



**EXPANDING
ACCESS TO
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SEXUAL AND GENDER BASED VIOLENCE IN PUNTLAND

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EAJ Research Scholars Program

While EAJ conducts its in-house research to support the design and adjustment of its programming approaches and activities, it has always deemed support to Somali academia an important approach to foster the voices of Somali justice and legal scholars. Inputs from Somali academia into the country's justice sector reform can provide culturally and contextually relevant approaches to aid-ing people in solving their grievances. It can help nurture in-country thinking about context-relevant understanding of the justice sector, as well as make support to women, marginalized and vulnerable groups in accessing justice in Somalia's legally plural scenario more targeted. Somali scholars can be important thought leaders in how to enable broader access to justice, and they can be the drivers of debates around the performance of justice actors and institutions, as well as norms that best help people achieve the kind of justice that serves them best.

With this in mind, EAJ has been issuing calls at universities across Somalia. The call for proposals was directed to Somali academics, researchers and students to submit proposals for short research pieces on a selected 'Access to Justice' topic. Successful applicants have received a research grant and have been submitting research papers on their selected topics to the EAJ. The EAJ Research Team has been providing support in the finalization of the papers, and is proud to showcase some of the research outcomes publicly, in this research series, as well as showcasing the researchers on the EAJ website.

The EAJ hopes that presented research pieces will contribute to a public debate on access to justice issues, and will showcase the capacities and interests of Somali academics. We sincerely hope that this can be a step to bring academic insights closer to practitioners in the Rule of Law and Access to Justice field and allow for the development of some Somali-born ideas and approaches on how to grant everyone access to fair justice.

Executive Summary

The most common forms of Sexual Gender Based Violence (SGBV) in Puntland include gang rape, domestic violence, early marriage, female genital mutilation (FGM), and human trafficking. Puntland authorities have adopted different laws and policies to prevent SGBV and protect victims and survivors. These include the Puntland Constitution of 2012, the Puntland Anti-FGM Policy of 2014, and the Sexual Offenses Law of 2016. In addition, the government of Puntland has established two important institutions that play a significant role in defending victims' rights: the Office of the Puntland Human Rights Defender and the Puntland Forensic Science Laboratory.

Regardless of existing efforts and poorly functioning laws, most victims do not have sufficient access to justice.

Challenges hindering victims' access to justice include the following:

1. Low public awareness of the judiciary system and its processes. Many rape survivors and their families do not bring cases to statutory justice institutions because of their deep-rooted culture, concerns about lack of confidentiality and distrust of the outcomes produced by these institutions.
2. Preference for the Xeer (Somali customary law) over both Sharia and secular law. Secular law and Sharia both respect women's individual rights, but Xeer, based on notions of communal rights, is prevalent and enforced by elders. Most people prefer to work through traditional elders instead of statutory institutions. Xeer employs an elder-to-elder approach, which is not as effective since the female victims are not involved; this leaves them at the mercy of the elders.
3. Low female representation in government, particularly in the judiciary system. If more women served on courts and within justice institutions, this could make a difference.
4. Low capacity of law enforcement institutions in understanding GBV cases.

1. Introduction

Somalia's traditional customs classify Somali women as part of the *birimageydo* (protected groups within the community¹), a category of society exempted from harm, especially in wartime when women often act as peace envoys. Historically, women have been included as part of compensation packages to reinforce peace accords. Many long blood feuds have been quelled through the payment of camels accompanied by gifts of virgin girls as wives to appease the next of kin of the final victim in a cycle of killings. Somalis refer to the gift of a virgin girl as *godob tir*, and the practice continues in modern-day Somalia (PDRC 2001).

The advent of urbanization in post-conflict Somalia has brought with it the degradation and erosion of some aspects of traditional culture, including a shift away from many rich traditions that protected women, the weak and the elderly. Sexual and gender based violence (SGBV) rose dramatically during the era of conflict, thriving on violations of the laws of *birimageydo*, setting a precedent for the abuse of women as a form of revenge. During the 1970s and 80s, the military government's counter-insurgency operatives frequently employed SGBV and other abuses of power to subjugate and punish population centers that showed allegiances or sympathies with rebel groups such as the Somali Salvation Democratic Front (SSDF) in northeastern Somalia (the present-day Puntland State). Somali intelligence personnel, legislators and academicians have neglected this subject in the past, mainly because of data scarcity resulting from women's silence in the face of the stigma that rape victims face in Somali society.

Rape came into the spotlight in 2017 when a group of young men posted a video of the gang rape of a young girl in Galdogob district of Puntland. Due to limited government capacity and the population's preference for Sharia and the traditional justice system (Xeer), this high-profile case was dealt with lightly. The punishment was not implemented correctly, and it resulted in the encouragement of other gang rape cases, because no fear of law and punishment was instilled. When a judgement is handed down it must be implemented properly so that the same mistake does not happen again. This encouraged impunity for perpetrators of rape, and subsequent high-profile rape and murder cases threatened the very legitimacy and continued viability of the Government of Puntland in the eyes of local constituencies and the Somali people at large. A significant social movement began to pressure the Government of Puntland to act against rape. Although the Puntland parliament passed the Puntland Sexual Offenses Law in 2016, Puntlanders still question whether it has been properly implemented.

Information on SGBV cases is scant and not properly documented. In 2018 it was reported that cases were rising in Puntland, and 133 cases were recorded between 2017 and 2019; the latter year saw a record number of reports. During that time, the Office of the Puntland Attorney General became a focal point in the fight against rape and impunity, although it only prosecuted 8 cases.

This research scholarship, commissioned by the Expanding Access to Justice (EAJ) program, sought to understand the challenges that gang rape victims face and to propose solutions in order to better combat SGBV. The findings documented in this report were primarily obtained through a desk study, interviews and focus group discussions (FGD) in the Puntland State of Somalia.

¹ Usually this group includes women, children, elderly, and religious leaders.

2. Purpose of the research

This project sought to achieve the following:

- To identify the most common forms of SGBV reported in Puntland State of Somalia and explore how government institutions including law enforcement agencies have dealt with them, as well as challenges that have emerged in the process of resolving these cases.
- To better understand the uses and practices of Somalia's different justice systems (Sharia, customary and statutory), as well as public preferences regarding these systems.
- To identify existing legal frameworks that help SGBV victims obtain justice, and to determine how effective these frameworks are and why.
- To identify any progress that has been made towards bringing perpetrators to justice.
- To provide recent SGBV case studies and explain how these cases proceeded to justice.

3. Research methodology

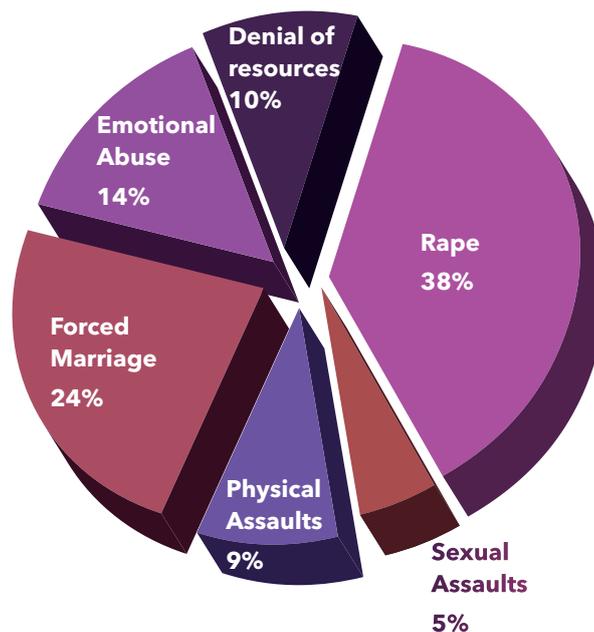
This research integrated different research tools. It commenced with an in-depth desk review, followed by key informant interviews (KIIs) with experts and FGDs with stakeholders from both IDP and host communities. This was followed by more comprehensive interviews covering three districts of Puntland State (Garowe, Bosaso and Galkacyo) selected according to population density. In total, 21 persons participated in interviews and 45 others were engaged in four FGDs. Researchers also visited Puntland's Ministry of Women Development and Family Affairs (MOWDAFA) to gather information about the government's role in SGBV protection and response.

4. Results and analysis

SGBV-related research, literature and statistics have generally been sparse in Somalia, due in large part to the prolonged civil war. Newly established universities and research centers in Puntland have mainly focused on political and state-building affairs, with little attention paid to social problems such as gender inequality, human rights and the rule of law.

Like other crimes, SGBV incidents in Puntland are rarely recorded due to limited reporting mechanisms. Primary data uncovered in this research indicates that the largest proportion (38%) of SGBV cases in Puntland (see Figure 1 below) are reported as rape, while the second most frequent type is forced marriage (24%). The GBV Information Management System (GBVIMS) recently established by MOWDAFA with the support of the UN Population Fund (UNFPA) depicts a high prevalence of sexual violence, gang rape, physical and psychological assault in Puntland. During the last quarter of 2019, the GBVIMS documented 153 incidents of sexual violence.

Figure 1: Common forms of SGBV in Puntland



Gang rape has become common in Puntland and Somalia as a whole in recent years. However, this research highlighted few reported cases. Nearly two thirds of respondents stated that they are not aware of the causes of gang rape, but some respondents emphasized drugs, technology and a lack of serious punishment as potential causes. This will require further in-depth research to reverse the increasing trend and to determine the root causes and factors behind the problem.

Just about more than half of respondents stated that most gang rape victims are eighteen years of age or above. This is followed by 12 to 17 years of age and 11 years of age or below. All reported victims were female. Respondents stated that efforts have been made and a number of laws approved to combat SGBV, but little has been achieved; most SGBV victims still lack access to justice because of traditional practices and interferences. Often, the elders intervene in the case and discuss the issue out of court, and the victim's individual rights get dropped.

Puntland's justice system is a hybrid of several legal structures, including Islamic/ Sharia law, formal/secular law and customary law (*Xeer*²), all of which criminalize sexual violence. The Constitution of Puntland ensures women's rights of equal participation in socio-economic and political affairs as well as access to justice (Articles 12 and 35). The Somali Penal Code (1962) criminalizes rape with a penalty of 15 years in prison (Article 398).

Somalia, particularly Puntland, has in the last decade developed and passed several legal provisions, policies and frameworks addressing and criminalizing all forms of SGBV and sexual harassment, including the Sexual Offenses Law of 2016 and the Anti-FGM Policy of 2014. Nevertheless, these legal frameworks are still based on a lack of public awareness, ineffective law enforcement and insufficient legal aid. Nearly all of respondents stated that anti-SGBV laws are not well known

within communities that are prone to rape, while half of them emphasized that proactive enforcement mechanisms remain weak. Additionally, divergences among Sharia, Xeer and statutory systems have caused legal confusion within Puntland's judicial system.

Nearly all respondents confirmed that most people in Puntland prefer customary law to the statutory courts with regard to rape cases. Due to the poor capacity of government institutions and the statutory judicial system to resolve such cases, people tend to fall back upon Xeer and traditional practices with more negative implications for women's rights. The basic values and social behaviors embodied by Xeer are rooted in a patriarchal system that imbues male clan elders with the authority to make decisions and to mediate, judge and settle incidents. Women are always under the jurisdiction of men and have limited rights in the public domain, which is governed by rudimentary cultural practices that are often based on a misinterpretation of Islam. These practices create an environment of impunity for SGBV (SIGI, 2019).

5. Case Studies

This study examined three specific gang rape cases to explore how each was solved. These heinous acts all came into the public limelight, overshadowing the lives of the victims and causing grievous harm to their families. A court judgment has been reached in only one of these cases.

Case 1. The most recent case in Puntland involved the gang rape and murder of a 12-year-old girl named Asha Ilyas Adan in Galkayo on 25 February 2019. This horrible case spurred public demonstrations throughout Puntland and as a result 10 men were arrested. The Puntland Forensic Science Laboratory played a significant role in identifying the perpetrators, all of whom were charged with rape and murder. Three were found guilty and received the death penalty, while the court acquitted the other seven suspects. The three convicted men are now awaiting execution.

In this case a murder was committed, and the government handled it well. Other notable features of this case included that the government did not allow intervention by elders, and that Somalis inside and outside the country put pressure on justice authorities through social media including the hashtag #JusticeforAisha, calling for a proper investigation.

Despite the convictions in this case, Puntland authorities still have a number of high-profile cases pending. Sluggishness in getting these cases to trial may have contributed to reports on social media that inserted pressure on investigations. Clan representatives who defended the men convicted of Asha's rape and murder have not been vocal recently nor have they publicly maintained their initial stance. Although the swift punishment of culprits may act as a deterrent, Puntland's battle with SGBV will likely continue as overall efforts to identify and address the root causes of this scourge have been weak.

Case 2: Hodan Ahmed Mohamed, a mother of three, was gang-raped and murdered in Garowe on 11 April 2019. A number of men have been arrested in this case, but as yet none have been taken to justice. The Forensic Science

Laboratory has started forensic work but unfortunately the process has already taken almost six months, much longer than expected. The Puntland government has promised justice for Hodan, but given the long time it is taking, her family is complaining about the process and is on the verge of giving up.

Case 3: A 12-year-old girl named Najmo Abdilkadir Hassan was gang-raped in Burtinle on 19 June 2019 and later died because her family hid the case until she was in serious medical condition. Three men including one of her relatives were arrested. The crime had no witnesses except the victim, who has now passed away, and the Forensic Science Laboratory has not been engaged.

The UNFPA released a statement, on 23 June 2019, concerning Case 3 when it became public, emphasizing that: "We are gravely concerned by the death of 12-year-old Najmo Abdilkadir Hassan from Burtinle in Puntland who passed on after suffering a brutal gang-rape on 19 June 2019. UNFPA strongly condemns this barbaric act of gender-based violence. We stand with Najmo's family and call for a speedy investigation into this grave crime. Perpetrators must be held to account. The scale and gravity of similar attacks in the country recently mark a disturbing escalation of violence. Violence against women and girls harms families and communities across generations and reinforces other forms of violence prevalent in society. We must work together to prevent such acts of sexual violence so everyone can live without fear and in freedom no matter their age or gender." (UNFPA, 2019)

6. Conclusion

The results of this study depict a rapidly increasing trend of gang rape that mirrors today's situation for women in Puntland. The government's limited capacity and the population's preference for Xeer and other traditional justice systems have meant that high-profile cases have been dealt with lightly. This has encouraged impunity for rape cases, and subsequent high-profile rape and murder cases have threatened the very legitimacy and continued viability of the Government of Puntland in the eyes of local constituencies and Somali people at large.

7. Recommendations

Based on the above findings, we make the following recommendations:

- Conduct further in-depth research on the issue of gang rape in Somalia and particularly Puntland.
- Provide more capacity support to the Puntland Forensic Science Laboratory, which is currently the only institution in the State that can prove allegations of gang rape.
- Educate the staff of relevant government institutions on rape and other SGBV case management skills.
- Overcome ignorance and create awareness by offering free legal aid to vulnerable communities and SGBV victims.

- Disseminate and implement existing SGBV laws.
- Raise public awareness and promote attitude change toward gang rape cases at the grassroots level, to encourage families to report cases rather than hiding them.
- Engage the media as a tool for awareness-raising about gang rape and other SGBV cases.
- Improve networking and connection-building among stakeholders regarding SGBV prevention and access to justice; focus on teamwork, information-sharing and the development of common strategies.
- Increase inclusion of women in courts and other justice institutions, so “women can talk to other women instead of men.”

8. Bibliography

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9. Appendices

- Appendix 1: Research questions
- What are the most common types of SGBV cases occurring in Puntland? Who are the victims of those abuses?
- Where do people go with their cases, to courts or traditional elders? Why do they prefer one or the other?
- What are the existing legal frameworks and institutions serving SGBV victims in getting justice? Do these work or not? If not, why?
- In your view, what are the causes of SGBV cases in Puntland?
- Which cases do you remember the most that happened in Puntland in 2019? How did these cases proceed to justice?

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