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***Seeking Justice for Rape in Somaliland: The Role and Limitations of the Criminal Justice System***

On 8 January 2018, Somaliland’s House of Representatives voted to pass a Sexual Offences Bill that would radically amend the Penal Code’s outdated provision on rape. If the *Guurti* and President both approve the current version of the Bill, the prosecution of rape will no longer solely depend on evidence of force and convicted persons will face greater prison time. The passage of this bill is undoubtedly a milestone. The reality, however, is that changing Somaliland’s criminal laws alone will not automatically ensure the effective prosecution of rape.

In a report published today, *Seeking Justice for Rape in Somaliland: The Role and Limitations of the Criminal Justice System*, Horizon Institute documents multiple barriers to prosecuting rape beyond an archaic penal law. The 51-page report is based on over 100 interviews with judges, prosecutors, investigators, lawyers, village committee members, elders and health professionals from the urban and rural areas of all six regions of between 2015 and 2018.

A major impediment to prosecuting rape in Somaliland is the victim’s reluctance to report without which the criminal justice system cannot prosecute. *Seeking Justice for Rape in Somaliland* details a multitude of reasons why a girl or woman may not report, one of which is shame and stigma. A nurse commented on why, in the small rural town of Faraweine, people “don’t talk about rape.”

Community members will say she was raped and no one will want to marry her. Even when elders deal with these cases, they don’t tell anyone because of the disgrace associated with rape.

Horizon’s research found other reasons why a victim may not report, such as the influence of her elders, or ignorance and mistrust of the criminal justice system. But the

report pinpoints the prohibitive costs associated with taking a case to court as a key impediment, especially for those from rural areas. An elder in Salahley, only 69 kilometres from the capital, Hargeisa, summed up why the economics of justice deters recourse to the courts.

When someone goes from here to Hargeisa, a lot of costs are involved, the biggest of which is transport. They also have to pay for meals and accommodation in Hargeisa. The victim's family has to also pay these costs for witnesses. If the victim's family has to send four people to court in Hargeisa, it would be \$200 at least. Most families don't have this money. Sometimes families will take a loan from a neighbour or sell their livestock. Given these costs, families may decide not to take a rape case to court.

Barriers to reporting mean that many rape cases are resolved through Somaliland's traditional form of justice, known as *Xeer*. But customary agreements do not hold individuals accountable for their actions. Instead, the accused is often only required to pay monetary compensation, a burden shared by his family and clan members, and not born solely by the accused. Moreover, in limited circumstances, a customary agreement may require the accused to marry the victim. Either way, he is set free, in the knowledge that if he commits another rape, there will be no personal consequences.

Even when a woman reports a rape and her case enters the criminal justice system, families are often negotiating in parallel to the prosecution and the case may be dropped if they reach an agreement.

In 2014, Somaliland's Attorney General, Hassan Ahmed Adan, issued a directive ordering prosecutors and judges not to accept customary agreements in rape cases.

There is anecdotal evidence that this directive is having some impact, at least in major urban towns, particularly in Hargeisa, as described by the Public Defender in Maroodi-Jeex Region which includes Hargeisa.

I personally haven't witnessed a rape case being withdrawn from the courts since 2015. There is a lot of pressure on the courts from the AGO, the Supreme Court, the government and international actors not to end rape prosecutions because the families have agreed to compensation and want the case to end. I think this pressure has been very effective, at least in Hargeisa where I work.

However, others working in Somaliland's criminal justice system are not confident that the Attorney General's directive is having the desired impact. A legal aid lawyer argued that, on the contrary, the directive is "discouraging cases from even being reported."

Since the directive in 2014, most rape cases go right to the customary system. Elders know the courts might not accept customary agreements, so they just avoid the courts completely.

*Seeking Justice for Rape in Somaliland* shows that while the directive has enabled some prosecutors and judges to reject customary agreements, rape cases continue to be resolved through *Xeer* because they go unreported, or are withdrawn or dismissed from the courts in defiance of the directive.

Whether or not the directive is effective, however, the criminal justice system faces other challenges when prosecuting rape, in particular a lack of evidence.

Prosecution can only end impunity for rape if there is sufficient evidence to convict, a difficulty prosecutors all over the world face. Investigations begin once victims and their families make a report to their local police station where their case is transferred to the Criminal Investigations Department's sex crimes unit. At this stage, a woman's ordeal can no longer be kept private. She must describe what happened, in detail, at least twice to investigators, and undergo an intrusive physical exam. This investigatory approach puts women through a painful process. Worse still, in far too many instances, it ultimately produces insufficient evidence to prosecute. A judge in Hargeisa lamented the fact that rape cases often turn into a "he said, she said" situation, without sufficient evidence to convict.

The prosecutor has to show all the elements of Article 398 of the Penal Code beyond a reasonable doubt. When all the evidence you have is what the victim says and what the accused says, it's hard for a judge to determine what happened.

Even if the Sexual Offences Bill passes, the Attorney General's directive is fully enforced and evidentiary shortcomings are addressed, rape victims are met with the harsh reality of an unfriendly criminal justice system. Financial pressure, government services they cannot physically access because of distance, a lack of a victim-centred approach to prosecutions and insufficient support services all contribute to disillusionment with criminal prosecutions for the women concerned and their relatives. A lawyer in Hargeisa described how their mood changes over time.

They will have a lot of energy at first because they think the justice system will find the truth. But this is before they know what happens. After they discover how hard it is to get their case through, they feel distress and shame. You can see this after the victim goes to court for the first time.

Reliable statistics are needed to serve as a basis for policies and interventions. This requires co-operation between Somaliland institutions to collect, in a uniform manner, as much accurate data as possible on the situation of rape.

Passage of the Sexual Offences Bill and enforcement of the Attorney General's directive are important steps in the right direction. But for rape prosecutions to become more effective and victim-friendly, Somaliland needs to address the challenges present at every

stage of prosecution in a comprehensive manner. Horizon's report identifies a series of feasible steps that do not require a large budget.

*Horizon Institute* is publishing *Seeking Justice for Rape in Somaliland* to encourage dialogue and coordination between the relevant justice sector actors and health professionals, to advance the progress made by the Attorney General's directive and to harness and support the Sexual Offences Bill should it become law. Horizon hopes this report can assist in the promotion of a comprehensive approach to ending impunity for rape in Somaliland and ultimately, as expressed by a judge in Borama, help stop perpetrators from reoffending.

There was one case brought to me where the perpetrator had previously raped seven girls. Because there was a customary agreement each time, the perpetrator didn't come to the courts. It was only when he raped the eighth victim that the case was brought to us and he was convicted. If he had been brought to the courts straight away, there wouldn't have been that many victims.

To read *Seeking Justice for Rape in Somaliland*, visit [here](#).

Founded in 2013, Horizon Institute is a Somaliland based NGO that assists government, private sector, and not-for-profit institutions create and take advantage of development opportunities. Horizon's work lies at the intersection of human rights, institution building and locally driven development. We integrate all three approaches to create effective initiatives that result in stronger and more resilient communities.

Horizon's reports and discussion papers explore issues identified through our work. They provide information and analysis intended to stimulate debate among stakeholders, the public and donors and promote government policies based on respect for human rights, strengthening institutions and encouraging self-reliance.

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