

JEREMY W. SCHULMANdirect dial 240.356.8551 email jschulman@schulmanbh.com

April 27, 2018

VIA ELECTRONIC MAIL

Mr. Michael Keating
Special Representative of the Secretary-General for Somalia
Head of the United Nations Assistance Mission in Somalia
Mogadishu, Somalia
keating1@un.org

Re: UNSON/OHCHR Report on NUSOJ

Dear Mr. Keating:

We are legal counsel to Mr. Omar Faruk Osman, Secretary General of the National Union of Somali Journalists (“NUSOJ”), and NUSOJ.

It has come to our attention that UNSOM, in cooperation with the United Nations’ Office of High Commissioner for Human Rights (“OHCHR”), is planning imminently to release a report on Freedom of Expression in Somalia (the “UNSON Report”). The stated purpose of the UNSOM Report is to provide an update on conditions in Somalia since August 2016 related to freedom of expression and the media, protection of journalists, and prosecution of perpetrators of violations against media workers and political actors. The UNSOM Report also analyzes a variety of violations relating to freedom of expression, including killings, beatings, harassment, arbitrary arrests and illegal detention, lack of due process or fair trial guarantees, and closure of media outlets. This reporting is an essential part of the valuable role ordinarily played by UNSOM, OHCHR, and the entire United Nations system to monitor compliance with international norms and ensure the safety and well being of journalists and others wishing to express their ideas freely and without recrimination.

It therefore comes as a most unwelcome surprise to NUSOJ that the upcoming UNSOM Report, while ostensibly working to promote freedom of expression and human rights of journalists, in certain respects accomplishes the opposite goal: facilitating continuing serious violations of the human rights of my clients, which include efforts to silence them by way of killings and assassination attempts and various other forms of harassment designed to prevent them from holding actors in the Somali government to account.

Specifically, the Report includes a section entitled “Conflict of NUSOJ Leadership” that completely mischaracterizes the factual record and serves to delegitimize Mr. Osman and the genuine trade organization of journalists named “NUSOJ” that he rightfully leads. The Report falsely concludes that “NUSOJ held their General Assembly in Mogadishu from 3 to 17 May 2016 and the membership elected Mahir Jama as the new Chairperson and Mohamed Ibrahim ‘Moalimuu’ as the Secretary General.” This statement, not to mention the inaccurate recounting of later events involving Mr. Osman, brings UNSOM into direct conflict with the human rights and labor organs of the United Nations itself, which UNSOM is duty-bound to respect and

comply with.

For example, the United Nations' International Labour Organization, Committee on Freedom of Association, issued its Interim Report in November 2017 in which it reiterated its prior conclusions that the "Committee expects the [Somali] 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 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." It was emphasized that the "Committee trusts that the [Somali] Government will recognize the leadership of the NUSOJ . . . under Mr. Omar Faruk Osman without delay." Although the UNSOM Report references this ILO Interim Report, nowhere is it mentioned that the ILO reviewed the purported dispute over the leadership of NUSOJ and expressly found, contrary to what UNSOM proposes to say in the UNSOM Report, that the Somali government must "recognize the leadership of the NUSOJ . . . under Mr. Omar Faruk Osman without delay." Please explain how it is that the ILO requires the Somali government to recognize Mr. Osman's leadership of NUSOJ without delay, but UNSOM is free to reject Mr. Osman's leadership and anoint the imposter Mr. Moalimuu as leader of that same organization. This is, obviously, absurd.

The ILO Interim Report further comments on an assassination attempt against Mr. Osman, which occurred on 25 December 2015, and demands that the Somali government "provide without delay detailed information on any police investigation and judicial inquiry in relation" thereto and, more generally, that the government "ensure the protection and guarantee the security of . . . NUSOJ leaders and members." The Committee further acknowledged that the Somali government had engaged in "retaliatory measures" against Mr. Osman and others involved with NUSOJ, and demanded that the government "ensure full respect" for the principle that union leaders should not be subjected to retaliation merely for engaging in union activities. What is UNSOM doing to facilitate this directive of the ILO and protect the security of NUSOJ's rightful leaders, including Mr. Osman? Does UNSOM seriously believe that issuing a report undermining Mr. Osman's authority and legitimacy "ensures full respect" for the principle that union leaders should not be subjected to retaliation, as the ILO requires? Again, UNSOM's position is absurd.

The ILO Interim Report relies upon a 4 February 2016 landmark ruling of the Supreme Court of Somalia in which it confirmed that the purported General Assembly of NUSOJ in May 2011 (which falsely claimed to have removed Mr. Osman) was unlawful and was not in line with the constitution of NUSOJ. The Supreme Court ruled that Mr. Osman is the legitimate Secretary General of NUSOJ. The ILO stated that it "expects the [Somali] Government to abide by the ruling of the Supreme Court concerning the leadership of NUSOJ." In accordance with this instruction, the Somali government itself has begun implementing the 4 February 2016 Supreme Court ruling, including with the Ministry of Labor issuing a public statement on 8 March 2018 recognizing Mr. Osman's position as the leader of NUSOJ. (See Annex A.) Astonishingly, there is no mention of the 4 February 2016 Supreme Court ruling or 8 March 2018 Ministry of Labor statement in the UNSOM Report. Instead, the UNSOM Report relies upon a different Supreme

Court “action” that has been entirely discredited by the ILO itself.¹ Please explain how it is that one organ of the United Nations (*i.e.*, the ILO) is requiring the Somali government to abide by the 4 February 2016 ruling of the Supreme Court, and the Somali government is in fact correctly doing so, while a different organ of the United Nations (*i.e.*, UNSOM) feels free to ignore this same ruling. UNSOM is making a mockery of the United Nations human rights system. Why is it doing this?

The UNSOM Report similarly runs afoul of multiple communications from senior UN human rights experts, namely the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, and the UN Special Rapporteur on the Situation of Human Rights Defenders, all of whom have corroborated that Mr. Osman is the *victim* of harassment, abuse, and retaliatory actions by the Somali Government for his role advocating for press freedoms, freedom of association, and the rights of workers in his country. These conclusions are wholly inconsistent with, and affirmatively discredit, the proposed UNSOM Report, which falsely casts Mr. Osman as a troublemaker who is wrongfully challenging the purported “leadership” of Mr. Moalimuu. In letters of 16 June 2017, 13 April 2016, and 3 May 2016, the UN Special Rapporteurs expressed serious concern about the treatment of Mr. Osman, while citing his official capacity as NUSOJ Secretary-General, namely the harassment and threat of arrest and prosecution from certain in the Somali Government, and demanded that the government take immediate steps to “safeguard the rights of the above-mentioned person in compliance with international instruments.” They characterized the situation as one of “urgency.” How can it be that these eminent UN authorities on human rights deem it urgent for the Somali government to safeguard the rights of Mr. Osman, while UNSOM can flagrantly disregard those same rights?

On 11 May 2017, Somalia’s State Attorney General, chief lawyer of the State who defended the government at the ILO, directed the Somali government to comply with the decisions from the ILO, as required under international law. (*See Annex B.*)

On 16 August 2016, the UN Secretary General and UN High Commissioner for Human Rights jointly presented a report (A/HRC/33/19) to the 33rd session of the UN Human Rights Council on reprisals against those who cooperate with the UN and its human rights mechanism, and these top UN leaders specifically cited in their report reprisals against Mr. Osman by the Somali government, while clearly referring to Mr. Osman in his official capacity as NUSOJ Secretary General. Shockingly, UNSOM, headed by a Special Representative of the UN Secretary General, contradicts the report of the UN Secretary-General, in order to de-legitimize the leadership of an independent union. (*See Annex C, page 9.*)

Finally, the UNSOM Report ignores the decisive recent action by the national court of a leading UN Member State (Germany), which operates as a binding judgment in every member

¹ On 13 February 2016, the Somali government, using the National Intelligence and Security

state of the European Union.² In its ruling on 19 April 2018, the court in Hamburg entered an order prohibiting Mohamed Ibrahim Nur “Moalimuu” from utilizing the name “NUSOJ” or claiming to be a representative of NUSOJ without the consent of Mr. Osman. Thus, UNSOM’s favored character, Mr. Moalimuu, has been adjudicated an impostor by a European Union court. If Mr. Moalimuu violates this order he faces a fine of up to 250,000 Euros or a jail term. A copy of the German court’s order is attached as Annex D. As with the respect it should accord the directives of the ILO and UN Special Rapporteurs, legal guidance from the Somali State Attorney General, the Final Judgment from the Supreme Court of Somalia, and the UN Secretary General’s report, UNSOM has no business defying a European Union court on the question of Mr. Osman’s leadership of NUSOJ. Ironically, UNSOM (and UNSOS) are the only otherwise credible organizations anywhere in the world that do not abide by the UN’s own directives on this matter.

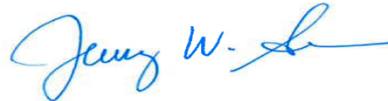
The struggle over the rightful leadership of NUSOJ is much more than a matter of semantics. Mr. Osman and NUSOJ have been fighting for years to protect the rights of journalists to express themselves freely, defend twin freedoms of expression and association, and expose abuse of public office and other forms of misconduct without harassment or other improper hindrance. Powerful forces aligned against these efforts to promote human rights have sought to eliminate Mr. Osman and other key leaders of NUSOJ, through killings and assassination attempts, a smear campaign and other more subtle steps to discredit and undermine them. This so-called “Conflict of NUSOJ Leadership” referenced on page 18 of the UNSOM Report, led by Mohamed Ibrahim Nur “Moalimuu” who seeks to impersonate Mr. Osman and falsely present himself as the head of NUSOJ, is a key part of the strategy to damage the reputation of a campaigning press freedom watchdog, discredit legitimate trade union leadership, disrupt their legitimate activities, give the oppressive arm of the government a tacit approval to suppress NUSOJ and its member journalists, and thereby remove them from the scene in Somalia as a watchdog over the political and business elite. It should be presumed that an organization as otherwise credible as UNSOM, as a human rights watchdog itself, would be wise to this form of attack on freedom of expression and human rights and not be so easily duped into facilitating the sort of fraud and corruption that it exists to protect against. UNSOM should not allow itself to become an institution that ignores international human rights law and disregards decision-making of competent United Nations bodies and national courts of a key bloc of United Nations Member States.

Based on the above, Mr. Osman and NUSOJ respectfully request that UNSOM modify its planned Report to account for the above authorities and properly accept and implement the decisions of the ILO, as the UN’s competent body to adjudicate labour union issues. Should

² See Regulation (EU) No 1215/2012, Articles 36 and 39, pursuant to which a “judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.” If a judgment is enforceable in the country of origin, it is enforceable in the other European Union countries without requiring any declaration of enforceability.

UNSOM refuse to comply with this request, NUSOJ will avail itself of all appropriate political and legal mechanisms to protect its rights. All rights, claims, and remedies are hereby reserved.

Sincerely yours,



Jeremy W. Schulman

Enclosures

Copies to:

H.E. Zeid Ra'ad Al Hussein
United Nations High Commissioner for Human Rights
Office of High Commissioner for Human Rights (OHCHR)
ZeidbinRaad@ohchr.org
InfoDesk@ohchr.org

Mr. Andrew Gilmour
Assistant Secretary-General for Human Rights
Office of the High Commissioner for Human Rights (OHCHR)
United Nations
New York, New York
Room: S-1311
gilmour@un.org

Mr. Omar Faruk Osman
Secretary-General
National Union of Somali Journalists (NUSOJ)
omar@nusoj.org