

## Somalia

The Federal Republic of Somalia has not ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Therefore, the Convention is not part of national law and cannot be cited in national courts. The Republic of Somaliland (Somaliland), the Puntland State of Somalia (Puntland) and the Jubbaland State of Somalia (Jubbaland) substantially govern their own affairs, including through their own Constitutions and laws. Where information is available this profile will include the legal framework of the self-declared Republic of Somaliland, and the autonomous regions of Puntland and Jubbaland.

After more than two decades of civil conflict in Somalia, a federal government emerged in Mogadishu in 2012, created with the framework of a provisional constitution (World Bank, 2017). The Provisional Constitution of the Republic of Somalia (2012), hereafter referred to as the Constitution of Somalia, states that all citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect have equal rights and duties before the law (Article 11.1). Discrimination against any person on the basis of age, race, colour, tribe, ethnicity, culture, dialect, gender, birth, disability, religion, political opinion, occupation or wealth is illegal (Article 11.3), however no punishment has been put in place in case the constitution is disrespected.

Somaliland's legal system is a combination of formal law, customary law (*Xeer*) and Sharia law. The formal legal system is made up of laws passed by the Somali government before Siad Barre's military coup of 1969, and legislation passed by the Somaliland government since 1991 (Norwegian Refugee Council and Legal Action Worldwide, 2014: 9). Significant legal confusion arises for lawyers and judges from the divergence between formal, *Xeer* and Sharia, in an already under-resourced judicial system. The rights of women in Somaliland are captured in the Constitution of the Republic of Somaliland (2001) in Article 36 which states that "the rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women save for matters which are specifically ordained in Sharia law". The article further states that the Government "shall encourage, and shall legislate for, the right of women to be free of practices which are contrary to Sharia law and which are injurious to their person and dignity".

The Transitional Constitution of Puntland Regional Government (2001) ensures women's rights of independence, socio-economic and political rights that are not forbidden in Sharia law (Article 18.1). The Provisional Constitution of the Jubbaland State of Somalia (2015) guarantees the human rights, economic and political rights and freedom of women (Article 16). Women's rights are referred to only in accordance with Sharia law in the Somaliland, Puntland and Jubbaland Constitutions. While Somalia and Somaliland have a National Gender Policy, Puntland and Jubbaland have yet to develop one (OHCHR, 2015: para. 33). Despite provisions in the Constitution of Somalia, Somaliland, Puntland and Jubbaland guaranteeing equal rights, reports indicate that women do not have the same access to rights as men, experience systematic subordination to men and discrimination in access to credit, education, politics, and housing (US State Department, 2016).

Somalia has been suffering from poor governance, protracted internal conflict, underdevelopment, economic decline, poverty, social and gender inequality, and environmental instability with droughts and floods during the two decades of conflict that followed the fall of the SIAD regime in 1991 (Central Intelligence Agency, 2017; Logica, 2013: 4). These disparities are more pronounced in rural rather than urban areas (Logica, 2013: 4). A series of destructive civil wars over the past 25 years contributed to the complete breakdown of state institutions and saw the clan system replace the state as the support system for the individual citizen. The fracturing of society along clan lines, environmental disaster and two decades of chronic insecurity has resulted in the internal and forced displacement of hundreds of thousands of Somalis (Adam, 2015; Central Intelligence Agency, 2017).

## 1. Discrimination in the family

Somalia is a predominately patriarchal society, influenced by nomadic pastoral traditions and norms, and Islamic teaching (UNICEF, 2002). In 1975, a codified Family Code was passed in Somalia, based on Sharia, customary and statutory law, and international resolutions. The Family Code regulates marriage and divorce, children and maintenance, guardianship and wills, and inheritance (Abdi, 2010: 5). A full English translation of the Family Code is not available. Reports indicate that rather than using the Family Code, Sharia law is being applied since the civil war started in 1991.

There are no specific Family Laws in Somaliland, Puntland and Jubbaland. In Somaliland, matters relating to family and personal issues are being dealt with in accordance with Islamic principles (Constitution, 2001: Article 130.5), complemented by customary law (Abdi, 2010: 5). In 2010, the Ministry of Labour and Social Welfare of Somaliland announced a review to assess the need for a new Family Law (Somaliland Law, 2017). However, no further information is available as to the progress of the review.

Article 130.5 of the Somaliland Constitution (2001) states that “All the laws which were current and which did not conflict with the Sharia law, individual rights and fundamental freedoms shall remain in force in the country of the Republic of Somaliland until the promulgation of laws which are in accord with the Somaliland Constitution”. Under Article 6.3 of the Somaliland Organisation of the Judiciary Law, District Courts have jurisdiction with all Islamic law issues which include family and personal law issues. In reality, however, the vast majority of these issues are dealt with outside the courts (Somaliland Law, 2017).

### a) Overarching legal framework for marriage

The Family Code (1975) also states that a marriage contracted under compulsion is invalid (Article 6; FAO, 2009). According to the Family Code essential elements of marriage are the proposal, and acceptance by the contracting parties before two witnesses. Marriages are to be registered at a District Court or authorized office within 15 days of marriage or 40 days for residents of rural areas. Failure to register marriage is punishable by fine.

Polygamy is legal in Somalia; a man may contract a second marriage with the written permission of the District Court only (Family Code, 1975). A second marriage may be authorized by the court based on the following conditions; a wife’s sterility unknown to the husband at the time of marriage

(confirmed by a panel of doctors); incurable chronic or contagious illness of the wife (certified by a doctor); wife's imprisonment of more than two years; wife's unjustified absence from the matrimonial home for over a year; or the existence of social necessity" (FAO, 2009).

Marriages in Somalia take several different forms, all of which to various extent disproportionately affect girls and women. First of all, marriages can be arranged by parents, with or without consent and knowledge of the couple. Secondly, marriage is formed without the knowledge of parents, in which case the couple elopes. Thirdly, a practice called "inherited marriage" is common in Somalia and can take two forms. One is called *dumaal*, entitling a man to marry the widow of his deceased brother or close relative. The second is called *higsisiin*, in which case a man is permitted to marry the sister of his deceased wife. Girls and women have limited ability to refuse such marriage arrangements. Refusal of *dumaal* could leave a woman without the rights of child custody and the management of the deceased husband's property (Immigration and Refugee Board of Canada, 2007).

In certain nomadic groups, abduction and rape are also common and women/girls may not be allowed to return to her family until she is pregnant with her first child. This despite Article 401 of the 1962 Penal Code criminalises abduction for the purposes of lust or marriage. These above described marriage traditions are mainly practices by nomadic pastoralist populations.

In Somalia, the value of a daughter is in part ascribed to the bride wealth she can bring to her father's family upon marriage in the form of dowry. In the event of rape, a girl's family may attempt to lower the bride prices in order to secure marriage and minimize social stigma. As such, rape and sexual assault may also be used as an avenue to initiate marriage and circumvent high bride prices. (Logica, 2013).

### **b) Child marriage**

Somalia's Constitution (2012) states that 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 28.5). The Constitution does not define the age of maturity. According to the Family Code (1975), the legal age for marriage in Somalia is 18 for both men and women. However, the Family Code also states that girls may marry at age 16 with a guardian's consent. Courts may grant exemption from minimum age requirements in cases of necessity. A girl between 16 and 18 years old may be represented in a contract of marriage by her father, or in his absence, by guardians in this order: mother, grandfather, elder brother, uncle, court-appointed guardian or judge (FAO, 2009).

The government of Somalia and regional authorities of Somaliland, Puntland and Jubbaland have not taken any known actions to prevent early and forced marriage (US State Department, 2016). In Somaliland there is a lack of legislation stipulating a minimum age for marriage. The Puntland Constitution states that the family is the fundamental element of the society originated from the marriage between a male and a female (Article 17), but does not include a legal age for marriage. Article 19.1 defines a child as anyone under the maturity age of 15 years. The Jubbaland Constitution does not make any reference to a legal age for marriage.

Early marriage is widespread in Somalia, Somaliland, Puntland and Jubbaland (UNICEF, 2012) and is largely driven by cultural and religious norms (Girls Not Brides, 2017). Residence, education and household wealth are defining matters in the practice of early marriage. Girls in rural areas (52.4%) are more likely to enter into early marriage, with some parents compelling daughters as young as 12 to marry (US State Department, 2016), than those living in urban areas (35.2%) (UNFPA, 2012: 74).

The practice of early marriage is said to have developed during the Civil War in the late 1980s (Girls Not Brides, 2017). Al-Shabaab arranged compulsory marriages between its soldiers and young girls in Al-Shabaab controlled areas (OHCHR, 2015: para. 36; Human Rights Watch, 2012). Al-Shabaab reportedly promoted early marriage to impose a harsh version of Sharia law (Human Rights Watch, 2012). Reports indicate that this is an organised practice whereby Al-Shabaab preaches marriage with fighters to girls still in school (Human Rights Watch, 2012: 54). Al-Shabaab reportedly also uses the lure of marriage as a recruitment tool. However, the practice of early marriage has become wider than Al-Shabaab, with armed militias and clan militias also forcing girls into marriage (OHCHR, 2015: para. 36; Human Rights Watch, 2012). Early and forced marriages in Somaliland reportedly occur with the acquiescence of religious leaders (OHCHR, 2015: para. 36).

### **c) Household responsibilities**

The Family Code (1975) guarantees that marriage is based on equal rights and duties. However, the code also states that the husband is the head of the family and the wife is obliged to obey her husband. Husband and wife are obliged to cohabit. The Family Code further asserts that both husband and wife must share the expenses of the matrimonial home in proportion to their incomes, if they have the financial capability. If either party fails their duty to maintain the home and is not destitute, the other party may obtain a court order for maintenance (FAO, 2009).

Under *Xeer*, customary law in Somalia, a woman is not an independent legal person; rather she is under the jurisdiction of others, predominantly male. Before marriage, a woman is the responsibility of her father. If the father of an unmarried woman dies another male relative may substitute the father. Once married, a woman falls under the jurisdiction of her husband (FAO, 2009). Sharia law reasserts women's social duty to maintain the household and care for the family (Logica, 2013)

Women and men take on clearly defined responsibilities within in the home. Somalia's deeply entrenched traditional and patriarchal views assign women secondary status within the family and society at large. Traditionally, men are protectors of family security, decision-makers in both public and private settings, arbiters in disputes, primary breadwinners and the custodian of family properties. Women on the other hand are generally excluded from political authority and economic autonomy, their rights and duties are acknowledged only as mediated by men. Women bear and raise children, are responsible for food production and all domestic tasks (FAO, 2009; Logica, 2013: 7). Decades of war, internal conflict and droughts caused widespread break-up and displacement of families; loss of male providers and male labour; destruction of homes, loss of household resources; collapse of community resources such as health centres and schools (Gardner, 2007: 3; Logical, 2013).

#### d) Divorce

According to the Family Code (1975), the right of divorce or *talaq* belongs to the husband, subject to authorization by a competent court. Only after 60 days of failed reconciliation efforts may the court authorize divorce. The court may not authorize more than one *talaq* at a time so men cannot divorce more than one wife at the time. Divorce requested by a minor, an insane person or pronounced under compulsion is rendered invalid (FAO, 2009). A wife is entitled to seek dissolution of the marriage if the husband has been granted permission to marry another wife by the District Court. However, only on condition that there are no children (FAO, 2009).

Under the Family Code (1975) both men and women may seek a judicial dissolution on the following grounds: “incurable disease of the other spouse making cohabitation dangerous or impossible; disappearance of the other party for a period of over four years; habitual failure to maintain by the other party; serious disagreement between spouses making conjugal life impossible, after reconciliation efforts of 60 days; perpetual impotence or sterility of the other party; and the other spouse’s sentencing to over four years imprisonment” (FAO, 2009). Where reason for divorce is deemed the fault of the husband by a District Court, he will need to maintain the former wife for between three months to one year. If the wife is deemed to be at fault, she may be ordered to pay the husband a compensation sum no less than her dowry (FAO, 2009).

Under the Family Code (1975) a mother is entitled to custody of male children until the age of 10, and female children until the age of 15 (Article 64). If the mother remarries, she may lose custody of younger children, unless the father gives his consent to the continued custodianship of the mother. If the father is deceased then the mother will keep custody even if she remarries someone outside the prohibited degree (Article 67). The court can extend the period of custody if this is in the best interests of the child (Article. 69; Reunite International, 2005). There is no information on how well custody rights of women are respected. Maintenance of children is the duty of both parents until the age of majority for sons, and marriage or financial independence for daughters (FAO, 2009).

#### e) Inheritance

Under the the Family Code (1975) women and men have equal rights of inheritance (Article 158). In testate succession, women only inherit one-third of the estate, unless consent of the heirs is obtained (Family Code, 1975). Heirs include spouses, children, grandchildren, parents, grandparents, full siblings, paternal and maternal aunts and uncles. The widow or widower is entitled to half of the estate if there are no children or grandchildren, or one-fourth if there are. Sons and daughters are to receive equal shares, as are grandchildren (FAO, 2009). In reality Sharia law and customary practices often prevent women from accessing equal shares or any share in inheritance (FAO, 2009). Under Sharia law, for example women can only inherit 50% of what their brothers can inherit from the family (FAO, 2009).

## 2. Restricted Physical integrity

Somalia has not ratified the Maputo Protocol, the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Women’s rights and physical integrity are challenged by religious and

customary practices such as polygamy, early and forced marriage, wife inheritance and female genital mutilation. Gender-based violence is widespread in Somalia (Human Rights Watch, 2012: 53).

Two decades of civil conflict and state collapse destroyed state institutions set out to protect people at risk and brought more violence into the lives of women, including sexual violence. The conflicts created a large population of displaced persons vulnerable to sexual violence and (Human Rights, 2014; Logica, 2013). The systematic use of sexual violence and rape has been a common feature of conflict perpetrated by all actors involved (Logica, 2013: 2). Members of Somalia's marginalized minority communities, and women belonging to these communities in particular, are reported to be particularly at risk of violence (Human Rights Watch, 2014). Women leaders, women who speak out against gender-based violence and the men and women who defend them are at risk of attack from traditional and religious leaders (UN Women, 2017).

### **a) Violence against women**

There is no overall law regarding violence against women in Somalia. The Constitution of Somalia (2012) states that every person has the right to personal security including the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment (Article 15.2). The Penal Code (1962) criminalizes sexual violence (Article 398-401).

Despite some level of protection guaranteed under the Constitution of Somalia and legal codes, incidents of sexual and physical violence against women is common (Logica, 2013: 8). Across Somalia, Ministries have recognized that sexual violence is widespread, increasing and committed with near total impunity, in part due to outdated laws (Legal Action Worldwide, 2016). In 2014, the Government of Somalia developed a national plan of action to end sexual violence in conflict, and established a multiparty steering committee. The plan of action encouraged the involvement of traditional and religious leaders in combating violence against women through the formal justice system. The Sexual Offences Bill was drafted as a result, but has not yet been passed post-election government (Legal Action Worldwide, 2016).

In 2015, the Somaliland Minister for Labour and Social Affairs began the processes of drafting their own sexual offences laws. The Bill is currently being debated by Parliament. The Sexual Offences Bill was passed by the Parliament in Puntland and signed into law in February 2016. The Jubbaland Minister for Gender, Family Affairs and Human Rights has initiated drafting of a Sexual Offences Bill in 2016 (Legal Action Worldwide, 2016).

The Bill, despite variations between Somalia, Somaliland and Puntland, is said to guarantee special protection for children, persons with disabilities, internally displaced people and others outside the social protection mechanisms of Somalia's society. Measures proposed include the strengthening of referral mechanisms for survivors of sexual violence, prioritization of the rights and needs of survivor health services, psychosocial support, legal aid and economic empowerment programmes for survivors of sexual violence (Sexual Offences Bill; OHCHR, 2016: para. 39). The bill sets out clear duties for police, investigators and prosecutors and includes penalties for people within or outside of the justice sector who do not adequately investigate or prosecute sexual crimes and those who interfere with such investigations and prosecutions (Legal Action Worldwide, 2016). The consultant

has only had access to a condensed version of the Bill. The bill is said not to address marital rape and domestic violence.

### **b) Domestic violence**

Although there is no law directly prohibiting domestic violence, the Penal Code (1962) addresses ill-treatment against members of the family (Article 341). Penalties up to five years for ill-treatment, when resulting in serious or very serious hurt imprisonment between two and eight years. In case of death, imprisonment will be between ten and fifteen years. The article does not specifically mention the spouse. Spousal rape is not prohibited (Penal Code, 1962: Article 398). In 2016, the Council of Ministers in Somalia approved a National Gender Policy providing the state with the right to prosecute anyone convicted of committing gender-based violence (US State Department, 2016). The laws of Somaliland do not protect victims of domestic violence (Somaliland Human Rights Centre, 2017).

Reports indicate that domestic violence is widespread in Somalia, Somaliland and Puntland (UNICEF, 2012). However domestic violence is unreported and often regarded as an accepted practice by both men and women (Logica, 2013: 8). One significant obstacle to making women safer is the slow change of public acceptance of domestic violence, even amongst women.

Due to the traditional and patriarchal structure of the family, and the wider society, reporting domestic violence is difficult for women. Traditionally, relations among individuals are based on kinship or the clan, which decides the position of every individual within the group. Kinship is traced through the father. This results in men occupying a higher position in the social hierarchy than women. Traditionally, a woman's role within the family is predefined and focusses on the private domain with responsibilities such as child bearing, child rearing and household tasks. Women's responsibilities are largely. These predefined roles are especially pronounced in nomadic and agricultural settings (FAO, 2009).

### **c) Rape**

The Penal Code (1962) criminalizes rape, providing penalties of 5 to 15 years in prison for violations (Article 398). In the outdated law, rape is referred to as carnal intercourse Article 398.1). The provisions are not based on a lack of consent. The penalty will increase in case of aggravated rape, phrased as unnatural offences committed with violence (Article 400). Anyone who with the use of violence, threat or deceit, abducts or detains a person for purposes of carnal violence can receive imprisonment from two to five years (Article 401). Reports indicate that the government does not effectively enforce the law (US State Department, 2016).

As mentioned above, Somalia and Somaliland have drafted a Sexual Offences Bill, and Puntland has passed a Sexual Offences Bill in 2016. The bill defines rape a sexual act as any act which is committed for a sexual reason, or any act involving contact with the genital organ, genital area, breast, anus, mouth or any part of a person's body, however slight, that a reasonable person would deem sexual in nature. The Bill defines and criminalizes rape, gang rape and sexual assault by penetration among other sexual offences (Condensed Sexual Offences Bill, 2016).

Out of fear of stigma, survivors of the rape and gang rapes rarely report the offence to the police (OHCHR, 2015: para. 34). Victims of rape and their families face stigmatizing and ostracizing within their own communities and discrimination based on the attribution of “impurity” (Human Rights Watch, 2012: 53). There is also a lack of confidence in the system due to the inability of the criminal justice system to hold the alleged perpetrators accountable (OHCHR, 2015: para. 35; Human Rights Watch, 2014). Many women, particularly those living in rural areas, are unaware of their rights (OHCHR, 2016: para. 37). Many women are unaware of health and justice services or they are not available (Human Rights Watch, 2014). In the absence of protection mechanisms, many women, widespread Sexual and gender-based violence has been an incentive to seek refuge (Human Rights Watch, 2012: 53).

#### **d) Sexual harassment**

There are no legal provisions addressing and criminalizing sexual harassment. The Constitution of Somalia protects workers, particularly women from sexual abuse, segregation and discrimination in the work place (Article 24.5). Nevertheless, sexual harassment is believed to be widespread. No information is available on governmental programs addressing sexual harassment (US State Department, 2016). There are no known laws prohibiting sexual harassment in Somaliland, Puntland and Jubbaland.

#### **e) Female genital mutilation**

The Constitution of Somalia prohibits FGM/C of girls, arguing that it is a cruel and degrading customary practice, and tantamount to torture (Article 15(4)). The Penal Code and Criminal Procedure Code do not address FGM/C and therefore there is no legal framework in place to criminalise FGM/C. The Minister for Women and Human Rights Development reported that the Government has adopted a policy against this practice (OHCHR, 2016: para. 38). Somaliland and Puntland do not have a legal framework in place prohibiting and criminalising FGM/C.

There is no law Prohibiting FGM/C in Somaliland (Somaliland Human Rights Centre, 2017: 20). In Somaliland, a Network against Female Genital Mutilation was established, made up of 20 civil society organizations. The Network established three support centres for survivors. The network is also working with the Somaliland authorities and religious leaders to produce a *fatwa* against female genital mutilation in Somaliland (OHCHR, 2015: para. 39).

In Puntland a law banning Type III infibulation was passed in 2011. The law still allows for other forms of circumcision (UNDP Somalia 2012; Logica 2013, p.6). In Puntland, dialogue is underway with the authorities and the community to develop standard operating procedures to prevent and respond to gender-based violence and to establish monitoring mechanisms and raise awareness about abandoning the practice of FGM/C (OHCHR, 2015: para. 38). The drafting of legislation prohibiting female genital mutilation and introducing penalties are ongoing. Puntland is also in the process of drafting a sexual offences bill and the Ministry for Women Development and Family Affairs supports survivors of rape and sexual violence, including by pursuing prosecutions against alleged perpetrators (OHCHR, 2015: para. 38).



The Provisional Constitution of the Jubbaland State of Somalia (2015) prohibits FGM/C. Article 16.3 states that FGM/C is a punishable criminal offence; however no punishment is included in the article. The practice is considered to be torture according to the Constitution (Article 16.3).

FGM/C is nearly universal among girls and women in Somalia. The vast majority of girls experience the practice between the ages of 5 and 9, and the majority undergo infibulation the most severe form of FGM/C, involving cutting and sewing the genitalia (UNICEF, 2016; US State Department, 2016). Almost two thirds of girls and women think the practice should continue (UNICEF, 2016; UNICEF, 2012). At least 80% of Somali girls who have undergone FGM/C had the procedure performed when they were between the ages of five and 14 (US State Department, 2016). The practice is carried out to ensure virginity and thus protect the family's honour. Cultural discrimination is exercised toward women who are not circumcised (FAO, 2009).

### **f) Abortion**

According to the Constitution of Somalia, abortion is only permitted to save the life of the mother (Article 15(5); WHO 2017). Somaliland's Penal Code (1962) criminalizes abortion, except to save the life of the woman (Article 418-422). Article 422 of the Penal Code reduces punishment by one-half to two thirds for the purpose of safeguarding one's own honour or that of a near relative. In Puntland, abortion is allowed if the life of the pregnant woman is endangered, after obtaining a specialized prescription (Constitution, 2001: Article13.3). The Constitution of Jubbaland (2015) states that abortion is prohibited unless the life of the mother is endangered as certified by a medical practitioner specialized in the field.

Husbands are reported to be in charge of family planning and reproductive health, rather than women. Ongoing conflict and instability have created difficulties in accessing health care provision and services in Somalia. According to reports, barriers to reproductive health care include insufficient and poor facilities, inaccessibility, prohibitive costs, insufficient implementation capacities and constraints to service delivery (Logica, 2013: 6). In addition, limited information about contraception is available to women in Somalia (US State Department, 2016). In Somalia, Somaliland and Puntland there are low contraceptive prevalence rates (Logica, 2013: 6; US State Department 2016).

### *More*

As of 2016, more than 1.1 million Somali refugees were hosted in the region, mainly in Kenya, Yemen, Egypt, Ethiopia, Djibouti, and Uganda. At the same time, more than 1.1 million Somalis were internally displaced (Central Intelligence Agency, 2017). Human trafficking is a serious, largely under-acknowledged challenge in Somalia. Somaliland and Puntland are sources of transit, destination and origin for both internal and international victims of trafficking, with many transiting to countries such as Ethiopia, Djibouti, Yemen, Saudi Arabia and the United Arab Emirates. Women and girls in particular are reportedly subjected to forced labour, prostitution or sexual slavery, and organ removal (Logica, 2013: 8).

### 3. Restricted Access to productive and financial resources

#### a) Secure access to land and assets

Somalia has not ratified ILO Convention 169. Somalia's Constitution (2012) states that land shall be held, used and managed in an equitable, efficient, productive and sustainable manner (Article 43.2) and guarantees equity in land allocation and the use of its resources (Article 43.3). Somalia has not passed any laws relating to land since the start of the civil war in 1991 (Norwegian Refugee Council and Legal Action Worldwide, 2014: 29). Prior to the conflict, Somalia had a mixed land tenure system in which some land was owned communally and administered through clan structures, and other land was owned privately and administered through the formal legal system (Norwegian Refugee Council and Legal Action Worldwide, 2014: 5).

After decades of war, access to land and property rights comes with many barriers for the general population. Somali's who wish to integrate and those who wish to return face difficulties in claiming housing, land and property rights (Norwegian Refugee Council and Legal Action Worldwide, 2014: 6). Women returnees are especially vulnerable due to lack of civil documentation, logistical difficulties of returning home, and discrimination in their host environment (Norwegian Refugee Council and Legal Action Worldwide, 2014: 6). Traditionally, most land disputes are resolved by tribal elders. The decisions made through these customary processes are unlikely to favour women and members of weaker clans (Norwegian Refugee Council and Legal Action Worldwide, 2014: 32).

Under the Constitution of Somalia, every person has the right to own, use, enjoy, sell, and transfer property (Article 26). Under Somaliland's Constitution the rights of women to own, manage, oversee, trade in, or pass on property is also guaranteed (Article 36.3). The Puntland Constitution states that every citizen shall have the right to have his/her own property, within the framework of the law (Article 30.1). Under Article 42 of the Jubbaland Draft Interim Charter (2013), women have equal rights to men to own property.

Although women across Somalia have statutory rights to own and acquire land, traditionally, women tend to register land in the names of their husband. When women are the head of household, they generally register land in the names of their sons or brothers (FAO, 2009). Despite the legal framework and equity under Sharia law, women often face legal, cultural, and societal barriers in the right to own and dispose of property independently. *Xeer* laws reportedly circumvent Sharia law with respect to women's inheritance, denying women ownership of land, camels and other assets in order to protect the property of the patriarchal line (Logica: 2013: 4; UNICEF, 2002: 16).

#### b) Secure access to formal financial resources

The Constitution of Somalia describes that women, among other marginalized groups in Somali society, "shall receive the necessary support to realize their socio-economic rights" (Article 27). In reality, women face limited access to economic resources and assets, compounded by women's limited participation in politics and decision-making spheres (UN Women, 2017). Due to decades of conflict, Somalia has only recently started developing a formal banking system. Half of Somalia's population lives below the international poverty line (World Bank, 2017). Many Somali's depend on remittances that members of the Somali diaspora send. Remittances make up Somalia's most

important source of revenue, making up between 25 and 45 percent of its economy (Oxfam America, 2015). This is an especially important lifeline for women. There are no known credit schemes for women across Somalia.

### c) Workplace rights

Somalia has ratified ILO Convention 111. Somalia has yet to ratify ILO Conventions 100, 156, 183, and 189. The Constitution of Somalia states that "all workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the work place". The Constitution also enforces that every labour law and practice shall comply with gender equality in the work place" (Article 24.5). According to the Labour Code (1972) women have equal rights to men to follow any occupation and the right to equality of opportunity and treatment in respect of employment and occupation without discrimination on the basis of language, race, colour, sex, religion, political opinion, national extraction or social origin (Article 3). The Labour Code requires equal pay for equal work, with penalties such as imprisonment up to six months and/or a fine of not more than 1,000 Somalia shillings (less than two dollars) (Article 70.2) . Penalties however, have not been sufficient to deter violations of the principle of equal pay for equal work (US State Department, 2016).

Women and men do not have the same right to working night hours, with women's work restricted between 10 PM and 5 AM (Labour Code, 1972: Article 88). The Secretary of State is charged with responsibility for labour affairs and may by decree prescribe the types of work prohibited for women, expectant and nursing mothers, children and young persons (Article 90).

Pregnant women are eligible for 14 weeks of maternity leave (Article 91). The law mandates that women may not be discharged during a period of pregnancy until the end of the maternity leave or until the child is 1 year old (Article 91). Despite the above protection, a female worker is not entitled to the right to return to the same work she was performing before taking her maternity leave. There is no paternity or parental leave.

Women in the Civil Service shall be entitled to maternity leave with pay for a period of four months, provided that at least one month of such leave shall be taken after the date of delivery (Civil Service Law, 1996: Article 35.1). Maternity leave shall be granted on a certificate of a medical officer. Somaliland also amended the 2004 Private Sector Employees Law in 2010. The consultant has not had access to an English translation of the law. The consultant has not been able to identify labour codes in Puntland and Jubbaland and can therefore not comment on women's economic rights.

According to recent reports, the Somali government does not effectively enforce labour laws and regulations (US State Department, 2016). Women have a weak position in the labour market. Women are overrepresented in vulnerable employment, such as micro- and small enterprises (UN Women, 2017). On the other hand, women are underrepresented in both the formal public and private sectors (UN Women, 2017). In larger companies women are often relegated to lower-level positions (UNDP, 2012). Reportedly, this underrepresentation is the result of cultural norms and girls' low educational level (US State Department, 2016). In Al-Shabaab-controlled areas, women are even more excluded from participation in economic activities as this is perceived as anti-Islamic (US State Department, 2016).

Decades of protracted conflict, political instability, persistent drought and famine have disrupted economic activity and made women vulnerable to chronic food insecurity, reduced access to firewood and water, fields for cultivation, livestock, services and support networks, as well as employment opportunities (Gardner, 2007: 3; Logical, 2013). Due to conflict or migration, men have been absent from household, resulting in a significant number of female-headed households, as well as households in which women have become the primary or contributing breadwinners for the family (Logica, 2013: 7). As a result, some women have taken up employment in non-traditional economic activities such as livestock trading and marketing activities. Despite assuming economic responsibilities, there has not been an overall improvement of access to and respect of their rights (Logica, 2013: 2; UN Women, 2017).

### *More*

The collapse of the Somali state in 1991 resulted in the disappearance of formal education systems, leaving most children without an opportunity to receive an education. The absence of formal education exacerbated severe gender disparities in literacy (UNDP, 2012).

## **4. Restricted Civil liberties**

### **a) Citizenship rights**

Somali Citizenship Law (1962) does not allow married and unmarried mothers to pass their nationality to children born in the country on an equal basis with unmarried and married fathers (Article 2, 4 and 5; Equality Now, 2016: 91). Married women cannot pass their nationality to foreign spouses on an equal basis with married men (Article 13). A woman without Somali citizenship who marries a Somali citizen automatically acquires Somali citizenship and retains it after the dissolution of the marriage (Article 13; Equality Now, 2016: 91). According to the constitution, Somalia is required to enact a special law defining how to obtain, suspend, or lose citizenship. Up until now, no such law has been enacted (Equality Now, 2016: 91; US State Department, 2016).

The Constitution of Somalia grants every person lawfully residing within the territory of the Federal Republic of Somalia the right to freedom of movement, freedom to choose their residence, and freedom to leave the country (Article 21.1). Every citizen has the right to enter and to remain in the country, and has the right to a passport (Article 21.2). Without a functioning government and institutions during the two decades of civil war, many Somalis reportedly acquired fake identity cards and passports to travel as they sought refugee status in neighbouring countries (Central Intelligence Agency, 2017). Although all Somalis have constitutionally protected freedom of movement, Al-Shabaab, warlords, armed militias, and others often inhibit this freedom. The autonomy and individual rights of Somali citizens are severely restricted by the insecurity in the country, both in government and Shabaab-controlled areas (Freedom House, 2016).

Between 2005 and 2012 Somali authorities registered 3% of births in the country. Authorities in Puntland and in the southern and central regions did not register births. Birth registration occurred in Somaliland for hospital and home births. Many births went unregistered due to limited capacity and widespread nomadic lifestyle. UNICEF began to support the Somaliland government in establishing a birth registration system by district in 2014. According to reports, unregistered births

have limited impact on people such as denial of public services like education (US State Department, 2016).

### **b) Voting**

Women have the right to vote in Somalia. The ratification of Somaliland's constitution allows women to vote and run for public offices (UNICEF, 2002). Article 26.1 of the Puntland Constitution (2001) guarantees the right to vote and be eligible for candidacy if one possesses the qualifications required by law. The Constitution of Jubbaland allows anyone over the age of 18 years the right to vote in an election and to be elected (Article 25).

In reality, the right to vote is more complex. In September 2012, for the first time since 2001, Somalia established a permanent government. Traditional elders appointed provisional members to the House of the People, rather than a direct election (Freedom House, 2016). In 2016, voting was still largely inaccessible to the majority of the Somali population. Instead, indirect elections started in October 2016 (Freedom House, 2017). This disproportionately impacts women as they do not take up roles as traditional elders in Somalia. Elections were last held in Somaliland on November 13, 2017. Women have been able to exercise their right to vote during the latest elections.

### **c) Political voice**

The Constitution of Somalia specifically indicates that “women must be included in all national institutions, in an effective way; in particular all elected and appointed positions across the three branches of government and in national and independent commissions” (Article 3.5). The Constitution of Somalia also states that the Parliamentary Service Commission should consist of four members elected by the House of the People from among its members, of whom at least two should be women and two members elected by the Upper House from among its members, of whom at least one should be a woman (Article 111D). The Constitution of Somalia does not include a 30% quota for women in representative bodies of government. Although it appeared in earlier drafts, it reportedly met too much resistance from clan elders, political leaders, and religious leaders (US State Department, 2016; Logica, 2013: 3; US State Department, 2016).

Quotas for political representation of women have been frequently discussed in Somaliland but never adopted (Freedom House, 2016). In Somaliland women have no equal access to equal participation in the governance structures (OHCHR, 2015: para. 33). Women have traditionally been excluded from the House of Elders. Only one woman gained appointment after her husband, who occupied the seat, resigned in 2012. There were two female ministers among the 24 cabinet ministers (US State Department, 2016; UN Women 2017). Women are largely absent from higher levels of government such as director general and head of department levels (UN Women, 2017).

In Puntland, women have never been allowed to serve on the Council of Elders. Traditional clan elders who make up the Council of Elders select members of Puntland's House of Representatives. Only two women serve in the 66-member House of Representatives. The nine-member electoral commission included one woman (US State Department, 2016).

The only minister remaining in cabinet, the minister of Women, Human Rights, and Social Development, received several death threats from extremist Islamic groups accusing her of pushing

for women's representation in government (US State Department, 2016; Freedom House, 2016). The Ministry of Women and Human Rights Development and Somali women's organizations advocate for the inclusion of women in decision-making positions and their participation in political processes at the federal and regional levels (OHCHR, 2016). In 2016, the Council of Ministers approved a National Gender Policy plan to increase women's political participation, economic empowerment, and the education of girls. The policy includes programs to promote awareness and sensitivity to gender issues and measurement tools to document gender inequities in policies and programs (US State Department, 2016). The Somali Islamic Scholars Union denounced the plan outside of Islam and called and argued that the authors should receive punishment.

Across Somalia, due to a clan-based society, male-dominated power structures, cultural and religious barriers, women are either excluded from formal decision making or operate through a patriarchal filter (UN Women, 2017). Other challenges to women's participation in public affairs include the high rate of illiteracy among women and women's, and societies, inherent perception that they can and should perform traditional roles inside the home and not in the public sphere (OHCHR, 2016: para. 43).

#### **d) Access to justice**

There are three main sources of law in Somalia: secular law grounded in colonial and post-independence frameworks, Islamic Sharia law, and customary, clan-based law (*Xeer*) (Logica, 2013: 4). According to the Constitution of Somalia every person is entitled to file a legal case before a competent court; has the right to a fair public hearing by an independent and impartial court or tribunal, to be held within a reasonable time, is entitled to defend him or herself from the case he or she is party to, whatever the level or stage of the proceedings may be (Article 34). The Constitution of Somalia also states that judicial proceedings shall be open to the public, but the courts may decide, in the interests of ethics, national security, the protection of witnesses, in cases involving juveniles, or concerning rape, that the proceedings be held in private (Article 107.1). A Supreme Court based in Mogadishu and an Appeal Court were established under the terms of the 2004 Transitional National Charter. Despite the establishment of a Supreme and Appeal Court, most regions use local forms of conflict resolution through secular traditional Somali customary law, or Sharia law (Central Intelligence Agency, 2017).

Article 28 of the Somaliland Constitution guarantees the right to sue and defend. Men and women have equal rights to institute proceedings in a competent court in accordance with the law and have equal rights to defend in a court. Somaliland has only one female legislator in the House of Representatives, but no female judges (Freedom House, 2016). Women's appointment to the Somaliland Judiciary has been blocked by traditional and religious elders (OHCHR, 2015: para. 33).

The Jubbaland Constitution guarantees the right of equality before the law (Article 11). Article 12 covers the right of the accused.

Mobile courts have been established by the Minister for Justice to ensure access to justice for victims, even those outside urban areas (OHCHR, 2016: para. 34). Similarly, in Somaliland, Puntland, and Jubbaland mobile courts have been set up. The United Nations Development Programme is supporting the capacity building of the police force and the judiciary to deal with cases of violence

against women (OHCHR, 2016: para. 42). A Gender Unit has been set up within the Somali police force, but female police officers actually handling cases involving violence against women remains small (OHCHR, 2016: para. 36). The Federal Government appointed female prosecutors to the Ministry of Justice (OHCHR, 2016: para. 41). The Government is also establishing referral centres for the counselling of victims of sexual and gender-based violence. Despite these efforts, women have limited access to confidential reporting mechanisms, legal aid services are inadequate and beyond the financial means of most women (Logica, 2013: 9).

Despite the legal framework, across Somalia women's access to justice is restricted both within the formal, clan based and Sharia-based judicial systems (UN Women, 2017). Women's individual rights are often suppressed in favour of patriarchal and communal priorities. Multiple justice institutions interact with traditional social and cultural norms in Somalia greatly affecting access to justice for women (Logica, 2013: 4).

*Xeer*, or customary law is a set of rules and obligations developed among traditional elders to mediate peaceful relations between competitive clans and sub-clans (FAO, 2009). *Xeer* treats women as legal minors and limits their rights in the public domain. Under *Xeer* compensation for crimes against women is usually half of what is paid to men. *Xeer* focusses on communal reconciliation and social cohesion. Generally, instead of seeking to punish perpetrators, families seek redress through compensation (*diya*), with the exclusion of the victim. Another form of redress is by exacting revenge (FAO 2009; Logica, 2013: 9). This, alongside Institutional and community intimidation, creates an environment of impunity for sexual violence crimes and discourages victims and survivors from reporting cases (OHCHR, 2016: para. 38). Families of survivors may fear stigma, are reluctant to counter cultural and religious norms, and risk loss of opportunities for compensation if alternate channels are sought (FAO 2009; Logica, 2013: 9; OHCHR, 2016: para. 38). Even police and judges are reportedly influenced by clan affiliations, traditional or political authorities or other social norms. Judges often refer cases of violence back to customary networks (Logica, 2013: 9). Within displaced populations there is a breakdown or absence of traditional or statutory structures within communities limiting access to seek redress. Customary law is often perceived as undermining the primacy of Sharia law (Logica, 2013: 4). Islamic law theoretically affords women more rights than customary systems as it recognizes equality of men and women before the law (UNICEF Somalia, 2002). Under Sharia law, women have access to judicial systems. However, only men can administer Sharia law and as a result the law is often applied in the interests of men (US State Department, 2016; Logica, 2013).

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