



Seeking Justice for Rape in Somaliland

The Role and Limitations of the Criminal Justice System

March 2018

6th Floor Omar Hashi Building, Hargeisa, Somaliland | +252 523 603 +252 (0) 633 751 063

P.O. Box 691-00621 Nairobi, Kenya | +254 (0) 20 4180 222 +254 (0) 713 773 420

www.thehorizoninstitute.org | info@thehorizoninstitute.org

“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.”

- Judge Abdirahman Barre, President of Awdal Regional Court in Borama, 17 October 2015

Horizon Institute seeks to provide support and expertise to communities transitioning from fragility and underdevelopment to resilience, stability and self-reliance. Horizon assists governments, the private sector, and institutions in the not-for-profit sector to create and take advantage of development and capacity building opportunities by applying a collaborative approach that brings together national and international expertise. Horizon achieves this by employing both national and international experts in the rule of law, security, governance and public sector development who are adept at harnessing local knowledge in fragile and conflict-affected states. The extensive experience of our staff working on the ground in developing countries informs our unique, collaborative approach to the design, implementation, management and evaluation of international development assistance programs and national capacity building projects.

At the centre of all aspects of Horizon's work is a strong commitment to the advancement of human rights and the rule of law. We are also dedicated to ensuring that local knowledge and opinions take precedent in the design and implementation of the international development assistance programs we manage. Horizon believes that prioritising a commitment to human rights and leveraging community expertise strengthens the functioning, capacity and service delivery of governments and institutions in the private and not-for-profit sectors, and moves countries from fragility to stability.

Horizon's reports and discussion papers explore issues identified through our work. They are 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.

Founded in 2013, Horizon's portfolio has included managing a justice sector project in Somaliland, funded by the Department for International Development (DFID), and work on civil service reform and revenue generation in Somaliland funded jointly by DFID and DANIDA. In 2017, Horizon conducted a baseline study in Somaliland to inform justice sector investment and interventions.

For more information, visit us online at www.thehorizoninstitute.org or contact us at info@thehorizoninstitute.org.

Horizon Institute would like to express its sincere appreciation to the members of the public and government officials who shared their experiences and insights with Horizon's researchers. Publication of this report, *Seeking Justice for Rape in Somaliland: The Role of the Criminal Justice System*, was made possible because of this.

Horizon would also like to express its appreciation to the researchers whose work contributed to this report which was written by Caitlin Lambert, Legal Advisor.

Horizon is immensely grateful to the Department for International Development (DFID) for making this research possible through their generous support.

ACRONYMS

AGO	Attorney General's Office
CID	Criminal Investigations Department
CPC	Criminal Procedure Code
DAG	Deputy Attorney General
DFID	Department for International Development
HoR	House of Representatives
ILR	Independent Legal Representative
IDP	Internally Displaced Person
INGOs	International Non-Governmental Organisations
MoJ	Ministry of Justice
MOLSA	Ministry of Labour and Social Affairs
NHRC	National Human Rights Commission
PTSD	Post Traumatic Stress Disorder
SGBV	Sexual and Gender-Based Violence

TABLE OF CONTENTS

INTRODUCTION	1
EXECUTIVE SUMMARY	2
Chapter 1	5
SOMALILAND’S CRIMINAL JUSTICE SYSTEM.....	5
Definition of Rape	5
Sexual Offences Bill.....	5
The Pluralist Legal System.....	6
Chapter 2	9
THE PREVALENCE OF RAPE IN SOMALILAND	9
Rape Cases Represent a Small Percentage of Criminal Cases	9
Rape in Somaliland: On the Rise?.....	9
Chapter 3	11
RELUCTANCE TO REPORT RAPE	11
Shame and Stigma	11
The Influence of Elders	12
Ignorance of the Formal Justice System.....	14
Mistrust of the Formal Justice System	16
Cost of Taking a Case to Court	17
Monetary Compensation	18
Lack of Confidentiality.....	18
Chapter 4	19
PROSECUTIONS DISCOURAGE VICTIMS	19
Bribes.....	19
Physically Inaccessible Services	20
Absence of a Victim-Centred Approach	24
A Dearth of Victim Support Services.....	28
Chapter 5	30
EVIDENTIARY CHALLENGES WEAKEN PROSECUTIONS	30
Insufficient Evidence.....	30
A Deficit of Investigation Resources	31
Inaccessible and Inadequate Forensic Medical Exams.....	34
Sentences Not Based on Law or Evidence	38
Chapter 6	39
RAPE CASES CONTINUE TO BE WITHDRAWN	39
Police	39

Criminal Investigations Department.....	40
Forensic Medical Examinations	41
Prosecution	42
Judiciary	44
Evidence of Change in Hargeisa	46
MOVING FORWARD	49

INTRODUCTION

A nine-year-old girl was raped in the village of Salahley in Somaliland. She was herding sheep and goats in the countryside when a man approached her, picked her up, took her out of sight and raped her. When she returned home, she was bleeding from the injuries inflicted on her. Her family reported the incident to the police. The accused was arrested and held at the village police station. But two days later he was released after the girl's family agreed, under the customary system, to accept financial compensation from his relatives and to drop the criminal case, leaving the accused unpunished and the victim without justice.

This story is not uncommon in Somaliland where impunity for rape is widespread. Customary law is frequently applied in rape cases because it is seen as an issue better handled quietly between the elders of the victim and the elders of the accused. 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. The victim is denied justice, while the greater interests of her community subsume her welfare and interests.

Somaliland's criminal justice system provides an opportunity to prosecute alleged rapists. But in practice, legal redress is often out of reach for a range of reasons including geographic isolation, poverty and non-existent or inaccessible services. When a victim and her family do have access to the criminal justice system, police officers frequently require a bribe, and because the Criminal Investigations Department (CID) does not have sufficient resources to conduct thorough investigations, there is often insufficient evidence. Additionally, the quality of forensic medical examinations is – almost always – unacceptably poor, and investigators, medical professionals, prosecutors and judges all too often treat the victim as if she is in the wrong. Moreover, some convicted rapists receive lenient sentences or are released early from prison. As a result, families and elders often deal directly with rape and do not submit reports to the authorities, or they turn their backs on the courts once an agreement is reached.

In 2014, the Attorney General, Hassan Ahmed Adan, took action to improve the criminal justice system's handling of rape cases when he directed all prosecutors and judges not to accept customary agreements.¹ Research by Horizon from September 2015 to February 2018 shows that many rape cases go unreported. It also found that when cases do reach the formal system, families and elders continue to intervene to prevent the police, prosecutors and judges from processing rape cases, preferring to rely on customary agreements. For the Attorney General's directive to have the intended impact – and to provide redress for victims like the nine-year-old in Salahley – Somaliland must address the shortcomings in the criminal justice system.

¹ Attorney General Hassan Ahmed Adan, *Directive: Agreements Against Rape Cases*, 7 September 2014 [hereinafter: Attorney General's directive]. This directive was the outcome of a conference held by the National Human Rights Commission, where government leaders, civil society institutions and traditional elders agreed that the formal justice system, and not the customary system, should handle rape cases.

EXECUTIVE SUMMARY

KEY FINDINGS

Women and girls in Somaliland, like women and girls throughout the world, face the threat of rape. Sex crimes are present in both urban and rural areas. At the community level, the blame for the rape is placed on the victim, and at the official level, the police, prosecutors and judges allow families and elders to withdraw cases from the court system and resolve them under customary law. Many Somalilanders attribute this impunity for rape as a major contributing factor to the prevalence of sexual violence.

An Encouraging Move: The 2014 Directive of the Attorney General Against Withdrawal of Rape Cases from the Courts

- The Attorney General of Somaliland, Hassan Ahmed Adan, took action to end this impunity. On 7 September 2014, he issued a directive that prevents prosecutors and judges from letting families and elders take rape cases out of the formal justice system.
- The directive is an important step toward ending impunity for rape in Somaliland. In an effort to assess the effect of the directive, Horizon researched sexual violence in Somaliland from September 2015 to February 2018 to determine its impact. Horizon conducted 108 interviews with judges, prosecutors, investigators, lawyers, village committee members, elders and health professionals from the urban and rural areas of Somaliland, in Maroodi-Jeex, Awdal, Saahil, Togdheer, Sool and Sanaag regions.

The Directive Has Had a Limited Impact

- Horizon's research findings show that while the directive has enabled some prosecutors and judges in major urban towns to reject customary agreements, rape cases continue to be resolved through *Xeer* (customary law). This is because they go unreported to the formal justice system and therefore do not reach the courts in the first place, or are withdrawn or dismissed from the courts in defiance of the directive.

Insufficient Evidence to Prosecute and Convict Undermines Prosecutions

- Even when there is no customary agreement and families want a case to move ahead, there is often insufficient evidence to prosecute and convict because the police and Criminal Investigations Department (CID) lack the training and resources to thoroughly investigate rape.
- Frequently the only evidence is a medical report from the examination of the victim. However, most of the country is without adequate medical facilities to provide assistance to the victim and collect the evidence for prosecution in a timely fashion. Women can be

required to walk for days and to travel at their own expense to obtain health care, by which time critical medical evidence is often lost.

The Absence of Reliable Data

- With international organisations taking different approaches to addressing the issue of rape in Somaliland, and Somaliland institutions providing donors with contradictory statistics on rape, it is difficult to understand precisely what is happening and how to respond in a meaningful manner. In order to do so effectively, 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 data as possible on the situation of rape.

No Government Guidelines on Reporting Rape Cases

- Horizon's research brings to light the complete absence of guidelines on reporting incidents of rape at all levels of the government, which has consequences for the administration of justice and the prospects for reducing the incidence of rape. The fact that clear, uniform guidelines do not exist makes it difficult, for instance, to gather and analyse statistical data, meaning that the scope of the problem – and the urgency needed to address it – is seriously underestimated.

Victims Experience Challenges at Every Stage of the Formal Justice System

- Victims often do not receive adequate assistance at the reporting stage because the police are under resourced, under staffed, and lack training. This is compounded by the fact that the police are quick to accuse the victim or fail to appreciate the nature and level of trauma they have experienced.
- Without adequate training and the necessary skills to question victims appropriately or collect evidence, CID investigators often compromise the prospects of successful prosecutions.
- In addition, geographic isolation is a major obstacle to obtaining redress through the criminal justice system, which is largely inaccessible in rural areas. When victims' families do report, cases are prosecuted at regional courts, so they must travel to and stay in one of six main urban centres in Somaliland. Simply traveling to a city can cost a rural family upwards of \$200 dollars. This is a prohibitive financial burden for poor rural families.
- The challenges for victims continue once their case reaches the prosecution and courts with prosecutors and judges often asking intrusive questions in the absence of victim protective measures.

- Moreover, with the existence of only one victim support service, Baahi-Koob, which is located in the capital city of Hargeisa, there is little encouragement or assistance to take a case through the courts.

Reluctance to Report Rape

- Women and their families are often reluctant to report rape to law enforcement out of well-founded fear that the victim will be socially ostracised. The stigma prompts families and elders to deal with rape privately in the customary system. The problems they hear about the criminal justice system further serve to discourage women from reporting.

Lack of Awareness of the Formal Justice System

- A further complication limiting the use of the criminal justice system is that a significant portion of the public has no knowledge about it or how it works. This makes it much less likely that rape will be reported.

Preference for the Customary System

- People in Somaliland, particularly in the rural areas, prefer using the traditional system because the formal justice system is simply too expensive and inaccessible. Distrust of the formal system also deters many victims from resorting to the police and the courts.

Looking to the Future

- *Horizon Institute* is publishing *Seeking Justice for Rape in Somaliland* to encourage dialogue and coordination between the relevant justice sector actors and health professionals, in order to safeguard and advance the progress made by the Attorney General's directive, ensure that all officials involved in rape cases abide by it 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 that the public views as credible and legitimate to end impunity for rape in Somaliland.

Chapter 1

SOMALILAND'S CRIMINAL JUSTICE SYSTEM

Definition of Rape

For the purposes of this report, rape is defined as the male sexual organ penetrating the female sexual organ. Discussion is limited to heterosexual rape where females are the victims. Horizon chose this focus because this was the primary form of rape brought up by interviewees and it accounts for most judicial action on sexual violence in Somaliland.

The legal definition of rape, termed “carnal violence,” in Article 398 of the Somaliland Penal Code is:

1. Whoever with violence or threats has carnal intercourse with a person of the other sex, shall be punished with imprisonment for five to fifteen years. 2. The same punishment shall be imposed on anyone who has carnal intercourse with a person of the other sex who is incapable of giving consent or with a person who has been deceived by the offender personating as another person. 3. The same punishment shall be imposed also on a public officer who, by abusing his power, has carnal intercourse with a person of the other sex who is under arrest or detained in custody under the said officer by reason of his office or entrusted to him in execution of an order of the competent authority. 4. For purposes of penal law, penetration of the male sexual organ shall constitute carnal intercourse.

The penal code's definition of rape limits the crime to a male perpetrator raping a female victim where there is force, deception or abuse of power.

Sexual Offences Bill

This antiquated definition may soon be amended. On 8 January 2018, Somaliland's House of Representatives (HoR) passed the Sexual Offences Bill. If approved in its current form by the House of Elders, known as the *Guurti*, which has the power to review any law passed by the HoR, and signed into law by the President, the Bill will significantly change the outdated definition of rape in the Penal Code.

The Bill will alter the legal definition of rape to “any person who commits sexual assault without the consent of the victim or sexual assault that is carried out by physical force, coercion or threat.” It will also raise the potential sentence for rape from five to 15 years to 15 to 20 years. The Bill further provides for higher sentences if aggravating circumstances, like raping a child less than 15 years of age, are found.

The Pluralist Legal System

Even if the outdated definition of rape is amended, the prosecution of rape will still be challenging because Somaliland's pluralist legal system makes it far from straightforward. It is a multi-layered justice system without clear divisions in jurisdiction composed of three overlapping, and at times conflicting, types of law: (i) *Xeer* Somali, the customary legal system of unwritten conventions and procedures that is implemented by elders, (ii) the formal justice system, based on Italian civil law and British common law,² and (iii) Sharia law led by Islamic religious leaders.

Customary Law

Historically, in the absence of a centralised authority in the pastoralist Somali society, elders applied *Xeer* to resolve conflicts between clans and to regulate access to resources and land.³ Somaliland now has a centralised authority and a formal justice system, but elders still regularly use *Xeer* to settle disputes. Unlike formal law or Sharia law, customary law is not universal among Somalis, but specific between any two clans or sub-clans. In the case of a dispute, the male members and elders from the involved clans or sub-clans negotiate based on the *Xeer* that is specific to their two clans or sub-clans. For example, if the two clans concerned have historically handled a crime in a certain way in the past, they will do the same for the current conflict. Moreover, customary law provides a collective outcome, not individual punishment or redress for crimes. Rape is often dealt with through payment of compensation to the victim's family, or sometimes through marriage of the victim to the perpetrator if she becomes pregnant as a result of the rape or if she and the perpetrator were in a romantic relationship at the time of the rape.

Criminal Law

Somaliland's criminal justice system, put in place after the fall of the central government in Somalia in 1991, consists of a three-tier judiciary, the Attorney General's Office (AGO), individual defence lawyers and an out-dated legal framework. The judiciary is divided into a Supreme Court, courts of appeal, and two courts of first instance, the regional and district courts. The six main regional courts—located in the urban areas of Hargeisa, Borama, Burao, Erigavo, Las Anod and Berbera—are the first instance courts with jurisdiction over rape.⁴ The courts in Gabiley, Wajale,⁵ Baligubedle, Oodwayne and Aynabo also have jurisdiction over rape because they have dual jurisdiction as district/regional courts. The AGO has offices or representatives in these towns, but no prosecutors in the rural areas. Private defence lawyers are scarce and the

² During British rule from 1884 to 1960, statutory and British common law were imposed on Somaliland. However, after independence, when Somaliland merged with Somalia—a former Italian colony with a civil law tradition—Somaliland's formal justice system was altered from a common law to a civil law approach. Barry Hart and Muhyadin Saed, *Practices of Customary Law, Conflict Transformation, and Restorative Justice in Somaliland*, Africa Peace and Conflict Journal (2010).

³ L. Moe and M. Simojoki, *Custom, contestation and co-operation: peace and justice promotion in Somaliland*, 13:4, Conflict, Security and Development, 393-416 (2013)

⁴ District courts only have jurisdiction over crimes with a potential sentence of up to three years' imprisonment. Regional courts have jurisdiction over all other crimes. Rape falls under the jurisdiction of the regional courts because the crime carries a potential sentence of five to 15 years' imprisonment.

⁵ Wajale, located in Maroodi-Jeex Region, is a branch of the Gabiley District/Regional Court.

State only has to provide an indigent defendant a court appointed attorney by law when the crime is punishable “by death, imprisonment for life or imprisonment for more than twenty years.”⁶ However, the Ministry of Justice employs a handful of public defenders that can represent defendants in assize cases. This includes rape, which carries a potential sentence of five to 15 years.⁷ Moreover, Somaliland’s criminal justice system is based on a Penal Code—adapted from the Italian civil law penal code from colonial Somalia—and a Criminal Procedure Code—adapted from the common law Indian Code of Criminal Procedure applied to Somaliland when it was a British Protectorate—that were drafted before the 1960s and have never been revised.⁸

Sharia Law

Sharia law, which was in use in Somaliland before it became a British Protectorate, directly influences the formal justice system, including criminal law, because Article 5.2 of the Constitution requires that “the laws of the nation shall be grounded on and shall not be contrary to Islamic Al-Sharia.” As such, Sharia law should take precedent over the formal justice system and even *Xeer*, but this only happens in practice if the presiding judge in a case has expertise in Sharia law.⁹ Religious leaders throughout Somaliland also settle issues arising from marriage, divorce and succession.¹⁰

A Multi-Layered System

The three types of law cannot, however, be understood as clear-cut categories or distinct justice systems. The lines between *Xeer*, the formal justice system and Sharia law are blurred.¹¹ There is neither harmonisation of the application of the three different systems nor a division in jurisdiction, which results in an *ad hoc* and highly subjective application of the laws. Sharia law directly influences both the formal justice system (as mandated by the Constitution) and *Xeer* by dictating the type and amount of compensation in customary agreements or imposing marriage as a resolution to rape.¹² Moreover, the formal justice system and *Xeer* are intertwined. For example, the police at times arrest suspects or conflicting parties upon the request of elders, underlining the extent to which the formal justice system and *Xeer* are interdependent. Both are influenced by Sharia law, but *Xeer* often takes primacy.

This complex justice system is deeply embedded in Somaliland society and impedes the prosecution of rape cases. Under the formal justice system, after a rape is reported, the police transfer the case to CID officers who investigate and refer the victim for medical care. If the CID finds sufficient evidence, the case is transferred to the prosecution to decide whether the case is

⁶ Somaliland Organisation of the Judiciary Law, No. 24, Art. 14(2) (2003).

⁷ Horizon Institute, *Baseline Study for Informed Investment in Somaliland’s Justice Sector*, (July 2017) available at: <http://www.thehorizoninstitute.org/baseline-study-project/>.

⁸ *Somaliland Criminal Procedure Law*, http://www.somalilandlaw.com/criminal_procedure_law.html.

⁹ University of Hargeisa Academy for Peace and Development, *The Judicial System in Somaliland* (2002) <http://www.mbali.info/doc178.htm>.

¹⁰ Mohamed Farah Hersi, *Research Guide to the Somaliland Legal System*, http://www.nyulawglobal.org/globalex/Somaliland.html#_2.1.2_Sharia_Law.

¹¹ B. Baker and E. Scheye, *Multi-layered Justice and Security Delivery in Post-conflict and Fragile States*, 7(4), *Conflict, Security and Development*, 503-528 (2007).

¹² Moe and Simojoki, *supra* note 5.

strong enough to go to court. However, elders often try to facilitate a settlement in the customary system while a criminal case is pending because there is no jurisdictional provision prohibiting parallel proceedings in *Xeer* and the formal system. Elders pressure the police, prosecutors and judges to stop adjudication in the courts and, more often than not, they succeed. Because of this overlap in jurisdiction and the primacy of *Xeer*, the formal justice system loses credibility and the victim is denied justice when the courts cede a case because families and elders have reached agreement.

Chapter 2

THE PREVALENCE OF RAPE IN SOMALILAND

Rape Cases Represent a Small Percentage of Criminal Cases

The negative impact of Somaliland's criminal justice system on rape prosecutions is evidenced by the low numbers of cases that reach the courts. Horizon undertook a quantitative study of Somaliland's justice sector from 15 December 2016 to 31 July 2017, and found that of the criminal cases entering the system in 2016, only a small percentage were rape cases. Of the 6,736 criminal cases in 2016, only 239 were for the crime of rape.

The trend towards few rape cases was also present at the five regional court centres monitored for Horizon's quantitative study from February to May 2017. Of the reported criminal cases at courts in Las Anod during this period, zero reported cases were for sexual and gender-based violence (SGBV). In Borama, seven of 117 reported criminal cases (five per cent) were rape cases. The same was true in Burao, where reported SGBV cases (one sexual assault, five attempted rapes and 11 rapes of 301 criminal cases) made up five per cent of all criminal cases. At courts in Erigavo 20 per cent of reported criminal cases were listed as SGBV (seven rapes of 36 criminal cases). Courts in Berbera had the highest percentage with 21 per cent SGBV cases (12 rapes of 56 criminal cases).¹³

The low number of rape cases dealt with in the formal justice system was confirmed by the AGO's 2017 case statistics. Of 3517 cases in 2017, 166 were rape cases.¹⁴

Rape in Somaliland: On the Rise?

Despite the low numbers of rape prosecutions, it is a common perception that incidents of rape are increasing in Somaliland. The Attorney General's directive itself was a response to the apparent escalation in rape cases. Yet, there are no clear and reliable statistics showing that rape is actually increasing in Somaliland. Currently, each institution involved in the process of collecting statistics or prosecuting rape cases—CID, Baahi-Koob,¹⁵ the AGO, and the courts—collects data on the number of rape cases occurring in Somaliland individually and for their own purposes. The institutions do not collaborate on collecting data. Therefore, there is no comprehensive statistical picture of rape in Somaliland.

¹³ Horizon's July 2017 Baseline Report, *supra* note 7.

¹⁴ Attorney General's Office, *Annual Report on SGBV*, 2017.

¹⁵ Baahi-Koob is a one-stop centre that provides counselling and legal advice for rape victims. It is the sole rape victim support service in Somaliland and it only has one office which is located in the capital of Hargeisa.

As illustrated by Fihima Taani, Director of the AGO's Women and Children's Unit, Somaliland agencies have varying standards for what data they collect and record.

[The AGO] doesn't get more than about 94 [rape] cases annually. Baahi-Koob, for example, might say there were 400. They always cite much higher numbers. They record every case, even those they themselves turn away for whatever reason. Some [cases] go as far as a first interview with the CID, but then are dropped for lack of sufficient evidence or the parties never come back [and the AGO doesn't record these cases].¹⁶

What is more, the international donors that fund these institutions often require statistics for their own purposes, which has further resulted in *ad hoc* data collection and ultimately conflicting numbers. The situation is exacerbated by the failure of international organisations to collaborate in addressing rape in Somaliland leading to a number of competing programs.

With international organisations taking different approaches to addressing the issue of rape in Somaliland, and Somaliland institutions providing donors with contradictory statistics on rape, it is difficult to understand precisely what is happening and how to respond in a meaningful manner. Undoubtedly, any occurrence of rape is grave, and Somaliland institutions and international organisations are right to try and tackle this problem. In order to do so effectively, 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 data as possible on the situation of rape.

¹⁶ Interviewed in Hargeisa on 20 November 2017.

Chapter 3

RELUCTANCE TO REPORT RAPE

If the authorities are not made aware of a rape, the criminal justice system cannot prosecute. But there are strong cultural inhibitions against speaking publicly about rape in Somaliland. Reporting a rape is not as simple as a victim making a complaint to the police. In Somali culture, it is rarely the woman herself who decides whether or not to approach the police. More frequently, her male relatives—either her father and his brothers if she is unmarried, or her husband and his brothers if she is married—decide whether to involve the police or the elders. According to Abdiaziz Khadar, a judge in Borama, if a woman went to a police station alone, “the first thing the officer will ask is why she did not come with her father.”¹⁷

Horizon’s research shows that families will not report a rape for a number of reasons, including protecting their female relative from public embarrassment.

Shame and Stigma

Article 36 of the Constitution guarantees gender equality, but male dominance prevails in Somaliland and women shoulder the shame for rape. This stigma can ruin a woman’s marriage prospects. Therefore, families believe that settling the case privately under *Xeer* is in her best interest. Other families, however, never have to make this decision because a victim may hide the truth. Filsan Rabi, the chairperson of a first response team in an internally displaced person’s (IDP) camp in Hargeisa, recalled a conversation with a woman who refused to tell her family because she feared being stigmatised.

A girl left Hargeisa University late at night. Three boys shined a torch into her eyes so she couldn’t see and they raped her. I helped to take her to the hospital. Luckily she wasn’t pregnant. Because she didn’t see the boy and wasn’t pregnant, she didn’t want to go to court. But she was traumatised. I asked her how she would hide the rape from her family. She said she’d just tell them she was sick. She was worried about getting married in the future and about her relationship with the community.¹⁸

Even if the woman tells her family, Fardous Adan, a defence lawyer in Hargeisa, commented that she might still want to use the customary system.

She [may believe] it’s better to let the family deal with it. This way, she may have a chance at finding someone to marry or in some cases, she will marry the perpetrator so that there is less shame on her.¹⁹

¹⁷ Interviewed in Borama on 17 October 2015.

¹⁸ Interviewed in Hargeisa on 19 October 2015.

¹⁹ Interviewed in Hargeisa on 12 October 2015.

Some women marry the accused under a customary agreement because, even if this marriage ends in divorce, this is preferable to public knowledge about the rape. Kaysar Hussein Ismail, an IDP living in Hargeisa, remarked that “even if they spend only one night as husband and wife, it’s better to be a divorced woman than a raped woman.”²⁰

Embarrassment about rape can be even more pronounced in the countryside. Fardous Yusuf, a nurse in the district of Faraweine, said “[women] are more afraid of stigma here than in Hargeisa.”

“The [victim] is really worried about her future and if she will be able to marry. Community members will say she was raped and no one will want to marry her.”²¹

Because of the shame, it does not surprise Ayaan Ahmed, a social worker at the Ministry of Labour and Social Affairs (MOLSA), that the family would hide the offence to protect her reputation.

Somali culture is very strong. The parents fear the daughter will not get married after being raped. So they will want to keep the case out of the [formal] justice system. If everyone knows she has been raped, no one will want to marry her.²²

The Influence of Elders

Guarding the reputation and marriage prospects of a woman prompts elders to urge a family to keep their distance from the authorities. Elders play a critical role in maintaining peaceful co-existence between communities mediating conflicts, including rape, in Somaliland society. They hold a position of considerable influence within the community and pressure from them can convince a victim and her family not to contact the police.²³ According to Yurub Ibrahim, an IDP in Hargeisa, elders encourage women and their relatives to leave rape cases to the customary system, and they often succeed in their efforts.

They say the victim’s reputation will be damaged. Also, rape cases [lead to] revenge in our culture, so the woman’s family will say they have to rape a woman in the other family. The elders try to prevent this type of revenge by negotiating compensation or marriage. Elders always get involved in rape as soon as they hear about it, especially when there is a serious dispute. Most of the time families accept what the elders want.²⁴

In addition to safeguarding the woman’s reputation and keeping the peace in the community, elders are also concerned with the future of the alleged perpetrator. Gudoon Ahmed, a Deputy Attorney General (DAG) in Burao, said that elders often seek to protect the accused.

The traditional elders from the accused’s side, who choose to solve a rape case through customary

²⁰ Interviewed in Hargeisa on 19 October 2015.

²¹ Interviewed in Faraweine on 20 October 2015.

²² Interviewed in Hargeisa on 11 October 2015.

²³ Clans select elders, who are always adult males, to represent their clan or sub-clan and delegate authority to elders to advocate on their behalf and to represent their interests.

²⁴ Interviewed in Hargeisa on 19 October 2015.

system, usually argue that the rapist is a student or recent graduate with a whole future ahead of him. Or that he is the breadwinner of a family and doesn't deserve to be jailed for the rest of his life.²⁵

Beyond maintaining social conventions, elders frequently benefit financially from their involvement in rape cases, taking a portion of the compensation the perpetrator's family pays to the victim's family. Hodan Mohamed, a lawyer at the National Human Rights Commission (NHRC), gave an example.

21 perpetrators raped two women. I recently found out they were released. Each perpetrator paid \$5,000 and the families of the two women split the \$105,000. But the women's families only received \$37,000 each instead of \$52,500. The rest of the money went to the elders. So there is a real incentive for elders to keep these cases in the customary system.²⁶

DAG Gudoon said elders "make a minimum of \$100 through the customary system" and that the prospect of earning money is "a major reason why they insist that families use the customary system over the formal justice system."

Mohamed Ali, a CID officer in Borama, echoed this point regarding a financial interest.

These men are just looking for money and don't care about the well-being of the victim.

Hamse Hirsi, a Saahil Regional Court judge in Berbera, had reached a similar conclusion.

Historically the elders would deal with problems in the community without the expectation of receiving payment. But now there are elders who see their role in the community as a job and want to earn money from it. This leads them to pressure families to use the customary system.²⁷

Judge Abdishakur Ali, at the Awdal Regional Court in Borama, also believes that elders "benefit from the compensation paid in customary law."

They take some of the livestock or money as part of their expenses for the meetings.²⁸

The same is true in Sool and Sanaag regions. Faisal Omar, a police officer in Erigavo, described how the elders profit financially.

The amount paid based on a customary agreement depends on the families involved. But the victim's family is usually paid forty sheep or \$500 to \$1,000. I believe the elders receive around 80% of the compensation. The main reason they are pushing for customary settlements is so they can make money.²⁹

In the words of Ali Suleiman Mohamoud, a judge in Las Anod, "the elders gain a lot financially."

²⁵ Interviewed in Burao on 24 December 2017.

²⁶ Interviewed in Hargeisa on 30 September 2015.

²⁷ Interviewed in Berbera on 2 December 2015.

²⁸ Interviewed in Burao on 30 January 2016.

²⁹ Interviewed in Erigavo on 31 January 2018.

Depending on the case, compensation is around \$500. Most of the money goes to the elders and some goes to the family of the victim. But the victim gets nothing.³⁰

However, Omer Ali, an elder in the village of Lafo Ruug in Saahil Region, disagrees and argued that families – both the victim’s and accused’s – only reimburse elders for their personal expenses.

Elders have to spend money on transport, food and accommodation if they are from another town, so the families have to pay the elders. For example, depending on the case and the families involved, an elder may have to travel here from Burao or Borama. Both the victim’s family and the accused’s family have to pay the elders. The payment is around \$500 for each family, so \$1,000 in total. The elders involved divide this money.³¹

Regardless of their motive for negotiating a customary agreement, elders are influential. Filsan Rabi commented that some victims and their families, in the IDP camp in Hargeisa where she works, will not report a rape because they know elders have the power and influence to withdraw a case from the courts.

Women know that even if they submit their case to court, the elders will take it out of court, which means the perpetrator isn’t punished. Some rape victims don’t take their case to court because of this.

Ignorance of the Formal Justice System

While the influence of elders may cause some cases to go unreported to the formal justice system, Hussein Fadal, an appeal court judge, remarked that others use *Xeer* because they are unfamiliar with criminal prosecutions.

People in general are more used to the customary system, so they prefer to take rape cases there. In Gabiley you can find people who don’t know anything about the courts. I’d say about only 30 per cent of the population in Gabiley know how the courts work.³²

People living in rural areas are likely to know even less about the formal justice system. Shamis Omar, the chairwoman of a women’s village association in Dhabolak, in Maroodi-Jeex Region, observed that members of her community often do not know how to use the courts.

“People are ignorant about the courts. They just know the court exists, but they don’t know that a person who rapes a girl should be arrested and go before the court.”³³

³⁰ Interviewed in Las Anod on 27 January 2018.

³¹ Interviewed in Lafo Ruug on 1 December 2015.

³² Interviewed in Berbera on 2 December 2015.

³³ Interviewed in Dhabolak on 20 October 2015.

Yurub Ibrahim, cited earlier, agreed.

Most of the people who live in Salahley don't know that the accused should be arrested and appear before a court. Instead, when there is a rape they approach the elders immediately.³⁴

She stressed that the government needs to create better understanding about what victims and their families should do when a rape occurs.

The government raises awareness about the importance of vaccines and what to do when there is a land dispute. But they don't do anything about rape and gender-based violence.

According to the AGO's Fihima Taani, the government seeks to educate the public about the criminal justice system through short television programs. She acknowledged these efforts do not reach every community since many households do not have access to televisions.³⁵

Ahmed Dalmar, a Maroodi-Jeex Regional Court judge in Hargeisa, called for greater public knowledge about the court system, especially outside the main urban towns.

The only way to stop cases from exiting the formal justice system is to make the public more knowledgeable [about the courts]. People don't know about the formal justice system or are afraid, so they don't come. Sometimes girls also report the case too late, often after a week, so there is no medical evidence. There is nothing but her word. We have to intensify publicity so that girls who are raped have to come to the police immediately. In Hargeisa, most people know about reporting rape, but we need to make sure people in the countryside also know.³⁶

However, as of November 2017, Fihima Taani confirmed that the government was not carrying out any awareness raising efforts to her knowledge.

I don't know of any recent awareness raising programs by the government. As far as the AGO is concerned, we regard awareness raising as the responsibility of the MoJ. We have not done any regarding the directive, but I do recognize that it would have been an effective strategy to do so.

When awareness campaigns have been carried out on the importance of prosecuting rape, the results have been positive. According to Luul Ismail, a village committee member in Burao, her group's efforts to educate the public on why rape should be prosecuted has led to more reporting and lowered the rate of customary agreements.

Currently, families of rape victims prefer the formal justice system to traditional agreements because they understand that the best way to get justice for the victim is to punish the criminal. I believe that is the main reason that most rape cases in Burao go through the courts now.³⁷

³⁴ Interviewed in Salahley on 29 November 2015.

³⁵ Interviewed in Hargeisa on 28 September 2015.

³⁶ Interviewed in Hargeisa on 12 October 2015.

³⁷ Interviewed in Burao on 25 December 2017.

Judge Saeed Nur, sitting on the Togdheer Regional Court in Burao, confirmed that the village committee's efforts to make the public more knowledgeable and change their opinions are making a difference.

I have handled ten rape cases since I was transferred to Burao in April of 2017 and I haven't seen any traditional elders asking that rape cases be resolved through the customary system. I have been really surprised that the Burao community prefers the formal justice system for rape cases. When I was a judge at the regional court in Berbera, traditional elders contacted me several times. The reason that the elders aren't attempting to withdraw rape cases from the courts can be attributed to the general population's awareness in Burao of the severity of a rape case.³⁸

Mistrust of the Formal Justice System

Even if a woman's family is familiar with the criminal justice system, they still may not inform the authorities due to a lack of confidence in the formal system. An elder from the Saahil Region, Omer Ali, spelt out the reasons why he believes families favour settling under *Xeer*.

The community doesn't trust the courts. The judgments coming from the courts are different from the customary law and are not in line with our culture. The criminal law and the customary law conflict, and the court cannot apply customary law. This makes people keep their distance from the courts.

The reluctance of the public to engage with the courts, he argued, is reinforced by the perception that the system is neither fair nor effective in enforcing judgments and sentences. He cited a murder that took place in Berbera in 2007.

The final judgment from the courts was the death penalty. But the murderer is still alive in prison. So the courts don't uphold their own judgments.

**“The judgments exist only on paper and are never enforced.
People see this happening and they lose faith in the courts.”**

There are also, he added, concerns about sentencing.

A rapist can be convicted to two years' imprisonment. But then he may be released early and you see him back in town before his sentence is up. The community sees this and they conclude that the formal justice system is not working right. As a result, they don't take their cases to court.³⁹

There are many challenges undercutting confidence in the courts. Hodan Mohamed from the NHRC believes that corruption, discussed in depth below, which is said to be prevalent throughout the formal justice system, is another impediment.

The public know they will have to pay bribes. So this is a big barrier. They say the police and even the staff in the courts will ask them for money. Everyone asks victims for money in the

³⁸ Interviewed in Burao on 26 December 2017.

³⁹ Interviewed in Lafo Ruug on 1 December 2015.

formal justice sector. It ends up being a lot of money for them [to pay]. The customary system is not fair, but people believe in it.

Abdullahi Abdi, the Maroodi-Jeex Public Defender, however, commented in November 2017 that he thinks victims are starting to trust the formal justice system, at least in Hargeisa, because more judges are rejecting customary agreements and prosecuting rape.

Alleged rapists are now being prosecuted and customary agreements aren't accepted as easily. This has improved the willingness of women to report because they have more confidence that the courts will actually follow through and prosecute the defendant.⁴⁰

Cost of Taking a Case to Court

Paying bribes, however, is only one of the many costs that make the formal justice system financially inaccessible for victims and their families. They also have to pay for transport to and from the CID, Baahi-Koob, the AGO and the court. The expenses of taking a case to the regional court are prohibitive for people living in rural areas, commented Mustafe Osman, an elder from Salahley, a mere 69 kilometres from Hargeisa.

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. Some families cannot meet all these expenses.

“If the victim’s family has to send four people to court in Hargeisa, it would be \$200 at least. This is including transport on the milk truck, \$5 per person, accommodation, about \$10 a night per person and food at about \$10 per day for each person. This is really a lot of money for people from this village.”

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.⁴¹

The AGO's Fihima Taani noted that the time it takes to deal with a rape case in the courts compounds the worries related to costs.

In the customary system, the men of the families involved will meet in a house. The first time they will listen to the two parties. On the second day they will give their judgment. It is two days from start to finish. But in the formal justice system it can take months. I've seen many victims choose the customary system because, they say, there are no fees, no transport costs, and the time is shorter. The customary system is easier.

Among the reasons why families favour the customary system, Horizon's research pinpoints cost as the main factor. They simply cannot afford the expenses associated with taking a rape case through the criminal justice system so they do not report. Somaliland has mobile courts, discussed more below, that are meant to eliminate the need for rural persons to pay to travel to

⁴⁰ Interviewed in Hargeisa on 2 November 2017.

⁴¹ Interviewed in Salahley on 29 November 2015.

urban areas to adjudicate cases. However, mobile courts largely operate at the appeal level and therefore are not a viable option for rural rape cases, so transport costs remain a major obstacle.

Monetary Compensation

A family may also choose not to report and instead opt to receive monetary compensation from the family of the accused. To IDP Filsan Rabi, the fact that people are “vulnerable and poor” can dictate their choices.

They would rather take camels as settlement to help them survive instead of taking a rape case to court.

Lack of Confidentiality

The choice to report is usually not up to the woman. But even if it were, she may agree with her family’s preference for the *Xeer*, as a more comfortable process for her. During a prosecution, she has to recount her story at least six separate times and answer potentially painful questions.⁴² In contrast, elders do not question the woman under *Xeer*. Hanan Omar, a lawyer who has worked with Somaliland’s only victim support centre Baahi-Koob, said the customary system spares women “the shame and embarrassment of talking to the police and the court.”

The police will accuse the victim of acting indecently and say it’s her own fault she was raped. The court will also have to question her about the rape, making her feel uneasy. In the customary system they don’t ask her anything. Some women go for the customary system because they don’t have to sit through questions and feel anxious.⁴³

⁴² Rape victims in the formal justice system must repeat their story at least once to the police or CID when they make the initial report, twice to the CID during investigations, once to the prosecution and once when they testify at court.

⁴³ Interviewed in Hargeisa on 30 September 2015.

Chapter 4

PROSECUTIONS DISCOURAGE VICTIMS

If a victim and her family decide to report a rape, the current shortcomings of the criminal justice system often dissuade them from seeing the case through the courts. Based on her experience as a lawyer, Hanan Omar commented on how and why they become increasingly despondent.

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; she is depressed about the reality of the formal justice system.

Financial pressure, inaccessible government services, a lack of a victim-centred approach to prosecutions and insufficient support services all contribute to the fact that women and their relatives feel disillusioned with criminal prosecutions and illustrate why they opt out.

Bribes

As discussed earlier, corruption in the formal justice system undercuts confidence in the courts. It also stops people from going beyond reporting and actually securing prosecution of their case. If they have to pay a bribe, some individuals, especially the poor and vulnerable, cannot afford to take their case through the courts given that the GDP per capita is estimated at only \$347 in Somaliland.⁴⁴ NHRC’s Hodan Mohamed said that unlike the aggrieved party in civil cases, victims in a criminal trial are not required to pay court costs.

There are no formal costs for rape when a case goes to court. So if there are payments for anything outside of transport, it’s a bribe.

The interviewees Horizon spoke with identified the police as being particularly receptive to payoffs. The reason, they said, is because they are unable to support families on their low salaries, which in most cases is the equivalent of \$100 per month. Faisal Omar, a CID officer in Erigavo, confirmed that some police officers receive as little as \$55 per month.⁴⁵ If an officer does not reject a case outright, because he thinks the complaint is without merit, they might not

⁴⁴ Ahmed Hassan Hirsi, interviewed in Lafo Ruug on 1 December 2015; *World Bank GDP and Poverty Estimates for Somaliland* (29 January 2014), <http://www.worldbank.org/en/news/press-release/2014/01/29/new-world-bank-gdp-and-poverty-estimates-for-somaliland>.

⁴⁵ Interviewed in Erigavo on 31 January 2017.

transfer it to the CID without payment of a bribe. “Often families have to pay the police to make a report,” according to a lawyer in Hargeisa.

When families pay the police, the police will be helpful. If the police are bringing someone to Baahi-Koob, it is because her family has paid a bribe. I don’t know how this can be stopped because it’s become part of [how things get done]. The police really need to be taught ethics, and a law that makes corruption like this illegal must be passed. I don’t know if this will ever happen. The police don’t even pass on some of the cases to CID because they haven’t received a bribe.

An official working at the AGO also stated that officers often demand kickbacks.

If you want the police to do something, you must pay them to work. If a family doesn’t have money to pay the police, the police won’t say that they can’t help the victim. They just won’t do anything to make sure the case proceeds. And it’s even harder for poor and uneducated people to get the police to help them.

Interviewed again in late 2017, the same official said the plight of the police remains unchanged.

The same situation still persists with regard to the police. Many members of the public always go in the first instance to the police and they take advantage of this to promise them to take action if they pay, and the public pays.

Hodan Mohamed from the NHRC underlined the economic reality facing policemen.

They make only \$100 a month and they may have between four and 12 children. On this salary, an officer must pay for his children to go to school, provide for health care, rent, water, and for things his wife needs. The salary is not enough to pay for all of this.

Ahmed Hirsi, an elder, said police officers were “underpaid” and described their life as “difficult.”

People will pay the police something to assist with their case. Because of the circumstances of the police, the family of the victim has to pay them.⁴⁶

Families who cannot afford bribes have no choice but to drop the criminal case.

Physically Inaccessible Services

Victims’ families also stop pursuing criminal prosecutions when they cannot meet the expenses of traveling to court. Court services are centralised in urban areas. Under the Somaliland Criminal Procedure Code (CPC), the court of first instance for rape is the regional court. The six main regional courts are located in the regional capitals of Hargeisa, Borama, Burao, Erigavo, Las Anod and Berbera, and there are district/regional Courts in Gabiley, Wajale,⁴⁷ Baligubedle, Oodwayne and Aynabo with jurisdiction over rape. The AGO has offices or representatives in these towns. While there may be police stations in the countryside, there are no courts with jurisdiction over rape or prosecutors to bring cases forward.

⁴⁶ Interviewed in Lafo Ruug on 1 December 2015.

⁴⁷ Wajale, located in Maroodi-Jeex Region, is a branch of the Gabiley District/Regional Court.

As Ismail Adan Arale, the assistant to the judge at the district court in Salahley indicated, geographic isolation coupled with the price of travelling to cities means that criminal justice eludes people living in the countryside.

We don't see rape cases in this court because we don't have jurisdiction as a district court. The district court can only deal with crimes that have a maximum potential punishment of three years. The punishment for rape is five to 15 years so we don't have jurisdiction. This is why rape cases go to the customary system in this area. The only role we have in a rape case is to give the police here a warrant to arrest the accused, but then we refer the case to the regional court in Hargeisa.⁴⁸

The cost of submitting a case to the regional court is beyond the means of most rural families. Abdikadir Iid, the judge at the Salahley District Court, said families have to take rape cases to court at their own expense.

The regional court is in Hargeisa, about 65 kilometres away. Though not too far, sometimes it can be hard for the victim's family to pay for transport to Hargeisa, especially if they have to foot the bill for witnesses as well. There are two types of transport from here to Hargeisa: the milk truck, which is \$5 one-way, and renting a car, which can cost between \$60-\$70 a day and this is excluding petrol. Petrol from here to Hargeisa is at least another \$20.

They may even have to pay to go back and forth between here and Hargeisa several times during the court process, as well as for accommodation, meals and transport within Hargeisa. One trip to Hargeisa can cost \$300 to \$400. This is a lot of money for people living here. Families here support themselves with their sheep and goats, so they sell livestock if they want to proceed to court with a rape case.⁴⁹

Mohamed Elmi, a prosecutor in Burao, said families faced similar obstacles in the rural areas of Togdheer Region.

A woman may have to travel 50 to 100 kilometres in order to reach Burao and the formal justice institutions. Depending on when she decides to report the crime, she can arrive days, weeks and even sometimes months after the rape took place. Either way, she and her family are the ones who are expected to pay the costs of the transportation and any other additional costs. One case can cost the victim and her family around \$200-\$300.⁵⁰

For extremely remote communities, using the criminal justice system is almost impossible, as Abdi Hayd, at the time the Regional Commander of Saahil Region, described.

Saahil Region has the worst environment, which normal cars cannot reach. As large areas remain cut off, it's difficult for people to report cases, and if they do, to get successful outcomes.⁵¹

⁴⁸ Interviewed in Salahley on 29 November 2015.

⁴⁹ Interviewed in Salahley on 29 November 2015.

⁵⁰ Interviewed in Burao on 30 January 2015.

⁵¹ Interviewed in Berbera in 2014.

Yassin Ali, a prosecutor in Erigavo, detailed the same situation in Sanaag Region.

Sanaag is a mountainous region and it can take over twelve hours by car from certain districts to reach Erigavo. It can cost almost \$300 just to travel to the city.⁵²

Horizon found that victims in rural areas of Sool Region also had to travel long distances to report rape cases and that this could cost between \$200 and \$300. Aydarus Abdillahi Ali, a prosecutor in Las Anod, pointed out that the victim's family pays even more in cases that take time to process.

“The families of victims from rural areas can pay on average \$600 in just expenses if the case is prolonged and they have to remain in the city. I’ve seen cases where families end up paying even more than this.”⁵³

Abdullahi Abdi, the Public Defender in Maroodi-Jeex Region, confirmed that most rape cases occurring in Somaliland's remote areas do not reach the courts because they are not physically accessible, giving the families concerned no choice but to reach an agreement.

Prosecutors cannot mitigate these costs by covering the transport costs or by traveling to the scene of the crime. Each regional AGO is responsible for rape committed in the countryside of their designated region and, ideally, prosecutors should travel to the rural areas where rapes occur to interview the victim and witnesses, or provide transport for the victim to travel to the regional office. However, as Abdirahman Eid, a prosecutor in Hargeisa pointed out, they do not have an adequate transport budget for travel.

This office is responsible for Hargeisa city and the whole of Maroodi-Jeex Region. All the prosecutors in this region are based in Hargeisa, so all the cases happening throughout Maroodi-Jeex Region are brought here to Hargeisa. When we get a report about an investigation in a remote area like Salahley, which is 60 kilometres from here, it's very difficult because we can't bring witnesses from the rural areas to Hargeisa. We don't have the vehicles or fuel or the money to cover the personal costs of the victim and witnesses while they are in Hargeisa. It's about \$50 to rent a car for a day. It's up to the victim's family to pay for transport to Hargeisa. Because of this, most of the rape cases that we deal with in this office are from Hargeisa.⁵⁴

Jama Saeed, a Berbera based prosecutor, made the same argument.

We might not be able to go if the scene of the crime is far away. We don't have a car at the regional prosecution office in Berbera, so we have to use our personal cars. We receive a quarterly fuel allowance of \$130 for the entire office, which is nothing and doesn't allow us to travel very far or very often.

If I use my personal car, I can't go to any villages off the tarmac road because I don't have a four-wheel drive. We don't have a budget to rent a car to get to these villages. We're responsible for six districts at the regional prosecution in Berbera: Abdaal, Bula-Haar, Sheikh, Go'da, Hagal and

⁵² Interviewed in Erigavo on 29 January 2018.

⁵³ Interviewed in Las Anod on 29 January 2018.

⁵⁴ Interviewed in Hargeisa on 27 September 2015 and 25 November 2015.

Laas Eidle. Go'da is the furthest district from Berbera. It's about 70-80 kilometres from our office. But the challenges my office faces with transport and getting to the scene of the crime is true whether we have to go somewhere in town or in the rural area because we just don't have enough money for fuel.⁵⁵

Borama prosecutor Abdi Elmi also lamented the fact that victims must pay for themselves and any witnesses to travel to the prosecutor's office.

There is no transportation to fetch them when we have rape cases in rural areas. No one will come to us because they don't have money for the car ride to Borama. Although it seems very simple, transport is what is needed.⁵⁶

A community member from the district of Faraweine, Hussein Abdi, confirmed that the dearth of services stops the public from using the court system.

If the government wants people to use the courts, then we need a government building here and the people to run it, because it's very hard for people to go to Hargeisa.⁵⁷

Somaliland's mobile courts are intended to expand access to justice for rural populations. The mobile courts were established with the help of UNDP in 2008⁵⁸ and operate at the regional, appeal and Supreme Court levels.⁵⁹ Through this initiative, judges and other justice sector actors are able to travel to communities without courts to hear cases and adjudicate complaints. With the regional and appeal courts located in regional capitals, and the Supreme Court located in the capital, Hargeisa, Judge Ali Suudi pointed out that the mobile courts are designed to increase access to justice in areas where there are only district courts or no courts at all.

The mobile courts work to bring justice to the communities who can't travel to cities. There is a lot of optimism about the ability of mobile courts to bring access to justice to the people. [The judiciary] sees mobile courts as part of our duty to expand access to justice.⁶⁰

However, the mobile courts function mainly at the appeal level and are not designed to respond quickly to time sensitive cases such as rape.⁶¹ The mobile courts do not have a subject matter focus and do not prioritise rape cases because, commented the Chief Justice, Adam Haji Ali, "all people need to have their cases heard."

The mobile courts don't focus on one particular group or type of case, although we are aware of vulnerable groups like women and children. Right now, we are just trying to make sure people outside of Hargeisa and the regional capitals have a chance to have their cases heard. We also

⁵⁵ Interviewed in Berbera on 2 December 2015.

⁵⁶ Interviewed in Borama on 18 October 2015.

⁵⁷ Interviewed in Faraweine on 20 October 2015.

⁵⁸ UNDP, "Evaluation of UNDP's Support to Mobile Courts in Sierra Leone, Democratic Republic of the Congo, and Somalia," (May 2014).

⁵⁹ Horizon's July 2017 Baseline Report, *supra* note 7.

⁶⁰ Interviewed in Hargeisa on 6 September 2016.

⁶¹ Interviews in Hargeisa, Gabiley and Borama September 2016.

don't have a plan to limit the mobile courts to just one type of case, so the mobile courts handle all cases.⁶²

As mobile courts currently operate, they are not a viable option for rural rape cases. Judge Abdikadir Iid, based at the Salahley District Court, suggested that transforming district courts into combined district/regional courts – so they have jurisdiction to prosecute rape – could be an alternative to mobile courts and would broaden access to justice for victims in rural areas.

The Supreme Court should appoint a regional/district court here in Salahley that has the jurisdiction to convict and process rape cases. This would cut down on unnecessary transportation costs. It would help bring other cases to the court as well because it would eliminate the cost of travelling to Hargeisa.⁶³

Absence of a Victim-Centred Approach

Rape is a complex and difficult crime to investigate and prosecute because the victim, the key witness, is often traumatised. Post-Traumatic Stress Disorder (PTSD) is caused by “exposure to a traumatic event. [I]ntense psychological distress occurs as a result of re-experiencing the event.”⁶⁴ How well a survivor is able to recover from the terrible ordeal of rape depends on the support she receives from her family and community, and from the legal system. Where these are not available, trauma is likely to persist for a long time, and can be exacerbated when medical, legal or healthcare professionals blame her for what happened. The experience of rape destroys the lives of survivors and their ability to re-enter society as fully functional members.

Given this context, victims may also respond to the investigation process and courtroom questioning in unexpected ways. Many cannot recount exactly what took place because of memory loss or they do not show visible signs of being upset because of shock.⁶⁵ A police officer or court official who reproaches them or questions their reaction to being raped reinforces the trauma.⁶⁶ An approach that takes full account of what the victim went through, prioritising their well-being, can avoid increasing the pain and fear and make it easier to employ constructive and successful investigation and prosecution strategies.

Police

In Somaliland, the criminal justice system, starting at the police station, generally blames the victim for being raped. Officers receive precious little education on the law, and even less training on how to interact with rape victims. Mohamoud Awale, a legal aid lawyer in Borama, had this to say about the police.

The police have little knowledge about the laws of Somaliland. They are meant to follow the penal and procedure codes, but they just write down the charge and that's all. They need to be

⁶² Interviewed in Hargeisa on 8 September 2016.

⁶³ Interviewed in Salahley on 20 December 2017.

⁶⁴ McGill J Med, 2006, July; 9 (2): 111-118.

⁶⁵ Elizabeth M. Donegan, *Strategies for Investigating Sex Crimes: Key Tactics for Sex Crimes Investigators*, Aspatore (2015).

⁶⁶ *Id.*

educated on the laws and they require training on investigations and generally they need capacity building.⁶⁷

The police do receive some training on SGBV from international non-governmental organisations (INGOs), but Armiah Hussein, a prosecutor in Burao, said this does not provide officers with sufficient skills.

At the moment, they are just given three-day seminars by INGOs and this is not enough.⁶⁸

Some cases end at the local police station and are never referred to the CID because, argued Filsan Rabi, the police have not been given sufficient training. The result, she said, is that the police hold victims responsible and sometimes reject cases.

“Some policemen will throw out a complaint, saying the woman was out late at night and the rape was her fault. Things will end there. We can’t change all of the police, but they need greater awareness and training to improve their skills.”

Criminal Investigations Department

When rape cases do reach the CID, the investigation process focuses primarily on obtaining evidence. While CID officers interviewed by Horizon said they try to put the victim at ease, the investigative techniques they use often put the victim at risk of reliving her trauma.

Often male officers interview rape victims. Entrusting the enquiry to a male investigator, commented Abdirahman Barre, a regional court judge in Borama, “isn’t good for the victim as she will feel shame and will not be able to open up about her ordeal to a man.”⁶⁹ But there is a shortage of female investigators throughout Somaliland. In Burao, the prosecutor, Mohamed Elmi, said there are only male CID investigators.

This is a big problem since women feel more comfortable with a female investigator. Some women withhold a lot of additional information from a male because they don’t want to go into the details of what happened to them.

Habon Farah is only one of two female CID officers in Borama. Although her office tries to assign female officers to rape cases, this is not always possible.

I try to make sure either I or the other female officer is assigned to a rape case because victims are usually more comfortable speaking to another woman. But our male colleagues will take on a rape case if we aren’t available.⁷⁰

⁶⁷ Interviewed in Borama on 20 October 2015.

⁶⁸ Interviewed in Burao on 30 January 2015.

⁶⁹ Interviewed in Borama on 17 October 2015.

⁷⁰ Interviewed in Borama on 4 December 2017.

A male CID officer is always assigned to rape cases in Burao according to DAG Gudoon Ahmed.

We only have one female investigator [in Burao]. But she doesn't work full time; nor does she work on cases by herself. I think having more female investigators would certainly help victims feel more comfortable in opening up during the investigation process.

The same is true in Erigavo as confirmed by CID officer Mohamed Ahmed Jama.

There are three female CID officers in Erigavo. They don't work full time so they aren't always here to interview the female rape victims. But they usually examine the victim for injuries because male officers can't do this.⁷¹

There are also no female CID officers in Las Anod in Sool Region, said CID officer Roble Muse, which means that a male CID investigator always conducts the interview.⁷²

Moreover, women reporting rape often face an unnecessarily intrusive interrogation. Investigators should avoid questions that rebuke the victim, like "why didn't you run?" Rahma Hirsi, a CID investigator in Hargeisa, insisted they try to ask only appropriate questions, but she acknowledged that sometimes investigators resort to seeking answers to "why."

The type of questions we ask are what, where and when. We don't ask "why" because it comes across as negative. That's for the court. We ask more open questions so that victims feel more at ease. They will feel accused if we ask them why they were raped. But we *do* ask: "Why didn't you shout," if she says she didn't shout. Or if she says she didn't tell anyone, we ask why not. So we may have to ask some "why" questions if they are important for the statement that goes to court.⁷³

It is also distressing for victims when investigators take them to the crime scene. Rahma Hirsi gave this reason why the CID does this.

The victim may remember more details. We tell her the scene of the crime is the key to [a successful prosecution]. Apart from remembering what happened, at least she knows that something is happening with her case.

Despite the good intentions of the CID officers, the investigative techniques they use need to be addressed and improved. While staff shortages may dictate using male investigators, this only underlines the imperative of recruiting and training female investigators. In addition, asking young girls and women inappropriate questions and taking them to the scene of their ordeal only serves to deepen their trauma and dampen their commitment to using the formal system.

⁷¹ Interviewed in Erigavo on 29 January 2018.

⁷² Interviewed in Las Anod on 29 January 2018.

⁷³ Interviewed in Hargeisa on 15 October 2015.

Prosecution

Rape cases are further undermined at the pre-trial stage by the prosecution. Although the prosecution represents the interests of the State – not the victim – when prosecuting a rape, a victim’s cooperation is integral to a successful outcome. It is therefore essential to establish a relationship with the victim that reinforces her willingness to assist the prosecutors. Central to a prosecutorial strategy focused on supporting the victim is minimising the number of times she is interviewed.⁷⁴ In Somaliland, however, prosecutors routinely conduct multiple interviews to test her account for inconsistencies. For example, the prosecution in Borama interviewed one woman a second time, not because her first statement to the CID lacked necessary evidence or because there were apparent contradictions, but merely to check for inconsistencies.⁷⁵

A prosecutor may have to interview a rape victim if the statement taken by the CID is incomplete, or if there are clear discrepancies that require explanation. However, routinely taking a second statement to assess the victim’s account for contradictions is not good practice. Moreover, even when such interviews are necessary, the AGO does not have a department-wide policy or guidelines on how prosecutors should question rape victims.

Aswan Jibril, a prosecutor in Hargeisa, described her personal technique.

When a case first comes to me, I will sit down with the victim in a room and I ask what happened to her. Before I do this, I tell everyone to leave the room so that she will feel comfortable speaking with me alone. Sometimes they do not want to speak to me at all. In these situations, I ask the mother or another family member to either ask her questions on my behalf, or to tell me what took place.⁷⁶

When the prosecution fails to take into consideration how the victim feels and does not make an effort to engage with her during the pre-trial phase, there is little likelihood she will want to assist and cooperate with the prosecution. Filsan Rabi, who works with IDP women in Hargeisa who have been raped, said they often complain to her about how the prosecution treats them.

“They ask us why we sent them to court when there is no one there to help them understand the process.”

Judiciary

The manner in which rape cases are dealt with at trial does little to reassure and inspire confidence in victims and their families. Universally recognised good practices that protect and encourage women to testify include the use of screens to block a view of the accused, permitting a support person to accompany the victim and closed courtrooms.⁷⁷ Somaliland’s formal justice system has implemented a closed courtroom for proceedings in rape cases. However, Ahmed

⁷⁴ Donegan, *supra* note 19.

⁷⁵ Regional Court: MGA/01/112/2014, Appeal Court: MRGA/DDDL/29/2014.

⁷⁶ Interviewed in Hargeisa on 13 October 2015.

⁷⁷ Donegan, *supra* note 19.

Dalmar, a regional court judge in Hargeisa, said that whether a family member can accompany a victim into the courtroom as a support person is left to the discretion of the presiding judge.

In the courtroom are the judge, the victim, the defendant, lawyers and one parent from each side. I allow the family in. Whether or not the parents of the victim and defendant are allowed into the courtroom is up to the individual judge. I let the parents in to help support the victim. For example, if the victim is five years old, she needs her mother. The mother will tell the girl to speak and not be afraid. Because her mother reassures her, the girl will tell me everything. The law allows judges to let family members in when we think it's necessary. I tried questioning a seven-year old rape victim by herself and she started crying. So I had to call her mother into the courtroom and then the girl spoke freely.

Moreover, there is no institution-wide policy on how a presiding judge should manage court proceedings and victim questioning in rape cases. Judge Abdiaziz Khadar, of the Awdal Regional Court in Borama, described his approach to rape cases and said “this varies with all judges.”

When a rape case is brought to the court, I will first listen to the information brought forward by the prosecutors. If the victim is a child, I will sit them next to me and ask them questions very carefully. I will also spell out the court process to them so they understand what is happening and what is expected from them during the trial. I do not speak to the child as though they are an adult as this will only confuse them. They are then asked questions by the prosecution and defence. If I am not happy with the questions asked, I will tell them to either ask something else or to change their question.

The lack of consistency in courtroom procedure, beyond a closed courtroom, results in some judges and prosecutors taking the victim to task, noted lawyer Hanan Omar.

**“It still happens that some prosecutors and judges hold her responsible.
And I think this will always happen because change depends on willingness.”**

The Chief Justice has said he aims to make the judiciary more sensitive to vulnerable groups like women, in part by establishing women's sections in courts. These sections would have judges who have been specifically trained on how to best approach victims of sexual violence. To date, no court has a women's section, and any accommodation for women are *ad hoc* efforts of individual judges.⁷⁸

A Dearth of Victim Support Services

Women taking a rape case through the formal justice system face a harrowing experience. For most who decide to report their rape, this is their first interaction with the judicial system and they do not know what to expect. Prosecuting rape is a complicated legal procedure that requires victims to go to several different institutions—the police, CID, Baahi-Koob, the hospital, the prosecution and the courts—and to repeat their story at every step. They must navigate this alone and without a designated support person. NHRC's Hodan Mohamed said there is only one dedicated victim support service in Somaliland which is located in the capital of Hargeisa.

⁷⁸ Horizon's July 2017 Baseline Report, *supra* note 7.

Baahi-Koob is the only support service for those who have been raped. They provide medical care, mental health care, and legal advice, all of which are very important for the victim. Previously, these services were all provided at different places, but now it's at one centre. They also explain the process of a rape case to the victim.

Other institutions try to provide what support they can, but their efforts often fall short. Fardous Adan, the legal aid lawyer in Hargeisa, said she can give a rape victim legal advice. But she recognized the need for additional assistance.

She also needs emotional support for trauma. There must be a change to ensure the victim is helped throughout the entire process.

The lack of support services, said IDP Filsan Rabi, accounts for why some women turn their backs on the formal justice system.

“There is no one standing beside them in court and they become disappointed. They don't go back. [Instead they] go to the customary system.”

Chapter 5

EVIDENTIARY CHALLENGES WEAKEN PROSECUTIONS

Prosecution can only end impunity for rape if there is sufficient evidence to convict. Investigations begin once victims and their families make a report to their local police station where their case is transferred to the CID or directly to the CID'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. Prosecutors and judges often blame investigators and medical staff for this, calling them lazy. The reality is that circumstances beyond their control, such as a scarcity of resources, undercut investigations.

Insufficient Evidence

The prosecutors and judges Horizon interviewed cited lack of evidence as the major stumbling block to successful prosecutions. Under Article 398 of the Penal Code, rape is defined as the male sexual organ penetrating the female sexual organ in one of four contexts:

- (1) the act was accompanied by violence or threats;
- (2) the victim was incapable of giving consent;
- (3) the accused impersonated another person; or
- (4) the accused was a public officer, such as a law enforcement official, and the victim was under his arrest or custody.⁷⁹

Somaliland's definition of rape is extremely narrow and judges often require evidence of force – torn clothes or injuries on the victim – before convicting. Ahmed Abdulle, a judge on the Sanaag Regional Court in Erigavo, said the biggest challenge for the judiciary in rape cases is a lack of evidence. “It's usually difficult to get witnesses because the act occurs in private.”⁸⁰

This means that cases often hinge on the medical report, any evidence found at the scene of the crime and the statements of the victim and accused. Rape cases, said Judge Ali Suudi Diriye, 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. There is also a big issue around consent. The accused will argue that there was consent but the victim will argue that she didn't consent.⁸¹

⁷⁹ Penal Code, Art. 398 (1962).

⁸⁰ Interviewed in Erigavo on 27 January 2018.

⁸¹ Interviewed in Hargeisa on 12 October 2015.

The CID, Buraao prosecutor Mohamed Elmi commented, is often singled out for poor work.

Most of the CID [investigators] don't have the relevant experience and knowledge on how to deal with rape cases. As a result, they are unable to put together thorough and reliable investigation reports.

Dahir Ibrahim, the head of the CID sex crimes unit in Hargeisa, accepted the shortcomings levelled at the CID.

Some of the criticism made by prosecutors about the police is right. Rape is a difficult crime to investigate because it's hard to find witnesses. We usually only have the statements of the victim and the accused and what little evidence we have found at the crime scene.⁸²

However, Judge Ahmed Dalmar commented that even if there are witnesses in a rape case, the prosecution does not always call them, further weakening the evidence.

The prosecution only brings the police report and victim to court. Sometimes the prosecution will bring a police report that lists witnesses to the crime. But they don't bring these witnesses to court.

When there is weak or no evidence, said Abdullahi Abdi, the Maroodi-Jeex Public Defender, the court might rely on a customary agreement. He described such a case in Erigavo in which he became involved at the appeal level.

This was a unique case. There was absolutely no evidence, not even a medical report, because the case wasn't brought to the courts until a month after the alleged rape. The only evidence the courts had was actually the customary agreement, which was in writing and said that the defendant had raped the victim. The court used this as proof of rape. I've never seen a court use a customary agreement as evidence in a rape case before. This was contrary to law because the Criminal Procedure Code states that only the defendant can make a confession. But the defendant's family arranged the customary agreement, so it wasn't really the defendant confessing but his family on his behalf.

A Deficit of Investigation Resources

Whether or not underperforming prosecutors and investigators contribute to inadequate evidence in rape cases, insufficient evidence is caused, in large part, by the lack of resources to investigate cases properly. With few resources and poor infrastructure, investigators are unable to develop solid evidence of rape. They do not always have transport to get to the crime scene and if they can reach it, they do not have the tools they need to do their work to acceptable standards. Investigators also have to operate with limited support facilities. In Hargeisa, the office of the CID sex crimes unit consists of one small room, an old computer, two unsteady desks and a few donated filing cabinets. This is where they interview rape victims and its location, off the courtyard, does not allow for privacy.

⁸² Interviewed in Hargeisa on 13 October 2015.

Abdi Hayd, at the time the Regional Commander in the Saahil Region, discussed similar problems in Berbera.

The CID has a small office which has far too much traffic, with people going in and out all day. There is no privacy. People might not even want to go there, with everyone knowing their business and pointing at them, as this leads to stigma.

Hargeisa CID's Dahir Ibrahim commented that investigators, even in Hargeisa, have little to no resources.

For the eight staff in my office, we only have one computer. So if there are multiple rape victims in our office, they have to sit out in the courtyard to give their statement and wait for the computer to be free. The victim may live far away, so getting her to court is a concern. Even to get to our office, she has to pay for her transport. If we had vehicles, we could pick up the victim and the perpetrator.

Even though the CID sex crimes unit does not have a dedicated vehicle, each office is responsible for investigating rape cases in the rural areas of their designated region. Shukri Ahmed, a CID investigator in Hargeisa, described the hurdles they must overcome to reach the remote villages her office covers.

At the CID office, we see victims from small towns around Hargeisa. The farthest place they come from is Biyo Shiinaha, a small town outside of Hargeisa, around 15-20 kilometres.

“We do not go to these rural areas unless we have the resources available. Usually, it will take us around a week to ensure we have permission, the fuel and the car to be able to go to the town. We can't get to every town because we don't have transport and fuel.”

Sometimes these rural areas have no roads and so we have to leave our car at the road and then walk to reach the victim. Once we left Hargeisa at 9:00 a.m. and reached the town at 10:00 a.m. But our car couldn't make it to their house and we had to walk. We reached the house at 4:00 p.m.⁸³

In Burao, the CID does not have a budget for transport, so it is up to the victim and her family to pay for fuel, as mentioned by prosecutor Armiah Hussein.

If the victim wishes to take her case forward, she will be required to pay for everything relating to the investigation. The furthest area outside of Burao takes around 40 to 50 litres of petrol, which is nearly \$100.⁸⁴

If the family of the victim cannot afford to pay for the CID's transport costs, then investigators may not be able to go to the scene of the crime. CID Officer Mohamed Jama, based in Erigavo, in Sanaag, said that if the victim's family “can't afford to rent a car for us, we can't visit the crime scene at all because we don't have transport.”⁸⁵

⁸³ Interviewed in Hargeisa on 13 December 2015.

⁸⁴ Interviewed in Burao on 30 January 2016.

⁸⁵ Interviewed in Erigavo on 29 January 2018.

CID Officer Habon Farah said in Borama the CID can only travel to the scene of a crime when a police car is available.

I travel once, twice or three times a month, depending on the cases we get. My travel is limited, not because of a lack of cases but because we don't have reliable transport. The CID doesn't have a car, so we have to borrow one from the police and can only use a police truck when it's available.

If the CID cannot to travel to the village or district to conduct an investigation, the local police may investigate. However, because the police face the same resource constraints as the CID, the family again has to pay for the costs of the investigation. Ahmed Sheikh, a village committee member, discussed similar circumstances at the Abaarso Police Station, outside of Hargeisa.

The police are supposed to take the accused to Hargeisa, but they don't have cars. They rent a car whenever they want to transfer someone to Hargeisa. The police had their own cars at one point, but not anymore. Their only resource is guns. Even when the police have to arrest the accused, the people who complained must rent a car and take the police to arrest the person.⁸⁶

In Burao, victims and their families also have to pay for transport costs for the police to go to the crime scene, as highlighted by Amina Yusuf and Abdillahi Yusuf, two village committee members in Aqibo and Xero Gaas.

The police will tell them they have the officers ready to go, but that there is no fuel for the car.⁸⁷

Hargeisa CID's Rahma Hirsi spoke about the various constraints they face that affect the quality of the crime scene.

The collection of evidence at the crime scene is the most difficult. If we see clothes, we can't investigate more than that because we don't have the tools to show if sperm is on the clothing. In the CID there are two units we go with to the scene of the crime; the crime scene unit and the finger print unit. We don't have our own car in the CID rape unit, so we use the cars of these two other units. We don't have any crime scene equipment. The crime scene unit has a camera so we can take pictures.

In Borama, investigators do not even have a camera they can borrow. Instead, Sacdiya Omar remarked, they use their phones to document the crime scene. The Berbera prosecutor, Jama Saeed, pointed out that the scarcity of resources for investigations compromises the quality of the evidence.

It means that when we are prosecuting a case, we often only have the statements of the victim, the accused and any witnesses.

⁸⁶ Interviewed in Abaarso on 21 October 2015.

⁸⁷ Interviewed in Burao on 31 January 2016.

Inaccessible and Inadequate Forensic Medical Exams

Medical evidence is essential to successfully prosecute rape cases. With insufficient resources in Somaliland to conduct a proper crime scene investigation, and a lack of witnesses because of the nature of the crime, whether a rape case goes to court often hinges on medical evidence. Yet, the victim's access to medical care, and the quality of the examination, often jeopardise the collection of medical evidence.

Lack of Access to Medical Care

Women who endure rape do not always have immediate access to medical care. They should be examined as soon as possible after the rape. But as Abdi Abdillahi, a CID commander in Togdheer Region described, medical personnel are not always on duty.

This evening at 6:30 p.m. a rape case was reported. I sent the car for the victim to be picked up. She was taken to the hospital for examination and treatment. However, the midwife had apparently gone off duty and will not be back until tomorrow 8:00 a.m. After the CID officers complained to me, I called the hospital and I was told we must bring her back in the morning. So the rape victim will go home, she will wash, clean up, time will pass and by the time she is examined tomorrow at 8:00 or 9:00 a.m., unless she was really viciously attacked, the likelihood of recovering any evidence, or even light injury, is much lower.⁸⁸

Getting medical services is even more difficult for victims living in rural areas. Fardous Yusuf, the nurse in the district of Faraweine, said village medical facilities often cannot treat rape victims and refer them to hospitals in urban areas.

At the medical centre in this village we only see acute cases. We also do vaccinations. If a rape case did happen here, we would have to refer her to Hargeisa because we can't treat that problem in our clinic. The health centre here is very new, so there aren't any medical services for rape victims. In Hargeisa rape victims go to the main hospital and they don't have to pay for treatment. If we refer a person to Hargeisa, they have to find their own transport. There aren't any private cars in this village, so if we send someone to Hargeisa the person has to take the milk truck.

In 2015, Yurub Ibrahim, a midwife in the district of Salahley, spoke about the confines within which she works.

“I don't have any medical equipment. All I can do is a physical examination and look for injuries with my eyes.”

We don't have swabs or anything. When the woman is seriously injured with a torn vagina or is bleeding a lot, then we send her with a letter to the main hospital in Hargeisa. She has to either rent a car, for \$50, or go on the milk truck for \$5. It's about 70 kilometres to Hargeisa.⁸⁹ Now, because it's the dry season, the milk truck only comes twice a week, but during the rainy season it's daily.

⁸⁸ Interviewed in Burao in 2014.

⁸⁹ The distance is 69 kilometres.

In 2017, she confirmed that the situation had not changed and that transport had become more expensive.

There have been no improvements in this area. If I have to refer a victim to Hargeisa for medical care, the cost of renting a car will now cost the victim \$100.⁹⁰

If a local medical centre cannot treat a victim and refers her to a hospital, she may have to travel a long distance to reach the hospital. Abdishakur Warsame, a doctor in Erigavo, said that the lack of access to medical facilities for rape victims in rural areas is critical.

There are no medical centres in rural areas at all. If a victim needs to come here for a medical exam, it may take her eight hours to reach us.⁹¹

In some instances, she may have to walk for days. If she has to travel far, as Judge Abdirahman Barre noted, most likely all the physical evidence would be destroyed.

Sometimes, I see a rape case in my court two to three months after the incident took place. It's also possible for the victim to walk three or four days in order to get to a police station. By the time she arrives, all the physical evidence of rape has disappeared. There was one case where a girl walked three days from Hayd, a rural area, to report a rape at the police station in Borama.

Muse Isse, a prosecutor in Borama, has also seen first-hand what it means when the victim lives in the countryside.

[B]ecause she may live far away from a hospital or anywhere there is medical help, by the time she arrives all evidence is lost. If she arrives at the police station very late, the majority of these cases can't go forward.⁹²

Without a forensic medical examination, the necessary evidence may be lost, resulting in insufficient evidence to prosecute. This is exactly what happened in a case from the district of Baki at the Awdal Regional Court. The alleged offence occurred on 17 October 2014, but the victim did not receive a medical exam until 28 November 2014. The judge returned a verdict of not guilty, citing the absence of medical evidence.⁹³

Judge Barre confirmed that access to medical care for rape victims from rural areas had not improved between 2015 to 2017.

“For victims in small rural towns, the biggest barrier to successful prosecutions is not having medical facilities close to them. It can take a day or two to reach a place that can do a physical exam.”⁹⁴

⁹⁰ Interviewed in Salahley on 20 December 2017.

⁹¹ Interviewed in Erigavo on 29 January 2018.

⁹² Interviewed in Borama on 14 October 2015.

⁹³ Awdal Regional Court: MGA/01/112/2014.

⁹⁴ Interviewed in Borama on 3 December 2017.

He suggested that expanding the mobile court teams to include medical professionals could be one way to address this problem.

Because some victims are isolated in rural areas, it would be ideal if we had a medical team that could travel with us on the mobile courts. Then they would have quicker access to medical treatment. But we would need a bigger budget to expand the current mobile court program.

Quality of Medical Exams Jeopardises Investigations

Even if a woman obtains medical care and receives a forensic examination, its quality maybe so poor that it is of little use. Often, as Hargeisa CID's Rahma Hirsi told Horizon, investigators have to send the medical report back to the doctor or midwife because it was not prepared correctly.

The doctors include in the report any physical evidence like sperm and any visible injuries. They also look to see if she has had intercourse before. Sometimes we have to return the medical report if we are unhappy with the quality of the information in it.

If the medical report is not accurate, the doctor or midwife, lawyer Hanan Omar noted, may have to do another examination. She spoke of her experience while working at Baahi-Koob.

The doctors and nurses don't prepare a detailed medical report. The nurses just fill out the form and check all the boxes without really looking at it. But the medical report is often the only evidence. When the victim tells me what happened to her, what is on the medical report is completely different. Then I have to ask that the medical report be done again, and this really frustrates the victim.

Hargeisa prosecutor Hibo Magan detailed some of the weaknesses she sees with medical exams.

Often a woman's status and the medical report are in contradiction. For example, the medical report will say she is single when she is actually married. This is because the doctors write the report carelessly and they don't check the victim properly.⁹⁵

Judge Abdiaziz Mohamed confirmed that medical exams by medical professionals in Gabiley are often not definitive so he depends on the victim's testimony.

If we don't have her testimony, how will we know if anything happened? The medical report isn't reliable so the victim has to testify so we have evidence. All the medical report will tell us is yes or no if she was raped.⁹⁶

He further gave the reasons why he does not trust medical exams.

We can send the victim to the hospital to be assessed, but I don't trust the results. For example, once a man raped a woman and he claimed, as his defence, that he was mentally ill. The first time doctors assessed him they said yes, he was mentally ill. Then they changed their minds and said no. Then they said maybe.

⁹⁵ Interviewed in Hargeisa on 13 October 2015.

⁹⁶ Interviewed in Gabiley on 2 December 2017.

So, I personally don't trust the ability of the hospital staff in Gabiley to do a proper mental health examination. The doctors and nurses who do this are incompetent. One time, we sent two separate cases to hospital for the parties involved to have a mental health examination. They combined the cases and sent us back one report! They aren't qualified so they botched the examination. I can't trust the doctors and nurses to handle evidence correctly, so I need the victim to come to court and tell me her story.

DAG Gudoon Ahmed agreed that the quality of forensic medical exams is not always reliable.

“While some doctors provide a well-written and detailed report on victims, others don't. It really depends on the individual doctor.”

Collecting evidence from rural health facilities is complicated, said Judge Abdirahman Barre, by medical professionals who have not been trained.

If a victim can get to a health centre, the midwives and nurses there aren't specifically trained on how to do a forensic rape examination. But they are able to look for bruises and other injuries on the victim's body. It would be good if they could have someone trained at each community medical centre on rape examinations so that evidence is preserved. In Borama, some nurses are trained so they know what they are doing compared to those working at the rural medical offices. But the doctors and nurses in Borama could still use training to improve their examinations and then evidence would be stronger.

Yurub Ibrahim, the midwife in Salahley, echoed Judge Barre's concerns. There are four midwives in Salahley, but none have been trained on conducting medical exams for rape victims.

I haven't received any training on rape exams. Unfortunately, the Ministry of Health has not indicated a need to train midwives on rape cases which would be very beneficial to women. Given that we deal primarily with women's health, training on how to care for rape victims will be extremely useful.

In Sool and Sanaag regions, the situation is much the same. Maryan Mohamed, a health professional at Las Anod Hospital, said they do not have training on forensic medical exams.⁹⁷ Abdishakur Warsame, a doctor at Erigavo Group Hospital, confirmed this point.

We don't have any tools specifically to use in rape examinations. We just do a basic physical test to see if the woman has been raped. We look to see if there is swelling, reddening or damage.

Judge Barre argued, however, that sometimes there is no physical evidence even if the medical examination is done properly.

The woman may wash her body and then wash her clothes or throw them away. This makes it difficult for the investigation as there will be little physical evidence available. There must be public education about this as I don't think the public understand the importance of medical evidence.

⁹⁷ Interviewed in Las Anod on 3 February 2018.

The medical exam is often the only evidence and without one, all that remains is the word of the accused and the victim. Working as a defence lawyer in Hargeisa has given Fardous Adan many opportunities to see this reality first-hand.

The only evidence that is ever collected in rape cases is the report of the medical exam. Even though the accused is remanded, the CID never produces any other type of evidence and the medical report is typically not even strong evidence. Rape cases are therefore usually based on the word of the accused and the victim. The accused will say that there was consent and without any circumstantial evidence, like ripped clothes or signs of a struggle, all there is his word against hers.

Sentences Not Based on Law or Evidence

If there is sufficient evidence to convict, a judge can sentence the convicted rapist to five to 15 years' imprisonment.⁹⁸ However, NHRC's Hodan Mohamed emphasised that some judges sentence as they see fit.

A person may be sentenced to two to three years [for a rape], but this sentencing is not based on the law. Judges give different sentences based on the people involved in the case.

Other judges do not know that Article 398 mandates a sentence of five to 15 years for rape. One judge's description of sentencing demonstrated this.

The sentences for rape in other countries such as Sudan and Egypt are 15 plus years whereas in Somaliland it is only 1 to fifteen years.⁹⁹

Fihima Taani described how the AGO is trying to address incorrect sentences for rape.

Perhaps the most important information we pull out from [case files] is when the judge has given less than the minimum sentence. This was happening as late as September 2017. We sift these out and bring it to the attention of the Attorney General.

Sentences that are not based in law or evidence damage the credibility of the courts, which in turn encourages victims and their families to use the customary system.

⁹⁸ Regional Court: MGA/01/112/2014, Appeal Court: MRGA/DDDL/29/2014.

⁹⁹ Interviewed in Borama on 17 October 2015.

Chapter 6

RAPE CASES CONTINUE TO BE WITHDRAWN

Rape cases continue to exit the formal justice system. The primacy of *Xeer* and the inefficiencies of prosecutions encourage families and elders to conclude customary agreements and then stop cooperating with legal proceedings. Horizon's research found that despite the Attorney General's directive, many justice personnel still comply with these agreements and allow cases to leave the court system. However, interviews conducted between November 2017 and January 2018 suggest that this may be starting to change slowly, at least in Somaliland's capital, Hargeisa.

Police

The point of first contact with the formal justice system for many rape victims and their families is their local police. Yet, reported cases often do not make it any further because officers are vulnerable to pressure from elders to drop rape cases. Yurub Osman, a village committee member, described the rape of a nine-year-old girl in Salahley.

This was very serious because the girl was very young and really injured. The man was taken to the police station and they held him there. But her family involved the elders and they came to an understanding. Two days later the man was released. There was compensation under a customary agreement; this is why the man was released. The police should arrest the men accused of rape and take them to court, but that's not what happens here. The elders have the last say here.¹⁰⁰

Based on her life at an IDP camp in Hargeisa, Yurub Ibrahim confirmed that "if a rape case is reported to the police but the police hear that the elders want to settle the case, then the case ends there."

Rather than dissuade customary agreements, Borama legal aid lawyer, Mohamoud Awale, argued that the Attorney General's directive had convinced most people not to report rape cases and not to engage with the formal system at all.

Since the directive in 2014, most rape cases go right to the customary system. I would say almost 90 per cent of rape cases don't even get reported now because elders know that the courts might not accept customary agreements so they just avoid the courts completely. The directive hasn't had the desired effect. Instead of ensuring that rape cases are prosecuted, it's actually discouraging cases from even being reported.¹⁰¹

Of the rapes that are reported in Erigavo to Faisal Omar, a police investigator, he said elders and victim's families ask him to terminate about 60 per cent of these cases. "The main reason they want us to stop cases is because they've agreed on compensation."¹⁰²

¹⁰⁰ Interviewed in Salahley on 29 November 2015.

¹⁰¹ Interviewed in Borama on 3 December 2017.

¹⁰² Interviewed in Erigavo on 31 January 2018.

Police investigator Nur Hassan Hussein said there have been fewer requests to end cases at the police station in 2017. However, he added, interference by elders continues to be a “challenge” in Burao.

When it comes to rape cases being processed through the formal justice system, traditional elders try to withdraw the cases as early as when the case is in its first stage in police stations.¹⁰³

He reported that instead of rejecting the customary agreements, they send them to the judiciary.

We don’t have the mandate to release an accused without an order from the court or the prosecution office. We will usually ask the families of the victim and accused to discuss the option of a customary agreement with the court and the prosecution office if they choose to withdraw a case.

Criminal Investigations Department

Rape cases also continue to be dropped during investigations. Mohamed Muse, the head of the CID in Borama, said families often take the case to the customary system at this point in the proceedings. Investigators repeatedly expressed their frustrations, and underlined their sense of powerlessness, in the face of decisions by the elders and families concerned, and sometimes the victims.

Sometimes, someone is brought to us and we begin the investigation. But they never return the next day because the families have taken the matter into their own hands.¹⁰⁴

In 2017, he confirmed the situation remained the same since Horizon first spoke with him in 2015.

Recently, there have been four to five reports of rape each month. But we only transfer between one and two to the prosecution. The others are resolved in the customary system. I don’t personally accept customary settlements. But the families agree to them outside the court system and there’s nothing I can do. I can’t do anything to prevent this because the victim won’t cooperate once a customary agreement is reached. This is outside my control. If the victim won’t speak to us, we can’t get her testimony or send her for a medical exam so we don’t have any evidence to base a case on.¹⁰⁵

With families taking customary agreements directly to the court, Gabiley CID Officer Mawlid Mirreh said he receives fewer requests to drop investigations.

Before the directive, families would come to the CID and tell me they reached an agreement and that I needed to drop the case. This wasn’t right, but what could I do? I had to stop the investigation. Now families who have come to an agreement will take it straight to the court because they know I won’t accept it. I’m never asked to stop an investigation now.¹⁰⁶

¹⁰³ Interviewed in Burao on 26 December 2017.

¹⁰⁴ Interviewed in Borama on 19 October 2015.

¹⁰⁵ Interviewed in Borama on 4 December 2017.

¹⁰⁶ Interviewed in Gabiley on 2 December 2017.

Rape investigations are still halted in Sool because, commented Las Anod CID Officer Robleh Muse, the families involved “want to settle the case outside of the court system.”¹⁰⁷

In Erigavo, CID Officer Mohamed Jama also faces pressure from families to stop rape investigations. Instead, he said he sends such requests to the courts.¹⁰⁸

Abdiaziz Khadar, a judge sitting on the Awdal Regional Court, suggested that families and elders withdraw complaints during investigations because the women themselves rarely have a say in what happens.

“Cases are leaving the formal system because the victim does not have a voice. The men behind the scenes are always the ones who ensure that nothing makes it past the investigation.”

CID investigator Rahma Hirsi spoke of the distress, and sometimes the tragic outcome, when victims learn a case has been “resolved” by the elders.

Sometimes elders try to take the rape case from the CID. We try to convince them not to remove the case from the formal justice system. But this still happens. When it does, I’ve seen it make victims go crazy, burn themselves [to death] because they are so upset.

The family might also put an end to the proceedings, added lawyer Hanan Omar, if the investigation shows a family member was the perpetrator.

They worry about family unity, so they take it out of the formal justice system.

Sometimes it is the woman herself, said Sacdiya Omar, a CID investigator in Borama, who does not want to go through the courts and investigators can do little to stop her.

We cannot force her. In these instances, the case will exit. I will always take contact information from the first meeting. But she will ignore my calls or switch off her phone.¹⁰⁹

Forensic Medical Examinations

Women also abandon their cases during investigations after they receive medical care. Hospitals in Somaliland provide free medical care to rape victims. Before a doctor or midwife will examine her, however, the CID must refer her. Therefore, to receive free health services, she must first report the offence. But, NHRC’s Hodan Mohamed noted, a woman might drop her case after receiving treatment.

They take the free medical treatment – pregnancy test, HIV test, etc – and then disappear and the case comes to an end.

¹⁰⁷ Interviewed in Las Anod on 29 January 2018.

¹⁰⁸ Interviewed in Erigavo on 29 January 2018.

¹⁰⁹ Interviewed in Borama on 17 October 2015.

Hodan Aideed, a midwife at Manhal Hospital in Las Anod, confirmed that a victim may even refuse to be examined.

She may be shy and is likely still traumatised from the incident, especially if she is a young woman. For example, a year ago there was a girl brought from a rural village and she refused to be examined.¹¹⁰

Kaysar Ismail, the IDP in Hargeisa, understands the rationale from the perspective of the woman who had been raped.

They believe that instead of 2,000 people knowing, if the case goes to court, it would be better if only 200 people know.

CID's Dahir Ibrahim said decisions often hinge on pregnancy and HIV/AIDS.

If they don't have HIV or aren't pregnant, then they resort to the customary system. Their main concern, when they go through the formal justice system, is whether their reputation will be ruined. Often, they will only follow through if there is HIV or pregnancy, and then they want justice.

Prosecution

If a case makes it through the investigation process, the prosecution may still drop it before the case reaches the court. Sharmarke Ismail, a judge at the Sanaag Regional Court in Erigavo, pointed out that if "the prosecutor agrees to a customary settlement [pre-trial], the courts are not in a position to refuse it and the case is dropped."¹¹¹

The Attorney General's directive, said Berbera prosecutor Jama Saeed, has not had the desired impact on prosecutions.

The families of the victim and the accused do pressure us to shelve a prosecution when they come to a customary agreement. They bring a paper showing they came to an agreement. At that point we drop the complaint. This happens in about one out of every three rape cases; the other two go through the court.

He highlighted the two factors which make it difficult for him to prosecute when there is a customary agreement.

Firstly, it is the judge who has the power to detain or release the accused. So, if the judge accepts the customary agreement I can't continue prosecuting. Secondly, if the families reach a customary agreement but I refuse to drop the matter, then the elders will come to see me. The victim's family will even tell the family of the accused that it's my fault the perpetrator is still being prosecuted. So, then they see me as the bad person. If I persist, this will really cause tension and can even endanger my safety.

¹¹⁰ Interviewed in Las Anod on 1 February 2018.

¹¹¹ Interviewed in Erigavo on 27 January 2018.

Despite “trying their best to prevent agreements between the families,” Abdi Elmi, a prosecutor in Borama, had reached a gloomy conclusion about the practical usefulness of the Attorney General’s directive.

Agreements between the justice institutions and elders haven’t made a difference to the number of SGBV cases exiting the justice system.

Hargeisa prosecutor Hibo Magan said that she has at least seen more prosecutors trying to convince the victim’s family to entrust cases to the formal justice system.

We brief them that this is mandatory and that the state is the victim in a rape case. How they react depends on the family. Sometimes they listen to us, but it is really the elders who have the power to persuade people. We do as much as we can. But we don’t always have the power to stop cases from being withdrawn. But since the Attorney General’s directive, all justice actors know that rape cases shouldn’t go to the customary system and are doing their jobs properly.

In 2015, the AGO’s Fihima Taani described what happened when a prosecutor rejected a request from the family to drop the case.

A very young girl, 18, was raped. A few days later, after the charge sheet was prepared and we had witnesses arranged, her father came to our office and said we had no case against the accused. He pushed his daughter to take back her statement. She was crying because she was scared of her father. He pressured her to say nothing had happened to her. But the prosecutor on the case said no, that he would not accept this because he had witnesses, a medical report and other evidence, and that he had to prosecute. The case then went to court.

But rape cases can still end at the pre-trial stage despite prosecutors’ best efforts. Muse Isse, a prosecutor in Borama, noted that if the prosecutor refuses to abandon a case, families may send victims outside of the court’s jurisdiction to prevent them from testifying.

When we reject an agreement, sometimes the victim is taken either to Djibouti or Ethiopia where no one can come after her and we are unable to locate her. Although the courts tell us that we still need to bring the witnesses forward from the victim’s case, they do not allow us to continue the case unless the victim is present. If we can’t do this, the court will close the case and the accused will be released. Once the judge says there is no evidence for the crime, the accused and others who are involved will automatically believe he is innocent. These [customary] agreements have made our work very difficult. As prosecutors, when we cannot find the victim and the court releases the accused, we do not request an appeal. If there is no victim, how can we appeal?

DAG Gudoon Ahmed described the same situation happening in a 2017 case in Burao of a man who raped a 60 year-old-woman.

There was agreement between two families and the victim disappeared from Burao [so she could no longer testify in court]. The accused was released since there was no longer a victim to testify.

Judiciary

The judiciary face a similar predicament when a judge will not accept a customary agreement and the victim is sent out of the court's jurisdiction. Judge Ali Suudi Diriye, the President of the Maroodi-Jeex Appeal Court in Hargeisa, said "this is a big problem and it happens all the time."

The prosecutor and the judge can't create a victim if there isn't one. We also can't force a victim to come and testify in court because we don't know where the family is hiding her. We don't even know where to send the police to compel her to come and testify. There is no solution because we can't force the victim out of hiding if she went willingly with her family.

In Judge Abdiaziz Mohamed's experience, families interested in stopping a case will also find other ways to avoid prosecution once the case has proceeded to trial.

Even with the directive in place, people still circumvent the courts by getting the accused and victim to marry. If the accused and victim are married, she can tell us not to go ahead with the case and she will most likely do this because her husband will pressure her to. If the victim is married to the accused, there's really nothing I can do.

**"The victim has to use her voice and tell us she was raped.
But if she's married to the man who raped her, she won't."**

In cases like this, the prosecution also knows they don't have a strong case because it's unlikely the victim will testify so they withdraw the case.

But judges also continue to permit rape cases to exit the formal justice system. The families or elders will present the presiding judge with written proof of their customary agreement and some judges will acknowledge their validity. In Las Anod, in Sool, Abdillahi Abokor, a regional court judge, said that families ask the court to stop prosecutions "almost 100 per cent of the time."

They prefer that elders deal with rape cases. The victim has no choice in this and it's the decision of her family. We accept these agreements. This region has not implemented the Attorney General's directive yet.¹¹²

In Erigavo, the judiciary will accept customary agreements if the AGO also approves them according to Ahmed Abdulle, a judge on the Sanaag Regional Court in Erigavo.

Families usually come to the court and request rape cases are dropped once they come to a settlement. The presiding judge will accept the customary agreement if the AGO has approved it.¹¹³

¹¹² Interviewed in Las Anod on 27 January 2018.

¹¹³ Interviewed in Erigavo on 27 January 2017.

Social pressure may also be a reason a judge accepts a customary agreement. Judge Hamse Hirsi said he felt compelled to allow the families the choice to opt out in the interests of community relations.

80% of the time the families take rape cases out of court. Although there was a directive from the Attorney General, it's still happening because the victim's family would rather get 50 camels. The two families will come to me and say: "Judge, we have agreed to compensation and so you need to discontinue the case." By law we can still carry on to convict the accused, but we need to take into account the safety and peace of the community.

“We have the power as judges to agree or disagree with the customary agreements. But we usually allow the case to go out of the formal justice system to maintain the peace in the community.”

Abdishakur Ali, a Togdheer Regional Court judge in Burao, also believes concern for “public interest” leads many judges to respond positively to customary settlements.

I would say around 50 per cent of rape cases are terminated at the trial stage. Judges consider the agreement brought by the two sides and allow the cases to come to an end in the public interest and for the sake of safety. It might be that the two families or elders have previously been involved in a rape case and solved it using the customary system. As a result, it's seen as an issue the two families are expected to respect due to this history and also a means to keep the peace amongst ourselves.

Fardous Adan commented on why she thinks judges are inclined to allow *Xeer* to dictate either compensation and or marriage with the perpetrator.

Judges believe cases are best dealt with between the families, and that going through the courts creates conflict and [raises] further problems for the families. But when a deal is made within the customary system, that will be the end of the matter.

Some judges, Faiza Saeed, a prosecutor in Borama commented, will even advise the families of the victim and accused to consider settling the case under *Xeer*.

The families will then ask the prosecutors to write a letter and that will be it.

Other judges accept customary agreements to release convicted persons early from prison. NHRC's Hodan Mohamed said this is a common occurrence.

Even if a rapist is convicted and sentenced, the customary system can create pressure that lets the perpetrator out of prison. In the example of the 21 men who gang raped two women, they were let go after only serving two and a half years of their ten-year sentence. I don't know why the former Chief Justice allowed this. Something was behind the decision, but I don't know what. The former Chief Justice said the perpetrators were young and had their futures ahead of them.

When they were released, they went back to their normal lives. There was no conflict between the families because the victims' families received compensation. This has happened before, not just in this case. So even if a rape case goes through the formal justice system successfully, the

perpetrator may not be punished. He is released back into the community where he came from, so there is a chance he could rape the victim again.

Judge Abdishakur Ali confirmed this practice in Burao.

In cases where there has been an agreement, it's either the regional court judge or the appeal court judge who releases the convicted rapist. From the legal perspective, the convicted rapist should never be released early, even if the two families have concluded a customary agreement, because of the negative impact on the victim. Despite this, the accused is often let out by the courts.

Deputy Commander of Las Anod Prison, Abdikadir Jama, said this also still happens in Sool Region.

The judges order the release because of the agreement of the clan elders. The elders agree to compensation; they settle the issue and then the judge agrees to this.¹¹⁴

The criminal justice system cannot use prosecution as a deterrence to rape if convicted rapists are unlawfully released from prison. This diminishes the authority of the formal justice system and allows perpetrators to act with the knowledge that customary agreements can secure their early release in the event that they are convicted and sentenced.

Evidence of Change in Hargeisa

While it is clear that customary agreements are still used to halt rape prosecutions despite the Attorney General's directive, there is anecdotal evidence that this is starting to change in Somaliland's capital city of Hargeisa. In November 2017, the AGO's Fihima Taani confirmed that prosecutors in Hargeisa are not accepting customary agreements in rape cases, but that this is not true of other regions.

In Maroodi-Jeex, cases are not being taken out of the court. We are very vigilant about this. However, in the eastern region, especially in Sool and Sanaag, but even in Togdheer, cases are being pulled out of the legal system. We are not informed as to the reasons why, but according to the reports sent from these regions, it is obvious this is taking place.

There is also some proof that Hargeisa based judges are rejecting customary agreements. Judge Ali Suudi Diriye said he has tried to stand his ground.

I've seen families settle rape cases out of court many times. But I, as a judge, will not accept this. This type of agreement encourages rape. I tell the parties that I don't accept customary settlements. They will tell me that it's none of my business and that it's the right of the victim to go to the customary system.

¹¹⁴ Interviewed in Las Anod on 3 February 2018.

Fardous Adan, in an interview in November 2017, said she believes that the Hargeisa based courts are becoming more strict in rejecting customary agreements. Through her work as a defence lawyer, she has seen the judiciary refusing to accept such agreements for rape cases.

In one case I was working on in Hargeisa, the accused and victim's families came to an agreement and asked for the case to be withdrawn. But the regional court would not back down and convicted the defendant. The appeal court upheld the conviction and the defendant appealed to the Supreme Court. At the Supreme Court the defendant and victim's families again tried to have the criminal case thrown out on the basis of a customary agreement. But the Supreme Court confirmed the sentence of six years.

In another case, the defendant and victim's families agreed on a settlement when the case was at the appeal court. But Judge Ali Suudi Diriye upheld the conviction.¹¹⁵

The Maroodi-Jeex Public Defender, Abdullahi Abdi, agreed that the courts are starting to reject customary agreements in rape case.

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.

Fardous Adan speculated that the enforcement of the Attorney General's directive to prosecute rape cases was limited to Hargeisa and the western regions of Somaliland.

I work mainly in Hargeisa, but I also work some in Borama and Berbera. As far as I can tell the situation is the same there and courts are not allowing rape cases to be withdrawn. But in the far east of Somaliland I have heard that it's really hard for courts to refuse a customary agreement.

Abdishakur Ali, a former judge on the Togdheer Regional Court, which is eastern Somaliland, agreed with this statement.

In the eastern regions, people are very focused on clan relations. Judges see themselves as problem solvers, so if the elders have already settled a rape case, they don't see the point of the accused being held in jail.¹¹⁶

“If the accused isn't released, the elders might accuse the court of pushing western culture by forcing the formal justice system over the customary system.”

Abdullahi Abdi described such a case from Erigavo, also in the east. The court of first instance initially accepted the customary agreement. But the appeal court and the Supreme Court in Hargeisa rejected it.

There was one rape case in a remote part of Erigavo where a 16-year-old boy was accused of raping a seven-year-old girl. The case went to the Sanaag Regional Court. The parties came to an

¹¹⁵ Interviewed in Hargeisa on 1 November 2017.

¹¹⁶ Interviewed in Burao on 24 December 2017.

agreement and the court accepted it. The prosecutor appealed the court's acceptance of the customary agreement and the argument ended up at the Supreme Court. That's when I got involved. The Supreme Court endorsed the defendant's conviction for eight years.

Hargeisa defence lawyer Fardous Adan gave credit to the Attorney General and Chief Justice for encouraging the courts to reject customary agreements.

I believe the Attorney General's directive made a big impact. I've seen some DAGs try to let rape cases be withdrawn and they were transferred or suspended because of this. The courts have also improved with the appointment of the Chief Justice. The changes have had an impact on people's behaviour. Now that the public knows that rapists will be prosecuted and customary agreements won't be accepted, there are fewer rapes. This is especially true of gang rapes from what I can see. Between 2012 and 2015 there were a lot of gang rapes and I was defending several of the accused in these cases. But I haven't seen one case of gang rape come before the courts in Hargeisa in 2017, so I think the prosecution of these cases is helping to deter rape.

The Attorney General's directive was a positive first step in acknowledging and addressing weaknesses in the formal structure. Most importantly, it clarified that the courts, and not the customary system, should handle rape cases. But much more needs to be done, across the justice sector, to ensure a timely, appropriate and co-ordinated response.

MOVING FORWARD

“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.”

- Judge Abdirahman Barre, President of Awdal Regional Court in Borama, 17 October 2015

The criminal justice system could, potentially, end impunity for rape in Somaliland. But currently, it does not provide a viable alternative to the customary system. The practical costs of physically accessing services prohibit women, especially those from rural areas, from using the court system. Victims whose families do report rape cases face an intimidating investigation and medical examination that often result in insufficient evidence to convict. If an accused is convicted, judges may hand down sentences which are not based on the law, or release convicted rapists from prison because of customary agreements.

Given these shortcomings, it is not surprising if entrusting a rape case to the customary system may seem like the better option. However, *Xeer* only provides collective outcomes in rape cases—either compensation to the victim’s family or marriage of the victim and the accused in limited circumstances. Neither gives justice to the victim or helps Somaliland move forward in ending impunity for rape. The successful prosecution of rape, on the other hand, can achieve justice for the victim and punish the accused and is a far greater deterrent against future rapes than a customary agreement.

The long-term solutions depend on resources beyond the current means of Somaliland. There are, however, several short-term steps Somaliland institutions can take to improve the prosecution of rape without requiring a large budget. Practical and feasible measures to improve rape prosecutions include the following:

1. Broaden and Intensify Public Awareness

The formal justice sector needs to conduct outreach work, particularly in rural communities, so people have a greater understanding about how prosecutions work, and how they can reduce the risk of perpetrators reoffending.

The short television programs prepared by the AGO about sexual and gender-based crimes could be expanded to include radio programs so communities without televisions can also benefit.

Formal and informal village committees could also educate the public on how to report a rape and how to navigate the court system.

2. Collect Accurate Data

When working in collaboration, Somaliland institutions would be in a better position to collect data on the rate of rape and relevant case statistics. Uniform templates for recording data could be developed and form part of routine practice for the police, CID investigators, victim support services, prosecutors and judges to record information such as:

- Number of reported cases of rape and other sexual offences;
- Age of victim and accused;
- Whether the victim received medical attention;
- The time between reporting the attack and receiving medical attention;
- Whether the case was referred to CID or resolved by local police;
- Whether community elders reached a customary agreement;
- Number of cases prosecuted;
- Number of trials concluded;
- Number of convictions and acquittals;
- What sentences were handed down by the courts;
- Number of cases withdrawn from the formal justice system, the stage at which they exited and the reason for withdrawal;
- Number of convicted persons released from prison before completing their sentence;
- Reasons for the convicted persons' early release from prison.

This information, if accurately recorded, would provide a more comprehensive picture of the hurdles in prosecuting rape in Somaliland. It would further identify communities in urgent need of assistance and can help to determine priorities.

3. Set Up Effective Victim Support Services

Strengthening support services, available from the point of reporting the case to the conclusion of court proceedings, would encourage victims and their families to use the courts.

4. Establish Uniform Investigation and Sentencing Guidelines

Uniform guidelines should be developed on how to deal with rape cases, including questions that should be asked by police, investigators, medical staff and prosecutors to ensure a consistent approach, and that all evidence necessary for prosecution is obtained.

The judiciary should implement sentencing guidelines for rape and other sexual offences.

5. Promote Training

The setting of long-term goals would strengthen the training of all justice sector actors, and relevant medical staff, and attract funding for the criminal justice system. Better trained and better resourced police, prosecutors and judges would be in a stronger position to ensure that the formal justice system deals in an appropriate manner with victims and responds in a timely

fashion. They would be able to exercise their responsibilities in a more efficient manner, would be less susceptible to community pressures and can work independently to successfully investigate and prosecute rape.

Horizon Institute hopes this report will contribute to a dialogue within Somaliland and prompt action to improve the criminal justice system. Very importantly, we hope it will encourage justice institutions to craft and implement policies that bring a measure of justice to the nine-year-old girl from Salahley, and countless other girls and women like her in Somaliland. Such a commitment would send a strong message to both victims and perpetrators, and the public at large, that subjecting young girls and women to the pain, humiliation and trauma of rape is not acceptable and would be met with a robust and coordinated approach across the criminal justice chain.