



Review of GBV Cases

Attorney General's Office

Borama, Awdal Region

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Introduction

As part of Horizon's ongoing training and support to the Attorney General's Office (AGO) a review was undertaken of the prosecution of three GBV cases within the Awdal region conducted by the Deputy Attorney Generals (DAGs) based in Borama.

The review consisted of interviews with the DAG and full access to the case file, as permitted by the Attorney General. This report provides a summary of the three cases and then both observations and recommendations as to the conduct of such cases and future training.

The three cases reviewed were as follows:

1. Rape in Baki District, October 2014
2. Gang rape of 15 year old girl in the Airport region of Borama
3. Attempted rape of a mother in the Baki District

1) Rape, Baki District (Regional Court: MGA/01/112/2014, Appeal Court: MRGA/DDDL/29/014)

Review: Examination of file and interview with the DAG who prosecuted the case at the Regional Court.

The offence was alleged to have been committed on 17 October 2014. The victim's account was that the accused had entered the victim's home at around 02:00 and raped her four times. The hut was dark and at first she thought it was her husband returning from a trip away. When she realised it was not her husband she grabbed his neck and he then punched her in the chest and injured her hands. After the rape, the victim left her house and made the first complaint to a man nearby.

The following morning the Elders agreed to slaughter a sheep as compensation. However, when the victim's husband returned they then decided to report the matter to the local police station.

Timeline of Investigation and Prosecution:

17 Oct 2014 Alleged offence.

18 Oct 2014 Elders agree compensation.

07 Nov 2014 Reported to local police station and first statement taken, Qardhille.

Family then moved to another area by Elders as to avoid conflict.

08 Nov 2014 Defendant arrested and interviewed, denied offence and stated was asleep at the time.

28 Nov 2014 Interviews conduct and statements taken by DAG, Borama.

Victim seen by Doctor, too late for medical evidence of rape.

30 Nov 2014 Charge sheet written.

12 Mar 2015 Judgment of regional court - Not guilty, insufficient evidence.

Notice of appeal submitted, Defendant remanded in custody.

16 Mar 2015 Grounds of appeal (Prosecution evidence was strong and defence evidence weak with no witnesses to support his alibi).

The evidence relied upon by the DAG at trial was; the victim's evidence, witness evidence of first complaint and description of accused, medical report (inconclusive) and a letter from seven Elders stating there had been previous complaints of rape against the defendant.

The defendant gave evidence on oath at the trial and was cross-examined, including on previous allegations as referred to in the letter from the Elders. He accepted that the Elders had been dealing with this complaint outside of court but denied previous incidents.

The Judge returned a verdict of not guilty, there is not yet a written judgment but in his oral reasons he cited a lack of evidence, in particular that there had been no eye witnesses to the defendant leaving the house and there was no medical evidence of penetration.

An appeal notice was lodged by the DAG that same day, the hearing of the appeal is outstanding with no date yet fixed.

Observations on the Prosecution

This case generally demonstrates good practice. In terms of the timeline of the prosecution it is clear that the DAG acted without delay - the only noticeable delay being between the first complaint to police on 7 November and the DAG taking a second statement on the 28 November, which was caused by the family having moved following the incident. The DAG in this case also appears to have collected and used all of the evidence at his disposal.

It is also encouraging to see the office rightly proceeding with prosecutions of rape allegations on the basis of the victim's evidence and other supporting evidence, despite the unavailability of medical evidence due to the passage of time.

One point of concern is the use of the letter from the Elders stating there had been previous complaints against the defendant. The DAG explained that he had asked the Court for permission to rely on the letter as it would be difficult to get the seven Elders to court. It seems that the defendant's legal representative did not object to the letter being used and the Judge permitted it. Notwithstanding the Judge granting permission in this instance, the prosecution needs to ensure that they can argue the admissibility of evidence they seek to rely on. In this case reliance on hearsay evidence within a letter signed by seven Elders, and which does not provide specifics of previous allegations, arguably ought to have been inadmissible under Article 155 CPC.

A second concern raised by this case review is the approach of DAGs taking further statements from the victim. In this case a statement was taken by the police on 7 November, and then a second statement on the 28 November by the DAG. The purpose of this second interview was explained to be to check that the first statement was correct and to check for inconsistencies. The DAG stated that when he first spoke to the victim it appeared she was hiding something, which he thought may have been due to the influence of her Elders. He then reassured her about the prosecution and she then proceeded to give an account consistent with her first statement. It may be appropriate to interview the victim a second time and to take a second statement where there is a lack of necessary detail in the first statement, or perhaps where there are evident inconsistencies within the first account itself which require an explanation. What is not good practice is for the DAGs to routinely conduct a second interview simply to test the victim's account for inconsistency.

2) Gang rape, Airport Region (Regional Court: MGA/SEL/01/112/2014)

Review: examination of file, court record and judgment and interview with the DAG who conducted the appeal.

The alleged offence took place on 27 May 2014 and was first reported to the police by the victim and her father on 28 May 2014. The victim was 15 years old and the defendants between 15 - 19 years old. In summary the victim's account throughout was that the first defendant had come to her house and asked for water, he had then kicked her and covered her mouth and eyes with her headscarf. He then raped her, as did the second to sixth defendants. They had held her hands and legs. The victim stated, and maintained, that she did not know the defendants, but she had heard them use each others names and she knew their names.

Evidence before the Regional Court:

The victim gave evidence, was cross-examined on behalf of the defendants and was questioned by the judge. From the court record it appears she was consistent with her statement to the police (summarised above). She maintained that she did not know the defendants and that she had not consented.

The police investigator gave evidence of the first complaint by the victim and the defendants interviews. With the exception of the fifth defendant they all accepted sexual intercourse but alleged that the victim had consented.

All of the defendants gave evidence but not on oath and therefore were not subject to cross-examination. All accepted sexual intercourse but alleged consent and denied use of force. They gave varying accounts of knowing the victim; we are close friends, we are neighbours, we studied at the same school, we met her on a farm. There was also noticeable discrepancies on their accounts of the day; the first and second defendants gave evidence that the victim had called the other defendants to join them whereas the sixth defendant gave evidence that the first defendant had called him to join them. Of note is that the fifth defendant also stated in evidence that the victim consented to the first three defendants but was not happy with the fourth, he claimed they then pushed her but did not force her.

Regional Court Judgment:

The judge stated that he weighed the evidence and his judgment was based on the following factors:

1. The victim does not have any features to show us there was force;
2. There is no injuries to the genital area, as stated by the medical report;
3. The victim's statement is contradictory as she mentioned that the accused closed her eyes but during questions she stated she had seen them, and
4. The place of the incident is her house which shows she did not shout as there is a neighbour's house close to her house.

The judge therefore convicted all 6 defendants not of Article 398 rape but of Article 402 public indecency, and sentenced them to eight months imprisonment. The victim was also convicted under Article 402 and received a 6 month suspended sentence.

Appeal Process (from interview with DAG who handled the appeal):

The AGO appealed on the grounds that:

1. It is not possible that she consented to have sex with six men;
2. The defendants should have been convicted of Article 398;
3. The AGO expected sentences of 15 years, not 8 months;
4. The AGO had not prosecuted the victim so she should not have been convicted;
5. The judgment is not based on the evidence, and

6. Requested that the judgment be overturned and the defendants sentenced to 10 years.

When the DAG first took the case on appeal he believed there should have been rape convictions, he then undertook further investigations. He and the Head of GBV from the Borama office met with the victim before preparing the grounds of appeal. She was questioned about the event and her knowledge of the boys, the answers given were consistent with her earlier evidence. She was asked whether she had reported the incident to her parents or neighbours and stated she had not. The DAGs spoke to her parents and were told it was four days after that she had been taken to hospital and that the incident had come to light after the boys had been talking about it and her parents had been told by her brothers.

The DAG stated he had also asked about the victim's mental health as she had answered no to rationale questions about what happened, such as whether she shouted and whether she had told her parents about it. The medical report was said to have confirmed penetration but stated there was no injuries. The DAG stated that he did not accept that she could have consented to six men and that is why he felt it was still a rape case.

Prior to the Appeal hearing the DAG stated he found that the victim and defendants were neighbours and went to the same school, they lived in a small village where everyone knew each other. He therefore spoke to the victim and advised her to tell the truth in court as to whether she knew them.

During the appeal hearing the Judge asked the same questions of the victim regarding whether she knew the defendants and she continued to answer no. The DAG then requested that the court have a mental health assessment undertaken, he stated he did so because she was lying about knowing the defendants. The assessment conducted that there were no mental health issues.

Three neighbours also gave evidence at the appeal, seemingly at the instigation of the judge and on the request by the defence. They gave evidence that they had not heard shouting and one stated in evidence that the victim attended school with the boys and that they had previously seen her with the first accused.

The scene of the crime was also visited during the appeal, the victim was asked to show where the incident happened and pointed out the sleeping area. The prosecutor also noted that the water tank was outside the house.

The DAG stated that in closing the appeal case he requested the defendants be convicted under Article 398 for rape, he submitted that she could not have consented to all six defendants even if she had consented to one.

Judgment on Appeal:

There is not yet a written judgment from the Appeal. The DAG stated that at the close of the evidence the Judge addressed the parents who were in court, stating that they could see how the evidence had been (referring to the alleged inconsistency in the victim's evidence regarding knowing the defendants) and therefore did they want the opportunity to resolve it amongst themselves. The parents of the victim and defendants therefore negotiated outside of court and agreed compensation of 35 camels for the victim's family.

The judge then appears to have made a judgment endorsing that agreement and released the defendants by imposing instead a fine for the Article 402 offence.

Observations on the Prosecution:

It is positive that the DAG office brought this prosecution and also pursued it on appeal following the Regional Court judgment. Through the appeal process however a number of issues arise in the approach to the victim which need to be improved in future cases, these are set out below.

First, it is evident that throughout the proceedings, especially on appeal, the victim had to give her account many times. In particular during the appeal process she was required to give her account again to the DAGs, then on oath in court for a second time and finally once more when the visiting the scene of the crime. Clearly in part this is determined by the judge's conduct of the case, however the DAGs have responsibility for the conduct of the prosecution and should be seeking to minimize the number of times that a victim, especially a young victim in a rape allegation, has to go through the process of giving their account as it is a traumatic experience.

Secondly, it is concerning that the victim was sent for a mental health assessment at the request of the prosecution because it was believed that she was lying in relation to knowing the defendants. Having requested such an assessment the prosecution has essentially accepted that their witness is not credible and therefore undermined their case. In addition undergoing such an assessment is likely to have had a significant negative impact on the victim, rather than supporting her throughout the process as the prosecution ought to.

Thirdly, the case demonstrates a need for prosecutors to carefully consider what the reasons behind any potentially inconsistencies in the victim's evidence might be and to attempt to address any weaknesses in their case. In this case the impression given was that once the evidence had been given by neighbours that she knew the defendants in some way then the prosecution could not be successful. Ideally there ought to be robust challenging of evidence given on behalf of defendants (i.e. how reliable is the evidence that they knew each other?) and secondly attempts made to explain inconsistencies, for example in this case legitimate reasons why the victim may have denied knowing the defendants which do not mean she consented, such as fear of telling her parents or cultural shame.

3) Attempted Rape, Baki District (Ref: XXIG/GA/324/2014)

Review: Examination of case file, including the victim's statement and interview with the DAG.

This case involved an allegation that the defendant had entered the victim's house at around 01:00 on 27 August 2014, in the Siimoodu district. The victim stated that he had removed her clothes and tried to penetrate her but she fought him. She stated her groped her breasts and then released semen on her thigh.

The defendant was charged with an offence under Article 399 (acts of lust committed with violence short of carnal intercourse). He admitted the offence and stated he had made an agreement to visit the victim's daughter and he had mistaken the victim for her daughter. The court imposed a two-year sentence of imprisonment.

Observations on the Prosecution:

This case was selected for review to look at the narrow issue of the appropriateness of the charge. When interviewing the DAGs this and similar cases were repeatedly referred to as 'attempted rape'

cases but were charged under Article 399. In discussion the DAG stated it was felt this was the most appropriate charge as he had groped the victim's breasts but there had not been penetration.

In this case however the victim's evidence was clear that the defendant had in fact tried to penetrate her, and the DAG appeared to consider the victim to be a reliable witness. The more appropriate charge in this case would arguably therefore have been Article 398 (rape) with Article 17 (attempt). From my discussions with the DAG office it appeared they had not considered this charge, or the possibility of putting several charges - i.e. charging both attempted rape and then also Article 399. It appeared from the review that this was not an isolated case of Article 399 being charged where the facts disclose an attempted rape. In some cases this may amount to under prosecuting, especially as Article 399 has a five-year maximum sentence.

Recommendations for Training

From the above reviews the following three main points are highlighted as desirable to address in future training of prosecutors and DAGs handling GBV cases:

1. Reducing the number of times a victim has to give their account to the police, AGO and court;
2. Appropriately handling potential inconsistencies in the victim's evidence, or other prosecution witnesses, and
3. Selecting the most appropriate charge under the Penal Code and use of multiple charges.

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