

**Republic of Somaliland**  
**The House of Representatives**



**RAPE, FORNICATION AND OTHER RELATED  
OFFENCES BILL**

*(Law No. 78/2020)*

**Republic of Somaliland**

*Unofficial English Translation by Horizon Institute, 3 September 2020.*

## The House of Representatives

**Having Seen: -** Articles 77 and 78 of the Constitution of the Republic of Somaliland;

**Having Seen: -** Articles 24 and 28 of the Constitution of the Republic of Somaliland concerning the right to life, security of the person, respect for reputation, and the right to sue and defend;

**Having Seen: -** Article 36 of the Constitution of the Republic of Somaliland concerning the rights of women to be free of practices which are contrary to Sharia and which are harmful to their person and dignity; and the constitutional right of safeguarding vulnerable people such as women, children, disabled and mentally ill people;

**Having Seen: -** That fornication/zina, rape and other related offences are violations of human rights (stated in Islamic Sharia) and the Constitution of the Republic of Somaliland;

**Having Recognized: -** That fornication/zina, rape and other related offences are increasing and happening all over the regions and districts of Somaliland; and that vulnerable people such as women, children and disabled people are the victims of fornication/zina, rape and other related offences;

**Having Recognized: -** That current laws in Somaliland are not

giving authorities the power to manage and control crimes such as fornication/zina, rape and other related offences (in accordance with Sharia law) and other basic human rights in the Constitution afforded these groups;

**Having Recognized: -**

The need to have a law and a procedure in conformity with Islamic Sharia and the Somaliland Constitution that can help in forbidding and preventing fornication/zina, rape and other related offences; punishing the perpetrators and protecting the victims of these offences;

**Having Recognized: -**

The importance of making sure that this law conforms with Islamic Sharia Laws and the Somaliland Constitution.

## **Issued**

# **The Rape, Fornication/Zina and Other Related Offences**

## **Bill No.78/2020**

## PART ONE

### GENERAL PROVISIONS

#### Article 1

##### The Name of the Bill

**This Bill shall be termed “The Rape, Fornication/Zina and Other Related Offences” No. 78/2020**

#### Article 2

##### Definitions

Unless the paragraph where these words are used give another meaning, the following words have these definitions:

- 1) **“Fornication/Zina”**: Any sexual intercourse between two unmarried people with their consent.
- 2) **“Rape”**: Any sexual assault that one person or more committed against another person, of opposite or same sex without marriage, by using force, coercion, the threat of a weapon or kidnapping.
- 3) **“Gender”**: The human biology of either a male or a female.
- 4) **“Complaint”**: Any complaint that the victim, or another party, submits to the police, prosecution or the court, complaining about a criminal offence written in this law or the consequences of the offence.
- 5) **“Reproductive Organ”**: The sex organ of the male (penis) or the female (vagina).
- 6) **“Penalty”**: The imprisonment or financial fine imposed on a criminal in accordance with the law.
- 7) **“Punishment”**: The retribution imposed, in accordance with Islamic Sharia, on those who commit the crime of fornication/zina.

- 8) **“Homosexuality”**: Sexual intercourse between two people of the same sex.
- 9) **“Puberty”**: Any person who reaches the age of puberty in accordance with Sharia, which is 15 years, or shows the signs of puberty in accordance with the Shafi’i school of thought.
- 10) **“Animal”**: Any living creature other than a human being.
- 11) **“Children under the age of puberty”**: Any person under 15 years old, or not showing the signs of puberty.
- 12) **“Vulnerable Person”**: Any of the following individuals:
- a) A disabled person, by virtue of physical or mental illness, unable to protect himself or herself against the crime committed because of the physical or mental disability;
  - b) An insane person who cannot understand the essence of the sexual offence because of mental illness;
  - c) An old person who is deficient due to age;
  - d) An unconscious person; Or;
  - e) A displaced person, a stateless person, or a refugee.
- 13) **“Gang Rape”**: Sexual assault committed by two or more as a group.
- 14) **“Health Worker”**: Any health professional working in a medical center who is certified to perform the examination of the victims as stated in this Bill.
- 15) **“Mahram”**: A member of the family with whom marriage would be considered *haram* (prohibited) in accordance with Islamic Sharia due to (kinship, marriage, breastfeeding, etc).
- 16) **“Law”**: Islamic Sharia Law and other laws not against Sharia.
- 17) **“Victim”**: Anybody who is a victim of the offences mentioned in this law.
- 18) **“Defendant”**: A person accused of committing the crime stated in this law.
- 19) **“An official in a position of trust”** means:
- a) Government officer or civil servant;
  - b) A doctor, nurse or other health worker or a person who works in a spiritual health center;
  - c) Humanitarian, advisor, or other community worker;
  - d) Manager, teacher or other staff member in an educational center; or;
  - e) Another family member or a staff person entrusted with giving care to a child or a disabled person.
- 20) **“Sexual Penetration”**: Penetration of the male organ (penis) into the reproductive organ of a female (vagina) or the anus.

- 21) **“Bodily Harm”**: Any hurt or physical injury to a person’s body.
- 22) **“Intoxication”**: Intoxicating someone or making him/her unconscious by using drugs or witchcraft.

### Article 3

#### Objectives of the Bill

Objectives of the Bill are as follows:

- 1) To produce a law that is in accordance with Islamic Sharia and the Constitution of the Republic of Somaliland, the general principles of justice, and the society’s cultural values;
- 2) To implement the punishment prescribed by Sharia for various types of fornication (both for consensual fornication and forced fornication) and all related crimes;
- 3) To safeguard the dignity of all humans, especially those who are vulnerable;
- 4) To prevent and stop widespread fornication in the community;
- 5) To ensure that the victims of rape and other related crimes have access to justice, which is in conformity with Islamic Sharia law, additionally to provide protection for the victims, their immediate families/relatives, witnesses and the prosecution team;
- 6) To put in place laws that facilitate and make it possible to manage and resolve crimes such as rape, and related offences, in a manner that is appropriate, reliable and consistent with Islamic Sharia laws and the constitutional rights of both the victims and the defendants;
- 7) To adequately protect and care for the vulnerable individuals in the community such as; women, children, the mentally and physically disabled;
- 8) To control and prevent diseases, the harms and the consequences of different types of fornication;
- 9) To enable the government to identify and prosecute sex offenders.

## PART 2

### CRIMINAL ACTS OF FORNICATION, RAPE, AND OTHER RELATED OFFENCES

#### Article 4

#### Criminal Acts of Fornication and Rape

##### A: Criminal Acts of Fornication/ Zina (Consensual Fornication)

- 1) Any individual who, being mature and mentally sane, engages in fornication, has committed a crime. When found guilty, the punishment prescribed by Islamic Sharia laws of fornication will be enforced, in accordance with Article 34, paragraph 1, of this Bill.
- 2) Any individual having sex with his/her *Mahram* (the people they are prohibited to marry), will suffer retribution based on the punishment stated in paragraph 1 above, and a prison sentence of **10-15 years**. The imprisonment is only applicable if the death penalty is not imposed.
- 3) Any individual who trades in prostitution or engages in acts of fornication in exchange for economic benefits will be penalized, using the punishment stated in paragraph 1 of this Article and there will be a penalty of **5-10 years** of imprisonment. The imprisonment is only applicable if the death penalty is not imposed.
- 4) Any individual who, knowingly/intentionally, facilitates fornication between two other individuals, either by renting or providing his/her house and vehicle or solicits women, will be penalized by the imposition of **3- 7 years** of imprisonment.
- 5) Any individual who is infected with HIV/AIDS, and maliciously engages in fornication/zina to spread the disease in the society, will be penalized with the heinous punishment stated in Surat Al Ma'idah, Verse 33.
- 6) If a minor, or a mentally ill individual, commits fornication, no punishment is due. But it is necessary for the guardian of the minor, or the mentally ill person, to impose disciplinary action which is in accordance with Sharia law.

## **B: Criminal Acts of Rape (Forced Fornication)**

- 1) Any individual who perpetrates rape against another individual of the opposite sex has committed a criminal act and, if found guilty in accordance with Article 34, paragraph 2, of this Bill, he/she will be liable to a penalty, under Islamic Sharia law, and a prison term of **5-15 years** which is only applicable if the death penalty was not imposed.
- 2) If the victim of the criminal act mentioned in paragraph 1 of this Article is a minor, or a vulnerable individual, the defendant, if found guilty, will be liable to the punishment prescribed for fornication by Islamic Sharia Law and a penalty of **10-20 years** of imprisonment.
- 3) If the victim of rape sustains brain or physical injury during the act of rape, the offender will be liable for the death penalty if that is what is prescribed in Sharia Law. If the death penalty is not applicable, the offender will be subject to a penalty of **10-20 years** of imprisonment. The victim of rape who sustained the brain or physical injury is entitled to monetary compensation in accordance with Sharia, as stated in Article 40 of this Bill.
- 4) Any individual who sexually assaults another, and infects the victim with incurable diseases such as HIV/AIDS, will be subject to the punishment prescribed for fornication by Islamic Sharia if the victim does not die of the disease. The offender will [also be liable] to a penalty of life imprisonment and monetary compensation due to the victim in accordance with Sharia.
- 5) Any individual who sexually assaults another, and infects the victim with incurable diseases such as HIV/AIDS, which results in the death of the victim, will be subject to the death penalty, if the previous verdict was not the death penalty. Unless the family of the deceased victim accept blood money (*Diya*) or choose to forgive the offender.
- 6) Any individual who commits rape and murders the victim will be eligible for the death penalty, unless the family of the deceased victim accept blood money (*Diya*) or choose to forgive the offender.
- 7) Any individual who commits rape shall compensate the victim by paying a full dowry (*Meher*), which is valued at the amount paid to women who are her peers and additional monetary compensation.
- 8) If it is proven that the offender raped the victim on multiple occasions, the victim will be entitled to a full dowry (*Meher*) for each occasion, which is valued at the amount paid to women who are her peers.



- 9) Any individual who commits rape, and it is proven that the victim was a virgin, the victim will be entitled to compensation for the loss of virginity, which is valued at the full blood money for a woman.
- 10) The penalties stated in this Article are not enforceable on offenders who are below the legal age/minor or the mentally ill. However, they must serve time in a juvenile correctional facility and undergo extensive disciplinary action consistent with the country's legal system, while preserving the victim's civil rights mentioned in sections 7, 8, and 9 of this Article. The court will require the legal guardian of the offender, as defined by Sharia, to bear the responsibility of settling the amount due to the victim.
- 11) Any individual who attempts to commit the various criminal acts of rape stated in this Article, will be liable to a penalty of **3-8 years** of imprisonment.

## Article 5

### Gang Rape

- 1) If two or more people committed the gang rape together, and if found guilty in accordance with Article 34, they will be subject to the penalty under Islamic Sharia and **10-20 years** of imprisonment, which is only applicable if the death penalty was not imposed.
- 2) If the victim of the gang rape, as mentioned in paragraph 1 of this Article, is a minor and did not reach the age of puberty, or is a vulnerable individual, the perpetrators will be punished in accordance with Islamic Sharia and imprisoned for between **15 to 25 years**, which is only applicable if the death penalty was not imposed.
- 3) If the victim of rape sustains brain or physical injury during the act of rape, the offenders will be subject to the death penalty if that is what is prescribed in Sharia law. If the death penalty does not apply, the perpetrators will receive a term of imprisonment between **20 to 25 years**. If the victim of the gang rape sustains mental or physical injury, he/she will receive compensation in accordance with Islamic Sharia law, as stated in Article 40 of this Bill.
- 4) If the perpetrators of gang rape infect the victim with incurable diseases such as HIV/AIDS, and the victim does not die of the disease, the perpetrators will be subject to the punishment prescribed for fornication by Islamic Sharia and a penalty of lifetime imprisonment.
- 5) If the perpetrators of gang rape infect the victim with incurable diseases such as HIV/AIDS, which results in the death of the victim, the perpetrators will be eligible for the death penalty,

if the former verdict was not the death penalty. Unless the family of the deceased victim accept blood money (*Diya*) or choose to forgive the perpetrators.

- 6) If the gang rape results in the death of the victim, the perpetrators will receive the death penalty unless the family of the deceased victim accept blood money or choose to forgive the perpetrators.
- 7) The victim of the gang rape is entitled to receive a full dowry (which is valued at the amount paid to women who are her peers) from each of the perpetrators.
- 8) The perpetrators of the gang rape shall pay the victim, if proven that the victim was a virgin, compensation for the loss of virginity, which is valued at full blood money for a woman.
- 9) Any individual who attempts to commit gang rape shall receive a term of imprisonment between **5 to 10 years**.

## Article 6

### The Offence of Homosexuality

- 1) Any individual having sex with a person of the same sex has committed the offence of homosexuality and, when proven guilty, shall be punished for the offence of fornication in accordance with Islamic Sharia.
- 2) Any individual having sex with a person of the same sex by force has committed a homosexual offence and, when proven guilty, shall be punished for the offence of fornication in accordance with Islamic Sharia and subject to a term of imprisonment between **10 to 20 years**, which is only applicable if the death penalty was not imposed
- 3) If the victim of the crime in paragraph 2 of this Article is a minor who did not reach the age of puberty, or a vulnerable individual, he/she will be subject to the punishment for fornication in accordance with Islamic Sharia and suffer a term of imprisonment between **15 to 25 years**. This is only applicable if the death penalty was not imposed.
- 4) Any sane individual, who has reached the age of puberty, and has sex with an animal committed a criminal offence and shall receive a penalty of imprisonment between **2 to 5 years**.

## Article 7

### Abuse of a Position of Power and Trust

- 1) An individual who holds a position of power, authority and trust, who deliberately commits a criminal act of rape benefiting from his/her position or authority will be subject to the penalty for fornication/zina prescribed in Sharia and an additional penalty of **10-20 years** of imprisonment. The imprisonment is only to be served if the death penalty is not imposed.
- 2) An individual who holds a position of power, authority and trust, who deliberately commits the criminal act mentioned in Section 1 of this Article against a minor, or a vulnerable individual, will be eligible for the penalty prescribed in Sharia for fornication/zina and an additional penalty of **15-25 years** of imprisonment. The imprisonment is only to be served if the death penalty is not imposed.

## Article 8

### Sextortion and Blackmailing

- 1) Any individual who uses sexually explicit voice recordings, images, footage or [other materials with] nude content to extort sexual favours from the victim and blackmails them by distributing/sharing this digital information on social media and, consequently, compels the victim to have sexual penetration with him/her, has committed a criminal act. If proven guilty, [he/she] will be subject to the penalty prescribed in Sharia for fornication/zina and imprisonment of **5-10 years**. The imprisonment is only served if the death penalty is not imposed.
- 2) If the individual perpetrating sextortion compels the victim to have sexual penetration with another individual, the perpetrator of the sextortion committed a criminal act and, if proven guilty, will be liable to a penalty of **10-15 years** of imprisonment.
- 3) If the individual perpetrating sextortion distributes the voice recordings or footage mentioned in Section 1 of this Article, or leaks/disseminates the recordings and footage on social media to defame/humiliate the victim, [he/she] is considered to have committed a crime and, if proven guilty, is liable to a penalty of **3-8 years** of imprisonment.

## Article 9

### Violations Related to Fornication/Zina and Rape

- 1) Any individual who penetrates another person with a body part other than the reproductive organ, inserts an object into the reproductive organ or the anus of the other person, is liable to a penalty of **5-10 years** of imprisonment.
- 2) Any individual who commits the criminal act stated in Section 1 of this Article against a minor, or a vulnerable person, will be liable to a penalty of **5-15 years** of imprisonment.
- 3) If two or more persons commit the criminal act stated in Section 1 of this Article, they will be liable to a penalty of **10-20 years** of imprisonment.
- 4) Any individual who commits the criminal act stated in Section 1 of this Article, and as a result the victim sustained physical injury or mental harm, the perpetrator shall make financial reparation for the harm inflicted on the victim in accordance with Islamic Sharia law.
- 5) Any individual who attempts to commit the criminal act stated in this Article will be liable to a penalty of imprisonment ranging from:
  - a) 2 to 3 years, if the criminal act attempted is the one stated in paragraph 1 of this Article;
  - b) 3 to 5 years, if the criminal act attempted is the one stated in paragraph 2 of this Article;
  - c) 5 to 7 years, if the criminal act attempted is the one stated in paragraph 3 of this Article.

If done on the basis of a medical or criminal examination, the rules stated in Paragraph 1 of this Article are not applicable, regarding the insertion of an object other than the reproductive organ of the husband into his wife, or any other object.

## Article 10

### Sex Compulsion and Trade/Sex Trafficking and Trading

- 1) Any individual who intentionally:
  - a) Compels a person to perform sexual acts with another person;
  - b) Compels a person to be under the control of another person who intends to sexually exploit them;

- c) Finances/operates, owns, manages, or rents a centre/ property intended for sexual trading (brothel);
- d) Engages in sex trafficking a person in and out of the Republic of Somaliland with the purpose of sexual trading/sexually exploiting them;
- e) Takes advantage of the vulnerability or economic hardship/poor socio-economic status of a person, or uses their position of power and trust to sexually exploit that person;

Has committed a criminal act of sexual exploitation and related actions and will be liable to a penalty of **3-7 years** of imprisonment.

- 2) If the criminal act stated in this Article is committed against a minor, or a vulnerable person, the offender will be liable to a penalty of **5-10 years** of imprisonment.
- 3) Any individual who attempts to commit the criminal act stated in this Article, will be liable to a penalty of **1-3 years** of imprisonment and a monetary penalty ranging from **2,500,000.00 to 5,000,000.00** Somaliland Shillings.

## Article 11

### Sexual Harassment and Assault

- 1) Any mature and mentally sane individual who inappropriately touches a person other than their spouse, or compels a person to touch him/her inappropriately, or forces a person to touch another person inappropriately, has committed a criminal act of unwelcome sexual advances and inappropriate touching and is liable to a penalty of **1-3 years** of imprisonment.
- 2) To ensure enforcement/implementation of this Article, the word “inappropriate touching” is defined as kissing, embracing, holding, stroking, caressing or claspings/grabbing the whole body or a specific part of the body of a person other than his/her spouse.
- 3) If the criminal act stated in Paragraph 1 of this Article, is committed against a minor, or a vulnerable person, the offender will be liable to **3-5 years** of imprisonment.

## **Article 12**

### **Forced Marriage**

- 1) Any man who forces or coerces a woman into marrying him has committed the criminal act of forced marriage and is liable to a penalty of **5-7 years** of imprisonment.
- 2) If the legal guardian of a woman gives her hand in marriage without obtaining her consent first, or not honouring her rejection, the woman has a right to accept the marriage after the fact or to request the dissolution of the marriage contract. No punishment is imposed on her father or the groom.
- 3) If a legal guardian deems that marriage is in the best interests of a minor, or a mentally ill woman, Sharia permits the marriage/*nikah* to occur without seeking consent from the minor and the mentally ill woman.

## **Article 13**

### **Intoxication to Obtain Sex**

- 1) Any individual who intentionally forces a drug [upon someone] or gives it to intoxicate a person with an intention to perform non-consensual sexual acts on the intoxicated person, either by him/her or by a third party, has committed a criminal act of intoxicating a person to obtain sex, [even if] no sexual penetration has taken place. [That person] is liable to a penalty of **5 to 7 years** of imprisonment.
- 2) Any individual who commits the criminal act stated in Paragraph 1 of this Article against a minor, or a vulnerable person, will be liable to a penalty of **6 to 9 years** of imprisonment.

## **Article 14**

### **Witchcraft to Obtain Sex**

- 1) Any individual who deliberately casts a spell on a person, with the intention to fornicate or commit zina with the bewitched, or for a third party to fornicate with the bewitched, has committed a criminal act of witchcraft [for the purpose of] rape. [That person committing the witchcraft] is liable to have the death penalty imposed.
- 2) Any harm inflicted on the victim by the witchcraft, as a consequence of the criminal act stated in Paragraph 1 of this Article is, according to Sharia, entitled to financial reparation commensurate with the gravity/severity of the harm sustained.

- 3) Any individual who attempts to commit the criminal act stated in Paragraph 1 of this Article, is liable to a penalty of **5 to 15 years** of imprisonment.

## Article 15

### Kidnapping for Rape and Unlawful Detention

- 1) Any individual who abducts, kidnaps and holds another person hostage, with the intention to rape, or violate them, has committed the criminal act of kidnapping to rape and unlawful detention and the offender will be liable to a penalty of **3 to 6 years** of imprisonment, [even if] sexual penetration does not take place.
- 2) Any individual who commits the criminal act stated in Paragraph 1 of this Article against a minor, or a vulnerable person, will be liable to a penalty of **5 to 8 years** of imprisonment.

## Article 16

### Nudity

Any mature and mentally sane individual who deliberately exposes/uncovers, in a public place, his/her genitals which Islamic Sharia has instructed to cover/not expose, has committed a criminal act of nudity in a public place and is liable to a penalty of **2 to 6 months** of imprisonment in addition to a fine of **1,000,000.00 to 2,000,000.00 Somaliland Shillings**

## Article 17

### Recording, Distributing, Spreading Sexually Explicit Footage and Nude Content

- 1) Any individual who deliberately:
  - a) Records, photographs, or possesses videos and images pertaining to criminal acts of fornication/zina, or other footage relating to sexual penetration, other related sexual violations and inappropriate content. Or;
  - b) Shows, distributes, plays it to another person, sells it for trading purposes, or disseminates a video to a media channel or for printing, or paints in a public place the images and footage taken from a criminal act of fornication/zina, or relating to sexual

penetration and any other immoral sexual acts, has committed the criminal act of recording, distributing, spreading sexually explicit footage and nude content and is liable to a penalty of **2 to 4 years** of imprisonment.

The rules stated in Paragraph 1 of this Article are not applicable to images and recordings taken for medical purposes and as evidence for future investigations.



## **PART 3**

### **PROSECUTION OF FORNICATION, RAPE AND OTHER RELATED OFFENCES**

#### **Article 18**

##### **Reporting Sex Offence Cases**

- 1) Any complaint related to a rape or other related offences can be reported by:
  - a) The victim; or
  - b) Someone the victim authorizes to report; or
  - c) Parent or guardian of the victim; or
  - d) Any member of the police force; or
  - e) The Attorney-General or his deputy.

#### **Article 19**

##### **Submission and Pre-Trial of the Cases Stated in This Law**

- 1) Rape and other related offences should be reported in accordance with this law and cannot be limited to a timeframe about submitting and prosecuting the case.
- 2) The delay in the submission of the complaint, or in reporting the criminal offences in this law, shall not be used as evidence against the complainant or the victim.
- 3) [If] it is proven that the victim reported a false rape complaint, the court will dismiss the case and the individual who reported the false claim will receive a penalty of imprisonment between **2 to 5 years**.

## **Article 20**

### **Where to File Rape Complaints**

The report of the criminal offences stated in this law can be submitted to the:

- 1) Police;
- 2) Prosecution;
- 3) Court.

## **Article 21**

### **Managing the Investigation of Rape and other Related Offences**

- 1) The police are mandated to carry out the investigation of rape cases, and other related offences in this law, in accordance with the guidelines of the Office of the Attorney-General which are not contrary to Islamic Sharia as stated in the Criminal Procedure Code.
- 2) The investigation process of the criminal offences related to this law should be closely coordinated between the police and health workers.

## **Article 22**

### **The Roles and Responsibilities of the Police in Investigating Cases**

Any member of the police force who receives the report of the complaint, or a criminal complaint stated in this law, should exercise the following roles and responsibilities:

- a. To cordially welcome and listen to the report or the complaint, quickly provide assistance and the necessary protection to the victim, the individual who reported the case and witnesses, if any;
- b. To quickly record, in the police Occurrence Book, the name, sex, age, status of the victim, the date, where and when the case happened;
- c. To receive the complaint submitted by the victim, or the individual filing the complaint, at the scene and immediately document a report and open an official case number for that complaint;
- d. To quickly examine the crime scene and collect available evidence;
- e. To make sure that the victim is not interviewed in a place where the suspect is;

- f. To tell the victim the rights that the law gives him/her, such as the right to have free medical treatment, the right to access justice, the right to free legal and community services, or other rights;
- g. When necessary, to immediately refer the victim to a health worker to perform a medical/forensic examination;
- h. To protect and never reveal the identity of the victim or the witness;
- i. To make sure the suspect is arrested (if he/she is a habitual criminal or no data is available from the suspect). If he/she is a good person with a good reputation within the community, he/she will not be arrested unless proven otherwise. The penalty applies to the individual submitting the false claim, to protect people known to be good and respected within the community. The suspect should be interviewed when arrested and the report should be recorded in the police Occurrence Book to open the case;
- j. To read out the rights of the suspect and [provide] all available resources that he/she can have access to. In particular, he/she should let him/her know the reason for the arrest and that he/she will be brought before the court within the legal period. Moreover, the suspect should be allowed to meet with anyone he/she requested and a defence lawyer, even if the suspect did not request [one];
- k. To utilize all available investigative tools and techniques to collect and protect all available evidence from the crime scene or found during the investigation;
- l. To consult with the prosecution whenever possible and make sure the prosecution knows about all the stages of the investigation process;
- m. To quickly conclude the investigation process;
- n. To immediately draft a detailed investigation report explaining the investigation process and the key findings and to submit that report to the Regional Attorney General's Office;
- o. To respect and enforce the orders from the court and perform other activities and responsibilities related to the investigation process as stated in the Criminal Procedure Code and in accordance with Islamic Sharia.

## **Article 23**

### **The Roles and Responsibilities of the Health Worker in the Investigation Process as Stated by This Law**

- 1) Any health worker, after receiving a referral from the police regarding the forensic examination, as stated by this law, has the following roles and responsibilities:
  - a. To immediately, without delay, perform a medical examination of the victim in a private place, as stated in the police referral, regarding biological samples;
  - b. To thoroughly examine the body and the clothes of the victim to find evidence showing physical injury to the victim;
  - c. To prepare and sign a comprehensive report detailing the key findings of the examination and submit that report to the police officer in charge of the case.
- 2) Health workers must also:
  - a. Respect the victim and provide the necessary medications; and
  - b. Protect the confidentiality of the victim and never share the victim's information with anybody;
  - c. The medical examination report stated in paragraph 1 of this article shall not be used as a basis of rape or other related offences. It should be used [only] for the collection of biological samples and the assessment of injury to the victim.

## **Article 24**

### **Failure to Perform the Duties of Criminal Investigation as Stated in the Law**

The police officers or health workers who fail, or delay, their responsibilities as stated in Articles [22] and [23]<sup>1</sup> of this law, and the evidence is lost due to their failure, which otherwise would have been saved if their duties had been performed responsibly and in a timely manner, will be subject to the code of conduct of their respective offices and the applicable punishment as stated in the Penal Code.

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<sup>1</sup> Articles 19 and 20 are incorrectly referenced in the Somali version.

## **Article 25**

### **Prosecution of a Criminal Case as Stated in This Law**

- 1) The government has the authority of the prosecution as stated in this law.
- 2) The Office of the Attorney-General, on behalf of the government, and in accordance with articles of this law and the Criminal Procedure Code, has the full authority of decision-making and prosecuting or dismissing all criminal cases of this law in conformity with Islamic Sharia.

## **Article 26**

### **The Responsibilities of the Office of the Attorney-General and the Prosecutors Towards Criminal Offences Stated in This Law**

- 1) The Office of the Attorney-General must ensure that prosecutors assigned to the criminal offences in this law are trained specifically to perform their duties and the role of prosecution in all the stages of the criminal investigation process.
- 2) The Office of the Attorney-General must lead the criminal investigations stated in this law and ensure implementation of the rule of law by protecting the rights of both the victim and the suspect.
- 3) The Office of the Attorney-General, after receiving the police investigation report regarding an offence stated in this law, must enforce their national responsibilities towards the case they received and other prosecution duties in accordance with this law and other laws concerning the Criminal Procedure Code.
- 4) In addition to the responsibilities of the Office of the Attorney-General stated in the above paragraphs, prosecutors assigned to the criminal cases stated in this law must:
  - 4.1. Work closely with the police officer in charge of the criminal case;
  - 4.2. Ensure, during the investigation process, and every stage of the case, that the victim understands;
    - a. His/her rights;
    - b. Details concerning the trial;
    - c. Services, assistance and other protection mechanisms available to him/her;

- d. The right to have compensation;
- e. Detailed information about the case that concerns him/her, such as when and where hearings will take place and release of the suspect either from the police station or prison;
- f. Immediately, without delay, explain to him/her the findings of the case, such as conviction, penalty, if the case is suspended or dismissed, and to have a written notice on why the case has been suspended or dismissed.

## **Article 27**

### **Obstruction of Justice**

- 1) Any individual who intentionally exerts influence on the investigation or the prosecution of an offence stated in this law, by threatening or bribing the witnesses, destroying evidence in order to impede or distract or obstruct the hearing process or the justice system, committed a crime and shall receive a term of imprisonment between **3 to 8 years**;
- 2) The two parties, or anyone related, cannot reach an agreement on suspending or dismissing the case regarding the offences stated in this law once the case is referred to government institutions and the judiciary;
- 3) The two parties, or anyone related, cannot reach an agreement on executing or suspending the case regarding an Islamic Sharia punishment once the case is referred to government institutions and the judiciary.

## **Article 28**

### **The Power of the Court and Hearing the Offences Stated in the Law**

- 1) The Regional Court where the offence took place has jurisdiction on hearing the offences stated in this law, in accordance with the Criminal Procedure Code;
- 2) If the punishment is 10 years or less, the hearing will take place at the General Section of the Regional Court. If the punishment is 10 years and more, the hearing will take place at the Assize Section of the Regional Court where the offence took place, in accordance with Article 12 of the Organization of the Judiciary Law and the Criminal Procedure Code;
- 3) If the offences come under the jurisdiction of both the General and Assize sections, the hearing takes place at the Assize Section, for punishments that range between 5 to 15 years, in accordance with Article 7(1) of the Criminal Procedure Code;
- 4) The hearing of offences committed by members of the National Army will follow Article 104 (1) of the Constitution of the Republic of Somaliland;

- 5) Court hearings of the offences in this law should take place in closed court session to protect the safety of the victim.

## **Article 29**

### **Safety Orders**

- 1) At any stage of the investigation, or the trial, regarding offences stated in this law, the court can issue an order to protect or safeguard the following individuals, if necessary:
- a. The victim;
  - b. If the victim is a minor, the order should not separate the minor from his/her parent or guardian, unless such order is not in the best interests of the child, or the suspect is the parent or the guardian;
  - c. Family, relatives of the victim;
  - d. The witnesses;
  - e. Health workers providing services to the victim;
  - f. The lawyer representing the victim or the suspect.
- 2) Safety orders can cover special provisions to prevent any attempt by the suspect to harm the victim, or threat to the person filing the complaint, or family member of the victim. These provisions can be orders to:
- b) Seize all the weapons in the possession of the suspect within twenty-four hours.<sup>2</sup>

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<sup>2</sup> The Somali version starts at b) instead of a).

## **PART 4**

### **RIGHTS OF THE VICTIM AND THE OFFENDER**

#### **Article 30**

##### **The Victim's Right to Free Health Care**

- 1) The victim has a right to access free health care, mental health counselling, emotional support, and to get tested for HIV/AIDS at every stage of the prosecution process.
- 2) The victim has a right immediately, after the sexual assault, to receive medical attention and to take the prescribed medication to prevent unwanted pregnancy and sexually transmitted diseases.
- 3) The victim has a right to request [copies of] their own medical and mental health reports, on the injuries sustained and the results of the medical tests and the recommended treatments.

#### **Article 31**

##### **Legal Representation for Victims**

The victim has a right to hire a lawyer to provide them with legal advice. If the victim does not have the means to hire a lawyer, then the government should appoint a lawyer for the victim, free of charge.

#### **Article 32**

##### **Right to Confidentiality**

- 1) Both the victim and witnesses of the criminal acts stated in this Bill have a right to stay anonymous and to have their personal information protected and not disclosed. Unless it is mandatory to disclose such information.
- 2) The legal institutions involved in the criminal/legal proceedings of the case have a duty:
  - a. To erase/conceal personal identification information, such as names;
  - b. Not to disclose confidential information to either the media or the general public;
  - c. To use technology which distorts the image and voice/speech recognition or do so by using blurry images on television.



- d. To use initials or withhold the name of the victim or witness.

### **Article 33**

#### **The Defendant's Rights**

- 1) The defendant has all the rights and freedoms stated in the Constitution of the Republic of Somaliland, [in common with] every individual who has criminal charges against him/her.
- 2) The defendant has a right to hire/appoint a lawyer or a legal team. If he/she does not have the means to hire a lawyer, the government should appoint a lawyer for the defendant free of charge.
- 3) The government of Somaliland shall take all the necessary steps/precautions to safeguard and honour the defendant's constitutional rights.
- 4) The perpetration of physical, mental, and psychological violations against the defendant are not permitted.

## **PART 5**

### **PROCEDURES RELATING TO EVIDENCE**

#### **Article 34**

##### **Admissible Evidence**

- 1) Evidence admissible by court to reach a verdict on suitable punishments for criminal acts of fornication/zina and rape that are mentioned in this Bill are:
  - a. The availability of four witnesses who fulfil the conditions of a witness as stated by Sharia, that is eyewitnesses of the action taking place, or;
  - b. The availability of a reliable/genuine confession, in which the defendant(s) confessed to committing the criminal act of rape, [after which] the court will automatically issue against the defendants the zina verdict prescribed by Islamic Sharia.
- 2) The admissible/acceptable evidence on which the court relies/depends on for reaching a verdict on the penalties to be imposed, both imprisonment and monetary, as stated in this Bill, include the evidence mentioned below:
  - a. A genuine confession before the court by the defendant(s);
  - b. The availability of two or more men who fulfil all the conditions of a witness mentioned/stated by Sharia;
  - c. A medical report on the victim which clearly indicates the occurrence of sexual penetration and any visible physical injuries sustained as a result of the sexual assault;
  - d. Evidence produced by the police investigations of the rape (circumstantial evidence) which includes the traces of the crime, indirect evidence, objects, equipment, weapons, or any other instrument which is related to the execution of the crime, forensic evidence, and any other corroborative evidence.
- 3) If evidence based on a medical report, as stated in Paragraph 2, letter C, is not available, or a period of time has elapsed from the date the event occurred, this does not translate into a dropping of the charges because any other available evidence can be used to prove the defendant's guilt.

## **Article 35**

### **Inadmissible Evidence**

- 1) It is not permitted to present the sexual history and background of the victim of sexual assault as evidence by the defence or to insinuate that:
  - a. The victim expressed consent to the sexual assault or any related violations which the case entails;
  - b. The victim's claim cannot be trusted.
- 2) The victim's reputation of being promiscuous to undermine her claim of sexual assault committed against her, in the absence of more reliable evidence.

## **PART SIX**

### **PENALTIES AND COMPENSATIONS**

#### **Article 36**

##### **Aggravating Circumstances**

The circumstances mentioned below constitute reasons for imposing substantial penalties and enable the court to increase punishment imposed on the defendant beyond Sharia prescribed punishments for the various types of fornication/zina:

- 1) The victim being a child (minor);
- 2) The victim being pregnant;
- 3) The victim being frail such as an elderly person, displaced people, refugees, or people without nationality;
- 4) The victim being impregnated through rape;
- 5) The victim being a pregnant woman who, as a result of the sexual assault/rape, miscarried the baby;
- 6) The victim sustains a minor physical injury, or major mental/physical harm;
- 7) The defendant having used or threatened the victim with a weapon, equipment, or any other instrument;
- 8) The defendant having used physical force during the rape or having treated the victim inhumanely after raping them;
- 9) A child witnessed the rape of the victim;
- 10) The victim being raped in the presence of others to humiliate her;
- 11) The defendant having threatened or vowed to harm the victim or any member close to her, if charges are pressed against him;

- 12) The defendant having previously committed a crime similar to the one under consideration against the victim;
- 13) The defendant being a previously convicted rapist;
- 14) The defendant being a fugitive at the time he committed the rape/crime;
- 15) The defendant having betrayed a position of power and trust;
- 16) If the perpetrators of the crime are two or more people;
- 17) The victim has reached puberty but is below 15 years of age.

### **Article 37**

#### **Increase or Reduction of Sentence**

For penalties, the judge has the option to either increase, or reduce, the penalties imposed, viewing/considering the nature of the criminal act, who perpetrated it, who it was perpetrated against, the place of the incident, the prevalence or infrequency of the particular crime, the nature and scope of the punishment to be imposed to deter and prevent the crime from occurring. However, the penalty imposed shall not be below the minimum sentence prescribed by the Article that, according to the police report, has been breached.

### **Article 38**

#### **The Victim's Testimony**

- 1) In order to reach a verdict on a defendant who is being tried for the articles stipulated by this Bill, the court is able to take into consideration the victim's testimony as to how the events unfolded and the harm and injuries sustained as a consequence of the crime. (However, the victim's claims cannot constitute the sole evidence that the court can rely on to pass judgement on the claim, or in sentencing the suspect/defendant, if it is not corroborated by the evidence stated in **Article 34** of this Bill.)
- 2) The information given by the victim which is submitted to the court, in accordance with this Article, shall not be considered by the court as reliable evidence of a criminal act of rape and related violations, if it is not accompanied by the evidence stated in **Article 34** of this Bill.

## **Article 39**

### **Sentencing Co-Defendants**

Any individual who guides, orders, encourages, provides advice on, organizes, forces, plots, works on, plays a role, assists another person in committing the criminal act stated in this Bill, has committed a crime, and if proven guilty, is liable to a penalty consistent with Article 73 and 75 of the law of General Punishment and Islamic Sharia.

## **Article 40**

### **Compensation Law**

- 1) When a defendant is found guilty of a criminal act stated in this Bill, and the court passes the punishment stated in this Bill, the court shall also, at the same time, give a ruling about the civil rights and compensation the victim is entitled to in accordance with Sharia.
- 2) The compensation and civil rights stated in Paragraph 1 that the victim is entitled to include:
  - a. A full dowry (*Meher*) which is equivalent to the amount women who are her peers are entitled to, if the victim is a woman;
  - b. A compensation for the broken hymen/loss of virginity which is equivalent to full payment of blood money payable for a woman's life, if it is proven that the victim was a virgin;
  - c. Compensating and evaluating, in accordance with Sharia, the physical injuries sustained;
  - d. Transport costs, reasonable travel and accommodation costs incurred by the victim.

## **PART SEVEN**

### **MISCELLANEOUS ARTICLES**

#### **Article 41**

##### **Sex Offender Registry**

- 1) This law creates a Registry for Sex Offenders, and other related offences, that will be a record of sex offenders as stated in this law and [who were] convicted to prison terms for longer than 4 years. If the sex offender committed the crime against a minor, or a disabled person, the detailed information about that offender should be recorded in the registry indicating the crime and the conviction.
- 2) The Criminal Investigation Department (CID) of the police is responsible for keeping the record and safety of this registry stated in paragraph one of this Article and they should establish that specific registry. The [name of a] suspect should not be recorded in this registry. The [name of an] offender convicted by the court and sentenced should be recorded in the registry.
- 3) Only concerned institutions, law enforcement agencies and government agencies can have access to this Registry of Sex Offenders and other related offences. Regulations and guidelines on who can have access to the registry, and the procedure for recording, will be issued.

#### **Article 42**

##### **Repeal or Suspension**

- 1) Articles 398, 399, 400 and 401 of the Penal Code are repealed.
- 2) Any act against Islamic Sharia on the different types of fornication/zina is repealed.
- 3) Any act in the Penal Code on the different types of fornication/zina which are against Islamic Sharia is repealed.
- 4) Any other act, or any other law or customary law, which is against this law is repealed and replaced with this law.

- 5) Articles in the Penal Code, Criminal Procedure Code and other appropriate articles that are in line with the objectives of this law and which are not against Islamic Sharia, should be applied to the offences stated in this law.

### **Article 43**

#### **Implementation of the Bill**

This Bill shall be implemented after passage by the legislative branch and the President signs, and an official proclamation is published.