
**Archive Reflections on Mechanisms in Fighting Impunity of Sexual Violence against
Females in Somalia**

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Abstract

Sexual violence is ubiquitous and pervasive in regions of Somalia. Two decades of civil and armed conflicts and a state of collapse were responsible for a large population of displaced persons and other people vulnerable to sexual violence and other allied offences. At the same time, state institutions that are supposed to protect those vulnerable who are most at risk have been destroyed. Armed assailants which include members of the state security forces, operating with complete impunity, sexual assault, rape, beating, shooting, and stabbing women and girls within the internally Displaced Person Camps even as they walk to market places, tend their fields, or forage for firewood are widely spread. The paper, therefore, examines the conceptions and causes of sexual violence, mechanisms to curb the prevalence of Sexual Gender-Based offences, and challenges militating against the effectiveness of the identified structures to halt the menace of a sexual offence. The writers relied on primary and secondary legal materials like statutes and conventions on the prevention of sexual violence, the Constitution of Somalia, the Qur'an, and Hadith. Others are textbooks, journals, law periodicals, and internet facilities. The paper revealed that there is sexual violence against old women and girls in Somalia caused by armed conflicts and state collapse. Also, state institutions that are supposed to protect those vulnerable who are most at risk have been destroyed. The paper recommended that Somali authorities and security forces should take all necessary measures to protect women's security, particularly, at IDPs camps, and ensure that survivors of sexual violence have meaningful redress by creating a justice system that meets international standards

Keywords: Sexual violence, armed assailants, sexual gender-based offense, vulnerable people

Introduction

Since the collapsed of the administration of President Said Barre and the ancestry into civil war in 1991, the country has been confronted with lingering insecurity, destruction of its economic, social and political infrastructure and various human rights abuses occasioned by impunity. In this context, women have suffered an array of human rights violations which include sexual violence in a country where intensely rooted gender inequality prevails. Although, there is a political advancement and security improvement in Somalia, epochs of conflict, wide spread violence and insecurity coupled with drought and enormous displacement have made women and girls extremely vulnerable to sexual violence.

In Mogadishu and its environs, UN partners and service providers registered more than 1,700 cases of rape between Jan-Nov., 2012. Also, conflict related sexual violence like rape remained one of the most serious and recurrent human rights abuse in Somalia in 2013. There was no strong and functioning central government or national rule of law institutions in the last twenty years in Somalia. This has resulted in limited access to the formal justice system which was built on common law, Shar'iah law as well as customary law practices especially in rural areas, prompting cases like sexual violence to be settled out of court.

Laws are protecting female victims of sexual violence at international, national, and domestic levels. National laws are the most potent and readily available that protect females from sexual abuses. Access to rural and non-Federal Government of Somalia controlled areas in the south and central Somalia have proved to be more challenging with inadequate humanitarian interventions and nearly no sustained development activities going on at the place.

The northern part of Somalia spilled into autonomous and semi-autonomous regions, particularly, Puntland because of the absence of central government during the civil war. The southern part of these two regions is commonly referred to as south and central Somalia where sexual violence has been a peculiar characteristic of war in Somalia, a country where gender inequality is deeply rooted and prevalent. The custom, convention, and code of honour that was used to regulate conflicts between clans and ensure that women and children of any clan were protected from sexual violence have been fragrantly violated during the war.

Females are the victims of rape, sexual slavery, abduction, and clan-related revenge killings. Armed forces are however not the only perpetrators of sexual violence in conflict-affected areas. Women and girls are particularly vulnerable to violence occurring in the domestic sphere and to criminality perpetrated by civilians outside the home. Despite the continuous sexual violence against women in their communities, thousands of Somali men are always denied responsibility. They accused the international community of inflating these high figures of sexual violence and of shifting the blame on Somali men. Also, there is a deep culture of silence and fear regarding crimes of sexual violence which significantly impacts on reporting and responses. Research on linkages between SGBV and conflict have not been deeply carried out in Somalia, even though extensive research works are investigating the causes of conflict in the country. Moreso, knowledge about social norms behind sexual violence and related offences are still disjointed in Somalia.

South and Central Somalia where humanitarian needs remain high and where most of the humanitarian interventions have taken place over the years witnessed decimal figures of Internally Displaced Persons. Finklehor (2010) believed that Sexual violence is not restricted

to IDPs, South and Central Somalia, displaced populations,, and the host communities in the more stable areas of Somalia and Puntland also faced a high level of sexual violence.

Long term conflict, insecurity, environmental tremours,, and the widespread use of injurious outmoded practices expose women and girls to the risk of sexual violence. This is mostly applicable to Internally Displaced Persons (IDPs) who are at risk of sexual violence and sexual exploitation as a result of appalling living conditions, inadequate security in the IDP camps, the necessity among the victims to undertake risky livelihood practices to survive, and absence of protection from clans. It is obvious that all the inhabitants of IDPs are at great risk, however, women and girls who are from the minority clans, female elderly persons, and female-headed households are at greater risk.

The prominent criminals of sexual violence and manipulation are at variance in the three regions, Puntland, South, and Central Somalia. Because of the conflict in the South and Central of Somalia, violence and exploitation by uniformed men are more common than in Puntland where such acts are more often than not committed by men in civilian clothes. There are peculiarities in terms of other forms of sexual offence such as domestic violence, female genital mutilation, and early marriages as well as concerning responses to these incidents in the three regions. These offences continue because instead of using the formal legal system to curb sexual violence and allied offences, elders and district authorities prefer the use of either Shar'iah law or custom (xeer), even in the regions where formal judicial systems are available. In these systems, justice is delivered by consensus between the perpetrators and the survivor's male head of the household of the victims.

Regional legal systems that protect women against sexual violence are not available. Two of these regional sets of legal systems are the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women and the Southern African Development Community Declaration on Gender and Development. International Conventions protecting women against sexual violence are the most prominent, particularly, Convention on the Eradication of all Forms of Discrimination against Women. This paper, therefore, sets out to achieve reflections on various perceptions and causes of sexual gender-based violence, mechanisms for the protection of women against sexual violence, and the effectiveness of those identified mechanisms.

Conceptions on Sexual Gender-Based Violence and Causes

Sexual and Gender-Based Violence (SGBV) has been the signature feature of the war in Somalia and it remains one of the most pervasive human rights violations. Customary conventions code of honour that is used to regulate conflicts between clans and ensure that women and children of any clan were protected from violence has been widely violated during the war. Women and girls have been targeted for rape, abduction, sexual slavery, and clan-related revenge killings. Sexual violence has been recognised as one of the main forms of violence against women. It has been defined as any act of gender-based violence that results in or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

The internally displaced persons (IDPs) and women from minority clans are the most vulnerable to sexual violence with limited mechanisms to protect and support them from

attacks. IDPs conditions are not secure always. There is a proliferation of harms, a lack of lighting, and limited policing capacity. The consistent displacement of IDP population in Mogadishu and its environs during the 2013 civil war also contributed to the vulnerability of sexual violence. As the offence of sexual violence committed against persons in IDPs in various societies is rife in the country, settlements in Mogadishu and its environs remain extremely vulnerable. In some cases, the victims are subjected to repeated and systemic sexual assault. Reportedly among the perpetrators are members of armed groups and militias and in some cases, Somali security forces.

Survivors are not able to identify the specific armed groups or security branches that the perpetrators belong. Sometimes, they are afraid of mentioning them because of fear of retaliation. The problem is aggravated because military uniforms are readily available in the open markets. Moreso, due to inadequate or irregularly paid salaries, members of the Somali Security forces sometimes operate as private security providers while off duty. The majority of these attacks are carried out with automatic weapons, reaffirming that arms are widely available, therefore, disarmament and arms control are urgently required.

Specific causes and drivers of gender-based violence (GBV) in Somalia are related to the long-armed conflict which include the breakdown of society as a result of the crisis, flight, and forced displacement, family separation, failed integration and reconciliation programmes as well as the behaviour of armed groups that reinforce norms equating power, violence, and weapons with masculinity. However, evidence has revealed that the armed actors are not the only potential perpetrators of sexual violence in conflict-affected communities.

Many Somali men continue to deny that there is violence against women within their communities. They indict the international community of conceiving this high decimal of sexual violence and of blaming Somali men. Moreso, there exists a deep culture of silence and fear concerning crimes of sexual violence which impacts significantly on reporting and response. Sexual violence is used to represent much behaviour that may otherwise fall under the rubrics of sexual abuse, sexual assault, and any other sexual violations such as sexual harassment and voyeurism. The term gender-based violence is widely used as a synonym for violence against women to highlight the gender inequality in which much violence is based.

Sexual Gender-Based Violence (SGBV) has been defined as violence against individuals or groups based on their gender identity. Violence and conflict are gendered activities and women and men in Somalia, as social actors, experience violence and conflict differently whether as victims or as perpetrators. Their identities are defined by their social class and status, age, clan and ethnic belongings, and their urban or rural origin. This in turn shapes their distinctive experience of SGBV and the way they respond to it. In an international context, it has been defined as a violation of human rights that includes much more than physical and sexual assault. Gender-based violence is violence that is directed against a person based on gender. It constitutes a breach of the fundamental right to life, liberty, security and dignity, equality between men and women, non-discrimination, and physical and mental integrity.

There exists a wide difference between and among Somali communities and international standards on their understanding and perceptions of SGBV. This is partly explained by the fact that the notion of SGBV is located at the intersection of the three legal systems operating in Somalia, to wit: statutory, customary, and Shar'iah. The contradiction and lack of

harmonisation in the three systems make it difficult not only to have a common perception of SGBV but also to address them properly. Under the statutory law, the recognition and legal definition of SGBV issues have evolved. The Somalia Penal Code promulgated in 1962 criminalises rape but considers it as a crime against morals and decency not against the person, thereby resulting in a less severe sentence as compared to other crimes where moral and decency cannot be invoked. However, the crimes are too narrowly defined following the international law standards of protection from SGBV. This leaves wide gaps in the legislation that ensures the continued relevance of the customary law (xeer) which is the most accessible, used, and preferred legal system. The code merely defined the act as ‘carnal intercourse; understood as ‘the penetration by male sexual organs’ with violence or threats, therefore, failing to encompass all forms of sexual violence. Under customary law, sexual crime is not conceived as a violation of an individual’s bodily integrity, instead, it is an issue of morality and honour and a crime committed first and foremost against the family, clan, and community.

Shar’iah is not applied in statutory courts, it is integrated into customary law where it is also not strictly adhered to. Although clan elders insist that customary law has no basis in Islamic religious law, one can discover elements of Islamic doctrine in customary law addressing SGBV. However, there are competing approaches toward the definition of SGBV by Islamic scholars as well as various Islamic jurisprudence schools (Sunni and Shia), making it cumbersome to set a single method for defining and administering SGBV laws. Many Islamic scholars and religious leaders confirmed that all forms of SGBV have no ground or approval in Islam, yet, various doctrines point to the propagation of some forms of SGBV, such as the use of physical violence against women and children or female genital mutilation. The discrepancies in interpreting the Islamic definition of SGBV lie in the attitudinal, behavioural and geographical diversity of its scholars. In Shar’iah, sexual violence is defined in the framework of fornication and adultery, *zina* (sexual intercourse outside the marriage bond). Islamic law is drawn from two major sources, that is, Qur’an and hadith. If an offence of *zina* is committed and proven, both Qur’an and hadith prescribed capital punishment (*hadd*) for man and woman who committed the offence. That is why Allah says in Qur’an as follows: “And the two persons (man and woman) among you who commit illegal sexual intercourse, punish them both....”

Mechanisms Protecting Women against Sexual Violence in Somalia

Some of the mechanisms to protect women against sexual violence in Somalia are examined in this section.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and other Cruel, Inhuman Treatment or degrading Treatment or Punishment commonly known as the United Nations Convention against Torture (UNCAT) is an international human rights treaty under the review of the United Nations that aims to prevent torture and other acts of cruel, inhuman or degrading treatment or punishment around the world. The text of the convention was adopted by the UN General Assembly on December 10, 1984 and following the ratification by the 20th state party, it came into force on 26 June 1987, now recognised as an international day in support of victims of torture in honour of the convention. Since the convention entered into force, the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment has become accepted

as a principle of customary international law and by August 2017, the convention had 162 state parties.

The convention follows the structure of the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) with a preamble and 33 articles, divided into three parts.

Art. 2 (1) imposes duties on the state to take effective legislative, administrative, judicial, or other measures to prevent any acts of torture in any territory under its jurisdiction.

Art. 4 (1) provides that each state shall ensure that all acts of torture are offences under its criminal law. The same shall apply to attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

Art. 5 imposes a duty on the state to ensure that torture is an extraditable offence, and to establish universal jurisdiction to try cases of torture where alleged torture cannot be extradited. The convention also imposes a duty on the state to ensure the impartial investigation of complaints of sexual violence and imposes a duty on the state to ensure that people who make legal complaints about and are witnesses in cases are not subject to intimidation. The prohibition on sexual violence under International Humanitarian Law, rape committed as part of a widespread or systemic attack against civilians can now be classified as a crime against humanity and rape committed in conflict situations can be considered a war crime and a grave breach of the Geneva Conventions. The convention requires states to take effective measures to prevent torture in any territory under their jurisdiction and forbids states to transport people to any country where there is a reason to believe that they will be tortured.

This instrument makes provisions to the Somali government, security and justice sectors guidance and best practices on how to respond to the allegation of sexual violence to comply with best-practice standards and international law. These standards include ensuring all survivors have access to a medical facility that will provide them with legally admissible medical certificates, ensure protection for civil society groups while discharging their duties; develop systems to receive and track complaints made against the police by civilians, ensure the survivors are individually provided with compensation; provide protection for survivors and witnesses; establish vetting procedures; ensure that superior officials are held responsible for the sexual violence committed by those under their commands.

Convention on the Elimination of all Forms of Discrimination against Women

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly and it is described as an International Bill of Rights for Women which was instituted on September 3, 1981, and ratified by 189 states. Over 50 countries that have ratified the Convention have done so subject to certain declarations, reservations, and objections including 38 countries that rejected the enforcement of Article 29 which addresses means of settlement for disputes concerning the interpretation or application of the Convention. Australia's Declaration noted the limitation on central government power resulting from its federal constitutional system. The United States and Palau have signed but not ratified the Treaty. The Holy See, Iran, Somalia, Sudan, and Tonga are not signatories to CEDAW.

For the present Convention, the term discrimination against women ‘shall mean any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women irrespective of their marital status on a basis of equality of men and women, of human rights and fundamental freedoms on the political, economic, social, cultural, civil or any other field.’

By adopting and ratifying the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women, and to this end, undertakes to:

Incorporate the principle of equality of men and women in their national Constitutions or other appropriate legislation if not yet incorporated therein and to ensure through law and other appropriate means, the practical realisation of this principle;

Adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

Establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

Restrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

Take all appropriate measures to eliminate discrimination against women by any persons, organisations or enterprises;

Take appropriate measure, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women; and repeal all national penal provisions which constitute discrimination against women. Somalia has neither signed nor ratified CEDAW but it has signed the Maputo Protocol. Pursuance to the Vienna Convention on the Law of Treaties, a signatory state is obligated to refrain from actions that defeat the object and purpose of the Treaty. Despite the disadvantage of the lack of commitment through the ratification of the two foremost women’s human rights instruments relevant to Somalia, it is still possible to analyse the translation of feminist norms within each document. Many of the international actors working on SGBV programmes use the CEDAW and Maputo Protocol and make references to both in campaigns for rights awareness.

CEDAW is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women’s right to acquire, change, or retain the nationality of their children. State parties also agreed to take appropriate measures against all forms of traffic in women and exploitation of women. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submitting national reports, at least every four years, on measures they have taken to comply with their treaty obligations. CEDAW and its Optional Protocol emphasised that the role of the state to prevent violence against women and prosecute those responsible, taking appropriate and effective measures to subdue all forms of gender-based violence whether by a public or private act, to ensure that law against family violence and abuse, rape, sexual assault, and other gender-based violence give adequate protection to all women and respect their integrity and dignity. General recommendation 19 of CEDAW Committee re-emphasizes that violence against women must be prosecuted whether the act was perpetrated by state or non-state actors. Under general international law and specific

human rights Covenants, states may also be responsible for private acts if they failed to act with due diligence to prevent violation of rights or to investigate and punish acts of violence and for providing compensation.

Effective diligence requires the state to adopt a whole range of other measures in addition to legislation to address gender-based violence. These include training state personnel, adoption of practical policies and mechanisms to protect women's rights, ensuring that relevant legal mechanisms are accessible to women who have experienced any form of gender-based violence and that such mechanisms best serve the demands of victims themselves.

International Human Rights Law

International human rights law obligates Somalia's fragile government to respect the rights to bodily integrity, liberty, and security of the person and to be free from discrimination which includes taking appropriate measures to eliminate sexual and gender-based violence. The Federal government of Somalia should take all feasible measures to uphold these rights by investigating and appropriately prosecuting government security agents and private actors that are responsible for the crimes.

The instrument emphasizes that there should be leadership support from the highest levels of the government in Somalia. If the leaders fail to properly address these abuses, they will consign more Somali women and girls to preventable sexual violence and trauma and will do nothing to bolster popular domestic support among Somalis for a weak government that remains highly dependent on foreign military and financial support.

Incidents of sexual violence have been consistently reported in the internally displaced camps and settlements in Mogadishu and its environs. Women and girls are the most targeted by the bandits and militias while on transit and upon arrival in the refugee camps. The Somali government and United Nations call on all parties to immediately cease such violations and put in place preventive measures. Reiterating the clear signal that impunity will no longer be tolerated by undertaking investigations of the alleged violations and ensuring punishment of perpetrators through the criminal justice mechanism.

Feminist strategic engagement with International Human Rights law has challenged assumptions of objectivity and universal application, advanced women's rights in definition and legal codification, revealed the andro-centric nature of international law and the institutions upholding it, and most importantly for the context of this paper, brought attention to the widespread experiences of SGBV for women in war and peacetime. Feminist strategies have further sought, among other things, to correct short sightedness; to avoid co-optation; to recognise women's rights as human rights on the international level, and to avoid the rights of women being reduced to mere illusions of equality. Feminists have also brought static treatment of international norms into their purview within which they have employed a strategy of inquiry that brought insight to the norm translation process that revealed a more fluid and fluctuation process.

The scholarly discourse on feminist strategies in international governance (human rights law and other associated or international institutions) is dominated by powerful voices of women scholars and practitioners in the field of human rights and other forms of international law and

international relations. Examples of the diversity of theories represented by these women are structuralism, constructivism, postmodernism, and liberal feminism.

Provisional Constitution

The Somali Constitution provides that enacted legislation will be deemed invalid if it contravenes the general principles and objectives of Islamic law. Based on this provision, the existing multiple, overlapping and often contradictory sources of law have made the judicial system highly confusing and controversial. These factors are compounded by a lack of formal training of many judges, prosecutors, law enforcement officers, and lawyers with widespread public ignorance and distrust of the statutory and/or Islamic judicial system, particularly in rural areas. Efforts by some Islamic elders to impose fundamentalist beliefs through Shar'iah which do not always provide for women's rights or protect women against sexual violence further exacerbate the situation. There is a clear need to identify the means to seek agreement nationally on an appropriate interpretation of Shar'iah such that it protects women, girls, men, and boys.

It should be added here that contrary to the above assertion, Islamic law makes clear provisions for the protection of women against sexual violence. Islamic law only recognises sexual intercourse that takes place between legally married parties. Any sexual intercourse between two parties who are not husband and wife, whether with consent or otherwise amount to a grievous offence (hadd) in Islam. Allah, therefore, says in the Glorious Qur'an as follows:

“And those of your women who commit illegal sexual intercourse, take the evidence of four witnesses from amongst you against them; and if they testify, confine them (i.e, women) to house until death comes to them or Allah ordains for them some (other) way” (Q. 4:15).

It is further provides in Qur'an thus:

“And the two persons (man and woman) among you who commit illegal sexual intercourse, punish them both. And if they repent (promise Allah that they will never repeat, i.e, commit illegal sexual intercourse and other similar sins) and do righteous good deeds, leave them alone. Surely, Allah is Ever the one who accepts repentance, (and He is the Most Merciful), (Q. 4: 16).

In addition to this, Qur'an provides punishment for perpetrators for sexual offence in a clear tone as follows:

“The fornicatress and fornicator, flog each of them with one hundred lashes. Let not pity withhold you in their case, it is a punishment prescribed by Almighty Allah, if you believe in Allah and the last day. And let a party of the believers witness their punishment. (This punishment is for unmarried persons guilty of the crime (illegal sex), but if married persons commit the offense (illegal sex), the punishment is to stone them to death, according to Allah's injunction” (Q. 24: 2).

The Somalia government is responsible for ensuring that agencies uphold both domestic legislations and the Somali Constitution by protecting women and girls against sexual harassment. The prohibition on sexual violence is therefore contained in the penal code and Chapter II of the Constitution. The legal responsibility of superior officers for acts committed by their subordinates is provided for in the penal code and the duty of the security forces to uphold human rights is contained in Chapter 14 of the Constitution, yet taking court action against government actors is allowed by Article 109 of the Constitution.

The Ministry of Interior and Federalism has authority over policies affecting internal population displacement and humanitarian assistance. In its short existence, however, the Ministry of Interior itself has undergone a major reorganization that temporarily slowed humanitarian policy development. Besides, a turf battle over IDP policy erupted in 2013 when the President announced the creation of the National Commissioner of Repatriation and Resettlement of Refugees and IDPs. The Ministry of Interior also employs humanitarian advisors with OCHA funding as well as a senior advisor of internal displacement. Several of these humanitarian positions within the government are held by young, well-educated members of the Somali Diaspora who have repatriated from European asylum countries with a strong sense of idealism about rebuilding their homeland. Apart from the Ministry of Interior, the Federal Government of Somalia also established an Inter-ministerial Emergency Drought Response Committee with staffing support from the Ministry of Interior. With growing concerns about the possibility of renewed famine, the Emergency Drought Committee became increasingly proactive in the second half of 2014, trying to provide food support to affected areas to avert population displacement.

The Somalia Compact pledges the government's commitment to the humanitarian principles of humanity, neutrality, impartiality, and operational independence. It reaffirms the government's commitment to allow full humanitarian access to people in need wherever in Somalia they are found and will not interfere with humanitarian actors' neutrality, impartiality, and independence. Compact states that the rights of vulnerable groups including IDPs are a cross-cutting that must be respected and protected.

Challenges in Curbing Impunity of Sexual Violence

There are no legal and institutional policies to curb sexual violence and to bring perpetrators to book. The offence of rape and other sexual abuses are considered as offenses against norm and morality and they are not considered as human rights abuses. It is only civil society organisations that protest against sexual and gender-based violence (SGBV). Corruption, dishonesty, bribery, and fraud are rife and have affected all spheres of the justice system in Somalia. The government is still contesting with security challenges and other major political-diplomatic issues, thereby abandoning SGBV for civil society organisations as well as the international community to help the victims so that their voices can be heard.

The civilian judicial system has been reported to be ineffective across the country. General crime rates have increased, particularly in 2015. Al-Shabaab was accused of continuing posing major threat to peace and security thereby hindering good governance because it is always in conflict with the Somali National Armed Forces (SNAF) and the African Union Mission in Somalia (AMISOM) to engage in systemic warfare with increasing efficiency and lethality which disproportionately affects the civilian population. In response to continued military operations by SNAF, AMISOM, and other bodies like Kenya and Ethiopia, Al-Shabaab has reportedly enhanced its potential. Legislations and policies need to undergo reformation to provide for an expansion of women's rights protection. The major challenge is that any legislation enacted in Somalia only affects Mogadishu, having little or no impact in other parts of the country. Formal Judicial institutions are propelling weak, thereby many victims of sexual violence to make recourse to the traditional system for justice which include customary law and customs even though the traditional judicial systems are male-dominated and not supportive of survivors' rights. It is therefore apparent that under Somalia's traditional and

customary legal systems, the perpetrator of sexual and gender-based violence often goes free with impunity because traditional Somali society seldom discusses the issues of sexual abuse.

The unending due process of searching for witnesses to sexual and gender-based offense leads to a backlog of cases. In practice, if a survivor perpetrator to be prosecuted for a sexual offence, they must first report to the police to obtain a referral form, then, to the hospital to obtain a medical certificate and proceed to the Criminal Investigation Department. The process is too cumbersome and fragmented thereby exposing the survivor to high-security risk. Also, the prosecution needs to prove that there was penetration during the unlawful sexual intercourse to secure a conviction. It has been difficult if not impossible to get a medical certificate to attest that there was penetration. It was just recently in Somalia that a doctor at a particular hospital was legally empowered to issue such certificates.

The United Nations reported nearly 800 cases of sexual and gender-based violence in Mogadishu for the first six months of 2013. The actual number is likely to be much higher. Many victims will not report rape and sexual assault because they lack confidence in the justice system or they are not aware of existing health and justice services or cannot access them, and they fear reprisal and stigma should they report rape. UN Children's Fund (UNICEF) reported that about one-third of victims of sexual violence in Somalia are children.

After two decades of state collapse and armed conflict, Somali medical services and the justice systems, that is, the police and the courts, are profoundly ill-equipped to support and assist victims of sexual violence. As a result, women and young girls face what the UN's independent expert on human rights in Somalia refers to as "double victimization"—first the rape or sexual assault itself, then a failure of the authorities to provide effective justice or medical and social support.

The Federal Government of Somalia, which was inaugurated in August 2012 and which is exceedingly dependent on international assistance and military support from an African Union peacekeeping mission, AMISOM controls a small part of the country around the capital Mogadishu and has acknowledged the extent of the problem of sexual violence. In May 2013, the government signed a joint communiqué with the UN's special representative on sexual violence in conflict, pledging to address the issue in a comprehensive manner and as a matter of priority. However, it has yet to prove itself able and willing to take serious measures to prevent security force personnel and others from committing sexual violence or holding perpetrators accountable.

Human Rights Watch documents reported women's experiences of sexual violence since the 2012 inauguration of the new Federal Government of Somalia. The report covers women's experiences in Mogadishu and the surrounding Benadir district areas where the government has some control and where the government and international agencies are investing significant resources in improving security and rebuilding government institutions which include the judiciary and health services.

When President Hassan Sheikh Mohamud came to power, he promised to prioritize security and justice. In reality, little has been done to address the problem of rape and sexual assault of women and girls, particularly among the vulnerable displaced communities.

Conclusion

This paper has examined the causes of sexual violence in Somalia and it has revealed that most of these offences were committed by both security officers and private individuals. The causes of the offences are dynamic, such as long armed conflict which include the breakdown of society as a result of the crisis, flight, and forced displacement and family separation, failed integration and reconciliation programmes as well as the behaviour of armed groups that reinforces norms equating power, violence, and weapons with masculinity. The paper revealed that the offences took place in many locations including IDPs camps and market places.

Many instruments make provisions to the Somali government, security and justice sectors guidance and best practices on how to respond to the allegation of sexual violence to comply with best-practice standards and international law. However, such instruments are not effective enough to curb sexual violence in Somalia

In conclusion, formal judicial institutions are weak. This has forced many victims of sexual violence to make recourse to the traditional system for justice which include customary law and customs even though the traditional judicial systems are male-dominated and not supportive of survivors' rights.

Recommendations

Having identified the various causes of sexual violence and challenges in bringing the perpetrators of the crime to book thereby making it difficult to halt the menace of the crime, the followings are the possible measures to control the impunity and solve the problems.

Physical Prevention: Somali authorities and security forces should take all necessary measures to protect women, particularly at IDP camps throughout Mogadishu and surrounding areas where they face a significant risk of rape. The government should ensure that it deploys a sufficient number of competent, trained police, including female officers to provide security for these displaced communities. It should issue clear public orders to the military and police that the government will enforce a "zero tolerance" policy concerning sexual violence. The government should also support adequate resources for independent shelters and safe spaces for women and girls at risk of violence.

National Stakeholders: Strengthening the capacity of national stakeholders to engage in addressing sexual violence in their respective sectors while building and enhancing linkages among them and removing institutional obstacles from legal and medical referral pathways including the current restrictions on the ability of medical doctors to deliver legally admissible medical certificates.

Emergency Health Services. Authorities should adopt measures to provide comprehensive and integrated services, including an emergency health response service to survivors of sexual and gender-based violence, including those in IDP camps. The government should ensure that health and social services provide adequate physical, psychological, social, economic and medical support to women and girls recovering from violence. Healthcare and social service providers should receive specialized training to provide care, treatment, and support to adult and child survivors of sexual violence.

National Security and Stabilization Plan: there is a need to establish and professionalise the unit of Somali Security Police Force Task to address the needs of women, ensure training for Somali security forces on prevention of sexual violence, recruit and train female officers and undertake an effort to vet all elements being targeted into the National Security forces and institutions to ensure that those who have committed grave human rights abuse like sexual violence are excluded from the position of responsibility and leadership.

Strengthening the Rule of Law: In line with the strengthening the rule of law, there should be reforming of the penal code on the crime of rape, support in a office of the Attorney General to develop specialised investigation capacity for sexual offences, build in a capacity for justice mechanisms at the local level, raising awareness, training magistrates, including women magistrates and other women in the justice system on legal procedures and addressing the protection of women in traditional justice system.

Access to Justice: The authorities should ensure that survivors of sexual violence have meaningful redress by creating a justice system that meets international standards. Justice sector reform will need to effectively address and respond to violence against women and take into consideration the barriers that women and girls face in accessing justice, including stigma, victimization, cost, and geographical inaccessibility. Police should be given appropriate training in responding to and investigating crimes of sexual violence. As a priority, the government should take all necessary actions to ensure that there is no retaliation against victims who allege sexual abuse as occurred in three high-profile cases in 2013. The authorities should promptly and impartially investigate allegations of sexual violence and appropriately prosecute those responsible, including members of the security forces.

Legal and Policy Reform: Somali's government should enact and enforce laws and regulations prohibiting all forms of violence against women; mandating prevention, and protection; establishing care, treatment, and support for survivors; and providing adequate punishment of convicted perpetrators. The government should review existing laws and policies, particularly in the penal code and the draft national gender policy to identify and eliminate gaps in the protection of women against acts of gender-based violence. The penal code needs to be reformed to ensure it addresses the issue of sexual violence in all its forms and in line with international standards. It will be fundamental to strengthening the Somali legal framework. Also, the code should clarify the role of the customary justice system in the adjudication of criminal matters including sexual violence.

Promotion of Women's Equality: The government's commitment to combatting violence against women should promote gender equality through education, women's political, social, and economic equality, and women's political participation.

Involving Community and Religious Leaders: The government and international community should ensure that community and religious leaders play a prominent role in an attempt to tackle sexual offence through outreach and sensitization and their active engagement as agents of change.

Somali authorities and security forces need to take meaningful steps to prevent violence against women and girls. These include putting in place protective measures, such as shelters and safe spaces, for women and girls at risk of violence, ensuring that there are clear command and

control structures for security forces, vetting both military personnel and the police to exclude perpetrators of human rights violations, including sexual violence; training of law enforcement officers; and holding all perpetrators accountable for abuses. Over the long term, the government should undertake public information and education campaigns on violence against women to change the existing attitudes of men and women about their roles and status.

Comprehensive criminal and civil legislation are ultimate for an effective and coordinated response to violence against women. The government should enact and enforce laws and regulations that prohibit all forms of violence against women and encompass prevention, protection, care, treatment, support, and remedies for survivors, as well as adequate punishment of convicted perpetrators. The government should review existing legal provisions to eliminate gaps in the protection of women against acts of gender-based violence.

Somalia's government, international bodies, and various Non-governmental organisations should adopt measures to provide comprehensive and integrated services, including emergency response, to survivors of sexual and gender-based violence. To achieve this, the government should seek to ensure that health and social services provide adequate physical, psychological, social, economic, and medical support to women and girls recovering from violence. Health care and social service providers and law enforcement officers should receive specialised training to provide care, treatment, and support to adult and child survivors.

There is a need for the Somalia government to put in place a judicial system capable of delivering justice to victims of abuse following international standards. Justice sector reform will need to effectively address and respond to violence against women and take into consideration the barriers that women and girls face in accessing justice, including stigma, victimization, cost, complexity, and geographical inaccessibility.

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