

Human and Trade Union Rights Report

SOMALIA



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Foreword

We are pleased to write the foreword to this report which takes a hard look at Somali workers' 5 years-long fight for independent, democratic trade unions and social justice since the independent national trade union centre, the Federation of Somali Trade Unions (FESTU) was formed in 2010.

The report puts Somalia's labour law and practice to the test against international workers' rights standards reflected in International Labour Organization conventions and the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

FESTU and its affiliated trade unions interviewed dozens of workers, union leaders, government officials, employer representatives, and advocates. Their stories inform much of this report, which also draws on worker affidavits, complaints and reports. It cites ILO conventions, conclusions and recommendations.

Somali trade unionists face similar challenges workers face everywhere, with some very terrible exceptions: blatant and whimsical official disregard for laid-down rules, threats of violence and assassination. In recent times, FESTU has witnessed ceaseless attacks and reckless interference from the Ministry of Labour. Union leaders and their members are attacked in order to stop dissent, silence trade union leaders and destroy the only mechanism that gives workers some control over their economic lives: their union.

In Somalia, legal, political and administrative state procedures act as tripwires to impede union organizing and offer little or no support or legal recourse in labour disputes. The labour law severely limits workers' rights to organise freely, bargain collectively and strike. Weak and inadequate enforcement mechanisms is another bane within the current industrial relations milieu.

The Somali labour movement, under the ambit of FESTU, weathered these challenges by building a broad leadership base with deep rank-and-file roots. FESTU continues to work daily to build membership, negotiate collective bargaining agreements, organise and mobilise workers, as well as seeking new ways to represent workers in informal employment arrangements. At the same time, Somali trade unionists have reached out to build strong ties with the African and international trade union community and to make the world aware of their struggles.

The dogged and resilient spirit of these workers are inspirational given the difficult and dangerous terrain they operate in and the injustices they are confronted with. They nevertheless continue to soldier on, believing that the injustices they face will be defeated.

Today, as the report notes, Somalia doesn't comply with the most basic human rights. Somalia needs to promote a just peace, create a democratic environment, establish the rule of law, and build a fair and prosperous economy, with full support of the international community. A necessary and important step forward is to end violence against working people.

As part of this process, the Somali government must bring the labour law into harmony with fundamental worker rights and genuinely commit to its enforcement, and end violations of trade union rights committed by its own officials.

For Somalia to prosper in peace, Somali workers must first gain their most basic human rights. Somalia can use this critical moment to establish itself more firmly along a path towards democracy and social justice.

By following this path, Somalia can give working people and their trade unions a chance to share in the national reconstruction and prosperity they are helping to create.

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Introduction

Since 1991, Somalis have suffered greatly from civil war. On 1 August 2012, the National Constituent Assembly of Somalia adopted the Provisional Constitution, a key milestone towards the end of the political transition. And on 20 August 2012, the Somali Parliamentary elections effectively marked the end of the transition period. The new federal Parliament elected Hassan Sheikh Mohamud as the President of Somalia on 10 September 2012, and a new Federal Government was formed.

Somalia's conflict is closely linked to competition over key economic resources, including the state. The lack of basic security and safety continues to hinder economic take-off in Somalia. The economy deteriorated as the physical infrastructure was destroyed. In addition to the loss of lives, the war worsened the population's living conditions, now among the lowest in the world.

Somalia's economy is largely dominated by the informal sector. The economy is based on international trade networks controlled by a small group of wealthy businessmen. The majority of the population lives at the subsistence level and is engaged in small-scale businesses, as petty traders, livestock or grain producers

Workers of Somalia had come out to organise themselves into trade unions to defend their rights and interests in this situation where there is a breakdown of rule of law, lack of protection for workers' rights from employers and other forces as well as re-establishing social dialogue. But trade unions have immediately borne the brunt of government officials and some unscrupulous employers.

Since coming into office in September 2012, the Federal Government of Somalia has made progress in implementing the federal structure and consolidating peace and stability in the regions where extremists and warlords were controlling. An African Union-led peacekeeping force continues to support Somali Security Forces in the fight against Al Shabaab, and has managed to reclaim significant territory over the last few years.

Serious and intensive discussions centring on progress made and challenges in implementing the new constitution, federalism, elections, resource sharing, reforming government agencies and good governance are currently taking place, given that there will be new parliamentary and presidential elections in 2016.



Trade Union Rights in Law

Economic recovery continues to be hampered by the still challenging security situation, poor infrastructure and limited financial resources in most regions of Somalia. The Somali economy remains heavily dependent on high levels of aid and remittances

Youth unemployment, the provision of social services such as education and health, and building sustainable livelihoods continue to be key economic development challenges. There is on-going exclusion of women, rural peoples and unemployed youth.



The Provisional Constitution of Somalia, which was adopted on 1 August 2012 as the highest law of the land adequately, guarantees workers and trade union rights. Article 16 specifies clear protection of the fundamental right of freedom of association.

Article 24 of the Constitution provides satisfactory guarantees for the "right to fair labour relations" for every person, the right for every worker to join or form a trade union and to participate in the activities of a trade union. It also guarantees the right to strike and the right to engage in collective bargaining regarding labour-related issues.

This Constitutional Provision also affirms that "all workers, particularly women, shall have a special right of protection from sexual abuse, segregation and discrimination in the work place. Every labour law and practice shall comply with gender equality in the work place."

Following successful campaign carried out by FESTU and its member union, the Federal Government of Somalia ratified on 20 March 2014 three fundamental International Labour Organisation (ILO) Conventions namely, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

In spite of the growing development of legal framework for industrial relation in Somalia, the exiting practice does not take cognisance of these gains. For instance, the controversial and draconian Labour Code

of 1972 is still the de facto law regulating industrial relations. The undue delay and inability of the Federal Government to pass a new labour code explains this. The labour code (No 65 of 1972) imposes serious obstacles to trade unions rights. It does not guarantee the right to freedom of association.

Part II of the Labour Code (LC) imposes limitations on the freedom of choice of trade union structure; the right to draw up their constitutions and rules; the right to elect representatives in full freedom; the right to freely organize activities and formulate programmes; the issues that can be covered by collective bargaining; excessive requirements for the establishment of unions and allows for the easy dissolution and suspension of trade unions.

Freedom of choice of trade union structure: Somali legislation infringes workers' right to freely determine the structure and composition of their union. Workers should have the right to form unions consisting of workers from different workplaces and cities. However, article 10 LC states that workers may establish unions "in the same occupation, trade or industry." Article 19 establishes that trade unions may appoint committees in accordance with the provisions of their constitutions or rules "be those who are actually working in the same occupation or trade or in related occupations or trades." These provisions imply that workers employed



in different occupations and sectors may not establish and join the same union and therefore impedes on the right of workers to decide on the composition of their union freely.

Excessive requirements for the establishment of unions: The minimum legal requirement for the number of founding members of a union is excessively high and poses a considerable hindrance to the unionization of workers. Article 10 LC states that a union shall have a minimum of 50 members. At the same time, Somalia's economy is by and large informal and the majority of the population is engaged in small-scale businesses. Thus, large parts of the workforce are unable to meet this requirement given the structure of the Somali labour market and are therefore excluded from the right to freedom of association at their workplace.

Internal administration of unions: Legal provisions allow for interference in the internal administration of unions and exceed the obligation to submit periodic reports to public authorities. Article 13 LC requires union rules to include a clause that would allow the inspection of the books and names of members by every person having an interest in its funds. This provision leaves a wide discretion to public authorities to carry out inspections and request information at any time constituting a risk to the guarantee of the right to organize their internal administrations without any constraints.

Right to freely organize activities and to formulate programmes: The law allows the government to interfere in the functions of trade unions. Article 17 specifically states that the functions of unions shall include, "facilitating the normal performance of the State enterprises and participation of workers in the planning and management of such enterprises; and ensuring increase of production and labour discipline."

This provision limits workers' right to freely organize activities as it imposes certain goals, which can prevent unions from defending the interests of their members by obliging them to reinforce the country's political and economic systems.

Dissolution of trade unions: Article 27 states that the government has the power to dissolve any trade union and the activities of which are considered to be detrimental to the interests of the workers or against the spirit of the revolution. This does not only mean that it is the government that has the competence to dissolve a union instead of an independent and impartial judicial body, and that unions are deprived of their right of defence through due process of law. By making the existence of unions conditional on their level of conformity with the broad concept of "the spirit of the revolution," the legislation prevents the development

of free and independent trade unions that are able to challenge socio-economic policies without the threat of dissolution.

Subjects covered by collective bargaining: The legislation provides restrictions on the scope of issues that can be negotiated through collective bargaining. Article 32 (2) states that the contents of a collective labour agreement shall take into account the state's revolutionary social policy, the role of trade unions and the responsibility of workers for increasing in every possible way the national production and their participation in the planning and management of national economy. Article 33 (j) specifies that collective agreements shall specify measures promoting workers participation in the management of the undertaking.

According to Article 42 (1) LC employment relationships governed by decisions of a public authority in accordance with law shall not be subject to regulation by collective labour agreement. The employment relationship can only be regulated through "special collective agreements" which are tripartite and it is the Ministry of Labour that has the right to take initiative and consult with workers and employers. The employment relationship can have serious implications on the working conditions of workers and thus the exclusion of this issue from collective bargaining negotiations seriously infringes the rights of workers.

The LC was adopted in 1972 during the military dictatorship of Mohamed Siad Barre. It is evidently largely insufficient to protect the right to freedom of association of workers and to establish sound industrial relations in Somalia. Numerous sections explicitly interfere in fundamental rights and must be amended.

LABOUR RIGHTS ABUSES

Poor and abusive working conditions

Majority of the Somali workers are working in poor and abusive working conditions, in breach both of national law and the International standards. Though working in different workplaces and settings, Somali workers have serious concerns and shared many of the exact same concerns.

Many workers raised concerns about pay and benefits, including not being paid their wages at all, late payment of wages and bonuses, denial of overtime payments, and denial of maternity and sick leave. The workers regularly complain about how they were treated by managers and their employers, and the pressure they are put under to complete work allocations which included resorting to forced overtime, physical abuse, and verbal abuse. These cases are frequent in agriculture, food, construction and transportation sectors in Mogadishu, Bosaso and Galkayo.

Public service workers who are employed by the Federal Government of Somalia and Puntland Regional State of Somalia have had severe delays of payments of their salaries. Workers employed by the federal government have endured 4 or 5 months delay of salaries in 2015 and even when paid they are not all paid arrears.

In Puntland, civil servants protested against the delay of payment of salaries in August 2015. While protesting, senior government officials threatened to recruit and replace the protesting workers as a strategy to break their protest. Media workers at Puntland TV protested



about lack of payment of salaries but the management used force by sending the police to arrest them. The industrial impasse was only resolved through the intervention of the Puntland President, which ensured that detained protesting workers released and their salaries paid.

Somali workers are mostly employed orally and they are fired orally. Engaged workers are seldom given written contracts with detail provisions of their rights, benefits, obligations and duties. The practice by employers to employ orally is driven largely by two reasons: a) ignorance in part, as well as crass disregard of the rights of workers; b) conscious attempt to dodge legal rights of workers in case taken to court of law. Unemployment rate and situation in Somalia is high and dire. Lots of unemployed persons are desperate to eke a living through waged employment and so the employers play on this reality. In the process, they engage workers on their terms more "take it or leave it" basis.

Somali workers do not get paid sick and maternity leave. In most cases, these fundamental rights are considered as luxury by employers. Worse still, there are no mechanisms to enforce these rights. Though the legal means exist, to pursue such path for redress is tedious, expensive and long for workers to explore. Working conditions are worst for workers in regions outside the capital city Mogadishu.

Workers in almost all of the main workplaces both in Mogadishu and outside Mogadishu complained that

managers do not pay wages or benefits in full or on time. This included pay for overtime, maternity benefits, the Eid holiday bonus, and compensation for working during vacations. One worker said that “if the manager gives you some “extra-money” for Eid day, the said manager thinks he did the workers a favour for which they must be grateful, as against being seen as fulfilling Somali laws”.

Another issue is arbitrary deductions from workers’ pay. “If we are not able to fulfil the production target, they deduct from our salaries” informed a farm worker in Afgoye district, 30 kms southwest Mogadishu. Some farm owners beat up female workers in front of everyone if they do not deliver water from the river or the production target is not fulfilled.

Women Workers have been complaining that pregnant women at their workplaces are denied maternity leave or given too little leave. A female union organiser working in a Mogadishu hospital said she was forced to resign her work before she gave birth. “I was forced to leave when I was seven months pregnant, and then stayed at home for two-and-a-half years. I know that it was illegal but because I was pregnant there was nothing I could do about it. Pregnant women are given a heavy load and if they couldn’t do it they are fired,” said a farm worker in Jowhar, 90km north of Mogadishu.

Workers in transport sector said they had witnessed truck or bus owners verbally and sometimes physically abusing their bus drivers for not bringing back the money expected from each journey. A driver complained that some bus owners have verbally and physically assaulted bus drivers and bus conductors for failing to meet set target even when force majeure situations hampered smooth operation.

Many workers told unions affiliated to FESTU that because they were given unattainable workload/task they were forced to work late at night or on holidays, and were then denied the overtime pay they should have received.

Many employers are failing to pay or delaying in the payment of wages and salaries to workers. Companies honour collective bargaining agreements largely in the breach because the government has been backing employers against workers. Furthermore employers with the help of the Ministry of Labour were failing to disclose full information during negotiations.



The formation of the Federation of Somali Trade Unions (FESTU), as the first independent and free national trade union centre was not without challenges. The officials of the Ministry of Labour of the former Transitional Federal Government set out in 2010 to reject recognition for the first independent and free national centre. They argued that FESTU’s formation was not approved by the Ministry and therefore cannot enjoy full recognition. Instead Ministry officials offered to elect leadership of FESTU to recognise them as “interim FESTU leadership” and that the Ministry of Labour will organise FESTU “national congress” to “elect” afresh leaders that the Ministry will recognise. But FESTU leadership and membership refused the proposed imposition as it constituted deliberate attempt by the Ministry to deny workers the right to freely elect their representatives. Consequently, the Ministry did not hesitate to label FESTU as an “illegal outfit”.

In order to mobilise workers under its control and deny workers their right to join freely the union of their choice, the Ministry of Labour appointed its own director of Labour as a head of Somali Federation of Trade Unions (SFTU) and dismissed any sector trade union that does not have the Ministry’s SFTU endorsement. The level of imposition and interference in trade union affairs and administration was without limit. For instance, in 2011, the Ministry of Labour got its Director of Labour turned “trade union leader” to serve as the workers’ representative that will form the tripartite team to sign the ILO backed Decent Work Country Programme. Again, FESTU supported by the International Trade Union Confederation (ITUC) successfully objected to this move. Thus,, the signature exercise for the Decent Work Country Programme was cancelled.

The Ministry took FESTU’s successful objection as an affront. Thus, the attacks, intimidation and interference were introduced and old ones scaled up. The Ministry of Labour officials resorted to writing endless contradictory letters with unsubstantiated contents to de-legitimise and denigrate genuine trade unions

Violations of Trade Union Rights

The right of all trade union members to participate in trade union activities flows from the right of workers to associate for trade union purposes. Any unlawful and unjustified action by the public authorities that impairs the right of the unionist to actively participate in union activities will violate the right to free association. In Somalia, unfortunately, the State has continued to deny trade unions the free exercise and enjoyment of these liberties.



In furtherance of the directives of the Minister, officials at the Ministry of Labour visited FESTU. The aims of the visits were: a) to formally notify FESTU of the said directive, and will-nilly, to demobilize FESTU from seriously contemplating staging its own commemoration; b) that affiliated unions of FESTU should make financial contribution to the organization of the Labour Day celebrations.

These moves and actions were vehemently resisted by the federation as it stressed that it's not the mandate and the task of the Ministry of Labour to organize workers. To do so is wilful interference and a conscious attempt to micro-manage legitimate, independent and democratic workers organisation. The International Workers' Day is a workers' event and workers only can choose how to mark and celebrate it in full freedom and without hindrance. FESTU and its affiliates went ahead to plan, finance and staged the commemoration of the event.

On 2 May 2015, the Ministry of Labour led and organised its own Labour Day celebrations. This is after meeting with frustrations from non-compliance from unions to make financial contributions to the celebrations.

On 5 May 2015, the Minister of Labour announced through the State Media (Radio Mogadishu and Somali National TV) that all trade unions have to submit their requests for registration afresh to the Ministry of Labour by submitting relevant documents, including a mandatory fee for registration. This was an attempt to delist, de-legitimise and ultimately criminalise legitimate and independent trade unions. The demand for registration fee as a pre-condition for registration and recognition is a direct attempt to extort money from workers' organisations.

One of the latest means of violating the rights of workers in Somalia is to retort to historical old practice of encouraging and forming counter unions, also referred to as "yellow unions" by governments and employers. Thus, the persistence of false trade unions, or "sweetheart unions," remains a major challenge in Somalia and constitutes a serious abrogation of the right to freedom of association.

The Ministry of Labour uses these sweetheart unions in representing workers at tripartite platforms without the knowledge and consent of workers. This denies true and independent workers' representatives the opportunity to take their rightful places in social dialogue processes and spaces. Also, these sweetheart unions are used as rubberstamps to canvass, endorse, legitimise and further government policies and legislations. This rubberstamp practice is more felt in relation to repressive and anti-workers decisions, policies and legislations.

leaders. They sought to criminalise trade union leaders to justify their ploys to impose surrogates on FESTU and its affiliate unions, concocted by the ministries of government who have nothing to do with the trade unions but meant to destroy independent union and turn them to yellow unions.

Officials at the Ministry of Labour were involved in initiating spurious legal proceedings against trade unions either through Crimes Investigations Department of Somali Police Force (CID) or the Office of Attorney General in order to incriminate, implicate and discredit union activists. The Office of the Attorney General and CID had issued at least 9 letters to trade union leaders in the sectors of media, agriculture, maritime and transportation.

Open acts of hostilities towards free, representative and independent trade unions have been increasing since the appointment of the current Minister of Labour & Social Affairs, Mr Abdiweli Ibrahim Mudey, who has been stigmatizing the legitimate leadership of FESTU as "illegitimate", "troublemakers", "Anti-government" and resorted to spread wild, defamatory and derogatory allegations in order to succeed his campaign to destroy the free and independent trade unions, and bring FESTU under the ambit of the Ministry, and set the independent trade union movement against the government as "anti-establishment" force.

To prevent FESTU-led commemoration of international Labour Day, which by implication means the denial of workers right to freely associate, assemble and celebrate their international day, Mr Mudey issued an official letter on 15 April 2015 with reference number WSHAB/MOLSA//01/0024//2015. In the letter, he appointed an organising committee of 12 people for Labour Day commemoration, led by Deputy Minister of Labour & Social Affairs, and followed this by an order in which he stated that no other entity can organise this commemoration and that State authorities should not fail to act decisively if his directives are flouted.

Union busting and reprisals against trade unionists

Many Somali workers involved in setting up trade unions - a "fundamental right" protected by the provisional constitution of Somalia - face violence, intimidation, threats, and loss of employment.



While in one sense the climate for union formation has improved in Somalia since 2010 when the Federation of Somali Trade Unions was established, unions affiliated with FESTU report that abuses of workers pressing for or leading unions has actually increased as employers and some government officials strive to push back against new unionization drives.

As some of the cases listed below would show, the trends are such that employers, especially small and medium business owners use sundry means including direct threats, harassment, assault, sack and divide & rule to prevent union formation and to bust existing ones.

Some workers involved in setting up trade unions in Puntland have faced extreme violence by managers. In one case, a worker who was leading a formation of transport union branch was beaten by a man he described as being an influential political person connected to the management of Bossasso airport.

In another case a pregnant worker who was a member of a textile union was beaten by men with cutting shears. It was believed that the assailants were sent by the owner of the workplace whom she had a dispute with regards to her rights at work. In yet another case, a female worker who was working in Middle Shabelle was hospitalized after being attacked by men with sticks.

Five activists of the Somali Maritime, Fishery and Port Workers Union were attacked as they helped workers at a fishery factory in Mogadishu sign union registration forms in August 2014. They told FESTU that the violence only stopped when the attackers thought they had killed one of them.

The union filed an assault case against the factory at the District Court. The next day, the fishery factory in turn filed a case against the five activists, accusing them of vandalizing the factory and stealing air-conditioners and computers.

Three days after, the President of the District Court ruled that “there is no case against the factory”. The speed and manner the case was handled by the President of the District Court, as well as the verdict, strongly suggested was compromised, most likely by the factory management.

Most nurse workers are women and are not spared physical attacks to prevent them from forming labour union. Organizers of a new union, Somali Nurse Workers Association (SNWA), say they were assaulted, in some cases brutally owners of private hospitals or clinics in Mogadishu. These hospital owners themselves believe that they are entitled to form a union since “they own hospitals or clinics” and the Nurse workers do not have right to form a union without hospital owners’ permission. Union organisers said scores of union members were fired.

Similar treatments were melted out to some agriculture workers. Two agriculture workers from a large farm in Lower Jubba region claimed that they lost their jobs after trying to organize a union branch. One of them also said he was attacked in July 2015: “one day the farm owner and three of his relatives found the membership card of the agriculture union. It had fallen out of my pocket. They said that I was being fired for being a member of the union and asked me to go and get job from the union”.

The Somali Hotel and Catering Workers Union (SHCWU) also reported that a hotel owner tried to prevent workers at his hotel from forming a union. The hotel owner serially harassed trade union organisers attempting to organise that workplace. In order to prevent a union activist in his hotel from pursuing union activities, the hotel owner increased the worker’s workload to the point where he had no time to speak with colleagues.

A Port worker in Bossasso told his union “some local militias beat me up and told me not to encourage other workers to join maritime union. Three managers and 8 outsiders were involved. They beat me up in front of the factory and told me to resign from the union or I would be killed”.

Another union activist at the Telecommunication and Post Workers Union recalled that on November 14, 2015, he received a threatening phone call from an unknown number warning him not to go to work. “A threatening man told me on the phone, ‘If we see you there we will shoot you and make sure you die.’” The next day, the activist was attacked when he was going to work and was hit with a car. Fortunately, he survived the attack as his assailants left him for dead and he had to be hospitalized.

The trade union helped the attacked union activist file a police complaint but the union leader told FESTU that the police did not investigate the matter. The

union leader was fired in December 2015 after he was absent from work for three days. “They used that as an excuse to fire me,” he said. “But the real reason is that I participate in union activities.” He said unpaid salary is still due her.

When workers involved in setting up unions are not physically attacked, they often face threats, intimidation, and increased workloads. In some cases, union leaders have also been threatened at their homes by hired militias. Some business owners sometimes also dismiss workers who chose to form unions.

A trade union leader, who was physically attacked when helping to form a union in Mogadishu, noted that assaults on union leaders had a chilling effect on many workers’ efforts to form unions. The union leader said the workers say to us, ‘even you leaders were beaten up or brutalised - so how can you protect us, what will be our fate if we join you?’ The union leader acknowledged that many workers are very afraid because employers are using this situation as an example of what can happen, and people are scared.

But union organisers demonstrate courage and commitment for workers’ interests. Rather than seeking personal gain, several of the union organizers said they had actually rejected bribes or promotions offered by managers in exchange for leaving the union. One of the union organizers explained why he thought unions are important. “we need trade union to build a good relationship, a bridge between the employers and the workers, to help us solve problems. I know that the managers think I’m a trouble maker, and they are afraid of me, but there is nothing they should be afraid of, we need to sit together and negotiate”.

Victimization of trade unionists through government-initiated actions has been routine, especially from the Ministry of Labour & Social Affairs. Particularly there has been victimization of trade union leaders and activists through government-sponsored slander and defamation. Credibility of independent trade unions is undermined by the interference of the Ministry of Labour in trade union work and its usage of “Government Organized Trade Unions” (GOTUs) or “yellow/sweetheart unions”.

Certain circles of the government went to the extent of pressuring members of the international community to listen and abide by their slanderous. They use lies, derogatory and defamatory attacks on trade unions with the aim to scare international community concerning trade unions.



VIOLENCE & IMPUNITY

In 2014, Somalia ratified ILO conventions 87 and 98. Somalia’s most recent Constitution, adopted in 2012, generally provides for freedom of association, the right to organize and bargain collectively, and the right to strike.

However, a number of laws and a host of mechanisms, both legal and illegal, limit these rights. In law and practice, Somalia violates the most basic principles of freedom of association and the right to organize and bargain collectively.

The largest single obstacle to worker rights in Somalia today is the climate of violence with impunity. Somalis are subject to murder, arbitrary arrest and detention, torture, violations of their rights to privacy and kidnapping. Journalists are subject to murder, harassment and intimidation, and practice self-censorship to avoid retaliation by corrupt officials, criminals, terrorists, and members of illegal armed groups.

Selective and systematic violence against union leaders and members reinforces anti-union strategies used by some private employers and the authorities as well as acts from terrorist groups. These strategies are aimed at discrediting union activity, immobilizing existing unions, and slowing or preventing the formation of new ones.

FESTU affiliated unions pointed out that some types of violations – such as some forced displacements of trade unionists in the agriculture and media sectors by Al-Shabaab terrorist group. They noted that these attacks were neither investigated nor perpetrators prosecuted.

Not surprising, then, the combination of government restrictions on organizing and collective bargaining; anti-union practices by both government officials (specifically from MOLSA) and employers; and the killing and intimidation of union leaders and members by Al-Shabaab terrorist group and other armed groups have undermined union organizing. This has also seriously jeopardized the prospects for a culture of industrial relations based on collective bargaining and social dialogue.

CHILD AND FORCED LABOUR

Journalists, followed by hotel workers, agriculture workers, telecommunication workers, transport workers and public service workers continue to be the main victims of the deadly violence. Journalism has become one of the most dangerous jobs in Somalia.

At least 86 workers in the hotel sector alone were murdered in Somalia in 2015. 6 media workers and at least 11 agriculture workers were killed in Middle and Lower Shabelle regions in 2015. While the number of killings of media workers declined and is not equal to the same number in other sectors, it is one of the most highly organised assassinations.

A decline in the number of murders of media workers or other workers hardly creates the political conditions under which workers can freely exercise their basic rights. Even if all workers' killings stopped tomorrow, it would be a long time before workers in Somalia would feel free to organize without fear of violent reprisal.

Violence against women union leaders and members must be read within a symbolic, political, and cultural context. Anti-union violence directed against women in Somalia is often generalized, trivialized, or simply attributed to gender discrimination.

The violent and non-violent repression of Somali workers and the emerging independent trade union movement constitutes the most egregious attack on civil liberties and social justice of the Somali people. The reign of anti-union repression is carried out with virtual impunity.

Although the Somali government has thousands of cases to pursue, it has failed to investigate, prosecute and bring to justice those responsible for the vast majority of murders committed against workers and trade union leaders/activists.

Perpetrators, who attack, assault, murder, assassinate, kidnap, threaten and terrorise trade unionists and workers have to be punished. Equally, the Somali government must take full responsibility for violations committed by its Ministry of Labour and Social Affairs. It therefore must be pressurised to respect core international labour standards and the UN declaration on human rights.

In 2014, Somalia ratified ILO Convention No. 182 on the Worst Forms of Child Labour. It has not ratified Convention No. 138 on the Minimum Age for Admission to Employment.

Child Labour

Somalia's constitution defines a child as "any person under 18 years of age", and stipulates that, "No child may perform work or provide services that are not suitable for the child's age or create a risk to the child's health or development in any way." However, it is unlawful to employ children under the age of 15 years, according to the 1972 labour code.

Many families in Somalia depend on income earned by their children to make ends meet. Child labour is a serious problem and dominant primarily in the informal economy. Children work in the agriculture sector, sometimes with their parents. They also work in construction and street work such as begging; selling cigarettes, shoe shining, washing cars and being conductors of minibuses. Female children are engaged as domestic workers. At least 45% male and 54% female children between the ages of 5-14 years old are considered to be involved in child labour in Somalia.

The use of children for military and violent expeditions is legendary in Somalia. Children are used to carry and plant explosive devices, operate checkpoints for militias or army and move weapons. Others serve as suicide bombers, conduct assassinations and provide security information.

Al-Shabaab uses children as child-soldiers and aids. The Somali government is also accused of using child soldiers.

Other sectors with high concentrations of child labour include marketplace and other informal work settings. Many are entirely separate from their families. These children cannot receive education because their family poverty situation forced them to work.

Forced Labour

Somalia has ratified both ILO conventions 29 and 105, the standards that deal with forced labour. Somalia does not engage in government-sponsored forced labour. The Constitution and laws prohibit forced or bonded labour.

Article 14 of the Provisional Constitution of Somalia prohibits forced labour. Article 464 of penal code punishes forced labour, apart from the cases of military or civil emergency.

However, the forced recruitment of child soldiers by Al-Shabaab and other militias like Ahlu Sunah Waljama in central Somalia is a significant problem. Article 29 of the Provisional Constitution specifies that "every child has the right ... not to be used in armed conflict". Government's enforcement capacity does not match the scale of the problem.

International Legal Labour Standards

The basic human rights standards that guarantee everyone the right to just and safe conditions of work including reasonable limitations on work hours and fair pay as well as non-discrimination in the work place are articulated in the Universal Declaration of Human Rights (UDHR).

These provisions are enshrined as legally binding commitments in several of the international human rights treaties, which Somalia has ratified. Key amongst them are both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as multiple core International Labour Organisation (ILO) conventions discussed below.

The International Covenant on Economic, Social and Cultural Rights ICESCR in particular requires all states party to ensure safe and healthy working conditions, reasonable limitations of working hours and non-discrimination in the work place.

Workers' right to organize is well established under international human rights law, and explicitly guaranteed in the ICCPR and the ICESCR. ILO Convention 87 concerning Freedom of Association and Protection of the Right to Organise and ILO Convention 98 concerning the Right to Organise and Collective Bargaining that Somalia has ratified are two core conventions that place primacy on workers' rights to organise.

These conventions, and their

authoritative interpretations by the UN Human Rights Committee, UN Committee on Economic, Social and Cultural Rights and the ILO Committee on Freedom of Association (CFA), which examines complaints from workers' and employers' organizations against ILO members, impose an obligation on the Somali federal government to ensure that they do not thwart workers' right to union formation and participation.

The ICCPR provides that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests". In the same light, the ICESCR recognizes "[t]he right of everyone to form trade unions and join the trade union of his choice."

As a party to the ICCPR, Somalia is required to "take the necessary steps . . . to adopt such legislative or other measures as may be necessary to give effect to" the right to form and join trade unions and to ensure that any person whose right to organize is violated "shall have an effective remedy."

As a member of the ILO, Somalia has "an obligation arising from the very fact of its membership in the

Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles the fundamental rights which are the subject of [the core] Conventions." The ILO CFA has noted that ILO members, by virtue of their membership, are "bound to respect a certain number of general rules which have been established for the common good....Among these principles, freedom of association has become a customary rule above the Conventions."

Under ILO Convention 87, CFA goes further to provide clarity on how these rights can be actualised, protected and preserved. It enthused that "Workers... without distinction whatsoever, shall have the right to establish and... to join organizations of their own choosing without previous authorization" and "to elect their representatives in full freedom." Authorities should refrain from any interference that would restrict this right or impede its enjoyment. States 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 organize includes the

right to official recognition through registration, and the conditions of registration cannot constitute a form of prior authorization before establishing a union. 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 organize.

Convention 98 guarantees that: "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment....Such protection shall apply more particularly in respect of acts calculated to ... [b] [c]ause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities."

The ILO Committee of Freedom of Association has repeatedly underscored the importance of adequate penalties and mechanisms to ensure compliance with laws against union interference.



Trade Unions' Victory for Freedom of Association

The International Labour Organisation (ILO), the UN's labour body, reached conclusions on systematic violation of freedom of association and trade union rights after a complaint submitted by the National Union of Somali Journalists (NUSOJ) and the Federation of Somali Trade Unions (FESTU) with the support of International Trade Union Confederation (ITUC) and made concrete recommendations for Somali government to implement in order to discharge international human rights obligation and international labour standards.

For the first time ever, Somalia was taken to the ILO supervisory bodies. On 28 December 2014, ILO received a detailed complaint backed by concrete evidence and well-documented cases of union rights violations. The government was given opportunity to reply, which they did. They concurred with some of the violations committed by its own officials and stated its position on trade unions. Insertions in the government's response had vindicated and authenticated the Somali Union (NUSOJ, FESTU) claims for human and trade union violations.

The report, conclusions and recommendations are pointers to the gravity of human and trade union rights violations going on in Somalia, and highlights serious and systematic trade union rights attacks. Facts of systematic violations of human and trade union rights are clearly documented in the ILO report.

The ILO Committee on Freedom of Association made following recommendations, which were adopted by ILO Governing Body:

- The Committee urges 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. The Government must also ensure that the right to freedom of movement is fully respected and enjoyed by the union leaders.



- The Committee urges the Government to take the necessary measures to ensure the protection and guarantee the security of the 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.
- The Committee requests the Government to review promptly the Somali Labour Code in consultation with the freely elected social partners with a view to ensuring its full conformity with Conventions Nos 87 and 98 and to provide a full report to the CEACR to which it refers the legislative aspects.
- In these circumstances, the Committee is bound to urge the Government to avail itself of all necessary ILO assistance in this regard.
- In light of the seriousness of the matters raised in this case and the apparent lack of understanding as to their fundamental importance, the Committee invites the Government, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, to come before the Committee at its next session in March 2016 so that it may obtain detailed information on the steps taken by the Government in relation to the pending matters.

The outcome of the ILO Governing Body (GB) meeting in November 2015 as far as freedom of association case on Somalia is concerned openly asserts the enormity of the violations endured by trade unions committed by the government, especially by Ministries of Labour and Information. The GB wants the government to stop interference in internal trade union affairs and other union attacks.

It also rebukes the government for making defamatory and derogatory statement against trade union leader. The GB equally called on the Somali Government to review the labour code in full consultation with and participation of "freely elected social partners".

Finally, the government was summoned to come before the ILO committee in March 2016 to assess the extent of implementation of the recommendations and conclusions of the ILO Governing Body.

Failure of federal government's responsibility

Somalia's system of governance shifted from centralised system and took a federal system with federal institutions, including a federal government and regional member States.

The poor and abusive working conditions in Somalia are not simply the work of a few rogue businessmen or employers willing to break the law and deny workers their fundamental human rights. They are the product of continuing government failures to enforce labour rights, hold violators accountable, and ensure that affected workers have access to appropriate remedies. The primary responsibility for protecting the rights of workers rests with the federal government of Somalia.

Whereas Somali law, despite adoption provisional constitution in 2012, still labour code falls short of international standards in important respects, rigorous enforcement of existing law, such as provisional constitution, would go a long way toward ending impunity for government officials and employers who harass and intimidate both workers and local trade unionists seeking to exercise their right to organize and collectively bargain.

While some institutions within the federal government of Somalia has taken steps to work with independent and freely organised trade unions, it bears responsibility for its failure over the years to enforce labour rights and some government institutions and officials committed gross violations against workers and trade unions. The Federal government has a responsibility to take action to counter such rights abuses.

The Ministry of Labour and Social Affairs is responsible for dealing with trade unions, but it is hampered by a lack of political will, capacity, and enforcement power, as well as dishonest or fraudulent conducts by those in the Ministry.

The Ministry states that it has a role to register unions but it fails to investigate unfair labour practices such as the harassment of union officers and members. In practice, Ministry officials commit some of the violations as had been recorded in this report.

Furthermore, the Ministry of Labour fails to apply its authority to enforce decisions such as reinstatement of wrongfully dismissed employees. The government is yet to propose to the parliament a bill meant to establish a labour court and appellate Labour Court.

The existing judiciary are slow and ineffective, and workers do not have the financial capacity to take cases to the court. A workers' lawyer opined, "all we can do is file cases against management in the district or regional courts and, in these courts, the case gets stuck in an abyss".

Despite abundant violations of labour rights, the Federal Ministry of Labour and Social Affairs (MOLSA) do not have professional and qualified labour inspectors.

Thus, the ministry fails to investigate and prosecute unfair labour practices, including anti-union discrimination, intimidation and harassment cases.



The government, especially the Ministry of Labour and Social Affairs, is also failing to effectively assume its responsibility for monitoring workplace so as to ensure safety and compliance to labour prescriptions. Instead of doing more to ensure protection when and where workers face intimidation and reprisals for trying to organize, pieces of evidence provided here alluded to the rather stark-naked attacks on human and trade unions rights perpetrated from within MOLSA.

Labour activists in Somalia go further, to accuse MOLSA of bias in favour of employers. The activists claim that the employers have strong political connections and relationship with political forces and government officials. They have equally alleged that some MOLSA officials are corrupt. "Instead of helping the unions as they are supposed to, they [ministry officials] help the employers. They are under pressure from higher authorities and there is also corruption. They don't treat us well," one union leader said.

Another union activist said that the corruption starts as soon as they try to register a new trade union. Some trade unions are asked to pay between US\$500 to \$1000. "When we go to apply for registration, they ask for bribes. If the union is approved, again at the time of registration, they ask for bribes" said a union activist.

The absence of a clear rule of procedures for labour disputes is another lacuna that the government and its supervisory ministry have not addressed. Somali trade unions continue to point as this development as one of the bane to the enjoyment of labour rights in the country. A trade union leader in the maritime sector informed that "when there are disputes between workers and employers or violations of the labour rights, there is no law that specifies how the case should be handled". He went further to add that "the absence of labour courts makes redress of rights' violation a disservice to the victims." This development he noted "promotes impunity". Besides, it is generally agreed that the general courts have a reputation for being slow and ineffective.

Another failure on the part of the Somali government in terms of labour rights protection and promotion is related to the current sanction regimes in the extant labour code. FESTU affirmed that penalties for rights violation as provided for in the the Labour Code are not sufficient to deter violations.

Gross inadequate operational resources available to the government and ministries equally undermine the effectiveness and efficiency in relation to Human and Trade Union Rights promotion. The dearth in operational resources makes labour and factory inspection, weak, sparse and irregular. Other labour relation administration duties have equally suffered as result.

Advancing Worker Rights in Somalia

The Way Forward

Somalia is not in compliance with ILO core labour standards on freedom of association, the right to organize and bargain collectively, and the elimination of discrimination, child labour, and forced labour. In fact, Somalia is not even in compliance with the most basic human rights.

Accordingly, achieving respect for workers' rights in Somalia will require not only addressing the typical needs of reforming labour law to meet international core labour standards while improving enforcement. It will also require an end to the violence and impunity stemming from a protracted armed conflict and terrorist attacks.

In building peaceful Somalia through national reconciliation, trade unions believe that a Somalia that will be based on justice under the dictates of the rule of law cannot be rebuilt from the current culture of impunity. Clearly impunity cannot be part of a just peace.

It remains to be seen whether the government will be able to halt the attacks on human and trade union rights and deliver accountability. This doubt is based on the fact that the Ministry of Labour and Social Affairs is itself one of the major violators of workers' rights. This fear and failure to deliver protection and justice for workers and trade unions is not only immoral and tragic, but does not bode well for the development of civil society and democratic institutions in Somalia.

Holding elections in 2016 alone do not confer the status of democracy. The suppression of grassroots voices that represent workers and their families destroys Somalia's opportunity to build a democratic, peaceful and just society where citizens do not have to fear death when they go to work. By condoning the on-going practices of crushing, undermining and threatening trade unions, Somalia is turning its back on the rule of law, and its best hope for democratic growth.



Despite the grave nature of the current situation, substantial steps can be taken now to improve respect for workers' rights in Somalia. While the role of Somali workers is paramount in advocating for their rights, the role of the Somali government, with the support of the international community, is critical. Employers, international financial institutions, and the international trade union community can also play key roles in ensuring respect for worker rights.

The Somali government can halt human and workers' rights violations and ensure respect for workers' rights by bringing its law and practice into harmony with core labour standards. The most important steps would be to end attacks on trade unions and abuse of public office at the Ministry of Labour and Social Affairs by ensuring compliance with principles of freedom of association and the right to organize and bargain collectively.

Somali government is strongly encouraged to genuinely work and cooperate with the ILO. One starting point will be to work together to ensure effective implementation of the recommendations of the ILO Committee on Freedom of Association (CFA) as contained in its November 2015 report.

The government can also promote compliance with core labour standards on the elimination of discrimination, child labour, and forced labour by effectively enforcing national laws restricting child and forced labour. The government is encouraged to seek technical and material assistance from the ILO and other development institutions towards this quest.

FESTU as a responsive and responsible social partner commit to genuinely work with our government and other local and international partners in the pursuit of a peaceful, just, democratic and prosperous Somalia. The federation takes its commitment seriously, which reflects in the very hard, extensive and uncompromising nature of this report.

This concern and commitment to a just Somalia is eloquently captured in the quote of the global icon, Nelson Mandela who said "a fundamental concern for others in our individual and community lives would go a long way in making the world the better place we so passionately dreamt of".



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