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Somalia

Gender Justice & The Law

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Somalia

Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
ESCWA	Economic and Social Commission for West Asia
FGM/C	female genital mutilation / cutting
GBV	Gender-based violence
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-government organization
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UNESCWA	United Nations Economic and Social Commission for West Asia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees (UN Refugee Agency)
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization
Arabic terms	
fatwa	Ruling or pronouncement on a point of Islamic law
'idda	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
khalwa	Social mingling of men and women who are unrelated
khul'a	Divorce process initiated by the wife requiring return of her mahr
mahr	Mandatory payment by the groom or his father to the bride which then becomes her property
talaq	Repudiation; divorce process whereby the husband repudiates his wife
'urf	Custom
wali	Guardian
wilaya	Guardianship
zina	Unlawful sex, including adultery and sex between two persons neither of whom are married

INTRODUCTION

Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Somalia. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

This country profile was informed and enriched by a workshop of Federal Government of Somalia stakeholders (13 December 2017), and inputs from members of the Steering Committee for the National Action Plan on Sexual Violence in Conflict and the Ministry of Women and Human Rights Development, whose contributions are gratefully acknowledged. Country inputs were coordinated by Mr. Noel Kututwa, Women Protection Officer, Human Rights and Protection Group, UN Assistance Mission in Somalia; Mr. Zafar Gondal, Justice Technical Specialist; and Ms. Doel Mukerjee, Project Manager, Rule of Law, UN Development Programme (UNDP). The Monitoring, Analysis and Reporting Arrangements (MARA) on conflict-related sexual violence in armed conflict and post-conflict situations for Somalia applauded the study on 17 January 2018.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.



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Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Somalia has not acceded to CEDAW.

Constitution

Article 11 of the Provisional Constitution provides that all citizens have equal rights regardless of sex, and that the State must not discriminate against any person on the basis of gender.

NATIONALITY LAW

NATIONALITY

Somali women do not have the same legal rights as men to pass citizenship to a child or a foreign spouse under the Law on Somali Citizenship of 1962.

CRIMINAL LAWS

Domestic violence

Somalia does not have a law that specifically addresses domestic violence.

Abortion for rape survivors

Abortion, with or without consent and for honour, is prohibited by Articles 418–422 of the Penal Code, including for women who have been raped.

Female Genital Mutilation / Cutting (FGM/C)

Article 15 of the Provisional Constitution prohibits FGM/C. A decree in Somaliland and legislation in Puntland prohibiting FGM have been drafted, but await endorsements.

Marital rape

Marital rape is not specifically criminalized. Women owe a duty of obedience to their husbands and are expected to fulfil conjugal duties in the marriage.

Sexual harassment

Article 24 of the Provisional Constitution prohibits sexual abuse in the workplace. The Puntland Sexual Offences Act 2016 prohibits sexual harassment.

Human trafficking

The Provisional Constitution provides that a person may not be subjected to slavery, servitude, trafficking, or forced labour for any purpose. The Penal Code includes some trafficking offences. However, there is no comprehensive anti-trafficking legislation addressing prevention and protection measures.

Rape (other than of a spouse)

Rape is criminalized by Article 398 of the Penal Code. Whoever with violence or threats has carnal intercourse with a person of the other sex shall be punished with imprisonment for five to 15 years.

Honour crimes: Mitigation of penalty

The Penal Code requires reduction of sentences for a person who kills a female relative (spouse, daughter, or sister) or her sexual partner in the sudden heat of rage “for the offence caused to his or her honour and to the honour of his or her family” after finding her in a sexual act.

Sex work and anti-prostitution laws

Prostitution is prohibited by Articles 405–408 of the Penal Code.

Exoneration by marriage

There is no marry-your-rapist provision in the Penal Code. Customary law may be applied in such cases to exonerate an abductor or rapist if marrying the victim preserves honour.

Adultery

Adultery is an offence under Article 426 of the Penal Code.

Sexual Orientation

Homosexual conduct between consenting adults is criminalized by Article 409 of the Penal Code.

PERSONAL STATUS LAWS

Minimum age of marriage

The Family Code sets the minimum age for marriage at 18 years for both males and females. However, females between the ages of 16 and 18 can marry with their guardian’s consent. The Family Code is seldom applied in legal practice. In most areas, Sharia and customary laws are used to address family matters.

Guardianship of children

Fathers are the guardians of children.

Male guardianship over women

Muslim women require consent of a wali (male guardian) to marry. Women and girls lack legal protections from early and forced marriage.

Custody of children

After divorce or separation, the mother retains custody of her children when they are young, but she loses custody if she remarries.

Marriage and divorce

A husband can divorce by repudiation (talaq). A wife has the right to divorce on specified grounds. Although the Family Code provides that marriage is based on equal rights and duties, in practice Sharia rules apply to marriage and divorce, including the wife’s duty of obedience.

Inheritance

Sharia rules of inheritance are applied. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

Polygamy

Polygamy is allowed by Sharia law. The Family Code allows polygamy in limited specified circumstances. The Family Code is seldom applied in legal practice.

LABOUR LAWS

Right to equal pay for the same work as men

The Private Sector Employees Laws of Somaliland and Puntland require that male and female workers who do the same work should receive equal remuneration. The Provisional Constitution states that every labour law shall comply with gender equality.

Domestic workers

There are no specific legal provisions on the protection of the rights of domestic workers.

Dismissal for pregnancy

The Provisional Constitution states that all women workers have a special right of protection from discrimination. Employers are prohibited from dismissing women because of pregnancy by the Private Sector Employees Law for Somaliland and Puntland.

Paid maternity leave

The Labour Code of 1972 provides that women are entitled to 14 weeks of maternity leave at half pay. For Somaliland and Puntland, the respective Private Sector Employees Law provides that women are entitled to 16 weeks of maternity leave.

Legal restrictions on women’s work

Under the Labour Code of 1972, women are restricted from being employed in night work, and the specific types of work prohibited for women may be prescribed by decree.

OVERVIEW

Legal framework

International law

Somalia has not acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and has signed but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

Domestic legal system

The legal system is pluralist and consists of three main sources of law: customary, Sharia, and statute laws. The state legal system combines elements of English common law and Italian civil law. The legal systems and methods of law enforcement differ between regions of the country. Most cases in rural areas are resolved through the traditional customary system.¹

Puntland and Somaliland largely govern their own affairs through their own constitutions and statute laws. The autonomous region of Somaliland is a self-declared republic. The formal state courts in Puntland and Somaliland apply the federal Penal Code of 1962 for criminal cases. Puntland has its own court system, which enforces a combination of Sharia law for personal status issues and the federal Penal Code.

The Islamic Courts Union established Sharia Courts in the southern and central regions of Somalia, but the influence of these courts has decreased in recent years. In the Hirshabelle region it has been reported that the state government established a Sharia Court system in 2017.²

Sharia law is administered by male judges only. This gives rise to the concern that the law may be misapplied in favour of men, with the result that women are denied justice and some men go unpunished.³

Most cases of sexual violence and gender-based violence (GBV) are dealt with by the customary system. Currently, the Federal Government of Somalia and some Federal Member States are making efforts to reintroduce common law courts, but the common law system is unfamiliar to most Somalis, resulting in lack of trust. Somalia is still characterized by a weak state justice system, which makes it difficult to ensure that the common law becomes the main legal system to address sexual violence and GBV cases.

The customary system (*xeer*) functions in parallel to state law. The impact of *xeer* on gender equality has been described as follows:

A number of *xeer* practices contravene basic human rights and standards of gender equality, including *dumaal* (where a widow marries a male relative of her deceased husband by choice or by force), *Xigsisan* or *Xiksin* (where a widower is given the right to marry his deceased wife's sister), and *godobtir* (the forced marriage of a girl into another clan as part of a compensation payment or inter-clan peace settlement). Crimes of rape are commonly resolved through the marriage of the victim and the perpetrator. Although the *xeer* of many groups protects the right of a victim to refuse marriage in case of rape, the victims face enormous societal pressure to do so; marriage is widely deemed the best option in such situations to protect the victim from a life of shame and as a means of stemming future retaliatory violence. *Xeer* also tolerates revenge and honor killings, denies women inheritance rights, and views domestic violence as a personal rather than a legal matter.⁴

Legislation relevant to gender justice

Federal laws

- Provisional Constitution of 2012

1 Legal Action Worldwide, Legal Aid Providers Supporting Gender Based Violence Survivors in Somalia (Legal Action Worldwide, 2014).

2 "Somali state opens Sharia court to rival al Shabaab justice system," Africa News (26 July 2017), <http://www.africanews.com/2017/07/26/somali-state-opens-sharia-court-to-rival-al-shabaab-justice-system>.

3 UNDP, Gender in Somalia: Brief (2013), p. 5.

4 Maria Vargas Simojoki, Unlikely Allies: Working with Traditional Leaders to Reform Customary Law in Somalia, (Rome: International Development Law Organization, 2011), Section 2.4.

- Penal Code of 1962
- Personal Status Code of 1975 (Family Code)
- The Criminal Procedure Code (Legislative Decree No. 1 of 1 June 1963)
- The Labour Code (Law No. 65 of 18 October 1972)

Somaliland

- Penal Code of 1962 (Somalia)
- The Somaliland National Human Rights Commission Law 2010
- Constitution of Somaliland of 2001. Article 36 states that the rights, freedoms, and duties laid down in the Constitution are to be enjoyed equally by men and women, save for matters that are specifically ordained in Islamic Sharia; the government shall encourage and shall legislate for the right of women to be free of practices that are contrary to Sharia and that are injurious to their person and dignity; and women have the right to own, manage, oversee, trade in, or pass on property in accordance with the law. Article 28 provides for equality to judicial recourse and that the State shall provide free legal defence in matters that are determined by the law, and court fees may be waived for the indigent.
- Private Sector Employees Law 2004

Puntland

- Penal Code of 1962 (Somalia)
- Constitution of Puntland of 2009. Article 35 states that it is the duty of the government to protect and promote the rights of women consistent with Islamic religious norms, and that women have the same rights as men, save the distinctions made by God between the two sexes. Article 12 provides that all persons are equal before the law. Article 25 provides for equality in judicial recourse, including that the state shall appoint a lawyer for any person unable to defend himself or herself, or devoid of means to procure one, and a special law shall regulate access to justice for anyone who cannot afford to pay the court charges.
- Sexual Offences Act (Rape Act) 2016
- Private Sector Employees Law

Provisional Constitution of the Federal Republic of Somalia

Articles of the Provisional Constitution relevant to protection from GBV include:

Article 2(3) provides that no law can be enacted that is not compliant with the general principles and objectives of Sharia. Article 4 provides that Sharia has precedence over the Constitution as the supreme law of the country.

Article 11

- (1) All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth, or dialect shall have equal rights and duties before the law.
- (2) Discrimination is deemed to occur if the effect of an action impairs or restricts a person's rights, even if the actor did not intend this effect.
- (3) The State must not discriminate against any person on the basis of age, race, colour, tribe, ethnicity, culture, dialect, gender, birth, disability, religion, political opinion, occupation, or wealth.
- (4) All state programmes, such as laws or political and administrative actions that are designed to achieve full equality for individuals or groups who are disadvantaged, or who have suffered from discrimination in the past, shall be deemed not to be discriminatory.

Article 12

- (1) The fundamental rights and freedoms recognized in this Chapter (of the Constitution) shall always be respected in the making and application of the law. Likewise, they must be respected by all individuals and private organizations, as well as by every state institution and state official as they carry out their official functions.
- (2) It is the responsibility of the State not only to ensure it does not violate rights through its actions, but also to take reasonable steps to protect the rights of the people from abuse by others.

Article 14

A person may not be subjected to slavery, servitude, trafficking, or forced labour for any purpose.

Article 15

- (1) Every person has the right to personal liberty and security.
- (2) Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment.
- (3) Every person has the right to physical integrity, which cannot be violated.
- (4) Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited.

Article 24

(1) All workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the workplace. Every labour law and practice shall comply with gender equality in the workplace.

Article 28

(1) A marriage shall not be legal without the free consent of both the man and the woman, or if either party has not reached the age of maturity.

Article 41

(1) The Federal Parliament shall establish a Human Rights Commission that is independent of state control and has adequate resources to carry out its functions effectively.

(2) The functions of the Human Rights Commission shall include the promotion of knowledge of human rights, and specifically Sharia, setting implementation standards and parameters for the fulfilment of human rights obligations, monitoring human rights within the country, and investigating allegations of human rights violations

Policy framework

Somalia's *National Gender Policy 2016* was approved by the Federal Council of Ministers. It includes strategies to eradicate harmful traditional practices such as FGM/C and child marriage and to improve services for the management of GBV cases.⁵

In 2014, the Ministry of Women and Human Rights Development, with support from the United Nations, developed a National Action Plan to Combat Sexual Violence in Conflict. The federal government has also drafted a Sexual Offences Bill 2017.

The Trafficking and Smuggling Taskforce is the federal government's anti-trafficking coordinating body with representation from the Ministry of Internal Security, Ministry of Foreign Affairs, Ministry of Justice, Somali Police Force, and Ministry of Interior and Federal Affairs.

Women are under-represented in government, representing only 24 per cent of Parliament. In 2016, the National Leadership Forum, which comprises leaders from federal and regional governments, endorsed an electoral model that sets a 30 per cent quota for women in parliamentary seats. It is envisaged that quotas for women can be integrated into the constitutional review process.

Legal and support services

Minimal government services are available to survivors of GBV. The Hargeisa Group Hospital (the largest hospital in Somalia) provides treatment and support to survivors. Some NGOs provide legal and medical support, but coverage is limited. The Somali Women Development Centre and Save Somali Women and Children are operating in the Benadir, Lower Juba, and Bay regions, providing legal aid, legal awareness services, and sensitization about the formal justice system.

The UN Population Fund (UNFPA) and UNDP implement a community police initiative through which the Ministry of Security provides six female community police volunteers to handle cases of GBV. These volunteers are trained to work with survivors, recording and reporting incidents of violence and providing psychological support and referrals for clinical management of injuries and legal redress.⁶

UNDP's Civilian Policing Project provides human rights training in the three Somali police forces. Targeted recruitment and training of female police officers has resulted in an increase of female police officers.⁷

The Somali Police Force established the Woman and Child Protection Unit (WCPU) in 2015, a specialized unit that provides a coordinated multisectoral approach to investigating and preventing sexual violence and GBV, conflict-related sexual violence, and violence against children. It provides legal aid services and access to medical services, psychosocial support, and access to a safe house or other place as may be necessary on a case-by-case basis. WCPU sensitizes members of the Somali Police Force on sexual violence through training police not to commit acts of sexual violence and to deal with GBV cases sensitively. The WCPU is represented at the federal state level by Gender Desks, which were established under a programme of the African Union Mission in Somalia (AMISOM). The Gender Desks aim to strengthen the capacity of the Somali Police Force to address sexual violence and GBV. UNDP is in discussion with the Somali Police Force to support the establishment of one-stop centres for GBV cases, to be piloted at the police station in Mogadishu.

⁵ Africa Union Mission in Somalia, *Easy to Read Guide on Somalia, Draft National Gender Policy*, <http://amisom-au.org/wp-content/uploads/2013/08/EASY-TO-READ-GUIDE-GENDER-POLICY.pdf>.

⁶ UNFPA, "Finding justice for survivors of gender-based violence in Somalia" (25 February 2015), <http://www.unfpa.org/news/finding-justice-survivors-gender-based-violence-somalia#sthash.RADlPdKv.dpuf>.

⁷ UNDP, "Promoting Human Rights and Gender Equality in the Police Force," <http://www.so.undp.org/content/somalia/en/home/ourwork/womenempowerment/successstories/Trainingpolice.html>.

The WCPU is supported by a Working Group with members from civil society organizations and Federal Government of Somalia entities: the Somali Police Force, Attorney General's office, judiciary, Ministry of Women and Human Rights, and Ministry of Internal Security. The United Nations supports this Working Group with participation of the United Nations Assistance Mission in Somalia (UNSOM) Women and Child Protection Unit, United Nations Police, UNDP, UN Women, UNICEF, and AMISOM. The UN provides technical support in training, equipment, and development of structures with the police.

The WCPU has six staff members, one being a male police officer. The Unit is located in police headquarters and works with all the police stations in Mogadishu, but it faces operational challenges. Police officers outside the Unit reportedly do not view its activities as serious police work and perceive it as providing support to survivors – an activity traditionally associated with NGOs. Female police officers are reluctant to join the WCPU, mainly due to the threats reportedly received by those working in the Unit. Many of the alleged perpetrators of sexual violence that the WCPU has to investigate are men in uniform, either from the police or the military, and are sometimes from powerful clans. There have been instances in which police working in the WCPU have received threats of harm if they pursued investigations.

Barriers to access to justice

The breakdown of the rule of law as well as cultural, religious, and institutional factors present barriers to access to justice. Fear of reprisals or punishment deters survivors of GBV from reporting incidents. Survivors are often reluctant to pursue cases against the perpetrator due to the social stigma associated with rape and other forms of GBV.

There are very high rates of sexual violence and GBV in the country, with more than 1,000 cases reported in Mogadishu in the first half of 2014. UNHCR and UNICEF have documented patterns of rape perpetrated with impunity, particularly of displaced women and members of minority clans.⁸ Somali authorities rarely address incidents of sexual violence and human trafficking through the formal court system. Lack of women working in the justice sector also deters survivors from reporting cases or pursuing prosecutions.

In south and central Somalia, survivors, lawyers, witnesses, journalists, and family members have been threatened, harassed, and arrested for reporting GBV offences. Legal aid providers regularly receive death threats towards their staff. Fear of reprisals to staff, survivors, witnesses, and medical personnel is a particular problem if perpetrators are from the security forces.⁹

In the Puntland region, many women and girls who are subjected to sexual violence in camps for internally displaced persons avoid pursuing legal action for fear of reprisals by their attackers. In the few cases where survivors choose to report an assault, they are required to pay fees to the police to open a case and to cover the costs of feeding the accused in detention.¹⁰

In Somaliland, gang rape is a problem in urban areas, primarily perpetrated by youth gangs and male students. Many of these cases occur in poor neighbourhoods and among immigrants, returned refugees, and displaced rural populations living in urban areas.¹¹

A 2014 report on legal aid in Somalia reported the following developments:

There are thirteen NGO legal aid providers across Somalia who provide four key services to GBV survivors. Firstly, providing criminal defence or civil representation to clients who cannot afford to represent themselves in court; secondly, representing and assisting victims of crime to participate in prosecutions against the accused; thirdly, providing general legal information and advice; and fourthly, providing representation and assistance in alternative dispute resolution through the customary system.

These legal aid providers have had significant successes in providing needed services for GBV survivors. Survivors are better served through 'one stop' medico-legal response centres, in which they can receive medical treatment, legal assistance, and report an offence to the CID all in one place. This results in an increase in GBV prosecutions and convictions....

In regions where there are higher number of women lawyers there is an increase in the number of reports, prosecutions and convictions for GBV offences.... In Somalia, there is a clear link between the number of women in senior positions in the Criminal Investigation Department (CID) of the police, and the Attorney General's office and the increase in reporting, investigations, prosecutions and convictions of perpetrators.¹²

8 United States Department of State, Country Reports on Human Rights Practices for 2014, Somalia (2015).

9 Legal Action Worldwide, Legal Aid Providers.

10 UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Report: Somalia (23 March 2015).

11 US Department of State, Country Reports.

12 Legal Action Worldwide, Legal Aid Providers.

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

Most domestic violence and sexual violence cases are dealt with through the customary and Sharia legal systems. Anecdotal evidence indicates that some customary practices result in a double victimization of women and girls, denial of justice for many survivors, and impunity for perpetrators.

The customary justice system is focused on clans. Justice is delivered for the clan rather than for the survivor of the sexual violence. Traditional approaches to dealing with rape seek resolution or compensation through negotiation between clan members. Restitution is paid to the clan and not to the survivor. Once restitution is paid, the perpetrator of the sexual violence is free from further punishment and the case is considered finalized. In some cases, the woman or girl is forced to marry the perpetrator of the violence as a form of “restitution” ordered by customary courts.¹³ The customary system is widespread, and many families and clans choose it over other justice systems.

In Puntland, there is a statutory law on sexual offences (Rape Act, 2016). A statute on sexual offences is under consideration by Somaliland’s Parliament in 2018. There is also a draft law on sexual offences under consideration by the Federal Government of Somalia.

According to Sharia and the local traditions of blood compensation, anyone found guilty of the death of a woman pays to the victim’s family only half the amount required for a man’s death.

Penal Code provisions

Somalia does not have a law that specifically addresses domestic violence. Murder, battery, and assault are covered in the Penal Code of 1962, Part XIII, under “Crimes against the Life and Safety of Individuals.”

There are no specific laws against spousal rape. The Penal Code identifies the following offences for acts of rape or sexual violence:

Carnal Violence

- Whoever with violence or threats has carnal intercourse with a person of the other sex shall be punished with imprisonment for five to 15 years.¹⁴
- The same punishment is imposed on anyone who has carnal intercourse with a person of the other sex who is incapable of giving consent or with a person who has been deceived by the offender personating as another person.¹⁵
- The same punishment shall be imposed on a public officer who, by abusing his power, has carnal intercourse with a person of the other sex who is under arrest or detained in custody.¹⁶

Acts of Lust Committed with Violence

- Committing an “act of lust” (other than carnal intercourse) with violence or threats upon a person of the other sex is punished with imprisonment from one to five years.¹⁷

Unnatural Offences Committed with Violence

- In cases of same-sex rape involving “unnatural sex” (i.e., sodomy) with threats or violence, or rape perpetrated by a male who has unnatural sex with (i.e., sodomizes) a female with threats or violence, the punishment that applies for “carnal violence” is increased.¹⁸

Abduction for Purposes of Lust or Marriage

- Whoever, with violence, threat, or deceit, abducts or detains a person for the purposes of carnal violence or lust shall be punished with imprisonment from two to five years.
- Whoever, with violence, threat, or deceit, abducts or detains for purposes of marriage an unmarried person, shall be punished with imprisonment from one to three years.

¹³ United Nations, Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (23 March 2015); UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, Mission to Somalia (14 May 2012), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add3_en.pdf.

¹⁴ *Somalia, Penal Code*, Art. 398(1).

¹⁵ *Ibid.*, Art. 398(2).

¹⁶ *Ibid.*, Art. 398(3).

¹⁷ *Ibid.*, Art. 399.

¹⁸ *Ibid.*, Art. 400.

HONOUR CRIMES

The Penal Code requires reduction of sentences for a person who kills a female relative (spouse, daughter, or sister) or her sexual partner in the sudden heat of rage “for the offence caused to his or her honour and to the honour of his or her family” after finding her in a sexual act.¹⁹ Punishment in such cases is reduced to imprisonment for a period of between five and ten years.

Where the offender, under the same circumstances, causes hurt rather than kills the female relative or partner, the punishment is reduced by a third, and where death results from the hurt, the punishment is imprisonment from two to eight years.²⁰

Where the offender, under the same circumstances, assaults the female relative or partner but without causing physical or mental illness, the offender is exonerated instead of being subject to punishment applicable in other circumstances, which is imprisonment for up to six months and a fine.²¹

The Penal Code also provides for reduction of penalty for causing a woman’s abortion with or without her consent where this crime is committed for the purpose of safeguarding one’s own honour or that of a near relative.²²

ADULTERY AND SEX OUTSIDE OF MARRIAGE

The Penal Code criminalizes adultery (sex outside of marriage by a married person) with imprisonment of up to two years.²³ In areas where Sharia law is implemented rather than the Penal Code, the offence of *zina* (extra-marital sex) is punishable with lashing or stoning to death.

Survivors of rape or other forms of sexual assault may be reluctant to report crimes for fear that they may face prosecution for adultery or *zina*.

ABORTION FOR RAPE SURVIVORS

Abortion is illegal under the federal Penal Code (Articles 418–422 and 424), even in cases of rape. A woman consenting to or causing her own abortion is subject to one to five years’ imprisonment. If an abortion is performed to safeguard one’s own honour or that of a near relative, the penalties shall be reduced by half to two thirds.

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

The Provisional Constitution prohibits FGM/C.²⁴

A draft decree in Somaliland that prohibits FGM/C is awaiting endorsement from religious leaders. Draft legislation outlawing all forms of FGM/C in Puntland is at the final stages, and a *fatwa* (religious decree) issued in Puntland bans all forms of FGM/C.²⁵ Despite the prohibitions, FGM/C prevalence in Somalia is approximately 95 per cent and is primarily performed on girls aged 4 to 11 years. The most common form of FGM/C is Type III (infibulation, referred to in Somalia as pharaonic circumcision). Eighty per cent of all genital procedures for women and girls consist of this form, which is the most harmful. The less radical form of FGM/C, Type I (Sunna), is practiced mainly in the coastal towns of Mogadishu, Brava, Merca, and Kismayo.²⁶

19 Ibid., Art. 443(1).

20 Ibid., Art. 443(2).

21 Ibid., Art. 443(3).

22 Ibid., Art. 422.

23 Ibid., Art. 426.

24 Somalia, Provisional Constitution, Art. 15.

25 UN Country Team, Thematic Briefing of the United Nations Country Team Somalia: GBV Issue (January 2014). Available from http://reliefweb.int/sites/reliefweb.int/files/resources/Thematic%20briefing_ENG_1_0.pdf

26 US Department of State, Country Reports.

FAMILY MATTERS

Equality in the family

The extent to which the Family Code of 1975 is applied across different jurisdictions of the Federal Republic is unclear. Little has been done to promote the law, which is seldom applied in legal practice and is considered to lack legitimacy because some provisions contradict Sharia.²⁷ In most areas, Sharia and customary laws are used to address family matters, rather than the Family Code. The Family Code provides that the doctrines of the Shafii School of jurisprudence and the general principles of Islamic law and social justice provide residuary sources of law.²⁸

The Somaliland Law website describes the situation in Somaliland as follows:

[Since 1991] all matters relating to family and personal issues (such as marriage, divorce, succession, etc.) have been dealt in accordance with Islamic (Shafii) principles (augmented by customary law in limited aspects); and the 1975 Somali Family Law, which was not widely used except in the courts before 1991, fell into disuse. The 1975 Law transgressed Islamic principles in its provisions relating to women and, in particular, succession. In the eyes of the vast majority of the population, this fundamental flaw has made the rest of the law, which dealt with less controversial issues of registration of marriage and divorce, maintenance, guardianship, and wills, etc., unacceptable.²⁹

The Family Code sets the minimum age for marriage at 18 years both for males and females. However, females between the ages of 16 and 18 can marry with their guardian's consent. If the guardian refuses consent, a judge may grant permission for girls to marry without the guardian's consent in exceptional circumstances.³⁰

The Family Code provides that marriage is based on equal rights and duties, the husband is declared head of the family, the parties are obliged to cohabit, and the wife is obliged to follow her husband.³¹

Polygamy is allowed by the Family Code in limited specified circumstances and under court supervision. However, in rural areas it is common practice for men to marry four women without court supervision.

In practice, child marriages are common, particularly in rural areas. Families perceive a girl as a source of wealth due to the dowry paid by the husband. The dowry (*Sooryo*) is commonly paid to the clan rather than the family.³² Where Sharia law is applied, girls can marry when they reach puberty, or at a younger age with their guardian's consent, and wives owe strict duties of obedience to their husbands.

Divorce, maintenance, and child custody

The Family Code provides that the right of *talaq* (divorce by repudiation, without the requirement to prove grounds) belongs to the husband, subject to authorization by the court. A court may authorize divorce in response to the husband's request only after reconciliation efforts of 60 days have failed.³³

Either party may seek divorce from the court on the following grounds: incurable disease; disappearance for over four years; failure to maintain; serious disagreement that makes conjugal life impossible; perpetual impotence or sterility of one or the other party; and sentencing to over four years' imprisonment.³⁴

A wife is entitled to seek dissolution if the husband has been granted permission for a polygamous marriage by the Court, on condition that there are no children.³⁵

27 UNDP, *Gender in Somalia: Brief* (2013).

28 Somalia, Family Code, Art. 1.

29 See http://www.somalilandlaw.com/family_-_personal_law.html; see also UNICEF, *Women's rights in Islam and Somali Culture* (December 2002), http://www.unicef.org/somalia/SOM_WomenInIslam.pdf

30 Somalia, Family Code, Arts. 16–17.

31 *Ibid.*, Art. 4.

32 UN Human Rights Council, *Report of the Special Rapporteur*.

33 Abdullah An-Na'im, "Islamic Family Law," Emory University website, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/somalia/>.

34 *Ibid.*

35 *Ibid.*

After divorce, the husband may be ordered to maintain his former wife for three months to one year if the court finds that he is at fault. If the wife is deemed to be at fault, she is required to pay her husband a sum not less than her dowry in compensation.³⁶

Following divorce, the mother has custody of her male children until they reach the age of ten and of her female children until they reach the age of 15.³⁷ The court may extend this period to 18 if it is in the best interests of the child.³⁸ If the mother remarries she may lose custody of younger children, unless the father gives his consent.³⁹

INHERITANCE

The Family Code provides that females and males shall have equal rights of inheritance. Heirs are identified as spouses, children, grandchildren, parents, grandparents, full siblings, and paternal and maternal aunts and uncles.⁴⁰ This provision is rarely enforced. From the date of its enactment, the Family Code met widespread resistance because it directly contradicts Sharia. The inheritance provisions of the Family Code are considered to be void under the Provisional Constitution because they directly contradict Sharia.

Where Sharia law is applied, women have the right to inherit, but generally inherit a smaller share than men. A daughter has the right to a share of the inheritance that is half of her brother's share.

In areas where customary law is applied to inheritance cases, women may be denied all inheritance rights. The position of women with regards to land and property ownership has been weakened by conflict and breakdown in law and order. Land grabbing by male relatives following the death of a husband/father is a widespread problem. Widows rarely inherit land under customary norms and are often deprived of access to their husband's land if they have no children. Land is therefore vested in trusteeship with uncles and other male relatives and inherited by children when they come of age.⁴¹

NATIONALITY

Women's rights under nationality laws

Somali women and men have equal legal rights to pass citizenship to a child or spouse under the Provisional Constitution. Article 8 mandates the Parliament to enact a special law on citizenship; Article 11 prohibits discrimination on the basis of gender.

However, national laws have not yet been updated to reflect the Provisional Constitution. Law No. 28 of 1962 on Somali Citizenship provides that a Somali citizen is anyone whose father is Somali. The 1962 Citizenship Law discriminates against women because it allows citizenship to pass automatically from a Somali father to his child, but not from a Somali mother to her child.

A new citizenship law has been drafted that removes discrimination against women, but it is yet to be passed and remains under consideration.

36 Ibid.

37 Somalia, Family Code, Art. 64.

38 Ibid., Art. 69.

39 Ibid., Art. 67.

40 Ibid., Art. 158.

41 UNDP, Gender in Somalia: Brief (2013).

LABOUR LAWS

Women and employment

Under the Labour Code of 1972 (Somalia), women are restricted from being employed in night work and the types of work prohibited for women may be prescribed by decree.⁴² Women are prohibited to work in factories, commercial enterprises, and farms. However, in practice women are not prevented from working at night.

A similar provision that prohibits women from engaging in night work in factories, farms, and commercial enterprises is included in the applicable Private Sector Employees Law of Puntland and Somaliland, which have replaced the Labour Code in these parts of the country.⁴³

The Provisional Constitution states that all workers, particularly women, shall have a special right of protection from sexual abuse and discrimination, and that every labour law and practice shall comply with gender equality in the workplace.⁴⁴

For Somaliland, the Private Sector Employees Law⁴⁵ provides that all citizens have the right to equal opportunity in employment regardless of their sex.⁴⁶ The same provision appears in the Private Sector Employees Law of Puntland,⁴⁷ and a similar provision exists in the Labour Code of 1972 (Somalia).⁴⁸

Article 20 of the respective Private Sector Employees Laws of Somaliland and Puntland require that male and female workers who do the same work should receive equal remuneration.⁴⁹

For Somaliland and Puntland, the respective Private Sector Employees Law provides that women are entitled to 16 weeks of maternity leave. It is unlawful to terminate an employee that a doctor has certified to be pregnant or to be in the final stages of delivery until her baby reaches one year, except in the case of an employee whose contract of employment has expired.⁵⁰ The Labour Code of 1972 (Somalia) provides that women are entitled to 14 weeks of maternity leave at half pay.⁵¹

Workplace sexual harassment

Article 24 of the Provisional Constitution prohibits sexual abuse in the workplace. No provisions in the labour laws were found that specifically prohibit sexual harassment in the workplace. For Somaliland and Puntland, the respective Private Sector Employees Law provides that employers are responsible for occupational health and safety of workers and their psychological well-being.⁵²

The Puntland Sexual Offences Act 2016 prohibits sexual harassment, and it defines it to include “a threat by words or actions against another person, to withhold from them an employment offer, benefit or promotion or anything of value, or to punish them, if the other person does not perform a sexual favour for them or any person.”

42 Somalia, Labour Code 1972, Arts. 88, 90

43 Somaliland, Private Sector Employees Law 2004, Art. 10; Puntland, Private Sector Employees Law, Art. 10.

44 Somalia, Provisional Constitution, Art. 24.

45 Law No. 31/2004 (as amended 2010).

46 Somaliland, Private Sector Employees Law 2004, Art. 7.

47 Puntland, Private Sector Employees Law, Art. 7.

48 Somalia, Labour Code 1972, Art. 3.

49 Somaliland, Private Sector Employees Law 2004, Art. 20; Puntland, Private Sector Employees Law, Art. 20.

50 Somaliland, Private Sector Employees Law 2004, Art. 15; Puntland, Private Sector Employees Law, Art. 15.

51 Somalia, Labour Code 1972, Art. 91.

52 Somaliland, Private Sector Employees Law 2004, Art. 41; Puntland, Private Sector Employees Law, Art. 41; Somalia, Labour Code, Art. 49.

SEX WORK AND ANTI-PROSTITUTION LAWS

The Penal Code provides that it is an offence to practice prostitution in any form, which is punishable with imprisonment from two months to two years, and with a fine from Sh. So. 100 to 2,000. If the act is committed by a married person, the punishment is increased.⁵³

It is an offence to incite anyone to commit a lewd act in a public place or a place open to the public, punishable with imprisonment of up to one year or with fine up to Sh. So. 2,000.⁵⁴

It is also an offence to instigate another to commit prostitution, or aid or in any manner facilitate prostitution, or exploit the proceeds of prostitution.⁵⁵

Some areas of southern Somalia that have Islamic courts impose Sharia law and impose severe punishment for extra-marital sex (*zina*), including stoning to death or flogging.

HUMAN TRAFFICKING

The Provisional Constitution provides that a person may not be subjected to slavery, servitude, trafficking, or forced labour for any purpose.⁵⁶ However, there is no comprehensive national anti-trafficking legislation, and anecdotal evidence indicates that child trafficking is rampant in some regions.

The Penal Code provides that it is an offence to compel another to commit prostitution by violence or threats, punishable with imprisonment from two to six years and with fine of Sh. So. 5,000 to 15,000.⁵⁷

The Penal Code also prohibits:

- Slavery, and dealing and trading in slaves, prescribing penalties of five to 20 years' imprisonment.⁵⁸
- Forced labour, prescribing penalties of six months to five years' imprisonment.⁵⁹

Human trafficking occurs in many parts of the country, internally and to neighbouring countries. Somalia is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. Internally displaced persons (IDPs) are vulnerable to sexual exploitation and trafficking for sex and labour. People in control of some IDP camps, commonly referred to as "gatekeepers" in Somalia, reportedly force girls and women to provide sex acts in exchange for food and services in the camps.

Internal trafficking occurs from southern and central regions to the regions of Puntland and Somaliland in the north. From Somaliland, people are trafficked to Puntland, Djibouti, and Ethiopia for domestic servitude or sexual exploitation. Many Somali women who are trafficked to the Middle East also experience domestic servitude and sexual exploitation.⁶⁰

53 Somalia, Penal Code, Art. 405.

54 Ibid., Art. 406.

55 Ibid., Art. 407.

56 Somalia, Provisional Constitution, Art. 14.

57 Somalia, Penal Code, Art. 408.

58 Ibid., Arts. 455–459.

59 Ibid., Art. 464.

60 United States Department of State, Trafficking in Persons Report 2017, Somalia, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271280.htm>.

SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

Under the Penal Code, sexual intercourse with a person of the same sex is punishable by imprisonment from three months to three years.⁶¹ An “act of lust” other than sexual intercourse is punishable by a prison term of two months to two years. An “additional security measure” may accompany sentences for homosexual acts.¹ This provision can be used to authorize police surveillance of offenders.

In parts of south and central Somalia where Sharia law is applied, same-sex conduct may be punished with the death penalty or flogging.⁶²

There are no specific laws protecting LGBT or intersex people from hate crimes, GBV, or discrimination. There are no legal protections for, or recognition of, transgender people.

SOMALIA: KEY RESOURCES

Legislation

Somalia, Provisional Constitution of the Federal Republic of Somalia. Available from <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=>

Somalia, Penal Code, Legislative Decree No. 5 of 16 December 1962. Available from <http://www.refworld.org/docid/4bc5906e2.html>.

Somalia, Criminal Procedure Code, Legislative Decree No. 1 of 1 June 1963. Available from http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91560.

Somalia, Family Code (Personal Status Code), No. 23 of 1975.

Somalia, Labour Code, Law No. 65 of 1972. Available from http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=16530.

Somaliland, Private Sector Employees Law, Law 31 of 2004. Available from http://www.somalilandlaw.com/labour_employment_law.html.

Puntland, Private Sector Employees Law. Available from <http://somalangoconsortium.org/download/578571d6b722b/>.

References

African Union Mission in Somalia, *Easy to Read Guide on Somalia, Draft National Gender Policy* (2013). Available from <http://amisom-au.org/wp-content/uploads/2013/08/EASY-TO-READ-GUIDE-GENDER-POLICY.pdf>.

Human Rights Watch, *“Here Rape is Normal”: A Five-Point Plan to Curtail Sexual Violence in Somalia* (February 2014). Available from <https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia>.

Kaalo NGO submission to the UN Universal Periodic Review on Oct/2010. Available from http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/SO/Kaalo_KaaloNGO-eng.pdf.

Legal Action Worldwide, *Legal Aid Providers Supporting Gender Based Violence Survivors in Somalia* (2014). Available from <http://legalactionworldwide.org/wp-content/uploads/2014/10/GBV-Legal-Aid-Report-final-29.10.pdf>.

Organisation for Economic Co-operation and Development, *Social Institutions and Gender Index Somalia* (2014). Available from <http://genderindex.org/country/somalia>.

Unlikely Allies: Working with Traditional Leaders to Reform Customary Law in Somalia, (Rome: International Development Law Or-

⁶¹ Ibid., Art. 410.

⁶² Swedish International Development Agency, *The Rights of LGBTI People in Somalia* (2014), <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-somalia.pdf>.

ganization, 2011).

United Nations Country Team Somalia, "Thematic Briefing of the United Nations Country Team Somalia," *GBV Issue* (January 2014). Available from http://reliefweb.int/sites/reliefweb.int/files/resources/Thematic%20briefing_ENG_1_0.pdf.

United Nations Assistance Mission in Somalia, Somalia Gender-Based Violence Working Group Strategy 2014–2016. Available from https://unsom.unmissions.org/Portals/UNSOM/GBV%20WG%20Strategy%20final%20Jan%2029%202014_new.pdf.

UNDP, *Gender in Somalia: Brief* (2013). Available from http://www.undp.org/content/dam/rbas/doc/Women's%20Empowerment/Gender_Somalia.pdf.

UNDP, *Sexual and Gender-Based Violence in Puntland, Somalia: The case of Bosaso region*. Available from http://www.undp.org/content/dam/somalia/docs/Project_Documents/Communications/Gender%20SGBV%20ENG.pdf.

United Nations Economic Commission for Africa, *Violence against Women in Africa, A Situational Analysis* (2010). Available from: <http://www1.uneca.org/Portals/awro/Publications/21VAW%20in%20Africa-A%20situational%20analysis.pdf>.

United Nations Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, Mission to Somalia* (14 May 2012). Available from http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add3_en.pdf.

United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report: Somalia* (23 March 2015). Available from <http://www.un.org/sexualviolenceinconflict/countries/somalia/>.

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