



Review of GBV Cases

Attorney General's Office

Hargeisa, Marodijeel Region

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Introduction

In December 2015, as part of Horizon's ongoing training and support to the Attorney General's Office (AGO), Horizon carried out a review of the prosecution of three gender-based violence (GBV) cases within the Marodijeeh region conducted by the Deputy Attorney Generals (DAGs) based in Hargeisa:

1. Gang rape in New Hargeisa, July 2013
2. Rape of eight-year-old girl in Mohamud Haybe, May 2013
3. Rape in Isha Borama, September 2013

The review consisted of interviews with the DAG who prosecuted the case and access to the case file, as permitted by the Attorney General. This report provides a summary of the three cases, observations and recommendations for future trainings.

1) Gang rape in New Hargeisa, July 2013

Case Summary

On 25 July 2015, at around 8:00 p.m., the two victims aged 24 and 25, were on their way to the mosque for *Taraweeh* prayers during Ramadan. When they were approaching the mosque, the defendants—a group of males—confronted the victims. The defendant's dragged and slapped the victims and when they tried to scream for help, no one came to their assistance. The defendants took them to a valley and divided into two groups, each taking a victim with them. They then forcibly took the victims' clothes off and raped them. Both victims said the defendants were carrying bats and knives and that they were hit with the bats. Their eyes were covered throughout and they did not know how many had raped them. There were 22 defendants, ranging in age from 15-19 years old. The police arrested 19 of the defendants on the night of the incident. Two more were arrested several days after the incident and one of the defendants was missing throughout the proceedings. Two of the defendants were from the Canadian diaspora and were in Hargeisa on holiday.

Evidence

The evidence submitted included a medical examination report for both victims. The victims were taken for the medical examination on 26 July 2013 and the report is dated 31 July 2013. The reports stated:

- Victim 1 was circumcised, hymen was broken, signs of fresh vaginal wounds, a 2-3cm vaginal tear and semen droplets.
- Victim 2 was infibulated, hymen was broken, signs of fresh vaginal wounds, 1-2cm tear of anal area and semen droplets.

The police interviewed the two victims and the seven police officers involved in locating and arresting the accused. They also obtained admissions from 20 of the defendants when they were brought to the police station. One of the defendants denied being involved in the rape and said that he arrived at the valley and was asked to participate but refused and left. In his statement, he said that the other defendants told him that he should join in because either way, he would still be a part of the act.

Court process and judgements

The 22 defendants were charged with rape (Article 398 Penal Code) and association for purpose of committing crimes (Articles 71 and 322 Penal Code). All of the accused were represented. The accused were taken to court on 27 July 2013, where they confessed in front of a judge, in accordance with Article 68 Criminal Procedure Code (Rules to be observed by a judge receiving a confession).

The first hearing at the Regional Court was on 4 August 2013, and the judge sentenced the 22 accused under Articles 398, 322, 39 and 71 of the Penal Code. Defendants 1-21 were sentenced to ten years imprisonment. When deciding on the ten-year sentence, the judge considered aggravating factors, including the large number of accused and the weapons used. Defendant 22, who was missing throughout the case, was sentenced to five years imprisonment in absentia as permitted under Article 128 of the Criminal Procedure Code. The court ordered civil compensation for both victims, but this was not paid at the Regional Court.

The defendants appealed on different dates beginning from 12 August 2013. The hearing was on 26 November 2013, and although the defendants had different lawyers representing them, there was one defence lawyer speaking on their behalf during the trial. The defence argued that none of the defendants had confessed in the presence of a judge, but the presiding judge rejected this argument and upheld the sentences. The judge deducted five years from one of the defendant's sentence due to his age. The defendant was from Canada and his family was able to prove that he was 15-years-old. The court ordered another defendant released due to a health condition, which he was able to show through hospital records. But the prosecution appealed this decision and the judge reversed the order for his release. The judgement was delivered on 7 December 2013.

The defendants separately filed requests for a second appeal at the Supreme Court between December 2013 and January 2014. The defence argued that the two accused from Canada did not understand or speak Somali. According to the defence, the two had made confessions despite the fact that they could not speak Somali. The prosecutor contended that all of the defendants could understand and speak Somali. Upon hearing the appeal, the Supreme Court reduced each sentence from ten years to five years. The defendant that was to be released upon the first appeal due to his health condition was released at this point. Additionally, the court ordered civil compensation for the victims. This judgement was dated 17 July 2014.

Following this appeal, the families of the victims and the defendants reached a customary agreement. On 10 November 2014, the families sent a notarized letter to the Supreme Court and AGO detailing their agreement. The compensation paid to the victims' families was around 200 million Somaliland shillings, and once paid, the Supreme Court released the defendants.

Analysis

Given the complexity of the case, the prosecutor's preparation was commendable. There were no delays in bringing the case to court and the prosecutor also considered the group nature of the offence when attaching Articles 322 and 71 to the charge sheet. Moreover, when the families of the victims and the defendants reached a customary agreement, the prosecutor attempted to meet with the families of the victims on several occasions to in an attempt to

dissuade them from settling under customary law, but was unsuccessful. The prosecutor also informed the Minister of Justice of the agreement, but because the elders of both families had reached a settlement, the Minister felt he could not interfere. Because the prosecutor tried to ensure that the defendants were not released under a customary agreement, the issues here lie with the judiciary and not the prosecution. In September 2014, one month before the agreement between the families, the Attorney General passed a directive prohibiting prosecutors and judges from accepting customary agreements in rape cases. Despite this, the Supreme Court released the defendants.

During the Supreme Court hearing, the defendant's sentences were reduced from ten years to five years. There was no record of the judge's reasoning so it is difficult to determine the basis of this decision. Given the serious nature of the evidence, including the confessions and the aggravating factors, it is unclear why the Supreme Court reduced the sentences to the minimum of five years. Under Article 60 of the Penal Code, persons under the age of eighteen years old are eligible for a reduced sentence. The ages of the accused ranged from 15-18 years old. One of the accused from Canada was 15-years-old and his sentence was reduced by five years at the Appeal Court. Potentially the judge reduced the sentences in view of Article 60, but neither the prosecution nor defence made any submissions to this effect.

2) Rape of Eight-Year-Old Girl, May 2013

Case Summary

On 15 May 2013, at around 8:00 p.m. in Mohamoud Haybe, the eight-year-old victim was on her way home from her grandmother's house. She was waiting for the bus when the defendant, aged 52, approached her and told her that it was too late for her to be out alone because she would be attacked by gangs. He told her that she should come with him and sleep with his children for the night and then go home in the morning. The defendant, who was working as a watchman, took the victim to the house and told her to remove her clothes otherwise insects would bite her. When she refused, he forcibly removed her clothes and raped her three times that night. The victim said in her statement that she was bleeding afterwards. The following morning, the victim was given breakfast and was told to leave.

The victim returned to the defendant's house later in the day to pick up clothes she had left behind. The victim was at her cousin's house playing nearby when the defendant saw her and motioned to her to come over to him. The victim then ran towards him and went to his house. Her cousin ran after her and shouted outside until the defendant opened the door and the victim came out. According to the victim's statement, when she entered the defendant's house, he had told her to remove her trousers and that he would pay her for doing so. When he heard the victim's cousin shouting outside, he gave the victim some money and she left. The accused fled on 16 May 2013 and the police arrested him on 17 May 2013.

Evidence

The police interviewed the victim, the defendant and three witnesses. The victim underwent a medical examination and the report stated that she was an uncircumcised child, that she had fresh wounds in the vaginal area, that her hymen had been broken and that semen droplets were present.

Court process and judgements

The Regional Court heard the case on 20 July 2013. The judge considered the evidence, including three witnesses brought forward by the accused who stated that they left Hargeisa with the defendant on 15 May 2013. The three witnesses testified that they had travelled to Kool Cadey town to deal with a family case and returned with the defendant on 17 May 2013.

The judge sentenced the defendant to seven years imprisonment under Article 398(2) and ordered civil compensation for the victim. There was no record for the sentence given and according to the prosecutor, the judge looked at the 5-15 year sentence range and found seven years to be the most appropriate. The defendant appealed on 30 July 2013, and the hearing was on 16 September 2013. The judge refused the grounds for appeal and upheld the sentence. On 6 October 2013, the defence appealed to the Supreme Court.

There were three hearings at the Supreme Court and the defendant was later released and acquitted of all charges. According to the prosecutor, the Supreme Court stated that the victim was a young girl who did not know what she was testifying against and was not a reliable witness due to her age. There was no civil compensation paid to the victim.

Analysis

The prosecutor used the powers given to the Attorney General's Office under Article 87 of the Criminal Procedure Code to ensure the safe and proper conduct of proceedings by making sure the victim was accompanied by her mother throughout the hearings and while testifying. This shows good prosecutorial practice through the protection of vulnerable witnesses.

When submitting the charge sheet, the prosecutor did not include any aggravating circumstances. Given the nature of the crime and the victim's age, this is something the prosecutor should have considered. In addition, Article 433 of the Penal Code criminalises abduction of a person under 14 years of age if the accused detains such a person against the will of a parent. The prosecution could have considered charging Article 433 along with Article 398 in this case.

Moreover, given the nature of the case, it is possible that the prosecution could have appealed this decision and requested a higher sentence. The Regional Court sentenced the defendant to seven years and the Appeal Court upheld this decision. The prosecution could have considered appealing because the sentence was, given the aggravating factors, on the lower end of the sentencing range of 5-15 years.

Although there was evidence against the defendant, he was later released by the Supreme Court. Because there is no record of the judgement, it is difficult to understand the reasoning for the release. According to the prosecutor involved, there was no evidentiary basis for the defendant's release. Instead, the prosecutor believed that the presiding judge was related to the defendant and that this was the reason for his release.

3) Rape in Isha Boorama, September 2013

Case Summary

On 8 September 2013, at around 1:30 p.m., the victim, a 17 year-old girl, ran out of her house and got on a bus after a fight with her brother. The victim said that after the fight she felt sick and dizzy and did not know where she was going. According to the victim's statement, when she gets angry she is possessed by *jiins* and sometimes becomes unconscious. The defendant, a 28-year old man, was driving the bus and told the victim that she looked distressed and that he would take her to a house to rest. When the defendant took the victim to the house, he told her to enter a room. He left the victim alone for a while and when he returned he grabbed her hands and mouth, removed her clothes and raped her. While he was raping her, the victim's mother and four other women walked in and the defendant hid behind the curtain. According to the victim's mother, one of the women came to her and told her that her daughter was being held in a house with a man. The defendant was arrested by the police and admitted that the two had sexual intercourse but that she had consented.

Evidence

The evidence consisted of the victim's statement, the defendant's statement, statements from eight witnesses, a letter from a doctor stating victim's mental state, a letter from *Cilaj* and the medical examination. The medical report, dated 14 September 2013, recorded that the victim's hymen was already broken (the victim was previously married), signs of bleeding and semen droplets.

Court process and judgements

The first hearing at the Regional Court took place on 25 November 2013. The defendant and victim were both questioned in court, but there was no record of their answers. There were five more hearings before the Regional Court judgement and witnesses for both the prosecution and defence testified. Two defence witnesses testified that the defendant and victim knew one another prior to the incident. One of the defence witnesses said that the two were in relationship and, in his opinion, were discussing marriage. According to the victim, she did not personally know the defendant and had never spoken to him before. She said that the defendant knew her and her mother because her family owned a shop.

During the sixth hearing on 9 January 2014, the judge asked for further evidence and the prosecutor requested that a mental examination be carried out on the victim. Three doctors signed the mental examination, dated 14 January 2014, stating that the victim suffers from possession, resulting in her unconsciousness. The Regional Court handed down its judgment on 29 January 2014. The judge stated that it was difficult to find clear evidence that the defendant and victim had any previous relations, and sentenced the accused to five years imprisonment under Article 398.

The defence appealed on 29 January 2014, but the Appeal Court upheld the five-year sentence on 7 June 2014. The defence sent a request for a second appeal on 9 June 2014, which the Supreme Court received on 22 June 2014. There is no record of whether the hearing took place. The families reached a customary agreement and the Supreme Court released the defendant.

Analysis

It is commendable that the prosecutor refused to accept the customary agreement in this case. During the early stages of the case, the families of the victim and the defendant informed the prosecutor that they had reached a customary agreement and asked for the defendant to be released. The AGO refused this request because of the Attorney General's directive stating that customary agreements are not allowed in rape cases. However, the Supreme Court released the defendant on the basis of the customary agreement, and this shows a weakness from the judicial perspective but not on the part of the prosecution.

One cause for concern is that the prosecution requested that a mental examination be carried out on the victim. This had the potential to undermine the victim's credibility. The prosecution should not have requested the mental examination and instead should have sought to bolster the victim's credibility.

Recommendations for Training

Based upon the above analysis of cases undertaken by the Hargeisa AGO, the following are proposed areas for trainings for prosecutors and DAGs working on GBV cases:

1. Using a victim centred approach in GBV cases and assisting victims of GBV to testify through the use of special measures;
2. Considering the use of multiple charges under the Penal Code; and
3. Bolstering, rather than undermining, the victim's credibility.