

SOMALIA



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Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

The colour codes indicate whether the laws comply with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women, and recommendations of the country's Universal Periodic Review.

YES

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

NO

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

Partly

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

No available data or inadequate information.

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

Somalia has not acceded to CEDAW. Consultations on accession to CEDAW are ongoing and assessment of existing laws against CEDAW is in progress.

Constitution

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

NATIONALITY LAW

NATIONALITY

Somali women do not have the same legal rights as men to pass citizenship to a child or a foreign spouse under the Law on Somali Citizenship of 1962. A draft Child Rights Bill will address this issue by providing that women can pass their nationality to their children.

CRIMINAL LAWS

Domestic violence

Somalia does not have a law that specifically addresses domestic violence. Domestic violence can be addressed by prosecuting the offender for assault under Article 440 of the Penal Code. The Ministry of Justice is revising the family laws. Religious laws and practices can protect women from domestic violence. Codification of the Sharia law has been proposed.

Abortion for rape survivors

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

Female Genital Mutilation / Cutting (FGM/C)

Article 15 of the Provisional Constitution prohibits FGM/C. There is a draft federal law prohibiting FGM. A decree in Somaliland and legislation in Puntland prohibiting FGM have also been drafted, but await endorsements.

Marital rape

Marital rape is not specifically criminalized. Women owe a duty of obedience to their husbands and are expected to fulfill conjugal duties in the marriage. Criminalization of marital rape is included in the draft federal Sexual Offences Bill but is highly contested. There are also provisions available under Sharia law to address this issue, but they need to be formalized.

Sexual harassment

Article 24 of the Provisional Constitution prohibits sexual abuse in the workplace. The Puntland Sexual Offences Act 2016 prohibits sexual harassment. The Somaliland Sexual Offences Law 2018 is not being implemented. The draft federal Sexual Offences Bill will prohibit sexual harassment.

Human trafficking

The Provisional Constitution provides that a person may not be subjected to slavery, servitude, trafficking, or forced labour for any purpose. The Penal Code includes some trafficking, forced prostitution and abduction offences. However, there is no comprehensive anti-trafficking legislation addressing prevention and protection measures. A draft Trafficking in Persons law has been submitted to the Council of Ministers.

Rape (other than of a spouse)

Rape is criminalized by Article 398 of the Penal Code. Whoever with violence or threats has carnal intercourse with a person of the other sex shall be punished with imprisonment for five to 15 years. The draft federal Sexual Offences Bill will reinforce the criminalization of rape.

Femicide: Mitigation of penalty (so called 'honour' crimes)

The Penal Code Article 443 requires reduction of sentences for a person who kills a female relative (spouse, daughter, or sister) or her sexual partner in the sudden heat of rage "for the offence caused to his or her honour and to the honour of his or her family" after finding her in a sexual act.

Sex work and anti-prostitution laws

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

Exoneration by marriage

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

Adultery

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

Sexual orientation

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

PERSONAL STATUS LAWS

Minimum age of marriage

The Family Code sets the minimum age for marriage at 18 years for both males and females. However, females between the ages of 16 and 18 can marry with their guardian's consent. The Family Code is seldom enforced in legal practice. The Ministry of Justice has been working on proposals for new family laws since 2018. In most areas, Sharia and customary laws are used to address family matters.

Guardianship of children

Fathers are the guardians of children.

Male guardianship over women

Muslim women require consent of a wali (male guardian) to marry. Marriage cannot happen without the consent of the woman.

Custody of children

After divorce or separation, the mother retains custody of her children when they are young, but she loses custody if she remarries. A draft Child Rights Bill will address this issue.

Marriage and divorce

A husband can divorce by verbal repudiation (talaq) outside of the court. A wife has the right to divorce on specified grounds based on a sound argument presented to the court. In practice Sharia rules apply to marriage and divorce, including the wife's duty of obedience. The Civil Code 1973 gives women the right to independently own property.

Inheritance

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

Polygamy

Polygamy is allowed by Sharia law. The Family Code allows polygamy in limited specified circumstances. The Family Code is seldom applied in legal practice. Women can include stipulations in the marriage contract stating that they do not agree to polygamy.

LABOUR LAWS

Right to equal pay for the same work as men

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

Domestic workers

There are no specific legal provisions on the protection of the rights of domestic workers. The federal Labour Code Bill 2019 is waiting to be presented to the parliament. The Labour Code Bill 2019 adopts a broad definition of a worker.

Dismissal for pregnancy

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

Paid maternity leave

Under Article 33 of the Civil Servant Law 2006, women are entitled to 4 months maternity leave with full pay and two hours break for breastfeeding for 12 months. For Somaliland and Puntland, the respective Private Sector Employees Law provides that women are entitled to 16 weeks of maternity leave and nursing breaks (article 15 of Puntland Labour Code for Private and Business Organizations, Labour Code no. 65).

Legal restrictions on women's work

Under the Labour Code of 1972, women are restricted from being employed in night work at factories, commercial enterprise and farms. It is also unlawful to employ women for night work at factories, commercial enterprise and farms under Article 8 of the Puntland Labour Code. A new draft federal Labour Code is being prepared which will provide equal labour rights for women.