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Joint Stakeholder Submission**



**Somali Women Development Centre [SWDC]**

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Somali Women Development Centre (SWDC) is a non-governmental and non-profit making organization that was established mid-2000, with the guiding vision to empower Somali women in the socio-economic, cultural and political context, living in an environment free from violence. SWDC is engaged in Human Rights protection with focus on vulnerable groups such as women, children, disability through enhancing their protection, lobbying and advocacy with concerned parties, promotion of gender equality, reconciliation and peace building, humanitarian response, provision of free legal aid services in collaboration with the relevant stakeholders in order to not only end impunity but also improve human dignity in Somalia.

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The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and South Africa that work together to advance human rights related to sexuality at the United Nations.

**Key Words:** gender-based violence, access to justice, forced marriage, violence against women, land rights, women's rights, family law, sexual violence.

### **Executive Summary**

1. This joint UPR stakeholder report was prepared by the Somali Women Development Centre (SWDC), Erica Marsh, an independent expert working on access to justice issues in Somalia, and the Sexual Rights Initiative (SRI).
2. This report aims to highlight the concerning state of human rights in Somalia. Despite the commitments made by Somalia during its last review, few of the accepted recommendations have materialized into proper implementation. The report focuses on issues primarily faced by women, relating to gender-based violence, land rights and access to justice.
3. There is an urgent need to develop national systems, and to align legislation and policy with international human rights norms and standards.

### **Gender-Based Violence (GBV)**

4. During the last UPR cycle, Somalia accepted all of the following recommendations about eradicating violence against women:
  - Step up efforts to prevent all forms of violence against women, including sexual abuse and domestic violence by finally adopting a comprehensive National Action Plan to punish perpetrators and provide assistance and recovery for victims as well as eradicate harmful traditions such as FGM. (Korea)
  - Implement the action plan against sexual violence against women and adopt measures to further criminalize female genital mutilation. (Spain)
  - Prohibit all forms of violence against women by passing and enforcing legislation providing for prevention, the adequate punishment of perpetrators, protection and support for victims, including legal remedies and paying special attention to the protection of minority women. (Austria)
  - Work on enacting important and relevant human rights laws, particularly, Disability Act, National Commission for Human Rights Act, and Sexual Offences Act. (Iraq)

5. Despite the consistent push from various CSOs and activists, Somalia has failed to implement any of these recommendations. In fact, protections for women and girls have diminished, resulting in higher risk of sexual violence and decreased reporting by survivors. The Independent Expert on Somalia also noted concerns over an increase in sexual and gender-based violence when releasing her 2020 report on the Situation of Human Rights in Somalia.<sup>1</sup>
6. Somalia remains in a state of protracted conflict between the Somali federal and regional governments and Al Shabaab. Consequently, official government presence is limited mainly to the capital Mogadishu and regional urban centers, while Al Shabaab has retained freedom of movement and influence, if not outright control, over rural areas in the central and southern parts of the country. The presence of police and formal judicial structures is, therefore, limited and where formal institutions do exist they are mainly in nascent states of development.
7. Gender-based violence is a violation of human rights. It infringes rights to bodily autonomy and integrity as well as the right to dignity. Any harm or suffering that is perpetrated against an individual, has a negative impact on the physical, sexual or psychological health of the person, and furthermore development and identity. The cause of the violence is founded in gender-based power inequalities and gender-based discrimination, which intersect with other systems of inequality based on race, class, religious affiliation, among others.
8. The threat of GBV is reinforced by the conflict, drought and poverty in Somalia. The humanitarian situation in Somalia continues to expose communities and internally displaced persons, to serious protection risks – with limited access to sexual and reproductive health, GBV prevention and response services.
9. Somalia's constitution recognizes the legitimacy of customary law, known as *xeer*, as well as Sharia and secular law (as long as the former is Sharia-compliant). *Xeer* was developed as a system of dispute resolution and agreements between and amongst the country's major clans, based on oral traditions and with an emphasis on preventing the outbreak of law-scale violence between parties involved in a particular conflict.
10. *Xeer* is recognized as playing an important part in dispute resolution, therefore reducing incidents of violent conflict. However, in this tradition, decisions are made by male elders, and women are often represented by male relatives. Any compensation from disputes involving women often goes to their male relatives. While *xeer* is commonly applied to

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<sup>1</sup> see <https://www.voanews.com/africa/un-expert-somalia-backtracking-human-rights-commitments>

incidents of GBV, the process provides very limited protections for survivors in these cases. In rape cases, for example, survivors may be married to perpetrators as a means of “resolving” the case. In instances of both sexual assault and domestic violence, compensation may be given to a survivor or her family members, which may cover medical costs for necessary treatments but this is not in itself a deterrent for future incidents of abuse.<sup>2</sup> It also fails to center or take into account survivors needs, wishes or rights when determining these ‘remedies’.

11. Where formal justice institutions do exist, they currently do not offer a significantly better alternative for GBV survivors, in part because of the lack of updated and comprehensive legislation addressing sexual and gender-based violence. Such offences currently fall under Somalia’s penal code, which came into effect in the 1960s and categorizes sexual assault as an “offence against modesty and sexual honor.”
12. Recently, there have been incredible efforts to update the laws addressing sexual assault through the drafting of the *Sexual Offences Bill*. The Independent Expert on the situation of human rights in Somalia, from their visit in 2017, stressed the importance of adoption of the *Sexual Offences Bill* in providing an essential legal framework for the protection of rights of women in Somalia.<sup>3</sup> In fact, one of their recommendation was for the Parliament to accelerate the finalization process, adopt the *Sexual Offences Bill* and ensure its assent expeditiously.<sup>4</sup> However, despite the tireless work of Somali CSOs, Council of Ministers and international stakeholders, this initiative has been disrupted and stalled.<sup>5</sup>
13. Several members of Somalia’s Federal Parliament contested the implementation of the *Sexual Offences Bill* on the grounds that it was neither culturally appropriate nor Sharia compliant. In August 2020, they put forward their own draft legislation, the *Sexual Intercourse and Related Crimes Bill*, which would significantly curtail efforts to enhance protections against forms of sexual violence in Somalia. As noted by the UN High Commissioner for Human Rights, Michelle Bachelet, the *Sexual Intercourse and Related Crimes Bill* would not only provide inadequate legal protections for victims or survivors, but it would also fail to uphold Somalia’s basic obligations to protect the human rights of its citizens particularly in relation to protection from sexual and gender-based violence.<sup>6</sup> This is particularly important under the current state of conflict in the country.

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<sup>2</sup> Research conducted in Somalia in 2019/2020.

<sup>3</sup> see [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/72](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/72)

<sup>4</sup> see [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/72](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/72)

<sup>5</sup> see *UN Somalia: Country Results Report 2019*

<sup>6</sup> see <https://news.un.org/en/story/2020/08/1070022>

14. Failing to pass a comprehensive law addressing sexual and gender-based violence, in line with international laws and standards, demonstrates a lack of commitment to addressing SGBV in Somalia and reinforces a culture of impunity for such crimes. The alternative, the *Sexual Intercourse and Related Crime* Bill is highly problematic and addresses the rights of woman and children in a regressive way.
15. The lack of comprehensive legal protections against gender-based violence fails to take into consideration UNSC 1325 which calls on member states to ensure that there are specific measures in place that address the protection of human rights of women and girls in both the police and judiciary.<sup>7</sup>
16. Under the current conflict, there have been an increasing number of rapes committed by youth gangs and unidentified men in uniform. Young girls are also being subjected to traditional practices at a higher rate, including early and forced marriages and female genital mutilation. Conflict-related factors, such as displacement and weakened judicial and health infrastructures makes it even tougher to find justice, protection or appropriate care.
17. The harmful practice of early and forced marriage and adversely affects the health, education and livelihoods of adolescent Somali girls. Girls who marry early are denied their childhood. Once married, these girls have little or no access to education and economic opportunities, and their families are more likely to live in poverty. Early and forced marriages also face a higher risk of experiencing dangerous, life-threatening complications in pregnancy, fistula, contracting HIV, suffering domestic, sexual violence and high rate of divorce.
18. Somalia does not have a minimum age for marriage. In August 2020, it was purposed through a bill to set the marriage age to puberty, essentially legalizing the marriage of girls as young as 10.<sup>8</sup> In the last UPR cycle, Somalia dismissed recommendations about abolishing early and forced/child marriage by enforcing a set age for marriage, by stating that the definition of 'early' is different in Somalia compared to international standards.
19. The Somali Government perpetuates gender inequality by failing to develop, implement, and enforce policies that prevent violence against women, forced marriages, and female genital mutilation. The Government makes promises of achieving and fulfilling human rights on the international stage, but continues to force regressive, outdated and oppressive laws and policies domestically, especially towards women. This practice of diplomacy only provides a false image of human rights in Somalia, and diminishes the work of national CSOs

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<sup>7</sup> see [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/72](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/72)

<sup>8</sup> see <https://www.reuters.com/article/us-somalia-child-marriage-idUSKBN25G0VK>

and human rights defenders.

## Land Rights

20. During the past UPR cycle, Somalia accepted the following recommendations:

- Sign and ratify the CEDAW. (Austria; also, by Guatemala, Italy, Sweden and Uganda, Austria)
- Intensify its effort in the promotion and protection of the rights of women by, inter alia, ratifying the CEDAW, revising discriminatory legal provisions and effectively enforcing its law to fight against gender-based violence. (Thailand)

21. Somalia has yet to sign and ratify the CEDAW. In addition to the past UPR recommendations, the Independent Expert on the situation of human rights in Somalia has also recommended that Somalia should accede to the CEDAW.<sup>9</sup> This Convention affirms equal rights for men and women, and establishes an international bill of rights for women in all spheres of their life, including land ownership. Women's equal rights to land are grounded in other human rights instruments, including the Universal Declaration on Human Rights. The Working Group on discrimination against women in law and practice emphasized the importance of women's land rights in multiple reports, and highlighted that the lack of proper legislation continues to prevent women from owning and accessing land.<sup>10</sup>

22. The issue of land rights had been highlighted by civil society organizations in their submissions to the past cycles of the UPR, but it failed to generate a recommendation for Somalia. In the last cycle, the Summary prepared by the OHCHR noted that widows were often subjected to land-grabbing by male relatives or denied access to land all together if they had no children.<sup>11</sup> Extensive field research in Somalia in 2019 found that this practice continues, particularly in Baidoa and Mogadishu. Although the Somali Constitution states that land should be held, used and managed equitably, land cases are mainly arbitrated through xeer, which can leave women at a disadvantage.<sup>12</sup> As the 2019 OECD Social Institutions and Gender Index for Somalia notes, xeer does not view women as independent members of the community, but rather as the jurisdiction of a male relative.<sup>13</sup>

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<sup>9</sup> see [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/72](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/72)

<sup>10</sup> see <https://www.ohchr.org/Documents/Issues/Women/WRGS/Womenslandright.docx>

<sup>11</sup> see [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/72](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/72)

<sup>12</sup> see <http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf> article 43

<sup>13</sup> see <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/SO.pdf>

23. During interviews in Somalia in 2019, women and elders from minority groups noted that corruption in the formal courts, where they exist, creates a significant challenge in preventing forms of land grabbing. Property values in urban areas continue to rise, as does conflict over land ownership as individuals returning from abroad have found that their land has been appropriated by others or have tried to assert ownership over land that is occupied. The lack of land registries and an absence of land ownership laws further exacerbate these issues, and leave less powerful groups vulnerable to expropriation. Even when a judge upholds the rights of such groups, there is often no way to enforce these decisions.

### **Access to Justice**

24. Somalia accepted the following recommendations in the past UPR cycle:

- Improve access to justice for victims of sexual violence, particularly in rural areas. (Luxembourg)
- Adopt measures, including appropriate legislation, to prevent, penalize and eliminate all forms of violence against women, end impunity for sexual violence and ensure access to justice. (Lithuania)
- Take concrete measures to ensure the implementation of the action plan for the human rights roadmap and to ensure all its citizens have access to an independent and competent legal aid system. (Afghanistan)

25. Although laws around gender equality and women's rights in Somalia have advanced in the past years, there are important gaps that need addressing to effectively guarantee and protect women's rights. The Somali legal system is pluralist and consists of three main sources of law: customary, Sharia and statute laws. The majority of cases are dealt with through the customary and Sharia legal systems.

26. Women, poor people, IDPs and survivors of SGBV, continue to face obstacles in accessing justice. The process of accessing formal judicial system is challenging as state-actors can be persuaded to disregard cases through 'influence' from perpetrators. Further, formal processes are time-consuming and costly. There is also a lack of oversight bodies, and therefore a lack of transparency and accountability. According to the provisional Constitution all citizens are equal in front of law – however, that is completely false in practice.

27. Access to justice ensures that rule of law is enforced, by allowing individuals to seek justice and redress their infringed right. It is a human right, which is capable of combating poverty, whilst also preventing and resolving issues. Rule of law also entails fairness in application of law and legal certainty, which promotes social development and security. It protects the citizens from arbitrary abuse, and encourages them to seek justice when they have been erred. This is undoubtedly a catalytic mechanism for reducing poverty and inequality, and promotes fairness in society.
28. Somalia is currently experiencing a wave of human rights infringement along with politically motivated crimes. These include rape, violence, torture, kidnappings, arbitrary arrest, FGM, etc. More often than not, people are denied access to fair trial, and are deprived from freedom of speech and press. Abusers are never prosecuted or punished, which negates the concepts of 'equal before the law.'
29. High concern reported and raised about the legal proceedings, application of laws, the capacity of judges, prosecutors and police investigators, the effectiveness of the judiciary, and customary law interventions in the cases.
30. The formal justice system in Somalia remains fragile and most Somali people prefer traditional mechanisms to resolve conflicts in their communities due to their physical accessibility, low cost and legitimacy in the eyes of local participants. However, the informal justice systems reinforce forms of discrimination and supports practices that do not comply with national laws and international human rights standards.
31. Human rights, particularly women's rights, continue to suffer due to a lack of an adequate legal framework and the absence of strong law and order and justice institutions.

## **Recommendations**

1. The Federal Government should pass an updated and comprehensive law addressing sexual and gender-based violence that is survivor-centric, human rights based, and in line with international laws and standards,<sup>14</sup> similar to the *Sexual Offences Bill*.
2. Urgently address sexual and gender-based violence by undertaking rights-based, survivor-centered actions that align with international norms and standards, including, by:
  - Urgently adopting a comprehensive national action plan;

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<sup>14</sup> Such a law exists in the Puntland region of Somalia and is considered to be Sharia compliant.

- Ensuring access to independent and competent legal aid system;
  - Allocating resources to judicial, health and social services;
  - Investigating and prosecuting all cases of SGBV; and
  - Providing appropriate reparations, restitution and rehabilitation.
3. Ensure the participation of women human rights defenders, civil society organizations, survivors and rights holders when designing and implementing legislation and policies on gender equality.
  4. Sign and ratify CEDAW and other international treaties for the protection of women's rights.
  5. Accelerate the adoption of the *Land Bill* to better address the increasing number of land disputes, complaints and denial of resources. Ensure that women, especially widows retain the rights to their land.
  6. Undertake specific legal reforms to promote gender equality in marriage, the rights of widows, and the rights of women during marriage dissolution including equal share of property, remarriage and custody of children.
  7. Adopt comprehensive legislation and policies for abolishing child, early and forced marriage.