

Report for the U.S. Department of Justice

LL File No. 2016-013913

Somalia: Treatment of Religious Minorities

July 2016



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Somalia: Treatment of Religious Minorities

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SUMMARY Somalia is a predominantly Muslim country with few religious minorities. The country is home to a small Christian community, as well as Muslim minority groups such as the Ashraf and Shekhal. These groups are reportedly subjected to a great deal of abuse, including at the hands of non-state actors and society at large. Members of minority groups who live in areas of the country that lack stability, in the southern and central part of the country in particular, appear to bear the brunt of the abuse. While those that reside in areas where there is relative stability fare better, they are not immune from persecution, and there appears to be an inability or unwillingness on the part of government institutions to provide protection and remedy abuses.

I. Introduction

The gravity of the abuse directed at religious minorities in Somalia is closely tied to the country's recent turbulent history. For over two decades, Somalia has been known as a "failed state," a reference to the lack of "the physical reality of security, sovereignty and a centralized government."¹ The chaos, enduring violence, and famine that has engulfed the country during this period began in 1991 with the collapse of the Siad Barre government.² This event was followed by successive civil wars involving various groups; international interventions, including by neighboring countries, the United Nations, and the African Union; numerous attempts to establish a transitional government; massive civilian deaths; and both internal and external displacement of large segments of the country's population.³ These events are said to have claimed the lives of an estimated 500,000 people and displaced over 2.1 million persons.⁴

¹ Ahmad Rashid Jamal, Identifying Causes of State Failure: The Case of Somalia 7 (Universität Konstanz Politik- und Verwaltungswissenschaften, Aug. 13, 2013), available on the Atlantic-Community.Org website, at <http://www.atlantic-community.org/documents/10180/280d1fa4-ccd0-43fa-af90-834e3b2bb9b3>, archived at <https://perma.cc/E9AQ-JWHU>.

² Benjamin Powell et al., Independent Institute, Somalia After State of Collapse: Chaos or Improvement? 3 (Independent Institute Working Paper No. 64, Nov. 30, 2006), https://www.independent.org/pdf/working_papers/64_somalia.pdf, archived at <https://perma.cc/9SNN-XKR5>.

³ *Somalia Civil War*, GLOBALSEcurity.ORG, <http://www.globalsecurity.org/military/world/war/somalia.htm> (last visited July 12, 2016), archived at <https://perma.cc/X9XC-8NNG>; *Somalia Profile—Timeline*, BBC (Mar. 1, 2016), <http://www.bbc.com/news/world-africa-14094632>, archived at <https://perma.cc/P48M-RRNK>; Annabel Lee Hogg, *Timeline: Somalia, 1991–2008*, THE ATLANTIC (Dec. 2008), <http://www.theatlantic.com/magazine/archive/2008/12/timeline-somalia-1991-2008/307190/>, archived at <https://perma.cc/2SPY-MML5>; Mark Bradbury & Sally Healy, *Endless War: A Brief History of the Somali Conflict*, ACCORD, no. 21, 2010, at 10–14, http://www.c-r.org/downloads/Accord%2021_3Endless%20war_a%20brief%20history_2010_ENG.pdf, archived at <https://perma.cc/Q3C5-KN2S>.

⁴ Amanda Sperber, *Out of Somalia's Civil War Raises a Disability Center Turning Lives Around*, TAKEPART (Dec. 3, 2015), <http://www.takepart.com/article/2015/12/03/civil-war-somalia-disability>, archived at

Although the negative outlook towards ethnic and religious minorities predated these events, the chaos that ensued following the collapse of the Barre government, particularly in areas where there was no effective government control for extended periods of time, reportedly made life particularly challenging for them.⁵

Some regions in the country have experienced relative stability during this otherwise chaotic period. Somaliland, one such region, enjoyed a very brief life as an independent country in 1960 before joining with the former Italian-Somaliland to form the Somali Republic, and then declared independence in 1991 following the collapse of the Barre government.⁶ While it does not enjoy recognition as an independent state by the international community, the territory has a “functional constitutional democracy,” including a bicameral legislature, a three-tiered court system, and an executive branch, as well as a police force and its own currency.⁷

Another example of relative stability in the country is Puntland, a regional state in northeast Somalia. Made up of seven regions, Puntland established itself as an autonomous region in 1998.⁸ Like Somaliland, Puntland has successfully established key political and administrative institutions that enable it to deliver basic social services, including education and health services.⁹ The government structure consists of three branches: legislative, executive, and judicial.¹⁰ A key factor distinguishing Puntland from Somaliland is the fact that Puntland has not

<https://perma.cc/N9J2-83X4>; INTERNATIONAL ORGANIZATION FOR MIGRATION, DIMENSIONS OF CRISIS ON MIGRATION IN SOMALIA 4 (Working Paper, Feb. 2014), <http://www.iom.int/files/live/sites/iom/files/Country/docs/Dimensions-of-Crisis-on-Migration-in-Somalia.pdf>, archived at <https://perma.cc/J292-46BA>.

⁵ UNITED NATIONS FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, A STUDY ON MINORITIES IN SOMALIA (Aug. 1, 2002), available on the ReliefWeb website, at <http://reliefweb.int/report/somalia/study-minorities-somalia>, archived at <https://perma.cc/AL4P-65QM>; Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Somalia* (updated May 2011), available on the United Nations High Commissioner for Refugees portal, Refworld, at <http://www.refworld.org/docid/4954ce42c.html>, archived at <https://perma.cc/3CG2-KWVC>.

⁶ *British Somaliland: Brief History*, THE BRITISH EMPIRE, <http://www.britishempire.co.uk/maproom/british-somaliland.htm> (last visited July 12, 2016), archived at <https://perma.cc/6DPE-S4Z4>; *Our History*, SOMALILAND GOVERNMENT, <http://somalilandgov.com/history/> (last visited July 12, 2016), archived at <https://perma.cc/4QJ5-3RC2>.

⁷ *Background on Somaliland*, THE CENTER FOR JUSTICE AND ACCOUNTABILITY, <http://www.cja.org/article.php?id=437> (last visited July 18, 2016), archived at <https://perma.cc/7JN6-3CKA>; *Somaliland Profile*, BBC NEWS AFRICA (May 26, 2016), <http://www.bbc.co.uk/news/world-africa-14115069>, archived at <https://perma.cc/FYN6-SCDT>; *Our Government*, SOMALILAND GOVERNMENT, <http://somalilandgov.com/the-administration/> (last visited July 12, 2016), archived at <https://perma.cc/SYM5-J67R>.

⁸ *Puntland Profile*, BBC NEWS AFRICA (Feb. 4, 2016), <http://www.bbc.co.uk/news/world-africa-14114727>, archived at <https://perma.cc/8CJJ-TUTN>.

⁹ Immigration and Refugee Board of Canada, *Somalia: Puntland, Including Government Structure, Security, and Access for Internally Displaced Persons (IDPs) from Somalia*, SOM103891.E (Nov. 25, 2011), <http://www.irb.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=453691>, archived at <https://perma.cc/7SLR-KKJA>; PUNTLAND STATE, FIRST ANNIVERSARY OF PRESIDENT FAROLE’S ADMINISTRATION I (Jan. 10, 2010), available on the Horseed Media website, at <https://horseedmedia.net/wp-content/uploads/2010/01/Puntland-First-Anniversary-Report-2009-1.pdf>, archived at <https://perma.cc/AH6A-R5FK>.

¹⁰ *The Structure of Government in Puntland State of Somalia*, PUNTLAND GOVERNMENT (Jan. 11, 2011), <http://www.puntlandgovt.com/government/>, archived at <https://perma.cc/75Z4-XUEQ>.

sought to secede from Somalia. According to the region's Constitution, Puntland is "an independent integral part of Somalia and has the obligation to restore and maintain the unity of Somalia on the basis of a Federal System."¹¹

Life in central and southern Somalia is markedly different. These regions experienced a great deal of violence following the collapse of the Barre government, a situation that continues in many parts. Although Somalia was finally able to establish a government, the Transitional Federal Government (TFG), in 2004 following various failed attempts to do so, the lack of security in the central and southern parts of the country, particularly in Mogadishu, the capital, effectively prevented the government from governing.¹² In 2006, a group of Sharia courts, known as the Islamic Courts Union (ICU), united themselves to form an administration to rival the TFG.¹³ The ICU fought against and defeated an alliance of warring factions in Mogadishu and managed to establish control temporarily.¹⁴ The same year, Ethiopian forces intervened to take control of Mogadishu followed by an African Union peacekeeping mission, the African Union Mission in Somalia (AMISOM), which arrived in 2007 and remains in Somalia to this day.¹⁵

The Ethiopian intervention in Somalia, which ended in 2009, is said to have contributed to the growth of Al-Shabaab ("the youth" in Arabic), a former youth wing of the ICU, which reconstituted itself as a militia following the ICU's defeat and began fighting for territorial control.¹⁶ Although the group made initial gains in territory, over the last few years it has lost control of various key posts in the region. In 2014, AMISOM troops and the Somali National Army are said to have pushed the group out of "several strategic towns in the regions of Benadir, Lower Shabelle, Bay, Bakool, Gedo, Hiiraan, Galgaduud and Middle Shabelle."¹⁷

¹¹ TRANSITIONAL CONSTITUTION OF PUNTLAND REGIONAL GOVERNMENT art. 2 (July 1, 2001), available at <http://www.refworld.org/pdfid/4bc589e92.pdf>, archived at <https://perma.cc/DK4N-8Z3A>.

¹² HUMAN RIGHTS AND SECURITY IN CENTRAL AND SOUTHERN SOMALIA: A JOINT FACT FINDING MISSION BY THE DANISH REFUGEE COUNCIL AND THE DANISH IMMIGRATION SERVICE 14–27 MARCH 2007 at 5 (Aug. 2007), https://www.nyidanmark.dk/NR/rdonlyres/F382C881-5A67-4605-845F-953B98E01355/0/somaliarapport_humanrights.pdf, archived at <https://perma.cc/DSA8-QDRP>.

¹³ EUROPEAN ASYLUM SUPPORT OFFICE (EASO), COUNTRY ORIGIN INFORMATION: SOMALIA SECURITY SITUATION 14 (Feb 2016), available at <http://www.refworld.org/pdfid/56e157934.pdf>, archived at <https://perma.cc/C7DR-YZBQ>.

¹⁴ *Id.* at 14; EASO, COUNTRY ORIGIN INFORMATION, SOUTH AND CENTRAL SOMALIA: COUNTRY OVERVIEW 24 (Aug. 2014), <https://coi.easo.europa.eu/administration/easo/PLib/EASO-Somalia-Security-Feb2016.pdf>, archived at <https://perma.cc/Z6SM-JXWT>.

¹⁵ EASO, COUNTRY ORIGIN INFORMATION: SOMALIA SECURITY SITUATION, *supra* note 13, at 14–15.

¹⁶ HANIBAL GOITOM, GROUPS AND ENTITIES CONTROLLING SOMALIA 5 (Law Library of Congress, Aug. 2012), available on the US Department of Justice website, at https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/2012-008340_Somalia.pdf, archived at <https://perma.cc/J6NJ-K3ZX>; Rob Wise, *Al Shabaab*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES 4 (Case Study No. 2, July 2011), https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/110715_Wise_AlShabaab_AQAM%20Futures%20Case%20Study_WEB.pdf, archived at <https://perma.cc/K9C6-P4CQ>.

¹⁷ EASO, COUNTRY ORIGIN INFORMATION: SOMALIA SECURITY SITUATION, *supra* note 13, at 15.

The situation in Somalia is reportedly improving. In 2012, Somalia ended its transitional period and formed a national government by enacting a new provisional constitution and electing a new national parliament and president.¹⁸ It is also said to be building a professional police force that is contributing to an improving security situation.¹⁹ The country has also seen measured economic improvement.²⁰ Four years after establishing a national government, Somalia is preparing to hold national elections in August 2016.²¹ However, the country remains highly fragile. It is ranked only second to last (the last being South Sudan) in the *Foreign Policy* 2015 Fragile States Index.²² Although its control has been greatly reduced at the moment, Al-Shabaab “retains significant terrorist capacity,” and violence continues in the southern parts of the country.²³ The Somali federal government remains highly dependent on foreign troops to maintain security. Its ability to take effective control of its territory going forward will depend on how long such forces remain in the country and its ability to replace such forces effectively.²⁴

II. Religious Minorities

Somalia is a majority Muslim country. Approximately 99.8% of the country’s estimated 12.3 million people are said to be Muslim, an overwhelming majority of whom are Sunnis who follow the Shafi’i school of thought.²⁵ Somalia reportedly has few religious minority groups, consisting

¹⁸ *U.S. Relations with Somalia: Fact Sheet*, U.S. DEPARTMENT OF STATE, BUREAU OF AFRICAN AFFAIRS (June 30, 2016), <http://www.state.gov/r/pa/ei/bgn/2863.htm>, archived at <https://perma.cc/TS8X-9N5V>.

¹⁹ *Security Improves in Somalia as Police Force Builds Capacity – SPF Commissioner*, AMISOM (Apr. 28, 2016), <http://amisom-au.org/2016/04/security-improves-in-somalia-as-police-force-builds-capacity-spf-commissioner/>, archived at <https://perma.cc/7PLM-C67E>; *Somalia No Longer a Failed State, Just a Fragile One, Says UN*, THE GUARDIAN (Dec. 22, 2015), <https://www.theguardian.com/world/2015/dec/23/somalia-no-longer-a-failed-state-just-a-fragile-one-says-un>, archived at <https://perma.cc/6ERB-B2HJ>.

²⁰ Benjamine Powell, *Somalia: Failed State, Economic Success*, FOUNDATION FOR ECONOMIC EDUCATION (Apr. 1, 2009), <https://fee.org/articles/somalia-failed-state-economic-success/>, archived at <https://perma.cc/29MG-LH7B>.

²¹ Abdulaziz Osman, *Somali Elections on Track for August, Despite Opposition*, VOICE OF AMERICA (May 23, 2016), <http://www.voanews.com/content/somali-elections-on-track-for-august-despite-opposition/3341767.html>, archived at <https://perma.cc/YNR4-DPF2>.

²² *Fragile States Index*, FOREIGN POLICY (June 17, 2015), <http://foreignpolicy.com/2015/06/17/fragile-states-2015-islamic-state-ebola-ukraine-russia-ferguson/>, archived at <https://perma.cc/Z9Y3-UU2Y>.

²³ *Somalia: Overview*, THE WORLD BANK, <http://www.worldbank.org/en/country/somalia/overview> (updated Apr. 9, 2006), archived at <https://perma.cc/HAX6-C7L3>.

²⁴ E.J. Hogendoorn, *Security and Governance in Somalia: Consolidating Gains, Confronting Challenges, and Charting the Path Forward*, CRISIS GROUP (Oct. 8, 2013), <http://www.crisisgroup.org/en/publication-type/speeches/2013/hogendoorn-security-and-governance-in-somalia.aspx>, archived at <https://perma.cc/Z4HS-2BGC>; *Weak Central Government Makes Security a Local Issue in Somalia*, WORLD POLITICS REVIEW (Feb. 29, 2016), <http://www.worldpoliticsreview.com/trend-lines/18075/weak-central-government-makes-security-a-local-issue-in-somalia> (restricted access).

²⁵ EASO, COUNTRY ORIGIN INFORMATION: SOMALIA SECURITY SITUATION, *supra* note 13, at 14; U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2014: SOMALIA 2 (Oct. 14, 2015), <http://www.state.gov/documents/organization/238472.pdf>, archived at <https://perma.cc/E7MU-78RL>; MARTIN HILL, MINORITY RIGHTS GROUP INTERNATIONAL, NO REDRESS: SOMALIA’S FORGOTTEN MINORITIES 12 (2010), <http://minorityrights.org/wp-content/uploads/old-site-downloads/download-912-Click-here-to-download-full-report.pdf>, archived at <https://perma.cc/G6WY-RZ27>; *Somalia – Country of Concern*,

of “a small Christian community and other religious groups, including an unknown number of Shia Muslims.”²⁶ There were around 1,000 Christians living in Somalia in 2009.²⁷ In addition, two Muslim groups, known as the Ashraf and Shekhal, are said to constitute religious minorities.²⁸ The Ashraf people, who claim to be the descendants of Fatima, Prophet Mohammed’s daughter, and Ali, his nephew, are “affiliated to (and sometimes considered as) Benadiri living mainly in the coastal regions (Merka, Baraawe) and, as a clan, with the Digil Mirifle in the riverine areas of Bay and Bakool.”²⁹ The Shekhal people, who are believed to be associated with Hawiye, a major clan in Somalia, live scattered throughout the country.³⁰

III. Treatment of Minorities

There are two points to keep in mind with regard to the issue of the treatment of religious minorities. One is the fact that over the last couple of decades the country has seen inordinate levels of sustained violence, resulting in hundreds of thousands of injuries and deaths as well as the displacement of millions of citizens. This makes it difficult to clearly identify and examine abuse directed specifically at religious minorities,³¹ and as a result sources providing detailed information regarding the persecution of religious minorities are hard to locate. Another point is that the security situation in Somalia has been and remains uneven, and depends on the specific time and place in question, as noted above. Therefore, the treatment of minorities likely has as much to do with when and where those minorities resided in the country as it does to their affiliation with a particular minority group.

FOREIGN AND COMMONWEALTH OFFICE (updated Jan. 21, 2015), <https://www.gov.uk/government/publications/somalia-country-of-concern/somalia-country-of-concern#contents>, archived at <https://perma.cc/K78D-7W9K>.

²⁶ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 25 at 2.

²⁷ EASO, COUNTRY ORIGIN INFORMATION, SOUTH AND CENTRAL SOMALIA: COUNTRY OVERVIEW, *supra* note 14, at 21.

²⁸ *Id.* at 21, 22 & 118.

²⁹ HILL, *supra* note 25, at 12; Immigration and Refugee Board of Canada, *Somalia: Information on the Ashraf Clan*, SOM103613.E (Nov. 23, 2010), <http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=453239>, archived at <https://perma.cc/5PV3-FMKJ>; EASO, COUNTRY ORIGIN INFORMATION, SOUTH AND CENTRAL SOMALIA: COUNTRY OVERVIEW, *supra* note 14, at 47.

³⁰ Australian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Somalia: Situation of the “Shakhal”, “Ajuran”, “Shashi”, and “Wayten” Clans*, a-3719 (ACC-SOM-3719) (Mar. 15, 2004), available at https://www.ecoi.net/file_upload/response_en_63347.html, archived at <https://perma.cc/WS8P-JY2S>.

³¹ HILL, *supra* note 25, at 4.

A. Government Treatment

1. Legal Framework

a. Federal Constitution

The 2012 Provisional Federal Constitution of Somalia makes Islam the state religion.³² In addition, the Constitution bans enactment of any law “not compliant with the general principles and objectives of Shari’ah.”³³ While the Constitution accords everyone the right to freely practice his or her religion, it bans the promotion of any religion other than Islam.³⁴ It also excludes non-Muslims from holding the office of the presidency.³⁵ While the Constitution does not expressly ban conversion from Islam, although its draft is said to have included a prohibition on doing so, both Somaliland and Puntland do have such a ban (see discussion below).³⁶

The Constitution also includes a provision for the empowerment of minorities. The economic and social rights clause of the Constitution mandates that groups, including minorities, “who have long suffered discrimination get the necessary support to realize their socio-economic rights.”³⁷

Somalia also accommodates non-Muslims by exempting them from having to comply with certain laws rooted in Islam. For instance, while the Constitution makes the teaching of Islam compulsory for public and private schools, it carves out an exception for schools owned by non-Muslims.³⁸ Similarly, Somalia’s 1963 Penal Code criminalizes the supply or sale of alcoholic beverages; however, this provision is said to be inapplicable to non-Muslims.³⁹ In addition, Somalia permits child adoption in certain circumstances while most Islamic countries bar it for religious reasons.⁴⁰

³² PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA art. 2 (Aug. 1, 2012), available on the United Nation’s Political Office for Somalia website, at <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=>, archived at <https://perma.cc/N9AC-K4DY>.

³³ *Id.* art. 2.

³⁴ *Id.* arts. 2 & 17.

³⁵ *Id.* art. 88.

³⁶ UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, ANNUAL REPORT 2012 at 320 (Mar. 2012), <http://www.uscirf.gov/sites/default/files/resources/Annual%20Report%20of%20USCIRF%202012%282%29.pdf>, archived at <https://perma.cc/F5LJ-22T8>; U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 25, at 2.

³⁷ PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA art. 27.

³⁸ *Id.* art. 30.

³⁹ PENAL CODE OF 1962, art. 411 (Dec. 16, 1962), available on the Somaliland Law website, at http://www.somalilandlaw.com/Penal_Code_English.pdf, archived at <https://perma.cc/JYN5-66KU>; MARTIN R. GANZGLASS, THE PENAL CODE OF THE SOMALI DEMOCRATIC REPUBLIC: WITH CASES, COMMENTARY, AND EXAMPLES 458 (1971).

⁴⁰ Family Law No. 23 of 1975, arts. 110–116, OFFICIAL GAZETTE OF THE DEMOCRATIC REPUBLIC OF SOMALIA (Mar. 31, 1975).

b. Somaliland Constitution

Somaliland has its own Constitution and that Constitution makes Islam the state religion.⁴¹ It further provides that “the laws of the nation shall be grounded on and shall not be contrary to Islamic Sharia.”⁴² While it provides that everyone has the right not to be forced to accept another religion, it prohibits Muslims from converting to any other religion.⁴³ It also imposes mandatory religious education in schools, stating that the “learning of and training in the Islamic religion is a fundamental path and shall be compulsory at all levels of education.”⁴⁴ In addition, the Constitution imposes a religious test on eligibility to hold certain high public offices, requiring candidates for the House of Representatives, the presidency, and the vice-presidency, and the spouses of candidates for the presidency and vice-presidency, to be Muslim.⁴⁵

c. Puntland Constitution

Puntland also has its own Constitution,⁴⁶ which makes Islam the state religion, bans the promotion of any other religion, and requires the state’s laws to be based on “the Islamic Religion.”⁴⁷ It imposes mandatory religious education, stating that “Islamic teaching is fundamental and shall be compulsory at all educational levels.”⁴⁸ While it accords everyone the right not to be forced to accept another religion, it prohibits Muslims from converting to any other religion.⁴⁹ It also prohibits assemblies and demonstrations deemed to be against Islam.⁵⁰ It imposes a religious test as a condition for holding the presidency and the vice-presidency by requiring that candidates to these offices be Muslims.⁵¹

⁴¹ CONSTITUTION OF THE REPUBLIC OF SOMALILAND art. 5 (updated translation, Apr. 2005), available on the Somaliland Law website, at http://www.somalilandlaw.com/Somaliland_Constitution/body_somaliland_constitution.htm, archived at <https://perma.cc/YH7H-H8NJ>.

⁴² *Id.* art. 4.

⁴³ *Id.* art. 33.

⁴⁴ *Id.* art. 15.

⁴⁵ *Id.* arts. 39 & 80.

⁴⁶ It appears that Puntland replaced its 2001 Transitional Constitution of Puntland Regional Government in 2009. Hanibal Goitom, *Somalia: Puntland State Approves New Constitution*, GLOBAL LEGAL MONITOR (July 2009), <http://www.loc.gov/law/foreign-news/article/somalia-puntland-state-approves-new-constitution/>, archived at <https://perma.cc/5Z8Z-RNLX>. However, only a draft version of its Constitution was located, and that draft was used for this report. CONSTITUTION OF THE REGIONAL PUNTLAND STATE OF SOMALIA (First Draft) (2007–09), available on the World Statesmen.org website, at <http://www.worldstatesmen.org/Puntland-const2010.pdf>, archived at <https://perma.cc/Y6K6-P9R2>.

⁴⁷ CONSTITUTION OF THE REGIONAL PUNTLAND STATE OF SOMALIA (First Draft) art. 8 (2007–08).

⁴⁸ *Id.* art. 31.

⁴⁹ *Id.* art. 12.

⁵⁰ *Id.*

⁵¹ *Id.* art. 77.

The Puntland Constitution includes a provision on the protection of minority rights, which states that the “constitution safeguards and respects the rights of minorities.”⁵² In addition, as noted above, it accords everyone freedom of worship.

2. *Treatment in Practice*

The treatment of religious minorities in Somalia appears to differ depending on time and place. Religious minorities are treated relatively better in places where, and at times in which, there is effective government control. For instance, in Somaliland and Puntland, where there are well-functioning government institutions relative to the situation in south and central Somalia, “there are few reports of religious freedom violations.”⁵³ Although, as noted above, the federal Constitution and the constitutions of Somaliland and Puntland ban proselytization, this ban is reportedly not enforced by the federal and regional governments.⁵⁴

However, it appears that these state institutions do at times contribute to the abuse of religious minorities, at least indirectly. A 2016 United Kingdom Home Office report described some of the challenges as follows:

Civilian authorities generally did not maintain effective control of security forces. Security forces abused civilians and often failed to prevent or respond to societal violence. Authorities rarely investigated abuse by police, army, or militia members, and a culture of impunity remained a problem. . . . The government established ad hoc official commissions to investigate alleged abuses by federal military forces and allied militias in the Lower Shabelle region. The outcome of the investigation remained unknown.⁵⁵

A 2014 European Asylum Support Office report provides more information regarding the systemic failures in the judicial and law enforcement mechanisms in the country that may exacerbate the problem of abuse of minorities. According to the report,

[i]n 2012, an international NGO and a UN agency in Mogadishu declared that civilians could not access law enforcement via the police, because these did not investigate and could not provide protection.

Police forces are functioning ineffectively due to inadequacy, intimidation and corruption. Police officers in Mogadishu often owed their positions largely to clan and familial links rather than to government authorities. . . . [P]eople ‘seek the assistance of the police force but there is no guarantee that they will be assisted’.

In practice, the judicial system, an amalgam of state law, clan-based customary law (*xeer*) and Islamic law, is still not functioning effectively, and is virtually inaccessible for

⁵² *Id.* art. 11.

⁵³ UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, *supra* note 36, at 321.

⁵⁴ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 25, at 4.

⁵⁵ UNITED KINGDOM HOME OFFICE, COUNTRY INFORMATION AND GUIDANCE, SOUTH AND CENTRAL SOMALIA: FEAR OF AL-SHABAAB 21 (ver. 1.0, Mar. 2016), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507788/SOM_CIG_Fear_of_Al_Shabaab.pdf, archived at <https://perma.cc/WH3U-QCUD>.

vulnerable groups such as women, [internally displaced persons] and minorities. . . . [M]arginalised groups have difficulties in getting a fair trial since strength in the sense of numbers and political influence is important in relation to getting a fair trial – if one can talk about fair trial for anyone in the justice system today’.⁵⁶

The result is that when minorities suffer abuse at the hands of members of the community, or possibly state agents, they often have no legal recourse.

B. Treatment by Non-State Actors

In areas that lack stability, the rights of civilians, including religious minorities, are not respected. South and central Somalia, where Al-Shabaab has maintained control for an extended period of time, are particularly problematic areas. This is in part the result of the group’s imposition of an extreme form of religious laws. According to a 2013 Freedom House report, the group “imposed crude versions of Islamic law in areas under its control, banning music, films, certain clothing, and in one area prohibiting men and women from walking together or talking in public.”⁵⁷ Significantly, the group targeted religious minorities for persecution. A 2010 report described the treatment of minorities in areas controlled by Al-Shabaab as follows:

It also forbids religious beliefs and practices of other faiths, such as Christianity; apostasy . . . ; adherence to non-Islamic African traditional rituals and customs; and ‘heretical’ traditional Somali Sufi practices such as veneration of ancestor-saints, pilgrimages to shrines, burial in funerary monuments, and religious healing practices.

Al-Shabaab have thus targeted particular minorities on account of their customary faith-related practices, namely Benadiri (Bravanese in particular), Bantu and Christians (many of whom are converted Bantu).

Somali Christians are at risk by al-Shabaab of being treated as non-believers and ‘infidels’ (*goal* in Somali) or ‘apostates’ subject to Shari’a death penalty provisions. . . . [A]l-Shabaab and members of other Islamic groups ‘have killed more than a dozen Christians’ in the country between March 2009 and early 2010.⁵⁸

A 2012 report by the US Commission on International Religious Freedom paints a similar picture about, among others, the mistreatment of Christians and converts.⁵⁹ According to this report, “Al-Shabaab targets the very small and extremely low-profile Christian and Christian

⁵⁶ EASO, COUNTRY ORIGIN INFORMATION, SOUTH AND CENTRAL SOMALIA: COUNTRY OVERVIEW, *supra* note 14, at 100.

⁵⁷ *Freedom in the World: Somalia*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2013/somalia> (last visited July 18, 2016), archived at <https://perma.cc/BW52-GRD4>.

⁵⁸ HILL, *supra* note 25, at 23.

⁵⁹ UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, *supra* note 36, at 321.

convert community.”⁶⁰ It reportedly kills persons suspected of being apostates and those who fail to comply with its edicts.⁶¹

Al-Shabaab’s practice of targeting non-Muslims has been demonstrated by the group’s attacks in neighboring Kenya.⁶² For instance, in a recent attack at a university in eastern Kenya, members of the militant group were said to have “roved from dorm to dorm, separating Christian from Muslim students and killing the Christians.”⁶³

C. Treatment by Somali Society

Religious minorities, particularly Christians, also face harassment and discrimination at the hands of the various Somali communities. According to one source, non-Muslims in the country routinely suffer discrimination and harassment. The source notes that

[t]he attitudes to[wards] non-Muslims are very negative because the majority of Somalis are Muslim and quite conservative. Non-Muslim minorities are viewed as outsiders by both the religious Muslim community and the clan structure which is even more important to Somalis. Since the clan structure is linked to Islam, non-Muslims simply do not have a place as part of the dominant community and are shunned or persecuted.⁶⁴

A 2014 Department of State report confirms this account. According to the report, “[n]on-Muslims who practiced their religion openly were constantly harassed. Conversion from Islam to another religion was socially unacceptable, and communities harassed those suspected of conversion.”⁶⁵ In addition, non-Muslims are not afforded public places to worship.⁶⁶ This is, no doubt, exacerbated by the failure of state institutions to afford these groups protection.

IV. Conclusion

While Somalis of all ethnic and religious backgrounds have suffered a great deal as the result of the civil strife that has permeated their country for more than two decades since the fall of the Barre government in 1991, certain groups have suffered additional abuses at the hands of various actors due to their religious affiliation. Members of religious minority groups located in the southern and central parts of the country that have lacked government control for extended

⁶⁰ *Id.*

⁶¹ Immigration and Refugee Board of Canada, *Somalia: Treatment of Non-Muslims, Including Those Who Commit Apostasy, By Society and Extremist Groups, Including al-Shabaab*, SOM104854.E (Apr. 29, 2014), <http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455295&p1s=1>, archived at <https://perma.cc/W3AF-9YF4>.

⁶² *Kenyan Muslims Shield Christians in Mandera Bus Attack*, BBC NEWS (Dec. 21, 2015), <http://www.bbc.com/news/world-africa-35151967>, archived at <https://perma.cc/6X4P-C27J>.

⁶³ Jeffrey Gettleman et al., *Somali Militants Kill 147 at Kenyan University*, N.Y. TIMES (Apr. 2, 2015), http://www.nytimes.com/2015/04/03/world/africa/garissa-university-college-shooting-in-kenya.html?_r=0, archived at <https://perma.cc/8A28-D77W>.

⁶⁴ *Id.*

⁶⁵ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 25, at 6.

⁶⁶ *Id.*

periods of time, particularly in areas controlled or targeted by Al-Shabaab, are said to have felt the brunt of religious persecution. Although religious minorities who live in areas of relative stability, including Somaliland, Puntland, and those areas controlled by the Federal Somalia Government and its allies, are said to have fared better, they have by no means been immune from persecution—a problem exacerbated by the inability or unwillingness of law enforcement and justice institutions to prevent or remedy such abuses.