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**BRIEFING FOR THE HUMAN RIGHTS
COMMITTEE, COUNTRY REPORT TASK FORCE,
138TH SESSION (26 JUNE 2023 - 28 JULY 2023),
WITH RESPECT TO VIOLENCE AGAINST
WOMEN IN: SOMALIA**



Strategic Advocacy
Human Rights

*Submitted by Strategic Advocacy for Human Rights (SAHR),
May 2023*

This thematic report¹ considers the de jure and de facto state of violence against women in the Federal Republic of Somalia (“Somalia” or the “State party”), in particular in relation to sexual violence. In light of the obligation under international human rights treaties to prohibit all violence against women, the global commitment to ending violence against women and girls in the public and private spheres in the context of the 2030 Agenda for Sustainable Development, previous recommendations of the Committee to Somalia, the recommendations of the UN Secretary General’s Study on Ending Violence Against Women, and those made to Somalia during the Universal Periodic Review in 2021, it is our hope that the Committee will:

- raise the issue of violence against women in its List of Issues Prior to Reporting for Somalia, in particular asking what progress is being made on enacting the draft Law legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law; and
- in its concluding observations on Somalia’s State Party Report, recommend that
 - the Sexual Offences Bill or legislation prohibiting all violence against women in all settings, in particular by reference to the UN Model Rape Law be urgently enacted by the State party;
 - amendments of provisions of the Criminal Procedure Code violating the rights of gender-based and sexual violence victims urgently be adopted by the State party;
 - investigations of the use of *xeer* in relation to gender-based and sexual violence be investigated; and
 - an action plan to guarantee access to the formal justice system for all such victims be urgently adopted.

¹ This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

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1. INTRODUCTION²

Strategic Advocacy for Human Rights (**SAHR**)³ is a peer-led non-governmental organization by and for human right defenders working to equip a movement of human rights defenders with the knowledge and tools to end gender-based violence through litigation, policy and law reform.

We submit this written contribution for State parties under review for consideration by the Committee, reporting before the 138th Session (26 June 2023 - 28 July 2023).

This report highlights key legal inequalities that women face in Somalia in relation to violence against women, along with suggested questions to be posed to the State party. Our analysis benchmarks the legislation and practices in Palestine against the UN Model Law on Rape⁴, published by the former UN Special Rapporteur on Violence Against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

The aim of this report is to aid and encourage the UN Human Rights Committee, the State and stakeholders, to review national criminal laws and systems and practice with international standards on rape and sexual violence, particularly the UN Model Law on Rape that updates best practices based on the lived realities and recommendations of civil society and survivors.

We hope that the Committee will utilize this report as a key resource in the course of developing its list of issues for Somalia.

Somalia's existing Penal Code of 1962 (the "**Somali Penal Code**") and Criminal Procedure Code (the "**Somali Criminal Procedure Code**") do not provide adequate protection against gender-based violence against women due to outdated definitions, lack of comprehensive legislation and provisions that limit the victim's ability to seek redress under the formal court system⁵. In particular, the Somali Penal Code is inconsistent with, and has many gaps in comparison to, the UN Model Rape Law and therefore inadequately addresses gender-based violence against women.

The Sexual Offences Bill first proposed in 2017 (the "**Sexual Offences Bill**") aimed to criminalize various forms of gender-based violence, such as rape, child marriage, and sex trafficking, was evaluated to be ground-breaking and more aligned with international human rights standards in addressing gender-based violence against women⁶. However, the enactment of the Sexual Offences Bill has been delayed and remains pending to date. The lack of the State party's political will is also demonstrated in the continued refusal to ratify the Convention on the Elimination of All Forms of Discrimination against

² This report focuses on analysis in relation to the laws and practices of Somalia and does not include review of the laws and practices of the self-governing autonomous regions known as Somaliland or Puntland.

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⁴ United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 5 May 2023]

⁵ N. Nyczak, *He Said, She Said: Assessing the Post-Colonial Legacy on Somalia's Rape Laws*, 37 Emory International Law Review 167, 2023, available at <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1307&context=eilr>, accessed 10 May 2023.

⁶ United Nations Assistance Mission in Somalia, *Women Protection*, accessible at <https://unsom.unmissions.org/women-protection-0>, accessed 10 May 2023.

Women (“CEDAW”) despite repeated recommendations of the Committee and other United Nations Offices and Special Procedures⁷.

Vulnerabilities and the culture of impunity which are being perpetuated by the absence of an adequate substantive legal framework are further exacerbated by procedural and structural issues such as procedural requirements including evidentiary rules hostile towards victims of gender-based and sexual violence and the prevalence of alternative dispute resolution mechanisms that marginalize women. The absence of an adequate legal framework, both procedural and substantive, is particularly concerning in the context of the current surge in violence against women given the economic vicissitudes and the isolation caused by the recent COVID-19 pandemic and multiple displacements and loss of livelihoods due to draughts and floodings, compounded with the climate of insecurity and weak institutional protections that exist due to continuing armed conflict⁸.

We therefore hope that the Committee will urgently raise the issue of violence against women and recommend that:

- the Sexual Offences Bill or legislation prohibiting all violence against women in all settings, in particular by reference to the UN Model Rape Law be urgently enacted by the State party;
- amendments of provisions of the Criminal Procedure Code violating the rights of gender-based and sexual violence victims urgently be adopted by the State party;
- investigations of the use of *xeer* in relation to gender-based and sexual violence be investigated by the State party; and
- an action plan to guarantee access to the formal justice system for all such victims of gender-based and sexual violence be urgently adopted by the State party.

2. KEY ISSUES OF CONCERN

2.1 Limitations of Somali Rape Law and delays in adopting the Sexual Offences Bill

Under current Somali law, rape is primarily defined in the Somali Penal Code by the use of violence or threats against the victim, requiring the demonstration of either force by the defendant or “extreme resistance” from the victim. However, this narrow definition overlooks the complex power dynamics present in gender based and sexual violence cases. The Somali Penal Code’s reliance on the extreme resistance standard excludes victims of rape due to coercion or socioeconomic influence from seeking justice in courts.

⁷ Human Rights Council Working Group on the Universal Periodic Review, *Compilation on Somalia*, (A/HRC/WG.6/38/SOM2), 26 February 2021, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/050/12/PDF/G2105012.pdf?OpenElement>, last accessed 10 May 2023.

⁸ UNFPA, *Overview of Gender-Based Violence Situation in Somalia*, April 2022, available at https://somalia.unfpa.org/sites/default/files/pub-pdf/somalia_gbv_advocacy_brief_09april22.pdf, accessed 10 May 2023.

Under the Somali Penal Code, the primary element of rape is the use of violence or threats against the victim⁹, and the threat must convey immediate danger¹⁰. The current definition of rape and other legislation related to sexual violence in Somalia are not consistent with the UN Model Law on Rape and present various limitations in protecting potential victims from sexual violence and also guaranteeing the rights of victims of gender-based and sexual violence.

Under the current definition of rape pursuant to the Somali Penal Code, rape can be demonstrated either by proving that the defendant used force or by establishing “extreme resistance” from the victim¹¹. Such proof can be provided through eyewitness testimony, which is unrealistic given the private nature of such crimes, or evidence such as bruise marks on the victim or the perpetrator’s body, a threshold that ignores the reality of sexual violence which often involves various types and levels of coercion not limited to physical violence¹².

Rape resulting from other forms of violence and coercion such as exploitation or dominance, or where victims are exposed to fear or manipulation therefore cannot be brought before the Somali courts or only unsuccessfully prosecuted. Reliance on such a narrow definition of rape as a violent crime only and the use of extreme resistance standard exclude victims who experience sexual or gender-based violence due to coercion or socioeconomic influence from seeking justice through the judiciary and other official channels, especially as if these victims attempt to bring their case forward, they may be accused of consenting to the sexual encounter and accused of consent, complicity and immorality¹³.

The long-standing insecurity and other aggravating factors such as drought, the COVID-19 pandemic, and displacement due to flooding only increase risks related to sexual violence that are not directly related to physical violence. The surge in the incidence of sexual violence in recent year does in fact demonstrate that not only sexual and gender-based violence cases due to non-physical violence are prevalent but also rising due to compounded risk factors¹⁴.

To remedy this, the Federal Government of Somalia has been taking steps to draft and adopt a comprehensive sexual offenses law. In 2017, the Sexual Offences Bill was submitted to the Council of Ministers by the federal Ministry of Women and Human Rights. In 2018, the Council of Ministers unanimously adopted the Sexual Offences Bill, which, despite some shortcomings, took positive steps such as:

- the adoption of a consent-based definition of rape;
- defining 18 as the age of consent; and

⁹ Article 398, Para. (1) of the Penal Code.

¹⁰ N. Nyczak, *He Said, She Said: Assessing the Post-Colonial Legacy on Somalia’s Rape Laws*, 37 Emory International Law Review 167, 2023, available at <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1307&context=eilr> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/050/36/PDF/G2105036.pdf?OpenElement>, accessed 10 May 2023.

¹¹ *Ibid*, at 194.

¹² *Ibid*.

¹³ *Ibid*, at 195-196.

¹⁴ UNFPA, *Overview of Gender-Based Violence Situation in Somalia*, April 2022, available at https://somalia.unfpa.org/sites/default/files/pub-pdf/somalia_gbv_advocacy_brief_09april22.pdf, accessed 10 May 2023.

- criminalization of child marriage¹⁵.

However, despite its unanimous adoption by the Council of Minister in 2018, the Sexual Offences Bill met with opposition at the House of the People of the Somali Federal Parliament. In a process that may have deviated from established law and legislative procedures whereby the bill was never properly tabled for debate and adoption at the parliament, the Speaker of the House of the People stated that the bill was reviewed together with religious scholars and lawyers and requested that the bill be re-submitted reflecting several substantive amendments.¹⁶ Five years later and to date, the Sexual Offences Bill still has not been enacted by the State party¹⁷.

Instead, the controversial Sexual Intercourse Related Crimes Bill was proposed for deliberation by the Somali Federal Parliament in August 2020 (the “**Sexual Intercourse Related Crimes Bill**”), threatening to further weaken protections for women and survivors of sexual violence by, among others:

- defining rape as direct and intentional sexual assault, without reference to consent¹⁸;
- omitting the age of consent;
- reducing privacy rights of victims by allowing their sexual history to be admitted as evidence during trial;
- reducing the types of situations where a person’s consent can be violated or invalidated;
- assigning consent to family members rather than the individual;
- permitting child marriage based on physical maturity; and
- significantly reducing the types of admissible evidence.

The Parliament of the Federal Government of Somalia appears to have effectively opted to replace the Sexual Offences Bill by attempting to push forward with the Sexual Intercourse and Related Crimes Bill.

The delayed adoption of the Sexual Offences Bill and the introduction of the Sexual Intercourse Related Crimes Bill are deeply concerning developments as they perpetuate the culture of impunity and absence of substantive protection and redress available to victims of sexual violence.

¹⁵ United Nations Assistance Mission in Somalia, *supra* note 10; Legal Action Worldwide, *Briefing Note on the Somalia Sexual Offences Bill (2018) and the proposed Sexual Intercourse Bill (2020)*, August 2020, available at <https://www.legalactionworldwide.org/wp-content/uploads/LAW-SOB-SIB-Briefing-Note-Aug-2020-2.pdf>, last accessed 10 May 2023.

¹⁶ UN News, *Somalia: Draft law a ‘major setback’ for victims of sexual violence*, 11 August 2020, available at: <https://news.un.org/en/story/2020/08/1070022>, last accessed 11 May 2023.

¹⁷ Somali Public Agenda, *Governance Brief 11: A comparative review of Somalia’s controversial Sexual Offences Bills*, January 2021, available at https://somalipublicagenda.org/wp-content/uploads/2021/01/SPA_Governance_Briefs_11_2021_ENGLISH.pdf, last accessed 11 May 2023.

¹⁸ Legal Action Worldwide, *supra* note 15.

Suggested List of Questions for the State Party

- Please comment on the continued delays in adopting the Sexual Offences Bill, and, whether any parliamentary legislative or judicial measures can be taken to address those delays and ensure the adoption of the Sexual Offences Bill.
- Please clarify the status of the Sexual Intercourse and Related Crimes Bill and whether its adoption is contemplated. If adoption is contemplated, please state the expected timeline and current process for adoption in the Somali Federal Parliament, and, describe the initiatives to prevent the bill from being adopted.

2.2 Procedural and Extra-Legal Challenges for Women in Rape Cases

During procedures before the Somali courts, women face challenges due to the corroborative evidence requirement, which demands additional evidence besides a woman's testimony to support a rape claim. This requirement is applied by Somali judges despite not being explicitly stipulated in the Somali Code of Criminal Procedure. Additionally, the defence can discredit a female rape victim by introducing evidence suggesting an "immoral character," which remains undefined by the Criminal Procedure Code. Furthermore, Somali judges often overly rely on medical reports, which may not be conclusive in determining non-consensual sexual assault, potentially hindering the pursuit of justice for rape victims.

A significant challenge faced by women in Somali courtrooms is the corroborative evidence requirement. The corroborative evidence requirement, despite not being explicitly stipulated in the Somali Code of Criminal Procedure, is a common law rule used by Somali courts in sexual violence cases. The requirement dictates that forensic evidence or additional testimony by witnesses is necessary to "corroborate" a woman's testimony as it alone is not sufficient to support a rape claim due to the prevalence of false rape charges¹⁹. This requirement was endorsed by the Supreme Court of Somali Republic when it held that a woman's testimony alone cannot be used to prove rape cases²⁰. Such a rule not only treats women as inherently unreliable and untrustworthy, but also violates the right to non-discrimination and the right to an effective remedy guaranteed under Article 2 of the International Covenant on Civil and Political Rights (the "**Covenant**") and the right to equality before the law and equal protection of the law under Article 26 of the Covenant.

Furthermore, under the Somali Criminal Procedure Code, the defence may discredit a female rape victim by introducing evidence that suggests she has an "immoral character"²¹. In addition to the existence itself of this problematic element which applies exclusively to female victims, the Criminal Procedure Code does not provide a definition for "immoral character" nor specifies which evidence is admissible as proof, making it impossible for women who are victims of sexual violence to prepare for and defend against such evidence²². The assumed immorality and unreliability of women is therefore

¹⁹ Nyczak, *supra* note 10 at 172.

²⁰ *Ibid*, at 203.

²¹ Criminal Procedure Code, art. 197.

²² Nyczak, *supra* note 10 at 207.

both recognized and enforced by Somali courts statutory and common law rules, adding to the violations of rights enshrined in Articles 2 and 26 of the Covenant.

Additionally, Somali judges rely heavily on medical reports both as a means to satisfy the corroborative evidence requirement and as a tool to assess the sexual history of the victim²³. In addition to such reliance on medical reports introducing a supplemental burden to victims who have limited access to the medical system, these reports only address the condition of the victim's hymen and any physical injuries sustained, further narrowing and reinforcing the definition of rape that is limited to violent assault under the Somali Penal Code.

Finally, the low representation of women in the justice and the surrounding administrative system add to the difficulties faced by the victims in both safely navigating the Somali judiciary and law enforcement²⁴. This further exacerbates the general problem present in the State party in relation to access to justice due to limited governmental resources and ongoing instability, presenting a landscape of compounded roadblocks and obstacles which entrench the culture of impunity and contribute to the general silencing of women victims.

Suggested List of Questions for the State Party

- Please report on the concrete steps taken to amend the Criminal Procedure Code in order to guarantee equality before the law and equal protection before the law, such as ensuring evidentiary requirements under the Criminal Procedure Code are equal regardless of gender and deleting the provisions under the Criminal Procedure Code related to evidence of “immoral character” in sexual violence cases.
- Please describe the current state of use of the corroborative evidence requirement by Somali judges, in particular in relation to rape cases.
- Please describe the concrete steps taken to prevent the use of the corroborative evidence requirement by Somali judges, in particular in relation to rape cases.
- Please report on actions taken and concrete steps planned to increase representation of women in public life, especially in the legal and administrative system.

2.3 **Withdrawal of Cases and Preference to Settle Disputes with Elders**

Cases related to sexual and gender-based violence are often withdrawn from official courts and settled through traditional dispute resolution mechanisms, causing the victims' access to justice to be further limited and the victims' rights to be further violated as compensation is provided to male relatives of the victim or victims are requested to marry the perpetrator.

In addition to the existing difficulties both in substantive law and procedural limitations, frequent recourse to the alternative dispute resolution systems further silence victims of gender-based violence

²³ *Ibid.*

²⁴ United Nations, *Somalia: UN official underlines need to advance women's participation in public life*, 23 February 2023, available at <https://news.un.org/en/story/2023/02/1133792>, last accessed 10 May 2023.

in Somalia. This is a problem existing in conjunction with and parallel to the weak protection and provided by the existing legal system.

As documented in the Report of the Office of the United Nations High Commissioner for Human Rights, the Somali legal system addressing sexual violence draws from various sources, and despite that avenues for redress for victims include Islamic law, *xeer* (customary and traditional law) and the formal justice system²⁵, most cases were dealt with under *xeer* and Islamic law²⁶. Under the *xeer* system, clan elders act as mediators or arbiters, and play a central role in the resolution of local and intra-clan disputes²⁷. Although the *xeer* system is a valuable alternative dispute resolution mechanism, the Report notes that *“as currently practised, those systems often resulted in further victimization of women and girls, with no justice for survivors, and impunity for perpetrators.”*²⁸

In particular, when victims withdraw cases from the court system, families agree on out-of-court settlements involving *diya* (blood money) payments, where male relatives of the victims will receive compensation or the victim would be requested to marry the perpetrator according to *xeer*²⁹. Victims of sexual violence are therefore further marginalized and obtain neither access to justice nor redress under the prevailing dispute resolution mechanisms, in violation of their human rights guaranteed under the Covenant, notably articles 2, 3, and 26.

Suggested List of Questions for the State Party

- Please report on the prevalence of use of *xeer* for gender-based and sexual violence cases.
- Please provide statistics related to the rate of prosecution and conviction of gender-based and sexual violence cases and withdrawal of such cases.
- Please report on the concrete steps taken and existing plans to increase and guarantee access to the formal justice system to victims of gender-based and sexual violence.

²⁵ United States Department of State, 2020 Report on International Religious Freedom : Somalia, 12 May, 2021, available at <https://www.state.gov/reports/2020-report-on-international-religious-freedom/somalia/>, last accessed 10 May 2023.

²⁶ Human Rights Council Working Group on the Universal Periodic Review, *supra* note 7, para. 53 *et seq.*

²⁷ European Union Agency for Asylum, the “Country Guidance: Somalia” (last updated: June 2022), available at: <https://euaa.europa.eu/country-guidance-somalia-2022>, last accessed 11 May 2023.

²⁸ *Ibid.*

²⁹ *Ibid.*: IGI GLOBAL, *What is “Diya”*, available at <https://www.igi-global.com/dictionary/experiences-and-employability-of-nigerien-migrants-in-algeria-and-libya/93698>, last accessed 10 May 2023.

In addition to the above observations, we annex a table comparing the State's law on rape and sexual violence with the UN Model Law on Rape. This table demonstrates the extent to which the State's law complies with internationally accepted standards and the articles of the ICCPR as above-mentioned.

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
A. Criminalization of rape		
Article 1. Definition of rape 16. A person (the perpetrator) commits rape when they: (a) engage in non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or (b) cause non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or (c) cause the victim to engage in the non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.	The Penal Code of 1962 does not use the term 'rape' but instead uses the term 'carnal intercourse' under Article 398 of the Penal Code: <i>"1. 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."</i> <i>2. The same punishment shall be imposed on anyone who has carnal intercourse with a person of the other sex who is incapable of giving consent or with a person who has been deceived by the offender personating as another person.</i> <i>3. The same punishment shall be imposed also on a public officer [240 a P.C.] who, by abusing his power, has carnal intercourse with a person of the other sex who is under arrest or detained in custody under the said officer by reason of his office or entrusted to him in execution of an order of the competent authority.</i> <i>4. For purposes of penal law [398, 400 P.C.], penetration of the male sexual organ shall constitute carnal intercourse."</i>	The definition of rape is vague (e.g., it does not explicitly include all forms of penetration including oral and anal penetration); it is based on intercourse with a person of the other sex (i.e., does not envisage homosexual acts); and it overemphasizes force and coercion.
Article 2. On consent 17. Consent must be given voluntarily and must be genuine and result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from: (a) silence by the victim;	N/A	There is no sophisticated doctrine of concept under the Penal Code – it is limited to incapability of giving consent, and deception of the victim by impersonation and misuse of power.

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
(b) non-resistance, verbal or physical, by the victim; (c) the victim's past sexual behavior; or (d) the victim's status, occupation or relationship to the accused.		
Article 3. Age of consent (a) A person is considered incapable of giving genuine consent when they are a person below the age of 16. (b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.	Article 29 (8) of the Provisional Constitution (2012) defines a "child" as any person under 18 years of age.	However, there does not appear to be any provision regarding the minimum age of sexual consent.
Article 4: incapability of giving consent A person is considered incapable of giving genuine consent: a. when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly; when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.	N/A	There is no sophisticated doctrine of concept under the Penal Code – it is limited to incapability of giving consent, and deception of the victim by impersonation and misuse of power.
Article 5. Use of force, threat or coercion	N/A	There is no sophisticated doctrine of concept under the Penal Code – it is

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range of coercive circumstances, including, but not limited to, circumstances in which: - the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim's subjugation or acquiescence; or b. the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.		limited to incapability of giving consent, and deception of the victim by impersonation and misuse of power.
Article 6. On presumed lack of consent Lack of consent is presumed when: a. The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly; b. When an illness, bodily injury, or other particular vulnerability has an impact of the victim's ability to consent; or c. When the perpetrator is in a position of power, trust, influence or dependency over the victim and may have taken advantage of that position to force participation.	Article 398 of the Penal Code: <i>2. The same punishment shall be imposed on anyone who has carnal intercourse with a person of the other sex who is incapable of giving consent or with a person who has been deceived by the offender personating as another person.</i> <i>3. The same punishment shall be imposed also on a public officer [240 a P.C.] who, by abusing his power, has carnal intercourse with a person of the other sex who is under arrest or detained in custody under the said officer by reason of his office or entrusted to him in execution of an order of the competent authority.</i>	There are rudimentary provisions in the Penal Code about presumed lack of consent where the victim is incapable of giving consent (although this is not expounded in any detail), and where there is deception of the victim by impersonation and misuse of power (again, this is not expounded in detail as are the UN Model Rape Law provisions)

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence or dominance over the victim: a. in a school, hospital, religious, correctional or care facility setting; b. in a professional or occupational setting; c. in a residential care facility, community home, voluntary home, children's home or orphanage; d. in the context of providing the victim medical, psychological or psycho-social support or treatment; e. in a guardian-ward relationship; f. by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or (g) by otherwise being generally involved and responsible for the care, training or supervision of the victim.		
Article 7. Sentencing	Articles 398, 399 and 401 of the Penal Code stipulate that "carnal intercourse", "acts of lust committed with violence", and "Abduction for Purposes of Lust or Marriage" are punishable with 5-15 years, 1-5 years and	

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
(a) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive and commensurate with the gravity of the crimes. (b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes. (c) States should not allow conditional sentences and/or community service or fines alone as sanctions. (d) The death penalty should never be imposed for rape.	2-5 years of imprisonment respectively. Article 400 provides that for “Unnatural Offences Committed with Violence” the punishment under articles 398 and 399 shall be increased (as the Penal Code indicates this as an aggravating circumstance).³⁰	
Article 8. Aggravating circumstances 22. The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties. 23. The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape: (a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:	Penal Code Art. 39 (Ordinary aggravating circumstances) i) having committed the act with abuse of power or in violation of duties inherent in a public office or in a public service; k) having committed the act with abuse of authority or of domestic relationship or with abuse of one’s position in an office, or in connexion with performance of work, dwelling together or extending or receiving hospitality. Art. 398 (Carnal violence) 2.- The same punishment shall be imposed on anyone who has carnal intercourse with a person of the other sex who is incapable of giving	The aggravating circumstances under the Penal Code does not meet the requirements under the UN Model Rape Law. According to Art. 398, sexual offence by a public officer is only subject to the same penalty as a crime committed by a non-public officer. Noticed that there are provisions on the aggravating factors under the draft Sexual Offences Bill, including if the survivor is under 11 years of age, pregnant, has a disability, is a refugee, IDP or elderly; if the perpetrator used a weapon; if the perpetrator offender

³⁰ See Article 118. (Increase of Punishment in the Case of a Single Aggravating Circumstance): Where there occurs only one aggravating circumstance, and the increase of punishment is not fixed by law, the punishment which should be imposed for the offence committed shall be increased up to one third. However, the punishment of imprisonment for a crime to be applied by reason of the increase shall not exceed thirty years.

(i.) the offence was committed against a former or current spouse or partner; (ii.) the offence was committed by a member of the family or a person cohabiting with the victim; (iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority or other unequal power relationship with the victim; (iv.) the perpetrator is an agent or contractor of the State, or has authorization, support or acquiescence from one or more agents or contractors of the State; (b) conditions of the victim or context that make them particularly vulnerable to sexual violence: (i.) the offence was committed against a victim who for any reason is imprisoned or detained; (ii.) the offence was committed against a child or against an older person; (iii.) the offence was committed against or in the presence of relatives of the victim or any child; (iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of	consent or with a person who has been deceived by the offender personating as another person. 3.- The same punishment shall be imposed also on a public officer who, by abusing his power has carnal intercourse with a person of the other sex who is under arrest or detained in custody under the said officer by reason of his office or entrusted to him in execution of an order of the competent authority. Art. 400 (Unnatural offences committed with violence) Where any of the acts referred to in articles 398 and 399 is committed against a person of the same sex or a person of different sex, against nature, the punishment shall be increased. Art. 401 (Abduction for purposes of lust or marriage) 1. Whoever, with violence, thereat or deceit, abducts or detains a person for purposes of carnal violence or lust shall be punished with imprisonment from two to five years. 2. Whoever, with violence, threat or deceit, abducts or detains, for purposes of marriage an unmarried person, shall be punished with imprisonment from one to three years, 3. Whoever abducts or detains a person who is incapable of giving consent, for purposes of carnal violence, or lust, or marriage, shall be punished with prescribed respectively in the two preceding articles.	is a repeat offender with previous convictions for sexual offences; etc. However, the full text of the draft Sexual Offences Bill is not publicly available.³¹
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³¹ Based on the Condensed Sexual Offences Bill prepared by the Legal Action Worldwide, available at: <https://www.legalactionworldwide.org/wp-content/uploads/Condensed-Sexual-Offences-Bill.pdf>

armed conflict, political violence or other social disturbance, during human trafficking or migration, labour exploitation, sexual exploitation or natural disasters; (v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status; (vi.) the offence was committed against a pregnant person; (c) the ways in which the offence is carried out: (i.) the offence was committed by two or more people acting together; (ii.) the offence, or related offences, were committed repeatedly; (iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence; (iv.) the offence was committed with the use or threat of use of a weapon; (v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances to maintain control over the victim;		
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(vi.) the perpetrator had previously been convicted of offences of a similar nature; (vii.) the offense was filmed or photographed by the perpetrator. (d) the consequences of rape to the victim: (i.) the offence resulted in severe physical or psychological harm or disability for the victim; (ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.		
Article 9. Mitigating circumstances States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions or so-called honour that are contrary to international human rights law in cases of rape. (a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim's family; (b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.	No equivalent provision.	

25. Mitigating circumstances that should be prohibited include, but are not limited to: (a) if the perpetrator marries or desires to or attempts to reconcile with the victim. (b) the wish of the perpetrator, or the perpetrator's family or community, to compensate for the harm. (c) character or reputation of the perpetrator; (d) prior history of behaviour to insinuate blame on the part of the victim.		
Article 10. Withdrawal of parental rights (a) States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests: (a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process. (b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women	No equivalent provision.	

should be taken into account when deciding on parental rights. (c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child's right benefit accruing from their paternity.		
Article 11. Victim-centred approach a) A victim-centred approach places the victim at the center of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are supported throughout the process, and free legal aid is available where appropriate; b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation; c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary	No equivalent provision.	Noticed that there are provisions on the protection orders under the draft Sexual Offences Bill as follows: the court may grant a protection order, which mandates that the accused must legally act in a certain way, to protect the survivor, family members, witnesses, medical practitioners, lawyers or humanitarian workers related to the case.³²

³² Ibid.

for the purposes of the criminal proceedings; d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice, unless a reasoned decision has been made to the contrary.		
Article 12 – Child victims and witnesses of rape (a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration. (b) Every child victim or witness of rape shall be treated according to the following general principles: (i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity. (ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.	No equivalent provision.	Noticed that there are provisions on the rights of survivor and witnesses under the draft Sexual Offences Bill as follows: the survivor has a right to free medical care, including counselling, and other necessary assistance. Survivors and witnesses have the right to confidentiality and privacy. In addition, the draft Sexual Offences Bill also defines and criminalises offences committed against children, including the above offences and some offences specifically relating only to children, such as: • Causing or inciting a child to engage in a sexual activity • Child marriage • Meeting or grooming a child for sexual purposes

(iii.) The privacy of a child victim or witness shall be protected. (iv.) Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court. (v.) A child victim or witness shall have the right to express his or her views, opinions and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process. (c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances: (i.) At his or her request; (ii.) At the request of his or her parents or guardian; (iii.) At the request of the support person, if one has been designated; (iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child. (d) If at any stage in the justice process the safety of a child victim		• Production, sale, distribution and possession of child pornography³³
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³³ Ibid.

or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following: (i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process; (ii.) Requesting restraining orders from a competent court; (iii.) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions; (iv.) Requesting an order from a competent court to place the accused under house arrest; (v.) Requesting protection for a child victim or witness by the police or other relevant agencies; (vi.) Making or requesting from competent authorities’ other protective measures that may be deemed appropriate.		
Article 13. Investigation (a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime; (b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;	No equivalent provision.	Noticed that there are provisions on the reporting and handling reports of an offence under the draft Sexual Offences Bill as follows: • Any delay in filing a complaint by the survivor will not be used against them;

(c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases; (d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services; (e) Investigators/police officers should conduct initial interviews in a gender- sensitive and trauma-informed manner and with due respect for the right to privacy. (f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary; (g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to protect the victim and their family as necessary;		• A complainant shall not be prosecuted or sued in civil proceedings for reporting a sexual offence unless they knew the complaint was false; • Any medical facility can issue a medical certificate that may be used in court (not just Madina Hospital); • A survivor does not need a police referral to get a medical certificate; • A public official who discloses the identity of the survivor commits an offence; • Any person who obstructs, undermines or interferes with the administration of justice under the Act commits an offence.³⁴
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(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.		
Article 14. Ex officio prosecution (a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement; (b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.	No equivalent provision.	
Article 15. Timely and without undue delay (a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings; (b) All reports of rape should be taken seriously and investigated promptly, thoroughly and impartially;	No equivalent provision.	

(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.		
Article 16. Evidentiary requirements, rape shield provisions 27. States should ensure an objective, gender-sensitive assessment of the evidence in rape cases: (a) Introduction of evidence regarding the victim's past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination; and should be permitted only when relevant and necessary; (b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation; (c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable and sufficient as a basis for conviction, considered in the context of the particular case;	No equivalent provision.	The draft Sexual Offences Bill proposes rules relating to admissible evidence: • A medical certificate may be adduced as evidence but is not necessary to opening an investigation, prosecuting a case or convicting an offender; • A medical certificate should outline the injuries sustained but not make a conclusion about whether or not rape has occurred; • Any medical professional is authorised to provide a medical certificate with or without a referral from the police. • Failure to produce forensic evidence shall not be a bar to prosecution. • The injured party's sexual history is inadmissible as evidence in a sexual offence case.

(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act. (e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.		
Article 17. Statutory Limitations (a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict; (b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.	Penal Code Art. 84 (<i>Time Limit for Complaint</i>). Except as otherwise provided by law, the right of making complaint may not be exercised after the lapse of one month from the date when the act constituting the offence was brought to the notice of the party injured.	Art. 84 of the Penal Code reads that a survivor of sexual violence needs to file a complaint within one month of the incident, which is an excessively short time period. The draft Sexual Offences Bill has a provision that any delay in filing a complaint by the survivor will not be used against them.
Article 18. Jurisdiction and Cooperation between States States should: i. Establish jurisdiction over offences of rape, when the offence is committed: ii. in their territory; or iii. on board a ship flying their flag; or iv. on board an aircraft registered under their laws; or	Penal Code Art. 6. (<i>Offences Committed in the Territory of the State</i>). 1. Whoever commits an offence in the territory of the State shall be punished according to Somali penal law. 2. An offence shall be deemed to be committed in the territory of the State where the act or omission constituting it occurred therein in whole or in part, or where the consequences of the act or omission occurred therein. Art. 10 (<i>Recognition of Foreign Penal Judgements</i>). 1. A foreign penal judgment pronounced in respect of a crime may be recognized:	

v. by one of their nationals. (a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed. (b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances or humanitarian crises. (c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating and prosecuting all rape cases, protecting and providing assistance to victims and providing mutual legal and other necessary assistance in criminal matters, extradition and enforcement of relevant civil and criminal judgments by judicial authorities of other States, including protection orders.	a) to establish that the offender is a recidivist or to establish any other penal consequence of a conviction, or to pronounce that the offender is a habitual or professional delinquent, b) where the conviction would involve an accessory penalty according to Somali law [...] Art, 11 (<i>Extradition</i>) 1. Extradition may be granted only in the cases and in the manner established by law and required by international conventions. 2. Extradition shall not be granted unless the act which gives rise to the demand for extradition is an offence under Somali law and the foreign law. [...]	
Article 19. Prohibition of mandatory reconciliation or mediation The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings. (a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.	No equivalent provision.	

(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime		
Article 20. Victim-centred protection measures States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by: (a) Providing for the protection of victims, their family members and witnesses from intimidation, retaliation and secondary victimization, including through physical protection of victims and their family members where necessary; (b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence remotely or through the use of communication technology in a place the victim deems safe; or by utilizing witness protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s); (c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from	Penal Code Art. 82 (<i>Exercise at the Right in the Case at Persons Under Disability</i>) 1. Where the party injured is under fourteen years of age or is under a disability by reason of mental infirmity, the right of making complaint may be exercised by his legal representative. 2. In the case of absence or disability of the legal representative or where the legal representative has conflicting interest with those of the party injured, the right of making complaint may be exercised by a special representative.	Other than the generic provision applicable to minors or the disabled set out in Art. 82 of the Penal Code, these does not appear to be protection measures for victims of sexual offenses. As noted above, the draft Sexual Offences Bill provides for rights of victims and protection measures: • Any medical facility can issue a medical certificate that may be used in court (not just Madina Hospital); • A survivor does not need a police referral to get a medical certificate; • A public official who discloses the identity of the survivor commits an offence; • Protection orders: The court may grant a protection order, which mandates that the accused must legally act in a certain way, to protect the survivor, family members, witnesses, medical practitioners, lawyers or

identifying victims of rape before conclusion of the trial and without the victims' consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like; (d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case; (e) Enabling victims to exercise their right to legal aid, interpretation and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim. (f) Assessing the victim's specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to: (i.) ensuring that interviews with the victim are conducted in their home or residence or in premises specially designed or adapted for that purpose by		humanitarian workers related to the case; • The survivor has a right to free medical care, including counselling, and other necessary assistance. Survivors and witnesses have the right to confidentiality and privacy; • Rights of children: Children have all the rights of other survivors, as well as additional rights, including to special care and attention; • Rights of persons with a disability: Persons with a disability have all the rights of other survivors, as well as additional rights, including with regard to accommodation, education, medical treatment and care; • Rights of survivors of sex trafficking: Survivors of sex trafficking have a right to lawfully reside in Somalia, or may alternatively request assistance to be safely repatriated to the country of their lawful residence or citizenship.
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	an interviewer of the same sex without undue delay; (ii.) ensuring the presence of parents or a person trusted by the child while recording a child's testimony, which could include representatives from specialist civil society organizations working to address or support victims of rape; an (iii.) in the case of victims with physical, psychological, mental or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist or other person familiar with appropriate communication techniques for example braille, sign language or other electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim; (iv.) ensuring that interviews with the victim are carried out by or through		
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professionals trained for that purpose; (v.) ensuring interpretation and or translation services; (vi.) ensuring psycho-social and legal support, and covering travel expenses incurred. (g) Ensuring that protection orders are efficient, available and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.		
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