

POLICY BRIEF IV

30th November 2020



Puntland
Development &
Research Center

Sexual Violence against Women/Girls with Particular Focus on Rape.

Key Policy Messages

- Somali women are the economic backbone, the foundation and the bond that connects the families and communities together.
- Sexual violence and rape against women and girls are crimes against not only an individual but the entire nations, affecting the lives, the well-being, dignity, and the health of the individual, community relations, peace and security. Thus, it has a broader impact of the country's security, political stability and economic growth.
- In recent years there has been an increase of incidents of violence against Somali women and girls including gang rape and killings. These horrific sexual crimes against women and girls have no age limitation where 2 years to 75 years old women are raped.
- Impunity of sexual crimes due to the existence and use of out of court settlements through Somali traditional elders and customary laws prevent survivors of sexual violence and rape access to justice. While customary laws and traditional elders play a crucial role and need to be accommodated in promoting peace and co-existence between families and communities, nevertheless, they shouldn't overtake the role of the police and judiciary in settling matters of sexual violence and rape crimes.
- There is an under representation of Somali women in judiciary and law enforcement institutions, thus their inclusion is utmost important to get access to justice and to gain the confidence of the victims of sexual violence and rape to report their cases.
- The establishment of an integrated services, a one-stop GBV centers, across Puntland regions to address GBV issues, where survivors of gender-based violence could access legal, health, and psychosocial support under one roof, was a much needed and a step on the right direction. However, there has to be some long term plans to sustain it and provide support for capacity development and funding.
- There is a weak implementations of the Gender Based Violence laws that are in the books, such as the Somali anti-rape laws particularly the Sexual Offences law in Puntland, which must be implemented.
- There is no/low awareness raising campaigns and community outreach programs to educate on prevention of sexual violence and rape against women and girls, which leads to inadequate reporting of crimes against women and girls.

Introduction

Somalia's traditional customs classify Somali women as part of the birimageydo, a category of society exempted from harm, especially in wartime when women often act as peace envoys. In recent years, there has been an increase of incidents of violence against Somali women including gang rape and killings. This created a lot of fear among Somali women/girls, and these rape crimes have no age limitation, 2years to 75yrs old women are raped.

Here are some of latest and harmful rape cases registered in Puntland that are either verdict of guilt or under process:

1. A 14 years old Naima Abdi Mohamed was raped and murdered in Bosaso on 24 October 2020
2. A 12 years old Najmo Abdilkadir Hassan was gang-raped in Burtinle on 19 June 2019. Najma died later from the injury. Najmo's family did not disclose the heinous crime against her and hid the case from the public until she was in serious medical condition.
3. A gang-raped and murder of a mother of three; Hodan Ahmed Shanlayste, in Garowe, on 10 April 2019.
4. A gang rape and murder of a 12-years old girl named Asha Ilyas Adan in Galkayo on 25 February 2019. The perpetrators have been trialed and sentenced.
5. In 2017 a group of young men posted a video of gang rape of young girls in Galdogob district of Puntland.

The theme of PDRCTalks 16 was about Sexual Violence against Women and Girls with particular focus on rape to increase awareness, discuss about the root causes, motivations, challenges and putting forward preventive measures to address such problem. The event of the 16th PDRCTalks was held on 30th November 2020, the keynote speakers were Mrs Bahsan Ahmed Said, head of UNFPA office in Puntland and Said Abdi Muumin, Head of Office of the Puntland Human Rights Defender. The Puntland Women Lawyers Association (PUWLA), also participated the event, and brought the initiative to highlight the issue of sexual violence against women and girls. This Policy briefing paper is the result of that event.

Both Federal and State level decision makers were also invited to the discussion. These include: Hon Xanifa Mohamed Ibrahim (Xaabsade), the minister of Women and Human Rights Development of the Federal Government of Somalia, Hon Amina Osman Haji, the minister of Women Development and Family Affairs in Puntland, Women MP from both houses upper and lower house at Federal Parliament.

Gender Based Violence in Somalia and Puntland

Rape is considered a shameful and embarrassing crime in the Somali communities, when it happens, the response should be quickly, otherwise the consequences will not only affect the victim but also the entire population resulting in armed conflict among communities, and the victim will be marginalized and stigmatized

On the other hand, gender-based violence undermines the health, dignity, security and autonomy of its victims, yet it remains hidden in a culture of silence. Victims of violence can suffer sexual and reproductive health consequences, including forced and unwanted pregnancies, unsafe abortions, traumatic fistula, sexually transmitted infections including HIV, and even death. It is also causing serious injuries, trauma, mental health illnesses and discriminatory practices and stigma in some cultures like Somalia/Puntland.

GBV also has high economic consequence in the society leading to poor economic growth. In 2016, the UN estimated about US \$1.5 trillion cost globally on violence against women (UN women, 2016). Equivalent to approximately 2% of the global gross domestic product. However, the most common forms of Gender Based Violence in Puntland include rape/gang rape, domestic violence, early marriage and female genital mutilation (FGM). Worldwide, an estimated one in three women will experience physical or sexual abuse in her lifetime (WHO, 2021). Rape is characterized by one of the most prevalent human rights violations in the world. Regardless of age, it effects social, economic, and political aspects of women's and girls lives.

Today, rape/ gang rape with murder remains a serious concern for women and girls in Somalia and particularly in Puntland State. According to a report by Amnesty international, Somalia is one of the leading countries in human right violations, in particular the sexual violence against women and girls (Amnesty international, 2016). Only from January to September in 2020, 794 rape cases were recorded in Somalia, these are cases recorded in the office of Attorney General (Somaliland data is excluded). However, due to high circumstance including preference for the Xeer "elder to elder approach", less awareness of the communities, and rooted cultural norms, we believe there are a lot of unreported cases of rape or gang rape in the country. In Puntland, 65 rape cases were registered from January to September 2020, where 29 cases were prosecuted, while 36 are still in trial processes or no evidence found to complete the prosecution. Early/child marriage is another form of GBV, it is a common practice across the developing countries. For example, in sub-Saharan Africa 35 per cent of young women were married before age 18, (UNICEF, 2020).

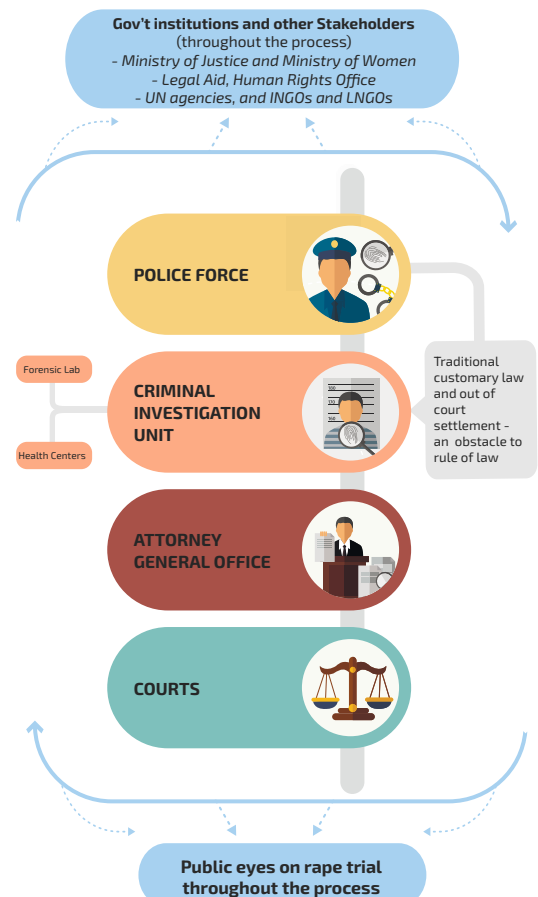
This practice is also recorded in Somalia. In Somalia, early child marriage is common in the countryside where neither the girl nor the boy has any ambition for education nor opportunity expect keeping the livestock.

Unfortunately, that culture is still giving motivation and transferer into the urban cities where the life is different and stronger, the girls are going to school and indeed to have bright future and goals.

In 2014, a UN study showed that 45% of girls in Somalia are married before their 18th birthday, and 8% are married before the age of 15 (UNICEF, 2014). Sometimes early marriage is not a decision for the girl, but it proposed from the family/parents but however it has moral, health and economic consequences.

Even though the Puntland FGM policy was approved, still the FGM exists in un-acceptable level. For example, Somalia has the highest FGM prevalence in the World (UNICEF, 2013). In Puntland, 15 percent of Women aged 15 - 49 has experienced physical violence since age of 12 (Puntland Statistics Department, 2020).

The following diagram illustrates both governmental and non-governmental institutions and their international partners involve in the fight against rape. The circumstances behind any report of rape are unique, each investigation step has its difficulties and can vary. However, every investigation starts with the same steps to gather as much evidence as possible. In Puntland none of these steps are successfully managed because of the weak institutions and low public awareness. As a primary challenge the people in the discussion mostly emphasized Criminal Investigation Department (CID) for not investigating well and not getting enough evidence. Corruption and interference by the elders in the judicial process derail the investigation process.



Legal Framework

Puntland's justice system is a mixture of several legal structures, including Islamic Sharia law, secular law, and customary law (Xeer), all of which criminalize all kind of sexual violence. The Constitution of Puntland ensures women's rights of equal participation in socio-economic and political affairs as well as access to justice (Articles 12 and 35). The Somali Penal Code (1962) criminalizes rape with a penalty of 15 years in prison (Article 398).

The Puntland authority has adopted Anti-FGM Policy of 2014, and the Sexual Offenses Law of 2016. In addition, the Puntland government has established two important institutions that play a significant role in defending victims' rights: The Office of the Puntland Human Rights Defender and the Puntland Forensic Science Laboratory.

The Somali traditional law (Xeer) is a mainly a compensatory law with punitive measures specifically the death penalty. Usually, the Somali Xeer does not have other punitive forms of punishment like incarceration. Traditional Somali legal proceedings for crimes are divided into 2 main categories Xeer Guud (General Law which adjudicates criminal and civil cases alike between all clans under normal circumstances and Xeer Gaar (Specific Law) which is used to adjudicate between 2 clans, in other words a bilateral legislation applied for only 2 specific clans. The Somali traditional law is subdivided into Dhiig (Criminal offenses) and Dhaqan (Civil Offenses). Criminal Offenses are subdivided into Qudh (murder, manslaughter, complicity in murder), and Qoon (injury, rape, robbery, slander, robbery, theft etc). As such, rape is considered a criminal offense, its legislation was very severe in the past. No mercy was shown to rapists, the rapists were fined between 5-10 camels. The compensation of the crime was not subject to clan contribution, so perpetrators had to pay the fine without support from kinsmen and clansmen alike. The punishment was made severe to prevent potential inter-clan conflicts between the victim and the perpetrators' clans. Rapists were scorned by the community, as a result, rapists used to flee from communities where they had committed their penal crimes because of social ostracization and shame.

The sexual offense law is a prevention and protection for all, it emphasized how the rape survivors get their rights as well as the rapists get into severe punishment while protecting their rights. Specifically, at punishment and evidence side indicated below:

a) "if there is full evidence of a rape case (Article 27, session 1 of the law sets out what full evidence mean which included two witnesses must be found or the accused to plead his guilty). the punishment is as mentioned in verse 33 of Surah Ma'ida".

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الآخِرَةِ عَذَابٌ عَظِيمٌ

(Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This penalty is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter.¹ Dr. Mustafa Khattab, the Clear Quran

b) "If there is no complete evidence, but the court finds incomplete evidence such as medical examination etc., the defendant will be punished between 10 to 20 years imprisonment as defined Article 29, session 5 of Puntland Sexual Offense law".

Regardless of existing efforts most of the victims do not have sufficient access to justice because of less implementation and practices of the laws.

Achievements

- **Establishment of one-stop GBV centers across Puntland regions;** it is the first time ever, and survivors of gender-based violence in Somalia could access health, legal, psychosocial support under one roof. In the past, GBV survivors had to seek various types of services from different entities. Therefore, the concept of integrated services with clear-cut referral mechanisms or 'one stop window service' was seen relevant to addressing GBV concerns on the ground, also taking into account confidentiality aspects or 'do not harm' principle given sensitivities and stigma attached to GBV. The one stop model of supporting survivors of GBV has been very instrumental and breakthrough of many challenges related to legal aid service delivery, particularly deep cultural entrenched practices and impunity that led many perpetrators get away of crimes committed.
- **Sexual offences law:** In August 2016, Puntland State of Somalia enacted a law criminalizing sexual offenses including rape, first of its kind of legal framework passed in Somalia, since collapse of Siyad Bare regime.
- **Zero Tolerance FGM policy;** 8 March 2014, Puntland State of Somalia signed first zero tolerance FGM policy; the policy promotes abandonment of all forms of FGM. The policy stipulates government commitment to end FGM, which has serious negative health consequences and gross violation of human right, particularly the right to be free from torture, violence and inhuman degrading treatment.
- **Bureau of Forensic Science;** In September 2017, Puntland State of Somalia launched the first forensic center with an advanced laboratory capable of producing forensic evidence in support of the court proceedings to bring sexual assault perpetrators to justice.

- **Sensitization and awareness of problems of GBV;** number of human right organizations has implemented numerous awareness and sensitization programme to advance women' s rights. This programme helps increase general public attitudes and practices towards respecting women and girls. Consequently, the increase of public awareness also increases e the reportinof GBV against women and girls such as rape.
- **Community police/ community police volunteers/ Gender desk;** Volunteer community police plays important role in helping women access police services, they help victims formulate and organize their crime reporting statements before submitting to the police for their official recording. Volunteers also provide some counselling work to compile their story in a comprehensive way, so that they do not forget part of the story, and also provide physiological support to calm the survivors.
- **Increased Capacity building among law enforcement agencies;** number of humanitarians in collaboration with the Ministry of Justice, Constitution and Religious Affairs (MOJRAR) have conducted number of capacity building training workshops for police, prosecutors and judges, this helps increased awareness of police personnel on human rights and provision of sexual offence law.

Challenges

- **Gender inequality,** particularly patriarchal culture where men made the majority of financial and family decisions, and dominated the public sphere, and where women are mostly considered as not equal partners is also key to the problem exacerbated by poverty, environmental shocks, decades of conflict. The inequality also exists in the institutions and government system, particularly in the judiciary system. If more women served on courts and within justice institutions, this could make a difference.
- **Weak rule of law** as a major contributor to increased sexual violence in Somalia. This is mainly due to poor institutional capacity of law enforcement agencies to trace, investigate and prosecute perpetrators of rape.
- **Limited implementation of Sexual offences law;** this happens when police, prosecutors and judges fail to implement the law, either applying less years of sentence or to obstruct, perverse, or interfere with the course or administration of justice, regarding the reporting, investigation, or prosecution of an offence under the provisions of this law. According to the Attorney General Office, 16 out of 29 cases prosecuted received term of imprisonment of less than 10 years, while sexual offences law has minimum imprisonment of term from 10 years to 20 years depending on aggravating circumstances.

- **Limited capacity to collect a forensic evidence based by police and doctors,** this is very crucial for obtaining scientific evidence to the police and officials investigating the rape cases. The forensic lap is a new tool that requires people to understand how it works.
- **Impunity of Sexual crimes** remains a major concern, due to existence strong Somali traditional or customary law, which prevents survivors of sexual violence access justice. While elders play a crucial role, in promoting peace and co-existence among tribal clans, but most of cases they are overtaking the role of police and judiciary in settling matters of rape cases, but also other criminal cases such as killings and injuries. The traditional system is not as effective since the female victims are not involved.
- The fact that there is a large-scale **humanitarian crisis** in Somalia especially in Puntland due to the compounding effects of protracted conflict and other forms of natural disasters such as drought, Cyclones, Floods and now COVID-19.

Recommendations

- The legal institutions should be the sole lead responsible body in the justice system for sexual violence and rape cases; out of court settlements by elders play a major obstacle to proper implementation of rule of law, thus their intervention should not be allowed
- The legal systems need to be unified (Traditional law, Islamic Sharia and Secular law), the rape punishment needs to be uniformed by all these three legal systems with No elder led process; the law must be controlled and enforced by the government
- A shared Database of all former suspected and charged sexual violence criminals and rapists must be created.
- Implementation of sexual offences law including prosecution of member of law enforcement agencies that might obstruct. The Sexual Offences Law Implementation Committee (specified in the Law) should be established. This can be an oversight committee is led by Ministry of Justice, Constitution, and Religious Affairs with membership of other specified institutions.
- Establishing specific police unit and more women in the police force who are in charge of GBV and rape related crimes. The more women in the police and other law enforcement institutions will avoid the culture of silence where the victims ashamed when they tell their stories. This need "women to women approach," not more male dominant at the offices; there are also some sort of lack of confidentiality and distrust of the outcomes produced by these institutions.

Sexual Violence against Women/Girls with Particular Focus on Rape

- Increase institutional capacity of law enforcement agencies and medical doctors/midwives on how to ethically report the rape (prevention and response) and collect forensic evidence in very provisional way.
- Increase funding for Gender Based Violence to reach out more districts and communities. In different dynamics, rape is spreading in the communities, so the efforts need to be extended not only in the major cities but also in the rural area.

- Empower women and girls through number of ways including awareness, education, life skills, economic support and mentoring .
- The Forensic Science Lab is a new tool to use in rape investigation. In order to increase public acceptance of the forensic lab results, there is a need to educate the public on how this new technology can facilitate and improve crime investigation process such as rape.

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