DECLARATION A

I Abdiaziz Mohamed SH. Mustafa declare that this dissertation is my original work and to the best of my knowledge it has not been presented for a degree or any other academic award in any university or institution of learning.”

…………………………………. ……………………………………

Abdiaziz Mohamud SH. Mustafa Date

Approved by:

…………………………………. ……………………………………

Dr. Godard Busingye, LL.D Date

Name and signature of supervisor
DEDICATION

I humbly dedicate this research to my mother Fatuma Moalim Abdulahi who has always been my mentor since childhood, May Allah the Great reward you abundantly. I officially dedicate this research to my brothers Abdurrahman Mohamud SH. Mustafa and Abdulahi Mohamud SH Mustafa plus all family members for their financial support. Thank so much.
ACKNOWLEDGEMENT

I am grateful to Allah the great for being with me throughout the whole period when pursuing this master’s degree. I would like to acknowledge the effort of my supervisor Dr. Godard Busingye for without his guidance and commitment during the course of this research, this work would not have been a successful project thank you so much. Thanks to my friends especially Zachariah who has stood with me since I began my course, am really blessed to have you besides me. My thanks also goes to my family especially my mother (Fatuma Moalim Abdulahi) my brother Abdirrahman Mohamed SH. Mustafa and to all relatives for their support financially, spiritually, morally and for the love they have always rendered to me during my academic errands thank you all for providing me with all the basics may Allah reward you abundantly. My profound gratitude goes to my supervisor Dr. Godard Busingye thank you for your love and encouragement may Allah bless you. Sincere thanks go to the management of Kampala International University main campus and school of Law for having endeavored to accept Somalis further their education thank you so much. We are so grateful and we promise to keep that love.
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- Convention on Elimination of All Forms of Discrimination against Women, 1979
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- The Convention against Torture (CAT), 1966
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Southern African Development Community’s Declaration on Gender and Development, 1997

The Maputo Protocol, 2003
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Provisional Constitution, 2012
Penal Code Act (1972)
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<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AID</td>
<td>Acquired Immune Deficiency Syndrome</td>
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<tr>
<td>AMISOM</td>
<td>African Union Mission in Somalia</td>
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<td>ANSAs</td>
<td>Armed non-state actors</td>
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<tr>
<td>CAT</td>
<td>Convention against Torture</td>
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<tr>
<td>CEDAW</td>
<td>Convention for eliminating all forms of Discrimination Against Women</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>FGM</td>
<td>Females Genital Mutilation</td>
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<td>FGS</td>
<td>Federal Government of Somalia</td>
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<tr>
<td>HIV</td>
<td>Human Immune Virus</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICL</td>
<td>International Criminal Law</td>
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<td>IDPs</td>
<td>Internally Displaced Persons</td>
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<td>IHL</td>
<td>International humanitarian Law</td>
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<td>IHRL</td>
<td>International Human Rights Law</td>
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<td>IPV</td>
<td>Intimate Partner Violence</td>
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<td>LAW</td>
<td>Legal Action Worldwide</td>
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<td>MDG</td>
<td>Millennium Development Goal</td>
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<td>MSM</td>
<td>Men who have sex with men</td>
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<td>NGOs</td>
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<td>NISA</td>
<td>Somalia’s National Intelligence and Security Agency</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>SNAF</td>
<td>Somali National Armed Forces</td>
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<td>SNDP</td>
<td>Somali National Development Plan</td>
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<td>STIs</td>
<td>Sexually transmitted infections</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UJ</td>
<td>Universal jurisdiction</td>
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<td>UKDFID</td>
<td>United Kingdom’s Department for International Development</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNCAT</td>
<td>United Nations Convention against Torture</td>
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<td>UNDP</td>
<td>United Nations Development Program</td>
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<td>UNFPA</td>
<td>United Nations Food Programme for Africa</td>
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<tr>
<td>Abbreviation</td>
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<td>UNICEF</td>
<td>United Nations International Children’s Education Fund</td>
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<td>UNPOS</td>
<td>UN Political Mission for Somalia</td>
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<tr>
<td>UNSOM</td>
<td>United Nations Assistance Mission in Somalia</td>
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<tr>
<td>US</td>
<td>United States</td>
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<td>World Health Organization</td>
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Puntland Sexual Offences Act (Somalia) 2015 (Final draft)
Religious Fatwa for Banning all Forms of FGM/C (Puntland) (no date)
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ABSTRACT

This study provided for an examination of the legal framework for protection of females against sexual violence in Somalia. It involved three objectives specifically to examine the national framework concerning sexual violence in Somalia, to assess international legal framework on sexual violence in Somalia and as well identify the challenges to international and national legal framework on sexual violence in Somalia. Being a legal research it focused on use of doctrinal research methodology which involved thorough analysis of the legal instruments concerning sexual violence in Somalia. Focus was put on both local and international statutes concerning sexual violence and how it has affected women in Somalia at large. The Somali government is bound by the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the general rules of international humanitarian law (IHL). Under the ICCPR, sexual violence is a serious violation of human rights law; Under the CAT, sexual violence is a form of torture; Under IHL, sexual violence may be considered a war crime and a crime against humanity. Various recommendations were made and these included recommending Somali authorities and forces to 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.
CHAPTER ONE
GENERAL INTRODUCTION

1.1 General Introduction

Since 1980s, Somalia has been in a state of armed conflict with a lot of criminal disorder both on women and men an ongoing conflict especially in the southern parts between government forces and the African Union Mission in Somalia (AMISOM) against the militant group Al Shabaab. The autonomous state of Somaliland in the north remains stable and the semi-autonomous state of Puntland enjoys relative security, though attacks by Al Shabaab are increasing. The current Federal Government of Somalia (FGS) was sworn in at Mogadishu International Airport in August 2012.¹

In most regions of Somalia, conflict, insecurity, frequent droughts and outbreaks of famine have left thousands of civilians dead, displaced and others extremely vulnerable. Human rights violations including sexual violence, forced evictions and arbitrary arrests and detention are often committed with impunity. Securing access to justice through the formal legal system remains a significant challenge especially for women and children, members of minority clans and displaced populations.²

Rape and other types of sexual violence are prevalent in all regions of Somalia yet accountability is limited for example between January and December 2015, organizations working with Sexual violence survivors in and around Mogadishu recorded 7439 cases of Sexual violence in Mogadishu alone. The statistics for 2016 have been disclosed by the Gender-Based Violence Working Group that the number of the Sexual violence incidents increased by 16% from 2014 to 2015 and 88% from 2014 to 2016 during the first quarter of each year. The Attorney General however stated in 2015 that 69 of these were prosecuted and 55 convicted though this has not been independently verified.³

Puntland as an independent state registered 5,600 Sexual violence cases to service providers between July 2013 and June 2014 and a publication of only one conviction was found in September 2014. The sexual assault referral centre in Bosaso, Puntland receives

¹ Manjoo, (2011).
² UN, 2013.
³ Somalia Gender-Based Violence Working Group, 2014.
approximately one case per day. Convictions for such crimes have increased in recent years. However, justice actors are limited by the current legal framework in terms of what they can prosecute and how. It is unclear, however, on the exact number of sexual offences being committed in Jubbaland due to the limited capacity of civil society and lack of access of the international community.4

1.2 Background of the study

In the 21st century, the world has adopted laws on sexual violence at the international, regional, national and state levels. The laws articulate when an offence can be considered to be a form of sexual violence. Most of them are on the basis of (animus nocendi) from the perpetrator of the crime. National laws are the most common that provide for the protection of people from sexual violence.5 Government has varying degrees of control. Puntland has been relatively stable over the last decade, thereby allowing for a stronger emphasis on building governance and rule of law. Access to rural and non-Federal Government of Somali (FGS) controlled areas in south and central Somalia has proven to be more challenging with limited humanitarian interventions and nearly no sustained development activities taking place.6

The absence of central governance during the civil war has seen the northern part of Somalia country split into autonomous and semi-autonomous regions; the semi-autonomous State of Puntland. The area south of these two regions is commonly referred to as South and Central Somalia where the Federal sexual violence has been a significant feature of the war in Somalia, a country where deeply rooted gender inequality prevails. The customary conventions and code of honor that used to regulate conflict between clans and ensure that women and children of any clan were protected from violence have been widely violated during the war.7

Women and girls have been targeted for rape, abduction, sexual slavery and clan-related revenge killings. Specific causes and drivers of Sexual violence in Somalia related to the long armed conflict include; the breakdown of society due to crisis, flight and forced

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4 Quinn, C. ‘Protection and prevention, an integral approach to child sexual assault’, unreferenced, P.95.
7 The terms sexual violence/sexual violation in this section include all forms of sexual abuse/assault.
displacement and family separation, failed reintegration and reconciliation programmes as well as the behaviour of armed groups that reinforces norms equating power, violence and weapons with masculinity. Armed actors are however, not the only potential perpetrators of sexual violence in conflict-affected settings. Women and girls are particularly vulnerable to violence occurring in the domestic sphere and to criminality perpetrated by civilians outside the home.\(^8\)

More than a thousand Somali men continue to deny that there is violence against women within their communities. They accuse the international community of inventing these high figures of sexual violence and of putting the blame on Somali men. Furthermore, there is a deep culture of silence and fear regarding crimes of sexual violence which significantly impacts on reporting and response. Linkages between Sexual violence and conflict have not yet been studied in depth in Somalia, even though there are extensive research papers looking at the drivers of conflict in the country. Likewise, knowledge about social norms underpinning sexual violence in Somalia is still fragmented and anecdotal.\(^9\)

The majority of IDPs are concentrated in South and Central Somalia where humanitarian needs remain high and where most of the humanitarian interventions have taken place over the years. IDPs are not the only ones affected and sexual violence is not limited to south and central Somalia. Both displaced populations and the host communities in the more stable areas in Somaliland and Puntland also face high levels of sexual violence.\(^10\)

Decades of conflict, insecurity, environmental shocks and the widespread use of harmful traditional practices put women and girls in particular at risk of sexual violence in Somalia. This is particularly true for Internally Displaced Persons (IDPs) who are at risk of sexual violence and sexual exploitation due to limited security in the IDP settlements, general poor living conditions, the requirement to undertake risky livelihood practices to survive and limited clan protection. Among the IDP population women and girls are at

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\(^8\) *Somalia Gender-Based Violence Working Group*, 2014.


\(^10\) Finklehor, 2010.
greater risk, especially those from minority clans, females-headed households and females elderly persons.  

Sexual violence is widespread in Somalia hence the Federal Government of Somalia (FGS), the local authorities in Puntland and the international community all agree that sexual violence exists at unacceptable levels and must be curbed. Sexual violence data from Banadir, Middle and Lower Shabelle and Bari regions indicate that the majority of cases reported were rape (41 percent) followed by physical assault (39 percent), sexual assault (11 percent), denial of resources (four per cent), psychological abuse (three per cent) and forced marriage (two per cent). Conflict being at the core of sexual violence; deep-rooted cultural beliefs create persistent inequalities between men and women and place women at particular risk of being victimized. Accepted cultural practices such as Females Genital Mutilation (FGM), forced and early marriage and intimate partner violence are prevalent throughout the country and are generally under-reported.  

The predominant perpetrators of sexual violence and exploitation vary by region (Puntland, South and central Somalia). Given the conflict in the South and Central of Somalia, violence and exploitation perpetrated by “men in uniform” is more prevalent than in Puntland where such acts are, more often than not, perpetrated by men in civilian clothes. Commonalities exist in all three regions when it comes to other forms of sexual violence such as domestic violence, female genital mutilation (FGM/C) and early marriages as well as with regard to responses to these incidents. Rather than using the formal judicial system to address a sexual violence incident, elders and district authorities prefer to turn to either Sharia Law or Xeer (custom) even in regions where formal judicial systems are in place. In these systems, justice is delivered by agreement between the perpetrators and the survivors’ male heads of households.

Whereas allegations of sexual and gender-based violence perpetrated by security forces constitute a large problem in the south and central parts of Somalia, these incidents do not play a predominant role in Puntland. Many women endure domestic violence including physical and sexual assault and often remain with their husband as a result of cultural beliefs that dictate submissive behavior of women. Loss of their children in case

11 UNHCR, 2013.
of a divorce might also play an important role in this decision. The issue of sexual violence is one that is a global challenge. In olden times, there used to be little protection for women and as a result, their subjugation was a normal phenomenon. The history of sexual violence is arguably vague but is closely related to patriarchal familial systems which did not consider women to be equal to men. Unfortunately, past legal systems and societies condoned violence against women probably because it was the order of the day. The Roman Empire which is one of the oldest is a good example of a system and era that condoned the use of violence against women where burning of witches and beating of women was legally accepted. Much later in the 18th century, laws were yet to embrace gender equality. The English common law allowed husbands to punish their wives with a stick. This law was abolished, however, late in the 19th century but it had already been prevalent in most European countries and America.

Regional laws protecting women against sexual violence are quite uncommon. Two of these regional set of laws are the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Southern African Development Community’s Declaration on Gender and Development. International conventions protecting women against sexual violence are the most prominent ones. The most common convention is the CEDAW which was instituted in the year 1979.

1.3 Statement of problem

Sexual violence is pervasive in much of Somalia and this is attributed to two decades of civil conflict and state collapse which have created a large population of displaced persons and other people vulnerable to sexual violence. It therefore remains widespread across Somalia especially in the south and central regions with increases in frequency

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consistently observed during military offensives particularly at checkpoints.19 At the same time it has destroyed the state institutions that are supposed to protect those most at risk.20 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 tend to their fields or forage for firewood.21 In Mogadishu for example IDPs camps, rape cases involving known perpetrator are addressed by clan leaders who negotiate compensation between the survivor and perpetrators’ families without due consideration of the rights and needs of the survivors.22

To make matters worse in Somalia, many women victims fail to 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 United Nations Children’s Fund (UNICEF) about one-third of victims of sexual violence in Somalia are children.23 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.24 Many victims do not report rape because they do not trust the criminal justice system, lack access and knowledge of available health and justice services and fear reprisal and stigma. Although rape in Somalia has received increased government and international attention over the last year, the situation for women and girls remains bleak.25

21 Ibid.
23 M. Mugo Rape in Somalia; Women and Double Victimization, Published by Global Education Magazine, (2014), pg 11.
Armed assailants including members of state security forces, operate with impunity as they sexually assault, rape, shoot and stab women. Women and girls living in the capital’s dire displacement camps are abused in their makeshift homes and as they walk to market, tend to their fields, or forage for firewood.\textsuperscript{26} The centrality of traditional practices in Somali society is such that most of the legal interventions even when it comes to sexual violence tend to be undertaken by clan or community authorities through the customary law structures.\textsuperscript{27} The horrific reality for many rape survivors is that they are victimized twice; first by the sexual assault itself and then by the government’s failure to provide justice or medical and social support. There is no doubt that Somalia faces enormous challenges including preventing and responding to sexual violence.\textsuperscript{28} Although it has contributed to fostering degrees of peace between clans” it is uncertain “if customary law works for girls and women.\textsuperscript{29} All these issues were due to lack of a well organized legal framework in the area to defend women and girls from all forms of sexual torture. Therefore in presence of a well formulated legal framework together with enforcement procedures for instance avoiding case pending to punish those involved in acts of sexual violence, women will be protected.\textsuperscript{30}

1.4 Objectives of the study

1.4.1 Main Objective

To identify the law relating to sexual violence in Somalia and the capacity of the government to respond to issues of sexual violence.

1.4.2 Specific Objectives

i) To identify national framework on sexual violence in Somalia.

ii) To assess the international legal frameworks on sexual violence in Somalia.

iii) To examine the contribution of national legal frameworks on sexual violence in Somalia.


\textsuperscript{27} Human Rights Watch, the \textit{power these men have over us; Sexual Exploitation and Abuse by African Union Forces in Somalia}, released on September, 2014.

\textsuperscript{28} Ibid.

\textsuperscript{29} Focus Group Discussion, \textit{Interview by Ifrah Ahmed, Group Interview}, 25 participants hailed from various IDP’s camp within Mogadishu, interview at Al Cadaalo camp, Mogadishu, October 13, 2014.

\textsuperscript{30} Amnesty International (2013), \textit{Rape and Sexual Violence in Somalia an Ongoing Epidemic}. 
1.5 Research questions
   i) What are the national frameworks on sexual violence in Somalia?
   ii) What international legal frameworks govern sexual violence in Somalia?
   iii) What is the contribution of national legal frameworks on sexual violence in Somalia?

1.6 Scope of the study
1.6.1 Time Scope
The time scope covered in this study is from 1990 up to date, the year before the fighting which erupted between rival factions in Somalia following the collapse of the Siad Barre regime in January 1991, up to date because the conflict is ongoing.

1.6.2 Subject Scope
For purposes of this study, three frameworks were analyzed and given the fact that Somalia is 99% Islamic, the Sharia law takes center stage in Somalia. This was analyzed first, followed by customary law which was a collection of various customs and traditions held by the Somali people. Finally, international laws and conventions such as the Geneva Convention, the Convention on the Elimination of all Forms of Discrimination against Women were consulted.

1.6.3 Geographical Scope
The geographical scope of this study was Somalia. While the country is quite expensive, some of its parts are not necessarily under the control of the central federal government of Somalia. However, irrespective of the above issues all regions in Somalia including Mogadishu, Puntland, Central Somalia and Somaliland were covered and encompassed in this analysis.

1.7 Significance
This study is crucial for the welfare of the women in Somalia who have been victims of sexual violence. Other parties shall also benefit as elaborated below;

Somali women are the biggest beneficiaries of this study. More awareness is expected to be created by this dissertation to several stakeholders who are responsible for improving the welfare of women in the country.
This dissertation is also an evaluation of the relevance of the legal frameworks that Somalia has in place regarding the welfare and safety of women in the country. It will inform the legal fraternity of how to effectively improve the quality of such laws.

Non-Governmental Organizations related to prevention, control and management of sexual violence cases shall also use this paper to underscore the need to strengthen their strategies in curbing future and prospective instances of sexual violence.

1.8 Clarification of key terms

**Sexual violence**

The term sexual violence is used to represent much behaviour that may otherwise fall under the rubrics of sexual abuse, sexual assault and any other sexual violations such as sexual harassment and voyeurism. The term gender-based violence is widely used as a synonym for violence against women, in order to highlight the gender inequality in which much violence is rooted.\(^{31}\) However, while this review acknowledges that the overwhelming recipients of violence are females, the term gender-based violence is here used to encompass all women, men, girls and boys who have experienced sexual violence.

**Violence** that takes place between intimate partners (spouses, boyfriend/girlfriend) as well as between other family members and this type of violence may include physical, sexual and psychological abuse as well as the denial of resources, opportunities or services.\(^{32}\)

**Sexual Abuse**

The term “sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.\(^{33}\)

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33 Ibid.
Sexual Exploitation

The term “sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power or trust, for sexual purposes including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Some types of “forced prostitution” can also fall under this category.\(^{34}\)

Harmful Traditional Practices

Cultural, social and religious customs and traditions that can be harmful to a person’s mental or physical health. It is often used in the context of female genital circumcision/mutilation or early/forced marriage. Other harmful traditional practices affecting children include binding, scarring, burning, branding, violent initiation rites, fattening, forced marriage, so-called “honour” crimes and dowry-related violence, exorcism or “witchcraft”.\(^ {35}\)

Denial of rightful access to economic resources

Denial of rightful access to economic resources or assets or livelihood opportunities, education, health or other social services. Examples include a widow prevented from receiving an inheritance, earnings forcibly taken by an intimate partner or family member, a woman prevented from using contraceptives, a girl prevented from attending school.

Psychological/Emotional Abuse

Infliction of mental or emotional pain or injury and examples include threats of physical or sexual violence, intimidation, humiliation, forced isolation, social exclusion, stalking, verbal harassment, unwanted attention, remarks, gestures or written words of a sexual and menacing nature, destruction of cherished things, sexual harassment is included in this category of sexual abuse.

\(^{34}\) UN Secretary General’s Bulletin on Protection for Sexual Exploitation and Abuse (ST/SGB/2003/13).

Forced Marriage and Early Marriage

The marriage of an individual against her or his will. Early marriage (marriage under the age of legal consent) is a form of forced marriage as the girls are not legally competent to agree to such unions.36

Physical Assault

An act of physical violence that is not sexual in nature. Examples include: hitting, slapping, choking, cutting, shoving, burning, shooting or use of any weapons, acid attacks or any other act that results in pain, discomfort or injury.

Sexual Assault

Any form of non-consensual sexual contact that does not result in or include penetration. Examples include; attempted rape as well as unwanted kissing, fondling or touching of genitalia and buttocks.

Rape

Non-consensual penetration (however slight) of the vagina, anus or mouth with a penis or other body part. Also includes penetration of the vagina or anus with an object. Rape includes marital rape and anal rape or forced sodomy.

1.9 Organization Layout

Chapter one was the introductory section of the report. It revealed the background of the study and describes the problem to show the need for this research to be undertaken. Further justification is outlined under “significance of the study.” Objectives of the study and their corresponding research questions were also provided in this section. Other elements forming part of this study were scope of the study, methodology and literature review, classification of terms and scheme of the study. Chapter two of the dissertation presented the national framework on Sexual violence in Somalia and these included provisional of constitution, domestic legal framework, access to justice, investigation and prosecutions and penal code act, Chapter three comprised of an analysis of the international legal framework on sexual violence in Somalia and it involved analysis of the international instruments like international human rights law, UN Convention on the

36 Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, (UNHCR, 2003).
Rights of the Child and AMISOM yet chapter four discussed the challenges of implementing national and international legal framework on sexual violence in Somalia.

1.10 Review of the literature
In her Article ‘Extra familial child sexual abuse; a study of perpetrator characteristics and implications for prevention’, Rebecca Bolen argues that girls are at risk for different types of abuse based on their age, therefore ‘the focus of prevention must change based on the age of the females child.’ In terms of extra familial abuse, younger children may need information about the privacy of their bodies as well as stranger danger. Walking safely may be important for middle school children whilst adolescent girls may benefit from personal safety information and information related to dating. She also suggests, however, that prevention programs may ultimately be minimally effective, as girls simply cannot be prepared for every situation in which abuse may occur.

A focus, rather, on socialization and on appropriate male/females interaction may be most useful. Bolen believes that the research focus in the past on intra familial abuse, particularly on father-daughter incest, has sidelined extra familial abuse. Bolen argues that the intra familial focus meant that a large amount of discourse centred on dysfunctional families and characteristics of the victim. However, if extra familial sexual abuse were a key research consideration another level of discourse would be necessary. This level would include the societal structure that contributed to and maintained the problem of sexual abuse.

For the prevention of abuse particularly concerning residential and foster care; closer monitoring of residential settings, foster parents and contact visits with parents; careful pediatric follow up of children in care; a child protection register; support for caregivers; extra provision for children who had been sexually abused and have become sexualized and abusers and an investigation of all allegations of abuse within the care system.

Recognizing that abuse may still be occurring and early recognition of abuse when it occurs in a placement were important implications from this research. This partly

implied that caregivers for children should be trained to identify developmentally appropriate behaviors so they can identify and question behaviour that is inappropriate.\textsuperscript{41}

Van Kessel believes that the audience should be parents, professionals, perpetrators and children. Many authors believe, however, that the wider this issue’s reach in all area society, the more likely prevention will be. Quinn suggests that in planning for prevention strategies, the three levels of prevention must take into account the age group targeted for intervention, as well as considering the objectives of the intervention.\textsuperscript{42}

She suggests that a planning model be used for prevention that includes Finklehor’s preconditions for child sexual abuse to occur, an example of this at a primary prevention level is legal and consumer action taken against advertising that degrades and sexualizes women and children. A long-term aim from a feminist perspective is changing patriarchal structures and power inequalities at an individual, family and societal level. Children’s rights campaigners believe that if children were considered as individuals in our society and their rights in society reflected that they would be less likely to be the objects of abuse and neglect.\textsuperscript{43}

Victims of child sexual abuse are more likely to be victimized as adults and they are also more likely to be the victims of physical abuse throughout their lives. Thus, in many ways, intervention can be seen as potentially preventing further victimization. Many people’s experience of abuse is that it is cross generational and that programmes such as the ‘Mother and Anger Change’ programme provide an opportunity for people to heal from their own trauma before passing on attitudes, feelings or more directly abusive behaviour that could lead to the abuse of children.\textsuperscript{44}

Review of the related literature on legal framework for the protection of females victims of sexual violence in Somalia Rozee postulates that the United States can be described as

\begin{itemize}
  \item \textsuperscript{41} B. Gallagher, (1971), 'The Extent and Nature of Known Cases of Institutional Child Sexual Abuse' London.
  \item \textsuperscript{43} Corby (2001), Child Abuse, Towards A Knowledge Base, 2\textsuperscript{nd} Edition, Open University Press, Buckingham, UK.
  \item \textsuperscript{44} The TV3 Documentary 'Killing Tomorrow' (2001) is useful to understand some of the issues under discussion here.
\end{itemize}
a rape culture, meaning the act of rape is normative; it is essentially a condoned behavior. American feminist and scholar Catherine MacKinnon, a professor at the University of Michigan Law School who specializes in sex equality, highlighted this idea by pointing out that rape in America is regulated, rather than prohibited.\footnote{Hyman, ‘Breaking the Silence: Restorative Justice and Child Sexual Abuse’ unpublished PhD Thesis, Massey University, 1993, pp109-110.}

MacKinnon discusses the regulation of rape in her book “Are Women Human” In an interview with Stuart Jeffries from news source The Guardian about her book, MacKinnon suggests that rape law enshrines rapists’ points of view. In the most obvious sense, she explains that rapists are men and most legislators are men and most judges are men and the law of rape was created when women were not even allowed to vote. So that means not that all the people who wrote it were rapists but that they are a member of the group who do rape and who do for reasons that they share in common even with those who do not, namely masculinity and their identification with masculine norms and in particular being the people who initiate sex and being the people who socially experience themselves as being affirmed by aggressive initiation of sexual interaction.\footnote{D. Jibril, ‘Somali government drafts bill to protect women’s rights’, Sabahi Online, 2013, 22 July.}

MacKinnon believes consent in rape cases should be irrelevant. She provides her reasoning for example that there is force or substantially coercive circumstances between the parties, individual consent is beside the point. The British common law approach has tended to be that you need both force and absence of consent.\footnote{Ibid.}

Seventeenth century judge Sir Matthew Hale asserted that rape is an accusation easily to be made, hard to be proved and harder to be defended by the party accused. This assertion became the Hale Warning which was often read in courtrooms during rape cases up until the late twentieth century, casting suspicion on the testimonies of women who reported being raped. In modern court proceedings, similar language can be heard. The language used by defense attorneys in cross-examining the victim serves to recast the act as consensual or to paint victims as liars. A 1993 report prepared by the Senate Judiciary Committee found that less than one half of rape cases are convicted, 21% of
convicted rapists are never sentenced to prison time and 24% of convicted rapists receive time in local jails for less than 11 months.\textsuperscript{48}

This judicial indifference reinforces the idea that rapists will not be held responsible for their actions. Diana Scully, the chair of the Women’s Studies Program at Virginia Commonwealth University whose research on rape, violence and medicalization of women’s health has earned her national recognition and Joseph Marolla, the executive director of the Center for Teaching Excellence at Virginia Commonwealth University and a former sociology professor with 30 years of teaching and research experience, examined the perspectives of rapists in a study that included interviews with 114 convicted, incarcerated rapists (1985). Their data reveals that the overwhelming majority of these rapists believed they never would go to prison for rape. Some knew that women frequently do not report rape and of those cases that are reported, conviction rates are low, therefore making rapists feel more secure. These men perceive rape as a rewarding, low risk-act.\textsuperscript{49}

The Scully and Marolla study implies that the incarcerated, convicted rapists made premeditated, purposeful choices to rape. A more recent 2011 study indicates that non-incarcerated and non-convicted perpetrators show similar premeditation. Antonia Abbey, psychology professor at Wayne State University specializing in sexual assault research and Angela Jacques-Tiura, postdoctoral fellow at Wayne State University, found that men who commit sexual assault make choices about whom they target and under what circumstances. In a study of 474 interviews with single men, ages 18-35 in the Detroit Metropolitan area, 43\% reported that they made a woman have sex against her wishes.\textsuperscript{50}

The National Sexual violence Resource Center provides insights as to how American rape culture and these stereotypical notions of male and females bodies in relation to sexuality are perpetuated. American society glamorizes and sexualizes violence. Often, sexual violence is ignored, excused, condoned and even encouraged. Even though most people do not commit sexual violence meaning it is not a normal behavior for most people these kinds of norms imply a level of acceptance and a mentality of complacency.


\textsuperscript{50}Abbey & Jacques-Tiura, \textit{Women’s Rights in Islam and Somali Culture}, 2011.
about sexual violence. They create a toxic environment in which sexual violence can take place, inhibiting appropriate action and condoning inappropriate inaction. Given this environment, it is not surprising that some people commit sexual violence and many bystanders do not speak up or intervene.⁵¹

Rentschler’s approach to self-defense further extends the self-defense lessons that traditionally centre on the stranger attack. She outlines the importance of gaining an awareness of surroundings both physically and politically.⁵²

Rentschler discusses the inadequacies of various institutions (legal, judicial, family) in addressing sexual violence against women. She advocates a system of prevention that ‘responds to institutional ‘neglect’ by giving women day to day fighting skills for taking care of violence on a personal level’.⁵³

Rentschler believes that self-defence education addresses the pervasiveness of sexual violence in two ways; through awareness and through fighting back. Fighting back includes yelling, running away from an attacker and physically attacking and defending oneself. It is argued that self-defence could assist women in not accepting violence against their beings on any level. It is further argued that self-defense can also be beneficial in other women’s lives such as communication skills in job interviews.⁵⁴

Studies conducted in Kenya, Zambia and South Africa discovered that most child survivors report to the police, prior to referrals to health facilities. This pattern reflects the widespread perception of child abuse as a criminal act and also illustrates a pervasive lack of awareness about available health services. The involvement of the police at this early stage emphasizes the need for police sensitization and for the development and reinforcement of effective referral networks.⁵⁵

⁵⁵ Keesbury et al., 2006; Speight et al., 2005.
Sexual abuse of male adults and children is vastly under-reported and poorly understood and the limited research in this area suggests that sexual violence against boys and men is endemic in many women the world. Population-based studies conducted among adolescents in developing countries indicate that 3.4% of males in Namibia and 13.4% in Tanzania have experienced a sexual assault. 11% of male adolescents in South Africa and 29.9% in Cameroon reported forced sexual initiation. 56

Men who have sex with men (MSM) are frequently targets of homophobic violence, which may or may not be sexual. In Kenya, nearly 40 percent of men who had sex with men reported having been raped outside their home and 13 percent report having been assaulted by the police. Men most commonly experience sexual violence in the form of receptive anal intercourse, forced masturbation of the perpetrator, receptive oral sex, or forced masturbation of the victim. 57

Survivors of sexual abuse are vulnerable to a number of sexually transmitted infections (STIs). When appropriate, WHO recommends that patients be tested for Chlamydia, gonorrhea, trichomoniasis, syphilis and hepatitis B although this may vary according to local environments and protocols. WHO does not recommend the routine prophylactic treatment of all patients, on the understanding that survivors experience different degrees of exposure to infection and there is scant evidence on the effectiveness of STI prophylaxis provision to abuse survivors. 58

Medical management protocols in high STI-prevalence settings differ on this issue for instance, the Kenyan protocol advises STI prophylaxis to be offered to all rape survivors. The incubation periods of different STIs vary and follow-up tests are advisable. Treatment may relieve a source of stress but the decision about whether to receive prophylactic treatment or wait for results of STI tests should be made by the survivor. 59

In many resource-poor settings, formal counseling services are not well or widely established. Individual psychotherapy is a relatively high-cost intervention and may not

56 Krug 2002.
be a cost-effective or feasible approach in low resource environments. In such contexts, informal systems of support can be of great value to the patient.\textsuperscript{60}

Support groups represent a relatively low-cost alternative to individual counseling and are believed to be especially helpful to survivors with limited social support resources as they decrease feelings of isolation and encourage survivors to share their experiences and establish their own informal support networks.\textsuperscript{61}

The World Health Organization analyzed evaluations of programs designed to prevent intimate partner or sexual violence perpetration or victimization at life stages. They found no sexual violence prevention programs met the criteria for being effective in preventing actual violence (defined as multiple well-designed studies demonstrating effectiveness in preventing perpetration or victimization). Strategies identified as having emerging evidence of effectiveness in reducing sexual violence (defined as one well-designed study demonstrating effectiveness in preventing violent perpetration or victimization or showing positive changes in risk factors such as knowledge, attitudes and beliefs related to violence) aimed to change social and cultural gender norms through the use of social norms theory.\textsuperscript{62}

\textbf{1.11 Methodology}

The research was qualitative with descriptive, analytical and normative approach hence it was a doctrinal research. The research was based on a doctrinal research methodology developed intuitively within the common law. The study therefore required studying law as a distinct specialty. The method exposed the researcher to statutory formulations, analysis of legal concepts and fundamental formulations. The researcher adopted multidisciplinary approach to the study relying and drawing generally from both primary and secondary data on the concept and formulations of development as a political and economic issue in order to generate materials that aid in coming up with reasons to ground and situate the final analysis and conclusions of the researcher. This seemed relevant due to the fact that it was all about analyzing legal issues related to sexual violence in Somalia on addition to another international legal framework. There was

\textsuperscript{60} Bott et al., 2004.
\textsuperscript{61} WHO, 2003; Bott et al., 2004.
\textsuperscript{62} WHO, 2009.
therefore no need of justifying and classifying it within a broader research framework. The doctrinal analysis has been the dominant legal method in the common law world, although other categories of research such as reform oriented, theoretical and fundamental have been acknowledged as important and to this extent doctrinal research has always included an interdisciplinary aspect. The essential features of doctrinal scholarship involve ‘a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation’. The doctrinal method is qualitative and idiosyncratic and, especially in the courts and in practice, the outcomes are often limited to the specific facts of the case.\textsuperscript{63}

CHAPTER TWO
INTERNATIONAL FRAMEWORK ON SEXUAL VIOLENCE IN SOMALIA

2.1 Introduction

In Somalia states have a duty to respect, protect and promote the human rights of women under international human rights law and those states that fail to do so may be held accountable. States obligations include ensuring that their agents do not commit acts of gender-based violence, implementing positive and effective measures to prohibit, prevent, investigate, punish violence against women and ensure redress for violence against women whether the perpetrator is a state or non-state actor. The State therefore has the duty to enact laws, institute policies and implement practices that protect victims of sexual violence, provide them with appropriate remedies and bring perpetrators to justice.64

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.65

In 2013, the United Kingdom’s Department for International Development (DFID) launched what was originally called the Call to Action on Protecting Girls and Women in Emergencies (Call to Action) to mobilize donors, UN agencies, NGOs and other stakeholders to protect women and girls in humanitarian emergencies. The Call to Action culminated in a high-level event, co-hosted by the U.K. and Sweden on November 13, 2013. That event produced a ground-breaking communiqué, in which donors and

humanitarian agencies signed and committed to preventing violence against women and girls from the start of humanitarian emergencies.66

The Call to Action is an important framework to help coordinate efforts with other donors, affected countries and non-government stakeholders to maximize our impact and change the nature of how we respond to sexual violence in humanitarian crisis. From 2014-2015, the United States assumed leadership of the Call to Action. Then-Secretary Kerry hosted follow-on Call to Action events on September 22, 2014 and October 1, 2015 in New York during the UN General Assembly. The United States remains actively involved in the Call to Action including by encouraging States and other organizations that did not sign the communiqué to join the initiative and make commitments in line with the Call to Action Road Map.67

The United Nations (UN) indicates that Sexual violence is prevalent in Somalia that is why a Joint Communique released by the Federal Republic of Somalia and the UN on 7 May 2013 acknowledged that “very high levels of sexual violence” had been consistently reported in the country.68

The Report of the UN Secretary General on Somalia released in January 2013 stated that 800 rapes were reported between September and late November 2012 in South-Central Somalia.69 The UN Special Representative on Sexual violence in Conflict, Zainab Hawa Bangura has stated that the UN has evidence of over 1,700 cases of sexual violence committed against women in IDPs camps in the Mogadishu area between January and November 2012.70 In August 2013, a representative for UN OCHA stated that these

trends are continuing, with 800 rapes reported in Mogadishu in the first six months of 2013.\textsuperscript{71}

Systematic rape and other forms of sexual violence are frequently used to destabilize entire communities as such acts of violence inflict harm on the victims, their families and their culture. Communities cannot be considered secure if women, children and men remain at constant threat of such crimes. Governments and security actors must protect civilians from sexual violence in the same way as they protect them from external military threats. Strong state institutions; when violations of the fundamental rights protected by a state’s domestic laws are committed, the state must be able to ensure that the perpetrators are brought to justice. If such acts are met with impunity, the state will be unable to maintain its control or authority over the population. Further, for security institutions to effectively uphold law and order, they must be able to do so within their own ranks.\textsuperscript{72}

Unique opportunity; a growing body of research shows that the protection and promotion of women is vital to the achievement of sustainable peace and development. Somalia is in a unique place to become a global model for post-conflict reconstruction, rebuilding itself in a manner that prevents violence against women and entrenches respect for all civilians. Statistics collected by the UN and other bodies indicate that sexual violence in Somalia is primarily committed by two groups of people; those known to the woman affected, and armed men in uniform.\textsuperscript{73} The second category includes the Somali police, military, militias and members of AMISOM. It is difficult for survivors to identify which of these groups the perpetrators belong to, if any. Different military and police uniforms have been donated by different donors and all are readily available on the market, and many Somali security personnel operate as private security providers while off duty.\textsuperscript{74}

Estimates of what percentage of attacks are carried out by security forces and militias vary. While perpetrators are difficult to identify, both UN actors and the Somali government acknowledge that they include security actors. The UN sexual violence

\textsuperscript{74} GBV working group; interview with employee for UNDP Somalia on 28 January 2014; Human Rights Watch, ‘Here, Rape is Normal’, 2014, p 28.
Working Group, UN Special Envoy on Sexual violence in Armed Conflict and a Crime and Victimization Survey carried out by the Somali Observatory of Conflict in 2011 estimate that the numbers of sexual violence committed by armed men in uniform are 30%, 64% and 70% of total offences, respectively. In December 2012, Somali President Hassan Sheikh Mohamud issued a statement in which he noted the increase in reported rapes and acknowledged that members of government security forces had been involved.

Further, courts are inaccessible to a large percentage of Somali women and the information available indicates that there have been a handful of convictions for rape in a civil court since the appointment of the new government. Human Rights Watch found evidence of one conviction in a civilian court in 2013 and news outlets reported on three in military courts in 2012 and 2013. By contrast, it is widely known that five people were arrested and charged with insult or defamation under the Penal code for making or reporting on allegations of rape in 2013.

In practice, if survivors wish to have perpetrators prosecuted for sexual violence, they must first report to the police to obtain a referral form, then to the hospital to obtain a medical certificate, and then to the Criminal Investigations Department. The process is long and fragmented and exposes the survivor to significant security risk. Security personnel who have been tried for rape have been tried through military tribunals rather than the civilian justice system. This appears to be in violation of the Somali Provisional Constitution, which provides that ‘human rights abuses alleged to have been

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76 Above n (US Dep), p 37.
79 Human Rights Watch, ‘Here, Rape is Normal’, 2014.
committed by members of the armed forces against civilians shall be brought before a civilian court.\textsuperscript{80}

\subsection*{2.1.1 Maputo Protocol, 2006}
This protocol emerged due to constant protection threat after a period of ten years in Somalia, forcible evictions of displaced persons have increased dramatically after a choice made by Mogadishu landowners including government officials to clear out displacement settlements in order to convert rising land values into lucrative economic development. Evictions have increased in several other towns as well hence nearly 50,000 persons have been forcibly evicted from their shelters since the start of 2013 often with little or no warning.\textsuperscript{81}

Somalia signed and ratified the African (Banjul) Charter on Human and Peoples’ Rights, in 1985 and has signed but not ratified the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Maputo Protocol) in 2006. The Provisional Constitution has a number of both positive and negative implications for women’s participation.\textsuperscript{82}

Gatekeepers are known to be complicit in the forced evictions yet the forcible returns of refugees and IDPs to unsafe are in origin have also emerged as risks in 2014, linked in part to eagerness by the national government and its supporters to demonstrate that the country is becoming more stable.\textsuperscript{83}

UNHCR’s protection strategy for 2013-2015 emphasizes the stark linkage between widespread protection problems and assistance shortcomings; IDPs’ “precarious position within a predatory environment has led to severe levels of exploitation in the labor market and widespread social exclusion in terms of access to traditional justice mechanisms and basic services such as education and health care,” the strategy states. Many IDPs have settled within the confines of the urban poor. However, the levels of

\textsuperscript{80} Article 128.
\textsuperscript{81} UNHCR (2014), Somalia Key Messages to the Somali Federal Government and IDMC website, summary reports of 2013 and 2014.
\textsuperscript{82} See http://www.achpr.org/instruments/achpr/ratification/.
\textsuperscript{83} Ibid.
discrimination they encounter means that their lives are entrapped in much worse destitution than their impoverished neighbors."\textsuperscript{84}

The UN Consolidated Appeal for Somalia received about half of the funds requested for humanitarian operations in 2013. In 2014, about one-third of the funds requested had been received by late-year. The 2014 humanitarian situation in Somalia was harsh, dangerous, highly vulnerable, operationally fragile and loosely monitored, susceptible to manipulation and underfunded since it affected many Somalis to an extent that most of their lives were claimed and others disastrously injured.\textsuperscript{85}

Article 3 concerning the Founding Principles expresses the view that 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”. Article 4 explains that everyone is equal before the law; even unintended acts by their effect can be defined as discriminatory if they impair or restrict a person’s rights; the state may not discriminate against any person on the grounds including but not limited to, clan, ethnic or social origin, sex; State measures designed to achieve full equality for individuals or groups who have suffered discrimination or disadvantage shall not be deemed discriminatory for example quota system.\textsuperscript{86}

Article 22 in regard to the Right of Political Participation stipulates that every citizen has the right to take part in public affairs; including the right to form and take part in the activities of political parties including the right to vote and stand for positions in elections for adults. Since 1991, the re-emergence of customary law, the extended use of Sharia and the resort to clan-based forms of political representation have meant women are excluded from most political and judicial structures.\textsuperscript{87}

Progressive reforms were therefore, made to the Family Law in 1975 under Siad Barre which assured women equal rights and made discrimination against women illegal.

\textsuperscript{84} UNHCR (2013), \textit{a Protection Strategy on Internal Displacement for UNHCR Somalia}.
\textsuperscript{85} UN-OCHA (2014), \textit{Financial Tracking Service, “Somalia, Funding Received 2014.}
\textsuperscript{86} Maputo Protocol, 2006.
\textsuperscript{87} Maputo Protocol, 2006.
though little was done to enforce the law and to date, the law is often regarded as a leftover from the Barre regime and is not applied in legal practice.\textsuperscript{88}

The Family Law guarantees women’s rights in marriage, divorce and inheritance; however, civil status issues are most often resolved under Sharia and Xeer (traditional or customary law). Islamic Sharia contains provisions that potentially offer women more rights than Xeer, however, in Somalia, Sharia is only administered by men and is often misapplied in the interests of men; this means that women do often not receive justice and men go unpunished.\textsuperscript{89}

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) but both justice mechanisms are male-dominated and not supportive of survivors’ rights. 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.\textsuperscript{90}

The elders responsible for taking decisions within rural communities are always men 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 camels for a man and 50 for a woman. In rape cases, the elders have sometimes compelled victims to marry the perpetrator. 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.\textsuperscript{91}

\section*{2.1.2 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)}

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{88} United Nations Entity for Gender Equality and the Empowerment of Women, (2012).
\item \textsuperscript{89} African Union (2010), \textit{List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa}.
\end{itemize}
\end{footnotesize}
Assembly and it is described as an international bill of rights for women which was instituted on 3 September 1981 and ratified by 189 states.\textsuperscript{92}

Over fifty countries that have ratified the Convention have done so subject to certain declarations, reservations and objections including 38 countries that rejected the enforcement Article 29 which addresses means of settlement for disputes concerning the interpretation or application of the Convention. Australia’s declaration noted the limitations on central government power resulting from its federal constitutional system. The United States and Palau have signed but not ratified the treaty.\textsuperscript{93}

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms including to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women; to establish tribunals and other public institutions to ensure the effective protection of women against discrimination and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.\textsuperscript{94}

Somalia has not yet signed or ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) but has signed the Maputo Protocol. Per the Vienna Convention on the Law of Treaties, a signatory State is obligated to “refrain from actions that defeat the object and purpose of a treaty.” Despite the drawback of the lack of commitment via ratification of the two foremost women’s human rights instruments relevant to Somalia, it is still possible to analyze the translation of feminist norms within each document. Many of the international actors working on Sexual violence programming use the CEDAW and the Maputo Protocol and make references to both in campaigns for rights awareness.\textsuperscript{95}

The ratification of the CEDAW is on the agenda of the UNFPA and signing it is a strategic target for the gender program in the National Development Plan (SNDP). For


\textsuperscript{95} Vienna Convention on the Law of Treaties, p. 336.
most discussions on Sexual Violence, the CEDAW only provides intuitive guidance; however, it re-mains the legal standard for women’s rights. For this reason an inclusion in the framework and the authoritative interpretation of the CEDAW and its relevance to Sexual violence through General Recommendation 19 (GR 19). International Human rights law (IHRL), via the CEDAW and its supplementary instruments, is thought of by feminists as the most useful tool for both the advancement and protection of human rights for women.96

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women’s rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.97

CEDAW and its Optional Protocol emphasize that the role of the State to prevent violence against women and prosecute those responsible-taking appropriate and effective measures to overcome all forms of gender-based violence whether by public or private act; to ensure that laws against family violence and abuse, rape, sexual assault and other gender based violence give adequate protection to all women and respect their integrity and dignity.98

General Recommendation 19 of the CEDAW Committee re-emphasizes that violence against women must be prosecuted, despite whether the act was committed by a state or non-state actor; Under general international law and specific human rights Covenants, States may also be responsible for private acts if they fail to act with due diligence to

98 CEDAW with UNSCR 1325 and 1820 « Global Network of Women Peace builders.
prevent violation of rights or to investigate and punish acts of violence and for providing compensation. \(^9^9\)

Effective due diligence requires the State to adopt a whole range of other measures in addition to legislation to address gender based violence. These include; training of state personnel, adoption of practical policies and mechanisms to protect women’s rights, ensuring that relevant legal mechanisms are accessible to women who have experienced any form of gender based violence and that such mechanisms best serve the needs of victims themselves. \(^10^0\)

**2.1.3 International Human rights law**

International human rights law obligates Somalia’s fragile government to respect the rights to bodily integrity, liberty and security of the person and to be free from discrimination which includes taking appropriate measures to eliminate sexual and gender-based violence. The Federal Government of Somalia should take all feasible steps to uphold these rights by investigating and appropriately prosecuting private actors and government agents who infringe upon them. \(^10^1\)

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. \(^10^2\)

Very high numbers of incidents of sexual violence have been reported consistently particularly in internally displaced camps and settlements in Mogadishu and surrounding areas. Women and girls are also targeted by bandits and militias while in transit, and upon arrival in refugee camps. \(^10^3\)

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\(^10^2\) UNHCR, Somalia, 2016 *Total Internally Displaced Persons*, HRW, Somalia; Forced Evictions of Displaced People.

\(^10^3\) Aden Abdulla Osman President of the Legislative Assembly, Mogadishu, July 1960. *Somalitalk.com.*
There exists a deep culture of silence and fear regarding crimes of sexual violence which significantly impacts on reporting and response. The Government of Somalia and the United Nations call on all parties to immediately cease such violations and put in place preventive measures. Reiterating the clear signal that impunity will not be tolerated by undertaking investigations of alleged violations and ensuring punishment of perpetrators, through the criminal justice system.

This has been the site of feminist contestation for decades. Feminist strategic engagement with IHRL has challenged assumptions of objectivity and universal application; advanced women’s rights in definition and legal codification; revealed the andro-centric nature of international law and the institutions upholding it and most importantly for the context of this research, brought attention to the widespread experiences of Sexual violence for women in war and peacetime. Feminist strategies have further sought, among other things to correct shortsightedness; to avoid co-optation; to recognize women’s rights as human rights on the international level and to avoid the rights of women being reduced to mere illusions of equality.

Feminists have also brought the static treatment of international norms into their purview within which they have employed a method of inquiry that brought insight to the norm translation process that revealed a more fluid and fluctuating process.

Borrowing from and adapting the dominant feminist narratives similar to Alice Edwards approach in her book on Violence against Women under International Human Rights Law employ a feminist method of inquiry throughout this thesis exploring and questioning the process of translation of universalistic feminist norms and strategies into a domestic context.

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

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105 Ibid.


women scholars and practitioners in the field of human rights and other forms of international law and international relations. Examples of the diversity of theories represented by these women are structuralist, constructivism, postmodernism, and liberal feminism.\textsuperscript{108}

In voices from African and Muslim feminists as their authoritative perspectives are more relevant to the women of Somalia. Mainstream feminists leading the conversation on the international level have been criticized for pushing forward a unified voice eliciting an image of a homogenous group of women with an agenda based on the goals of only a limited group (read white and Western) of women. The inclusion of African and Muslim feminist voices is meant to counter the dominance of the mainstream voice and to help identify the specificities of the experiences of Sexual violence for Somali women.\textsuperscript{109}

These voices build upon years of activism and advocacy for the inclusion and advancement of women’s human rights internationally and domestically. The inclusion of feminist norms in the CEDAW and Maputo protocol is the result of indomitable feminist commitment.\textsuperscript{110} The Protocol itself is “the result of about a decade and a half of work by women’s human rights advocates.” Due to the androcentric nature of the international human rights system and international law in general, feminists have learned to negotiate and make compromises to lift themselves onto the international stage. This is a strategic process that has produced prevailing feminist strategies to advance and protect women’s rights not only opportunistically but also with persistent challenges to dispassionate or adversarial forces seeking to ossify feminist progress.\textsuperscript{111}

Ratifying the CEDAW is a strategic goal agreed on by the international donor community and the government. Its critical relevance to Sexual violence programming is in the obligation placed on States to “not only prohibit direct and indirect discrimination

against women as compared to men but also to combat systemic or structural gender discrimination.” 112

In the context of Sexual Violence, rights protecting women from domestic abuse described by GR 19 as the most “insidious form of violence” and “prevalent in all societies” are provided for in Article 16. This has however been the case with other Islamic countries, Articles 16 and 5 (and 2) land on contentious grounds that have prompted sweeping reservations to be applied to any provisions incompatible with the teachings and beliefs of Shari’ah law and Islam.113

In Somalia, it is likely that similar reservations will be applied to the CEDAW upon ratification. One respondent from a U.N. agency stated ratification of the CEDAW was expected by June or July of this year (2017) and that they would be happy to see it ratified even with the reservations.114

Chinkin for example states “the international community is prepared to formally acknowledge the considerable problems of inequality faced by women but only, it seems, if individual states are not required as a result to alter patriarchal practices that subordinate women.” The same effect would be made should Somalia apply a reservation to Article 16 which would obligate the State to protect women and ensure equality not only in the public spheres but in the private as well.115

The private sphere being a location where “inequality in the family undermines women’s access to and enjoyment of rights in the public sphere of the workplace and politics.” It is particularly relevant in Somalia where intimate partner violence (IPV) is one of the most prevalent forms of Sexual violence impacting 28% of women in South Central and 48.2% in Puntland.116

In various Articles of the CEDAW and explicitly in GR 19, discrimination based on sex is defined as a hindrance to the ability of women to gain equality with men. This

113 GR 19, Paragraph 23.
114 Maputo Protocol, Articles 2 and 17.
115 IASC Guidelines, pp. 42.
116 Johns Hopkins. Gender-based Violence Survey; South Central, pp. 17 and Puntland, pp. 16 (South Central and Puntland) (Studies on file with author).
phrasing is part of an equality rhetoric placing the status of men as the ultimate comparator. Such phrasing formally reinforces the subordination of women as it relegates women to an inferior position in the comparison. In other words, this equality rhetoric uses the “benchmark of men’s terms of success as a measure for a woman’s success in society.”

This mode of thinking does not account for the structural inequalities leading to the subordination of women and it contradicts feminist thought that equality should be defined as “not freedom to be treated without regard to sex but freedom from systematic subordination because of sex.” It lends itself to a focus on achieving formal or *de jure* equality which can be measured easily for example, in numbers in quota systems. Such measurements don’t reflect or promote substantive equality for women.

For women, this feminist method of defining gender equality seeks to be inclusive of the differences in women’s experiences throughout the world by dismissing ideas “that there is an essential women’s experience which can be isolated and described independently of race, class, sexual orientation or other experiences.”

In Somalia, the differences in women’s experiences can be predicated on various identity factors. The experiences of women in minority clans or IDP camps for example, will be considerably different than those from a majority clan who have more privilege in opportunity.

In Somalia, the process of translation for gender equality as a norm emphasizing equality between men and women can be analyzed through the harmonized messaging written under the auspices of the UNFPA as Chair of the Sexual violence Working Group. Writing the messages was a collaborative effort with NGOs and other UN agencies. The messages focus on the elimination of Sexual violence towards women and girls by using written sound bites to convey the many consequences of Sexual violence and advocate a zero tolerance of it. These messages are meant to be disseminated through Sexual

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117 CEDAW (Preamble and Articles 2, 3, 7, 8, 9, 10, and 15) and GR 19 (First paragraph).
violence programming and are designed for different stakeholders and groups such as the Ministry of Health, religious leaders, men and boys, women and girls, government and policymakers.¹²¹

Feminists have been challenging the neutrality and objectivity of international law for decades and putting forth efforts to correct or at least influence gender sensitization in the creation and interpretation of law. This engagement led to the involvement in developing legal strategies for pursuing justice and providing legal protection for women against acts of Sexual violence in both war and peacetime. Feminist advocacy in the 1990s has been spotlighted for its persistence leading to legal milestones in feminist jurisprudence.¹²²

An international non-profit think tank, Legal Action Worldwide (LAW) drafted the Bill for the FGS and Puntland through a consultative process that included discussions with lawyers, civil society organizations, clan elders and religious leaders (the latter groups solely consist of men). A similar approach was taken for the Puntland Act for which LAW acted as a technical advisor.¹²³

The Puntland Act was the result of a partnership between UNFPA and the Ministry of Justice in Puntland and the consultations for this process included in addition to the groups mentioned above, women’s groups, law enforcement agencies and the Attorney General’s office. The drafting process also included a review of examples of legislation provided by the “UNiTE to End Violence Campaign” and of legislation regarding sexual offences in other comparable jurisdictions. The selected comparable jurisdictions were Kenya, Sierra Leone, South Africa, The Gambia, and the Great Lakes.¹²⁴

The comprehensiveness of the FGS Bill is indeed impressive. It covers much of what one particularly influential Working Group in G Feminism in the 1990s proposed. Items from the proposal also in the FGS Bill are “substantive definitions of gender related crimes, rules about the admissibility of evidence of sex crimes, proposals for a special system of

¹²² UN Women webpage for Somalia.
¹²³ Law webpage.
protection of victim witnesses, proposed penalties and a proposal for the compensation of victims.” The extensive coverage of the Bill goes beyond the proposal and includes many more notable components in the protections and rights of survivors.125

Feminist involvement in the establishment of jurisprudence for sexual violence under IHL and ICL had focused strategies and debates on defining the meaning of consent. Structuralist feminists advocated for complete abolition and thus criminalization of sexual acts committed during wartime in the presence of a foreign or domestic military. This advocacy stemmed from the universalist view of structuralists of the ongoing “war against women” in which all sexual acts committed in the context of war should be deemed coercive, as a woman’s ability to give consent is compromised due the nature of the environment the act took place in.126

For liberal feminists, the focus was on the sexual autonomy of the individual, even in the presence of a foreign or domestic military. In domestic contexts, the interpretative breadth for determining consent is typically a severely gender biased process involving extra-legal evidentiary considerations such as did the woman physically resist or scream; a woman’s outfit or a woman’s physical setting. 127

In the Puntland Act the death penalty is the prescribed punishment for rape if it caused death, was incestuous or was committed with the use of a weapon.128 The endorsement of the Puntland Act by the UNFPA as an international norm-carrying actor abiding the most fundamental principles of human rights, is an example of moral compromises made to further the protection of women. The idea that the death of perpetrators, a strict violation of the right to life and the normative restrictions on using the death penalty, is more favorable than to not have the legislation passed makes Halley wary of feminist commitments. In this example, the moral distinctions have more clarity.129

127 FGS Bill, final draft, pp. 8.
128 Puntland Act, pp. 22.
2.1.4 UN Human Rights Committee on Sexual violence in Somalia

The UN Human Rights Committee has commented on the obligation of states to ensure the protection of rights as outlined by the ICCPR (Article 2(3)) and its first optional protocol the positive obligation on State Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State not just against violation of Covenant rights by its agents but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so that as they are amenable to application between private persons or entities.¹³⁰

UN SOM continues with its regular monitoring and reporting obligations within the country with a special focus on the violations and abuses resulting from acts and omissions by national and regional authorities. HRPG also monitors and reports on allegations of violations by parties to the ongoing conflict in the country in which Somali security forces, AMISOM and al-Shabaab are key protagonists. Key are in focus include the situation of Children Associated with Armed Conflict and Conflict Related Sexual violence. The HRPG also collaborates with UN agencies, funds and programmes as a member of the UN Country Team.¹³¹

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would rise to violations by State Parties of those rights as a result of State Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm cause by such acts by private persons or entities.¹³²

The standard of “due diligence” determines the requisite level of effort that a state must employ to fulfill its responsibility to protect individuals from abuses of their rights by non-state actors. According to the aforementioned UN Declaration States should exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private actors.¹³³

¹³¹ M. Freeman, (2011), the Value and Values of Children’s Rights in an Invernizzi & J. Williams, the Human Rights of Children from Visions to Implementation, Surrey, Ashgate.
¹³³ Strategic Initiative for Women in the Horn of Africa (SIHA) 2007.
In the report, the secretary-general urged the Security Council to integrate attention to sexual violence into its monitoring and field visits to conflict-affected countries and to take preventive steps and measures to ensure accountability including sanctions and referrals to the International Criminal Court. “In conflicts around the world, armies and armed groups use sexual violence as a devastating tactic of war, women’s rights advocacy director at Human Rights Watch. “The UN Security Council should not dodge its responsibilities to survivors and should take strong action to support survivors and sanction those responsible for sexual violence.”

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The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". 135

The collapse of the humanitarian situation has further aggravated the human rights crisis and resulted in massive displacement of Somalis from the Southern regions into TFG-controlled territories and across the borders into Ethiopia and Kenya. The vulnerability of the displaced has raised acute protection concerns. In the margins of the 18th session of the Human Rights Council, the Office of the High Commissioner for Human Rights has advocated for a human rights based approach to the immediate, medium and long-term strategies for addressing the food crisis. 136

The adoption of the Kampala Accord in June 2011 resulted in the adoption of a Roadmap to End the Transition in September 2011. The Roadmap identifies security, progress in adoption of the Constitution, national outreach, reconciliation and good governance as

priority areas against which the transitional authorities will be assessed in August 2012.\textsuperscript{137}

In 2011, the Office of the High Commissioner for Human Rights facilitated Somalia’s engagement in the Universal Period Review of the Human Rights Council. Somalia accepted, fully or in partial, all 155 recommendations formulated by Member States for the improvement of its human rights situation. These recommendations cover a wide range of issues such as the political process, peace and reconciliation, the protection of civilians in the context of the armed conflict, ratification of international human rights instruments, the development of human rights-compliant legislative and policy frameworks including at the level of the Constitution, the establishment of a national human rights institution and the strengthening of civilian police and the judiciary. The UPR recommendations provide a comprehensive roadmap for improving the human rights situation in Somalia.\textsuperscript{138}

2.1.5 The Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights implements its Somalia programs through the Human Rights Unit of the UN Political Mission for Somalia (UNPOS) which was established in 1995 to advance the cause of peace and reconciliation in Somalia. The Human Rights Unit was created in 2008 with a broad mandate to carry out monitoring and capacity-building, as well as to mainstream human rights within the activities of the UN Country Team for Somalia. The Human Rights Unit consists of seven international professionals deployed to Mogadishu, Garowe (Puntland), Hargeisa (Somaliland) and Nairobi.\textsuperscript{139}


\textsuperscript{138} Committee on the Elimination of Discrimination against Women (2008).
\textsuperscript{139} Associated Press (AP). 27 October 2006.
supports the Independent Expert on the situation of Human Rights in Somalia appointed by the Human Rights Council.\textsuperscript{140}

The failure to protect human rights does not just occur at the Council but across UN human rights bodies. Since the creation of those bodies, they have all contributed effectively to the development of human rights. The principal human rights body, initially the Commission and now the Council, fulfills that mandate through soft law in the form of decisions and resolutions through providing a forum for discussion about emerging rights and normative content and through working with states, civil society and other UN bodies in the pursuit of developing international human rights law. Treaty Bodies provide jurisprudence, both in the form of concluding observations and general comments, which expand upon and develop the normative content of the law.\textsuperscript{141}

The promotion of human rights has been strengthened with the reforms of the past two decades. The Office of the High Commissioner for Human Rights (OHCHR) has streamlined promotion activities. Since the creation of the Council and the expansion of the Special Procedures system, those activities have become increasingly effective. Promotion activities are weaved through all parts of the UN human rights machinery. Fact-finding, information sharing, cooperation, constructive dialogue, technical assistance, capacity building, peer support and review are all effective tools in promoting human rights within states.\textsuperscript{142}

The problem, of course, is the protection mandate. Developing and promoting human rights are aimed at the medium-to long-term. They require dialogue, cooperation and constructive engagement. Protecting human rights focuses on the short-term. States are far less willing to engage with protection activities because they impact upon the immediate situation within a country and a key weakness of UN human rights bodies is that, while they are set up for dialogue and engagement, they lack the teeth to effectively protect rights where a state is not willing to cooperate. Unlike the Security Council, human rights bodies do not have enforcement powers. Unlike international financial institutions, the UN human rights machinery does not have any leverage over states that

\textsuperscript{140} Amnesty International,(2013), \textit{Rape and Sexual violence in Somalia, an Ongoing Epidemic.}

\textsuperscript{141} Amnesty International (AI), 23 May 2006.

\textsuperscript{142} United Nations Treaty Collection (2016).
fail to comply with their obligations. That is one main flaw in the system and one that cannot easily be resolved but it is not the only weakness.\textsuperscript{143}

\subsection*{2.1.6 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment}

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment commonly known as the United Nations Convention against Torture (UNCAT) is an international human rights treaty under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman or degrading treatment or punishment around the world.\textsuperscript{144} The Convention requires states to take effective measures to prevent torture in any territory under their jurisdiction and forbids states to transport people to any country where there is reason to believe they will be tortured.\textsuperscript{145}

The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and following ratification by the 20\textsuperscript{th} state party, it came into force on 26 June 1987 is now recognized as the International Day in Support of Victims of Torture, in honor of the Convention. Since the convention's entry into force, the absolute prohibition against torture and other acts of cruel, inhuman or degrading treatment or punishment has become accepted as a principle of customary international law and by August 2017, the Convention had 162 state parties.\textsuperscript{146}

The Covenant follows the structure of the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) with a preamble and 33 Articles, divided into three parts; Part I (Articles 1-16) contains a definition of torture (Article 1) and commits parties to taking effective measures to prevent any act of torture in any territory under their jurisdiction (Article 2). These include ensuring that torture is a criminal offense under a party's municipal law (Article 4), establishing jurisdiction over acts of torture committed by or against a party's nationals (Article 5), ensuring that torture is an extraditable offense (Article 8) and

\textsuperscript{144} Convention Against Torture (2007), Pg not specified.
establishing universal jurisdiction to try cases of torture where an alleged torturer cannot be extradited (Article 5).\textsuperscript{147}

An aspect which provides a direct linkage to the specificities outlined under sexual violence. Under ICL the ICTR’s landmark judgment in Akayesu, reflects clearly as the Tribunal stated that it considered ‘sexual violence to be any act of a sexual nature which is committed on a person under circumstances which are coercive.’ It went on, ‘sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.'\textsuperscript{148}

A person illegally detained is in an exacerbated situation of vulnerability that creates a real risk of violating other rights such as the right to be treated with humanity and dignity.\textsuperscript{149} In this sense, the Inter-American Court considered that the degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance”.\textsuperscript{150}

It also admitted the existence of torture related to an illegal detention; the Court has considered proven that the alleged victim’s head was covered by a hood, she was kept handcuffed to a bed, in a room with the light on and the radio at full volume, which prevented her from sleeping.

This woman was also subjected to very prolonged interrogations, during which she was shown photographs of individuals who showed signs of torture or had been killed in combat and she was threatened that she would be found by her family in the same way. The State agents also threatened to torture her physically or to kill her or members of her family if she did not collaborate. To this end, they showed her photographs of herself and her family and correspondence from her to her former husband.\textsuperscript{151}

\textsuperscript{147} Convention Against Torture Archived 9 November 2007, pg not specified.
\textsuperscript{148} European Court of Human Rights, Selmiuni v. France , op.cit.
\textsuperscript{149} Inter-American Court of Human Rights, Cantoral-Benavides v. Peru. 18 August 2000. Series C No. 69, par. 90; the “Street Children case” (Villagrán-Morales et al.) v. Guatemala. 19 November, 1999.
\textsuperscript{150} Inter-American Court of Human Rights, Loayza-Tamayo v. Peru.17 September 1997.
2.1.7 The UN Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCR) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation. Nations that ratify this convention are bound to it by international law. Compliance is monitored by the UN Committee on the Rights of the Child which is composed of members from countries around the world. Once a year, the Committee submits a report to the Third Committee of the United Nations General Assembly which also hears a statement from the CRC Chair and the Assembly adopts a Resolution on the Rights of the Child.

This convention obliges state parties to protect individuals less than 18 years from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including individual sexual abuse.

The Declaration of the Rights of the Child was the first effort to address the rights of the child on an international level which was mentioned in its preamble that; ‘mankind owes to the child the best it has to give.’ The Declaration also known as the Declaration of Geneva was the first document that directed international attention to children’s rights. The Declaration of Geneva was drafted by the Save the Children Fund, an organization established by Eglantyne Jebb26. The document was submitted to the League of Nations and was adopted by the League of Nations in November 1924.

The United Nations Convention on the Rights of the Child (UNCRC) is a legally-binding international agreement setting out the civil, political, economic, social and cultural
rights of every child, regardless of their race, religion or abilities. The UNCRC consists of 54 Articles that set out children’s rights and how governments should work together to make them available to all children.\textsuperscript{158}

Since it was adopted by the United Nations in November 1989, 194 countries have signed up to the UNCRC with only two countries in the world still to ratify. All countries that sign up to the UNCRC are bound by international law to ensure it is implemented which is monitored by the Committee on the Rights of the Child. Under the terms of the convention, governments are required to meet children’s basic needs and help them reach their full potential. Central to this is the acknowledgment that every child has basic fundamental rights.\textsuperscript{159}

\textbf{2.1.8 African Union Mission in Somalia}

The Independent Expert held a meeting with AMISOM leaders during his mission. He paid tribute to the sacrifices made by AMISOM soldiers and its civilian personnel, and commended the support given by the international community to its mission. The Special Representative of the Chairperson of the African Union Commission reiterated a message previously conveyed to the Assistant Secretary-General, in which he rejected allegations that AMISOM contingents had killed civilians during air strikes; thorough investigations conducted by the Intergovernmental Authority on Development and the administrative authorities of Jubbaland had in fact found that the allegations were untrue.\textsuperscript{160}

He stated that AMISOM operations were sensitive to human rights and respect for international humanitarian law and that AMISOM acted on all concrete reports of violations.\textsuperscript{161} At the time of drafting the present report, the Independent Expert had not received information regarding the findings of the above-mentioned board of inquiry. With regard to the allegations of sexual abuse by AMISOM soldiers, the Special Representative informed the Independent Expert that AMISOM had taken a number of

\textsuperscript{158} Queensland government, \textit{United Nations Convention on the Rights of the Child}.  
\textsuperscript{159} Declaration of the Rights of the Child, League of Nations Records of the Fifth Assembly, 1924 OJ spec supp, 23 (1924). \textit{League of Nation Official Journal}.  
\textsuperscript{160} CIA \textit{world fact book}, December 6, 2013.  
measures to prevent sexual exploitation and abuse. The camps had been sealed against any unnecessary interaction with the civilian population.\textsuperscript{162}

Businesses had been removed from within the camps, thus reducing contacts between civilians and soldiers. A toll-free hotline managed by Somali non-governmental organizations to receive allegations of cases of sexual exploitation and abuse had been set up. Since the measures had been taken, no new allegations of sexual exploitation and abuse had been reported. The Special Representative emphasized that he had directed the force commanders to ensure that such acts do not occur again.\textsuperscript{163}

\subsection*{2.2 Conclusion}

The practice of sexual violence remains of concern in Somalia due to the fact that many cases have persisted not only by Somalis but also by other peacekeeping forces like AMISOM and it is reported by the human rights watch report of 2014 that over 18 forced marriage cases involving SNA elements (three), Al Shabaab (13) and ASWJ (two) as put in the case on the date of 14\textsuperscript{th} September 2017 where heavily armed Al Shabaab members abducted a 15-year-old girl from her home in Waberi village, Elbur district, Galgaduud region and took her to an unknown location after her father rejected a marriage proposal from one of the men. Before the abduction, the case of a proposed marriage was referred to an Al Shabaab “tribunal” before which the girl’s father rejected the marriage proposal on grounds that his daughter was underage. The father was subsequently arrested and the girl was abducted soon after.\textsuperscript{164} This indicates that although international humanitarian instruments have been applied in the region, there are gaps that require for complete reduction of sexual violence in the region.

\textsuperscript{162} Convention on the Elimination of all Forms of Racial Discrimination (1965).

\textsuperscript{163} http://www.unicef.org/somalia/reallives_5434.html.

\textsuperscript{164} UNSOM started documenting CRSV cases in September 2016 following the implementation of the consolidation of protection functions within its human rights component.
CHAPTER THREE
NATIONAL FRAMEWORK ON SEXUAL VIOLENCE IN SOMALIA

3.0 Introduction
According to 2002 World Health Organization report, sexual violence is any sexual act or attempt to obtain a sexual act by violence or coercion, acts to traffic a person or acts directed against a person's sexuality, regardless of the relationship to the victim. It occurs in times of peace and armed conflict situations, is widespread and is considered to be one of the most traumatic, pervasive and most common human rights violations.\textsuperscript{165}

3.1 Concept of sexual violence
Sexual violence is a serious public health problem and has a profound short or long-term impact on physical and mental health such as an increased risk of sexual and reproductive health problems an increased risk of suicide or HIV infection. Murder occurring either during a sexual assault or as a result of an honor killing in response to a sexual assault is also a factor of sexual violence.\textsuperscript{166}

Women and girls suffer disproportionately from these aspects, sexual violence can occur to anybody at any age; it is an act of violence that can be perpetrated by parents, caregivers, acquaintances and strangers as well as intimate partners. It is rarely a crime of passion and is rather an aggressive act that frequently aims to express power and dominance over the victim.\textsuperscript{167}

Sexual violence remains highly stigmatized in all settings, thus levels of disclosure of the assault vary between regions. In general, it is a widely underreported phenomenon, thus available data tend to underestimate the true scale of the problem. In addition, sexual violence is also a neglected area of research, thus deeper understanding of the issue is imperative in order to promote a coordinated movement against it and Domestic sexual violence is distinguished from conflict-related sexual violence.\textsuperscript{168}

\textsuperscript{165} Elements of Crimes, Article 7(1) (g)-p6.
\textsuperscript{166} ICRC statement to the United Nations, 2013.
\textsuperscript{167} Holmes MM et al.1996.
Often, people who coerce their spouses into sexual acts believe their actions are legitimate because they are married. In times of conflict, sexual violence tends to be an inevitable repercussion of warfare trapped in an ongoing cycle of impunity.\textsuperscript{169}

Rape of women and of men is often used as a method of warfare (war rape) as a form of attack on the enemy, typifying the conquest and degradation of its women or men or captured male or females fighters. Even if strongly prohibited by International Human Rights Law (IHRL), customary law and International Humanitarian Law (IHL) enforcement mechanisms are still fragile or even non-existent in many corners of the world.\textsuperscript{170} An important element in the WHO definition of sexual violence is use of “coercion” or force and there is a high possibility that there are cultural differences with respect to what is labelled as “forced” sexual intercourse.\textsuperscript{171}

Various cultures describe certain forms of sexual violence that are condemned and other forms that may be tolerated to a degree, the culturally legitimized forms of violence thus giving rise to a continuum with transgressive coercion at one end to tolerated coercion at the other for example in South Africa, only the rape of white women was prosecuted under an apartheid system while sexual violence against black women was accepted as a part of life.\textsuperscript{172}

Childhood marriages in certain parts of rural India involve marriage and sexual relationship with a girl who is not yet an adult. It thus, amounts to sexual coercion and is considered illegal. The entire issue is sanctioned by personal laws defined by individuals who partake in such marriages\textsuperscript{173} as condoned by Khap Panchayats who decide on marriage partners in certain parts of North India. Similarly, sexual violence is considered legitimate by young men in South Africa who also believe that mental health is negatively affected by lack of sex.\textsuperscript{174}

Rape and other forms of sexual violence have long been part of the multitude of human rights abuses committed by different actors in Somalia, during more than two decades of

\textsuperscript{172}Armstrong S. (1994), Rape in South Africa.
\textsuperscript{173}M.Ouattara, Sen P (1998), Forced marriage, forced sex.
conflict. Perpetrators have included government security forces, members of armed opposition groups, militias and private actors. Members of the peacekeeping force, the African Union Mission in Somalia (AMISOM) have also been accused of rape. 175

Perpetrators operate with impunity in a situation of ongoing lawlessness resulting from decades without an effective central government which has allowed different state and non-state actors and powerful interest groups to exercise control and influence. While the general security situation has improved to some extent in parts of the capital Mogadishu and other key towns, insecurity prevails in much of the country. 176

A Human Rights Watch report found sexual violence was pervasive in Somalia which has suffered two decades of civil conflict. Rape victims, about a third of whom were children, were unlikely to report assaults due to a lack of confidence in the justice system and fear or reprisals. 177

One of the most valuable lessons learned from feminist engagement with human rights is that inclusiveness in understanding the various ways women are impacted by sexual violence is critical to progress for the movement. For example, earlier feminist engagement with human rights law was criticized for its ethnocentric and exclusive tendencies. 178 In the pursuit of a universal voice for women, a new form of discrimination arose focusing on issues important to white, European and American feminists, which failed to see differences between women. This provoked the criticism of feminism from the South with demands of consideration for the specificities of “other” women’s lived experiences. 179

Thus, intersectionality became an integral component of the feminist discourse. Thiam’s explanation of the omission of non-mainstream experiences is also relevant to the situation for women in Somalia who experience insecurity in many ways. Thiam wrote

175 Heise et al. Defining “coercion” and “consent” cross-culturally 1996.
176 L. Baron and M. Straus, 1989, Rape and its relation to social disorganization.
177 UN, (2005), Comprehensive review of the whole question of peacekeeping operations in all their aspects, UN General Assembly, New York, (A/59/710) P. 8.
that “the majority of European women do not lack essentials whereas Black women are fighting for survival as much in the field of institutions as in the manner of her daily existence.”

Strategic engagement with the issue could lead to establishing a dialogue as it did for Sexual violence in the first place. Instead, some practitioners in the field comfortably dismiss it as either a non-issue or one that is simply not talked about. Barlas’ feminist exegesis of the Qur’an demonstrates the possibility of unreading homophobia in it if only there is a will. The ability to do so is supported by Kugle and Hunt, who explain that “there has always been room for differing interpretations of the Qur’an, as well attested by the many shelves occupied by tafsir or exegetical literature.”

Some interpreters of Quran may interpret The Quran a text guiding and justifying discrimination by those who seek to manipulate its teachings to interpret superiority over others (i.e. women) and maintain the status quo. This interpretation is losing its grip as modernity exposes its attitudinal antiquations a process that has been significantly contributed to by feminist thought and strategy.

This filter of translation perpetuates a silence on the lived experiences of LGBTI persons and has directly left them in a dangerously insecure situation. Strategic engagement with the issue could lead to establishing a dialogue as it did for sexual violence in the first place. Instead, some practitioners in the field comfortably dismiss it as either a non-issue or one that is simply not talked about. Barlas’ feminist exegesis of the Qur’an demonstrates the possibility of unreading homophobia in it if only there is a will. The ability to do so is supported by Kugle and Hunt, who explain that “there has always been room for differing interpretations of the Qur’an, as well attested by the many shelves occupied by tafsir or exegetical literature.”

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183 V.Kesic, the status of rape as a war crime in international law: Changes introduced after the wars in the former Yugoslavia and Rwanda”, New York, (2001), p. 273.
The ambiguity of the Qur’an leaves it open to be interpreted as a text guiding and justifying discrimination by those who seek to manipulate its teachings to interpret superiority over others that is to say women and maintain the status quo.\textsuperscript{184} Formal judicial structures under the Somalian Provisional Constitution under the Somali Provisional Constitution, it is written that all laws enacted within the Somali Republic must follow the general principles and objectives of Shari’ah effectively giving the courts “power to strike down any law on the basis of contradicting Shari’ah.\textsuperscript{185} The Constitution also includes a bill of rights which is given priority by their inclusion in the Constitution include the right to human dignity, which is granted to “every human being” and is considered an inviolable right to be “protected by all”.\textsuperscript{186}

Equal rights and duties before the law are best owed upon and to be enjoyed by all regardless of sex and other enumerated statuses. The terms gender and sex are both used in this Article in granting equality and prohibiting discrimination by the State, respectively.\textsuperscript{187} Other rights granted through the constitution, relevant to sexual violence, are as follows: right to life; right to be free from slavery, servitude, trafficking and forced labor; the right to family care in regards to consensual marriage after the age of maturity has been reached and the right to the liberty and security of the person.\textsuperscript{188} The latter right includes the prohibition of all forms of violence, with an emphasis on violence against women torture and inhumane treatment.\textsuperscript{189}

\textbf{3.2. Strength of the National Legal Framework on Sexual violence in Somalia}

\textbf{3.2.1 Domestic Legal Framework}

The Somali government is responsible for ensuring that its security agencies uphold both domestic legislation and the Somali constitution by protecting women and girls from sexual harassment. The prohibition on sexual violence is therefore contained in the Penal code and Chapter two of the Constitution.\textsuperscript{190}

\textsuperscript{184} V. Kesic, \textit{the status of rape as a war crime in international law: Changes introduced after the wars in the former Yugoslavia and Rwanda}, New York, 2001. p. 273.
\textsuperscript{185} Somali Provisional Constitution, p.1.
\textsuperscript{186} Somali Provisional Constitution, p.3.
\textsuperscript{187} Ibid, pp. 3-7.
\textsuperscript{188} Ibid articles 11-15.
\textsuperscript{189} Somalia Penal Code, pp. 283-285.
\textsuperscript{190} Wendy Zeldin (2012), Constitutional law Somalia.
The legal responsibility of superior officers for acts committed by their subordinates is provided for in the Penal Code and the duty of the security forces to uphold human rights is contained in Chapter 14 of the Constitution yet taking court action against government actors is allowed by Article 109 of the constitution.191

The Ministry of Interior and Federalism has authority over policies affecting internal population displacement and humanitarian assistance. In its short existence however, the Ministry of Interior itself has undergone a major reorganization that temporarily slowed humanitarian policy development. In addition, a turf battle over IDP policy erupted in 2013 when the President announced creation of a National Commissioner of Repatriation and Resettlement of Refugees and IDPs.192

The Ministry of Interior also employs humanitarian advisors some with OCHA funding as well as a senior advisor on internal displacement and several of these humanitarian positions within the government are held by young, well-educated members of the Somali Diaspora who have repatriated from European asylum countries with a strong sense of idealism about rebuilding their homeland.193

Beyond the Ministry of Interior, the FGS established an inter-ministerial Emergency Drought Response Committee with staffing support from the Ministry of Interior. With concerns growing about the possibility of renewed famine, the Emergency Drought Response Committee became increasingly proactive in the second half of 2014 trying to provide food support in affected areas in order to avert population displacement.194

The Somali Compact pledges the government’s commitment to the humanitarian principles of humanity, neutrality, impartiality and operational independence. It re-affirms the government’s commitment to allow “full humanitarian access to people in need wherever in Somalia they are found and will not interfere with humanitarian actors’ neutrality impartiality and independence.” The Compact states that the rights of

192 Multiple Key Informant interviews, 2014, Mogadishu, September.
193 Multiple Key Informant interviews, 2014, Mogadishu, September.
194 Local Somali government officials have belatedly announced creation of a 17th district within Mogadishu.
vulnerable groups including IDPs are “a cross-cutting issue” that must be respected and protected.\textsuperscript{195}

\textbf{3.2.2 Provisional Constitution}

Articles 10, 11 and 15 protect the rights to dignity, liberty and security including a specific prohibition of violence against women, access to the courts redress for human rights violations. The constitution also mandates that security forces of Somalia must protect all Somali citizens, implement the constitution, uphold, respect human rights and be transparent and accountable.\textsuperscript{196}

Article 109 provides that any individual or group ‘may submit a reference application directly to the Constitutional Court on matters concerning the public interest especially when the constitution is violated, Somalia also has an obligation under Article 18 of the African Charter to eliminate every form of discrimination against women and to ensure the protection of the rights of women and to refrain from acts that defeat the object and purpose of the Maputo Protocol. The aim of the Maputo Protocol is to achieve the substantive equality between men and women and the elimination of harmful practices against women.\textsuperscript{197}

Fulfillment of these obligations requires that state agencies do not engage in sexual and Gender Based Violence and that if individual members of those agencies do commit such offences, they are appropriately and efficiently investigated and prosecuted by the state. Failure to do so places the state in violation of regional law. In terms of legal assistance, the International Commission of Inquiry for Guinea-Conakry exemplifies a swift response to sexual violence employed as a tool of political repression. In Timor-Leste, UNDP and the United Nations Integrated Mission in Timor-Leste have provided technical guidance to the National Parliament on bills aimed at reparation and the prosecution of cases, to provide a measure of justice for survivors of conflict-related sexual violence.\textsuperscript{198}

\textsuperscript{195} Emergency Shelter Cluster (2013), wash clusters and reach, Mapping and Information Management for Effective Humanitarian Programming in Somalia and Key Informant interview, Nairobi.
\textsuperscript{196} Chapter 14, Articles 127 and 128.
\textsuperscript{197} Article 5.
\textsuperscript{198} Human-Rights-Watch (2014), United States of America.
At the national level, the equality of rights for Somali citizens has been recognized by the recent constitution of the post-transitional Federal Republic of Somalia. Somalia government with UN agencies and other partners are in the process of drafting a gender policy that will promote gender equality and hopefully mainstream preventive and responsive measures against sexual and gender based violence in all governments’ plans.\(^{199}\)

The Somalia government will also need to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and such a move could boost the effectiveness of the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa that Somalia has already ratified. The charter commits the government to countering all forms of discrimination against women including violence via the appropriate legislative and institutional measures.\(^{200}\)

Women’s right to equality before the law is frequently violated in domestic criminal jurisdictions because their evidence is distrusted. Women, therefore, have been treated unequally in that their right to freedom from sexual coercion by a perpetrator is extremely limited. In domestic jurisdictions, rape and sexual assault laws have often put people in terms of a ‘proposer’ of sexual acts and the ‘acceptor’ is deemed to consent to the act unless their resistance is made clear especially by using physical resistance.\(^{201}\)

This is contrary to an approach to the criminal law which incorporates the human right to equality as stated in an intervention to the European Court of Human Rights in the case of M.C. v Bulgaria where the equality approach starts by examining not whether the woman said ‘no’ but whether she said ‘yes’. Women do not walk around in a state of constant consent to sexual activity unless and until they say ‘no’ or offer resistance to anyone who targets them for sexual activity. The right to physical and sexual autonomy means that they have to affirmatively consent to sexual activity.\(^{202}\)

\(^{199}\) Draft Gender Policy of Somalia, 2014.
\(^{201}\) TANA report, 2012’ Political Economy Analysis in Mogadishu.
\(^{202}\) TANA report, 2012, Political Economy Analysis in Mogadishu.
3.2.3 Access to justice

In Somalia, in the year 2018 women held 14% of seats in Parliament, two positions in the 21 member cabinet and 29 appointments as judges. The increased representation of women in government led to the establishment of the MPF as a fully-fledged ministry in 2008. The MPF is currently developing a National Gender Policy and assisting in the implementation of the National Strategy for the Integration of Women in Development.203

A consultative forum to review Somalia’s National Action Plan on Ending Sexual violence in Conflict was held in Mogadishu as part of the efforts aimed at addressing the widespread conflict related sexual violence in the country. The forum, convened by the Federal Ministry of Women and Human Rights Development with support of the United Nations Assistance Mission in Somalia (UNSOM), evaluated among other things, the progress made in drawing up a legal framework that will improve reporting, support for survivors and the capacities to prosecute perpetrators of sexual violence. 204

3.2.4 Investigations and prosecutions

There have been a handful of convictions for rape in a civil court since the appointment of the new government. Human Rights Watch found evidence of one conviction in a civilian court in 2013 and news outlets reported on three in military courts in 2012 and 2013. By contrast, it is widely known that five people were arrested and charged with insult or defamation under the Penal code for making or reporting on allegations of rape in 2013.205

Security personnel who have been charged with rape have been tried through military tribunals, rather than the civilian justice system which appears to be in violation of the Somali Provisional Constitution which provides that ‘human rights abuses alleged to have been committed by members of the armed forces against civilians shall be brought before a civilian court.206

203 Above n 42, p 15.
205 UN-OCHA (2014), Somalia Humanitarian Key Messages: Authorized by the Humanitarian Coordinator (May 2014) and UN-OCHA, The Somalia Humanitarian Narrative May.
206 Human Rights Watch, 2014, ‘Here, Rape is Normal’.
Strengthening the protection of internally displaced camps and establishing measures to protect women and girls in the camps from sexual violence. In line with the National Security and Stabilization Plan, establish and professionalize the unit of the Somali Police Force tasked to address the needs of women ensure training for Somali Security forces on prevention of sexual violence, recruit and train females officers and undertake efforts to vet all elements being integrated into the national security forces and institutions to ensure that those who have committed grave human rights violations including sexual violence are excluded from positions of leadership and responsibility.\textsuperscript{207}

3.2.5 Penal Code

Current Somali law on sexual violence is based on the colonial-era penal code that dates back to the 1930s. Under this legislation, rape is not considered a crime against an individual like murder or assault. Instead it falls into a lesser category of “crime against morality” along with homosexuality and bestiality. There are no clear guidelines for prosecution and no legal repercussions if the police elect not to investigate a reported sexual assault. Gang rape, child marriage, and sexual harassment are not acknowledged in the law.\textsuperscript{208}

The Penal Code Act 1962 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.\textsuperscript{209}

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,

\textsuperscript{207} UN-OCHA (2014), Humanitarian Bulletin Somalia June.
\textsuperscript{208} World Report 2016 Somalia, Report of The Secretary-General, areas 11-12, Lifos, Security Situation in Somalia.
\textsuperscript{209} UN (2013), Office of the SRSG on Sexual Violence in Conflict Government of Somalia.
Article 443 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 and by contrast, killings done impulsively without premeditation incur sentences of 10 to 15 years under the Penal Code. 210

Article 443 also mandates that a person whose honor-motivated violence results in “physical or mental” injuries to his spouse or females 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.

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 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. Under Article 439, the usual punishment for such an assault would be imprisonment of up to six months or a fine. 211

The Somali Penal Code, applied throughout Somalia includes punishments for rape, assault, incest and ‘hurt’. The formal system can in theory hold perpetrators of violence to account yet in practice sexual violence cases are rare due the preference of women for more accessible and culturally relevant customary law and of the three forms of legal resolution in Somalia, ‘formal’ justice is accessed the least by women. UNDP found that less than five percent of females youth reported crimes such as sexual violence, rape, abduction and forced detention to the authorities. 212

The same report found that 54 percent of those it interviewed reported having very easy access to community elders for seeking justice, whereas almost 50 percent reported that access to legal courts and police was difficult. Whilst the lack of geographical coverage offered by formal law courts is a major factor behind the preference of customary law, so

211 Penal Code 1962.
too is the lack of trust in formal justice. Formal justice is often turned to when other community-based options have been exhausted.213

Other reasons given by women for not pursuing formal justice include fear of shame due to having rape incidents being made public and thus damage to their social standing as well as inadequate protection and difficulties encountered during prosecution due to evidence tampering and witness withdrawal UN attributes this to “perceived weaknesses in the formal justice system”. 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 including the current Penal Code which is particularly problematic with respect to violence against women.214

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214 TANA Copenhagen, 2012, ‘Political Economy Analysis in Mogadishu’, published by the Danish Refugee Council and UNICEF.
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Humanitarian agencies have attempted to counter the wave of evictions with advocacy and trainings. UNHCR and the office of the UN Special Rapporteur for the Human Rights of Internally Displaced Persons have worked with Somali government officials to draft guidelines on evictions. The effort has had minimal impact on evictions thus far. Somali authorities say that they learn about many evictions after the fact.

The Humanitarian Country Team published a policy discussion paper in late-2013, drafted by UNHCR, outlining possible steps to deter evictions the HCT’s second policy paper on evictions in two years. The linchpins of the HCT’s plan, however, were implementation of the government’s IDP policy and possible resumption of organized IDP relocation activities; a year later, the government has not yet adopted an IDP policy and organized relocation efforts remain in limbo.

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progress made in drawing up a legal framework that will improve reporting, support for survivors and the capacities to prosecute perpetrators of sexual violence.220

A Bill to address sexual assault more comprehensively is currently wending its way to parliament. The proposed legislation will place more weight on survivor testimony and less emphasis on the doctor’s certificate. In anticipation of the potential new law, and to teach Somali lawyers how to gather evidence that could be used in domestic and international courts, Legal Action Worldwide(LAW) which is providing technical support for the bill, is running a series of training sessions inside Mogadishu International Airport. The fortified airport is the most secure building in Somalia.221

Law wants to train the lawyers to collect more evidence than is necessary under the national penal code. Not only will that build stronger cases such testimony can also be archived so there’s enough information for the country’s lawyers to adjust to the evolving Somali legal system.222

In line with strengthening the rule of law reform, the Penal Code on the crime of rape, support the Office of the Attorney General to develop specialized investigation capacity for sexual violence crimes, train magistrates including women magistrates and other women in the justice sector), build capacity for justice mechanisms at local level, raise awareness for women on legal procedures and address protection of women in traditional justice systems.223

Ensuring access to services including medical, psychosocial and legal aid to survivors of sexual violence including in newly accessible areas and the Government of Somalia designates the National Human Rights Commission as the focal point institution to work with the United Nations on Sexual violence and the implementation of the commitments outlined above.224

220 UN-OCHA (2014), Somalia Humanitarian Key Messages; Authorized by the Humanitarian Coordinator and UN-OCHA, The Somalia Humanitarian Narrative May.
221 UN-OCHA (2014), The Somalia Humanitarian Narrative May.
223 UNSC, Report of the Secretary-General on Somalia, 8 January 2016, S/2016/27.
3.2.6 Customary Law (Xeer)

In Somalia, each clan has its own localized system of customary law (xeer.) It is a polycentric system which some claim as “the only law considered righteous by the Somali people.”

This consideration, limiting the legitimacy of the formal system, blends well into the earlier discussion on the tensions between Somali culture and Idein Western interventionism. This tension extends to the legal dimension, as it is commonly believed that “the formal judicial systems have no jurisdiction, since they are either imposed by foreign stakeholders or used as a way to oppress the Somali customary traditions.”

Clan elders are responsible for mediation in the customary law (Xeer) system, a position women are excluded from holding. In sexual violence cases, the common form of “redress” for the injured party and her family is to seek monetary compensation from the perpetrator’s clan. The compensation paid in such cases is not passed onto the survivor or her family but instead remains with the elders. Another common practice in customary law (Xeer) is to force marriage between the perpetrator and survivor.

Customary law (Xeer) is a system of law combining adherence to both custom and Shari’ah law without much practical understanding of the distinction between the two. In the respondent’s conversations with clan elders she observed that many continue to formulate decisions based in the belief of their accordance to Shari’ah, when, in reality, there is often limited or no relevance and they can even stand in contradiction to Shari’ah law.

The respondent claimed that this informal legal heritage is difficult to document, as there is no formal codification of law. Another explanation for the inconsistency in perception can be found in the varying degree to which some clans adhere to traditional practices. In Xeer, precedence does inform decisions and in that way it bears similarity to common law. However, precedence can also be completely disregarded thus rendering the application of law unpredictable and arbitrary.

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226 Ibid.
227 El-Bushra and Gardner, p. 15.
228 El-Bushra and Gardner, p. 15.
229 Law webpage for Sexual Offences Bill (LAW webpage).
230 UNFPA. *Puntland passes law against sexual offences* various sources report conflicting months (February, August, and September) for passing the Puntland Act.
An international non-profit think tank, Legal Action Worldwide (LAW) drafted the Bill for the FGS and Somaliland through a consultative process that included discussions with lawyers, civil society organizations, clan elders and religious leaders (the latter groups solely consist of men). A similar approach was taken for the Puntland Act, for which LAW acted as a technical advisor. The Puntland Act was the result of a partnership between UNFPA and the Ministry of Justice in Puntland and the consultations for this process included, in addition to the groups mentioned above, women’s groups, law enforcement agencies and the Attorney General’s office.

The drafting process also included a review of examples of legislation provided by the “UNiTE to End Violence Campaign” and of legislation regarding sexual offences in other comparable jurisdictions. The selected comparable jurisdictions were Kenya, Sierra Leone, South Africa, The Gambia, and the Great Lakes. For the FGS and Somaliland Bills, an International Technical Review Unit (ITRU) was established to “provide pro bono legal advice on the draft Bills and their implementation plans to ensure they are relevant to the Somali context and in line with international best practice.” One member of the technical unit, Judge Vagn Joensen of the International Criminal Tribunal for Rwanda, described the Bill for the FGS as “the most comprehensive Bill on sexual crimes, seen anywhere.”

The comprehensiveness of the FGS Bill is indeed impressive; it covers much of what one particularly influential Working Group in Feminism in the 1990s proposed. Items from the proposal also in the FGS Bill are: “substantive definitions of gender-related crimes, rules about the admissibility of evidence of sex crimes, proposals for a special system of protection of victim witnesses, proposed penalties and a proposal for the compensation of victims.”

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231 LAW webpage.
233 LAW webpage.
234 Ibid, pp. 5.
236 Ibid.
The extensive coverage of the Bill goes beyond the proposal and includes many more notable components in the protections and rights of survivors. In the following sections, I will compare and analyze four separate drafts of the FGS Bill and the final version of the Puntland Act to reveal the translation of feminist methods and strategies in international law, in particular, Halley’s description of G-Feminism engaging with IHL, ICL and IHRL.238

Article 6 of the Maputo Protocol also stipulates the minimum age of marriage is 18 years.239 The Puntland Act, while not including a specific definition of “marriageable age” does define child as “any person below the age of 15”.240 Without a legal definition of marriageable age, defining anyone over the age of 15 as “not a child” could effectively put the marriageable age at 15 in Puntland. It appears those drafting the FGS Bill were able to make more advances in deterring child marriage than those in Puntland.241

The Act also states “for the purposes of applying this law, a child who is legally married is permitted to engage in consensual sexual acts with their spouse.”242 This provision and the silence on criminalizing forced and child marriage and its facilitation as the FGS Bill does, legitimizes these forms of marriage. Article 16 (2) of the CEDAW states “the marriage of a child shall have no legal effect”.243 However, Article 16 is one of the Articles likely to have a reservation applied to it before ratification, eliminating the effect of obligatory compliance with this specific protection measure. 244

The exception for child marriage in the Act suggests consent in sexual acts between a husband and wife matters legally. This language contradicts the explicit tolerance for marital rape in Article 6 (6) on rape, which states “marriage between the couples shall constitute defense to a charge of rape under this section.”245 The FGS Bill is silent on the issue of marital rape because, as the respondent who participated in the drafting process explained, the battle on including it as a sexual offense was lost. It is also noteworthy

238 Ibid, p.3.
239 FGS Bill, fourth draft, pp. 6 (comment from ITRU).
240 Puntland Act, pp. 4.
243 CEDAW, Article 16 (2).
244 Ibid.
245 Puntland Act, p. 9.
that in the same Article covering rape in the Act, a provision of non-applicability of the offence of rape is given in the circumstance that “penetration is carried out in the course of a search authorized by law or for bona fide medical purposes.” This is a precariously vague subsection to the description of rape as a sexual offence. It does not take much imagination to think of the ways that this could be used to justify rape against someone in detention.

The tolerance for and exclusion of marital rape in the Bill and the Act is a replication of the division in the disparate legal protections afforded in the public and private spheres on the international level to the domestic. The exemptions given for these violations exemplify what Kennedy has termed the “tolerated residuum of abuse” for women. Puntland Act the death penalty is the prescribed punishment for rape if it caused death, was incestuous, or was committed with the use of a weapon. The endorsement of the Puntland Act by the UNFPA, as an international norm-carrying actor abiding the most fundamental principles of human rights, is an example of moral compromises made to further the protection of women. The idea that the death of perpetrators, a strict violation of the right to life and the normative restrictions on using the death penalty, is more favorable than to not have the legislation passed makes Halley wary of feminist commitments. In this example, the moral distinctions have more clarity.

246 Ibid.
248 Ibid at p. 337.
249 Puntland Act, p. 22.
250 Ibid.
CHAPTER FOUR
CHALLENGES OF IMPLEMENTING INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK ON SEXUAL VIOLENCE IN SOMALIA

4.0 Introduction
The political progress and security gains, decades of conflict, widespread violence and insecurity, compounded by drought and massive displacement in Somalia have made women and girls extremely vulnerable to sexual violence. This is attributed to a 2013 conflict-related sexual violence including rape which remained one of the most serious and recurrent human rights violations with 30 to 50 percent of cases involving children as victims including boys.\textsuperscript{251} The repeated displacement of individuals in the Mogadishu area increased their vulnerability to sexual violence by armed groups, militias and in some instances Somali security forces.\textsuperscript{252}

4.1 Impact of sexual violence on the justice system in Somalia
The increasing number of sexual violence cases has increased pressure on Somali justice and health services and highlighted their gaps and deficiencies for example the lack of a strong legislative framework on sexual violence, insufficient capacity within the justice sector to investigate and address such crimes, significant gaps in justice infrastructure like police stations, detention facilities, court houses and penitentiary facilities and limited access to medical and psycho-social services.\textsuperscript{253}

The absence of legal administrative units like adequate legislation, capacity and infrastructure has led to a lack of trust in law enforcement and justice systems which has compounded the reluctance of survivors to bring forward charges against perpetrators of sexual violence. As a result of a strong clan structure, incidents of sexual violence and disputes between clans are largely addressed through the customary system rather than the formal justice system.\textsuperscript{254}

In this regard, the Somali government recognized its limited capacity and the breadth of challenges have made strong commitments to combat sexual violence including the signing of a Joint Communiqué with the UN on 7th May 2013.255

These commitments build on previous ones, including those made during the Universal Periodic Review in September 2011, when the Government accepted, amongst others, the following recommendations; the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the codification and harmonization of national legislation including customary law, in conformity with Somalia’s international obligations; addressing gender-based violence and ensuring access to services by survivors and the provision of protection of journalists and human rights defenders.256

Since the signing of the joint communication the government of Somalia has adopted a Post-Transition Human Rights Road Map for the period of 2013 to 2015 and a Compact (the “New Deal”), both of which strongly build on the necessity to address human rights concerns including those affecting women and children and ensure accountability for human rights violations.257

The National Parliament has established a Sub-Committee on Human Rights and in 2011 Somalia created a Ministry of Women and Human Rights for the first time which has provided for structuring of a good foundation to deliver practical solutions to address sexual violence in conflict.258

The extent of uncertainty about Somalia’s internal displacement especially in the capital city where more than 40 international relief agencies have operated in recent years, speaks volumes about the international community’s ongoing struggles to mount an effective humanitarian response nearly a quarter-century into Somalia’s chronic crisis.259

256 Ibid.
257 Mohamud, 2012, Feminism and the Women’s Movement.
4.2 Challenges of the national legal framework on sexual violence in Somalia

The Sexual Offenses Bill which would be the country’s first comprehensive law on sexual violence still faces enormous impediments to passage and even greater impediments to implementation. But on May 17 (2016), it was endorsed by a group of high-level Somali officials, representatives from donor countries and U.N and African Union diplomats in what advocates described as an important step toward getting the draft law on the books.260

The elders responsible for taking decisions within rural communities are always men and women who 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 camels for a man and 50 for a woman. In rape cases, the elders have sometimes compelled victims to marry the perpetrator. 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.261

Weak state judicial institutions have meant that many survivors of sexual violence depend on traditional mechanisms for justice including customary law, customs but both justice mechanisms are male-dominated and not supportive of survivors’ rights. 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.262

There is no legal framework policy yet that deals with victims of sexual violence and in the country rape is not considered as a big deal and it is only civil society organizations that shout about sexual and gender-based violence (Sexual Violence). 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 Sexual violence but it is up to (Civil

Society Organizations) as well the international community to help these silenced victims and make their voices heard.\textsuperscript{263}

In a country where rape is underreported and rarely prosecuted, lawyers are transforming the way they interview survivors and collect evidence, in the hope of reforming a justice system that often fails those it is supposed to protect. At present, if a woman who has experienced sexual violence wants to obtain justice through the legal system, she faces an extremely complicated and humiliating process, at the end of which a conviction is very unlikely who founded Legal Action Worldwide, a law firm specializing in human rights that is providing technical support for the drafting of the Somali bill.\textsuperscript{264}

In the past, women who came forward to report sexual violence have been accused of prostitution and even raped again in prison, according to testimonies collected by the Elman Peace and Human Rights Center, a Mogadishu-based nonprofit that assists victims of gender-based violence.\textsuperscript{265}

When applied in the state court, Somali law on sexual violence is based on an Italian colonial-era penal code written in the 1930s. Conviction is dependent on the provision of medical and police certificates and survivor testimony is not prioritized. Moreover, Human Rights Watch says there is no agreement over the legal age of consent in Somalia.

Statistics about rape in Somalia vary wildly and the lack of infrastructure combined with the rarity of reporting, means there is no way to get a firm grasp on its scope. The Somalia Protection Cluster, a consortium of NGOs working in the country, recorded 1,599 cases of gender-based violence between September 2016 and February 2017. In 2015, the attorney general’s office recorded 69 rape cases, 55 of which resulted in a conviction, according to Legal Action Worldwide (LAW), a firm specializing in human rights. Back in 2013, the U.N. recorded 800 cases of gender-based violence in the first six months of the year in Mogadishu alone.\textsuperscript{266}

\textsuperscript{264} Boone, ‘\textit{Worse than the Taliban’-new law rolls back rights for women’}, The Guardian, 31\textsuperscript{st} May, (2009).
\textsuperscript{265} United Nations Population Fund (UNFPA), \textit{Puntland intensifies the fight against GBV}’2014.
\textsuperscript{266} Holzer, \textit{Political Islam in Somalia}, Geopolitics of the Middle East, 2007, pp 23-42.
Article 2 that all legislation must be ‘compliant with the general principles and objectives of Sharia law.’ This does not however suggest that legislation must implement all of the legal rules found in the Quran and other Islamic jurisprudence but that it must be generally aligned with its principles and aims.\textsuperscript{267} There have also been some attempts to codify personal and family laws for example in the Family Code (2002) which attempts to marry principles of civil and Islamic law in matters of marriage, divorce and inheritance.\textsuperscript{268}

The civilian judicial system is reported to be largely non-functional across the country.\textsuperscript{269} General crime rates have reportedly increased significantly in 2015.\textsuperscript{270} Al-Shabaab reportedly continues to pose a major threat to peace and security,\textsuperscript{271} fighting against the Somali National Armed Forces (SNAF) and the African Union Mission in Somalia (AMISOM).\textsuperscript{272} In response to continued military operations conducted by SNAF, AMISOM and allies, notably Kenya and Ethiopia, Al-Shabaab has reportedly enhanced its ability to engage in asymmetric warfare with increasing efficiency and lethality which disproportionately affects the civilian population.\textsuperscript{273}

Laws on these issues and other personal status matters have been progressively altered in recent years to provide for an expansion of women’s rights. The biggest challenge with any legislation passed in Somalia right now is that it has very little force outside Mogadishu or possibly even within Mogadishu, the former head of the U.N. Monitoring Group on Somalia and Eritrea. Opposition from emerging state-level administrations meant that a number of pieces of legislation have been passed and they have no meaningful impact on the ground.\textsuperscript{274}

The due long process of checking for evidence leads to case backlog, in practice, if survivors perpetrators prosecuted for sexual violence, they must first report to the police

\textsuperscript{268} Family Code Act 2002.
\textsuperscript{269} Ibid at page 13.
\textsuperscript{270} Lifos, Security Situation in Somalia.
\textsuperscript{272} UNSC, Report of the Secretary-General on Somalia, 8 January 2016, para, 1.
\textsuperscript{273} Human Rights Watch (HRW) (2016), World Report, Somalia.
to obtain a referral form, then to the hospital to obtain a medical certificate and then to the Criminal Investigations Department. The process is long and fragmented and exposes the survivor to significant security risk. Further, courts are inaccessible to a large percentage of Somali women.\textsuperscript{275}

The constitution is not comprehensive in its protection of human rights but does specify that all people are equal and incorporates ratified international treaties into domestic law. However, most of Djibouti’s achievements in the area of gender equality have occurred within a political rather than constitutional framework. Domestic laws and policies for the protection and empowerment of women in 2002, a law was passed establishing a minimum 10% quota for women in elected legislative and executive positions. At that point, there were no females parliamentarians. In 2008, the President signed a Decree further requiring women to hold at least 20% of all high-level public services positions.\textsuperscript{276}

Most of the protection threats confronting displaced Somalis in 2014 are similar to those of ten years ago. IDP sites in most of the country are still controlled by self-appointed gatekeepers who charge fees to households for the right to live in decrepit IDP settlements and receive sporadic relief distributions. In 2004, economic exploitation of IDP families, gender-based violence, trafficking and discrimination against IDPs who are members of weaker clans or minorities remain pervasive in 2014. UNHCR points out that “who you are” is absolutely key to how much protection a displaced family can expect to receive.\textsuperscript{277}

There is limited sex disaggregated data on IDPs but in 2012 the United Nations Development Programs (UNDP) estimated that women and children comprised between 70 and 80% of all IDP and refugee camps in Somalia, the majority of them from minority groups. There are an estimated 100 IDP camps spread within the three research districts with a total estimated population of 20,000 inhabitants.\textsuperscript{278}

\textsuperscript{277} UNHCR, A Protection Strategy on Internal Displacement for UNHCR Somalia-2013-2015.
\textsuperscript{278} Sourced from Social Affairs District Authorities and Population Estimation Sample Survey. However, there are conflicting figures regarding accurate numbers of IDPs and IDP camps in the 16 districts of
In 2011, the Rome-based International Development Law Organization estimated that 80 to 90 percent of criminal disputes in Somalia were handled through the customary system. In the areas that remain under Al Shabaab’s control, women and girls live under the constant threat of sexual and gender-based violence. According to Human Rights Watch, the militant group has abducted women and girls raped them and forced them to marry fighters or work as slaves.\textsuperscript{279}

The conflict in Mogadishu was accompanied by high levels of violence targeted at the IDPs physical, sexual and emotional violence including the denial of economic opportunities. Short-lived deals have taken place between leaders to bring peace, security and stability to the region but none has been able to deliver in the long term. The provision of security and public services briefly existed when the Islamic Courts Union (ICU) took over the city in 2006 before being driven out by the government with intense fighting taking place in 2007–08.\textsuperscript{280}

When applied in the state court, Somali law on sexual violence is based on an Italian colonial-era penal code written in the 1930s. Conviction is dependent on the provision of medical and police certificates and survivor testimony is not prioritized. Moreover, Human Rights Watch says there is no agreement over the legal age of consent in Somalia.\textsuperscript{281}

In Somalia, the prosecution needs to prove that penetration occurred in order to secure a conviction. Getting a medical certificate that attests to this can prove difficult. Until recently, there was only one doctor at one hospital in the capital, who was legally empowered to give out such certificates.\textsuperscript{282} (Human Right Watch researcher Laetitia Bader, who spoke to the country’s attorney general, says courts now accept records from other hospitals.) This doctor issued the girls with a signed certificate that said intercourse

\textsuperscript{279} Ibid.
\textsuperscript{281} UNOCHA, \textit{A study on minorities in Somalia}, August(2002).
had taken place, allowing the girls to take their accused rapists to court. But there would be no conviction.283

According to UNDP about 85 percent of UNDP’s budget goes toward “rule of law” programs, leaving only about 15 percent for recovery initiatives. A crucial humanitarian and development challenge in need of UNDP attention is the issue of land ownership particularly in towns and urban areas where many displaced Somali households apparently prefer to integrate permanently.284

Plans by humanitarian organizations to support local integration, permanent relocation projects and return programs when conditions permit are much more likely to succeed if those efforts are coordinated with UNDP and other development actors. The notion that early recovery objectives can be successfully mainstreamed into existing humanitarian programs without links to UNDP or other development organizations is an illusion.285

Despite a widespread and deep desire to bring the country’s 20-plus years of protracted population displacement to a safe and dignified conclusion and to build the resilience of long-neglected communities, Somalia has no early recovery cluster, no early recovery working group and no apparent realization that the concept is operationally possible within the cluster structure. At the highest levels of the UN humanitarian system in Somalia, senior officials were unaware that UNDP in 2014 remains the officially designated lead agency for the global Working Group on Early Recovery.286

UN relief officials describe the country’s basic humanitarian indicators as “shocking” not only for displaced persons but for all Somalis. The country has among the world’s highest rates of child mortality and maternal mortality. Seventy percent of the population lack access to safe drinking water. More than three-quarters of Somalis live without adequate sanitation facilities.287 Health care including basic vaccinations is extremely limited or nonexistent.288

285 Ibid.
286 Key Informant interview, Nairobi, September 2014.
288 UN-OCHA(2014), Somalia Humanitarian Key Messages: Authorized by the Humanitarian Coordinator.
4.3 Challenges of international legal framework on sexual violence

In Somalia, virtually no specific protections for LGBTI persons from Sexual violence exist.\textsuperscript{289} This situation persists, despite such persons being listed as a special “at-risk” group in the IASC global guidelines which govern the Sexual violence programming in Somalia. Further, the guidelines outline specific problems that the LGBTI communities face such as “convincing security forces that sexual violence against them was non-consensual; in addition, some male victims may face the risk of being counter-prosecuted under sodomy laws if they report sexual violence perpetrated against them by a man.”\textsuperscript{290}

The guidelines also emphasize the necessity for trainings for a “variety of stakeholders, including humanitarian actors, government actors and community members” for the implementation of “effective Sexual Violence-related programming, but also for engaging with and influencing cultural norms that contribute to the perpetuation of Sexual Violence.”\textsuperscript{291}

The CEDAW alone is not an ideal reference for Sexual Violence, much to the disappointment of feminists and women in general as it is a product of its time and does not address Sexual violence explicitly. GR 19 is the most comprehensive general recommendation adopted to correct this exclusion, but the definition for Sexual violence given is troublesome given its limitations and contradictions to the feminist pursuit of gender equality. Sexual violence in GR 19 is defined as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” Following the CEDAW, GR 19 continues to formalize a perception of equality that uses the male as the ultimate comparator for equality achievement.\textsuperscript{292}

A feminist definition would define equality between men and women, giving independence to trajectories for status achievement based on equal opportunities. Additionally, the definition does not describe Sexual violence as a violation of women’s human rights, but only as an inhibitor to the enjoyment of rights and freedoms at worst. This limitation is problematic in terms of legal enforcement as well as in its

\textsuperscript{289} Thiam, pp. 35.
\textsuperscript{290} Under Article 409 of the Somali Penal Code it is illegal to have same-sex intercourse.
\textsuperscript{291} IASC Guidelines, pp. 48.
\textsuperscript{292} UNHCR. Action Against Sexual and Gender-based Violence. pp. 6.
formalization of the limited understanding by the international community of the severity of the indelible personal impact and consequences of Sexual Violence.\textsuperscript{293}

The Maputo Protocol only defines VAW but the inclusion of its elements given in the subsequent rights is thorough to the point of extending obligations regarding VAW to both the public and private spheres as well as in war and peacetime. The challenge in finding a definition encompassing all necessary and fundamental components needed for a working definition of Sexual violence is illustrative of the process of feminist engagement on the international level.\textsuperscript{294} Feminist activism in international governance is bound to existing social and political attitudes and the advancement of women given through these instruments is the inch that is the result of much negotiation and compromise.\textsuperscript{295} This inch, however, has been extended to miles in the process of developing a definition of Sexual violence outside legal codification.\textsuperscript{296}

It is ultimately the decision of the Somalian government; the international donor community does exert a level of influence in these processes but the donor community a group that should advocate for unconditional compliance to the Convention will lose in its inability to exercise its power to ensure protections for women in the private sphere via international legislation. The patriarchal institutions will make a compromise for and on behalf of the Somali women who will be most impacted by the Convention as Somali women are not equally represented throughout these negotiations processes. Placing a reservation on Article 16 showcases the domineering grip of religion and State that seeks to deter “probing into what States deem to be their area of domestic jurisdiction.”\textsuperscript{297}

The compromise made risks the future work of gender norms and perception changes on the grassroots level, potentially derailing the progress Sexual violence programming. However, the ratification of the CEDAW, with the intent to meaningfully follow the obligations ascribed to it, could provide protection for rights attuned to the specificities

\textsuperscript{293} DEVAW, Article 1.
\textsuperscript{294} Hailey, et al., pp. 341.
\textsuperscript{295} Johns Hopkins. \textit{Gender-based Violence Survey, South Central}, pp. 17 and Puntland, pp. 16 (South Central and Puntland) (Studies on file with author).
\textsuperscript{296} OHCHR, \textit{Sexual and gender-based violence} in the context of transitional justice.
\textsuperscript{297} Barlas, pp. 187.
of the experience of subordination of women and that are designed to liberate women from that subordination.298

The case of LGBTI exclusion in Somalia reveals major limitations to the feminist norms in IHRL critiqued by many “other” feminist voices. That is, its focus on the hetero normative experiences of Sexual violence and subordination of women on the basis of sex only. When sex is de-fined as a male/females biological binary, sexual subordination does not include discrimination for those who are gender queer.299

Instead, it accounts only for discrimination based on the sub-ordination and power imbalances created based on women who identify with their biological sex (cisgender). For gender queer women defying socially constructed gender roles, discrimination in the CEDAW, GR 19 and the Maputo Protocol does not technically apply. Thus, the gender equality being pursued in Somalia is not in reality gender equality but sexual equality.300

Grossly inadequate access to victim services and to channels for redress is a theme across both conflict and post-conflict countries covered in the secretary-general’s report. National legal frameworks and social norms can exacerbate these problems for example, in Afghanistan where victims of sexual violence can be prosecuted for “moral crimes” and are at risk of murder through so-called honor killings. “Governments have made concrete commitments to survivors of sexual violence in conflict but they are overdue on fulfilling them,” Varia said. “Governments should improve access to the full range of reproductive health and psychosocial services, as well as redress and reparations in the courts.”301

The Convention against Torture and Other Cruel, Inhuman is weak in monitoring progress is lack of data and continued instability in the country caused by sporadic violence by Al Shabaab. Though the Al Shabaab group was driven out of the Somali capital of Mogadishu, it still controls much of the southern region and contributes to tremendous regional instability.302

299 Kugle and Hunt, pp. 273.
300 Ibid.
Generation and use of sex-disaggregated quality data and ensuring continued funding for that is yet to reach the top of the priority while the government is seeking to other key issues related to stability and humanitarian needs such as security, education and health; lack of access to financial services is a challenge for women and the poor in general to access credit; lack of ownership of land and other assets results in little trust being placed in the capacity of women and this, acts as an impediment to accessing loans.  

A consistent challenge is under-reporting of sexual violence in conflicts, including because of stigma, the risk of retaliation, lack of access for monitors, inadequate means for safe reporting, and weak government response, Human Rights Watch said. The secretary-general’s report cites 117 incidents of sexual violence in Sudan affecting 206 victims in 2014. However, Human Rights Watch research indicates the numbers are far higher and that the UN is not recording or officially acknowledging many cases. These include the Sudanese army attacks in Tabit, in which at least 221 women and girls were raped as documented in a recent Human Rights Watch report. The Sudanese government has blocked a credible investigation and victims’ access to services, yet the Security Council has taken no action in response.

Weaknesses of AMISOM remain with regard to respect for the rights of women, children, persons with disabilities and minorities. For historical reasons and in spite of its imperfections, the traditional justice system, custom, continues to play a significant role in Somalia. Traditional elders have also played a crucial role in ensuring the cohesion of Somali society but have also been accused of perpetuating the violation of women’s rights.

The reform of Xeer (customary law) is timely and necessary, to harmonize it with international human rights standards. This will call for a concerted effort of awareness-raising across the country, resource mobilization and support. The institutional and legal

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303 The Accessibility of Microfinance for Small Businesses in Mogadishu, Somalia by Dr. Abdel Hafiez Ali, Sudan University of Science and Technology Vol. 3, number 11, June 2013.
reforms made to date could come undone if commensurate resources are not invested to consolidate them.\footnote{\textsuperscript{306}}

Humanitarian issues continue to attract the attention of the Federal Government of Somalia and the international community, particularly at this time of political transition in Somalia. The Federal Government is attempting to organize elections, fight the insurgency and manage State-building, besides having to address a potential massive return of refugees. In the midst of these challenges, it must not sacrifice human rights. With the support of the international community which should continue to safeguard the rights of women, combat violence against women and children and respect international human rights and humanitarian law as it fights Al-Shabaab. It should safeguard media freedoms and the right to freedom of expression and opinion.\footnote{\textsuperscript{307}}

Somalia faces serious human rights challenges after more than two decades of conflict. One of the main issues is the lack of a national human rights mechanism capable of responding to the various human rights challenges facing the country. To address this, HRPG provides advice and technical support to the FGS to meet its obligations to respect, protect and fulfill the rights and freedoms of the Somali people as enshrined in the Provisional Constitution of 2012 and other international laws to which Somalia is a party.\footnote{\textsuperscript{308}}

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

\footnote{\textsuperscript{306} UN Somalia, ‘Violence in the Lives of Women and Girls (draft copy), UNDP, UNPOS and UN Women, 2012.}
\footnote{\textsuperscript{308} Yun Seira (2014), “Breaking Imaginary Barriers, Obligations of Armed Non-State Actors under General Human Rights Law.”}
among Somalis for a weak government which remains highly dependent on foreign military and financial backing.\textsuperscript{309}

The United Nations response had been undermined by unacceptable incidents of sexual abuse and exploitation by peacekeepers, she noted insisting; “The Secretary-General and all of us are determined to tackle this challenge head-on.” Sexual violence was uniquely heart-wrenching in that perpetrators often escaped justice, while victims were often forced to live with the shame of having been raped, rejected by their families and communities. Depression, flashbacks and fear were just some of the long-term impacts, she said, adding that pregnancy and sexually transmitted diseases were common. Recalling the release of 82 schoolgirls held captive for the past three years after Boko Haram kidnapped 270 of them in Chibok, Nigeria, in April 2014, she said thousands remained missing around the world.\textsuperscript{310}

4.4 Conclusion

The National Legal Framework in regard to sexual violence in Somalia has been strong in different ways though proved with some weaknesses which are political, social, economic and strategic in nature. Legally, although the constitution applies immediately, it was originally planned that it be put to a national referendum in order to take effect. The referendum however was cancelled because of the impossibility of holding it in areas controlled by Al Shabaab. The constitution appears to exist in a parallel universe, a fantasy land when compared with the reality on the ground in Somalia with universal access to education and the end of females genital mutilation unlikely to happen anytime soon. Despite mounting rhetoric in the past year about a system-wide commitment to pursue a humanitarian strategy that accentuates durable solutions, the relief-to-development gap is as glaring in Somalia as it is in most other countries.\textsuperscript{311}

\textsuperscript{309} Ibid.


CHAPTER FIVE  
SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction
There are enormous challenges faced by the Somali government to implement its obligations to prevent and prosecute sexual violence. It is well known that the numbers of sexual violence incidents are significantly higher in conflict and post-conflict contexts, where the risks are compounded by displacement, breakdowns in social norms and lack of access to services.\(^{312}\) The United Nations has reported an increase in civilian casualties including by government forces, in the last quarter of 2016. The government has said it intends to step-up operations against Al Shabaab. Conducting military operations when many civilians are on the move, fleeing a devastating drought, poses additional risks to civilian security. After twenty years of statelessness, the Somali government faces significant difficulties in producing functioning justice and security institutions including a well-organized police force, prisons and court system.\(^{313}\)

5.1 Summary of Findings
Discussion of results was based on the three research objective which the research based on investigating the issue of sexual violence in Somalia.

5.1.1 National Framework on Sexual violence in Somalia
Results for this objective depicted that Sexual violence is a serious public health problem and has a profound short or long-term impact on physical and mental health such as an increased risk of sexual and reproductive health problems an increased risk of suicide to an extent that it is considered as a neglected area of research, thus deeper understanding of the issue is imperative in order to promote a coordinated movement against the practice. Hence the national framework involves the recent constitution of the post-transitional Federal Republic of Somalia. Constitution which provides that ‘human rights abuses alleged to have been committed by members of the armed forces against civilians shall be brought before a civilian court to face judgment. Hence the Somali Penal Code, applied throughout Somalia includes punishments for rape, assault, incest and ‘hurt’ on

\(^{312}\) Van Eeden v Minister of Safety and Security (Women’s Legal Centre Trust as Amicus Curiae) 2003 (1) SA 389(SCA).
\(^{313}\) C.K. et al v The Commissioner of Police et al, Petition no. 8 of 2012.
addition to Customary Law known as Xeer which involves imparting morals basing on clanship and it is the only law considered righteous by the Somali people.

In Somalia, each clan has its own localized system of Xeer. It is a polycentric system, which some claim as “the only law considered righteous by the Somali people.” The formal system can in theory hold perpetrators of violence to account yet in practice sexual violence cases are rare due the preference of women for more accessible and culturally relevant customary law and of the three forms of legal resolution in Somalia, ‘formal’ justice is accessed the least by women implying that sexual violence in Somalia is a crime which needs to be only stopped or reduced if the law is strengthened.

5.1.2 International framework on sexual violence in Somalia

There are many international legal instruments that have been reinforced to reduce sexual violence in Somalia. These include legal instruments like Maputo Protocol which was ratified in 2006. This law specifically puts focus on enforcement of women’s rights in families and the public hence if Somalis embark on this law more results will be put on improvement of sexual violence in the country. Further, there is also practice on the provisional Constitution basically considering Articles 10, 11 and 15 which re-enforce protection of the rights to dignity, liberty and security including a specific prohibition of violence against women, access to the courts redress for human rights violations.

International human rights law which 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. Further is the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) which is an international treaty adopted in 1979 by the United Nations General Assembly though not yet ratified by the Somali government but through its principles, the Maputo protocol is relevant in fighting sexual violence in the country. These are also embarked by UN Human Rights Committee on Sexual Violence, the Office of the High Commissioner for Human Rights International human rights law which obligates Somalia’s fragile government to respect the rights to bodily integrity, liberty and security of the person and to be free from discrimination

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314 Wauters, pp. 28.
which includes taking appropriate measures to eliminate sexual and gender-based violence. The famously known international instrument is the African Union Mission in Somalia which is a combination of many African countries targeting abolishment of all forms of torture in Somalia.

5.1.3 Challenges to National and International Legal Framework on Sexual violence in Somalia
Despite the existence of the national and international legal frameworks on sexual violence in Somalia, challenges still exist in legal procedures and these range from the political, social economic and strategic setups. To mention; absence of legal administrative units like the adequate legislation, capacity and infrastructure has led to a lack of trust in law enforcement and justice systems which has compounded the reluctance of survivors to bring forward charges against perpetrators of sexual violence. The elders responsible for taking decisions within rural communities are always men and women who 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 camels for a man and 50 for a woman. Weak state judicial institutions have meant that many survivors of sexual violence depend on traditional mechanisms for justice including customary law, customs but both justice mechanisms are male-dominated and not supportive of survivors’ rights. Hence in regard to the findings, Somalia still lacks equality between women and men to an extent that in public places women are not supposed to connect with men and this is greatly attributed to the strong cultural beliefs.

5.2 Conclusion
Years of conflict in Somalia have affected every aspect of human rights and destroyed governance structures. A major constraint and challenge facing the Federal Government of Somalia is the endemic lack of financial resources, technical capacity and expertise and infrastructure which to a large extent contributes to its inability to fulfill its obligations in addressing the human rights challenges with which it is faced. Notwithstanding the fact that Somalia has the primary responsibility to protect the human rights of its people, Somalia needs as much support as possible to build strong institutions and structures that will make it not only a functional democratic State but one that ensures that the human rights of its people are protected.
In the present report, the Independent Expert has identified the progress made in the political, security and national and State-building processes in Somalia as the State prepares for the elections to be held later in 2016 and the challenges that the Federal Government faces during that time. The newly established National Leadership Forum is addressing all concerns to create the conditions for better governance in the future. The establishment of the Forum, albeit a supra-constitutional institution has facilitated consultations between the Federal and State authorities on urgent issues that could have otherwise undermined the elections.

The mobilization of resources and their allocation to Federal and State institutions and to civil society remains a major problem that could affect institutional capacity-building at all levels as the State struggles to consolidate peace, economic development and security. The newly adopted national development plan addresses some of these issues. The Independent Expert reiterates his view that the international community should not withhold its support for Somalia at this critical time.

The Independent Expert repeatedly identified security and economic development as a key factor in sustaining the democratic building process and the protection of human rights in Somalia. Somalia is emerging from a conflict situation that has long oppressed the enjoyment of human rights at all levels. Challenges remain with regard to respect for the rights of women, children, persons with disabilities and minorities.

For historical reasons and inspite of its imperfections, the traditional justice system, customs, continues to play a significant role in Somalia. Traditional elders have also played a crucial role in ensuring the cohesion of Somali society but have also been accused of perpetuating the violation of women’s rights. The reform of Xeer is timely and necessary, to harmonize it with international human rights standards. This will call for a concerted effort of awareness-raising across the country, resource mobilization and support. The institutional and legal reforms made to date could come undone if commensurate resources are not invested to consolidate them.

Humanitarian issues continue to attract the attention of the Federal Government of Somalia and the international community particularly at this time of political transition in Somalia. The Federal Government is attempting to organize elections, fight the
insurgency and manage State-building, besides having to address a potential massive return of refugees. In the midst of these challenges, it must not sacrifice human rights. With the support of the international community, it should continue to safeguard the rights of women, combat violence against women and children and respect international human rights and humanitarian law as it fights Al-Shabaab. It should safeguard media freedoms and the right to freedom of expression and opinion.

5.3 Recommendations

5.3.1 Recommendations to Somalia authorities

5.3.1.1 Physical prevention
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 females 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.

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

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

5.3.2 Recommendations to the government

5.3.2.1 Legal and policy reform
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.

5.3.2.2 Promotion of women’s equality
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.

5.3.2.3 Focus on human rights
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.
5.3.2.4 Focus should be put on establishment of vetting procedures

The Government should also establish clear vetting procedures when recruiting senior officials into the federal and state civilian and military structures in order to identify and remove individuals responsible for serious abuses. They are also obliged to establish disciplinary and oversight mechanisms including a public complaints unit where members of the public can file grievances against military personnel and internal oversight bodies to investigate misconduct. The government should ensure effective and impartial investigations into alleged war crimes and other abuses and refer those found responsible, regardless of rank for appropriate criminal prosecution.

5.3.2.5 Defining powers of different authorities

In reviewing the provisional Constitution, the Independent Constitutional Review and Implementation Commission should clearly define the powers and authority of the Prime Minister vis-à-vis those of the President so as to avoid the political clashes that have arisen in the past owing to the contradiction in the provisional Constitution relating to their powers. The establishment of a fully operational constitutional court to adjudicate disputes arising out of the application and interpretation of the Constitution is vital.

The Ministry of Women and Human Rights Development should continue its efforts to ensure the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. Ensure that the Action Plan for the implementation of the Human Rights Road Map is implemented and that adequate resources are allocated to implement the plan.

There is need to ensure that the participation and representation without discrimination, at all levels of government of women including those from minority groups in South-central Somalia, Puntland are facilitated including in the political and State-formation processes in Somalia. There is need to ensure that the legislation establishing the national human rights commission of Somalia complies with the Paris Principles and that it is enacted without undue delay. Adequate financial and human resources must be provided to the Office of the Human Rights Defender of Puntland National Human Rights Commission to enable them to discharge their respective mandates.
Government should adopt legislation addressing sexual and gender-based violence in south-central Somalia, Puntland in particular the sexual offences bill and legislation criminalizing females genital mutilation/cutting. The Federal Government should fast track the development of action plans to implement the national action plan on sexual violence in conflict which was adopted in May 2014. The Federal Government should implement the commitments made under the joint communiqué it signed on 7 May 2013 with the United Nations on the prevention of sexual violence.

The Government should also ensure that minority groups in Somalia especially women and children are accorded equal protection and facilitate the participation and representation without discrimination of minority groups including minority women, at all levels of government including in the political and State-formation processes in Somalia. Furthermore, policies, laws and programmes to protect their heritage and traditions should be adopted while ensuring that their social, economic and cultural rights are fully guaranteed.

The government with international support should publicly commit to ensuring that the implementation of police reform plans, notably the New Policing Model and Heegan plan includes concrete measures to significantly strengthen police capacity to prevent and respond to sexual and gender-based violence.

The government should promptly adopt measures to end discrimination against women. Somali women’s participation in politics and decision-making spheres remains limited, perpetuating narrow gender roles and inequalities. Political processes are controlled by male-dominated systems, notably through the predominance of clan elders.

5.3.3 Recommendations to Strengthening the legal framework on sexual violence

5.3.3.1 Reforming the Penal Code on the crime of rape

In line with strengthening the rule of law, focus must be put on reforming the Penal Code on the crime of rape, support the Office of the Attorney General to develop specialized investigation capacity for sexual violence crimes, train magistrates including women magistrates and other women in the justice sector), build capacity for justice mechanisms at local level, raise awareness for women on legal procedures and address protection of women in traditional justice systems.
Focus should be put on quick service delivery; ensuring access to services including medical, psychosocial and legal aid to survivors of sexual violence including in newly accessible areas. The Government of Somalia designates the National Human Rights Commission as the focal point institution to work with the United Nations on Sexual violence and the implementation of the commitments outlined above.

5.3.3.2 To the Justice Commission of Somalia

Core to reforming Somalia’s criminal justice system will be ensuring that those most at risk of abuse and least protected by existing systems have access to redress. Any justice sector reform needs to effectively address and respond to sexual violence and take into consideration the barriers that women and girls face in accessing justice including stigma and victimization.

High levels of sexual and gender-based violence persist in Somalia, corroding women’s rights and creating long-term threats to security and to women’s health. Human Rights Watch and other international and Somali organizations have documented that women in internal displacement camps are particularly vulnerable to sexual violence by armed men including government soldiers and militia members and civilians.

5.3.3.3 To the Parliament

Ensure that revisions ensure that all forms of sexual violence be appropriately prosecuted and that the punishment reflects the seriousness of the crime.

Enact the draft sexual offenses act ensuring that the version passed meets international standards and also improve the means to adequately respond to survivors of sexual violence including by providing specialized training to health professionals to provide care and treatment to survivors and better provide for treatment including medical, psychological and rehabilitation programs and legal support.

5.3.4 Recommendations to the international community

The international community is recommended to continue to provide adequate technical and financial support to the peace and State-building process in Somalia. Support for the Action Plan for the implementation of the Human Rights Road Map should be considered in the context of the New Deal for Somalia financing arrangements.
Continue providing support including training and equipment of the Somali national army and police to strengthen their capacity to protect the Somali women who are being harassed due to instability.

The Governments of Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America and should consider reviewing the restrictions placed on remittances to Somalia in order to allow families to contribute to the sustainable livelihood of their relatives in Somalia due to the fact that women are sometimes harassed due to lack of financial support and other social issues like family ties.

Advocate and support a comprehensive strategy against Al-Shabaab that is anchored in human rights including through ensuring protection of civilians and accountability for human rights violations, ensuring that counter-terrorism measures comply with human rights standards and ensuring humanitarian access and the rapid delivery of basic services, security and law enforcement in newly liberated areas.

5.3.5 To the Human Rights commission in Somalia

Human Rights Watch and the UN have documented numerous abuses by African Union forces in Somalia (AMISOM) and other foreign forces including unlawful killings of civilians and sexual exploitation and abuse for example, in July 2016 AMISOM’s Ethiopian contingent killed 14 civilians in the Bay region. AMISOM committed to investigating the incident and conducted a board of inquiry.

Human Rights Watch in 2014 reported on cases of sexual exploitation and abuse of Somali women and girls in Mogadishu by AMISOM troops from Uganda and Burundi. In 2016, the UN reported allegations of 14 AMISOM soldiers in the Galgudud region gang-raping two girls.

Each country contributing troops to AMISOM has exclusive jurisdiction over their own forces in Somalia. However, these countries have not committed the time, resources and political will needed for credible investigations. In addition, troop-contributing countries have failed to share information about allegations and investigations with AMISOM leadership, other stakeholders and the victims themselves.
Call on troop-contributing countries to impartially and transparently investigate credible allegations of abuses by their forces in Somalia including by deploying sufficient prosecutors, investigators to Somalia and holding in-country court martial.

5.3.6 Recommendations to the security forces in Somalia

Throughout Somalia’s armed conflict, Human Rights Watch has documented serious abuses by Somali security forces including the army, police, intelligence agencies and government-affiliated militia. These include indiscriminate attacks, murder, rape, torture, arbitrary arrest and detention and looting. Impunity for abuses has been widespread. Providing accountability including by establishing vetting and oversight mechanisms to remove abusive commanders and new and current personnel as well as by strengthening national and international avenues for redress should be central to Somalia’s security sector reform plans now being discussed.

5.3.6.1 Army

It should promptly issue clear and public orders that the Somali National Army (SNA) forces, regional forces and allied militias will comply with international humanitarian and human rights law especially in regard to violation of women’s rights through protecting them against sexual harassment.

Ensure that new and current military personnel receive appropriate training in human rights and humanitarian law, including strict prohibitions on rape and other sexual violence.

Suspend SNA personnel and allied forces implicated in abuse of civilians until the allegations are properly investigated and appropriate disciplinary sanction or criminal prosecutions are carried out.

Human Rights Watch has documented indiscriminate attacks, unlawful killings of civilians and other abuses by Somali government forces and allied militia in military operations against the Islamist armed group Al Shabaab. Government forces and allied militia have also targeted civilians in the context of politicized clan fighting for example, Human Rights Watch documented civilian casualties in 2016 from indiscriminate attacks between the Puntland forces and Galmudug Interim Regional forces.
5.3.6.2 Intelligence and Police

Human Rights Watch is concerned about the broad mandate granted to Somalia’s National Intelligence and Security Agency (NISA) particularly regarding terrorism-related offenses and lack of accountability for abusive conduct by its agents.

They should enact laws prohibiting torture and other ill-treatment and enforced disappearances in line with international standards and ensure that relevant new legislation including the draft Counter-Terrorism bill include provisions prohibiting torture.

As part of the reform of the intelligence services and the police, the government, notably the Ministry of Internal Security should ensure that members of the intelligence services and the police responsible for sexual abuses are appropriately prosecuted in civilian courts.

They should also stick to increasing efforts to support specialized training of police and other security personnel to assist investigations of sexual violence, strengthen procedures to protect the confidentiality of people reporting sexual assault.

It should also ensure that police officers at all levels receive appropriate training on human rights as well as international best practices on investigating sexual violence.

Increase awareness among clan and religious leaders of the importance of reporting allegations of sexual and gender-based violence to the police.

Continue to assist prosecutors in investigating and prosecuting sexual violence cases properly and fairly and Offer training to judges and defense counsel in handling sexual violence cases.

In revising the penal code and other laws, the government should revise legislation dealing with sexual violence.
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