

SOMALIA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at March 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If</i></p>	<p>According to Article 11 of the Constitution:²</p> <ul style="list-style-type: none"> All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law. The State must not discriminate against any person on the basis of age, race, colour, tribe, ethnicity, culture, dialect, gender, birth, disability, religion, political opinion, occupation, or wealth. All State programs, such 	<p>District Courts are mandated to administer, record and oversee marital issues. They employ full discretionary authorities in marital dispute management.</p> <p>In most cases, courts refer back to the elders of the spouses for any dispute to arise, and the elders' verdict is upheld by the court.</p>	<p>The federal government has a (draft) gender policy. The goal of this policy is to promote gender equality and sustainable human development in Somalia by ensuring that equal value is placed on the contributions of women and men as equal parents in the post conflict reconstruction process and national development.⁷</p>	<p>According to Article 1 of the Family Law:¹⁰</p> <ul style="list-style-type: none"> The provisions of this law shall apply to all cases herein provided for. In the absence of a specific provision, the leading doctrines of the Shafi school of law, the general principles of the Islamic law (Sharia) and social justice shall apply. In practice, procedural matters involving marriage and divorce 	<p>With respect to the mainstream local practices, marriage is administered under the <i>fiqh</i> of the Shafi school of law. Procedurally, it is determined by Somali customary practices developed over the centuries.</p> <p>Of these practices, the husband is recognized as the head of the family.¹¹</p> <p>Apart from sporadic attempts to develop unified customary rules to regulate family affairs, there has been no success in achieving written comprehensive family rules nor complementary sets of rules to</p>

¹ This country table was prepared by Hassan Suudi, Legal Researcher at ISIR Thinktank and Lecturer at College of Law, University of Hargeisa

² Article 11 of Somalia's transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

⁷ National Gender Policy (draft), <http://www.mwhrd.gov.so/en/wp-content/uploads/2018/10/Draft-of-National-Gender-Policy-4.pdf>

¹⁰ Art 1 of Somalia's Family Law No. 23 of 11th January 1975 (Technically in force, but never put into practice as it was controversial and rejected overwhelmingly by the religious leaders and the people)

¹¹ Local customary practices

<p><i>not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p>	<p>as laws or political and administrative actions that are designed to achieve full equality for individuals or groups who are disadvantaged, or who have suffered from discrimination in the past, shall be deemed to be not discriminatory.</p> <p>Article 36(1) of Somaliland Constitution provides that:³</p> <ul style="list-style-type: none"> • The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women save for matters which are specifically ordained in Islamic Sharia. <p>Article 28⁴ of the Constitution provides that:</p> <ul style="list-style-type: none"> • Marriage is the basis of the family, which is the foundation of society. Its protection is a legal duty of 		<p>Somaliland’s gender policy goal is to facilitate the mainstreaming of the needs and concerns of women and men, girls and boys in all areas for sustainable and equitable development.⁸</p> <p>Somalia's National GBV Strategy provides for three strategic priorities: strengthening GBV service provision, evidence-based advocacy, and promoting positive gender and social norm change.⁹</p>	<p>are managed under an unwritten communal customary process influenced by the Shafi school of law.</p>	<p>govern both the substantial and procedural aspects of the family issues.</p> <p>Family affairs is one of the social issues left to be handled by elders or authorized persons/offices in both urban and rural areas. This is particularly true in rural areas, where a vast majority of the population live and where fewer courts exist. Very few cases are left for the formal statutory courts to decide, and these are mainly critical cases in the urban context.</p>
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³ Article 36 (1) of Somaliland’s (of Somalia) Constitution (2001),

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=88085&p_country=SOM&p_count=35&p_classification=01&p_classcount=19

⁴ Article 28 (1) of Somalia’s transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

⁸ Somaliland Gender Policy, <https://slmesaf.com/wp-content/uploads/2019/08/National-Gender-Policy.pdf>

⁹ Somalia National GBV Strategy 2018-2020, <https://reliefweb.int/sites/reliefweb.int/files/resources/Somalia%20-%20National%20GBV%20strategy%202018-2020.pdf>

	<p>the State.</p> <p>Article 4⁵ of the family law defined marriage as:</p> <ul style="list-style-type: none"> • A contract between a man and a woman having equal rights and duties; it is founded on mutual understanding and reciprocal respect between the contracting parties and its objective is to create a united family, recognising that the family is the cornerstone of society. • The husband is by law the head of the family. <p>Article 29⁶ of the Constitution provides that:</p> <ul style="list-style-type: none"> • Every child has the right to be protected from mistreatment, neglect, abuse, or degradation. 				
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⁵ Article 4 of Somalia's Family Law No. 23 of 11th January 1975

⁶ Article 29 of Somalia's transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

<p>Minimum and equal age of marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Is there a minimum age verification process before the marriage is concluded?</i></p>	<p>According to article 29(8)¹² of the Federal Constitution:</p> <ul style="list-style-type: none"> • Child means a person under 18 years of age <p>According to Article 64(2) of juvenile justice law:¹³</p> <ul style="list-style-type: none"> • The age of criminal responsibility of a person is 18 years and above • The family law is less clear about the minimum age of marriage, but indirectly, it mentions that there is no minimum age of marriage. This expression can be understood from the following articles 19 and 26. <p>According to Article 19¹⁴ of the family law:</p> <ul style="list-style-type: none"> • Girls who have not attained the age of majority may be 		<p>Somalia ratified Convention on the Rights of the Child.¹⁷</p> <p>According to Article 1 of the CRC:</p> <ul style="list-style-type: none"> • For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.¹⁸ 	<p>The legal limitation on the definition of childhood has visibly nothing to do with the marriage capacity, be it minimum or equal age of marriage.</p> <p>If a man and woman agree to marry and the (woman) guardian endorses the deal, the process is practically done. Likewise, guardians can agree on behalf of either party if he or she is still a child.</p>	<p>There is confusion regarding uniformity of the legal age of maturity, not only for marriage, but for vast legal aspects such as contracting, criminal responsibility, voting etc.</p> <p>Generally, statutory laws tend to state 18 years as the legal age, but the mainstream public understanding is 15 years. This is in line with Shafi doctrine, which is the Sharia school of thought of the country.</p> <p>Practically, equality of age of parties to the marriage contract is neither popular nor considered as an issue; this is why there is no age verification process before a marriage.¹⁹</p> <p>34% of girls are married by the time they turn 18, and 16% by the time they turn 15.²⁰</p>
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¹² Article 29 of Somalia's transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

¹³ Somaliland Juvenile Justice Law No. 36 of 2007

¹⁴ Article 19 of Somalia's Family Law No. 23 of 11th January 1975

¹⁷ On October 2, 2015, Somalia ratified CRC becoming the 196th country, <https://www.unicef.org/somalia/press-releases/fifth-anniversary-somalias-ratification-convention-rights-child-approaches>

¹⁸ Article 1 of the Convention on the Rights of the Child, <https://www.ohchr.org/EN/professionalinterest/pages/crc.aspx>

¹⁹ Mainstream local practices

²⁰ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020

	<p>represented in the contract of marriage by her father and in his absence by her mother, her grandfather, her elder brother and then her uncle.</p> <p>According to Article 26¹⁵ of the family law:</p> <ul style="list-style-type: none"> • A wife who has attained the age of majority and is of sound mind may relinquish the whole dower or part of it. <p>According to Article 41¹⁶ of the family law:</p> <ul style="list-style-type: none"> • For a divorce to be valid, the husband should be of age. 				
<p>Consent to marriage / Forced marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the practice</i></p>	<p>Article 28(5) of the Federal Constitution provides that:²¹</p> <ul style="list-style-type: none"> • A marriage shall not be legal without the free consent of both the man and the woman, or if either 		<p>According to Somaliland SOP for prevention and response to GBV:²⁵</p> <ul style="list-style-type: none"> • Forced marriage occurs when 	<p>According to Article 5 ("Formalities of Marriage") of the family law:²⁷</p> <ul style="list-style-type: none"> • Marriage shall be performed before a 	<p>Under the Shafi school, the father and grandfather may engage <i>ijbar</i> to marry off a girl. This is adopted as a local practice.</p>

¹⁵ Article 26 of Somalia's Family Law No. 23 of 11th January 1975

¹⁶ Article 41 of Somalia's Family Law No. 23 of 11th January 1975

²¹ Article 28(5) of Somalia's transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

²⁵ Standard Operating Procedures for Prevention and response to Gender Based Violence (GBV) in Somaliland, June 2010

²⁷ Article 5 of Somalia's Family Law No. 23 of 11th January 1975

<p><i>of forcing women to marry against their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p>	<p>party has not reached the age of maturity.</p> <p>According to Article 2²² of the family law:</p> <ul style="list-style-type: none"> Any party may promise marriage to the other, but the promisor is not obliged to fulfil the promise. However, the party who does not intend to fulfil his/her promise is obliged to convey his/her intention to the other in clear terms. <p>According to Article 7 of the family law:</p> <ul style="list-style-type: none"> The marriage is not valid if contracted under compulsion whether physical or moral.²³ <p>According to Article 9 of Sexual offences law:²⁴</p>		<p>parents or others force a girl to marry a man against her will.</p> <ul style="list-style-type: none"> Early marriage occurs when a girl under the age of 15 years gets married. <p>Somalia ratified ICESCR without reservation.²⁶ According to Article 10:</p> <ul style="list-style-type: none"> Marriage must be entered into with the free consent of the intending spouses. 	<p>judge or a person authorized by the Ministry of Justice and Religious Affairs.</p> <ul style="list-style-type: none"> Where it is not possible to perform marriage before a judge or a person authorized by the Ministry, the marriage may be performed before a person who is well versed in the Islamic law. Somali citizens residing abroad may perform marriage and divorce before the Somali Consular authorities. Marriage shall be registered at the nearest District Court or at the expressly 	<p>Marriage among Somali women is virtually universal, with only 6 percent of the women aged 45-49 having never entered into a marital union.²⁹</p> <p>The median age at first marriage for women aged 25-49 is 20 years, compared to men whose median age at first marriage for men aged 25-64 is 23 years.³⁰</p> <p>Somali parents encourage the marriage of their daughters while they are still young, in the hope that marriage will benefit the girls both financially and socially.³¹</p> <p>All Somali clans usually intermarry, with the exception of a particular minority clan.</p> <p>Procedurally, they all intermarry employing similar traditional norms. The bridegroom has to</p>
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²² Article 2 of Somalia's Family Law No. 23 of 11th January 1975

²³ Article 7 of Somalia's Family Law No. 23 of 11th January 1975

²⁴ Article 9 of Somaliland Sexual Offences Law No. 78 of 1st September 2018

²⁶ International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27

²⁹ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

³⁰ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

³¹ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

	<ul style="list-style-type: none"> • A person commits the offence of forced marriage if he or she breaches the lawful consent requirements enshrined in Sharia and so intentionally, knowingly, or wilfully marry or facilitates, organises or arranges a marriage without the consent of one or all of the parties. 			<p>authorized office within 15 days of its performance. However, this period may be extended to 40 days for residents in rural areas.</p> <ul style="list-style-type: none"> • The responsibility for registering the marriage lies upon the person who has performed it. • Whoever fails to discharge the duty mentioned above without any reasonable cause shall be punished with a fine. • The supervision over registration and imposition of the fine are within the competence of the President of the Regional Court of Appeal. 	<p>be accompanied by his clan elders to seek for the consent of marrying the bride from her clan elders (<i>wali</i>).</p> <p>This practice represents a model of family building that is more of an agreement between the two clans than an agreement between two individuals.</p> <p>Registration of marriage doesn't exist in rural areas and is not common in urban settings. However, people may register their marriages and collect the documentation for limited purposes such as for immigration or residing in hotels.</p>
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				<p>According to Article 8(3) of law of organization of the judiciary:²⁸</p> <ul style="list-style-type: none"> • The district court is mandated to adjudicate all family/sharia related issues, regardless of the value of the subject matter. 	
<p>Women’s capacity to enter into marriage</p> <p><i>Is consent of a guardian (wali) required? Can the woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage and can these rights be changed during marriage? If so, who can change these</i></p>	<p>According to Article 19 of the family law:³²</p> <ul style="list-style-type: none"> • A girl who has not attained the age of majority may be represented in the contract of marriage by her father and in his absence by her mother, her grandfather, her elder brother and her uncle. • In the absence of the above-mentioned persons, or in case none of them wants to take the guardianship upon himself, or they are at a distance of more than 100 KM from 			<p>According to Article 20 of the family law:³³</p> <ul style="list-style-type: none"> • If there is more than one relative of the same degree, guardianship is entrusted to the relative chosen by the girl. • If the girl does not choose her guardian, the Court shall appoint a guardian. 	<p>With respect to local practice, guardianship is considered a requirement for marrying off all girls and women regardless of their age. However, the local practice is identical with respect to all other provisions given in articles 19 and 20 of the family law.</p> <p>There are no statistics available, but anecdotally almost all marriage contracts happen under guardianship of a <i>wali</i>.</p> <p>Certain marriage contracts involve secret marriage (<i>qudbo-sir</i> or <i>masaafa</i>). This</p>

²⁸ Article 8(3) of Somalia Law of Organisation of the Judiciary Law No. 34 of 11th October 1974, http://www.somalilandlaw.com/organisation_of_the_Judiciary_Law_Som_1974.pdf

³² Article 19 of Somalia’s Family Law No. 23 of 11th January 1975

³³ Article 20 of Somalia’s Family Law No. 23 of 11th January 1975

<p><i>rights and under what circumstances e.g. mutual consent?</i></p>	<p>the place of marriage, the Court or the person so authorized by the Ministry of Justice and Religious Affairs shall assume the guardianship.</p> <p>According to Article 21 of the family law:</p> <ul style="list-style-type: none"> Whoever, for the purpose of contracting marriage, takes away a girl who has not attained the age of majority to a place more than 100 KM for her guardian's residence in order to escape from his authority shall be punished. 				<p>kind of marriage occurs without the consent of the guardian, either because the guardian refused to consent to the proposed marriage or the man doesn't have final capacity to afford honorary remunerations for the marriage gathering (Yarad/Gabaati). For <i>qudbo-sir</i> or <i>masaaf</i> to be valid marriage, "the couple must have travelled a certain distance from home – traditionally, this distance should approximate a three day trip by camel (an estimated 90 km)."³⁴</p> <p>The woman negotiates her dower (mahr) with the man before the marriage. Dower is an Islamic marriage requirement from the groom to the bride. That negotiation outcome for dower is announced in the Nikah event to be witnessed by two identified persons. In addition, the groom (with his family elders) has to give additional traditionally required wealth (camel in the olden days and money in the urban context) for the relatives and family of the bride.</p>
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³⁴ LANDINFO, Report Somalia: Marriage and Divorce, June 2018, <https://www.justice.gov/eoir/page/file/1296791/download>

<p>Polygamous marriage</p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? If conditions are required, under what conditions is polygamy allowed? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to register a polygamous marriage? Are temporary marriages recognised?</i></p>	<p>According to Article 13 of the family law:³⁵</p> <ul style="list-style-type: none"> • A man may not contract marriage with a second woman unless he is authorized in writing by the competent District Court. 			<p>According to Article 13 of the family law, the Court shall not authorize such a marriage unless it has ascertained the existence of one of the following conditions:³⁶</p> <ul style="list-style-type: none"> • Sterility of the wife certified by a panel of doctors, provided that that husband was not aware of the fact before marriage, • Chronic or contagious disease of the wife, certified by a doctor, provided that the disease is incurable, • The wife is sentenced to imprisonment of more than 2 years, • Unjustified absence of the wife from the matrimonial home for a period of more than one year, 	<p>Family structure in Somalia is still relatively traditional and thus resembles how family life is organised in other parts of the African and Arab (Muslim) world.³⁷</p> <p>Without court permission, a man can marry as many as four wives at the same time and without restrictions. The subsequent wives generally have the same formal rights arising from these marriages.</p> <p>“Generally speaking, the number of wives depends on the age and status of the male – older men more often have more wives than younger men. This is partly because older men usually have better economic circumstances.”³⁸</p>
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³⁵ Article 13 of Somalia’s Family Law No. 23 of 11th January 1975

³⁶ Article 13 of Somalia’s Family Law No. 23 of 11th January 1975

³⁷ LANDINFO, Report Somalia: Marriage and Divorce, June 2018, <https://www.justice.gov/eoir/page/file/1296791/download>

³⁸ LANDINFO, Report Somalia: Marriage and Divorce, June 2018, <https://www.justice.gov/eoir/page/file/1296791/download>

				<ul style="list-style-type: none"> Existence of a social necessity. In this case, the authorization shall be granted by a person so authorized by the Ministry of Justice and Religious Affairs. 	
<p>Violence against women in the family</p> <p><i>Are there laws and practices that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault, mental and other forms of violence that affects a women's mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Are there support services for</i></p>	<p>According to Article 15(2) of the Federal Constitution:³⁹</p> <ul style="list-style-type: none"> Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment. <p>According to Article 36(2)⁴⁰ of Somaliland Constitution:</p> <ul style="list-style-type: none"> The Government shall encourage, and shall legislate for the right of women to be free of 		<p>The National Declaration of Traditional Leaders⁴¹ provides that the rights of women must fully be protected in accordance with the Sharia law. This will cover violations such as:</p> <ul style="list-style-type: none"> Rape, slander, harassment, inheritance rights, forced marriage. Arranged marriage, divorce, and dowry payment. 	<p>The SOP for Prevention and Response to GBV is recognized as a guiding document to counter and manage GBV cases, including domestic violence. However, the document was to demonstrate affirmative action from the part of the government. Approved in June 2010, it has neither legal authority to be enforced nor popular support to pressure legal reform.⁴⁴</p>	<p>Customary rules (male dominated) are still more significant for adjudicating domestic violence instances than statutory laws and courts.</p> <p>In 2020, "with regard to women's opinions on who the most common perpetrators of violent acts against women are, the survey found that over half (59%) of women believe that husbands commit the most violent acts against women in the community".⁴⁵</p> <p>FGM is almost universally practiced. In 2020, circumcision</p>

³⁹ Article 15(2) of Somalia's transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

⁴⁰ Article 36(2) of Somaliland Constitution

⁴¹ National Declaration of Somaliland Traditional Leaders, 4-10 December 2006, Hargeisa

⁴⁴ Somaliland Standard Operating Procedure for Prevention and Response GBV, 2010

⁴⁵ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

<p>women who are the victims of aggression or abuses?</p>	<p>practices which are contrary to Sharia and which are injurious to their person and dignity.</p>		<p>The Somaliland GBV plan devises actions for the Prevention and Management of GBV incidents.⁴²</p> <p>The Ministry of Religious Affairs has issued a Fatwa delegitimizing the use of Pharaonic FGM and recommending the “Sunni” type.⁴³</p>		<p>in women aged 15-49 was high, at 99 percent.⁴⁶</p> <p>The Sexual Offences Law⁴⁷ was passed in 2018, but its enforcement was halted after public outcry. That law recognized a list of violence offences against women.</p> <p>The Federal Ministry of Women and Human Rights Development and their counterparts at regional state level are mandated to “promote social and economic empowerment of women”.⁴⁸</p> <p>Parallel to those state services, there are networks of women all over Somalia that provide services, advocacy, awareness and capacity development on women's agenda.</p>
<p>Family Planning (OPTIONAL)</p> <p><i>Do women require the</i></p>			<p>“In 2015, Somalia became an FP2020 commitment making country, and in 2017</p>		<p>In Somalia, marriage and fertility are closely linked, because childbearing usually takes place within the context of</p>

⁴² Somaliland National Plan of Action for the Prevention and Management of Gender Based Violence, January 2008

⁴³ Somaliland Ministry of Religious Affairs and Endowment

⁴⁶ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

⁴⁷ Somaliland Sexual Offences Law No. 78 of 2018

⁴⁸ Ministry of Women and Human Rights Development, <https://mwhrd.gov.so/en/>

<p><i>consent of the husband to practise family planning, including abortions and sterilization in the law, procedure or practice?</i></p>			<p>the government revised its commitment to ensure access to quality reproductive health services, including family planning, in emergency and crisis settings from 50% of facilities offering Family Planning services in 2017 to 80% by 2020⁴⁹. Under this, the government committed to ensure that legal, policy and strategic frameworks for family planning in Somalia are in place by 2020.⁴⁹</p> <p>Puntland put in place a Family Planning Strategy 2020-2024 to identify gaps in reproductive and family planning needs</p>		<p>marriage.⁵¹</p> <p>In Somalia the total fertility rate is high at 6.9 children per woman. The median birth spacing between two births is 21 months. 62% of ever-married women aged 15-49 have knowledge of modern contraception; 68% of births were reported by the mother to have been wanted at the time of conception.⁵²</p> <p>The data on marriage and fertility collected as part of the Somalia Health and Demographic Survey 2020 validates estimates that suggest that Somalia has one of the highest fertility levels in the world, second only to Niger according to the latest revision of the UNFPA 2019.⁵³</p>
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⁴⁹ Country Worksheet: Prioritized Action Planning 2019-2020, Family Planning 2020, <https://www.familyplanning2020.org/somalia>

⁵¹ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

⁵² Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

⁵³ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

			and develop strategies to address the same. ⁵⁰		
<p>Divorce</p> <p><i>Is there an equal right to divorce? Can the husband divorce at will and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure e.g. are witnesses required or does the spouse need to go to court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce? Are</i></p>	<p>According to Article 34 of family law:⁵⁴</p> <ul style="list-style-type: none"> The marriage contract ceases with divorce (<i>talaq</i>), dissolution (<i>faskh</i>) or death of one of the spouses. <p>According to Article 35 of the family law:⁵⁵</p> <ul style="list-style-type: none"> Divorce (<i>talaq</i>) is of two kinds: Revocable divorce does not bring to an end the marriage link until termination of the <i>iddat</i> period. Irrevocable divorce brings the marriage to an end at the moment it occurs. Any divorce (<i>talaq</i>) is revocable, with the exception of that which occurs before the 			<p>According to Article 36 of the family law (formalities of divorce):⁵⁸</p> <ul style="list-style-type: none"> The Court may authorize a divorce only after referring the case to a conciliation committee appointed by it and upon ascertaining that it has failed its attempted reconciliation between the husband and wife. In case of the failure in the attempted reconciliation, the committee shall transit its findings to the court within 60 	<p>The divorce practice is the same as the provisions of the legislative framework and procedure.</p> <p>The right of divorce (<i>talaq</i>) belongs to the husband. This is the main form of dissolving a marriage, however, women opting to the court in search of marriage dissolution (<i>faskh</i>) is an increasingly observed trend.</p> <p>Unless a divorce is about a critical dispute, a man can unilaterally divorce outside the court but the marriage dissolution (<i>faskh</i>) filed by the wife can only be sought through the court.</p> <p>In most of the cases, divorce happens as a result of mutual negotiations mainly facilitated by the elders of the husband and</p>

⁵⁰ Puntland Government of Somalia Family Planning Strategy and Implementation Plan, July 2020, <https://familyplanning2020.org/sites/default/files/Somalia-FP-strategy-CIP-final-29-07-2020.pdf>

⁵⁴ Article 34 of Somalia's Family Law No. 23 of 11th January 1975

⁵⁵ Article 35 of Somalia's Family Law No. 23 of 11th January 1975

⁵⁸ Article 13 of Somalia's Family Law No. 23 of 11th January 1975

<p><i>the procedures for divorce by women and men different?</i></p>	<p>consummation of the marriage and the one with the pronouncement of the third <i>talaq</i> which completes the former two.</p> <p>According to Article 36⁵⁶ of the family law:</p> <ul style="list-style-type: none"> • The right of divorce (<i>talaq</i>) belongs to the husband subject to the authorization by the competent court. <p>According to Article 42⁵⁷ of family law:</p> <ul style="list-style-type: none"> • Dissolution (<i>faskh</i>) can only be brought by the court • A suit for dissolution of the marriage shall deprive the husband of his right of divorce. 			<p>days of its appointment.</p> <ul style="list-style-type: none"> • The court shall not authorize more than one <i>talaq</i> at a time. <p>According to Article 43⁵⁹ of the family law:</p> <ul style="list-style-type: none"> • Both husband and wife are entitled to file a petition for dissolution of the marriage if they have one of the cases listed in the law. • The list includes suffering from incurable diseases, disappear, habit to refuse maintenance, extreme poverty to care each other, serious disagreement, perpetual sterility and long imprisonment of either. 	<p>wife, after all attempts to resolve disputes are exhausted.</p> <p>Widowhood significantly increases and peaks among women of age 45-49 years. Divorce among women of 15-19 years stands at 2 percent and is 6 percent among all women of reproductive ages (15-49 years).⁶⁰</p> <p>The total fertility rate for Somalia is 6.9 children per woman.⁶¹</p> <p>Dumaal (inherited widow) – a practice whereby a widow marries the brother or close relatives of her deceased husband – is also a commonly accepted norm.</p>
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⁵⁶ Article 36 of Somalia's Family Law No. 23 of 11th January 1975

⁵⁷ Article 43 of Somalia's Family Law No. 23 of 11th January 1975

⁵⁹ Article 43 of Somalia's Family Law No. 23 of 11th January 1975

⁶⁰ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

⁶¹ Directorate of National Statistics, Federal Government of Somalia. The Somali Health and Demographic Survey 2020.

<p>Women's financial rights after divorce</p> <p>Matrimonial property <i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman's role as wife and mother recognised as contribution to acquisition of assets?</i></p> <p>Maintenance <i>What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a 'gift' upon divorce (muta'a)?</i></p>	<p>According to Article 44 of family law:⁶²</p> <ul style="list-style-type: none"> Where divorce (<i>talaq</i>) or dissolution (<i>faskh</i>) results through the fault of the husband, the court shall order him to maintain his former wife for a period not less than three months and not more than one year. If the divorce or dissolution results through a fault on the part of the wife, the Court shall order her to pay to the husband a sum not less than her dower. <p>According to Article 52 of family law:⁶³</p> <ul style="list-style-type: none"> The husband shall continue to provide maintenance to his wife during the period of <i>iddat</i>, if he was previously obliged to do so. 				<p>Regardless of fault or if the marriage divorced or dissolved, the man should maintain his former wife if she has children or pregnancy with her.</p> <p>In most of the cases, the court orders or elders of the divorcing spouses manage fixing maintenance rate depending on the financial capacity of the husband.</p> <p>A former wife of a dissolved or divorced marriage is not obliged to pay to her former husband, regardless of her financial capacity.</p> <p>Matrimonial property is divided. The wife collect properties brought by her or those usually used by women. Likewise, men collect properties brought by him or usually used by men.</p> <p>Note: men assume ownership of most property, mainly housing and valuable fixed assets. This is because of the assumption that it was the duty of the</p>
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⁶² Article 44 of Somalia's Family Law No. 23 of 11th January 1975

⁶³ Article 52 of Somalia's Family Law No. 23 of 11th January 1975

					<p>husband (not wife) to have prepared a matrimonial house.</p> <p>A woman will continue owning property/assets of her own even after divorce.</p>
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority rights over the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p>	<p>According to Article 64 of family law:⁶⁴</p> <ul style="list-style-type: none"> The mother is entitled to the custody (<i>hadana</i>) of her male child until he has completed the age of ten years and of her female child until she has attained the age of fifteen years. In case of her marriage to another man she may continue with custody of the children provided that the father consents. 				<p>Practice is identical with the provisions of the law. Mother is entitled to the custody (<i>hadana</i>) of her child unless she is married to another man.</p> <p>As a matter of fact, the mother takes custody of children. Both mother and father communicate on the fate of the children. In rare cases, fathers challenge.</p> <p>When the children reach or get close to majority, they make a choice.</p>
<p>Guardianship of Children</p> <p><i>Is there an equal right to</i></p>	<p>According to Article 63 of the federal Constitution:⁶⁵</p> <ul style="list-style-type: none"> Every child has the right to care from their parents, 			<p>In most of the cases, elders from the spouses (who are sometimes) authorized by the court</p>	<p>The practice is identical with the provisions of the law.</p>

⁶⁴ Article 44 of Somalia's Family Law No. 23 of 11th January 1975

⁶⁵ Article 82 of Somalia's transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

<p><i>guardianship? If not, who has priority rights over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p>	<p>including education and instruction. In instances where this care is not available from the family, it must be provided by others. This right applies to street children and children of unknown parents, the rights of whom the state has a particular duty to fulfil and protect.</p> <p>According to Article 63 of family law:⁶⁶</p> <ul style="list-style-type: none"> • Custody of a child is the proper rearing, educating, cultivating good morals in it without prejudice to the specific rights of the guardian. <p>According to Article 64 of family law:⁶⁷</p> <ul style="list-style-type: none"> • If the mother dies or there is a legal impediment, the custody of the child shall pass to the father or some other relative. 			<p>mediate in case of dispute over guardianship.</p>	
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⁶⁶ Article 63 of Somalia's Family Law No. 23 of 11th January 1975

⁶⁷ Article 64 of Somalia's Family Law No. 23 of 11th January 1975

	<ul style="list-style-type: none"> • In the absence of the above-mentioned persons or in the case of their unfitness, the Court may entrust into account the interest of the child • The Court may restore the custody of the child to the mother or any of her relatives on the disappearance of the legal impediment. <p>According to Article 66 of family law:⁶⁸</p> <ul style="list-style-type: none"> • In case there are more relatives in the same degree entitled to the custody of the child, the court shall choose the one who is in the best interests of the child. <p>According to Article 67 of family law:⁶⁹</p> <ul style="list-style-type: none"> • If the person having custody of the child gets married with a person 				
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⁶⁸ Article 66 of Somalia's Family Law No. 23 of 11th January 1975

⁶⁹ Article 67 of Somalia's Family Law No. 23 of 11th January 1975

	<p>other than a relative of the child, he/she loses his/her right to the custody. This provision shall not however apply to the widow having the custody of the child.</p> <p>According to Article 71 of family law:⁷⁰</p> <ul style="list-style-type: none"> • The person who has custody of the child may not take him/her outside the Republic except with the consent of the guardian. • In case of disagreement between the person who has the custody of the child and the guardian, the court shall decide. <p>According to Article 72 of family law:⁷¹</p> <ul style="list-style-type: none"> • Where the child lives with one of its parents, the one who has no custody shall not deny the other the right of access to the child or 				
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⁷⁰ Article 72 of Somalia's Family Law No. 23 of 11th January 1975

⁷¹ Article 72 of Somalia's Family Law No. 23 of 11th January 1975

	<p>from keeping the child for a short period.</p> <ul style="list-style-type: none"> • Such a right belongs only to the parents. <p>According to Article 75 of family law:⁷²</p> <ul style="list-style-type: none"> • Maintenance of the children by their parents shall continue: • In the case of daughter until she gets married or being of age, she has found a job which enables her to maintain herself. • In the case of the son until he attains the age of majority. • If the son has attained the age of maturity but is unable to work because of some illness or because he must pursue his studies the parents shall be obliged to maintain him. 				
Inheritance	According to Article 157 of family law: ⁷³				The inheritance provisions of family law were among the

⁷² Article 75 of Somalia's Family Law No. 23 of 11th January 1975

⁷³ Article 158 of Somalia's Family Law No. 23 of 11th January 1975

<p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p>	<ul style="list-style-type: none"> • Titles of inheritance are relationship and marriage. <p>According to Article 158 of family law:</p> <ul style="list-style-type: none"> • Females and males shall have equal rights of inheritance. 				<p>particular provisions publicly rejected upon its signature into law, and specifically confronted by highly esteemed religious jurists who were finally murdered and some imprisoned.</p> <p>Inheritance is governed according to Shafi <i>fiqh</i> by the court or persons authorized.⁷⁴</p> <p>Inheritance shares are divided and distributed by a given formula-based method.</p> <p>Using that formula, women get their shares of inheritance.</p> <p>Depending on the heirs, females may sometimes gain more than males, but male heirs generally get more than females.</p> <p>For instance, if a husband dies without children, the wife may get 1/4 of her deceased husband's total wealth and his father may get 1/6. This means that a woman got a share more than that of a man.</p>
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⁷⁴ Shafi Fiqh is dominant in Somali Horn of Africa (regardless of borders) and its jurisprudence books including Minhaj is referred for both the will and inheritance

<p>Nationality</p> <p><i>Does a wife have the right to confer citizenship on foreign born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p>	<p>According to Article 8 of the Federal Constitution:⁷⁵</p> <ul style="list-style-type: none"> • The people of the Federal Republic of Somalia are one, indivisible and comprise all the citizens. • 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. • A person who is a Somali citizen cannot be deprived of Somali citizenship, even if they become a citizen of another country. • Denial, suspension, or deprivation of Somali citizenship may not be based on political grounds. <p>According to Article 9 of Somaliland citizenship law:⁷⁶</p> <ul style="list-style-type: none"> • Any female alien who marries a male citizen shall 			<p>According to Article 3 of the citizenship regulations:⁷⁸</p> <ul style="list-style-type: none"> • An alien or stateless person who is of age and fulfils the conditions prescribed in articles 4 and 5 of the Law and intends to acquire Somali citizenship by grant shall submit a written application on stamp paper to the President of the Republic through the District Commissioner territorially competent. The application shall be accompanied by the necessary documents showing that the person concerned fulfils all the conditions required by law. 	<p>By 2015, approximately 2 million people from Somalia were living outside of the country's borders.</p> <p>Somalia has large diaspora (with foreign nationalities) all over the world, yet they have limited intermarriage with the people of those countries.</p> <p>Somali women's marriage with foreigners was extremely rare at all times and thus it was not raised as a policy issue.</p>
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⁷⁵ Article 8 of Somalia's transitional federal constitution (2012), <http://mop.gov.so/wp-content/uploads/2018/04/Somalia-Constitution2012.pdf>

⁷⁶ Article 9 of Somaliland Citizenship Law No. 22 of 2002, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=88084&p_country=SOM&p_count=30

⁷⁸ Somali Citizenship Regulation (President) Decree No. 129 of 19 February 1963

	<p>acquire Somaliland citizenship and, unless she has renounced it, shall retain such citizenship even after her divorce.</p> <ul style="list-style-type: none"> • Any female citizen who marries a male alien shall lose her citizenship if she accepts her husband's citizenship. • A female citizen, who is married to a husband who has renounced his Somaliland citizenship and acquired another citizenship, shall lose her (Somaliland) citizenship unless the husband was a refugee. • A woman who loses Somaliland citizenship because of marriage may re-acquire such citizenship if the circumstances set out in this Law apply to her. <p>According to Article 10 of Somaliland citizenship law:⁷⁷</p> <ul style="list-style-type: none"> • Children under the age of majority whose father 				
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⁷⁷ Article 10 of Somaliland Citizenship Law No. 22 of 2002, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=88084&p_country=SOM&p_count=30

	<p>acquired or lost or re-acquired citizenship shall, in all these circumstances, be treated like their fathers under this law.</p> <ul style="list-style-type: none"> • When a child reaches the age of majority, he/she may request confirmation of his/her citizenship. 				
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ACCESS TO JUSTICE

SYSTEM	PROCEDURES & TIMELINES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
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<p><i>How do Muslim family law (i.e. marriage and family related) cases get administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?) How many courthouses/court rooms around the country that administer Muslim family law cases? How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c? Do lawyers represent clients?</i></p>	<p><i>Briefly describe procedures for filing a divorce or any other family law related cases.</i></p>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters? (E.g. lack of accessibility, bad procedures, delayed processes, gender insensitive judges, etc?)</i></p>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases? (E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</i></p>
<p>Each district (regardless of grade) has a district court. And each District Court has a family section. All family sections are manned by Sharia Judges (Kadis). In addition, persons authorized also facilitate marriage performances.</p> <p>Family cases include marriage, divorce, maintenance, children guardianship and inheritance.</p> <p>In addition to the ordinary requirements for a judge to be appointed, family law judges should have sharia law qualifications, and thus almost all courts' family sections have religious</p>	<p>Applications for family cases are administered by the Somali civil procedure code.</p> <p>According to Article 117 and 119 of the civil code:⁷⁹</p> <ul style="list-style-type: none"> • The application should contain the name of the competent court addressed to, address, full names and address of parties to the case or their representatives, point of issue, relevant provisions of the law, relief requested. 	<p>The key constraints against women's access to justice for family cases in court includes:</p> <ul style="list-style-type: none"> • Delays: Like all other disputes, court cases take longer than expected, without any transitional remedy. • Difficulties in enforcing judgements on maintenance. • Complex and bureaucratic processes: The applicable rules of procedure to file and proceed with a petition on a family case are under the civil procedure code. These rules are complex 	<p>Elders representing each of the two spouses oversee implementation of the consensus reached.</p> <p>In 2015, Somalia appointed its first six female prosecutors.⁸⁰</p> <p>In 2018, Hargeisa district court registered 3344 family cases. It is understood that a far larger number may have been resolved outside the court (in the urban and rural areas).⁸¹</p> <p>In 2021, Hargeisa's population is estimated at 1,033,205.⁸²</p>

⁷⁹ Article 117 and 119 of the Somali Civil Procedure Code Law No. 70 of 19 October 1975

⁸⁰ UNSOM, <https://unsom.unmissions.org/somalia%E2%80%99s-first-female-prosecutors-change-face-justice>

⁸¹ Hargeisa District Court (Oral) Report, <https://www.youtube.com/watch?v=6olY62zuZ90>

⁸² World Population Review, <https://worldpopulationreview.com/world-cities/hargeysa-population>

<p>backgrounds.</p> <p>By law, women are not prohibited to serve as judges, yet no women judges have yet been appointed. They serve in courts as assistants and court clerks.</p> <p>Lawyers represent all cases including family cases. Lawyers include both males and females.</p>	<ul style="list-style-type: none"> • Appeals against the judgment of the District Court are taken to the regional court of appeal and then to the Supreme Court 	<p>and litigants need to hire a lawyer, which can cost a lot.</p>	
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