

# FREEDOM OF EXPRESSION IN SOMALIA

FOR THE PUBLIC GOOD





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## Executive Summary

This report is jointly published by the United Nations Assistance Mission in Somalia (UNSOM) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>1</sup> It focuses on the progress made and challenges faced by Somalia in relation to the freedom of expression in Somalia since the release of the last UNSOM/OHCHR report on freedom of expression in Somalia in September 2018.<sup>2</sup> It analyses the violations and abuses affecting the right to freedom of expression documented by the Human Rights and Protection Group (HRPG) of UNSOM from 1 August 2018 to 31 December 2022.

The report documents the killing of 11 journalists and other media workers (10 men and one woman) and the injuring of 10 others (all men). Al-Shabaab remained the main perpetrator of these violations. Seven of the 11 killings documented were claimed by Al-Shabaab on its affiliated website. The other four remained attributed to unidentified perpetrators. Most of the killings occurred either during indiscriminate attacks or as a result of being deliberately targeted by the group. UNSOM obtained information regarding two cases out of 21 (11 killings and 10 injuries) where the perpetrators were convicted by Somali military courts in Benadir and Puntland.

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1 The United Nations Assistance Mission in Somalia (UNSOM) was established on 3 June 2013 by United Nations Security Council Resolution 2102. The subsequent mandate renewals, including 2657 (2022), comprise both the protection and promotion of international human rights law and international humanitarian law (S/RES/2657).

2 "The precarious enjoyment of freedom of expression in Somalia", 6 September 2018 [https://unsom.unmissions.org/sites/default/files/the\\_precarious\\_enjoyment\\_of\\_freedom\\_of\\_expression\\_in\\_somalia.pdf](https://unsom.unmissions.org/sites/default/files/the_precarious_enjoyment_of_freedom_of_expression_in_somalia.pdf).

Additionally, 199 journalists and other media workers were arbitrarily arrested and/or detained in relation to their work and the exercise of their right to freedom of expression. Of these 199, 185 were released without charges and 14 media workers were prosecuted of whom 12 were sentenced under the Somali Penal Code, including two cases adjudicated by military courts. Moreover, 10 media outlets were suspended by national and/or federal member state authorities. Eight of these suspensions were without a court decision. With respect to harassment and intimidation, in this reporting period, 37 incidents were documented and attributed to the state police forces (22), intelligence services (5), the Somali National Army (4), the Puntland Presidential and Parliament Guards (4) and security guards of the Benadir Administration (2).

When compared with the previous reporting period—from January 2014 to July 2018—there has been a 47 per cent decrease in journalists and other media workers killed and a seven per cent decrease in journalists arbitrarily arrested. However, there was a significant 270 per cent increase in the number of media professionals who reported being harassed or intimidated. The decrease in killings and arbitrary arrests of journalists and media workers could be attributed to self-censorship adopted by media workers as a protection mechanism to avoid physical threats and detentions.

In the reporting period, the situations that most commonly triggered the arbitrary detention of media workers related to work involving interviewing people to seek their views, reporting on protests, and broadcasting news that was perceived by the authorities as propaganda or defamation because it included the reporting of views that were critical of public officials or the administration's management in matters of public concern.

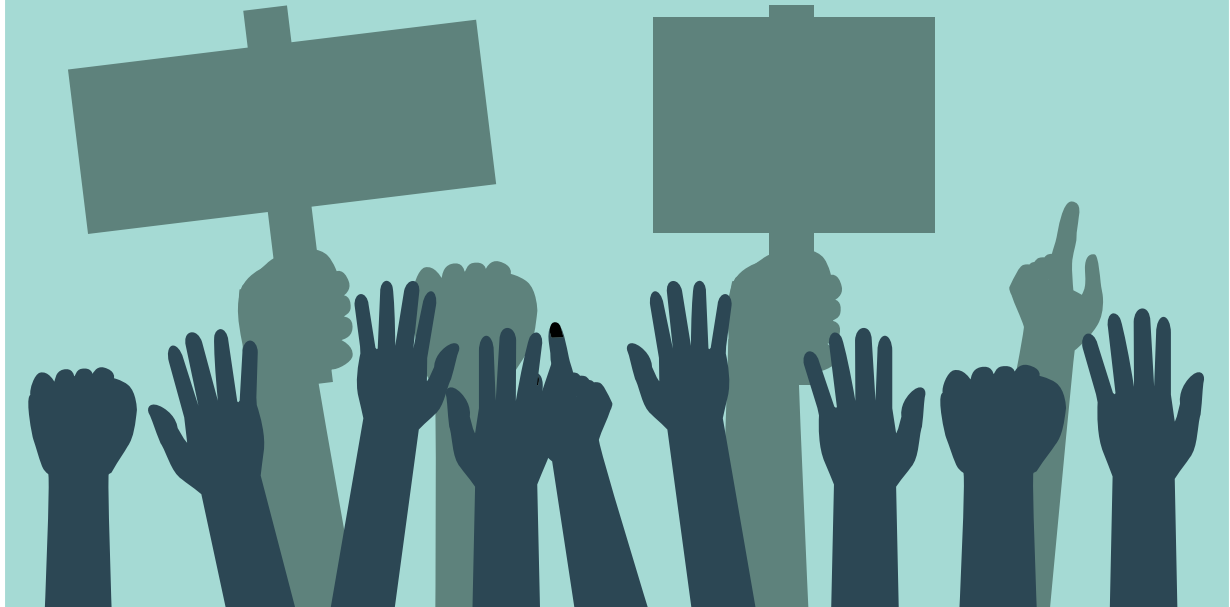
UNSOM/OHCHR also documented the arbitrary arrest and/or detention by state security forces of 265 other individuals (231 men and 34 women) in relation to freedom of expression, including persons who had participated in demonstrations, social media activists, and supporters of political parties. The report notes a significant increase of 82 per cent in the number of other individuals arbitrarily arrested or detained in relation to attempts to exercise their right to freedom of expression compared to the previous reporting period of January 2014 to July 2018 (146 arbitrary arrests and/or detentions). Most of these incidents occurred in the context of the protests linked to the postponement of the presidential elections in "Somaliland" in 2022 and the protests after the HirShabelle state presidential elections in 2020.

The Federal Government of Somalia has committed to implementing the recommendations from the Universal Periodic Review Process (UPR) regarding freedom of expression. During the second UPR cycle, in January 2016, the Federal Government supported 16 recommendations relating to the right to freedom of expression. In May 2021, similar recommendations were raised during its third cycle of the UPR review, with the Federal Government accepting 24 recommendations.

The present report provides a number of recommendations to the Federal Government, federal member states and Somali journalists and media organisations. Recommendations include the review of the Somali Penal Code, the Media Law and counter-terrorism measures as well as strengthening efforts to ensure accountability for human rights violations against journalists, media workers and other individuals.

# THE RIGHT TO **FREEDOM OF EXPRESSION** IN SOMALIA

August 2018 – December 2022



## I. Introduction

1. This report is the third in a series of reports by UNSOM/OHCHR on the state of the right to freedom of expression in Somalia. It provides an updated analysis of incidents affecting the right to freedom of expression, as well as other human rights documented by UNSOM/OHCHR from 1 August 2018 to 31 December 2022. The report examines those incidents in comparison to the period of 1 January 2014 to 31 July 2018.
2. Previously, in September 2018, UNSOM published its second report on the right to freedom of expression, highlighting progress made and challenges faced by Somalia in protecting and expanding civic space.<sup>3</sup> The previous report also examined patterns of violations and abuses of the right to freedom of expression documented by UNSOM from 1 August 2016 until 31 July 2018. It included recommendations in several areas, such as promoting accountability, implementing the UPR recommendations of 2016, establishing the Independent National Human Rights Commission, and harmonising domestic laws with international human rights standards.

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3 Ibid.

## II. Methodology

3. The information contained in this report was collected by UNSOM/OHCHR from individual testimonies and other sources, such as human rights defenders, media rights organisations, government authorities at all levels, community leaders, and local and international non-government organisations (NGOs), among others. UNSOM/OHCHR sought independent and reliable sources to verify allegations of human rights violations and abuses affecting the right to freedom of expression, as well as other related human rights in line with the OHCHR human rights monitoring and reporting methodology.
4. UNSOM/OHCHR also engaged with key government authorities to follow up on documented incidents, administrative and judicial decisions and reviewed reports submitted by the Federal Government of Somalia to United Nations Human Rights Treaty Bodies, and these bodies' concluding observations and recommendations.
5. For the purpose of this report, journalism “ (...) is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere (...)”.<sup>4</sup>

## III. Legal and Institutional Framework

### A. International Human Rights Law

6. Freedom of expression is a fundamental human right that plays a special role in the protection and promotion of all other human rights. It is enshrined in article 19 of the Universal Declaration of Human Rights. Freedom of expression is also protected by various international and regional treaties,<sup>5</sup> including the International Covenant on Civil and Political Rights (ICCPR) ratified by Somalia in 1990.<sup>6</sup>
7. The rights to freedom of opinion and expression are interconnected. International human rights law protects all forms of opinion and to hold opinions without interference. 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 constitutes violations of international human rights law. As such, the holding of an opinion shall not be criminalised. The United Nations Human Rights Committee has stated that detention may be arbitrary by virtue of the fact that it represents a punishment for freedom of expression.<sup>7</sup>

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4 United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para. 44.

5 ICCPR art. 19; ICERD art. 5(d)(viii); ICESCR art. 15(3); CRC arts. 12 and 13; ICRMW art. 13; CRPD art. 21.

6 ICCPR art. 19.

7 United Nations Human Rights Committee, General Comment No. 35, Article 9: Liberty and security of person, 16 December 2014, CCPR/C/GC/35, para. 53.



8. The right to freedom of expression comprises the right “seek, receive and impart information and ideas of all kinds, regardless of frontiers”.<sup>8</sup> It further includes “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse”.<sup>9</sup> In this regard, even expression that may be regarded as offensive is permissible as long as it falls within the scope of article 19(2) of the International Covenant on Civil and Political Rights.<sup>10</sup>
9. While the right to freedom of expression can be restricted by states, such restrictions must be compliant with the principles of legality, necessity, proportionality, and non-discrimination, as set out in Article 19 (3) of in the ICCPR. The restrictions on the right to freedom of expression must be only for specific purposes: to respect the rights or reputations of others, and to protect national security, public order, public health, or morals. Any such restrictions must 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> Such restrictions must not be construed in a way that puts the right itself in “jeopardy” or create a situation where the exception becomes the rule.<sup>13</sup>
10. International human rights law requires that States 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”.<sup>14</sup> Moreover, no restrictions to freedom of expression can “be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.” Arbitrary arrest and detention, threats to life, and killing of individuals in relation to the exercise of their freedom of expression are incompatible with that right, among others.<sup>15</sup>
11. International human rights 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 to the public”.<sup>16</sup> While States are required to prohibit certain types of expression or information, such as child pornography; incitement to genocide; advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and incitement

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8 Ibid.

9 United Nations Human Rights Committee, General Comment No. 34, para. 11. 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 receives adequate, politically balanced information, particularly during election periods” (article 6).

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

11 Ibid., para. 22.

12 Ibid.

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

14 Ibid.

15 Ibid., para. 23. In May 2015, the Pan-African Commission on Human and Peoples’ Rights adopted Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa.

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

to terrorism,<sup>17</sup> 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.<sup>18</sup> 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>19</sup> The State is required to provide effective remedy for any violations of the right to freedom of expression.

12. Thus, permissible limitations are not simply discretionary and should be narrowly interpreted, given that the right to freedom of expression is a prerequisite for a free and democratic society informed by the principles of transparency and accountability.<sup>20</sup> In particular, the right to 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.

## B. International Humanitarian law

13. The Federal Government of Somalia has recognized its engagement in a non-international armed conflict with Al-Shabaab with the support of international partners,<sup>21</sup> considering Al-Shabaab both a non-state organized armed group and a terrorist threat.<sup>22</sup> It is accordingly bound by customary and conventional international humanitarian law applicable to a non-international armed conflict. Notably, it is bound by common article 3 of the Geneva Conventions, while it has yet to become party to Additional Protocol II of the Geneva Conventions.

## C. National Law

14. Article 18 of the 2012 Provisional Federal Constitution of Somalia guarantees the right to freedom of expression as follows: “Every person has the right to have and express their opinions and to receive and impart their opinion, information and ideas in any way. Freedom of expression includes freedom

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

18 States parties should ensure that counter-terrorism measures are compatible with article 19(3) of the International Covenant on Civil and Political Rights. Such offences as “encouragement of terrorism” and “extremist activity”, as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. United Nations Human Rights Committee, General Comment 34, para 46.

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

20 International Covenant on Civil and Political Rights, article 4, provides that freedom of thought cannot be derogated during a state of emergency.

21 CCPR/C/SOM/1 Initial report submitted by Somalia under article 40 of the Covenant pursuant to the optional reporting procedure (30 June 2022).

22 The group was listed by the UN Security Council as a terrorist threat in 2010 under the Security Council Resolution 1844 (2008), which cites its engagement in acts that directly or indirectly threaten the peace, security, or stability of Somalia, the obstruction of the delivery of humanitarian assistance to Somalia and carrying out large-scale suicide car bombs. Available at <https://goo.su/n1xB>.

of speech, and freedom of the media, including all forms of electronic and web-based media. Free media is essential to the development and maintenance of democracy in a nation, and for economic development”.<sup>23</sup> This provision is complemented by the state constitutions of “Somaliland” (2000), Puntland (2009), the South West State (2014), Jubbaland (2015),<sup>24</sup> Galmudug (2015), and HirShabelle (2016), which all guarantee the right to freedom of expression.

15. While federal law applies in principle across Somalia, there is no uniform regulation, implementation and enforcement, particularly in states such as “Somaliland” and Puntland, which, following the collapse of the central state in 1991, established their own state structures and legislative frameworks that prevail today.
16. The right to freedom of expression is linked to the rights to freedoms of association and peaceful assembly. The Federal Constitution of Somalia guarantees that every person has “the right to organise and participate in meetings, and to demonstrate and protest peacefully, without prior authorisation”.<sup>25</sup> The HirShabelle, Jubaland, Puntland, “Somaliland” and South West State (SWS) Constitutions also guarantee these rights.
17. The main legislative development that has taken place since the release of the 2018 UNSOM Report is the adoption of amendments to the Federal Media Law in August 2020. At the state level, in “Somaliland”, the Ministry of Information and Culture drafted the “Somaliland” Media Bill in 2019 to replace the 2004 “Somaliland” Press Law. It received inputs from media networks, civil society, academics, and other government institutions. However, it remained in draft at the Ministry level as of December 2022.

### a) National Media Law

18. On 26 August 2020, Former President Mohamed Abdullahi Mohamed signed into law the amended version of the media bill.<sup>26</sup> The House of the People and the Upper House of the Federal Parliament passed the amendments in July 2019<sup>27</sup> and January 2020,<sup>28</sup> respectively. The signature came despite repeated calls by Somali media groups to the President not to sign it,<sup>29</sup> citing that it contained contentious provisions that were not aligned with international standards on freedom of expression and could pose challenges to the independence of the media. Media associations and activists argued

23 See Article 1 of the Declaration of Windhoek available at <https://bit.ly/41GI55e> Last accessed 26 April 2023.

24 The Provisional Jubbaland Constitution, articles 14, 15 and 20. The Constitution also guarantees the rights to freedoms of assembly, demonstration and association.

25 Federal Constitution, article 20.

26 See press release <https://twitter.com/sntvnews1/status/1298569839318106112> last accessed 25 June 2023.

27 <https://sjsyndicate.org/2019/07/08/somali-journalists-syndicate-sjs-outraged-by-the-new-oppressive-media-bill-passed-by-the-parliament/> last accessed 21 June 2023.

28 <https://goobjoog.com/english/senate-approves-revised-media-law/> last accessed 21 June 2023.

29 See NUSOJ statement <https://www.nusoj.org/new-draft-media-law-puts-undue-restrictions-on-media-freedom/> last accessed 21 June 2023.

that most of their proposals or recommendations submitted to the government and the parliament were not incorporated into the newly amended law.<sup>30</sup>

19. The amended Media Law includes provisions with ambiguously worded texts that could be used to curtail the right to freedom of expression and overall media practice in Somalia. For example, article 4 prohibits “dissemination of false news”, “incitement to violence and clannism”, and “spreading hate speech” without defining these terms.<sup>31</sup> Similarly, article 29 forbids media to “spread information or publications that are false and propaganda against the dignity of an individual, institution or government.”
20. The amended version requires new registration of all the media outlets at federal and federal member states levels, including those that were already registered and had operations.<sup>32</sup> Article 18 of the Media Law establishes a mandatory registration of journalists on the national registry “after verification of his/her skills as a journalist.” This provision needs to be reviewed in light of Somalia’s human rights commitments which indicate that “general State systems of registration or licensing of journalists are incompatible with paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events [...] considering that journalism is a function shared by a wide range of actors”.<sup>33</sup> The Media Law also imposes financial penalties on journalists and media organisations for violating the Media Law or ‘relevant media ethics’.<sup>34</sup>
21. Under the amended Media Law, the Federal Minister of Information has a significant oversight mandate over the Somali Media Council, which is supposed to be an independent media committee mandated with overseeing the implementation of the Media Law and media practices in the country.<sup>35</sup> The Federal Minister of Information has the power to “enforce the media law, suggest changes in the structure of the National Media Council, and suggest changes in the law.”<sup>36</sup> On 5 October 2020, in a joint letter to the President of Somalia, Amnesty International, the Committee to Protect Journalists, and Human Rights Watch raised their concerns about the amended Media Law.<sup>37</sup>
22. The country’s protracted parliamentary elections and the election of a new President of the Federal Republic of Somalia that concluded in April and May 2022, respectively, paused significant legislative reforms such as the amendment of the Somali Penal Code, the review of the Provisional Federal Constitution and the Media Law.

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30 See statement issued SJS and SOMA: <https://sjsyndicate.org/2020/08/26/somalias-new-media-law-poses-threat-to-media-freedom-and-rights-of-journalists/> and also see NUSOJ statement: <https://www.nusoj.org/statement-on-the-amended-media-law-signed-by-the-president-of-somalia/> last accessed 21 June 2023.

31 2020 Somalia Media Law, article 4 and article 29.

32 Ibid., article 16.

33 United Nations Human Rights Committee, General comment No. 34.

34 Somalia Media Law 2020, article 5.

35 Ibid, article 14.

36 Ibid, article 39.

37 Joint Letter Re: Concerns and Recommendations on Somalia’s New Media Law: available at <https://www.hrw.org/news/2020/10/05/joint-letter-re-concerns-and-recommendations-somalias-new-media-law> last accessed on 21 June 2023.

## b) Puntland

23. The 2009 Puntland Constitution guarantees the right to freedom of opinion and expression through speech, the media, writing, video, literature and by any other means consistent with the law.<sup>38</sup> Nevertheless, these rights are subject to limitations related to Sharia, by-laws, ethics, the stability of the country and the protection of the rights of others. The right to seek, impart and receive information is not included in the Puntland Constitution. The Puntland Constitution further recognises the right to participate in political parties, the freedom of association, and the right to demonstrate.<sup>39</sup>
24. The Puntland Media Law (amended in 2016) mandated the Puntland Media Council to promote and enhance ethical and professional standards amongst journalists and media, to maintain a register of accredited journalists and media, and set and regulate ethical and disciplinary measures for the media. The Council, which consists of seven members, was inaugurated for the first time on 26 March 2018. It has been slow to fulfil its functions since its inception as Puntland was in an election year in 2019, and the COVID-19 pandemic paralysed activities in 2020. On 25 July 2021, the members of the Puntland Media Council elected a new chairperson and held an extraordinary meeting on 13 November 2021. On 15 November 2021, the Council published a press release urging journalists and media workers to register for accreditation; nevertheless, the registration has been postponed as the Council was developing Standard Operating Procedures.

## c) “Somaliland”

25. Since 2017, there have been efforts by local and international actors to advocate with the government and parliamentarians to amend the “Somaliland” Press Law.<sup>40</sup> In 2019, the “Somaliland” Ministry of Information and Culture drafted the “Somaliland” Media Bill with inputs from media networks, civil society, academics, and other government institutions. As of December 2022, the draft was still with the Ministry and one of the sticking points was the formation of the Media Council and its mandate. The “Somaliland” Journalists Association (SOLJA), the “Somaliland” Human Rights Commission and other stakeholders continue to advocate with the “Somaliland” Ministry of Information and Culture and the “Somaliland” Parliament to accelerate the finalisation of the Bill which is still with the Ministry. The proposed law will replace the 2004 “Somaliland” Press Law.

## d) Jubaland

26. The Jubaland Constitution recognises the rights to freedom of assembly, to demonstrate, and the freedom of association.<sup>41</sup> The 2019 election-related political deadlock in Jubaland and the onset of

38 Puntland Constitution, article 14.

39 Ibid., article 41(b) on establishing and joining a political party; article 15 on formation and membership in social organisations.

40 The United Nations and other international partners, civil society representatives and the “Somaliland” National Human Rights Commission were involved in such efforts.

41 The 1 August 2015 Provisional Constitution of Jubaland, article 14, guaranteeing the right to freedom of association, and

the COVID-19 pandemic in 2020 partly slowed the process for the development of the Jubaland Media Bill, which started in 2017. In 2018, UNSOM reviewed the first draft and provided technical inputs on international standards on the right to freedom of expression. In 2019 and 2021, the Jubaland Ministry of Information and Public Awareness conducted additional consultations with various stakeholders, including media associations, freelance journalists, civil society organisations and line ministries and a new chapter on the safety mechanism and ethics of the media was reportedly added. A copy of the draft Bill was submitted to the Jubaland Attorney General's Office for review. As of December 2022, the Jubaland Ministry of Information and Public Awareness continued to finalise the bill.

### e) Galmudug

27. The 2015 Galmudug Constitution provides for a wide range of rights and freedoms relating to thought, assembly and demonstrations.<sup>42</sup> The Galmudug Ministry of Information initiated discussions for the development of the Galmudug Media Bill, and the drafting process began in 2021 with the involvement of journalists and representatives of associations and other civil society organisations. As of the end of December 2022, the bill had been drafted, and the Galmudug Ministry of Information was in the process of arranging additional consultations with relevant Galmudug Government ministries, civil society and other stakeholders.

### f) HirShabelle

28. Article 20 of the Constitution of HirShabelle guarantees the “right to express views, speech and innovation” subject to the limitation of not harming or insulting “an individual, group or community, or the Islamic religion.” Article 21 of the Constitution provides that anyone can “establish private media or speak in the media, expressing or defending his views”.

### g) South West State

29. The 2014 South West State Constitution provides for media independence and the right to freedom of opinion and expression in articles 12, 22 and 24, which cover political parties, groups and human rights defenders. Article 24 of the Constitution limits activities deemed to be contrary to Islam, public safety, public order and stability.

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article 15, protecting the right to freedom of assembly and demonstration, and providing for complaints and petition.

<sup>42</sup> The 2018 Constitution of Galmudug, articles 20, 30 and 32.

## D. Oversight structures

### a) Media Council

30. The Media Council should have been established, approved and fully functioning by 2016 under the 2016 Federal Media Law. The Federal Ministry of Information attempted to establish it in 2016 unilaterally, but the Federal Cabinet did not approve it. Under the amended Media Law, the Federal Ministry of Information still has significant roles in both the establishment and the oversight of the Media Council. According to Article 15 of the amended Media Law, the National Media Council's role includes among other responsibilities "promoting journalistic ethics among the media"; "mediation and resolution of complaints against the public and private media, except for criminal offences"; "rewarding and disciplining of journalists, editors and officials of media organizations"; "safeguards the standards and professional development of journalists and the media" and "advising, granting and revoking of media agencies' licences".<sup>43</sup> In addition, the provision on the composition of members of the Council continues to raise concerns over media freedoms.

### b) Independent National Human Rights Commission

31. When established, the Independent National Human Rights Commission could play a positive role in the promotion and protection of freedom of expression. Indeed, the National Human Rights Commission Law (article 6) grants it a broad mandate, which includes ensuring that government policies are consistent with human rights principles, investigating abuses against vulnerable groups, and writing public reports to address critical human rights issues.
32. However, the establishment of the Independent National Human Rights Commission has been delayed. On 17 January 2018, the Ministry of Women and Human Rights Development presented a list of recommended Commissioners to the previous Council of Ministers for approval. However, no action was taken which has stalled the remaining steps (the parliamentary endorsement and the formal appointment by the President) for the establishment of the Commission. The political and security crisis over the delayed electoral process in 2020 and 2021 further diminished any prospects for the establishment of the Commission.<sup>44</sup> In 2021, as part of recommendations from the third cycle of the UPR, Somalia agreed to finalise the establishment of the Independent National Human Rights Commission and ensure its full operation in line with the Paris Principles.
33. The new Federal Government of Somalia, which was formed in August 2022, restarted the process for the establishment of the Commission. On 20 November 2022, the Federal Minister of Women and Human Rights Development appointed a temporary committee the establishment of the Independent

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<sup>43</sup> See Amended Media Law, article 15 "The Roles of the National Media Council."

<sup>44</sup> The elections were concluded after a period of more than one year in which all Somali elected institutions exceeded their constitutional timelines due to political tensions and a lack of consensus on the arrangements for the conduction of inclusive elections. See <https://unsom.unmissions.org/international-partners-urge-final-push-complete-electoral-process-0>.

National Human Rights Commission to review the procedure followed by the previous Temporary Selection Panel to select the nine candidate commissioners and the reason for the dispute on the selected candidate commissioners. The Minister also tasked the committee to speed up the establishment of the Independent National Human Rights Commission.

34. On 15 December 2022, the temporary committee for the establishment of the Independent National Human Rights Commission issued a call for applications to become a commissioner of the Commission and requested those interested to submit their applications from 14 to 20 December 2022. The National Human Rights Commission Law, enacted in August 2016,<sup>45</sup> provides the timelines and defines the qualifications of commissioners, the requirements to advertise the vacancies transparently, and the appointment procedure through a special inclusive selection panel. The adherence to these provisions will be key in ensuring an independent, credible and effective Commission to protect human rights, including the right to freedom of expression.

#### IV. The promotion and protection of freedom of expression in Somalia

35. During the reporting period, UNSOM/OHCHR documented the killing of 11 journalists and other media workers (10 men and one woman) and the injuring of 10 others (all men). In addition, 464 individuals (199 journalists and media workers and 265 other individuals such as human rights defenders, political opponents, of which 40 are women and 424 are men) were arbitrarily arrested or/and detained for exercising the right to freedom of expression. Another 37 were subjected to harassment or intimidation reportedly by state security forces. Moreover, state authorities suspended 10 independent media outlets, including seven over allegations of disseminating false information or criticizing senior public officials. Eight of the 10 media outlets were suspended without a court order authorizing it.

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45 The Paris Principles are the international minimum standards for national human rights institutions. Compliance with the Paris Principles enables national human rights institutions to work independently and professionally in promoting and protecting human rights: [http://www.asiapacificforum.net/media/resource\\_file/A\\_Manual\\_on\\_NHRIs\\_97lhU4q.pdf](http://www.asiapacificforum.net/media/resource_file/A_Manual_on_NHRIs_97lhU4q.pdf).



Table 1 – Freedom of expression incidents from August 2018 to December 2022

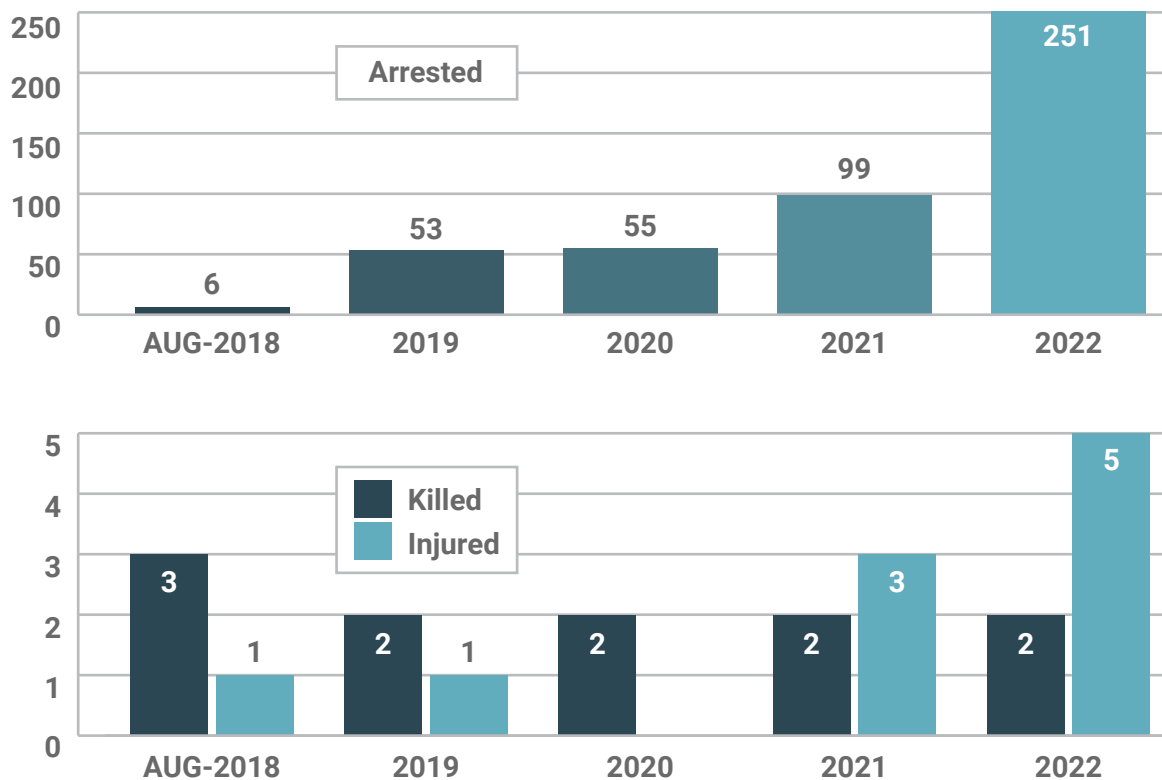


Table 2

Journalists and media workers	From January 2014 to July 2018	From August 2018 to December 2022
Killed	20	11
Injured	32	10
Harassed/intimidated	10	37
Arbitrarily detained and or arrested	214	199
Detained in electoral related activities	No available record	18
Journalists prosecuted	No available record	14
Media outlets suspended	38	10
Other individuals arrested in relation to freedom of expression	146	265

## A. Killing and injuring of journalists and other media workers

36. UNSOM/OHCHR documented the killing of 11 journalists and other media workers during the period under review in Benadir (4), Jubaland (2), Puntland (2), South West State (2), and HirShabelle (1), which constitutes a 47 per cent decrease compared to the previous reporting period from January 2014 to July 2018. Most of the killings occurred during indiscriminate attacks by Al-Shabaab or as a result of being deliberately targeted by the group. One of the main reasons behind the reduction of killings and injuring of media workers may be linked to the self-censorship adopted by media professionals who reported to UNSOM that this is a protection mechanism to avoid physical attacks in the current security situation.
37. Non-state actors in Somalia have conducted a number of attacks against journalists and other media workers. Seven of the 11 killings documented were claimed by Al-Shabaab on its affiliated website. The other four remained attributed to unidentified perpetrators. For example, on 20 November 2020 in Mogadishu, a suicide bomber detonated his explosive vest and killed a prominent journalist who was also the director of the state-owned Radio Mogadishu. The Al-Shabaab spokesperson referred to the deceased journalist as “an apostate who committed crimes against Islam”.<sup>46</sup> In another incident, on 1 March 2021, Al-Shabaab shot and killed a journalist in Galkayo, Puntland, accusing the victim of spying for the Puntland Administration.<sup>47</sup>
38. In addition to killings, UNSOM/OHCHR documented ten journalists and other media workers injured (all males) compared to the previous reporting period where 32 injuries were documented. Six were attributed to Al-Shabaab, three to the state security forces and one was attributed to unidentified armed men. Seven incidents took place in Mogadishu, two in HirShabelle and one in Jubaland.

## B. Harassment and intimidation of journalists and other media workers

*“The incident occurred when I was covering a peaceful demonstration. A police officer forcefully grabbed my equipment and hit me in the face. I fell to the ground... Of course, I could not defend myself. He was solid and armed. Luckily, the demonstrators ran to my rescue... Unfortunately, I sustained a head injury.”*

A journalist who reported being physically assaulted by security forces during a demonstration in Somalia (May 2021, interview with UNSOM).

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46 See Al-Shabaab claimed responsibility for the killing on its affiliated website available at <https://radioalfurqaan.com/2021/11/cabdi-caziiz-afrika-oo-ku-dhintay-qarax-ka-dhacay-magaalada-muqdisho/> last accessed 27 April 2023.

47 Al-Shabaab claimed responsibility for the killing on its affiliated website <https://calamada.com/99075-2/>. Last accessed 26 April 2023.

39. A significant increase in the number of incidents of harassment and intimidation of journalists and other media workers was observed during the reporting period.<sup>48</sup> UNSOM/OHCHR documented 37 incidents (involving 36 men and one woman), representing a 270 per cent increase compared with the previous reporting period when 10 incidents were documented. Over half of them were attributed to the police forces (22), followed by the intelligence agencies (5), the Puntland Presidential and Parliament Guards (4), the Somali National Army (SNA) (4) and security guards of the Benadir Regional Administration (2). Regarding the locations, 20 of the incidents occurred in Benadir, particularly in Mogadishu; five in “Somaliland”; five in Puntland; four in Jubaland; two in HirShabelle; and one in Galmudug.
40. UNSOM/OHCHR carried out interviews with different sources, including victims, who reported that security forces had committed acts of intimidation and harassment to deter journalists from reporting on issues of public interest, such as corruption, irregularities in the electoral process, civilian casualties resulting from military operations, or cases of disappearance, among others.
41. For example, on 3 February 2021 in Wisil town (Mudug region), the Galmudug Police Force reportedly threatened and intimidated a journalist to pressure him to delete the recording of an interview he had conducted with elders who were complaining about a newly appointed administration for their village. Another incident occurred on 16 February 2022 when officers from the Special Unit of the Somali Police Force (SPF) allegedly physically assaulted two TV journalists and two camera operators that were filming the police station in Mogadishu that had been attacked by Al-Shabaab the day before. During the incident, the officers also reportedly confiscated the equipment of the media workers and tied their hands and legs for several hours.
42. Women journalists reported to UNSOM/OHCHR that they face additional challenges when exercising their right to freedom of expression. In particular, stereotypes of women’s roles in society affect their daily work leading to differing coverage, for instance, in terms of barriers to access to the areas where the incident they want to report on occurred. They also reported that working as a journalist or a media operator is often perceived a dangerous job therefore not fit for women. Women journalists also reported being refused interviews with sources because they are women, pressures for abandoning a profession socially perceived as for men only, and discrimination in relation to labour rights, including lower salaries and no access to promotions.
43. UNSOM/OHCHR documented four incidents of women journalists being targeted for their work. For instance, on 4 May 2020, members of the Somali Police Force (SPF) and a public official reportedly physically assaulted a woman journalist and a camera operator in Mogadishu. The woman journalist was conducting radio interviews with women who had complained about the alleged misuse of the food-for-work beneficiary cards.

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48 See ICCPR articles 7 and 10.

44. Journalists and media workers reported to UNSOM that physical assaults, harassment, and threats against them by security forces have resulted in a climate of fear and self-censorship.<sup>49</sup> In some instances, journalists reported having abandoned their professional activities or considerably restricted them for their own safety.

### C. Arbitrary and unlawful arrests or detention

45. During the reporting period, 464 individuals (199 journalists and other media workers, and 265 other individuals, of which 40 are women and 424 are men) were arbitrarily and unlawfully arrested and/or detained by state security forces when exercising their right to freedom of expression.
46. Compared with the previous reporting period of January 2014 to July 2018, the number of arbitrary arrests and/or detentions among journalists and other media workers has decreased during the reporting period by seven per cent.<sup>50</sup> Out of 199 journalists and other media workers arrested or detained (six women and 193 men), 185 were released without charges, 14 were prosecuted and 12 were sentenced.<sup>51</sup> Incidents of arbitrary arrest and/or arbitrary detention of media workers in the current reporting period mainly occurred while they interviewed people to collect their views on public issues,<sup>52</sup> while they covered or reported on protests; or in the aftermath of press conferences and following broadcasting of issues of public interest.
47. The broadcasts that appeared to trigger most of the arbitrary detentions of media workers included reporting of views that were critical of public officials and the administration's management of public affairs, including public exposure of corruption, mismanagement of humanitarian aid, the struggles of hospitals to provide health care; broadcasting allegedly fake news – considered as such by the authorities – or information related to security such as reporting on Al-Shabaab activities and military operations. For example, on 22 December 2022, members of the HirShabelle Police Force reportedly detained three media workers working for a local radio station called Radio Hiiranweyn in Beletweyne town, Hiran region. The incident was allegedly related to the broadcast of reports of Al-Shabaab retaking villages in the Hiran region. Following the clan elders' intervention, the media workers were released the same day.
48. The 265 other non-media workers (231 men and 34 women) arbitrarily arrested and/or detained by security forces in relation to exercising their right to freedom of expression included clan elders, supporters of opposition political parties, social media activists, and ordinary civilians. This consti-

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49 See also Amnesty International report (2020) on freedom of expression in Somalia: <https://www.amnesty.org/en/documents/afr52/1442/2020/en/> last accessed 26 April 2023.

50 From January 2014 to July 2018, UNSOM/OHCHR documented 214 journalists and media workers arbitrarily arrested and or detained.

51 Twelve media workers were sentenced, one was acquitted by the court and in one case the trial was ongoing at the time of the finalization of this report.

52 Including covering views on political decisions, security incidents, criticisms of public figures or complains of communities or clan elders.

tutes an 82 per cent increase compared to 146 incidents of this nature recorded during the previous reporting period. These incidents occurred mostly in the context of protests or expressions of critical views about the public administration or public figures.

49. Out of the 464 documented arbitrary arrests and/or detentions, 279 took place in “Somaliland”, 50 in HirShabelle, 45 in South West State, 26 in Puntland, 30 in Mogadishu, 16 in Jubaland, and 18 in Galmudug. In “Somaliland,” these incidents took place in the context of protests that started as a reaction to the postponement of the “Somaliland” presidential elections in 2022. The majority of the arbitrary arrests and detentions in HirShabelle State took place in the context of the political and clan dynamics in the state and protests following the election of the HirShabelle State President in November 2020. For example, from January to May 2021, NISA and HirShabelle police carried out three arbitrary arrests and detentions of nine civilians (five men and four women) in Beletweyne town for attending meetings organised by the Hawadle clan youth group against the HirShabelle administration. A journalist covering one of the meetings was also arrested and detained.
50. Four-hundred and twenty-six of the arbitrary arrests and/or detentions were carried out by police forces, 36 by intelligence agencies, one by the SNA and one by the security guards of a district commissioner. For example, on 1 February 2019, members of Jubaland security forces arrested and detained for 26 days a journalist who worked for South West TV station in Luuq town, Gedo region, for allegedly posting comments critical about the local administration on social media. The journalist was not formally charged or brought before a court. In another incident, on 14 March 2022, a journalist working for a private television station called Horn Cable TV in Borama district, Awdal region, “Somaliland”, was arrested following the broadcast of a program seeking the views of residents on President Muse Bihi’s visit to the United States of America. The journalist was released on 20 March 2022 without being charged.
51. Of the 14 journalists and media workers who were prosecuted, 11 took place in “Somaliland”, one in Puntland, one in Mogadishu and one in Galmudug. In the majority of incidents where journalists were prosecuted, they were charged under the 1964 Somali Penal Code using articles 215 (Subversive or Anti-National Propaganda), 269 (Insult to a Political, Administrative or Judicial body), 326 (Intimidation of the public), 328 (Publication or circulation of false, exaggerated or tendentious news capable of disturbing public order), 321 (Instigation to disobey the Law), 452(3) (Defamation when act is committed by means of press), or 505 (Non-observance of the orders of the authorities). Most offences under these articles entail a prison sentence ranging from six months to two years, but an offence under articles 269 and 452(3), carries terms of three years of imprisonment.
52. The provisions of the Penal Code that establish these offences contain broadly defined and vaguely formulated provisions. Under international human rights law offences must meet the principle of legality, including legal certainty and predictability.<sup>53</sup> Further, their application against journalists for the mere fact of performing their work are contrary to article 19 of the ICCPR. In this regard, offences that punish individuals for criticizing public institutions or their authorities, such as article 269 (Insult

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53 See article 15 ICCPR. See also, United Nations Human Rights Committee, General Comment No. 29, para. 7.

to a Political, Administrative or Judicial body) are not compatible with article 19 of the ICCPR. Any criticism of such entities is permitted under the ICCPR, which only limits criticism of individuals in certain circumstances.<sup>54</sup> It is also worth noting that while defamation may still be subject to judicial consideration, the United Nations Human Rights Committee has urged States parties to consider decriminalization of defamation.<sup>55</sup>

53. UNSOM/OHCHR has documented two cases of criminal proceedings against journalists and other media workers under military court jurisdiction,<sup>56</sup> which raise concerns about the respect for the right to a fair trial.<sup>57</sup> For instance, on 3 March 2021, the Military Court of the First Instance in Nugal region sentenced a journalist, detained since 27 December 2020, to three months of imprisonment for public incitement through social media. The journalist reported on a demonstration opposing the Puntland Administration's decision on the increase of prices of goods and living costs. On 4 March, the Prosecutor of the Military Court of the First Instance appealed against the ruling of the Court, which on 17 March increased his sentence from three months to three years of imprisonment. The defense lawyer decided not to attend the proceedings of the Appeal Court, claiming that the Military Court had no jurisdiction over the case. On 22 March, the Puntland President issued a decree granting a special pardon for the journalist based on article 80 of the Puntland Constitution.
54. Three cases of arbitrary arrest of journalists were documented regarding the implementation of COVID-19 pandemic preventive measures by the government and allegations of irregularities in the use and distribution of the limited healthcare resources available. For example, on 14 April 2020, Somali authorities detained a journalist in Mogadishu after he posted an article on social media alleging that public officials had taken ventilators donated to a hospital in Mogadishu. He was subsequently charged under the Somali Penal Code articles 269 (Insult to a Political, Administrative or Judicial Body), 220 (Offending the Honour or Prestige of the Head of the State), 271 (Offence against the Authorities by Means of Damaging Posters), and 328 (Publication or Circulation of False, Exaggerated or Tendentious News capable of disturbing Public Order). On 29 July 2020, the Benadir Regional Court sentenced him to six months imprisonment and a fine of approximately USD 200. Similarly, on 20 March 2020, the Puntland Police Force arbitrarily arrested a journalist who was interviewing residents and seeking their views on COVID-19 restrictions.

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54 See United Nations Human Rights Committee, General Comment No 34, paragraph 28: "The term "others" relates to other persons individually or as a member of a community." Additionally, paragraph 38 states: "the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions the value placed by the Covenant upon uninhibited expression is particularly high."

55 The United Nations Human Rights Committee has explained in its General comment No. 34 that a restriction must be "the least intrusive instrument amongst those which might achieve their protective function" and that it must be proportionate to the interest to be protected. Also see paragraph 47.

56 In some cases, the Somali military justice is exercising legal jurisdiction over Al-Shabaab-related cases, which may include journalists for alleged affiliation with the group.

57 According to the United Nations Human Rights Committee General Comment No. 32 paragraph 22: "the trial of civilians by military or special Courts should be exceptional" [...] "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned". All persons accused of a criminal offense has the rights to a fair and public hearing by a competent, independent and impartial tribunal established by law, as guaranteed by article 14(1) of the ICCPR.

### a) “Somaliland”

55. The Human Rights Committee states that the right of peaceful assembly, as a fundamental human right, is essential for the expression of opinions and ideas and has a collective dimension for participation in public affairs and for democracy.<sup>58</sup> Furthermore, in relation to the right of every citizen to take part in the conduct of public affairs the Human Rights Committee noted that: “This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion” and [the] “freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose.”<sup>59</sup>
56. Of the 464 incidents of arbitrary arrest and/or detention documented by UNSOM/OHCHR in “Somaliland”, 279 were carried out by the “Somaliland” Police Force and the intelligence services. These included 72 journalists and other media workers and 207 politicians, supporters of political parties, musicians, and social media activists. Most were arrested for criticizing the “Somaliland” authorities, including by making allegations of corruption. In 61 cases, journalists and other media workers were released without charges. In one case, the court dismissed the charges for lack of evidence. A further 10 cases (all men) led to conviction and terms of imprisonment from several months to three years, whereas others were fined.
57. For instance, on 11 October 2018, a reporter working for Bulsho TV station was arrested by the “Somaliland” Police Force in Ceerigaabo, Sanaag region, after the station aired a report critical of the ability of the Ceerigaabo General Hospital to provide appropriate care, and allegations of corruption and mismanagement. As a result, the journalist was detained for four days and released without charges. In another case covering corruption, on 13 December 2018, the “Somaliland” Police Force arrested a journalist working for Goobjoog TV station in Buroa, Togdheer region, after he posted allegations of corruption involving the prosecutor’s office on his Facebook account. He was released on 17 December 2018 without being charged following mediation by a media association.
58. Additionally, at the beginning of August 2022, the two main opposition parties in “Somaliland”, the Justice and Welfare Party (UCID) and Waddani, called for and organised demonstrations against the delay of the Presidential elections scheduled for 13 November 2022. On 7 August 2022, Waddani and UCID parties submitted a letter to the “Somaliland” Ministry of Interior informing it of their intention to hold public demonstrations on 11 August 2022.<sup>60</sup> During the demonstrations in Hargeisa, Buroa and Ceerigaavo towns, it is alleged that the “Somaliland” Police Force jointly with other “Somaliland” forces (such as immigration and border control, intelligence officers, custodial corps in uniform and

58 See United Nations Human Rights Committee, General Comment No. 34 paragraph 47.

59 See United Nations Human Rights Committee, General Comment No. 25, paragraph 25.

60 According to article 10 (1) of “Somaliland” public order law (Law No. 51/2012), “[t]he organizers of the demonstrations should inform the district commissioner (mayor), governor or Minister of Interior three days before the demonstration starts.” Similarly, article 10 (2) of this law states “ on the basis of public health, stability, public morality, public order and security, the district commissioner (mayor), Governor or Minister of Interior can reject the demonstration in written form with full justification of the refusal or amend the timing and the way of organizing the demonstration and then immediately inform to the National Security Council and the Police.”



civilian clothing, fire brigade, military and the emergency units of the police force) dispersed the protesters using a mixture of live ammunition, rubber bullets and tear gas. As a result, according to authorities,<sup>61</sup> five people were killed (all men), 86 were injured, including 15 persons who were injured in Burao and Hargeisa by gunshot wounds. Additionally, 75 people (23 women and 52 men) were detained and were released between one week to four weeks without charges, and two media workers were among those arrested. The “Somaliland” authorities stated that 85 members of the security forces and protesters were injured (67 or so by protestors, the rest in a vehicle accident). Internet shutdowns reportedly initiated by the authorities, occurred during the demonstration day.<sup>62</sup>

59. On 13 August 2022, the first deputy of “Somaliland’s” Lower House appointed a standing committee to investigate the events of 11 August and report back to the Parliament. On 14 August, the Government and the two opposition parties appointed two additional investigation committees. The report of the Lower House’s Parliamentary Committee found that “the security forces used excessive force and live ammunition against protestors” and that “no security forces were arrested or brought to court for the killings and injuries committed against the protestors”. Additionally, according to the “Somaliland” Minister of Interior and Security, “no gunshots hit the security members, but there were catapults and stones”. According to the report, the total number of people who died in the protests was five (all civilians), of which three were killed by live ammunition, one person was killed by a motor vehicle collision and one person was killed by tear gas. Out of the 85 wounded police officers, 14 of them presented more serious injuries but none were hospitalized.
60. On 13 November 2022, after the announcement of a new postponement of the elections in “Somaliland”, opposition protests in Burao resulted in four men being injured and at least 63 individuals detained. Fourteen of the 63 male detainees were boys below 18 years of age and were released without charge. By mid-December 2022, all detainees had been released without being charged.

## b) Arrests and detention by Intelligence Service Agencies

61. During the reporting period, UNSOM/OHCHR documented 21 incidents, in which the exercise of the right of freedom of expression led to the arbitrary arrest and detention of the individuals, coupled with acts of intimidation and physical assault, carried out by intelligence agencies across the country. The National Intelligence and Security Agency (NISA) was responsible for 17 incidents affecting 26 individuals (17 journalists and other media workers and nine other individuals, six of whom are women and 20 are men). The “Somaliland” Intelligence Agency was responsible for four incidents, involving five journalists and other media workers. One detention was attributed to the Jubaland Intelligence Security Agency (JISA).

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61 See press conference <https://www.facebook.com/watch/?v=446791044015854>. On 17 August, “Somaliland” Government reportedly accepted to pay as compensation (Dia) an amount of USD 42,000 to each family of the victims five male civilians killed during opposition protests.

62 From 6:00 am to 13:00. See Internet disrupted in “Somaliland” amid protests over postponed elections <https://netblocks.org/reports/internet-disrupted-in-somaliland-amid-protests-over-postponed-elections-xyMnWG8Z>. Last accessed 26 April 2023.



*“I was arrested by the security forces while filming an event, along with other fellow journalists. During the incident, one officer insisted that he could shoot me and claimed that I was among the Al-Shabaab fighters. He added that nobody would challenge his statements.”*

*A journalist who reported being arrested and his equipment confiscated by the Somali National Army in Mogadishu (June 2022, interview with UNSOM).*

62. In those incidents involving NISA, 15 of those detained were released without being charged or without appearing before a court, with the exception of two journalists. For instance, on 11 April 2022, NISA officers reportedly arrested and briefly detained for a second time a 14-year old boy in Xudur district, Bakool region, South West State, for posting on social media his criticism of the electoral processes and senior government officials. Following negotiations between clan elders and security forces, the boy was released on the same day with a warning not to make another post criticizing the local government. Earlier, on 22 December 2021, the same boy had been arrested after posting a video on social media criticizing the South West State President’s expenditure on celebrations instead of using funds to support citizens in need.<sup>63</sup>
63. In Jubaland, on 7 October 2019, JISA officers based at the Kismayo airport arrested and detained a journalist working for a privately-owned Somali cable TV station. The journalist was reportedly prevented from travelling to Mogadishu and detained by JISA officers without being given a reason. He was released the same day. In another example, on 8 February 2022, the “Somaliland” National Intelligence Agency detained a freelance journalist at the Criminal Investigation Department (CID) detention facility in Hargeisa. UNSOM/OHCHR received information that the journalist allegedly posted on Facebook that a foreign government would take over the old port of Zaila in Awdal region. The journalist appeared twice before the Maroodijeh Regional Court, which fined him approximately USD 235 for circulating false news.

### c) Freedom of expression and electoral process-related incidents

64. UNSOM/OHCHR documented 18 incidents involving 20 journalists and other media workers (18 arbitrary arrested and two assaulted) that occurred while journalists and media workers were covering electoral-process-related activities. None of the arrests resulted in criminal charges. For example, on 28 October 2021, the South West Special Police Force (SWSPF) arrested eight male journalists, including the director of the private radio station, Dalsan, in Baidoa town, Bay region. The SWSPF arrested the journalists and confiscated their equipment while they were covering the arrival of a presidential candidate in Baidoa. The journalists were released with their equipment on the same day without being charged.

<sup>63</sup> See Convention on the Rights of the Child articles 2.2, 13, and 37.b. in relation to the international human rights law in children rights and freedom of expression.

65. In a similar incident, on 20 March 2022, the Puntland Police Force arrested and briefly detained the director of a local radio station in Qardho town after he reportedly published a post on social media criticizing the candidacy of the President of Puntland State for the presidential elections in Somalia. He was later released without being charged.

#### D. Suspension of media outlets

66. UNSOM documented the suspension of ten media outlets (nine national and one international), including eight suspensions without a court order. For example, on 19 December 2019 in Jowhar, Middle Shabelle Region, the Somali Police Force shut down the City FM radio station for 11 months without a court order reportedly on the orders of the former HirShabelle President after the outlet broadcast a report critical of the former HirShabelle President for allegedly grabbing farmland owned by a local family. The City FM radio station resumed its work on 3 December 2020 after advocacy efforts by the director of the radio station with the state authorities.
67. In another example, on 18 June 2019, the “Somaliland” Police Force shut down the offices of two independent TV stations (Eryal and Horyaal) based in Hargeisa for 12 days before lifting the ban on 30 June 2019. The “Somaliland” Minister of Information accused both TV stations of airing false information and issued a letter instructing the police to close them down apparently for “propagating anti-“Somaliland” army news, propaganda against security and fueling conflict within the community”.<sup>64</sup> The lifting of the ban was facilitated through mediation by the “Somaliland” Journalists Association and the “Somaliland” Independent Broadcast Association.

#### E. Administrative measures with implications for the right to freedom of expression

68. During the reporting period, different administrative orders were adopted with implications for the right to freedom of expression and access to information in the context of the new measures on counterterrorism against Al-Shabaab.
69. On 22 March 2022, the Nugal Regional Administration in Puntland issued a directive prohibiting the holding of press conferences, events, and demonstrations without its prior approval.
70. On 6 October 2022, the Federal Ministry of Communication and Technology instructed<sup>65</sup> internet service providers to suspend more than 40 online sites and social media platforms, including Telegram, allegedly for spreading Al-Shabaab-related information.<sup>66</sup>

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64 <https://sjsyndicate.org/2019/06/18/somaliland-authorities-indefinitely-shut-down-two-privately-owned-tv-stations-in-hargeisa/> last accessed 27 April 2023.

65 See <https://www.facebook.com/sntvnews/posts/pfbid02GYtGZtHzdJp3aJJZaFitF8ekFtcCWxvmJJ57e5uihCbxCX2B-7Zq39CmZLOBjsWYI> last accessed 27 April 2023.

66 Somali Media Law, article 2 establishes that “only a court decision can order a journalist to be deprived of his freedom or

71. On 8 October 2022, the Federal Ministry of Information, Culture and Tourism (MICT) issued a directive<sup>67</sup> prohibiting the media and users of social media from engaging in the “dissemination of extremist ideology messages” of the group Al-Shabaab. The order warned the public to “avoid spreading terrorists’ intimidating and misleading messages—intentionally or unintentionally, directly or indirectly and consciously or unconsciously”.
72. As a reaction to the Ministry’s directive, the representatives of five media associations held a press conference on 10 October 2022 in Mogadishu. In a joint press statement<sup>68</sup> the five media associations expressed their concerns about the impact of this directive on the right of freedom of expression. In particular, the statement notes that “the vaguely-worded directive might limit the ability of journalists to freely report the ongoing operations against the armed group [Al-Shabaab]. It might also restrict access to information relating to the ongoing security operations from the general public”. The Secretary General of the Somali Journalists Syndicate (SJS), who read the joint press statement on behalf of the five media associations, was detained by NISA on 11 October 2022 in Mogadishu. He was formally charged under Somali Penal Code article 321 (Instigating to Disobey the Law), article 219 (Bringing the Nation or the State into Contempt) and article 505 (Non-observance of the Orders of the Authorities). A record of the press conference and a copy of the MICT directive were the proof presented by the prosecutor against him.
73. On 6 November, the Federal Ministry of Endowments and Religious Affairs issued a directive which instructed that Al-Shabaab be referred to as “Khawarij”.<sup>69</sup> Media workers raised their concerns regarding the new directive and the possible repercussions as Al-Shabaab may target them for using it.
74. On 26 December 2022, the Hirshabelle Ministry of Information, Culture and Tourism issued an order<sup>70</sup> to the Hiran Regional Administration and the Police Force in Beletweyne to stop a training course delivered by the Somali Journalists Syndicate and ordered SJS trainers to leave the HirShabelle state within 24 hours. In the order, the authorities reportedly stated that the SJS did not inform the HirShabelle Ministry of Information about the training in Beledweyne; also stated that SJS was not allowed to conduct trainings in HirShabelle state after the SJS violated the pre-notification requirement in a previous training. Neither the Hiran Regional Administration nor the Police Force acted and SJS trainers managed to complete the training as planned.

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suspect the work of a media agency.”

67 <https://www.facebook.com/moisomalia/posts/pfbid0pLnkkBn4VCZ8nrWreMpCaBUfH9PjmyozXLgbMQgUcu584D-MC3XkcwLTTJpHeuhyj> last accessed 27 April 2023.

68 <https://sjsyndicate.org/wp-content/uploads/2022/10/Joint-Statement-Somali-media-fraternity-expresses-concern-about-the-Somalia-government%E2%80%99s-directive.pdf>. Last accessed 27 April 2023.

69 Khawarij is a word that means “deviant sect.”

70 See <https://www.facebook.com/105930105560671/posts/pfbid02gVLLpGMktEyxF8BGEJ68QeFY9UqaVDLb7soX-5ECcZodythqigxiMSuyxtoWGB6XI/?mibextid=Nif5oz> last accessed 26 April 2023

## V. Accountability for violations and abuses of human rights of journalists and media workers

75. Somali authorities have pledged to improve the safety of journalists and other media workers and ensure accountability for crimes committed against them. On 15 September 2019, the Deputy Minister of Information, Culture and Tourism (MICT) stated that the Federal Government of Somalia is committed to supporting initiatives aimed at protecting journalists, combating impunity, and punishing crimes against media professionals.<sup>71</sup> On 3 May 2020, the then President of Somalia acknowledged the problematic use of the current Penal Code and promised that his administration would reform it to ensure it was not applied against journalists. Former President Mohamed Abdullahi Mohamed pledged that his administration would not tolerate any infringement of the press and all forms of violations against media establishments based on their political views.<sup>72</sup>
76. Moreover, on 21 May 2020, the Benadir Regional Court issued a judicial order directing the Attorney General's Office to open an investigation into the killings of journalists in the country.<sup>73</sup> On 8 September 2020, the Attorney General's Office announced the appointment of a Special Prosecutor to execute the order of the Benadir Regional Court. The Office of the Special Prosecutor should prosecute crimes against journalism and provide training for journalists, the public, and law enforcement officers regarding international human rights obligations and commitments of States in relation to the safety of journalists.
77. However, during the reporting period, UNSOM/OHCHR noted persistent challenges in terms of accountability as investigations into the killing and injuring of journalists and other media workers have, for the most part, not progressed. Information available indicates that two cases out of the 21 (11 killings and 10 injured) have led to the sentencing of the perpetrators by military courts. In two cases the individual perpetrator died during the suicide attack. A major contributing factor is that the majority of these incidents have been committed by Al-Shabaab, and therefore it is challenging to hold its members accountable.
78. There have also been instances where judicial proceedings were carried out, on 13 February 2022, the First Instance Puntland Military Court in Galkayo sentenced two men to death and two others to 15-25 years imprisonment for the murder of a male journalist who was shot and killed on 1 March 2021 in Galkayo. They had legal representation during the trial, and were granted 30 days to appeal

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71 The Deputy Minister made these statements during a workshop organized by the MICT, with the support of UNESCO. It aimed at devising strategies to address Somalia's increasingly dangerous environment for journalists. <https://www.unesco.org/en/articles/somalia-calls-appointment-special-prosecutor-crimes-against-journalists-0>. Last accessed 27 April 2023.

72 [https://twitter.com/m\\_farmaajo/status/1256942877432844288?lang=en](https://twitter.com/m_farmaajo/status/1256942877432844288?lang=en) last accessed 27 April 2023.

73 MGB/XG/02/2020. See: [nuso.org/appointment-of-special-prosecutor-is-a-significant-step-to-end-impunity-of-crimes-against-journalists-says-nusoj/](https://nuso.org/appointment-of-special-prosecutor-is-a-significant-step-to-end-impunity-of-crimes-against-journalists-says-nusoj/) last accessed 26 April 2023.

the sentence,<sup>74</sup> in compliance with the provisions in the 1963 Criminal Procedure Code of Somalia.<sup>75</sup> Additionally, on 19 June 2022, the First Instance Military Court in Mogadishu sentenced a former officer of the SPF to one-year imprisonment after the court found him guilty of shooting and injuring a camera operator working for a private television station on 20 March 2021 in Mogadishu.<sup>76</sup> UNSOM/OHCHR continues to advocate against the use of death penalty and the continued moratorium for civilian cases.

## VI. Relevant United Nations human rights mechanisms' recommendations

79. During the second UPR cycle, in January 2016, the Federal Government of Somalia received and supported 16 recommendations relating to the right to freedom of expression. In particular, three recommendations related to arbitrary arrests, detentions and harassment of journalists and media company owners, especially in preventing abuses by security forces and intelligence agencies. Another five were linked to ensuring effective and credible judicial investigations into the crimes against journalists and six recommendations to review the national legislation such as the Media Law, the Penal Code and the Provisional Federal Constitution in line with international standards on freedom of expression. Two recommendations were general calls for greater protection and enjoyment of the right to freedom of expression in Somalia.<sup>77</sup>
80. As a result of such recommendations, national authorities adopted the National Communications Law in October 2017 and, at a federal member state level, established the Puntland Media Council in March 2018. The reform of the Somali Penal Code remains pending.
81. With respect to the Media Law, an August 2020 amendment provides for the establishment of an independent National Media Council. The Council has not been fully operationalized, but according to the amended law, the roles of the Council include "rewarding and disciplining of journalists, editors and officials of media organisations".<sup>78</sup> This amendment was criticised by journalists and media organisations due to concerns about the risk of being misused to curtail journalistic expression.-
82. In May 2021, similar recommendations during the third cycle of the UPR review of Somalia, when Somalia accepted 24 recommendations in connection with the right to freedom of expression.<sup>79</sup>

74 The appeal remains pending resolution.

75 Article 34 of the Provisional Federal Constitution provides the right of all individuals to access a court, and a fair public hearing by an independent and impartial court or tribunal to be held within a reasonable time in line with article 14 of the Covenant on Civil and Political Rights. Due process rights of individuals are also further elaborated in the 1963 Criminal Procedure Code.

76 In Somalia, the Police is considered part of the armed forces under article 14(3) 2(1) of the Organisation of Police Law, the Somali Police Force. In consequence, Police are subjected to military jurisdiction.

77 A/HRC/32/2. See <https://www.ohchr.org/en/hr-bodies/upr/so-index>.

78 Somali Media Law, article 15.

79 A/HRC/48/11. See <https://www.ohchr.org/en/hr-bodies/upr/so-index>.

Nine of the 24 call for the adoption of a strong legal framework. The recommendations reaffirmed the necessity of revising the Somali Penal Code and the Media Law in compliance with international human rights standards. Seven recommendations focused on the fight against impunity for crimes against journalists, including killings, detentions and harassment. Among these recommendations, the Government supported the proposal to “take all the necessary steps to ensure that the newly established prosecutor for crimes against journalists carries out effective investigations into attacks against journalists, and notify the United Nations Educational, Scientific and Cultural Organisation of the status of the judicial inquiry into the killing of journalists.” Another eight recommendations were related to strengthening the protection of journalists and ensuring freedom of the press and expression such as “to create an enabling environment in which human rights defenders and journalists can operate safely and securely, free from harassment, violence, and reprisals.”

83. In its national report (2021), the Federal Government of Somalia outlined the measures undertaken to guarantee the right to freedom of expression as part of the UPR. For example, the establishment of a cooperative engagement between the MICT and the Attorney General’s Office “regarding detained human rights defenders and journalists [with the aim to] allow rapid action to be taken in cases where a journalist is (arbitrarily) detained because of their work.” Also, it announced that “the MICT is planning to draft a policy to address attacks or arbitrary detention of journalists” which is still pending.
84. In the concluding observations on the 2022 initial report of Somalia,<sup>80</sup> the Committee against Torture took note of the establishment “of the Police Oversight Committee to investigate abuses, including torture, committed by police officers and investigators [against those] suspected of having committed terrorist acts, human rights defenders and journalists” and regretted that “the State party could not provide answers to its questions on the conditions needed for the Police Oversight Committee to launch investigations into cases, the number of cases investigated, the human and budgetary resources allocated to the Police Oversight Committee and the way its mandate is coordinated with that of the Attorney General.” The Committee recommends to “ensure that all acts of torture and ill-treatment, including excessive use of force, are promptly investigated in an impartial manner and that the suspected perpetrators are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts.” The Committee also urged Somalia to expedite the establishment of a Paris Principle compliant National Human Rights Commission.
85. The Independent Expert on Somalia continuously called for enhanced accountability for journalists and media workers in Somalia, including in 2022, urging the Somali authorities to set up a national mechanism consistent with the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity to combat the harassment and targeting of journalists and media workers. Similarly, in 2021, the Independent Expert urged the Somali authorities to take robust action to protect journalists, media workers and human rights defenders and to prevent their arbitrary arrest and

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80 CAT/C/SOM/CO/1 available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=-CAT%2FC%2FSOM%2FCO%2F1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=-CAT%2FC%2FSOM%2FCO%2F1&Lang=en). Last accessed 27 April 2023.

detention. In 2020, the Independent Expert called on the Somali authorities to redouble their efforts to improve the safety and security of journalists and create an enabling environment in which they can operate, in dignity, free from any abuse.<sup>81</sup>

86. The review of the Provisional Federal Constitution has been highlighted as one of the key priorities of the new government appointed in 2022.<sup>82</sup> In the meantime, at the federal member-state level, efforts are ongoing to adopt the “Somaliland” Media Bill and the Jubaland Media Bill, with technical support from UNSOM/OHCHR.

## VII. Conclusion and recommendations

87. The findings of this report show that while progress has been made by the national authorities towards implementing recommendations from United Nations human rights mechanisms on freedom of expression, significant challenges remain for Somalia to fully respect, protect and fulfil this right. The reports also notes that the amendments of the legal framework, including some of the articles of the Somali Penal Code or the Media Law, continue to be incomplete or have been paused.
88. Furthermore, administrative measures related to the COVID-19 pandemic and the counter-terrorism efforts had a significant impact on the right to freedom of expression, especially for media workers. In particular, the order issued on 8 October 2022 to combat perceived propaganda, needs to be aligned with international human rights law. It should ensure that the suppression of information before its dissemination is strictly necessary and proportional to the aims pursued and does not unduly restrict the exercise of freedom of expression.
89. There has been a 47-per cent decrease in killings and injuring of journalists and other media workers compared to the previous reporting period. Al-Shabaab continues to be the principal perpetrator in killing and injuring journalists followed by unknown perpetrators.
90. Intimidation and harassment of media workers by security forces have significantly increased by 270 per cent. Moreover, there has been an 82 per cent increase in incidents of arbitrary detentions among other individuals and non-media workers. Police forces were reportedly involved in 96 per cent of these incidents, and intelligence services were involved in the remaining four per cent. The most common triggers for arbitrary detention of media workers include interviewing people to seek their views, reporting on protests and broadcasting news that the authorities consider to be critical of public officials and/or the administration. Furthermore, 10 media outlets were suspended by national and/or federal member state authorities without a court decision in most cases.

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81 See the reports of the Independent Expert on the situation of human rights in Somalia at [https://www.ohchr.org/en/documents-listing?field\\_content\\_category\\_target\\_id%5B182%5D=182&field\\_entity\\_target\\_id%5B1252%5D=1252](https://www.ohchr.org/en/documents-listing?field_content_category_target_id%5B182%5D=182&field_entity_target_id%5B1252%5D=1252).

82 See the 12 June 2022 communique of the National Consultative Council <https://radiomuqdisho.so/shirka-golaha-wadatashiga-qaran-oo-soo-gabagaboobay/> Last accessed 27 April 2023.

91. The 1964 Penal Code include vaguely defined provisions that have being used to prosecute media workers and other individuals for criticizing public officials and for reporting on issues of public interest. In some instances, journalists and other media workers have been tried by military courts in relation to their work, undermining the right to a fair trial by an independent and civilian court. In most cases, arrests were made by security forces, including intelligence agencies such as NISA which during the reporting period was operating outside of a legal framework and oversight mechanisms leading to weak accountability. There is a need to strengthen and accelerate investigations, and prosecutions of perpetrators and ensure the right to an effective remedy for victims of the human rights violations and abuses described in this report.



# Recommendations

## A. To the Federal Government of Somalia

92. Ensure that national legislation and administrative orders related to the right to freedom of expression (in particular the provisions of the Somali Penal Code linked to freedom of expression, the Media Law and other administrative orders related to counter-terrorism) are compliant with international human rights standards.
93. Strengthen the protection of freedom of expression by effectively implementing the United Nations human rights mechanisms' recommendations, including recommendations pertaining to the fight against the impunity of perpetrators of human rights violations against journalists and human rights defenders, ensure that prompt, independent, impartial investigations are conducted, perpetrators are held accountable, and guarantee the victims' right to reparations.
94. Support to, and engage with, women journalists' associations, and promote the implementation of effective mechanisms for reporting human rights violations and abuses affecting women journalists and conduct public campaigns for promoting equality.
95. Ensure the National Media Council is operationalized and able to operate in compliance with Somalia's international human rights obligations. Further ensure that the selection process of the members of the National Media Council is conducted in a fair and transparent manner with the participation of media and civil society.
96. Expedite the process of approval of the Commissioners of the Independent National Human Rights Commission; ensure that the Commission operates in full compliance with the Paris Principles relating to the Status of National Human Rights Institutions.
97. Ensure that NISA's powers are defined and restricted in line with Somalia's human rights obligations and ensure that the limited oversight mechanisms are in place to prevent violations and abuses and ensure accountability for human rights violations.
98. Ensure that no media outlet or agency is closed or suspended without a court order in line with article 2 of the Media Law.
99. Establish a forum for dialogue between Government authorities and media rights organisations, with a view to strengthening mutual trust and democratic oversight over issues of common interest.
100. Prevent and address all forms of threats and attacks against journalists and other media workers, human rights defenders and civil society actors and ensure prompt investigation and accountability when such acts occur.

## B. To Federal Member States

101. Support the efforts of the Federal Government of Somalia in implementing the UPR recommendations, including the establishment of an inter-ministerial UPR Task Force, with support from civil society and other stakeholders.
102. Ensure that domestic laws, policies, and administrative measures are consistent with international human rights standards on freedom of expression, including reviewing and enacting new legislation where applicable.
103. Ensure that media regulatory bodies are fully operational and independent, with adequate resources, both human and financial, to carry out their mandated activities.
104. Strengthen the Federal Member States' Human Rights Commissions, including the Puntland Human Rights Defender's Office, by providing adequate resources to enable them to function effectively and independently for conducting human rights monitoring.

## C. To Somali Journalists and Media Organisations

105. Adopt and promote a formal code of ethics to encourage self-regulation and abide by the highest ethical standards for journalists and other media workers, including while acquiring and disseminating news.
106. In particular, do not use wording that can incite violence or amount to hate speech.

## D. To the International Community

107. Continue to advocate for the promotion and protection of the right to freedom of expression, including the release of journalists and other media workers who have been arbitrarily arrested and detained and to advocate for the opening of investigations of human rights violations against media workers.
108. Support the Federal Government of Somalia to fulfil its obligations under the International Covenant on Civil and Political Rights, as well as regional human rights instruments on freedom of expression.
109. Support the implementation of programmes and projects intended to strengthen the professional capacity of journalists, civil society organisations, state authorities, and other actors, through gender-sensitive trainings and technical advice, including in relation to human rights.



