



Home Office

# **Country Policy and Information Note**

## **Somalia: Women fearing gender-based violence**

**Version 4.0**

**April 2018**

# Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained within this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

## Country Information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,  
5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: [chiefinspector@icinspector.gsi.gov.uk](mailto:chiefinspector@icinspector.gsi.gov.uk)

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>.

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# Policy guidance

Updated: 4 April 2018

## 1. Introduction

### 1.1 Basis of claim

1.1.1 Fear of gender-based violence by state and/or non-state actors.

### 1.2 Points to note

1.2.1 For the purposes of the note, gender-based violence includes, but is not limited to: domestic violence, physical attacks and abuse outside the home, sexual violence and rape.

1.2.2 Decision makers must refer to the Asylum Instructions on [Gender issues in the asylum claim](#).

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## 2. Consideration of issues

### 2.1 Credibility

2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Particular social group

2.2.1 Women form a particular social group (PSG) in Somalia within the meaning of the Refugee Convention because they share a common characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society.

2.2.2 Although women in Somalia form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question is whether the particular person will face a real risk of persecution on account of their membership of such a group.

2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

## 2.3 Assessment of risk

### a. Domestic and public violence

- 2.3.1 Women's rights are protected in law but in practice women face significant official, cultural and social barriers in accessing education and justice, and have experienced restrictions on their family and property rights. They are also under-represented in public life throughout Somalia. Despite this, many women in Somalia work in the informal labour sector (see [Position of women](#)).
- 2.3.2 Despite legal protection, sexual and gender-based violence (SGBV) – including domestic violence, rape, and sexual abuse – remains widespread throughout Somalia as a result of the continuing insecurity, weak rule of law, gender inequality and large-scale displacement, although reliable data on numbers and frequency are not available and abuses are likely to be under-reported. SGBV is particularly prevalent in camps for internally displaced persons (IDP) and in conflict zones where all parties – government forces, militia members, African Union Mission in Somalia (AMISOM) forces, and Al-Shabaab – have reportedly perpetrated sexual abuse and violence. Government forces and AMISOM peacekeepers are also reported to have committed abuses with impunity. Women and girls who are displaced, from marginalised groups, or who live in areas under Al-Shabaab control are particularly vulnerable SGBV owing to a lack of or limited access to protection mechanisms and weak clan protection (see [Position of women](#); and [Sexual and gender-based violence](#)).
- 2.3.3 In the country guidance case [AMM and others \(conflict; humanitarian crisis; returnees; FGM\) Somalia CG \[2011\] UKUT 00445 \(IAC\) \(28 November 2011\)](#), heard 13 to 21 June and 15 July 2011, which considered the situation in south and central Somalia, the Upper Tribunal held that '... except as regards the issue of FGM, it is unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues.' (paragraph 371). In the subsequent country guidance case of [MOJ & Ors \(Return to Mogadishu\) Somalia CG \[2014\] UKUT 00442 \(IAC\) \(3 October 2014\)](#), heard 10-13, 25 February and 9 September 2014, which considered the humanitarian and security situation, primarily, in Mogadishu, found that there was no general risk to civilians in Mogadishu (para 407).
- 2.3.4 The UT in [MOJ](#) also found that: 'It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.' (para 408)
- 2.3.5 In assessing risk of serious harm on return, the Tribunal in [MOJ](#) outlined a number of factors to consider, though not specifically for a woman, which included: access to family networks or clan protection and support; age; health; economic status; family responsibilities; connections with the diaspora and other individual circumstances of the person (see para 407).

- 2.3.6 Since the country guidance case [MOJ & Ors](#) was heard, the situation in Mogadishu has not substantially changed to depart from the country guidance generally.
- 2.3.7 A woman without family/friends/clan connections, or who is not able to approach her family because her fear is based on domestic abuse or violence, or without resources, in general, is likely to be at risk of sexual and gender-based violence on return, or relocating to Mogadishu or other parts of south and central Somalia, controlled by the government. In particular, a woman from a marginalised group and/or who will return to an IDP camp is likely to face treatment, by its nature and repetition, amounting to persecution or serious harm.
- 2.3.8 Similarly, a woman returning to Puntland or Somaliland, especially if she is single and with no support network, is likely to be vulnerable to abuse, but this will depend on the facts of the individual case.
- 2.3.9 However, each case needs to be considered on its merits, with the onus on the woman to demonstrate why she would face a risk on return.
- 2.3.10 For analysis and information about the security and humanitarian situation, (see the country policy and information note, [Security and humanitarian situation in south and central Somalia](#)).
- b. [Al-Shabaab-controlled areas](#)
- 2.3.11 In Al-Shabaab-controlled areas, a strict and harsh interpretation of Sharia law is imposed, which prohibits the exercise of several forms of human rights, such as freedom of speech, expression, movement, assembly, and religion. Women are also excluded from economic activities which are perceived as unIslamic (see [Areas controlled by Al-Shabaab](#) and the country information and policy note on [Somalia \(South and Central\): fear of Al-Shabaab](#)).
- c. [Somaliland or Puntland](#)
- 2.3.12 Sexual and gender-based violence are also serious problems in Somaliland and Puntland. Cases of such abuses are often unreported and resolved between families, with perpetrators typically paying compensation or marrying the victim. Women, especially single women, with no support network are likely to be vulnerable and may be subjected to destitution (see [Sexual and gender-based violence \(GBV\) in Somaliland](#) and [Sexual and gender-based violence \(GBV\) in Puntland](#)).
- d. [FGM in south and central Somalia, including Mogadishu](#)
- 2.3.13 Female Genital Mutilation (FGM) is almost universally practiced throughout Somalia and a very strong cultural belief persists in its practice.
- 2.3.14 In the country guidance case of [AMM and others](#), which was heard in 2011, the Upper Tribunal held that the incidence of FGM in Somalia was universally agreed to be over 90% (paragraph 241 and country guidance headnote (16)). In South and Central Somalia, no significant changes in FGM prevalence have been observed since the 1990s (paragraph 547) and that ‘the societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised, unmarried Somali woman, up to the

age of 39, will be at real risk of suffering FGM. The risk will be greatest in cases where both parents are in favour of FGM.’ (paragraphs 609 & 610 and country guidance headnote (16)).

- 2.3.15 [AMM and others](#) also held that should both parents oppose FGM, ‘the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives will at some point inflict FGM on her’ (para 610) and country guidance headnote (17)).
- 2.3.16 [MOJ & Ors](#) does not replace the general finding in [AMM and others](#) about the risk to women of FGM.
- 2.3.17 Despite Somalia’s new constitution, which was adopted in August 2012, prohibiting the practice, the country information available since [MOJ & Ors](#) does not support a departure from those findings (see [Female genital mutilation \(FGM\)](#)).

#### e. FGM in Somaliland or Puntland

- 2.3.18 In 2014, the Puntland government made the practice of FGM illegal. The Puntland government and community actors are working together to end the practice of FGM in Puntland (see [FGM in Puntland](#)).
- 2.3.19 In Somaliland, the UNFPA (United Nations Population Fund) and community organisations are also working together to end the practice of FGM (see [FGM in Somaliland](#)).
- 2.3.20 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#) and, when considering claims from women, the [Asylum Instruction on Gender Issues in Asylum Claims](#).

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## 2.4 Protection

### a. Southern and central Somalia, including Mogadishu

- 2.4.1 Prosecutions and convictions for rape and other forms of sexual violence are rare in Somalia. Survivors not only experience fear and shame in reporting such crimes, but at times face greater abuse and stigmatisation if they do. Somali police, rather than investigating criminal complaints, sometimes ask victims of crime to carry out investigations themselves (see [State response](#)).
- 2.4.2 Traditional laws, often used instead of a weak state judiciary, discriminate against women and girls (see [Traditional justice systems](#)).
- 2.4.3 In general, a woman fearing sexual or gender-based violence is unlikely to be able to access effective protection from the state.

## b. al-Shabaab-controlled areas

- 2.4.4 In general, a woman fearing sexual or gender-based violence is unlikely to be able to access effective protection when living in an al-Shabaab-controlled area (see [Areas controlled by Al-Shabaab](#) and the country information and policy note on [Somalia \(South and Central\): Fear of Al-Shabaab](#)).

## c. Somaliland or Puntland

- 2.4.5 The situation may be otherwise in Somaliland where the authorities have taken action against those accused of rape, and Puntland where the authorities have also taken action against those accused of rape, and where female genital mutilation has been made illegal (see [Sexual and gender-based violence](#) and [FGM in Puntland](#)).
- 2.4.6 Decision makers must consider each case on its individual facts and the particular circumstances of the person.

For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.5 Internal relocation

- 2.5.1 The relevance and reasonableness of internal relocation must be assessed on a case-by-case basis taking full account of the individual circumstances of the particular person.
- 2.5.2 For single women and female single heads of households with no male protection, especially those originating from minority groups, internal relocation will not be available in the absence of meaningful support networks.
- 2.5.3 If the person cannot remain in Mogadishu, the decision maker must establish whether they could safely and reasonably relocate elsewhere in Somalia.
- 2.5.4 For areas of south and central Somalia which are not under the control of Al-Shabaab, [AMM and others](#) found that family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation (para 604). Travel by land across southern and central Somalia to a home area or proposed place of relocation may pose real risks of serious harm from Al-Shabaab checkpoints (para 605). [AMM and others](#) also referred to famine conditions (para 605), which no longer applies, but decision makers must consider the wider humanitarian situation when deciding the reasonableness of internal relocation (see country information and policy note on [Somalia \(South and Central\): Security and humanitarian situation](#)).
- 2.5.5 [AMM and others](#) also found that women travelling without male friends or relatives are in general likely to face a real risk of sexual violence (para 605).
- 2.5.6 [AMM and others](#) found that internal relocation to an area controlled by al-Shabaab is not feasible for a person who has had no history of living under al-Shabaab in that area (and is in general unlikely to be a reasonable proposition for someone who has had such a history) (para 603).



- 2.5.7 Decision makers must continue to consider the factors outlined in the [MOJ & Ors](#) country guidance headnotes (vii)–(xii) when deciding cases involving a person returning, or internally relocating to Mogadishu.
- 2.5.8 Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally-based clans or sub-clans.
- 2.5.9 For further guidance on internal relocation and the factors to be considered, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.6 Certification

- 2.6.1 Where a claim is refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.6.2 For further information on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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# Country information

Updated: 4 April 2018

## 3. Position of women

3.1.1 The United States State Department (USSD) 'Country Report on Human Rights Practices for 2016,' published on 3 March 2017, observed:

'Women did not have the same rights as men and experienced systematic subordination to men, despite provisions in the federal constitution prohibiting such discrimination. Women experienced discrimination in credit, education, politics, and housing.

'On May 27 [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 plan included programs to promote awareness and sensitivity to gender issues and tools to measure gender inequities in policies and programs. On June 30, the Somali Islamic Scholars Union denounced the new policy as un-Islamic and called for punishment of its authors. In June and July, the minister of women, human rights, and social development, the only woman remaining in the cabinet, reportedly received several death threats from extremist Islamic groups who accused her of pushing for women's representation in government. On October 2, the Somali Religious Council released a press statement warning the government against advocating for women in politics, calling the 30 percent quota for women's seats in parliament "dangerous" and against Islamic religious tenets and predicting the policy would lead to disintegration of the family.

'Only men administered sharia, which often was applied in the interests of men. According to sharia law and the local tradition of blood compensation, anyone found guilty of the death of a woman paid to the victim's family only half the amount required to compensate for a man's death.

'While the law requires equal pay for equal work, this did not always occur. Women were underrepresented in both the formal public and private sectors because of cultural norms and girls' low educational level. Women were not subject to discrimination in owning or managing businesses except in al-Shabaab-controlled areas. While generally visible in micro- and small enterprises, women were relegated to lower-level positions in larger companies.

'The exclusion of women was more pronounced in al-Shabaab-controlled areas, where women's participation in economic activities was perceived as anti-Islamic.

'While formal law and sharia provide women the right to own and dispose of property independently, various legal, cultural, and societal barriers often obstructed women from exercising such rights. By law girls and women could inherit only half the amount of property to which their brothers were entitled. A 2010 report from a local women's organization in Somaliland

indicated 75 percent of women did not own livestock, land, or other property. Only 15 to 20 percent received inheritance from male family members.’<sup>1</sup>

3.1.2 The Australian government’s Department of Foreign Affairs and Trade (DFAT) country report on Somalia observed:

‘Article 3 of the Provisional Constitution stipulates that women must be included in all national institutions including in elected and appointed positions. The Provisional Constitution also provides for protection from discrimination in the workplace and from violence against women, including sexual abuse. According to the Penal Code, the punishment for rape is five to 15 years. Abortion is prohibited, given it does not comply with Sharia law as practised in Somalia, but is possible in cases of necessity such as to save the life of the mother. The principles of Sharia favour males in relation to divorce, custody of children and inheritance. Amendments to Somalia’s Citizenship Law to allow mothers to confer citizenship to their children (currently only fathers can do so) have been proposed but not yet approved.

‘In practice, women in Somalia face significant official, cultural and social barriers. In terms of political representation, the 30 per cent target for female political representation for the 2016/17 elections was not met. However, the election results were an improvement on the last parliament: women now make up 24 per cent of the Lower House (compared to 14 per cent in the previous parliament) and 23 per cent in the newly-created Upper House. Formal female workforce participation is limited by cultural norms that dictate women should be engaged in household work; around 37 per cent of women over 15 years of age are formally employed. Given widespread poverty and the high number of women-headed-households, there are many women working in the informal labour sector. Female participation in education is also notably less than the male population and, according to UNICEF, only 25 per cent of women aged 15 to 24 are literate.

‘Overall, DFAT assesses that women throughout Somalia face a high risk of official and societal discrimination and gender-based violence. There are few support mechanisms available to women, particularly to women who are internally displaced or do not have clan connections.’<sup>2</sup>

3.1.3 The UN Office of the High Commissioner for Human Rights (OHCHR) reported in December 2017 that:

‘The protracted conflict in Somalia has resulted in the prevalence of sexual violence against women, men, boys and girls, with women and girls particularly affected. Continued insecurity, weak rule of law and lack of humanitarian access have aggravated sexual violence. Gender inequality, power imbalances, slow progress in fulfilling Somalia’s obligations under international human rights treaties, displacement of large populations as a result of both the conflict and the drought, as well as the return of refugees

<sup>1</sup> United States State Department (USSD), ‘Country Report on Human Rights Practices for 2016’, section 6, Somalia, 3 March 2017, <https://www.state.gov/documents/organization/265512.pdf>. Accessed: 14 November 2017

<sup>2</sup> Australian Department of Foreign Affairs and Trade (DFAT), ‘Country Information Report – Somalia’, paras 3.21 to 3.23, 13 July 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-somalia.pdf>. Accessed: 15 December 2017

from Kenya to mainly Baidoa, Luuq and Kismayo, all contribute to an environment in which women and girls are especially vulnerable to gender-based violence, including conflict related sexual violence and sexual exploitation and abuse. Women and girls who are displaced or from marginalized groups suffer the most due to inadequate protection mechanisms, lack of or limited access to available formal and informal justice mechanisms, and weak clan protection.’<sup>3</sup>

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## 4. Sexual and gender-based violence

### 4.1 Legal rights

4.1.1 The Social Institutions and Gender Index stated: ‘Somalia has laws prohibiting rape; however they are very rarely enforced. There are no laws prohibiting domestic violence, spousal rape or sexual harassment.’<sup>4</sup>

4.1.2 The USSD ‘Country Report on Human Rights Practices for 2016’ stated: ‘The law criminalizes rape, providing penalties of five to 15 years in prison for violations. Military court sentences for rape included death. The government did not effectively enforce the law. There are no laws against spousal violence, including rape, although on May 27, the Council of Ministers approved a national gender policy that gives the state the right to sue anyone convicted of committing gender-based violence, such as the killing or rape of a woman. Somali NGOs documented patterns of rape perpetrated with impunity, particularly of female IDPs and members of minority clans.’<sup>5</sup>

4.1.3 A ‘Report of the Independent Expert on the Situation of human rights in Somalia’, dated 6 September 2017, submitted to the United Nations Human Rights Council, stated:

‘The Puntland Minister of Women and Human Rights Development explained that the Government had taken measures to protect women against sexual and gender-based violence, and described the progress made in their protection...In 2015, Puntland adopted the Puntland Rape Act, which facilitated the trial of rape cases in formal courts. Chapter 19 of the Rape Act, on the special duties of the prosecution authorities where the accused is charged with a sexual offence, provides that the decision to prosecute the perpetrator of a sexual offence or any other offence under that law will be made by the Attorney General, not the complainant, and that the Somali Penal Code shall not apply to rape cases. It also provides that the prosecution authorities may establish specialized units with specialized

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<sup>3</sup> UN Office of the High Commissioner for Human Rights (OHCHR), ‘Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia,’ p24, December 2017, <http://www.ohchr.org/Documents/Countries/SO/ReportProtectionofCivilians.pdf>.

Accessed: 22 January 2018

<sup>4</sup> Social Institutions and Gender Index, Somalia, <http://www.genderindex.org/country/somalia/>.

Accessed: 14 November 2017

<sup>5</sup> United States State Department (USSD), ‘Country Report on Human Rights Practices for 2016’, section 6, Somalia, 3 March 2017, <https://www.state.gov/documents/organization/265512.pdf>.

Accessed: 14 November 2017

prosecutors for sexual offence cases. At all relevant stages of the legal process, the prosecution authorities are required to forbid traditional elders or any other authority or person to take any measures to resolve any offence prescribed under the Act, using the traditional or any other informal dispute resolution mechanism. The Act has therefore removed the power to resolve rape cases through traditional mechanisms from traditional elders and families.

‘The Rape Act is yet to be effectively implemented because of the lack of training for judges and magistrates in the formal courts, who still use sharia law when the formal legislation is inadequate.’<sup>6</sup>

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## 4.2 Prevalence

### 4.2.1 The Social Institutions and Gender Index stated:

‘Whilst most incidents of violence against women go unreported, there is a culture of impunity surrounding sexual and domestic violence in Somalia. Customary approaches to dealing with violence against women typically involve making “arrangements” between the clans of the victim and the rapist. According to the United Nations Human Rights Council, rape or domestic violence is treated as civil dispute, often resolved through either the payment of money or a forced marriage between the victim and the perpetrator.

‘Although there is a lack of prevalence data, sexual and domestic violence is reported to be a serious problem in Somalia and recent reports suggest that it is increasing.

‘Anecdotal reports from field workers suggest that although there has been a general increase in awareness about rape and sexual violence, there remains a reluctance to talk about gender-based violence. For instance, UNICEF reported that 76% of women 15–49 years old consider a husband to be justified in hitting or beating his wife, if his wife burns the food, argues with him, goes out without telling him or neglects the children or refuses sexual relations...Women in Somalia continue to be subject to high levels of conflict-related sexual violence and domestic violence, where rape is often used as a weapon of war. Police and militia members have been found to be perpetrators of rape against women and rape has been commonly practiced in inter-clan conflicts. Women living in Internally Displaced Person (IDP) camps are particularly vulnerable to rape, abduction and forced marriage, and recent reports have documented a pattern of sexual exploitation by troops, in which sex is exchanged for food or money.’<sup>7</sup>

### 4.2.2 The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

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<sup>6</sup> United Nations Human Rights Council, ‘Report of the Independent Expert on the Situation of human rights in Somalia (Advance edited version)’, page 15, 6 September 2017, <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>. Accessed: 21 November 2017

<sup>7</sup> Social Institutions and Gender Index, Somalia section, undated, <http://www.genderindex.org/country/somalia/>. Accessed: 14 November 2017

‘Although statistics on cases of gender-based violence in Mogadishu were unreliable, international and local NGOs characterized such violence as pervasive. Government forces, militia members, and men wearing uniforms raped women and girls. While the army arrested some security force members accused of such rapes, impunity was the norm.

‘AMISOM troops committed sexual abuse and exploitation, including rape...

‘Local civil society organizations in Somaliland reported that gang rape continued to be a problem in urban areas, primarily perpetrated by youth gangs and male students. It often occurred in poorer neighborhoods and among immigrants, returned refugees, and displaced rural populations living in urban areas. In 55 percent of reported cases, a minor was the victim. Many cases went unreported.

‘Domestic and sexual violence against women remained serious problems despite the provisional federal constitution provision prohibiting any form of violence against women...

‘Al-Shabaab also committed sexual violence, including through forced marriages. Al-Shabaab sentenced persons to death for rape.’<sup>8</sup>

4.2.3 The Human Rights Watch ‘World Report 2018’, published on 18 January 2018, stated: ‘Internally displaced women and girls remain at particular risk of sexual and gender-based violence by armed men, including government soldiers and militia members, and civilians. According to the UN, incidents of reported sexual violence around displacement settlements increased in 2017.’<sup>9</sup>

4.2.4 The Australian Department of Foreign Affairs and Trade (DFAT), ‘Country Information Report – Somalia’, dated 13 June 2017, stated:  
‘Violence against women, including domestic violence, rape, sexual abuse, exploitation and trafficking is widespread throughout Somalia. Somalia is not a party to the UN Convention on the Elimination of Violence against Women. Women without family and clan connections are more vulnerable to gender-based violence and have less access to justice than women who come from majority clans. UN Women reported that the Somali National Army and the national police operate within a patronage system that rewards loyalties, resulting in unequal access to their services, which often disadvantages women. Women also have less access to independent financial resources, which are required in the pluralistic justice system in Somalia.’<sup>10</sup>

4.2.5 The DFAT report on Somalia also stated:

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<sup>8</sup> USSD, ‘Country Report on Human Rights Practices for 2016’, section 6, Somalia, 3 March 2017, <https://www.state.gov/documents/organization/265512.pdf>. Accessed: 14 November 2017

<sup>9</sup> Human Rights Watch, ‘World Report 2018’, Somalia, 18 January 2018, <https://www.hrw.org/world-report/2018/country-chapters/somalia>. Accessed: 30 January 2018

<sup>10</sup> Australian Department of Foreign Affairs and Trade (DFAT), ‘Country Information Report – Somalia’, 13 June 2017, page 14, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-somalia.pdf>. Accessed: 14 November 2017

'In addition to generalised gender-based violence, women in Somalia face sexual abuse perpetrated by all actors in the conflict: Somali security forces, al-Shabaab, AMISOM troops, and within clan militias and communities.'

'The evidence collected by HRW of AMISOM-perpetrated sexual violence against Somali women and girls demonstrated a relatively organised pattern of sexual exploitation. Vulnerable women were raped in or near AMISOM bases and then paid small amounts or provided with food or medicine in an attempt by troops to justify the act as transactional sex. The perpetrators ranged from junior to senior officers. Some reported incidents have been investigated by troop-contributing countries or by the African Union (AU).

'The AU has assessed all allegations as not credible. DFAT assesses that there is a lack of accountability in relation to sexual exploitation not only in relation to AMISOM forces, but all perpetrators, and many cases would go unreported. Al-Shabaab practises hudood, which is physical punishment for violation of Sharia law. Women who do not obey dress codes, work outside their homes, are seen conversing with men outside their family, or any other behaviour deemed inappropriate by al-Shabaab, can face public beatings, whippings or execution.'<sup>11</sup>

4.2.6 A 'News Deeply' report, 'In Somalia, New Law Could Finally Give Rape Survivors a Voice', dated 27 April 2017, stated:

'Statistics about rape in Somalia vary wildly, and the lack of infrastructure, combined with the rarity of reporting, means there is no way to get a firm grasp on its scope. The Somalia Protection Cluster, a consortium of NGOs working in the country, recorded 1,599 cases of gender-based violence between September 2016 and February 2017. In 2015, the attorney general's office recorded 69 rape cases, 55 of which resulted in a conviction, according to Legal Action Worldwide (LAW), a firm specializing in human rights. Back in 2013, the U.N. recorded 800 cases of gender-based violence in the first six months of the year – in Mogadishu alone.

'In a country where survivors themselves believe that "rape is normal," women's rights advocates say these statistics represent a fraction of the sexual assaults that actually occur in Somalia.'<sup>12</sup>

4.2.7 The UN Office of the High Commissioner for Human Rights (OHCHR) reported in December 2017 that:

'The protracted conflict in Somalia has resulted in the prevalence of sexual violence against women, men, boys and girls, with women and girls particularly affected. Continued insecurity, weak rule of law and lack of humanitarian access have aggravated sexual violence. Gender inequality, power imbalances, slow progress in fulfilling Somalia's obligations under international human rights treaties, displacement of large populations as a result of both the conflict and the drought, as well as the return of

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<sup>11</sup> Australian DFAT, 'Country Information Report – Somalia', 13 June 2017, page 14, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-somalia.pdf>. Accessed: 14 November 2017

<sup>12</sup> 'News Deeply', 'In Somalia, New Law Could Finally Give Rape Survivors a Voice', 27 April 2017, <https://www.newsdeeply.com/womenandgirls/articles/2017/04/27/in-somalia-new-law-could-finally-give-rape-survivors-a-voice>. Accessed: 22 November 2017

refugees from Kenya to mainly Baidoa, Luuq and Kismayo, all contribute to an environment in which women and girls are especially vulnerable to gender-based violence, including conflict related sexual violence and sexual exploitation and abuse. Women and girls who are displaced or from marginalized groups suffer the most due to inadequate protection mechanisms, lack of or limited access to available formal and informal justice mechanisms, and weak clan protection.’<sup>13</sup>

- 4.2.8 EASO’s December 2017 report on Somalia, citing various sources stated: ‘Sexual and gender-based violence (SGBV) is a prevalent issue in the conflict areas of Somalia. In particular ethnic minorities, IDPs and people living in areas under AS are at a heightened risk of sexual exploitation. Sexual violence is particularly widespread within IDP camps, with some camp administrators (gate keepers) reported to have forced girls and women to perform sex acts in exchange for food, clothing, and shelter.’<sup>14</sup>

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### 4.3 Mogadishu and south central Somalia

- 4.3.1 The Human Rights Watch (HRW) report, ‘Here, Rape is Normal’, dated 13 February 2014, stated:

‘The majority of the victims of sexual violence documented by local and international NGOs in and around Mogadishu are women and girls living in IDP camps. Many reported incidents that took place at night while the victims slept in their shelters and lacked any physical protection or security. In some cases, victims have been repeatedly raped and sometimes gang-raped over their time in the camps. Others have been attacked when they leave the camps to gather supplies or work. Human Rights Watch research published in 2013 found that armed men in uniform, including government forces and government-allied militia, have been responsible for a significant number of sexual assaults of internally displaced women and girls since July 2011. These have included some government personnel who were posted in IDP camps to provide security.’<sup>15</sup>

- 4.3.2 The HRW report, ‘Here, Rape is Normal’, also stated:

‘The insecurity of IDP camps, particularly at night, poses among the gravest risks of sexual violence for women and girls in Mogadishu. Many of the women interviewed by Human Rights Watch were living in shelters made of cloth and plastic sheeting, which are easily accessible to an intruder. Others had been living in temporary shelters that are structurally flimsy and

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<sup>13</sup> UN Office of the High Commissioner for Human Rights (OHCHR), ‘Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia’, p24, December 2017, <http://www.ohchr.org/Documents/Countries/SO/ReportProtectionofCivilians.pdf>.

Accessed: 22 January 2018

<sup>14</sup> European Asylum Support Office (EASO), ‘Country of Origin Information Report, Somalia Security situation’, p57, December 2017, [https://coi.easo.europa.eu/administration/easo/PLib/EASO\\_Somalia\\_security\\_situation\\_2017.pdf](https://coi.easo.europa.eu/administration/easo/PLib/EASO_Somalia_security_situation_2017.pdf).

Accessed on 24 January 2018

<sup>15</sup> Human Rights Watch, ‘Here, Rape is Normal’, Improve Prevention Strategies section, 13 February 2014, <https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia>. Accessed: 22 November 2017



constructed from wood, cardboard and cloth, often without doors. In two incidents reported to Human Rights Watch, displaced women who lived in more solidly built houses were attacked outside of their homes while carrying out daily chores. Some of the IDP settlements are physically isolated, situated on the outskirts of the city. While others were in the center of Mogadishu and sometimes on main thoroughfares, they had no form of protection...

'Displaced women and girls are also vulnerable when they leave their camps to gather supplies or go to work. Many of the women interviewed by Human Rights Watch said they were living alone because they were divorced, their husbands or fathers had been killed during the conflict, or their husbands or fathers had stayed behind to guard their homes and land after they were displaced by drought. In female-headed households, many women have no alternative but to make the risky journey and travel long distances to gather food, firewood, materials to construct shelters, and to work.'<sup>16</sup>

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#### 4.4 Areas controlled by Al-Shabaab

4.4.1 The Danish Immigration Service (DIS) report, 'South and Central Somalia – Security Situation, al-Shabaab Presence, and Target Groups', published in March 2017, stated: 'Women as a generic category are not considered al-Shabaab targets. One source found that there is not a big distinction between men and women when it comes to risk of being targeted by al-Shabaab. It depends on their profile. An independent organisation assessed that, in general, women are less likely than men to be targeted by al-Shabaab in areas with AMISOM/SNA presence.'<sup>17</sup>

4.4.2 The DIS report, 'South and Central Somalia – Security Situation, al-Shabaab Presence, and Target Groups,' also stated:

'A woman accused of spying will, just as a man, be executed. However, an anonymous source especially mentioned the lack of rights for women and a Western source added that especially women would have to conform to al-Shabaab norms. If a person plays by the rules of al-Shabaab and is not profiled, he/she can avoid sanctions. An independent organisation concurred that a person can survive if he/she does not talk against al-Shabaab.

'A UN source mentioned that women are subjected to forced marriage in areas controlled by al-Shabaab but it is unknown to what extent. Another UN source concurred that forced marriage to al-Shabaab fighters is occurring, and that it can happen through intimidation of the parents.'<sup>18</sup>

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<sup>16</sup> Human Rights Watch, 'Here, Rape is Normal', Insecurity inside IDP camps and Violence outside camps sections, 13 February 2014, <https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia>. Accessed: 22 November 2017

<sup>17</sup> Danish Immigration Service, 'South and Central Somalia – Security Situation, al-Shabaab Presence, and Target Groups', page 19, March 2017, <http://www.ft.dk/samling/20161/almdel/UUI/bilag/140/1730460.pdf>. Accessed: 15 November 2017

<sup>18</sup> Danish Immigration Service, 'South and Central Somalia – Security Situation, al-Shabaab Presence, and Target Groups', pages 24-25, March 2017, <http://www.ft.dk/samling/20161/almdel/UUI/bilag/140/1730460.pdf>. Accessed: 15 November 2017

## 4.5 Somaliland

4.5.1 The USSD 'Country Report on Human Rights Practices for 2016' stated: 'Local civil society organizations in Somaliland reported that gang rape continued to be a problem in urban areas, primarily perpetrated by youth gangs and male students. It often occurred in poorer neighborhoods and among immigrants, returned refugees, and displaced rural populations living in urban areas. In 55 percent of reported cases, a minor was the victim. Many cases went unreported.'<sup>19</sup>

4.5.2 An 'Independent' report, 'In Somaliland, women are being raped as a result of extreme drought and lack of support', dated 17 February 2017, stated: "Two days ago four men came, grabbed me and started raping me. Most women and girls in the camp have been assaulted or raped by gangs," begins Hodan Ahmedan, 23, sitting in her makeshift shelter where she has lived since she arrived from drought-ridden eastern Somaliland to a camp for internally displaced in Maxamed Mooge, Hargeisa.

'Cases of sexual and gender-based violence (SGBV) are rife here. A lack of police presence, inadequate lighting, an absence of sanitary facilities and an increase in the number of female-only households has rendered this camp an ideal ground for SGBV. "The ground is really hard here so we can't dig to make lavatories.

'This means we have to go outside and because there is no privacy in the open, we only go once it gets dark," explains Hodan "and by the time it is dark enough for us to go, it also becomes very dangerous as many gangs operate here. These are the circumstances in which I was raped."

"It happens to all of us, all the time," concludes Sahra Hussein, one of the oldest residents in the camp...

'When women arrive in the capital they find themselves cast to the margins, in hostile environments with few employment opportunities. While men have found it possible to find jobs in the city, the multitude of dangers the drought has exposed women to – from sexual assaults, to illegal land grabbing, to lack of sanitary facilities – clearly demonstrates that it is the women who are bearing the brunt of the drought and its consequences.'<sup>20</sup>

4.5.3 A 'Report of the Independent Expert on the Situation of human rights in Somalia', dated 6 September 2017, submitted to the United Nations Human Rights Council, stated:

'As in the rest of Somalia, the legal system in Somaliland is based on sharia law and a constitution that guarantees fundamental freedoms...

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<sup>19</sup> USSD, 'Country Report on Human Rights Practices for 2016', section 6, Somalia, 3 March 2017, <https://www.state.gov/documents/organization/265512.pdf>. Accessed: 17 November 2017

<sup>20</sup> 'Independent', 'In Somaliland, women are being raped as a result of extreme drought and lack of support', 17 February 2017, <http://www.independent.co.uk/news/world/africa/east-africa-drought-horn-somaliland-somalia-refugees-rape-miscarriages-a7586471.html>. Accessed: 17 November 2017

‘On the rights of women, some of the lessons learned include the zero-tolerance policy applied to rape cases, which led to a ban on traditional leaders having jurisdiction over those cases. The Independent Expert met two sultans who support the ban. Nevertheless, UNSOM informed the Independent Expert that some 505 rapes had been recorded in Hargeisa. The other lesson learned is the registration by the Ministry of the Interior of 2,700 sultans and their inclusion on the government payroll as part of the local governance system. In the view of the Independent Expert, such registration is useful for monitoring cases involving women’s rights.

‘The Deputy Attorney General welcomed the initiative to protect women against sexual and gender-based violence and stated that rape had no place under sharia law; indeed, even touching a woman could be considered a sin under that system of law. If crimes prescribed by sharia law were committed, in addition to the punishment provided under the Penal Code, compensation was paid to the victim, meaning that the perpetrator faced two forms of punishment. Even in the traditional justice system, women’s rights were considered important, and violations of those rights could result in conflict between clans.

‘The Independent Expert was informed that the Attorney General had issued a decree in 2011 banning traditional leaders from intervening in rape cases. The decree had filled the legal vacuum that had previously existed relating to the involvement of traditional elders in trials of cases of sexual and gender-based violence, by stating clearly that rape cases could not be dealt with by traditional leaders, but only by formal courts.’<sup>21</sup>

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## 5. Female genital mutilation (FGM)

### 5.1 Prevalence

5.1.1 The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

‘Although the provisional federal constitution describes female circumcision as cruel and degrading, equates it with torture, and prohibits the circumcision of girls, FGM/C was almost universally practiced throughout the country. UNICEF reported that 98 percent of women and girls had undergone FGM/C and that the majority were subjected to infibulation-the most severe form-- which involves cutting and sewing the genitalia. At least 80 percent of Somali girls who have undergone FGM/C had the procedure performed when they were between the ages of five and 14. International and local NGOs conducted education awareness programs on the dangers of FGM/C, but there were no reliable statistics to measure their success.’<sup>22</sup>

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<sup>21</sup> United Nations Human Rights Council, ‘Report of the Independent Expert on the Situation of human rights in Somalia (Advance edited version)’, pages 15-16, 6 September 2017, <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>. Accessed: 21 November 2017

<sup>22</sup> USSD, ‘Country Report on Human Rights Practices for 2016’, section 6, Somalia, 3 March 2017, <https://www.state.gov/documents/organization/265512.pdf>. Accessed: 14 November 2017

- 5.1.2 A Health and Education Advice and Resource Team (HEART) undated report, 'Situational Analysis of FGM/C Stakeholders and Interventions in Somalia', stated:

'Current statistics indicate a high prevalence of FGM/C in Somalia, at around 97.9% for women 15–49 years old (Population Reference Bureau, 2014). In Somaliland, Puntland and South Central Somalia, the communities consulted said that nearly all households in their localities had women and girls who had undergone FGM/C. The few mothers who openly said they had not had their daughters undergo FGM/C were from communities that had been beneficiaries of anti-FGM/C activities carried out by ANPPCAN in Borama in Somaliland, TASS in Garowe in Puntland and SPL in Mogadishu, Somalia. During the Situational Analysis, there was not a single community consulted in which all households had completely abandoned FGM/C. ...The only community in which the participants claimed that most families are abandoning FGM/C completely was in Borama, Somaliland, in a community that was targeted by CCBRS.

'Many people consulted—in institutions and in communities—said, however, that FGM/C is decreasing, even if rates remain high. In consultations, people acknowledged that the decrease is highest amongst a minority of educated Somalis and the Somali diaspora from Western countries or the Middle East, and in urban areas. In isolated rural areas, FGM/C rates are believed to remain extremely high. There is a small number of riverine clans which do not carry out FGM/C.'<sup>23</sup>

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## 5.2 FGM in Puntland

- 5.2.1 A CNN news report, 'Breaking the silence in the world capital of female genital mutilation', dated 5 July 2017, stated: 'Somalia has promised to ban FGM for several years, but has yet to follow through on doing so. Since 2014 though, the most severe form of infibulation has been illegal in the Puntland region - thanks to a Presidential decree.'<sup>24</sup>
- 5.2.2 A 'Report of the Independent Expert on the Situation of human rights in Somalia', dated 6 September 2017, submitted to the United Nations Human Rights Council, stated:

'The Puntland Minister of Women and Human Rights Development explained that the Government had taken measures to protect women against sexual and gender-based violence, and described the progress made in their protection. Her Ministry had been working to eradicate female genital mutilation through community involvement. A fatwa had been issued jointly in 2014 by Puntland religious leaders and Sudanese scholars, declaring that female genital mutilation did not exist under Islamic law.

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<sup>23</sup> Health and Education Advice and Resource Team (HEART), 'Situational Analysis of FGM/C Stakeholders and Interventions in Somalia', undated, page 41, <http://orchidproject.org/wp-content/uploads/2015/02/Situational-Analysis-of-FGMC-Stakeholders-and-Interventions-in-Somalia1.pdf>. Accessed: 15 November 2017

<sup>24</sup> CNN, 'Breaking the silence in the world capital of female genital mutilation', 5 July 2017, <http://edition.cnn.com/2017/07/05/africa/somalia-fight-to-end-fgm/index.html>. Accessed: 15 November 2017

The fatwa was followed by a Puntland decree in March 2014, declaring a complete ban on female genital mutilation.’<sup>25</sup>

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### 5.3 FGM in Somaliland

#### 5.3.1 A ‘Somaliland Press’ article, ‘Eradicating FGM in Somaliland One Midwife at a time’, dated 10 April 2015, stated:

‘In 2002, after working for the United Nations and World Health Organization for over 15 years, Ms Adan, a nurse and midwife, opened the Edna Adan Maternity and Teaching Hospital in Hargeisa, Somaliland...At Ms. Adan’s own insistence, no midwife or other health personnel can enrol in the training programme without first agreeing to work towards ending FGM...Ms. Adan instructs her staff to educate community members about the harms [sic] of FGM. This includes dispelling common misconceptions about FGM, such as the belief that it is a religious requirement...Ms. Adan also highlighted the need for FGM to be seen as a community issue – one that involves a girl’s entire family, including the men.’<sup>26</sup>

#### 5.3.2 A UNFPA (United Nations Population Fund) article, ‘Somaliland working towards total abandonment of FGM’, dated 12 June 2017, stated:

‘More than 1000 community members in Hargeisa, Somaliland have committed to work towards advocating for the total abandonment of female genital mutilation (FGM) in the region.

‘The community members made the commitment after IRADA, a local non-governmental organisation, carried out a community outreach event on May 15, 2017 at Sheikh Nur Camp for internally displaced persons (IDPs) in Hargeisa. UNFPA Somalia provides IRADA with technical and financial support...

‘The community event focused on community empowerment on the negative consequences of FGM and the importance of supporting total abandonment of the harmful practice in Somaliland.

‘IRADA executive director Mr. Taissir Ahmed Omar said during the event that FGM is a harmful traditional practice that has been practised for long in Somaliland despite its negative consequences...

‘Traditional drama and narrations were performed by the New Circus Somaliland, a group of traditional dancers, who facilitated the awareness through a live concert and clearly articulated the medical and social consequences of FGM.

‘UNFPA Somalia Youth and Gender Specialist Mr. Ahmed Abdi Jama said after the event that many participants were able to understand that FGM is a

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<sup>25</sup> United Nations Human Rights Council, ‘Report of the Independent Expert on the Situation of human rights in Somalia (Advance edited version)’, page 15, 6 September 2017, <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>. Accessed: 21 November 2017

<sup>26</sup> ‘Somaliland Press’, ‘Eradicating FGM in Somaliland One Midwife at a time’, 10 April 2015, <http://www.somalilandpress.com/eradicating-fgm-in-somaliland-one-midwife-at-a-time/>. Accessed: 14 November 2017

bad practice and that many supported the crusade for total abandonment of the practice.

“One community representative declared that people in Hargeisa were committed to take any necessary actions towards the elimination of the harmful practice which, they said, is a violation of human rights,” said Mr. Jama.

‘Sheikh Nur IDP Centre is one of the areas where IRADA and UNFPA Somalia carry out an FGM programme aiming at the declaration for the total abandonment of FGM. Community focal points including traditional elders, religious leaders and women groups from the camp have since been trained on advocating for the total abandonment of FGM.’<sup>27</sup>

- 5.3.3 For more information about the practice of FGM in Somalia, see the Danish Immigration Service report, ‘[South Central Somalia – Female Genital Mutilation/Cutting](#)’, published in January 2016.

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## 6. Protection and assistance

### 6.1 State response

- 6.1.1 The Human Rights Watch (HRW) report, ‘Here, Rape is Normal’, dated 13 February 2014, stated:

‘According to UN figures, between January and November 2012, the military court reportedly opened 13 cases against members of the Somali security forces accused of rape. The court found one defendant guilty and acquitted three. Nine other cases were pending...prosecutions through the civilian criminal justice system may be even more limited. The UN reported that while official police and court data are not available, data informally acquired from the Somali police indicate that about 100 rape cases were opened in Mogadishu between January and November 2012. It is unknown how many cases resulted in convictions as authorities do not publicly release figures on the prosecution and conviction of crimes. The minimal efforts to improve access to justice in Mogadishu have met with setbacks because of insecurity. The UN told Human Rights Watch that a pilot mobile court project rapidly stalled because the judges feared for their safety.

‘On rare occasions courts in Mogadishu have handed down convictions for rape.’<sup>28</sup>

- 6.1.2 A ‘Voice of America’ news report, ‘Somali Rape Law Gets First Test’, dated 25 January 2017, stated:

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<sup>27</sup> UNFPA (United Nations Population Fund), ‘Somaliland working towards total abandonment of FGM’, 12 June 2017,

<http://somalia.unfpa.org/en/news/somaliland-working-towards-total-abandonment-fgm>.

Accessed: 24 November 2017

<sup>28</sup> Human Rights Watch, ‘Here, Rape is Normal’, Access to the State Justice System section, 13 February 2014,

<https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia>. Accessed: 22 November 2017

‘A gang rape video recorded in central Somalia could serve as a powerful test case for Puntland state's new sexual violence statute, and potentially for the rule of law in general in Somalia.

‘A group of men arrested and accused of gang raping and stabbing a pair of young girls in Somalia's Puntland state in December could face the death penalty or life imprisonment if they are found guilty...

‘It is the first law in all of Somalia to criminalize sexual assault. The new act draws on modern Western jurisprudence and is compliant with Islamic Sharia law.’<sup>29</sup>

- 6.1.3 A United Nations Population Fund (UNFPA) report, ‘Puntland enforces sexual offences law’, dated 31 January 2017, stated:

‘Five men have been sentenced to prison terms ranging from five to ten years, for gang raping a 16-year-old girl in Puntland, Somalia. The court ruling is being seen as significant in enforcing Somalis first ever Sexual Offences Law, which was launched on November 29, 2016.

‘The five men have also been sentenced lashes and ordered to compensate the survivor [sic]...

‘The Sexual Offences Law criminalises all sexual crimes including gang rape, sexual exploitation and abuse, sexual harassment, sexual offences involving the Internet and indecent exposure of genital organs in public places. The law also broadens the definition of consent, which is now designed to redress the balance in favour of survivors without prejudicing the perpetrators’ right to a fair trial to help juries reach just and fair decisions.

‘Authorities in Puntland and civil society organisations recently stepped up efforts to advocate for the enforcement of the law following a number of new rape cases reported in the region, including the one where the teenage girl was gang raped.’<sup>30</sup>

- 6.1.4 The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

‘Women feared reporting rape due to possible reprisals. Police were reluctant to investigate and sometimes asked survivors to do the investigatory work for their own cases. Traditional approaches to dealing with rape tended to ignore the survivor’s situation and instead sought resolution or compensation for rape through a negotiation between clan members of the perpetrator and survivor. Some survivors were forced to marry perpetrators.

‘For the most part, authorities rarely used formal structures to address rape...

‘Domestic and sexual violence against women remained serious problems despite the provisional federal constitution provision prohibiting any form of violence against women. While both sharia and customary law address the

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<sup>29</sup> ‘Voice of America’, ‘Somali Rape Law Gets First Test’, 25 January 2017, <https://www.voanews.com/a/somalia-rape-case-may-test-new-law/3692193.html>. Accessed: 14 November 2017

<sup>30</sup> UNFPA, ‘Puntland enforces sexual offences law’, 31 January 2017, <http://somalia.unfpa.org/news/puntland-enforces-sexual-offences-law>. Accessed: 21 November 2017

resolution of family disputes, women were not included in the decision-making process.’<sup>31</sup>

- 6.1.5 A ‘News Deeply’ report, ‘In Somalia, New Law Could Finally Give Rape Survivors a Voice’, dated 27 April 2017, stated:

‘A Somali lawyer in her late 20s, Abdinoor recently took on a case that made her realize how little she knew about interviewing rape survivors – and which highlighted the severe limitations of Somalia’s sexual assault laws. Her clients were two girls, aged 12 and 14...

‘In Somalia, the prosecution needs to prove that penetration occurred in order to secure a conviction. Getting a medical certificate that attests to this can prove difficult. Until recently, there was only one doctor, at one hospital in the capital, who was legally empowered to give out such certificates...

‘During the trial, Abdinoor says the girls were questioned in separate rooms (in Somalia, details of sexual assault can’t be discussed in public courtrooms). By the end of the session, both had recanted their original statements, and the boys were let go.’<sup>32</sup>

- 6.1.6 A Newsgram report, ‘End of the “Culture of Silence”: Somalia Gets its First Forensic Lab to Handle Cases of Rape and Gender-based Violence’, dated 16 September 2017, stated:

‘A new forensic lab launched in central Somalia could transform how the Puntland state government handles cases of rape and gender-based violence, and possibly create a model for the rest of the country to follow...

‘There are promising signs that Puntland’s efforts are already helping more rape survivors to hold their attackers accountable. Data from Puntland’s attorney general shows that of the 108 rapes reported in Puntland in 2016, only 14, or 12 percent, resulted in convictions. Almost a third were dropped due to lack of evidence.

‘But since the Sexual Offenses Act was implemented this year, the conviction rate has risen to 27 percent, while the number of cases thrown out for insufficient evidence has dropped to 21 percent.’<sup>33</sup>

- 6.1.7 The Human Rights Watch ‘World Report 2018’, published on 18 January 2018, stated:

‘While authorities adopted some measures to improve the capacity of government institutions to tackle impunity for sexual violence, including establishing a sexual violence unit within the Attorney General’s Office, and passing a sexual offenses law in Puntland, implementation was limited. In early 2017, authorities in Puntland condoned a Sharia court-hearing of a

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<sup>31</sup> USSD, ‘Country Report on Human Rights Practices for 2016’, section 6, Somalia, 3 March 2017, <https://www.state.gov/documents/organization/265512.pdf>. Accessed: 15 November 2017

<sup>32</sup> ‘News Deeply’, ‘In Somalia, New Law Could Finally Give Rape Survivors a Voice’, 27 April 2017, <https://www.newsdeeply.com/womenandgirls/articles/2017/04/27/in-somalia-new-law-could-finally-give-rape-survivors-a-voice>. Accessed: 22 November 2017

<sup>33</sup> Newsgram, ‘End of the “Culture of Silence”: Somalia Gets its First Forensic Lab to Handle Cases of Rape and Gender-based Violence’, 16 September 2017, <https://www.newsgram.com/somalia-forensic-lab-rape-gender-based-violence>. Accessed: 17 November 2017



group of young men accused of gang-raping two girls in Goldogob town instead of prosecutors pushing for the case to be transferred to criminal justice proceedings under its newly passed sexual offenses act.’<sup>34</sup>

- 6.1.8 The Australian DFAT ‘Country Information Report - Somalia’, published on 13 June 2017, stated:

‘DFAT assesses that, in practice, the formal justice and security institutions in Somalia do not have the ability to provide effective protection for the majority of the community and, in some cases, state actors such as the Somali National Army (SNA) and the police are the perpetrators of human rights abuses. Civilian authorities do not have sufficient control of the security forces and impunity and corruption is widespread in Somalia, with very limited access to avenues of redress. The majority clans rely on their own militia and alliances with other clans for protection. Minor sub-clans have limited protection from clan militia and those outside the clan system (such as the Bantu) have none.’<sup>35</sup>

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## 6.2 Traditional justice systems

- 6.2.1 The Amnesty International report, ‘Somalia: Prioritise Protection for People with Disabilities’, dated 15 March 2015, stated: ‘Due to the weak legal framework, violence against women and girls is often addressed through Shari’a or customary law.’<sup>36</sup>

- 6.2.2 The Human Rights Watch (HRW) report, ‘Here, Rape is Normal’, dated 13 February 2014, stated:

‘Weak state judicial institutions have meant that many survivors of sexual violence depend on traditional mechanisms for justice, including customary law, xeer, and Sharia (Islamic law). But both justice mechanisms are male-dominated and not supportive of survivors’ rights.

‘Under Somali traditional or customary legal mechanisms, sexual and gender-based violence often goes unpunished, particularly as traditional Somali society does not openly discuss these issues. The elders responsible for taking decisions within rural communities are always men (in Somali Odayaasha Dhaqanka) and women are not permitted to participate in decisions taken by this group. Rather, in cases concerning women, male relatives represent the women. Compensation for loss of life is typically 100 camels for a man and 50 for a woman. In rape cases, the elders have sometimes compelled victims to marry the perpetrator.

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<sup>34</sup> Human Rights Watch, ‘World Report 2018’, Somalia, 18 January 2018, <https://www.hrw.org/world-report/2018/country-chapters/somalia>. Accessed: 30 January 2018

<sup>35</sup> Australian DFAT, ‘Country Information Report – Somalia’, para 5.1, 13 June 2017, <https://cisnet.online.immi.gov.au/CountryInfo/Library/2017/Documents/Somalia%20-%20Country%20Information%20Report%20-%20Final%20%2813%20June%202017%29.pdf>. Accessed: 30 January 2018

<sup>36</sup> Amnesty International, ‘Somalia: Prioritise Protection for People with Disabilities’, 5 March 2015, <https://www.amnesty.org/en/documents/afr52/1166/2015/en/>. Accessed: 20 November 2017

‘Service providers told Human Rights Watch that traditional justice mechanisms that are ill-equipped to deal with sexual violence have had a negative impact on victims and stripped them of their legal rights.

“When a women [sic] is raped, usually the clan elders of the two families come together and agree that the perpetrator’s family pay a small amount of money [anything from \$5 to \$100] to the victim,” a member of a Somali service provider said.’<sup>37</sup>

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## 7. Freedom of movement

7.1.1 The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

‘The provisional federal constitution states that all persons lawfully residing in the country have the right to freedom of movement, to choose their residence, and to leave the country. Freedom of movement, however, was restricted in some areas...

‘Checkpoints operated by government forces, allied groups, armed militias, clan factions, and al-Shabaab inhibited movement and exposed citizens to looting, extortion, harassment, and violence. Roadblocks manned by armed actors and attacks on humanitarian personnel severely restricted movement and the delivery of aid in southern and central sectors of the country.’<sup>38</sup>

7.1.2 The Social Institutions and Gender Index stated: ‘Ongoing conflict has caused a general loss of mobility in Somalia. The threat of different forms of violence, particularly sexual violence, continues to limit women’s freedom of movement...’<sup>39</sup>

7.1.3 The DFAT ‘Country Information Report – Somalia’ stated:

‘There are no legal impediments to Somali citizens relocating in south-central Somalia and many clans have historically led a nomadic life. Internal displacement due to conflict or humanitarian disaster is a common occurrence, and over 1.1 million people are currently displaced within Somalia. However, an individual’s internal relocation options can be severely limited by a lack of financial resources or the absence of clan connections. Somalis tend to reside in their clan area as it is their main, and often only, source of physical and social protection. According to UNHCR’s Position on Returns to South and Central Somalia the support of an individual’s clan is vital for safety and access to basic necessities, such as food and accommodation. Some may relocate to Mogadishu or urban centres for livelihood opportunities but this does not always result in better opportunities given the large number of IDPs in Mogadishu.

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<sup>37</sup> Human Rights Watch, ‘Here, Rape is Normal’, Failure of Traditional Justice mechanisms section, 13 February 2014,

<https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia>. Accessed: 22 November 2017

<sup>38</sup> USSD, ‘Country Report on Human Rights Practices for 2016’, section 2d, Somalia, 3 March 2017, <https://www.state.gov/documents/organization/265512.pdf>. Accessed: 14 November 2017

<sup>39</sup> Social Institutions and Gender Index, Somalia, undated, <http://www.genderindex.org/country/somalia/>. Accessed: 14 November 2017

'The security conditions in south-central Somalia hinder freedom of movement. While urban centres may be controlled by the Federal Government or protected by the Somali National Army, AMISOM or regional militia, moving between areas often requires traversing al-Shabaab controlled areas and roads. Al-Shabaab "taxes" those that move through areas under its control, extorting money and goods at checkpoints.'<sup>40</sup>

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<sup>40</sup> Australian DFAT, 'Country Information Report – Somalia', 13 June 2017, page 23, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-somalia.pdf>. Accessed: 14 November 2017

# Version control

## Clearance

Below is information on when this version of the guidance was cleared:

- version **4.0**
- valid from **4 April 2018**

## Changes from last version of this note

Updated country information and revision of policy guidance.

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