Somalia, is the Secretary-General (SG) of the Somali Journalists Syndicate (SJS) and the Somali Mechanism for Safety of Journalists (SMSG).

According to the information received:

On 8 October 2022, the Federal Ministry of Information, Culture and Tourism issued an administrative order that prohibited media and users of social media to engage in the "dissemination of extremist ideology messages" of the group Al-Shabaab. The order warned the public to "avoid spreading terrorists' intimidating and misleading messages—intentionally or unintentionally, directly or indirectly and consciously or unconsciously".

On 10 October 2022, representatives of some media associations held a press conference in which they expressed concern about the Somalia Government's directive which they considered may restrict free expression and media freedom. Mr. Mumin read a joint press statement issued on behalf of numerous media associations. In particular, the statement raised concerns that the directive was vaguely-worded and might limit the ability of journalists to freely report on the ongoing operations against the armed group. They expressed further "concerns that the new directive might be used to silence the legitimate critics of the government and its security forces, including journalists, human rights defenders, independent researchers, analysts and others."

On 11 October 2022, members of the National Intelligence and Security Agency (NISA) arrested and detained Mr. Mumin at the Aden Abdulle International Airport in Mogadishu, as he was attempting to travel from Mogadishu to Nairobi. Mr. Mumin remained in NISA custody until 13 October where he was allegedly held incommunicado for 36 hours, without access to a lawyer and his family. According to reports, Mr. Mumin had inadequate access to clean drinking water while in detention.

On 13 October 2022, Mr. Mumin appeared before the Benadir Regional Court in Mogadishu. The Court reportedly gave the Prosecutor until the morning of 16 October to investigate and bring criminal charges. The court ordered that Mr. Mumin be held in police (Criminal Investigation Department) custody pending completion of investigations and another court appearance on 16 October 2022.

On 16 October 2022, Mr. Mumin was released on bail after he appeared before the Benadir Regional Court in Mogadishu for his preliminary hearing. At the hearing, he was informed that he was being investigated for violations of the Somali Penal Code, in particular articles 321 (instigation to disobey the laws), 219 (bringing the nation or the state into contempt) and 505 (non-observance of orders of the authorities). In the letter describing his bail conditions, the judge ordered Mr. Mumin not to talk about the case while it remains pending trial.

On 18 October 2022, Mr. Mumin was detained again by the NISA at Aden Abdulle International Airport in Mogadishu, as he was attempting to travel from Mogadishu to Nairobi. Mr. Mumin was reportedly re-arrested for breach of the conditions of his release from the Benadir Regional Court issued on 16 October and detained at the Criminal Investigation Department in Mogadishu. During his detention, Mr. Mumin suffered from several health problems including kidney problem and allergic reactions. After appearing before the Benadir Court to request release on medical grounds, Mr. Mumin was again released on bail on 22 October.

The Court has informed Mr. Mumin that his trial will take place on 4 January 2023. According to the charge letter, the basis for his arrest and charges relates to his participation in the above-mentioned public event. The video of Mr. Mumin reading the statement and a copy of the press release issued on 8 October by the Ministry of Information announcing the new order were reportedly used as evidence against him.

According to the information received, this is the third time that the Somali authorities have arrested Mr. Mumin in relation to his media work since December 2019.

While we do not wish to prejudge the accuracy of these allegations, the reported arrest, detention and charges brought against Mr. Mumin raise several human rights concerns. First, there seems to be no clear legal basis for the arrest and detention of Mr. Mumin by the NISA, partly because of the apparent lack of legal standing for NISA to arrest and detain persons due to the absence of clearly defined powers, obligations and oversight procedures of the NISA.

Second, leaving aside the question of whether the initial detention of Mr. Mumin by NISA was lawful, the amount of time between when he entered the custody of the Criminal Investigation Department and appeared before a judge—three days—is in contravention of article 35 (5) of the Provisional Constitution of the Federal Republic of Somalia, which requires that every person who is arrested has the right to be brought before a competent court within 48 hours of the arrest. This contravention is further compounded by the fact that Mr. Mumin had already spent two days in NISA custody for a total of five days before he appeared before a judge.

Furthermore, while fully recognizing the Government's responsibility and legitimate efforts to counter terrorism and violent extremism conducive to terrorism to protect national security, we express our concern about the directive issued by the Somali Federal Government on 8 October, which appears to be the basis of the legal action against Mr. Mumin. We are particularly worried about the use of overly broad and vague definitions prohibiting the dissemination of 'extremist ideology' through the spread of 'intimidating and misleading messages – intentionally or unintentionally, directly or indirectly and consciously or unconsciously. We express our deep concern about the use of the term "extremism", which in the absence of the qualifier "violent extremism leading to terrorism", remains broad and excessively vague and can encroach on human rights in profound and far-reaching ways, leading to the inclusion of non-violent groups. We echo the observations of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that the term "extremism" has no place in binding international legal standards and, where it operates as a criminal legal category, is irreconcilable with the principle of legal certainty (A/HRC/43/46, paras. 13 and 14). We express our deep concern that the broad scope of the directive could mean that a range of activities of expression and association protected under international human rights law could potentially be qualified as "terrorism". Such characterization is likely to allow for the arrest, detention or harassment of individuals exercising their internationally protected rights, risks unduly restricting freedom of expression, including journalists and media worker's ability to report on anti-terrorism operations and hence the public's access to information, and can be easily misused to silence critical voices, including human rights defenders, journalists and media workers. We underscore our profound concern at the use of counter-terrorism or extremism measures to limit civic space and target the essential work of civil society actors, including journalists.

In addition to the procedural concerns surrounding the arrest, detention, and process of Mr. Mumin, we are alarmed by the apparent use of the criminal justice system against a journalist for expressing his concerns about the legality of government measures. We are further seriously concerned at the charges brought against Mr. Mumin under the Somali Penal Code, for which he may face up to five years of prison. We are particularly concerned by the broader significance and negative implications this case could have for freedom of expression and freedom of the media in Somalia, inter alia through the effect on individuals, including journalists, media workers and human rights defenders, who wish to express themselves, demonstrate peacefully, and participate in public and political life in Somalia and the potentially chilling effect that harassment and pressure against may have on civil society in Somalia more generally.

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.

We are issuing this appeal in order to safeguard the rights of Mr. Mumin from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.¹

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual grounds for the arrest, detention and charges against Mr. Mumin, and explain how it complies with your obligations under international human rights law.
3. Please explain how the administrative order of 8 October and its implementation comply with international human rights standards, in particular for freedom of expression. Please explain the manner in which this administrative order complies with the principles of legality, necessity, proportionality and non-discrimination.
4. Please explain how the term “extremism”, as provided for in the administrative order of 8 October, complies with the principle of legal certainty.
5. Please explain what measures have been taken to ensure that all people in Somalia, including journalists, media workers, human rights defenders and others, can exercise their legitimate rights to freedom of expression and peaceful assembly without fear of reprisals, judicial prosecution or criminalization of any kind.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency’s Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

¹ Article 41 ICJ Statute ‘Interim Protection’: Part III, Section D (Incidental Proceedings), Subsection 1

accountability of any person(s) responsible for the alleged violations.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex

Reference to international human rights law

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

In connection with above alleged facts and concerns, we would like to refer to articles 9, 14, 19 and 22 of the International Covenant for Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 4 January 1999, which guarantee the right to not be subjected to arbitrary arrest or detention, the right to a fair trial and the right to freedom of opinion and expression and freedom of association.

In particular, article 9 of the ICCPR provides 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. As per the jurisprudence of the Working Group on Arbitrary Detention and General Comment No. 35,² any detention due to the peaceful exercise of rights, including the rights to freedom of expression and freedom of association, may be arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

In addition, article 9 (3) of the ICCPR requires that individuals arrested or detained on a criminal charge be brought promptly before a judge or other officer authorized by law to exercise judicial power and be entitled to trial within a reasonable time or to release. In accordance with General Comment No. 35, 48 hours is ordinarily sufficient to satisfy the requirement of promptness and any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances

We also wish to bring the attention of your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). In particular, rule 22 provides that all prisoners should have access to drinking water whenever needed.

We would like to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in Comment No. 27 (CCPR/C/GC/27), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (paragraph 14), while "the principle of proportionality has to be respected not only in the law that frames the restrictions but

² CCPR/C/GC/35, para. 17.

also by the administrative and judicial authorities in applying the law” (paragraph 15).

We also wish to bring to the attention of your Excellency’s Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 (3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, and to be tried without undue delay.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary, proportionate and non-discriminatory. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. In her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression expressed her concern about the criminalization of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation.

We further would like to recall that articles 21 and 22 of the ICCPR guarantee the rights of peaceful assembly and of association, and note that “no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

We want to bring the attention of your Excellency's Government to Security Council's resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180 which require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and non-discrimination. Wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society.

We would like to further bring your Excellency's Government's attention to the "principle of legal certainty" under international law (ICCPR article 15(1); ECHR article 7(1)), which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para.34).

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Likewise, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Both the General Assembly and the Human Rights Council repeatedly urged the States to create and maintain a safe and enabling environment in which human rights defenders can operate free from hindrance, reprisals, and insecurity (e.g., the General Assembly resolutions 74/146 (A/RES/74/146) and 70/161 (A/RES/70/161), and the Human Rights Council resolutions 22/6 (A/HRC/RES/22/6) and 13/13 (A/HRC/RES/13/13)).

Finally, we would like to bring the attention of the Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/40/52) on the impact of terrorism measures on civic space and human rights defenders, journalists and the media. We want to stress that counter-terrorism legislation should not be misused against individuals peacefully exercising their rights to freedom of expression, peaceful association, and assembly. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offence. Any restriction on expression or information that a government seeks to justify on the grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34).