

Reference : **DSA/ACE/64/263 20**Date : **17 August 2020**

To:

- **H.E. Maxamed Mursal Sheikh, Speaker of the Federal Parliament**
- **H.E Mohamed Mursal Abdirahman, Speaker of the Lower House**
- **H.E. Deqa Yasin Hagi Yusuf, Minister of Women and Human Rights Development**

**LETTER OF URGENT APPEAL TO THE GOVERNMENT OF THE FEDERAL
REPUBLIC OF SOMALIA ON THE SEXUAL INTERCOURSE RELATED CRIMES
BILL**

We have the honour to address Your Excellencies on behalf of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee), an African Union Organ mandated to monitor the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter) and to promote and protect the rights of children on the Continent.

We would like to start by acknowledging and commending the efforts that the Government of the Federal Republic of Somalia has put in ensuring the protection of children's rights in general and the rights of the girl child in particular. While your Government has not yet ratified the Charter, it signed on 01 June 1991. The Committee further recognizes and commends that Somalia has ratified the Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights, the International Convention on Civil and Political Rights, and signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol). The Committee also commends the Constitution of Somalia which sets the age of marriage at 18. Furthermore, work has been done in drafting the Sexual Offences Bill from 2018 which provides protection for girls.

When the Committee had its advocacy visit to Somalia on 30-31 July 2018, it acknowledged the importance of the Bill and encouraged the Government of Somalia to adopt the Bill and work towards building the capacities of various Government organs to be able to implement the Bill. Moreover, Somalia portrayed a great deal of political will to

protect the girl child as it co-sponsored the 2014 UN General Assembly resolution and the 2013 Human Rights Council resolution on child, early and forced marriage.

However, the Committee notes from various reliable sources that the Sexual Offence Bill which was sent back to the Cabinet by the Speaker of the Parliament in 2019, is planned to be replaced by the Sexual Intercourse Related Crimes Bill with substantive changes that could undermine the rights of children, particularly the girl child. The new draft is said to allow children to get married based on their reproductive maturity as opposed to setting a minimum age of marriage. The Committee is strongly concerned that this in effect legalizes child marriage in Somalia.

We would like to draw the attention of Your Excellencies to the various international human rights standards that abrogate child marriage, Article 21 of the African Children's Charter unequivocally bans child marriage and child betrothal with no exceptions. Even though Somalia has not ratified the Charter, it has signed it. International norms provide that signatory states to a certain treaty cannot act in a manner that contravenes the object and purpose of the respective treaty as provided under article 18(a) of the Vienna Convention on the Law of Treaties. As clearly stipulated in the Preamble of the African Children's Charter, one of its main objectives is to introduce a regional child rights instrument and address culture and tradition-based practices that affect children. Such practices include child marriage and female genital mutilation. The Maputo Protocol under article 6 also prescribes that the age of marriage should be set at 18. Moreover, the passing into law of the Sexual Intercourse Related Crimes Bill would not be in line with the Constitution of Somalia as well as other norms and standards included in the SDGs, Agenda 2063, Agenda 2040, the Joint General Comment of the Committee and the African Commission on Human Peoples' Rights on Child Marriage and the AU Common Position on Ending Child Marriage. The Committee is concerned that the new Bill is regressive and disregards the various positive efforts exerted to fight child marriage nationally, regionally and globally.

We would like to place emphasis on the devastating effect of child marriage. Child marriage undermines the value of a child and infringes their freedom to enjoy a childhood and develop properly. It affects the health and psychology of the child and deprives the child of the right to education, play and many other rights. It also affects the realization of many of the goals and aspirations set in the SDGs as well as Agenda 2063 and Agenda 2040. Given the fact that Somalia has the 10th highest percentage of child marriage in the world, the Committee strongly believes that any legislative reform undertaken by the State should be to fully prohibit child marriage and work towards mechanisms that would allow it to eliminate the practice in the foreseeable future.

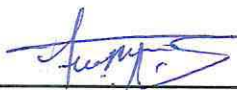
The Committee therefore urges the Government of Somalia to:

- Disregard the elements of the newly introduced Sexual Intercourse Related Crimes Bill that allow child marriage, forced marriage and do not provide adequate penalties for sexual abuse and sexual violence;
- Ensure that any draft introduced is in line with regional and international human rights instruments, norms and standards as well as the Constitution of Somalia as it relates to age of marriage;
- Ensure that there are no exceptions in legislation in setting the minimum age of marriage at 18;
- Ensure that the penalty prescribed for perpetrators of child marriage is commensurate with the seriousness of child marriage and the impact it has on children;
- Ratify the African Children's Charter, and
- Seek technical assistance, as appropriate, from its international partners in this regard.

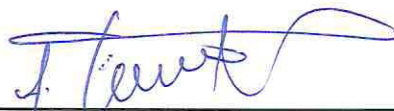
The Committee wishes that its concerns and recommendations are given due attention by the relevant Authorities within the Federal Republic of Somalia and timely actions are taken to prevent any draft that does not promote the rights of children from becoming a law. The Committee looks forward to a positive response on its Urgent Appeal as soon as possible.

We would like to kindly inform you that the Committee will make this letter available on its website.

Please accept, Your Excellencies, the assurances of our highest consideration.



Hon. Joseph Ndayisenga
Chairperson



Hon. Dikere Marie-Christine Bocoum
Special rapporteur on Child
Marriage and Other Harmful Practices