

*Federation of Somali Trade Unions (FESTU)*

# **SOMALIA HUMAN AND TRADE UNION RIGHTS REPORT**

*January - December 2016*



***"Protection from impunity is as important  
as any bullet-proof vest"***

*Labour Rights Abuses in Somalia*



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The Federation of Somali Trade Unions (FESTU) is the voice of Somali workers and their trade unions. It envisions a society where workers enjoy their rights, have access to social justice and equality, and where conditions of work help eradicate poverty and vulnerability.

Its mission is to promote the growth of the trade union movement in Somalia and thereby contribute to the realisation of workers' rights, social justice and improved working conditions through education, networking, research, organising, advocacy, policy engagement and trade union solidarity.

FESTU is a member of the International Trade Union Confederation (ITUC) and the African Regional Organisation of International Trade Union Confederation (ITUC-Africa).

For more information, please visit our website:  
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UN Human Rights Council

FESTU Staff and Member Unions



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## SUMMARY

The Federation of Somali Trade Unions (FESTU) intends this report to impact on Somalia positively. It sheds light on the numerous and appalling abuses of trade union rights in Somalia in 2016 which were committed in direct contravention of international labour standards and international human rights law. Trade union leaders, activists and members have experienced impunity and a lack of redress for human rights violations.

Outspoken trade union leaders and worker activists have been subjected to statements or actions that dehumanise and demoralise them, including smear campaigns, political persecution, vilification and castigation.

The government of Somalia fails to guarantee trade unions' rights to freedom of association and to fully protect workers' interests in the workplace. Trade unions must overcome significant obstacles established in law and in practice to organise workers in Somalia.

There is insufficiency of national mechanisms for the effective protection of workers and their trade unions and the lack of recognition by the government and its institutions of the existence of free and independent trade union organisations. The credibility of independent trade union organisations has been undermined by the interference of the government and the use of government-organised "yellow" trade unions. The government's hostility towards independent trade unions inhibits the defence of labour rights in Somalia.

Notwithstanding these attacks, trade unions have successfully challenged rights violations by the Somali government through the judiciary. They became the first Somali civil society organisations that ever successfully used the UN's human rights system to seek remedy for rights abuses.

The deaths of workers, the intimidation as well as the suffering of workers and their trade union representatives must cease. The Somali government must recognise the legitimacy and important role that free and independent trade unions play in the promotion and consolidation of peace, human rights, social justice, good governance, democracy and the rule of law. It needs to ensure that national legislation and administrative systems regarding trade unions conform to international standards.

Somalia should take immediate steps to fulfil the recommendations of the ILO concerning the complaint filed by FESTU and NUSOJ, and should foster a better environment for trade union activism. It should take immediate steps to implement labour reforms.

By working with international institutions and government officials who are supportive of change, FESTU hopes that 2017 will see the actions and reforms urgently needed to make Somalia safer, more just, and better for all its citizens.

Somalia's international partners should stress that ensuring international standards on labour rights, in particular the right of workers to association and trade unions to exist freely and to organize, should be an integral part of any international support and be based on Somalia's approach as it aspires to receive international support.

# KEY RECOMMENDATIONS

## To the Federal Government of Somalia and its Federal Member States:

- ◆ Respect and promote freedom of association and the rights of workers to form independent labour unions, bargain collectively, and conduct strikes, in accordance with Somalia's obligations under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and ILO Conventions 87 and 98.

- ◆ Foster an environment that protects, not punishes, labour rights activists for defending human and trade union rights in Somalia, and ensure that trade union leaders and worker activists do not face reprisal for their legitimate trade union rights activism.

- ◆ Respect the rights of workers to associate, organise and form unions, and to peaceful assembly with others in accordance with international human and labour rights law.

- ◆ Review, in consultation with independent unions in Somalia, international trade union bodies, and the ILO, all union registration procedures with a view to bringing the Labour Code of Somalia into full conformity with ILO Conventions 87 and 98.

- ◆ Allow trade unions to exercise their internationally protected right to peaceful assembly.

- ◆ Implement in full the recommendations issued by the ILO Governing Body and ILO Committee on Freedom of Association.

## To International Partners:

- ◆ Constantly raise concerns, publicly and at the highest level, as well as in the context of multilateral institutions, about violations of labour rights in Somalia.

- ◆ Call upon the government of Somalia to fully protect in law and in practice internationally recognized trade union rights, including the right to freedom of association, the right to organise, and the right to strike.

## To the International Labour Organization:

- ◆ Seek a time-bound reform program for amending the Labour Code to bring them into compliance with ILO Conventions 87 and 98.

- ◆ Follow up on the ILO Committee of Freedom of Association's conclusions and recommendations issued following approval of the ILO Governing Body in response to a complaint filed by NUSOJ and FESTU with the support of ITUC.



## INTRODUCTION



*(Kwasi Adu-Amankwah, ITUC-Africa General Secretary)*

The Horn of Africa nation of Somalia is actively recovering from years of civil war and strife. Its people are yearning for peace and eager to benefit from the abundant resources in their country. They want justice, given that injustice was key to the downfall of the military government. But there remains severe oppression of workers and their trade union representatives who are aspiring to dignity, justice and decent livelihoods.

Today, although Somalia is a member of the International Labour Organization (ILO) and therefore signed up to respect principles of freedom of association, dangerous and premeditated attacks are common reprisals for trade union activity. In such a climate, it requires courage merely to be a union member and self-sacrifice to become a union leader.

Since our report last year on human and trade union rights in Somalia, deadly violence against workers continued undiminished, with attacks at workplaces carried out with absolute impu-

nity. No one was investigated, let alone prosecuted. Workers were forced to labour and to do overtime without written statement of conditions of service, and in some cases denied any compensation.

Free and independent trade unions, belonging to the Federation of Somali Trade Unions (FESTU), were denied the space and freedom to organise and mobilise workers. In addition, they faced concerted efforts to disorganise and undermine them. The main architects of this campaign were government agents and officials.

Union meetings were raided and stopped, union members were killed and wounded, and trade unions were de-registered in order to make them illegal. Fake unions were set up, as the government sponsored the seizure of independent unions and union activists were threatened.

Criminal prosecutions were trumped up against trade union leaders for defending union rights, unions were denied their rightful place on tripartite platforms, and their leaders were slandered and demonised.

This report by the Federation of Somali Trade Unions (FESTU) paints in clear terms the pain suffered by Somali workers and their trade unions, and calls for concrete change to improve the situation in which trade unions are working.

We express our total admiration and respect for the courage, tenacity, consistency and sacrifice of FESTU and its members. Their resolute fight for trade union rights is appreciated continentally and internationally; and encourages the worldwide trade union movement to rally behind them and give them whole hearted support.

Attacks and derogatory campaigns against FESTU and its members must cease. Somalia will only achieve democratic rule when it allows trade unions the space and freedom to exist and operate.

**Kwasi Adu-Amankwah**  
**ITUC-Africa General Secretary**



## OVERVIEW



*(Omar Faruk Osman, FESTU General Secretary)*

As the call for human and trade union rights has grown in strength throughout Somalia, those at the forefront of these demands have been met with threats, intimidation and other attacks. For several years, trade union representatives have been the targets of grave and frequent abuses. Last year, 2016, has been no exception. On the contrary, reported attacks on trade unions and workers across the country have been on the rise.

Representatives of trade unions and workers have been intimidated, harassed, attacked and killed. They have been maligned and subjected to tenuous claims. The dangers that trade unions face are directly linked to the failures of the Somali government to recognise the legitimacy of their work; to ensure effective protection; and to bring to justice those responsible for attacks against trade unionists and workers.

Indeed, far from mitigating the risks, senior officials of the federal government were actually increasing the likelihood of attacks on trade unions by labelling them as “troublemakers”,

“subversives” or “criminals”. While the nature of the abuses may vary, the objectives of our detractors and attacks have been consistent: to silence us and prevent us from carrying out our legitimate trade union work.

Since 2015, the Federation of Somali Trade Unions (FESTU) has documented cases of attacks on human and trade union rights. This report focuses primarily on such attacks between January and December 2016. During this period, FESTU took action in all these cases of attacks, calling on the authorities to comply with their international obligations to ensure that trade union officials and workers are able to carry out their work unrestricted and safely.

Notwithstanding advances in the complaint at the International Labour Organization against the government in which the trade unions secured milestone victories, the high level of impunity across the country remains a serious concern.

Government officials have excessively used their powers to subdue the trade unions, blocked proper trade union representation and deprived unions of their basic freedoms of association, peaceful assembly and expression. For the government officials, a trade union organisation that is not approved and does not enjoy endorsement of the relevant ministry cannot and must not exist.

Somalia’s labour code is still a legislation that does not comply with international labour standards. The federal government has demonstrated its unwillingness to comply with legal decisions when they lost a trade union rights case both in the Supreme Court of Somalia in February 2016 and at the ILO Committee on Freedom of Association.

Despite persistent intimidation, threats and attacks, free and independent trade unions continue their work with determination and courage, by turning agony from attacks on them into organising across Somalia. We urge the new federal government of Somalia to fulfil its obligation to protect trade unions and to respect, protect and fulfil human rights for workers.

**Omar Faruk Osman**  
**FESTU General Secretary**



# “ MAIN LABOUR RIGHTS ABUSES ”



*(Healthcare assistant in a Mogadishu Hospital)*

In a dangerous and precarious environment in Somalia, ensuring human and worker rights is a major challenge. Fighting for respect for the clearly enshrined international legal rights afforded to all workers, which is at the foundation of economic and social development, is a daunting task. There are exploitative and dangerous working practices that put workers regularly at risk. They include the following:

## ***Failure to Provide a Written Statement of Employment Specifics***

Most Somalis, be they in the private or public sector, work without a written statement or contract setting out the terms of their employment. Workers are employed orally and fired orally. Even the old Somali labour code provides statutory rights by law but it is not implemented.

A verbally-employed worker without written statement does not know his or her rights and other entitlements. Workers take this kind of work because they are desperately searching for employment and most of these are young people. Furthermore, the Ministry of Labour and the courts are failing to enforce the labour code provisions regarding written conditions.

This situation has resulted in workers being unfairly or wrongly dismissed. They are also denied basic rights such as sick time off work, health and safety, maternity leave, compensation in case of redundancy, dismissal and disciplinary procedure. For instance, one worker said: “If an employer no longer needs your work, he will just instruct a security guard to not let you in the office. The employer believes he does not need to notify you”.

A worker who demanded a written statement of particulars of his employment was sacked just for asking three times because the manager said: “You want to tie our hands with needless restrictions and obligations. The door is open, get out now.”



*(Street vendor selling fresh fruits and vegetables)*

Some Somali employers have repeatedly refused to pay medical or funeral expenses of their workers who were wounded or killed during terrorist attacks in Mogadishu. Trade unions strongly argued that employers have a duty to care for their employees.

Employees work under conditions dictated by employers, and according to employers, these are non-negotiable conditions of service. Most of the time salaries paid to workers are very low. They are insufficient to meet a family's living needs.

### ***Forced Overtime***

Overtime work – work beyond the regular eight-hour day stipulated in the Labour Law – is pervasive in Somalia's labour market. Legally, overtime is expected to be limited to exceptional or urgent work. And overtime is expected to be voluntary. But Somali employers pressure workers and even try to penalise workers who choose not to do overtime work. Workers fear retaliation if they refuse overtime work.

While workers should be paid an overtime rate for their work after the regular eight-hour workday, there is no paid overtime work that is known in Somalia. Most of the workers interviewed by the Federation of Somali Trade Unions reported working between four and five hours of overtime per week.

There have been retaliatory acts against those who refuse overtime work. Managers or em-



*(Professional tailoring worker)*

employers threaten to fire these employees as “lazy” persons who do not want to do the work, a “disobedient person”, “uncreative worker” or “layabout” as this becomes an excuse to punish the worker.

Sacking workers for requesting exemption from overtime work has a chilling ripple effect— other workers are deterred from seeking such authorisation. One worker said: “Overtime is not known at all. The employer says to you, just continue to finish work, and this will be 5 hours more than normal working hours”.

### ***Salary non-payment***

Access to adequate and regular wages is not guaranteed in practice, even for employed workers. In some cases, workers have had to survive with their earnings in arrears for months or even years. Those affected include people who are still formally employed and required to go to work.

Notably, this violation of the right to be paid for one’s work is common in the public sector, and there are also cases of non-payment in the private sector. While government institutions in Somalia are complicit in these violations by private employers by not getting them to pay, some ministers and top managers continue to receive high salaries and generous benefits.

Public sector workers have not been paid since August 2016. A public sector worker who does not want to be named for fear of his safety or being sacked said: “Our ministry is not without money. You could sense the flow of cash for the minister and deputy minister. But this cash does not pass beyond the minister and his deputy. No one cares or is fighting for our salaries.”

Some private companies do not pay their workers regularly due to financial problems and lack of profits. Recently workers who went to a police station with their union representative were asked to record a statement and come back three days later.

When workers came back, the police instead were harassing them for filing a “false” complaint and they were forced to leave. One of the complaining workers said: “We cannot go

back to our employer because he will tell us, 'Get out of my office,' that we did not get our rights from police. So now we don't know where to go".

This demonstrates how law enforcement is either incompetent to handle such cases or corrupted and compromised by employers. Furthermore, the Ministry of Labour, which is allowed by law to deploy labour inspectors, has never deployed its officers to look into workplace issues including non-payment of salaries.



*(Dockworkers at Mogadishu Seaport)*

Public sector workers have also raised serious concern over new people recruited and employed for the public sector by each minister when he or she is appointed, while previous employees in the ministry are not paid regularly. So the numbers of public sector workers are increasing without regular salaries as a new minister is appointed.

These unpaid public sector workers are expected to come to work every work day, with failure to report to work for a few days leading to termination of employment. Some workers have come up with coping mechanisms. They ask the public that they are supposed to service to give them money, which amounts to bribery or corruption.

Public sector workers who do decide to leave due to the hardships of non-payment suffer the same fate. Those public sector workers who do stay on the job unpaid are motivated primarily by the absence of alternatives, and by the hope of retaining future opportunities for wages or allowances.

The public at large is affected both through the reduction of economic growth and through the reduction of public services. The indifference to the rights of workers by top officials in both government and private companies is particularly glaring, given the extravagant wages and benefits they continue to allocate to themselves.

This failure to pay what workers are legally entitled to is salary robbery, in that it involves employers, be they private or public, taking money that belongs to their employees and keeping it for themselves.

International standards, particularly the International Labour Organization (ILO) Protection





*(Port worker at Mogadishu Seaport)*

of Wages Convention, 1949 (No. 95), which was ratified by Somalia, demands the regular payment of wages to workers and the priority of such payments over other financial obligations of employers. National law in Somalia defines employers' obligations for payment of regular salaries.

### ***Discrimination in the Workplace***

Somalia has ratified ILO Convention No. 111 on Discrimination (Employment and Occupation). In spite of this ratification, Somalia has not ensured that workers are free from discrimination in the work-

place. Women face discriminatory laws and practices. Gender discrimination includes constraints on the hours and locations of work for women, job offers of certain positions for women or men only, and sexual harassment in the workplace.

Part of the challenge of addressing gender discrimination in the workplace is to address the treatment of women in Somali society in general. Somalia is deeply patriarchal. Women are economically insecure and therefore vulnerable to discrimination in the workplace. The low cultural and legal status of women reinforces subordination and subverts women's rights.

Women workers interviewed for this report acknowledged that sexual harassment goes on in the workplace, but were reticent about giving personal examples. Women's apparent reluctance to report situations of sexual harassment in the workplace, as well as the apparent lack of support for such reports, exacerbates the problem.

Furthermore, clan-based discrimination in the workplace is increasingly common. In number of cases, workers who do not hail from the same clan as the employer or the manager are less privileged than those hailing from the manager's clan. Discriminatory acts also include lack of promotion for deserving workers, and denial of training opportunities.



# VIOLENCE, INTIMIDATION AND IMPUNITY



**T**he largest single obstacle to workers' rights in Somalia today is the climate of violence and impunity. Somalis are subject to murder, arbitrary arrest and detention, violations of their labour rights, disrespect of their right to privacy and displacement.

More than 113 workers were killed and more than 500 wounded in 2016, according to cases recorded by FESTU affiliates. Most of those who died were killed in planned terror attacks targeting hotels and restaurants.

Public sector workers have also been hard-hit by the violence. Al-Shabaab targeted a number of people working for government institutions through targeted assassinations. Many government employees received death threats because of their government employment.

Members and leaders of the Federation of Somali Trade Unions (FESTU) were targeted a number of times in 2016. Workers in the sectors of agriculture, hotels and media are mostly subjected to constant harassment, intimidation and even deadly attacks.

More than 30 journalists were arrested. Working journalists opt to practice self-censorship to avoid retaliation by corrupt officials, criminal elements, Islamist extremists and members of illegal armed groups.

In addition, the ability of Somalia's judicial system to address violence is severely compromised. Corruption, lack of training, scarcity of resources, and infiltration by surreptitious groups undermine meaningful investigation and adjudication of many violent crimes.

The fear of reprisal prevents many victims and witnesses from coming forward. Further, justice sector workers are subject to intimidation and in some cases, violence, including murder. High-level officials of the Somali government promised serious investigations. But, so far,





*(Male radio journalist & unionist activist killed in Mogadishu)*

the government has failed to investigate and punish the vast majority of acts of violence and threats against workers and trade union activists. Senior government officials even tried to hide facts of attacks against trade unions by claiming the violence was stage-managed by the victim.

While it is not always possible to establish motives for the attacks on workers or union members, analyses of these attacks demonstrate that most are directly linked to the victims' participation in union activities or the victim's activity in his or her workplace.

Somali workers are essential players in the effort to bring an end to violence and impunity in the country. The government can hasten the arrival of peace, stability and justice by beginning to respect and enforce workers' fundamental rights.

The ILO Committee on Freedom of Association has repeatedly asked the Somali government to ensure the safety and security of the leaders and members of FESTU and NUSQJ as a result of a complaint the two organisations filed against Somali government with the help of the International Trade Union Confederation (ITUC).

The ILO is also asking for a judicial inquiry into the attacks against union leaders and members. It has repeatedly pointed out that it is impossible for workers to exercise their core labour rights in such an environment:

*"Freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed..."*



*(A view of destruction caused by suicide attack on SYL Hotel in Mogadishu)*

*"The rights of workers' and employers' organisations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organisations, and it is for governments to ensure that this principle is respected..."*

*"A climate of violence such as that surrounding the murder or disappearance of trade union leaders, or one in which the premises and property of workers and employers are attacked, constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities..."*

Threats as well as selective and systematic violence against union leaders and members, and impunity surrounding these acts, reinforce anti-union strategies used by private employers and the Somali government. This in effect links government repression to anti-trade union actions.

These strategies aim to discredit union activity, immobilising existing unions and slowing or preventing the formation of new ones. Violence or threat of violence is aimed more at erasing union gains than at the victims themselves, forcing trade unionists to choose literally between their families and their union.

Not unexpectedly, the combination of legal restrictions on organising and collective bargaining, anti-union practices by both government officials and employers, and the killing and intimidation of union members have undermined the ability of unions to organise. Those acts have seriously jeopardised the prospects for a culture of industrial relations based on collective bargaining.



# THREATS AND REPRISALS AGAINST UNION RIGHTS ACTIVISTS



Independent trade union activists, interviewed for this report, described how incidents of interference, harassment, and intimidation by government representatives and company officials contribute to a restrictive environment for trade union activism in Somalia.

They detailed how their efforts to organise workers into active and independent unions led to pressure by government officials or company managers on trade union members to leave the union, sometimes under threat of dismissal.

In some cases, the government would take punitive action against them. In a handful of cases, trade union leaders and worker activists said that the authorities have threatened them with criminal charges, apparently in retaliation for their activism.

On 23 April 2016, Omar Faruk Osman, NUSOJ Secretary General who is also FESTU General Secretary, was summoned to the Office of Attorney General (AG). Omar Faruk Osman was informed that the State Attorney General (SAG), Mr Osman Elmi Guled, the chief legal advisor to the federal government and the government's chief law enforcement officer, has submitted a complaint against him. The State Attorney General's action was based on a letter that the government received from the ILO asking for answers about alleged violations of freedom of association in Somalia.



(Letterhead of State Attorney General)

The State Attorney General Osman Elmi Guled expounded in his letter: Omar Faruk Osman is a threat to peace and stability of the country, and he is involved in the creation of clash among media professionals; he is aggravating the relations between the government and international institutions, by opening baseless and fabricated cases at these international institutions; he is circulating issues aggravating the reputation of the Somali government, by using name of an organisation he is not its leader; and SAG suspects there are foreigners working with Omar Faruk Osman who are facilitating for him to commit these crimes.

In line with article 18 and 20 of Somali Criminal Law, the State Attorney General asked 1) to charge Omar Faruk Osman with criminal acts related to his work; 2) while AG is conducting investigations, a travel ban was to be imposed on him (Omar Faruk Osman), and to confiscate his passport so he cannot travel outside country; 3) to summon him if he is outside the country, and if he refuses to come back, to use Interpol by issuing an international arrest warrant; 4) to add this complaint to previous cases at the office of Attorney General against him; 5) to conduct thorough investigations of what Omar Faruk Osman does and those that support him to commit crimes he is involved in.

Omar Faruk Osman was summoned four times for questioning. He was asked to provide personal details as well as personal and institutional bank statements. Osman refused to provide bank statements. The case is not officially closed, nor was Osman officially charged.

Managers, or management-level employees working for state institutions or private companies, have pressured workers to leave trade unions, sometimes under threat of dismissal. For those government officials and managers, no union can exist without their approval.

The Federation of Somali Trade Unions documented some instances in which managers dismissed employees following their union-related activities or worker activism.

Several trade union activists said they were concerned about speaking openly about their trade union activities and requested anonymity in the report for fear of possible retribution. One union activist said: "If you include this information, they will immediately figure out who I am, and I don't know what will happen to me". Another trade unionist said, "protection from impunity is as important as any bullet-proof vest".

There are cases of threats by security personnel or unscheduled and intimidating visits by the police or National Intelligence and Security Agency officials to trade union members' places of work or their homes. These officers act to intimidate trade union members. This constitutes a violation of privacy. It violates Somalia's provisional Constitution and international labour conventions to which Somalia is party.

Under international labour and human rights law, union leaders and members should be free to carry out legitimate trade union activities without fear of intimidation by government officials. Workers should be free to defend their economic and social interests, form unions, and bargain for better protection of their rights without fear of retaliation.

Those standards provide that employers and governmental authorities are prohibited from mounting anti-union campaigns that interfere with workers' efforts to organise themselves, or retaliating against workers for supporting a union. Any retaliation by the authorities or by companies for engaging in legitimate labour activities is a violation of workers' rights.

International law requires Somalia to outlaw such conduct, sanction perpetrators with meaningful and deterrent penalties, and enforce the rules. These standards are enshrined in International Labour Convention 87 (the Freedom of Association and Protection of the Right to Organise Convention), and International Labour Convention 98 (the Right to Organise and Collective Bargaining Convention). These standards are also supported by the United Nations International Covenant on Economic, Social and Cultural Rights. Somalia's labour laws and employment practices do not meet these international norms.



# CHILD AND FORCED LABOUR



Somalia ratified ILO Convention No. 29 (Forced Labour Convention), and Convention No. 182 (Elimination of the Worst Forms of Child Labour). Under Article 29 of the provisional Constitution of Somalia, the word “child” means a person less than 18 years of age. Children under 18 years of age are generally prohibited from working in Somalia.

The Labour Code makes exceptions in cases where extreme poverty makes it necessary for the family’s survival, the child can then receive schooling and the work should not be hazardous or overly demanding. Despite these constitutional protections, child labourers work on average 47 hours a week.

The federal government and regional states fail to enforce national laws, because the Ministry of Labour and Social Affairs inspection system is so ineffective that the law is largely ignored across the country. Many government officials are not aware of their responsibility.

Consequently, child labour is a widespread and growing problem in Somalia. The most damaging effect of the phenomenon is the erosion of Somali children’s ability to obtain an education and build a pathway out of poverty.

Turning children into violent extremists is thus a major problem in Somalia. Militia groups such as Al-Shabaab and Ahlu Sunnah Waljama have recruited children as members who carry guns to fight for them, or in the worst case scenario as children who are used for suicide attacks by Al-Shabaab.

In agriculture, particularly in Middle Jubba, Lower Jubba, Lower Shebelle, Middle Shebelle and Hiran regions, and in the informal economy, many children work in order to provide income for their families. That is necessary because the incomes typically paid to adult workers are insufficient to sustain a family. Al-Shabaab forces children in regions in southern Somalia that they control to work. Even women, some of them pregnant, are forced to carry water from rivers.





*(Shoeshine boy)*



*(A Girl and a boy working at shoeshine stand)*

Many children work in Somalia in hazardous conditions. Children also work as street vendors and at family-run stores in the public marketplaces. In these and other jobs, children typically do not earn a separate salary, but rather augment their parents' earnings. They also work in the textile and clothing sector.

Although forced labour is not a predominant practice today, Somalia still fails to comply with the relevant ILO conventions. Somalia is a source of human trafficking, including exploited women and children, and the problem is growing in severity and scope. Hundreds, possibly thousands, of children, some from southern regions of Somalia, are forced to work in bars and restaurants in Puntland and Somaliland. In other cases, children are forced to work as beggars on the streets.

Somali workers are subject to a growing trend of employer demands for forced overtime. In these situations, workers are required to continue working beyond their agreed-upon work-day, frequently, without notice and without being paid.

While this practice does not automatically constitute forced labour under ILO standards, Somali trade unions believe that it shares similar characteristics with violations of those norms. Workers are sometimes threatened with dismissal if they do not work extra time. Such threats are not idle, as many workers have been sacked for refusing to work disproportionate overtime or for demanding overtime pay.

Forced overtime is also common in the service and agricultural sectors, although it is not well documented because some of the areas where it is prevalent are controlled by Al-Shabaab militias who reject trade union representatives. In these sectors, employers regularly tell workers that if they do not stay to work late they need not show up the next day, because there will no longer be a job for them.



# VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSEMBLY



Although peaceful assembly is guaranteed in Somalia's provisional Constitution and is a fundamental right protected under Article 21 of the International Covenant on Civil and Political Rights, the federal government of Somalia placed heavy restrictions on the right to peaceful assembly in 2016. Trade unions and others that attempted to exercise their right to meet freely encounter interference by law enforcement or the National Intelligence and Security Agency (NISA), and are often prevented from gathering altogether.

In February 2016, NISA stopped the General Assembly (GA) of the National Union of Somali Journalists. The assembly was originally slated for 13-14 February 2016 in Mogadishu, but it was prevented from convening by those state agencies in a way that breached national law and international instruments ratified by Somalia.

On 4th February 2016, in a case brought before Somalia's Supreme Court by the NUSOJ leadership, the Supreme Court confirmed the legitimacy of the NUSOJ leadership. It ruled that the Somali government committed serious violations of freedom of association against NUSOJ, and interfered in their internal affairs.

On the strength of this ruling, NUSOJ went about the preparations for their General Assembly. They informed the relevant state agencies accordingly, as well as invited 66 delegates from the length and breadth of Somalia.

In a similar manner, the Banadir Regional Appeal Court, mandated by the Somalia Supreme



*(Member journalists of journalist union)*

Court to observe the NUSOJ General assembly, wrote to the Ministry of Internal Security, NISA and the Somali Police Force to provide adequate security for the event.

Rather than provide security, NISA went ahead to prevent the meeting from taking place in a manner that undermines the rule of law, promotes impunity and violates the rights of freedom of association and assembly of Somali media workers.

In June 2016, Somali police stopped the congress of the Somali Teachers Union from going ahead in Mogadishu. Police informed the union officials that they had no permission to organise the congress and union leaders should first get an approval letter from the Ministry of Education. Instructions to stop the congress came from senior officials at the ministry and police threatened members of the union with arrest, should they insist to continue the congress.

On 23 February 2016, the Ministry of Labour and Social Affairs sent a letter with reference number MOLSA/DM/127/2016 signed by its Deputy Minister Osman Libah Ibrahim, to the National Intelligence and Security Agency (NISA). It asked NISA to stop the congress of the

Federation of Somali Trade Unions (FESTU), having termed the event a “false congress”. However, NISA refused to implement this request and FESTU congress took place uninterrupted in April 2016 in Mogadishu.

After failing to get NISA to stop the FESTU congress, the Ministries of Information and Labour hastily organised a 2-hour meeting which they termed “FESTU congress” on the same day that FESTU’s national congress started, so as to confuse people but they’re flustered to learn that an international trade union delegation had already arrived in Mogadishu to observe the FESTU national congress.

On 9 July 2016, the Ministry of Internal Security of the Federal Government of Somalia issued an order (reference number WAG/XAG/0067/2016) banning all meetings held at hotels in Mogadishu. This order forbade any assembly without the hotels first notifying the ministry and seeking permission, it said, “to safeguard security and minimise problems by UGUS (Al-Shabaab) against people”.

While it is true that the insurgent group (Al-Shabaab) has been increasingly targeting public places, government agencies, which have foremost responsibility to protect citizens, are fully aware that hotels are relatively some of the safest places where people can freely meet and associate.

On the occasion of the International Day to End Impunity of Crimes against Journalists, 2 November 2016, the National Union of Somali Journalists (NUSOJ) decided to organise an event on impunity of crimes against Somali journalists.

On 29 October 2016, the Ministry of Internal Security had granted NUSOJ approval to organise the international day on 1-2 November 2016. But one day later, on 30 October, the Ministry of Internal Security notified NUSOJ of the Ministry’s decision to withdraw approval to hold the meeting.

NUSOJ went ahead and organised this event and challenged attempts by security officers who came to the meeting venue to stop the activity, until the officers finally withdrew from the venue.



# REDRESS OF VIOLATIONS OF HUMAN & TRADE UNION RIGHTS



**T**he Federal Government of Somalia has an obligation to uphold national laws and international laws and standards designed to protect trade unions and workers from abuses. As is demonstrated in this report, impunity for serious human rights violations, including labour rights abuses, is a key problem in Somalia.

Impunity leads to continued abuses. It denies the victims their rights under international human rights law to effective assistance and reparations for the abuse. The suffering of victims goes unacknowledged, unaddressed and uncompensated.

Law enforcement authorities are expected to ensure the safety of the citizens and allow them to exercise their fundamental and constitutional rights. They are also expected to take appropriate actions against those suspected of committing serious violations.

The Labour Inspectorate under the Ministry of Labour and Social Affairs is responsible for monitoring employers' adherence to labour laws, inspecting workplaces and reviewing complaints submitted to the Ministry by workers and employers.

Article 39 of Somalia's provisional Constitution evidently specifies redress of violations of human rights. Clause 2 of this Article says "redress of violations of human rights must be available in courts that the people can readily access". Clause 3 says "a person or organisation may go to court to protect the rights of others who are unable to do so for themselves".



The International Covenant on Civil and Political Rights (ICCPR) establishes the right to a redress determined by a “competent judicial, administrative or other authority”. However, for serious violations of international law, it is recognised that the option of a judicial remedy must always be available.

As stated by the UN Human Rights Committee, “administrative remedies cannot be deemed to constitute adequate and effective remedies. ... in the event of particularly serious violations of human rights”.

A significant problem in getting redress in Somalia is the lack of independence of the mechanisms tasked with investigating human rights violations when they involve state officials, and their susceptibility to interference where the violations of rights affect powerful actors.

Trade unions may also appeal to law enforcement bodies, such as the Attorney General’s office or the police, or directly to the



*(ILO Director-General Mr. Guy Ryder meets Omar Faruk Osman, FESTU General Secretary)*



courts for certain issues, or to local and regional administration offices. But there is rare respect of and adherence to the decisions of the judiciary or space for the judiciary to make independent decisions.

A number of labour union representatives stated that in response to complaints regarding labour disputes, government bodies had provided inconsistent responses. Some reported that in response to their appeals to local law enforcement, regional administration offices, or the prosecutor general's office, these government structures ignored or were ineffective in helping resolve the situation.

For the first time that a trade union took the Somali government to court for violations of trade union rights, the National Union of Somali Journalists (NUSOJ) filed a legal case against the Somali government, in particular the Ministries of Information and Labour.

On 4 February 2016, the Supreme Court ruled in favour of NUSOJ and confirmed the authenticity of its leadership. But the government refused to respect it, blocked implementation of the court verdict, and even removed the Chief Justice on 4 May 2016 through a Presidential Decree, violating the Constitution.

While the NUSOJ case and victory at the Supreme Court was exemplary for civil society to seek redress at the judiciary, the government proved that it does not respect the rule of law, separation of powers and the independence of the judiciary as enshrined in the provisional Constitution of Somalia.

When the government is the perpetrator of violations of freedom of association and is orchestrating attacks on trade union rights, even the judiciary can rarely provide protection and redress to citizens, and judges themselves are afraid of retaliatory measures by the government.

FESTU and its affiliated union, NUSOJ, became first Somali civil society organisations who approached UN human rights mechanism, particularly the ILO's supervisory mechanism, for redress and a filed a complaint on flagrant violations of freedom of association.

In order to address impunity, and to comply with its obligations under international law, the new government of Somalia must establish, through legislation and policy, a comprehensive victim and witness protection programme.



# INTERNATIONAL LEGAL STANDARDS



Somalia is party to several international legal conventions governing the rights of trade unions and workers. Somalia has also ratified 19 International Labour Organization (ILO) conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

Somalia's most recent Constitution, adopted in 2012, provides for freedom of association, the right to organise and bargain collectively, and the right to strike. However, a number of legal provisions in the old Labour Code and a host of mechanisms, both legal and illegal, limit these rights.

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Somali government has a duty to respect, protect, and fulfil workers' rights to "safe and healthy conditions" without discrimination and with "rest, leisure...reasonable limitation on working hours," and "to form trade unions and join the trade union" of their choice.

The International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of association. Both the ICCPR and ICESCR, along with the relevant ILO conventions, guarantee the right to join trade unions.

These, together with the authoritative interpretation of the ILO core conventions by the ILO's Committee on Freedom of Association (CFA), impose an obligation on the Somali government to ensure that officials do not thwart union formation and participation. Workers have the right to join organisations "of their choosing without prior authorisation," and authorities should refrain from any interference that would restrict this right.

National laws and regulations governing unions should not restrict union formation, con-

trary to what Somali labour laws stipulate now. Governments are free to prescribe legal formalities for establishing unions, but they cannot abuse this freedom by prescribing formalities that impair fundamental labour rights guarantees.

The right to organise includes the right to official recognition through registration. But a registrar cannot have absolute discretion to refuse registration, even if the law guarantees workers the right to appeal the registrar's decision. The law should clearly specify the conditions for union registration and the grounds on which the registrar may refuse or cancel registration. Government procedures that result in undue delays to registration are an infringement of workers' right to organise.



*(Petrol station workers in Mogadishu)*

In law (Labour Code) and practice, Somalia violates the most basic principles of freedom of association and the right to organise and bargain collectively.

In Somalia, once any Minister of Labour and Social Affairs is appointed, he tries to register trade unions. Officials of the Ministry claiming to be representing trade unions endeavour to frustrate, delay or even deny genuine trade unions from registration or recognition by confusing, inciting, mudslinging or manipulating the Ministers themselves. Somali Labour Ministry officials have also unnecessarily delayed for indefinite periods and suspended or cancelled union registration, thus violating international standards.

Regarding child labour, Somalia ratified the Convention on the Rights of the Child (CRC) in 2015. It states that children have a right "to be protected from economic exploitation and from performing any work that is likely to be hazardous, to interfere with the child's education, or be harmful to the child's health or physical, mental, spiritual, moral or social development". Somalia has also ratified binding ILO Conventions, including the Worst Forms of Child Labour Convention (No. 182).

But because of poor labour inspections and enforcement, international child labour provisions are frequently violated. As a party to the CRC and ILO conventions, Somalia is obligated to take all necessary measures to ensure the effective enforcement of the provisions of these conventions, including through monitoring of remediation efforts.



# DE-LEGITIMISATION OF TRADE UNIONS



Following adoption of the conclusions and recommendation of the Governing Body of the International Labour Organization (ILO) in November 2015, the precarious situation for trade unions in Somalia worsened in 2016. The Somali government stepped up its campaign to de-legitimise the independent trade union movement, particularly the Federation of Somali Trade Unions (FESTU) and its affiliate the National Union of Somali Journalists (NUSOJ).

In order to eliminate leaders elected by union members, the Ministries of Information and Labour organised a letter-writing campaign. The aim was to legitimise people they appointed as trade union leaders, against the will of the union members, in collusion with employers and in direct contravention of the union's rule book.

There are two broader objectives in this action. The first is to take control of the trade union, through the intervention of security forces when needed and given credence by some foreign entities. Many state officials believe that government letters would de-legitimise leadership elected by union members and legitimise the ones imposed by the government.

If this first objective is not achieved, and there is outcry and resistance from union members, the second objective is to portray to the outside world that there are internal wrangles within the union. It aims to show that union members are divided and it is not the government that should be blamed for this division, when indeed it is the government which tries to cause disarray with its sponsored people.

In the second week of April 2016, the Somalia's Council of Ministers held their regular meeting in which they deliberated on how to confront the increased complaints of trade union rights violations, which was causing embarrassment for the government as a whole.

The agenda item was reportedly proposed and pushed by the Ministers of Labour and Information, supported by the Deputy Minister of Labour. The Ministers blamed NUSOJ Secretary General Omar Faruk Osman for allegedly dragging the government into disrepute.



*(Ahmed Osman Said, FESTU President)*

Deputy Minister of Labour Osman Libah blamed security forces for not punishing Osman. Attempts to obtain a collective decision from the Council of Ministers to arrest trade union leaders or impose restrictions failed after a number of council members questioned the sincerity of the two ministers in handling the matter. At least three ministers warned their colleagues to be careful not to commit an unlawful act that would implicate the entire government.

One senior government official who spoke on condition of anonymity described the policy: "Either way we make you unlawful and this pretext of you being divided has saved us from number of condemnations."

The government official added that "some members of the international community trust us (government) since they want a smooth relationship with us". However, the official acknowledged that "people started seeing that those we are pushing for are not union members, not elected through union rules and government is muscling out union members".

These acts noticeably reveal an official policy that independent civil society organisations, including free trade unions that sought to expose unethical or unlawful acts by government officials, should not be allowed to carry out their work.

In other words, if trade unions are to exist, they must exist under the thumb and blessings of the ministries. And if trade unions want to exist freely and operate independently from government, then the government will de-legitimise and criminalise trade union activities.





# STIGMATISATION AND ATTACKS ON REPUTATION



Acknowledging the legitimacy of trade unions and their legitimate work is a key government obligation that can help bring about a safe working environment for them. However, different government officials, including ministers, have stigmatised legitimate trade union leaders.

They have attacked trade unionists and labelled them as “illegal”, “illegitimate”, “unscrupulous” or even “immoral”. These name-calls or character assassinations were made without a modicum of proof.

Trade union leaders have been accused of being “criminals”, “corrupt”, “liars”, “troublemakers”, “enemies of the state” or “traitors”; of defending “crooks”; and “sympathising” with opposition politicians. But there has been no evidence to back up this defamation. Such charges are punishable by law, which the government never had the audacity to prosecute.

There is a clear pattern to discredit and defame trade union leadership for merely promoting and fighting for human and trade union rights in their country and for engaging with International Labour Organisation and international human rights bodies.

The effect has been to pave the way for even more serious attacks against trade unions and their elected leaders. It also puts in doubt the legality and legitimacy of their work to defend worker rights, freedom of association, freedom of expression and freedom of assembly, which are basic rights for trade unions to defend human and union rights.

On 27 February 2016, the Minister of Information issued a two-page letter on government-controlled Somali National Television (SNTV), in which he openly belittled and denigrated the leadership of NUSOJ and FESTU, and avowed to disregard the decision of the Supreme Court of 4 February. This attack through SNTV was repeated several times and it was part of the campaign to stigmatise free trade unions.

“Our main target is the head of the union. You kill the snake at the head and then the other union leaders and members will just run away and disappear,” an official at the Ministry of Labour told the federation on condition of anonymity, describing the government’s policy. “If we don’t destroy the head, we know you will bite us so long as the head is alive”.

Minister of Labour Abdiweli Mudey had repeatedly characterised leaders of FESTU as “criminals”. This, despite the fact he never knew them before he became minister, never met them since, and yet continued to insinuate that FESTU officials are “criminals that should not be allowed to exist.”

Such derogatory comments by high-ranking government officials, in the context of death threats and physical attacks, are real dangers. When abuse of power or abuse of public office become the norm, it can have grave consequences for the life and work of a trade union leader or activist.

These comments also send an ominous message to current and potential future trade union leaders that unless they stop their work, they could face public vilification and all its consequences.

With sophisticated strategies, government officials at the highest level - and some external entities who want to benefit from being in good terms with the government - have made statements that call into question the legitimacy of trade unions and undermine their legitimate work. These strategies aim to discredit union activity, immobilise existing unions, and slow down or prevent the formation of new ones.



## PIONEERING SUCCESSES



Trade unions are the bedrock of independent civil society movement in which they want to re-claim their constitutional and fundamental rights. For the first time in their history, the Federation of Somali Trade Unions (FESTU) and its affiliate the National Union of Somali Journalists (NUSOJ) have successfully challenged human rights violations by the government, both at the Supreme Court of Somalia, and at the International Labour Organization (ILO).

Trade unions dared to challenge abuses within a judicial system whose independence is tremendously undermined and weakened by the executive branch of government. NUSOJ has become the first civil society organisation to take the Somali government to court over violations of freedom of association, and thus tested the possibility that it is still open for a civic organisation to pursue justice through the domestic justice system.

But following the favourable ruling for NUSOJ, the government openly refused to respect court decisions and set out to remove the judges who made the ruling, then set out a renewed campaign against the union.

Following the Somali government's accreditation of non-trade union people in place of FESTU's delegates at the 105th session of the International Labour Conference, held in May-June 2016, the ILO conference said it "considers that the Government has interfered in FESTU's internal matters, contravening article 3(5) of the ILO Constitution".

For the first time, the ILO Conference decided to monitor the case of Somalia, given that the government failed to consult with FESTU and accredited individuals who do not belong to trade unions as trade unionists and workers' delegates. The ILO requested the government of Somalia, by virtue of article 26bis (7) of the ILO Conference Standing Orders, to submit a detailed report for the next session of the Conference.

When it submits its credentials for its delegation, the government must provide a report with relevant documentation on: "(a) the names of the representative workers' organisations in Somalia, together with figures indicating their comparative importance; and (b) information



*(ILO Governing Body in Session in November 2016)*

as to which of those organisations were consulted on the designation of the workers' delegation, as well as the date(s) and place(s) of such consultation(s)."

In November 2015, the ILO Committee on Freedom of Association urged "the Government to refrain from any further interference in the unions registered in Somalia with particular reference to the NUSOJ and FESTU, observe the right of the union to administer its own affairs and activities without let or hindrance and in line with the principles of freedom of association and democracy, ensure that the elected leaders of the union are free to exercise the mandate given to them by their members and to that extent enjoy the recognition of the Government as a social partner. Government must also ensure that the right to freedom of movement is fully respected and enjoyed by the union leaders."

The ILO's tripartite body further urged "the Government to take the necessary measures to ensure the protection and guarantee the security of FESTU and NUSOJ leaders and members and establish a full and independent judicial inquiry on the allegations of intimidations and death threats affecting them. The Committee requests the Government to keep it informed of the outcome of the investigations."

In November 2016, the ILO Committee on Freedom of Association specified that it "expects the Government to abide by the ruling of the Supreme Court concerning the leadership of NUSOJ and it urges the Government to refrain from any further interference in NUSOJ and FESTU internal affairs, and ensure that the elected leaders of the unions – in particular Mr Osman, until otherwise indicated by the union members themselves – are free to exercise the mandate given to them by their members in accordance with the unions' by-laws. The Committee trusts that the Government will recognize the leadership of NUSOJ and FESTU under Mr Omar Faruk Osman without delay."

The ILO asked the Somali government "to provide without delay full explanations on the reasons for the arrest on 15 October 2016 of Mr Abdi Adan Guled, Vice-President of NUSOJ" and to "to take all necessary measures to investigate urgently the assassination of Mr Abdiasis Mohamed Ali, a member of NUSOJ, and to keep it informed of its outcome."

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## ANNEX: UN RIGHTS EXPERTS RAISE ALARM AT GROWING PERSECUTION AGAINST TRADE UNIONISTS



**G**ENEVA (4 May 2016) – A group of four United Nations human rights experts\* today urged the Government of Somalia to halt the continuous acts of intimidation and reprisals against members and leaders of two Somali trade unions, and to stop interfering in the unions' internal affairs and activities.

"States have the obligation to respect and fully protect the rights of all individuals, including trade unionists, to associate and express themselves freely," the experts stressed. "It is crucial that these individuals can exercise their rights without fear of violence, threats or acts of intimidation, smear campaign or harassment of any sort."

Since 2011, members and leaders of the Federation of Somali Trade Unions (FESTU) and the National Union of Somali Journalists (NUSOJ) have been threatened and intimidated by both anonymous persons and by State officials.

NUSOJ's Secretary-General, Omar Faruk Osman, and its Organizing Secretary, Abdiqani Sheik Mohamed, have been particularly targeted. In December 2015, Mr. Osman survived an assassination attempt in Mogadishu. The police reportedly opened an investigation, but it has been inconclusive.



*(Mr. Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association)*

Additionally, the human rights experts expressed serious concerns about acts of reprisals against Mr. Osman, that have followed the intervention of the International Labour Organization (ILO) urging the Somali authorities to comply with their international obligation regarding trade unions' rights.

They were alarmed at a complaint against him, dated 29 February 2016, accusing him of cooperating with international organizations and trying to harm the reputation of the Somali government.

During the time of the investigation, Mr. Osman will be prevented from traveling, his passport will be confiscated, he will be summoned if he happens to be out of the country and, should he fail to return following the summons, Interpol will be involved in his arrest warrant, the human rights experts pointed out.

"Such actions are particularly disturbing, and we call on the authorities to stop any act of reprisal, to hold the perpetrators of the reprisals and earlier threats accountable without delay and provide protection to Mr. Osman, his family and colleagues," they urged.

The UN human rights experts noted that FESTU and NUSOJ leaders and members have also frequently been arrested and interrogated on their union and human rights activities, and have faced

undue travel restrictions. In addition, the Somali authorities have interfered with the union's internal affairs and activities, banning for instance the NUSOJ's general assembly in February 2016. "The Somali Ministry of Information attempted to designate a State official at the leadership of NUSOJ, and issued a press release on State-own media in which it did not recognize Mr. Osman as the elected Secretary-General of this union," they said.

The UN human rights experts also expressed serious concern about the threats of reprisals against Mr. Osman, despite assurances made by the Government during the recent mission to the country by the UN Independent Expert on the human rights situation in Somalia, that it would respond to the concerns officially raised by a group of UN experts on 13 April 2016.

The Somali Federal Government has not yet responded to the experts' communication, but instead issued the threats of reprisals to Mr. Osman shortly after the mission of the Independent Expert had concluded.

"Somalia is not fulfilling its international human rights obligations and the situation for trade unions keeps on worsening despite specific recommendations made by the International Labour Organization's Governing Body urging the Somali Government to refrain from any further interference in the unions registered in Somalia, with particular reference to the NUSOJ and FESTU," the experts said.

**(\*) The experts:** Mr. **Bahame Tom Mukirya Nyanduga**, Independent Expert on the situation of human rights in Somalia; Mr. **Maina Kiai**, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Mr. **David Kaye**, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. **Michel Forst**, Special Rapporteur on the situation of human rights defenders.

The Special Rapporteurs and Independent Experts are part of what is known as the Special Procedures of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity. Learn more, log on to: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

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