

Country/entity	Somalia
Region	Africa (excl MENA)
Agreement name	Provisional Constitution of The Federal Republic of Somalia
Date	1 Aug 2012
Agreement status	Multiparty signed/agreed
Interim arrangement	Yes

Agreement/conflict level Intrastate/intrastate conflict

Somali Civil War (1991 -)

Originally spurred by centre-peripheral tensions, fighting broke out in 1981 between the regime of President Said Barre and the Somali National Movement, a militia primarily consisting of members from the northern Ishaq clan. Fighting intensified in the late 1980s as more clan-based militias arose. President Barre's regime collapsed in late 1991 and as a result the UN intervened. However persistent attacks on the UN's forces forced a withdrawal in 1994. From the mid- to late 1990s, the character of the conflict shifted as warlords fought for access to rents. Also during this period, two different peace agreements arose; the Soderre Declaration, which was mediated by Ethiopia and supported by IGAD, and the Cairo Accord, which was brokered by Egypt. Fighting, already noticeably lessened compared to the early 1990s, decreased and the more amicable environment paved the way for the Transitional Government to be formed in 2000 (replaced in 2004 by the Transitional Federal Government).

Nonetheless, opposition to the TFG arose in the form of the Islamic Courts Union (ICU), which by early 2006 had taken control of most of southern Somalia until they were ousted by an armed intervention by Ethiopia in December 2006. As a result, the ICU splintered. Hard-line ICU members formed the Takfiri organization, Harakat al-Shabaab al-Mujahideen, and launched a guerrilla campaign against the TFG. Another faction of the ICU fled to Djibouti and formed the Alliance for the Re-liberation of Somalia, which was absorbed into the ruling TFG after successful negotiations in 2007.

To deal with the new round of fighting, the UN-mandated AMISOM force was deployed in 2007. Since then, insecurity has fluctuated between the urban and rural areas as the al-Shabaab's territorial gains waver. Local militia leaders maintain de facto governance over communities. From 2009 to 2012, insecurity spilled over into the Gulf of Aden and the Indian Ocean when Somali pirates seized, looted and ransomed ships. In 2014, 'Operation Indian Ocean' was launched and in parallel with infighting among al-Shabaab, the organisation's position in Somalia has diminished slightly. However, as evidenced by large-scale attacks by al-Shabaab in northern Kenya throughout 2013-2015, the lack of security continues to destabilize the region. Al-Shabaab continues to launch surprise attacks with the aim of forcing out foreign military presence in Somalia. Targets include both military forces and civilians. The devastating attack in October 2017 in Mogadishu saw 587 fatalities and resulted in a renewed military offensive by the Somali government and African Union allies. Since 2017, the U.S. has increased its air strikes targeting al-Shabaab militants, and in December 2018 they announced to re-establish a permanent diplomatic mission in the country. Al-Shabaab has been characterized as a spoiler in the Somali peace process and have therefore been placed outside of any negotiations.

Close

Somali Civil War (1991 -)

Stage Framework/substantive - comprehensive

Conflict nature Government/territory

Peace process	Somalia Peace Process
Parties	Members of the Transitional Government of Somalia
Third parties	-
Description	The Provisional Constitution of Somalia provides the legal foundation for the Federal Republic of Somalia outlining the Fundamental Rights and Duties of the Citizen; Land Property and Environment; Representation of the People; Devolution of the Power of State in the Federal Republic of Somalia; The Federal Parliament; the Presidency; the Executive; the Judiciary; the Independent Commissions; the Civil Service; the Federal Members States; Public Finance and Peace and Security.

Agreement document	SO_120801_Provisional Constitution of Somalia.pdf (opens in new tab) Download PDF
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Women, girls and gender

Participation

Participation→Gender quotas

Page 38, CHAPTER 10: THE INDEPENDENT COMMISSIONS

Article 111D. Parliamentary Service Commission

... (c) Four (4) members elected by the House of the People from among its members, of whom at least two (2) shall be women;

(d) Two (2) members elected by the Upper House from among its members, of whom at least one shall be a woman; and

Participation→Effective participation

Page 1, CHAPTER 1: DECLARATION OF THE FEDERAL REPUBLIC OF SOMALIA

Article 3: Founding Principles,

(5) Women must be included, in an effective way, in all national institutions, in particular all elected and appointed positions across the three branches of government and in national independent commissions.

Equality

Equality→Equality (general)

Page 3, Title One: General Principles Of Human Rights

Article 11. Equality

(1) All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law.

... (3) The State must not discriminate against any person on the basis of age, race, colour, tribe, ethnicity, culture, dialect, gender, birth, disability, religion, political opinion, occupation, or wealth.

Equality→Social equality

Page 6, Title Two: Rights, Basic Personal Liberties and Limitations

Article 24. Labour Relations

... (5) All workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the work place. Every labour law and practice shall comply with gender equality in the work place.

Page 6, Title Two: Rights, Basic Personal Liberties and Limitations

Article 27. Economic and Social Rights

... (5) It shall be ensured that women, the aged, the disabled and minorities who have long suffered discrimination get the necessary support to realize their socio-economic rights.

Equality→Other

Page 46, CHAPTER 14: PEACE AND SECURITY Article 127. Principles for the Security Forces

... (2) Every Somali citizen is entitled to be considered for positions in the national armed forces at all levels, without discrimination, and the rights of women shall be protected in this respect

Particular groups of women Particular groups of women→Pregnancy/maternity

women

Page 4, Title Two: Rights, Basic Personal Liberties and Limitations Article 15. Liberty and Security of the Person (5) Abortion is contrary to Shari'ah and is prohibited except in cases of necessity, especially to save the life of the mother.

International law	International law→General IHRL, IHL and IL Page 6, Title Two: Rights, Basic Personal Liberties and Limitations Article 28. Family Care (2) Mother and child care is a legal duty of the State. ... (5) A marriage shall not be legal without the free consent of both the man and the woman, or if either party has not reached the age of maturity.
New institutions	No specific mention.
Violence against women	Violence against women→Sexual violence Page 6, Title Two: Rights, Basic Personal Liberties and Limitations, Article 24. Labour Relations ... (5) All workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the work place. Every labour law and practice shall comply with gender equality in the work place. Violence against women→Gender-based violence/VAW (general) Page 4, Title Two: Rights, Basic Personal Liberties and Limitations, Article 15. Liberty and Security of the Person ... (2) Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment. Page 4, Title Two: Rights, Basic Personal Liberties and Limitations Article 15. Liberty and Security of the Person ... (4) Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited. Page 33, CHAPTER9: THE JUDICIAL AUTHORITY Article 107. Judicial Procedure (1) Judicial proceedings shall be open to the public, but the courts may decide, in the interests of ethics, national security, the protection of witnesses, in cases involving juveniles, or concerning rape, that the proceedings be held in private. Violence against women→Other Page 4, Title Two: Rights, Basic Personal Liberties and Limitations Article 15. Liberty and Security of the Person ... (4) Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited.
Transitional justice	No specific mention.

Institutional reform Institutional reform→Constitution-making/reform

Page 50, CHAPTER 15: FINAL AND TRANSITIONAL PROVISIONS, Title One: Amending The Constitution, Article 134. Provisions Applicable to an Amendment to the Constitution Proposed Before the Expiry of the First Term of the Federal Parliament: The Review and Implementation Commission ... (3) The relevant Minister shall select as a nominee a person, not a member of the Federal Parliament, who meets the following criteria for appointment to the Review and Implementation Commission: ... (d) Has knowledge and experience of at least ten years in matters relating to one or more of the following fields: ... (iv) Gender;

Institutional reform→Emergency/criminal law/corruption reform

Page 4, Title Two: Rights, Basic Personal Liberties and Limitations

Article 15. Liberty and Security of the Person

... (4) Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited.

Institutional reform→DDR, army, parastatal or rebel forces

Page 46, CHAPTER 14: PEACE AND SECURITY

Article 127. Principles for the Security Forces

... (2) Every Somali citizen is entitled to be considered for positions in the national armed forces at all levels, without discrimination, and the rights of women shall be protected in this respect.

Development

Development→Reproductive rights

Page 4, Title Two: Rights, Basic Personal Liberties and Limitations, Article 15. Liberty and Security of the Person

... (4) Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited.

(5) Abortion is contrary to Shari'ah and is prohibited except in cases of necessity, especially to save the life of the mother.

Implementation

Implementation→Women's role and consideration in implementation of the agreement

Page 50, CHAPTER 15: FINAL AND TRANSITIONAL PROVISIONS, Title One: Amending The Constitution,

Article 134. Provisions Applicable to an Amendment to the Constitution Proposed Before the Expiry of the First Term of the Federal Parliament: The Review and Implementation Commission

... (3) The relevant Minister shall select as a nominee a person, not a member of the Federal Parliament, who meets the following criteria for appointment to the Review and Implementation Commission:

... (d) Has knowledge and experience of at least ten years in matters relating to one or more of the following fields:

... (iv) Gender;

Other

No specific mention.