



Nairobi, 5 October 2020

His Excellency Mohamed Abdullahi Mohamed
President of the Federal Republic of Somalia
Villa Somalia
Mogadishu
Somalia

Your Excellency,

RE: CONCERNS AND RECOMMENDATIONS ON SOMALIA'S NEW MEDIA LAW

On behalf of Amnesty International, the Committee to Protect Journalists, and Human Rights Watch, we write to you to share concerns regarding the amendment to the media law which you signed into law in August 2020.

Our organizations have documented severe restrictions on the media and the right to freedom of expression in Somalia for many years, and we have repeatedly called on the Somalia government to create a conducive legal environment for journalists and media organizations to operate.

In the run-up to the national elections expected to take place in late 2020 or early 2021, the government's commitment to free and independent reporting is especially important. Creating a conducive legal and security environment for the media requires important measures by your office and government, Excellency.

We acknowledge the steps that your government has taken so far to improve media freedom and respect the right to freedom of expression in the country, particularly your expressed commitment on May 3, 2020 to review the penal code and to decriminalize journalism and, more recently, the attorney general's decision to establish the office of a new prosecutor to deal with crimes against journalists.

We also acknowledge that, positively, the new media law explicitly provides for the rights to freedom of expression¹ and media freedom, including journalists' rights to security and access to information.² It also prohibits censorship and forced reporting.³

We are however concerned by the comments you made in the media on September 26, Your Excellency, claiming that that the media is acting unprofessionally and linking some journalists to Al-Shabaab. Such comments place Somali journalists, who already operate in a volatile context, at risk of reprisals and undermine the positive commitments made regarding media freedom.

In addition, the new media law also includes provisions that threaten human rights, including freedom of expression, and could criminalize reporting and give the government overly broad powers and oversight over media organizations.

¹ Somalia Media Law Amendment Bill ("Somalia Media Law") article. 3.

² Somalia Media Law article. 36.

³ Somalia Media Law article. 3.



The provisions on criminal penalties are vaguely worded and could give law enforcement authorities wide scope for misinterpretation and abuse. These include the provision prohibiting reporting on issues conflicting with “national interest”,⁴ “false information”,⁵ “incitement to violence and clannism”⁶ and “dissemination of propaganda”.⁷

In Somalia and elsewhere, our organizations have long found that such vaguely defined provisions tend to have a chilling effect on journalists, pushing them to self-censor due to their fear of covering stories that could subject them to penalties.⁸

The new law you signed in August directly contradicts your May 3 commitment to decriminalize journalism through its provision of legal sanctions for media offenses. The law also includes a provision which risks undermining journalists’ rights to confidential sources.⁹ Furthermore, the law imposes unspecified fines on journalists who contravene its provisions, and journalists could face prosecution for failure to pay the fines.

The UN Human Rights Committee has made clear that States should consider decriminalizing defamation and that, even in the most serious cases, imprisonment is never an appropriate penalty. The African Commission on Human and Peoples’ Rights has also called on states to repeal criminal defamation and insult laws and underlined that criminal defamation laws are a serious restriction of freedom of expression.¹⁰

The law also contains administrative restrictions that give the Ministry of Information a broad mandate to regulate the media and media practitioners. These include the registration of all journalists,¹¹ requirements to have media outlets pay a fee prior to registration,¹² and the requirement that all media outlets re-register within 60 days of the law coming into effect.¹³ In a 2003 Declaration by International and Regional Experts on Freedom of Expression, the experts stated: “Individual journalists should not be required to be licensed or to register” and therefore under international law, registration of media workers is prohibited.¹⁴

Under the new law, the Minister of Information is given significant oversight roles over the Somali Media Council, in theory established as an independent media committee mandated with overseeing the implementation of the law and media practices,¹⁵ including the power to grant government approval of the membership of the Council,¹⁶ and to suggest changes to the Council.¹⁷

We understand that there is limited time before the elections to begin a comprehensive review of the law, but given our concerns with certain provisions, we urge you to ensure that the new law is amended and brought into conformity with international standards. We propose the following recommendations:

- Take immediate steps to ensure the review and amendment of the problematic provisions in the new media law; ensure that any restrictions on media freedom in the law are necessary, proportionate and the least restrictive possible;
- Promptly finalize a comprehensive review of the penal code and all other laws that impede the right to freedom of expression and media freedom, in addition to other rights, and bring them in line with Somalia’s constitution and international human rights law and standards.

⁴ Somalia Media Law, article 3.4.

⁵ Somalia Media Law, article 4 (t).

⁶ Somalia Media Law, article 4 (j), also, article 29.

⁷ Somalia Media Law article 4 (x).

⁸ Amnesty International, “‘We Live in Perpetual Fear’: Violations and Abuses of Freedom of Expression in Somalia,” February 13, 2020, <https://www.amnesty.org/en/documents/afr52/1442/2020/en/>; Human Rights Watch, “‘Like Fish in Poisonous Waters,’ Attacks on Media Freedom in Somalia,” May 3, 2016, <https://www.hrw.org/report/2016/05/03/fish-poisonous-waters/attacks-media-freedom-somalia>;

⁹ Somalia Media Law article 5.

¹⁰ African Commission on Human and Peoples’ Rights, “Press Release by the Special Rapporteur on Freedom of Expression and Access to Information on the acquittal by the Provincial Court of Luanda, Angola, of journalist on charges of insult and defamation,” July 31, 2018, <https://www.achpr.org/pressrelease/detail?id=33>.

¹¹ Somalia Media Law Article 18.

¹² Somalia Media Law Article 9.

¹³ Somalia Media Law Article 13.

¹⁴ See, International Mechanisms for Promoting Freedom of Expression JOINT DECLARATION by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression: 2003, at <https://www.osce.org/fom/28235?download=true>.

¹⁵ Somalia Media Law Article 14.

¹⁶ Somalia Media Law Article 39.

¹⁷ Somalia Media Law Article 39.



While these reviews are pending, take concrete steps to respect, protect, promote and fulfil the rights to freedom of expression, access to information and media freedom, and ensure that journalists and media practitioners are able to carry out their work freely, without any intimidation and harassment, including before, during and after the election period. Specific proposed steps include:

- Publicly calling on judicial and security authorities to stop further arrests of journalists and media workers and end prosecutions of journalists;
- Ensure that government officials including those in the highest positions, refrain from making negative and intimidating public statements which could negatively impact on the right to freedom of expression and media freedom, including by risking the safety and security of journalists;
- Directing security agencies, including the police and National Intelligence and Security Agency (NISA) leadership, to use all available supervisory and disciplinary mechanisms to ensure that security forces fully respect the rights of journalists and media workers; and
- Ensuring that the proposed new prosecutor on crimes against journalists promptly and impartially investigates credible allegations of harassment, threats or violence against journalists and media outlets; this should include investigating security officials, regardless of rank, complicit in abuses against journalists or who fail to adequately investigate alleged harassment, threats or violence against journalists.

Thank you for your attention, and we would be happy to discuss these issues in more detail during a virtual meeting.

Sincerely,

Deprese Muchena,
Regional Director,
Amnesty International Regional Office for
East and Southern Africa.

Laetitia Bader,
Horn of Africa Director,
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Angela Quintal,
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