

WOMEN'S HUMAN RIGHTS IN SOMALILAND



NAGAAD

Ministry of Justice

Progressio Somaliland

WOMEN'S HUMAN RIGHTS IN SOMALILAND

MARIA BEATA TUNGARAZA
NAGAAD WOMEN'S HUMAN RIGHTS ADVISOR

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ABOUT THE AUTHOR

Maria Beata Tungaraza is a Tanzanian lawyer with a Master of Laws Degree (LLM) from Georgetown University Law Center, Washington, USA, a Post-Graduate Diploma in Law from Monash University, Melbourne, Australia, and a Bachelor of Laws Degree (LLB) from Dar es Salaam University, Tanzania. Ms Tungaraza was awarded a Monash University Graduate Award and a Women's Law and Public Policy Fellowship Award from Georgetown University.

Her graduate thesis 'Women's Rights and the AIDS Epidemic in Tanzania' was published in 2005 in the book *Voices of African Women: Women's Rights in Ghana, Uganda and Tanzania*. Ms Tungaraza wrote this in her capacity as Women's Human Rights Advisor for Nagaad, a women's rights umbrella organization in Somaliland.

With over 20 years' experience in international human rights law, Ms Tungaraza has considerable expertise in the following: leadership and advocacy for women in Africa; international comparative rights of women; women's law and public policy; gender and the law; law and development; HIV/AIDS law; policy and dispute settlement; international law and international contracts. She founded the Global White Ribbon Alliance for Safe Motherhood in Tanzania and her contribution to promoting gender equality and women's human rights – with action-oriented results – is recognized at local and international levels.

Ms Tungaraza carried out a study entitled 'Review and Assessment of Laws Impacting on HIV/AIDS in Tanzania' for the Tanzania Women Lawyers Association, which led to the development of the AIDS Act 2008, which was passed by the National Parliament of the United Republic of Tanzania in February 2008 and assented by the President of the United Republic of Tanzania in April 2008. Ms Tungaraza has strong experience in managing international development projects in the context of international donors.

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ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSO	Civil society organizations
IEC	Information, education and communication
FBOs	Faith-based organizations
HIV	Human Immunodeficiency Virus
NGOs	Non-governmental organizations
PLHA	People living with HIV/AIDS
PMTCT	Prevention of Mother to Child Transmission Treatment
SMEs	Small and medium enterprises
STIs	Sexually transmitted infections
UN	United Nations

FOREWORD

This publication has come at an opportune time when Somaliland is going through a period of socio-economic and development reconstruction. Somaliland recognizes that a true democratic nation is built on the solid foundation of the principle of equality of all people, and that any form of discrimination hampers the pace of development. In pursuit of this aim, gender inequality must be seen as a major obstacle to socio-economic and political development.

In abiding by the principle of equality enshrined in the Constitution of the Republic of Somaliland, the Sharia and international human rights instruments, the Republic of Somaliland has taken various measures to ensure equality among all its citizens, in particular, gender equality and equity. Coupled with legislative, administrative and policy measures that enable all participants to play a role in attaining gender equality and gender equity, Somaliland will in the near future record remarkable achievement in sustainable social and economic development.

We believe that this publication on women's human rights in Somaliland will benefit community members and stakeholders at all levels, providing them with a deeper understanding of the law, policy and practice impacting on gender equality and women's human rights in Somaliland. We acknowledge with thanks the input of all who have contributed, and hope for continued informed cooperation so that we can achieve a full realization of democracy and good governance, which recognizes the equality of all citizens as its cardinal principle.

Minister for Justice

STATEMENT

Since its inception in 1997, Nagaad, a women's rights umbrella organization in Somaliland, has tirelessly advocated gender equality, equity and gender mainstreaming in the political arena. Influencing the law, policy and practice for improved gender equality and women's human rights in Somaliland continues to be a key agenda for Nagaad.

Having survived the catastrophic wars and witnessed the attainment of a democratic government, Nagaad has noted the widely-felt need for promotion of gender equality as a means for sustainable socio-economic and political reconstruction of Somaliland, acknowledging that gender equality and equity are an intrinsic part of national development. The non-recognized status of the Republic of Somaliland notwithstanding, that women's rights are fundamental to human rights is well recognized under the Constitution of the Republic of Somaliland, and explicitly spelt out under the Sharia and international human rights instruments.

Despite the fact that Somaliland has not ratified international human rights treaties (pending its recognition as an autonomous government by the international community) the Constitution recognizes international human rights instruments, including the 1995 Fourth World Conference on Women, held in Beijing, which called for international commitments to improve the rights of women, and the Millennium Goals, agreed by United Nations member states to strengthen human rights, peace and development. Guided likewise by the Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW), Nagaad continues to advocate for policy and legislative reforms to ensure a true democratic society that promotes, protects and defends gender equality and women's human rights in Somaliland.

Nagaad believes that we can look forward to a time in the near future when Somaliland will be recognized by the international community for its remarkable attainment of good governance, such as Constitutional reforms that provide for affirmative action to increase women's participation in politics and the decision-making process as a vital human right; policy and legislative reforms for the abolition of harmful traditional practices; gender mainstreaming in poverty-alleviation strategies; government gender budget initiatives and legislative development against sexual and gender-based violence. Furthermore, community members will continuously advocate for gender equality and women's human rights in Somaliland. This publication will serve to inform various stakeholders on the status of women's human rights in Somaliland and encourage action-oriented dialogues and debates at all levels for sustainable positive impact.

Nagaad Executive Director

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I wish also to express my special gratitude to Progressio, the international development agency, which provided timely financial and technical assistance to make this publication a reality. Dr Adan Yusouf Abokor, Country Director, Progressio, merits particular appreciation for his inspiration and contribution.

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The community members are highly appreciated of for their insights on customary law and practice impacting on gender equality, equity and mainstreaming in the political arena and decision making processes at all levels.

This publication would not have been complete without the contributions from the Government, Parliament, judiciary, traditional and religious leaders, international development agencies, legal professionals, civil society organizations and community members.

To all of you, I say thank you very much.

Maria Beata Tungaraza

INTRODUCTION

Since the reassertion of its sovereignty in 1991, the Republic of Somaliland has focused on peace-building and the reconstruction of its nation, which was adversely affected by the war. The process of peace-building and socio-economic reconstruction towards national development required a concerted effort of both men and women to ensure growth and good governance in all sectors. Women played an active role in this process but were soon marginalized by negative traditions and customs that perceived national development as a male domain. This perception stemmed from the patriarchal lineage of the clan-based system, which recognizes male dominance and perpetrated gender inequality through customary laws. The norm of gender inequality, which was once a feature of nomadic society, is gradually proving untenable to meet the challenges of the new millennium as well as national and international development.

While gender inequality continued to affect national development, the effects of the war obstructed the development of the policy and legal environment needed for growth in all sectors. In a bid to make inclusion a priority of policy making, it was felt there was a strong need for Somaliland women to advocate gender equality, equity, gender mainstreaming in all sectors and increased women's participation in the political arena. Influencing the policy and legal framework affecting gender equality is a pre-requisite of national development, and this is the main objective of this publication.

The findings of this publication reveal that there is political will expressed by the current government's leadership to promote gender equality, equity and gender mainstreaming. The development of the policy and legal framework for promoting gender equality is hindered by negative traditional attitudes, customary laws and lack of government gender budgets. Furthermore, the process of gender mainstreaming in all sectors has been difficult to implement. In this context, it will be argued that:

- (i) Women's rights are human rights. Gender equality is a pre-requisite to sustainable national development;
- (ii) Influencing the policy and legal environment of women's rights for positive change is imperative;
- (iii) Codification of customary laws is necessary, so the people of Somaliland can identify the gaps that negate the principle of equality. Cultural and traditional biases against women hinder the realization of the principle of equality and are reflected in customary laws and practice. Pursuant to CEDAW, states are obliged to identify and eliminate all forms of discrimination against women. This includes policies, practices and laws that are discriminatory. The codification of customary laws will, *inter*

alia, promote the positive principles of customary laws that positively maintain the identity of Somaliland people as a sovereign nation;

- (iv) Amendment of the Constitution to provide affirmative action for increased opportunities for women in education, employment, commerce, politics and decision-making is of crucial importance for reinforcing gender equality and women empowerment;
- (v) Harmonization of the sources of law is important, in order to avoid laws overlapping and conflicting. While all other sources of law in Somaliland are in harmony concerning gender equality, some principles of customary law run to the contrary. This ambiguity in law is due to the fact that customary law is not codified, and might lead to inconsistent legal norms because traditional courts have the discretion to apply and interpret any source of law;
- (vi) Establishment of government gender budgets is necessary to ensure effective women's rights interventions, including gender mainstreaming in all government sectors;
- (vii) Integrating gender mainstreaming in poverty alleviation strategies is needed to ensure the economic empowerment of women;
- (viii) Legislative development, with legal and regulatory reforms geared towards a rights-based practice for protection of the rights of women under general human rights law, is an important tool for promoting human rights for women. Special attention should be made to develop legislation against sexual and gender-based violence;
- (ix) Guaranteeing women's human rights through a positive approach, by moving from policy to practical enforcement and practice, is essential;
- (x) Adding more women to the Human Rights Commission and legal profession are important for eliminating gender bias in and ensuring that women are part of the decision-making process.

This publication was developed through qualitative research, consulting secondary and primary data. Consultative meetings with community members, civil society organizations, women's rights activists, traditional and religious leaders, the Attorney General's Chambers, The Law Reform Commission, members of the judiciary, parliamentarians and government leaders informed the research findings. The publication, investigating how women's human rights issues can be achieved within legal, policy and practice frameworks, serves as a guide to policy-makers and stakeholders at all levels. It will encourage action-oriented dialogues and debates to achieve positive impact and contribute to the sustainable development of Somaliland.

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This publication is therefore divided into eight chapters. Chapter one addresses the context and rationale for advocating for women's human rights. Chapter two examines the Somaliland legal system. Chapter three focuses on women and property rights. Chapter four is on women and inheritance rights. Chapter five deals with women rights in relation to agriculture. Chapter six tackles issues relating to violence against women. Chapter seven analyses the policy and legal issues relating to women and AIDS. Chapter eight provides intervention strategies.

CHAPTER ONE

CONTEXT AND RATIONALE

Women's rights are human rights. Human rights are inherent rights vested in a human being simply because he/she is a human being.

The human rights of women has become a developmental issue. Gender inequalities can prevent a society from realizing its full potential in all areas of development - economic, social, and political. To hasten the pace of development in Somaliland, it is important to ensure that women's human rights are integrated into the country's planning and budgeting, and mainstreamed in all aspects of development.¹ Since the Declaration of Somaliland in 1991, women in Somaliland have played an active role in moving towards peace, reconciliation and reconstruction.² Despite this, they remain disadvantaged politically, economically and socially. The patriarchal clan-based system, reinforced by customary laws, continues to weaken women's social, economic and political status.

Inter alia, the Somaliland war of independence from Siad Barre's regime had an impact on gender disparity, since it adversely affected the country socially, economically and politically, so that enabling policies and the legal framework needed for reconstruction stagnated. Data collection and the establishment of the National Bureau of Statistics – important tools for positive intervention - were also brought to a halt, and even to date there is no central source of statistics to accurately provide data on gender disparity.

The Ministry of Family Affairs and Social Development, which has the overall mandate for coordinating women's rights and gender interventions, was only established in 2006.³ Needless to say, gender mainstreaming is perceived as the responsibility of the Ministry of Family Affairs and Social Development, instead of as a multisectoral issue. The Government budget is very meager, accounting for less than \$30 million; consequently, the development of enabling policies and laws to cater for gender mainstreaming has been a very slow and painful process.

The priority for government budgets during the post-conflict phase inevitably focused mainly on peace and security. Despite the Constitution's provisions for the principle of equality, over a decade passed after the war without the establishment of any enabling laws and policies, allowing gender discriminatory practices and

¹ Maria B Tungaraza: *Women's Rights and the AIDS Epidemic in Tanzania*, Chapter Three: Johanna Bond: *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania* Carolina Academic Press, 2005.

² Progressio: *Women's Human Rights Advisor*, March 2007, p3.

³ Government statement provided by the Honourable Ahmed Hassan Yussuf, Director General, Ministry of Family Affairs and Social Development, during a consultative meeting held in Hargeisa, July 2007.

laws to persist, impact negatively on women's status socially, economically and politically.

(i) Women's Social Status

Socially, public attitude has tended to favour male dominance over women, although the Constitution of the Republic of Somaliland does not condone any form of discrimination.⁴ By virtue of Article 8 of the Constitution of the Republic of Somaliland:

'All citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of color, clan, birth, language, gender, property, status, opinion etc.' It is further provided that: 'Precedence and discrimination on grounds of ethnicity, clan affiliation, birth and residence is prohibited; and at the same time programmes aimed at eradicating long-lasting bad practices shall be a national obligation.'

The Constitution also provides for equal opportunity of all citizens in terms of education, employment and health.⁵ It goes further to recognize special needs in the health, care, development and education of vulnerable mothers, children and mentally disabled persons.⁶ The principle of non-discrimination is also expressed in international human rights instruments, which are recognized by the Government of Somaliland.⁷

Women's human rights are constrained by inadequate legal literacy amongst women, as the existing legal system does not reach the majority of women who live in rural areas. Coupled with this, there is a discriminatory application of statutory laws, inadequate legislative protective mechanisms (such as protection orders, barring orders and safety orders) and insensitive investigations and prosecutions of cases involving violence against women and children.⁸ Another factor is that judges who handle such cases are not well equipped with judicial activism techniques for protecting women's human rights.⁹ Customary laws and practices remain discriminatory against women, particularly in relation to institutionalized violence against women, eg wife battering and rape. Statutory laws and customary laws are often conflicting. The low rate of women's access to

⁴ Article 8 and Article 36 of the Constitution of the Republic of Somaliland.

⁵ Articles 15, 16, 17 and 20.

⁶ Article 19.

⁷ Article 2, International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Discrimination Against Women.

⁸ *Infra* Chapter five.

⁹ *Infra* Chapter five.

education affects women's ability to assert their rights, as most women are unaware of their human rights under the Constitution.¹⁰

The Right to Education:

The right to education is spelt out under Article 15(1) of the Constitution of the Republic of Somaliland, which states that:

‘The State shall pay particular attention to the advancement, extension and dissemination of knowledge and education as it recognizes that education is the most appropriate investment that can play a major role in political, economic and social development.’

Article 26 of the Universal Declaration of Human Rights, Article 13 of the International Covenant on Economic Social and Cultural Rights, and Article 10 of the Convention on Elimination of All Forms of Discrimination Against Women confer the right to education on everyone irrespective of sex.

At a policy level, the Ministry of Education of the Republic of Somaliland has developed the National Education Policy 2006, which grants an equal right to education with affirmative action to increase women's opportunity to access education. In practice, the proportion of women and girls is not equal to men and boys in enrolment in the education sector. This gap widens in secondary and tertiary education, with more boys than girls. Traditional attitudes have for so long denied women and girls equal education opportunities. Many parents, especially in the rural areas, give priority to boys at all levels of the education system and girls are left at home for domestic assistance. Further, young girls marry at a young age and therefore limit their chances for access to higher education. Monitoring data on gender equality in education is limited by the absence of a National Bureau of Statistics, which could assist in providing reliable and accurate data on gender imbalance in the education sector.

However, the Ministry of Education has noted some improvement in women and girls' enrolment at all levels of education. This has been attributed to two main factors. First is the active participation of women diasporas; second is the efforts by the Ministry of Education to sensitize communities to eradicating gender inequality in education. It has been noted that, although the war resulted in the collapse of the education system in Somaliland, diasporas in the post-conflict era ushered in a positive attitude towards enrolment of girls and women in schools and in tertiary education.¹¹ Most of the women diasporas who sought refuge in other countries during the war proved to be more economically supportive to their

¹⁰ Article 36, Constitution of the Republic of Somaliland.

¹¹ Position given by the Director General, Ministry of Education, Republic of Somaliland, Honourable Ali Abdi Odowaa.

families than men, and contributed some revenue to the national budget.¹² This development gradually changed public attitudes to a realization that men and women are equally valuable to the family. Meanwhile, in order to gain a full picture of gender imbalance and inequalities in the education sector, the Ministry of Education developed awareness and sensitization campaigns with the aim of helping the people of Somaliland enjoy equal access to education.

While there remains a gender disparity in enrollment in education¹³, the number of girls enrolling in schools in urban areas is gradually increasing.¹⁴ Needless to say, the war had a devastating effect on the education sector: it brought its development to a halt, which compounded existing gender disparities rooted in traditional attitudes. Even during the post-conflict reconstruction phase, rebuilding Somaliland's education sector has been slow. After the reassertion of the Somaliland sovereignty in 1991, over a decade passed without a National Education Policy or a National Gender Policy being put in place. It was not until 2006 that the National Education Policy of the Republic of Somaliland was created and not until 2007 that the Government started to develop a National Gender Policy. In the absence of enabling policies it is difficult to attain the goal of comprehensive educational, which the nation's reconstruction requires.

The Director General of the Ministry of Education of the Republic of Somaliland, Honourable Ali Abdi Odowaa, stated that:

'The Government of Somaliland gives priority to education in accordance with the Constitution of the Republic of Somaliland. To that effect, the Government budget for education accounts for 13 per cent of the total budget. This elucidates the weight which the Government invests in education, despite its meager resources. The Constitution of the Republic of Somaliland and the National Education Policy 2006 eradicate all forms of discrimination in education. Therefore, there are no gender barriers to the right to education. In practice, traditional misconceptions that men are entitled to more education opportunities than girls still exist but the effects of the war brought gradual positive changes to this traditional attitude, since diasporas, men and women, equally contributed to the national development, with women showing slightly more financial contribution than men. As a result of continued community awareness raising and sensitization by the Ministry, communities now realize the importance of investing in equal education rights for men and women. The total enrolment of the primary school education for the year 2007-2008 was about 200,000, of which 30 per cent were girls. The National Education Policy 2006, through affirmative action, aims at scaling up girls enrolment

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

so that by the year 2010-2011 enrolment of girls will be higher than that of boys.'

The fact that Article 8 the Constitution of the Republic of Somaliland provides for equality of all citizens, it follows *ipso facto* that education is a vital human right for all in Somaliland. The Constitution's provision on education in relation to women's opportunities is reiterated under Article 36, which provides that:

- '1. The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women, save in matters which are specifically ordained in Islamic Sharia.
2. The Government shall encourage, and shall legislate for, the right of women to be free of practices which are contrary to Sharia and which are injurious to their personal dignity.
3. Women have the right to own, manage, oversee, trade in, or pass property in accordance with the law.
4. In order to raise the levels of education and income of women, and also the welfare of the family, women shall have the right to have extended to them education in home economics and to have opened for them vocational, special skills and adult education schools.'

Article 36 (3) and Article 36 (4) should not be interpreted to be making a distinction between women's right to knowledge and men's knowledge. The Constitution does not limit women's education to vocational knowledge designed for the practicalities of being women and preparing men for the employment sector. Rather, these provisions should be read in conjunction with Article 8 of the Constitution as they are meant to facilitate women's opportunities to compete equally with men in public and private spheres. There is a widespread built-in assumption that practical subjects for girls should relate to their future roles as mothers and home-makers, while boys are more likely to need preparation for entry into the world of formal employment, thereby excluding or trivializing women's contributions, experiences or knowledge. These differences have been maintained through tradition and custom.

Save for customary law, all sources of law in Somaliland provide for gender equality in education. The Holy Quran fully recognizes gender equality in relation to education and provides that: 'superiority of any person over another is piety and righteousness, not gender, color or nationality.' Further, the Holy Quran states that: 'Whosoever has a daughter and... does not favour his son over her, Allah will enter him into paradise.'¹⁵ Moreover, the Prophet Mohammad (SAW) gave his

¹⁵ Asmahan Abdelsalaam Hassan: Understanding Gender; Nagaad Women's Umbrella Organization.

daughters and wives equal education status. Thus, gender disparity in education contravenes the Sharia.

The National Education Policy 2006 provides that the education system is based on Somaliland values and principles, the state religion, which is Islam, and citizens realizing their full potential in life, within the context of Islam. Education opportunities are open to all irrespective of gender, region or religion. The National Education Policy 2006 responds to the need for a gender-responsive education policy. The National Education Policy 2006 states:

‘Since 18 May 1991, when Somaliland formed its own government, education has been recognized as a basic human right that should be provided to all citizens, irrespective of gender, as enshrined in the country’s Constitution. The Somaliland Government is therefore committed to expanding girls’ education, given the realization that offering girls basic education is one way of giving them much greater power and enabling them to take control and make genuine choices, both in their personal and public lives.’

Nevertheless, the provisions for gender equality in the Constitution and National Education Policy hit a barrier in the form of deep-rooted patriarchal customs, a fact that the National Education Policy 2006 acknowledges will be a challenge. However, it is hereby contended that gender discrimination in education is inconsistent not only with Somaliland’s laws but also Islamic teaching. It is testified by eminent Muslim scholars that:

‘In the words of Prophet Muhammad (SAW): “To seek knowledge is obligatory on every Muslim.” (Declared authentic by Shaikh Muhammad Naasir-ud-Deed al-Albaani.)’¹⁶

The history of Islam supports women’s equal right to education. Prophet Muhammad’s wives are highly educated women:

‘During the lifetime of the Prophet, many women had been not only the instance for the evolution of many traditions, but had also been their transmitters to their sisters and brethren in faith.³ After the Prophet’s death, many women Companions, particularly his wives, were looked upon as vital custodians of knowledge, and were approached for instruction by the other Companions, to whom they readily dispensed the rich store which they had gathered in the Prophet’s company. The names of Hafsa, Umm Habiba, Maymuna, Umm Salama, and A’isha, are familiar to every student of *hadith* as being among its earliest and most distinguished transmitters.⁴ In particular, A’isha is one of the most

¹⁶ Quoted from Women’s Rights in Islam: www.realislam.com.

important figures in the whole history of *hadith* literature - not only as one of the earliest reporters of the largest number of *hadith*, but also as one of their most careful interpreters¹⁷

This supports the view that, under Islam, the right to education has no gender bias. The Prophet said, *inter alia*:

‘Whoever follows a way to seek knowledge, Allah will make easy for him a way to paradise.’ (Declared authentic by Shaikh Muhammad Naasir-ud-Deen Al-Albaani.)¹⁸

Education is recognized by the National Education Policy 2006 as a reconstructive effort towards national development. As such, the Education Policy defines education as:

‘‘That in which the content and methods are related to and respond to the needs and aspirations of society. The curriculum is geared to set an effective basis for the development in the areas of animal rearing, agriculture or business know-how, and to exploit better our vast marine resources.’

The educational system is therefore seen as a way to provide the human resources required for economic growth, thus creating an enabling environment for the country to realize its national vision. This vision is characterized by growth in several sectors including pastoralism, fishing, industry, commerce, trade and agriculture.

The national educational goals are as follows:

- To build a modern society based on the Rule of Law;
- To promote the diffusion and practice of genuine Islamic principles and values;
- To establish democratic governance emanating from the free expression of popular will and sovereignty;
- To foster human rights, freedom, social justice and national unity;
- To create an enlightened society made up of individuals with correct social values and attitudes, who are committed to the preservation and enrichment of cultural values and traditions based on Islamic principles;
- To build a strong and self-reliant economy through the acquisition and application of scientific, technological and managerial knowledge and skills;

¹⁷ Dr. Muhammad Zubayr Siddiq: Women Scholars of Hadith; www.islamfortoday.com.

¹⁸ Ibid.

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- To protect and improve the natural environment, so as to pass it on as a safer and better heritage for future generations;
- To ensure that Somaliland becomes a useful member of the international community and contributes to human progress and welfare;
- To promote within the society a sense of responsibility for peace, and improve human relations at the community, national and international levels.

The Somaliland Vision for Education is as follows:

- The development of a society committed to the preservation and enrichment of the cultural values and traditions based on genuine Islamic principles;
- The acquisition of literacy and numeracy as well as mastery and application of scientific, technological and managerial knowledge and skills;
- The acquisition of key life skills, both for full self development and actualization of the individual's potential and for the purpose of state development and participation in the global economy;
- The ability for logical thought, critical judgment, self expression and self reliance;
- The learners' growth into strong, healthy, mature, useful and well adjusted members of the society with positive attitudes to gender and other family life issues;
- The national consciousness and unity in the minds of the children at an early age and enhancement of a spirit of patriotism for Somaliland as well as a desire for its sustained integration, stability and prosperity;
- The knowledge, skills and attitudes for the protection and improvement of the environment in order to pass it on as a safer and better heritage for future generations;
- Skills and attitudes which foster the growth of social justice, responsibility and the value and virtue of peace;
- The inculcation, appreciation and respect for the dignity of labour in the context of the country's socio-economic and environmental needs.

The policy guidelines provide that increasing access and participation of girls in education is a state priority. The Government further expresses commitment to increasing girls' participation at secondary level and supports actions to attract and retain girls in secondary schools. This commitment notwithstanding, the National Education Policy 2006 points out challenges faced in the education system. These include: limited resources; high poverty levels; lack of reliable data on education

costs; pronounced gender disparities in access to and completion of education; social inequities in opportunities for education, skewed against nomadic groups, pastoralists and the rural poor; inappropriate teaching methodologies; poor levels of learning attainment; a multiplicity of learning provisions; limited relevancy of curricula and inadequate examination provisions. The National Education Policy 2006 acknowledges further that these challenges must be addressed and overcome in order for Somaliland to nurture the human resources needed for national development.

To reduce the gender disparity in access to education and literacy, the National Education Policy 2006 also recognises the role of non-formal education. Specifically, the Government will establish non-formal education centers for girls and women, and make provision for lessons at flexible times, in shifts and for shorter duration. Moreover, the National Education Policy 2006 recognises education as a vital tool for enhancing women's participation in management and decision-making processes. It provides that the Government will put in place strategies to improve access to teacher education, improve the participation of women through the development of affirmative action tailored to support female teachers and encourage more women at the trainer's level to serve as role models for girls. As pointed out above, while advocating gender equality, the National Education Policy 2006 concedes that gender inequality is amongst the challenges faced in the Policy's implementation. This being the case, it is hereby asserted that unless the root causes for gender discrimination are addressed, the pace of national development will be slowed down by a lack of full input by women, which is affected not only by low levels of education but also unequal participation in decision-making processes resulting from customary laws and values.

The Right to Employment:

The Somaliland employment sector maintains gender inequality largely due to public attitude and a misconceived interpretation of Islamic principles that employment is a male domain and women are not supposed to go out to work and must be provided by men. Consequently, this has led to a pronounced disparity, and women who are employed tend to be in low cadres.

There is political will expressed by the Government of Somaliland to mainstream gender to ensure equal employment opportunities for all. This view was presented by the Director General of Labour, Honourable Ibrahim Deria, who stated that:

‘There is strong political will by the current Government leadership to mainstream gender in the employment sector. The Government is committed to ensuring equal employment opportunities for all, especially increased employment opportunities for women, youth, people with disabilities and minorities. For a long time, women, youth, people with disabilities and minorities were deprived of the right to employment due

to negative public attitudes. This led to a negative impact, which saw a trend of youth absconding to other countries to seek employment through dangerous means, namely, stowing away by ship. Unfortunately, quite often, the crew threw them into deep sea and left them for dead. Consequently, as a remedy, the Government came up with the Affirmative Action Circular for increased employment opportunity to the disadvantaged. In addition, the Government is amending labour laws to ensure equal employment opportunities and good governance.’

Equal employment opportunity is covered under Article 20(1) of the Constitution that:

‘All able citizens have a right and a duty to work. The state shall, therefore, be responsible for the creation of work and facilitating of the skills training of employees.’

The only distinction made to equal right to employment is stated under Article 20(2) of the Constitution that:

‘The conditions of work of the young and women, night-working and working establishments shall be regulated by the Labour Law.’

Apart from the Constitution, equal employment opportunity is also stated under international human rights instruments and is governed by labour laws, to wit, Somaliland Labour Code, the Law of Civil Service (Law No. 7/1962) and Sharia law.

Pursuant to Article 23 of the Universal Declaration of Human Rights, everyone has the right to work, to a free choice of employment, to just and favourable conditions of work and to protection against unemployment. Article 6 of the International Covenant on Economic, Social and Cultural Rights recognizes the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.¹⁹ Article 11 of the Convention on the Elimination of all Forms of Discrimination Against Women calls for appropriate measures to be taken to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

The provisions of the Labour Code or regulations therein apply to all employers and workers in NGOs, UN organs, companies and the private sector. (However, ambassadors and UN international staff are covered by separate provisions.) Under the Labour Code:

‘Every person has the right to compete for any occupation he chooses and has the right to equality of opportunity and treatment in respect of

¹⁹ See also Articles 7, 8 and 9, International Covenant on Economic, Social and Cultural Rights.

employment and occupation without discrimination on the basis of language, race, color, sex, religion or political opinion.'

The Law of Civil Service (Law No. 7/1962) - hereafter referred to as the Law of Civil Service - reiterates this principle of equal employment opportunity. The only ambiguity is seen in Article 1, which seems to contradict this cardinal principle of equality where it defines the term 'family' to mean 'wife and minor children of an official'. This definition implies that a civil servant is a male and excludes females. Unless there is some other definition to prove this presumption to the contrary, it can be argued beyond reasonable doubt that the Law of Civil Service is gender discriminatory and should be amended to provide for gender equality. It is hereby suggested that the word 'wife' be replaced by the word 'spouse' for gender equality to be realized.

The provision that covers the right to retirement is also discriminatory on the basis of gender. According to Article 38, an official shall retire from the service on reaching the age of 60 years for male and 55 for female. On a human rights principle, the retirement age should be the same for both men and women.

Article 23 deals with social security, pension and special allowance but does not provide for the right of sero-positive mothers to be provided with Prevention of Mother to Child Transmission Treatment (PMTCT). Be it under the national health care insurance scheme or other separate laws, expectant mothers living with HIV/AIDS should be given PMTCT services for safe motherhood. Likewise, upon request, civil servants living with HIV/AIDS should be entitled to free anti-retrovirals.

Article 8 of the Law of Civil Service, provides for requirements for admission to the Civil Service and one such requirement is that the 'appointment to the Civil Service shall be open only to the citizens who are physically fit for the appointment to the service'. However, the term 'physically fit' is not defined under the Law. It is hereby suggested that it is imperative that the Law defines the term 'physically fit' and embodies an exception clause in this Article so that the term physically fit does not discriminate against people living with HIV/AIDS (PLHA), people with a disability and expectant mothers. Furthermore, the Article must state explicitly that compulsory testing for HIV/AIDS should not be permitted and should not be included in a physical fitness test if passing such a test is part of the selection process.

Inequality in the employment field has its origins in public attitudes and misconceptions based on an erroneous interpretation of the Holy Quran, which concludes that women are not entitled to go out of their houses to work. In this instance, Holy_Quran, Verse 33, Surah 33. Al-Ahzab; is referred to:

'And stay in your houses and do not display yourselves like that of the times of ignorance, and perform *As-Salat* (*Iqamat-as-Slat*), and give *Zakat* and obey Allah and His Messenger.'²⁰

However, unequal opportunity for employment is not acceptable under the Sharia. Dr Jamal Badawi, a noted Islamic scholar, states that:

'There is no decree in Islam which forbids woman from seeking employment whenever there is a necessity for it, especially in positions which fit her nature and in which society needs her most. Examples of these professions are nursing, teaching (especially of children) and medicine. Moreover, there is no restriction on benefiting from woman's exceptional talent in any field.'²¹

Another prominent scholar, Dr Muhammad Sharif Chaudhry, points out that:

'Dr Hamidullah writes: "In every epoch of Islamic history, including the time of the Prophet, one sees Muslim women engaged in every profession that suited them. They worked as nurses, teachers, and even as combatants alongside men when necessary, in addition to being singers, hairdressers, etc. Caliph Umar employed a lady, Shifa' bint Abdallah, as an inspector in the market at the capital (Madinah), as Ibn Hajar (*Isabah*) records. The same lady had taught Hafsa, wife of the Prophet, how to write and read. The jurists admit the possibility of women being appointed as judges of tribunals, and there are several examples of the kind.'²²

Regarding the right to work, the Holy Quran, Verse 32, Sura 4. An-Nisa, states:

'And wish not for those things which Allah has made some of you to excel others. For men there is reward for what they earned, (and likewise) for women there is reward for what they have earned, and ask Allah of His Bounty. Surely, Allah is Ever All -Knower of Everything.'²³

Although the Constitution and labour laws provide for equal employment opportunities, very few women are employed at executive and technical levels. The reason behind this is quite often the lower levels of education attained by women compared with their men. It is important to point out that an equal right to work is recognized in Islam. Prophet Mohamed allowed his wife Khadija to work as a merchant. This was later on honoured by the Umar ibn al-Khattab, the second

²⁰ Position clarified by Mr. Ahmed Ismail Alli, Director of Judiciary Services, Ministry of Justice, during Consultative meeting held in Hargeisa, June 2008.

²¹ Dr. Jamal Badawi: The Status of Women in Islam; www.institutealislam.com.

²² Dr. Muhammad Sharif Chaudhry: Women's rights in Islam; www.muslimtents.com.

²³ Op. cit. note 12. See also: Dr. Zieba Zorish-Shamley: Women's Position, Role and Rights in Islam; Afghanistan Online; www.afghan-web.com.

Islam Caliph, by appointing a woman, Shifa' bint-Abdallah, to hold the position of inspector of the market in the Madinah capital.²⁴

The Right to Health:

The right to health is stipulated under Article 17(1) of the Constitution that in order to fulfill a policy of promoting public health, the state shall have the duty to meet the country's needs for equipment to combat communicable diseases, the provision of free medicine, and the care of the public welfare. Hitherto, the state shall be responsible for the health, care, development and education of the mother, the child, the disabled who have no one to care for them, and the mentally handicapped persons who are not able and have no one to care for them.²⁵

The right to health is enshrined in international human rights instruments. By virtue of Article 25 of the Universal Declaration of Human Rights, everyone has the right to a standard of living that is adequate to maintain the health and wellbeing of themselves and of their family, including medical care. Mothers and children are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to enjoy the highest attainable standard of physical and mental health. The convention also provides for the reduction of the stillbirth rate and of infant mortality and for the healthy development of children. Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women requires appropriate measures to be taken to eliminate discrimination against women in the field of health care in order to ensure that men and women have equal access to health-care services. Women should be granted appropriate services in connection with pregnancy, confinement and the post-natal period, with free services where necessary, as well as adequate nutrition during pregnancy and lactation.

The right to health for the women of Somaliland is significantly hampered by their disproportionately low access to health care. The maternal mortality rate in Somaliland is estimated at 1,044 deaths per 100,000 live births, The mortality rate of newborn babies is estimated at 45 deaths per 1,000 live births; infant mortality rate is 73 deaths per 1,000 and for children under five years it is 117 deaths per 1,000. Pregnant women rely on traditional birth attendants rather than health facilities, so that 91 per cent of deliveries occur at home and only nine per cent are at health facilities. This is attributed to many factors, including a poor referral system and a shortage of qualified health personnel in health facilities, especially

²⁴ Op. cit. note 8.

²⁵ Article 19 of the Constitution of the Republic of Somaliland.

in rural areas. Lack of access to reproductive health services in both rural and urban areas is a serious challenge to women's human rights to safe motherhood.²⁶

Very little investment is made in reproductive health and it accounts for only two per cent of the health sector's budget. The quality of reproductive health care is not satisfactory, with many facilities lacking basic equipment, supplies and laboratory facilities. Antenatal care attendance is very low; the number of facilities offering emergency obstetric care is inadequate and the supply of essential drugs and equipment is inadequate or irregular. Post-natal services are offered in very few facilities due to lack of awareness regarding its importance on the part of clients and service providers.

The entire population of Somaliland is served by 23 hospitals, 69 health centers and 157 health posts. There are 82 doctors, 215 nurses and a total of 422 qualified health providers. Lack of adequately trained health personnel to care for expectant mothers leads to a high dependency on traditional birth attendants, who mostly lack the professional skills to handle a complicated labour. The lack of an established referral system from traditional birth attendants to health care facilities jeopardizes the lives of mothers and newborn babies in the event of complicated labour. Most of the health facilities are in a poor condition and require renovation or rebuilding to ensure the safety and privacy of clients and to facilitate delivery of quality services. Every mother is entitled to access antenatal health care and care during delivery, yet this is the least considered service in the health sector. Nevertheless, the Government of Somaliland managed to reduce maternal mortality within the period 2003-2008. In 2003, maternal mortality was 1,600 per 100,000 and by 2006 it was 1,044 per 100,000. With proper policies to cover reproductive health, safe motherhood, antenatal care, safe deliveries and post-natal care, maternal mortality could be significantly reduced.

In terms of prevention of mother to child transmission of HIV/AIDS the Ministry of Health established four Maternal and Child Health facilities in two regions to provide PMTCT services in Somaliland. Due to continued lobbying for PMTCT services by traditional leaders, the Ministry of Health has plans to extend the service to two more regions, creating a total of eight PMTCT facilities in Somaliland. So far, there are adequate counseling and testing services in both rural and urban areas and sentinel data is well recorded. The main challenge in providing the PMTCT service is lack of re-agents. During the period June-December 2008, for example, there were no re-agents and this seriously affects safe motherhood. Secondly, social stigma associated with HIV/AIDS is a barrier to people taking up counseling, testing and social support services. Third, accessibility to health care facilities and lack of qualified health personnel to offer appropriate HIV/AIDS care and treatment remain a challenge.

²⁶ Data provided by the Republic of Somaliland, Ministry of Health and Labour, December 2008.

In Somaliland several traditional practices have a detrimental affect on women's reproductive health, the most serious of these is pharaonic female genital mutilation. There is high prevalence of pharaonic female genital mutilation (FGM) and of fistula (VVF), both of which have serious long-term effects. Many women endure prolonged labours and suffer from rupture of the bladder and rectum, causing fistula. The traditional cure for constipation, the use of salt, is another contributory factor in fistula. Female genital mutilation, an ancient tradition practised in various parts of the world including Africa,²⁷ has been defined as

'The surgical removal of parts or all of the most sensitive genital organs. It is an age-old practice which is perpetuated in many communities around the world simply because it is customary. FGM forms an important part of the rites of passage ceremony for some communities, marking the coming of age of the female child. It is believed that, by mutilating the female's genital organs, her sexuality will be controlled; but above all it is to ensure a women's virginity before marriage and chastity thereafter.'²⁸

Pursuant to the position of law given by the Chairperson of the Law Reform Commission of the Republic of Somaliland, Islamic teaching recognizes sunna female genital mutilation and this is the legally recognized form of genital mutilation in Somaliland.²⁹

Human rights activists have opined that pharaonic female genital mutilation is a violation of human rights.³⁰ In Somaliland, there is neither policy nor law that prohibits pharaonic female genital mutilation, although under the law, female genital mutilation may become an offence if it results in a crime against the safety of individual, namely, hurt.³¹ It is provided that whoever causes hurt to another, resulting in physical or mental illness, shall be punished with imprisonment. This extends to hurt caused by a parent, hurt for reason of honour and hurt or death caused by negligence. It is hereby asserted that unless consensus is reached by traditional and religious leaders and a clear direction is settled, pharaonic female genital mutilation will continue to be an unresolved issue in Somaliland, rather like a riddle remaining to be solved. This may affect development of a national policy on female genital mutilation and other policies relating to women's human rights.

²⁷ Mr. Abdul Wahid Sheikhosman , Chairperson, Law Reform Commission, Republic of Somaliland.

²⁸ United Nations: Human Rights; Harmful traditional Practices Affecting the Health of Women and Children, Fact Sheet No. 23; World Campaign for Human Rights.

²⁹ Position of the Republic of Somaliland on FGM, clarified by Mr. Abdul Wahid Sheikhosman, Chairperson, Law Reform Commission, Republic of Somaliland.

³⁰ Policy Dialogue, Community members, 16 Days of Activism Against Gender Violence, November 2007,

Hargeisa.

³¹ Article 439, Penal Code.

(ii) Women's Economic Status

Women's economic empowerment is a human right.³² In accordance with Article 11 of the Constitution of the Republic of Somaliland:

'The state shall lay down the national economic policy based on the principle of free enterprise and the joint working of private property, public property, the national wealth and foreign investment so as to realize the growth of productivity, the raising of the standard of living, the creation of jobs, and, in general, the advancement of the economy of the nation.'³³

Women have the right to own, manage, oversee, trade in or pass on property in accordance with the law.³⁴ *Inter alia*, 'In order to ensure that the economic system does not lead to the exclusive enrichment of a group or a small section of the public, and to avoid (both) the creation of economic classes consisting of those who are prosperous and those who are not, and the widening of the economic gulf between the urban and rural communities, the state shall ensure that social benefits and economic opportunities are provided in a just and equitable manner.'³⁵ The state shall ensure the security of foreign investment in the country. Such investment shall be regulated by law.³⁶ The Constitution also provides that every citizen shall have the right to participate in political, economic, social and cultural rights.³⁷ Similarly, every person shall have the right to own property, provided that it is acquired lawfully.³⁸

Under Article 12 (1) the land is public property commonly owned by the nation, and the state is responsible for it. The care and safeguarding of property, endowments and public assets is the responsibility of the state and all citizens; and shall be determined by law.³⁹ The Government shall have the power to own and possess movable and immovable property; and to purchase, sell, rent, lease, exchange for equivalent value, or otherwise expend that property in any way which is in accordance with the law.⁴⁰ The central state is responsible for the natural resources of the country, and shall take all possible steps to explore and exploit all the resources available in the nation's land or sea. The protection of, and the best

³² Article 18, 22 and 36 of the Constitution of the Republic of Somaliland; Article 1 of the International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Discrimination Against Women.

³³ Article 11 (1).

³⁴ Article 36 (3).

³⁵ Article 11 (2).

³⁶ Article 11 (3).

³⁷ Article 22.

³⁸ Article 31.

³⁹ Article 12 (2).

⁴⁰ Article 12 (3).

means of the exploiting, these natural resources shall be determined by law.⁴¹ Where it is necessary to transfer the ownership or the benefits of a public asset, the transfer shall be effected in accordance with the law.⁴² The state shall encourage indigenous economic production such as agriculture, livestock, fisheries, minerals, production of frankincense and myrrh and gum etc, and manufacture based on indigenous products.⁴³ The payment of Zakat is a cornerstone of Islam, and its administration shall be determined by law.⁴⁴

To facilitate financing the economic sector, the state shall establish a Central Bank, which shall direct the monetary system and the currency of the nation. The opening of commercial and development banks shall be made possible and private banks shall be accorded preferential status.⁴⁵ The imposition of taxes and other duties shall be based on the interests and wellbeing of the society. Therefore, no taxes or duties which have not been determined by law shall be collected.⁴⁶ The levying, waiver and changes in taxes and other duties shall be determined by law.⁴⁷ Usury and commercial practices which are against the interests of the society and unlawful enrichment are prohibited.⁴⁸

According to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the term discrimination against women means 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in political, economic, social and cultural, civil or any other field.'⁴⁹ Hence, in the political, social, economic and cultural fields all appropriate measures should be taken, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the enjoyment of human rights and fundamental freedoms on a basis of equality with men.⁵⁰ All appropriate measures are required to be taken to eliminate discrimination against women in other areas of economic and social life in order to ensure, on the basis of the equality of men and women, the same rights to, amongst others, bank loans, mortgages and other forms of financial credit.⁵¹ Problems faced by rural women and the significant role they play in the economic survival of their families, should be taken into account, including their work in the

⁴¹ Article 12 (4).

⁴² Article 12 (5).

⁴³ Article 12 (6).

⁴⁴ Article 12 (7).

⁴⁵ Article 13.

⁴⁶ Article 14 (1).

⁴⁷ Article 14 (2).

⁴⁸ Article 14 (3).

⁴⁹ Article 1.

⁵⁰ Ibid. Article 3.

⁵¹ Ibid. Article 13.

non-monetary sectors of the economy.⁵² Women should be accorded, in civil matters, legal status identical to that of men and the same opportunities to exercise that status. In particular, women should be given equal rights to conclude contracts and to administer property and should be treated equally in procedures in courts and tribunals.⁵³

The economic rights of women are also stipulated under the International Covenant on Economic, Social and Cultural Rights, which states that all peoples have the right of self-determination. By virtue of that right, they may freely determine their political status and freely pursue their economic, social and cultural development.⁵⁴ Therefore, the equal rights of men and women to enjoy all economic, social and cultural rights should be ensured.⁵⁵ These rights are also found under the International Covenant on Civil and Political Rights.⁵⁶ Equally important, the Beijing Platform of Action recommends the removal of all obstacles that hinder women's economic empowerment to enable them to enjoy their economic rights and achieve equal access to and participation in economic structures and policies.

Right to Trade:

On a superficial level, one may say that women in Somaliland enjoy equal economic status to men. However, the situation is disputable because customary laws which apply *mutatis mutandis* with the Constitution tend to discriminate against women. Forty per cent of the female population in Somaliland live in urban areas and 60 per cent are nomadic, living in rural areas. Economically, women, who make up more than 50 per cent of the total population of Somaliland, bear the responsibility of providing for their families as breadwinners. Very few women in Somaliland are employed in the formal sector, but large numbers of women still participate in the economic sector to meet the needs of the family. Women's economic status is caught in a web of poverty as the majority of women live a nomadic life in poor rural areas with limited financial resources. Pastoral activities, once a major source of income for women, were affected by the ban on the exportation of cattle, sheep and goats. Apart from asking for financial assistance from relatives abroad (commonly referred to as diasporas), it is extremely difficult for many women to get capital for small and medium enterprises (SMEs). Women's access to micro-credit is hampered by a lack of national female-oriented micro-credit services and poor knowledge of existing credit facilities among women. Moreover, the fact that gender mainstreaming is not integrated into a national poverty reduction strategy is another hindrance to women participating fully and fairly in the economic sector.

⁵² Ibid. Article 14.

⁵³ Ibid. Article 15.

⁵⁴ Article 1.

⁵⁵ Ibid. Article 3.

⁵⁶ Articles 1, 2, 3 and 26.

In compliance with the Constitution, Sharia, international human rights instruments and the United Nations Millennium Development Goals, and mindful of the fact that gender inequality inhibits economic growth and development, The Ministry of Trade and Industry has made deliberate efforts to integrate gender mainstreaming into the economic sector. The ministry appreciated that societies that discriminate on basis of gender inevitably pay the price of poverty, slower economic growth, weak governance and a lower standard of living. Overall, evidence is mounting that improved gender equality is a critical component of any development strategy. In this sector therefore, access to trade and commerce is accorded to all people without discrimination. Achieving advances will require increased resources and changes to the national budget. However, the overwhelming effects of the war mean there is a lack of government finance, so finance largely depends on diasporas, international development agencies and the private sector. Despite these shortcomings, the ministry has managed to provide services to women, lifting barriers that have traditionally kept women from accessing formal trade licenses and financial services such as collateral requirements.

The Director General of the Ministry of Trade and Industry, Honourable Abdulrahman M. Ajab, stated that:

‘The Ministry of Trade and Industry has mainstreamed gender in compliance with the provisions of the Constitution regarding the principle of equality and the right to trade. Accordingly, the Ministry responds to the Sharia principles outlined in the Holy Quran which confer trade and commercial opportunities equally without discrimination on the basis of gender. The Prophet’s wife, Khadija, was a merchant and therefore gender mainstreaming in the trade and industrial sector is not a new phenomenon in Islamic culture and Somaliland society. Moreover, the Constitution recognises provisions of gender equality in Articles 18, 36, and 22 and as stated in Article 26 of the International Covenant on Civil and Political Rights (ICCPR); Article 3 of the International Covenant on Economic, Social and Cultural Rights; and Articles 3, 13, 14 and 15 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Given the realistic situation, the priority of the meager government budget is focused on peace and security of the nation. The Ministry, in collaboration with diasporas and international development partners, will continue to support women’s participation in economic activities technically and financially and ensure that conducive policy and legal mechanisms are in place. So far, women’s barriers to trade and investment have been mitigated with positive results measured by the overwhelming number of women seeking trade licences, micro-credits and technical support from the Ministry.’

The Ministry of Trade and Industry has realized that women account for the majority of those that enrol for business licenses. This is due to the fact that women are breadwinners of most of households in Somaliland. To ensure a women-friendly environment, two female lawyers have been employed by the ministry to provide services such as trade licensing, accessing contracts and business information to women. It was observed that women's increased income benefits their households, particularly in education, diet, health care and sustaining basic family needs. Women have been found to spend more of their income on their households rather than keeping it back for themselves. So when help is given to increase women's incomes, the welfare of whole families are improved. To this end, the ministry provides technical and managerial skills, infrastructure, market information and contacts with external markets to minimize administrative impediments to doing business. The Director of Commerce provides legal support to women to ensure smooth registration, investment and implementation of businesses. The main obstacle at the moment is that there is no national finance or micro-finance schemes for women to enable them to invest effectively in economic activities. As such, the Government depends on international development partners and the private sector to finance SMEs and investments, which allows every lending institution to develop its own internal micro-finance policy. There is therefore a need to develop national finance and micro-finance policies to effectively empower women economically.

Micro-finance policies are blessed by the Holy Quran under Verse 282, Surah 2. Al-Baqarah:

‘When you contract a debt for a fixed period, write it down. Let a scribe write it down just between you. Let not the scribe refuse to write to write as Allah has taught him, so let him write. Let him (the debtor) who incurs the liability dictate, and he must fear Allah, his Lord, and diminish not anything of what he owes... And get two witnesses... And if there are not two men (available), then a man and two women, such as you agree for witness... And the witness should not refuse when they are called (for evidence)... You should not become weary to write it (your contract), whether it be small or big, for its fixed term, that is more just with Allah; more solid as evidence... But take witnesses whenever you make a commercial contract.’

As such, micro-finance policies should be cautious of imposing interest rates to micro-creditors. Verse 275, Surah 2. Al-Baqarah of the Holy Quran stipulates that:

‘Whereas Allah has permitted trading and forbidden Riba (usury).’

It is also essential that government gender budget initiatives be established to cater for women's economic empowerment, growth and the reduction of poverty, with special attention to trade, services, markets and infrastructure, and creating an

environment conducive to attracting private investment. Likewise, it is crucial to establish national budgets and ensure women and men benefit equally from the allocation of resources. It is important to note that 'gender budget' is not a separate budget for women. Rather, the initiative assesses the national budget from a gender perspective and seeks to mainstream gender into the budgetary process by examining the impact of the national and provincial budgets. Lobbying donors for funds to support the economic empowerment of women through contributions to the Government's gender budget will bring significant positive changes in the move towards national development.

Women and Agriculture:

In any social economic structure, gender inequality is based on disparities in land ownership between men and women. Land ownership in the patriarchal system tends to see clan land vested in male clan members as opposed to female clan members. In spite of the fact that Somaliland is a nomadic society, the past few decades have seen a socio-economic transformation in response to the overall move towards globalization, which calls for a market economy, agricultural development and food security. Hitherto, 'the division of responsibilities and labour within households and communities tended to place farming and nutrition-related tasks under women's domain, since those activities were closely related to social and human reproduction goals, whereas men tended to become progressively involved in public and community organizations and off-farm activities.'⁵⁷ Nevertheless, lack of clan land ownership constitutes one of the serious obstacles to women's full involvement in the agrarian sector.

Somaliland has an area of about 68,000 square miles (176,120km²). Its population is estimated at 3.5 million, of which 50 per cent are pastoralists, 30 per cent agropastoralists and about 20 per cent urban. The livestock and agricultural sectors dominate the economy of Somaliland as sources of employment and livelihood.⁵⁸ Agriculture is the second most important economic activity after livestock with Hargeisa, Sanaag, Togdheer and Awdal regions having substantial land areas that are suitable for agriculture. However, the sector has been vulnerable to droughts and is increasingly under threat of environmental through deforestation and is characterized by low efficiency and productivity.⁵⁹ The Ministry of Agriculture observes that:

'The Government recognizes the important role of agriculture, being the second most important sector currently after the livestock sector, in the

⁵⁷ Food and Agriculture Organization of the United Nations: Gender and Land Compendium of Country Studies; Rome, 2005; p. xiii.

⁵⁸ The Republic of Somaliland, Ministry of Agriculture in Collaboration with ECSALI Project: Somaliland Agriculture Sector Human Resource Assessment and Intervention Plan; 2008; p. 1.

⁵⁹ Ibid.

development of the country. It has great potential for improving the livelihoods of the rural population through gainful on-farm employment, income generation, improvement of food security and creating employment to the non-farming population through inter-linkages with other service sectors such as marketing, agro-inputs suppliers and agro-processing.⁶⁰

Although Somaliland has introduced legal regulations that acknowledge women's rights to own, lease or sell land, the introduction of new institutional arrangements for land has not guaranteed a better position for women in relation to land ownership, and customary law remains the main snag in this socio-economic development.⁶¹ Traditional land concentration patterns and social/gender disparities associated with them seem to be aggravated by the current process of economic globalization. 'The current economic trends toward market liberalization may once more jeopardize the rights of women to own the land they may require for agriculture and the sustainable livelihood of their family.'⁶²

Gender disparities are clearly seen in terms of human resources. The Ministry of Agriculture assessed gender distribution in the agricultural sector and states:

'The assessment revealed that a serious gender imbalance in the technical human resource in that none of the personnel at both degree- and certificate- level training is a lady. (Annex 1). In regard to the current staffing of the MOA women are only represented in the support staff cadres like secretaries, messengers and cleaners. The current imbalance is a result of male-biased training in technical fields during the former Somalia regime. This gender imbalance is notwithstanding the fact that women play an important role in agriculture and food cycle in Somaliland through their involvement in food production, processing and preparation.'⁶³

The Ministry of Agriculture has developed the National Policy for Agriculture 2008, which creates an enabling environment for gender mainstreaming in the agricultural sector. However, its implementation and realization is still a challenge. Lack of micro-finance policies, legal and regulatory systems deprive women of land rights. Without them, women cannot access the finance that would enable them to invest reasonably in the agrarian sector. The new tenure reforms are either silent on the matter of women's rights to land or reluctant to take specific action and allocate the resources to implement gender progressive land policies.

⁶⁰ Ibid.

⁶¹ See, Republic of Somaliland, Law of Land Administration, No. 17, 2007.

⁶² Ibid. p. xiv.

⁶³ See Op. cit. note 95; Republic of Somaliland, Ministry of Agriculture: Somaliland Agriculture Sector Human Resource Assessment and Intervention Plan; 2008; p. 17.

Bearing in mind that most Somaliland women are engaged in small-scale farming, it is suggested that agricultural micro-finance policies need to be explored in Somaliland as a way to achieve meaningful gender mainstreaming and poverty reduction. In line with the principles of Convention on the Elimination of all Forms of Discrimination, the problems faced by rural women and the significant roles rural women play in the economic survival of their families, including work in the non-monetary sectors of the economy, should be taken into account.⁶⁴ All appropriate measures should be taken to eliminate discrimination against women in rural areas in order to ensure, on the basis of equality between men and women, that they participate in and benefit from rural development. In particular, it should be ensured that women have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.⁶⁵

Women's economic empowerment is crucial to emancipating them from all forms of discrimination. This can be strengthened by investing in women's education and mainstreaming gender into national poverty reduction strategies. Investment in women's higher education contributes to the stability of the economy and the reduction of poverty. Lack of economic power subjugates women to male dominance and therefore affects their lives socially, economically and politically.

(iii) Women's Political Status

Political representation is a fundamental human right vested in all human beings and it is stipulated in international human rights instruments that:

'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'⁶⁶

Under Article 25 of the International Covenant on Civil and Political Rights every citizen has the right and the opportunity, without any distinction, to take part in public affairs, directly or through freely chosen representatives. Similarly, every citizen has the right to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of electors. The Convention on the Elimination of All Forms of Discrimination Against Women provides that appropriate measures should be taken to eliminate discrimination against women in political and public life and, in particular, to ensure that women, on equal terms with men, have the right:

⁶⁴ Article 14 (1), The Convention on the Elimination of All Forms of Discrimination Against Women.

⁶⁵ Ibid. Article 14 (2) (g).

⁶⁶ Article 1, The International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Article 3 Convention on the Elimination of All Forms of Discrimination Against Women.

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and implementation thereof and to hold office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.⁶⁷

Appropriate measures should be taken to ensure that women, on equal terms with men and without any discrimination, have the opportunity to represent their governments at an international level and to participate in the work of international organizations.⁶⁸

Pursuant to Article 22 of the Constitution of the Republic of Somaliland:

‘Every citizen shall have the right to participate in the political, economic, social and cultural affairs in accordance with the laws and the Constitution.’

It is further stipulated that:

‘Every citizen who fulfils the requirements of the law shall have the right to be elected (to an office) and to vote.’

Furthermore, by virtue of Article 23:

‘All citizens shall have the right to form, in accordance with the law, political, educational, cultural, social, occupational or employees’ associations.’⁶⁹

This means that women have equal rights to political participation, to form political parties and to be nominated by their political parties to vie for any political leadership seat. The right to representation in Parliament is also granted on an equal basis, under Article 40 and 41, without discrimination against women.⁷⁰ This being the case, it can unequivocally be argued that, except in cases of physical and mental disability, in Somaliland women have equal chances with men in political participation.

In accordance with Article 41 of the Constitution of the Republic of Somaliland, the House of Representatives shall consist of 82 members who shall be directly elected by secret ballot in a free general election. To be eligible for candidacy, any person

⁶⁷ Article 7.

⁶⁸ Article 8.

⁶⁹ Constitution of the Republic of Somaliland.

⁷⁰ Ibid. Articles 40 and 41.

who is standing for election to the House of Representatives must fulfil the following conditions:

1. He must be a Muslim and must behave in accordance with the Islamic religion.
2. He must be a citizen who is not younger than 35 (thirty five) years.
3. He must be physically and mentally able to fulfill his duties.
4. He must be educated to, at least, secondary school level or equivalent.
5. He must not have been subject of a final sentence for a criminal offence by a court within the preceding five years.
6. He must be a responsible person with appropriate character and behaviour.
7. No employee of the state shall be eligible for candidacy unless he has tendered his resignation from office prior to a period determined by law. Such resignation shall be accepted.

These provisions for election to the House of Representatives do not discriminate on the basis of gender. The only notion of discrimination inferred is to women with a disability and women who are under 35 years, who are not eligible. There is a strongly felt need to amend Article 41 of the Constitution to accord equality so that women with disability and women under 35 years who have attained the age of majority may be eligible to contest any political position.

There is an ambiguity under the provisions of the Constitution pertaining to representation in the House of Elders. The constitutional eligibility to representation in the House of Elders requires an elder to be versed in the traditions. As Somaliland women do not participate in clan leadership and the decision-making process, this provision may be used by political parties against women, in favour of men. Somaliland history shows that traditional guurti have been composed of men for so long that they have acquired immense knowledge of customary issues. This fact is supported by the presentation of the Law Review Commission, Ministry of Justice, Republic of Somaliland, on the Alternative Dispute Resolution (ADR) system, which states that:

“The lawyers in the traditional system are called Xeerbeegti, which could mean treaty measuring or treaty guiding. The Xeerbeegti are the legislators and the judges in the Somali traditional system.

‘Xeerbeegti are members elected by their respective clans and families. Their election is based on their capacity to present convincing arguments, honesty, their knowledge of the values and traditions of the society, neutrality and their personal experience in responding to the difficulties they face. In electing Xeerbeegtis the male members of the concerned families come together and every participant is eligible to present his idea

by stating reasons, and at the end of the discussion the person chairing (probably the sultan of that clan or sub-clan) will announce those who will in the future be Xeerbeegti by citing the opinion of the majority... Women and outcast groups can neither vote nor be eligible for election.⁷¹

The rationale behind this form of discrimination is as follows:

‘This is because Somali traditional values hold that women are like minors who are not capable of doing judicial acts. As Somali proverb says, “Haween waa dhalaan raad weyn”, which means women are minors with large footprints, supporting the oppression of women.

‘To add salt to the wound, Somalis do not allow women to go under the tree under which ADR is given. In this respect they have a famous saying, “ganbo geed ma tagto”, which in essence means women should not go to the tree. This is so even when women have grievances. In such situations a man (probably a relative) may represent the women and speak on their behalf.’⁷²

Unless the above customary principle of clan representation is reformed, Articles 40 and 41 of the Constitution are rendered futile in terms of women’s right to political participation. It is high time that women were considered eligible for the traditional Xeerbeegti and the House of Elders as a Constitutional right, on the principle of equality. Within this ambit, it can also be argued that the election of Xeerbeegti contravenes the principles laid down by the Holy Quran, which blesses women’s participation in politics and decision-making.⁷³

In Somaliland, the representation of women in politics and decision-making is immensely low. Only three women in Somaliland’s history have held ministerial positions and, so far, only two women have held the position of director general in a government ministry. Both female ministers have excelled in their roles and brought remarkable development in the country. Edna Hospital, built and run by the former Minister for Foreign Affairs, Honourable Edna, is a testament to this. Edna Hospital provides the best service in maternal health and other general health services. The Minister for Family Affairs and Social Development, Honourable Fadouma, has shown remarkable results in developing policies to combating violence against women. This is proof that, given the opportunity, women are capable of making positive changes for national development.

Although political parties have expressed an interest in including women as members, the numbers of women who are actually elected to the House of

⁷¹ Republic of Somaliland, Ministry of Justice, Law Review Commission: Alternative Dispute Resources; UNDP/ROLS; 2006.

⁷² Ibid.

⁷³ Verse, 23 Surah 27. An-Naml.

Parliament or progress to hold leadership positions remains low. The biggest obstacle is patriarchal traditional customs, which still makes clan members hesitant to nominate women to run for political election. Another factor is that there is currently no enabling policy or legal framework for an affirmative action towards increasing special seats for women's representation in Parliament and leadership positions at all levels. The provisions of the Constitution of the Republic of Somaliland are of general application when it comes to matters of political representation, so they give equal chances to men and women (regardless of the clan system and customary laws, which favour male candidates). The Constitution, despite its noble efforts at providing for women's rights, is silent on the subject of affirmative action such as providing reserved seats for women. Constitutional amendments to introduce a quota system with political leadership seats reserved for women is the only remedy, and would vastly increase women's participation in the political arena.

In a male-dominated society such as Somaliland (and elsewhere in the world), policy and legislative recognition of reserved seats for women in leadership is a prerequisite for ensuring the participation of women in leadership and decision-making. Codification of international human rights instruments into domestic laws is an important way of increasing women's participation in politics. Traditionally, women in Somaliland were not expected to influence the decision-making processes, from the domestic level to a national level. These rigid attitudes are based on patriarchal structures, which limit women having their say in the allocation of domestic resources. It has been noted by international election observers in Somaliland that:

‘Despite the relative progress in women's participation in Somaliland, women still remain largely excluded as representatives in Parliament. Voters in the parliamentary elections were encouraged, for example, to support male candidates, particularly if in the same clan. Although many of the party agents and local observers were women – as were the majority of voters – the political parties did not do enough to promote women candidates. The strong influence of clan support for particular candidates, combined with the fact that clans are male led and male dominated, means men are put forward as candidates. In addition, with a female candidate, the issue of clan loyalty is complicated in terms of whether she is representing her family clan or the clan of husband.’⁷⁴

It has also been pointed out that: ‘Clan identity is patrilineal and it is for life; you belong to your father's clan and this does not change when you marry, for either a

⁷⁴ Adan Yusuf Abokor, et al: Further steps to democracy: The Somaliland parliamentary elections, September 2005; p. 16; Progressio 2006.

man or a woman.⁷⁵ At national level, existing attitudes influence the election and appointment of women and hence limit women's voices from being heard in decision-making and planning processes. Currently, after the 2005 parliamentary elections, there is only one woman in the Council of 22 ministers and two female parliamentarians out of a total 82 members of parliament.

Despite the fact that customary law and practice inhibit gender mainstreaming in political participation and decision-making process, Somaliland legend suggests the existence of a female chief. Legend has it that there was a Somaliland Queen Arawelo who was very powerful and conquered many chiefdoms. Powerful though she was, she was finally assassinated by the grandchild she loved most. Although Somaliland does not have a culture of transcribing such legends⁷⁶, the story has been passed down in the oral tradition and supports the notion that there were once queens in this country.⁷⁷

Traditional chiefs agree to the existence of a female chief somewhere in history, as told in this one legend, adding that:

'We are ready for gender mainstreaming in the political arena as long as it does not contravene the Sharia'⁷⁸

Islamic scholars assert that unequal gender participation in politics is a violation of the Sharia law.⁷⁹ Citing the Holy Quran to this effect, and quoting a famous sheikh, the late Sheikh Mohamed Al-Gazali of Egypt, Sheikh Abdurahman Ibrahim argues that in the Holy Quran God gives equal gender rights to political participation and decision-making. This is borne out in Verse 23, Surah 27. An-Naml:

'I found a woman ruling over them: she has been given all things that could be possessed by any ruler of the earth, and she has a great throne.'

Sheikh Abdurahman Ibrahim opines further that the Queen believed in democracy and good governance, for Verse 32, Surah 27. An-Naml provides that:

'She said: "O chiefs! Advise me in (this) case of mine. I decide no case till you are present with me (and give me your opinions)."'

⁷⁵ Edited by Judith Gardner and Judy El Bushra: Somalia, The Untold Story, The War Through the Eyes of the Women; CIIR 2004; Part 2 Section 2:7: Judith Gardner with Amina Mohamoud Warsame: Women, Clan Identity and Peace-Building: Somalia.

⁷⁶ Chief Hassan Badmah Meygal and Chief Rashid Handule Dheere, during a consultative meeting, Hargeisa, July 2008. The name of the Queen was cited by Madam Amina Mahamoud Warsame (Milgo), Executive Director, Nagaad, Women's Umbrella Organization, July, 2008.

⁷⁷ Chief Hassan Badmah Meygal and Chief Rashid Abdi Handule Dheere, during consultative meeting in Hargeisa, July 2008.

⁷⁸ Ibid.

⁷⁹ Position of law clarified by Sheikh Abdurahman Ibrahim, during a consultative meeting, Hargeisa, July 2008.

Community members are of the opinion that women's right to leadership and political participation was recognized during the time of the Prophet Muhammad (SAW) and the evidence is supported by the existence of the Government of Fatima, which was led by a woman called Fatima.⁸⁰ Further support of women's right to leadership and political participation is given by the Hadith Buluq Al Maram, which provides that 'Paradise is under women's and mothers' feet'.⁸¹ Thus, this word of God commands gender equality and equity and, by implication, gender mainstreaming in the political arena. It is important that Somaliland abides by this command by God. Inequality in decision-making processes and participation in politics on the basis of gender is a violation of the word of God. It is a breach of Sharia law.

Eminent Muslim scholars suggest that:

'In the Islamic history there were no restrictions on women's full participation in the economic, political and social spheres of their society. For example, Khadija, the Prophet's first wife was one of the most important merchants of the time, and the Prophet himself was her employee. Ayisha, the Prophet's other wife was one of his most important advisers and consultants. In the early Islamic history women not only participated in various aspects of their society's public sphere, they also had the right to be elected to political offices. For example, Omar the second Khalif appointed a woman to oversee the affairs of the marketplace. The women also participated in wars and fought in the battles'.⁸²

An inference is often made by Islamic communities that the Holy Quran restricts women from participating in politics. However, as Dr Jamal Badawi, a noted Islamic scholar, comments:

'Although not mentioned in the Qur'an, one Hadeeth of the Prophet is interpreted to make woman ineligible for the position of head of state. The Hadeeth referred to is roughly translated as: "A people will not prosper if they let a woman be their leader." This limitation, however, has nothing to do with the dignity of woman or with her rights. It is rather related to the natural differences in the biological and psychological make-up of men and women'.⁸³

Women's political participation can be traced back to the Prophet Muhammad's time. It is stated that:

⁸⁰ Random interview by community member, Mr. Hassan Abdirahman Warsame, Retired, Former Coordinator of Commerce, Ministry of Trade and Industry, cited Hadith Mutafiq, Ali bin Abn Taalib.

⁸¹ Random interview, opinion provided by Mr. Hassan Warsame, Id.

⁸² Dr. Zieba Shorish-Shamley: Women's Position, Role and Rights in Islam; www.afghan-web.com

⁸³ Jamal A. Badawi: The Status of Women in Islam.

‘Any fair investigation of the teachings of Islam or into the history of the Islamic civilization will surely find clear evidence of woman’s equality with man in what we call today “political rights”. This includes the right of election as well as the nomination to political offices. It also includes woman’s right to participate in public affairs. Both in the Qur’an and in Islamic history we find examples of women who participated in serious discussions and argued even with the Prophet (P) himself, (see Qur’an 58: 14 and 60: 10-12).

‘During the Caliphate of Omar Ibn al-Khattab, a woman argued with him in the mosque, proved her point, and caused him to declare in the presence of people: “A woman is right and Omar is wrong.”’⁸⁴

There must be stronger awareness-raising of stakeholders at all levels to create a deeper understanding of the sources of the principle of equality for the people of Somaliland, in order to change traditional attitudes that deny women the right to political participation and decision-making.

(iv) Women’s Legal Status

By virtue of Article 8, the Constitution of the Republic of Somaliland recognizes the equal rights of all citizens. Mindful of the long-standing disadvantageous position of women due to customary practices, the rights of women are specifically addressed by Article 36:

- ‘1. The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women, save in matters which are specifically ordained in Islamic Sharia.
2. The Government shall encourage, and shall legislate for, the right of women to be free of practices which are contrary to Sharia and which are injurious to their personal dignity.
3. Women have the right to own, manage, oversee, trade in, or pass on property in accordance with the law.
4. In order to raise the level of education and income of women, and also the welfare of the family, women shall have the right to have extended to them education in home economics and to have opened to them vocational, special skills and adult education school.’

The Constitution of the Republic of Somaliland is the backbone of all laws of the country and calls for the recognition of international human rights instruments including The Convention on the Elimination of All Forms of Discrimination Against Women, the Universal Declaration of Human Rights, the International

⁸⁴ Ibid.

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Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.⁸⁵ It is provided that:

'The articles which relate to fundamental rights and freedoms shall be interpreted in a manner consistent with the international conventions on human rights and also with the international laws referred to in this Constitution.'⁸⁶

The principle of equality of all persons is clearly provided under the Holy Quran in Verse 189, Sura 7. Al-A'raf, that:

'It is He who created you from a single person, and made his mate of like nature, in order that he might dwell with her (in love)...'⁸⁷

Verse 13, Sura 49. Al-Hujurat, states that:

'O mankind! We created you from a single (pair) of male and female, and made you into nations and tribes, that you may know each other (not that you despise each other)...'⁸⁸

A progressive school of thought suggests women's human rights are well spelt out under the Islamic Sharia, where the Holy Quran clearly provides that: 'superiority of any person over another is piety and righteousness, not gender, color or nationality.' Furthermore, the Holy Quran states that: 'Whosoever has a daughter and... does not favour his son over her, Allah will enter him into paradise.'⁸⁹ So although the Constitution and the Holy Quran provide for women's human rights, a number of factors still hamper the realization of women's human rights in Somaliland.

Customary laws continue to have a negative impact on women's human rights, largely because Somaliland customary law is not codified and is therefore subject to interpretation – and those interpretations tend to discriminate against women. This is because Somaliland's traditional lineage is patriarchal and therefore assumes male dominance over female. In practice, Somaliland women still suffer an inferior status and discrimination politically, socially, economically and culturally. Some efforts have been made by traditional leaders to harmonize customary law by advocating its codification, but no further steps have been made towards codifying of customary law.

⁸⁵ Article 21(2) of the Constitution of the Republic of Somaliland.

⁸⁶ Ibid.

⁸⁷ Dr. Zieba Zorish-Shamley: Women's Position, Role and Rights in Islam; Afghanistan Online; www.afghan-web.com

⁸⁸ Ibid.

⁸⁹ Asmahan Abdelsalaam Hassan: Understanding Gender; Nagaad Women's Umbrella Organization:

Therefore, Somaliland law is based on two conflicting systems of law: written law and uncodified customary law. A hurdle to be overcome is that human rights law finds contradictions within this system of law. Whereas state law and Sharia law provide for gender equality, customary law provides to the contrary. The law is mute on the question of a conflict of law, so there is no guidance on which law prevails when exercising women's human rights highlights a contradiction between the two. The Chairperson of the Law Reform Commission, Republic of Somaliland, has asserted the position of law that:

‘Sharia law derives from the Holy Quran and is a source of all legislations; any legislation that is contrary to the Sharia is null and void. However, the Parliament of the Republic of Somaliland may enact laws that are outside the Sharia but do not violate its principles.’

This being the case, it remains to be ascertained as to on what grounds do the provisions of customary law differ from the Holy Quran in terms of gender equality and Islamic practice. It is indisputable that customary law has its role in Somaliland's nomadic society, which required men to protect women against the hazardous challenges of searching for pastures. However, societies are not static and their culture changes according to the social economic climate. What is Somaliland culture today may not have been Somaliland culture in the previous centuries. This is becoming apparent now, since the culture and law seem to lag behind the socio-economic development of this millennium.

Customary law lags behind the Sharia in recognizing women's human rights and gender equality in most instances. Customary law has also failed to conform to the Constitution and international human rights instruments. This challenge calls for codification and review of customary laws to conform to the Sharia law and the Constitution of Somaliland. In this context, conscious efforts should be taken to overcome this hurdle by focusing on advocacy for constitutional review to introduce the following:

- a quota system that will give women increased participation in the political arena and in national and international decision-making processes;
- development of the National Gender Policy;
- eradication of harmful traditional practices;
- codification of family laws;
- review, amendment, and development of laws impacting on women's human rights;
- mainstreaming gender in all government planning;
- setting up government gender budget initiatives;

- development of poverty alleviation strategies.

(v) Government Initiatives

The Ministry of Family Affairs and Social Development carried out the process of developing the National Gender Policy in 2007, which was endorsed by the Council of Ministers in May 2008. Nagaad, which is the women's rights umbrella organization in Somaliland, played an active role in advocacy for the development of the National Gender Policy and commends the Government's initiatives, especially the Council of Ministers, for approving the National Gender Policy Framework. The development of the National Gender Policy is seen as a means to combat gender discrimination and promote gender equality, equity, representation in the political arena, economic empowerment, and provide access to social services such as health and education, promote good governance, engender transparency and accountability and enhance the capacity building of women. It is expected that the policy will consider amendment of the Constitution and discriminatory laws, and the codification of customary laws. This will further accelerate gender mainstreaming in policies, programs and ministerial strategies and activities. Further, the policy must integrate poverty reduction strategies and the National Strategy for Growth and Reduction of Poverty, taking into account the gender mainstreaming processes to realize gender equality and women empowerment. Gender mainstreaming in this context will not only safeguard women's enjoyment of their inherent human rights, but must be viewed as a *sine qua non* for development. To attain this, the policy must adopt a rights-based approach which addresses the needs of Somaliland women, and should conform with international human rights standards set out in international human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Beijing Platform of Action, the African Region Platform of Action and the United Nations Millennium Goals.

Although Somaliland has not yet ratified international human rights instruments, these are recognized by the Constitution. In its endeavor to acquire international recognition, it is important that the Government of Somaliland maintains a good international record for promoting and safeguarding women's human rights. This will form a solid basis for fulfilling its international obligation of reporting to the United Nations Human Rights Committee.

The Beijing Platform for Action identified 12 critical areas of concern, namely: women in poverty; education and training of women; women and health; violence against women; women and armed conflict; women and the economy; women in power and decision-making; institutional mechanisms for the advancement of women; women in media; women and the environment; and the girl child. The five-year review of the United Nations Special Session of the General Assembly, entitled 'Women 2000: Gender Equality, Development and Peace for the 21st

Century (Beijing +5), revealed that within these critical areas lay additional issues, which required more emphasis. Therefore, the Beijing +5 Political Declaration and Outcome document focuses on the following emerging critical areas: gender issues in humanitarian crises; women's access to decision-making; women's participation in peacemaking and peace-keeping; violence against women, in particular the impact of armed conflicts on women; the economic impact of globalization on women; trafficking in women and girls; women's access to new information and communications technologies; the impact on women of the global HIV/AIDS crises and their crucial role in fighting the pandemic. It is hereby proposed that the development of the policy should address these issues.

In its preamble, CEDAW recalls that:

'Discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity...'

Discrimination against women has been defined under Article 1 of the CEDAW as:

'... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'

Despite the above provision, Somaliland women remain disadvantaged politically, economically and socially. The clan-based system, reinforced by customary laws, continues to weaken women's political, social and economic status. Socially, public attitude has tended to favour male dominance over women, even though the Constitution of the Republic of Somaliland does not condone any form of discrimination. To this end, CEDAW under Article 2, requires state parties to condemn discrimination against women in all its forms and to agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. State parties also undertake to embody a principle of equality of men and women in their national constitutions or other appropriate legislation to ensure the practical realization of this principle. State parties also undertake to take appropriate measures, including legislation, to modify or abolish existing laws, regulations, custom and practices which constitute discrimination against women.

The existing institutional mechanisms for promoting gender equality and empowerment of women are within the Government structures. The executive, the Parliament and the judiciary form the three pillars of the Government in Somaliland. The Constitution of the Republic of Somaliland guarantees the rights of both women and men to hold public office without gender discrimination. The international human rights instruments guarantee women their right to political representation without discrimination whatsoever. Article 7 of CEDAW requires state parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, have the right to vote in all elections and public referenda and are eligible for election to all publicly elected bodies. Furthermore, the provision entitles women to participate in the formulation of government policy and its implementation and to hold public office and perform all public functions at all levels of government. On the same grounds, Article 1 of the International Covenant on Civil and Political Rights provides that:

‘All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural rights.’

This notwithstanding, gender discrimination is apparent in all Government structures. The Executive highlights discriminatory representation in leadership positions, with only one female government minister out of a total of 51 ministers and only two women parliamentarians out of a total of 164. The judiciary has no female representation at all. Thus, this hinders women's opportunity to represent their constituency and government at an international level and to participate in the work of the international organizations, contrary to Article 8 of the CEDAW. Against this background, the policy must put emphasis on mainstreaming and integration of gender equality in policies, plans, development strategies and actions in all sectors and at all levels in the development process.

Major obstacles to addressing disparities are customary laws and cultural practices. There is a wide gap between the proclamations in the Constitution and the law that determines the roles and power relations of men and women. Customary law is internalized as a norm and the socialization process perpetuates the unequal power relationships between women and men. Customary law currently condones and reinforces gender stereotypes and an unequal division of gender roles and creation of male and female images. Therefore, the policy should include review of legislation that impacts on women's human rights, including the Constitution, laws, the enactment of new laws, the formulation and implementation of policies, strategies and programs, from a gender perspective. Awareness-raising of ways that women can to combat gender discrimination is also pre-requisite, so that women can start demanding their rights.

At a superficial level, Somaliland women might be viewed as economically stronger than men, especially when it comes to urban small-scale trading. However, the small and medium enterprises (SMEs) and big businesses are dominated by men. Men account for almost 90 per cent of land and property ownership with a small number involved in transnational and even global trading. A large number of women are economically powerless and therefore voiceless. This population is largely the rural poor with a few living in semi-urban and urban areas. While it is of prime importance to promote the economic empowerment of all women, special attention should be directed to the needs of the rural poor, who are in most cases forgotten.

Article 14 of the CEDAW provides that:

‘State parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetarized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.’

An enabling environment should be created by the policy so that the Government adopts a national micro-finance policy with guidelines on achieving gender equality among those accessing financial services. The policy should direct that mechanisms be put in place to make financial services accessible to both women and men. It should also give flexibility in regulating micro-finance institutions, both those established specifically for financing women and those that serve both women and men. It is hoped that a micro-finance policy would lead to the revision or formulation of other policies, which would identify interventions that would promote indigenous entrepreneurship among women, youth and people with disabilities.

The Government, in collaboration with other stakeholders, could promote the formation of women-productive groups such as the formal savings and credit co-operative societies, savings and credit associations (which are informal) and community-based organizations. Particular care should be taken to ensure that over 60 per cent of the established women's groups are rural based. Rural women should increasingly become members of informal and formal savings and credit associations. Women should be encouraged to strengthen the associations so that they graduate into registered savings and credit co-operative societies.

To this end, CEDAW should be translated into the national language so it is easily accessed by both men and women. CEDAW-monitoring indicators should be developed so its implementation can be followed up and the data collected and then disseminated to all gender focal points in ministries and regions. Some of

these indicators should be included in a computerised gender-sensitive monitoring system of the ministry.

By virtue of Article 10 of CEDAW:

‘State parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and, in particular, to ensure on a basis of equality of men and women.’

Furthermore, CEDAW stipulates that stereotyped roles for men and women at all levels of education should be eliminated, by encouraging co-education and by revising text books and school programs and adapting teaching methods. The policy must appreciate that a good system of education is effective both from quantitative and qualitative perspectives. To achieve this, the policy should aim to promote access to and equity in education of all citizens regardless of sex. It should also, amongst other aims, encourage the equitable distribution of educational institutions and resources, and expand and improve girls’ education. The policy must recommend a curriculum review that eliminates gender stereotyping in textbooks and classroom practices and encourages the participation and academic achievements of girls. The policy should give rise an education sector development program that aims to promote equality and equity in the provision of education nationwide. The education sector development program should have three components; basic education (which comprises primary and secondary education); vocational and folk education and higher education and training.

The recruitment to various posts in the public service should be open female and male applicants via non-discriminative job advertisements, descriptions and specifications. However, low levels of education and qualification limit opportunities for recruitment and promotion for many women. And among the elite group of Somaliland women who are well educated, patriarchal attitudes have affected employment opportunities. The Government should take various steps to bridge the gender gap in employment. The Government should encourage women to apply for advertised jobs and furthermore instigate affirmative action, so that if a female and a male applicant have similar qualifications, the woman is given priority in recruitment. As a result there will be an increase of women in the public service. The public service requires an increase in the number of women in decision-making positions, so that the country has female director generals, regional commissioners, magistrates and judges, and women in ministerial management teams. The existing employment and labour relations legislation must be reviewed to reflect a gender equality perspective as spelt out under Article 11 of the CEDAW, which says:

‘State parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to

ensure, on a basis of equality of men and women, the same rights to work as an inalienable right of all human beings. This right applies equally to the same employment opportunities, including the application of the same criteria for selection in matters of employment’.

Inter alia, the policy must take note of the equal right in terms of employment opportunities, including the application of the same criteria in selection for employment.

The policy should provide for the Government to strengthen and improve curative services and review the health policies to put emphasis on preventive health care. Regional-based health services should be prioritized so that they are easily accessible and affordable to all people, women and men, children and the youth. The policy should promote the involvement of NGOs, the private sector and religious institutions in health service delivery and in the development of human resources related to health.

The policy must spell out a reproductive and child health strategy that will lead to health reforms to increase interventions in maternal and childcare. Pursuant to Article 12 of the CEDAW:

‘State parties shall take appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services and to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.’

Institutional arrangements for managing the health service delivery through regional health boards and community health committees should be introduced. In addition, the boards will enable women’s participation in decision-making by requiring a 50/50 ratio of female/male membership. By-laws to establish community health funds should be formulated to improve primary health care. The community health funds should involve community participation in the planning, implementation and performance monitoring of their health service delivery. Hence, the policy and strategy should lead to improved health services and availability of essential drugs. For example, there should be significant improvements in immunization. Achievements must include an expansion of the vaccination coverage.

Pursuant to Article 16 of CEDAW:

‘ State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure on a basis of equality of men and women’.

The policy must therefore ensure elimination of discrimination against women in family matters. It is important that the policy contains a provision to cater for the development of a family code which is consistent with CEDAW and human rights instruments principles.

Somaliland still maintains some harmful traditional practices for women. Article 5 of the CEDAW provides that:

‘State parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of the superiority of either of the sexes or on stereotyped roles of men and women.’

The Government should put in place several measures to combat violence against women. In this regard, a national plan of action to combat violence against women and children should be developed and implemented. The plan of action will provide strategies and activities to be implemented by various stakeholders. It will focus on legal, social, economic, cultural and political, services and education, training and awareness-building. Based on this a further national plan of action to combat female genital mutilation should be developed and implemented. This will provide guidance on its elimination and activities to be undertaken, including training school teachers in order to integrate the knowledge into the schools curriculum and sensitization of communities through campaigns, media programs, seminars, workshops, drama, books, and leaflets on the harmful effects of FGM.

In the area of governance and accountability, it is crucial to ensure that structures and systems of governance as well as the rule of law are democratic, participatory, representative, accountable and inclusive. These initiatives will lay the basis for the formulation and review of macro and other policies and programs with a gender perspective. The Government should undertake to strengthen gender machinery for women's advancement. To this end, ministries, independent departments and agencies, regional secretariats and local authorities each need to establish a 'gender focal desk' or gender focal point. As a result, gender will become mainstreamed in policies, strategies and programs of all institutions and structures. It will also become easier for ministries to monitor progress made in gender mainstreaming throughout Government's institutions and structures.

In line with the above, the policy must enable the Government to develop a sub-program for gender and women's advancement, which will address selected core areas based on the above-mentioned 12 critical areas of concern from the Beijing Platform for Action and ensure that these tally with CEDAW's major areas of concern. The sub-program should be designed to take into account emerging challenges, such as the HIV and AIDS pandemic, and the Millennium Development Goals.

The policy must ensure that the Government, in collaboration with development partners, implements a gender and advocacy program. The program should aim to strengthen institutional mechanisms and social cultural practices that promote and protect the rights of women and girls to bring about gender equality and equity. This program should facilitate mainstreaming gender in policies, programs and strategies, including capacity building of the national gender machinery for gender analysis and planning. The program should also encourage civil society organizations (CSOs), community and religious leaders, parliamentarians and the media to advocate the respect of human and women's rights. The gender and advocacy program should recommend immediate action to modify customary laws to comply with CEDAW.

The policy should provide for the formation of the Law Reform Commission to work in collaboration with the Ministry of Justice, NGOs and CSOs to ensure that laws have been reviewed and new laws put in place to enhance good governance. Changing traditional practices and attitudes is a gradual process. There should be deliberate efforts by the Government and NGOs to address various issues and outstanding obstacles. CSOs dealing with human rights issues must carry out awareness raising on the existing laws and collect views from the people at different levels from grassroots to national levels. Views collected should be incorporated in legislation.

In view of the above, it is essential that the Government grants the Commission for Human Rights the mandate to focus on issues related to good governance. The commission will investigate allegations involving the violation of women's human rights. The commission will also promote harmonization of national legislation and monitor adherence to the Constitution and human rights treaties. In this endeavor, the commission will appreciate the vital importance of the gender issue, and establish a special desk to deal with public education on good governance and women's rights.

The evidence of government budgets and reviews of public expenditure is that gender mainstreaming has not been realized at a multi-sectoral level. Women's human rights issues are consigned to being solely the responsibility of the Ministry of Family Affairs and Social Development. This in turn affects opportunities to intervene in matters that affect women's human rights at all levels, especially at the district level and in rural areas. Lack of data on factors affecting women's human rights is a fact that cannot be underestimated. Bearing in mind that the Ministry of Family Affairs and Social Development is still young, statistics and data collection on gender and women's rights issues needs to be coordinated and strengthened. It is important to link up problematic issues pertaining on women's human rights and supporting data for the purposes of sensitization and advocacy and for monitoring and evaluation.

There is a strongly felt need to increase the Government budget to address women's human rights interventions. The policy must create an enabling environment for parliamentarians and communities to work together to advocate budgetary increases that would decentralize interventions and meet women's needs. Capacity building is needed to increase skills and widen people's knowledge of government budgetary processes and resource tracking. The Government, therefore, must aim to cost policy interventions and secure domestic and foreign resources to finance them. Interventions are not limited to the Government initiatives, so financial support would also need to take the private sector and CSOs into account. To cost it, the Government will have to use an approach based on Millennium Project costing, where estimates assume GDP annual growth over the period of the policy. This is essential to meet domestic mobilization targets and thus reduce dependency. The financing gap is likely to be large and is compounded by the unpredictability of development assistance and a low revenue base.

The Government will have to ask development partners to increase their assistance and give firm commitments of long-term support. It will be necessary to guard against adverse effects on competitiveness, debt sustainability and the Government's fiscal position by ensuring development assistance is used effectively and absorptive capacity is strengthened. Crises in the global economy and unforeseen disasters could thwart the financing of the policy.

The development of a National Gender Policy will bring positive changes if its provisions abide by international human rights instruments, it is indigenous and addresses Somaliland women's needs.

CHAPTER TWO

SOMALILAND LEGAL SYSTEM

The legal system of Somaliland is governed by the Constitution of the Republic of Somaliland, which is the backbone of all laws. Upon reasserting its Sovereignty in 1991 the Somaliland government under Article 130(5) of the Constitution settled the position of law so that:

‘All laws which were current and which did not conflict with the Islamic Sharia, individual rights and fundamental freedoms shall remain in force in the country of the Republic of Somaliland until the promulgation of laws which are in accord with the Constitution of the Republic of Somaliland.’

The Director General, Ministry of Justice, Mohamed Ibrahim Sheikh Ali, clarified that:

‘There are three major sources of law governing Somaliland, namely, State law, Sharia law and Customary law.⁹⁰ These sources of law are administered under two major parts, public and private law. Public law comprises of constitutional law, criminal law, civil law and administrative law. Private law includes civil law, contract law, property law, family law and labour law. It follows that Sharia law governs matrimonial matters or family law only. Customary law is un-codified and is usually used to adjudicate disputes in rural areas.’

By virtue of the Constitution of the Republic of Somaliland, Sharia law presides over all laws in Somaliland. Nevertheless, customary law is also a strong source of law. This tripartite system of law inevitably leads to a conflicting legal system, which affects women's rights directly or indirectly. This chapter will address whether this legal system has been supportive of women's human rights in Somaliland and identify any gaps that affect women's enjoyment of their inherent human rights.

(i) Sharia Law

Pursuant to the Somaliland Constitution:

Article 5(2): ‘The laws of nation shall be grounded on and shall not be contrary to Islamic Sharia’.

⁹⁰Position of law clarified during a consultative meeting with the Ministry of Justice; June 2008.

The source of Sharia law is the Holy Quran.⁹¹ Article 4(2) of the Constitution of the Republic of Somaliland provides that: 'The laws of the nation shall be grounded on and shall not be contrary to Islamic Sharia.' The Constitution under Article 4(2) confirms that Islamic Sharia will be a source of the law, *but it does not rule out other sources*, so long as the laws themselves do not contradict the Sharia. It should be noted also that Article 128 confirms that the Constitution shall be based on Islamic *principles*, and that as it is the supreme law of the land, any law which does not conform to it shall be null and void.⁹² As for pre-1991 laws, the test of whether they are still in force depends on whether they conflict with Islamic Sharia or individual rights and fundamental freedoms under the Constitution (see Article 130(5)). Whilst under Article 115, the as yet unformed Ulema Council may formulate declarations about any Sharia matter in which there is a dispute so as to establish an *ijtima* (a learned opinion), the council may only forward their opinions to the Constitutional Court or to whichever office has requested the opinion.⁹³ In the end, only the Constitutional Court (which is also the Supreme Court – see Article 101) has exclusive jurisdiction to reach a decision about the interpretation or constitutionality of any law. This is set out clearly in Article 6(4) of the Organization of the Judiciary Law 2004.

Depending on the legal issue to be adjudicated upon, judges have prerogative powers to refer to any school of Sharia law that they deem fit.⁹⁴ In practice, each Sheikh is influenced by a different school of Sharia law.⁹⁵ All these schools of Sharia law rest in the Holy Quran which recognizes fundamental human rights and the equality of men and women.⁹⁶ Qadi courts have long been established in Somaliland to settle disputes under Sharia Law.⁹⁷ In accordance with the Somaliland Constitution, Sharia law recognizes gender equality. However, a fact that cannot be denied is that women's human rights in law in Somaliland have not been adequately realized, based on the grounds that currently there is no unanimous interpretation of the Sharia law as different scholars interpret the legal status of women differently depending on the school of the Sharia law that they refer to on a particular issue.

It is indisputable that Somaliland society is not static and culture inevitably adopts to changes. To respond to the changing needs of its communities, the current government has set up Madum courts in semi-urban areas to serve as Sharia courts,

⁹¹ Position of law clarified by Mr. Abdul Wahid Sheikhosman, Chairperson, Law Reform Commission, Republic of Somaliland.

⁹² Ibrahim Hashi Jama: The Constitution of the Republic of Somaliland: Translated with extended annotations and explanatory notes (Updated Translation, April 2005).

⁹³ Ibid.

⁹⁴ Position of law clarified by Mr. Abdul Wahid Sheikhosman, Chairperson, Law Reform Commission.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

but they have no power to order enforcement of state law.⁹⁸ By the same token, Madam courts have taken on the nature of reconciliatory courts and in some instances have applied customary law.⁹⁹

(ii) Customary Law

Customary law in Somaliland is not codified but applies in all parts of the country.¹⁰⁰ Although customary law is not codified, traditional courts are consistent in abiding by precedents.¹⁰¹ Should a new issue arise which does not fit within the existing precedents, traditional courts will apply legal reasoning to fit that particular issue. The decision reached will thereby become the precedent to be followed in future cases of a similar nature.¹⁰² The peculiar nature of customary law in Somaliland is that this source of law embodies a number of distinct customary laws relevant to a particular geographic location.¹⁰³ Thus, similar issues may result in different decisions, based on their different geographical locations. This notwithstanding, every geographic location observes the precedents pertaining to its locality .

The Somaliland customary law court system is based on Somaliland's traditional authority, which is elected by the clan members.¹⁰⁴ This authority originates from the election criteria set up by clan elders. The supreme customary law court is headed by the Sultan who is the highest clan authority.¹⁰⁵ The customary appeal court is headed by the Chiefs and the traditional court is headed by the Akil, who is the lowest clan leader.¹⁰⁶ The customary law legal system is illustrated below.

Eligibility for election for the first time to the position of the Chief is based on the following criteria:

- (i) Wealth;
- (ii) Tolerance;
- (iii) Leadership ability;
- (iv) Command of respect by the clan;

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Position of Law clarified by Honourable Judge Abdirashid Mohamed Hirsi, Chairman of Hargeisa District Court, during a Consultative meeting with the Judiciary, April, 2008.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Position of law clarified by Mr. Ahmed Ismail Ally, Director of Judiciary and Child Rights Department, Ministry of Justice, during a consultative meeting with the Ministry of Justice, April 2008.

¹⁰⁴ Position of law clarified by Mr. Ahmed Ismail Ally, Director of Judiciary and Child Rights Department, Ministry of Justice, during a consultative meeting with the Ministry of Justice, April 2008.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

- (v) Advocacy by clan members for competency to the position;
- (vi) Public relations capacity internally and externally; and
- (vii) Good command of conflict management.¹⁰⁷

All Sultans, Grads, Ugas, Chiefs and Akils in Somaliland are registered by the Ministry of Interior. Sultans are heads of two or more Chiefs. Chiefs are heads of five or more Akils. Akils have the mandate to nominate representatives of the customary court from the sub-clan.¹⁰⁸ These traditional courts use traditional law, commonly referred to as customary law which is not codified. The basic principle for establishing case precedents is based on the principle of '*Arrintu ma ugubaa mise waa curad*'¹⁰⁹ literally meaning '*Is this the first case or there is a precedent?*'. If the case is new, the customary law agrees on a new method to manage the case. If it is of a similar nature to previous cases it follows precedent. The precedent is known as the '*xeer*'.¹¹⁰

Traditional courts are known as Akil courts and are presided by the 'Akil', commonly referred to in English as the 'chief', and comprised of the 'Guurti', who are elders of the clans.¹¹¹ Akil courts are mobile courts resolving cases wherever a particular dispute arises.¹¹² In some parts of Somaliland customary law is preferred to Sharia law and is very powerful, bearing in mind the power vested in the Guurti by their clans. The clan system rests on a patriarchal system which determines customary law. Thus, customary law also governs issues relating to matrimonial disputes, inheritance and property rights, depending on the geographical area.¹¹³

Government leadership has expressed the political will to codify customary laws to reinforce comprehensive knowledge of customary law by the people of Somaliland and to erase ambiguities in legal interpretations. The Director General of the Ministry of Tourism and Culture, Honourable Hassan Ismail Hassan, stated that:

'The Ministry of Tourism and Culture is vested with the mandate of ensuring that gender is mainstreamed in the cultural sector. Men and women have equal rights towards national development and safeguarding our autonomy. National development must be consistent with fundamental cultural traits. Culture must be a central component of national development strategies. In order to survive, a culture needs to

¹⁰⁷ Ibid.

¹⁰⁸ Position of customary legal system clarified by Mr. Ahmed Ismail Ally, Director of Judiciary and Child Rights Department, Ministry of Justice, during a consultative meeting with the Ministry of Justice, April 2008 and also, Mr. Abdul Wahid Sheikhsman, Chairperson, Law Reform Commission.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

renew itself so as to cope with present-day issues. It is imperative to carry out an objective study of our own history to reassess traditional values with a view to emphasizing those conducive to renewal and progress. Cultural identity should be part of efforts to strengthen the capacity for autonomous decision-making, blending indigenous and universal elements in the service of the people-centered policy. Predominant among the latter are values of democracy and social justice. Adoption of clear policies and priorities to foster cultural development is necessary. The Ministry intends to codify customary laws to safeguard the principle of equality stipulated in the Constitution of the Republic of Somaliland. To attain this, technical as well as financial assistance is required. The Ministry is mobilizing resources to this end.'

It must be noted that law reform and legislative development are under the mandate of the Ministry of Justice. Codification of customary laws in this respect will be executed by the Ministry of Tourism and Culture in collaboration with the Ministry of Justice, since the Ministry of Justice is vested with the mandate of legislative development.¹¹⁴ By and large, state law is shaped by customary law, hence women's human rights must be protected against negative public attitudes derived from the patriarchal nature of customary laws.

(iii) State Law

The source of state law is constitutional law whose supreme law rests on the Sharia law. Moreover, state law commonly connotes circular law and legislation that is developed from time to time by the legislature.¹¹⁵ State law recognizes the principle of equality and does not condone gender discrimination.

¹¹⁴ Position of law clarified by Mr. Abdul Wahid Sheikhosman, Chairperson, Law Reform Commission, Republic of Somaliland.

¹¹⁵ Ibid.

CHAPTER THREE

WOMEN AND PROPERTY RIGHTS

In most of the patriarchal societies of Africa, women are denied ownership to land. Clan land is considered to be the most valuable property and women are accorded only usage rights as opposed to ownership. This therefore grants men economic power over women, and this power extends to social and political power. This prompts the question whether this basis of power of men over women exists in Somaliland, which is traditionally a nomadic society. Prominent lawyers in Somaliland are of the view that in Somaliland there is no such phenomenon as clan land, since the society is predominantly nomadic.¹¹⁶ By virtue of the Constitution of the Republic of Somaliland, all land belongs to the Government. Emanating from the cardinal principle of equality, the Constitution spells out clearly that all citizens of Somaliland have equal rights to property ownership.

By virtue of state law, property law and contract law, all people have the right to acquire property. Thus, women have the right to enter into contractual agreements to acquire property and invest in property without discrimination.

Arising from the premise that Somaliland law is based on Sharia law, the principle of equal ownership of property is reflected in the Sharia Surah 2. Al-Baqarah. Mr Ahmed Ismail Ally, Director of the Judiciary and Child Rights Department, citing the Holy Quran, has stated that nothing in the Holy Quran denies women property ownership.¹¹⁷ Under Verse 35, Surah 2. Al-Baqarah, God gives equal rights to a man and a woman to enjoy property together. It is provided that:

‘And we said: ‘O Adam! Dwell you and your wife in the Paradise and eat both of you freely with pleasure and delight, of things therein as wherever you will, but come not under this tree or you both will be of the Zalimun (wrongdoers).’¹¹⁸

This is supported by strong evidence that Prophet Muhammad’s wife Khadija owned property before she was married to Prophet Mohamed and Prophet Mohamed was a servant of Khadija. Verse 188, Surah 2. Al-Baqarah forbids all people, without making any gender distinction whatsoever, to forfeit property rights illegally. It is provided that:

‘And eat up not one another’s property unjustly (in any illegal way, eg stealing, robbing, deceiving, etc), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully.’

¹¹⁶ Op. cit, notes 19 and 26.

¹¹⁷ Position of law clarified during a consultative meeting with the Ministry of Justice, June 2008.

¹¹⁸ Ibid.

Even upon divorce, the Holy Quran takes care of the division of matrimonial rights and does not condone injustice to women.¹¹⁹ Moreover, under Verse 38, Surah 24, An-Nur, it is stipulated clearly that God rewards abundantly those who invest and give property to any person that He wills, regardless of gender. The pertinent Verse provides that:

‘That Allah may reward them according to the best of their deeds, and add even more for them out of His Grace. And Allah provides without measure to whom He wills.’

By virtue of Somaliland law, any law that contravenes Sharia is bad law.¹²⁰ It has been shown above that state law and Sharia law both recognize women's rights to property ownership. A question to be posed at this juncture is whether customary law provides an exception to this cardinal rule. It has been pointed out by Mrs Amina Warsame, who represents the Somaliland women elders, that customary law denies women the right to property ownership. Tracing the origins of this discriminatory law, Mrs Warsame stated¹²¹ that in the Somaliland traditional nomadic society, women had the responsibility for building houses whenever the family settled at a new grazing pasture. Women thatched houses and always looked after the building materials for use in the future. However, all property including livestock belonged to the husband. In the event of divorce, a wife walked out of the house empty handed and was even forced to leave behind her baby.¹²² A woman would untie the baby from her back and hand it over to her husband. This often made a woman cling to a post that supported the house and cry for mercy to maintain the marriage, even if it meant staying in the house solely to look after the children, without any conjugal rights. This culture is largely practised in rural areas to date.

This view is supported by a statement from another elderly woman, Mrs Rahma Mohamed, who commented on women's right to property ownership under customary law: ‘Customary law gives women an inferior role. Women do not get equal rights in relation to property ownership.’¹²³

Community members have cited a customary practice which required men to break any pot that was brought by a wife after the wedding to prevent women from

¹¹⁹ Verse 229, Surah 2. Al Baqarah.

¹²⁰ Position of law clarified by Mr. Ahmed Ismail Ally, Director of Judiciary and Child Rights Department, Ministry of Justice, during a consultative meeting with the Ministry of Justice, June 2008

¹²¹ Position of law clarified by Mrs Amina Mahamoud Warsame (Milgo), Executive Director, Nagaad Women's Umbrella Organization, Somaliland, Hargeisa, July 2008.

¹²² Ibid.

¹²³ Statement given during interview with Mrs Rahma Mohamed: Executive Director, SOWNA NGO, in Hargeisa, July 2008.

owning any property in the house.¹²⁴ Confirming the existence of this practice, Chief Rashid Abdi Handule Dheere stated that the tradition of breaking pots is also practiced by people in urban areas.¹²⁵ Traditionally, Somaliland culture did not deny women property ownership, but there was a fear or superstition that if a woman had property she may not respect her husband. This was expressed in the custom of the 'break your wife's pot first',¹²⁶ which follows on from an original custom of 'slaughter your wife's goat first'.¹²⁷ If a wife brought some cattle from her family, a husband was required to slaughter her cattle to prevent her from owning property in the house. It can clearly be seen that customary law is discriminatory in terms of property ownership and needs to be codified to identify the forms of discrimination and propose amendments to abolish discriminatory principles. Chief Rashid Abdi Handule Dheere and Chief Hassan Badmah Meygali commented that:

'The society is now transitioning from the nomadic mode of production to a modern mode of production forced by changes internationally. To respond to global needs, customary law has to gradually hand over. Property ownership has to apply equally, as now women are involved in business and professional work and earn property. The customary law which denies women equal ownership of property is bad law. We are now ready for law reform and codification of customary law insofar as the legislative developments do not contravene Sharia law.'¹²⁸

However, another school of thought presented by legal scholars and legal practitioners suggest that customary law does recognize both private and joint ownership of matrimonial property. Stating this view, Judge Abdirashid Mohamed Hirsi, Chairman of Hargeisa District Court, said:

'Customary law recognizes private and joint ownership of property within a family, for customary law evinced in customary proverb states that "You can never reach a man whose wife is better than yours."¹²⁹

Elaborating further on this proverb, Mrs Amina Mohamoud Warsame (Milgo), Executive Director, Nagaad, stated:

¹²⁴ Statement given by community members during a consultative meeting with Hargeisa community members, July 2008.

¹²⁵ Position of Customary law given by Chief Rashid Abdi Handule Dheere, during a consultative meeting with traditional Chiefs, Hargeisa, July 2008.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Statement provided during a consultative meeting with Traditional Chiefs, held in Hargeisa, July 2008.

¹²⁹ Position of customary law, provided during the consultative meeting with the Judiciary, Hargeisa, April 2008.

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'Gender inequality is a mere denial of the recognition of women's contribution in development despite the Somaliland proverb which elucidates that "You can never reach a man within one day if he has a horse that runs faster than yours; you can never reach a man in one year whose pasture is better than yours and you can never reach a man in your lifetime whose wife is better than yours."'¹³⁰

The above exposes some contradictions concerning customary law in relation women's rights to property ownership. Whereas one school of thought shows that customary law accepts gender equality in property ownership, another school of thought proves the contrary. This calls for community dialogues involving men and women to resolve this contradiction and for the Ministry of Justice to come up with a position to settle this contradiction.

¹³⁰ Position of customary law provided during the consultative meeting with Executive Director, Nagaad, held in Hargeisa, April 2008.

CHAPTER FOUR

WOMEN AND INHERITANCE RIGHTS

Inheritance law in Somaliland is governed by Sharia law.¹³¹ The Holy Quran does not deny women inheritance rights. By virtue of Verse 7, Surah 4. An-Nisa:

‘There is a share for men and a share for women, from which is left by parents and those nearest related, whether the property be small or large - a legal share.’

The division of inheritance rights is spelt out under the Holy Quran, Verse 11, Surah 4. An-Nisa that:

‘Allah commands you as regards your children’s (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased’s left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-wise.’

Verse 12, Surah 4. An-Nisa, states that:

‘In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-forgiving.’

Accordingly, Verse 13, Surah 4. An-Nisa, concludes that:

¹³¹ Position of law clarified by Judge Abdirashid Mohamed Hirsi, Chairman of Hargeisa District Court, during a consultative meeting with the Judiciary, Hargeisa, April 2008.

‘These are the limits (set by) Allah (or ordinances as regards laws of inheritance), and whosoever obeys Allah and His Messenger (Muhammad SAW) will be admitted to the Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success.’

The Holy Quran, under Verse 19, Surah 4. An-Nisa, forbids wife inheritance against the will of the widow. It is provided that:

‘You are forbidden to inherit women against their will; and you should not treat them with harshness.’

A logical issue to raise is the position of law in terms of property acquired jointly by spouses. In this instance, Sharia law recognizes joint ownership of the property on the grounds that if the law recognizes that women can own property, it follows, *ipso facto*, that the law recognizes private and joint ownership within a marriage.¹³² It has been a common practice in Somaliland for spouses to make an inventory that distinguishes between private property and joint property.¹³³ A wife may acquire property through inheritance from her family and therefore a husband cannot claim ownership to that property.¹³⁴ Similarly, if a wife is a businesswoman or a hard-working professional who is skilful at acquiring property, such property cannot be taken to be a husband's property.¹³⁵

Whether a man or a woman can write a will bequeathing their estate in the event of death, it is unequivocally consistent within the law.¹³⁶ The inheritance rights commanded by the Sharia do not prohibit written wills insofar as the will does not violate the principles specified under the Holy Quran. However, all systems of law agree that a man has a right during his life to assign any part of his property to his family members.¹³⁷ This is supported by Article 333 of the Civil Code which provides that all agreements out of the courts, where members of the communities come to an agreement, is legitimate in the eyes of the law.¹³⁸ Within the same ambit, Sharia law, Verse 34, Surah 4. An-Nisa of the Holy Quran, and Verses 128 and 129, Surah 4. An-Nisa of the Holy Quran provide that:

‘When agreement is reached between two parties is good justice.’¹³⁹

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

CHAPTER FIVE

VIOLENCE AGAINST WOMEN

The United Nations notes that, 'the issue of gender-based violence is not specifically addressed in the CEDAW, although it is clearly fundamental to its most basic provisions. In general recommendation No. 19 adopted at its 11th session, in 1992, the Committee on the Elimination of Discrimination against Women took an important step to formally extending the general prohibition on gender-based discrimination to include gender based violence.'¹⁴⁰ Hence, it defined gender-based violence under para. 6 as:

'Violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.'¹⁴¹

The committee affirmed that violence against women constitutes a violation of her internationally recognized human rights, regardless of whether the perpetrator is a public official or a private person.¹⁴² Accordingly, violence against women encompasses economic, social and political factors that impact on women's human rights in Somaliland. A few examples include harmful traditional practices such as pharaonic female genital mutilation, domestic violence, forced marriages (including victims of rape to the rapist and wife inheritance) and sexual violence.

Judge Abdirahman Jama Hayan, Chairman of Hargeisa Regional Court, clarified that all matters of violence against women which result to injury are governed by the Penal Code.¹⁴³

Sheikh Abdurahman Ibrahim, while reciting the Holy Quran, Verse 231, Surah 2. Al-Baqarah, contends that:

'Violence against women is not acceptable in Somaliland. It is a violation of Sharia. When God created the world he first created a man and a woman, Adam and Hawa, and it is not reflected anywhere in the Holy Quran that Adam should exercise violence against Hawa. Even in the event of divorce God says: And when you have divorced women and they have fulfilled the term of their prescribed period, either take them back on reasonable basis or set them free on reasonable basis. But do not take them back to hurt them, and whoever does that, then he has wronged himself. And treat not the Verses (Laws) of Allah as a jest, but remember

¹⁴⁰ United Nations: Human Rights; Discrimination Against Women: The Convention and the Committee; Fact Sheet No. 22; World Campaign for Human Rights; p. 30.

¹⁴¹ Ibid. p. 31.

¹⁴² Ibid.

¹⁴³ Position of law clarified during consultative meeting with the judiciary, Hargeisa, April 2008.

Allah's Favours on you (ie, Islam) and that He has sent down to you the Book (ie, The Qur'an) and Al Hikmah (the Prophet's Sunnah – legal ways – Islamic jurisprudence) whereby He instructs you. And fear Allah, and know that Allah is All-aware of everything.¹⁴⁴

Sheikh Mohamed Abdulla Musa cites the Holy Quran, Verse 34, Surah 4. An-Nisa, that:

'As to those women on whose part you fear disloyalty and ill conduct, admonish them (first), (next) refuse to share their beds (and last) beat them (lightly); but if they return to obedience seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great.'¹⁴⁵

In addition to the above, the Holy Quran, Verse 35, Surah 4. An-Nisa, provides that:

'If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-knower, Well-Acquainted with all things.'

Traditional leaders unanimously agree that customary law does not condone violence against women.¹⁴⁶ Under Somaliland custom men have always been given the role of protectors of women and if a woman was subjected to violence, male relatives will go to any length to remedy justice. Relatives of the aggrieved and the offender will go to a customary law court in order to reach a consensus of opinion and reconciliation. The woman is represented by her male relatives. While mediating over the dispute, the customary law court will first examine the injury inflicted on the aggrieved party. If the injury is minor, a person who inflicted harm will be ordered to pay compensation. If the injury caused grievous harm, the customary law court orders the offender to pay compensation and, if necessary, issue a divorce.

Prominent legal scholars and legal practitioners assert that customary law does not condone violence against women.¹⁴⁷ In the event of a family conflict, the Guurti settle the conflicts by bringing both parties together and giving them the same opportunity to state the facts. The Guurti applies customary legal reasoning to come to a decision. No case of violence against women is left unresolved.¹⁴⁸

¹⁴⁴ Position of Sharia law clarified during a consultative meeting Sheikh Abdurahman Ibrahim, Hargeisa, July 2008.

¹⁴⁵ Position of law clarified during a consultative meeting with traditional leaders, Borama, June 2008.

¹⁴⁶ Position of law clarified by Sheikh Mohamed Abdulla Musa and and Sheikh Adan Dahir, during the consultative meeting in Borama, July 2008.

¹⁴⁷ Position of law clarified by Honourable Judge Abdirashid Mohamed Hirsi, Chairman of Hargeisa District Court, during consultative meeting with the Judiciary, April 2008.

¹⁴⁸ Ibid.

According to Somaliland legal scholars, the tradition of Somaliland has always seen violence against women as a serious offence to the extent that if a member of one clan commits violence against a woman, her would wage a war in return. Thus, many civil wars erupted over the protection of a woman.¹⁴⁹ If a violent act is committed by someone within the same clan, the male family members of the aggrieved woman will represent the woman in the customary court and ensure that the dispute is settled.

Despite the fact that Somaliland is an independent, sovereign state whose citizens shall have equal rights and duties before the law, Somaliland is experiencing a proliferation of violence against women. This is reflected in domestic violence, sexual offences and harmful traditional practices, namely female genital mutilation.

(i) Domestic Violence

Domestic violence is a violation of the institution of family. The family, based on marriage, is a fundamental element of society and is protected by the Somaliland state. In this regard, the state safeguards public morality in the manner prescribed by law. If a person enters into a marriage when, due to his personal status, such marriage is not allowed, they shall be punishable with imprisonment. Having intercourse with a person whom one is forbidden to marry, due by his or her personal status, is punishable by law. So adultery is an offence¹⁵⁰, as is incest. Adultery is punishable by law and the punishment is increased in the case of an incestuous relationship. Suffice to say, crimes arising out of dereliction of duty towards family are covered under the Penal Code.¹⁵¹

Ill-treatment of a member of a family, or a person who is under the age of 18, subject to someone's authority or entrusted to him for purposes of education, instruction, treatment, supervision, custody or the exercise of a profession or craft, shall be punishable.¹⁵² The law clarifies that where the act results in serious or very serious injury, the punishment is imprisonment for two to eight years; where death results, the punishment shall be imprisonment for ten to 15 years. It is important to note that the age of a minor was formerly defined as under 14 (under the Penal Code 1962) has been repealed by the Juvenile Justice Law 2008 and is now defined as under 18.¹⁵³

¹⁴⁹ Ibid.

¹⁵⁰ Art. 426, Penal Code, Law No. 5, 1962.

¹⁵¹ Chapter III, The Somali Penal Code, Law No.5, 1962.

¹⁵² Art. 432 (i).

¹⁵³ Position of Law clarified by Mr. Abdul Wahid Sheikhosman, Chairperson, Law Reform Commission.

Avoidance of obligations relating to the exercise of parental authority, legal guardianship, or marriage is a punishable offence and the same penalty applies to a person who misuses or squanders the estate of a minor child or ward.

Abduction is also a violation of the law. Under the Penal Code, abducting a person under 18 years of age, or a person who is mentally infirm, from a parent who is exercising parental authority, or from a guardian or trustee, or detaining such person against the will of the aforesaid people, shall be punished, on complaint of the parent, guardian or trustee. Likewise, whoever abducts or detains a person who has attained 18 years of age, without the person's consent, for the purposes other than lust or marriage, will be liable to punishment, on complaint of the parent exercising parental authority, the guardian or trustee.¹⁵⁴

It is important to point out that, customary law does not condone domestic violence. However, male community members state that the rationale behind domestic violence is to discipline a wife, where the wife does not fulfil her marital obligations.¹⁵⁵ There is mixed opinion in this subject, although the majority condemn domestic violence. In matters of domestic violence, the first step under customary law is to try to reconcile the parties to resolve the dispute. Reconciliation is effected twice. If the parties do not reach a consensus then a divorce will be issued, with compensation if the aggrieved party so requires.¹⁵⁶

Sharia law, Verse 34, Surah 4. An-Nisa, of the Holy Quran, deals with family conflict management. It is stipulated under this provision that: 'In case of a family dispute, the judge must call the two parties to the suit in order to assign the management of the problem.'¹⁵⁷

Sharia law uses three determining factors to decide on domestic violence matters. First, Verse 9, Surah 49. Al-Hujurat, establishes the principle of reconciliation as follows:

'And if two parties or groups among the believers fall to fighting, then make peace between them both. But if one of them outrages against the other, then fight you (all) against the one that which outrages till it complies with the command of Allah. Then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are the equitable.'¹⁵⁸

¹⁵⁴ Art. 433

¹⁵⁵ Opinion given by male community members in Borama, Burao, Berbera and Hargeisa regions, during the consultations conducted in the year 2007 and 2008.

¹⁵⁶ Position of law clarified by Chief Rashid Abdi Handule Dheere, during the consultative meeting held in Hargeisa, July 2008.

¹⁵⁷ Position of law given by Honourable Judge Abdirashid Mohamed Hirsi, Chairman of Hargeisa District Court during the consultative meeting with the Judiciary, held in July 2008.

¹⁵⁸ Ibid.

Second, Sharia law looks at the injuries sustained. If injuries are minor the offender is asked to compensate the aggrieved party. If the injury is grave, the offender may be punished by 100 strokes in public or imprisoned.¹⁵⁹ Third, the aggrieved party may be granted divorce should she request so.¹⁶⁰

From a legal standpoint, violence against women is a violation of women's rights. Some community members have attributed violence against women to customary practices which hold that women's status is inferior to men's status.

In practice, women who are victims of violence have some awareness of the legal recourse available to them, but are not conversant enough to properly articulate issues and assert their rights in court. This is illustrated by the case of **X vs Y**, **Supreme Court Appeal, 2007**, as shown below.

Family Case

In The Name of Somaliland Republic,

Hargeisa District Court,

Court Judgement, 14th February 2007.

X vs Y, Hargeisa District Court, February 2007

Facts

[1] On the 27th day of January 2007, X (hereinafter referred to as the Claimant) filed a suit in the District Court of Hargeisa against her husband, Y (hereinafter referred to as the Respondent), seeking for proper maintenance and consummation of marriage or divorce. The Claimant averred that, since the birth of their three-month-old son, the Defendant had neither slept at home nor spent time with the family. On those occasions that the Defendant visited the Claimant's house it was only for the reason of paying bills; in doing so, he never entered in the house but stopped by the doorstep. The Claimant always claimed an excuse that he was very busy but, to the Claimant's surprise, he had time to stay at his first wife's house. It was the Claimant's case that the Respondent had failed to honour his marriage to her.

[2] The Claimant sought the following orders:

- (a) The Respondent to properly divorce the Claimant;
- (b) Upon divorce, the Respondent to issue to the Claimant a certificate of divorce;
- (c) The Respondent to be ordered to pay daily maintenance of the child;
- (d) The Respondent to pay 12 camels wedlock; or, as the alternative,

¹⁵⁹ Judge Adan Jama Seleben, Appeal Court Judge, Burao.

¹⁶⁰ Ibid.

(e) The defendant to maintain and properly consummate the marriage.

[3] On the 30th day of January 2007, the Respondent submitted his defence in which he averred that the Claimant is his spouse and that he met all the maintenance costs for her and the child. The Respondent further stated that the reasons for his absence from home were due to the nature of his job, namely, military force operations. On the issue of maintenance of the Claimant and the child, the defendant stated that he earns a soldier's salary, which is very low but still met all the bills in accordance with his salary scale and at times he even provided more to his wife. The Respondent also submitted that he had another large family of 12 and agreed to divorce the Claimant and pay her shillings So.100,000 per month.

District Court Decision

Having heard from both parties, the Judge was of the opinion that the problem arising between the two parties stemmed from the reason that the Respondent showed preference to his first wife over the Claimant. As such, there was no other serious conflict between the parties. Pursuant to the provisions of Articles 117, 119, 163, 164, 167, 78, 79, 80 of the Civil Procedure Code, the Court issued the following orders:

1. The Respondent to pay the Claimant a monthly maintenance allowance of a sum of shillings So.400,000 and a further sum of shillings So.100,000 per month as house rent.
2. The Respondent to honour his marriage to the Claimant on equal basis with his first wife.
3. That both parties should set aside the conflict between them and maintain their marriage.
4. The defendant to pay all pending bills for the Claimant.

Appeal

Aggrieved by the decision of the District Court, the Respondent (hereafter referred to as the Appellant), filed an appeal to the Regional Appeal Court. In his appeal the Appellant relied on the following grounds:

1. That the District Court erred in ordering him to pay to the Claimant (hereafter referred to as the Respondent) the sum of shillings So.500,000 per month, namely, shillings So.400,000 maintenance allowance and shillings So.100,000 house rent when in actual fact he divorced her. (As will be shown below, the Appellant divorced the Respondent while the suit was still under court proceedings.)

2. The District Court failed to take into account the fact that the Appellant had a large family and therefore was unable to meet the costs.

The Respondent argued that:

1. The Appellant had in fact misled the court in saying that he was an ordinary soldier - he was in fact an officer in the army.
2. To the extent that the Appellant had divorced the Respondent through two Talaqs, he should be ordered further to pay camel wedlock on top of the monthly payments.

Hargeisa Appeal Court Decision

The Appellate Court dismissed the Appeal and quashed the decision of the District Court on the grounds of non-disclosure of material facts on the part of the Appellant. The Appellate Court found that the Appellant had not disclosed at the hearing before the District Court that he had issued two sworn Talaqs to his wife on 30th January 2007. The Court then proceeded to issue the following orders:

1. The appellant to pay to the Respondent 12 camels as wedlock.
2. The appellant to pay to the Respondent the sum of shillings So.5000 per day as divorce duration while she was in Cidat-bax period.
3. The Appellant to pay to the Respondent a monthly rent for one room.
4. The Appellant to pay a sum of shillings So.100,000 monthly as food allowance for the son.

Judgment of the Appeal Court was issued by Hargeisa Appeal Court Judge.

Aggrieved by the decision of the Regional Appeal Court, the Appellant, Y, brought an appeal to the Supreme Court of the Republic of Somaliland. The suit was presided over by three Supreme Court Judges, namely, the Chairperson and two other members.

The Appellant asserted that the decision by the Regional Appeal Court was unfair and did injustice to him. The Regional Court erred in ordering him to pay shillings So.500,000 to his divorced wife, an amount which was higher than his salary. The Appellant claimed further that he only earned an ordinary soldier's monthly salary rate of shillings So.200,000. It was also put by the Appellant that the Respondent's claim to the Regional Appeal Court that the Appellant did not pay any bills for the past ten months was false. Lastly, the Regional Appeal Court failed to acknowledge the fact that the Claimant had divorced the Respondent. For that matter, the Appellant maintained that he could only deduct a monthly amount of shillings So.50,000 for a living allowance for the Respondent and shillings

So.40,000 for his son's living allowance. The Appellant therefore requested the Supreme Court to reverse the decision of the Regional Appeal Court.

The Respondent countered the Appellant's claim that:

1. The Regional Appeal Court misdirected itself from the main issue of her suit. In her initial suit to the District Court, the Respondent claimed that the main issue was the failure of her husband to honour his marriage to her for the period of ten months;
2. The Regional Appeal Court also failed to order the Appellant to pay her the bill for the divorce period and instead only ordered the Appellant to pay a sum of shillings So.550,000 for the child maintenance bill;
3. Lastly, the Regional Appeal Court honoured a divorce claimed to have been issued to the Respondent by the Appellant which was false because the Respondent was not aware of the divorce and neither was the District Court;

The Supreme Court, having heard the case from both sides, considered the following:

1. Judgment of Hargeisa Appeal Court Ref: MRH/DMLR/25/07 of 13/03/07;
2. Judgment of Hargeisa District Court Ref: MDH/DML/112/07 of 14/02/07.
3. The Islamic Sharia Imaam Shafic School, the Muqni-Almuxtaaf Text Book, Chapter 3, page number 441, 220.
4. Articles 246, 77, 78 of the Civil Procedure Code.

The Supreme Court reached the following decision:

1. Save for the divorce under Sharia law, the Court rejected all other appeal reasons of the Appellant Y dated 21st March 07;
2. The Court respected the defence of the Respondent, X, dated 13/04/07.
3. The Court upheld the decision of Hargeisa Regional Appeal Court, Ref: MRH/DMLR/25/07 dated 13/03/07.
4. This Judgment was issued on 22/03/07.

Considering the above court proceedings it is clear that X, whose case reflects problems affecting many Somaliland women, had an issue in her marriage and sought legal recourse. The main snag in defending her rights is that she failed to articulate and argue before the court that her husband had erred in law by issuing her with a divorce while the case was still being heard by the court; also, he failed to notify the court of his intention to issue divorce during court proceedings. At

this point, it is imperative to raise a few issues to ascertain whether the courts in any way violated women's human rights. It is questioned:

1. Whether the courts properly addressed all the issues of dispute in this case;
2. Whether it was proper for the Appellant to have issued a divorce to his wife while the case was still being heard before the law;
3. Whether a human right of the woman with regards to the right to marry was properly addressed by the Court.
4. Whether the Courts properly analysed the reasons for opting to use specific sources of law to this particular case. In this case the judges made reference to provisions of the Sharia Law and Civil Procedure Code without clearly analysing the legal reasoning as to how the sources of law were applied to the facts of the case and evidence thereto.

It is contended hereby that all the courts failed to properly address the facts of the case to enable them to identify the issues. This inevitably affected the legal reasoning, application of the relevant laws and erroneous decisions by the courts. The courts must have identified two issues: first, whether Y failed to honour his marriage to X. Second, whether Y failed to meet his obligations of providing his family with living allowance. Third, whether Y properly issued the divorce to X. Nowhere in the court proceedings did Y dispute the fact that he failed to honour his marriage. It is apparent from the proceedings that Y failed to adequately meet his obligations for maintaining the family's living expenses. Y erred in law by issuing divorce to his wife during court proceedings, for the Holy Quran, Verse 34, Surah 4. An-Nisa, commands that:

‘As to those women on whose part you fear disloyalty and ill conduct, admonish them (first), (next) refuse to share their beds (and last) beat them (lightly); but if they return to obedience seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great.’¹⁶¹

In addition, the Holy Quran, Verse 35, Surah 4. An-Nisa, provides that:

‘If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-knower, Well-Acquainted with all things.’

Y did not honour the commands of the Holy Quran, for he stayed away and abstained from honouring his marriage for ten months and divorced his wife while

¹⁶¹ Position of law clarified during a consultative meeting with traditional leaders, Borama, June 2008.

the court was still arbitrating. It is hereby contended that the court misdirected itself on the point of law as the Appellant pre-empted the court from effecting the course of justice and therefore denied the Respondent equity and equal right before the law. This was because the husband held the trump card which, in this case, enabled him to issue a sworn divorce, contrary to the law, but one which the courts failed to challenge. Moreover, the Holy Quran, under Verse 226 and 227, Surah 2. Al Baqara, commands that, if a husband takes oath not to have sexual relations with his wife he must wait for four months and decide either to return or to divorce. The right to marry is a human right, and therefore the right to consummate the marriage should be given due respect. The fact that the Appellant denied his wife the right to consummate the marriage means he inflicted psychological harm on his wife; conversely, this led to emotional, mental and physical violence against the Respondent.

The courts failed to present proper legal method this case. Apart from mentioning the provisions of the Sharia and Civil Procedure Code, the courts failed to adduce clearly how the provisions of the pertinent sources of law properly fitted with the issues and facts at hand. This inadequacy in court proceedings led to injustice for the Respondent. The legal jargon used by the courts limited her ability to query the violation of her rights and the courts did not take due care to spell out clearly to the parties what the provisions of the law referred to, leaving them as legal citations. Justice was therefore not properly granted to the Respondent.

Insofar as the courts failed to identify major issues relating to the dispute and allowed the Appellant to wrongfully maneuver justice by instituting an improper divorce, the courts became facilitators of a form of gender violence, one which was propagated by the Appeal Court and then effectively blessed by the Supreme Court. Denial of conjugal rights is a violation of the right to marry and the courts could have ordered the Appellant to come up with a way of effecting equal conjugal rights to both wives.

It is discerned that quite often women know where to go for legal redress but do not have the capability to argue and defend their cases and often lose their rights. Developing a women's rights-based approach, by adding more women to the Human Rights Commission and to the ranks of the legal profession, is important for eliminating gender biases in women's concerns and ensuring that women are part of decision making process in human rights structures. Furthermore, training of the judiciary in women's human rights law is crucial to ensure that gender equality is maintained and the principle of equality is put into practice, hence eliminating gender biases.

Mrs Amina Milgo Warsame, Executive Director of Nagaad, the women's rights umbrella organization in Somaliland, and renowned women's rights activist, has

made a detailed study of women and the justice system in Somaliland. Commenting on the judiciary, she writes:

‘Although no extensive studies have been made on the extent and use of customary law in Somaliland, it is an undisputed fact that customary law is predominant in the rural areas and also widely used in the urban areas of Somaliland. Even the judiciary personnel admit this fact. As put by a district judge in Borama, “Elders take a lot of the burden from the courts in Somaliland by resolving conflicts in the traditional way.” Clan elders deal with a wide range of legal issues at the family, the community and the national level using customary laws as laid down centuries ago.

‘In any case, many women do prefer to take their matters to clan elders when they feel that their rights have been violated. Moreover, if the women’s family see the woman as the victim in a family dispute, they are more likely to assist her... Some women become satisfied with the decisions reached by elders and advise other women to use that system.’¹⁶²

(ii) Sexual Offences

Sexual offences are said to be a new phenomenon in Somaliland and are reported to be increasing drastically.¹⁶³ The factors behind this growing trend are yet to be ascertained. The most controversial issue in this context is the nature of the legal process that deals with sexual offences. All systems of law in Somaliland are applicable to sexual offences, though the nature of court decisions differs. The concurrent nature of the Somaliland legal system means that application of a particular system of law depends on the geographic location where the offence is committed. This means that if a sexual offence is committed in a geographical area which applies Sharia or state law the offence is punishable, whereas if it is committed in an area which applies customary law the offence is conciliatory.

Under the regional court, sexual offences are governed by The Somaliland Penal Code, Law No. 5 of 1962¹⁶⁴ (hereafter referred to as the Penal Code). The essential basis of the Penal Code is the set of constitutional principles relating to the subject, the absolute effectiveness of which is guaranteed by the Constitution of the

¹⁶² Amina Milgo Warsame: Women and the Justice Systems in Somaliland; SOWRAG Report, 2000.

¹⁶³ Ifrah Adan Omer: Presentation by Legal Aid Clinic, University of Hargeisa, Nagaad, 16 Days of Violence against Women; 2007.

¹⁶⁴ Position of law clarified by Honourable Judge Abdirahman Jama Hayan, Chairman, Hargeisa District Court, Hargeisa, April 2008.

Republic. The foremost principle, which forms the backbone of the organization of the State, is the principle of legality (or principle of the *State of Law*), which is expressly guaranteed by Article 5 of the Constitution. This article subordinates the '*organisation of the State*' and the '*relationships between the State and other persons, both public as well as private*', to the '*supremacy of the law*', and guarantee their observance by means of suitable jurisdictional controls, which are likewise applicable to the '*administrative acts contrary to law*' and '*legislative acts contrary to the Constitution*'.

By virtue of Article 398 of the Penal Code, whoever with violence or threats has carnal intercourse with a person of the opposite sex is punished with imprisonment. This applies also to anyone who has carnal intercourse with a person of the opposite sex who is incapable of giving consent, or with a person who has been deceived by the offender impersonating another person. Similarly, acts of lust committed with violence, unnatural offences committed with violence and abduction for purposes of lust or marriage are offences.

Other offences have been defined as offences against modesty and sexual honour and these include obscene acts, obscene publications and performances, prostitution and homosexuality.

Coupled with the above, Article 21 of the Penal Code recognizes the conciliatory nature of customary law in relation to sexual offences in that if there is a criminal case and parties to the case decide to settle their dispute out of the court, the decision reached is valid under the law.

However, customary law has evinced weakness in resolving sexual offences in that in most instances if it is a case of rape, the rapist's sentence is to marry his victim. In other sexual offence cases the court grants compensation to the male family members of the victim.¹⁶⁵

Pursuant to Sharia law, once it is proven beyond reasonable doubt that the offender has committed a sexual offence, if he is a single man the punishment is to be beaten in public with 100 strokes and to compensate the victim. If the offender is a married man then he will be stoned to death.¹⁶⁶

The above notwithstanding, circumstances allow for simultaneous application of the sources of law.¹⁶⁷ In some instances, if an offender was tried and imprisoned under state law, families of the parties to the case may decide to reconcile and forgive the offender and at that juncture the court decision may be overturned and

¹⁶⁵ Position of law clarified by Honourable Judge Aden Jama Seleben, Appeal Court Judge, Burao, during the consultative meeting by the Judiciary, held in July 2008.

¹⁶⁶ Judge Aden Jama Seleben, Appeal Court Judge, Burao.

¹⁶⁷ Position of law clarified by Mr. Ahmed Ismail Ally, Director of Judiciary and Child Rights Department, Ministry of Justice, during the consultative meeting with the Ministry of Justice, Republic of Somaliland, in April 2008.

the offender released from imprisonment. The Sharia principle of reconciliation applies *mutatis mutandis* with the principle of reconciliation under customary law. Similarly, if the offender is forgiven under customary or Sharia law and the aggrieved party is not satisfied, courts may resort to any appropriate law that the aggrieved party opts to take. This law position is well illustrated by the following cases.

In **R vs. S, Hargeisa District Court, April 2008**, the accused, S, was arrested on the charge of raping the aggrieved, R. In this case, both the aggrieved and the accused were represented by their clan elders. The representatives of the aggrieved decided that Sharia law should apply in all proceedings of this case. Representatives from both parties agreed to reconcile under Sharia law. The accused was therefore ordered to pay compensation to the aggrieved covering all damages. The representatives of both parties mutually agreed to release the accused upon effecting compensation. The decision reached was endorsed by the Notary Public Officer who witnessed the agreement by both parties to the case.

In another case, **A vs B, Hargeisa Regional Court, June 2008**, the aggrieved, A alleged to have been raped by the accused, B. The aggrieved and the accused were represented by their clan elders. The representatives of the accused requested for the release of the accused and to be forgiven by the aggrieved representatives pursuant to Sharia law. The representatives of the aggrieved consented accordingly.

The court therefore applied Sharia law to the case and ordered the accused to pay compensation of a total of 25 she camels and shillings So.7,500,000 to the aggrieved. The court also ordered for the release of the accused. The decision of the case was endorsed by the Notary Public Officer who witnessed the proceedings of the case and the decision.

It will be improper to proceed without mentioning that the Attorney General's Chambers of the Republic of Somaliland is gender sensitive and protects the rights of women in special circumstances specific to law enforcement.¹⁶⁸ The Attorney General's Chambers considers two circumstances: women who have committed crimes and women who are victims of crime. With regards to women who committed crimes, the main areas addressed are special rights of pregnant women, elderly women, married women, women with a disability and women suffering from particular diseases. In such cases, punishment is reduced by half and the judge has discretion to issue parole sentencing. In the event of a woman prisoner qualifying as a special case, the judge has the prerogative to order her release.

¹⁶⁸ Position of law clarified by the Deputy Attorney General, Honourable Adan Ahmed Musa, during a consultative meeting, held in Hargeisa, December 2008.

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In the case of women who are victims of crime, the Attorney General's Chambers acts as lawyers for the victim. The Attorney General's Chambers also acts as investigators and, in addition, provides psychosocial support. The Attorney General's Chambers orders the police to arrest the suspects in such a case and provides the woman with the required legal assistance, including acting as advocates before the court, ensuring that fair justice is obtained in both criminal and civil cases. In the event that women and orphans are deprived of their inheritance rights, the Attorney General's Chambers intervenes to protect inheritance rights.

CHAPTER SIX

WOMEN AND AIDS

Pursuant to the Somaliland National Policy on HIV/AIDS and STI Prevention and Control, (hereafter referred to as the Policy), not much data has been collected on the HIV/AIDS situation in Somaliland since the collapse of the health system in 1991.¹⁶⁹ HIV prevalence stands at 0.8 per cent in Somaliland. However, various vulnerability factors suggest that the prevalence of HIV/AIDS and STIs in Somaliland are probably higher.¹⁷⁰ Preliminary data in Somaliland from a survey conducted among 1,766 young women aged 15-25 attending an antenatal care (ANC) clinic, recorded an HIV prevalence of 1.7 per cent. Prevalence among patients with sexually transmitted disease syndromes was 6.3 per cent and was higher among males (7.4 per cent) compared to females at (5.4 per cent).¹⁷¹ HIV prevalence ranged from 0.0 per cent in Borama to 2.7 per cent in Berbera with a median of 1.3 per cent. The ANC site in the port city of Berbera has shown a steady increase in the trend of HIV infection, with a prevalence of 0.0 per cent, 2.3 per cent, and 2.7 per cent in the years 1999, 2004, and 2007 respectively.¹⁷² Overall, HIV prevalence was higher among females (2.7 per cent) than in males (1.5 per cent).¹⁷³ The epidemic is heterosexual driven and is a great cause of concern especially among young people.¹⁷⁴ Disparities in gender relations underline the higher risk women and girls face, and there is a close relationship between gender and youth with regards to the risk of HIV infection.¹⁷⁵

The Policy is comprehensive and calls for a multisectoral approach for HIV/AIDS interventions. The Policy adopts the goals, objectives and priority strategies outlined in HIV/AIDS Action Plan for Somaliland 2004-2006, which clarifies and operationalizes the vision set out in the Strategic Framework for Prevention and Control of HIV/AIDS and STIs within Somali Populations 2003-2008.

The Policy covers HIV/AIDS and human rights issues, whereby a supportive and enabling environment for women, children and other vulnerable groups will be created to address underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.¹⁷⁶ The Policy further calls for the enactment of anti-discrimination and other protective laws that protect vulnerable groups, PLHA and those with disabilities from discrimination in both the public and private sectors; the ensuring

¹⁶⁹ The Republic of Somaliland: National Policy on HIV/AIDS and STI Prevention and Control.

¹⁷⁰ Ibid.

¹⁷¹ The Republic of Somaliland: Revised Strategic Framework (2009-2013).

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Art. 5.1, Somaliland National Policy on HIV/AIDS and STI Prevention and Control.

of privacy, confidentiality and ethics in research involving human subjects; an emphasis on education and conciliation, and the provision of speedy and effective administrative and civil remedies.¹⁷⁷ Equally important is the review and reform of public health laws, criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not mis-used in the context of HIV/AIDS or targeted against PLHA and other vulnerable groups.¹⁷⁸ Sectoral policies will be put in place to effectively address discrimination on the basis of HIV/AIDS and take steps to effectively address discrimination in their institutions and in the implementation of their sectoral mandates.¹⁷⁹

As pointed out earlier on, the primary mode of transmission in Somaliland is through heterosexual transmission and women are the most affected. However, the Policy does not address issues relating to wilful transmission of HIV/AIDS and courts of law are not well versed in handling HIV/AIDS cases. A testimony below proves this fact.

Ms Anonymous is a divorced, 30-yearold single mother with two children. Ms Anonymous lives with AIDS which was transmitted to her by her estranged husband. Her estranged husband was on medication and was aware of his HIV/AIDS status but married her without disclosing this fact. She was married at the age of 18, was the only wife to her husband and was divorced when she was pregnant with her second daughter. After divorce the husband married another woman, who later died.

Ms Anonymous heard rumors after she was married that her husband had AIDS, but she did not believe them because her husband did not disclose this fact to her. The couple lived in Hargeisa and later on moved to Gabile. Ms Anonymous was divorced by her husband in Gabile and she decided to live in Hargeisa where she was once again informed by people that her husband had AIDS. It was not until Ms Anonymous attended clinic for her second pregnancy that she was told of her HIV/AIDS status by the healthcare providers. Ms Anonymous's parents are deceased; she felt deserted and decided to inform her sister and her aunt about her HIV/AIDS status. With the permission of Ms Anonymous, her sister and her aunt consulted the hospital authorities and the hospital confirmed her status. Her sister and her aunt advised her to take the matter to court. She consulted the traditional elders from her family, who sent the matter to Gabile Court. The Gabile Court arrested her estranged husband for four days. He escaped to Ethiopia. The Gabile Court referred the case to Hargeisa Court. The Hargeisa Court did not pursue the matter. Ms Anonymous recollects that this occurred in the year 2005.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

It is sad to note that the estranged husband returned to Gabile and married another woman. The woman was shocked to find out that she was infected with AIDS and died within a short time. She did not bear any children. The estranged husband is still alive in Gabile, living a promiscuous life and wilfully spreading AIDS. To this end, Ms Anonymous advised that:

- (i) If a person knows he has AIDS and does not inform his partner he should be arrested and imprisoned.
- (ii) If the person marries and is not aware that he infected with AIDS he should not be imprisoned.
- (iii) Every person who wants to marry must undergo an HIV test before marriage.
- (iv) Courts must help women to obtain legal remedy instead of passively ignoring cases.
- (v) Courts and law enforcers must intervene in time to save the lives of the victims of wilful transmission of AIDS.

Sheikh Mohamed Abdullah Musa pointed out that wilful transmission of HIV/AIDS is a violation of the commands of the Holy Quran. Sharia law has long condemned wilful transmission of HIV/AIDS, an inference which is found in the Holy Quran, Verse 195, Surah 2. Al-Baqarah commanding people not to throw themselves into destruction:

‘And spend in the Cause of Allah (ie, Jihad of all kinds) and do not throw yourselves into destruction (by not spending your wealth in the Cause of Allah), and do good. Truly, Allah loves *Al-Muhsinin* (the good-doers).’¹⁸⁰

Concurring with this position of law, Sheikh Abdurahman Ibrahim asserted that wilful transmission of HIV/AIDS is contrary to Allah’s command stipulated by the Holy Quran, Verse 32, Surah 17. Al-Isra, which prohibits unlawful sexual intercourse:

‘And come not near to the unlawful sexual intercourse. Verily, it is a *Fahishah* (ie, Anything that transgresses its limits: a great sin) and an evil way (that leads one to Hell unless Allah forgives him).’¹⁸¹

Insofar as AIDS has no cure and, without long-term treatment, leads to death, wilful transmission of HIV/AIDS has been equated to killing by Sheikh Mohamed

¹⁸⁰ Ibid.

¹⁸¹ Position of law clarified by Sheikh Abdurahman Ibrahim, during the consultative meeting with Religious Leaders, held in Hargeisa, June 2008.

Abdullah Musa and Sheikh Adan Dahir, who opined that it is a contravention of the Holy Quran, Verse 32 Surah 17. Al-Isra, which states:

‘And do not kill anyone whose killing Allah has forbidden, except for a just cause. And whoever is killed wrongfully (*Mazaluman* intentionally with hostility and oppression and not by mistake), We have given his heir the authority (to demand *Qisas* - Law of Equality in punishment – or to forgive, or to take *Diyah* (blood -money). But let him not exceed limits in the matter of taking life (ie, He should not kill except the killer). Verily, he is helped (by the Islamic law).’¹⁸²

Sheikh Mohamed Abdullah Musa and Sheikh Adan Dahir equally noted the Holy Quran, Verse 19, Surah 24. An-Nur:

‘Verily, those who like that (the crime of) illegal sexual intercourse should be propagated among those who believe, they will have a painful torment in this world and in the hereafter. And Allah knows and you know not.’¹⁸³

By virtue of the Sharia law, if a spouse brings the matter to court, the court decides on grounds of three options. First, the spouses are immediately barred from exercising their conjugal rights, but their marriage is sustained. Secondly, the spouses may be separated in bed and board without a divorce. Third, upon the wish of the aggrieved party the court may issue divorce.¹⁸⁴ This principle is echoed in customary law. Another school of thought adduces that in dealing with sexually transmitted diseases, Sharia law examines whether the infection is curable or incurable. If it is an incurable infection such as AIDS, apart from the three options mentioned above, the person infected must be granted compensation.¹⁸⁵ Should the infection result into death, the relatives of the deceased may ask for any of the following options under Sharia law. First, by virtue of the Sharia law ‘if one kills he must be killed as well’. Therefore, relatives of the deceased may ask for death punishment of the person who killed their relative. Second, the Sharia provides for reconciliation of the parties in dispute, so the aggrieved person may opt to forgive the person who infected her with AIDS. Third, the aggrieved person may ask for compensation.¹⁸⁶

¹⁸² Position of law clarified during the consultative meeting with Traditional Leaders held in Borama, June 2008.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ Position of law clarified by Mr. Adan Jama Seleben, Appeal Court Judge, during the consultative meeting held in Burao, July 2008.

¹⁸⁶ *Ibid.*

Customary law provides two options for remedy in HIV/AIDS transmission which follows the same process as in sexually transmitted diseases.¹⁸⁷ The first option is for the customary law courts to issue an order for the spouses to immediately abstain from exercising conjugal rights, but the spouses maintain the marriage. Secondly, the courts may issue separation and compensation to the aggrieved party. Thirdly, the court may issue divorce, should the aggrieved party request this. The spouse who transmitted HIV/AIDS may be ordered to pay compensation if the aggrieved party requests to be compensated.¹⁸⁸

Whether other sources of law in Somaliland apart from the Sharia may be invoked to protect women from HIV/AIDS or to grant compensation is a question to be ascertained at this juncture. Most of Somaliland's legislation came into force before the advent of the AIDS epidemic. Bearing in mind that wilful transmission of AIDS connotes *mens rea* and *actus reus* and is therefore a criminal act, it is imperative to consult the Penal Code to determine how such cases can be dealt with.

The Penal Code has a specific provision that deals with epidemics, and is defined within the context of crimes endangering public safety by fraud.¹⁸⁹ Thus: 'Whoever causes an epidemic by diffusing noxious germs shall be punished with imprisonment for life.' Where death of any person results from such act, the punishment of death shall be imposed. Two elements are required in this instance to constitute an epidemic offence.

- (a) First, the person liable must have caused an epidemic;
- (b) The epidemic must be a result of diffusion of a noxious germ.

It is difficult, indeed almost impossible, to assert that any person who transmits HIV to another caused an epidemic. The cause of the epidemic has not been proven scientifically; rather, what has been proven so far are factors that contribute to the spread of the epidemic. Whether a person who transmits HIV to another can be implicated by law in having caused an epidemic is in question. 'Causing' and 'spreading' are two terms which, although related, are different and in the context of the AIDS epidemic they cannot be used interchangeably, so it is difficult to envisage a situation where Article 334 of the Penal Code may be applicable.

Secondly, whether transmitting HIV to another may be defined as 'diffusing a noxious germ' is another factor to be determined. Furthermore, HIV has been defined as human immunodeficiency virus and whether the term germ could be used interchangeably to mean virus is another question to be examined.

¹⁸⁷ Position of law clarified by Sheikh Mohamed Abdullah Musa and Sheikh Adan Dahir during the consultative meeting held in Borama, July 2008.

¹⁸⁸ *Ibid.*

¹⁸⁹ Article 334 of the Penal Code, 1962.

The most appropriate provision may be inferred under Chapter III of the Penal Code, which refers to crimes with *culpa* involving damage. It is provided that:

'Whoever, by his own culpable act or omission, creates or continues the danger of a disaster shall be punished with imprisonment up to two years.¹⁹⁰ The term of imprisonment shall not be less than one year where the offender has infringed a particular order of the authority directed to the elimination of the danger.'¹⁹¹ It is provided further that, 'Whoever culpably omits to put in place or removes or makes unserviceable any device or apparatus, or other means for salvage intended to be used at the time of the accidents, or for the prevention thereof, shall be punished with imprisonment up to one year or with a fine from shillings So.1,000 to 10,000.'¹⁹²

So far, no HIV/AIDS case has been decided by the Somaliland courts. However, HIV/AIDS cases could be properly covered by the Penal Code under provisions covering

criminal negligence causing bodily harm or 'wanton and reckless disregard'.

The Penal Code provides that:

'Whoever by culpable negligence causes hurt to another shall be punished with imprisonment up to three months or fine up to shillings So.5,000.¹⁹³ Where the hurt is grievous the punishment shall be imprisonment from one to six months or fine from shillings So.2,000 to 10,000; where it is very grievous imprisonment shall be from three months to two years or fine from shillings. So.5,000 to 20,000.'¹⁹⁴

It is further provided that:

'Whoever causes hurt to another from which physical or mental illness results shall be punished with imprisonment from three months to three years. The hurt shall be deemed to be grievous and imprisonment from three to seven years shall be imposed.'¹⁹⁵

1. where the act results in an illness which endangers the life of the person injured, or an illness or incapacity which prevents him from attending his ordinary occupation for a period exceeding 40 days;
2. where the act produces a permanent weakening of sense or organ;

¹⁹⁰ Article 34 (1), Penal Code, 1962.

¹⁹¹ Article 345 (2), Penal Code, 1962.

¹⁹² Article 346, Penal Code, 1962.

¹⁹³ Article 446 (1), Penal Code, 1962.

¹⁹⁴ Article 446 (2), Penal Code, 1962.

¹⁹⁵ Article 440 (2), Penal Code, 1962.

3. where the party injured is a pregnant woman and the act results in the acceleration of birth.

The hurt shall be deemed to be very grievous, and imprisonment from six to 12 years shall be imposed, where the act results in:¹⁹⁶

- (a) an illness certainly or probably incurable;
- (b) the loss of a sense;
- (c) the loss of a limb, or a mutilation which renders the limb useless, or the loss of the use of an organ or of the capacity to procreate, or a permanent and serious difficulty in speech;
- (d) deformity, or the permanent disfigurement of the face;
- (e) the miscarriage of the person injured.

In the case of hurt to more than one person, the provision of Article 44 shall apply, but the punishment of imprisonment shall not exceed, in the aggregate, five years.'

Some HIV/AIDS cases could also be addressed under the Penal Code in provisions relating to assault. By virtue of the Penal Code, 'Whoever strikes another and no physical or mental illness results thereto, shall be punished, on the complaint of the party injured, with imprisonment up to six months or with a fine up to shillings So.3,000. However, this provision shall not apply when the law deems the act to be a constitutive element or an aggravating circumstance of another offence. Whether the Penal Code also accommodates HIV/AIDS cases relating to aggravated sexual assault, common nuisance or administering a noxious thing is a question to ponder.

Could the person who wilfully transmits HIV/AIDS be held liable for the mother-to-child transmission (MTCT) in the event that a baby is HIV/AIDS positive? Does the law establish that a person who is infected with HIV (and aware of the fact) must 'take all reasonable measures and precautions to prevent the transmission of HIV to others and in the case of a pregnant woman, the foetus?' These are some of the challenges in Somaliland law that need to be addressed.

Looking at the case cited above, a question that promptly arises is whether there is any provision in Somaliland law for a pre-marital notice of objection to an intended marriage where there is ample evidence that one of the intended spouses has HIV/AIDS and has not notified his partner. Although the Somaliland National Policy on HIV/AIDS and STI Prevention and Control provides for the right to confidentiality, under what circumstances can this right be waived to allow a pre-marital notice of objection to a persons wilfully transmitting AIDS to their spouse?

¹⁹⁶ Article 440 (3), Penal Code, 1962.

Arising from these questions, there is clearly a need to develop or reform the laws to meet the challenges of HIV/AIDS, since most of the laws were enacted before the advent of the epidemic. As seen above, the Penal Code is narrow in scope and does not encompass adequately issues related to HIV/AIDS prevention, reduction of stigma, care and support services. The penalties associated with the offences are very low, lagging behind socio-economic development. For instance, the monetary fine of Somaliland shillings So.2000 to 5000 is very low when applied to compensate for injury sustained by HIV/AIDS transmission. When the Penal Code was enacted in 1962, the monetary value was substantially higher than its present value. It is recommended that the Somaliland government considers a review and reform of criminal laws and correctional systems to ensure that they are consistent with international human rights obligations,¹⁹⁷ developing a comprehensive legislation that caters for HIV/AIDS prevention, public health, stigma reduction, care and support services and other related legal issues.

¹⁹⁷ UNAIDS, Handbook for Legislators on HIV/AIDS, Law, and Human Rights, 1999.

CHAPTER SEVEN

INTERVENTION STRATEGIES

This chapter proposes the following intervention strategies to ensure the protection of women's human rights and reproductive health rights in Somaliland.

(i) Gender Sensitization

Large-scale public awareness campaigns concerning gender equality must be carried out. To achieve this, civil society organisations (CSOs) will work with respected members of the society, such as progressive politicians, Members of Parliament, religious leaders and judges to sensitize and educate community members. Taking a community-based approach is the most effective way to disseminate information and raise awareness of women's rights. This is more effective than imposing a top-down requirement that the community adopts cultural changes. Equally importantly, there is a strongly felt need for the establishment of a central National Bureau of Statistics for the purpose of providing accurate data to the public.

Communities at all levels must be sensitized on the importance of gender mainstreaming in all government sectors to ensure gender equality and equity and mainstreaming in the political arena. The support and participation of rural women is critical to the success of the women's human rights movement. Inclusion of rural women will extend the scope of the women's movement so that advocacy takes place not only in Parliament, but at all levels of government leadership throughout the country. Effective advocacy requires regular consultations between the women's movement at the national and the grassroots level in order to identify policy needs based on real, as opposed to assumed, needs.

(ii) Advocacy for Codification of Customary Law

Since this study has exposed some gaps in customary law which hinder the full realization of gender equality and women's human rights in Somaliland, it is imperative that customary law be codified and amended to promote, protect and defend women's rights in Somaliland. Constant dialogues among traditional leaders, religious leaders and community members are necessary for action-oriented results.

(iii) Advocacy for Establishment of Government Gender Budget Initiatives

Establishment of government gender budgets is necessary to enable effective women's rights interventions and gender mainstreaming in all government sectors. Thus, the initiative focuses on assessing the national budget from a gender perspective and seeks to mainstream gender into the budget process by examining the impact of the national and provincial budgets. According to the Women In Development Southern African Awareness Programme (Widsaa), which has done extensive advocacy for gender budgets, this is done by distinguishing three aspects of expenditure, as follows:

'Amounts allocated to women-specific projects, such as bursaries for young or income-generating projects; affirmative action and other policy initiatives within government employment which promote the development of female staff; and funds allocated to all the other policies and programmes of government and the effect of these expenditures on different groups of women and on women relative to men.'¹⁹⁸

(iv) Advocacy for Affirmative Action for Women in Leadership

Although women constitute the majority of voters in Somaliland, their participation in political life has been very low. Affirmative action in Parliament is important in order to rectify political gender imbalances that have existed since the nation's founding and to bring the voices and concerns of the country's women into the national political consciousness. It is therefore important for CSOs to advocate for policy development, the review of existing legislation and the establishment of reserved seats for women. Reserved seats for women not only provide exposure and experience in the political arena, but also afford women the confidence to run in an open electoral contest. In addition, parliamentary membership functions as a prerequisite for cabinet positions. The small number of women in Parliament since Somaliland's independence has narrowed the possibility of female appointees to the cabinet. It is high time that policy and legislative changes are put in place to increase the number of women parliamentarians. The Government must implement affirmative action programs to increase women's representation in all branches of the Government. Instituting affirmative action means taking steps 'whereby male privileges are phased out and

¹⁹⁸ Widsaa: Gender Budget: Women's Economic Empowerment; 1999.

equality for sexes ensured.¹⁹⁹ The first step is to eliminate stereotypes that suggest that an occupation is either a man's job or a woman's job.

The first step in this endeavour must be directed towards constitutional review to ensure that reserved seats for women's representation in leadership are included under the women's rights quota provision. This will not only serve to empower women in leadership but also to empower women in decision making.

(v) Advocacy for Establishment of a Parliamentary Committee on Women's Human Rights

CSOs must sensitize its members and communities to advocate for the Government to create a Parliamentary Committee to review issues relating to the status of women. This Women's Human Rights Committee would ensure that Parliament assesses all bills for their women's human rights implications, and that Parliament considers all relevant recommendations for changes or additions before bills become law. Expertise in women's human rights and sensitivity should be the primary criteria for membership of this committee.

(vi) Sensitization and Advocacy for Economic Empowerment

The effect of poverty touches almost every aspect of Somaliland women's lives, from their education and health to their exposure to violence and their reproduction. Poverty reduction and, more specifically, economic empowerment is critical to Somaliland women enjoying basic human rights. CSOs must therefore advocate for the development of the National Strategy for Growth and Reduction of Poverty in achievement of the Millennium Development Goals. Gender equality will therefore be mainstreamed as a cross-cutting issue. The Strategy will seek to deepen ownership and inclusion in policy making, addressing laws and customs that hamper development and negatively affect women's human rights.

(vii) Advocacy for Codification of International Human Rights Instruments and Training in Judicial Activism and Women's Rights

Since Somaliland recognizes international human rights it is of critical importance that these instruments are codified into domestic laws. Recognition of international

¹⁹⁹ Jane Magigita: Implementation of Affirmative Action in Tanzania's Parliament: An Assessment of the Reserved Seats for Women: Chapter One: Johanna Bond: Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania; Carolina Academic Press, 2005.

human rights alone is not sufficient guarantee of women's human rights in Somaliland, as the instruments cannot be enforced without codification. Hence, CSOs must sensitize the communities and advocate for codification of international human rights.

Discriminatory laws emerge as actual disputes between individuals require the courts to make just decisions. To reach a just decision between competing interests, the court interprets or decides the present law. An activist court can provide a vision for change by using real facts to demonstrate the injustice of a discriminatory law. Admittedly, change of laws by legislative or judicial action alone cannot improve the status of women in Somaliland - or elsewhere - because women's inferior status is a phenomenon rooted in the socio-economic system that laws enforce and re-enforce. However, progressive judicial action can supplement and sometimes prompt economic, social, and political efforts. The courts, if they adopt a progressive activist position, offer one way to improve the status of women, a way that is sometimes more effective than legislation.²⁰⁰

Equal protection of laws prohibits sexual discrimination but does not prohibit all differentiation on the basis of sex. In other words, distinction based on sex as a class would be justified if the differences between the sexes are highly relevant for the legitimate purposes of a given law or act. This kind of searching judicial inquiry, the norm in applying equal protection clauses to discrimination claims, is necessary to differentiate between distinctions based on actual differences and those that are motivated by notions of female inferiority and a desire to subjugate women.

Successful judicial activism depends on the availability of relevant socio-economic data to inform the decision-making process. Judicial access to such information presupposes the existence of supporting legal structures, such as provisions of law permitting the courts to receive and consider socio-economic factors not traditionally considered in ordinary pleadings between parties. In order to produce law that is just for women, judicial officers must understand the particular ways that law affects women. It is therefore crucial in this context to consider the use of '*amicus curiae* briefs' .²⁰¹

Typically, *amicus* briefs are filed by non-parties, either individual or groups with an interest in the outcome of the case beyond the individual interest of the parties involved. These individuals or groups most often concern themselves with the overall development of the law in a particular area. The briefs often take a broad approach, exploring the larger context of a particular issue before the court and

²⁰⁰ Regina Rweyemamu: Judicial Activism and Gender Rights in Tanzania: The Task Ahead: Chapter One, Johanna Bond; Voices of African Women, Women's Rights in Ghana, Uganda, and Tanzania; Carolina Academic Press, 2005.

²⁰¹ Ibid.

assessing the impact of various outcomes on particular groups or society at large. The briefs are not evidence, but help the court to assess the case in its totality.

Instead of relying on the court's own, possibly limited, understanding of the ramification of a case, *amicus curiae* briefs provide the court with significant input from groups or individuals with particular expertise. In a sense, the court hears an extra voice from the people.

Judicial activism in the area of women's rights depends on a judiciary that understands and appreciates the need for gender equality. Although there appears to be a formal acceptance of women's rights, belief in the inferiority of women is still prevalent, and members of the judiciary are often influenced by the value system of the society in which they live. Toward this end, it is important to have some gender training programs. Given the current economic situation in developing countries like Somaliland, a recommendation that involves substantial financial costs is not likely to be well received. Judicial training, however, need not be expensive. Trainers may distribute relevant scholarly papers to judges and magistrates or convene regular seminars. The distribution of literature and training could be expanded to include feedback on judicial decisions from the general public and legal professionals.

Institutional strengthening of the judiciary is necessary for enhancing a good system of case law reports. Capacity building of judges in legal reasoning and legal analysis of cases is an important way to enable judges to address case facts effectively and deliver optimum justice.

(viii) Research and Publication

CSOs should give significant emphasis in research and publication to inform the Government and communities on factors affecting women's human rights in Somaliland. Women elites as well as women in rural areas will be encouraged to participate in this important intervention. In this respect, a review and assessment of Somaliland Laws Affecting Women's Human Rights will be explored.

(ix) Learning from Best Practices

Exposure visits for CSOs, communities and policy makers must be addressed. Tanzania has a good history of making deliberate decisions based on affirmative action and enacting laws and policies that promote women's human rights socially, economically and politically. Women at all levels of the nation participate fully in development and social, economic and political activities. Tanzanian First Ladies have been on the front line in political campaigns and in mobilizing resources for women's and girls' development. A visit to Tanzania may provide an avenue for effective lobbying for political representation and the socio-economic empowerment of women in Somaliland. Tanzania's initiatives for promoting

gender equality have helped to bring Tanzanian women to international prominence to serve as role models of African female leadership. These include Dr Asha-Rose Migiro, UN Deputy Secretary-General, Professor Anna Tibaijuka, UN Under-Secretary-General and Executive Director of UN-HABITAT, and Ambassador Gertrude Mongella, founding President of the Pan-African Parliament.

CSOs could also learn from the active participation of women in socio-economic life and political representation in Uganda. Significantly, Uganda emerged from civil wars with a respect for the active participation of women and Janet Kataha Museveni, Uganda's First Lady, is now a Member of Parliament. Mozambique is another post-conflict country to be considered, as the tireless campaigning work of Graca Machel in emancipating women from discrimination has been internationally recognized.

Thus CSOs must promote women's participation in politics, including lobbying for recognition of Somaliland. To this end, CSOs should lobby through the Pan-African Parliament and heads of states to ensure that Somaliland is recognized by most of the African states and that Somaliland is in the forefront of the promotion of democracy, good governance and women's human rights. This will enable the Somaliland Government to consider budgetary increases for gender mainstreaming in all sectors.

(x) Capacity Building of Communities, CSOs and Key Decision Makers

CSOs must build the capacity of its members and help communities and policy makers to have a deeper understanding of human rights issues, as pertained to in the draft Policy, and how customary law and legislation impact on women's human rights. Experience has shown that sensitization of communities, parliamentarians and CSOs can greatly facilitate the effective passage of a draft Policy, the codification of customary law and the review and assessment of legislation impacting on women's rights. Through parallel programming, the capacity of government agencies, communities and CSOs will be built to monitor and advocate for women's human rights.

(xi) Training on Human Rights Reporting to UN Human Rights Committee

The Somaliland Government and CSOs should benefit from training by the UN's Human Rights Committee or Human Rights Treaty Bodies in the supervision and implementation of human rights instruments. CSOs can play a vital role in

assisting the Treaty Bodies in promotion and protection of human rights.²⁰² NGOs can participate by examining reports submitted by state parties. The precise status of CSOs' participation is then identified and a range of practical suggestions proposed.

International donor agencies must work with various partners to build a coalition of concerned donors and other international and local agencies, in order to coordinate and leverage resources that will support legal reforms.

²⁰² Michael O'Flaherty: Human Rights and the UN, Practice before the UN Treaty Bodies, Sweet and Maxwell London, 1996.

CONCLUSION

It is hereby asserted that unless Somaliland harmonizes the legal system for a rights-based approach, gender equality and women's human rights will not be realized in Somaliland. Women will continue to have no right to self-determination and be excluded from the decision making process at all levels. Customary law needs to be studied extensively by traditional leaders, religious leaders, community members and legal professionals to come up with a consensus on the codification of customary law, identifying gaps and solutions that will promote, protect and defend gender equality and women's human rights in Somaliland. Positive policy and legislative reforms must be in place to influence positive policy, legal and practice environment of women's human rights in Somaliland. This initiative, however, must be mindful of harmonization of the existing legal system, as defined by the Constitution of the Somaliland Republic.

BIBLIOGRAPHY

The Holy Quran.

1. Constitution of the Republic of Somaliland.
2. The Republic of Somaliland Penal Code, 1962.
3. The Law of Civil Service, (Law No. 7/1962).
4. Somaliland Labour/Employment Law.
5. Somali Civil Procedure Code, (Law No. 19/1974).
6. Urban Land Management Law (Law No. 17/2001).
7. Agricultural Land Ownership Law, (Law No. 17/2001).
8. The Republic of Somaliland, Ministry of Family Affairs and Social Development, National Gender Policy Framework, 2008.
9. The Republic of Somaliland, Ministry of Education, Somaliland National Policy for Education (SNPE), 2005.
10. Somaliland Citizenship Law, (Law No. 22/2002).
11. Somaliland Voter Registration Law 2007 (Law No. 37/2007) as amended in 2008.
12. The Republic of Somaliland, Ministry of Agriculture, Draft National Policy for Agriculture, 2008.
13. United Nations Human Rights International Instruments.
14. United Nations Millennium Development Goals.

Publications

1. Adan Yusuf Abokor *et al.* Further steps to Democracy: The Somaliland Parliamentary Elections, September 2005; Progressio, 2006.
2. Asmahan Abdelsalaam Hassan: Understanding Gender; Nagaad Women's Umbrella Organization.
3. Dr. Jamal Badawi: The Status of Women in Islam; www.institutealislam.com.
4. Dr. Muhammad Sharif Chaudhry: Women's Rights in Islam; www.muslimtents.com.
5. Dr. Zieba Zorish-Shamley: Women's Position, Role and Rights in Islam; Afghanistan Online; www.afghan-web.com.
6. Dr. Muhammad Zubayr Siddiq: Women Scholars of Hadith; www.islamfortoday.com.
7. Jane Magigita: Implementation of Affirmative Action in Tanzania's Parliament: An Assessment of the Reserved Seats for Women: Chapter One: Johanna Bond: Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania; Carolina Academic Press, 2005.
8. Johanna Bond: Voices of African Women; Women's Rights in Ghana, Uganda and Tanzania; Carolina Academic Press, 2005.
9. Judith Gardner & Judy El Bushra: Somalia The Untold Story: The War Through The Eyes of Somali Women; CIIR, 2004.
10. Maria B. Tungaraza: Women's Rights and the AIDS Epidemic in Tanzania: Chapter Three: Johanna Bond: Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania; Carolina Academic Press, 2005.

11. Maria Beata Tungalaza and Magdalena K. Rwebangira: Review and Assessment of Laws Affecting HIV/AIDS in Tanzania; Tanzania Women Lawyers Association, 2003.
12. Mary Rusimbi: The Case of Gender Budget Initiative (GBI); Tanzania Gender Networking Programme (TGNP).
13. Michael O'Flaherty: Human Rights and the UN Practice Before the UN Treaty Bodies; Sweet and Maxwell London, 1996.
14. Rebecca J. Cook: Human Rights of Women: National and International Perspectives; University of Pennsylvania Press, Philadelphia, 1995.
15. Regina Rweyemamu: Judicial Activism and Gender Rights in Tanzania: The Task Ahead: Chapter One: Johanna Bond: Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania; Carolina Academic Press, 2005.
16. Republic of Somaliland, Ministry of Agriculture in Collaboration with Enhancement of Capacity of Somali Agriculture and Livestock Institutions Project (ECSALI) Project: Somaliland Agriculture Sector Human Resource Assessment and Intervention Plan, 2008.
17. United Nations: Human Rights; Discrimination Against Women: The Convention and the Committee; Fact Sheet No. 22; World Campaign for Human Rights.
18. United Nations: Human Rights; Harmful Traditional Practices Affecting The Health of Women and Children; Fact Sheet No. 23; World Campaign for Human Rights.
19. The United Republic of Tanzania: Country Report on Implementation of the Beijing Platform for Action and the Outcome Document of the Twenty – Third Special Session of the General Assembly – Beijing + 10, Women, 2005.
20. The United Republic of Tanzania: National Economic Growth Strategy, 2000.
21. The United Republic of Tanzania: National Strategy for Growth and Reduction of Poverty (NSGRP); Vice President's Office, June 2005.
22. UNAIDS: Handbook for Legislators on HIV/AIDS, Law, and Human Rights, 1999.
23. United Nations, Economic and Social Council, Commission on Sustainable Development, Sixteenth Session, 5 – 16 May 2008, Discussion Papers submitted by Major Group – Contribution by Women.
24. Widsaa: Gender Budgets: Women's Economic Empowerment; 1999.

Unpublished Papers

1. Amina Milgo Warsame, Women and the Justice Systems in Somaliland; SOWRAG Report, 2000.
2. Maria Beata Tungalaza: Nagaad; Concept Paper; Women's Human Rights in Somaliland, June 2007.
3. Republic of Somaliland, Ministry of Justice, Law Reform Commission: Alternative Dispute Resources; UNDP/ROLS, 2006.

Case law

1. A v. B; Hargeisa Regional Court, June 2008.
2. R v. S; Hargeisa District Court, April 2008.
3. X v. Y; Hargeisa District Court, February 2007.