



Gender Briefing

SOMALIA

SIHA NETWORK GENDER BRIEFING I SOMALIA

The aim of this **Gender Briefing** is to examine four countries that have, over the past decade, passed and adopted gender-progressive legislation and policies. The four countries are Sudan, Somalia, Ethiopia and Uganda. Against an inventory of the existing, recent gender policy and legal progress made in each of these countries, this brief will present a short analysis covering:

- a. A general review of the social and political context in which the gender laws and policies are being implemented (broad contextual analysis) in each country.
- b. An overview of the existing laws/policies that have direct or indirect implications for gender equity in each country.
- c. For each country, a brief background of the major issues facing women's rights and gender activists. The brief shall focus on issues of VAWG, informal sector employment, women's political participation, and finally, marriage and succession.
- d. A structural analysis per country of (a), (b) and (c) above – highlighting and summarizing the major factors deepening the gap between laws/policies and women's lived realities. This brief will look at policies and laws against actual practices.
- e. This brief will highlight the women's movement situation in each country employing the SIHA community activism guide.

1. BACKGROUND: SOCIAL AND POLITICAL CONTEXT OF GENDER ACTIVISM IN SOMALIA

Somalia has a rich and complex history, marred in recent decades by high levels of violence and conflict. This gender briefing examines the status of women in Somalia, but does not directly include information from the self-declared state of Somaliland, though many of the cultural practices and traditional customs and beliefs are shared across the region. Somaliland broke away from Somalia in 1991 and administrates itself under its own government, though its status as a state has never been recognized internationally.

Since the overthrow of Siad Barre's 21-year government in January 1991, civil conflict has torn Somalia apart, leading to the collapse of the state and the economy. Fighting between armed Islamist groups and pro-government forces has subjected southern and central Somalia to violence and instability, with growing unrest in Puntland and along the contested border between Puntland and Somaliland. Civilians have been killed and injured as a result of indiscriminate attacks and generalized violence. Conflict has forced over two million people to leave their homes, seeking refuge as internally displaced persons (IDPs) or as refugees in neighboring countries. Due to armed groups and insecurity, aid agencies have had very limited access to civilians and the displaced. Humanitarian workers, journalists and human rights activists are at risk of being killed and/or abducted. Armed groups control most of southern and central Somalia and they often carry out unlawful killings, torture and forced recruitment. The Transitional Federal Government (TFG) controls only part of the capital, Mogadishu, and there is no effective justice system. Serious human rights abuses, including war crimes go unpunished. Somalia continues to carry out the death penalty.¹

Violence against women in Somalia is recorded as the highest in Africa. Furthermore, national laws, policies and procedures are not favourable to the rights of women and there is no framework for addressing widespread VAW. Violence against women occurs in the form of rape, torture, looting and forced displacement. These are all tools of war used to humiliate and control communities living in certain areas. To date, Somalia remains one of the countries refusing to sign the International Convention on the Elimination of all forms of Discrimination against Women (CEDAW). National Laws, policies and procedures do little to protect the rights of women. During the periods in which Somalia was left stateless, clan-based Islamic courts were established as a means of keeping law and order, but they concentrated mainly on family law. In some instances, Somali women can be considered the perpetrators of violence against their own sex with specific regard to the practice of Female Genital Mutilation (FGM). This harmful practice is known to cause severe bleeding, urine retention, and in some cases, death. FGM can cause lifelong, physical suffering for many women, yet mothers continue to subject their daughters to this horrific practice.

¹ Amnesty International, *Somalia Human Rights*, <https://www.amnestyusa.org/countries/somalia/>

The majority of Somali women agree that all girls should be circumcised and that female circumcision is a part of Islamic practice. Moreover, they believe that an uncircumcised girl is unfit for marriage. A shocking 98% of Somali women continue to be circumcised, with 90% being subjected to the Pharaonic, also called Infibulation, method. The less radical form of circumcision, known as Sunna in Somalia, and also referred to as Clitoridectomy, is mainly practiced in coastal towns.²

Politically, women have been making significant progress in gaining formal representation at local and national levels. However, the prevailing unreliable security situation in the country continues to threaten this painstaking progress. Currently, around 1.4 million people, mostly women and children, are displaced within Somalia after being forced to flee their homes. Many young girls and women are at risk of rape every minute of every day, and girls as young as five years are being raped. The inability to enforce law in several areas allows for the militias to kill and rape with impunity.³ One of the greatest risks to women's lives is not war, but giving birth. One of the most dangerous things a woman in Somalia can do is to become pregnant. When a woman does become pregnant, her chances of survival drop considerably due to the non-existent antenatal care, nonexistent medical supplies, the extraordinarily poor healthcare available, and the lack of infrastructure. A woman's lifetime risk of dying from maternal causes in Somalia is reported to be 1 in 14; one of the highest rates in the world, second only to Afghanistan.⁴ The war has affected literacy and education rates, especially for women and girls. As the local communities retreat deeper into traditional domains of "protection", the presence and public role of the state as a guarantor of human rights has diminished. The reconsolidation of traditional norms has been particularly detrimental for women's rights.

2 SIHA (2006), "Highlighting Violence against Women in Somalia," *Pambazuka*, <https://www.pambazuka.org/gender-minorities/highlighting-violence-against-women-somalia>

3 Marian Qasim, "The Women of Somalia are Living in Hell," *The Guardian*, <https://www.theguardian.com/commentisfree/2011/jun/17/women-somalia-hell-worst-world>

4 Ibid.

2. MAJOR ISSUES IMPACTING GENDER EQUITY AND WOMEN'S HUMAN RIGHTS

This section highlights the key issues around which women's rights and gender activists in Somalia have been mobilizing their efforts. It provides a brief of the available legal and policy frameworks for redress, and identifies the problems of implementation.

2.1. Rape and Gendered Violence against Women

Sexual violence is pervasive in much of Somalia. Two decades of civil conflict and state collapse have created a large population of displaced persons and other people vulnerable to sexual violence. At the same time, it has destroyed the state institutions that are supposed to protect those most at risk. Armed assailants, including members of state security forces, operate with complete impunity. Assailants sexually assault, rape, beat, shoot, and stab women and girls living in Displaced Person Camps as they walk to market, tend to their fields, or forage for firewood. Members of Somalia's long marginalized minority communities are particularly at risk. The United Nations reported nearly 800 cases of sexual and gender-based violence in Mogadishu alone during the first six months of 2013. The actual number is likely much higher. Many victims will not report rape and sexual assault because they lack confidence in the justice system, are unaware of or cannot access available health and justice services and they fear reprisal and stigma. Somali medical services and the justice system, including police and the courts, are profoundly ill equipped to support and assist victims of sexual violence.⁵ The following existing legal and policy frameworks provide sources for redress.

GBV-related Laws and Policies:

- **The Penal Code**

- ▶ Somalia's 1962 Penal Code⁶ is still current law. It criminalizes rape and other forms of sexual violence as well as forced prostitution. Articles 398-9 provide that "carnal intercourse" and "acts of lust committed with violence" are punishable with 5-15 years and 1-5 years imprisonment respectively.
- ▶ Articles 407-408 criminalize the compulsion or facilitation of prostitution and the exploitation of the proceeds of prostitution. Abduction for the purposes of lust or marriage is prohibited under Article 401. In practice, however, it has been documented that women who complain about a rape may find themselves trapped by Article 426, which prohibits adultery and makes no exception for the case of rape.
- ▶ Article 39(i) makes abuse of power in the commission of a crime an aggravating circumstance and Article 33 provides that when a superior officer orders the commission of an offence both the perpetrator and his superior will be liable. However, in practice, these provisions offer little more than theoretical protection.

5 Human Rights Watch (2014), "'Here Rape is Normal:': A Five Point Plan to Curtail Sexual Violence in Somalia,' Report available online at: <https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia>

6 Available online at: http://www.nuhanovicfoundation.org/user/file/1962_somali_penal_code_english_-_edited_13_august_12.pdf

● **The National Gender Policy**

Somalia currently has a draft National Gender Policy (NGP). The implementation of the policy lies with the Federal Government of Somalia through its ministries, particularly the Directorate of Women and Social Affairs under the Ministry of Human Development and Public Services. The policy will be put into place for ten (10) years with periodic reviews, and has self-regulated monitoring and an evaluation framework.⁷ The draft policy has the following stated objectives:

- ▶ Eliminate all forms of gender discrimination from Somali society
- ▶ Reduce gender inequalities between women and men
- ▶ Boys and girls to achieve sustainable livelihoods
- ▶ Advocate for and promote understanding of human rights of women and men
- ▶ Increase women's participation in decision-making processes at all levels
- ▶ Provide sets of guidelines for concrete strategies and actions to empower women, men, girls and boys
- ▶ Hold government accountable to its commitment to gender equality
- ▶ Promote positive societal beliefs, attitudes and behavioural change pertinent to achieving gender equality
- ▶ Facilitate the creation of incentives and welfare measures for the motivation and retention of healthcare workers
- ▶ Improve equal access to HIV/AIDS information for prevention, treatment and care for women and men living with HIV/AIDS
- ▶ Improve services for the management of cases of GBV
- ▶ Promote the rights of women and men, boys and girls with disabilities and ensure that all those in need of rehabilitation have access to necessary services

● **The Somali Compact (2013)**

- ▶ The Somali Compact (New Deal for Peace building and State building) that was signed by the Federal Government of Somalia outlined priorities from 2014 to 2016 and mentioned gender as a crosscutting priority.
- ▶ It recognized the important role played by women in community mobilization and peace building, including in sustaining their families during, and in the aftermath of conflict.
- ▶ It recognized that the prevalence of religious and clan-based systems, coupled with the impact of lingering conflict and humanitarian crises contribute to the circumscribed status of women in Somali society.
- ▶ The Compact aimed to enhance the role women play in Somali society as

⁷ <http://amisom-au.org/wp-content/uploads/2013/08/EASY-TO-READ-GUIDE-GENDER-POLICY.pdf>

peace builders, as economic actors, and as figures central to the promotion of community stability and social cohesion.

- ▶ Key gendered interventions outlined within this Compact were to ensure equitable participation of women, youth and other marginalized groups in national political processes, and to respond directly to the acute challenges contributing to sustained gender disparities across multiple sectors.
- ▶ The Compact sought to address contributing factors perpetuating gender inequality through strategic priorities under all PSGs, including emphasis on improved participation in political and decision-making forums, access to justice and protection from sexual and gender-based violence, economic empowerment, and access to basic services such as health and education, particularly for the most vulnerable populations e.g. female-headed households.
- ▶ It also sought to strengthen a government-led gender coordination mechanism to include representatives from the UN and donors, to ensure effective coordination of gender efforts across sectors.

● Sexual Offences Bill

- ▶ A draft Sexual Offences Bill exists in Somalia, which is yet to be enacted. Puntland enacted its law in December 2017, making it the first law in Somalia to criminalize sexual assault. The bill draws on the modern Western legal system and is compliant with Islamic Sharia Law.

Laws/Policy vs. Existing realities

The following are reasons that existing laws, including those that are likely to be passed like the NGP may fail to protect women and girls from widespread rape and gendered violence against women:

- a. The draft National Gender Policy does not give express recognition or mention to the nature, causes and forms of sexual and gendered violence that women and girls in Somalia are facing from militias and the militarized society. Its focus is on **care**, not **prevention**, as it does not explicitly seek to address the political dimensions of the gendered violence being experienced by women.
- b. While developing the Somali Compact, the government did not get enough input from women's civil society groups nor did it design national reforms in ways that would address women's needs. The structure of the New Deal itself fails to prioritize gender equality, **leaving it as a cross cutting issue** with no guidance for implementation.⁸
- c. Even though Somalia's Penal Code criminalizes rape and sexual violence, the crimes are too narrowly defined to satisfy international law standards of protection from sexual and gender based violence. Furthermore, shame and stigmatization deter most victims from seeking justice through formal courts.⁹

8 Kumuyi, Odih Love (2017), "Lost in Implementation? Where is Gender in the Somali Compact for Peacebuilding and Statebuilding? *Journal of Peacebuilding and Development*, 12(1): 97-102. Accessible online at: <http://www.tandfonline.com/doi/abs/10.1080/15423166.2017.1288997?journalCode=rjpd20>

9 <http://www.nuhanovicfoundation.org/en/legal-instruments-3/somali-penal-code/>

- d. Still on the Penal Code, the Status of Mission Agreement between AMISOM and Somalia provides that foreign military personnel shall not be tried for a criminal offence in Somalia but rather, will be tried in their home countries. This makes pursuit of those perpetrators absolutely beyond the reach of Somali victims.¹⁰
- e. Furthermore, while the 2012 Constitution of Somalia stipulates that “human rights abuses alleged to have been committed by members of the armed forces against civilians shall be brought before a civilian court” (Article 128), in practice, offences are invariably dealt with by military courts and very few prosecutions for sexual abuse succeed.¹¹
- f. There is no guarantee that the Sexual Offences law will prevail because after years of war, Somalia’s government, even at the state level, has little real control. In most parts of Somalia, local clan elders dispense informal justice through customary law. Under customary law, rapists often only pay a fine as punishment or the victims are forced to marry their attackers.¹²

2.2. Female Genital Mutilation/Cutting (FGM/C)

Currently, about 95% of girls in Somalia between the ages of 4 and 11 years and 98% of all females between the ages of 15 and 49 undergo FGM.¹³ It is a practice that involves the partial or total removal of the external female genitalia for no medical benefit. The UN officially banned the practice of FGM in 2012. During that same year, Somalia’s Ministry of Women Affairs and Human Rights announced that it would introduce a law that would ban FGM. The practice is regarded by Somalia’s new constitution as “torture”, and is explicitly prohibited. Article 15(4) of the **Provisional Constitution** stipulates that, “Circumcision of girls is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited.” There is, however, no specific law against female circumcision, and the practice remains widespread in both rural and urban areas in Somalia. In 2014, the autonomous state of Puntland banned FGM from its regions.¹⁴ Regionally, the African Charter on Human and Peoples’ rights (Banjul Charter) and its Protocol on the Rights of Women (Maputo Protocol) in addition to the Charter on the Rights and Welfare of the Child have emphasized the promotion and protection of women’s rights. The clearest and most explicit language is to be found in Article 5 of the Maputo Protocol, which prohibits “all forms of FGM” through legislative measures and sanctions.¹⁵ While there is an earnest campaign underway by women’s rights advocates to ban the practice of FGM and religious leaders and government officials have supported a ban, it is important to note that the practice seems to have moved underground as parents are increasingly reluctant to be publicly associated with FGM.

It is worth understanding the reasons why the constitutional provision banning FGM/C has had little effect. Some obstacles that anti-FGM/C campaigners are likely to face in pushing for a specific legislation/policy targeting the practice are listed below:

¹⁰ Ibid.

¹¹ Ibid.

¹² <https://www.voanews.com/a/somalia-rape-case-may-test-new-law/3692193.html>

¹³ Tonnessen, Liv (2015), “FGM in the Horn of Africa: What does Islam have to do with it? *Women in Islam*, SIHA Journal Issue 02/2015 (64-66).

¹⁴ <https://horseedmedia.net/2015/08/03/somalia-to-introduce-law-prohibiting-female-genital-mutilation/>

¹⁵ Tonnessen (2015), “FGM in the Horn of Africa,” p.64.

- a. Link to Islam – the use of religious terms to refer to the practice has given it an Islamic identity and strengthened the belief that Islam requires FGM/C. The *sunna* is used to legitimize type 1 of FGM/C employing Islamic justifications.
- b. The practice of FGM/C pre-dates Islam. This makes it difficult to separate culture and tradition from Islam especially with regard to the control of women’s sexuality, which is often embedded in both custom and religion.
- c. Patriarchal ideals placing women in a shame-honor paradigm reinforce the practice of FGM/C. Women and girls do not wish to dishonor their families and clans and therefore, are reluctant to resist FGM/C practices.
- d. The majority of efforts to combat the practice have so far been driven by civil society activism with funding and support from the international community. As a result, these efforts to end FGM/C are often deemed “Western” or “foreign” by conservative political and religious actors.
- e. No existing domestic policy or law, including the NGP and the Compact, has explicitly addressed the issue of FGM/C as a harmful traditional practice. FGM/C is usually found under the broad term -gendered violence.

2.3. Political Participation and Engagement in Decision-Making

Previous Somali governments have not ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to date there has been no gender policy or gender specific legislation in Somalia. Despite advocacy for a quota of 30 percent women representation in all political institutions, and its inclusion in the Garowe II Principles, this was not incorporated into the Provisional Federal Constitution adopted on the 1st of August 2012. However, Article 133 of the Constitution specifically sets out a process for amendment of the Constitution, with the opportunity for inclusion of a gender quota.¹⁶ In their quest for participation in leadership, women have experienced major socio-cultural barriers. These include opposition from clan leaders, cultural beliefs that women cannot take up key leadership roles, social stigma associated with women in political leadership, lack of women empowerment leading to low self-esteem and low self-confidence, and lack of support from community members and clan elders. Additionally, women are not allowed to move freely in public places as according to the culture, a woman’s rightful place is at home. Religion has also been cited as a barrier as many Somalis believe that Islam does not allow women to assume senior positions such as the presidency. Women can, however, take up junior positions. Some claim that Islam requires women to stay at home, and view women’s leadership as “immoral”.¹⁷

Financial barriers also bar women’s participation in decision-making. Compared to their male counterparts, many women in Somalia do not own property or businesses. Many of them have limited education and therefore have limited options for income generating activities. As a result, women do not have the same purchasing power as men and are generally economically disadvantaged. Political campaigns require significant financial

¹⁶ http://www.undp.org/content/dam/rbas/doc/Women's%20Empowerment/Gender_Somalia.pdf

¹⁷ AMISOM (2016), “Somali Women’s Participation in Politics and Public Life,” *Research Report*.

resources that most women cannot afford. Additionally, even women from wealthy families or who have financially stable male partners, will mostly likely not benefit from the financial support required to finance campaigns and compete for political positions. In addition to lack of financial support, women experience a lack of moral support. Somali women may be threatened and killed when they vie for political leadership, which instills a lot of fear in would-be contestants. The militias or political opponents carry out these killings. This is a departure from the past where killing a woman was a rare occurrence and was considered a very serious crime.¹⁸

Policy and legislative framework for women's participation in leadership:

Somalia has ratified three out of the four international bills on human rights, including the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Optional Protocol to the International Covenant on Civil and Political Rights (but has not acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights). As stated above, Somalia signed and ratified the African (Banjul) Charter on Human and Peoples' Rights in 1985, and has signed but not ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) in 2006. Somalia has not signed CEDAW.¹⁹ As such, Somali women's participation in politics and decision-making is framed within the following:

● The Provisional Constitution

The Provisional Constitution has a number of positive and negative implications for women:

- ▶ Article 3 on *Founding Principles* states that: "Women must be included, in an effective way, in all national institutions, in particular all elected and appointed positions across the three branches of government and in national independent commissions".
- ▶ Article 11 on *Equality* states that:
 - 1) Everyone is equal before the law
 - 2) Even unintended acts by their effect can be defined as discriminatory if they impair or restrict a person's rights
 - 3) The state may not discriminate against any person on the grounds, including but not limited to, clan, ethnic or social origin, sex etc.
 - 4) State measures designed to achieve full equality for individuals or groups who have suffered discrimination or disadvantage shall not be deemed discriminatory (e.g. quota system).
- ▶ Article 22 on *Right of Political Participation* states that: Every citizen has the right to take part in public affairs; including the right to form and/or take part in the activities of political parties (including the right to vote and stand for positions in elections for adults).²⁰

18 Ibid.

19 UNDP, "Gender in Somalia," http://www.undp.org/content/dam/rbas/doc/Women's%20Empowerment/Gender_Somalia.pdf

20 Ibid.

- **Family Law**

- ▶ Progressive reforms were made to the Family Law in 1975 under Siad Barre, which assured women equal rights, and made discrimination against women illegal – though little was done to enforce the law, and to date, the law is often regarded as a leftover from the Barre regime and is not applied in legal practice.
- ▶ The Family Law guarantees women’s rights in marriage, divorce and inheritance. However, civil status issues are most often resolved under *Sharia* and *xeer* (traditional or customary law).²¹

- **Customary law (Xeer)**

- ▶ Since 1991, the re-emergence of customary law, the extended use of *Sharia*, and the resort to clan-based forms of political representation has meant that women are excluded from most political and judicial structures.²²
- ▶ Somalia exists in a state of legal pluralism where customary law (Xeer), religious law (Sharia) and secular law operate. Among the three, Xeer is the dominant system that governs societal relations and serious crimes, due to a variety of historical and political reasons.
- ▶ As first the Somali state and then society fractured, Xeer persisted through years of civil war primarily due to its core position underpinning the legitimacy of Somali traditional structures, especially in the provision of justice and arbitration.²³

- **Sharia Law**

- ▶ Islamic *Sharia* contains provisions that potentially offer women more rights than *Xeer*. However, in Somalia, *Sharia* is only administered by men, and is often misapplied in the interests of men, meaning that women often do not receive justice, and men go unpunished.²⁴

Law vs. women’s realities

Why are there gaps between existing laws and policies and, Somali women’s lived realities and experience of politics, public life and decision-making?

- a. Historically, women and minority groups such as the Bantu tribes and agrarian Somalis, suffered discrimination and were not permitted a voice. Moreover, Xeer legitimacy was also not without questioning. In some areas of southern Somalia, warlords and their military power eradicated traditional respect for elders. In addition, Al-Shabaab controlled areas only followed by Sharia law.²⁵
- b. The hierarchal clan system continues to be exclusionary and male-dominated.²⁶ An example is *Diya*, which is compensation usually in the form of livestock, paid by a

21 Ibid.

22 Ibid.

23 Natasha Leite, (2017), Reinvigoration of Somali Traditional Justice through Inclusive conflict Resolution Approaches,” <https://reliefweb.int/report/somalia/reinvigoration-somali-traditional-justice-through-inclusive-conflict-resolution>

24 UNDP, “Gender in Somalia”

25 Leite, 2017.

26 Each clan comprises varying levels of subdivision that descend hierarchically from clan families to clans, subclans, sub-subclans, primary lineage groups and diya-paying groups (Leite, 2017).

person who has injured or killed another person. *Diya* is often referred to as “blood money”. A *diya*-paying group is made up of a group of men linked by lineage and a contractual agreement to support one another, mostly with regard to compensation for injuries and death against fellow members. In these ways, women and minority clans have been **historically and systematically excluded** from the decision-making process, and mostly disenfranchised by it.²⁷

- c. Due to its local nature, there are aspects of Xeer that are not universal. Xeer is divided into two categories: Xeer Guud and Xeer Gaar. Xeer Guud includes criminal and civil matters and is applicable to all clans, whereas Xeer Gaar is a decision only applied in its specific community. It is important to also clarify that even though Xeer Guud is universal in its application, the specific subsections and interpretations by the respective Guurti might change between communities.²⁸ This makes it difficult to uniformly apply universal women’s rights laws, as they are likely to be **contradicted or challenged at the local clan level when in conflict with customary laws**.
- d. Furthermore, when two parties are in conflict, the Guurti of the two conflicting parties convene a *shir beeled*, clan assembly, to discuss the issues at stake. The elders examine relevant precedents or relevant Xeer on the matter. If no relevant codes are found, the elders resort to Sharia for reference. If reference is obtained from Sharia, it then becomes part of the Xeer. **This entire process is oral, so there are no written precedents or Xeer.**²⁹ This has significant implications for women’s rights, since any progress on gender/women’s rights, whether significant or not, risks being forgotten or erased, and replaced with other oral inventions when convenient.
- e. Family law provisions limiting polygamy – the two prime areas of family law affecting women’s rights are divorce and polygamy. Both of these are also affirmed in the *Hadiths* in the Quran, a fact that leads to contradictions in interpretation and implementation.

2.4. Internal Displacement

Somalia has the seventh largest internally displaced population in the world at 1.1 million people,³⁰ many of whom have been displaced multiple times. Large-scale displacement was driven by the search for food, water, safe shelter, and the need for pastures for livestock. With the impact of severe, recurrent drought and other natural hazards on food, security and health, certain areas of the country faced two periods of famine, one from 1991 to 1992, and the second in 2011. As a result of restrictions imposed by Al-Shabaab on trade and freedom of movement as well as access restrictions and the limited humanitarian funding and response, famine spread across all regions of the south in 2011 and an estimated 260,000 people died. In February 2017, around 6 million Somalis were facing acute food insecurity. Many thousands of families who are dependent on livestock and agriculture for survival have been forced to abandon their homes and normal migration patterns. Somali refugees, either voluntarily or forcibly, are returning to Somalia causing an internal displacement crisis. Forced evictions give an urban dimension to the problem.

27 Ibid.

28 Ibid.

29 Ibid.

30 <https://www.brookings.edu/research/internal-displacement-in-somalia/>

In 2015, an estimated 85% of the 80,000 households living in 486 informal settlements were thought to be IDPs.³¹

The gendered dimensions of internal displacement in Somalia highlights specific issues that affect the rights of internally displaced women and girls. Gender concerns for internally displaced women primarily relate to two core issues: protecting and safeguarding women and girls from rape, abduction, forced sexual slavery, genital mutilation, torture and murder and upholding their rights to equal access and full participation in assistance programs. Gender violence is a common feature of displacement, and rape is a deliberate tactic used in war to dehumanize and dishonor not only the woman but also her husband and the entire community.³² There is a stigma attached to rape in Somalia that makes people uncomfortable reporting it. Combined with a media that is uninterested in reporting on IDPs, IDP women remain very vulnerable to rape and other forms of sexual violence.³³ The humiliation and degradation of rape are only compounded by the impunity of the perpetrators. The IDP camps in which women and children seek refuge, present a lifestyle alien to their cultural values and in this unfamiliar social context gender roles change radically. Women's vulnerability to sexual exploitation, domestic violence, and rape increases as gender roles shift. Domestic violence is often the outcome of gender role reversals when men, normally the providers for their families, face the idleness and humiliation of IDP life.³⁴

The effects of displacement depend on its duration, but immediate manifestations include family separations, exposure to gender violence, trauma associated with the deaths of family members, impaired health, and the loss of the home and possessions. Displacement may affect women's rights to inherit land and property. Over time, the cumulative effects of personal loss may result in depression and physical deterioration. Post-traumatic stress syndrome is a common ailment among women who have been displaced for more than a few months. The long-term impact of displacement on women may mean the permanent loss of social and cultural ties, the termination of career and regular employment, and disruption or loss of educational opportunities. Some marriages do not survive the stress of displacement and divorces are common in IDP settings. Displacement also changes gender roles as families become separated, relatives are killed, and homes are destroyed. Women's vulnerability to sexual exploitation, domestic violence, and rape increases as gender roles shift.³⁵

Policy and Legislative Framework on Internal Displacement:

▶ The Guiding Principles on Internal Displacement

- The UN's Guiding Principles on Internal Displacement provide an overarching, regulating framework that applies international human rights and humanitarian law to IDPs.
- The Guiding Principle were among the first international frameworks to outline specific rights relevant to women facing internal displacement, including:

31 <http://www.internal-displacement.org/countries/somalia>

32 http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef_idpgender_1998.pdf

33 <https://www.brookings.edu/wp-content/uploads/2016/06/Improving-the-Protection-of-Internally-Displacement-Women-October-10-2014.pdf>

34 http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef_idpgender_1998.pdf

35 Ibid.

- a) Non-discrimination and the right of expectant mothers, mothers of young children, and female heads of household to protection and assistance that “takes into account their special needs”
- b) Protection from SGBV and other forms of violence and exploitation
- c) The right to access all necessary documents, education and training
- d) The need for internally displaced women to actively participate in decision-making at all stages of displacement

▶ **UN Security Council Resolution 1325**

- Resolution 1325 of October 2000 reaffirms the important role of women in solving conflict and maintaining peace.

▶ **Various UN Security Council (UNSC) resolutions also address issues relating to internally displaced women, including:**

- Access to protection and assistance – Security Council resolutions 1674 (2006), 1894 (2009) and 1379 (2001)
- Sexual violence – Security Council resolutions 1807 (2008) in the Democratic Republic of the Congo and 1556 (2004) in Sudan
- Trafficking – Security Council resolution 1674 (2006)
- Peace, reconciliation and development – Security Council resolutions 1265 (1999) and 1296 (2000)³⁶

▶ **The Puntland Guidelines on Implementation of National IDP Policy henceforth referred to as “the Guidelines”³⁷**

- The Guidelines build on existing international humanitarian law and human rights instruments and relevant national legislation.
- Their objectives are:

To effectively address protection and assistance issues relating to internal displacement in all three phases: protection from displacement, during displacement and after displacement

To harmonize the Puntland IDP Policy principles with those stipulated in the 1998 Guiding Principles on Internal Displacement and with the obligations under the 2009 Kampala Convention, in conformity with international human rights law and humanitarian law

To develop guiding principles in accordance with the Constitution of the State of Puntland thereby ensuring the rights and responsibilities of IDPs as per their constitutional and legal rights

To enhance socio-economic conditions, peace and sustainable development within IDP and host communities

▶ **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention, 2009)**

- The Kampala Convention of December 2009, contains the following

³⁶ <https://www.brookings.edu/wp-content/uploads/2016/06/Improving-the-Protection-of-Internally-Displacement-Women-October-10-2014.pdf>

³⁷ http://www.moipuntland.com/moi/wp-content/uploads/2015/01/IDP_Policy_English_Version_1.pdf

provisions incorporating a gendered approach to protection and assistance, with most pertaining to the specific obligations of State parties:

- i) SGBV: State parties are obligated to “protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing,” various acts, including: “Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labor and human trafficking and smuggling” (Article 9.1.d)
- ii) General protection and assistance: State parties shall “Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases (Article 9.2.c)
- iii) Reproductive and sexual health: State parties shall “Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses” (Article 9.2.d)
- iv) Registration and personal documentation: “Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names” (Article 13)³⁸

Disconnect between existing legal/policy framework and lived realities of IDPs:

- a. The huge focus of gender mainstreaming as conducted by international aid organizations may have the effect of obliterating gender issues specific to IDPs.
- b. IDPs, by definition, remain within national borders, meaning that their own governments are responsible for meeting their protection needs. Unfortunately, their governments are often unable to provide protection and may even be responsible for the displacement.
- c. The need to develop national action plans on the basis of Security Council resolutions is a process that requires a strong state for implementation.
- d. The issue of autonomous regions affects the generalization of existing policies and laws across all of Somalia. For instance, Puntland has instituted a set of guidelines, which for political reasons may not benefit women in other parts of Somalia.
- e. Existing guidelines like the Puntland Guidelines on Implementation of National IDP Policy do not directly state gender issues in the Guidelines’ objectives, but makes reference to the Kampala Convention, which does include gender. Local cultural dynamics may affect the explicit focus on gender issues surrounding internal displacement.

38 Ibid.

Regional Office

Plot 3 Katalima Bend Naguru

P.O. Box 2793, Kampala

Kampala- Uganda

www.sihanet.org

Email: sihahornofafrica@gmail.com

