

Minority Rights Group International (MRG) - individual UPR submission - SOMALIA - May 2011

1. Introductory executive summary

1.1 The situation and struggle for minority rights in Somalia must be considered in the context of Somalia in the last 20 years of state collapse, civil war and resulting humanitarian disaster. Immense violations of basic human rights have affected all Somalis, majorities (Darod, Hawiye, Dir and Rahanweyn) and minorities alike (Bantu, Gaboye, Madhiban, Musse Deriyo, Tupal, Yibro, Benadiri, Barawani, Bajuni, Boni, Ashraf and Shekhal). However, majority groups benefit from a traditional clan structure that has afforded them protection and privilege not available to minorities, who, regardless of the conflict, continue to suffer marginalization and exclusion from mainstream economic, social and political life, thanks to a legacy of slavery, customary segregation, dispossession and displacement. Somalia's minorities are diverse and not framed simply by elements of ethnic, religious or linguistic differentiation. Their diversity also rests on social and historical distinctions between minorities and the pastoralist majorities.

1.2 Civil war, and later an Islamist insurgency against a weak transitional government in south-central Somalia, have forced thousands of minorities from their homes and lands, both to other parts of Somalia and abroad. Minorities have been targeted due to lack of protection as well as, in some cases, for their religious or other traditional beliefs and practices. Through field research results, MRG has found that minority women, in particular, suffer egregious abuse in the context of displacement. In 2009, MRG's researchers, visiting internally displaced person (IDP) camps in semi-autonomous Puntland in northeastern Somalia, were told of a disturbing and persistent pattern of rape of minority women, perpetrated by majority men and sometimes by members of the Puntland police, army or security service. Instances of denial of access to justice, with lack of protection from police and courts have also been documented. In crisis-stricken south-central Somalia, armed group al-Shabaab has waged violent attacks in the past year against minorities, particularly Bantu and Christians, with reports of shootings, beheadings and the imposition of laws restricting faith-based practices, with harsh consequences for dissent. The conflict has forced people from the area in their thousands in 2010 alone. A more tolerant atmosphere for minorities would seem to exist in the relatively peaceful self-declared Republic of Somaliland. Progress, however, has been limited by government inaction and negative government attitudes towards human rights defenders, and persistence of prejudicial attitudes among members of the majority clans that affect the educational and social advancement of minorities. In 2010, discriminatory cases involving Gaboye minority women and men have been exposed by NGOs, local and international media.

Somali minority groups suffer from social segregation, economic deprivation and political manipulation. Often, they are also excluded from mainstream government positions and the few minorities who hold positions might have no real power to represent their communities. As a result of their distinct ethnic identity, some minorities, particularly the Bantu and Bajuni continued to suffer from systematic confiscation of their lands and properties.

1.3 With the disintegration of the rule of law in Somalia, marginalized minorities outside the clan system are at particular risk, facing threats from continuing and potentially new discrimination, segregation, violence and abuse. Without a functioning national Government, responsible for upholding the rights of all groups, and a concerted international effort, Somali minorities remain locked in a situation of utter vulnerability and desperation.

More details can be found in an MRG report entitled *No redress: Somalia's forgotten minorities*, published in November 2010 (see ANNEX I Embargoed).

2. Current issues facing minorities

2.1 In 2010, Somalia has begun to draw international attention on the heels of its turmoil, but the country's minority groups have so far received inadequate human rights protection and humanitarian assistance. Information about them is incomplete and not widely known, and international reports on the Somalia crisis rarely mention minorities and their rights. Yet, implementing the rights of the marginalized minorities, who form an integral and substantial part of Somali society, cannot be forever postponed. An absence of data poses a primary obstacle to a comprehensive understanding of the situation. There are no reliable population statistics for Somalia due to the chaos in the country, and thus none on how minorities have fared, particularly given the general absence of statistics on minorities. Pre-civil war census statistics were dubious and contested. Calculations for the current population of Somalia, including Somaliland (a self-declared republic in the north-west), vary, with the latest World Bank figure suggesting approximately 9 million¹. Similarly, poverty statistics for minorities are scarce. Somalia ranks close to the bottom of the least-developed countries in the world on several indicators and, for the fifth year in a row, it tops the ranking on the *Peoples under threat* MRG index² (published in the *State of the World's Minorities*).³ According to the United Nations High Commissioner for Refugees (UNHCR), ongoing conflict meant 1.4 million people were internally displaced in south-central Somalia and Somaliland as at the end of April 2010, while more than half a million people had fled to neighbouring countries⁴. UN OCHA in 2002 estimated minorities to be one-third of the total population, or two million out of six million people at that time⁵. If that one-third proportion overall remains correct, despite the killings and migratory patterns that occurred since then, minorities might now number up to 3 million of the estimated 9 million population (counting Somalia and Somaliland together). It is probable, even though the documentation is incomplete, that minorities overall have suffered (proportionally to their population numbers), more than majorities in the conflict, given the extreme disadvantage and discrimination they have already suffered. In addition to recognized international standards for minority rights set out in several treaties and declarations, domestic legislation also exists. The Constitution of Somaliland (approved by referendum on 31 May 2001), the Transitional Constitution of Puntland (approved 5 June 2001), and the Transitional Federal Government (TFG) Charter of Somalia, all commit to equality and non-discrimination for all their citizens. Their legal codes are secular in origin and apply approximately the same wide range of rights. Discrimination against minorities originates from historically derived social attitudes and customary law. In the absence of any specific non-discrimination laws, affirmative action measures or public pro-

¹ The World Bank, <http://data.worldbank.org/country/somalia>, accessed 21 June 2010.

² *Peoples under threat 2010* MRG index <http://www.minorityrights.org/9885/peoples-under-threat/peoples-under-threat-2010.html>.

³ *State of the World's Minorities 2010* (events of 2009) www.minorityrights.org/download.php?id=840

⁴ UNHCR *Somalia Briefing Sheet* [http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4b791d4c9&query=Somalia1.4 million](http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4b791d4c9&query=Somalia1.4%20million) and <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483ad6>

⁵ *A study on minorities in Somalia*, United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 1 Aug 2002. <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/7d1fc87ed568612dc1256c0c004a2463>

minority campaigns, change has been slow and uneven. Minority activism is thus in urgent need of support and resources. Among Somalis, recognition of, and advocacy for, minority rights is slowly increasing. Political participation by minorities in government and parliament has been accepted in principle. A power-sharing deal in the TFG in accordance with the Transitional Federal Charter (TFC) adopted in 2004 included minority representation. Yet, much more progress still needs to be made in terms of protection of minority rights and livelihoods, and overturning the historically prejudicial social attitudes of the dominant majorities. Somali minorities face socially-institutionalized discrimination and severe human rights abuses. The traditional clan structure formed by the majorities continues to exclude minorities from political participation and employment; limits their access to justice where abuse has been perpetrated against them or they stand accused of a crime; denies them their rights to development, education and sustainable livelihoods; and places restrictions on inter-marriage between majorities and minorities. Majorities also routinely subject minority members to hate speech, which has served to perpetuate stereotypes of minorities relating to their physical appearance and traditional practices, and thus heighten their exclusion.

2.2 The Somali minorities collectively – and minority members individually – suffer denial and abuse of the whole range of basic human rights set out in international and regional conventions including the international Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against Torture (CAT), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the African Charter on Human and Peoples’ Rights, all of which are legally binding on Somalia. Many of the abuses Somali minorities have experienced in conflict situations are also violations of the Geneva Conventions and other provisions of international humanitarian law.

➤ Public and political participation: in 2000 and 2004, the TNG and TFG respectively adopted the clan-based power-sharing system known as the ‘4.5 formula’ of representation, a discriminatory approach whereby minorities combined were considered to make up only half of one majority clan: the formula equalized representation of the four majority clans, and gave to the minorities overall roughly half the number of seats assigned to each of the majority clan-families. The allocation was not intended to represent population numbers or geographical distributions, on which there was no accepted data; rather, it represented a political compromise and was based on Somali cultural institutions. Each clan allocated its share of seats internally along genealogical lines of sub-clans, while the minorities selected their candidates, as decided by representatives from the different minorities, with disagreements settled by a neutral arbitration committee. Twelve per cent of seats were reserved for women, although the full allocation was never made. The number and identities of minorities were confusing. There was no official list to rely on, or clear ethnographic or census data. While the 4.5 formula gave minorities a voice in political decision-making, it was weak and largely unheard within the context of the failures of the TFG, which has been in continual conflict and crisis. The formula helped to put minority rights on the international agenda for reconstruction but without much impact so far. A particular issue in drafting the revised Constitution to eventually succeed the current TFC will be the need for an appraisal and replacement of this formula, to ensure effective political representation of minority groups. The formula has been criticized by some minority academics and activists as representing ‘absolute discrimination and severe ethnic marginalization’ (based on alleged incorrect estimates of their population numbers) and as rejecting the protests of minorities at the time. In Somaliland, due to their lack of political representation, low educational levels and poor employment opportunities, very few minority members are in positions of prominence or leadership. The Puntland parliament has no seats reserved for small minority communities (mainly

Madhiban and Musse Deriyo). The majority clans (all from the Darod clan) did not allocate minority representation in the Isimo (clan elder) conferences convened to establish the Puntland region state and later to respond to critical situations, and the government does not apply the TFG's 4.5 representation formula giving minorities a stake in parliament. Minority sultans are officially recognized, although with little actual power. Women's rights have been particularly violated in Somalia since the breakdown of the state. While women (including minority women) have actively engaged in peace-building, the gendered nature of clan-based politics means that women are typically excluded from full participation in decision-making and peace talks.

➤ Educational discrimination: very few minority children (and far fewer girls than boys) are in the educational system, due to lack of economic means, and not least because of the 'segregating environment existing among young students and in the schools'. VOSOMWO's 2006 minority rights survey found that only 20 per cent of children of the families interviewed had education or went to school.⁶

➤ Employment: since few minority members have received much education, with the exception of some who managed to travel abroad, they are ill-equipped for most modern employment opportunities. In addition, majority clan members now seeking employment in manual jobs previously associated with minorities are often favoured over minorities.

➤ Prohibition on inter-marriage: despite the customary prohibition by clans on intermarriage with a minority, such relationships have historically probably always taken place, clandestinely at least, although they are rare. This restriction on intermarriage has excluded minorities from forms of clan support or advancement through marriage ties.

➤ Gender-based abuses: these are prevalent against women in general throughout Somalia, but they can affect minority women more severely. Minority women face multiple discrimination in that their human rights are violated as women, both from the wider political structures and male social attitudes, as well as within their own communities. Furthermore, a shocking pattern of gender-based violence is taking place against minority women and girls languishing in IDP camps in the Puntland region, in the north-east of the country, perpetrated by majority men and sometimes by members of the Puntland police, army or security service. As stated by Dr Shamsul Bari, UN Independent Expert, in reference to Puntland in his 2010 report on the situation of human rights in Somalia "Minorities who lack the protection of the major clans are likely to be victims of the discrepancies between customary, criminal and sharia law"⁷. He further highlighted the plight of minorities in South-Central Somalia in the face of 'Islamic forces' and a deteriorating security situation.

➤ No access to and/or denial of justice: MRG research indicates that minorities in Somalia have little chance of obtaining justice if they complain of crimes against them or are accused of crimes and arrested. Police, who invariably belong to majority clans, commonly refuse to investigate complaints by minorities and hardly ever investigate allegations of rape. Courts neglect to guarantee defendants' rights, including the right to legal defence representation, appeal and petition for clemency in regard to a death sentence. Minorities also have little access to justice in customary law applied in crimes, including murder, arbitrary killings, manslaughter or a serious assault, where the death penalty following trial may be commuted to the payment of *diya*, or blood compensation, with the agreement of the victim's clan. Minority elders have been obliged to negotiate compensation with majority clan elders, and submit the decision to a court, which then closes the case without further police

⁶ Voice of Somaliland Minority Women Organization, 'Final Report: Minority Rights Monitoring Survey', Somaliland, VOSOMWO, 2006.

⁷ UN, 'Technical Assistance and Capacity Building: Report of the Independent Expert on the Situation of Human Rights in Somalia, Shamsul Bari', 23 March 2010, <http://daccess-dsny.un.org/doc/UNDOC/GEN/G10/124/58/PDF/G1012458.pdf?OpenElement>

investigation or judicial action. Minorities received a lower compensation payment than clan members, and reportedly have difficulty obtaining enforcement of it.

➤ Hate speech: in testimony given to MRG for its report, Somali minority interviewees often referred to hate speech terminology, deriving from prejudicial socio-cultural attitudes of contempt and a legacy of slavery. They reported verbal abuse being commonly used against them by members of majority clans, who disparaged them on the basis of their minority status and identity. Several members of Bantu and occupational minority groups (like caste) spoke of being routinely insulted with derogatory language and name-calling. On the basis of Articles 19 and 20 of the ICCPR and Article 9 of the African Charter on Human and Peoples' Rights that deal with hate speech, Somalia should aim to adopt legislation prohibiting any advocacy of national racial, ethnic or religious hatred that constitutes incitement to discrimination, hostility or violence. In the future, state authorities should strive to review and harmonize laws on hate speech to ensure they conform to acceptable international standards. A series of other mechanisms and options should be adopted in conjunction with this legislation, particularly aimed at strengthening minorities' public and political participation in Somalia; strengthening human rights education and knowledge; protecting minority and community media; inter-ethnic and inter-religious dialogue; and a meaningful and enforceable code of conduct for MPs and political leaders.

3. Recommendations

MRG recognizes that the advancement of minority rights is extremely difficult in an environment of unending conflict, but it must not be continually postponed. It therefore makes the following recommendations, among others:

3.1 The future new Constitution of Somalia must specifically recognize the country's minorities, and entrench their rights to equality and non-discrimination in line with international human rights standards.

3.2 Equal access to justice for members of minorities should be ensured, including through public education and training to familiarize judges, police, prosecutors and defence lawyers with minority rights issues and standards, and through their implementation in the justice system.

3.3 The participation of minorities in public life, including their representation in the civil service, local governmental bodies, the judiciary, police and security forces, should be promoted, and affirmative action measures should be explored.

3.4 Special measures should be implemented to protect and promote the rights of women from minority communities, who experience multiple discrimination on account of their gender and minority status.

3.5 The international community should support expansion of the Somalia work of the Office of the UN High Commissioner for Human Rights (UN OHCHR) to include a special programme for minority rights, in conjunction with the role of the Independent Expert for Somalia, and support international and regional action to promote Somali minority rights through *inter alia* the UN Human Rights Council and the African Commission on Human and Peoples' Rights.