



Guidelines for Prosecuting Crimes of SGBV in Somaliland

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Introduction

This Guide is designed to build upon a training course developed and delivered by Horizon Institute between 2014 – 2015 to help ensure that the response to crimes of Sexual and Gender Based Violence (SGBV) by prosecutors in Somaliland achieves meaningful protection for victims, and just prosecutions for alleged perpetrators.

It outlines the special role for prosecutors in SGBV cases, defines the victim-centred approach, and aims to provide practical tips for prosecutors to follow at each stage of the justice process.

This area of focus was identified as a priority by the Attorney General, underlining the commitment of his office and the Government of Somaliland more generally, to ensuring that the administration of justice protects the vulnerable through fair, objective and independent application of the law.

1. Role of the Prosecutor

Generally, prosecutors play a central role in contributing to fair and equitable criminal justice and the effective protection of citizens against crime. They have a responsibility to help ensure respect for the Universal Declaration of Human Rights principles of:

- 1) **Equality before the law** – *All citizens are equal before the law irrespective of gender, ethnicity, social status or any other consideration;*
- 2) **Presumption of innocence** – *Any accused person must be presumed to be innocent unless proved guilty based upon evidence, according to the law. The accused person does not have to prove that s/he is not guilty, the State has to prove, beyond a reasonable doubt, that s/he is guilty;*
- 3) **Right to fair and public hearing by independent and impartial tribunal** – *tribunals must judge a case strictly according to the law, and on the evidence alone, and not allow any bias or prejudice to affect their judgement.*

In the prosecution of cases of SGBV, the prosecutor has a crucial and dual role to investigate and prosecute and to actively take a victim-centred approach integrating the legal process of investigation and prosecution, with the services required to secure, treat and support the victims of SGBV.

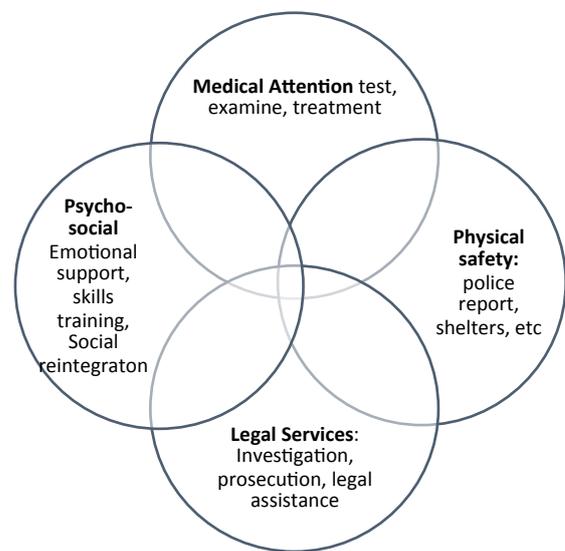
Investigate and Prosecute	Protect (recognise victims' needs and be proactive in safeguarding them)
Initiate criminal proceedings, direct the investigation of, and supervise the progress of criminal cases on behalf of the State	Actively participate in the victim-centred approach
Conduct a fair and thorough prosecution	Treat victims of SGBV with compassion and respect for their dignity
Ensure rigorous attention to the elements of the offence	Ensure that victims know their rights and what to expect from the process: <ul style="list-style-type: none"> • Right to seek redress • Role they will play in judicial proceedings • Right to express their views and concerns • Right to privacy • Right to physical safety • Right to speedy investigation and prosecution of the case
Be alive to different types of evidence in proving that an offence of SGBV was committed	
Observe AG circular, ref: 07/09/2014 – Prosecution to play no role in mediating or negotiating in cases of SGBV	Assist and support victim through judicial proceedings
Professional standards according to the 2013 Prosecutors Code	Ensure that victim receives compensation for the harm suffered
	Help victim to access other support services – health, psycho-social, material, social – where they are available

2. The Victim-Centred Approach

“...the decision to report a rape case is made by the family and the elders. The clans sometimes can agree to take the case out of the courts if the victim’s family is paid, but the victim is never compensated. It’s the men who take the money. If a woman is raped, she will first tell her parents and they decide whether to take the case to the formal justice system. The victim does not have any part in the decision of whether to take her case to the customary system or the formal justice system. It is the parents who decide...no one ever asks [the victims] if they want to take their case to the courts...most rape cases are of girls between 15 and 20 years old, so they have no choice. It is their parents who control them.”

Legal Aid Provider

The victim-centred approach emphasises the interests of the victim as the most important part of any process, and places the needs of the victim at the centre of the response. The legal process is *one part* of an integrated approach to supporting and caring for victims. The best interests of the victim are paramount. This may include not pursuing a prosecution, but the prosecution is responsible for being certain that it is the victim and not other interested parties (such as family members) who are making this decision.



FSU Sierra Leone SGBV Case Management Guidelines

3. Medical Attention and Care for Victims

The primary role of the medical professional is to treat the victim:

Treatment	Testing	Examining	Recording evidence
Injuries and STIs including PEP - post exposure prophylaxis	Transmissible sexual infections including HIV/AIDS, Pregnancy	Medical history	Description & classification
Emergency contraception		Top to toe exam	Collection forensic examples
Arrange follow-up care		Genito-anal exam	

4. Duty of Confidentiality in SGBV Cases

The victim is entitled to privacy and safety. Crimes of SGBV are very sensitive and have various effects, going beyond physical injury, and including psychological and social damage. Crimes of SGBV touch on deeply rooted social and cultural taboos which can make it much harder for victims.

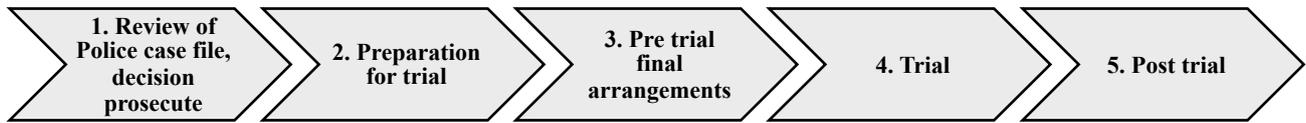
Different Effects of SGBV:

Physical Effects	Psychological Effects	Social Effects
Bruises Wounds Damage to sexual organs Infections, including HIV/AIDS Miscarriage Unwanted pregnancy Unsafe abortion Disability Death	Post-traumatic stress Anxiety, Fear Anger Depression Shame, self-blame Low self-esteem Mental disorders Suicidal thoughts	Blaming the victim Social stigma Isolation in the community Sexual problems Loss of role in the society Exclusion from education Reduction of work potential Reduction of parental skills

5. Steps to Help Protect Confidentiality

- Do not disclose information about the victim/witnesses to outsiders (e.g. friends, family members, neighbours).
- You can share information about the victim with care providers (NGOs, health or psychosocial care providers) BUT only with the informed consent of the victim (or the victim's parent/legal guardian in case of minors).
- Conduct interviews with victims/witnesses in a private room, in the presence of investigators and other person(s) whose presence is allowed/requested by the victim/witness.
- Keep all records on SGBV cases confidential - in a secure area, ideally a locked cabinet. Don't leave files unattended at the office and/or in Court.
- Remove all personal information (such as name or contact address) on the victim from those documents that will be made public e.g. block out the name and details so that they are not visible.

6. Practical Steps for Prosecutors throughout the Case Process



6.1 Step One – Review of Police Case File, Decision to Prosecute

Considerations on reviewing the police file:	Yes	No
Does it disclose a case to answer?		
What charge?		
Multiple charges?		
Evidence Admissible?		
Evidence Reliable?		
Evidence complete – Further investigations required?		
Is the Victim secure?		
Has s/he had access to available support services?		

1. Identify the correct offence, or offences, which have (or may have) been committed based on the available evidence: Failure to identify the correct offence could prevent a successful prosecution.

It is also important to ensure defendants are not undercharged.

Example of undercharging:

A complaint by a woman that a man had tried to rape her, including removing her clothes and attempting to penetrate her before then being stopped by a third party.

Ought to be charged as Article 398 with Article 17, NOT Article 399

2. Identify the Elements of the Offence: Break down the individual elements of the offence/s that you think available evidence point to.

3. Apply the evidence: Check to see that there is evidence available to match each element of the offence/s you aim to charge. This should highlight any weaknesses in the case and areas for further investigation or evidence.

6.2 Step Two – Preparation For Trial

a) *Interviewing the Victim and witnesses:* The practical steps prosecutors can take to make sure that a victim feels safe, private and respected include:

- Try to reduce the number of times that a victim has to tell her/his story
- Explain the investigative and judicial process, and her/his role in that
- Explain your role
- Safeguard the victim’s privacy – interview in a private/protected space
- Respect views of victim including if they do not wish to collaborate in the investigation
- Offer victim the opportunity to be accompanied by trusted person/woman
- Do not convey judgement, or suggest victim not telling the truth
- Do not conduct any interview with an angry face
- Do not conduct any interview if the victim is sick or crying
- Allow time for the victim to feel comfortable with telling the story, take breaks if needed
- Do not make assumptions about the history and background of the victim – e.g. If a girl and a boy know each other already, this does NOT infer consent¹

b) *Dealing with victims/witnesses who are children:*

DO’s:

- Give the child choices and some sense of control: explain why she/he is there and what is going to happen next.
- Use language that is appropriate to the age and development stage of the child.
- Talk to the child in a quiet and safe environment where he/she can be encouraged to express feelings and thoughts.
- Be calm and patient. Give the child healing messages, such as “it was not your fault,” “it is ok to feel scared,” “you are very brave,” “it is good that you talked about it, now we can make sure that it won’t happen again.”
- Protect the child by stopping any activity that is upsetting the child.
- Tell the child that he/she can say no if he/she does not want somebody to be present in the room, listen to his/her story.
- Show warmth and affection to the child (but make sure that the child is comfortable with it).
- Spend the amount of time necessary with the child to find out what happened.

DON’Ts:

- DON’T force a child to talk about the abuse.
- DON’T touch or hug a child if she/he does not want to.

¹ See Annex 3 on rape myths

- DON'T judge or punish the child for 'bad behavior' e.g. aggression, sexualized behavior, disobedience.
- DON'T embarrass a child by talking about the events to family members, siblings, etc.

c) Corroborating Evidence:

Corroborating evidence comes from another source – not the victim. The story of the victim told to and repeated by another person is not corroborating evidence. Instead, it includes:

- Confession by suspect/accused.
- Statements from eyewitness(es): e.g.
 - the suspect is caught red-handed
 - the distressed condition of victim just after the act (e.g. weeping victim, torn clothes)
 - suspect seen running away from scene of crime
- Medical report documenting the victim's injuries (by a qualified medical practitioner).
- Photos of the injuries of the victim.
- The victim's underwear/torn clothes.
- Blood, sperm or other substance on the suspect's clothing or bedding.
- Any object used during the crime.
- Photographs or sketches of the scene of crime.
- Documents or statements determining the age of the victim.

d) Developing the Case:

- Elements of the offence identified;
- Available evidence applied;
- Supporting evidence in hand.

What is the case theory? Can you present a believable narrative that explains the victim's behaviour?

- a) What conclusion are you asking the court to reach?
- b) What evidence supports that conclusion?
- c) What inferences are you asking the court to draw?

e) Decision on Charge:

In the final decision on what to charge, consider whether multiple charges are disclosed by the evidence. The same set of facts may disclose several separate offences, which can all be charged.

Charging a lesser alternative: If there is a possibility of judge using Article 124, the prosecution could charge a lesser alternative. Make it clear from the outset that charges are presented as alternatives.

f) Service/Disclosure:

Article 71 Criminal Procedure Code requires the prosecutor to provide the defence with the following information in the charge:

(1)(d) The offence charged, together with a plain, concise statement of the acts constituting the offence, including the time and place of the commission of the offence, and the person against whom, or the thing in respect of which, the offence was committed;

(e) The law, and the article of the law, against which the offence is said to have been committed;

(f) A statement of the aggravating circumstances;

(g) The personal details of the injured party and of the person who appears to be acquainted with the circumstances of the offence.

6.3 Step Three – Pre-Trial Final Arrangements

- Warn witnesses of date, time, and place of trial.
- Give victim and witnesses details of the trial as far in advance as possible AND remind them again shortly before the day of the trial.
- Ensure arrangements are in place to safeguard safety of victims/witnesses when they arrive at court and to allow them to be shielded from the view of the defendant/other witnesses/defendant family members at court.
- Explore whether the trial and all other hearings may be held *in camera* (not a public hearing).
- Ensure any exhibits you are relying on are prepared, safe, and you are clear how they will be presented.
- Have an outline of how you will present your arguments including evidence and inferences.
- Prepare witness/victim for cross-examination, explain again the process.
- Explain basic logistics. Tell the witness what time they should arrive in court and where they should wait.
- If they are not able to visit the courthouse before the trial, consider using a drawing of the courtroom. Explain who the various players will be in the courtroom.

6.4 Step Four – Trial

- Protection – make sure victim/witnesses cannot be approached by the perpetrator/s or people associated with them.
- Duty of the Prosecution is to ensure a fair trial – the aim is not a conviction at all costs but a conviction based upon the evidence.
- Meet the victim in good time before the start of the trial. Invite him/her to review his/her statements in order to refresh his/her memory.
- Review the testimony. Begin with the oath. Explain what the oath means, and ask the witness to repeat after you for practice. Go through the direct examination. Then explain that the purpose of cross examination is to test the witness and s/he should ensure s/he understands the questions and answers truthfully.
- Emphasise the importance of telling the truth. Explain that s/he should try to respond to questions to the best of his/her knowledge and memory. There is no right or wrong answer.
- If s/he does not understand, she can ask for the question to be repeated. Prepare her for finding the questioning upsetting. Make it clear that s/he should let you know if s/he is upset by the questions that the defence counsel is asking.

During the trial, victim/witness may experience high levels of fear and distress. This may negatively affect the quality of evidence and/or cause the victim to withdraw from the process.

Dealing with uncooperative victims or recanting victims:

Victims who are supported and treated in a respectful and compassionate manner and empowered by skilled professionals are less likely to withdraw support from the process at a later date, and more likely to feel able to tell what they know in a clear and coherent manner.

Possible approaches to take with unwilling or uncooperative victims:

- Early contact with the victim to provide information about violence, the criminal court process and her role in it. Take the time to explain the steps of the criminal justice system and any available support services (e.g. shelter, medical assistance).
- Understand the victim's reluctance and try to address it, if possible. For example, in domestic violence cases, the victim may think that the prosecutor expects her to leave the abuser. However, the prosecutor can make it clear that the decision about the relationship is her decision, not the prosecutor's. The message to convey is that both share the goal of ending the violence in her life.
- Consider whether an expert witness should be called to explain the reason why the victim is uncooperative or recants her statement.
- Prepare to proceed with the case without victim testimony. Prosecutors and police should build their cases so that they can be proved without the testimony of the victim (i.e. prior statements, emergency communications such as emergency call records, photos of the victim, the defendant and the scene of the crime).

Adapted from UNODC 2013 Handbook on effective prosecution responses to violence against women and girls

6.5 Step Five – Post Trial

If the perpetrator is found guilty, compensation will be awarded by the court. The victim might feel responsible if the perpetrator is found guilty and sentenced. The Prosecutor should explain that what happened to the perpetrator is outside the victim's control and s/he did the right thing to report the abuse.

If the perpetrator is found not guilty, the victim may feel that his/her story was not believed. The Prosecutor has a role in explaining the reasons, e.g. perhaps there was inadequate corroborating evidence.

Where possible, ensure that victims/witnesses have access to appropriate continuing support services.

ANNEX I: NATIONAL LEGAL FRAMEWORK

1. Constitution of the Republic of Somaliland

2. Penal Code: The following Articles in the Penal Code are those which a prosecutor will consider as potential charges when dealing with a SGBV case:

- Article 17: Crimes Attempted
- Article 322: Association for Purpose of Committing Crimes
- Article 398: Carnal violence [rape]
- Article 399: Acts of Lust Committed with Violence
- Article 400: Unnatural Offences Committed with Violence
- Article 402: Obscene Acts
- Article 404: Definition Obscene Acts & Objects
- Article 17: Crimes Attempted
- Article 322: Association for Purpose of Committing Crimes

3. Juvenile Justice Law: The following Articles in the Juvenile Justice Law are those which a prosecutor will consider when the accused is a child:

- Article 8: Deprivation of Liberty
- Article 10: Criminal Capacity
- Article 12: Prohibition of Certain Punishments

4. Sharia principles for guidance on compensation

ANNEX II – ATTORNEY GENERAL’S DIRECTIVE ON RAPE CASES

REPUBLIC OF SOMALILAND
ATTORNEY GENERAL’S OFFICE

Ref/JSL/534/2014
07/09/2014

Hargeysa

To: All Deputy Attorney Generals of the Republic of Somaliland
CC: All chairs of regional courts of the country
CC: All Chairs of Regional Appellate courts of the country
CC: Chief of Justice of the Republic of Somaliland
CC: High Judicial Committee of the Republic of Somaliland

Objective: Agreements against the rape cases

Dear Sirs,

There is an increasing occurrence of criminal acts of rape against the girls which are committed collectively and individually which result, physical, psychological, and reproductive organ injuries. It is absolutely important that we all fortify to minimize the rape calamity.

Thus, we know that and it cannot be denied that the parties or elders mediating the parties present written agreements which encourage rape acts be committed. It also keeps the criminals away from the punishments they deserved though there are international effort to combat rape and its harm to community.

It happens that court judges give leaner sentences for punishment for the rape cases which is between 5 to 15 years of imprisonment as stated in article 398 of the Penal Code though they have the discretion to apply the rules as per article 109 of the Penal Code. Hence, sometimes the judges finalize the case with imprisonments of one or two years which has no place in the law. They do not even consider the aggravating circumstances specified in the Penal Code like the gang rape offences as stated in article 71 of the Penal Code or the opinions in article 39 and 110 of the penal code.

Therefore, to strengthen this issue, it is being obliged to all deputy Attorney Generals in all regions of the country to object anybody bringing in outside agreements and cases specified in article 398 of the Penal Code cannot be settled otherwise.

Chairs of Regional and Appellate courts are urged to keep in mind that the prosecutors have been directed that issue and to launch a collective campaign to reduce that offences and to make the criminals serve the punishments.

The Chief of Justice, considering the previous memo we submitted and this one is requested to oblige all the Judges of the courts in all the regions of the country to coordinate in ending agreements against the rape cases in order to get proper justice throughout the country.

Hassan Ahmed Adan, Attorney General, Republic Of Somaliland

ANNEX III – RAPE MYTHS

Here are a few examples of common rape myths:

1. **Rape only occurs between strangers in dark places.**
Kufsigu waxuu ka dhacaa meel madoow, dad aan aqoon isu lahayna ayuu ka dhex dhaca.
2. **Women provoke rape by the way they dress/behave.**
Dumarku iyagaa sabab u ah kufsigu oo habka aay u labistaan amaba u dhaqmaan ayaa sababta.
3. **Women who drink alcohol or use drugs are asking for it.**
Dumarka khamriga caba amaba isticmaala maan dooriyeyaasha kale iyagaaba dalbada.
4. **Rape is a crime of passion.**
Kufsigu waa dambi shucuur ah.