

Apostasy and Blasphemy in the Context of Somalia's International Human Rights Obligations

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Abstract

The legal framework of the Federal Republic of Somalia does not explicitly forbid apostasy but explicitly prohibits blasphemy against Islamic religion, object of worship and people venerated by Islam. If a person leaves Islam, he is ostracised by his kindred and the entire community. If he is a businessman, he would lose customers. If you are a jobseeker that is declared an apostate it becomes difficult to secure a job until you revert to Islam. The hatred against non-Muslims and non-believers is so deeply rooted in Somalia that many apostates has been persecuted in different ways. An apostate cannot inherit from a Muslim parent or ancestor and vice versa. The current application of blasphemy laws that exalt Islamic faith over other revealed religions is not in line with human rights obligations.

Keywords: apostasy, blasphemy laws of Somalia, human rights, obligations.

JEL Classification: K33, K38

1. Introduction

It is so unfortunate that hatred towards Christianity has deeply permeated the society of Somalia up to such an extent that it is felt throughout the territory of Somalia. The society exerts much pressure to the general citizenry to despise anyone who converts from Islamic religion to join other revealed religions of the world. Any conversion from Islamic faith is perceived by family members and the entire clan as an act of betrayal.² This hatred directed to the followers of other religions other than Islam has exacerbated religious intolerance within the country. One of the scenarios that reveal this religious intolerance and hatred is the one where a Muslim husband divorced his lovely wife residing in Burao just because he found out that she owns a Christian bible.³ It did not end there; he threatened to report her to the authorities so that she would be stoned to death as an apostate. Apostasy is not criminalised in the Criminal Code but the government agencies have directly and indirectly authorised the targeting of religious minorities by inciting violence against them and subjugated them.⁴ In the year 2017 the citizens of Somalia lodged a complaint against the reopening of the Roman Catholic Church that was closed for almost thirty years back and the government responded swiftly to their complaint by closing down the Catholic Church just few days after its reopening.⁵ As recent as October 2020 a couple who were Christian evangelists were arrested and charged with apostasy because they were propagating Christianity in Mogadishu. The police officials encouraged the community to alert the authorities if they see anyone propagating any religion other than Islam and made a solemn promise to apply blasphemy laws against anyone who dares propagating Christianity within the borders of Somalia.⁶ African Union has made some efforts to maintain peace in the Republic of Somali through the African Union Mission in Somalia (AMISOM). An Islamic extremist group (*Al-shabaab*) has alleged that the African Union Mission in Somalia (AMISOM) is an invasion and occupation of apostates and has executed many of them.⁷ It is highly disturbing that non-Muslims especially Christians are ostracized in Somalia, and it becomes very difficult to make a living if you are known to be a Christian because almost everyone disassociates

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² ADF International - Universal Periodic Review-Third Cycle, Submission to the 38th Session of the Human Rights Council's Universal Periodic Review Working Group, October 2020, Switzerland, Somalia Para 10.

³ Ibid at Para 12.

⁴ Ibid at Para 15, see also Djibouti: Situation and Treatment of Christians, including Instances of Discrimination or Violence, Effectiveness of Recourse Available in Cases of Mistreatment, Problems that a Muslim can Face if He or She Converts to Christianity or Marries a Christian (2000-2009) Immigration and Refugee Board of Canada, 2009.

⁵ Ibid ADF International Para 17.

⁶ Ibid ADF International Para 16.

⁷ Ibid ADF International at Para 19.

from you. If you run a business to make a living, you lose customers immediately when they discover your new choice of religion. If you are a job seeker it becomes very difficult for you to secure an employment opportunity just because of your religious affiliation.⁸ Apostasy is an impediment to inheritance because a non-Muslim cannot inherit from a Muslim and a Muslim cannot inherit from a non-Muslim.⁹ The first part of this paper will discuss the historical background of apostasy in Islamic law. The second part of this paper will discuss the legal framework of Somalia on Freedom of religion and their human rights obligations.

2. Historical background of apostasy in Islamic Law

Historically some wars were fought after the demise of prophet Muhammad (pbuh). Some people were challenging companions of the prophet, some claiming to be prophets and they ended up raising armies against the companions of the prophet, thereby threatening the future of Islam and its existence. This was an era filled with so many uncertainties regarding the future of Islamic religion. So those who fought against the companions of the prophet Muhammad were viewed as those who committed high treason and therefore deserved to be executed. This approval of violence intended to ensure the survival of Islamic religion rather than to deny people of their right to freedom of religion.¹⁰ The Quranic notion of apostasy is captured in three functional concepts, namely: (a) *Kufr* (disbelief), (b) *Irtidad* (apostasy), and (c) *Fisq* (stubborn disobedience).¹¹ Islamic law assumes that God is infinitely merciful, generous, compassionate, and beneficent, and dictates that human beings in turn should be grateful for what God bestows on them. Disbelief then is the failure to acknowledge God's benevolence, to reject it or to renounce God himself.¹² Islamic law differentiates between two types of disbelief, namely: people who have never seen God's greatness (*kafara*) and people who acknowledge God but turn their back on God's greatness (*murtad*). The Quran provides that those who associate anything with God (*mushrikun*) should be murdered.¹³ This is narrated by Abdullah as follows: "Allah's messenger said the blood of a Muslim who confess that *La ilaha illallah* (none has the right to be worshipped but Allah) and that I am the messenger of Allah cannot be shed except in three cases: (1) life for life, (in cases of intentional murders without right, i.e. in *Qisas* – law of equality in punishment; (2) a married person who commits illegal sexual intercourse; and (3) the one who turns renegade from Islam (apostate) and leaves the group of Muslims (by innovating heresy, new ideas and new things, etc in the Islamic religion)."¹⁴ Professor Wael Hallaq from the University of Columbia argued that there is no Quranic verse that expressly states that an apostate from Islam should be murdered.¹⁵ Hallaq's interpretation of Quranic verse (Q 2: 256) is that religion is not meant to be by force and any person who decides to abandon Islam and join other religion will be punished afterlife. Some Islamic scholars have agreed with Hallaq's interpretations of the Quran.¹⁶

The majority scholarly opinion of Muslim scholars is that apostates ought to be summoned and given an opportunity to repent and if they do repent, they would not be eliminated from the

⁸ Haile Ahmed A and David W Shenk (2011) *Teatime in Mogadishu: My Journey as a Peace Ambassador in the World of Islam*, The Christians Meeting Muslims Series. Harrisonburg: Herald Press; Marshal Paul and Lela Gilbert (1997) *Their Blood Cries Out: The Untold Story of Persecution against Christians in the Modern World*. Dallas: World Publishing; Marshal Paul "Persecution of Christians in the Contemporary World" 1998 (22) 1 *International Bulletin of Missionary Research*.

⁹ Fyze A *Outlines of Muhammedan Law* (London, 1964) at 395; Ansari-Pour MA "The Legal Relationship of a Father with his Illegitimate Child under Islamic and Iranian Law" (1999-2000) 6 *Yearbook of Islamic and Middle Eastern Law* 140-155; Schacht J *An Introduction to Islamic Law* (Oxford, 1964) at 170; Coulson NJ *Succession in the Muslim Family* (Cambridge, 1971) at 193-194; Nasir Jamal J *The Islamic Law of Personal Status* (2nd ed 1990) at 232.

¹⁰ Sherazad Hamit "Apostasy and the Notion of Religious Freedom in Islam" 2006 (01) 02 *Macalester Islam Journal* 2.

¹¹ *Ibid*.

¹² *Encyclopaedia of the Quran* page 119.

¹³ Quran 9: 5-6.

¹⁴ Bukhari, Book # 83, Hadith # 17 / vol 9:20.

¹⁵ Hallaq Wael (2011) *Apostasy* in Jane Damman McAuliffe (ed) *Encyclopaedia of the Quran*, Leiden and Boston: Brill 119-122; see also Malik Saira "An Analysis of Apostasy/*irtidad*: Considerations for Muslims in Contemporary Western Societies" 2009 (11) 3 *Journal of Islamic Law and Culture* 211-223.

¹⁶ Arnipur Katajun (2016) "*La ikraha fi'l-din* – There is no Compulsion in Religion" – Or is There? In Hans Georg Ziebertz and Ernst Hirssch Ballin (eds), *Freedom of Religion in the 21st Century: A Human Rights Perspective on the Relation between Politics and Religion*, Leiden and Boston 74-91.

surface of the earth. However, if they refuse to repent and continue in their ignorance they should be executed.¹⁷ Other Islamic scholars are of the view that a women apostate ought to be imprisoned and flogged until they return to Islamic religion but rejects the idea of killing them.¹⁸

It is noticeable that an accusation of apostasy is not the only reason that leads to the punishment of an apostate.¹⁹ Many scholars of Islamic law agree that the punishment of an apostate is largely connected to revolution rather than change of religious belief.²⁰ Muhammad Muhiy al-Din al-Masiri supported the idea that there is a connection between apostasy and revolution or an uprising and argued that apostasy is not just an intellectual choice of a different religion but is regarded as high treason against Islamic religion and rebellion against its tenets. He aptly summed it up as follows: "Apostasy (constitutes) an offence against the social order of Moslem society, for the social order of every Muslim society is Islam. Apostasy means treason to Islam and rebellion against its principles. It causes scepticism as to its truth. No society can function properly if its social order is made object of scepticism and defamation, for that may lead in the end, to the destruction of this order."²¹ The above quotation shows that an allegation of apostasy is related to rebellion. They strongly believe that the one who changes his or her religion is more likely to join forces with enemies of the Islamic state. The change of religion from Islam to another religion or to be an atheist is perceived as a sign of an intention to combat against the dominant societal order.²² This has made Alalwani to argue that it is not just the real change from Islamic religion that causes a problem but the act of rebellion.²³ Other Islamic scholars such as Larsson Goran are of the opinion that apostates that were eliminated from the surface of the earth during the early history of Islam were killed because Muhammad and his supporters were at war.²⁴ According to Larsson it is no longer necessary to kill apostates because Muslims are no longer at war with those who threatened its existence. However, other scholars such as Abou El Fadl Khaled do not share the latter mentioned sentiment and still maintain that the actual change of Islamic faith constitutes a dilemma and is the reason for the punishment of apostates.²⁵ If for whatever reason, the state fails in its duty to punish apostates, some individual extremist Muslims strongly believe that they have a divine duty to assassinate any apostate.²⁶

3. Legal framework of Somalia on freedom of religion and their human rights obligations

The Federal Republic of Somalia adopted a provisional Constitution in August 2012. The Constitution provides that Islamic religion is the religion of the state and all laws must be derived from Sharia laws as the source of all other laws.²⁷ Similar to other Muslim majority countries, the

¹⁷ Peter Rudolph and GJJ de Vries (1976-1977) *Apostasy in Islam*, *Die Welt des Islams* 17 (1/4): 1-25 at 5-6.

¹⁸ *Ibid* at 5.

¹⁹ Ahmedov Aibek "Religious Minorities and Apostasy in Early Islamic State: Legal and Historical Analysis of Services" 2006 (2) 3 *Journal of Islamic State Practices in International Law* 1-17; Cook David "Apostasy from Islam: A Historical Perspective 248-288; Masham Andrew "Public Execution in the Umayyad Period: Early Islamic Punitive Practice and Its Late Antique Context" 2011 (11) 4 *Journal of Arabic and Islamic Studies* 104-136.

²⁰ Alalwani Tahir Jabir (2011) *Apostasy in Islam: A Historical and Scriptural Analysis*, London and Washington: The International Institute of Islamic Thought; Kraemer Gudring (2006) *Drawing Boundaries: Yusuf al-Qaradawi on Apostasy in Gudring Kraemer and Samine Schmidtke (eds) Speaking for Islam: Religious Authorities in Muslim Societies*, Leiden and Boston: Brill 181-217; Weltecke Dorothea (2013) *The Medieval Period in Stephen Bullivant and Michael Ruse (eds) The Oxford Handbook of Atheism*, Oxford: Oxford University Press 164-178.

²¹ Quoted in Peter Rudolph and GJJ de Vries (1976-1977) *Apostasy in Islam*, *Die Welt des Islams* 17 (1/4): 1-25 at 5-6.

²² Kraemer Joel L (1980) *Apostates, Rebels and Brigands*, *Israel Oriental Studies* 34-73; Kraemer Gudring (2006) *Drawing Boundaries: Yusuf al-Qaradawi on Apostasy in Gudring Kraemer and Samine Schmidtke (eds) Speaking for Islam: Religious Authorities in Muslim Societies*, Leiden and Boston: Brill 181-217.

²³ Alalwani Tahir Jabir (2011) *Apostasy in Islam: A Historical and Scriptural Analysis*, London and Washington: The International Institute of Islamic Thought 54.

²⁴ Larsson Goran "Disputed, Sensitive and Indispensable Topics: The Study of Islam and Apostasy" 2018 *Method and Theory in the Study of Religion* 201-226 at 209.

²⁵ Abou El Fadl Khaled (2010) *Speaking in God's Name: Islamic Law, Authority and Women*, Oxford: One World at 164; Kraemer Gudring (2006) *Drawing Boundaries: Yusuf al-Qaradawi on Apostasy in Gudring Kraemer and Samine Schmidtke (eds) Speaking for Islam: Religious Authorities in Muslim Societies*, Leiden and Boston: Brill 181-217.

²⁶ Peter Rudolph and GJJ de Vries (1976-1977) *Apostasy in Islam*, *Die Welt des Islams* 17 (1/4): 1-25 at 5-6.

²⁷ Article 2 (1) of the Provisional Constitution of Somalia, 2012.

private life of citizens is regulated in terms of Sharia law, and it is so unfortunate that there is no Constitutional provision that exempt non-Muslims from the application of Sharia law.²⁸ This situation leads to discrimination against Christians, violence against them and their persecution all over the country.²⁹ The Penal Code of Somalia does not explicitly outlaw apostasy or change from Islam to another religion. If a person speaks sacrilegiously about Muslims, their places, or objects of worship, or disrupts religious rites or practices, such a person should be punished with imprisonment.³⁰ If any person blasphemes God, symbols or person respected in the religion of the state should be punished with a fine for doing so. Moreover, if a person disrespects the Islamic religion such a person should be imprisoned for a period of not more than two years.³¹ There is a problem with the way blasphemy laws are formulated and they are vague. They are open to subjective interpretations and abuse by certain individuals to settle their own selfish ends.

The Provisional Constitution has a provision that guarantees religious freedom for all. It is formulated more like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). UDHR provides that each human being has a right to choose any religion of his choice and such a right includes freedom to change religion and adopt any other revealed religion of his choice.³² In a similar vein, ICCPR guarantees freedom of thought, conscience, and religion to everyone. This freedom comprise liberty to choose or change from one religion to the other.³³ Article 2 of the Constitution of Somalia is a direct contradiction of the above international instruments because it prohibits change from Islamic religion to any other revealed religion and forbids other religions from propagating in Somalia.³⁴ As early as 2002, one hundred and forty countries have signed the UDHR, ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides for the limitation of religious freedom and affords everybody the right to change religion and adopt another religion. The right or freedom to change religion continues to be a contentious issue all over the world.³⁵ The blasphemy laws that are still applicable in Somalia are not in line with the latter mentioned international human rights instruments and the Federal Republic of Somalia ought to amend its blasphemy laws to comply with its human rights obligations.

4. Conclusion

As already argued earlier, religious intolerance is an order of the day in the Federal Republic of Somalia. This intolerance is visible to those who change from Islam and embrace other revealed religions such as Christianity. One of the married men decided to divorce his wife and threaten to report her apostasy to the authorities just because he discovered that she owns a Christian bible. Change from Islam is not explicitly mentioned in the Penal Code, but the general normative system of Somalia forbids it to such an extent that other family members, entire kindred and the community perceives change from Islam as an act of betrayal that deserves punishment. As a result of this it becomes difficult to make a living in the country that clearly exalts one religion over other religions because anyone who deviate from the dominant state religion is persecuted in different ways. It becomes extremely difficult to secure a job or promotion if you decided no longer to embrace Islam.

²⁸ ADF International "Universal Periodic Review-Third Cycle, Submission to the 38th Session of the Human Rights Council's Universal Periodic Review Working Group, October 2020, Switzerland, Somalia Para 4.

²⁹ Frank-Ole Thoresen "Persecution of Christians in a Somali Context" 2012 (3-4) *Norsk Tidsskrift for Misjonsvitenskap* 227-250 at 234; Hall of Shame Report for year 2009. The Worlds Ten Worst Persecutors of Christians. International Christian Concern, 2009 at 14; International Religious Freedom Report: Somalia (2009). United States Department of State. Bureau of Democracy, Human Rights, and Labour, 2009.

³⁰ Articles 313 and 314 of the Penal Code of Somalia.

³¹ Articles 313 and 314 of the Penal Code of Somalia.

³² Article 18 of the Universal Declaration of Human Rights (UDHR), 1948.

³³ Article 18 (1) of the International Covenant on Civil and Political Rights (ICCPR), 1966.

³⁴ Article 2 (2) of the Provisional Federal Constitution of Somalia, 2012.

³⁵ Waltz Susan "Universal Human Rights: The Contribution of Muslim State" 2004 (26) *Human Rights Quarterly* 802; Dunn Shannon (2015) *Islamic Law and Human Rights*, in Anver M Emon and Rumeen Ahmed (eds) *The Oxford Handbook of Islamic Law*: Oxford University Press Online 1-27; Hashemi Nader and Emran Qureshi (2014) *Human Rights in Islam* el-Din Shahin (ed) *The Oxford Encyclopedia of Islam and Politics*: Oxford University Press 427-437.

This tendency of ostracising other societal members with different religious beliefs is not in line with the international human rights instruments. The application of blasphemy laws in Somalia is not free from practical problems of application because such laws are vague and are subjected to subjective interpretations and abuse.

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