

# WOMEN'S RIGHTS IN ISLAM AND SOMALI CULTURE



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# **WOMEN'S RIGHTS IN ISLAM AND SOMALI CULTURE**

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# 1. INTRODUCTION

The cultural context and experiences of women in Somaliland provide insight into both specific and universal challenges to the fulfillment of the human rights of all Somali women. For instance, the collapse of the central government eliminated legal protection of the human rights of women. In the same way, the prolonged war adversely affected their socioeconomic situation. As part of their survival strategies, women assumed heavier economic responsibilities for themselves, their children, their parents and in many instances for their spouses. This enhanced the responsibilities of women within families but did not necessarily translate into overall improvement in the realization of their rights.

As well, this increased participation has not lasted with the restoration of stability in Somaliland. Men have increasingly replaced women in economic roles and earlier patterns of discrimination have re-emerged. This is reflected in a number of crucial ways, including private and public sector employment. Educational employment opportunities, and indeed the promotion of girl's education in general, are major problems. Gender disparities are significant in school enrolment statistics, with girls comprising only 36 percent of the student population in grades 1-8, and with negligible employment of women as teachers and education functionaries. At present only 13 percent of primary school teachers are women.

Unfortunately, the imbalance so evident in educational employment is even more pronounced in other sectors. The low level of employment of women in the private and public sectors has led to the emergence of women-led independent organizations that act as advocates for women in the process of reconstruction, women's rights and human rights in general. However, women are also beginning to face new challenges from conservative elements who consider women rights, gender equality and the participation of women in economic activities as anti-Islamic and contrary to Somali culture.

## 1.1 TERMS OF REFERENCE

This study falls within the framework of a broader UNICEF programme and process aimed at promoting a gradual and consistent positive change in social and cultural attitudes to achieve women's emancipation without employing disruptive and confrontational strategies. Toward that end, the study engaged Somali religious leaders and experts of Somali culture in an in-depth exploration of women's rights under Islam and Somali culture with the overall aim of contributing to the knowledge of both women and men in reference to Islamic principles and building consensus between religious leaders and scholars in order to advance respect for women's rights within Somali society.

The Academy for Peace and Development (hereafter called 'The Academy') was contracted by UNICEF to conduct the study resulting in the preparation of discussion papers exploring:

- Women's rights under the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Koran/Hadith; and
- Women in Somali culture and CEDAW.

The contract also required the Academy to:

- Conduct a five-day workshop to discuss the reports with the aim of creating a consensus around the study outcomes.
- Produce a short documentary film on the status of women's rights in Somaliland.
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## 1.2 METHODOLOGY

The Academy formed two research teams assisted by two Working Groups comprising both female and male analysts conversant in Islam and gender issues. After lengthy discussions, the researchers and working groups agreed to focus the study on Islamic law (*Shari'a*) and Somali customary law. The Teams prepared two discussion papers on women's rights in Islam and Somali culture.

A workshop on "Islam, Somali Culture and Women's Rights" was organized and held in Hargeisa from 5-9 October 2002. The workshop participants came from all regions within Somaliland and included education authorities, legal experts, human rights groups, religious groups, traditionalists, lawmakers, media people, women's groups and local NGOs.

This report is based on the findings of the working groups and feedback from the workshop participants. The documentary film is presented separately.



## 2. BACKGROUND

Somali traditional culture is a predominately patriarchal society that blends nomadic pastoral traditions and norms with Islamic teaching. The shape of the culture is affected by the interaction between these two factors.

The place of women in an Islamic society is determined by the Koran, the tradition of the Prophet Mohammed (PUB), and the interpretations of Islamic law and traditions influenced by social customs and practices. Through the revelation of the Koran and the *Sunnah* of the Prophet Mohammed (PUB), Islam liberated women from unacceptable conditions that prevailed in the tribal society of pre-Islamic Arabia.

Among the rights granted to women by Islam were the rights to life and education as well as the right to inherit, manage and maintain property. Though polygamy was not outlawed, the number of wives was restricted to maximum of four and guidelines were set to provide for the just and equal treatment of co-wives. In marriage, women's right to a marriage contract was stressed as well as women's consent. Though only the male possess the right to divorce, women are allowed to initiate divorce.

In Somali culture, the agnatic principle defines the identity and affinity of both men and women. The clan system not only provides collective and individual identity to members but also serves as the collective memory.<sup>1</sup> Though flexible and dynamic, the clan system proscribes paths of social and personal development for women quite distinct from those of men.

For example, in the Somali clan system a woman lives with her family of origin but is expected to leave it and join the lineage of her husband upon marriage. However, as a wife, she is not fully incorporated into the lineage or the "*dia*-paying group" of her husband because under the Somali system wives retain the ties of their lineage of birth. This situation throws ambiguity over women's real group identity and allegiance.

<sup>1</sup> Somali Women, on the eve of the 21<sup>st</sup> Century. P, 8.

## 2.1 SOCIOECONOMIC SITUATION OF WOMEN

Interpretations and the application of women's rights under Islam are profoundly affected by social and economic factors. Social practices, customary laws, poverty, war and illiteracy often subvert the status of women. Thus, women's rights in practice in Somaliland and Somali society are generally affected by the prevailing political and socio-economic conditions.

The advent of urbanisation, particularly after the end of World War II, incorporated increasing numbers of Somalis into the livestock trade and exports, with the two sectors becoming the basis of wider commercial activities within the urban economy. Opportunities for women in both the livestock trade and the new urban commercial activities were very limited. However, the increased level of urbanisation created the conditions for improved women's participation in the informal sectors of the urban economy and limited but significant progress in girls' education. These changes did not immediately result in an overall improvement in the lives of Somaliland women, but built the foundation for greater acceptance and gradual access of women into public life, through education and employment during the nine years of civilian rule after independence.

During the military regime of the 1970s and 1980s, women's public participation broadened. Female school enrolment and job opportunities increased and women were able to hold positions in the army and civilian government institutions. Legal reforms were also initiated. The Family Law of 1975, for instance, gave equal rights to women and men in matters of marriage, divorce and inheritance.<sup>2</sup> Unfortunately, these legal reforms did not have a long-term impact.

An exodus of men in the mid-seventies to the Gulf States to seek job opportunities had greater and more lasting impact than the official reforms. Women whose husbands were working in the Gulf States assumed responsibility for the care and management of the family. The exposure of these Somali men to the religious influences of conservative Islamic countries, including the more puritanical and doctrinaire teaching of Islam, led to an Islamic resurgence upon the return of the migrant workers. This included a new breed of younger and better educated Islamic teachers and Imams of mosques, who called for the re-Islamization of the society to counter threats of western influences and secularism. Islamic missionaries targeted women and encouraged them to adopt the Hijab dress code as a sign of modesty and Muslim identity. They opened and continue to operate religious schools for boys and girls and served as Imams in the Mosques, the centres of religious studies and platforms for the propagation of Islamic jurisprudence, values and morality.

<sup>2</sup> Five religious leaders who campaigned against the law were executed. The enactment of the law was part of the autocratic military style of governance.

Despite some positive economic changes for women during the civil wars of the 1970 and 1980s and the upheavals in the early 1990's, women were often victimized. Many were widowed, killed, robbed, raped or abandoned while others were traumatized emotionally by shared kinship or marriage ties with opposing groups in conflict that pitted kinsmen of their husbands and sons against those of their fathers and brothers. Yet some women supported the war effort both spiritually and materially. They cooked for the fighting men and took care of the wounded, raised funds, and participated in public rallies and mass mobilisation through *Buraanbur* (female poetry) (Bryden, and Steiner, 1998).

Clearly, the impact of the war on women has been mixed. On one hand, the dismantling of state structures has given way to the traditional mode of social organisation, in which women's public role is limited. In Somali society, women are excluded from formal clan conferences and deliberations — the Beel Conference system. Lineage interests and matters are exclusively the domain of men, so none of the clans include women in clan conferences or nominate them to represent lineage groups in the two legislative councils. Women have been similarly excluded from appointments to senior level positions of the government at the central and local level, which are the basis of power-sharing<sup>3</sup>.

On the other hand, the exclusion of women from the political process has not deterred them from being active and visible in issues of concern to them on other fronts. With the support and encouragement of women in the Diaspora, they established local non-governmental organisations (NGOs). These organisations successfully raised funds and initiated various programs and projects aimed at advancing the economic and social status of Somaliland women. Many of these women-led NGOs have now gained a reputation for integrity, frugal management and cost-effective services.

Today, women play a significant role in nation-building efforts. This has increased the conflict between the traditional roles of women and the real demands of today's daily life in post war Somaliland society on the one hand and their expectations and opportunities on the other. The conflict between the role they are expected to play, and that which they seek and in reality perform, can only be reconciled through the elimination of the discrimination against women. Seeking to achieve this will in turn strengthen the effectiveness of their participation in the ongoing reconstruction efforts.

The ratification of Somaliland's constitution brings an end to the clan-based system. The new constitution establishes a foundation for women's political rights. Women can vote and run for public offices. The strong influence of women in elections is being felt and recognised. However, both religious beliefs and tradition are likely to weigh heavily against women's full political participation or election to public offices.

<sup>3</sup> Recently a woman was appointed to a ministerial post while one of the new political parties elected a woman as one of two vice-presidents.

## 2.2 THE ISLAMIC PERSPECTIVE AND JURISPRUDENCE

During the late nineteenth and early twentieth centuries, politicians, intellectuals and religious leaders sought to counter and respond to the challenges and influences of European colonisation. The objective was to revitalise Muslim society and achieve national independence without losing the Islamic identity. The strategies to meet these numerous challenges varied widely. (Esposito, 1998):

- Conservative *ulama* (religious leaders) advocated armed struggle (*jihad*) in defence of Islam or emigration (*hijra*), withdrawal and non-operation. Both of these strategies were patterned on the Prophet's response to his enemies.
- Muslim rulers (Western-oriented elitists) wished to learn from the West and to master the techniques that had given the West its military and technological advantage. New schools with Western curricula were established, students were sent to the West to be educated, and consultants and advisors were hired. Rulers were more interested in military, scientific, and economic modernisation than significant political change. This produced an elite group who emulated the West by advocating widespread reforms.
- Islamic modernists in the Middle East, including reformers like Jamal al-Din al-Afghani and Mohamed Abduh in Egypt, and Sayyid Ahmed Khan and later Mohamed Iqbal in South Asia, attempted to bridge the gap between the more isolationist position of many religious leaders (*ulama*) and Western secular Muslim modernists. They argued that Islam is a dynamic, progressive religion capable of change and compatible with the pillars of modernity (reason, science, and technology). All criticised the Ulama's tendency to cling to tradition (*taqlid*) and called for fresh interpretation (*ijtihad*) of Islam to respond to the new challenges faced by the Muslim community. Their programs included religious, educational, and social reforms based on a distinction between those aspects that were immutable in Islam and those that were subject to change. Thus reforms distinguished between religious observation (*ibadat*) in Islamic law and social relations or regulations (*muamalat*), which were historically and socially conditioned and thus capable of reinterpretation or reformulation. Reformers espoused a process of reinterpretation that adapted traditional concepts and institutions to modern realities, resulting in a transformation of their meaning to accommodate and legitimate change.

Some Muslim countries, particularly in the Arab World, opted for socialism. They initiated universal education and opened employment opportunities for the educated females. In contrast to those leaders who emulated the Western model, socialist governments looked to the Soviet block as the model of modernisation. The education and training of women was seen as part of building a productive workforce and economic development (Haddad, 1998).

The process of modernisation in the relatively more successful countries has inevitably induced some social changes that improved the status of women. This ushered a period of intense debate and reform that encompassed the areas of dress, family relations, education, and employment. Modern family law reforms were initiated by most of Muslim governments, implemented from the top down and often rationalised and legitimated in the name of Islam. Islamic groups intensely resisted and were often able to limit the scope of the reform. However, implementation of these social reforms also proved extremely difficult on the ground.

Nevertheless, significant changes occurred in the lives of many Muslim women, as a result of the influences of the West and Islamic modernists, and the introduction of universal education, together with the growth of employment opportunities. These changes altered and broadened women's role in society. In a growing number of Muslim countries, women have entered many areas of public life, ranging from politics to the professions. Admittedly, this is true for a relatively small percentage of women and it varies greatly from one region of the Muslim world to another (and often from urban to rural settings) (Esposito, 1998).

The reforms of the Muslim family laws, and the dilution of the traditional Islamic culture and institutions through the process of social transformation, has triggered reaction from traditional Islamic circles and produced strong conservative Islamic writings reaffirming traditional Islamic values. Literature calling for the preservation of a distinctive Islamic society is being widely disseminated. To conservative Islamic scholars and leaders, the home is the domain of the woman and the centre of peace, civility, tranquillity, and a protective safe haven from the brutality of the outside world. The man is the protector and provider (Haddad, 1998).



وَيَقُولُ يَا مَنَادُ  
يَا إِلَهَ مَا لَأَبْصَرُ هُمْ  
وَلَا يَنْفَعُهُمْ وَيَقُولُوا  
هُوَ لَا يَنْفَعُنَا وَأَنْعَدْنَا  
لَهُ فَإِنَّ شَيْئًا لِلَّهِ مَا  
لَا يَعْلَمُ فِي السَّمَوَاتِ  
وَلَا فِي الْأَرْضِ ضِدٌّ سَخَا  
نُهُ وَنَعَالِي عَمَائِمُ كُونُوا  
وَمَا كَانَ النَّاسُ إِلَّا أُمَّةً  
وَاحِدَةً فَأَخْلَفُوا وَلَوْ  
لَا كَلِمَةٌ سَبَقَ مِنَّا يَكْفُ  
لِقَابِي بَيْنَهُمْ فِيمَا فِيهِ  
لَخَلِيفُونَ وَيَقُولُونَ لَوْ  
لَا أَنزَلْنَا عَلَيْهِ آيَةً مِّنَّا  
يَهْدِيهِمْ لَهَادُوا لَعَنَّا اللَّهُ  
نَظَرُوا إِلَىٰ مَلْعَمٍ مِّنَ الْمَسْجِدِ

### 3. WORKSHOP DISCUSSION AND CONCLUSIONS

*For Muslim men and women and for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's remembrance for them has Allah prepared Forgiveness and great reward (Qur'an 33:35).*

### 3.1 COMPATIBILITY OF CEDAW PROVISIONS WITH ISLAM AND SOMALI CULTURE

For purposes of the study, the standards and concerns in the provisions of the CEDAW are compared with the human rights standards of Islam and the influences of traditional Somali culture on contemporary conditions of women's rights in Somaliland. The comparison is based on provisions of the CEDAW that are deemed most relevant to the human rights situation of women in Somaliland.

#### 3.1.1 CONCEPTION AND DEFINITION OF DISCRIMINATION

According to the Convention, *"Discrimination against women shall mean 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..."* [ARTICLE 1]

In the Qur'an, men and women are one spirit, equal in their humanity:

*O mankind: Reverence your Guardian Lord Who created you from a single person created of like nature.... (Qur'an 4:1) It is He who created you from a single person and made his mate of like nature ... (Qur'an 7:189)*

The Prophet in one of his sayings (Pbuh) is quoted to have said *"Men and women are equal halves."*

Islam condemned and put an end to female infanticide, which was widely prevalent in pre-Islam Arabia:

*When the female (infant) is buried alive, question- for what crime she was killed. (Qur'an 81:8-9).*

Equality of men and women are part of the ethics, spirituality, and humanity of Islam. At the same time, Islam affirms "natural differences" between men and women. As a result of these distinctions, the rights and obligations of men and women, and their roles in the Muslim community, are not identical. These differences in rights and obligations are motivated by the Islamic conception of the role of women in the family and the Muslim community.

Differences in gender roles do not imply the superiority of one gender over the other. The Qur'an makes it clear that the sole basis for superiority of any person over another is piety and righteousness, not gender, colour or nationality:

*O mankind! We created you from a single (pair) of a male and a female and made you into nations and tribes that you may know each other, Verily the most honoured of you in the sight of Allah is (one who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things). (Qur'an 49:13)*

The Somali culture incorporated fundamental principles of Islam regarding the equality of men and women, based on the Qur'an and the Hadith. There is also a sense of fairness between men and women in customary law, (xeer) as it is based on a patrilineal kinship that assigns both genders an identity, which in turn defines relationships with other members of the society, rights, and obligation including mutual protection. For women, individual identity and rights come from their status as wives, mothers, daughters and sisters.

### 3.1.2 EQUALITY BEFORE THE LAW

*“Accord to women equality with men before the law, equal rights to conclude contracts, and to administer property ... and treat them equally in all stages of procedures in courts and tribunals”* [article 15]

In Islam both men and women are entitled to equality before the law and courts of law. Both men and women are accountable for their deeds before the law. Like men, women are entitled to seek justice. Islam asserts that both genders are honoured and dignified: And they are equal in the sight of Allah, as they have the same religious and moral duties and responsibilities. In addition, both face the same consequences of their actions.

*For Muslim men and women and for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's remembrance for them has Allah prepared Forgiveness and great reward (Qur'an 33:35).*

In the Islamic legal system, only a person conversant with Qur'an and Sunnah, and with the ability to ijtihad (according to some scholars) is qualified to be a judge. The majority of Muslim scholars stipulate that only men can be judges. Hanifi, one of the leading Islamic jurists, permits women to become judges on matters not related to capital punishment and contracts. Ibnu jarir Al-tabari and Ibn Hzm were of the opinion that women could be judges in all cases, since there is no clear-cut text which excludes women. Ibn Hazm cited this verse:

*Behold Allah bids you to deliver all that you have been entrusted with unto those who are entitled thereto, and whenever you judge between people, to judge with justice. Verily most excellent is what Allah exhorts you to do: verily, Allah is all-hearing, all-seeing (Qur'an 4:58).*

Ibn Hazm argues that this verse is addressed to both men and women and that there is no reason to prefer men to women (Ibn Hazm, Al-Muhalla bin Athar, vol. 8 Dar Al-Kutub Al-Ilmiya, 1988, p.528).

### 3.1.3 RESTRICTIONS AND QUALIFICATIONS

The majority of the scholars are of the opinion that women do not have the legal capacity to enter into marriage contracts without *wali* (her male Guardian). A woman can not be the Guardian for other women in marriage or to represent them in marriage. This is based on two of the Prophet's Sayings (Hadith).

*A women is not authorised to be guardian neither for her marriage nor for other women (Dar'al Qudni): Any woman who marries without the consent of her guardian, her marriage is illegal or invalid.*

However, the school of Hanfiya, and scholars such as Safar, Hasan bin Syad, and Abu Yusuf allowed women to marry without the permission of her male-guardian, and to represent another one in marriage. They based their opinion on this verse:

*There is no blame on you for what they do with themselves, provided it is reasonable (Qur'an 2:240)*

Islamic laws (Shari'a) accept the only the testimony of men in some cases, the testimony of men and women in others, and solely the testimony of women in other cases. The majority of Muslim scholars exclude the testimony of women from cases of adultery, capital and corporal punishment (*qisaas*), marriages, divorce, and guardianship. They allow women to testify in matters related to business and wealth. The school of Hanafiya allows two female witnesses and one male witness to testify in all matters, with the exception of capital and corporal punishment (*qisaas*), in which women are excluded.

Women can only testify in matters related to birth, breastfeeding, and specific physical issues relating to women. Famous Scholar ibni Qayim, while mentioning the case of availability of only one male witness said: whatever shows clear and credible evidence is valid, and Allah and his Prophet do not take away someone's rights when it is proven by one means or another. Fundamentally, whenever the case is proven by the use of sound evidence, it is obligatory to execute it and to support it (Fiqh Sunnah).

Both men and women are equal in terms of capital and corporal punishment. A Muslim man could receive the death penalty for killing a Muslim woman and visa versa. However, a majority of the scholars state that the general practice has been that the blood compensation for a woman is half of that of a man. .Some contemporary scholars such as Gazali and older scholars such as Assami and Ibna Aliya see woman's blood compensation as being equal to that of a man.

In Somali Culture, there is no discrimination against women in traditional litigation. A proverb says, "Gari Allay Taqaanna". The proverb says roughly, "*people are equal in front of God.*" The proverb embodies the principle of equality before the law and of the universality of justice.

The rights of women in Somaliland in accordance with the Islamic principles have not been fully implemented, due to the fact that the knowledge of Islam has been limited, and the governing institutions were not in a position to carry out the realisation of such principles for many reasons.

The colonial administration did not change this state of affairs for women, but rather incorporated customary laws into civil matters. The reach of the colonial law enforcement was also limited. Throughout the long colonial era, women mainly enjoyed the rights granted to them by the Somali tradition and culture.

The birth of the Somali State from the union of the former British Protectorate of Somaliland and the Italian Trusteeship has not changed the status of women significantly. Throughout the nine years of civilian administration, the nascent Somali State continued implementing the same colonial rules without any major change to the status of women. Women gained their right to vote and voted in the general elections of 1964 and 1969. Work opportunities for women have also significantly increased.

In practice, customary law is pervasive, undermining the application of Islamic law. For instance, a man may not be killed for a woman since he is worth 100 camels and she is worth 50 camels. Women can be particularly vulnerable to the substitution of customary law to *Shari'a* law. Elders routinely exert pressure on women to settle out of court through traditional channels, thus forfeiting their legal rights.

The differentiation between men and women appears in blood compensation and in some physical injury whereby female compensation is half of that of the male.

### 3.1.4 PROPERTY RIGHTS

*“Grant women equal rights with men to acquire, change or retain their nationality “*  
[ARTICLE 9]

The nationality of any Muslim is the Islamic Doctrine (Aqida Al-Isaamiya). Therefore, it is illegal for a Muslim woman to lose, or to be denied her rights by marrying another Muslim. The Islamic Shari'a recognises property rights of women before and after marriage.

*To men is allotted what they earn and to women is allotted what they earn*  
(Qur'an: 4:32).

Islam through marriage aims to assure greater financial security for women. They are entitled to receive marital gifts, to keep present and future properties and income for their own security. No married woman is required to spend a penny from her property and income on the household. Generally, a Muslim woman is guaranteed support in all stages of her life, as a daughter, wife, mother, or sister. Inheritance in Islam is based on kinship.

*“Men shall have a portion of what the parents and the near relatives, a women shall a portion of what the parents and the near relatives leave*  
(Qur'an 4:7).

Many respectable scholars such as Imam Shafi'i hold the view that it is obligatory that a husband provide a gift to his divorced wife in accordance with the size of his wealth.

*For divorced women provide a suitable Gift. This is a duty on the righteous*  
(Qur'an 2:241) *Bestow on them (a Suitable gift) The wealthy According to his means, And the poor According his means* (Qur'an 2:236) (see Tafsir ibnu Katiir).

Women's property rights in Somali customary laws are less progressive than they are in Islam. Somali customary laws (Xeer) often circumvent women's inheritance rights in order to keep property with the patriarchal family.

## 3.2 LEADERSHIP AND PARTICIPATION IN POLITICAL AND PUBLIC LIFE

*"...ensure to women on equal terms to men the right to vote in all elections... ... and to be eligible for election to all publicly elected bodies... to hold public offices and perform all public functions in all levels of government."* [ARTICLE 7]

### 3.2.1 HOLDING A PUBLIC OFFICE

The Qur'an, in describing the qualifications of true believers, states:

*"... and whose rule in all matters of common concern in consultation (shura) among themselves."*

When it comes to administration and leadership positions, Islamic law (*shari'a*) does not allow a woman to be a head of any state based on this Hadith:

*No people will ever succeed if they hand their affairs to a woman.*

There is no clear-cut text that precludes women from holding a high level political position. However, some Muslim scholars severely restrict the presence of women in public life, citing varied reasons — moral vulnerability of women and, in their view, women's tendency to be a source of (fitna) temptation and social discord. For these reasons, conservative scholars do not permit women to hold any public office or leadership position. Other scholars permit women to hold any public office and leadership position with the exception of serving as Head of the State or Caliph.

### 3.2.2 THE RIGHT TO VOTE

Voting is a new development similar to a process call in Islam Bai'ah or pledging allegiance to the leader. Like men, women participated in and were included in the (*Bai'ah*) allegiance of the Prophet. Abdur-rahman Ibn Auf, one of the people selected by Omer Bin Khatab to nominate his successor, consulted many women before he recommended Uthman ibn Affan to be the third caliph. Therefore women can vote without violating Islamic guidelines of modesty and virtue.

### 3.2.3 RUNNING FOR ELECTION

Contemporary Muslim scholars have differed on whether women are able to run for election. According to some scholars, Islam does not allow individuals to seek nomination and election to a public position, but rather stipulates that the community should select or nominate appropriate people to lead them. The Prophet (Pbuh) said: "We shall not give a public position to whoever seeks or strives for it (Bukhari). Since such nomination or selection process is very difficult today, some scholars permit men to run for election, based on a verse in which Joseph asks the Egyptian leader to make him the treasurer:

*(Joseph) set me over the storehouses of the land: I am a good keeper, knowledgeable (Qur'an: 12:55).*

The concept of election and voting is alien to the Somali political system. In recent years, assemblies of clan representatives have been convened to elect leaders and to build political consensus on important decisions. Traditionally such assemblies convened to:

- Resolve inter-clan conflicts.
- Agree on nomination of a traditional leader.
- Decide on issues of peace and war.

According to tradition and customary law, decisions are often made through consensus. Mr. Cumar nuur Cusmaan (Aare), a member of Somaliland Parliament, and Mr. Muse Cali Faruur, a Somali folklore specialist, noted that women used cultural devices to signal approval or disapproval of a course of action, and thus influence decisions. This included BRAANBUR or ululation (Mashxarad). Again according to Muse Cali Faruur, men consulted with the women in their family before the meetings of the clan assemblies.

The Somali culture does not explicitly state whether Somali women can hold traditional leadership position or political offices. But in practice we find that the clan-based system does not provide women the right to hold public office or to have a formal role or participate in a traditional assembly (*Shir* or council). In a patrilineal society, women face often difficult choices: For instance, should she represent her paternal kin or her husband's? There is also a cultural belief that lineage interests and matters are the domain of men, and can be best expressed through them. The exclusion is at least in part based on the belief that women will face a serious conflict of interest.

### 3.2.4 PUBLIC PARTICIPATION

Principally, in Islam a woman is religiously required to remain in her house and to undertake the important task of taking care of her home and her offspring:

*"And stay quietly in your houses (Qur'an 32:33).*

During the prophets' era, women attended the mosque and took part in religious services on feast days. They actively participated in discussion and were free to question, confront and challenge speakers. This practice continued even in 'Umar's time — when he was caliph. It is reported that when 'Umar attempted to limit the dowry in a khutbah in the mosque, a woman challenged his ruling and 'Umar conceded that "the woman is correct and 'Umar is wrong".

There is sufficient historical evidence of the participation of Muslim women in the choice of rulers, in public issues, in consultation (*shura*), in administrative positions, and even on the battlefield. Such involvement in political affairs was conducted without losing sight of the complementary priorities of both genders, and without violating Islamic guidelines of modesty and virtue. The Prophet was often advised by his wife Umm Salamah.

In contemporary Muslim societies, scholars differ on the appropriate level of women's participation in community activities. Religious leaders, officials of the key branches of the government, intellectuals and civil society leaders of each country need to review and decide on strategies for women's participation in the community, taking into consideration their national welfare and the social and economic settings.

Again the exercise of physical force or war between kinship groups practically or potentially is very important in the political life of these groups. Women's role in this respect was minimal. This situation has also minimised the political public participation of women.

Historically, however, women are known, accepted, and expected to exert political influence indirectly through their husbands and their kinsmen. There are legends like that of *Araweello*, which warn of the dangers of women assuming political leadership. Others (likes the wives of the warrior and the leader *Wiil Waal*) suggest that women, denied direct participation in the political process, can and do exert political power through men, particularly their husbands. In contemporary politics, the wives of Presidents since independence in 1960 also seem to wield political power.

### 3.3 EQUALITY OF SOCIOECONOMIC OPPORTUNITIES

*"... 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 training..."*[ARTICLE 10] CEDAW

Education is not only a right but also a duty of all males and females. Prophet Muhammad said: *"Seeking knowledge is mandatory for every Muslim. A husband can not prevent his wife from seeking education. Parents are duty bound to educate their girls as they educate their sons. Prophet Muhammad said:" Whosoever has a daughter and.... does not favor his son over her, Allah will enter him into Paradise."* [Ahmad]

The Prophet encouraged women to seek knowledge. As an example, the Prophet assigned specific days to instruct women, despite his busy schedule. Islam endorses a woman's right to have access to all types of education and training, and to pursue it to any level they desire. Both males and females can have the same curricula, examination and qualified teachers. Conservative Islamic groups demand separate educational facilities for men and women.

*". take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights..."* [ARTICLE 11] CEDAW

According to Islamic *Shari'a*, the primary duty of women is to maintain the home, provide support to her husband, and bearing, raising and teaching her children: *A woman is responsible for her husband's home and maintaining her house, said the Prophet (Pbuh)*. Women have the right to work outside her house out of necessity or otherwise, but a woman needs to consult her spouse or guardian if she wishes to work.

The Qur'an cites the daughters' of Shu'ayb: *"And when he arrived at the watering (place) in Madyan, He found there a group of men watering (their flocks). And besides them he found two women who were keeping back (their flocks). He said "what is the matter with you?" They said: We cannot water (Our flocks) until the shepherds take back (their flocks): And our father is a very old man."* (Qur'an 28:23).

Women perform varied roles at different stages. As a wife and as a mother, she is a teacher for all her children, a master trainer for her daughters, and above all a manager of not only her home, including the family's livestock. In a traditional nomadic setting, women's work is also highly specialized and valued. For example women make all materials for the construction of the nomadic home, as well as all household utensils and instruments. They are also responsible for the logistics of moving the family dwelling in the frequent nomadic movements. Women procure daily supplies of water and firewood. These are just some examples of women's role in the traditional system.

In the Somali pastoral economy, the labor of the women is part of their domestic and communal activities. The political and social crises during the last fifty years brought women in large numbers to the labour market to perform traditional responsibilities. Out of necessity, they took to work outside the home and became key actors in the marketplace as small traders, shop owners, and *Qat* sellers.

Consequently, the economic roles and contributions of women have changed drastically. The religious and cultural impact of these changes remains to be fully studied and understood. Some of the conditions on women's work outside the home are:

- The job itself should not be something forbidden or should not lead her to something forbidden.
- She should comply with Islamic guidelines of modesty and virtue.
- She should not forgo an important job (like her housework) for this job.

In Somali Culture, labour (including herding of livestock and farm work) is considered a duty and obligation of all in the family. Each family member has a specific, well-defined role and responsibility. In the urban employment, there are no Islamic grounds for discrimination against women.

### 3.4 MARRIAGE AND FAMILY

*"... ensure on the basis of equality of men and women the right to enter into marriage... the same rights and responsibilities during marriage... the same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether for free of charge or for valuable consideration...."*  
CEDAW [ARTICLE 16]

The social rights of women in Islam and Somali Culture are best expressed in marriage traditions and the institution of the family.

#### 3.4.1 THE BETROTHAL SYSTEM

According to Islam, women have the right to accept or reject marriage proposals. Her consent is a prerequisite for the validity of the marital contract according to the Prophet's teaching.

*"Ibn Abbas reported that a girl came to the Messenger of God, Muhammad, and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice ... (between accepting the marriage or invalidating it)." (Ahmad).*

In another version, the girl said: "Actually, I accept this marriage, but I wanted to let women know that parents have no right to force a husband on them." [Ibn Majah] A woman can stipulate, "not to be married with" in her marriage contract. The scholars have differed on

whether such stipulation would invalidate the marriage.

In the Somali culture marriage is conducted in accordance with Islamic teachings and more specifically on "Shaafici" school of thought. For this reason there is no special *xeer* (Customary agreement) between different kinship groups for marriage procedures. But there are factors that influence marriage such as social norms, local customs and folkways, mostly based on bond of affinity between families and agnatic groups resulting from the marriage contract between the two persons.

In Somali society, marriage has both individual and commercial aspects (I.M.Lewis.1994, p, 67). It is the duty of the girl's family to help her marry. Parents and other agnates therefore exercise considerable influence in the choice of a bride. Brides are chosen or rejected in the interest of the families and concerned kinship group (I.M.Lewis, 1994,33).

Despite this group interest, young people have considerable room for free choice. Marriage itself is a right of every young couple. Under the Somali tradition, young females and males can meet whilst herding live-stock, either during the daytime, or at nights inside the nomadic hamlet, where they can dance or talk together. Older people, especially the religious, often disapprove of these meetings, particularly the songs and dances. (I. M. Lewis ,1994,p, 34). These social encounters were good opportunities for young people to get acquainted with each other, and would sometimes lead to marriage.

Many young couples eloped if their respective families objected to their marriage. However, in most cases, young couples were married through a system of marriage transaction whereby the respected fathers would agree on a price for the bride.

In giving family heads the authority to accept or reject the marriage transaction, much power is invested in them. Most families preferred this system because it promoted links between families and also engendered positives for both families, in bride wealth and a healthy marriage dowry.

According to Hadraawi, a renowned Poet and expert on Somali culture, this arrangement is also a source of pride and honour for the girls. According to Muse Cali Faruur and Cumar Nuur Cusmaa (Aare), the power of the father and other senior family male members or agnates over the girl's right to choose her spouse was counter-balanced by the power the girl exercised over the family in choosing to elope if they objected to her relationship.

Muse Cali Faruur and Mr. Aare noted another system that, in rare cases, allowed a girl who passed the normal age of marriage to present herself to a nomadic hamlet for marriage to a man. Mr. Muse continued to point out that sometimes the woman used to select a particular man, the house of whom she took refuge in. This was a symbolic request to marry her. This custom belongs to the remote past and is not something practised today.

Another old practice, according to Mr Muse Cali Faruur and Mr Aare, saw a father promise his infant girl in marriage to another man upon her reaching maturity. This system is known as (Xudun-xid) or child betrothal system. Both Muse and Aare confirmed that this custom has almost disappeared.

Islam celebrates the special and exclusive function of marriage- procreation- and extends this celebration of marriage to motherhood. The Qur'an advocates reverence for mothers.

*O mankind: Reverence your Guardian Lord and (reverence) the wombs (that bore you): for Allah ever watches over you (Qur'an 4:1).*

Mothers are also accorded a special place of honour in the Prophet Sayings . A man came to the Prophet Mohamed asking:

*O Messenger of Allah, who among the people is the most worthy of my good companionship? The Prophet said your mother. The man said then who is next: the Prophet said, your mother, the man further asked, and then who is next? The Prophet said, your mother. The man further asked, and then who is next? Only then did the Prophet say, your father. (Muslim/Bukhari)*

Kindness to parents (especially mothers) is next to worship of Allah:

*Your lord has decreed that you worship none but Him and that you be kind to parents. Whether one or both of them attain old age in your life say not to them a word of contempt nor repel them but address them in terms of honour (Qir'an 17:23).*

*And we have enjoined on the human (to be good) to his/her parents: in travail upon did his/her mother bear him/her and in years Twain was his/her waning: (hear the command) "show gratitude to Me and to your parents: to Me is (your final) destiny. (Qur'an 31:14)*

Marriage is not only a binding contract between two persons, but also involves a wider relationship between their respective kin's (I.M.Lewis1994, p.42). Two customs, reflecting the commercial character of marriage in Somali pastoral society, are called *Dumaal* and *Xigsiisan*. The former (widow inheritance) is a custom in which a man is to marry the widow of his brother or his close cousin (*inadeer*) who has no brother. The latter is also a custom where a man is to marry his deceased wife's sister.

### 3.4.2 RESPONSIBILITY

In Islam, the husband is responsible for the maintenance, protection, and overall welfare of the family (*qiwamah*) within the framework of consultation and kindness.

*"Men are the protectors and maintainers of women because Allah has given the one more (strength) than the other and because they support them from their means."*  
Qur'an 4:34).

Islam also sought to establish symmetry between the respective rights and obligations of men and women.

*"And women shall have rights similar to the rights against them, according to what is equitable." Qur'an 2:228).*

Prophet Muhammad instructed respect for women. To demonstrate that respect, the Prophet helped in household chores in spite of his busy schedule and encouraged men to consult with their spouses and children in family matters. The Prophet said, *"The best to you is the best to your family (wife)..."*

Islam obliged women to accept the authority of the husband within the family.

*"The righteous women are obedient and protect (the husband's interest) in his absence, as Allah has protected them. "*  
(Qur'an 4:241)

The normative relations of husbands and wives in Somali culture are highly similar to those under Islam. The husband is the head of the family. He is responsible for the security and the relationship of his family to others. The wife is in turn responsible for the day - today management of family affairs.

### 3.4.3 DIVORCE AND CUSTODY

Islam stipulates the husband's right to divorce, while recognising the wife's right to ask for it. The wife can initiate divorce through a process called "khul"--divestiture. The Somali culture permits the mediation of marital disputes by the relatives. Otherwise, the Shari'a is used to resolve disputes between husbands and wives.

The priority for custody of young children (up to the age of about seven) is given to the mother. A child later chooses between his mother and father (for custody purposes). Custody questions are settled in a manner prioritizing the interest and well being of the child.

## 3.5 ACCESS TO SERVICES AND LOANS

*"... take all appropriate measures in order to eliminate discrimination against women in the field of health care, on the basis of equality of men and women, access to health care services, including those related to family planning: CEDAW[ARTICLE 12]*

There are no religious or cultural discriminations against women in health care. However, Islam does not permit birth control, and encourages human reproduction, as the Prophet exhorted Muslims to multiply. But the Qur'an commands the mothers to breastfeed their offspring for two whole years *the mothers shall give suck to their offspring for two whole years* (Qur'an 2:233). This encourages spacing between children.

*"...ensure on a basis of equality ... the right to bank loans.."* CEDAW [ARTICLE 13]

The Somali nomadic economy was not money based. Indeed, a well-known Somali proverb says, "Allahayaw maxay noqon ninkii awrkii lacag siistay!" This means, "If you sell your camel and in turn get some money, Oh! God, I just can't imagine that."

There are also no banks in the urban sectors of Somaliland. Loans are secured from relatives and friends. Somali traditions neither encourage nor discourage or impede women from taking bank loans.

### 3.6 CULTURAL PREJUDICES AND RESTRICTIONS

*“... Take all appropriate measures to modify the social and cultural patterns of conduct of men and women... which are based on the idea of inferiority or superiority of either sex or stereotyped roles for men and women.”*  
CEDAW [ARTICLE 5]

### 3.7 HONOUR AND MORALITY

Notions of honour and sexual morality in Islam and Somali culture are similar and are sources of gender bias against women, and restrictions on their freedom of movement. In Islam, the movement of women requires the permission of husbands or male guardians, and in traveling she requires the permission of her *Muhram* (husband, father, brother, first uncle). Such restrictions are not imposed on Somali women.

Islam permits a maximum number of four wives at a time. However, guidelines are provided for just and equal treatment of co-wives. The Qur'an explicitly places conditions on the practice of polygamy.

*“ If you fear that you shall not be able to deal justly with the orphans marry women of your choice-- two or three or four; but if you fear that you shall not be able to deal justly (with them) then only one ... (Qur'an 4:3)*

#### 3.6.1 POLYGAMY

There has been an upsurge in polygamy, where men, who have no means to look after one family, are marrying other women. This practice is the most frequent cause of divorce. In Somaliland, polygamy has had devastating psychological effects on women, causes economic hardship for the family, and is the source of conflict between siblings of different mothers.

### 3.6.2 VIOLENCE OR ABUSE AGAINST WOMEN

Violence against women is often based on erroneous notions of men's authority over women. Under no circumstances does the Qur'an encourage, or condone physical abuse or cruelty towards women. The maximum allowed in extreme cases is a gentle tap that does not even leave a mark on the body while saving the marriage from collapsing. Even in this last respect the historical context needs to be applied.

In the event of a family dispute with the problem relating to the wife's behaviour, her husband may exhort her and appeal for reason. In case the problem continues, the husband may express his displeasure in another peaceful manner by sleeping in a separate bed from hers. If that don't solve the problem the husband may resort to another measure best described as a gentle tap on the body, but never on the face, making it more of a symbolic measure than a punitive one.

*"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): for Allah is Most High, great (above you all)."* (Qur'an 4:34)

As defined by the Hadith, it is not permissible to strike anyone's face, cause any bodily harm or even be harsh. In addition, early jurists interpreted light beating as a (symbolical) use of the miswak (a small natural toothbrush). However, the Prophet Muhammad discouraged these measures. Among his sayings: "[Is it not a shame that], one of you beats his wife like [an unscrupulous person] beats a slave and maybe he sleeps with her at the end of the day." (Riyad Al Saliheen) in another Hadith, the Prophet said "How does anyone of you beat his wife as he beats the stallion camel and then he may embrace (sleep with) her?" (Bukhari) in addition the Prophet (Pbuh) never raised his hands to his wives.

The Shari'a (Islamic Law) has long co-existed with Somali customary law (Xeer), despite apparent contradictions between the two. The Shar'a is more progressive than Somali customary law. It grants women rights in inheritance and ownership, stipulates procedures for settling divorce, initiating marriage and maintaining widows and orphans. The customary law that is practised often denies women their share of inheritance in camels, land and farms by families, in order to protect the property of the patriarchal family. Somali customs and practices also include arranged marriages in which the consent of the women involved is not sought, and not adhering to the strict conditions attached to multiple wives.



## 4. RECOMMENDATIONS

Today, women in Somaliland play a notable role, particularly economically. In order to advance women's rights in a manner that is compatible with the Somali culture, it is extremely important to understand the roles and status of men and women in Somali clan system. The distinct gender role of men and women is the gateway to better understanding the restrictions and limitation on women's rights.

The promotion of girls/women's education is an important human rights issue and an essential precondition for the realization of other rights. A famous Arabian poet once commented that if you educate a boy you educate one person, but if you educate a girl you educate many.

The workshop participants identified some areas of the Somali culture that are compatible with the main provisions of the economic and social rights included in CEDAW. The two working groups and the workshop participants concluded the following recommendations:

- Women's rights are integral part of Islamic and Somali culture. Efforts to advance women's rights must take into account both Islam and the culture. Otherwise, these efforts will backfire due to resistance and negative reaction.
- It is not useful to consider the human rights of women as a "gender-struggle". Women alone should not assume the responsibility of advancing women's rights. Men also have a prominent role to play.
- Since the institutions of the family and society are inherently linked, women's rights should be examined in the context of the family in Islamic Society and the rights and obligations of each member of the family.
- In both Islamic and Somali traditions, the rights of family members should complement each other. Greater realisation of women's rights therefore reinforce the welfare of the family members as a whole.
- The norms of Islam should be distinguished from the negative aspects of the prevailing social customs and practices.
- To the extent possible, international human rights norms should be adapted to the human rights conditions of women in Somaliland. But these international norms must be consistent with Islam and Somali culture.
- Islamic principles should be differentiated from the prevailing circumstances and practices in different stages of development and historical periods - e.g. if today in Somaliland men failed to fulfil their expected role in the family - it would have nothing to do with Islamic teachings.
- Where there is no explicit text in the Qura'n or the Sunnah on a particular human rights issue, the overall benefits and negative impact or damage on the fabric of the society should be evaluated in order to resolve and decide issues. Such decisions should give priority to preventing damage to both women and society.
- Islamic beliefs and norms provide moral guidelines to secular life that are connected to a faith in life hereafter. These beliefs must be taken into account in efforts to advance women's rights.
- Some aspects of clan social organization have adverse effects on women's political rights. These must be changed through education and enlightenment.

- Those aspects of the customary law that seriously restrict or discriminate against women need to be reviewed and up-dated so as to make them compatible with today's modern life. However, the risks of cultural dislocation and confusion of identity must be considered and avoided.
- In order to implement the above goal, massive orientation courses need to be organized to increase awareness and acceptance of women's rights. Women's rights should be also disseminated through the formal and informal media.
- To improve the status of women in Somaliland, efforts should focus particularly on today's problems relating to marriages, divorces, family responsibility, and child care utilizing the Islamic law. (*shari'a*)
- In particular, efforts toward change must stress the expansion of economic opportunities and social programs for the poor, the less fortunate or most vulnerable people, most of whom are children and women.

In summary, both Islam and the Somali culture view women's political participation and rights differently than the CEDAW. The Somaliland Constitution acknowledges gender equality (Articles 8 on equality of citizens and 36 on women's rights). The constitution defines women's rights broadly and in the context of Islamic perspective on the different roles of men and women. However, the constitution sanctions gender equality in political participation and gives women greater political rights than is actually the practice. Strategies for enhancing women's political participation need sympathetic attention, understanding and further study, in order to explore how and what legal and constitutional mechanisms can be used to implement the rights of women under the constitution.



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## ANNEX

*To men is allotted what they earn and to women is allotted what they earn (Qur'an: 4:32).*

## ANNEX TEAMS AND WORKSHOP PARTICIPANTS

### RESEARCHERS

- |                             |                                   |
|-----------------------------|-----------------------------------|
| 1. Mohamed Haji Mohamoud    | Religious scholar                 |
| 2. Mohamed Hassan Ibrahim   | A Researcher                      |
| 3. Amina Warsame            | Researcher in Women Issues        |
| 4. Ja'far Mohamed Gadaweyne | An Educationists and a Researcher |
| 5. Rashid Haji Abdillahi    | Sociologists and literalists      |

### WORKING GROUPS

- |                            |                                            |
|----------------------------|--------------------------------------------|
| 1. Mohamed Saleh Igeh      | A judge, head of Hargeysa's Regional Court |
| 2. Ifrah Adan              | A lawyer and Human rights advocate         |
| 3. Sa'di Muse              | Director of International NGO PENHA        |
| 4. Abdirahman Jimaleh      | A Researcher                               |
| 5. Mohamed Warsame Hadrawi | A renown poet                              |
| 6. Bashir Farah Kahin      | Educationist and expert in Curriculum      |
| 7. Muse Ali Farur          | A leading Traditionalist                   |
| 8. Omar Nor Osman          | A parliamentarian and Traditionalist       |

### REGIONS

- |                        |                                |
|------------------------|--------------------------------|
| 1. Salayman Abdillahi  | Religious Groups/Sahil Region  |
| 2. Ahmed Roble         | Youth activists/Sahil Region   |
| 3. Sado Jama Ali       | Women NGOs/Sahil Region        |
| 4. Ikram Haji Dawuud   | Women Activits/Awdel Region    |
| 5. Sh. Hassan Dahaye   | Religious Scholar/Awdel        |
| 6. Yusuf Geedi         | Traditionalist/Awdel           |
| 7. Su'ad Salah Ibrahim | Officer, Regional Court/Sanaag |
| 8. Saeed A. Dahir      | Religious Group/Sanag          |
| 9. Roble Elmi Muse     | Traditionalists/Sanag          |
| 10. Amino Ibrahim      | Women activist/Togdhee         |
| 11. Yusuf Hiito        | Poet                           |
| 12. Cisman Abdillahi   | Religious leaders/Togdheer     |

**WORKSHOP PARTICIPANTS**

1. Ahmed Yusuf Dualeh	Minister of Education
2. Sh. Ismail Abdi Hurre	Religious Scholar
3. Amran Ali Iis	DG of Ministry of Family
4. Mohamed Yusuf Abdi	House Elders
5. Mohamoud A. Hamud	Intellectual and a Politicians
6. Ahmed Abbas Ahmed	Intellectual
7. Khaliil Abdiqadir	Religious Leaders
8. Foosiyo Haji Dahir	Religious Woman
9. Sacido Ahmed Abdi	Teacher
10. Farduz M. Mohamed	Educationist
11. Foosiyo Abdiqadir	Housewife
12. Kayd Jama	Officer- Ministry of Culture
13. Ahmed Saleyman	Officer- Custodial Corp.
14. Hoodo Mohamed	Housewife
15. Shukri Wali	Women NGOs
16. Ali Ahmed Gedi	Public
17. Sahra Abdillahi	Women NGOs
18. Ramla Mohamoud	Women Activists
19. Faysal Abdillahi	Journalist, Mandeeg
20. Fadhiya Haji Hussein	NAGAAD Umbrella
21. Jawahir A. Abdalla	Teacher
22. Asha M. Omar	Women Activists

For more information about UNICEF and how it is working in Somalia to improve the lives of children and youth, women and families please contact:

UNICEF Somalia Communication Section  
P. O. Box 44145  
Nairobi  
Kenya

Telephone 254-20 623958 / 521396  
Facsimile 254-20 520640

You can request programme updates by email from [somalia@unicef.org](mailto:somalia@unicef.org)