

# REPORT ON THE RIGHT TO FREEDOM OF EXPRESSION:

Striving to Widen Democratic Space in Somalia's  
Political Transition



**Somalia**  
August 2016



## **Mandate**

This report was prepared by the Human Rights and Protection Group of the United Nations Mission in Somalia (UNSOM) and covers the period from 2012 to August 2016.

The UNSOM Human Rights and Protection Group prepared this report pursuant to UNSOM's mandate under United Nations Security Council resolution 2102 (2013) which requires UNSOM "to monitor, help investigate and report to the Council on, and help prevent any abuses or violations of human rights or violations of international humanitarian law committed in Somalia".

This report received technical input from the Office of High Commissioner for Human Rights (OHCHR).

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# EXECUTIVE SUMMARY

This joint report by the United Nations Assistance Mission in Somalia (UNSOM) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) focuses on the right to freedom of opinion and expression in Somalia in the context of the country's democratic transition. The report assesses progress since 2012 and the challenges to creating democratic space for Somali citizens on key processes, such as the constitutional review, State formation and the electoral process. 2016 is a critical juncture in Somalia's political transition, ahead of the expected 2020 "one person, one vote" elections.

Freedom of expression plays a central role in building democratic states and in time of political transformation. Its exercise allows political processes to be open, free, fair, and legitimate, enabling pluralistic political communication and ensuring representative and meaningful public and political discourse. Securing space for the multiple voices of politicians, media, and the population in general, is both a permanent challenge and a critical opportunity for any democracy.

The report also analyses the violations related to freedom of expression documented by UNSOM from 2012 until 2016, including killings, beatings, harassment, arbitrary arrests and illegal detention, lack of due process or fair trial guarantees, and closure of media outlets. While such violations receive press coverage and are publicly and privately raised by journalists and other media workers, media associations and human rights defenders, the authorities rarely investigate the cases or prosecute perpetrators. Genuine accountability can only be achieved if there is a systematic and official response to impunity by ensuring that effective investigations and prosecutions take place and punishments are duly enforced.

Attacks, threats of attack and other forms of harassment and interference often silence journalists and other media workers, human rights defenders or political leaders, pushing them to self-censorship on issues that certain actors consider to be sensitive, including on the human rights situation, elections, corruption, and public crises or issues of public concern, emergencies and public demonstrations. These threats and attacks necessarily contravene national and international law and impede the free flow of information, which impacts the ability of citizens to contribute to democratic processes by means of informed decisions on a wide range of issues, thereby violating the fundamental right to freedom of opinion and expression.

Key recommendations to the Federal Government and the emerging Federal states include strengthening law and policy frameworks, fostering a conducive environment for all Somalis to express their opinions freely, particularly at such a critical juncture in Somalia's political landscape, and ensuring accountability for human rights violations and abuses.

# INTRODUCTION

1. In 2012, Somalia adopted its Vision 2016 in which it set itself the goal to complete the review of the Constitution, the formation of a democratic and peaceful State and to hold “one person, one vote” elections before 2016. This joint report by the United Nations Assistance Mission in Somalia (UNSOM) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) focuses on the rights to freedom of opinion and expression in Somalia in the context of the country’s democratic transition. Focusing on these rights, the report assesses progress achieved since 2012 and the challenges to creating the democratic space necessary to allow the Somali people to freely express their views, including on the current key processes that are to shape the country’s future, such as the constitutional review, State formation and the electoral process.
2. Since 2012, Somalia has continued to make progress towards achieving its Vision 2016: the contours of a federal state are emerging; the technical aspects of the Provisional Federal Constitution have been reviewed and preparations are underway to implement an electoral process replacing the envisaged universal elections that were not considered feasible this year. The rebuilding of state institutions, including a functioning legislature, is progressing; the Federal Parliament has passed the Political Parties Bill and on an independent National Human Rights Commission which has been signed into law. Moreover, an action plan for the Human Rights Road Map has been developed.
3. Creating and expanding space where all Somalis, whether the population in general, journalists and other media workers, human rights defenders or political opponents, can share views freely and participate in the national debate is vital to democratic progress but also to the credibility of the ongoing State-building process.
4. In underscoring the importance of the right to freedom of opinion and expression, the United Nations Human Rights Council observed that they are “a fundamental pillar for building a democratic society and strengthening democracy.”<sup>1</sup> Therefore, at this critical juncture in the State-building process, UNSOM and OHCHR consider that it is timely to review the state of the right to freedom of opinion and expression with a focus on the efforts to create space for the Somali people to have a say in these key processes and the challenges faced by journalists and other media workers and human rights defenders,<sup>2</sup> and to offer recommendations on how these challenges can be addressed.
5. Chapter I outlines the international and national legal framework related to the right to freedom of opinion and expression, and describes how it is implemented in Somalia, identifying protection gaps through the patterns of violations observed. The specific challenges these patterns demonstrate, especially in relation to security actors, and the lack of regulatory bodies will be addressed in other relevant chapters.
6. Chapters II to IV review the freedom of opinion and expression in the political, security and judicial processes and institutions, specifically in the context of the constitutional review, State formation and electoral process. It considers the steps that have been taken since 2012 and challenges in creating space for the Somali people to freely express themselves on key processes ahead of 2020 where universal suffrage is expected, noting that 2016 is a critical juncture in Somalia’s political transition.

1 Report of the Human Rights Council, A/HRC/23/2, p. 7), 24 June 2013 (addressing the role of freedom of opinion and expression in women’s empowerment).

2 A journalist is not automatically a human rights defender, but may act as a defender when reporting on human rights violations and abuses.



7. Chapter V considers how freedom of expression is enjoyed by journalists and other media workers.
8. The report concludes with a set of practical recommendations addressed to the Federal Government of Somalia (FGS), to the regional administrations, to the media and to the international community.
9. The information contained in this report is the result of UNSOM human rights monitoring. The specificity of the situation in Somalia, including the ongoing conflict, creates a challenging environment for UNSOM to collect and verify data and to conduct fact-finding missions. Where possible, UNSOM interviews victims and also relies on a wide network of sources. To address access constraints, UNSOM has developed a range of methodologies, including building the capacity of its sources to monitor and report on human rights. Furthermore, UNSOM has conducted trainings for civil society actors on human rights monitoring and reporting, and on international standards on the right to freedom of opinion and expression.
10. The report was shared with the Federal and emerging Federal states. The FGS, Puntland, Jubbaland and “Somaliland”<sup>3</sup> acknowledged certain concerns contained in the report, but disagreed with some elements as outlined in Annex VII.3. Many of these elements are reflected in the report’s recommendations and represent opportunities for further cooperation with, and technical support to, the FGS and the emerging Federal states.

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<sup>3</sup> In its response, “Somaliland” objected to the use of quotation marks in reference to its name, noting that this has a “biased connotation” and that the “Somaliland name is not arguable and the UN should not question the name by putting it in quotation marks.”

# I. International and National Legal Frameworks on the Right to Freedom of Opinion and Expression

## 1. INTERNATIONAL HUMAN RIGHTS LAW

11. International human rights law provides for the right to freedom of opinion without interference<sup>4</sup> and for the right to freedom of expression, which comprises the right to seek, receive and impart information and ideas of all kinds, which includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching or religious discourse.<sup>5</sup> In this regard, it is considered that even expression that may be regarded as deeply offensive is permissible as long as it falls within the scope of article 19(2) ICCPR.<sup>6</sup>
12. While often framed together, the rights of freedom of opinion and expression are distinct. International human rights law protects all forms of opinion.<sup>7</sup> Harassment, intimidation or stigmatization of a person, including his or her arrest, detention, trial or imprisonment due to the opinions he or she may hold, constitute violations of international human rights law. As such, the holding of an opinion shall not be criminalized.<sup>8</sup>
13. On the other hand, international law allows for freedom of expression to be limited for two specific purposes: to respect the rights or reputations of others, and to protect national security or public order or public health or morals.<sup>9</sup> Nevertheless, these restrictions must not be construed in a way that puts the right in "jeopardy" or create a situation where the exception becomes the rule.<sup>10</sup> The restrictions must also be "provided by law" and must "conform to the strict tests of necessity and proportionality."<sup>11</sup> Furthermore, "restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."<sup>12</sup>
14. States must take measures to eliminate the structural, legal and practical barriers to the enjoyment of the right to freedom of expression. In this regard, measures must be established "to protect against attacks aimed at silencing those exercising their right to freedom of expression" and any restrictions to freedom of expression cannot "be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights." Thus, attacks such as arbitrary arrest and detention, threats to life, and killing can never be compatible with this right.<sup>13</sup>
15. International law also requires that any restrictions provided by law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible

4 International Covenant on Civil and Political Rights (ICCPR), art. 19(1) providing that "everyone shall have the right to hold opinions without interference". Somalia became party to the ICCPR in 1990.

5 ICCPR, art. 19 (2) and art.9 African Charter on Human and Peoples' Rights. The Declaration of Principles on Freedom of Expression in Africa also affirms that "the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods" (art. 6).

6 United Nations Human Rights Committee, General Comment No. 34, paras. 9 and 11 (citing art. 19, paras. 2 and 3, and art. 20).

7 Ibid., para. 11.

8 Ibid., para. 9.

9 ICCPR, art. 19(3) stating that the "exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputation of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

10 United Nations Human Rights Committee, General Comment No. 34 (2011), para. 21.

11 Ibid., para. 22.

12 Ibid.

13 Ibid., para. 23. Similar guidelines were given by the Pan-African Commission on Human and Peoples' Rights *with Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*, adopted in May 2015.

to the public.”<sup>14</sup> In this regard, international law considers that there are four types of expression or information that States are required to prohibit under international law: child pornography; incitement to genocide; advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and incitement to terrorism. States are not required to prohibit other types of information or expression, although they can restrict freedom of expression as outlined above, for example to protect an individual from a false and malicious accusation, or while countering terrorism. Nevertheless, these permissible restrictions cannot be used by authorities as a pretext “to unduly control and censor the media and to evade transparency or to silence criticism of public policies.”<sup>15</sup> In case of violation of freedom of expression, States shall make remedies available.

16. Thus, the limitations are not to be discretionary and should be narrowly interpreted given that freedom of expression is a prerequisite for a free and democratic society informed by the principles of transparency and accountability.<sup>16</sup> More specifically, and pertinent to Somalia in 2016, freedom of expression contributes to ensuring transparency and accountability in the conduct of public affairs and other matters of public interest, enabling the population to participate fully, actively, and meaningfully in all aspects of society. As witnessed in many countries, including Somalia, this crucial role often exposes individuals including journalists and other media workers, political leaders and other citizens to violations of their fundamental human rights, including killings, abduction, arbitrary detention, torture, harassment, surveillance, search and seizure, threats and other forms of violence.<sup>17</sup>
17. The right to freedom of opinion and expression is fundamentally interrelated to the right to participation in public affairs through free and fair elections.<sup>18</sup> The plurality of opinion and the unimpeded exchange of divergent ideas is a crucial prerequisite to ensure that the public makes informed choices and is thus a basic pillar of any democratic system. The absence of adequate protection of the freedom to express, convey and debate political, security and human rights issues relevant to the ongoing State and peace building processes negatively impacts the legitimacy of the emerging Somali federal State as well as its institutions and political system. International law further provides that the State must take positive measures to protect and promote the freedom of expression in the context of political and electoral processes to ensure the full realization of article 25.<sup>19</sup> General Assembly resolution 59/201 declared that freedom of association and peaceful assembly are essential elements of democracy together with the right to vote and to be elected at genuine periodic free elections and that the strengthening of both political party systems and civil society organizations should be encouraged. The role of women in public affairs and the importance of their equal participation have been reaffirmed by the United Nations.<sup>20</sup>
18. Somalia has been reviewed twice under the Universal Periodic Review (UPR), in September 2011 and in January 2016. A number of recommendations on freedom of expression were made, urging Somalia to ensure respect of freedom of expression, protect journalists and media workers, ensure inclusive political participation of all citizens including women in public life, and the adoption of legislation to ensure freedoms of association and peaceful assembly. The Government committed to implementing these recommendations, and concrete measures have been incorporated into the 2015-2016 Action Plan on the Human Rights Roadmap. They include establishment of the National Human Rights Commission, engagement of journalists and other media workers on the review of the Media Law that should include an independent oversight mechanism, and training for journalists on professional and ethical practice and self-protection measures. In the 2016 UPR, the Government reaffirmed its 2011 commitments.

14 United Nations Human Rights Committee, General Comment No. 34 (2011), paras. 24 and 25.

15 United Nations General Assembly (A/HRC/20/17), para. 80.

16 It is also noted that freedom of opinion cannot be derogated during a state of emergency.

17 A/HRC/24/23, para. 2.

18 ICCPR, art. 25. The United Nations Human Rights Committee has stated that “freedom of expression ... [is an essential condition] for the effective exercise of the right to vote and must be fully protected. UN Human Rights Committee, General Comment No. 25, para. 12.

19 ICCPR/C/21/Rev.1/Add.7, paras. 8 and 12.

20 United Nations Security Council Resolution 1325 as well as the Beijing Declaration and Platform for Action commit States to ensure women’s full participation in power structures and decision-making.

## 2. NATIONAL LAW

19. Somalia's 2012 Provisional Federal Constitution ("Federal Constitution")<sup>21</sup> is complemented by the state Constitutions of "Somaliland" (2000), Puntland (2009), the Interim South West Administration (2014), Jubbaland (2015)<sup>22</sup> and the Galmudug Interim Administration (2015), all of which guarantee the right to freedom of expression. The right to participate in public life, guaranteed by the Federal Constitution, cannot be fully realized without ensuring the right to freedom of opinion and expression in all its dimensions.<sup>23</sup> However, the Constitutions of the existing and emerging federal member states are yet to be harmonized with the Federal Constitution, which is still under review.
20. The 2014 Interim South West Administration (ISWA) Provisional Constitution provides for the independence and freedom of opinion and expression and of the press, as well as the related freedoms of assembly<sup>24</sup> and association. However, Article 24 limits activities if they are deemed to be contrary to Islamic religion, public safety, public order and stability. The Galmudug Interim Administration (GIA)'s 2015 Charter provides for a wide range of rights and freedoms relating to freedom of thought, media and the rights to assembly and demonstrations.<sup>25</sup>
21. The 2009 Puntland Constitution guarantees freedom of opinion and expression, through speech, the media, writing, video, literature and by any other means consistent with the law and ethics.<sup>26</sup> Nevertheless, it contains broadly worded, undefined limitations. For example, freedoms are subjected to Sharia, by-laws, ethics, the stability of the country and the rights of another person. Hence, "Islam shall be the only religion of Puntland" and "a Muslim may not renounce his/her belief".<sup>27</sup> These limitations are inconsistent with international law and seek to limit freedom of opinion.<sup>28</sup> The right to seek, impart and receive information is not included in the Constitution and Puntland does not have a Freedom of Information Act or equivalent. The Puntland Constitution protects press and media freedoms, providing for an "independent press and media" that "shall be free from government intervention and shall be subject only to the law."<sup>29</sup> However, it allows for derogation from the right to freedom of expression in times of war or other public emergency.
22. Specific media laws at the federal level<sup>30</sup> and at the regional level, in Puntland<sup>31</sup> in 2014 and in "Somaliland"<sup>32</sup> in 2004, complement this framework and are of similar scope.<sup>33</sup> The "Somaliland" Press Law mostly regulates newspapers and does not cover web-based media.<sup>34</sup> It recognizes freedom of the press and prohibits restrictions on the press. It also includes a code of conduct to govern media behaviour, and regulates procedures for registration and operation of media outlets.

21 Federal Constitution, art. 18 (guaranteeing freedom of opinion and expression, including freedom of speech and the media).

22 The Jubbaland Provisional Constitution, arts. 14, 15 and 20. The Constitution also guarantees the freedoms of assembly, demonstration, and association.

23 Federal Constitution, art. 22, stating that "every citizen has the right to take part in public affairs".

24 The ISWA Provisional Constitution, arts. 12, 22 and 24 (covering political parties, groups, and human rights defenders).

25 The Charter of Galmudug, arts. 20, 30 and 32.

26 Puntland Constitution, art. 14.

27 Puntland Constitution, art. 9 declares that "Islam shall be the only religion of Puntland"; and article 13 states that "a Muslim may not renounce his/her belief".

28 ICCPR, art. 19(1) states that "a person may express his/her opinion through speech, media, writing, video, literature and by any other means consistent with the law and ethics".

29 Puntland Constitution, art. 22(1).

30 The Federal Media Law was enacted by the Parliament on 28 December 2015 and signed by the President of the Federal Government of Somalia on 10 January 2016.

31 The Puntland Media Law was enacted by Parliament on July 2014 and signed by the President on 29 July 2014.

32 The "Somaliland" Press Law was enacted by the Parliament and signed by the President in 2004.

33 The "Somaliland" Constitution (2000), art. 32 provides for freedoms of public demonstration, expression of opinion, press and other media. The Puntland Constitution, art. 25 provides for freedom of opinion and expression. The Jubbaland Provisional Constitution, art. 21 anticipates specific media and press legislation.

34 "Somaliland" Press Law art. 3 on Freedom of the Press provides that "the freedom of the press is recognized and enshrined in the Constitution of the Republic of Somaliland and is respected and valued in Somaliland. No restraints can be imposed on the Press. Any acts that can be construed as amounting to censorship are prohibited. d. Journalists may form professional organizations which have an umbrella association". Also art. 5 provides that "every Somaliland citizen has a right to engage in or carry on any press activity, either solely or jointly with others."

23. While federal law applies in principle across Somalia, there is no uniform application, particularly in “Somaliland” and Puntland which, following the collapse of the central state in 1991, established their own state structures including the legislative frameworks that prevail today.
24. In regards to the “Rights to Freedom of Association and Peaceful Assembly”, the Federal Constitution guarantees every person “the right to organize and participate in meetings, and to demonstrate and protest peacefully, without prior authorization.”<sup>35</sup> The 2015 Jubbaland Constitution and that of Puntland and South West Administration also guarantee these rights. For example, the Puntland Constitution also recognizes the right to participate in political parties and the freedom of association and the right to demonstrate.<sup>36</sup> The Jubbaland Constitution recognizes the rights to freedom of assembly, to demonstrate and to freedom of association.<sup>37</sup>

## The Federal Media Law

25. After some years of negotiation, the Somali Media Bill became law in January 2016. It guarantees certain freedoms, including the independence of public broadcasting, protects the right to information for journalists, and prohibits censorship or forced reporting on issues contrary to public interest.<sup>38</sup> It also lists prohibitions of what can be reported on, including broadcasting false reports, inciting hostilities, encouraging clannism, and disseminating baseless propaganda.<sup>39</sup> However, some terms used are unclear, which allow for subjective interpretation leading to undue restrictions or limitations on the right to freedom of expression. These terms include “disseminating false news”, “inciting violence”, and “defamation of persons or institutions”. These restrictions provided by the Media Law lack the precision necessary to enable citizens to regulate their conduct accordingly, which is inconsistent with international law. Furthermore, the Media Law provides for high penalties and fines for journalists and media outlets for such violations.<sup>40</sup> In addition, the Ministry of Information has a wide margin of discretion in controlling the registration of journalists.<sup>41</sup>
26. The Media Law provides for an independent National Media Council to be established to promote ethics, to resolve and to mediate disputes and complaints, to discipline journalists and media editors and officials, and to recommend the granting and withdrawal of licenses.<sup>42</sup> The Council comprises nine members: three from State-owned media, three from private media and three from civil society plus the National Human Rights Commission.<sup>43</sup> The law is silent on the relationship between the Council and its regional counterparts, as well as media associations or relevant bodies that could interact with it. On 7 February 2016, the Minister of Information approached civil society and journalists and other media workers to nominate their representatives in the Council within three days, leaving little time for consultation.
27. The Council was approved on 17 June 2016 and consists of three representatives from State media, three from independent media, one from the Somali Bar Association, one from Somali Women Organizations, and one from a human rights organization, despite the law referring to the National Human Rights Commission, which has not yet been established. The appointment process and the approval of the Council has been met with strong opposition from media organizations, including the National Union of Somali Journalists

35 Federal Constitution, art. 20.

36 Puntland Constitution, art. 41/b on establishing and joining a political party; art. 15 on the right to assembly; and art. 15 on demonstrations.

37 Jubbaland Constitution art. 15 (providing the right to freedom of assembly and demonstration, and complaints and petition and art. 14 (providing for the right to freedom of association).

38 Federal Media Law, art. 3(4) states that private media cannot be “forced to broadcast reports against the interests of the nation, security, economy, politics and society.”

39 Ibid., art. 4.

40 Ibid., art. 5.

41 The process of issuing licenses is not explicit in the Media Law. Article 18, which addresses registration of journalists, provides that the Ministry of Information will certify who could be a journalist, but this is not necessarily based on qualifications and/or interviews by the Media Council.

42 Federal Media Law, art. 15

43 Federal Constitution, art. 41 providing for the establishment of a National Human Rights Commission.

(NUSOJ)<sup>44</sup> and Somali Independent Media Houses Association (SIMHA), which argue that the process lacked consultation, was not transparent and was pursuant to a flawed Media Law. One of the Council members from the private media resigned on the day of his appointment (17 June 2016), citing that he was not consulted on his appointment and had only learned about it from the media.<sup>45</sup> Finally, Puntland authorities have rejected and condemned the approved Media Council, stating that it is neither represented in the Council nor were Puntland's view considered in the drafting of the Media Law.

## The Penal Code

28. Many of the cases documented in this report are based on the powerful accusation of spreading “false information,” which is frequently used by the authorities across the country to close media houses or arrest journalists and other media workers.<sup>46</sup> The Somali Penal Code criminalizes the spreading of “false news”, including with imprisonment of up to six months. As the Code does not define what amounts to false news, there is not sufficient precision to allow journalists and other media workers to regulate their conduct, as required by international human rights law. Furthermore, it has not been demonstrated that such a restriction is necessary or proportional to the permitted limitations under international human rights law. As such, the Penal Code provisions on spreading false information are an unjustifiable restriction to freedom of expression and the Code can serve as a vehicle to target journalists and media workers who express opinions that the authorities wish to silence.<sup>47</sup>
29. As part of his role in giving guidance to States on applying the right to freedom of expression, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has addressed the use of allegations of “false information” and strongly urged governments to ensure that press offences are not punishable by terms of imprisonment, except in cases involving racist or discriminatory comments or calls to violence. He has further noted that “prison terms are considered both reprehensible and out of proportion to the harm suffered by the victim. Thus, imprisonment as punishment for the peaceful expression of an opinion constitutes a serious violation of human rights.”<sup>48</sup> In a similar vein, the United Nations Human Rights Committee, which monitors the implementation of the rights enshrined in the International Covenant on Civil and Political Rights, including the right to freedom of expression, has observed that where there is public interest in the subject matter, for example around public figures, States should consider avoiding penalizing “untrue statements that have been published in error but without malice”.<sup>49</sup>
30. While journalists should always aim at reporting in a truthful and balanced manner, it may be difficult at times to conclusively verify every fact, particularly in the context of a conflict and widespread insecurity. Furthermore, while journalists have the duty to exercise due diligence in checking the veracity of the facts they are reporting, not complying with this should, in principle, not incur criminal sanctions. The patterns observed in the invocation of “false information” by the authorities represent a dangerous precedent that

44 The National Union of Somali Journalists (NUSOJ) was formed in August 2002. From May 2011, an internal dispute about leadership divided the organization and its members. On 7 February 2016, the Federal Supreme Court held that the Omar Faruq-led wing was the legitimate leadership of NUSOJ. On 11 February 2016, the Ministry of Information requested NUSOJ to hold a general assembly to elect a new leadership not involved in the dispute. Following the Supreme Court's decision to hold a new election for NUSOJ leadership, the Union held a general assembly in Mogadishu from 3 to 17 May, resulting in the election of a new Chairperson and Secretary General. However, Omar Faruk and his supporters opposed the general assembly on the grounds of interference from the Ministry of Information and media owners. On 3-4 July, Omar Faruk organized another meeting in Gaalkacyo, resulting in his re-election as the Secretary General on NUSOJ. On 20 July, the Chief Justice of Somalia issued a letter to the regional administrations, States institutions and Office of the Attorney General to endorse the outcome of the election of NUSOJ leadership held in Mogadishu from 3 to 17 May 2016.

45 Mohamed Fiyooore, the editor of Radio Danan in Mogadishu.

46 Somali Penal Code, art. 328 stating that “[w]hoever publishes or circulates false, exaggerated or tendentious news so as to disturb the public order shall be punished, where the act does not constitute a more serious offense (Somali Penal Code, art. 15) with imprisonment of up to six months (Somali Penal Code, art. 96) or with fine (Somali Penal Code, art. 97).

47 Under the auspices of the Ministry of Justice and supported by the International Development Law Organisation (IDLO), the Penal Code has been under review for the last two years. No draft of the revisions is publicly available.

48 Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of Expression (E/CN.4/2000/63), para. 205.

49 United Nations Human Rights Committee, General Comment 34, para. 47.

could be used to justify politically motivated arrest, detention and conviction. Such risks may increase in the context of active electoral campaigning.

## The Counter-Terrorism Bill

31. Restrictions on the grounds of national security are, as illustrated in Chapter III, of particular concern and would increase if the Counter-Terrorism Bill, approved by the Council of Ministers in July 2014, is adopted. As in the case of the Media Law, some terms in the Bill are not well defined, allowing for interpretations that could justify excessive use of powers by law enforcement agencies, security, or other institutions, and would negatively affect the enjoyment of the right to freedom of opinion and expression. For example, under articles 3 and 4, reference is made to the prohibition of “reports against the interest of the country, its security, economic and social interest<sup>50</sup>” or reports on “false news”.<sup>51</sup> As seen in other contexts, the impact of counter-terrorism legislation on key and public actors raises concern, particularly where broader police and intelligence service powers for addressing terrorism becomes permissible and can be used to restrict freedom of expression in violation of international law.<sup>52</sup>
32. A direct - although broad - reference to the right to freedom of expression appears in Article 12 of the Bill, which criminalizes the offence of incitement or promotion of a commission of a terrorist act, and incitement or promotion of membership of a terrorist group. The United Nations Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism, and the United Nations Office on Drugs and Crime have cautioned against “an overly broad definition of ‘terrorism’, warning that it may lead to the criminalization of legitimate activities, such as lawful protests and expressions of opinion which, while unpalatable, do not amount to incitement to violence”.<sup>53</sup> Moreover, Article 15 of the Bill imposes on journalists the duty to disclose information and criminalizes the failure to do so. This article is overly broad and should be framed in a way that any measures taken are necessary and proportional.
33. Broad powers of investigation are also granted to certain categories of persons, including the Director of National Intelligence and Security Agency (NISA) and the Police Commissioner.<sup>54</sup> The duration of the warrant and subsequent renewal without judicial oversight also raises concerns. Articles 23(2) and 30 provide for detention without charge for a period of 60 days, while the Constitutional guarantee is 48 hours. The United Nations Human Rights Committee observed that “governments must take “extreme care” to ensure that laws relating to national security are not invoked “to suppress or withhold from the public information of legitimate public interest that does not harm national security” or to prosecute journalists and media workers, researchers, activists, or others who disseminate such information.<sup>55</sup> As it currently stands, the Counter-Terrorism Bill risks undermining that duty of care.

50 Federal Media Law, art. 3 (4).

51 Ibid., art. 4.1 (B).

52 A/HRC/24/23, para. 8.

53 United Nations Office of Drugs and Crime, Frequently Asked Questions: International Law Aspects of Countering Terrorism at 95 (2009); <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf>; See also E/CN.4/2006/98, A/63/223.

54 Counter Terrorism Bill, art. 21 (4).

55 United Nations Human Rights Committee, General Comment 34, para. 30 (on art. 19).

## II. Freedom of Expression and the Political Process

34. Freedom of expression plays a central role in ensuring that political processes are open, free, fair, and legitimate, thus guaranteeing a functioning and effective democracy, particularly during times of political transformation. Free and open political communication is a critical factor to ensuring fair and democratic processes and representative and meaningful public and political discourse. Providing and securing space for the multiple voices of politicians, media, minorities and citizens in general is both a permanent challenge and a critical opportunity for any democracy.
35. Attacks, threats of attack and other forms of harassment and interference often silence journalists and other media workers, human rights defenders or political leaders, pushing them to self-censorship on issues that certain actors consider to be sensitive, including the human rights situation, elections, corruption, and public crises or issues of public concern, emergencies and public demonstrations.<sup>56</sup> This violence necessarily impedes the free flow of information, which impacts the ability of citizens to contribute to democratic processes by means of informed decisions on a wide range of issues, thereby violating the fundamental right to freedom of opinion and expression of the wider population.<sup>57</sup> The United Nations Special Rapporteur on the promotion and protection of the right to freedom of expression has documented that attacks against journalists and other media workers, human rights defenders or political leaders are generally committed with impunity, which engenders further violence.<sup>58</sup>

### 1. The Constitutional Review Process

36. A key priority for Somalia since 2012 has been the development of legal and policy frameworks, including the review of the Federal Constitution. This review is central to the democratic and peace-building processes and has the potential to offer a genuine opportunity to reflect and strengthen the compliance of Somalia's legal architecture with international human rights standards, including the right to freedom of expression.
37. On September 2013, the National Conference on "Vision 2016" concluded that the "review and implementation of the Provisional Constitution" should be "as inclusive as possible".<sup>59</sup> To be inclusive and nationally owned, the review requires broad dialogue and consultations at different levels, with diverse stakeholders and a broad spectrum of the society, including women, youth and minority groups. Participation in the ongoing review is currently limited to Parliament's Oversight Committee, the Independent Constitutional Review and Implementation Commission, and the Ministry of Constitutional Affairs. While these institutions have expressed their commitment to inclusivity, announcing plans to organize regional consultations, outreach programmes and civic education, little has been done to date and the only civic education exercise took

<sup>56</sup> A/HRC/24/23, para. 3. See also Security Council resolution 2222, para. 6 (2015) calling for the protection of journalists, media professionals and associated personnel in situations of armed conflict, and to ensure accountability for crimes committed against them, noting the important role that journalists, media professionals and associated personnel can play in "protection of civilians and conflict prevention by acting as early warning mechanisms in identifying and reporting on potential situations that could result in genocide, war crimes, ethnic cleansing and crimes against humanity." See also para. 6 requiring United Nations missions to include in their mandate reporting information on specific acts of violence against journalists, media professionals and associated personnel in situation of armed conflict.

<sup>57</sup> A/HRC/24/23, para. 4.

<sup>58</sup> A/HRC/20/17, para. 65.

<sup>59</sup> The Federal President convened the Vision 2016 Conference from 2 to 6 September 2013 that created the opportunity to advance the political process and collect opinions on the constitutional making process and the political road map to the 2016 electoral process.



place in Baidoa in April 2016.<sup>60</sup> Thus, the constitutional review process has not yet allowed for pluralistic discussions, particularly in the emerging federal member states.

## 2. The State Formation Process

38. In 2012, all of the south and central regions of Somalia was essentially ‘administered’ from Mogadishu, but with limited reach, as large parts of Somalia were under Al Shabaab control.<sup>61</sup> Following the establishment of the current administration, the formation of a Federal State and inclusive politics became key priorities as set out in the Government’s 2012 six pillar policy, and affirmed in the New Deal that was endorsed in September 2013.<sup>62</sup> So far three sub-federal administrations have been established, namely, Jubbaland, South West and Galmudug, while the formation of the Hiraan and Middle Shabelle Administrations is in progress. The Federal Member State of Puntland already existed before 2012.
39. The State formation process has been characterized by multiple consultations and has received wide media coverage, without any apparent censorship. The open and inclusive nature of this process has been attributed to various factors, including improved security compared to the period prior to 2012, advocacy by international partners, increased access to the internet and, a growing public awareness of the right to engage in the political process, particularly through the sharing of views and ideas. During the State formation process for Galgaduud and South Mudug regions in 2015, efforts were made to create space for the freedom of expression, including through the Somali Women Leaders’ Initiative, a forum for Somali women to organize and lobby for women’s interests.
40. Women’s representation in the Government and related institutions is generally low. Women represent only 14 per cent of the Federal Parliament and their representation in Regional administrations is mixed at best. ISWA, formed in November 2014, has a Cabinet consisting 64 Ministers, Deputy Ministers and State ministers, including three female representatives. The ISWA Constitution requires a 20 per cent quota for women in the ISWA Assembly and following strong advocacy by women’s representatives, women received 21.5 per cent of the seats.<sup>63</sup> Similarly, women represent nine per cent of the Galmudug Assembly. However, the Jubbaland Assembly and Puntland House of Representatives only comprise four and three per cent women respectively.<sup>64</sup> In addition, there is only one female minister in the Jubbaland Cabinet, responsible for the Ministry of Gender, Family Affairs and Human Rights, and four in the Puntland Cabinet, including one Minister and three deputy Ministers. “Somaliland” has one per cent of women representation in its House of Representatives, and none in the Upper House.
41. While State formation processes have been characterised by reasonably open debate, an exception is the so-called Puntland treason case involving 14 people, including politicians. On 13 January 2015, the Garoowe Court of First Instance sentenced *in absentia* three Puntland citizens to life imprisonment and 11 others to 10 years of imprisonment based on treason provisions in the Somali Penal Code and the Puntland Constitution on acts that threaten “national unity” for attending preparatory meetings for the central regions state formation in Adaado, Galgaduud region. The harshest punishments were imposed on the three individuals who formerly held positions in the Puntland Government. In an unusual step, the

60 The Compact priorities and milestones as further agreed by the United Nations and the FGS in the Integrated Strategic Framework for Peace and State-building Goals 1 provided by a six-step process which includes civic education and civic engagement and public participation.

61 The term “South Central Somalia” is sometimes used to refer to the area comprising existing and emerging Federal member states, including Jubbaland, the South West, Galmudug, and the two regions of Hiraan and Middle Shabelle that have not completed the State formation process. The status of Banadir region, including Mogadishu, is still under discussion.

62 The Six-Pillar policy was developed immediately after the end of the Transitional Federal Government in 2012. It set out key short-term priorities on security, the judiciary, rule of law, good governance and public finance management. The Somali New Deal Compact (2014-2016) was built on the basis of this policy together with the “Busan principles” that identified the Peace and State building Goals (PSGs) for the 2014 to 2016 period: Inclusive politics; security; justice; economic foundations; revenue services and crosscutting issues including human rights.

63 ISWA Constitution, art. 37.

64 Provisional Constitution of Jubbaland State of Somalia, art. 28(1) providing for the structure and the term of the State Assembly which comprises 75 members. In the parliamentary elections to the State parliament after the end of the transition, the Assembly must comprise a minimum of 15 per cent women.

Attorney General appealed the conviction on behalf of the accused, despite initiating the prosecution. It is understood that he was pressured by elders who had also intervened with the President. As a result, on 4 March 2015, the Garoowe Court of Appeal overturned the lower court's decision for the 11 due to lack of evidence. The Court also ordered the Government to issue an apology to the nine politicians who appeared in court. In August 2015, the Puntland President ordered that the charges be withdrawn for the remaining three.

42. This case was about individuals who attended a meeting to share their ideas and views in a matter of concern to them as Somalis. It was of great concern as it indicated the potential for the authorities to intimidate and harass individuals who do not follow the official position, thereby violating constitutionally guaranteed rights.<sup>65</sup> While there have been no further cases of this magnitude, it is unclear whether this is due to freedom of expression being fostered or to self-censorship in highly sensitive political contexts.

### 3. The Electoral Process

43. The last general elections in Somalia took place in 1967. Considering that 98 per cent of the Somali population are below 64 years old, with 45.6 per cent below 15, the majority of the population has never experienced democratic elections.<sup>66</sup>
44. The Federal Constitution provides for “the right to form political parties and to participate in the activities of political parties.”<sup>67</sup> However, the situation in Somalia has not allowed for the establishment or emergence of such political organizations. No official political parties exist in the south and central regions of Somalia, and the Federal Parliament only approved the Political Parties Law in June 2016 creating a mechanism for the registration of parties. The Constitutions and electoral legislation in Puntland and “Somaliland” limit the number of officially recognized political parties to three and regulate their political programmes, finances and charters.
45. In 2012, two National Conferences, Garoowe 1 and 2, comprising representatives from the regions in south central Somalia and Puntland, gathered in Puntland and committed to abandoning the clan-based system as an electoral model. However, progress on key political processes provided for in the Federal Constitution (constitutional review and federalization/State formation), and the institutions established to support the process (the Federal Electoral Implementation Team and the State Electoral Implementation Team) and the development of the legal framework has been slower than originally expected, making it difficult to hold general elections in 2016. The prevailing security situation also impacts the ability to hold countrywide elections, as a significant number of districts are still under Al Shabaab control. In July 2015, the Somali Government acknowledged that universal elections would not be possible in 2016 but only elected representatives designated by indirect suffrage for Parliamentary elections.
46. A National Consultative Forum (NCF) was established on 19 October 2015 to give citizens a say on the best possible electoral model for 2016. Starting in October 2015, countrywide public consultations on an electoral model were conducted, with Somalis freely expressing their preference to move away from a non-transparent selection by traditional elders to a broader and more inclusive process. The consultations brought together participants from a wide spectrum of society, including women and youth. Views were

65 While the Federal Constitution provides for freedom of association, including, political party participation, Puntland's Constitution is more restrictive with respect to “Formation and Membership in Social Associations,” (art. 15) which strictly prohibits associations of a clan or military nature. The right of political participation is also qualified, including by the obligation to safeguard Puntland's nationhood which the Puntland Government interprets to cover political association and participation that can be perceived as challenging Puntland's understanding of its borders. Nevertheless, the convictions were based on the Somali Penal Code which defines “treason” as applying to Somalia in relation to other countries and not within the emerging Federal states.

66 Federal Republic of Somalia and the United Nations Population Fund, Population Estimation Survey 2014 for the 18 Pre-War Regions of Somalia (PESS).

67 Ibid.

freely expressed even against a backdrop of political leaders trying to steer debate in a particular direction. The Forum concluded with the issuance of a declaration calling for an inclusive process.<sup>68</sup>

47. The Federal Government then took responsibility for developing a concrete model that would respond to the views of participants in the NCF. The model announced by the FGS on 28 February 2016 largely achieves this aim.<sup>69</sup> It is more inclusive than the 2012 process, in which only 135 clan elders from across Somalia chose the 275 members of the Federal Parliament. In the 2016 electoral model<sup>70</sup>, an electoral college of 13,750 delegates will be able to elect the 275 members of the Lower House, although the seats will still be allocated to clans based on the 4.5 formula.<sup>71</sup> Members of regional assemblies will choose the now 56 members of the Upper House.
48. In addition, the electoral model provides that both Houses of Parliament shall include at least 30 per cent of women and shall increase the representation of youth under 35 years of age. However, the modalities by which these benchmarks are to be achieved remains unclear, given that all seats in the Lower House will be allocated along clan lines and that clan elders will select the members of the electoral colleges. It is regrettable that Somalia's Federal Parliament did not approve the model, which was finally endorsed by a Presidential decree on 30 April 2016.<sup>72</sup> While this may not hamper the process, the lack of Parliamentary approval has resulted in challenges in the political negotiations around the electoral process, including on the 30 per cent quota for women's representation.
49. The model excluded the Banadir region – the most populated region<sup>73</sup> in the country – from having representatives in the proposed Upper House, arguably due to the unresolved status of the Banadir region and Mogadishu.<sup>74</sup> The Banadiri, a minority community in Mogadishu, challenged this on grounds that they were disproportionately impacted by the decision, given that they have no other avenue for representation in the Upper House.<sup>75</sup> In response, on 25 June 2016, Somalia's National Leadership Forum (NLF), which brings together leaders of the Federal Government, the Federal Parliament and the regional federal states, approved two additional seats in the Upper House to be allocated to the Banadiri community. While the complaints of the Banadiri community are partially addressed, wider issues remain unresolved and the NLF agreed to establish a 19-member committee to look into this and advise on issues, including representation and status. On 9 August 2016, the NLF agreed on further modalities to secure Banadiri representation.<sup>76</sup>
50. However, there is division within the Banadiri community on who should represent the community. While there are senior Banadiri individuals holding top positions<sup>77</sup> at national level and at Banaadir region level, some community members raised questions on whether they represent the best interests of the community. The Banaadiri Political Reformation Council, a group of relatively young individuals (including some from the diaspora), have been vocal critics of the current political leaders of the Banadiri community. With such divisions within the community, the process of deciding who will be entitled to the two seats allocated to the Banadiri in the Upper House will be challenging.

68 The National Consultative Forum's Declaration issued on 16 December 2015 committed to important principles and actions including the constitutional term limits of the executive and legislature, the establishment of a Lower House and the Upper House for the 2016 Election, a Parliament with balanced representation between the constituency and clan, electoral colleges to vote at the Federal member state capitals and representation from women, youth and civil society with a minimum of seats to be reserved for women in both houses. A Road Map was subsequently developed for the 2016 election process and the 2016-2020 period.

69 Communique on Electoral Model for 2016, issued on 28 January 2016 by the Office of the Prime Minister of the Government of Federal Republic of Somalia.

70 According to the PESS made in 2013-2014, the Somali population is estimated to be 12.3 million, with 46 per cent of the population below the age of 15.

71 The 4.5 formula is a quota system that combines four majority clans with each 61 delegates and minority clans with 31 delegates.

72 The Prime Minister submitted the model to Parliament on 30 April 2016.

73 PESS.

74 Federal Constitution, art. 9 (the capital city of the nation). The Federal Constitution does not identify Mogadishu as the capital of Somalia but states that "the status of the capital city of Somalia shall be determined in the constitutional review process, and the two houses of the Somali Federal Parliament shall enact a special law with regards to this issue." This issue remains unresolved.

75 [www.Garooweonline.com/en/news/somalia/somalia-mogadishu-protests-for-representation-in-upper-house](http://www.Garooweonline.com/en/news/somalia/somalia-mogadishu-protests-for-representation-in-upper-house).

76 National Leadership Forum, Communique on 2016 Elections, 9 August 2016.

77 First Deputy Speaker of the Federal Parliament and Deputy Governor for Banadir Region.

51. In sum, as the 2016 electoral process will only enable a small proportion of Somalis to participate, it remains a transitional step towards universal suffrage in 2020.

## Women's Political Participation

52. The women of Somalia, including through civil society, have been able to freely debate and advocate for the measures to guarantee a 30 per cent quota for women's representation in the legislature and in the implementation bodies for the indirect elections. Much advocacy has gone into securing the commitment of Somalia's top political leaders to ensure women's participation in the 2016 electoral process. A key outcome of early advocacy was the President's May 2016 appointment of 13 Goodwill Ambassadors to champion the 30 per cent quota for women.
53. A 30 per cent quota for women was established for the 2012 Federal parliamentary process, but only 14 per cent of the selected lawmakers were female.<sup>78</sup> In "Somaliland", the 86 member House of Representatives includes two women lawmakers, and only two of the 66 members in Puntland's House of Representatives are women. While the political commitment to a 30 per cent quota for the 2016 process is significant, it could be imperilled given the lack of guidelines and of an enforcement mechanism. The predominance of the role of the clan elders in public affairs represents the main obstacle to women's participation, as women are not represented among clan elders. In this regard, the two decrees<sup>79</sup> issued in 2016 on the electoral model recalling the NLF's commitment to reserve 30 per cent of seats in both Houses of Parliament for women are noteworthy. The NLF's 9 August 2016 communique was also significant in that it urges the traditional elders and electoral colleges to "ensure" that 30 per cent of the elected members of the Lower House are women, as well as calling for women's representation in the electoral colleges and the Upper House.
54. While the 2016 electoral process is important, support to empower women to participate in public life should include short, medium, and long-term considerations. For example, in the short-term initiatives such as the promotion of women voters and candidate registration, women voters' education, protection, and access of women to freely compete, campaign and vote on Election Day. In the medium-term, initiatives to help influence the 2020 elections should include training and capacity building of women candidates with respect to political campaigning and advocacy for a minimum 30 per cent representation of women in decision-making bodies at all levels, including the districts. In the longer-term, the promotion of women's leadership through political party reform, awareness-raising of the Government's commitment to gender equality, the allocation of adequate resources to women's groups, and the removal of legal and logistical barriers are essential.
55. Women's political participation means representation in political parties, involvement in the electoral process, representation in and by civil society organisations, and the ability to influence debate. Somali women experience extremely high levels of discrimination in all areas of their life, which has an impact on their ability to participate in public and political life. The persistent underrepresentation of women in decision-making forums has also had direct consequences in political and public arenas.<sup>80</sup>
56. One example of the challenges faced was in Puntland, where a number of women's groups, including the Talo-wadaag Women's Association (Common Cause Movement), the Puntland Women's Association, as well as the Ministry of Women, are striving to have women's voices heard in the lead up to the 2016 elections.

78 On 24 June 2016, the Prime Minister replaced two female ministers - the Minister of Education and the Minister of Health - by male Members of Parliament. No official reason was given for their dismissal, but the timing was unusual given the intense debate about women's representation in the 2016.

79 The first Presidential Decree was issued on 27 January 2016 and proposed the 2016 electoral model based on 4.5 clan-based formula. The second decree, issued on 22 May 2016, introduced the modalities of the 2016 electoral process.

80 Ibid.

These organizations have held a number of meetings with influential leaders in Puntland, including the Vice President, the Parliamentary Speaker, traditional and religious leaders, and have identified “champions” for women’s participation among the traditional leaders. While there has been no backlash against their advocacy, they have expressed concerns about genuine participation in public forums as the debate and sphere of influence remains dominated by men. For example in May 2016 in Qardho, Puntland, despite numerous requests and efforts, traditional leaders prevented women’s organization representatives from participating in a conference that was attended by more than 100 traditional Somali leaders from across the country. The members of the women’s organizations who went to the conference venue were denied access to the conference, with the organizers stating that “this is not a place for women”.

57. On 30 June 2016, a group of religious leaders, under the umbrella of the Somali Islamic Scholars Union, denounced the Cabinet’s earlier approval of the Gender Policy, declaring that many elements were against the Federal Constitution and Islam in general, and called for the punishment of those behind the policy. The scholars questioned the policy’s commitment to the equality of women and men, women’s empowerment, political participation and representation in Somalia. Following this, harassment and targeting of women leaders has become visible, including death threats issued to the Minister of Women and Human Rights (the only woman left in the Somali cabinet after successive reshuffles since 2012).<sup>81</sup> A fabricated version of the Gender Policy that distorted its original content was also disseminated over social media, including points that had not been agreed to, such as committing to same-sex marriage and the provision of condoms in hotels.<sup>82</sup>

## Political Assembly and Demonstrations

58. The right to hold peaceful demonstrations and protests without prior authorization is routinely denied by formerly the Federal Ministry of Interior and now the Ministry of Internal Security, which requires the organizers of public gatherings to obtain its prior approval, citing security concerns, notably the possible infiltration of such gatherings by Al Shabaab.<sup>83</sup> Most of the demonstrations in Mogadishu have been organized by the Banadir Regional Authority, either in support of Government initiatives or against Al Shabaab attacks, as well as by the Banadir Political Reformation Council, which has demanded greater political representation.
59. Episodes of heavy-handed repression of public protests or expressions of dissent in different parts of the country have been observed. “Somaliland” authorities have prohibited political parties from holding meetings in hotels or public arenas, effectively muzzling the opposition.<sup>84</sup> On 13 May 2013, “Somaliland” security forces opened fire during protests in the town of Burao over a local ban on sand harvesting, resulting in the death of one unarmed civilian. On 14 August 2013, in Mogadishu, Somali Government security forces used grenades and live ammunition to disperse a crowd of demonstrators who were protesting against a government edict expelling people living on State-owned land. Three protestors died and 10 were injured, and security forces claimed that they had opened fire after protestors reportedly ignored an order to halt the demonstration. On 7 June 2014, Somali National Army troops fired on protesting taxi drivers in the Lower Shabelle town of Afgooye, killing one demonstrator. On 1 January 2015, in the Galgaduud Region security forces fired at Ahlu Sunna Wal Jama’a supporters when a protest against the Federal Government became violent, killing two people. On 22 February 2016, the deputy Chairperson of the Banaadiri Political Reformation Council was arbitrarily arrested by NISA following a public gathering of their supporters

81 Between 17 and 29 June 2016, the Minister and her advisers received several phone calls indicating that they “would hear from others”, and religious leaders and supporters stated publicly that it was permissible to kill the Minister and her staff, including at Friday prayers. Al Shabaab used the discussion to claim that the FGS is un-Islamic.

82 See e.g. <http://waagacusub.net/articles/2298/Topnews-Akhri-Sir-Culus-Dukumiintigii-lagu-ansixiyay-sharcigga-khaniisinta-Somalia-iyosinaanta-Ragga-iyodumarka>

83 U.S. State Department, *Country Reports on Human Rights Practices*, 2015. [www.state.gov/documents/organization/252939.pdf](http://www.state.gov/documents/organization/252939.pdf)

84 Freedom House 2015 Report on Somalia.

in Mogadishu to advocate for the right of the Banadiri Community.<sup>85</sup> He was released after three days, following advocacy by UNSOM and the subsequent intervention of the Federal Ministry of Women Affairs and Human Rights.

60. On 26 March 2016, three people were wounded after police opened fire on anti-FGS demonstrators in Beledweyne, Hiraan region, during a visit by the Federal President. As in other cases, it is unclear if an investigation was initiated. In April and May 2016, Jubbaland security forces arrested and detained 11 women, some of whom were beaten. The arrests were in reaction to the women protesting against the Jubbaland authorities' unlawful allocation of public land used by the women to an unidentified international partner.
61. On 9 July 2016, contrary to the Federal Constitution, the Ministry of Internal Security banned public meetings organized in the hotels in Mogadishu if no prior notice was given to the Ministry.<sup>86</sup> On 14 and 15 July 2016, NISA stopped two separate political meetings organized by two different clans in hotels in Mogadishu to discuss upcoming elections and nominations of the members of the parliament. In one case, NISA claimed that they had to evacuate the hotel for security reasons, while hotel managers declared that there was no security threat. Some elders who attended one of the meetings reported that they had received phone calls from NISA officers before the meeting to dissuade them to attend. In the other case, NISA argued that the organizers had not obtained permission to hold a political meeting. On 14 July 2016, NISA intervened in another hotel in Mogadishu, only to find that it was hosting a wedding ceremony.

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85 The Banadir Regional Authority (BRA) is the local government of Banaadir region, which comprises Mogadishu and surrounding areas. The Banaadiri Political Reformation Council is critical of the BRA and advocates for the rights of Banadiri community in general and their rights in Mogadishu. The BPRC claims that the Banadiri community and Reer Mataan (a sub, sub, sub clan of Abgaal) are indigenous to this part of Somalia and should have a better representation in the management of the Banadir Region.

86 Federal Constitution, art. 20 (providing that "every person has the right to organize and participate in meetings, and to demonstrate and protest peacefully, without requiring prior authorization.")

### III. The Security Situation and the Freedom of Expression

62. Limited progress has been made in the establishment of effective and genuinely national security institutions grounded in legal and policy frameworks. Somalia remains a dangerous operating environment, and while the lack of security or poor security environment affects all Somalis, journalists and media workers, activists and political leaders have been particularly impacted. Documented violations targeting them include loss of life, injury, arbitrary arrest and detention, intimidation and harassment, physical attacks, closure of media houses, confiscation of newspapers, blocking of websites, and denial of access to information all over the country, including in “Somaliland”.
63. Since the establishment of the current Government in August 2012 until June 2016, 30 journalists and media workers, including two females, have been killed in the country during complex or targeted attacks.<sup>87</sup> Among them, seven worked for State-owned media while 23 others worked for independent media. Violence against political leaders continues, including assassinations, harassment and intimidation, albeit on a lower scale than prior to 2012. Since 2012, 18 parliamentarians, including one female, have been killed and several more targeted with IEDs attached to vehicles or attempted assassinations. There is little information available on whether comprehensive investigations have taken place with respect to these incidents, some of which have been claimed by Al Shabaab, while the rest cannot be attributed or were perpetrated by clan militias.<sup>88</sup>
64. Al Shabaab also uses the media as a propaganda tool in its fight against the FGS and foreign presence in the country, including the African Union Mission to Somalia (AMISOM). Al Shabaab has prohibited all media, whether independent or state-owned, to operate and report in the areas under its control. The only media outlet permitted to operate is Al Shabaab’s local FM Radio in Jilib town, in Middle Jubba, which broadcasts religious sermons promoting Al Shabaab views and ideologies and propaganda. This necessarily limits the access to information for the population living in Al Shabaab controlled areas. The influence of AS also reaches beyond the areas they control as they use operatives to target journalists and media workers across the country.

#### 1. THE SOMALI NATIONAL ARMY

65. Since 2012, little reform was undertaken in the security sector in Somalia, in particular in Mogadishu, Jubbaland, and ISWA.<sup>89</sup> The Guulwade Plan is the framework for strengthening the Somali National Army (SNA), with the objective of transferring the primacy of security within the State to the civilian police, to improve law enforcement generally.
66. While militia integration is in process, parallel armed groups and security militias<sup>90</sup> operate outside the control of both the FGS and the SNA, undermining their authority and limiting their ownership and

<sup>87</sup> According to the Committee to Protect Journalists, 17 journalists were killed from January 2014 to February 2016 across the country. <https://cpj.org/killed/2015/>. From 2014 to February 2016, UNSOM documented nine journalists killed and 12 injured.

<sup>88</sup> Responsibility for the killing of 10 of these journalists has been attributed to Al Shabaab, as many have been killed in complex attacks which comprise a series of coordinated attacks by Al Shabaab combining use of explosive devices (vehicles and people) and armed fighters. Al Shabaab has not claimed responsibility for targeted assassinations, although there has been attribution and in one case, two Al Shabaab suspects were executed following a Military Court trial’s judgement that they were guilty of the murder of a female journalist.

<sup>89</sup> Covering sectors 1, 2, 3 5 and 6 of the AMISOM administered regions.

<sup>90</sup> Since 2012, several international programmes funded through bilateral arrangements have been supporting regional security militias and private armies.

management of national security. In the areas not controlled by the authorities and the security forces, there is limited oversight of how Somalis enjoy human rights in general.

67. UNSOM has documented two cases where SNA was implicated in limiting the freedom of expression.<sup>91</sup> One case, in December 2015, involved SNA in collaboration with AMISOM Ethiopian National Defence Force (ENDF) contingent in Garbahaarey. A freelance journalist reporting from Gedo, Jubbaland, was arrested and held for 27 days. He was tortured and finally forcibly transferred to Mogadishu. The justification given for his detention was that he had published two articles critical of the ENDF actions in the area, including covering the community's perceptions of ENDF.

## 2. THE POLICE

68. Unlike NISA, the police have not, until recently, played a visible role in interfering with the right to freedom of expression in South and Central regions in Somalia.<sup>92</sup> The 2015 Heegan Plan provides a framework for the re-establishment of basic policing services throughout Somalia, and is complemented by the new policing model agreed upon in March 2016 and endorsed by the National Consultative Forum in June 2016. The new model is based on a federal system of policing, supplemented by State policing institutions, with a Federal level centralized command and control.
69. It is anticipated that the model will promote improved policing responses to a range of human rights violations, including restrictions on the rights to freedom of expression and to political participation. However, since the modalities of the model are yet to be finalized, law enforcement during the 2016 elections will be largely undertaken by other security forces, particularly SNA and NISA. This will require considerable strengthening of law enforcement capabilities for those security forces who will be engaged during the electoral process.
70. "Somaliland" Police have been more heavy-handed with respect to the freedom of expression.<sup>93</sup> In June 2016, they arrested and detained four youth who had organized a debate on issues of concern in Berbera town. One of those arrested was the Spokesperson of the WADANI opposition party's youth wing. The debate included a criticism of "Somaliland's" 30-year lease agreement with the Dubai Port World in Berbera. They were eventually released without charges after 14 days of being held at the Hargeisa Central Police Station.<sup>94</sup>

## 3. THE NATIONAL INTELLIGENCE AND SECURITY AGENCY

71. Gaps in legislation pose challenges in the exercise of freedom of expression and allow intelligence agencies<sup>95</sup> to infringe upon it, in particular NISA, which operates outside the legal framework despite being bound by the Federal Constitution and the Criminal Procedure Code.
72. While NISA was created by the FGS in January 2013,<sup>96</sup> it was not established by law or Presidential decree and its powers and obligations are therefore not defined. Nevertheless, as a security institution, NISA is bound by the Federal Constitution, which provides that the security services must be accountable, comply with the rule of law, and are subject to civilian control.<sup>97</sup> However, arrest and detentions conducted by

91 See para 59 on suppression of protests in Lower Shabelle.

92 See occasional exceptions when the Police are brought in to support a NISA raid.

93 See also IV. Media in "Somaliland".

94 Cf. "Somaliland" Constitution, art. 22(1) (providing that "every citizen shall have the right to participate in the political, economic, social and cultural affairs in accordance with the laws and the Constitution").

95 Emerging Federal states have their own intelligence agencies, e.g. the Puntland Intelligence Service and the Jubbaland Intelligence and Security Agency.

96 NISA replaced the National Security Service which was abolished in 1990.

97 Provisional Federal Constitution, art. 35 (6).



NISA routinely disregard these protections as well as guarantees under international human rights law,<sup>98</sup> including access to legal representation and to family visits, and the right to be presented before judicial authorities. It is of particular concern that political leaders, activists, journalists and media owners arrested by NISA are detained in the NISA *Godka Jiliow* detention centre, where Al Shabaab suspects are also detained, and with no judicial oversight.

73. The case of Radio Shabelle illustrates the range of challenges posed by the gaps in legislative protections, particularly with respect to NISA. Established in 2002, Radio Shabelle is the flagship station of the Shabelle Media Network.<sup>99</sup> It has been shut down several times by the authorities, its equipment was confiscated, some of its staff arrested and detained (including the owner and senior leadership members), and some received imprisonment sentences and were fined with substantial penalties. Between 2013 and 2015, UNSOM documented five separate serious incidents where local authorities interfered with Radio Shabelle.<sup>100</sup>
74. On 23 October 2013, the station was taken off the air without explanation for more than a month after reporting on corruption allegations against certain Government officials, including the then Interior Minister.<sup>101</sup> The same day, NISA and the police forcibly evicted the radio station from Government-owned premises.
75. In November 2013, NISA arrested the owner of Shabelle Media Network and a journalist for interviewing an alleged female rape victim who identified the perpetrator as a well-known and networked figure in Mogadishu. On 9 December 2013, a Mogadishu court sentenced both the alleged rape victim and the journalist to six-month house arrest and six-month imprisonment respectively for making false accusations. The director and owner of Shabelle Radio was also sentenced to one year of imprisonment for defaming national leaders. The victim was subsequently released into an NGO-operated safe house, while the journalist and director of Shabelle Radio were imprisoned but later released after payment of fines.
76. In August 2014, NISA shut down Radio Shabelle's Mogadishu Headquarters again, seized equipment, and arrested 17 staff members, including the owner and two senior editors. Fourteen were released after two days, and the Attorney-General's Office (AGO) eventually charged the remaining three with high treason and dissemination of false news that was likely to disturb public order.
77. On 1 March 2015, the Banadir Regional Court held a trial for the three, and ordered Shabelle Media Network's owner to pay USD 10,000, finding him guilty of airing false news "capable of disturbing the public order". The Director of Sky FM Radio, which is part of Shabelle Media Network, was ordered to pay USD 2,000, after the Attorney General's Office withdrew the treason charge against him. The Deputy Editor of Shabelle media was also ordered to pay a fine of USD 500. The journalists and media workers chose not to appeal and paid the fines. NISA refused to return the radio equipment in contravention of the court order. UNSOM subsequently intervened, which resulted in the restitution of the equipment on 14 March. The stations resumed operations shortly thereafter.
78. On 3 April 2015, NISA again raided Shabelle Media Network, shutting down Shabelle and SKY FM Radio stations in Mogadishu, arrested and detained senior staff, including once more the Deputy Editor, and confiscated radio equipment. NISA's action was in response to Radio Shabelle's airing of the voice of an Al Shabaab leader following the attack on Garissa University in Kenya on 2 April. As detailed below, in

98 ICCPR, art. 9 and art. 14.

99 Shabelle Media Network comprises Shabelle radio, Sky News FM radio and website ([www.shabelle.net](http://www.shabelle.net)).

100 Note that this case also takes place against the background of a long-running feud between Shabelle and the former Mayor of Mogadishu (between 2010 and February 2014), during which they regularly exchanged accusations and insults [http://www.somaliareport.com/index.php/post/3250/Mubaraks\\_Musings](http://www.somaliareport.com/index.php/post/3250/Mubaraks_Musings).

101 He served as Minister of Interior and Security from 4 November 2012 to 17 January 2014.

2014 NISA had issued an order prohibiting Somali media from airing the voices of Al Shabaab members. However, no court ever approved the NISA order and no Presidential Decree has been issued on the matter. In this case, the Banadir regional court refused NISA's request to detain the journalists for 20 days pending investigation. Nonetheless, NISA continued to detain two media workers for 14 days without warrant, in violation of the Federal Constitution, the Criminal Procedure Code, and the court's decision. They were eventually released following the Minister of National Security's intervention. On 2 May 2015, the Federal Minister of Information handed over the seized, albeit damaged, equipment to Shabelle Media Network, and both radio stations resumed their operations on the same day.

79. NISA actions that violate the permissible restrictions on freedom of expression have not been confined to Radio Shabelle. From September 2014 to October 2015, NISA shut down three radio stations, arrested 14 media workers including journalists and owners, and summoned two radio directors and three journalists to appear at NISA headquarters where they were questioned. Additional practices by NISA against the media have included seizure of radio equipment and banning media operations. In most cases, no formal statement or communication was made to enforce or lift the ban but according to direct testimonies, NISA officers visited media stations to inform the staff of the ban and/or threatened to arrest journalists or staff. Likewise, lifting a ban is mostly done through word-of-mouth orders. On 23 February 2016, during an attempt to arrest the Chairperson of the Banadiri Political Reformation Council during a press conference, NISA requested the journalists and media workers present to delete their recordings.
80. NISA appears to arrest and detain media workers, close media houses, and confiscate equipment when media report on issues that are critical of the Government, such as corruption or perceived State failure. For example, on 3 January 2015, Radio Risala reported on a suspected case of Ebola, Goobjoob Radio, Sky FM covered security events perceived by the Government as sensitive, and Universal TV facilitated a debate with parliamentarians on corruption and the influence of Ethiopia in Somalia.
81. In April 2015, both the Office of the Attorney-General and the Banadir Regional Court demonstrated their willingness to challenge NISA's abuse of powers by refusing to bring new charges against Shabelle media workers or to authorize continued detention pending investigation. Nevertheless, NISA has demonstrated some resistance, ignoring the judicial authorities' decisions, including by not returning equipment to media houses and continuing detention without warrant, in violation of the Penal Code. At a press conference on 2 April 2015, the Minister of Information called on NISA not to arrest journalists or suspend media outlets without first informing him. This seems to indicate some effort to control NISA's illegal activities in relation to journalists and media workers – although there seems to be no clear link between the Minister of Information and NISA, as both the latter and the Somali Police Force are under the Ministry of Internal Security.
82. On 2 September 2014, NISA imposed restrictions on the media regarding Al Shabaab, requesting them not to broadcast Al Shabaab propaganda and, in particular, not to interview or air the voices of Al Shabaab elements.<sup>102</sup> On 3 May 2015, the Director of NISA ordered the Somali Media to stop using the name “Al Shabaab” and to refer instead to “UGUS”, which is a Somali acronym for “the Group that Massacres the Somali People”. NISA stated that failure to comply would result in prosecution. On 4 May, the FGS issued the same order.<sup>103</sup> Al Shabaab's reaction was the following: “No one has a right to insult us. Anyone who calls us names we will respond appropriately.”<sup>104</sup>

102 On 2 September 2014, a key NISA official in the Banadir region met journalists and the directors of the media houses in City Palace Hotel in Mogadishu and issued a verbal order that from 2 September, all media houses would not be allowed to broadcast any Al Shabaab propaganda or the voices of Al Shabaab members. Participants were prohibited from recording the meeting. NISA soldiers followed up with journalists at their work places, reiterating the content of the meeting and stating that anyone violating the order would be arrested and the stations shut down.

103 Somalia's Government ban on Al Shabaab name from media: <http://www.bbc.com/news/world-africa-32580748>

104 <http://www.aljazeera.com/news/2015/05/somalia-bans-media-al-shabab-150504130216081.html>

83. The restrictions imposed by NISA compromise journalists and media workers' impartiality, but also creates a risk for those who comply, as they may be perceived by Al Shabaab as taking sides with the Government. On 2 September 2014, the Chair of the Somali Independent Media Houses Association stressed that the NISA order would put the lives of journalists and media workers at risk, and called on the FGS to repeal it. While no actions have yet been taken against media outlets that continue to refer to Al Shabaab in their reporting, the threat remains.
84. In February 2016, NISA used the media, including the Somali National TV, to diffuse documentaries showing Al Shabaab suspects confessing their crimes while in NISA custody. Televised confessions raise serious concerns: the lack of validity of such confessions in the absence of due process, the use of confession as primary evidence to condemn the defendant during subsequent court proceedings, but foremost, the ability of the detainees in situation of *incommunicado* detention to decline to confess and the possible use of torture to force them to do so. For instance, Hassan Hanafi, a journalist accused of Al Shabaab affiliation, was in NISA custody for 15 months without a trial before he appeared on one of these TV documentaries on 5 February 2016, confessing his implication in the killing of at least four journalists in 2008 and 2010.<sup>105</sup>

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105 On 3 March 2016, the Somalia's First Instance Military Court in Mogadishu sentenced Hassan Hanafi to death after finding him guilty of direct or indirect involvement in the killing of at least five journalists.

## IV. The Justice System and the Freedom of Expression

85. Despite the existing legal guarantees, the authorities have resorted to arguments rooted in security concerns or risks of undermining the state to erode protections for key actors, particularly those in the Criminal Procedure Code on due process guarantees. Consistent with international law,<sup>106</sup> the Federal Constitution prohibits arrest and detention without warrant unless the individual is caught in the act of a crime.<sup>107</sup> It also prohibits illegal detention, all forms of violence, and guarantees the right to be informed promptly of the reason for one's arrest or detention, the right to be brought before a competent court within 48 hours of the arrest,<sup>108</sup> and the right to legal representation. Suspects cannot be kept in an illegal detention centre, and must be granted visits such as from family, a doctor, and a lawyer.
86. The justice system should play a critical role in ensuring the protection of freedom of expression, promoting free participation in public affairs, and ensuring an open election process. Noting the judiciary's oversight role in ensuring the right to freedom of expression in electoral processes, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasized that it must be "totally independent and sufficiently resourced" to undertake this role effectively.<sup>109</sup>
87. Justice institutions have been re-established in the Banadir region, while sub-national entities, such as Jubbaland and South West, only recently started establishing their own courts, Attorney-General Offices, and appointing justice personnel. While there are varying capacities depending on the region - for example, justice institutions in "Somaliland" and Puntland are more established - there is a general deficit in infrastructure and human capacity.<sup>110</sup>
88. The independence of the judicial system is also a serious concern. The legal framework, both at federal and sub-federal levels, does not comply with international standards; for example, regarding the mode of judicial appointments. The judiciary has been shaped by clan-based politics that continue to define society. In this context, judges are expected to favour their clan and base their decisions on political considerations rather than the law, which undermines public trust in justice institutions. Due to weak or non-existent oversight mechanisms, corruption and judicial misconduct is rife. Newly-appointed judges generally do not receive any initial training, and on-the-job training is limited. In addition, Somalia's legal system integrates elements of civil and common law, as well as the clan justice system or *xeer* and Sharia law. The multiplication of legal references makes it difficult for judges to adjudicate cases.<sup>111</sup> Moreover, the lack of specific protection provisions in the law for women allows traditional mechanisms to undermine women's rights. Women are not represented in judicial institutions and there is no legislative framework on sexual violence in Somalia, denying women's access to justice and remedies for such crimes.<sup>112</sup>

106 ICCPR, art. 9 and art. 14.

107 Federal Constitution, art. 25 (2) provides that "No person may be arrested, searched, or detained, except when caught in *flagrante delicto* or on the issue of a reasoned arrest warrant by a competent judge".

108 Federal Constitution, art. 35 (2) "every person arrested or detained has the right to be informed promptly of the reason for their arrest or detention in a language that the person understands" and further states "every person who is arrested has the right to be brought before a competent court within 48 hours of the arrest."

109 A/HRC/26/30 p. 20.

110 World Bank Report, Political Economy of Justice in Somalia, April 2016.

111 *Xeer* is defined by the Ministry of Justice as: a "traditional dispute resolution (TDR) and customary justice system of Somalia. The *Xeer* is recognized as a code of conduct to settle disputes and keep the peace between clans and sub-clans. Historically and today the *Xeer* is the primary mechanism used for dispute resolution; it is widely trusted but recognized as having weaknesses and in need of strengthening."

112 The 1962 Penal Code criminalizes rape but considers it as a crime against morals, not against the victim. It needs to be reformed to address sexual violence in all its forms, and in line with international human rights standards.

89. The inadequacy of court infrastructure and poor court administration further complicate the delivery of justice services. Efforts are ongoing to train judges, support the establishment of Judicial Service Commissions in charge of recruitment, transfer, discipline and promotion of judges, and promote law reform. However, building an independent, accessible, efficient and accountable justice system will take time, and it will be very difficult for the judiciary to fulfil its mandate in the short-term. In view of the upcoming elections, it will be critical to focus on building the capacities of the judiciary on upholding basic rights, including the right to freedom of expression. Furthermore, the establishment of monitoring mechanisms by international and civil society organizations and the national human rights commission would improve judicial accountability and encourage free participation in public affairs.
90. While not necessarily limited to cases of freedom of expression, there is little accountability for human rights violations and abuses. For example, in April 2016, an elderly man, highly regarded in his community, was killed by armed men in Mogadishu. A few days earlier he had spoken at a public meeting about his concerns over growing insecurity in his Dharkenley neighbourhood, which led local authorities to increase security in the area. While no one claimed responsibility for the attack, Al Shabaab is suspected of targeting him due to his public statements. In June 2016, a civil servant and women's rights activist in Mudug region was shot dead by unidentified attackers in Gaalkacyo town. She was a well-known advocate in Mudug region, an outspoken critic of Al Shabaab, and a significant actor in peace and reconciliation efforts. No one has claimed responsibility for her killing, and suspects arrested in this case were released on the same day.
91. Since January 2015, only 10 of the 48 journalists, media workers, and senior management staff of media outlets arrested were brought before a court. Nine were sentenced to imprisonment and to high penalties,<sup>113</sup> while 38 were released without charges. Of the 10 prosecuted, one journalist was sentenced to death on the grounds of Al Shabaab affiliation and his involvement in the killings of other journalists in 2014 and 2015. His death sentence, confirmed by the High Military Court in Mogadishu on 26 March 2016, was mainly based on a video confession that was done while in NISA custody and broadcasted by the Somali National TV. He was not brought before a court at the time and was executed by firing squad on 11 April 2016.
92. There are concerns over the manner in which the Attorney-General's Office has handled cases involving journalists and media workers. In October 2015, two journalists who had been arrested upon an order of the Deputy Minister of Information following a televised debate, were taken to the Office of the Attorney-General, which authorized NISA to maintain them in custody for 21 days for investigation purposes, and without presenting them to a judge as legally required.<sup>114</sup>
93. In "Somaliland", attempts by the courts to curb abuse of power by the authorities have been challenged. In April 2015, Guleid Jama, the Chairperson of the Human Rights Centre, was arrested because of his organization's 2014 Annual Report, which highlighted human rights concerns with regard to police and judicial institutions, as well as his BBC interview on 16 April on the same issues, where he discussed the death penalty and other concerns. On 19 April, after mounting pressure from civil society organizations and international actors, the Hargeisa Regional Court ordered Guleid Jama's release. The prosecution's charges under the Criminal Procedure Code included anti-national propaganda against the State, false accusations, intimidation of the public, and publication or circulation of false news that can affect the public order. The Court of Appeal consequently suspended the lower court's grant of bail. Mr. Guleid was denied access to visits by his family, friends, the Human Rights Centre and other civil society organizations,

113 On 28 March 2016, the Togdheer Regional Court in Burao sentenced to two freelance journalists to pay a fine of one million "Somaliland" shillings (about USD 145) each for "unlawful use of dead bodies". The journalists were released upon paying the fine after 10 days in prison.

114 Apparently there were differences within the Office of the Attorney-General on the approach to adopt, and this decision was taken when the Attorney-General was out of the country.

and the Attorney-General ordered the arrest of anyone who would attempt a visit. The case was eventually dismissed by the Hargeisa Regional Court on 26 August 2015.

94. A consistent theme that emerges in Chapters IV and V is that the security forces and justice institutions consistently invoke “protection of national security and public order.” While the threats to national security in Somalia are significant, the internationally agreed exceptions to the right to freedom of expression are narrow. It is vitally important that the exceptions not be used in a manner that is inconsistent with the Government’s commitment to comply with its international obligations, and to provide a free and open discussion of ideas. Indeed, this report documents repeated attempts to stifle political speech that were excused by State actors as being necessary for the protection of national security, and illustrates the fragile state of the right to freedom of expression in Somalia.
95. The FGS and other authorities must not take steps that unnecessarily or disproportionately interfere with the freedom of expression, whether through laws, policies, or extra-legal means. Furthermore, particular attention should be paid to restrictions that inhibit the expression of views that contribute to public and political debate as Somalia moves toward the one person, one vote elections in 2020, which will require a more robust public discourse. The value of uninhibited expression is particularly high in the current context as Somalia seeks to emerge from years of conflict and establish an inclusive and democratic state.

## V. The Media in Somalia

96. Somalia has a vibrant media culture, with more than 90 media outlets – radio, television, and print – actively operating in the country, and an unlimited number of online websites, an increasing number of bloggers and social media that play a key role in sharing information and the expression of opinion.<sup>115</sup> Currently, there are 58 radio stations across the country, 28 newspapers and 12 Somali language television stations, including five based in the United Kingdom. The most widely accessible and primary medium of information is the radio. However, there are some noticeable discrepancies in their geographical coverage, as only two radio stations have national coverage (BBC and VOA). There are 42 radio stations, seven TV stations, seven newspaper houses, and a large number of online news portals in Banadir, Jubbaland, the South West, Galmudug and Hiraan and Middle Shabelle; whereas Puntland has 15 radio stations, two TV stations, and five newspaper houses, and “Somaliland” has one Government-owned radio station, four TV stations, and 16 newspaper houses. The media landscape is dominated by independent radio stations. Out of 58 stations, 53 are independent, four are State-owned, and one is run by Al Shabaab.<sup>116</sup> The State owns four out of 12 TV stations, and one of the 28 newspaper houses. Most of the media operates in Somali, with some programmes broadcasting in English, Arabic and Swahili.
97. Since 2002, journalists and media workers, media and publisher associations have been established across Somalia and “Somaliland”. They have been active in lobbying for media rights and freedoms and in highlighting attacks and other violations against journalists and media workers. They also advocate for the improvement of professional journalism.<sup>117</sup> The main ones include NUSOJ, established in August 2002, with more than 500 members; the Media Association of Puntland (MAP); the Jubbaland Independent Journalists Association, established in 2004 with 45 members; and the Somaliland Journalists Association (SOLJA), established in 2003 and composed of 283 members.<sup>118</sup> While media associations have played an important role, constant infighting and divisions in one of the key organizations have remained a major impediment to collective engagement on their rights and freedoms.<sup>119</sup>
98. There is no established salary pay-scale for private media employees, and salaries generally depend on years of experience.<sup>120</sup> However, a majority of journalists and media workers rely on very low or no pay at all. The practice of “tips” (referred to as *Qabah* or *Sharrur*) is used by many journalists and media workers to supplement their income, and events will be covered on this basis. Politicians resort to paying tips to ensure that their press conference will be covered by a large number of media outlets. This no doubt affects the impartiality of journalists in terms of what and how they cover.
99. In 2015, Somalia was ranked the worst country on the Global Impunity Index list, an index compiled by the Committee to Protect Journalists to captures data about the lack of accountability for crimes against journalists and media workers.<sup>121</sup> These rankings are consistent with what UNSOM has observed on the

115 AU/UN IST Briefing Report (2014).

116 Al Shabaab operates one radio station in the area they control, Radio Andalus, as well as three online websites [www.radioandalus24.com](http://www.radioandalus24.com), [www.radioalfurqan.com](http://www.radioalfurqan.com) [www.somalimemo.com](http://www.somalimemo.com),

117 Media associations in Somalia do not have records of the academic qualifications of their members. Mogadishu University, Plasma University and Horn of Africa University offer full-time journalism degrees. Some universities, for instance in “Somaliland”, offer short courses in journalism.

118 Additional and significant associations include Somaliland Society and Writer’s Journalists Association (SSWJ), with 30 members, Women in Journalists Association (WIJA), established in 2006 and the South West Journalist Association created in 2014 in Baidoa with 108 journalists.

119 See footnote 42 (discussing divisions within the media community).

120 The average monthly salary for a junior TV or radio journalist is around USD 50, USD 150/300 at mid-career, and a senior journalist and a producer could be paid up to USD 500. Payments are not made regularly. By comparison, a salary for a police officer is USD 100, a primary school teacher USD 70 and in the NGO sector, junior staff will be paid USD 350 USD and senior staff USD 800.

121 <https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php#index>.

ground. From January 2014 to July 2016, UNSOM recorded 120 cases of arbitrary arrest and detention of journalists and media workers, owners of media houses and publishers: 60 in “Somaliland” and 60 in Somalia. The period of detention ranged from 24 hours to several months, without charges. In most cases, the police opened files and negotiations would take place between journalists and media workers and officials; subsequently the majority of cases would be unofficially closed and the journalists and media workers released.<sup>122</sup> Other incidents include raids and bans on radio and TV stations, the suspension of web-based news, and confiscation of newspapers.

100. These figures illustrate a hostile environment for journalists and media workers, compromising the enjoyment of the freedom of expression. Statistically, perpetrators of all types of violations are mainly security forces belonging to both the FGS and the emerging Federal states, such as the Puntland Security Forces, Puntland Police and Presidential Guards, the Puntland Ministry of Security, but also intelligence and/or security agencies such as NISA, the Puntland Intelligence Security, and “Somaliland” Police Force. Abuse of power by executive offices was also reported, for example in Puntland and “Somaliland”, the Offices of the President, the Ministry of Information, and the Attorney General. Additional perpetrators include Al Shabaab and other armed groups or individuals.
101. While violations such as killings, beatings, harassment, arbitrary arrests and illegal detention, lack of due process or fair trial, guarantees and closure of media outlets generally receive wide press coverage and are publicly and privately raised by journalists, media workers, media associations and human rights defenders, there is little response from the authorities to investigate the cases and to prosecute perpetrators. Rather, those detained are generally released after intense bilateral advocacy by concerned Government officials, clan elders, or the international community. Genuine accountability can only be achieved if there is a systematic and official response to impunity by ensuring that effective investigations and prosecutions take place and punishments are duly enforced.
102. A new trend of attacks on journalists and other media workers emerged in late 2015 with unidentified groups of assailants physically assaulting them, particularly in “Somaliland” and in Puntland. In “Somaliland” this trend also includes arbitrary arrests and detention of journalists and other media workers, usually in response to reports or issues covered by them. The increase and new type of violations reported appear to be related to the current political dynamics in the context of the preparations for Parliamentary and Presidential elections in “Somaliland” that will take place in 2017.

## 1. THE MEDIA IN BANADIR, JUBBALAND, SOUTH-WEST AND GALMUDUG

103. Eleven independent radio stations were temporarily shut down in Benadir, Jubbaland, and Galmudug in 2014 (four), 2015 (five), and 2016 (two). Six stations in Mogadishu and three (Shabelle, Risala, and Sky) were shut down by NISA without a court order.
104. The FGS suspended the UK-based Universal TV station in Mogadishu on 2 October 2015.<sup>123</sup> On 23 August 2015, the Jubbaland Administration’s Ministry of Information issued a letter banning the operation of Universal TV in Jubbaland and subsequently ordered the Universal TV journalist in Kismayo to stop

<sup>122</sup> Based on its documentation, UNSOM raises individual cases or patterns, largely focused on due process concerns with the authorities. Where little traction is made, press releases are issued. For example, on 4 October 2015, UNSOM issued a press release following the forced closure of Universal TV offices, on 2 October 2015, and the arrest of its two journalists. As a result of this and high level advocacy, the two journalists were released and Universal TV Studio in Mogadishu resumed its operations nine days after it had been shut down by NISA. UNSOM also issued a press release on 24 November 2014, following the arrest of a Garoowe-based journalist who had been arrested and detained for no apparent reason. He was working with Somali Channel TV, which had been suspended by the Ministry of Information without justification. Following intensive advocacy by UNSOM and others, a Presidential Order releasing the journalist was issued on 29 November 2015. The Special Representative of the Secretary-General in Somalia has also consistently addressed concerns regarding violations freedom of expression with high-level counterparts in Somalia, Puntland and “Somaliland”.

<sup>123</sup> See para. 128 (on its closure in “Somaliland”).



reporting for undisclosed reasons. It was later understood that the banning was justified on the grounds that the station had broadcasted inaccurate information for two years and did not follow journalistic ethical standards.<sup>124</sup> Since 2013, the security situation in Kismayo has gradually improved allowing media to operate, although around 40 per cent of Jubbaland is under Al Shabaab control.

105. In ISWA, during the period under review, three journalists and two relatives of one were killed, and three were wounded during targeted attacks, including by suicide-bombers. In addition, arrests and serious beatings and intimidation were reported.
106. The GIA controls only part of its territory, with some areas controlled by rival factions, including Al Shabaab and Ahlu Sunna Wal Jama'a (ASWJ). In 2015, ASWJ conducted media crackdowns and closures in Dhusamareeb and Guriel districts, where two FM radio stations were closed down (later reopened following negotiations), journalists arbitrarily detained, and censorship imposed. ASWJ argued that these radio stations were closed and five journalists were arrested and detained for three days because they had not complied with its orders not to air news and programmes about the FGS and the Adaado conference for the formation of GIA in central Somalia.
107. In February 2016, the Federal Ministers of Security, Information and Post and Telecommunications and the Attorney-General held three meetings in Mogadishu with national Internet Service Providers (ISPs). This followed the Attorney-General's 8 November 2015 order requiring the Ministry of Post and Telecommunications to block 35 websites critical of the Government, claiming they represented a threat to national security by publishing anti-Government "propaganda" or were not complying with "journalistic ethics". On 9 November 2015, a prosecutor in the Attorney-General's Office told the media that the Attorney-General had no legal basis or power to issue such an order.
108. ISPs had initially resisted the Attorney-General's order but complied after he warned that non-compliance would be considered an act of treason. Some of the ISPs were arrested and released after 24 hours after promising to comply. On February 2016, ISPs blocked 29 of the 35 websites but refused to block six websites connected to Al Shabaab, as the authorities were not able to guarantee their security from possible retaliation.
109. Most of the 29 websites closed are owned by members of the Somali diaspora based in the Netherlands and are critical of national leaders and FGS actions. The taking down of a website is a serious restriction to freedom of expression, which is only allowed under international human rights law if provided by law or for the protection of one of the permissible grounds, and after a court has conducted a necessity and proportionality analysis. Based on the information available, these conditions have not been met, and the blocking of websites therefore represents a violation of the freedom of expression.

## 2. THE MEDIA IN PUNTLAND

110. Puntland is served by seven local radio stations, two TV stations, and four newspaper houses operating across the region. The Media Association of Puntland is the main organization actively involved in the protection and promotion of freedom of expression and of journalists and media workers.
111. The 2014 Media Law was adopted despite concerns raised by the Media Association of Puntland, particularly regarding the powers of censorship given to unspecified "relevant" Government institutions rather than a court, the lack of clarity regarding classified information, and the accreditation of journalists by the Ministry of Information.

<sup>124</sup> On 23 August 2015.

112. The Media Law provides for the establishment of a High Media Committee to manage media activities and “safeguard the freedom of the media”, which has not been established. Representatives should be from the Ministry of Information, the media and civil society and will have the power to receive complaints from the public against the media and to resolve disputes through mediation. The law provides that decisions by the Media Committee can be appealed to “court of competent jurisdictions”, with no clarification as to which court. The financial arrangements and the selection of the members are also subject to the Ministry of Information’s control.<sup>125</sup>
113. In 2014, Puntland established a constitutionally guaranteed human rights oversight mechanism, the Puntland Office for the Protection and Promotion of Human Rights in Puntland (the OHRD) headed by the Human Rights Defender.<sup>126</sup> The OHRD is independent, with Parliamentary oversight, and enjoys a wide mandate to prevent, protect and promote human rights in Puntland, including to receive complaints, investigate, raise awareness and publish an annual report, including on the freedom of expression. In April 2015, the OHRD launched its first Annual Human Rights Report.
114. From October 2014 to July 2016, UNSOM documented a number of serious violations of freedom of expression in Puntland, including arbitrary arrests and detention, and harassment and intimidation of journalists and media workers, police raids on radio stations, banning of radio stations, websites and TV stations, and confiscation of newspapers. Journalists and media workers were arrested without warrants of arrest and later released without charge. These actions usually followed media reports on national affairs, including economic, security and political developments, as well as debates on internally displaced persons, returnees, collection of taxes, or broadcast of Somali national programmes.
115. UNSOM has documented five cases of physical attacks on journalists in Puntland, including one killing. On 18 November 2014, a journalist working for the locally based Radio Daljir and UK-based Horncable TV was killed by unknown assailants in North Gaalkacyo. In early 2015, four incidents took place; on 16 January, a grenade was thrown at the premises of Radio Galkayo; on 17 February, a freelance journalist was shot at and wounded by an armed man; on 15 May, a vehicle carrying two journalists from the State-owned Puntland TV was shot in Garowe; and on 20 July, three journalists and media workers were reportedly assaulted and mistreated by the Puntland Presidential guards for covering the departure of Federal Prime Minister Omar Abdirashid Ali Sharmarke. Suspects were arrested in two of the incidents, with one suspect released before he appeared in court.
116. During the reporting period, certain Puntland officials have resorted to legal procedures to suppress the freedom of expression. Members of the government, including the Deputy Minister of Interior and the Minister of Information, have ordered the closure of media outlets or requested the Office of the Attorney-General to file complaints against them. On 19 May 2015, the Deputy Minister of Interior issued a written order closing Somali National TV (SNTV) in Puntland, accusing SNTV of publishing false information about the government’s response to the situation of returnees.
117. Likewise, the Minister for Information has intervened on several occasions to restrict the media. On 5 August 2015, he requested the Attorney-General to file a complaint against Sahan Radio Garoowe for publishing an “offensive article against the Puntland authorities”, apparently for not covering the 17<sup>th</sup> anniversary of the Puntland State. On 17 September 2015, he addressed a letter to all private FM stations in Puntland, ordering them to stop airing State-run radio Mogadishu programmes.<sup>127</sup> The letter was copied to all Puntland Regional Police Commanders and other officials, to be enforced with immediate effect. On

125 Puntland Media Law, art. 22, providing that some funds from the Ministry of Information budget should be allocated for the Media Committee.

126 Puntland Constitution, art. 116; art. 118, relating to the OHRD’s competence and responsibilities is reflected in section 13 and 14 of the Human Rights Defenders Act of 2011. The OHRD was officially launched in March 2015.

127 The letter was dated 14 September 2015. It was widely seen as a retaliatory measure resulting from a political dispute with the FGS.

29 October 2015, the Minister ordered the ban of VOA-Somali Service from broadcasting any programme in Puntland, threatening punitive action in case of non-compliance.

118. On 11 November, the Puntland Minister of Information issued yet another, letter banning a journalist from practicing journalism in Puntland. The letter, addressed to Mr. Jama Deperani, a correspondent for London-based Somali Channel TV, ordered him to suspend his work as a journalist in Puntland until further notice and without any justification. The widely-viewed “Deperani show”, had hosted the Minister of Information and interviewed him on key issues such as the Puntland government’s accountability and the Minister’s position on Khatumo. Deperani was later detained by the police, and the Garowe Court of the First Instance confirmed an arrest warrant for 15 days and denied bail. Deperani was held at the Garoowe Central Prison and released after 10 days without charges pursuant to a Presidential Decree.
119. Local governments have also been involved. For example, in May 2015, the local government in the Nugaal region ordered the police to confiscate copies of newspapers for publishing interviews with taxpayers who criticized the government’s tax collection method. On 23 June 2016, Puntland’s Police Commissioner ordered the closure of Radio Daljir in Puntland.<sup>128</sup> The closure came a day after Puntland’s Minister of Information issued a press statement banning all media outlets in Puntland from broadcasting any audio-visual, writing, pictures, news or articles from the “rebels” and interviewing individuals affiliated with terrorist groups such as *Da’esh* (ISIS), and with piracy. The closure came a day after its journalists and media workers interviewed the former Governor of Bari region, who now leads his clan militia in an armed struggle against Puntland. The Minister accused the media of lacking professional ethics and being unqualified, justifying the closure on the grounds that they propagated the former governor’s views despite repeated instructions not to broadcast his interviews. During a press conference, when asked what the legal basis for the restrictions was, the Minister responded “We will not look at the law. We will use bullets and beatings” and further stated “we do not recognise the Constitution, we do not recognise the law. We will rule you [the media] with power and abuse because you broke the law.”<sup>129</sup>
120. The Media Association of Puntland quickly reacts to most of the attacks. For instance, it issued press statements condemning the intimidation of journalists and media workers, the bans and censorship against freedom of expression and media in the region.<sup>130</sup> On 9 July 2016, the Minister of Information instructed media outlets to accredit their journalists by sending their names to the Ministry by 25 July. The letter stated that failure to comply with these orders would result in the non-accreditation of the journalists to work in Puntland while media houses failing to provide their employees list to the Ministry would be banned from broadcasting and operating in the regional state’s jurisdiction. The Media Association of Puntland has challenged this as ministerial interference in the registration and accreditation of journalists and, on 17 July, a nine-member Parliamentary Committee was appointed to mediate the dispute between the Association and the Minister.

### 3. THE MEDIA IN “SOMALILAND”

121. “Somaliland” has more than 16 independent newspaper houses, five TV stations, one radio station, as well as a number of web portals. Media associations, such as Somaliland Journalists Association (SOLJA), Somaliland Society of Writers and Journalists (SSWJ), and the Women in Journalism Association (WIJA) are active, and their work is complemented by civil society, including human rights defenders.

128 June 27, 2016 Somalia: Puntland’s leading news radio closed, <https://rsf.org/en/news/somalia-puntlands-leading-news-radio-closed>.

129 <https://www.youtube.com/watch?v=DXrKPwhrQ8Y>

130 30/10/ 2015, <http://mediapuntland.org/puntland-administration-lifts-the-ban-on-the-voa-somali-broadcast-in-puntland/>

122. In 2002, the “Somaliland” Government issued a Ministerial decree banning the operation of privately owned radio stations.<sup>131</sup> Despite the passage of the Press Law and advocacy by media and human rights organizations, the decree was never revoked. On 19 November 2014, the “Somaliland” Minister of Information issued a decree and announced a Media Code of Ethics and the establishment of a “Disciplinary Committee” to monitor defamation and review media licenses of journalists. The “Somaliland” journalists and media workers opposed the decree, stating that it violated the “Somaliland” Constitution and relevant international standards. In June 2015, SOLJA called for a reform of the media laws to address violations against media workers and enhance the relationship between the Government and the media.
123. In “Somaliland”, journalists and media workers and media associations continue to advocate for the decriminalization of cases involving media and for the enforcement of the 2004 Press Law, while the judiciary claims that there is no alternative to the Penal Code. The “Somaliland” Chief Justice seems to be committed to addressing the shortcomings in the law. In September 2015, he held a press conference, noting the need to review laws that deal with cases involving journalists, media workers and media houses. He also reiterated that journalists and media workers should no longer be detained for undertaking their daily activities. In October 2015, he issued a non-binding decree establishing a mechanism to prevent illegal arrest and detention of journalists and media workers. However, the courts will continue to refer to the Penal Code, as the 2004 Press Law, which is largely regulatory, does not provide recourse to any judicial mechanism. Therefore, law enforcement actors continue to use repressive measures to impede freedom of expression in “Somaliland”.
124. During the reporting period, UNSOM monitored and documented violations ranging from intimidation, harassment, arrests and detention, physical assaults, and banning of media. The majority of incidents were attributed to the Police Rapid Reaction Unit, established to counter terrorism, to the Criminal Investigation Department, to the Office of the Attorney-General, as well as other top Government officials. UNSOM has engaged in advocacy with the authorities on a number of cases, and notes the latter’s increasing willingness to consider and address UNSOM’s concerns.
125. From January 2014 to July 2016, at least 60 journalists and media workers were arrested and detained, and in most cases were released without being charged. The case of a reporter of UK-based Kalsan TV, in Sanaag region (editor-in-chief of the Sanaag media website) illustrates this pattern. On 12 February 2015, the police detained him at Ceerigaabo central police station for criticizing the conditions of the Ceerigaabo General Hospital. He was released on bail the same day, and the court later dropped the case. Kalsan TV then dismissed him, although the employer denied that this resulted from pressure from the Sanaag regional administration. In another case, on 27 September 2015, the police arrested four musicians belonging to the well-known band *Hidigaha Geeska*, and detained them at Hargeisa central police station on treason charges. The musicians were returning from Mogadishu, where they had performed during Eid festivals, singing songs encouraging Somalis to love each other as one, which the “Somaliland” Government interpreted to be against its statehood claim. Videos available on the internet show that the group only performed love songs, but it is unclear whether any clips have been removed. The Hargeisa Regional Court eventually found that the charges were baseless.
126. Intimidation and harassment of media workers in Berbera intensified following media reporting on the “Somaliland” government’s plan to privatize a fuel storage facility, which is an issue of public concern. At least three journalists and one traditional leader were arrested and detained for around 48 hours. Clan elders and the “Somaliland” media associations intervened to secure their release.<sup>132</sup>
127. One TV station and four newspapers were shut down and/or suspended by “Somaliland” authorities

131 Ministerial Decree banning the importation and operation of privately owned radio stations, 4 June 2002.

132 SECJA has been active since March 2015 but the authorities have refused to register it.

during the reporting period. Two journalists from Hubsad newspaper were arrested on 30 November 2015, allegedly for publishing a newspaper without a license. They were released on bail on 3 December, and formally charged on 10 January under the Penal Code. Their case has since been brought before the Hargeisa Regional Court that is delaying proceedings for no explicit reasons. The newspaper was also suspended by the office of the Attorney general and has been under suspension since then.

128. The remaining three cases mobilized public opinion and were largely reported by the media: the Universal TV, Hubaal, and Haatuf cases. On 3 February 2014, the Minister of Information issued a decree suspending the London-registered Universal TV station from operating in “Somaliland”. This ban was lifted in November 2014. In December 2013 and April 2014 respectively, the Hubaal and Haatuf media groups were shut down. Arrested in April 2014, the Haatuf owner and the editor-in-chief were immediately sentenced to up to four years of imprisonment by the Hargeisa Regional court but released by Presidential decree one month later. However, as of February 2016, the newspaper remained under suspension and its website only has limited accessibility. In May 2015, the “Somaliland” authorities decided to lift the ban on Hubaal media group following negotiations between the owners and Government officials. The charges were dropped and publication resumed. The decision appeared to be a political move from the Government to appease the media in the aftermath of Parliament’s extension of the Government’s term.
129. Over the last six months, a new trend of attacks on journalists and media workers has emerged, particularly in “Somaliland” where several cases of verbal and physical assaults against journalists and other media workers by unknown attackers were reported. For example, on 10 January 2016, in Togdheer region, an unidentified group of men verbally and physically attacked a journalist while he was on his way home, making explicit threats in relation to his reporting. On 21 October 2015, in Burao, Togdheer region, an unidentified group of men attacked a journalist and chairperson of *Codka Shacabka* newspaper, seriously injuring him. The perpetrators also took his camera and other media equipment. The police arrested the perpetrators who were prosecuted on 4 March 2016 under the Penal Code.
130. Other recent cases raised the question of the legality of arrest and detention of journalists and other media workers. On 28 May, in Hargeisa, two media workers from Bulsho TV and Foore Newspaper were arrested by the “Somaliland” Intelligence Agency in connection with reporting on the Berbera port deal. The men were taken to an unknown and illegal detention house, and no notification of their whereabouts was given to their families. Although the Bulsho TV journalist was released without charges on 29 May, the Foore Chairperson was detained without a court appearance until he was released on bail on 4 June. He has since been charged for publishing inflammatory articles and criticizing the Berbera port lease agreement between the “Somaliland” government and the Dubai Ports World company, defaming the President’s family and operating under an unauthorized business license. The court has not yet issued a verdict on the case.
131. Local human rights organizations condemned the arrests and attacks against journalists and media workers and supported them through legal representation. They have also been advocating publicly and with the relevant authorities and the international community for better protection of journalists and other media workers.
132. The trend of arrests and detention of journalists and other media workers, particularly the short detention period, seem to indicate an intention to intimidate or harass journalists and media owners which inevitably leads to self-censorship or to media workers eventually leaving the profession.<sup>133</sup>

133 See Human Rights Watch, “Like Fish in Poisonous Waters”: Attacks on Media Freedom in Somalia (2016), Ch. IV.

## VI. Conclusions and Recommendations

133. Freedom of expression is a requirement for the realization of the principles of transparency and accountability, which are essential for the promotion and protection of human rights. Allowing the space for the Somali people to freely express their views, debate and participate in the key political processes that will determine the future of their country enhances the legitimacy of the emerging federal and democratic State of Somalia and contributes to the restoration of lasting peace and democracy.
134. In the absence of protection to ensure the freedom to express, communicate, publish and discuss political and electoral issues, genuine and effective political participation is jeopardized and cannot be realized. Any measure limiting freedom of information and expression necessarily imposes a substantial burden of justification on government agencies. Consequently, the Government should revise and withdraw laws and practices that currently restrict and endanger the right to freedom of expression, and any measures that restrict the freedom of expression must be based on validly enacted law, subject to external and independent oversight, and be necessary and proportionate to achieving security objectives. The President's August 2016 signing into law of the Human Rights Commission Bill creates an important opportunity to further strengthen an oversight framework. The law, which is largely compliant with the international standards governing national human rights institutions, will pave the way for the establishment of an independent Human Rights Commission for Somalia. A properly resourced and independent Commission will play a critical role in the promotion and protection of human rights for all, including the right to freedom of expression.
135. Consistent with international law, the FGS and the emerging Federal states are therefore urged to take all necessary measures to create an enabling environment for the full enjoyment of the right to freedom of opinion and expression, including widening the space for safe and free and open public debate on critical issues of public concern, such as the State formation, the constitutional review and electoral processes. Giving the general population a say on how to address the continuing security challenges in Somalia is also important.
136. The noticeable improvements in the security environment, both in the towns and in areas now under Government control, have created an atmosphere in which people are becoming increasingly free to express and associate themselves with both the Federal Government and state-level administrations without fear of reprisal, particularly from Al-Shabaab. While enjoyment varies from one region to another, main challenges throughout the country include a persistent sense of insecurity due to Al-Shabaab insurgents, as well as subtle harassment by the respective administrations, and the absence of genuine political commitment of the leadership to enforce due process or specific freedom of expression guarantees.
137. With the upcoming 2016 electoral process, the ongoing implementation of the electoral model and the universal adult suffrage elections envisaged in 2020, unimpeded political activity and free participation of the Somali population, freedom of expression and the safe and free functioning of a vibrant media is critical. Based on the observations made in this report, OHCHR and UNSOM make the following recommendations to enhance the protection of freedom of expression throughout Somalia. Many of these recommendations should be implemented as soon as possible to guarantee a conducive environment for the 2020 elections:

## To the Federal Government of Somalia

- Prioritize the implementation of the recommendations of the UPR related to freedom of expression and the media, protection of journalists, prosecution of perpetrators of violations against the media workers and political actors. Some of these recommendations have been considered in the action plan on the Human Rights Roadmap 2015-2016.
- Following the June 2016 passing of the Political Parties Law, establish a legal framework that will enable the formation of political organizations.
- Respect and guarantee the independence of the media, notably by bringing media legislation in line with the Provisional Federal Constitution, as well as regional and the international norms and standards. This should include repealing laws that criminalize the “dissemination of false news” and a review of the Counter-Terrorism Bill to ensure that restrictions are those permissible under international human rights law.
- Ensure the realization of the right of women to participate in the political process, particularly the 2016 electoral process and the envisaged 2020 elections. The commitments for a 30 per cent quota by leaders of the Federal Government and the regional state administrations should be respected and enforced, including through sanctions for non-compliance.
- Reforms within Government and political organizations should ensure women’s representation, inclusiveness and effective participation. This should include the development by relevant authorities of a protective framework, including the establishment of appropriate security arrangements and accountability mechanisms.
- Following the August 2016 enactment of the National Human Rights Commission Law, promptly establish the independent Human Rights Commission, so that it can start to play its rightful role on the protection and promotion of the rights of Somalis, including political actors, journalists and human rights defenders.
- Ensure that the role of National Intelligence Security Agency is regulated with effective oversight mechanisms, to prevent violations by its agents, and ensure accountability, including for acts targeting political actors, journalist and other media workers, and human rights defenders.
- Conduct and seek support from international partners to carry out human rights trainings and foster accountability for security institutions and agents, especially those who will be engaged in the electoral process.
- Ensure that the Media Council is independent, and is able to operate in line with international human rights norms and standards.
- Conduct in 2017 inclusive consultations with the Somali people for the review of the Federal Constitution.
- Encourage the general public and civil society organisations to express their views and debate the best ways to defeat Al Shabaab, counter violent extremism, and establish durable security in the country, including the establishment of credible security institutions.

## To Puntland

- Ensure that the Puntland Constitution is brought into conformity with regional and international human rights instruments, including with regard to freedom of expression, by broadening the scope of rights protected under the Constitution.
- Demonstrate public commitment to a free and open environment for journalists and other media workers to operate.
- Establish the High Media Committee provided for in the 2014 Media Law and review the law to make it compatible with the international and national human rights standards.
- Foster an enabling environment for safe, free and independent media practice, including by refraining from any interference with media and preventing arbitrary arrests of journalists and other media workers.
- Put in place protection mechanisms to prevent attacks and assassinations of political actors, journalists and other media workers and ensure accountability where such acts occur.

- Strengthen the Puntland Office of the Human Rights Defender through provision of adequate resources to enable it to function effectively and independently, including to conduct human rights monitoring.

### **To the Jubbaland Administration, the Interim South West Administration, and the Galmudug Interim Administration**

- Ensure that new legislation addressing freedom of expression is developed in consultation with human rights defenders, journalists and other media actors, and civil society and that such legislation is compliant with the Federal Constitution, their respective Constitutions and international norms and standards.
- Support the mandate of, and ensure that the work of the forthcoming independent Human Rights Commission is facilitated in their respective jurisdictions.

### **To “Somaliland”**

- Review relevant legislation and enact new legislation to reinforce the protection of the rights to freedom of expression and freedom of media.
- Ensure investigation and prosecution of individuals responsible for attacks against the media and media workers, including law enforcement agents whose code of conduct should include proper treatment of media professionals.
- Review the powers of the “Somaliland” Attorney-General over the media to ensure the institution plays a key role in the protection of freedom of expression.

### **To Journalists and Other Media Workers**

- Adopt a formal code of conduct to encourage self-regulation and abide by the highest ethical standards for journalists and other media workers.
- Journalists should acquire and disseminate news and all information, including on the electoral process, in a legally and professionally acceptable manner.
- Journalists should use dispassionate and impartial language to report on the electoral process and avoid wording that can incite violence or amounts to hate speech, and avoid discrimination in their coverage against any political party or candidate for elected office.

### **To the International Community**

- Continue to encourage and assist Somalia’s leaders to widen the space for the Somali people, including women and youth, to have a say in the ongoing state formation, constitutional review and electoral processes as well as on ways of establishing sustainable security and countering violent extremism.
- Maintain the promotion and protection of freedom of expression on the international community’s agenda in their engagement with the Somali federal and regional authorities and at relevant high level events and fora, including Human Rights Council, General Assembly and Security Council.
- Support the training of and awareness raising campaigns for law enforcement and judicial officers and provide technical assistance to ensure effective criminal investigations, including into attacks against journalists and other media workers.
- When supporting legislative review initiatives, ensure that international human rights standards inform the debate, including the review of laws that violate the freedom of expression.
- Further support journalists and other media workers on initiatives to enhance self-protection.
- Support the establishment of the National Human Rights Commission and the strengthening of the Office of Puntland Human Rights Defender and the “Somaliland” Human Rights Commission to engage effectively on the right to freedom of expression.



# VII. Annexes

## 1. MAP OF SOMALIA



Map No. 3690 Rev. 10 UNITED NATIONS  
December 2011

Department of Field Support  
Cartographic Section

## 2. FREQUENTLY USED ACRONYMS

AMISOM:	African Union Mission in Somalia
FGS:	Federal Government of Somalia
GIA:	Galmudug Interim Administration
ICCPR:	International Covenant on Civil and Political Rights
ISWA:	Interim South West Administration
MAP:	Media Association of Puntland
NGOs:	Non-governmental organizations
NISA:	National Intelligence and Security Agency
NUSOJ:	National Union of Somali Journalists
SECJA:	Somaliland East and Central Regions Journalists Association
SNTV:	Somali National Television
SOLJA:	Somaliland Journalists Association
SRSG:	Special Representative of the Secretary-General
UNICEF:	United Nations Children's Fund
UNSOM:	United Nations Assistance Mission in Somalia
UPR:	Universal Periodic Review
WIJA:	Women in Journalism Association

### 3. RESPONSES FROM THE AUTHORITIES

JAMHUURIYADDA FEDERALKA  
SOOMAALIYA  
Wasaaradda Haweenka iyo Horumarinta



جمهورية الصومال الفدرالية  
وزارة المرأة و تنمية حقوق الانسان  
مكتب الوزير

Federal Republic of Somali  
Ministry of Women and Human Rights Development  
Office of the Minister

August 24, 2016

Dear Sir / Madam,

#### **Re: Somalia – Report on the right to freedom of expression**

The Ministry of Women and Human Rights Development (MWHRD) has shared this draft report with other key Ministries including the Ministry of Justice, Ministry of Interior and Federalism, Ministry of Information, Culture and Tourism, Ministry of Defence and the Ministry of Internal Security.

The Ministry of Information, Culture and Tourism requested further time to review the report and gave the following concerns orally:

- In general, they were of the view that some of the information in this report (in particular in relation to the appointment of the National Media Council) to be based on rumors and not facts;
- In relation to para 24 – they stated that the Federal Media law is based on international practices given the lengthy comparative processes they went through when drafting this law to ensure that it is compliant with international law. Also, many international consultants worked on this law. The report fails to cover the lengthy consultations processes that this law went through over a long period of time. During the final stages there was a committee of 21 people of which 16 were from a private media. Internews assisted in public consultations for thousands including those in the regions and even those in places like Nairobi and London. Many were involved in the process of this law and the Ministry was simply coordinating the efforts. The terms are not 'unclear', it is for the court to decide what constitutes 'disseminating false news'. They wanted to emphasise that disseminating false news was indeed a problem.
- In relation to para 25 & 26 – they disagree with the way that it was suggested the appointment of the National Media Council was done, in particular that civil society was only given 3 days to nominate their representatives for the Council. NUSOJ did not oppose, it was only SIMHA that opposed. They (SIMHA) were given representation on the Council but the person resigned.

Furthermore, the Ministry of Internal Security has requested an extension until Saturday August 27, 2016 in order to verify all the information in the report.

Should you have any further queries, please do not hesitate to contact us.

Yours faithfully,

Ministry of Women and Human Rights Development



As the Buurdhuubo incident you have mentioned, we have made further inquiries to investigate and find the truth about this. Having thoroughly investigated this matter, we can now confirm that the incident happened as a result of two women groups in the town disputing on the management of a local school. The local authorities had nothing to do with this school administration related matter. When the two groups fought each other, the local police service personnel intervened and it has been reported that only one female was arrested in the process and was then released without charge on the same day.

Having provided detailed information regarding these two incidents, we must advise that a balance be struck as to whether or not the information you receive represents the circumstances of incidents. Otherwise, your report will not be impartial and credible as “Justice should not always be done, but it has to be seen to be done”

Many Thanks

Best Regards

Dr. Adan inshaar cumar

Deputy Minister of Justice, Constitution and Religious Affairs

Kismayo, Jubbaland State of Somalia





**To: Mr. Howard Bell – Head, Puntland Area Office, UNSOM**

**Cc: H.E President Abdiweli Mohamed Ali**

**Dear Mr. Howard,**

I am writing to share with you our official response to UNSOM/OHCHR report “The Right to Freedom of Expression”, presented by UNSOM to H.E. President Abdiweli Mohamed Ali. The response will in particular cover the media and justice sector. Due to the sensitive nature of this report, we wish to highlight here, how important it is to have an impartial and objective coverage of the moot themes covered therein.

On the media in Puntland, Puntland is a democratic state which takes pride in the freedom of media and speech and ethics. As stressed in section 2 of the report ‘The Media Law in Puntland,’ we are saddened by and condemn any physical attacks on journalists. Further reading through the some of the key points presented in this report, it is becoming apparent that information was presented from a single perspective. Some of the allegations presented in this report need to be looked into carefully. Due to the apparent lack of sources in regards to incidents and conflicts presented, the information provided can be misconstrued therefore it would be advisable to review this report.

Key Points:

- While safeguarding the code and conducts of freedom of speech, the government still has the right to block any media coverage which can cause harm or be damaging to the safety of the State. This law is acknowledged internationally, and the security of the State is and will continue to be our priority.
- We feel saddened by the lack of cooperation with the relevant ministry on the part of UNSOM, as we believe that some of the sources that have been quoted in this report are unreliable and often fabricate stories to fulfill their agenda. i.e. 117 in regards to Mr. Deperani he was not detained and suspended in regards to the events mention in the reports but an entirely different case in which he played a part in inciting clan-based violence and political lobbying. He was advised not to work until the time of his trial; however, he chose to breach his suspension which then led to his arrest.
- In regards to Radio Daljir, a meeting was set up with them at the ministry of information, and they were clearly advised not to interview or spread the propaganda



OFFICE OF THE PRESIDENT  
PUNTLAND STATE OF SOMALIA

messages of terror groups such as Da'esh (ISIS). However, they ignored this direct order which has led to the temporary closure of the radio station.

- The 'alleged' interview conducted by Radio Daljir (118) with the Ministry of Information is another case of fabrication. The Minister was unaware of the fact that he was being recorded, this was released and edited to their advantage without consent. This clearly shows a lack of ethics and a clear breach of the media code of conduct on the part of Radio Daljir.

- As we are all aware Parliament has passed a Media Bill, article 4 section 5 of the Puntland Media Law states that a journalist in Puntland must be registered and receive an official ID to practice. We have in several cases requested MAP to provide us a list of 'registered' journalists, however; they have refused to cooperate. The issuance of an ID and registration adds to the safety of the State; however, we feel that MAP doesn't share this thinking.

- We also have on several occasions requested for the broadcasters of both TV and Radio to fully register with the government. However, MAP yet again has played a consistent role in the interference of executing this, which has led to us believing that MAP is not in compliance with the Media Law in Puntland.

To conclude we are pleased that the Ministry of Information and MAP have been able to come to an agreement in regards to the passing of the Media Law. MAP was previously concerned about the Media.

On the justice sector, in page 30 para 86 of the report provides that “ *justice institutions in Somaliland and Puntland are more established . There is a general deficit in infrastructure and human capacity*”

**Puntland comment :** this is relatively true and to overcome this problem , Puntland has allocated land to build new courts in Bossaso , but the pledges from UNDP to implement the constructions have never been executed for fund problems . The government has nominated new chief justice and new members of high judiciary council replacing the former ones as part of the government efforts to inject new bloods into the judiciary system and there is anticipation of genuine judiciary reform in Puntland in the coming months .

In the same page, paragraph 87 of the report , continues to claim that “ *the independent judicial independence is also a serious concern. The legal frame work both federal and sub federal levels, does not fully comply with international standard . For example regarding the mode of judicial appointment, the judiciary has been shaped by clan based politics that continue to define society in this context judges are expected to favor their clan and base their decisions on political consideration rather than the law which undermines public trust in justice institutions Due to weak or non existence of oversight mechanisms corruption and and judicial misconduct is rife*”

”



OFFICE OF THE PRESIDENT  
PUNTLAND STATE OF SOMALIA

**Puntland comment:** Puntland constitution clearly provides full judiciary independence in line with the international standards of ensuring checks and balance or theory of separation of power. In practice, we do not have reports where Puntland judges were accused of clan favoritism and generalizing the report in this way is prejudice and based on erroneous intuitions. Yes, Puntland judges come from different clans, but it does not mean that they have to favour for their respective clans. We have cases where some judges were intimidated by their fellow men because of judgments not in their favor by judges from their clans.

In terms of the alleged corruption, the Puntland high judiciary has inspection judiciary unit with UNDP support who are mandated to detect any allegations of corruption. In 2014, the president of Puntland nominated a judiciary reform committee who submitted a comprehensive assessment of the judiciary and based on their recommendations, some judges were fired due to alleged corruption and incompetence. This is a clear indication of how Puntland judiciary council has been giving a full attention to the issues of corruption and incompetence of judges.

In the same page and the paragraph , it was noted that “ *newly appointed judges generally don’t receive initial training, and on the job training is limited. in addition there is plurality of laws . The multiplication of legal references makes difficult for judges to adjudicate cases*”

**Puntland comment:** there is still relative plurality of laws which hinders rule of law , however, Puntland has pioneered efforts to harmonize laws in collaboration with UNDP . this include establishing 4 ADR centers in which elders and Qadis resolve cases which are not serious crimes such as rape and murder and they register their cases in the first instance court. This scheme has seen success and there are ongoing efforts to increase such ADR centers in all Puntland to consolidate rule of law and access to justice .There is ADR policy in Puntland which guides all works of the ADR and this marks Puntland’s commitment to overcome plurality of laws. In terms of lack of training of judges, this is not the rule in Puntland and all judges in main cities are mostly law degree graduates and recent reports of the Puntland judiciary and ministry of Justice shows marked improvement in terms of judiciary professionalization. Many of the judges have under on job trainings by the senior judges, law universities and UNDP.

In the same page and the paragraph , it also noted that “*there is also lack of specific protection provisions in the law for women are represented in the judicial institutions and there is no legislative framework on sexual violence in Somalia denying women’s access to justice and remedies for such crimes*”.

**Puntland comment:** This is another example of generalization and prejudice. Puntland cabinet has recently passed the sexual offence bill and now being discussed by the parliament for its enactment . Not only this, new juvenile law has already been presented for cabinet approval. Also ministry of justice is now working on new FGM bill. There are provisions in the Somali Penal Code in 1963 which still criminalizes sexual violence against women despite its relative outdated. Therefore,



OFFICE OF THE PRESIDENT  
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we cannot say lack of specific laws protecting women, but we can say there is inadequacy.

In page 31 para 89 of the report, it was claimed that “in June 2016 a civil servant and women rights activist for Mudug region was shot dead by unidentified armed group in Galkaio. she was a well know advocate an outspoken critic to Alshabab and a significant factor in peace and reconciliation efforts, no one has claimed the responsibility for her killing and suspects arrested in this case were released in the same day”.

**Puntland comment:** This part of the report is just baseless implicit accusation. The Puntland police made investigations and have not yet captured the real suspects. Those who were

arrested during police operations were then released and no evidence could be reached to prosecute them and this according to the Puntland or Somalia laws that no suspect could be detained more than 48 hours unless there are strong clues that could permit extension of the arrest for further investigations. Puntland is well known in their fight against terrorists and never happen to release terrorists. Furthermore, due to increased investigation by Puntland intelligence forces led by the Puntland Security Forces in collaboration with Danab forces from the Federal SNA, significant arrests of high profile Shabaab members were achieved. This is a perfect reflection of the serious commitment of this Government to uproot and destroy violent extremism and terrorism.

Kindest regards,

  
Deeq S Yusuf  
Chief of Staff, Office of the President  
Puntland State of Somalia







## JUBBLAND STATE OF SOMALIA

### Ministry of Justice, Constitution and Religious Affairs

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REF.NO:11/W/C/D/ARD.

22/08/2016

Dear Sirs,

Further to our meeting with you on 18<sup>th</sup> August 2016 at your Kismayo Airport offices, The Ministry of Justice, Constitution and Religious Affairs, JSS wishes to clarify Para.14 of your summary of the Public Report on the Rights to Freedom of Expression. You have cited in the Report 2 incidences in which 17 women were arrested and detained by JSS Security Forces as a result of property disputes in Kismayo .

Please note that the Kismayo incidence related to a public owned plots of land where the State Government earmarked for development. Only 10 women were involved in this incident not 17. The Government gave a contract to a private construction company to carry out important developments projects including building health clinic, two public schools and a police station .A group of woman then came to the site and demonstrated with violence by throwing stones at the security service personnel who were called to calm the situation down. The women demonstrators claimed interests in the plots of land in question and their behavior towards the police officers and the construction workers was unacceptable as they have breached the peace, law and order. The JSS Security Service Officers then intervened, arrested and detained the women for just a few hours at the Kismayo main police station where they have been released without charge on the same day .The women were just advised and cautioned against such a violent demonstration.

As the Buurdhuubo incident you have mentioned, we have made further inquiries to investigate and find the truth about this. Having thoroughly investigated this matter, we can now confirm that the incident happened as a result of two women groups in the town disputing on the management of a local school. The local authorities had nothing to do with this school administration related matter. When the two groups fought each other, the local police service personnel intervened and it has been reported that only one female was arrested in the process and was then released without charge on the same day.

Having provided detailed information regarding these two incidents, we must advise that a balance be struck as to whether or not the information you receive represents the circumstances of incidents. Otherwise, your report will not be impartial and credible as “Justice should not always be done, but it has to be seen to be done”

Many Thanks

Best Regards

Dr. Adan Inshaar Cumar

Deputy Minister of Justice, Construction and Religious Affairs

Kismayo, Jubbaland State of Somalia





## THE MINISTER

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28 August 2016

Raisodon Zenenga  
Deputy Special Representative of the Secretary General  
UNSOM

Dear Mr. Zenenga,

I have the honour to refer to your letter of 16 June 2016 regarding reports falling within the human rights mandate of the UN Assistance Mission in Somalia (UNSOM). I wish to thank you for bringing to my attention the allegations of infringement of freedom of expression mentioned in your letter and wish to assure you that the Republic of Somaliland is committed to fulfilling its obligations in accordance with due process of law as guaranteed in its national Constitution and in conformity with international human rights law.

Given our historical legacy, and in particular the experience of the brutal regime of Siad Barre, my people and Government regard media freedom as a pillar of our democracy, and the democratic society we have built since Independence in 1991 is something we hold dear and are determined to keep. In this connection, I have the honour to refer to article 19 of the Universal Declaration of Human Rights which upholds everyone's right to freedom of opinion and expression including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media.

I welcome the opportunity to engage with you and with UNSOM regarding the specific incidents mentioned in your letter in hopes of ensuring the human rights of all citizens of Somaliland. Following discussions with, and in collaboration with the President of the Supreme Court and Constitutional Court of Somaliland, the Honourable Adam Haji-Ali Ahmed, I would like to share the following information with a view to addressing your concerns.

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and value it as a means to hold Government to account. As universally recognized, while freedom of expression must be upheld as broadly as possible, it is not absolute and may be constrained by legitimate measures to protect national security and public safety. It is only with the greatest reluctance that Somaliland limits freedom of expression, and then only as prescribed by law.

While we are not without some failings, we are continuously striving to improve our standards and strengthen our institutions. We are also receiving international assistance to improve relations between the domestic media and Government institutions. We share your concerns about the need to ensure that citizens and media alike enjoy freedom of opinion and expression and to reaffirm our commitment to fulfil our due process and human rights obligations under our Constitution and international human rights law.

We would appreciate if our comments in this letter in relation to human rights and in particular the right to freedom of expression in Somaliland could be taken into consideration and reflected in any forthcoming or future reports by the United Nations.

Again, we wish to thank you for engaging with us directly on these matters and for providing us with an impetus to redouble our efforts to ensure such incidents or infractions do not occur again. We look forward to continuing such cooperation in an open and constructive manner.

Yours sincerely,



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H.E Dr. Saad Ali Shire

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