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“Here, Rape is Normal”

A Five-Point Plan to Curtail Sexual Violence in Somalia



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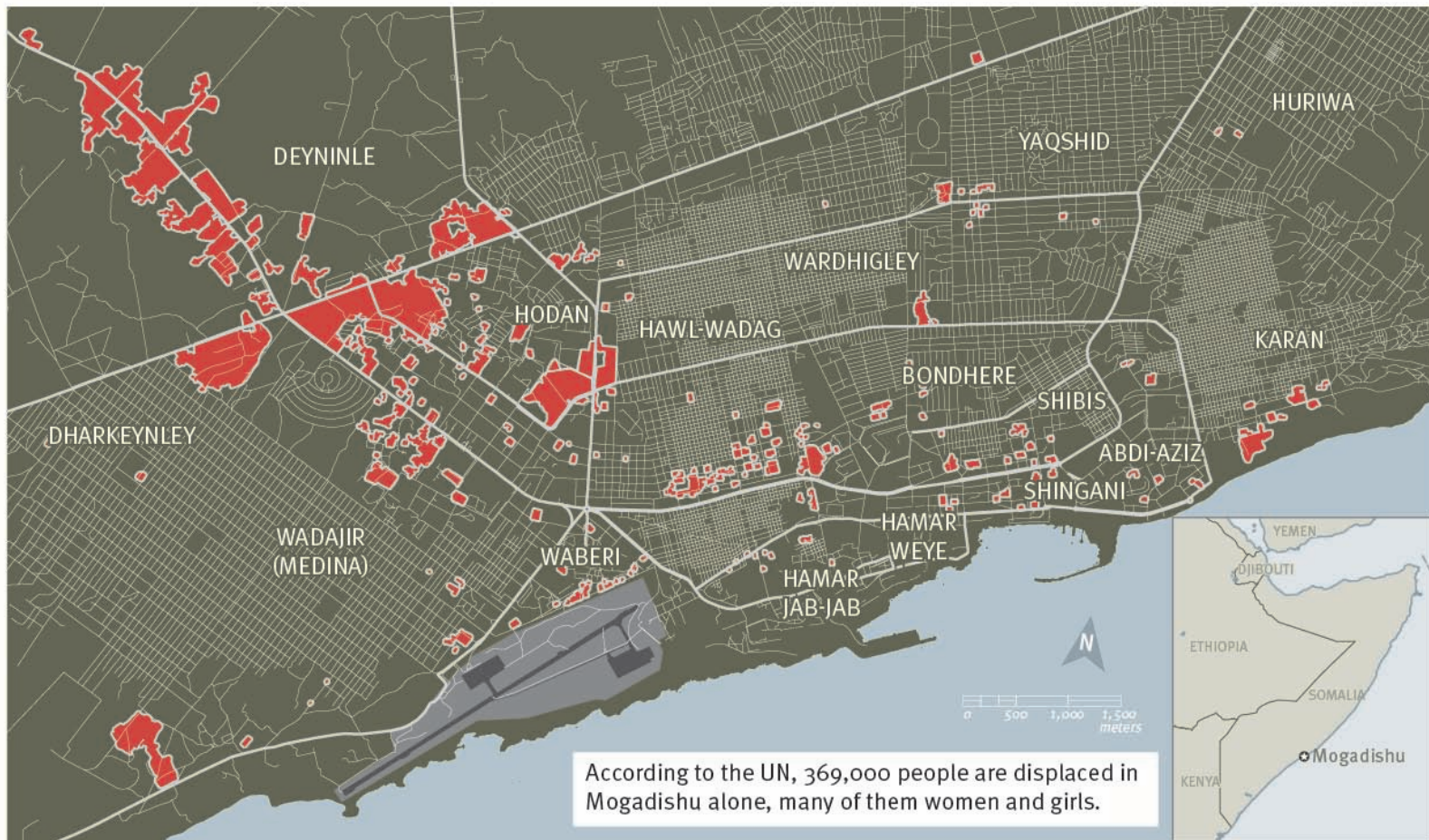
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Map: IDP Settlements in Mogadishu



Summary

Maryam, a 37-year-old single mother, said that the night before her interview with Human Rights Watch, she could hear a woman being attacked at the camp for internally displaced persons (IDPs) where she lives with her six children in Somalia's capital, Mogadishu. The episode brought back the trauma of her own experiences of sexual assault. Maryam said that rape had become even more pervasive at the camp in Wadajir district of the capital and the situation for women had deteriorated since she herself was raped there in 2012. "In our camp when we saw someone, we used to say, 'Hi, how are you.' Now when we see each other we ask, 'Were you raped today?'"

Maryam said that the first time she was raped, she was five months pregnant and asleep in her makeshift shelter in Wadajir district. "The four men all raped me one by one while one of them stood guard outside. I was struggling with the last man and he stabbed me with the bayonet on his gun. I was screaming and no one came out to help."

The next day, the camp "gatekeeper" (manager) checked up on her as word spread in the camp about the assault. He took her to the police station where she reported that one of the rapists was wearing a police uniform. "I then started to bleed profusely from my vagina.... They told me to go home and wash off the blood. But before they let me go, they told me I had to wash the floor where I was bleeding. I sat down, they gave me a brush and I cleaned the floor." She never returned to the police station to pursue the case. She was afraid the assailants would come after her and "do something worse." Shortly after, Maryam miscarried. Three months later, she was raped again at night in her tent by a different gang of assailants.

Sexual violence is pervasive in much of Somalia. Two decades of civil conflict and state collapse have created a large population of displaced persons and other people vulnerable to sexual violence. At the same time it has destroyed the state institutions that are supposed to protect those most at risk. Armed assailants, including members of state security forces, operating with complete impunity, sexually assault, rape, beat, shoot, and stab women and girls inside camps for the displaced and as they walk to market, tend to their fields, or forage for firewood. Members of Somalia's long marginalized minority communities are particularly at risk.

The United Nations reported nearly 800 cases of sexual and gender-based violence in Mogadishu alone for the first six months of 2013. The actual number is likely much higher.

Many victims will not report rape and sexual assault because they lack confidence in the justice system, are unaware of available health and justice services or cannot access them, and fear reprisal and stigma should they report rape. According to the UN Children's Fund (UNICEF), 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 system, including 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 failure of the authorities to provide effective justice or medical and social support.

The Federal Government of Somalia, which was inaugurated in August 2012, but which is highly dependent on international assistance and on the military support of an African Union peacekeeping mission, AMISOM, and only controls a small part of the country in around the capital Mogadishu, 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 to hold perpetrators accountable.

In this report, Human Rights Watch documents 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, including the judiciary and health services.

While President Hassan Sheikh Mohamud came to power promising 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.

The report provides a five-point roadmap intended to assist the government, donor countries, and other entities to put in place a comprehensive national strategy to reduce sexual violence, provide survivors with immediate and urgent assistance, and develop a long-term approach to end these abuses.

Physical prevention. First, Somali authorities and security forces should take all necessary measures to protect women's security, 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 with regard to sexual violence. The government should also support adequate resources for independent shelters and safe spaces for women and girls at risk of violence.

Emergency health services. Second, 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.

Access to justice. Third, 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. Fourth, the 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 authorities 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.

Promotion of women's equality. Fifth, as part of the Federal Government of Somalia's commitment to combatting violence against women, it should promote gender equality through education, women's political, social, and economic equality, and women's political participation.

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 steps to uphold these rights by investigating and appropriately prosecuting private actors and government agents who infringe upon them. Ending the impunity that fosters future abuses will require leadership from the highest levels of the government. Failure to properly address these issues 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 which remains highly dependent on foreign military and financial backing.

International donors have pressed the Federal Government of Somalia, including through the Somali Compact endorsed in September 2013, to give priority to women's rights. Donors should make it clear that supporting both short and long-term measures to address sexual violence against women is crucial for Somalia's development.

When Human Rights Watch asked one survivor why she did not report her being raped, she shrugged and explained the futility: "Rape is a frequent occurrence in Somalia. Here, rape is normal."

Key Recommendations

The Federal Government of Somalia, with the assistance of international donors, should:

PHYSICAL PREVENTION

- Support joint patrols of police officers and community representatives in internally displaced person camps to deter sexual violence, and ensure that women survivors are linked to support services;
- Ensure that adequate services are available to residents of IDP camps to reduce the need for women and girls to engage in high-risk activities such as collecting firewood in remote areas;

EMERGENCY HEALTH SERVICES

- Ensure that health and social services provide adequate physical, psychological, social, economic, and medical support to women and girls who are victims of sexual violence;
- Develop confidential referral systems and health posts in high-risk areas, such as large or isolated IDP camps, that can facilitate access to emergency treatment for women who are victims of sexual violence;

ACCESS TO JUSTICE

- Investigate and appropriately discipline and prosecute sexual violence committed by members of the state security forces;
- Provide appropriate training for all police and prosecutors in the handling of cases of sexual and gender-based violence;
- Ensure that sufficient numbers of competent, trained police, including female officers, are deployed in IDP camps to provide adequate protection for women and girls;

LEGAL AND POLICY REFORM

- 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;

- Review existing provisions, particularly in the penal code and in the draft national gender policy, to eliminate gaps in the protection of women against acts of gender-based violence;

PROMOTION OF WOMEN'S EQUALITY

- Support programs to help female survivors rebuild their lives by assisting them in seeking housing, jobs, vocational training, or school enrollment; and
- Ratify core human rights conventions, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

Methodology

The report is based on fact-finding missions to Nairobi, Kenya in June 2013 and to Mogadishu, Somalia in August 2013 to examine recent sexual violence against women and girls in Mogadishu. Security and concerns for the safety of interviewees precluded research in other parts of Somalia.

In Mogadishu, Human Rights Watch interviewed 27 survivors of rape, some of whom had suffered abuse on more than one occasion, all between August 2012 and August 2013, the period since the new Somali Federal Government took over from the Transitional Federal Government. Human Rights Watch interviewed 6 additional women who witnessed abuse or provided services to the survivors. None of those interviewed were under the age of 18.

In Nairobi, Human Rights Watch also met with 12 representatives from international aid agencies and other relevant organizations working in Somalia. In December 2013 and January 2014, Human Rights Watch sent detailed letters with questions and our findings and recommendations to Somalia's President's Office and requested the government's response (see annexes 2 and 3).

Human Rights Watch worked with local contacts who helped identify women willing to be interviewed for this report. The women came from five different districts across the capital, primarily in central Mogadishu, and in and around Afgoye. The majority of women interviewed lived in makeshift shelters in camps for internally displaced persons in and around Mogadishu. Others lived in villages with more solid houses. Importantly, and contrary to the experience of many rape survivors in Somalia, all victims interviewed for this report had already received some basic assistance from service providers.

The names of interviewees have been withheld and replaced by pseudonyms for security reasons. The exact locations and camp names where women lived and where the abuse occurred are not always included in this report due to safety concerns and to protect the identity of the women, at their request.

The individual women interviewed for this report were fully informed about the nature and purpose of our research and how we would use the information they provided. Human Rights Watch obtained oral consent for each of the interviews. No incentives were provided to individuals in exchange for their interviews. All the interviews were conducted in person, in private, and in Somali with a female interpreter. Care was taken to ensure that

interviews about past traumatic events did not further traumatize interviewees and, where appropriate, Human Rights Watch facilitated referrals to a local organization providing counseling and other services.

The majority of international representatives interviewed by Human Rights Watch also requested that their names and organizations be withheld.

Sexual Violence Figures

On August 16, 2013, the UN Office for the Coordination of Humanitarian Affairs (OCHA) said that during the first half of the year, there were about 800 cases of sexual and gender-based violence reported in Mogadishu alone.¹ In Mogadishu and surrounding areas between January and November 2012, UN partners and service providers registered over 1,700 cases of rape.² According to the UN Children's Fund (UNICEF), about one-third of victims of sexual violence in Somalia are children. In 2012, UNICEF and its partners assisted 2,200 victims of sexual violence in the country.³ With all of these figures, the actual number is likely much higher, as many victims of sexual violence never report their experiences to the authorities for various reasons, including fear of reprisals from authorities or perpetrators. Women and girls are also wary of the ostracism and social stigma associated with rape and they have little confidence that the authorities will undertake an adequate investigation into their cases.

¹ United Nations, "UN humanitarian wing warns of pervasive sexual violence in Somalia," UN News Centre, August 16, 2013, www.un.org/apps/news/story.asp?NewsID=45641&Cr=sexual+violence&Cr1=#.Ul2i9NI3sud (accessed January 24, 2014).

² UN General Assembly Security Council, Report of the Secretary-General on Sexual violence in conflict, 14 March 2013, A/67/792-S/2013/149, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_149.pdf (accessed January 24, 2014).

³ United Nations, "UN humanitarian wing warns of pervasive sexual violence in Somalia," UN News Centre, August 16, 2013, www.un.org/apps/news/story.asp?NewsID=45641&Cr=sexual+violence&Cr1=#.Ul2i9NI3sud (accessed January 24, 2014).

1. Improve Prevention Strategies

The majority of the victims of sexual violence documented by local and international NGOs in and around Mogadishu are women and girls living in IDP camps. Many reported incidents that took place at night while the victims slept in their shelters and lacked any physical protection or security. In some cases, victims have been repeatedly raped and sometimes gang-raped over their time in the camps.⁴ Others have been attacked when they leave the camps to gather supplies or work. Human Rights Watch research published in 2013 found that armed men in uniform, including government forces and government-allied militia, have been responsible for a significant number of sexual assaults of internally displaced women and girls since July 2011.⁵ These have included some government personnel who were posted in IDP camps to provide security.

The Federal Government of Somalia should take immediate steps to reduce and prevent sexual violence by minimizing risk factors that exacerbate women's vulnerability, particularly for internally displaced women and girls.

SHORT-TERM PROTECTION MEASURES:

- Organize joint patrols of competent, trained police officers and community representatives in IDP camps, especially at night, to deter violence and identify women who have been victimized so that they can be provided with services;
- Provide services to reduce the need for women and girls in IDP camps to undertake high-risk activities such as collecting firewood in remote areas and fetching water; provide safe access to water points.

MEDIUM-TERM MEASURES:

- Improve physical protection by building off-site shelters and safe spaces within camps for women and girls at risk of violence and who have experienced violence. Provide adequate lighting throughout the camps, latrines with locks, and secure camp perimeters;

⁴ Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, August 16 2013, A/HRC/24/40N BARI, para 50.

⁵ Human Rights Watch, *Hostages of the Gatekeepers*, www.hrw.org/reports/2013/03/28/hostages-gatekeepers-o

- Employ community safety coordinators in IDP camps to help women and girls organize to travel in groups to collect supplies or when they need to leave camp to work or attend school;
- Ensure that sufficient numbers of competent, trained police, including female officers, are deployed to protect women and girls in IDP camps and in the community at large.

LONG-TERM MEASURES:

- Launch public information and education campaigns on violence against women to change existing attitudes of men and women about their roles and status;
- Launch public messaging and awareness campaigns to inform survivors of sexual violence of available services and reporting processes.

In 2011, Farxiyo moved to Mogadishu from Lower Shabelle with her family after all their livestock died from drought. Her abusive husband divorced her and left her solely financially responsible for their seven children, two of whom stay with Farxiyo's mother.⁶ In July 2013, Farxiyo was forcibly evicted from her camp by unknown men who destroyed her shelter along with others. "I didn't know where to go. I didn't know what to do. I sat in front of the camp and someone gave me some shillings and helped me move out."⁷

Soon after moving to another camp in Sarkuusta (between Mogadishu and Afgoye) with her five children, she was raped while asleep in her tent. Farxiyo said she feels completely unprotected at the camp and knows other women who have been raped. The day before Human Rights Watch interviewed her, she said she heard two men attacking her elderly neighbor. The next morning she went to console the woman who told her what happened.⁸

Farxiyo told Human Rights Watch:

The government should give us proper shelter with a fence and an entrance. Police should secure the camp and manage who comes and goes. The worst thing is that the rapes push us into poverty because afterward we cannot do the same work or carry heavy loads. We need money for our kids to live. The government should do something or kids will die of hunger.⁹

⁶ Human Rights Watch interview with Farxiyo, Mogadishu, August 25, 2013.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

Insecurity inside IDP camps

The insecurity of IDP camps, particularly at night, poses among the gravest risks of sexual violence for women and girls in Mogadishu. Many of the women interviewed by Human Rights Watch were living in shelters made of cloth and plastic sheeting, which are easily accessible to an intruder. Others had been living in temporary shelters that are structurally flimsy and constructed from wood, cardboard and cloth, often without doors. In two incidents reported to Human Rights Watch, displaced women who lived in more solidly built houses were attacked outside of their homes while carrying out daily chores. Some of the IDP settlements are physically isolated, situated on the outskirts of the city. While others were in the center of Mogadishu and sometimes on main thoroughfares, they had no form of protection.

Many women and girls in IDP camps must walk significant distances from the camp to collect fuel, access latrines, or reach other services. Insufficient lighting in and outside of the tents makes it easy for intruders to move about unnoticed. Many camps have no security and those that do often depend upon government-affiliated militia, who have regularly been implicated in threats and assaults against displaced people, including children.

In early 2013, 34-year-old Shamso was raped by three men who broke into her home in a camp in the Dharkenley district under cover of night. She attempted to resist the first attacker, which led the others to stab her in her lower back before raping her. Throughout the attack, her three young children were in the same room.¹⁰ She told Human Rights Watch:

One of the men came in and raped me while the second and third men stood outside [the hut] and guarded it. They took turns. The men didn't hurry because mostly women live in the camp and are no threat to them. During the attack, one of them told me, "You can tell anyone that we did this, we're not scared."¹¹

Shamso's camp, which houses about 40 tents, has one security guard who leaves for his home at night, leaving the camp completely accessible to intruders. She said that rape was very common there. After the attack, she was afraid to stay at that camp.¹²

¹⁰ Human Rights Watch interview with Shamso, 34 year-old-woman, Mogadishu, August 25, 2013.

¹¹ Ibid.

¹² Ibid.

Ayan, 20, was sleeping with her 3-year-old in a makeshift tent in a camp in Hodan district in July 2013, when three men entered at midnight, one carrying a knife.¹³ As the first man raped her, she screamed as loudly as she could, startling the men, who then fled. “They didn’t say anything but I knew what they wanted,” she told Human Rights Watch. She said there are more than 100 tents at the camp where she lives, but no security, so “people come and go as they please.” Ayan continues to live at the camp where she was raped because she has nowhere else to go, due to lack of resources. Many of the women interviewed by Human Rights Watch said they were reluctant to move since they would lose their support networks and livelihood opportunities.¹⁴

In a few cases, women told Human Rights Watch that their camps had pooled together resources to hire security guards to work at night and this was reducing the number of sexual assaults. One woman, who was gang-raped by three men inside her temporary shelter in late 2012 soon after she moved to the IDP camp in an area of Mogadishu known as X-control, said that rape has been less frequent at the camp since the security guards were hired.¹⁵ Residents pay \$1 a month for it. Such initiatives indicate that rape at camps is not inevitable and that a strong law enforcement or security presence could be an effective deterrent to sexual violence.

Violence outside camps

Displaced women and girls are also vulnerable when they leave their camps to gather supplies or go to work. Many of the women interviewed by Human Rights Watch said they were living alone because they were divorced, their husbands or fathers had been killed during the conflict, or their husbands or fathers had stayed behind to guard their homes and land after they were displaced by drought. In female-headed households, many women have no alternative but to make the risky journey and travel long distances to gather food, firewood, materials to construct shelters, and to work.¹⁶

¹³ Human Rights Watch interview with Ayan, 20, Mogadishu, August 25, 2013.

¹⁴ In January 2013, Nadifa, a 45-year-old widow with eight children, was raped in her shelter in an IDP camp in Hodan. One evening, Nadifa saw a shadow at her tent’s entrance. After asking who was there, a man entered and kicked her hard in the ribs. She tried to get up but he slapped her across the cheek causing her to feel dizzy, fall and pass out. The next morning, she regained consciousness to the sound of her 12-year-old daughter’s screams, but was still unable to move. While she did not remember the attack, she said that she knew she had been raped because of pain in her genitals and some of her clothing had been stripped. As with Shamsa’s case, guards at Nadifa’s camp return home at night leaving residents to fend for themselves. She said that everyone in the camp is scared because of these attacks. Human Rights Watch interview with Nadifa, 45, Mogadishu, August 25, 2013.

¹⁵ Human Rights Watch interview with Waris, 28, Mogadishu, August 25, 2013.

¹⁶ Somali women and children comprise about 70 to 80 percent of all refugees and internally displaced people. United Nations Development Programme, “Somalia Human Development Report 2012: Empowering youth for peace and

In May 2013, unknown men evicted Safiyo, a 25-year-old divorced woman, from her apartment in Hodan district after demanding \$5 per month in rent.¹⁷ Safiyo and her three children moved to an IDP camp in the same district. Several days later, while collecting firewood, two men in military uniforms approached her from behind and pushed her down, crushing her face and smashing a tooth on her lower jaw. The men raped her, telling her that if she said, “a single word, we will slaughter you.”¹⁸

“One was holding my head down, the other held a knife to my throat,” she told Human Rights Watch. “When they were using me, I was face down on the ground. The first man finished and they swapped positions. The second one raped me and said, ‘Don’t move or we’ll kill you.’” After the assault, Safiyo spent four months at Benadir hospital recovering from her injuries, and is now under her mother’s care.

In June 2013, Shamsa, who had been raped several months earlier in her shelter, walked for over two hours from her IDP camp to collect wood to reinforce the structure of her shelter in Dharkenley district.¹⁹ She was four months pregnant at the time. A man, who had covered his face except for his eyes, threw her to the ground and threatened her with his machete. He then raped her so violently that she said it caused her to later miscarry. After he was finished, Shamsa ran away leaving everything behind, including her wood and her shoes.²⁰

Women living in IDP camps in Mogadishu as well as in Afgoye described how they had to travel up to 30 kilometers into the bush along the Afgoye corridor to look for wood. These long, unpatrolled distances between IDP camps and fuel, firewood, water and other necessary supplies present numerous opportunities for perpetrators to commit sexual violence with impunity.

development” September 2012, www.so.undp.org/shdr/Somalia%20Human%20Development%20Report%202012.pdf, p.23 (accessed January 24, 2014).

¹⁷ Human Rights Watch interview with Safiyo, 25, Mogadishu, August 26, 2013.

¹⁸ Ibid.

¹⁹ Human Rights Watch interview with Shamsa, 34, Mogadishu, August 25, 2013.

²⁰ Ibid.

Hazards of Moving

Hawo's experience of rape exemplifies the hazards of moving. In December 2012, Hawo, 27, left her husband and the town of Jowhar, 90 kilometers north of Mogadishu, to move to the capital with her six children to find work. While her bus was on the outskirts of town, assailants with Kalashnikov assault rifles and pistols stopped the bus and said they were going to "take all the women off the bus and nobody should try to do anything about it." The women who resisted were beaten into submission. "They didn't steal anything from us because none of us had anything of value. They took us to a bushy area and raped us. We could all see each other." After the assailants left, the women returned to the bus and continued the journey to Mogadishu in silence.²¹

²¹ Human Rights Watch interview with Hawo, Mogadishu, August 25, 2013.

2. Improve Access to Emergency Health Services

Sexual and gender-based violence has acute and long-term physical, psychological, and social consequences.²² Survivors often experience severe psychological trauma: depression, terror, guilt, shame, loss of self-esteem. Survivors also face rejection by spouses and families. Immediate medical and psychological assistance for survivors is a crucial step to their recovery and, in some instances, to their survival. However, because of the ruinous state of the health system in Somalia following more than two decades of conflict, few of the rape survivors interviewed by Human Rights Watch had been able to access appropriate post-rape care services, including post-exposure prophylaxis for the prevention of HIV transmission and emergency contraception. Adequate services should be accessible to all women and girls, including those from marginalized communities or minority clans, who are sometimes cut off from information about available services.²³

Somali authorities, with the assistance of the international community, should adopt measures to provide comprehensive and integrated services, including emergency response, to survivors of sexual and gender-based violence.

MEDIUM-TERM MEASURES:

- Launch public messaging campaigns through billboards and radio that increase awareness of the major problem of sexual violence in Somalia, which would help reduce stigma;

LONG-TERM MEASURES:

- Ensure that health and social services provide adequate physical, psychological, social, economic, and medical support to women and girls recovering from violence; develop confidential referral systems and health posts in high-risk areas, such as large or isolated IDP camps, which can facilitate referrals and access to emergency treatment for women who are victims of sexual violence.
- Ensure that all hospitals in Mogadishu and surrounding areas are equipped with medical supplies to treat post-rape care in accordance with World Health

²² UNFPA, "Reproductive Health in Refugee Situation", 1999, <http://www.unfpa.org/emergencies/manual/4.htm> (accessed January 24, 2014).

²³ Human Rights Watch recognizes that sexual violence requires a holistic and multi-sector response, including livelihoods and social support. This section focuses primarily on emergency health services and life-saving assistance, which was identified as a priority area by the victims.

- Organization (WHO) standards and ensure that all facilities have procedures in place to respond to sexual violence, including Postexposure Prophylaxis (PEP) kits. All services should have trained staff to deliver confidential and comprehensive medical treatment and psychosocial support. If and when services are not available then facilities should have adequate referral systems to ensure survivors can access confidential care;
- Provide specialized training for healthcare and social service providers to ensure care, treatment, and support to women and child survivors. Training should include both individual and community approaches where needed;
 - Ensure that public information is available about the legal and physical consequences of sexual violence and how victims can access free functioning services.

Inadequate Infrastructure and Services

In most of Somalia, especially in south and central Somalia, the basic health infrastructure is in ruins. After the fall of Somalia's last central government in 1991, its already fragile healthcare system collapsed. Somalis came to rely on international donors and humanitarian agencies for health services. With little to no formal government structures for two decades, health services including psychological and psychiatric care were mostly provided on a fee-paying basis and what public services were available were very basic and rarely 100 percent free.²⁴ To date the system of fee-paying health care still exists. According to a member of an international NGO providing health care in Somalia, "besides some clinics and NGOs, which are supported by outside organizations, most patients are expected to pay for at least some, if not all of their treatment, and always for the medication."²⁵ Most state and private facilities do not provide comprehensive services for survivors of sexual violence.

One of the most important and longstanding providers of free medical services was the international medical NGO Medecins Sans Frontieres (MSF). Survivors and local service providers identified the MSF facilities as the best known of the few completely free clinics where local organizations could refer victims of sexual violence, knowing that free emergency medical care would be available.²⁶ MSF closed down operations in 2013.²⁷ Its

²⁴ Bryson Brown, "Beyond the Brink: Somalia's Health Crisis," 2010, <http://www.du.edu/korbel/hrhw/researchdigest/mena/HealthCrisis.pdf> (accessed January 24, 2014).

²⁵ Human Rights Watch interview with service provider, Nairobi, June 11, 2013.

²⁶ Human Rights Watch interview with service provider, Mogadishu, August, 26 2013.

withdrawal was described by one local services provider working with survivors of sexual violence as leaving a “massive gap” in the help that is available in Mogadishu.²⁸ The departure by MSF due to unacceptably high security risks highlighted the challenges that service providers face when operating in Somalia and the crucial need to protect them.

According to the United Nations High Commissioner for Refugees (UNHCR), services for sexual violence are available in all districts in and around Mogadishu. However, victims told Human Rights Watch that they were not aware of such services or they said access to services remained a challenge.

Human Rights Watch did not carry out a comprehensive assessment of services but interviewed 11 humanitarian agencies and NGOs supporting or directly providing services to survivors of sexual violence. They report that they are providing free services to survivors of sexual and gender-based violence in all 16 districts in and around Mogadishu. These services reportedly include health services, legal advice, and representation, as well as psycho-social support. According to a 2013 report of the UN secretary-general on sexual violence in conflict, the UN and its partners have been able to establish referral pathways for basic psycho-social support and health services in some areas. However, coverage and quality standards are low and access to health services in rural areas in Somalia remains extremely limited.²⁹

Other Barriers to Women’s Access to Treatment

Lack of adequate infrastructure and services are not the only barriers to necessary treatment for victims of sexual violence.

The survivors of sexual violence interviewed by Human Rights Watch all said they were from poor and disenfranchised IDP communities, many from drought-affected areas, often female-headed households and living without their usual community support systems.³⁰

27 Medecins sans Frontieres, “MSF Forced to Close All Medical Programs in Somalia,” August 14, 2013, <http://www.doctorswithoutborders.org/press/release.cfm?id=6985&cat=press-release> (accessed January 24, 2014).

28 Human Rights Watch interview with service provider, Mogadishu, August, 26 2013.

29 UN General Assembly Security Council, Report of the Secretary-General on Sexual violence in conflict, 14 March 2013, A/67/792-S/2013/149, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2013_149.pdf (accessed January 24, 2014).

30 While internally displaced people throughout the world are particularly vulnerable, the clan system in Somalia added an additional layer of vulnerability to those most affected by the 2011 famine. A June 2012 IDP assessment in Mogadishu found that 60 percent of internally displaced people originated from Bay, Bakool, and the two Shabelle regions. While an accurate picture of the famine-affected population is not available, it is believed that the majority of IDPs from southern Somalia displaced as a result of the famine in mid-2011 were from the Rahanweyn and Bantu communities. Both their social status, not seen as being one of the noble clans, and their livelihood strategies, being primarily agro-pastoralists and farmers,

Most IDPs in Mogadishu are from minority clans who have little awareness of the need for and availability of emergency health services.

Another barrier is the cultural taboo of rape. Staff from several of the organizations dealing with sexual and gender-based violence told Human Rights Watch that women were inhibited from accessing services by the stigma that surrounds women who report rape.³¹ In addition, women who do want to access health care or other services also have to overcome many practical barriers such as transport to and from services and child care.

Qamar, a 28-year-old woman from Hodan who was brutally raped in her shelter in front of her two children as she slept in an IDP camp in August 2013, told Human Rights Watch:

The day after the rape I took a minibus to the hospitals, the neighbors chipped in and paid for the transport. I went to the women and children clinic on the Burundian [AMISOM] base and got injections and pills.³² I told them that my husband had sexually abused me and beat me, rather than say I was raped. I didn't know there was a treatment for rape... I went because I had been anally raped and there were tears. ...I didn't say anything because rape is not something you talk about.³³

Raxmo, 42, described to Human Rights Watch how her 17-year-old daughter, who had been raped at the Sarkuusta Camp, died as they were trying to take her to a hospital several kilometers away. With no mobile emergency medical services available and with no money to hire a vehicle or even use public transport, family and neighbors were forced to carry her in a wheelbarrow.³⁴

Lack of access to information about the physical location of accessible free services is a further barrier. Four women told Human Rights Watch that their access to immediate care

rendered them particularly vulnerable to famine and later to abuses in Mogadishu. The more limited international reach of the Rahanweyn and Bantu, including fewer links in the diaspora and neighboring countries, is also believed to have undermined their social support mechanisms. See Human Rights Watch, *Hostages of the Gatekeepers*, (New York: Human Rights Watch, 2013), www.hrw.org/reports/2013/03/28/hostages-gatekeepers-o.

³¹ Human Rights Watch interview with service provider, Nairobi, June 12, 2013

For more detailed information on the humanitarian actors and activities against gender-based violence in Somalia see Humanitarian Response Somalia, Office for the Coordination of Humanitarian Affairs, <https://somalia.humanitarianresponse.info/clusters/gender-based-violence> (accessed January 24, 2014).

³² African Union Mission in Somalia (AMISOM), Burundian provide primary healthcare to local Somalis in a hospital based at the Mogadishu University camp that hosts the base.

³³ Human Rights Watch interview with Qamar, 28, Mogadishu, August 26, 2013.

³⁴ Human Rights Watch interview Raxmo, Mogadishu, August 24, 2013

had been hampered by their lack of awareness about the few free or accessible services that do exist. Safiyo, 32, said that after she was raped by two men while collecting firewood:

People grazing cows found me and put me on their donkey and took me to my house. I could not afford medicine or health care. It was only when my neighbor came to my house and asked me what was wrong. She said there was a center that gives free medicine – she took me.³⁵

One local NGO staff member told Human Rights Watch that the use of community workers and women in the community who could identify victims and facilitate their transport to services had proved to be an effective strategy to significantly increase the numbers of survivors accessing assistance.³⁶ Most women who had been able to access services were able to do so through outreach programs and community focal points that made referrals to local services.

Human Rights Watch interviewed three women who miscarried after they were raped; others described contracting sexually transmitted infections (STIs) from their attackers. Many of the women in IDP camps in Mogadishu have limited understanding of their reproductive health system and health risks. In several cases, women told Human Rights Watch that they had been to hospital after the rape, but did not disclose the rape to healthcare workers because they were not aware of the health risks associated with rape, or that treatments were available to reduce their exposure to HIV and to treat and prevent STIs.

Twenty-eight-year-old Asha, who was raped by two men while working as a porter in Bakara market, told Human Rights Watch:

I was raped, I fled and took a minibus back home. ... I went to a [local] hospital first and then after a week I got more ill and went to the hospital on the Burundi base (AMISOM), but didn't get treatment... I went to NGO service provider at the end of Ramadan a month later so it was too late for [preventative medical treatment]. I had gone to the other hospitals and been treated for a chest infection. When I went to the two hospitals I didn't

³⁵ Human Rights Watch interview with Safiyo, 32, Mogadishu, August 26, 2013.

³⁶ Human Rights Watch interview with NGO staff member, Mogadishu, August 25, 2013.

mention that I was raped because I didn't know anything about HIV and sexually transmitted infections.³⁷

Psychologists, counselors, social workers, community workers, and teachers should be trained to treat survivors of sexual violence, including recognizing the indirect signs and symptoms. For instance, violence survivors may not disclose their rape to a healthcare worker, but may be suffering from headaches, depression, anxiety, somatic complaints, fatigue, palpitations, poor memory, and lack of concentration.³⁸

Impact of Conflict on Women and Girls

The widespread violence, insecurity and displacement caused by two decades of conflict in Somalia have created perilous conditions for Somali women and girls, particularly those from Somalia's displaced communities. According to the UN, 1.1 million people are currently displaced within the country, with 369,000 in Mogadishu alone, many of them women and girls.³⁹

A devastating famine between 2010 and 2012 in south-central Somalia, caused by drought, insecurity, and fighting, al-Shabaab's blocking of civilian access to humanitarian assistance, and increased "taxation" of resources and livestock, created a new wave of displacement into the war-torn capital. Although there is no accurate death toll, tens of thousands of people are believed to have died as a result of the famine.⁴⁰ Thousands more fled into neighboring countries. In November 2013, there were more than one million Somali refugees mainly in the East and Horn of Africa.⁴¹

³⁷ Human Rights Watch interview with Asha, 23, Mogadishu, Somalia, 25 August 2013.

³⁸ UNDP, "Somalia Human Development Report 2012: Empowering youth for peace and development" September 2012, www.so.undp.org/shdr/Somalia%20Human%20Development%20Report%202012.pdf, (accessed January 24, 2014).

³⁹ In January 2013, the Somali government announced plans to relocate tens of thousands of internally displaced persons (IDPs) within Mogadishu by August 2013. It cited security and development of the capital as reasons for the proposed relocation of IDPs to a site in Daynille, north of the city. The government also saw this as a first step towards returning IDPs to their places of origin – most of which are in areas of ongoing conflict and insecurity. After failing to establish the appropriate security provisions in Daynille, the government abandoned its plan to relocate IDPs living in Mogadishu. Yet, evictions continued in 2013 despite the government's failure to provide an alternative location. Human Rights Watch interviews with women forcibly evicted from IDP camps in Mogadishu in 2013 are consistent with Amnesty International research that found scores of IDPs who had been forcibly evicted from public and private land with no consultation, little notice and often with the threat or use of force and the destruction of property. Amnesty International, "Somalia: No Place for the Displaced" September 2013, www.amnesty.org/en/library/asset/AFR52/010/2013/en/998458d1-c6d4-44dc-879d-24b4c6889d1c/af520102013en.pdf (accessed January 24, 2014).

⁴⁰ BBC News, "Somalia famine 'killed 260,000 people,'" May 2, 2013, <http://www.bbc.co.uk/news/world-africa-22380352> (accessed January 24, 2014).

⁴¹ UNHCR, Somalia Fact Sheet, November 2013, <http://data.unhcr.org/horn-of-africa/country.php?id=197>

Somalia's social system, governed in part by a traditional clan system, leaves displaced women and girls from minority groups and less powerful clans especially vulnerable to random violence due to their social isolation and poor living and work opportunities. Women and girls from such groups often have less access to education and are often unaware of and isolated from the justice system and other government institutions and services.⁴²

⁴² Hill, Martin, "No redress: Somalia's forgotten minorities," Minority Rights Group International, 2010. <http://www.refworld.org/pdfid/4d19e8coc.pdf> (accessed January 24, 2014).

3. Ensuring Access to Justice

Accountability for sexual violence in Somalia is almost non-existent. Impunity is the norm. The reasons for this include: the inevitable weakness of the justice system after years of armed conflict; cultural taboos which make women reluctant to file complaints; the legitimate fear of reprisals especially in cases where the alleged perpetrator are members of the security forces; and the perceived lack of will and capacity on the part of the police to record and investigate allegations.

The Federal Government of Somalia, with assistance from international donors, should establish a judicial system capable of delivering justice to victims of sexual abuse in accordance with international standards.

SHORT-TERM MEASURES:

- Order police to improve their relationship with IDP communities by engaging in a greater number of patrols, holding public meetings with the community, doing outreach to service providers to encourage women and girls to report incidents of violence;
- Adopt a “zero tolerance” policy for any police officer implicated in sexual violence;
- Adopt procedures that take into account the lack of anonymity in camp settings to protect the confidentiality of persons reporting sexual assault during the police investigation;
- Issue clear and public orders to all members of the armed forces and police that rape and commit other acts of sexual violence will be promptly investigated and prosecuted;
- Investigate and appropriately prosecute alleged sexual violence committed by members of the armed forces and police, and promptly dismiss those found to be responsible from security forces.

MEDIUM-TERM MEASURES:

- Launch public information and education campaigns on reporting violence against women to police, military courts, and other authorities;
- Train all law enforcement, including police and prosecutors, to promptly and thoroughly investigate cases of sexual and gender-based violence;

- Recruit more female police officers and other female personnel to act as focal points at police stations;
- Ensure military personnel and the police are vetted to exclude perpetrators of human rights abuses, including sexual violence.

LONG-TERM MEASURES:

- Ensure that all existing and new recruits receive appropriate human rights trainings, and that they include training about forms of sexual violence and how to respond to reports of sexual violence;
- Establish court procedures to protect the privacy of victims, such as excluding media and the public from hearings for sexual violence cases;
- Support the training of female lawyers, prosecutors, and judges, and offer gender-sensitive training to the judiciary;
- Publicly release data on the prosecution and conviction of cases of sexual and gender-based violence;
- Transfer all criminal cases involving alleged civilian perpetrators as soon as feasible from the military court system to the civilian justice system;
- Develop adequate protection measures, including protection programs and psychological support, before, during, and after the trial for all victims and witnesses whose physical safety and psychological well-being are at risk. This should include, but not be limited to, relocation measures.

Xawo, 34, was a cleaner in her neighborhood.⁴³ In June 2012, four men whose rooms she cleaned took her to a back room, tied her hands, slammed her against a cement wall, broke her fingers, and gang raped her. She told Human Rights Watch that she never reported the incident because the perpetrators knew where she lived and she was fearful of reprisal. After she became pregnant from the rape, people close to her told her to “throw the baby away and cover up [her] story,” she said.

When a woman faces such difficulties, she knows she can’t go to the government or to anyone. Women are being abused from every angle – from their family all the way to their government. Even within your family they’re telling you not to keep the child or to

⁴³ Human Rights Watch interview with Xawo, 34, Mogadishu, August 25, 2013.

cover it up and not bring shame. Women are always told to be quiet, when you accuse the military or police of rape, your family says, “Even we will beat you if you bring this up.” We need to acknowledge this is happening and give women the opportunity to speak out not just publicly but within the family. It’s a struggle at all levels.

Failure of the Justice System

In most of the cases documented by Human Rights Watch, women who had been raped said they did not file complaints because they did not believe the police would be able or willing to take effective action, even when the alleged perpetrators were not thought to be members of the security forces. Women were also deterred from going to the authorities by family members and the heads of IDP camps known as “gatekeepers.”

Lack of Investigations

Rape survivors say the high frequency of sexual violence in Mogadishu’s IDP camps has “normalized” rape, and that an underfunded and overstretched police force is cavalier about their plight. When Human Rights Watch asked one survivor why she did not report her being raped, she shrugged and explained the futility: “Rape is a frequent occurrence in Somalia. Here, rape is normal.”

Somali police, rather than proactively investigate criminal complaints, often demand that victims of any crime do the legwork in the investigation, from locating witnesses to establishing who the suspects are. This practice is especially problematic in cases of rape. Women described the challenges that they face: many were raped at night in an unfamiliar area. They could not identify the perpetrators or potential witnesses. Even if they were able to clearly see the uniforms of perpetrators, the difficulties of differentiating whether the uniforms belonged to military or to a militia group made identification daunting. Thus where the police were reluctant to investigate a case without information on the identity of the perpetrator, rape survivors considered reporting the abuse to be futile.

Samiira told Human Rights Watch that after she was raped by men in uniform while collecting firewood in Afgoye in May 2013, she did not file a police report because she did not know who the rapists were. “If someone goes to the police they do not respond,” she

said. “They’ll ask me if I know who [the perpetrators] are. I know their faces and I could recognize them and I thought about reporting it but I don’t know where they live.”⁴⁴

Even in cases where the alleged perpetrator is known, and police have medical evidence and a witness, cases of sexual violence rarely make it to court. From our interviews with more than 27 victims, Human Rights Watch was able to document just a single case in which an alleged perpetrator was arrested. He was later released without charge despite incriminating medical evidence and victim testimony.

In March 2013, when Leyla was outside working, her husband raped her 3-year-old daughter (his step-daughter).⁴⁵ After the rape, Leyla said that he burned the girl’s thighs and vaginal area in what may have been an attempt to destroy any incriminating evidence. A medical report taken when the girl was hospitalized stated that she had been raped. The police arrested and detained the husband, but despite the evidence against him he was not criminally charged and was released after four months. Leyla has since lived in fear that he will find and harm her and her daughter.⁴⁶

Access to the State Justice System

Access to the justice system is extremely limited, especially in rural areas.⁴⁷ Some survivors of sexual violence, especially women who are new to Mogadishu or an IDP camp, lack knowledge about how to report sexual violence and where to go to report it. Jamilah, a 25-year-old woman who was raped in her tent at Sarkuusta IDP camp, told Human Rights Watch that she never reported her rape because she had a “lack of information ... that is the biggest barrier for reporting. We are so disempowered.”⁴⁸

Displaced women may also be reluctant to report sexual violence because they are too poor to take time off from work and forgo the daily wages that they depend on to feed their families. Filsan told Human Rights Watch that she did not go to the police after being raped because she could not afford to stop working at a food shack at the bus station as she is the sole provider for her invalid husband and seven children.⁴⁹

⁴⁴ Human Rights Watch interview with Samiira, 24, Mogadishu, August 26, 2013.

⁴⁵ Human Rights Watch interview with Leyla, Mogadishu, August 24, 2013.

⁴⁶ Ibid.

⁴⁷ UN General Assembly Security Council, Report of the Secretary-General on Sexual violence in conflict, 14 March 2013, A/67/792-S/2013/149, para. 64, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2013_149.pdf (accessed January 24, 2014).

⁴⁸ Human Rights Watch interview with Jamilah, 25, Mogadishu, August 25, 2013.

⁴⁹ Human Rights Watch interview with Filsan, 29, Mogadishu, August 26, 2013.

According to the UN special expert on Somalia, women and young girls “face double victimization because, after being violated, they often have no effective justice and support system to turn to.”⁵⁰ Only a small fraction of crimes of sexual violence are prosecuted through the legal system and even fewer result in conviction.

According to UN figures, between January and November 2012, the military court reportedly opened 13 cases against members of the Somali security forces accused of rape.⁵¹ The court found one defendant guilty and acquitted three. Nine other cases were pending.⁵² Human Rights Watch research into the military court found some due process concerns in both cases concerning soldier defendants and those concerning civilian defendants, including lengthy pre-trial detentions and restrictions on defendants’ capacity to exercise the right to a defense and appeal. The military court has also sentenced defendants, including civilians, to death in trials.⁵³

Prosecutions through the civilian criminal justice system may be even more limited. The UN reported that while official police and court data are not available, data informally acquired from the Somali police indicate that about 100 rape cases were opened in Mogadishu between January and November 2012.⁵⁴ It is unknown how many cases resulted in convictions as authorities do not publicly release figures on the prosecution and conviction of crimes. The minimal efforts to improve access to justice in Mogadishu have met with setbacks because of insecurity.⁵⁵ The UN told Human Rights Watch that a pilot mobile court project rapidly stalled because the judges feared for their safety.⁵⁶

On rare occasions courts in Mogadishu have handed down convictions for rape. According to a local service provider who provides legal and other assistance to vulnerable women,

50 UN Human Rights Council, Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, August 16 2013, A/HRC/24/40, para 21, http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-24-40_en%20%281%29.pdf.

51 Ibid., para. 54.

52 Ibid.

53 On January 16, 2013, the military court executed a soldier who had been found guilty of rape in 2011. Sabahi Online, “Somali Military Court Executes 2 Soldiers Convicted of Murder, Rape,” January 16, 2013, http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2013/01/16/newsbrief-02 (accessed January 24, 2014). Human Rights Watch opposes the death penalty in all cases because of its inherent cruelty.

54 UN Human Rights Council, Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, August 16 2013, A/HRC/24/40, para 54, http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-24-40_en%20%281%29.pdf (accessed January 24, 2014).

55 Attacks claimed by al-Shabaab on the Mogadishu regional courthouse and on an aid workers’ convoy on April 14, 2013, killed four legal professionals, including a judge and three lawyers, and brought the court system in the capital to a standstill for several months. Human Rights Watch, *New Al-Shabaab Attacks are War Crimes*, April, 2013, <http://www.hrw.org/news/2013/04/16/somalia-new-al-shabaab-attacks-are-war-crimes> (accessed January 24, 2014).

56 Human Rights Watch interview with UN staff, Nairobi, October 10, 2013.

in July 2013 a court convicted a neighbor for raping a 15-year-old girl with disabilities in an IDP camp in Hodan and sentenced him to 10 years' imprisonment.⁵⁷

The service provider described the criminal justice system in Somalia as broken:

There is no legal framework policy yet that deals with victims of sexual violence. Rape is not considered as a big deal here in Somalia and it is only civil society organizations that shout about sexual and gender-based violence [SGBV]. Corruption, dishonesty, bribery and fraud have widely affected all pillars of the justice system in Somalia. The current government is still struggling with the security and other major political diplomatic issues let alone thinking about SGBV, but it is up to [civil society organizations] as well the international community to help these silenced victims and make their voices heard.⁵⁸

Failure of Traditional Justice Mechanisms

Weak state judicial institutions have meant that many survivors of sexual violence depend on traditional mechanisms for justice, including customary law, *xeer*, and Sharia (Islamic law).⁵⁹ But both justice mechanisms are male-dominated and not supportive of survivors' rights.⁶⁰

Under Somali traditional or customary legal mechanisms, sexual and gender-based violence often goes unpunished, particularly as traditional Somali society does not openly discuss these issues.⁶¹ The elders responsible for taking decisions within rural communities are always men (in Somali *Odayaasha Dhaqanka*) and women are not permitted to participate in decisions taken by this group. Rather, in cases concerning women, male relatives represent the women. Compensation for loss of life is typically 100

⁵⁷ Human Rights Watch email interview with Somali service provider, Mogadishu, October 8, 2013.

⁵⁸ Ibid.

⁵⁹ See UN Human Rights Council, Report of the Secretary-General on UN support to end human rights abuses and combat impunity in Somalia, 21 September 2012 A/HRC/21/36, para. 35; UN Security Council, Report of the Secretary-General on Somalia, 3 September, 2013, S/2013/521

⁶⁰ See UN Human Rights Council, Report of the Secretary-General on UN support to end human rights abuses and combat impunity in Somalia, 21 September 2012 A/HRC/21/36, para.35.

⁶¹ United Nations Development Programme Somalia, "Gender in Somalia,"

http://www.so.undp.org/content/dam/somalia/docs/Project_Documents/Womens_Empowerment/Gender%20in%20Somalia%20FINAL.pdf, p2.

camels for a man and 50 for a woman.⁶² In rape cases, the elders have sometimes compelled victims to marry the perpetrator.⁶³

Service providers told Human Rights Watch that traditional justice mechanisms that are ill-equipped to deal with sexual violence have had a negative impact on victims and stripped them of their legal rights.⁶⁴

“When a women is raped, usually the clan elders of the two families come together and agree that the perpetrator’s family pay a small amount of money [anything from \$5 to \$100] to the victim,” a member of a Somali service provider said. “In most instances, if it is a case of rape, the rapist’s sentence is to marry his victim or compensate male family members of the victim.”⁶⁵

Perpetrators in Uniform

Human Rights Watch research published in 2013 found that armed men in uniform, including government forces, have been responsible for a significant number of sexual assaults of internally displaced women and girls in Mogadishu since July 2011.⁶⁶ These have included some government personnel who were posted in IDP camps to provide security.

While in many cases the alleged perpetrators in Mogadishu of rape are members of the security forces, it can be difficult to prove this and to identify those responsible because of the large number of armed groups active in the capital and the ready availability of military and military-type uniforms. The problem is exacerbated by the fact that different police uniforms are provided by various donor countries. And state security forces dress in a mix of uniforms, making it difficult to distinguish them from members of non-state armed

62 Somali culture is organized according to a clan system with membership in a diya group based on kinship. Diya group members are linked together in alliances that collectively pay or receive blood compensation for violence committed against or by members of the group. Women are not members in the same way as men – they do not count as paying members – and payments go directly to men. UNDP Somalia, “Gender in Somalia,” http://www.so.undp.org/docs/Gender_in_Somalia.pdf, p. 4.

63 Human Rights Watch email interview with Somali service provider, Mogadishu, October 8, 2013.

64 Ibid.

65 Ibid.

66 Human Rights Watch documented several cases of rape in the second half of 2011, mostly in Badbadho camp in Dharkenley district, a camp that was established by the authorities in mid-2011 as a result of the influx of people into Mogadishu. Incidents of rape were also documented in 2012 in other camps and settlements, including Siliga camp in Wadajir district, Midnimo camp in Tarbuunka district, and Milk Factory camp in Hodan district. Human Rights Watch, *Hostages of the Gatekeepers*, (New York: Human Rights Watch, 2013), www.hrw.org/reports/2013/03/28/hostages-gatekeepers-o.

groups.⁶⁷ In addition, underpaid members of the security forces often operate as private bodyguards and security providers, and wear their military uniforms while off duty.

While not all perpetrators wearing uniforms belong to state security forces, the frequent reports of attacks by uniformed men and the total impunity for those who commit crimes has led to a deep and general mistrust of the security forces, including police, among victims of sexual violence. Many of the women interviewed by Human Rights Watch said that there was no point in reporting their cases to the police because the police would not adequately investigate fellow security force members. The women said that those perpetrators wearing uniforms acted with apparently little regard for being brought to justice: they rarely felt the need to conceal their uniform.

Raxmo previously operated a tea stall that served Somali soldiers near the Sarkuusta IDP camp between Mogadishu and Afgoye.⁶⁸ One night in April 2013, three assailants entered her tent. She woke up to the screams of her 17-year-old daughter, who was being raped. She recognized the three soldiers as customers from her tea stall: “I tried to pull [one of the soldiers] off her but, when I tried, he used a large knife and stabbed me under my left armpit. The men shot their AK-47s into the tent as they were fleeing, killing my daughter.”

Raxmo was herself raped a month later after she had moved her family to another IDP camp and opened up a small grocery kiosk. On that day, she was returning to her kiosk from the market and had hired a porter to wheelbarrow food that she planned to sell. Another woman carrying food on her head was walking with them. They encountered two men wearing army uniforms and carrying guns in the middle of the road who ordered the porter to leave right away. The men took the women to a derelict outpost where they searched them and stole Raxmo’s cellphone. Then they took her inside the building to a man who acted as their superior officer and who gave orders. The man raped her after beating and punching her. The other woman who was accompanying her was raped as well.⁶⁹

Asha, 28, was raped by men in uniform while working as a porter at Bakara market, the largest market in Mogadishu, to support her four children.⁷⁰ In July 2013, a man hired her to carry groceries to an unfamiliar area in Mogadishu’s outskirts. When she arrived at a derelict house, she became suspicious, but it was too late. Two men wearing military uniforms took her inside. After ordering her to strip, they raped her. One of the rapists slapped her and said,

⁶⁷ UN Security Council, Report of the Secretary-General on Somalia, September 3, 2013, *S/2013/521*, para 31.

⁶⁸ Human Rights Watch interview with Raxmo, Mogadishu, August 24, 2013.

⁶⁹ Ibid.

⁷⁰ Human Rights Watch interview with Asha, 28, Mogadishu, August 24, 2013.

“If you say a word or scream, I will shoot you.” Asha begged him not to hurt her. After she was raped, Asha fled and took a minibus home to her IDP camp in the area called X-control. Asha still works as a porter but no longer accepts employment from men.

Fear of Reprisal from Security Forces

Women told Human Rights Watch that they were especially reluctant to report the crime to authorities for fear of reprisals or of being accused of a crime, particularly in cases where the perpetrator was a member of the security forces. For instance, three months after Maryam was first raped in 2012, seven men knocked on her door one night and ordered her to let them in.⁷¹ They called her by name. After she refused, they kicked in the door. The men were all wearing greenish military uniforms that looked new. She said that because she resisted the assault, the men viciously beat her with an AK-47 and stabbed her near her left eye. The men gang-raped her. The attack left Maryam with blurred vision while her eye was swollen for three months.⁷²

One of the assailants was familiar to Maryam: she knew his name and the location of his house. When she asked him during the attack, “Why are you doing this to me?” all he said was “Get ready.” “I had been to his house earlier that day to wash clothes,” Maryam said. “When I was at the house, he said, ‘I like the way you wash, I like the way you iron, I’m watching you.’ I thought he was joking. But he was the last one who raped me.”⁷³

Maryam never reported the second rape because she was afraid of being arrested for filing a report against men in uniform:

I see him on the street now but nothing happens to him. He moves freely in the city with complete freedom. ... I get flashbacks [of the attack] especially because I keep seeing him around. I can’t do anything because he has a gun and I don’t have a gun. It hurts me when I see him in the street every day and I can’t do anything because I don’t have a gun.⁷⁴

⁷¹ Human Rights Watch interview with Maryam, 37, Mogadishu, August 24, 2013.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

Raxmo, who was injured after trying to stop the rape of her teenaged daughter in an IDP camp, was raped herself a few months later returning from market.⁷⁵ After Raxmo was raped, the soldiers threatened her and told her to remain silent.

She told Human Rights Watch:

As soon as he finished, one of the men said, “We know who you are, you’re a businesswomen. We will find where you hide and finish you if you say government soldiers did this to you.” I told people about what happened but not the police. If you can’t identify who the perpetrator is, what’s the point of reporting the crime? No one will do anything.

The family reported neither crime to police because they did not believe police would do anything against other men in uniform. “What will they do?” Raxmo said. “They are responsible for these abuses. All we could do is leave our camp because we were afraid the men would come back to harm us.”⁷⁶

For Sacdiya, who was raped in June by two men as she collected firewood, reporting the incident to police was out of the question after hearing about the experiences of a neighbor who had reported her experience of sexual violence and was then accused of lying and arrested.⁷⁷ She said: “If you go to police they will ask, ‘Can you show us who did it?’ And when you say ‘No, I can’t,’ they’ll respond, ‘It’s you that’s guilty.’ ... We are farmers, we are poor, we don’t have guns, our voice is not considered. ... Guns have influence, we do not.”⁷⁸

Women are further dissuaded from reporting sexual violence for fear of being sexually assaulted again as reprisal. In March 2013, Nafiso, who lives with her children and elderly parents, said a man in a green military uniform with combat boots carrying a machete broke into her house in her village near Afgoye.⁷⁹ He kicked her in the ribs and covered her mouth with his hand as he raped her. Nafiso’s neighbor’s experience with the police deterred her from reporting the incident: “A neighbor of mine was raped by men in military uniform. She went to report it and the same night she was raped again by men in military

⁷⁵ Human Rights Watch interview with Raxmo, Mogadishu, August 24, 2013.

⁷⁶ Ibid.

⁷⁷ Human Rights Watch interview with Sacdiya, 32, Mogadishu, August 26, 2013.

⁷⁸ Ibid.

⁷⁹ Human Rights Watch interview with Nafiso, Mogadishu, August 26, 2013.

uniform. I think they targeted her. Police report the crimes to their higher-ups and we face retribution.”⁸⁰

Similarly, when Hawo was raped, she did not tell anyone.⁸¹ “I was afraid to report to the police,” she said. “I was afraid of them. The police have weapons like the men who raped me. I was worried what they would do to me. They might do the same harm as the perpetrators. Also, if they didn’t believe me, they would punish me.”⁸²

A number of widely reported cases of security forces intimidating victims have done nothing to dispel the fears that prevent many victims from reporting rape to the authorities.

On January 8, 2013, a 27-year-old woman was interviewed by a freelance journalist, Abdiaziz Abdinur Ibrahim, in the wake of growing reports of sexual violence by security forces in the IDP camps of Mogadishu. She said that in August 2012, men in uniform, who were possibly government soldiers, raped her in the Burdubo IDP camp in the Tarabunka neighborhood of West Mogadishu. Police arrested the woman on January 10 and interrogated her at the Criminal Investigation Department. Rather than investigate the perpetrators of the alleged rape, the police investigated the woman, the journalist, and three other individuals, including the woman’s husband, who eventually spent between 14 to 19 days in detention without charge.

All five were eventually charged on January 29 with a range of crimes, including insulting the government, simulating a criminal offense, and making a false accusation. On February 5, 2013, the woman and the journalist were convicted of falsely accusing a government body of committing a crime that damages state security and sentenced to one-year imprisonment. The woman’s sentence was later overturned by an appellate court, while the journalist’s sentence was ultimately quashed by the Supreme Court after he had spent 66 days in detention.

In a similar case in August 2013, a resident of Mogadishu said she was abducted by Somali army soldiers and transferred to (AMISOM) soldiers who gang-raped her and then dumped her on the streets. A joint Somali and AMISOM investigation committee was established to investigate the incident and identify those responsible and the underlying causes of such abuses. The government said that the incident was reported to have occurred on an AMISOM base in north Mogadishu, known as Maslah camp.

⁸⁰ Ibid.

⁸¹ Human Rights Watch interview with Hawo, 27, Mogadishu, August 25, 2013.

⁸² Ibid.

Somali security personnel from the police, intelligence services, and the military harassed and intimidated the woman and others involved in the case, including the organization providing the woman with medical assistance and shelter, and a journalist who initially interviewed her. The investigation committee was to complete its findings within 60 days and present them to a designated ministerial team. As of January 2014, the government has not released its findings of the investigation.

In both instances, the conduct of the police and military highlight serious violations of due process, which seem likely to deter future victims from reporting sexual violence. The former case also reveals a disturbing attempt to blame the complainant and the media, and to divert attention from the very real and alarming prevalence of sexual violence in Mogadishu. These cases also may chill efforts by the media to report on these and other human rights abuses involving security forces and other government officials.

Despite domestic and international criticism of the government's handling of the cases, in November 2013 authorities arrested another woman, a 19-year-old journalist, who alleged she had been raped, in this case not by military personnel. Authorities also arrested two journalists – one for interviewing the woman, the other, the head of the media outlet that aired the interview, for allowing his station's camera to film the interview. The authorities have reportedly denied the jailed journalists access to a lawyer. The police made the arrests after the alleged attackers filed a defamation case against the woman and one of the journalists.⁸³ On November 28, the authorities charged the woman and the journalists

with filing a false criminal claim. On December 9, a court convicted the woman and the journalist of defamation, and the network owner was convicted of “insulting a government body.” The court sentenced the woman to six months' house arrest and the two journalists to prison terms of six months and a year. The men were released after agreeing to pay a fine instead.⁸⁴

⁸³ Hamza Mohamed, “Somali radio director arrested over rape case,” Al Jazeera, November 26, 2013, <http://www.aljazeera.com/news/africa/2013/11/somali-radio-director-arrested-over-rape-case-2013112544618304277.html> (accessed January 24, 2014).

⁸⁴ Somali woman who reported rape sentenced,” Al Jazeera, December 9, 2013, <http://www.aljazeera.com/news/africa/2013/12/cloneofsomali-woman-who-reported-rape-sentenced--2013129133153914393.html> (accessed January 24, 2014).

Threats and Violence from Al-Shabaab

Outside of areas under the control of the Federal Government of Somalia, Somali women and girls face threats of sexual and gender-based violence from al-Shabaab. In al-Shabaab-controlled areas, militants have been responsible for numerous acts of violence against girls and women, including rape, forced marriage, corporal punishment, and killing. In 2012, Human Rights Watch reported that al-Shabaab recruited and abducted girls to be raped, forced into marriage with fighters, or forced to cook, clean, and perform other domestic duties at their military camps.⁸⁵ The UN special rapporteur on violence against women, Rashida Manjoo, said that Somali women and girl refugees and IDPs reported several cases of female refugees and IDPs, ages 11 to 80, being kidnapped, raped, or forced into marriage by al-Shabaab militias.⁸⁶ The Strategic Initiative for Women in the Horn of Africa also reported that girls as young as 12 were being forced into marriage with al-Shabaab fighters, while also being subjected to rape and sexual abuse.⁸⁷

Al-Shabaab has further inflicted violence against Somali women and girls by way of *hudood*, or physical punishment of those they deem to have violated Sharia, or Islamic law. For example, on August 21, 2012, al-Shabaab militants dragged a female tea seller from a bus near the town of Baidoa and beheaded her because she had refused to stop selling tea to members of the Transitional Federal Government.⁸⁸ The group has strictly regulated and policed every aspect of the lives of the population under its control, and women in particular. They have conducted public beatings and whippings of women who were deemed to wear clothing that was not “modest,” or who worked outside their homes and were as a result seen as “mingling” with men.⁸⁹

⁸⁵ Human Rights Watch, *Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia*, February 2012, <http://www.hrw.org/sites/default/files/reports/somalia0212ForUpload.pdf>, pp. 3, 27 (accessed January 24, 2014).

⁸⁶ UN General Assembly and Human Rights Council, Report of Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16/Add.3, May 14, 2012, para. 25.

⁸⁷ SIHA, Women in the Horn Still Bending Their Heads: Immunity and Institutionalization of Violence Against Women in Sudan, Somalia, and Eritrea, 2012, <http://sihanet.org/index.php/statements/file/19-statement-to-the-51-session-of-the-african-commission-on-human-and-peoples-rights> (accessed January 24, 2014).

⁸⁸ Strategic Initiative for Women in the Horn of Africa Press Release, “Somalia: Woman Beheaded – Peace in Somalia will remain superficial until the human rights of women are protected,” August 23, 2012, www.sihanet.org/index.php/news-and-events/83-somalia-woman-beheaded-peace-in-somalia-will-remain-superficial-until-the-human-rights-of-women-are-protected (accessed January 24, 2014).

⁸⁹ See Human Rights Watch, *No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia*, February 2012, <http://www.hrw.org/sites/default/files/reports/somalia0212ForUpload.pdf>, pp. 3, 27 Human Rights Watch, *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government and AMISOM in Somalia*, April 19, 2010, <http://www.hrw.org/reports/2010/04/19/harsh-war-harsh-peace> (accessed January 24, 2014); Sahar Abdi, “Somali women say Islamists becoming more draconian,” Reuters, January 15, 2011, www.reuters.com/article/2011/01/15/ozatp-somalia-conflict-idAFJOE70E06S20110115 (accessed January 24, 2014).

4. Legal and Policy Reform

While Somalia's Provisional Constitution, adopted in August 2012, affirms the state's commitment to human rights and basic freedoms with provisions on gender equality, women's rights, personal liberties, freedom from torture, and the right to effective redress, Somalia's existing laws and policies are inadequate to protect women from sexual and gender-based violence. In some important respects they even contribute to the problem.

The Federal Government of Somalia should review existing laws and policies to ensure that all forms of violence against women are prohibited and clearly elucidated in law. Comprehensive criminal and civil legislation is fundamental for an effective and coordinated response to violence against women.

IN THE MEDIUM AND LONG-TERM THE GOVERNMENT SHOULD:

- Enact and enforce laws and regulations that prohibit all forms of violence against women and encompass prevention, protection, care, treatment and support, and remedies for survivors, as well as adequate punishment of convicted perpetrators.
- Review existing provisions, particularly in the penal code and in the draft national gender policy, to eliminate gaps in the protection of women against acts of gender-based violence.
- Amend current penal code provisions that classify sexual violence as an "offense against modesty and sexual honor" rather than as a violation of bodily integrity;
- Repeal article 443 of the penal code, which contains less severe criminal sentencing provisions for perpetrators of so-called honor crimes;
- Revise the penal code and other legislation to ensure that all forms of sexual violence can be appropriately prosecuted and that the punishment is proportionate to the crime;
- Amend the draft national gender policy to give priority to the elimination of all forms of gender discrimination, including all forms of violence against women; and
- Ratify core human rights conventions, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

Draft Gender Policy

Somalia's government has also committed to enacting a national policy to protect women from inequality.⁹⁰ The policy could set a historic precedent if it is able to ensure the implementation of Somalia's Provisional Constitution and its provision prohibiting all forms of violence against women. According to the draft policy, the government is committed to "eliminat[ing] all forms of gender discrimination from Somali society."⁹¹ To achieve this objective, the policy needs to include concrete, effective measures that specifically deal with the pervasive sexual and gender-based violence in the country. The July 2013 draft reviewed by Human Rights Watch did not address the issue.

In a letter to the Somali government (see annex), Human Rights Watch recommended a number of revisions to the text of the gender policy that would promote a more comprehensive and effective legislative response to sexual and gender-based violence in Somalia. The proposed revisions included a clear articulation that the prevention of violence against women and girls be one of the government's priorities, explicit recognition that violence against women is a form of gender-based discrimination and a violation of women's and girls' human rights, and specific provisions to address violence in a comprehensive manner. Human Rights Watch further recommended that the policy encompass not only the criminalization of all forms of violence against women and girls, and the effective prosecution and punishment of perpetrators, but also the prevention of violence, and the empowerment, support, and protection of survivors.⁹²

Penal Code

In order to meet Somalia's obligations under international law, Somali legislators should amend or abolish existing legislation that subjects women to discrimination and abuse,

⁹⁰ Somalia Transitional Federal Government and African Union Mission in Somalia, Draft Somali National Gender Policy, 2013, <http://amisom-au.org/wp-content/uploads/2013/08/EASY-TO-READ-GUIDE-GENDER-POLICY.pdf>.

⁹¹ This review is of the first draft of the gender policy completed in July 2013 by the ministry's Directorate of Women and Social Affairs with help from the African Union Mission in Somalia.

⁹² For example, article 2(3) of the July draft of the gender policy lists seven objectives, which make no reference to violence against women. Human Rights Watch's letter suggested that the government revise article 2(3)(1) as follows: "Eliminate all forms of gender discrimination, including all forms of violence against women, from Somali society." Similarly, Human Rights Watch recommended that article 4 of the draft policy be revised to include a fifth priority (in addition to the existing priorities of women's health, political participation, education and economic empowerment) targeting violence against women, which could be complemented by a new subsection to elaborate on this priority as follows:

Gender-based violence

This gender policy defines gender-based violence to include all violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, including sexual violence, domestic violence, female genital mutilation and forced and early marriage.

including the current Penal Code, which is particularly problematic with respect to violence against women.

The 1962 Penal Code classifies sexual violence under the headings of “Offense Against Modesty and Sexual Honor” and “Crimes Against Morals and Decency,” rather than as an offense against bodily integrity, autonomy, and dignity. All forms of sexual assault should be considered as crimes against the individual, rather than crimes against norms or values. By focusing on a victim’s honor and modesty, the Penal Code perpetuates the notion that a survivor of sexual violence has lost her honor or is immodest, and may serve to undermine justice by leading courts to focus on examining a woman’s sexual history rather than the alleged violence committed against her by the accused.

Reflecting this problematic paradigm, the Penal Code stipulates less severe criminal sentencing provisions for perpetrators of so-called honor crimes than for perpetrators of the same crimes where honor cannot be cited as a basis for mitigation. For example, article 443 of the Penal Code mandates that the maximum penalty for a person who immediately kills his spouse, daughter, or sister after witnessing her engaging in “fornication” is imprisonment of 5 to 10 years.⁹³ By contrast, killings done impulsively without premeditation incur sentences of 10 to 15 years under the Penal Code.⁹⁴ Article 443 also mandates that a person whose honor-motivated violence results in “physical or mental” injuries to his spouse or female relative is eligible for a one-third reduction in his prison sentence, whereas the same violence could result in a full prison sentence if the attack was not deemed to have been motivated by honor.⁹⁵ Article 443 further reduces one’s prison sentence to 2 to 8 years if the aggressor kills his spouse, daughter, or sister but without the requisite intent to cause death.⁹⁶ And if an assault results in no “physical or mental illness,” article 443 completely exonerates a person who assaults his spouse or family member for reasons of honor.⁹⁷ Under article 439, the usual punishment for such an assault would be imprisonment of up to six months or a fine.⁹⁸

93 Somalia Penal Code, Legislative Decree No. 5 of December 16, 1962, art. 443 states, that “Homicide and Hurt for Reasons of Honor: 1. Whoever (a) finds his or her spouse, a daughter, or a sister (b) committing fornication, (c) and in the sudden heat of rage for the offense caused to his or her honor and to the honor of his or her family, (d) causes the death of such spouse, daughter or sister, shall be punished with imprisonment from five to ten years.

94 Ibid., art. 441(b).

95 Ibid., art. 443(2)(c) and 440.

96 Ibid., art. 443(2)(d).

97 Ibid., art. 443(3)(c).

98 Ibid., art. 439(b).

Article 443 violates the fundamental principle of international human rights law that individuals are entitled to equality before the law and should not suffer discrimination on the grounds of their sex.⁹⁹ The penalty for murder or for battery should be consistent throughout the Penal Code (though it should not include the death penalty, which Human Rights Watch opposes in all circumstances¹⁰⁰), and the relationship between the victim and the perpetrator should not affect this. As the CEDAW Committee has specifically addressed, governments have an obligation to enact “legislation to remove the defense of honor in regard to the assault or murder of a female family member.”¹⁰¹ By upholding the notion that “honor” is a legitimate rationale for assault and murder, article 443 of the Penal Code effectively authorizes, and even invites, violence against women by stating explicitly that a person who “merely beats” or kills his wife, daughter, or sister caught in the act fornication – as opposed to someone else – shall not be gravely punished.

In addition, the wording of Penal Code article 398 on carnal violence, which defines rape as “Whoever (a) with violence or threats (b) has carnal intercourse (c) with a person of the other sex, shall be punished with imprisonment from five to fifteen years” is imprecise. Elements of the crime, such as “carnal intercourse” are not adequately defined, since the definition of this act in subsection (4) merely provides that “penetration by the male sexual organ shall constitute carnal intercourse.”¹⁰² In order to encompass all forms of sexual violence, the term “carnal intercourse” should include all forms of penetration, including vaginal, anal, and oral, and by penis, fingers, tongue or other instruments.

Defining a crime precisely can significantly impact whether a violation is reported and how it is prosecuted. Penal Code article 399, which criminalizes “acts of lust other than carnal intercourse,” suggests a distinction between carnal intercourse, which warrants a more serious penalty, and other sexual violations, which carry a lesser sentence.¹⁰³ This

⁹⁹ See International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 26.

¹⁰⁰ Human Rights Watch opposes capital punishment in all countries and in all circumstances because the inherent dignity of the person is inconsistent with the death penalty. This form of punishment is unique in its cruelty and finality, and it is inevitably and universally plagued with arbitrariness, prejudice, and error.

¹⁰¹ CEDAW Committee, General Recommendation No. 19, (Eleventh session, 1992), para. 24(r)(ii).

¹⁰² Somalia Penal Code, Legislative Decree No. 5 of 16 December 1962, art. 398 on Carnal Violence:

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

¹⁰³ Somalia Penal Code, art. 399 on Acts of Lust Committed with Violence:

distinction should be clarified. If article 399 is intended to capture other forms of sexual assault distinct from penetrative acts, these acts need to be comprehensively defined.¹⁰⁴ Significantly, the critical requirement of “consent” or “coercive circumstances” in cases of sexual assault is absent in both articles 398 and 399, which is inconsistent with the standard under international law. According to the CEDAW Committee, “rape constitutes a violation of women’s right to personal security and bodily integrity, and *its essential element is lack of consent*.” The Committee further stated “that there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.”¹⁰⁵

Thus, the existence of force can be considered evidence of lack of consent, but should not be treated as a necessary element of the crime of sexual aggression. Alternatively, a focus on “coercive circumstances” would replace a focus on the conduct of the victim and whether she consented with a focus on the conduct of the offender. In amending these articles legislators should focus on “coercive circumstances” rather than “consent” as a central element of the definition.¹⁰⁶

Whoever (a) by employing the means or under the conditions specified in the preceding article, (b) commits upon a person of the other sex (c) acts of lust other than carnal intercourse, shall be punished with imprisonment from one to five years.

¹⁰⁴ See, for example, the South African Sexual Offences Act:

- direct or indirect contact between the:
 - o genital organs or anus of one person, or in the case of a female, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling the genital organs or anus of a person or animal
 - o mouth of one person and
 - the mouth of another person
 - any other part of the body of another person, or in the case of a female, her breasts, which could
 - be used in an act of sexual penetration;
 - cause sexual arousal or stimulation;
 - be sexually aroused or stimulated thereby; or
 - and any object resembling the genital organs or anus of a person, and in the case of a female, her breasts, or an animal
- the masturbation of one person by another person
- the insertion of any object resembling the genital organs or a person or animal into or beyond the mouth of another person, but which does not include an act of sexual penetration.

¹⁰⁵ See, for example, CEDAW, Communication No. 18/2008, CEDAW/C/46/D/18/2008, Sept. 1, 2010, at para. 8.7, stating, “[t]hrough its consideration of States parties’ reports, the Committee has clarified time and again that rape constitutes a violation of women’s right to personal security and bodily integrity, and that its essential element was lack of consent.” *Ibid.*, para. 8.5.

¹⁰⁶ Namibian law provides a good example of a coercion-based definition, which includes a non-exhaustive list of coercive circumstances:

- the application of physical force to the complainant or a third party
- threats (verbal or otherwise) of the application of physical force to the complainant or a third party

A Pervasive Pattern of Violence Against Women

Long before the armed conflict, women in Somalia faced a pervasive pattern of gender-based violence, which continues to the present. Common forms of such violence include domestic violence, female genital mutilation (FGM), and early and forced marriage. UNICEF indicates that Somalia has one of the highest rates of FGM in the world, with more than 98 percent of girls between the ages of 7 to 12 experiencing some form of cutting.¹⁰⁷ Moreover, many women and girls in Somalia experience the most extreme form of genital mutilation, infibulation, which requires the partial or complete removal of all external sexual organs and almost complete closure of the vaginal opening.¹⁰⁸

Rashida Manjoo, the UN special rapporteur on violence against women, has called domestic violence against Somali women and girls “the most pervasive manifestation of violence against women and girls in the country,” in which “legal intervention or other assistance” is not deemed necessary unless the violence leads to serious injury or death.¹⁰⁹ While almost no reliable data exists on the prevalence of domestic violence, those surveys that have been undertaken suggest that it is widespread.

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- threats (verbal or otherwise) to cause harm (other than bodily harm) to the complainant or a third party under circumstances where it is not reasonable for the complainant to disregard the threats
 - where the complainant is under 14 years and the perpetrator is more than 3 years older than the complainant
 - circumstances where the complainant is unlawfully detained
 - circumstances where the complainant is ... and therefore unable to understand the nature of the act or unable or deprived of the opportunity to express unwillingness:
 - o physically or mentally disabled, whether permanent or temporary;
 - o intoxicated (drunk or under the influence of drugs) and unable to consent
 - o asleep
 - circumstances where the presence of more than one person is used to intimate the complainant

107 United Nations Children’s Fund (UNICEF), “Child Protection: Priority Issues,” www.unicef.org/somalia/cpp_133.html (accessed January 24, 2014).

108 LandInfo, Country of Origin Information Centre, Report: Female genital mutilation in Sudan and Somalia, December 2008, <http://www.refworld.org/pdfid/498085871c.pdf> (accessed January 24, 2014).

109 UN General Assembly and Human Rights Council, Report of Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16/Add.3, May 14, 2012, para. 17.

5. Women's Equality

Sexual and gender-based violence is fundamentally linked to women's inequality. Evidence suggests that in places where the "gender gap" — in relation to women's health, participation in the economy, level of education, and representation in politics — is greater, women are more likely to be subjected to violence.¹¹⁰ In 2013, the UN Security Council affirmed that "women's political, social and economic empowerment and gender equality ... are central to long-term efforts to prevent sexual violence in armed conflict and post-conflict situations."¹¹¹ Establishing gender equality over the long term is therefore crucial for Somalia to effectively and sustainably reduce sexual and gender-based violence. The Federal Government of Somalia should take wide-ranging steps to eradicate the root causes of this gender inequality which has been exacerbated by years of armed conflict and a culture of impunity.

MEDIUM- AND LONG-TERM MEASURES:

- Support programs that assist female survivors of sexual and gender-based violence in rebuilding their lives, by assisting them in seeking housing, jobs, vocational training, or school enrollment;
- Support programs that promote the political, social, and economic equality of women;
- Ensure that women are able as a matter of law and practice to equally and fully participate in the political process;
- Promote women's political participation by building the capacity of female candidates through initiatives such as campaign management or leadership training;
- Support voter education programs that target the education and information needs of women voters;
- Support the education of girls by tackling discriminatory attitudes regarding girls' education through public education campaigns;

¹¹⁰ Lakshmi Puri, Acting Head of UN Women, "It is time for action to end violence against women," ACP-EU Joint Parliamentary Assembly, 19 June 2013, www.unwomen.org/en/news/stories/2013/6/it-is-time-for-action-to-end-violence-against-women-a-speech-by-lakshmi-puri#sthash.h1zjpcXk.dpuf (accessed January 24, 2014).

¹¹¹ The resolution noted that sexual violence in post-conflict situations disproportionately affects women and girls and that these acts of violence not only "severely impede the critical contributions of women to society, but also impede durable peace and security as well as sustainable development." UN Security Council Resolution 2106, S/RES/2106 (2013).

- Ensure women's rights to own property, inheritance, equal pay for equal work, and safe and decent employment;
- Ensure any post-conflict economic recovery strategies will promote gender equality and target women working in both the formal and the informal employment sectors;
- Raise public awareness to stop violence against women and girls; and
- Support civil society organizations that protect and promote women's rights, including those acting on behalf of women's rights defenders.

"The challenge for women in Somalia is not just the violence. Sometimes we will go to the market, or wash clothes or deliver things but then they just send us away and don't give us any money and we still have to feed the children," said Sahra, who was stabbed and raped in July 2013 while collecting firewood. "Now the manual labor that I did before I was raped, I am not strong enough to do it anymore. We need more programs that give us capital to start an alternative business. After being raped, women are physically unable to do this type of work anymore and don't have capital to do something different to put food on the table."¹¹²

Women's Political Participation

Women's exclusion from peace processes, from decision-making on peace-building and state-building priorities, and from important state institutions perpetuates the marginalization of women in post-conflict societies.¹¹³

Somalia's Provisional Constitution explicitly recognizes the importance of women's political participation. Article 3 states: "Women must be included, in an effective way, in all national institutions, in particular all elected and appointed positions across the three branches of government and in national independent commissions."

Despite its importance, Somali women's participation and role in politics and decision-making spheres remains limited, perpetuating narrow gender roles and inequalities.¹¹⁴ Women have been virtually excluded from political and judicial structures in different parts of the country since 1991, when the collapse of the central government led to a re-

¹¹² Human Rights Watch interview with Sahra, Mogadishu, August 24, 2013.

¹¹³ See for example UN Women (2013), *Women's participation in Peace Negotiations: Connections between Presence and Influence*, UN Women, New York, UNIFEM (2009), *Progress of the world's women: who answers to women?* UNIFEM, New York; UN Women (2011), *Progress of the world's women: In pursuit of justice*, UN Women, New York.

¹¹⁴ UNDP Somalia, "Gender in Somalia," http://www.so.undp.org/docs/Gender_in_Somalia.pdf, p2.

emphasis on customary law, the extended use of Sharia law, and a reliance on clan-based forms of political representation.¹¹⁵

In February 2012, leaders from across Somalia agreed on a framework for a federal structure, as well as electoral and parliamentary systems to replace the Transitional Federal Government that had been in place since 2004. In the new framework women were initially guaranteed 30 percent of parliament's seats but ultimately received about 14 percent when parliament was formed later in the year.¹¹⁶ The new cabinet included Somalia's first female foreign minister, who also became the country's first female deputy prime minister.

On January 16, 2014, Somalia's newly appointed Prime Minister Abdiweli Sheikh Ahmed announced his cabinet of 25 ministers, which included only two women for the ministries of women and human rights development, and general activities and rebuilding.¹¹⁷ Other senior posts are also occupied by women.¹¹⁸

Education

Every girl has a right to education and to equal access to education compared to boys. By getting an education, girls become more able to realize their rights in other spheres. There is evidence that women with less education are also generally more likely to experience violence than those with higher levels of education.¹¹⁹

115Historically, Somali society has employed a governance system under traditional customary laws known as xeer, which recognizes the rights of men while limiting those of women. Although women have statutory rights to own and acquire land, traditionally women tend to register land in the names of their husbands or, if they are the head of the household, in the names of their sons or brothers. UNDP, "Somalia Human Development Report 2012: Empowering youth for peace and development" September 2012, www.so.undp.org/shdr/Somalia%20Human%20Development%20Report%202012.pdf, (accessed January 24, 2014).

116 United Nations Political Office for Somalia, "Year End Letter from SRSg Mahiga," 2012, UNPOS, <http://unpos.unmissions.org/Default.aspx?ctl=Details&tabid=9705&mid=12667&ItemID=19547> (accessed January 24, 2014), Darman Farah Adde, "Garowe II conference establishes new government structure," Sabahi, February 21, 2012, http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/02/21/feature-01 (accessed January 24, 2014).

117 "Somalia's prime minister announces new cabinet," Somalicurrent, January 16, 2014, <http://www.somalicurrent.com/2014/01/16/somalias-prime-minister-announces-new-cabinet/> (accessed January 24, 2014).

118 Liban Obsiye, "Somali women groups: Strengthening sisterhood," Hiiraan Online, October 9, 2013, http://www.hiiraan.com/op4/2013/oct/41492/somali_women_groups_strengthening_sisterhood.aspx.

119The relationship between educational attainment and its protective effect is complex. Some men may react violently to women's empowerment through education, particularly if educated women then challenge traditional gender roles. Thus, in some societies there is actually increased risk of violence for some women until a sufficient number of them reach a high enough educational level and gender norms shift to allow its protective effects to operate. World Health Organization, "Addressing violence against women and achievement of the Millennium Development Goals" MDG 2, http://www.who.int/gender/documents/women_MDGs_report/en/index4.html (accessed January 24, 2014).

Somalia has one of the lowest enrollment ratios in primary education in the world.¹²⁰ While accurate and recent statistics on the education enrollment or attendance rates of girls is unavailable, data that does exist suggest low school enrollment and attendance for both boys and girls, with girls faring worse.¹²¹ According to UNICEF, the percentage of primary school participation for girls between 2007 and 2010 was 23 percent, compared with 42 percent for boys, while the net attendance ratio was 15 percent and 18 percent, respectively.¹²² A 2012 report by the UN secretary-general estimated net primary school enrollment for girls at 7 percent compared with 13 percent for boys.¹²³ The literacy rate for women and girls in Somalia (aged 15-24) is only about 25 percent, with the lowest literacy rate of 19 percent in the South Central region.¹²⁴ This is compared with a 36 percent national literacy rate for men (and 31 percent overall).¹²⁵

Persistent insecurity, economic collapse, and lack of governance, especially in the southern regions, have greatly hampered the development of the education sector in Somalia. Girls have seen their access to education further eroded by a general lack of protection and by displacement, exhaustion, family separation, and emotional trauma.¹²⁶ Encouragingly, the Human Rights Roadmap approved by the Somalia government in August 2013 acknowledges the poor attendance rates of Somali girls and lists education as one of the key priorities.¹²⁷

¹²⁰ Somalia Government, “Developing a Human Rights Roadmap for Somalia,” 2013.

¹²¹ UNDP Somalia, “Gender in Somalia,”

http://www.so.undp.org/content/dam/somalia/docs/Project_Documents/Womens_Empowerment/Gender%20in%20Somalia%20FINAL.pdf

¹²² Ibid., p. 4.

¹²³ UN Human Rights Council, Report of the Secretary-General on UN support to end human rights abuses and combat impunity in Somalia, 21 September 2012 A/HRC/21/36,

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.36_en_only.pdf.

¹²⁴ Somalia Government, “Developing a Human Rights Roadmap for Somalia,” 2013. P. 19.

¹²⁵ United Nations Development Programme, “Somalia Human Development Report 2012: Empowering youth for peace and development” September 28, 2012, p. 54, <http://www.undp.org/content/undp/en/home/librarypage/hdr/Somalia-human-development-report-2012/> (accessed January 24, 2014).

¹²⁶ UN Human Rights Council, Report of the Secretary-General on UN support to end human rights abuses and combat impunity in Somalia, September 21, 2012 A/HRC/21/36,

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.36_en_only.pdf.

¹²⁷ UNDP in Somalia, “Status of MDGs in Somalia” March 2012, <http://www.so.undp.org/index.php/Millennium-Development-Goals.html>.

Employment

In post-conflict countries, formal sector employment generation initiatives tend to neglect women as governments focus on economic opportunities for demobilized men.¹²⁸ Yet, economic opportunities for women not only bolster their financial security, but mitigate their risk of physical, sexual, domestic, and psychological violence. Without equal economic and employment opportunities, many women remain trapped in situations of violence, exploitation, and abuse.

For many Somali women, the consequences of armed conflict – including the death of a spouse or other family member, displacement, loss of property, destruction of one’s home, or absent men – has meant there is no option but for them to assume the role of family breadwinner. Yet limited economic opportunities, particularly for female-headed households, compel women to seek and take work wherever they can find it, including in situations that subject them to the risk of sexual violence. Should women be attacked as a result, the consequences can be wide-ranging and have enormous, long-term impacts on the women and their children, particularly for those unable to work again because of an attack.

After Farxiyo was raped in her IDP camp, she was unable to leave her home for two days.¹²⁹ While the neighbors collected food to feed the six children living with her, Farxiyo lamented the way rape caused poverty. “After we are raped, we can’t do the same work or carry heavy loads, Farxiyo said. “We need money for our kids to live. The government should do something or children will die of hunger.”¹³⁰ Samiira, a mother of five who was raped and injured by three men while working on a farm, said the day of the attack was the worst day of her life: “I quit my job. Now, sometimes we eat and sometimes we don’t.”¹³¹

Customary norms may further isolate and economically marginalize women in Somalia. Often, widowed women do not receive their fair share of an inheritance when land is grabbed by male relatives. Customary norms in Somalia deprive widows of access to their husband’s land if they have no children.¹³² Without access to land, widowed women may lose their only source of shelter, food, and income, exacerbating the poverty they already find themselves in.

128 Convention on the Elimination of All Forms of Discrimination against Women Committee, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 18 October 2013 CEDAW/C/GC/30, <http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>.

129 Human Rights Watch interview with Farxiyo, Mogadishu, August 25, 2013.

130 Ibid.

131 Human Rights Watch interview with Samiira, Mogadishu, August 26, 2013.

132 UNDP Somalia, “Gender in Somalia,” http://www.so.undp.org/docs/Gender_in_Somalia.pdf.

Commitments of the Federal Government of Somalia

The Provisional Constitution, adopted in August 2012, explicitly prohibits “all forms of violence, including any form of violence against women, torture, or inhumane treatment.”¹³³

Since assuming power in late 2012, the Federal Government of Somalia has pledged to address sexual violence, but it has not shown itself able or willing to follow up with concrete action to address the problem. In November 2012, President Hassan Sheikh Mohamud publicly promised to hold government forces accountable for abuses, including rape.¹³⁴

After several months of international media attention on the scale of sexual violence in Somalia, on May 7, 2013, the government and the UN signed a joint communiqué that acknowledged that “very high numbers of incidents of sexual violence have been reported consistently, particularly in internally displaced camps and settlements in Mogadishu and surrounding areas,” which the government promised to address “in a comprehensive manner and as a matter of priority.” The government promised to lead and undertake various measures, including:

- Developing and implementing a comprehensive strategy to prevent and respond to sexual violence, as well as supporting the work of service providers;
- Strengthening the protection of internally displaced camps and establishing measures to protect women and girls in the camps from sexual violence;

¹³³ The Provisional Constitution affirms the state’s commitment to human rights and basic freedoms with provisions on gender equality, women’s rights, personal liberties, freedom from torture, and the right to effective redress. The constitution contains provisions pertaining to a range of women’s issues beyond sexual violence. Article 15 prohibits female genital mutilation (FGM), which it describes as “a cruel and degrading customary practice, and is tantamount to torture.” Article 3 covers women’s political participation and provides that women be effectively included in all national institutions, particularly in all elected and appointed positions across the three branches of government and in national independent commissions. Significantly, article 39 calls for a law to provide for adequate procedures for redress, stating that, “redress of violations of human rights must be available in courts that the people can readily access.” If a victim is unable to go to court, they may be represented by a person or organization to go on their behalf “to protect the rights of others.” Under the Somali Compact agreed to by Federal Government and donor countries, Somalia has prioritized finalizing and adopting a Federal Constitution by December 2015. Somalia Government, “The Somali Compact,” 2013, <http://reliefweb.int/report/somalia/somali-compact> (accessed January 24, 2014); Federal Republic of Somalia Provisional Constitution, art.24, August 1, 2012.

¹³⁴ The president’s speech of November, 2012, is available online at <http://radiomuqdisho.net/wp-content/uploads/2012/11/Riix-Halkan-si-Aad-U-Dhageysato-Khudabadii-Madaxweynuhu-uga-hadlayay-amniga.mp3>.

- Ensuring access to services including medical, psychosocial, and legal aid to sexual violence survivors;
- Implementing protocols to ensure the protection of victims, witnesses, journalists and others who report on sexual violence;
- Strengthening the legal framework on sexual violence through enactment, review, or harmonization of relevant legislation;
- Supporting the Office of the Attorney General to develop specialized investigation capacity for sexual violence crimes; and
- Issuing command orders through the army and police prohibiting sexual violence and reinforcing the commitment for “zero tolerance” of such violations in the army and police codes of conduct.

In August 2013, a special session of the Cabinet of Ministers formally endorsed a “human rights road map” for the period 2013 to 2015 laying the foundation for improving the protection and promotion of human rights in Somalia.¹³⁵ The roadmap urged the government to address the widespread issue of discrimination and inequality on the basis of sex and to consider:

- Ratifying the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as Somalia is one of the very few countries in the world that has not ratified either convention;
- Enshrining guarantees of non-discrimination and equality in national legislation at the constitutional level;
- Adopting specific legislation and policies on core priority areas (education, work, and gender-based violence);
- Identifying and revising discriminatory legislation and the penal code; and
- Including gender analysis and mainstreaming in all sectorial policies and legislation.

In late 2013 the Office of the Prime Minister presented a draft document entitled “Preventing Sexual Violence,” requesting timely and tangible assistance from the international community. It contained a number of valuable recommendations to help victims of sexual violence, including:¹³⁶

¹³⁵ Somalia Government, “Developing a Human Rights Roadmap for Somalia,” 2013, on file with Human Rights Watch.

¹³⁶ Office of the Prime Minister, “Preventing Sexual Violence Recommendations” (Draft of 2013) on file with Human Rights Watch.

- Training and capacity-building of legal staff on handling cases of alleged sexual assault and exploitation;
- Setting up a flagship rape clinic, to be expanded to more hospitals as soon as technically possible, which will include advanced medical and psychological care, medical tests and forensics, post-trauma care and counsel;
- Setting up a Rape Rapid Response Unit, inclusive of female officers, tasked with responding to alleged rape reports immediately;
- Developing and enforcing policies and protocols for hospitals and medical practitioners on the documentation, collection, and preservation of forensic evidence, and the appropriate procurement and training of hospital and clinic staff to effectively use rape kits;
- Gender-based violence and human rights awareness and sensitivity training for security and armed forces.

In February 2013, prior to the first of a series of donor pledging conferences on Somalia in London, Somalia's Justice Sector Action Plan (2013-2015) was developed by the Ministry of Justice and the Judiciary with international support as part of an international effort to support the rebuilding and resourcing of a functioning justice sector in the country.¹³⁷ Under the plan, the government acknowledges that the justice needs of women and children are "often not well served by male-dominated justice institutions."¹³⁸ The plan cites an urgent need to reform justice institutions and gives priority to the implementation of women-centered justice policies.

In the same period, the Somali authorities, with support from the UN, the European Union, and the United Kingdom, developed a strategic action plan for policing that envisages the transformation of the Somali police force so that it can meet the needs of vulnerable groups.¹³⁹ In 2014, the government is planning to establish a Family Support Unit within the Somali police force with an expertise in investigating criminal offenses against women, particularly sexual and domestic violence.

Government officials have also stated the need to improve the situation of the displaced population in Mogadishu. In January 2013, the government announced plans to relocate the capital's displaced population to new camps in the Daynile district despite the fact

¹³⁷ Ministry of Justice, Religion, Constitutional and Reconciliation Affairs, "Somalia Justice Sector Action Plan 2013-2015," May 2012, on file with Human Rights Watch.

¹³⁸ Ibid.

¹³⁹ Somali Police Force, "Action Plan to Develop Strategic Plan," 2013, on file with Human Rights Watch.

that al-Shabaab retains a significant presence in Daynile, prompting concerns that the new camps would lack basic security and protection, as well as services. ¹⁴⁰

While the plans seemingly offered the authorities and humanitarian agencies the opportunity to significantly improve the lot of this highly vulnerable population, including their protection from sexual violence, the lack of planning and consultation meant that the site was not set with the necessary services and infrastructure to provide proper protection. The relocation of IDPs from Mogadishu was postponed as a result. Meanwhile, forced relocation of the displaced have continued, including from camps planned for relocation, putting the already vulnerable at further risk.¹⁴¹

In spite of these public commitments and nascent plans to address sexual violence, including by improving protection and tackling impunity, the Somali government has yet to implement tangible measures to improve the safety of women in camps.¹⁴² As a result of limited political will and lack of capacity, the government has not held perpetrators of sexual violence accountable, particularly government forces, as illustrated in three recent high-profile cases in which officials arrested or harassed women who reported that they had been raped, rather than properly investigating and prosecuting the alleged crime (see access to justice section).

¹⁴⁰ "Mogadishu Mayor Announces Plan to Relocate IDP's" AllAfrica.com, February 27, 2013, <http://allafrica.com/stories/201302271425.html> (accessed January 24, 2014).

¹⁴¹ Amnesty International, "Somalia: No Place for the Displaced" September 2013, www.amnesty.org/en/library/asset/AFR52/010/2013/en/998458d1-c6d4-44dc-879d-24b4c6889d1c/afr520102013en.pdf (accessed January 24, 2014).

¹⁴² See for example: UN Human Rights Council, "Report of the Secretary-General on the United Nations support to end human rights abuses and combat impunity in Somalia," A/ HRC/21/36, September 21, 2012, p.25.

International Legal Obligations

International human rights law contains protections from rape and other forms of sexual abuse through its prohibitions on torture and other ill-treatment, slavery, forced prostitution, and discrimination based on sex.¹⁴³ It obligates governments to adopt effective measures for the prevention, investigation, prosecution, and punishment of sexual violence; to ensure its citizens the highest attainable standard of health; and to provide reparations to victims of serious human rights violations.¹⁴⁴

Somalia recognized that Somali girls and women have the right to live their lives free of violence when, prior to the collapse of the government of Siad Barre, it ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Somalia is one of only seven countries that has not ratified the Convention on the Elimination of All Forms of Discrimination against Women.¹⁴⁵ However, as part of the UN Universal Periodic Review, Somalia in September 2011, accepted recommendations made

¹⁴³ The International Covenant on Civil and Political Rights (ICCPR) prohibits torture and other cruel, inhuman, or degrading treatment (art. 7) and protects women's right to be free from discrimination based on sex (arts. 2(1) and 26). ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Somalia in 1990; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Somalia in 1990 (the UN special rapporteur on torture has long characterized rape as torture); UN Commission on Human Rights, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. P. Kooijmans, submitted pursuant to Commission on Human Rights resolution 1985/33, U.N. Doc. E/CN.4/1986/15, February 19, 1986, para. 119; UN Commission on Human Rights, Forty-eighth session, Summary Record of the 21st Meeting, U.N. Doc. E/CN.4/1992/SR.21, February 11, 1992, para. 35; UN Commission on Human Rights, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, U.N. Doc. E/CN.4/1995/34, January 12, 1995, <http://www.unhcr.org/refworld/pdfid/4d3943f72.pdf> (accessed January 24, 2014), para 19.; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, entered into force October 21, 1986, ratified by Somalia in 1985, arts. 2, 5, 18(3).

¹⁴⁴ See Human Rights Committee, General Comment No. 31 Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 14 (“a failure to ensure Covenant rights as required by article 2 [prohibiting discrimination] would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”); International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Somalia in 1990, art. 12 (right to health).

¹⁴⁵ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, Somalia has not ratified CEDAW.

by other countries pertaining to violence against women, including ratifying CEDAW and the Convention on the Rights of the Child.¹⁴⁶

Right to Freedom from Gender-Based Violence

Among their basic human rights, women and girls have the right to bodily integrity, to security of person, and to freedom from torture and cruel, inhuman, or degrading treatment. These rights are enshrined in the Universal Declaration of Human Rights, the ICCPR, and the Convention against Torture.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which Somalia has signed but not ratified, commits governments to combating all forms of discrimination against women, including violence against women, and to adopting the appropriate legislative and institutional measures.¹⁴⁷

Under the Maputo Protocol, governments are obligated to adopt and implement appropriate measures to ensure the protection of women from all forms of violence, particularly sexual and verbal violence.¹⁴⁸ They are to take appropriate and effective measures to:

- enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex, whether the violence takes place in private or public;
- adopt such other legislative, administrative, social, and economic measures as may be necessary to ensure the prevention, punishment, and eradication of all forms of violence against women;
- identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
- actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices, and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women;

¹⁴⁶ UN Universal Periodic Review, "Database of UPR Recommendations," Somalia, <http://www.upr-info.org/database>.

¹⁴⁷ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005, arts. 2 and 4. Somalia has not ratified the protocol.

¹⁴⁸ Maputo Protocol, art. 3.

- punish the perpetrators of violence against women and implement programs for the rehabilitation of women victims; [and]
- establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.¹⁴⁹

The CEDAW Committee stated in General Recommendations 28 and 19 that violence against women constitutes a form of discrimination and states have a due diligence obligation to prevent, investigate, prosecute, and punish acts of gender-based violence. In its General Recommendation 19, the CEDAW Committee stated, “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”¹⁵⁰ A state’s consistent failure to do so when women are disproportionately the victims, amounts to unequal and discriminatory treatment and constitutes a violation of the state’s obligation to guarantee women equal protection of the law.¹⁵¹

The CEDAW Committee has identified key steps necessary to combat violence against women, among them: effective legal measures, including penal sanctions, civil remedies, and compensatory provisions; preventive measures, including public information and education programs to change attitudes about the roles and status of men and women; and protective measures, including shelters, counseling, rehabilitation, and support services.

Human Rights protections against sexual violence also apply to persons under 18. The African Charter on the Rights and Welfare of the Child, which Somalia signed in 1991 but has not ratified, provides that governments “shall undertake to protect the child from all forms of sexual exploitation and sexual abuse.”¹⁵² Somalia has also signed, but not ratified, the Convention on the Rights of the Child, which states that children must be protected from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation – including sexual abuse – and ensure that victims

¹⁴⁹ Ibid, art. 4.

¹⁵⁰ UN CEDAW Committee, General Recommendation No. 28, On the core obligations of States parties under art. 2 of CEDAW, U.N. Doc. CEDAW/C/GC/28 (2010), paras. 19 and 34; UN CEDAW Committee, General Recommendation No. 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 (1994) (hereinafter General Recommendation No. 19), p. 84, para. 9.

¹⁵¹ CEDAW, art. 15; ICCPR, art. 26.

¹⁵² African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, art. 27.

of such acts receive legal and psycho-social redress.”¹⁵³ The ICCPR grants every child the right to “such measures of protection as are required by his status as a minor.”¹⁵⁴ Under the African Charter on the Rights and Welfare of the Child, states must take preventive and remedial measures against child abuse and torture, particularly sexual abuse.¹⁵⁵

The Convention on the Rights of Persons with Disabilities also upholds the rights of women and girls to live lives free from violence. Article 16 places an obligation on states to “prevent the occurrence of all forms of exploitation, violence and abuse.”¹⁵⁶

Similarly, the UN General Assembly has urged governments to take specific law enforcement measures to combat domestic violence through its Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women. The resolution, among other things, urges governments to enforce laws on violence against women, develop gender-sensitive investigation techniques, ensure that police procedures account for victim safety and prevent further violence, and empower police to respond promptly to violence against women.¹⁵⁷

Violence against IDPs

IDPs have all the rights set out above. These rights are reflected in the UN Guiding Principles on Internal Displacement, which “reflect and are consistent with international human rights law and international humanitarian law.”¹⁵⁸ The Guiding Principles provide that IDPs “shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”¹⁵⁹ National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction.¹⁶⁰

¹⁵³ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. doc A/44/49 (1989), entered into force September 2, 1990, art. 19.

¹⁵⁴ ICCPR, art. 24(1).

¹⁵⁵ African Charter on the Rights and Welfare of the Child, arts. 16, 27.

¹⁵⁶ Convention on the Rights of Persons with Disabilities, adopted on December 13, 2006, G.A. Res 61/106, art. 1, <http://www.un.org/disabilities/convention/conventionfull.shtml>.

¹⁵⁷ UN General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, U.N. Doc. A/RES/52/86, February 2, 1998.

¹⁵⁸ UN Economic and Social Council (ECOSOC), “Guiding Principles on Internal Displacement,” (UN Guiding Principles) U.N. Doc. E/CN.4/1998/53/Add.2 (1998), July 22, 1998, introductory note, para. 9.

¹⁵⁹ *Ibid.*, principle 1.

¹⁶⁰ *Ibid.*, principle 3(1).

IDPs shall be protected, for example, against rape, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution, and any form of indecent assault.¹⁶¹ They shall have the right to liberty of movement and freedom to choose their residence, in particular the right to move freely in and out of camps or other settlements.¹⁶²

Under the Maputo Protocol, governments are obligated to protect IDPs against all forms of violence, rape, and other forms of sexual exploitation, and that their perpetrators are brought to justice before a competent criminal jurisdiction.¹⁶³

Of emerging importance to IDPs in Africa is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which came into force on December 6, 2012. The Kampala Convention provides a comprehensive description of the rights of internally displaced people and the obligations of states and non-state actors. Somalia is a signatory but not yet a party to the convention.¹⁶⁴

Right to Education

The right to education is enshrined in the ICESCR and the CRC.¹⁶⁵ The UN Committee on Economic, Cultural and Civil Rights, in its general comment on the right to education, notes the need for education curricula at all levels to be acceptable to the students, meaning relevant, culturally appropriate, and of good quality.¹⁶⁶ When considering the appropriate application of these essential features, the best interests of the student shall be a primary consideration.¹⁶⁷

Right to Health

Article 12 of the ICESCR provides for the right of everyone to the enjoyment of “the highest attainable standard of physical and mental health.”¹⁶⁸ Governments should also ensure

¹⁶¹ Ibid., principle 11(a).

¹⁶² Ibid., principle 14.

¹⁶³ Maputo Protocol, art. 11(3).

¹⁶⁴ African Union, Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), October 22, 2009, entered into force on 6 Dec 201.

¹⁶⁵ ICESCR, art. 13; CRC, art. 28.

¹⁶⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 70 (2003), para. 6.

¹⁶⁷ Ibid., para. 7.

¹⁶⁸ ICESCR, art. 12(1)

non-discriminatory access to health care, especially for vulnerable or marginalized groups.¹⁶⁹ The right to health includes an obligation to protect women and girls from violence. Violations of the right to health include “the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others” and “the failure to protect women against violence or to prosecute perpetrators.”¹⁷⁰ The UN special rapporteur on the right to health has said that rape and other forms of sexual violence represent a “serious [breach] of sexual and reproductive freedoms, and are fundamentally and inherently inconsistent with the right to health.”¹⁷¹

The right to health includes the right to access information concerning health. The Committee on Economic, Social and Cultural Rights has stated that “the realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information.”¹⁷² The particular needs of women in relation to access to health-related information have also been highlighted by the CEDAW Committee and the UN special rapporteur on the right to health, who has stated that a factor that makes women more vulnerable to ill health is lack of information.¹⁷³ Many displaced women and girls lack the information necessary to seek health services after rape or other acts of violence and the government has not done enough to provide this information.

A primary component of ensuring the right to health is accountability, with the aim of correcting systemic failure to prevent future harm. The UN special rapporteur on the right to health has elaborated upon the meaning of accountability in the context of providing health care:

What it means is that there must be accessible, transparent and effective mechanisms of accountability in relation to health and human rights.... Accountability is also sometimes narrowly understood to mean blame and punishment, whereas it is more accurately

169 See, for example, Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment No. 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 43.

170 *Ibid.*, para. 51.

171 UN Report of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/61/338, September 13, 2006, para. 25.

172 ESCR Committee, General Comment No. 14, para. 12(b).

173 UN Commission on Human Rights, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Report of Special Rapporteur Paul Hunt submitted in accordance with Commission resolution 2002/31,” E/CN.4/2003/58, February 13, 2003. And, Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Women and Health, 1999, U.N. Doc. A/54/38/Rev.3, para. 18.

regarded as a process to determine what is working (so it can be repeated) and what is not (so it can be adjusted).¹⁷⁴

Correction of systemic failures in the referral pathway – such as lack of training and mistreatment by officials – cannot be achieved without regular monitoring of the health system and the underlying physical and socio-economic determinants of health that affect women’s health and ability to exercise their rights.¹⁷⁵ In a country like Somalia, this should include special attention to women living in displacement, due to their vulnerable socio-economic conditions. States should develop “appropriate indicators to monitor progress made, and to highlight where policy adjustments may be needed.”¹⁷⁶ Monitoring helps governments develop a better understanding of the “problems and shortcomings encountered” in realizing rights, providing them with the “framework within which more appropriate policies can be devised.”¹⁷⁷

Right to Privacy and Bodily Integrity

International human rights law guarantees both a right to privacy and a right to bodily integrity that incorporate a right to sexual autonomy.¹⁷⁸ Sexual autonomy – the right to sexual self-determination – enshrines both the right to engage in wanted sexuality and the right to be free and protected from unwanted sexuality, from sexual abuse, and sexual violence. The right to sexual autonomy alongside the right to sexual and reproductive health has been the focus of a number of international declarations and conference documents that address states’ obligations in this area.¹⁷⁹

174 Special rapporteur on the right to health, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt,” January 17, 2007, A/HRC/4/28, para. 46.

175 Office of the High Commissioner for Human Rights, “Report of the Office of the High Commission for Human Rights on preventable maternal mortality and morbidity and human rights,” April 2010, A/HRC/14/39, para. 36.

176 Special rapporteur on the right to health, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” September 2006, A/61/338, para. 28(e).

177 Committee on Economic, Social, and Cultural Rights, “Reporting by States Parties,” General Comment No. 1, E/1989/22, 1989, para. 3.

178 See ICCPR, arts. 7 and 17.

179 At the UN International Conference on Population and Development held in October 1994 in Cairo, Egypt, and the UN Fourth World Conference on Women held in September 1995 in Beijing, China, governments explicitly endorsed women’s sexual autonomy. In the 1994 Cairo Programme of Action on Population and Development, delegates from governments around the world pledged to eliminate all practices that discriminate against women and to assist women to “establish and realize their rights, including those that relate to reproductive and sexual health.” In the 1995 Beijing Declaration and Platform for Action, delegates from governments around the world recognized that women’s human rights include their right to have control over and decide freely and responsibly on matters related to their sexuality free of coercion, discrimination and violence. See UN, Programme of Action of the United Nations International Conference on Population and Development (1994), A/CONF.171/13, October 18, 1994, para. 4.4(c) and United Nations, Beijing Declaration and Platform for Action (1995), A/CONF.177/20, October 17, 1995, para. 223.

Right to a Remedy

By ratifying the ICCPR, the Convention against Torture, and other human rights treaties, Somalia has assumed a positive obligation to address violence against women. Whether the violence is perpetrated by government authorities or by others, international law requires that Somali authorities exercise due diligence to prevent, investigate, prosecute, and punish acts of violence against women.¹⁸⁰

A victim also has the right to an effective remedy when rights have been violated.¹⁸¹ The ICCPR provides that governments must ensure that any person whose rights under the Covenant are violated “shall have an effective remedy,” and that any person claiming a remedy “shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State.”¹⁸²

The Human Rights Committee, which monitors implementation of the ICCPR, has stated that the duty to provide an effective remedy to victims of human rights violations, whether at the hands of public officials or private individuals, includes the obligation to “exercise due diligence to prevent, punish, investigate, or redress the harm caused by such acts.”¹⁸³ The Committee emphasized that governments must ensure “accessible and effective remedies” for human rights violations and to take into account “the special vulnerability of certain categories of person,” further noting that “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”¹⁸⁴

180 UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties: general legal obligation on states parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, (Eightieth session, 2004), <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (accessed January 24, 2014), para. 8; UN Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2, (2008), <http://www2.ohchr.org/english/bodies/cat/comments.htm> (accessed January 24, 2014), paras. 1-3; UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, A/HRC/7/3, January 15, 2008, <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm> (accessed January 24, 2014), paras. 30-32; UN Declaration on the Elimination of Violence Against Women, December 20, 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), <http://www.un.org/documents/ga/res/48/a48r104.htm> (accessed January 24, 2014), art. 4(c); Fourth World Conference on Women, Report of the Fourth World Conference on Women (“Beijing Declaration and Platform for Action”), Beijing, 4-15 September 1995, A/CONF.177/20, October 17, 1995, <http://www.un.org/esa/gopher-data/conf/fwcw/off/a-20.en> (accessed January 24, 2014), para. 124 (b); UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against women, (Eleventh session, 1992), <http://www2.ohchr.org/english/bodies/cedaw/comments.htm> (accessed January 24, 2014), para. 24(a) and (t).

181 See ICCPR, art. 2.

182 Ibid.

183 Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 8.

184 Ibid., para. 15.

Women's Political Participation

International standards recognize women's political participation as a human right, supported by provisions mandating equality between men and women in all aspects of society. CEDAW specifically requires that states take appropriate measures to eliminate discrimination against women in the political and public life of their countries.¹⁸⁵

There is broad international consensus about the need to include women in post-conflict decision-making. UN Security Council Resolution 1325, unanimously adopted in 2000, stressed the importance of women's equal and full participation as active agents in peace and security in all aspects of conflict prevention and resolution and post-conflict reconstruction.¹⁸⁶ Resolution 1325 calls upon all governments to increase the number of women involved in decision-making at the national, regional, and international level on conflict prevention, management, and resolution. Implementation of this obligation is measured by the level of women's political participation in parliament and in elections.¹⁸⁷

While Resolution 1325 was the first time the Security Council addressed the unique impact of armed conflict on women and the key role women do and should play in conflict prevention, peacekeeping, conflict resolution and securing peace, it has since adopted numerous supporting resolutions.¹⁸⁸ Taken together, the resolutions affirm that women's exclusion poses a profound constraint on effective peace-building, state-building, and long-term development.

¹⁸⁵ CEDAW, art. 7. CEDAW General Recommendation 23 recognizes that the "political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers." (CEDAW Committee, General Recommendation No. 23, Political and public life, (Sixteenth session, 1997), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. II) (2008), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go8/422/43/PDF/Go842243.pdf?OpenElement> (accessed January 24, 2014), p. 347, para. 5.)

¹⁸⁶ United Nations Development Fund for Women (UNIFEM), "Security Council Resolution 1325 Annotated and Explained," updated, http://www.peacewomen.org/assets/file/BasicWPSDocs/annotated_1325.pdf (accessed January 24, 2014), p. 4.

¹⁸⁷ UN Security Council, Report of the Secretary-General on Women, peace and security, S/2010/173, April 6, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/305/16/PDF/N1030516.pdf?OpenElement> (accessed January 24, 2014), paras. 21 and 25.

¹⁸⁸ See Security Council Resolutions 1820, 1888, 1889, 1960, and 2106.

Acknowledgments

This report was researched and written by Samer Muscati, emergencies researcher for the Women's Rights division, and Tirana Hassan, senior researcher for the Emergencies division, at Human Rights Watch.

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350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-36-1300; 917-591-3452

WOMEN'S RIGHTS DIVISION

Liesl Gerntholtz, *Executive Director*
Janet Walsh, *Deputy Director*
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Meghan Rhoad, *Researcher*
Aruna Kashyap, *Researcher*
Agnes Odhiambo, *Researcher*
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Samer Muscati, *Researcher*
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Annex 1

Letter re: Somalia National Draft Gender Policy

August 21, 2013

Ms. Maryan Qasim,
Minister of Human Development and Public Services
Ministry of Human Development and Public Services
Federal Republic of Somalia
Mogadishu, Somalia
Via email: [REDACTED]

Dear Minister Qasim,

I am writing on behalf of Human Rights Watch, an international organization that conducts research and advocacy on human rights in more than 80 countries worldwide, to share our analysis of the Federal Republic of Somalia's draft National Gender Policy.

We commend Somalia's commitment to enacting a national policy to protect women from inequality that is fuelled by longstanding social and cultural norms, sanctioned by discriminatory laws and compounded by years of armed conflict and a culture of impunity. The new government could set an historic precedent with a gender policy that is able to ensure implementation of Somalia's provisional Constitution, which explicitly prohibits "all forms of violence, including any form of violence against women."

This review is of the first draft of the gender policy completed in July 2013 by the ministry's Directorate of Women and Social Affairs with help from the African Union Mission in Somalia. According to that draft policy, the government is committed to "eliminat[ing] all forms of gender discrimination from Somali society." To achieve this objective, the policy needs to include effective measures that specifically deal with the pervasive sexual and gender-based violence in the country. Somalia's responsibility to combat sexual and gender-based violence is underlined by the commitments it made in May 2013 as part of a Joint Communiqué signed with the United Nations, which lays out various government commitments to prevent sexual violence (described in greater detail below).

Background

Sexual violence is pervasive in Somalia and a fact of everyday life for women and girls. Decades of armed conflict, widespread violence and insecurity, compounded by famine and massive displacement, have



rendered women and girls extremely vulnerable to sexual violence, particularly those who have been internally displaced.

Alarming numbers of incidents continue to be reported. On August 16, 2013, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) said that during the first half of the year, there were about 800 cases of sexual and gender-based violence reported in Mogadishu alone. According to the United Nations Children's Fund (UNICEF), about one-third of victims of sexual violence in Somalia are children. Last year, UNICEF and its partners assisted 2,200 victims of sexual violence in the country. The actual number is likely much higher as many victims of sexual violence never report their experiences to the authorities for fear of reprisals from perpetrators. Women and girls are also wary of the ostracism and social stigma associated with rape and have little confidence that the authorities will respond.

Human Rights Watch research, published in March 2013, has found that armed men in uniform, including government forces and government-allied militia, have been responsible for a significant number of sexual assaults of internally displaced women and girls since July 2011. These have included some security personnel who were posted in displaced persons camps to provide security.

Somali women and girls also continue to be at enormous risk for other forms of gender-based violence, in particular:

- UNICEF has indicated that Somalia has one of the highest rates of female genital mutilation (FGM) in the world, with more than 98 percent of girls between the ages of 7 to 12 experiencing some form of mutilation. Moreover, many women and girls in Somalia experience the most extreme form of genital mutilation, infibulation, which requires partial or complete removal of all external sexual organs and almost complete closure of the vaginal opening.
- The Special Rapporteur to the UN Human Rights Council on violence against women has called domestic violence against Somali women and girls “the most pervasive manifestation of violence against women and girls in the country.” While it is difficult to get reliable data on the prevalence of domestic violence, those surveys that have been undertaken suggest that it is widespread, even in parts of the country not severely afflicted by conflict, and they confirm the reluctance of women to report it.

Government response to sexual violence

Since assuming power, the current government of Somalia has sent mixed signals about addressing sexual violence. In November 2012, President Hassan Sheikh Mohamud publicly committed to hold to account members of the security forces responsible for rape.

However, the arrest and prosecution in January 2013 of a displaced woman and a journalist to whom she had spoken about her alleged rape by government security forces points to a greater willingness to protect the perpetrators of sexual violence than to address the serious problem. The case—in which the two defendants initially received one-year prison terms, which were later overturned—marred the credibility of the government's reform agenda. Somalia is also one of the very few countries that has not ratified the Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW) nor the Convention on the Rights of the Child.

In a positive development, on May 7, 2013, the government of Somalia and the UN signed a joint communique that acknowledged that “very high numbers of incidents of sexual violence have been reported consistently particularly in internally displaced camps and settlements in Mogadishu and surrounding areas,” which the government committed to addressing “in a comprehensive manner and as a matter of priority.” The government promised to lead and undertake various measures, including:

- Developing and implementing a comprehensive strategy to prevent and respond to sexual violence, as well as supporting the work of service providers;
- Strengthening the protection of internally displaced camps and establishing measures to protect women and girls in the camps from sexual violence;
- Ensuring access to services including medical, psychosocial and legal aid to sexual violence survivors;
- Implementing protocols to ensure the protection of victims, witnesses and journalists and others who report on sexual violence;
- Strengthening the legal framework on sexual violence through enactment, review or harmonization of relevant legislation;
- Supporting the Office of the Attorney General to develop specialized investigation capacity for sexual violence crimes; and
- Issuing command orders through the army and police prohibiting sexual violence and reinforcing the commitment for “zero tolerance” of such violations in the army and police codes of conduct.

Analysis of draft gender policy

The proposed policy is a positive first step to addressing gender inequality in Somalia. The policy will do much to safeguard women's rights and support their access to education, health services, and participation in government. However, a continuing insurgency and a lack of government resources and control will likely pose significant challenges to the policy's implementation. Somalia's international partners should commit resources to address the deep-rooted gender inequalities the policy aims to undo. Donors should help build the capacity of security forces to protect women's rights, including by vetting recruits to weed out perpetrators of sexual violence and by recruiting more women, and of the justice system to handle sexual violence cases competently and impartially. They should also consider support for victims' medical and psychosocial support services.

The draft gender policy should clearly articulate that the prevention of violence against women and girls is one of the government's priorities and should include specific provisions to address violence in a comprehensive manner. By doing so, Somalia's government would be acting to fulfill its international human rights obligations to combat discrimination against women, its commitments under its provisional constitution, as well as its commitments pursuant to the Joint Communique with the UN.

Human Rights Watch recommends that the gender policy adopt a comprehensive legislative approach, encompassing not only the criminalization of all forms of violence against women and girls, and the effective prosecution and punishment of perpetrators, but also the prevention of violence, and the empowerment, support, and protection of survivors. The policy should encourage the Somali government to enact legislation that explicitly recognizes violence against women as a form of gender-based discrimination and a violation of women's and girls' human rights.

In particular, Somalia's gender policy should be revised to focus on four thematic areas crucial for combatting violence against women:

1. **Prevention:** Somali authorities and security forces need to take meaningful steps to prevent violence against women and girls. This includes 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 existing attitudes of men and women about their roles and status.
2. **Law reform:** Comprehensive criminal and civil legislation is fundamental 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 and 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.
3. **Access to services:** Authorities should adopt measures to provide comprehensive and integrated services, including emergency response, to survivors of sexual and gender-based violence. In order 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 specialized training to provide care, treatment, and support to adult and child survivors.
4. **Access to justice:** Somalia should establish a judicial system capable of delivering justice to victims of abuse in accordance with 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.

Revisions to the draft gender policy

Human Rights Watch recommends a number of revisions to the text of the gender policy that would promote a more comprehensive and effective legislative response to sexual and gender-based violence in Somalia.

Article 2(3) of the current draft of the gender policy lists seven objectives, which make no reference to violence against women. We recommend that article 2(3)(1) be revised as follows: “Eliminate all forms of gender discrimination, including all forms of violence against women, from Somali society.”

Similarly, we recommend that article 4 be revised to include a fifth priority (in addition to the existing priorities of women’s health, political participation, education, and economic empowerment) targeting violence against women, which could read as follows: “The priority interventions areas are arranged into five thematic areas: economic empowerment, health, education, gender and political participation, and violence against women.”

This provision could be complemented by a new subsection, article 4(5), to elaborate on this priority as follows:

Article 4(5) Gender-based violence

This gender policy defines gender-based violence to include all violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, including sexual violence, domestic violence, female genital mutilation and forced and early marriage.

Strategies for implementation

The following strategies shall be used to eliminate violence against women and girls.

- *Implementing measures to protect women’s security, particularly for displaced women, through sufficient, competent, trained and accountable security forces;*
- *Stipulating vetting procedures to prevent recruitment by security forces of individuals responsible for sexual violence;*
- *Reforming and passing laws to end the impunity of violence against women by ensuring perpetrators can be appropriately prosecuted;*
- *Supporting the development of health, social and other services that provide physical, psychological, social, economic and medical support to women and girls recovering from gender-based violence;*
- *Raising awareness of women’s human rights and gender equality, including the right of women to be free from violence, and on existing gender-sensitive laws and constitutional provisions on violence against women;*

- *Facilitating justice sector reform to effectively address and respond to violence against women that will consider the barriers that women and girls face in accessing justice, including stigma and victimization; and*
- *Supporting and safeguarding civil society organizations that protect and promote women's rights.*

Furthermore, the chart in article 5 of the draft policy should be revised to include the following section:

Institution	Roles and Responsibility
Violence against Women	
Parliament	- <i>Passing and reforming laws to end the impunity for violence against women by ensuring perpetrators can be appropriately prosecuted</i> - <i>Monitoring and evaluation of laws to assess how they are being applied, gender aggregated data, data on who it is being applied against, etc. – so law can be reviewed and amended if necessary</i>
Ministry of Justice	- <i>Ensuring perpetrators are appropriately prosecuted</i> - <i>Facilitating justice sector reform to effectively address and respond to violence against women that will consider the barriers that women and girls face in accessing justice, including the need for witness and victim protection</i> - <i>Training prosecutors, judges on laws and gender policy</i> - <i>Enforcement of legislated gender sensitive laws</i>
Ministry of Defense; Ministry of Interior and National Security	- <i>Developing strategies to protect women's security, particularly for displaced women, by adequately deploying and training security forces</i> - <i>Stipulating vetting procedures to prevent recruitment by security forces of individuals responsible for sexual violence forces</i> - <i>Training police on how to enforce and apply law</i>
Directorate of Gender and Social Affairs	- <i>Raising public awareness and promoting education on gender-sensitive laws and constitutional provisions</i> - <i>Supporting and safeguarding civil society organizations that protect and promote women's rights</i> - <i>Supporting the development of health and social</i>

	<i>services to women and girls recovering from gender-based violence</i>
Directorate of Health	- <i>Supporting the development of health and social services to women and girls recovering from gender-based violence</i>

Finally, article 6(1) should be revised to include the following indicators that will inform the monitoring and evaluation of this policy:

- *Number of individuals convicted on an annual basis for crimes of sexual and gender-based violence.*
- *Number of women and girls (by district/age/clan) using health and social services to recover from gender-based violence.*
- *Number of law enforcement officers trained to implement laws and gender policy.*
- *Number of female law enforcement officers, lawyers, and judges hired per district.*

Thank you for reviewing these concerns and we hope that the proposed policy will be revised to take them into consideration. We welcome your response and look forward to an opportunity to discuss our recommendations with you. Please feel free to have your office contact our Somalia researcher, Laetitia Bader, at Baderl@hrw.org or +254700241854 with any questions or to set up a meeting.

Sincerely yours,



Liesl Gertholtz
Executive Director
Women's Rights Division
Human Rights Watch

This letter has also been sent to the Director of the Ministry of Women and Social Affairs.

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

AFRICA DIVISION

Daniel Bekele, *Executive Director*
Rona Peligal, *Deputy Director*
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Annex 2

Letter to Somali Government requesting information on their response to sexual violence against women in Somalia

December 24, 2013

Awes Hagi Yusuf
Chief Advisor of the Policy Unit
Presidency Office
Mogadishu
Federal Republic of Somalia

Via email [REDACTED]

Re: Sexual violence against women in Somalia

Dear Awes Hagi,

In light of our meeting in Mogadishu in early December 2013 and to continue the productive dialogue, I am writing to request a government response to inquiries related to sexual violence against women in Somalia.

In early 2014, Human Rights Watch will be releasing a report based on a fact-finding mission to Mogadishu in August 2013. Before the report's release, we will also be sending you a separate letter with our key findings and recommendations.

We would like to ask you several questions that would assist us in preparing a report that is accurate and fair. In order for us to take your answers into account in our forthcoming report, we would appreciate a written response by January 24, 2014.

1. Somalia's Office of the Prime Minister has developed a series of recommendations on preventing sexual violence that were drafted by an independent committee. What is the status of these recommendations? When will they be made public and when will implementation begin?
2. In a letter to the Somalia government in August 2013 (see attached), Human Rights Watch recommended a number of revisions to the text of the

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draft gender policy that would promote a more comprehensive and effective legislative response to sexual and gender-based violence in Somalia. What is the status of the policy and has the government accepted any of our recommendations?

3. The government of Somalia and the United Nations signed a joint communiqué on May 7, 2013, in which the government committed to address sexual violence and promised to lead and undertake various measures to do so. Has the government started to implement any of the measures, and if so, what specific steps has it taken?

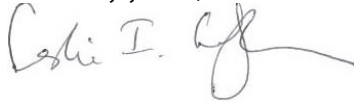
4. Does the Ministry of Justice or any other ministry collect comprehensive statistics on sexual violence cases? In particular, can you provide information on how many cases were reported to police so far in 2013? How many resulted in arrests? How many resulted in convictions – both at the level of the ordinary courts and the military court?

5. Government officials told Human Rights Watch in December 2013 that the government plans to deploy 100 police officers to the planned relocation site for internally displaced persons in Daynile. Can you please clarify at what stage the deployment process is at, how the police officers will be chosen, what vetting will be carried out and what training they will be receiving prior to deployment?

We look forward to receiving information regarding the questions outlined above. We would also appreciate learning about any recent actions the government has taken to address the problem of sexual violence in the country. Please email your response to my colleague Camille Pendley at pendlec@hrw.org or send by fax to +1-212-736-1300.

Thank you for your attention to this matter.

Sincerely yours,



Leslie Lefkow
Deputy Director
Africa Division

Cc: Ms. Maryam Qasim, Minister of Human Development and Public Services,
[REDACTED]

Mr. Abukar Osman, Permanent Secretary, Ministry of Interior and National Security, Republic of Somalia, [REDACTED]

Ms Muna Mohamed, Senior Advisor, Office of the Prime Minister,
[REDACTED]

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

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Annex 3

Letter to the Somali Government re: HRW findings

January 9, 2014

Awes Hagi Yusuf
Chief Advisor of the Policy Unit
Presidency Office
Mogadishu
Federal Republic of Somalia

Via email: [REDACTED]

Re: Report on sexual violence in Somalia

Dear Awes Hagi,

As a follow up to our December 24, 2013 letter requesting government responses to inquiries related to sexual violence against women in Mogadishu and the Benadir region, I am writing to share with you some of the key findings and recommendations of our forthcoming Human Rights Watch report on the same topic.

The report is based on a fact-finding mission in August 2013 to Mogadishu where Human Rights Watch interviewed 27 survivors of rape, all of whom had been assaulted since the new Somali Federal Government came to power in late 2012. Human Rights Watch interviewed others who witnessed abuses or provided services to the survivors, as well as representatives from international aid agencies and other relevant organizations working in Somalia.

In addition to documenting rape of women and girls in Mogadishu, the report seeks to provide a road map to assist the government, with the support of donor countries and other entities, to put in place a comprehensive national policy to prevent sexual violence, provide survivors with immediate and urgent assistance, and develop a long-term approach to end these abuses. This report presents five key areas – physical prevention, emergency health services, access to justice, legal reform, and women's equality – that we believe the Somali government and international donors will need to address to help stop the country's epidemic of sexual violence.



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We would appreciate getting your response to our main recommendations, set out below. In order for us to take your views into account in our forthcoming report, we would appreciate a written response by January 24, 2014. We would also welcome the opportunity to meet with you and other relevant government officials prior to the release of the report to discuss these important matters further.

Below we share our main findings and recommendations, broken down by area.

1. Physical prevention of sexual violence

Ongoing insecurity of internally displaced persons (IDP) camps in Mogadishu and its immediate surroundings poses among the gravest risks of sexual violence for women and girls in Mogadishu. Many of the women interviewed by Human Rights Watch live in precarious shelter. The research highlights how long distances to collect fuel, reach services or work, and limited lighting in camps are key factors contributing to risk of rape, particularly for female-headed households. In addition, interviewees said that the lack of security in camps is a significant problem.

Recommendations

- Support joint patrols of police officers and community representatives in IDP camps, especially at night, to deter violence;
- Ensure that adequate resources are available to women and girls in IDP camps to reduce the need for high-risk activities such as collecting firewood in remote areas and access to safe water points; and
- Ensure that sufficient numbers of competent, trained police, including female officers, are deployed to protect women and girls in IDP camps and in the community at large.

2. Access to emergency health services

Our research highlights a range of factors hampering the ability of Mogadishu's health system to address the specific and urgent needs of survivors of sexual and gender-based violence. These include the small number of existing facilities, user fees for health services, lack of training among health workers on these issues, and lack of counselling and trauma services.

Service providers in Mogadishu as well as survivors of rape described stigma, cultural taboos as well as practical barriers such as transport to and from services and child care as factors impeding their access to existing services.

Recommendations

- Ensure that health and social services provide adequate physical, psychological, social, economic, and medical support to women and girls recovering from sexual violence; and
- Develop confidential referral systems and health posts in high-risk areas, such as large or isolated IDP camps, which can facilitate referrals and access to emergency treatment for women who are victims of sexual violence.

3. Access to justice

Our research documents how mistrust of police authority continues to discourage victims of sexual violence from reporting crimes, particularly if they belong to IDP communities.

We found that the January 2013 high-profile prosecution of a displaced woman who said that government soldiers had raped her made some survivors more fearful about reporting rape and that the number of reports temporarily decreased.

Victims told Human Rights Watch that Somali police, rather than proactively investigate criminal complaints, often demand that victims of any crime do the legwork in the investigation, from locating witnesses to establishing who the suspects are. This practice is especially problematic in cases of rape. Given the risks for the women themselves to identify perpetrators, many say it is futile to report abuse to the police.

Recommendations

- Issue clear and public orders to all members of the armed forces and police that rape and other forms of sexual violence will be promptly investigated and prosecuted;
- Investigate and appropriately prosecute alleged sexual violence committed by members of the armed forces and police; promptly dismiss those found to be responsible from the security forces;
- Undertake public information and education campaigns on reporting violence against women to police, military courts and other authorities;
- Train all law enforcement, including police and prosecutors, to promptly and thoroughly investigate cases of sexual and gender-based violence; and
- Adopt procedures to protect the confidentiality of persons reporting sexual assault during the police investigation.

4. Legal and policy reform

The report finds that Somalia's existing laws and policies are inadequate in protecting women from sexual and gender-based violence and in important respects contributes to it.

Recommendations

- Enact and enforce laws and regulations that prohibit all forms of violence against women and encompass prevention, protection, care, treatment and support and remedies for survivors, as well as adequate punishment of convicted perpetrators; and
- Review existing provisions, particularly in the Penal Code and in the draft national gender policy, to eliminate gaps in the protection of women against acts of gender-based violence.

5. Women's equality

In order to meaningfully address violence against women as well as promote the country's viable development, the Somali government should address the root causes of gender inequality and take broader steps to empower women socially, economically, and politically.

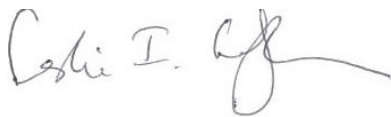
Recommendations

- Support programs that promote the political, social, and economic equality of women;
- Ensure that women are able as a matter of law and practice to equally and fully participate in any future transitional processes; and
- Support the education of girls by tackling discriminatory attitudes regarding girls' education through public education campaigns.

We look forward to receiving your comments on these issues, any additional comments you wish to provide, and information regarding the questions outlined above. Please email your response to my colleague Camille Pendley at pendlec@hrw.org or send by fax to +1-212-736-1300.

Thank you for your attention to this matter.

Sincerely yours,



Leslie Lefkow
Deputy Director
Africa Division

Cc:

Ms. Maryam Qasim, Minister of Human Development and Public Services,
[REDACTED]

Mr. Abukar Osman, Permanent Secretary, Ministry of Interior and National Security, Republic of Somalia, [REDACTED]

Ms. Muna Mohamed, Senior Advisor, Office of the Prime Minister,
[REDACTED]

“Here, Rape is Normal”

A Five-Point Plan to Curtail Sexual Violence in Somalia

Sexual violence is a fact of everyday life for many women and girls in Somalia’s capital, Mogadishu. Armed assailants, including members of state security forces, operate with complete impunity as they sexually assault and rape women and girls inside camps for the displaced, in their homes, and as they walk to market, tend to their fields, or forage for firewood.

The Federal Government of Somalia, in office since August 2012, has acknowledged the extent of the problem of sexual violence, but needs to take concrete steps to curtail the abuse.

“Here, Rape is Normal” provides a five-point road map to assist the government, donor countries and other entities to put in place a comprehensive national strategy to reduce sexual violence, provide rape survivors with immediate and urgent assistance, and develop a long-term approach to end these abuses. The report focuses on the key areas of: improving prevention; increasing access to emergency health services; ensuring justice and legal and policy reform; and promoting women’s equality.



A Somali woman walks alone in central Mogadishu.

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