

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on minority issues and the Independent Expert on the situation of human rights in Somalia

Ref.: AL OTH 129/2022
(Please use this reference in your reply)

19 December 2022

Mr. Abdirisq Hussein Ali,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention; Special Rapporteur on minority issues and Independent Expert on the situation of human rights in Somalia, pursuant to Human Rights Council resolutions 49/5, 51/8, 43/8 and 45/27.

In this connection, we would like to express our concern over the alleged arbitrary arrest, detention and prosecution of Ms. **Hani Abdirahman Abdimalik** and Mr. **Said Aden Mohamed**, for having converted to Christianity, in violation of their right to freedom of thought, conscience and religion and their rights as members of a religious minority in Somaliland.

According to the information received:

Ms. Hani Abdirahman Abdimalik

On 30 May 2022, Ms. Hani Abdirahman Abdimalik was arrested in Hargeisa and put in custody at the Hargeisa Central Police Station for converting to Christianity and for allegedly sharing her faith on social media. The arrest was carried out after her conversion was reported to the police in connection with allegations of membership in a Christian group on Facebook. When arrested, the police did not show an arrest warrant and confiscated a necklace with a cross. While in custody, the police interrogated Ms. Hani Abdirahman Abdimalik without the presence of a lawyer. The police asked her several times who had converted her to Christianity and told her that, if she disclosed the identity of this person, she would be released. The police also told her that if she converted back to Islam, she would be released. Ms. Hani Abdirahman Abdimalik refused to renounce Christianity.

On 27 June 2022, the Somaliland Police Force concluded the investigations and submitted a case file to the Hargeisa Regional Prosecutor's Office. According to the charge sheet, the Prosecutor accused Ms. Hani Abdirahman Abdimalik of "Crimes against the religion of the State" (Part. IV, Chapter I of the Penal Code) for committing blasphemy, insulting the Islamic religion and the Prophet of Islam on social media and spreading Christianity.

On 6 August 2022, the Hargeisa Regional Court in Woqooyi Galbeed region sentenced Ms. Hani Abdirahman Abdimalik to five years of imprisonment for committing crimes under art. 313 "Bringing the religion of the State into contempt"; art. 314 "Disturbance of religious functions"; art. 321 "Instigation

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to Disobey the Laws”; and art. 45 “Continuing Offence” of the Somali Penal Code Article. During the hearing, Ms. Hani Abdirahman Abdimalik confirmed that she had converted to Christianity but denied any intent of proselytism or having shared Christian messages with others. Later on, she was transferred to a prison in Hargeisa, where she has not been allowed to practice her religion and forbidden to own any Christian items. Ms. Hani’s lawyer filed an appeal to the Hargeisa Court of Appeal and is awaiting a hearing date.

According to art. 313(1) of the Somali Penal Code “Whoever publicly brings the religion of Islam into contempt shall be punished with imprisonment up to two years”. According to art. 313 (2): “Whoever publicly insults the religion of Islam by bringing into contempt persons professing it or places or objects dedicated to worship, shall be liable to the same punishment”. According to art. 314 “Whoever impedes or disturbs the exercise of functions, ceremonies or religious practices of the Islamic faith in a place intended for the purpose, or in a public place or a place open to the public, shall be punished with imprisonment up to two years”.

Mr. Said Aden Mohamed

On 22 June 2022, Mr. Said Aden Mohamed was arrested by the Somaliland Police in the port city of Berbera (Somaliland), in connection with allegations of membership in a Christian group on Facebook and spreading Christianity on social media. On 20 July 2022, the Berbera Regional Court convicted Mr. Aden to three years in prison under art. 313(2), art. 314 and a fine of one million Somaliland shilling under art. 403 (“Obscene publications and performances”) of the Somali Penal Code. During the hearing, Mr. Aden confirmed his Christian faith before the Court and contested the charges. The verdict was announced on [REDACTED] and posted on Facebook. Different users commented on the decision of the Court with online messages containing hate speech and incitement to religious violence. Mr. Aden’s lawyer filed an appeal by the 20 August 2022 deadline; nonetheless, on the same day the appeal was filed, Mr. Aden was brought, from prison, before the Appeal Court in Berbera. Due to the fact that it was impossible for the lawyer to travel to Berbera on such short notice, and the refusal of the judge to adjourn the hearing to a later date, the hearing proceeded in the absence of Mr. Aden’s attorney. The Appeal Court upheld the sentence. Mr. Aden’s lawyer filed an appeal to the Supreme Court and is now awaiting a hearing date.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern regarding the arrest, detention and prosecution of Ms. Hani Abdirahman and Mr. Said Aden Mohamed, which appear to depict a pattern of judicial persecution against individuals belonging to a religious minority while exercising peacefully their right to freedom of thought, conscience and religion. This right includes in particular the right to change religion or belief and manifest it in teaching, practice, worship and observance, either alone or in community with others and in public or private. These rights are protected by article 18 of the Universal Declaration on Human Rights and articles 18 and 27 of the International Covenant on Civil and Political Rights (ICCPR). The facts alleged, if proved accurate, would amount to religious persecution.

Ms. Hani Abdirahman and Mr. Said Aden Mohamed appear to have been prosecuted for having converted to a religion other than the State's religion. According to art. 18 (1) of the ICCPR everyone has the right to have or adopt a religion or belief of their choice, which necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another (see Human Rights Committee Comment no. 22, paragraph 5, HRI/GEN/1/Rev.1). The right to change or retain one's religion or belief falls within the ambit of the forum internum of the right to freedom of thought, conscience, religion or belief, which has the status of absolute and unconditional protection and does not permit any limitations (see Human Rights Committee, General Comment n. 22 – paragraph 3, CCPR/C/21/Rev.1).

We wish to remind you that the arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR, including the right to freedom of religion or belief enshrined in art. 18, is arbitrary. Should these allegations be confirmed, they would amount to a violation of Ms. Hani Abdirahman and Mr. Said Aden Mohamed's rights enshrined in the ICCPR by contravening articles 3 (non-discrimination), 9 (right to liberty and security of person), 14 (fair trial), 18 (freedom of thought, conscience and religion) 19 (right to freedom of opinion and expression), 26 (equality before the law) and 27 (rights of minorities) of the same Convention.

Moreover, we wish to express concern over the application of anti-blasphemy provisions contained in article 313 of the Somali Penal Code, which unduly limits the right to manifest one's religion or belief in public or in private. Its vague formulation allows the punishment of any manifestation of religious belief by members of a religious minority, including peacefully talking about one's faith or, in this case, the simple membership in a social media group of Christian believers, which would amount to the judicial persecution of individuals on religious grounds.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds for the arrest, detention and prosecution of Ms. Hani Abdirahman and Mr. Said Aden Mohamed.
3. Please provide detailed information about the factual elements upon which the charges against Ms. Hani Abdirahman and Mr. Said Aden Mohamed were based.

4. Please provide precise information about measures taken to ensure that the rights of Ms. Hani Abdirahman and Mr. Said Aden Mohamed to freedom of religion or belief and as a member of a religious minority are respected and protected in accordance with international human rights obligations under the UDHR and ICCPR;
5. Please explain how the application of the provisions contained in Part. IV, Chapter I of the Penal Code (Crimes against the religion of the State), and in particular art. 313, is compatible with international human rights law regarding non-discrimination and the right to freedom of religion or belief as well as the right to freedom of opinion and expression, as provided for in the UDHR and the ICCPR.

We would like to inform you that, in accordance with its methods of work, after having transmitted the information contained in the present communication, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we respectfully recommend that measures are taken to halt the alleged violations of the rights of these two persons, and prevent their re-occurrence; to investigate these allegations, and in the event that the investigations conclude that the allegations are correct, to ensure the accountability of any person(s) responsible for the related violations.

Kindly note that a letter with the same information has been transmitted to the authorities of the Federal Republic of Somalia. Please also note that this letter does not in any way imply the expression of any opinion concerning the legal status of any country, territory, city or areas, or of its authorities.

Please accept, Mr. Abdirisak Hussein Ali, the assurances of our highest consideration.

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Fernand de Varennes
Special Rapporteur on minority issues

Isha Dyfan
Independent Expert on the situation of human rights in Somalia

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We refer to the International Covenant on Civil and Political Rights (ICCPR), and, in particular, its article 9 enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. 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 state that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation.

Furthermore, in its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of peaceful assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention. It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the right to legal assistance.

Moreover, article 18 of the ICCPR stresses 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 teaching.” General Comment No. 22 of the Human Rights Committee has clearly stressed that article 18 “distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally” (see paragraph 3, HRI/GEN/1/Rev.1).

According to the Committee, “the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect are similarly inconsistent with article 18.2” (see paragraph 5, HRI/GEN/1/Rev.1).

Concerning the right to manifest one's religion or belief, the Human Rights Committee reminded that "article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. In interpreting the scope of permissible limitation clauses, the need to protect the rights guaranteed under the Covenant should be taken into primary consideration, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.

The Committee observed that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

The Committee observed that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint" (see paragraph 8, HRI/GEN/1/Rev.1). The Committee "views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community" (see paragraph 2, HRI/GEN/1/Rev.1).

We would also like to refer to the observations made by the Human Rights Committee concerning official or State religions: "the fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers" (see paragraph 8, HRI/GEN/1/Rev.1).

We would like to draw the attention to General Comment No. 34 on article 19 of the ICCPR of the Human Rights Committee. In paragraph 48, the Human Rights Committee underlines that "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers".

The repeal of blasphemy laws has been called for by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on freedom of opinion

and expression and is a recommendation of the Rabat Plan of Action (see A/HRC/22/17/Add.4) on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (para. 17). According to the Special Rapporteur on freedom of religion or belief: "Anti-blasphemy laws, which frequently serve to uphold State-sponsored religion ... stifle the enjoyment of freedom of religion or belief, and the ability to engage in a healthy dialogue about religion. As also called for in several recent international action plans, such anti-blasphemy laws must be repealed as a matter of priority and are incompatible with the Covenant (ICCPR)" (see A/HRC/37/49 paragraph 83).

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) states in its article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms.[...]" According to article 4 (2): "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter".

Article 27 of the ICCPR provides that 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 practise their own religion, or to use their own language. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1), recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (article 2) and requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

Furthermore, we wish to refer to Human Rights Council Resolution 16/18 (A/HRC/RES/16/18) on Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, which calls on States to take effective measures to ensure that public functionaries in the conduct of their public duties do not discriminate against an individual on the basis of religion or belief (art. 6a); States are also urged to foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion and to contribute openly and on an equal footing to society (art. 6b).