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SOMALIA

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report highlights the severe restrictions on freedom of religion in Somalia and calls on the government to adhere to its international human rights commitments to protect this fundamental human right. Furthermore, it explains why Somalia must fully respect the right to freedom of expression and the right to freedom of religion within its borders and provide greater protection for Christians and other religious minorities. It also explains why Somalia should continue should resist calls to liberalize access to abortion due to the fact that there is no international human right to abortion.

(a) Freedom of religion or belief

3. Somalia has a population of approximately 15.4 million people¹, where more than 99 percent of the population are Muslim. The majority of Muslims in Somalia are Sunni and of the Shafi'i school of Islamic jurisprudence, while there is a small number of Sufi and Shia Muslims as well.² An unknown number of Christians and other religious minorities such as Jews, Buddhists, Hindus, those of traditional African beliefs, and those not affiliated with any religion constitute less than one percent of the population.³
4. Islam is the state religion and Shari'ah law is the governing source of laws.⁴ The provisional federal constitution (hereinafter, “PFC”) provides that all citizens have equal rights and duties before the law but stipulates that all laws must comply with the “general principles and objectives of Shari'ah”.⁵ Like many Muslim countries, Shari'ah law regulates the private life of citizens, yet, in Somalia there are no provisions exempting non-Muslims from the application of Shar'iah law. As a result, religious minorities, and in particular Christians, are victims of discrimination, violence and persecution across the country. The most targeted Christians are converts from Islam.
5. The PFC guarantees freedom of religion. It limits freedom of religion or belief as formulated in article 18 of both the Universal Declaration of Human Rights (hereinafter, “UDHR”) and the International Covenant and Civil and Political Rights (hereinafter, “ICCPR”). The UDHR establishes the right to change religion “alone or in community with others and in public or private, manifest belief in teaching,

¹ UN Data (United Nations Statistics Division), ‘Somalia: Country Profile’ (2019).

² Harvard Religious Literacy Project, ‘Islam in Somalia’ <<https://rlp.hds.harvard.edu/faq/islam-somalia>> accessed 14 October 2020.

³ Pew-Templeton Global Religious Futures Project, ‘Somalia’ http://www.globalreligiousfutures.org/countries/somalia/#?affiliations_religion_id=0&affiliations_year=2020®ion_name=All%20Countries&restrictions_year=2016, accessed 14 October 2020.

⁴ Provisional Constitution of the Federal Republic of Somalia, Art 2(1).

⁵ Id.

practice, worship and observance”.

6. Conversely, article 2 of the PFC expressly forbids conversion from Islam to any other religion and does not allow other religions to propagate in the country.⁶ This article and its reiteration in article 17(2) contradict the purpose of the religious freedom provisions enshrined in Somalia’s constitution⁷ and hampers the free practice of all religions, including Christianity.
7. While the Somali Penal Code does not criminalize apostasy or conversion from Islam to another religion, Articles 313 and 314 call for the imprisonment of whoever publicly brings into contempt “persons professing [Islam], places or objects of worship, or disturbs religious ceremonies or practices” and fines any person who publicly blasphemes “the Deity, symbols, or person venerated in the religion of the State”. The Penal Code also ambiguously provides that whoever brings the religion of Islam into contempt shall face imprisonment for up to two years.⁸
8. These provisions impede the free exercise of both religion and expression, and point to the State’s sanctioning of societal oppression against religious minorities. In accordance with international human rights treaties, it is the government’s responsibility to ensure that non-Muslim citizens do not live in fear of violent reprisal or death by publicly and privately living out their religious beliefs.
9. For the above reasons, Somalia is ranked third among the 2020 World Watch List of the top 50 countries where Christians are most persecuted. This is due primarily to the wide-spread belief that Somalis are only Muslim and the clan culture that perpetuates both the persecution of Christians by immediate and extended family members and the community at large, including the government.⁹

Societal Pressure on Christians and the Vulnerability of Women

10. Societal and familial antagonism towards Christianity is felt throughout Somalia. Families and clans regard the conversion from Islam to Christianity as a betrayal. The intolerance is so extreme that elderly Christians have reportedly been killed by their Muslim grandchildren, causing many of the elderly to flee away from their children and grandchildren.¹⁰ Women in particular are either killed or forced to relocate in cities far from their families and support. As a result, many children become orphans as Islamic extremists kill Christian families for their faith.¹¹
11. In October 2019, Sa’aada Hussein’s husband told their extended family that she was a Christian. The family then called for a gathering to judge her but she instead fled for her life leaving her husband and children behind. Shunned in society as a divorced woman, she is living in a different part of the country without any family or support.¹²

⁶ Provisional Constitution of the Federal Republic of Somalia, Art 2(2).

⁷ Provisional Constitution of the Federal Republic of Somalia, Art 17(1).

⁸ [PENAL CODE] art. 313 and 314 (Somalia).

⁹ Open Doors, 2020 World Watch List, <https://www.opendoorsusa.org/christian-persecution/world-watch-list/>.

¹⁰ World Watch Monitor, ‘Somalia Christians killed by their children’s children’, 2 March 2018, <https://www.worldwatchmonitor.org/coe/somalia-christians-killed-childrens-children/>.

¹¹ Jardine Malado, ‘Somalia church sees increase in number of orphans as more Christian parents are killed for their faith’, Christian Times, 8 March 2018, <https://christiantimes.com/article/somalia-church-sees-increase-in-number-of-orphans-as-more-christian-parents-are-killed-for-their-faith/73746.htm>.

¹² International Christian Concern, ‘Christian Mother in Somalia Flees Family in Fear for Life’, 7 October 2019, <https://www.persecution.org/2019/10/07/christian-mother-somalia-flees-family-fear-life/>.

12. In August 2019, a wife and mother of two children living in Burao was divorced instantly when her husband discovered she owned a Bible. Her husband took her two children away and threatened to take the Bible to the Islamic court so she could be stoned for being an “apostate”. Instead, her brothers beat her mercilessly with sticks and starved her. She didn’t denounce them to authorities for fear of being charged with “apostacy”. The mother of two has relocated to an undisclosed location for security reasons.¹³
13. In March 2017, an underground Christian woman was murdered and her son and husband were seriously wounded. Still, the head of the family, Suleiman Abdiwahab, stated that they could not allow their religion to be defiled by a “foreign, western” religion.¹⁴
14. When women convert to Christianity in Somalia, they suffer a double persecution of being labeled as an “apostate” and then forced to flee their homes and live as divorced women if they can make it out of their hometowns alive. Given that the Somali constitution provides for equal rights and duties of all citizens before the law, the Somali government has committed itself to protecting not only the rights of the Muslim majority, but also the rights of vulnerable Christian women targeted by family members, terrorist groups and government authorities.

Cases

15. While there is no apostasy law enshrined in the criminal code, government authorities have directly and indirectly sanctioned the targeting of religious minorities by allowing and in some cases inciting systematic violence and oppression against these vulnerable groups, and in particular Christians.
16. Recently, in October of 2020, a couple was arrested and charged with being “apostates and evangelists spreading Christianity” after an anonymous tip alerted police of “suspicious activity” in Mogadishu. During the press conference, the police encouraged citizens to report religious activity and threatened to enforce the blasphemy laws against “whoever dares to spread Christianity”.¹⁵
17. In 2017, politicians responded to the public outcry of the opening of a Catholic church in Hargeisa by closing it down only days after it was reopened. Prior to its short-lived reopening, the Catholic church had been closed for thirty years.¹⁶
18. Terrorist groups such as Al-Shabaab, the East African al-Qaeda branch, have also sought to enforce Shari’ah law against other Muslims, particularly those that do not abide by violent extremism, and non-Muslims alike by killing, maiming, and harassing anyone accused of apostasy, in particular those who have converted from Islam to

¹³ SomTribune, ‘Somaliland: Underground Christian Wife Says She Was Divorced, Beaten When Discovered’, 17 August 2019, <https://www.somtribune.com/2019/08/17/somaliland-underground-christian-wife-says-she-was-divorced-beaten-when-discovered/>.

¹⁴ Morning Star News, ‘Islamic Extremists in Somalia Kill Secret Christian, Her Son, Wound Husband, Sources Say’ 6 March 2017, <https://morningstarnews.org/2017/03/islamic-extremists-somalia-kill-secret-christian-son-wound-husband-sources-say/>.

¹⁵ Middle Eastern Concern, ‘Somaliland: Couple in need of prayer’, 6 October 2020, <https://meconcern.org/2020/10/06/somaliland-couple-in-need-of-prayer/>.

¹⁶ Tonny Onyulo, ‘Christian workers in Somalia worship in secret, fear al-Shabaab’, 7 January 2019, <https://religionnews.com/2019/01/07/christian-workers-in-somalia-worship-in-secret-fear-al-shabab/>.

Christianity.

19. In the struggle for control of Somalia over the past two decades, Al-Shabaab was forced to retreat after Ethiopian and United States forces pushed them out of Somalia's major cities.¹⁷ Even so, Al-Shabaab is responsible for the death of many government officials, Somali armed forces and civilians from contributing countries of the African Union Mission in Somalia (AMISOM). Al-Shabaab has characterized AMISOM's peacekeeping efforts as the invasion and occupation of "apostates".¹⁸
20. Since 2015, Al-Shabaab's rival the Islamic State in Somalia (ISS) has increased their activity all over the country expanding its membership and operations in southern and central Somalia.¹⁹ The increased spread of both groups presents an even greater threat to religious minorities and undermines the efforts of the government to combat religious persecution and terrorism throughout the country.
21. Many victims of religious persecution who have fled Somalia are still afraid to return to their homes.²⁰ Al-Shabaab's desire to eradicate all Christians from Somalia²¹ has internally displaced many families and in particular women. This has led to an increase in the population of internally displaced persons (IDPs) as well as Somalis living in diaspora, and has increased the targeted persecution of Christian converts around the borders of neighboring Ethiopia and Kenya.²²
22. Al-Shabaab, ISS, ethnic group leaders and mobs act with impunity. With the looming threat of becoming an Islamic State run by ISIL,²³ the Somali government should prosecute Al-Shabaab leaders and the like. If Somalis living in diaspora for fear of persecution ever hope to return to Somalia, the Somali government must ensure a future of peaceful co-existence of different religious groups while guaranteeing freedom of religion or belief throughout the country.

(b) Freedom of Expression

23. Article 18 of the PFC establishes that "every person has the right to have and express their opinions and to receive and impart their opinion, information, and ideas in any way". However, in practice the Somali government has arrested and detained several reporters and investigative journalists under the ambiguous blasphemy laws enshrined in the penal code.

¹⁷ BBC News, 'Somalia Profile: Timeline', (BBC News, 4 January 2018)

<<https://www.bbc.com/news/world-africa-14094632>> accessed 14 October 2020.

¹⁸ Al Jazeera, 'Somalia army chief survives suicide bombing in Mogadishu', 13 July 2020, <https://www.aljazeera.com/news/2020/7/13/somalia-army-chief-survives-suicide-bombing-in-mogadishu>.

¹⁹ Caleb Weiss, 'Reigniting the Rivalry: The Islamic State in Somalia vs. al-Shabaab', (2019) 12(4) CTC <<https://ctc.usma.edu/reigniting-rivalry-islamic-state-somalia-vs-al-shabaab/>> accessed 14 October 2020.

²⁰ Katie McQue, "They call for my slaughter": Somalia atheists living in fear', 2 December 2019, <https://globalvoices.org/2019/12/02/they-call-for-my-slaughter-somali-atheists-living-in-fear/>.

²¹ *Somalia: Al-Shabaab Swears to Eradicate Christians* [online video], Voice of the Martyrs, 31 May 2012, <<https://www.youtube.com/watch?v=3SdUdAdFRb0>>, accessed 14 October 2020.

²² *Somalia Country Report*, OPEN DOORS, <https://www.opendoorsusa.org/christian-persecution/world-watch-list/somalia/>.

²³ World Watch Monitor, 'Islamic State regrouping in Somalia 'without many obstacles'', 22 February 2018, <https://www.worldwatchmonitor.org/coe/islamic-state-regroups-in-somalia-without-many-obstacles/>.

24. In 2019, the Somali government detained several journalists²⁴ on criminal charges such as defamation, anti-national propaganda and even terrorism. The government also shut down a local broadcasting station²⁵ accusing the owner of disseminating false information. The International Press Institute (IPI), comprised of a global network of editors, has called on the Somali president Mohamed Abdullahi Mohamed to end the interrogation, harassment, and arrest of journalist and media outlets by national intelligence and government officials.²⁶

(c) Right to Life

25. According to the PFC, abortion is prohibited “except in cases of necessity, especially to save the life of the mother”.²⁷

26. Under the 1962 Penal Code, a person who performs or attempts to perform an abortion may be imprisoned for up to two years with the possible term rising if they do so regularly. In addition, medical practitioners guilty of the repetition of this crime would be permanently prohibited from practicing. Similarly, the person who administers to a pregnant woman the means to commit an abortion could face imprisonment from six months to two years.²⁸

27. A woman who consents to undergo an abortion faces imprisonment from one to five years, the same term given for someone who would “cause” the abortion. The Code nevertheless provides a reduced sentence for the termination of pregnancy due to the safeguarding of one’s honour or that of a near relative.²⁹

28. Activists who advocate for liberalized abortion insist that Somalia should fully decriminalize abortion and make it available on demand, claiming that it is not just a matter of improving maternal health and reducing maternal mortality and morbidity, but rather is an issue of fundamental human rights, of which abortion is supposedly one.

The right to life in international law

29. A so-called international “right to abortion” is incompatible with various provisions of international human rights treaties, in particular provisions on the right to life. Article 6(1) of the ICCPR states, “Every human being has the inherent right to life.” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.

²⁴ See Omar Nor, ‘Somali: Puntland brings criminal charges against journalist to silence critical reporting’, 22 October 2019, <https://www.modernghana.com/news/962741/somalia-puntland-brings-criminal-charges-against.html>;

Committee to Protect Journalists, ‘Somali journalist Ali Adan Mumin jailed despite court order for release’, 31 May 2019, <https://cpj.org/2019/05/somali-journalist-ali-adan-mumin-remains-jailed-af/>.

Article 19, ‘Somalia: Journalist sentenced to 18 months in prison for defamation and ‘fake news’’, 19 October 2017,

<https://www.article19.org/resources/somalia-journalist-sentenced-to-18-months-in-prison-for-defamation-and-fake-news/>; International Press Institute, ‘Somalia: Press Freedom deteriorating at a rapid pace’, 6 May 2020, <https://ipi.media/somalia-press-freedom-deteriorating-at-rapid-pace/>.

²⁵ Committee to Protect Journalists, ‘Somali authorities shut down radio station City FM, seek to question owner’, 23 December 2019, <https://cpj.org/2019/12/somali-authorities-shut-down-radio-station-city-fm/>.

²⁶ International Press Institute, ‘Somalia: Press Freedom deteriorating at a rapid pace’.

²⁷ Provisional Constitution of the Federal Republic of Somalia, Art 15 (5).

²⁸ Penal Code of Somalia, Art. 420.

²⁹ Penal Code of Somalia, Art. 422.

30. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states that the “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” This clause must be understood as recognizing the unborn child’s distinct identity from the mother and protecting the unborn child’s right to life.
31. The travaux préparatoires of the ICCPR explicitly state that “the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.”³⁰ Similarly, other early UN texts note that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the *interests of the unborn child*.”³¹
32. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”
33. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

Legalizing abortion does not make it safe

34. The medical infrastructure in Somalia, like much of Sub-Saharan African countries, is poor, with an inadequate number of trained health professionals and unsanitary, poorly- equipped health facilities. Women who receive abortions will still face the same poor conditions faced by women who give birth and deal with similar complications, such as bleeding and infection. Providing more access to abortion will mean more women will suffer from abortion complications.
35. High rates of maternal mortality have less to do with the legality of abortion per se than with an inability to access obstetric care, lack of information, and lack of health workers, especially in the case of women living in poverty and in rural areas.
36. Emphasis on the legalization of abortion detracts from the need to further invest in quality obstetric care, nurse-practitioners and medical provisions for women, particularly in remote and poor areas. Haemorrhage, hypertensive disorders and sepsis account for a high number of maternal deaths throughout the country. Further, abortion can never be safe because it takes the life of the unborn child.

³⁰ A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a “supplementary means of interpretation.”

³¹ Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10. ³¹ A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a “supplementary means of interpretation.”

Reducing recourse to abortion

37. Somalia must focus on introducing measures to reduce recourse to abortion, instead of focusing on legalizing it, in line with paragraph 8.25 of the Programme of Action of the International Conference on Population and Development. Measures to reduce abortion include improving access to education, which empowers women and leads to social and economic development, as well as facilitating healthy decision-making.
38. Somalia must also focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Given that Somalia has the highest number of pregnancy and child-birth related deaths in the world,³² resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(d) Recommendations

39. In light of the aforementioned, ADF International recommends the following:

- (a) Ensure that the right to freedom of religion or belief is guaranteed and protected within Somalia, and that Christians and other religious minorities are treated equally and with respect to all of their human rights and fundamental freedoms by both society and the State;
- (b) Repeal all laws that negatively impact religious freedom including provisions of the blasphemy laws that impose serious restrictions on the free exercise of religion and freedom of expression; and in particular, those that prohibit conversion.
- (c) Prosecute and punish all cases of religiously motivated violence against individuals;
- (d) Develop a legislative framework for freedom of the press and media;
- (e) Resist calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn;
- (f) Improve health-care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and
- (g) Focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds.

³² United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 'Maternal Mortality in Somalia: What ARC is doing to combat this crisis', 29 October 2018, <https://reliefweb.int/report/somalia/maternal-mortality-somalia-what-arc-doing-combat-crisis>.



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