



NGO: EUROPEAN CENTRE FOR LAW AND JUSTICE (ECLJ)

**UNIVERSAL PERIODIC REVIEW
38TH SESSION**

**STATUS OF HUMAN RIGHTS IN THE FEDERAL REPUBLIC OF SOMALIA
FOR THE 38TH SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

*www.ECLJ.org
4, quai Koch
67000 Strasbourg, France
Phone: +33 (0)3.88.24.94.40*

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ holds Special Consultative Status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the Federal Republic of Somalia (Somalia) for the 38th Session of the Universal Periodic Review (UPR).

Background

2. Somalia is home to over 15.6 million people and is a predominately Muslim country with nearly 99% of the population being Sunni Muslim¹. The overwhelming Muslim population is reflected in the country's provisional Constitution which establishes Islam as "the religion of the State"². In its 2020 World Watch List Report on religious freedom issues around the world, Open Doors ranked Somalia as the third worst place to live for Christians³.

3. Somalia's most recent UPR was considered on 22 January 2016⁴. Of the 228 recommendations Somalia received, it accepted 168 and took note of 60⁵, an improvement upon its acceptance of 155 recommendations, after its previous 2011 UPR⁶. Somalia accepted recommendations regarding its ratification of the Convention on Elimination of all Forms of Discrimination Against Women, the enforcement or enactment of international or domestic human rights law, the protection of children, particularly from child soldiering, and its efforts to combat terrorism⁷. Somalia agreed to further examine recommendations urging its accession to a number of international treaties, its formulation and adoption of a permanent constitution, and instituting a stay on capital punishment⁸.

4. Many countries requested that Somalia "[f]inalize and adopt the Federal Constitution, without delay, in coordination with the Federal Government, regional administrations, civil society and the Somali public"⁹. Despite agreeing to examine the idea of adopting a permanent Constitution, however, Somalia is still operating under a provisional Constitution which was adopted in August of 2012.

Legal Framework

5. As previously stated, Somalia is currently operating under a provisional Constitution. This provisional Constitution is extremely flawed and severely restricts the ability for non-Muslims to peacefully and freely exercise their religion.

6. Article 11 provides that "[a]ll citizens regardless of . . . religion . . . shall have equal rights and duties before the law"¹⁰. While the provisional Constitution claims to allow other religions to practice their faith, other articles provide evidence to the contrary.

7. For example, article 17 guarantees the freedom of religion: "(1) Every person is free to practice his or her religion." However, it goes on to state: "(2) No religion other than Islam can be propagated in the Federal Republic of Somalia"¹¹.

8. Moreover, article 2 states:

(1) Islam is the religion of the State

(2) No religion other than Islam can be propagated in the country.

(3) No law can be enacted that is not compliant with the general principles of Shari'ah¹².

9. Article 3 establishes the Quran as the foundation for the Constitution: “The Constitution of the Federal Republic of Somalia is based on the foundations of the Holy Quran and the Sunna of our prophet Mohamed (PBUH) and protects the higher objectives of Shari'ah and social justice”¹³.

10. These Constitutional articles severely impact the ability for Somali citizens to practice their faith, especially Christians, who can be punished simply for sharing their belief in Jesus as the Son of the one and only true God, as this can be viewed as propagating a religion other than Islam. This can also be viewed as a violation of the Penal Code which states in article 313 that “Whoever publicly brings the religion of Islam [1 Const.] into contempt shall be punished with imprisonment [96 P.C.] up to two years”¹⁴.

11. Somalia has signed the Universal Declaration of Human Rights (UDHR) and is a party to the International Convention on Civil and Political Rights (ICCPR). Both of these international covenants protect religious freedom by prohibiting government discrimination on the basis of religion.

12. Article 2 of the UDHR provides that:

Everyone is entitled to all the rights and freedoms set forth in the Declaration, *without distinction of any kind*, such as . . . *religion*, political or other opinion, national or social origin, property, birth or other status¹⁵.

13. Article 18 of the UDHR provides further protection for religious freedom:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance¹⁶.

14. As a party to the ICCPR Somalia has pledged to uphold its principles. Article 18 of the ICCPR states that:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching¹⁷.

15. Furthermore, under article 27 of the ICCPR:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities *shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion*, or to use their own language¹⁸.

16. Currently, Somalia's provisional Constitution and Penal Code do not hold up to the standard set by the UDHR and ICCPR.

Religious Persecution in Somalia

17. In addition to being a minority religion, the danger to Christians in Somalia is in large part due to Al-Shabaab, an al Qaeda-affiliated terrorist organisation that is attempting to establish an Islamic state in Somalia and has expressed a desire, repeatedly, to eradicate Christians from the country¹⁹. Al-Shabaab rose to prominence in 2006 and has caused a great deal of death and destruction since that time²⁰.

18. For example, in August of 2020, Al-Shabaab militants stormed a hotel armed with AK-47s and explosive devices; they detonated a car bomb located outside of the hotel before shooting their way in. This heinous attack resulted in the death of 11 civilians and one police officer²¹.

19. One Christian community in Mogadishu, the capital of Somalia, has as few as thirty members. One member of this community, who went by the name 'Moses' in order to remain anonymous, explained that they must live in secrecy in order to avoid harassment by the government, friends, neighbors, and even members of their own family, stating "[v]iolence is in [our] homes and we, who are few, we risk our lives every day"²². John, a Kenyan Pastor who is working in Mogadishu described being Christian on a daily basis in Somalia:

It's very dangerous for anyone to identify you as a Christian in the country. You will, in fact, be counting your days on earth . . . So we are always silent as long as we meet and share the word of God in private. But we have always trusted Jesus for protection as the Bible says²³.

20. Al Shabaab has threatened to execute Christian converts in areas it controls, going so far as to harass humanitarian aid workers it claims intend to promote Christianity. In July 2019, the group killed an NGO worker in Buulo Cadey, reflecting a larger trend of targeting aid workers in the country²⁴.

21. In February of 2017, extremists identified as belonging to Al-Shabaab attacked a Christian family while they were sleeping²⁵. Both parents were Christians who converted from Islam²⁶. While the family slept, armed extremists broke into the house and opened fire, killing the mother and eleven-year-old son and wounding the father, saying "[w]e cannot allow the defiling of our religion with a foreign, Western religion"²⁷. The father, who survived the attack, shared the horrifying details of that night: "[t]he gunmen fired several shots, then destroyed the door with a big metallic object and then were able [to] enter into the house . . . They randomly shot at everyone."²⁸

22. In June of 2019, a Somali woman who was secretly a Christian left the drawer containing her Bible unlocked²⁹. Her husband found the Bible and immediately divorced her, preventing her from seeing her two daughters and threatening to report her local officials,

which could have resulted in her death³⁰. Her brothers also beat her and refused to give her food, but she could not seek help from local police for fear of being arrested and punished for apostasy³¹.

Children in Armed Conflict

23. Somalia has also signed the Convention on the Rights of the Child, which guarantees protection for all people under 18 years of age³². Article 37 provides that:

States Parties shall ensure that

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action³³.

24. Further, article 38 provides:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. . . .

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict³⁴.

25. In 2018, Somalia had the worst record of recruitment of child soldiers in the world³⁵. Al Shabaab forcibly recruited dozens of children, some as young as 10 or 12 years old, in 2018 and 2019³⁶. Further, the Somali and Puntland governments continue to arrest and militarily try children for crimes including affiliation with al Shabaab and “offending the military institution.”³⁷

Conclusion

26. The 38th Working Group on the UPR must address the egregious violations of religious freedom and due process rights and urge the government of Somalia to adopt a permanent constitution that is in line with the international treaties it has ratified, including the ICCPR

and UDHR. Somalia is subject to the ICCPR and UDHR and has committed, in its own constitution, to abide by the standards set by these important documents. Thus, the Somali government must work to ensure that its constitution truly protects the human right to religious freedom and due process for *all* of its citizens. Somalia also must ensure that its most vulnerable population, children, are not recruited as soldiers or tried for military crimes. Further, the Somali government must not discriminate against its citizens and must ensure that those who act on their own volition outside of the law are held accountable for targeting, harassing and harming others because of their religious beliefs. Christians and other religious practitioners should be able to openly and freely practice their faith without fearing for their lives.

¹ *World Watch List: Somalia*, OPEN DOORS, <https://www.opendoorsusa.org/christian-persecution/world-watch-list/somalia/>.

² The Federal Republic of Somalia Provisional Constitution art. 2, *available at* <http://extwprlegs1.fao.org/docs/pdf/som127387.pdf>.

³ *World Watch List: Somalia*, *supra* note 1.

⁴ *Universal Periodic Review – Somalia*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/SOindex.aspx> (last visited 1 Oct. 2020).

⁵ Report of the Human Rights Council on its Thirty-Second Session, A/HRC/32/2 p. 127, 132, ¶¶ 856–57, 890 (14 Nov. 2016).

⁶ National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, A/HRC/WG.6/24/SOM/1, pg. 9 (28 Oct. 2015), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/245/97/PDF/G1524597.pdf?OpenElement>.

⁷ Report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/32/12, ¶ 135 (13 Apr. 2016), <https://undocs.org/A/HRC/32/12>.

⁸ *Id.* ¶ 136.

⁹ FEDERAL REPUBLIC OF SOMALIA: UNIVERSAL PERIODIC REVIEW, SECOND CYCLE 2016 8 <https://lib.ohchr.org/HRBodies/UPR/Documents/Session24/SO/Somalia.pdf> (last visited 29 Sept. 2020).

¹⁰ FEDERAL REPUBLIC OF SOMALIA PROVISIONAL CONSTITUTION, Aug. 1, 2012, art. 11 (Som.), *available at* <http://extwprlegs1.fao.org/docs/pdf/som127387.pdf>.

¹¹ *Id.* art. 17.

¹² The Federal Republic of Somalia Provisional Constitution art. 2, *available at* <http://extwprlegs1.fao.org/docs/pdf/som127387.pdf>.

¹³ *Id.* art. 3.

¹⁴ Penal Code Legislative Decree No. 5 of 16 December 1962, art. 313 (*Unofficial Translation*) *available at* https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=88090.

¹⁵ U.N. General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A, art. 2.

¹⁶ *Id.* art. 18.

¹⁷ International Covenant on Civil and Political Rights, Dec. 16 1966, S. Treaty Doc. No 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. art. 18.

¹⁸ *Id.* at 27.

¹⁹ *World Watch List: Somalia*, *supra* note 1; ROB WISE, CTR. FOR STRATEGIC & INT’L STUD., AL SHABAAB 3 (July 2011), *available at* http://www.operationspaix.net/DATA/DOCUMENT/4039~v~Al_Shabaab.pdf.

²⁰ WISE, *supra* note 19, at 1.

²¹ Nicholas Bariyo, *Hotel Assault in Somalia’s Capital Raises Fresh Questions About Al-Shabaab*, WALL ST. J. (17 Aug. 2020, 1:51 PM), <https://www.wsj.com/articles/hotel-assault-in-somalias-capital-raises-fresh-questions-about-al-shabaab-11597686674>.

²² *Somalia Christians “Killed by Their Children’s Children”*, WORLD WATCH MONITOR (2 March 2018), <https://www.worldwatchmonitor.org/coe/somalia-christians-killed-childrens-children/>.

²³ Tonny Onyulo, *Christian Workers in Somalia Worship in Secret, Fear Al-Shabab*, RELIGION NEWS SERV. (7 Jan. 2019), <https://religionnews.com/2019/01/07/christian-workers-in-somalia-worship-in-secret-fear-al-shabab/>.

²⁴ U.N. Chair of the S.C. Comm. Pursuant to Resol. 751 (1992) Concerning Som., Letter dated 1 Nov. 2019 from the Chair of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council, S/2019/858 (1 Nov. 2019).

²⁵ *Islamic Extremists in Somalia Kill Secret Christian, Her Son, Wound Husband, Sources Say*, MORNING STAR NEWS (6 Mar. 2017) <https://morningstarnews.org/2017/03/islamic-extremists-somalia-kill-secret-christian-son-wound-husband-sources-say/>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Christian Mother in Somalia Divorced, Beaten*, MORNING STAR NEWS (16 Aug. 2019), <https://morningstarnews.org/2019/08/christian-mother-in-somalia-divorced-beaten/>.

³⁰ *Id.*

³¹ *Id.*

³² Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/44/49 (1989), art. 1.

³³ *Id.* art. 37.

³⁴ *Id.* art. 38.

³⁵ *Somalia: Events of 2019*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/somalia#> (last visited 5 Oct. 2020); U.N. Assistant Sec’y-Gen. for Humanitarian Affs. and Deputy Emergency Relief Coordinator, *Briefing to the Security Council on the Humanitarian Situation in Somalia*, 22 May 2019, at 3, <https://reliefweb.int/sites/reliefweb.int/files/resources/ASG%20Statement%20to%20SC%20on%20Somalia%20-%20as%20delivered%20-%2022%20May%202019.pdf>.

³⁶ *Somalia: Events of 2019*, *supra* note **Erreur ! Signet non défini.**

³⁷ *Id.*; U.N. Chair of the S.C. Comm. Pursuant to Resol. 751 (1992) Concerning Som., *supra* note 24.