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Responses to Information Requests

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9 March 2018

SOM106079.E

Somalia: Whether persons born in Somaliland and in the Ogaden region of Ethiopia are entitled to Somali citizenship; citizenship status of women married to foreign nationals; requirements and procedures to obtain and reacquire Somali citizenship (2015-November 2017)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

This Response replaces SOM106017 of 23 November 2017. Information obtained from a different translation of *Law No. 28 of 22 December 1962 on Somali Citizenship* was added to this Response. In addition, information obtained through correspondence with a representative from the Ministry of Interior and Federal Affairs of Somalia was added to this Response.

1. Somali Citizenship

Law No. 28 of 22 December 1962 on Somali Citizenship provides the following:

Article 1. Acquisition of Citizenship

Somali citizenship may be acquired by operation of law or by grant.

Article 2. Acquisition of Citizenship by Operation of Law

Any person:

- a. whose father is a Somali citizen;
- b. who is a Somali residing in the territory of the Somali Republic or abroad and declares to be willing to renounce any status as citizen or subject of a foreign country

shall be a Somali Citizen by operation of law.

Article 3. Definition of "Somali"

For the purpose of this law, any person who — by origin, language or tradition — belongs to the Somali Nation, shall be considered a "Somali".

Article 4. Acquisition of Citizenship by Grant

Somali citizenship may be granted to any person who is of age and makes application therefor, provided that:

- a. he has established his residence in the territory of the Somali Republic for a period of at least seven years;
- b. he is of good civil and moral conduct;
- c. he declares to be willing to renounce any status as citizen or subject of a foreign country.

Article 5. *Reduction of Period*

The period referred to in sub-paragraph a) of the preceding article shall be reduced to two years, where the person concerned is the child of a Somali mother even if she is not a citizen.

Article 6. *Renunciation of Foreign Citizenship*

1. Any person who, in accordance with articles 2 and 4 of this law, declares that he is willing to renounce any status as citizen or subject of a foreign country, shall make such declaration before the President of the District Court of the district where he resides or, if he resides abroad, before a Consulate of the Somali Republic.
2. A certificate that the declaration has been made shall be issued in two copies, one of which shall be delivered to the person concerned.
3. In the case provided for in paragraph b) of article 2, if the person concerned is a minor, the declaration may be made by his legal representative.

Article 7. *Granting of Citizenship*

1. The granting of citizenship provided for in article 4 of this law shall be made by decree of the President of the Republic on the proposal of the Minister of Interior, having heard the Council of Ministers. [1]
2. The granting of citizenship shall be subject to the prior advice of a special Commission consisting of a President and eight members appointed for a period of two years by decree of the President of the Republic on the proposal of the Prime Minister, having heard the Council of Ministers.
3. The President and the Members of the Commission shall be chosen from among qualified Somali Citizens representing the various sections of the national community.

Article 8. *Oath*

1. The decree granting Somali citizenship referred to in the preceding article shall not come into force unless the person concerned takes an oath of allegiance that he will be loyal to the Republic and comply with the Constitution and other laws.
2. The oath shall be administered before the President of the District Court competent for the area.

...

Article 12. *Recovery of Citizenship*

1. Any person who fulfils the conditions laid down in article 2 of this law and has lost his Somali citizenship may recover it, on application made therefor, if he subsequently establishes his residence in the territory of the Somali Republic, and declares to be willing to renounce any status as citizen or subject of a foreign country.
2. In any other case, a person who has lost his Somali citizenship may [sic] recover it, on application made therefor, if he subsequently establishes his residence in the territory of the Somali Republic for at least three years and proves that he fulfilled the conditions laid down in this law for the acquisition of citizenship. (Somalia 1962, italics in original)

A copy of *Law No. 28 of 22 December 1962 on Somali Citizenship* is attached to this Response.

According to Citizenship Rights in Africa Initiative (CRAI) [1], "[t]he determination of Somali citizenship is complicated by the fact that Somalia has lacked functioning governing institutions for the past decades" (CRAI n.d.a). In correspondence with the Research Directorate, a lawyer from Mogadishu Law Office [2], stated, while speaking on his own behalf, that "there is no procedure or administrative body in place to obtain citizenship in Somalia" (Lawyer 12 Nov. 2017). According to the US Department of State's Reciprocity Schedule for Somalia, "there continues to be no recognized competent civil authority to issue civil documents" in Somalia (US n.d.).

2. Dual Citizenship

The *Law No. 28 of 22 December 1962 on Somali Citizenship* provides the following:

Article 10. *Renunciation of Citizenship*

Any Somali citizen who:

- a. having established his residence abroad, voluntarily acquires foreign citizenship or the status as subject of a foreign country;
- b. having established his residence abroad, and having acquired, for reasons beyond his will, foreign citizenship or the status as subject of a foreign country, declares to renounce Somali citizenship;
- c. being abroad and having accepted employment from a foreign Government or voluntarily serving in the armed forces of a foreign country, continues to retain his post, notwithstanding the notice from, the Somali Government that, unless he leaves the employment or the service within a definite period of time, he shall lose Somali citizenship;

shall cease to be a Somali citizen. (Somalia 1962, italics in original)

Article 8 of the Somali *Provisional Constitution* of 2012 provides the following:

Article 8: The People and the Citizenship

1. The people of the Federal Republic of Somalia are one, are indivisible and consists of all the citizens.
2. There shall be only one Somali citizenship, and the House of the People of the Federal Parliament of Somalia shall enact a special law that shall define how to obtain, suspend, or lose it.
3. A person who is a Somali citizen cannot be deprived of Somali citizenship, even if they become a citizen of another country.
4. Denial, suspension, or deprivation of Somali citizenship may not be based on political grounds. (Somalia 2012)

According to sources, the *Law No. 28 of 22 December 1962 on Somali Citizenship* regulates access to Somali citizenship (Open Society Foundations 2016, 6; CRAI n.d.a; Lawyer 12 Nov. 2017). According to CRAI, the law, while "still in force[,] [is] incompatible with some aspects of [the] 2012 [C]onstitution (especially on dual nationality)" (CRAI n.d.b). Sources indicate that while *Law No. 28 of 22 December 1962 on Somali Citizenship* does not permit dual citizenship (CRAI n.d.a; Lawyer 12 Nov. 2017; LAW n.d.a), the *Provisional Constitution* of 2012 entitles Somalis to dual citizenship (CRAI n.d.a; Lawyer 12 Nov. 2017). In correspondence with the Research Directorate, a representative of the Somali Embassy in Brussels explained that "under the current constitution, a Somali citizen can have dual citizenship. He can hold, for example, a Somali passport and a Western passport. The individual can use both passports for traveling" (Somalia 13 Nov. 2017).

In a comparative study on citizenship law in Africa for Open Society Foundations [3], Bronwen Manby [4] states that the Constitution of Somalia has been changed to allow dual citizenship, but "the legislation has yet to be updated" (Open Society Foundations 2016, 75). The lawyer stated the following regarding the *Provisional Constitution* of 2012:

It takes precedence over the 1962 statutes on citizenship, so far as they are incompatible with the adopted *Provisional Constitution*. However, this would not render the 1962 provisions invalid, as they have not been repealed by a legislature or rendered invalid by any court of law. In practical terms, the articles of the *Provisional Constitution* relating to citizenship cannot be implemented since there is no legislation, regulatory regime, or administrative body, with the authority to manage citizenship in Somalia, neither is there a harmonized approach to identifying citizens. (Lawyer 12 Nov. 2017)

In correspondence with the Research Directorate, a Legal Advisor of Legal Action Worldwide (LAW) [5] stated that

in practice, the 1962 prohibition on dual citizenship was not implemented. Half the Somali government has dual citizenship. If the [*Law No. 28 of 22 December 1962 on Somali Citizenship*] was applied in practice, this would rule all of them out of public office as the [*Law No. 28 of 22 December 1962 on Somali Citizenship*] says you immediately lose Somali citizenship when you take up another one and the electoral laws prohibit foreign nationals from holding office. This is why dual citizenship was put into the constitution to overrule the 1962 legislation. (LAW 13 Nov. 2017)

Other sources similarly indicate that many politicians in Somalia hold foreign citizenship (*The Telegraph* 8 Feb. 2017; Quartz Africa 7 Feb. 2017). According to Wakiil, "an independent, non-partisan online database of MPs [Members of Parliament] and Senators in Somalia" (Wakiil n.d.), 105 out of 275 Somali Federal MPs have dual citizenship (Wakiil 21 Feb. 2017). Sources indicate that the Somali president who was elected in February 2017 holds dual Somali-US citizenship (AP 8 Feb. 2017; Smithsonian.com 10 Feb. 2017) and that "dual citizenship is accepted for politicians in Somalia" (Smithsonian.com 10 Feb. 2017).

3. Citizenship Status of Persons Born in Somaliland

Sources indicate that Somaliland has legislation relating to citizenship (CRAI n.d.a; Lawyer 12 Nov. 2017; Somalilandlaw.com Aug. 2014). Article 2 of the *Somaliland Citizenship Law* provides the following:

Article 2: Citizenship by birth

1. A Somaliland citizen by birth is anyone whose father is a descendent of persons who resided in the territory of Somaliland on 26 June 1960 and before.
2. A Somaliland citizen by birth may acquire the citizenship of another country (dual nationality) without losing his Somaliland citizenship.
3. Unless he has not [sic] voluntarily renounced the right to Somaliland citizenship, any adult progeny of a male Somaliland citizen, who resides in a foreign country or is a citizen of another country or is a refugee in another country may acquire Somaliland citizenship on his first return to the territory of Somaliland. (Somaliland 2002)

CRAI explains that "the effectiveness of this law depends in part on the extent to which Somaliland is recognized as a state, or not" (CRAI n.d.a). In correspondence with the Research Directorate, a representative of the Somali Ministry of Interior and Federal Affairs stated that "[t]he Somali government does not consider Somaliland as a separate state" and that "persons born in Somaliland are Somali citizens" (Somalia 12 Dec. 2017). Other sources similarly indicate that persons born in Somaliland have access to Somali citizenship (Lawyer 12 Nov. 2017; LAW 13 Nov 2017; Somalia 13 Nov. 2017). According to the Legal Advisor of LAW, such persons can apply for a Somali passport if they go to Mogadishu (LAW 13 Nov 2017). The same source further stated that the process is "actually quite straightforward and that it is not actually an issue for Somalilanders to come to Mogadishu, except that there are no direct commercial flights and the road is very dangerous, so there are practical barriers for anyone who is not wealthy" (LAW 13 Nov 2017). The lawyer explained that such persons

can obtain Somali national documents, such as an identification card, birth certificate (indicating they were born in Somaliland), and so on. However, at present, there is no administrative apparatus in Somalia which can lawfully issue citizenship certificates. (Lawyer 12 Nov. 2017)

4. Citizenship Status of Persons Born in the Ogaden Region of Ethiopia

The representative of the Somali Embassy in Brussels stated, without providing further details, that a person born in the Ogaden region of Ethiopia cannot obtain Somali citizenship (Somalia 13 Nov. 2017). In contrast, the representative of the Somali Ministry of Interior and Federal Affairs stated that a person born in the Ogaden region of Ethiopia can obtain Somali citizenship (Somalia 12 Dec. 2017). Other sources likewise indicated that Somali citizenship can be obtained by a person born in the Ogaden region of Ethiopia (Lawyer 12 Nov. 2017; LAW 13 Nov. 2017). The Legal Advisor of LAW stated that it is "[t]echnically" possible "if they are of Somali ethnicity (i.e. either both parents are of Somali ethnicity, or the father is/was a Somali citizen) and either don't have or are willing to renounce their Ethiopian citizenship" (LAW 13 Nov. 2017). According to the representative of the Somali Ministry of Interior and Federal Affairs, "[t]he required procedure is to find elders that attest and verify that [the person is a descendant] from a Somali clan that resides in that region (Somalia 12 Dec. 2017). The lawyer stated that the *Law No. 28 of 22 December 1962 on Somali Citizenship* outlines the acquisition of citizenship on the basis of the principle of nationality, where an individual identifies with Somali heritage. Individuals who do not reside in Somalia, but identify with Somali heritage through language, lineage or culture can attain citizenship by becoming a resident of any Somali region. The attainment of citizenship based on heritage requires that the individual renounce citizenship or nationality of a foreign country. (Lawyer 12 Nov. 2017)

The Legal Advisor of LAW explained that the Ministry of Immigration and Federal Affairs has not yet established an office where one could actually apply to obtain Somali citizenship and until it is established, it would be "very difficult" to obtain in practice (LAW 13 Nov. 2017). The same source further added that, in this situation "[w]hat they could do is apply to immigration for a Somali passport, but they have to [go] to Mogadishu to do that" (LAW 13 Nov. 2017). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Citizenship Status of Women Married to Foreign Nationals

Article 13 of the *Law No. 28 of 22 December 1962 on Somali Citizenship* provides the following:

Article 13. *Married Women*

1. Any woman who is not a citizen and marries a citizen shall acquire Somali citizenship. She shall retain it even after the dissolution of the marriage, except where she renounces her Somali citizenship under the terms of article 10.
2. Except as provided in paragraph 2 of article 9, any woman who is not a citizen and is the wife of an alien or stateless person who acquires citizenship, shall acquire Somali citizenship.
3. Any woman who is a citizen and marries an alien shall lose her Somali citizenship if, by her marriage, she acquires her husband's citizenship.
4. Except as provided in paragraph 3 of article 11, any woman who is of marriage shall recover it, if the marriage is dissolved, provided that she loses it too, unless the husband has become stateless or the new citizenship acquired by him cannot be extended to her.
5. Any woman who was a citizen and lost her citizenship because of marriage shall recover it, if the marriage is dissolved, provided that she establishes her residence in the territory of the Somali Republic and renounces any foreign citizenship or status as subject of a foreign country in the manner prescribed in article 6. (Somalia 1962, italics in original)

Paragraph 3 of Article 11 of *Law No. 28 of 22 December 1962 on Somali Citizenship* provides the following: "[d]eprivation of citizenship acquired by grant shall not extend to the wife and minor children of the person concerned" (Somalia 1962).

However, Somalilandlaw.com, a "not-for-profit, independent website" that aims to "disseminate information about the Constitution and laws" of Somaliland (Somalilandlaw.com n.d.) states that paragraph 4 of Article 13 of the law was corrected in a corrigendum published on 19 February 1963 (Somalilandlaw.com July 2014). According to the English translation of *Law No. 28 of 22 December 1962 on Somali Citizenship* that is provided by Somalilandlaw.com, paragraph 4 of Article 13 reads as follows: "*Except as provided in paragraph 3 of article 11, any woman who is a citizen and is the wife of a citizen who loses his citizenship shall lose it too, unless the husband has become stateless or the new citizenship acquired by him cannot be extended to her*" (Somalilandlaw.com July 2014, italics in original). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

On its website, LAW indicates that, according to the *Law No. 28 of 22 December 1962 on Somali Citizenship*, "[w]hen a non-Somali man marries a Somali woman, the woman will involuntarily lose her Somali citizenship" (LAW n.d.a). When asked whether a woman, who was born in Somaliland and who acquired Djiboutian citizenship as a result of marriage to a Djiboutian man, can have Somali citizenship, the Legal Advisor of LAW stated that "under the current law, [the woman] loses her citizenship and can't get it back unless they divorce, but ... as there is no office to apply to re-acquire it in practice, this would be extremely difficult" (LAW 13 Nov. 2017). In contrast, when asked the same question, the representative of the Somali Embassy in Belgium stated that "the woman can keep her Somali passport regardless of the origin of her husband" (Somalia 13 Nov. 2017). According to the lawyer, "[d]ual nationality under both Somali and Somaliland law is not limited to two countries. If the woman is entitled to Somaliland citizenship under the *Somaliland Citizenship Law (Law No 22/2002)*, she is legally entitled to Somali citizenship" (Lawyer 12 Nov. 2017). According to the representative of the Somali Ministry of Interior and Federal Affairs, a woman who is born in Somaliland is a Somali citizen and her acquisition of Djiboutian citizenship "will qualify her for dual citizenship analogous to a Somali who is a Canadian citizen" (Somalia 12 Dec. 2017).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] Citizenship Rights in Africa Initiative (CRAI) is a website that "contains a database on nationality and statelessness in Africa featuring national laws and subsidiary legislation, reports and academic articles, news stories and blog postings, and other resources. ... The website is hosted by the International Refugee Rights Initiative" (IRRI) (CRAI n.d.c). IRRI is a non-profit organization in the US, the UK and Uganda that "works to address causes of conflict-related displacement" (IRRI n.d.). The website of CRAI is "maintained by Bronwen Manby and Djibril Balde, on behalf of an informal network of organisations, individuals and experts in Africa working for the right to nationality and an end to statelessness in Africa" (CRAI n.d.c).

[2] Mogadishu Law Office is a Mogadishu-based law firm which specializes in commercial disputes, foreign trade and investment, and civil and criminal litigation, among other fields of practice (Mogadishu Law Office n.d.).

[3] Open Society Foundations "work[s] to build vibrant and tolerant societies whose governments are accountable to their citizens" (Open Society Foundations n.d.). It "fund[s] a range of programs around the world, from public health to education to business development" (Open Society Foundations n.d.).

[4] According to the website of the Centre for the Study of Human Rights based at the London School of Economics and Political Science (LSE), Bronwen Manby is "an independent consultant in the field of human rights, democracy and good governance, with a focus on sub-Saharan Africa" (Centre for the Study of Human Rights 10 Nov. 2015). According to the same source, she is also a Visiting Senior Fellow at the Centre (Centre for the Study of Human Rights 10 Nov. 2015).

[5] Legal Action Worldwide (LAW) is a "non-profit network and think tank of human rights lawyers who provide creative legal assistance to individuals and communities who have suffered from human rights violations and abuses in fragile and conflict-affected areas" (LAW n.d.b). LAW is the "technical legal advisor" to the Somali Ministry of Interior and Federal Affairs on the draft Citizenship Bill to be passed in 2017 (LAW n.d.a).

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Additional Sources Consulted

Oral sources: Citizenship Rights Africa Initiative; Global Campaign for Equal Nationality Rights; International Organization for Migration – Mission in Somalia; Somalia – Embassies in Addis Ababa, in Berlin and in Washington, Immigration and Naturalization Directorate, Permanent Mission to the UN; Somaliland Lawyers' Association; Somaliland Women Lawyers Association; UN – Independent Expert on the Situation of Human Rights in Somalia, Technical Advisor for the UNDP; University of Hargeisa, Legal Clinic.

Internet sites, including: Africa News; Al Jazeera; All Africa; Hiiraan Online; International Organization for Migration – Mission in Somalia; IRIN; Mogadishu Law Office; *The New York Times*; Somalia – Embassy in Washington, Immigration and Naturalization Directorate, Ministry of Interior and Federal Affairs; *The Guardian*; UN – Office of the High Commissioner for Human Rights.

Attachment

Somalia. 1962. *Law No. 28 of 22 December 1962 on Somali Citizenship*. Sent to the Research Directorate by a lawyer at Mogadishu Law Office, 16 November 2017.

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