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1.2.1. Gender based violence (GBV), types, prevalence and situation of women in the Somali society, including forced and child marriage

○ (a) The legal framework

Somalia has a hybrid legal system, which includes formal, Sharia, and *Xeer* (clan) laws.123 Institutions are described as 'frail or non-existent' in many parts of Somalia, resulting in sexual offences being mainly handled as per *Xeer* law, which provides that the crime is not attributed to the individual, but to their clan.124 *Xeer* is described as the preferred system for dispute resolution, while state officials also perpetuate its use by referring cases back to clan elders, who still remain the most powerful upholding force behind justice and access to it.125 For further information on the gendered impact of *Xeer*, see the EUAA COI Report Somalia: Actors (July 2021), notably chapter 2.3.2 Customary justice - Xeer and Alternative Dispute Resolution (ADR),126 as well as chapter 2. Women and Girls of the EUAA COI Report: Somalia: Targeted Profiles (September 2021).127

The Penal Code of Somalia identifies and penalises sexual offences in articles 398-407; however, the Penal code is described as outdated, criminalising a limited range of sexual acts and including contradictory and outdated definitions, without for example 'adequate consideration of the principle of consent'.128 Both Somaliland and Puntland apply the 1962 Somali Penal Code when it comes to criminal cases.129

The Sexual Offenses Bill was sanctioned by the Council of Ministers of Somalia in 2018 aiming to cover gaps and outdated aspects of the Penal Code; however, it remains pending approval of the lower house of the Parliament (the People's House).130 In 2020, the Sexual Intercourse and Related Crimes Bill (SIB) was introduced, possibly with the intention to supersede the Sexual Offences Bill, and it was heavily criticised by civil society and women's rights advocates.131 The UN Human Rights Committee in a May 2024 report expressed its concern that the bill on sexual intercourse and related crimes 'does not provide for substantive protection to victims of sexual violence and allows for child marriage'.132

On 28 December 2023, the Offenses of Rape and Indecency Bill was passed by the Cabinet;133 the Special Representative of the Secretary-General noted the existence of articles in the bill not in line with international humanitarian standards, citing as an example the definition of rape which 'must contain the element of consent as part of the crime, and the crimes of indecency must be clearly defined so that conduct that is prohibited and is punishable under the law is clear'.134 Similarly the Independent Expert highlighted provisions in the Bill of concern to her, including the definition of coercion and of indecency.135

In August 2020, Somaliland's House of Representatives passed the Rape, Fornication and Other Related Offences Bill (Law No. 78/2020).136 According to the Sexual Exploitation and Abuse/Sexual Harassment Prevention and Response Action Plan by the Somali Ministry of Labor and Social Affairs (MOLSA), '[t]he law does not provide any details on legal age of a minor in Somalia or sex consent'.137 According to a joint statement by the Somaliland National Human Rights Commission and other human rights advocates, the bill does not 'sufficiently protect survivors of rape and punish perpetrators'.138 On 24 June 2024, Somaliland's President issued a decree formalising the implementation of a resolution to prosecute rape cases through the formal court system instead of through the traditional system, with the formal courts being the only authorised institutions to deal with rape cases.139 Further information on the implementation of this decree could not be found among the sources consulted by EUAA within the time constraints of this report.

☐ (b) Gender based violence (GBV)

Women in Somalia are exposed to sexual and gender-based violence,140 domestic violence, FGM/C,141 conflict-related sexual violence142 - particularly rapes and gang rapes combined with homicide - as well as lack of accountability for perpetrators.143 GBV was described as an ongoing 'highly prevalent and persistent phenomenon' for women in Somalia, with its most common forms including harmful traditional norms and practices linked to FGM/C, early and forced marriage, as well as physical and sexual violence, including Intimate Partner Violence (IPV).144 Women and girls in Somalia were reported to be increasingly vulnerable to gender-based violence due to multiple displacements, difficult living conditions, and overcrowded IDP camps; the above being further impacted by unsafe travel to services, markets, and schools, decreasing family income and ongoing food insecurity, with women and girls continuing to be exposed to rape, intimate partner violence (IPV), sexual abuse, and exploitation.145 The combination of limited access to and availability of services, as well as the stigmatisation and fear of reprisals from the perpetrator, family members and community members, that victims of GBV in Somalia were reported to face, significantly impacted their access to services. Recourse and access to justice were reportedly impacted by delays, with UNFPA adding that perpetrators 'are not often held accountable due to weak rule of law and discriminatory social and cultural norms'.146

An ongoing pattern of attacks on social media towards female elected officials, including by former elected officials, was noted while patterns of 'gendered disinformation' and hate speech both in mainstream and social media were reported, with women with a presence in public and political life, including activists, leaders and journalists being targeted.147

The UN Security Council stated that sexual and gender-based violence in Somalia was 'significantly underreported',148 while the UN Independent Expert on the situation of human rights in Somalia highlighted the possibility of underreporting of incidents of sexual and gender-based violence against women and girls, due to reasons including 'cultural taboos, stigmatisation, fear of reprisals, insecurity, barriers to humanitarian access and inadequate care services',149 as well as due to the difficulty in accessing areas and verifying incidents.150

During 2023, incidences of GBV steadily increased in comparison to 2022.151 Between July-September 2023, 2 823 new GBV cases were reported in Somalia, including 714 incidents of sexual violence, with 62 % of the cases being physical assault and 17 % of them being rape.152 Between October-December 2023, 2 544

new GBV cases were recorded in Somalia, including 495 incidents of sexual violence.153 In late 2023, following an El Niño phenomenon which resulted in very heavy floods after a period of extended drought, approximately 700 000 women and girls were impacted by lack of access to protective shelter and adequate specialised services for GBV.154 In 2023, according to UN reporting, sexual violence was reportedly perpetrated against 197 girls, primarily by 'unidentified perpetrators', followed by Al-Shabaab members and government security forces.155 In the first half of 2024, there were more than 500 reported cases of sexual violence against children with GBV being described by UNICEF as 'pervasive' and 70 % of GBV cases affecting individuals under 18 years, while there were 'increasing concerns' about sexual violence against boys.156 In the period from January to June 2024, a decrease of reported rape cases was recorded compared to the same period in 2023.157 Between July 2023 and September 2024, different incidents of conflict-related sexual violence were reported, against women and girls with the perpetrators including unknown armed actors,158 state actors, and Al-Shabaab fighters.159

☐ (c) Early and forced marriage

UNICEF defines child marriage as a union, formal or informal, between a child under the age of 18 and an adult or another child.160 The UN Human Rights Committee highlighted the high rates of early and forced marriage in Somalia, with some Somali girls marrying even before the age of 15.161 Child marriage is widespread in Somalia, being 'deeply rooted in cultural and social norms',162 with 45 % of women between 20 to 24 married before the age of 18,163 and with 8 % of girls married before the age of 15.164 In traditional pastoralist communities, early marriage (below 18 years) was common, and particularly child marriage among girls, with girls often married by the age of 12 or 13, with marriage considered the 'ultimate goal' for a girl and key for her livelihood security.165

Some illustrative examples include, in July 2024, an incident of conflict-related sexual violence was reported against seven girls who were going to be forcibly married to Al-Shabaab members. The girls aged between 14 and 17 years were trafficked from the Bay region and intercepted in Mogadishu in the process of being transported to Galgaduud region for forced marriages to Al-Shabaab members. The girls stood trial before the first instance military court in Mogadishu for alleged affiliation with Al-Shabaab, and were released and transferred to a rehabilitation centre the same day,166 while between January to May 2024, another incident of conflict-related sexual violence was reported of a forced marriage of an underage girl by an Al-Shabaab member in Jubbaland state.167

☐ (d) GBV and situation of women under Al-Shabaab, including forced and child marriage

According to interviews conducted by the UN with female Al-Shabaab defectors, women under Al-Shabaab in general held support roles, such as *zakat* (religious tax) collectors, madrasa teachers and preachers, and security guards in prisons. In terms of support to Al-Shabaab's operational activities, women were also serving as cooks and cleaners for Al-Shabaab fighters, storing weapons and acting as spies. The women highlighted 'the dire economic and humanitarian situation,' a general lack of health and education facilities in Al-Shabaab controlled areas, and the strict control on their life and behaviour. Despite the formal ban on women working, Orly Stern, a researcher and human rights lawyer with focus on 'women in war',168 described in a 2021 report on the gendered economy of Al-Shabaab that women were at times 'actively' involved in Al-Shabaab's financial and business interests. This included moving goods over the borders

between Al-Shabaab and government-controlled territory, as they can cross the borders between the territories more easily than men.169 In another report from 2019, Dr Stern highlighted that in the cases where women were actively participating in Al-Shabaab, meaning beyond their roles as wives, they were playing a range of roles and unlike men, most women would support Al-Shabaab from their homes – in cities, towns and villages, both in territory under Al-Shabaab control and in unoccupied territory.170

According to another research, still by Orly Stern, on the wives of Al-Shabaab (2020), in general 'the ways communities treat al-Shabaab wives depends largely on how those communities feel about al Shabaab', with wives of Al-Shabaab members 'enjoying better treatment – and even some status – in al-Shabaab territory'. 171

Al-Shabaab was described as remaining the perpetrator with the highest recorded number of incidents of forced marriage.,172 According to the UN Security Council, Al-Shabaab 'draws' many women forcefully, using conflict-related sexual violence against women and girls in order to gain and maintain control of communities under its control. In addition, it reportedly uses abduction and forced marriage 'as a form of compensation to its fighters and to forge ties with prominent clan leaders'.173 Al-Shabaab was reported to continuing kidnapping women and girls, force families to surrender their daughters to marry, and to occupy hospitals and maternity wards.174

○ (e) Situation of women who left Al-Shabaab and repercussions for leaving Al-Shabaab

Women regularly mentioned that a key factor for their defection was the protection of their children from recruitment, as well as the fact that their husbands had been killed in Al-Shabaab operations.175

According to two experts on disengagement from Al-Shabaab and on former members interviewed by the EUAA in 2022, a woman's capacity and options to leave Al-Shabaab is significantly impacted by which actor is in control of the area where she lives and whether it has been reclaimed by government forces or not. 176 According to findings177 from interviews conducted with former female members who had disengaged from Al-Shabaab, the majority had become tired and frustrated with the roles they held within Al-Shabaab, and the reasons for disengaging 'reflected their disillusionment, frustration and anger'.178

According to an expert on disengagement from Al-Shabaab interviewed by the EUAA in 2022, the consequences associated with leaving Al-Shabaab (territory) depend on women's role or situation within the group prior to her leaving. The expert added that women were exposed to retaliation and threatening from the group linked to the role/function they used to have within the group.179 Most of the women who leave Al-Shabaab are described as 'highly vulnerable to stigma' and living in conditions of extreme poverty since they are excluded from communities and resources, while many choose to live in isolation fearing stigmatisation. The women who escape take their children and few possessions, while many have no skills or education, making them dependent to community support and aid.180 According to Dr. Stern, as of 2020, the ease of integration of women after they have left Al-Shabaab depends very much on the places women move to, and the level of family or clan connection/support they can rely upon,181 while in their new location women face multiple challenges, including poverty, stigma and mistrust from within the hosting community (including IDP camps) or the family circle, sexual exploitation, and fear of Al-Shabaab (also within IDP camps).182

There were also reports that the government was not allowing individuals that previously cooperated with Al-Shabab from returning to areas formerly under Al-Shabaab control.183 On 8 August 2023, four women married to alleged Al-Shabaab members stood trial alongside their driver, accused of transporting material destined to make explosive devices. After they denied any knowledge of their husbands' affiliation and the transported materials, they were sentenced to two years' imprisonment each, and later released on parole.184

The UN noted the closure of dedicated rehabilitation centres for women who used to be associated with Al-Shabaab, in a report covering the period from September 2023 to August 2024.185 Additional information on the latest status of the rehabilitation centres for women could not be found. In 2020, two female rehabilitation centres were established in Baidoa and Kismayo for women who used to be associated with Al-Shabaab, as well as in Mogadishu which was ran by an NGO, however the latter reportedly closed after 2020 due to funding cuts.186 As of April 2023, rehabilitation facilities were reported for both men and women in 'at least three different locations': Kismayo, Baidoa and Mogadishu.187 As of January 2024, the UN Security Council reported that five rehabilitation centres in Mogadishu, Kismaayo and Baidoa and one multifunctional reception centre in Galmudug were operational, providing support to 215 female and 502 male beneficiaries. 188 For more information on women leaving Al-Shabaab and repercussions for doing so, see section 2.2 Women of the EUAA COI Report Somalia: Defection, desertion and disengagement from Al-Shabaab

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