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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, 3–12 May 2021**

### **Opinion No. 18/2021 concerning Mohamed Abdiwahaab Nuur (Somalia)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,<sup>1</sup> on 23 December 2020 the Working Group transmitted to the Government of Somalia a communication concerning Mohamed Abdiwahaab Nuur. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> A/HRC/36/38.

## Submissions

### *Communication from the source*

4. Mohamed Abdiwahaab Nuur is a Somali citizen of Bantu ethnicity born in 1989, usually residing in Mogadishu. He is a journalist and editor for Radio Hiigsi, an independent, privately owned radio station in Mogadishu. Before his arrest, Mr. Nuur had been involved in the publication of pieces critical of the Government regarding human rights issues, since 2016. In his work, he has reported on abuses of power committed by security forces, restrictions on freedom of expression, and the targeting of marginalized communities in Shibis District.

#### a. Arrest and detention

5. According to the source, National Intelligence and Security Agency agents first arrested Mr. Nuur on 29 February 2020 and detained him in Godka Jila'ow Prison without access to counsel or contact with his family. This arrest is said to be linked to an editorial published on 26 February 2020 that criticized the Somali military. In that context, Mr. Nuur was beaten and threatened in order to force a confession.

6. The source explains that Mr. Nuur was initially released on 2 March 2020 on condition that he would not write about the security forces or speak about what happened during his detention. On an earlier occasion, on 13 June 2019 after work, National Intelligence and Security Agency officers had followed Mr. Nuur in an unmarked car, and fired a bullet in his direction, causing him to fall on a rock and break his leg. Later, they had identified themselves as National Intelligence and Security Agency officers and told Mr. Nuur that they would release him if he did not write about the shooting. When he refused to keep silent, the officers arrested him. After midnight, Mr. Nuur was able to call his family, who came to the station and apologized to officers in exchange for Mr. Nuur's freedom. However, in the morning, Mr. Nuur wrote on his Facebook page about his experience with the officers. The Shibis District National Intelligence and Security Agency commander called Mr. Nuur and directed him to take down the post, threatening to "deal with him" if he did not. Mr. Nuur took down the post out of concern for his safety.

7. The source alleges that on 7 March 2020, National Intelligence and Security Agency officers again arrested Mr. Nuur on his way to work. This was shortly after he had published an editorial criticizing Somali security forces. He was held incommunicado without access to a lawyer or his family for 92 days before being brought to a military court on 7 June 2020. Mr. Nuur's lawyers and family were able to see him once, on 8 June 2020. No formal charges were brought against Mr. Nuur during that period.

8. According to the source, although the National Intelligence and Security Agency commander in charge of Shibis District had allegedly stated during the arrest that Mr. Nuur would be released after questioning, Mr. Nuur was transferred to Godka Jila'ow Prison. The source further reports that shortly after his arrest, National Intelligence and Security Agency agents confiscated Mr. Nuur's phone and laptop, and likely gained access to Mr. Nuur's personal phone.

9. The source explains that following protests against his detention, organized by Somali journalists' organizations, the Ministry of Information, on 22 April 2020, reportedly issued a press statement claiming that Mr. Nuur had been arrested on suspicion of being a member of the militant group Al-Shabaab, and that he was under investigation in connection with a 2019 murder case. Three months after his 7 June 2020 detention, Mr. Nuur appeared before a military court and was transferred to Mogadishu Central Prison. However, neither his lawyers nor his family were made aware of this court appearance. By the end of July 2020, no charges had been brought against Mr. Nuur.

10. Additionally, it is alleged that National Intelligence and Security Agency agents severely beat and tortured Mr. Nuur while he was in detention at Godka Jila'ow Prison. They also used intense lights to deprive him of sleep and repeatedly interrogated him. As a result, Mr. Nuur suffered from chronic headaches, eye pain and haemorrhoids, but was unable to see a doctor. Furthermore, between 30 March and 5 April 2020, Mr. Nuur went on a hunger strike to protest against his continued detention. He later experienced severe health problems,

including a stomach ulcer and haemorrhoids. He was later forced to eat by National Intelligence and Security Agency officers, who threatened to kill him if he continued his strike.

11. The source reports that during his detention at Mogadishu Central Prison, Mr. Nuur was held in a six-metre-long cell with 189 other inmates, without access to running water, and had limited access to the washroom in the cell. He and other inmates were not provided with the required amount of time in natural light and he had to pay to have access to a bed and safe drinking water.

12. On 25 July 2020, two men, one of whom was masked, allegedly demanded to see Mr. Nuur at Mogadishu Central Prison. They took him out of his cell, turned on large, bright lights, and interrogated him, without the presence of his lawyer or his family, for approximately ten to twenty minutes, about his job and where he lived. As the two men left, they threatened Mr. Nuur, claiming that he was a member of Al-Shabaab.

13. According to the source, during a court hearing on 3 August 2020, the judge of the Military Court (at the level of first instance) stated that he did not find Mr. Nuur to be guilty of the charges brought against him. The judge ordered that all the charges against Mr. Nuur be dropped and directed that he be released. Mr. Nuur was released at some point between 3 and 5 August 2020. However, according to the source, since his release, Mr. Nuur has been subjected to severe harassment from National Intelligence and Security Agency agents and in particular from the commander who arrested him. The heightened levels of harassment and threats have put Mr. Nuur at severe risk for rearrest. Furthermore, it is reported that on 9 August 2020, five witnesses who appeared in the military court during the hearing that led to Mr. Nuur's release were arrested on orders from the National Intelligence and Security Agency. The source fears that a new attempt to build a case against Mr. Nuur is ongoing. Allegations were also spread in the media, stating that the court had been bribed to release Mr. Nuur.

b. Legal analysis

14. The source argues that the detention of Mr. Nuur constitutes an arbitrary deprivation of his liberty under categories I, II, III and V as set forth by the Working Group on Arbitrary Detention.

15. The source contends that Mr. Nuur's detention violated international and Somali constitutional protections for detainees. Mr. Nuur was arrested on 7 March 2020, and after three months of incommunicado detention, he was brought before a military court on 7 June 2020. The source reiterates that he was arrested without a warrant and was not promptly informed of the basis of his arrest, in violation of article 35 (2) of the Constitution. In fact, in July 2020, no formal charges had still been brought against Mr. Nuur; the Government only issued a statement on 22 April 2020, alleging that he was being held on suspicion of affiliation with Al-Shabaab. Mr. Nuur was also denied access to legal counsel and the Government did not inform his family of his situation or whereabouts from 7 March to 8 June 2020, and his family and his lawyers had no further access to him after 8 June 2020. Additionally, Mr. Nuur was held in detention for months before appearing before a judge, far exceeding the Somali constitutional requirement that detainees be brought before a competent court within 48 hours. Moreover, as Mr. Nuur is a civilian, a military court is an inappropriate setting in which to try him, violating the requirement that detainees must be brought before a *competent* court.

16. According to the source, Mr. Nuur's detention without charge failed to provide any legal basis for his detention. Despite the assertion by the Ministry of Information that Mr. Nuur was being held for terrorist affiliation, Mr. Nuur was held without charge from 7 March 2020 until at least the end of July 2020. Therefore, the source considers that the Government failed to provide prompt information regarding Mr. Nuur's arrest, in violation of his rights under article 9 (2) of the Covenant. The source considers that the Government's disregard for the procedural safeguards enshrined in the Constitution of Somalia renders Mr. Nuur's detention both unconstitutional and without legal basis, making his detention arbitrary under category I.

17. The source claims that the detention of Mr. Nuur is arbitrary because it resulted from the exercise of his fundamental right to freedom of expression and opinion. According to the source, Mr. Nuur's treatment falls under category II of arbitrary deprivation of liberty because despite international and Somali law clearly guaranteeing the right of individuals to freedom of expression, the authorities detained Mr. Nuur in direct retaliation for the exercise of that right. According to the source, there is a well-documented pattern of attacking and attempting to silence opponents and critics through harassment and arbitrary detention, particularly through accusations of association with terrorist organizations. For example, on 21 October 2019 the country's Minister of Information accused journalists of working for Al-Shabaab and threatened to take action, and on 2 April 2020 the National Intelligence and Security Agency made the same threat against another journalist. Notably, Mr. Nuur was first arrested on 29 February 2020, only three days after he had published his editorial criticizing the security forces. Moreover, the source claims that the National Intelligence and Security Agency commander who arrested Mr. Nuur has a history of targeting journalists and marginalized groups in Shibis District. He has also reportedly systematically arrested other individuals, accused them of affiliation with Al-Shabaab, and allegedly demanded money in exchange for their freedom. Moreover, he has previously targeted Mr. Nuur because of his work as a journalist. In 2019, he and other National Intelligence and Security Agency officers followed Mr. Nuur in an unmarked car on his way back from the radio station, shot at him and then arrested him. The source reports that one anonymous National Intelligence and Security Agency agent admitted to conducting surveillance of Mr. Nuur with the goal of intentionally incriminating him. Another officer admitted that there was such little evidence to arrest Mr. Nuur and felt uncomfortable following through with the arrest as commanded.

18. To the source, it is clear that the authorities targeted Mr. Nuur for arrest in retaliation for his criticism of the government security forces. Mr. Nuur is a journalist and editor for an independent radio station. During the first detention, in February 2020, National Intelligence and Security Agency agents reportedly interrogated him and threatened to kill him if he did not stop criticizing the security forces. He was released on condition that he would not speak about his detention. In March 2020, he was arrested again after receiving multiple threatening phone calls from the National Intelligence and Security Agency. When pushed by free press advocates to make a statement about Mr. Nuur's arrest, the Ministry of Information claimed he was being investigated for alleged "ties" to Al-Shabaab, which is, to the source, a typical tactic used by the State to suppress the work of journalists and justify their unlawful detention.

19. Additionally, the source argues that the attempt to prevent Mr. Nuur from continuing his criticism of the Government through arrest and baseless accusations of terrorist affiliation is in line with the broader history of the Government of Somalia of attempting to suppress the free expression and civic activism of individuals and constitutes a violation of article 19 (2) of the Covenant, article 19 of the Universal Declaration of Human Rights and article 18 of the Constitution. Moreover, because of Mr. Nuur's work as a journalist shedding light on human rights violations, the source states that he enjoys special protection under international law with respect to any detention related to his work. Any government interference – such as detention – which serves to restrict his speech is liable to give rise to heightened scrutiny from the Working Group. The source thus concludes that it is precisely his work – seeking to raise awareness regarding government conduct – that ultimately motivated his detention. Therefore, to the source, Mr. Nuur's detention is arbitrary under category II.

20. As regards the detention coming under category III, the source argues, firstly, that the authorities violated Mr. Nuur's right to be detained only by virtue of a judicial order. The source recalls that article 9(1) of the Covenant and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prohibit arbitrary arrest and detention and state that no one is to be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. However, in the case at hand, there was no judicial order to detain Mr. Nuur, and when the military court requested that the National Intelligence and Security Agency state the basis for arrest, the Agency's agents failed to provide any reason to the court.

21. Moreover, the authorities allegedly violated Mr. Nuur's rights to be promptly informed of the basis of his arrest, to be promptly brought before a competent judge and to

be tried without undue delay. Indeed, the arresting officer failed to inform Mr. Nuur of the basis of his arrest at the time of the arrest, and no basis was provided until 22 April 2020, after journalists' advocacy organizations had placed pressure on the Government; and more than three months after Mr. Nuur's arrest, no charges had been brought against him. Furthermore, Mr. Nuur was arrested on 7 March 2020 and detained at Godka Jila'ow Prison until he was brought before a military court on 7 June 2020. This three-month detention clearly exceeded the mandate that an accused detainee is to be brought before the court within 48 hours of arrest.

22. Thirdly, upon his arrest, Mr. Nuur was reportedly held incommunicado for three months before his lawyer was finally allowed to see him. Generally, a detention is considered to be incommunicado when the detainee's communication with his or her family and counsel is either prohibited or severely limited, resulting in a lack of opportunity for the detainee to challenge his or her detention or treatment while in detention. In the case at hand, the source claims that, for 92 days, Mr. Nuur was denied communication with his family and legal counsel, and was not provided with any charges against him nor brought before any court. The authorities' denial of access to counsel and of communication with family and failure to provide Mr. Nuur with a means of challenging his detention indicate that his detention was incommunicado. In this regard, the source recalls that incommunicado detention constitutes a violation of article 9(3) of the Covenant, which guarantees the right to be promptly brought before a competent court and disfavours the practice of pretrial detention. Moreover, when Mr. Nuur was eventually brought before a court, 92 days after his initial arrest, he appeared before a military court instead of a civilian court, denying his right to be promptly brought before a competent court.

23. The source further notes that article 14(3)(d) of the Covenant guarantees the right for those accused of penal offences to defend themselves through legal assistance, and that this right is affirmed by principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This right is also enshrined in article 35(6) of the Constitution. In the present case, Mr. Nuur was held incommunicado for three months without access to a lawyer, violating his right to legal counsel.

24. Finally, the source argues that the treatment of Mr. Nuur during his detention violated his right to be free from torture and cruel, inhuman or degrading treatment. Indeed, while Mr. Nuur was in detention at Godka Jila'ow Prison, National Intelligence and Security Agency agents severely beat him and used intense lights to deprive him of sleep to repeatedly interrogate him. As a result, he has been suffering from chronic headaches, eye pain and haemorrhoids, but has been unable to see a doctor.

25. For all the aforementioned reasons, the source considers that Mr. Nuur's detention should be found to be arbitrary under category III.

26. Concerning a category V violation, the source contends that the detention of Mr. Nuur is due to his ethnic origin. The facts appear to indicate that Mr. Nuur was targeted for arrest and subjected to harsher treatment because of his ethnicity as a Somali Bantu. Somali Bantus are generally subject to discriminatory treatment by the State and are often denied access to justice. Additionally, during his detention, Mr. Nuur reported that he had received death threats from two National Intelligence and Security Agency officers and had been told that they would kill him even if he was released because he came from the Bantu community and had no rights. This seems to indicate that these officers targeted Mr. Nuur not only in retaliation for his editorial but also because he would be unlikely to successfully seek a remedy for his treatment because he is a Somali Bantu. This supports the conclusion that he was targeted for arrest and ill-treatment because of his ethnicity, making his arrest and prolonged detention discriminatory on the basis of a protected class in violation of the Covenant and the Constitution.

27. On the other hand, the source argues that the detention of Mr. Nuur was also due to his political opinions, political participation, and status as a human rights defender and journalist. Indeed, Mr. Nuur was first arrested only three days after he initially published his editorial on 26 February 2020 criticizing the security forces. Although he was initially released on 2 March 2020, the officials explicitly told him that he would only be released on condition that he would not speak out regarding his experience in detention, indicating an

explicit attempt to silence Mr. Nuur from speaking out against National Intelligence and Security Agency abuses. However, when he again spoke out regarding his detention and treatment by the National Intelligence and Security Agency, he was arrested on 7 March and was held in detention until August 2020. Additionally, Mr. Nuur had previously been targeted for assassination attempts by the arresting officer, the National Intelligence and Security Agency commander for the Shibis District, who has a history of targeting journalists. Thus, the facts indicate that Mr. Nuur was arrested in light of his political opinions and activities; by extension, his detention was discriminatory, being based on his political opinions and his status as a journalist and human rights defender.

#### *Response from the Government*

28. On 23 December 2020, in accordance with its methods of work,<sup>2</sup> the Working Group transmitted the allegations made by the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 22 February 2021, detailed information regarding Mr. Nuur's situation and any comments on the source's allegations.

29. The Government did not reply to the communication by 22 February 2021. The Government did not request an extension of the time limit for its reply, as is provided for in paragraph 16 of the Working Group's methods of work.

#### **Discussion**

30. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

31. The Working Group notes that Mr. Nuur was in fact released sometime between 3 and 5 August 2020. However, in accordance with paragraph 17 (a) of its methods of work, the Working Group "reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned". In the present case, the Working Group is of the opinion that the allegations made by the source are extremely serious, and therefore proceeds to render the opinion.

32. In determining whether Mr. Nuur's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>3</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

33. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other applicable international and regional instruments.<sup>4</sup> Consequently, even if the detention is in conformity with national legislation, regulations and

<sup>2</sup> A/HRC/36/38.

<sup>3</sup> A/HRC/19/57, para. 68.

<sup>4</sup> General Assembly resolution 72/180, preambular para. 5; and Human Rights Council resolution 41/2, preambular para. 2; resolution 41/6, para. 5 (b); resolution 41/10, para. 6; resolution 41/17, preambular para. 1; resolution 43/26, preambular para. 13; resolution 44/16, preambular para. 25; resolution 45/19, preambular para. 9; resolution 45/20, preambular para. 2; resolution 45/21, preambular para. 3; and resolution 45/29, preambular para. 3. See also Commission on Human Rights resolution 1991/42, para. 2; and resolution 1997/50, para. 15; Human Rights Council resolution 6/4, para. 1 (a); and resolution 10/9, para. 4 (b); and opinions No. 41/2014, para. 24; No. 3/2018, para. 39; No. 18/2019, para. 24; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

practices, the Working Group is entitled and obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>5</sup>

34. The Working Group notes that Mr. Nuur has been detained on several occasions, namely from 29 February 2020 to 2 March 2020, from 7 March 2020 to 7 June 2020, and on a previous occasion on 12 June 2019.

#### *Category I*

35. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without a legal basis.

36. The source submits, and the Government has not rebutted, that Mr. Nuur was arrested without a warrant on 7 March 2020. For three months he was in incommunicado detention, during which time he was denied access to legal counsel and to his family. He was brought before a military court on 7 June 2020. The source submits that Mr. Nuur's detention was without a legal basis, as he was not promptly informed of the reasons for his detention, in violation of article 35 (2) of the Constitution; and that by July 2020, no formal charges had been brought against him, with the Government only issuing a statement on 22 April 2020 alleging that he was being held on suspicion of affiliation with Al-Shabaab.

37. The source considers that the Government's failure to promptly provide Mr. Nuur with the reasons for his arrest was in violation of his rights under article 9 (2) of the Covenant. The source thus considers the Government's disregard for the procedural safeguards enshrined in the Constitution as rendering Mr. Nuur's detention both unconstitutional and without legal basis, making his detention arbitrary under category I.

38. International law on detention includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

39. The Working Group has stated that in order for a deprivation of liberty to be justified, it must have a legal basis. It is not sufficient for there to be a national law or practice authorizing the arrest. The authorities must invoke a legal basis consistent with international human rights standards and apply it to the circumstances of the case. This did not happen in Mr. Nuur's case.<sup>6</sup>

40. When Mr. Nuur was arrested on 7 March 2020, there was no arrest warrant issued in respect of that arrest. The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary.<sup>7</sup> The Working Group

<sup>5</sup> Opinions No. 1/1998, para. 13; No. 82/2018, para. 25; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

<sup>6</sup> See, for example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 65/2019, para. 59; No. 71/2019, para. 70; No. 72/2019, para. 40; No. 82/2019, para. 74; No. 6/2020, para. 39; No. 11/2020, para. 37; No. 13/2020, para. 46; No. 14/2020, para. 49; No. 31/2020, para. 40; No. 32/2020, para. 32; No. 33/2020, paras. 53 and 71; and No. 34/2020, para. 44.

<sup>7</sup> See, for example, decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46.

reiterates that any deprivation of liberty without, as in the present case, a valid arrest warrant, is arbitrary and lacks legal basis.

41. The un rebutted submission of the source is that following his arrest, Mr. Nuur was not promptly informed of the basis of his arrest, in violation of article 35 (2) of the Constitution. As of July 2020, no formal charges had yet been brought against Mr. Nuur, the Government only having issued a statement on 22 April 2020 alleging that he was being held on suspicion of affiliation with Al-Shabaab. The Working Group has been presented with no valid exceptional grounds to justify departure from prescribed requirements under international law.

42. The Working Group also finds that, in order to constitute a legal basis for deprivation of liberty, the authorities should have informed Mr. Nuur of the reasons for his arrest, at the time of arrest, and of the charges against him promptly.<sup>8</sup> The failure to do so violates articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (2) of the Covenant and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders his arrest devoid of any legal basis.<sup>9</sup>

43. Furthermore, according to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the norm, and should be ordered for the shortest time possible.<sup>10</sup> In other words, liberty is acknowledged under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception.<sup>11</sup> Detention pending trial must thus be based on an individualized determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>12</sup> Following his arrests, Mr. Nuur was kept in detention for varying periods without being brought before a competent judicial authority. He was notably held incommunicado without access to a lawyer or his family for 92 days before being brought to a military court on 7 June 2020. The Working Group has stated that access to a lawyer is an essential safeguard in ensuring that the rights set forth in article 9 (3) and (4) of the Covenant are upheld.<sup>13</sup>

44. International standards set out in the Working Group's jurisprudence prescribe that the arrested person is to be brought before a judge within 48 hours.<sup>14</sup> The Working Group finds that the Government has violated articles 3 and 9 of the Universal Declaration of Human Rights, principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 48-hour stipulation by the Human Rights Committee, in regard to article 9 (3) of the Covenant.

45. As regards the incommunicado detention of Mr. Nuur for 92 days, the Working Group has consistently found that holding persons incommunicado violates their right to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant.<sup>15</sup> This view is consistent with that of the Human Rights Committee, which has stated in its general comment No. 35 (2014)<sup>16</sup> that "incommunicado detention that prevents prompt presentation before a judge inherently

<sup>8</sup> See, for example, opinion No. 10/2015, para. 34. See also opinions No. 46/2019, para. 51; No. 16/2020, para. 60; and No. 46/2020, para. 40.

<sup>9</sup> Opinions No. 46/2020, para. 40; No. 16/2020, para. 60; No. 46/2019, para. 51; and No. 10/2015, para. 34.

<sup>10</sup> A/HRC/19/57, paras. 48–58.

<sup>11</sup> *Ibid.*, para. 54.

<sup>12</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

<sup>13</sup> Opinions No. 61/2020, para. 70; and No. 40/2020, para. 29.

<sup>14</sup> Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; No. 6/2020, para. 45; No. 14/2020, para. 53; No. 31/2020, para. 45; No. 32/2020, para. 38; No. 33/2020, para. 75; and No. 34/2020, para. 51. See also Human Rights Committee, general comment No. 35 (2014), para. 33, citing *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), paras. 7.3–7.5. See also CCPR/C/79/Add.89, para. 17; CCPR/C/SLV/CO/6, para. 14; and CCPR/CO/70/GAB, para. 13.

<sup>15</sup> See, for example, opinions No. 45/2017, No. 46/2017, No. 79/2017, No. 11/2018 and No. 35/2018.

<sup>16</sup> See para. 35.



violates paragraph 3” (of art. 9 of the Covenant). The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>17</sup> and is essential in ensuring that detention has a legal basis. Given that Mr. Nuur was unable to contact anyone and especially his lawyer, which is an essential safeguard to ensure the ability of any detainee to personally challenge their detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

46. For the reasons articulated in the preceding paragraphs, the Working Group finds that that the deprivation of liberty of Mr. Nuur lacks a legal basis, and is thus arbitrary and falls under category I.

### *Category II*

47. The source asserts that the detention of Mr. Nuur resulted from the exercise of his fundamental right to freedom of expression and opinion through his work as a journalist and editor for an independent radio station, and that despite international and Somali law clearly guaranteeing the right of individuals to freedom of expression, the authorities detained Mr. Nuur in direct retaliation for the exercise by him of that right. The source further alleges that the action by the Government was part of a pattern of attempts to silence opponents and critics through accusations of association with terrorists, used to justify harassment and detentions. Mr. Nuur was arrested in retaliation for his criticism of government security forces.

48. According to the source, the attempts to prevent Mr. Nuur from criticizing the Government through arrest and groundless accusations of terrorist affiliation suppress free expression and civic activism of individuals and constitute a violation of article 19 (2) of the Covenant, article 19 of the Universal Declaration of Human Rights and article 18 of the Constitution. The source thus concludes that Mr. Nuur’s detention is arbitrary under category II.

49. The Working Group also notes the observation by the Human Rights Committee, in paragraph 8 of its general comment No. 25 (1996), that citizens take part in the conduct of public affairs by exerting influence through (among other ways) their capacity to organize themselves and that this participation is supported by ensuring freedom of expression, assembly and association.

50. The Working Group also recalls that article 19 (2) of the Covenant provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. The Human Rights Committee notes, in its general comment No. 34 (2011), that this right includes political discourse, commentary on public affairs, discussion of human rights, and journalism.<sup>18</sup> Moreover, as the restatement and interpretation of relevant international law by the four independent global human rights experts on freedom of expression and access to information make clear, “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’, are incompatible with international standards for restrictions on freedom of expression ... and should be abolished”.<sup>19</sup>

<sup>17</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, A/HRC/30/37, para. 3.

<sup>18</sup> Human Rights Committee, general comment No. 34, para. 11. See also, for example, opinions No. 31/1998, No. 52/2013 and No. 45/2019 (finding that journalism falls within the protection of freedom of expression under article 19 of the Covenant). Even statements considered unacceptable, disrespectful and in very bad taste by the authorities are entitled to protection. See opinions No. 10/2018, para. 63; No. 61/2018, para. 56; No. 20/2019, para. 71; and No. 14/2020, para. 65.

<sup>19</sup> Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, adopted in Vienna on 3 March 2017 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur for Freedom of Expression and the African Commission on Human and Peoples’

51. Although freedom of opinion and expression is not without limitation, article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one's rights and freedoms are for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. The Covenant similarly lists the legitimate limitations in its article 19 (3).<sup>20</sup> In the case of Mr. Nuur, the legitimate limitations of the right have not been met.

52. The Working Group therefore finds that Mr. Nuur's deprivation of liberty is arbitrary, falling within category II, as it resulted from his legitimate exercise of the rights and freedoms enshrined in article 19 of the Universal Declaration of Human Rights and article 19 (1) and (2) of the Covenant.

### *Category III*

53. Given its finding that Mr. Nuur's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that in such circumstances no trial should have taken place. However, as Mr. Nuur appeared before a military court, which acquitted him, the Working Group will now consider the alleged violations of the right to a fair trial.

54. The source alleges that in connection with Mr. Nuur's detention there was non-observance of international norms relating to the right to a fair trial, which was of such gravity as to give Mr. Nuur's deprivation of liberty an arbitrary character under category III.

55. As noted above, the source states that the authorities violated Mr. Nuur's rights in that his detention was not under a judicial order, contrary to article 9 (1) of the Covenant and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which prohibit arrests and deprivation of liberty except on such grounds and in accordance with such procedure as are established by law. In the present case, there was no judicial order to detain Mr. Nuur. Furthermore, Mr. Nuur was not informed of the basis of his arrest at the time of his arrest; rather, he was informed of this more than three months after his arrest, on 22 April 2020, after pressure had been placed on the Government by journalists' organizations. Furthermore, Mr. Nuur was brought before a military court only on 7 June 2020 – his three-month pretrial detention clearly exceeding the prescription that an accused detainee be brought before the court within 48 hours of arrest.

56. The source also stresses that following his arrest, Mr. Nuur was reportedly held incommunicado for 92 days before his lawyer was finally allowed to see him. This, according to the source, constitutes a violation of article 9 (3) of the Covenant which guarantees the right to be promptly brought before a competent judicial authority. The source also alleges a violation of article 14 (3) (d) of the Covenant, which guarantees the right for those accused of penal offences to defend themselves by means of legal assistance – a right affirmed by principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and also enshrined in article 35 (6) of the Constitution.

57. Lastly, the source argues that Mr. Nuur's right to freedom from torture and cruel, inhuman or degrading treatment was violated while he was in detention at Godka Jila'ow Prison, when National Intelligence and Security Agency agents severely beat him using intense lights to deprive him of sleep to repeatedly interrogate him.

58. In the Working Group's view, the Government failed to respect a number of Mr. Nuur's rights. The Working Group especially notes the denial of Mr. Nuur's right to be visited by his lawyer and his family when he was held incommunicado for 92 days contrary to principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Giving prompt

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Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa, para. 2 (a), available at

[www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc](http://www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc).

<sup>20</sup> See also articles 9 (2), 10 (2) and 11 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

and regular access to family members, as well as lawyers, is an essential and necessary safeguard for the prevention of torture as well as for protection against arbitrary detention and infringement of personal security.<sup>21</sup> The Working Group reiterates that denial of access to a lawyer is a violation of article 14 (3) (d) of the Covenant, which guarantees the right for those accused of penal offences to defend themselves by means of legal assistance – a right affirmed by principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

59. The right to legal assistance at all times is inherent in the right to liberty and security of person as well as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, article 14 (1) and (3) (b) and (d) of the Covenant, principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. The Working Group considers that this violation substantially undermined and compromised Mr. Nuur's capacity to defend himself in any judicial proceedings. As the Working Group has stated in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court,<sup>22</sup> persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension; and nor should access to legal counsel be unlawfully or unreasonably restricted.<sup>23</sup>

60. In the Working Group's view, Mr. Nuur's pretrial detention without an individualized judicial assessment for a period of 92 days clearly undermined the presumption of innocence guaranteed under article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It was also in clear violation of the right to be tried without undue delay under articles 10 and 11 (1) of the Universal Declaration of Human Rights.

61. The Working Group notes that when Mr. Nuur finally appeared before a court, it was before a judge of the Military Court (at the level of first instance). The Working Group considers the practice of civilians appearing before military courts to be in violation of article 14 (1) of the Covenant.

62. The Working Group notes that following Mr. Nuur's arrest by National Intelligence and Security Agency agents on 29 February 2020 and his detention in Godka Jila'ow Prison without access to counsel, he was severely beaten by National Intelligence and Security Agency agents, who also used intense lights to deprive him of sleep as he was repeatedly interrogated in order to obtain a confession. The admission into evidence of a statement obtained through torture renders the entire proceedings unfair, as the intentional infliction of physical or psychological pressure to obtain a confession was a violation by Somalia of its obligations under articles 2, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

63. Accordingly, the Working Group finds that the source has presented credible allegations that the absolute prohibition of torture enshrined in article 5 of the Universal Declaration of Human Rights and articles 2 and 16 (1) of the Convention against Torture and

<sup>21</sup> Opinions No. 10/2018, para. 74; No. 30/2018, para. 47; No. 35/2018, para. 39; No. 39/2018, para. 41; No. 47/2018, para. 71; No. 22/2019, para. 71; No. 36/2019, para. 56; No. 44/2019, paras. 74–75; No. 45/2019, para. 76; No. 56/2019, para. 83; No. 65/2019, para. 68; No. 6/2020, para. 54; No. 11/2020, para. 54; No. 31/2020, para. 51; No. 32/2020, para. 59; No. 33/2020, para. 87; and No. 34/2020, para. 57.

<sup>22</sup> A/HRC/30/37.

<sup>23</sup> *Ibid.*, annex, paras. 12–15 and 67–71. See also Human Rights Committee, general comment No. 32 (2007), para. 34.

Other Cruel, Inhuman or Degrading Treatment or Punishment has been violated in the present case.

64. Given the above, the Working Group concludes that the violations of the right to a fair trial are of such gravity as to give Mr. Nuur's deprivation of liberty an arbitrary character that falls within category III.

#### *Category V*

65. The Working Group will now examine whether Mr. Nuur's deprivation of liberty constitutes discrimination under international law for the purpose of category V.

66. As regards category V, the source contends that the detention of Mr. Nuur was due to his ethnic origin as a Somali Bantu. According to the source, Somali Bantu are generally subject to discriminatory treatment by the State and are often denied access to justice. In the case of Mr. Nuur, it was reported that he received death threats from two National Intelligence and Security Agency officers, who told him that they would kill him even if he was released because he came from the Bantu community and had no rights. Mr. Nuur was targeted for arrest and ill-treatment because of his ethnicity, making his arrest and prolonged detention discriminatory on the basis of a protected class in violation of the Covenant and the Constitution.

67. Additionally, the detention of Mr. Nuur, according to the source, was also due to his political opinions, political participation, and status as a human rights defender and journalist.

68. The Working Group recalls that under article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, it is incumbent upon the Government to assure to everyone within its jurisdiction effective protection and remedies against acts of discrimination and to eliminate all barriers faced by ethnic minorities.

69. Mr. Nuur's criticism of the Government and his persecution may be understood against the backdrop of the pervasive discrimination and persecution faced by the Somali Bantu ethnic minorities.

70. After considering the circumstances surrounding Mr. Nuur's arrest and treatment, the Working Group considers that Mr. Nuur's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2(1) and 26 of the Covenant on the grounds of discrimination based on ethno-religious origin and political opinion. His deprivation of liberty therefore falls under category V.

#### *Concluding remarks*

71. The Working Group recalls its findings that Mr. Nuur was arbitrarily deprived of his liberty without legal basis as a result of exercising his freedom of expression and in violation of his right to a fair trial and non-discrimination.

72. The Working Group reiterates that the duty to comply with international human rights standards rests with all State organs, officers and agents as well as all other natural and legal persons.

#### **Disposition**

73. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mohamed Abdiwahaab Nuur, being in contravention of articles 2, 3, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2(1) and (3), 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

74. The Working Group requests the Government of Somalia to take the steps necessary to remedy the situation of Mr. Nuur without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

75. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Nuur an enforceable right to compensation and other reparations, in accordance with international law.

76. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Nuur and to take appropriate measures against those responsible for the violation of his rights.

77. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Independent Expert on the situation of human rights in Somalia, for appropriate action.

78. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

79. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Mr. Nuur;
- (b) Whether an investigation has been conducted into the violation of Mr. Nuur's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Somalia with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

80. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

81. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

82. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>24</sup>

*[Adopted on 11 May 2021]*

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<sup>24</sup> Human Rights Council resolution 42/22, paras. 3 and 7.