



August 2013

Refugee Documentation Centre

Country Marriage Pack

Somalia

Disclaimer

Country Marriage Packs (CMPs) are prepared by researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. CMPs contain a selection of representative links to and excerpts from sources under a number of categories for use as Country of Origin Information. Please note that CMPs are not, and do not purport to be, exhaustive with regard to conditions in the countries surveyed or conclusive as to the merit of any particular claim to refugee status or protection.

1. Types of Marriage

Civil Marriages

A document by *Landinfo* states under the heading 'Marriage and Divorce':

"Civil marriages have never been performed in Somalia." (Landinfo (5 January 2009) *Documents in Somalia and Sudan*)

Religious Marriages

See 'Traditional/Other Marriages' section below.

Traditional/Other Marriages

A document by the *OECD* states under the heading 'Family Code' in relation to polygamy:

"Polygamy is permitted under Somalia's customary and religious systems. Under the civil system, men who wish to take a second (or subsequent) wife must obtain authorisation from a district court of justice. Authorisation is granted if the first wife is ill or sterile, has been imprisoned for more than two years or has been 'unjustifiably absent' from the marital home. There is limited data available on the prevalence of polygamous marriages, however based on a number of academic studies, the US Department for Health estimates that one-fifth of the Somali population lives in a polygamous marriage." (OECD Social Institutions and Gender Index (2012) *Somalia*)

A Landinfo Response quoted in the *UK Home Office* Country Report states:

"Arranged marriages are the norm in Somalia, and few women oppose their family's choice, which is to say their father or guardian's choice (Abdullahi

2001). The difference between an arranged marriage and a forced marriage can be subtle. Among nomadic groups, marriage to members of neighbouring clans is important for building alliances in order to ensure access to water and pasture areas. There is also a long tradition of peace arrangements between clans, sealed with an exchange of brides between the parties.

The social pressure for entering marriage is strong, especially for a first marriage, and for many young women it is almost unthinkable to oppose being married, because marrying and raising a family is fundamental in society. In conversations with both Somali and international resource persons during stays in Nairobi in 2002, 2004 and 2005, everyone pointed out that women who refuse to marry their family's choice may risk being exposed to violence. The extent of such violence is unknown. Those who do break with the traditional social standards cannot expect help or protection from family or other clan members. However, killing women is not socially accepted, and so-called 'honour killings' of women have no tradition in Somalia." (Landinfo Response (6 July 2012) *Somalia: Al-Shabaab and forced marriage*)

A County Profile updated by Dr Cedric Barnes following the 9th European Country of Origin Information Seminar in Dublin states:

"The position of women under immediate source of authority for the majority of Somali people – the traditional customary law (*xeer*) – is often in basic contravention of most 'universally accepted' notions of human rights. For example *xeer* allows the marriage of a widow to her deceased husband's close male relative (*dumaal* in Somali). *Xeer* also theoretically allows the forced marriage of a raped woman to the perpetrator to guard against an escalation of revenge and forces the clan to compensate for the potential *yared* (bridewealth in Somali) of the raped woman." (UNHCR and Refugee Documentation Centre (updated August 2007) *Somalia: 9th European Country of Origin Information Seminar, Dublin, 24-25 May 2004*)

A Danish Immigration Service report quotes Dr Hassan Isak, a lawyer from Baidoa, under the heading 'Marriage proceedings' as follows:

"It was stated that in accordance with Islamic law, a man might have up to four wives. If one dies therefore, there is not the need to remarry. As an example, if a man has two wives and one dies, he will take the other as his sole wife. If he has children with a wife who dies, one of his other wives will assume responsibility for the children." (Danish Immigration Service (17 March 2004) *Human Rights and Security in Central and Southern Somalia: Joint Danish, Finnish, Norwegian and British Fact-Finding Mission to Nairobi, Kenya*)

A document by *Emory Law* states in relation to polygamy:

"A man may not contract a second marriage without the written permission of the District Court. The Court's authorisation requires ascertainment of one of the following conditions: sterility of the wife of which the husband was not aware at the time of marriage, attested by a panel of doctors; incurable chronic or contagious illness of the wife, certified by a doctor; the wife's sentencing to more than two years in prison; the wife's unjustified absence from the matrimonial home for more than one year; or the existence of social

necessity (grounds for which are not defined).” (Emory Law (undated) *Somalia*)

A document by *AFP* and carried by Radio Netherlands Worldwide states of secret marriages:

“Youths in some Muslim countries where sex before marriage is forbidden and the cost of a wedding prohibitive sometimes resort to secret marriage, known as ‘Qudbosir’ in Somalia and ‘Urfi’ in most Arab countries.

The custom, which keeps the matrimony secret from the couples' parents and sometimes from another wife, is frowned upon in most of Somalia but has been practised in southern regions.” (Radio Netherlands Worldwide (11 January 2010) *Somalia men flogged for 'un-Islamic' romance*)

The *US Department of State Country Report* states under the heading ‘National/Racial/Ethnic Minorities’:

“Intermarriage between minority groups and mainstream clans was restricted by custom. (US Department of State (19 April 2013) *2012 Country Report on Human Rights Practices – Somalia*)

This report states under the heading ‘Child marriage’:

“Child marriage was prevalent. In rural areas parents often compelled their daughters as young as 12 to marry. In areas under its control, al-Shabaab arranged compulsory marriages between their soldiers and young girls and used the lure of marriage as a recruitment tool. The provisional federal constitution does not specify a minimum legal age of marriage but notes no marriage shall be legal without the free consent of both the man and the woman. Early marriages were common; 45 percent of women aged 20 to 24 were married by age 18 and 8 percent were married by age 15.” (Ibid)

A response to an information request from the *Immigration and Refugee Board of Canada* states:

“Although non-arranged marriages have become more common in Somalia (SAPA/AP 30 Oct. 2006; Public Agenda 31 Oct. 2005), sources consulted by the Research Directorate indicate that arranged marriages, including forced marriages, still take place in the country. Immigration and Refugee Board of Canada (20 September 2007) *Somalia: Prevalence of forced or arranged marriages in Somalia; consequences for a young woman who refuses to participate in a forced or arranged marriage*)

The report also states:

“ According to an article on marriage traditions in Somalia published in a 2004 book entitled *Somalia – The Untold Story: The War Through the Eyes of Somali Women*, elopement is a common way for a Somali woman to avoid an arranged marriage (ibid; see also Gardner and El Bushra 2004, 148). However, the practice is frowned upon in Somali society and a woman who elopes may be "risking her family's wrath" (Musse Ahmed 2004, 54). In October 2006, Islamic leaders in Somalia reportedly banned this type of

marriage, known as masaafo, saying that it "violate[d] islam" (SAPA/AP 30 Oct. 2006)." [...]

The article on marriage traditions in Somalia indicates that in cases where a marriage is arranged without the consent of the couple, the girl may be able to refuse the marriage if she gains her mother's support (Musse Ahmed 2004, 53). However, to avoid this situation, the father or male relative of the girl may try to formalize the union without advising the family (ibid.)." [...] (Ibid)

The report continues:

"A 2004 report by the Danish Refugee Council (DRC) similarly indicates that a woman can be forced into a marriage arranged by her father or male guardian (21 Aug. 2004, 10). The father or guardian may justify the arrangement, believing that he is looking out for the woman's welfare." (Ibid)

Under the heading 'Sexual assault and abduction' the report notes:

"Several sources consulted by the Research Directorate indicate that many women in Somalia who have been raped are forced to marry their rapist (Peacewomen.org 4 Mar. 2006; Musse 2004, 77; Denmark Aug. 2007, 33). According to a 2004 article on war crimes against women and girls in Somalia, this type of marriage occurs mainly in nomadic pastoral societies where women are valued for their "bride wealth" (Musse 2004, 77)." (Ibid)

Proxy Marriage

No information on the above issue could be found among sources available.

2. Formalities of Marriage (Consent, Minimum Age and Registration of Marriage)

A *Danish Immigration Service* report quotes Dr Hassan Isak, a lawyer from Baidoa, under the heading 'Marriage proceedings' as follows:

"Dr. Hassan Isak said that there are two ways by which a couple may be married:

- Firstly where the couple get together with the full knowledge of their parents who arrange for them to marry. The father of the son goes to the girl's father and asks permission for his son to marry the girl. They then arrange a time for the marriage to take place. The two sides also make an agreement on the costs of the wedding; the gifts, the bride's dowry, jewellery and house where they will live. It is frequently the case that parents arrange a couple's wedding without their knowledge. It was suggested that around 20% of marriages take place in this way. It was also noted that such marriages might be arranged for persons who are not in the same region or country.
- Secondly where a couple get together without the knowledge of their parents in a way known as 'street love'. The boy and the girl get together and prepare to get married in a secret or 'run away' marriage. It was stated that in order for the marriage to be valid, the boy and girl have to be adults (the

source referred to this as being over the age of 20) and travel at least 90km away from their hometowns. The ceremony is conducted by a Sheikh and must be witnessed by three officials from the Sheikh's house. The Sheikh asks whether the lady agrees to marry with the man. When she gives a positive response that is heard by all three witnesses and when the couple confirm they have not been married before, the marriage is concluded. The couple must provide a picture of themselves together, which is attached to the marriage certificate." (Danish Immigration Service (17 March 2004) *Human Rights and Security in Central and Southern Somalia: Joint Danish, Finnish, Norwegian and British Fact-Finding Mission to Nairobi, Kenya*)

This report also states:

"In cases where the parents of the couple find out that their children have been married in secret (for example if the girl falls pregnant), the relatives of the boy go to the girls' parent's house to pay a compensation (xumeyn) for the couple's decision to get married in this way. After the offer is accepted, the respective parents agree how much the compensation should be. Once this is agreed, the meeting is concluded with a fad banquet. It was stated that even if the parents do not accept this, the marriage is still valid.

A UNIFEM representative found it unlikely that a girl would elope to marry someone her family did not approve of. On the other hand, the clan arranges for matchmaking discos where the different parties are approved of in advance by the clan." (Ibid)

A document by *Emory Law* states in relation to the minimum age to marry:

"The minimum marriage age is 18 years for both parties. The female party may marry at 16 years with her guardian's consent, and the Court may grant an exemption from the minimum age requirements in case of necessity. A girl who has reached 16 years but is under 18 years may be represented in the contract of marriage by her father (in the absence of the father, the guardians in order are: mother, grandfather, elder brother, uncle, a Court-appointed guardian or judge). The Court is also empowered to overrule the objection of a guardian to the marriage of a female ward between 16 and 18 years." (Emory Law (undated) *Somalia*)

This document states in relation to registration of the marriage:

"Marriage is to be registered at the nearest District Court or authorised office within 15 days (40 days for residents of rural areas); failure to register is punishable by a fine. The essential elements of marriage as outlined in Article 6 are: proposal and acceptance by the contracting parties before two witnesses. A marriage contracted under compulsion is invalid." (Ibid)

A document by the *OECD* states under the heading 'Discriminatory Family Code':

"Due to the years of conflict and collapse of the state and its institutions, customary practices and Sharia law in relation to family matters have taken the place of the legal and judicial system. According to the 1975 Family Code, the legal minimum age for marriage is 18 years for both men and women, but women can marry at the age of 16 years with parental authorisation. Despite

the law, early marriage is practiced in Somalia, with 2006 data showing that 22 percent of girls aged 15 to 19 were married, divorced or widowed. Although non-arranged marriages have become more common, reports suggests that arranged marriages, including forced marriages, still take place in the country.” (OECD Social Institutions and Gender Index (2012) *Somalia*)

A document by *Landinfo* states under the heading ‘Marriage and Divorce’:

“Prior to the collapse of the Somali national state in 1991, the so-called wadaat - religious experts with competency to perform marriages – were appointed and registered by the authorities through the regional Khadi’s Court, administered by the Ministry of Justice and Religious Affairs. The person authorised to perform the marriage, the marrying couple (the woman not necessarily present), the woman’s guardian and two (male) witnesses - a requirement according to Islamic religious law, Sharia – would be present at the wedding ceremony. After the ceremony, the marriage would be registered and the couple would receive a marriage certificate.

This centrally administered system for appointments and registration was discontinued in 1991.¹¹ However, since 1991, local Sharia courts have to a certain extent retained some form of oversight and control over those authorised to perform marriages. Marriage certificates have also been issued by Sharia courts in Mogadishu and other towns after 1991.

Prior to 1991, certificates were prepared by the local sheik and certified with a stamp from the Sharia court (Udlændingestyrelsen 1991). If the sheik himself was a member of the court, he could stamp the document himself. No national or local registers containing information on marriages certified by these courts exist, and the Sharia courts have only invariably kept possession of copies of the issued certificates. Hence it is very difficult or impossible to verify such certificates.” (Landinfo (5 January 2009) *Documents in Somalia and Sudan*)

The same document by *Landinfo* states:

“Somalia has not had a functioning state government since 1991, and large parts of the territory are under no actual central administration or governing. This means that Somalia’s inhabitants have been unable to obtain official documents such as ID cards, passports or various certificates for the past 17 years.” (ibid)

This document also states:

“Somalia held its last census in 1975. Currently, no national or local authority administers or possesses population data. The Federal Somali Transitional Government, TFG, appointed in the autumn of 2004, has not yet established any state institutions mandated to issue or register official documents (Interviews with representatives for various international organisations in Nairobi in June 2008). However, the authorities started issuing new passports via the United Arab Emirate Sharjah on 1 April 2007 (see point 2.8).

Consequently, all documents and certificates issued by various private agencies rely on information provided by the individual concerned (with witnesses when appropriate) or relatives.

All archives and public offices were plundered or destroyed during the civil war, leaving Somalia with no remaining registers, copies or originals which can be used for comparing or referencing documents and certificates.” (Ibid)

A response from the *Immigration and Refugee Board of Canada* states:

“According to the Director of Research Resource Division for Refugees at Carleton University, there are no certificates of marriage in Somalia.” (Immigration and Refugee Board of Canada (1 May 1990) *Somalia: Information regarding the status of marriage documentation in Somalia*)

The footnote states:

“As stated by the Director of RRDR at Carleton University during a telephone interview with the IRBDC on 15 and 18 May 1990.] The Director further states that marriages are religious affairs in Somalia, not civil ones. These statements are supported by the Manager of COSTI, Centre for Italian Scholastic and Technical Organizations located in Toronto, and an authority on Somali affairs residing in Ottawa.” (Ibid)

3. Divorce

A *Danish Immigration Service* report quotes Dr Hassan Isak, a lawyer from Baidoa, under the heading ‘Divorce proceedings’ as follows:

“Dr. Hassan Isak indicated that divorce could occur in two ways: if a conflict develops between the couple themselves or if a conflict develops between the families of the couple. If a conflict develops between the families, it is not compulsory for the couple to divorce; however it is unusual if they do not.

In order to proceed with a divorce, the husband must consult with three Dalaks (equivalent to three witnesses at the marriage). The husband can only consult with one Dalak at a time. After he has stated that he intends to divorce, he has three months to consider his decision. If he intends to continue with the divorce, he has to consult another Dalak after which a further three months must elapse before the divorce is concluded following consultation with the third Dalak. The proceedings may be suspended or cancelled at any time during this six-month period.

It is not usual for a wife to initiate a divorce, though she may pursue a divorce in the event of exceptional circumstances, if her husband is unable to support her financially (especially if he is based elsewhere in the country or abroad), or if he is unable to meet her sexual needs or is homosexual.” (Danish Immigration Service (17 March 2004) *Human Rights and Security in Central and Southern Somalia: Joint Danish, Finnish, Norwegian and British Fact-Finding Mission to Nairobi, Kenya*)

This report also quotes Jesper Mørch, Representative, United Nations Children’s Fund (UNICEF), under the heading ‘Child custody’:

“Mørch informed the delegation that in cases where parents divorce, a son under the age of seven, and girls up to the age of puberty, would normally be taken care of by the mother, although the father will still be the legal guardian. After this age, the children will be taken care of by the father or whomever he chooses to take care of them. In the case of a husband dying or otherwise disappearing, the custody of the children will be transferred to his family and/or clan.

A UNIFEM representative said that according to the Koran as applied in Somalia, children under the age of seven stay with their mothers in case the family is split up by divorce or other factors. After that age, boys normally return to the father or the father’s family. In principle the girls also return to the fathers but often they remain with the mothers. A woman has no recourse in cases where her husband does not conform to these rules. The UNIFEM representative mentioned a case of a woman in Beled Weyne where the Sharia court had actually ruled in favour of her, but did not have the capacity to enforce its decision.

In cases where a child’s parents divorce, Dr. Hassan Isak stated that the mother has custody of the children and resides at the family home. The father will move away. The father will continue to provide financial support to his family. After three months it is up to the mother whether she wants to leave the family home. While she continues to stay there, the father will provide support. If the mother is pregnant, the father must provide the mother with support for two years after the birth.

In cases where one parent dies, custody of the children will go to the remaining parent. Where both parents die, the families of the deceased agree between themselves who has custody of the children.

Where parents of a child are not married, the mother's mother (grandmother) has custody of the children. ” (Ibid)

A document by *Emory Law* states in relation to divorce:

“The Court may authorise divorce only after reconciliation efforts (of up to 60 days) have failed, and the Court may not authorise more than one *talaq* at a time. Divorce by a minor or insane person, or pronounced under compulsion is declared invalid. Either party may seek a judicial dissolution on the following grounds: incurable disease of the other spouse making cohabitation dangerous or impossible; disappearance of the other party for a period of over four years; habitual failure to maintain by the responsible party; serious disagreement between spouses making conjugal life impossible (after reconciliation efforts of up to 60 days); perpetual impotence or sterility of the other party; and the other spouse’s sentencing to over four years imprisonment. The wife is entitled to seek a dissolution if the husband has been granted permission to marry polygamously by the District Court, on condition that there are no children from the marriage. Where the reason for a *talaq* or *faskh* is deemed to be the husband’s fault, the Court shall order him to maintain his former wife for three months to one year; if the wife is deemed to be at fault, the Court shall order her to pay her husband a sum not less than her dower in compensation. The mother is entitled to custody of male children until the age of 10 and female children until the age of 15, with the Court empowered to extend custody until age 18 for the male or female ward

if s/he is not able to look after him/herself. If the mother remarries and the husband is within the prohibited degrees to the ward(s), or in case she is widowed and remarries, she may retain custody. Maintenance of children is the duty of both parents until the age of majority for sons and until marriage or until she is able to support herself through gainful employment for the daughter.” (Emory Law (undated) *Somalia*)

This document also states under the heading ‘Judicial Divorce’:

“either party may seek judicial dissolution on following grounds: incurable disease of other spouse making cohabitation dangerous or impossible; disappearance of other party for period of over four years; habitual failure to maintain by other party; serious disagreement between spouses making conjugal life impossible (after reconciliation efforts of 60 days); perpetual impotence or sterility of other party; and other spouse’s sentencing to over four years imprisonment.

Wife is entitled to seek dissolution if husband has been granted permission to marry polygamously by District Court, on condition that there are no children” (Ibid)

The book, *Culture and Customs of Somalia*, states:

“In the case of a divorce, *furis/furniin*, the husband vocalises the divorce formula in front of a qadi or a wadaad in the presence of witnesses. In most cases, much reconciliation effort either by the qadi or wadaad and close relatives precedes any dissolution of marriage. Women may sue for divorce by going to a qadi’s court in towns: in the countryside, divorce is sought by a woman usually after she leaves the conjugal home for that of her parents or relatives, who would then, in case of irreconcilable differences or cruelty, demand the husband pronounce the divorce formula. In the case of the husband’s refusal to do so, the woman and her relatives would petition for divorce before a qadi’s court. The rate of divorce is not known statistically but it can be said to be low. Being divorced does not carry any social stigma for either party, and both parties usually remarry.” (C. Abdullahi, Mohamed Diriye (2001) *Culture and Customs of Somalia*, Greenwood Publishing Group)

4. Marriage between Non-Nationals and Nationals

No information on the above issue could be found among sources available.

Marriage between two Non-Nationals

No information on the above issue could be found among sources available.

References

Abdullahi, Mohamed Diriye (2001) *Culture and Customs of Somalia*, Greenwood Publishing Group

Danish Immigration Service (17 March 2004) *Human Rights and Security in Central and Southern Somalia: Joint Danish, Finnish, Norwegian and British Fact-Finding Mission to Nairobi, Kenya*

<http://www.unhcr.org/refworld/docid/405b2d804.html>

Immigration and Refugee Board of Canada (20 September 2007) *Somalia: Prevalence of forced or arranged marriages in Somalia; consequences for a young woman who refuses to participate in a forced or arranged marriage*

<http://www.unhcr.org/refworld/docid/47ce6d7a2b.html>

Immigration and Refugee Board of Canada (1 May 1990) *Somalia: Information regarding the status of marriage documentation in Somalia*

<http://www.unhcr.org/refworld/docid/3ae6aba650.html>

Emory Law (undated) *Somalia*

<http://www.law.emory.edu/ifl/legal/Somalia.htm>

Landinfo Response (6 July 2012) *Somalia: Al-Shabaab and forced marriage*

<http://www.landinfo.no/asset/2156>

Landinfo (5 January 2009) *Documents in Somalia and Sudan*

<http://www.unhcr.org/refworld/docid/498085872.html>

OECD Social Institutions and Gender Index (2012) *Somalia*

<http://genderindex.org/country/somalia>

Radio Netherlands Worldwide (11 January 2010) *Somalia men flogged for 'un-Islamic' romance*

<http://www.rnw.nl/international-justice/article/somalia-men-flogged-un-islamic-romance>

UNHCR and Refugee Documentation Centre (updated August 2007) *Somalia: 9th European Country of Origin Information Seminar, Dublin, 24-25 May 2004*

<http://www.unhcr.org/refworld/docid/46e8eb132.html>

US Department of State (19 April 2013) *2012 Country Report on Human Rights Practices – Somalia*

<http://www.state.gov/j/drl/rls/hrrpt/2012/af/204165.htm>

Sources Consulted

Abdullahi, Mohamed Diriye

Emory Law

European Country of Origin Information Network

Google

Immigration and Refugee Board of Canada

Landinfo

Lexadin

Lexis Nexis

OECD Social Institutions and Gender Index

Trinity College Dublin Online Library Catalogue
UNHCR Refworld
US Department of State
World Legal Information Institute