

**UNIVERSAL PERIODIC REVIEW OF SOMALIA**

**UPR WORKING GROUP**

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## Introduction

1. All Survivors Project (ASP) is an independent, impartial, international non-governmental organisation that seeks to support global efforts to eradicate conflict-related sexual violence (CRSV), strengthen the national and international responses thereto, and ensure that the rights and dignity of all victims and survivors are respected and protected. Through its research and advocacy, ASP aims to complement and reinforce existing work on CRSV against women and girls, by focusing on men, boys and people with diverse sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC)<sup>1</sup>- victims and survivors who are not always easily identified or supported within existing responses to CRSV.
2. ASP makes this submission to the United Nations (UN) Working Group on the Universal Periodic Review (UPR) in advance of its consideration of Somalia at its 38th session (April – May 2021). This submission focuses on CRSV against men, boys and persons with diverse SOGIESC in South and Central Somalia, the responses of the justice sector as well as health and other service providers to them and concludes with recommendations to the Federal Government of Somalia (FGS). It is based on publicly available information and interviews with a limited number of key informants. There remains a dearth of reliable information on the issue, and ASP calls for addressing this knowledge gap to ensure an effective response by national and international actors to CRSV against male (and LGBTI+) survivors.

## Overview of CRSV against men, boys and LGBTI+ persons in Somalia

3. In this submission, ASP relies on the definition of CRSV developed by the UN in its Analytical and Conceptual Framing of Conflict-Related Sexual Violence.<sup>2</sup>
4. In its Resolution 2467 (2019), the UN Security Council highlighted that men and boys were also targeted by sexual (and gender-based) violence in armed conflict and post-conflict settings, as well as in the context of detention and other contexts associated with armed conflict, and urged Member States to protect male victims and survivors *‘through the strengthening of policies that offer appropriate responses to [such] survivors’* and to *‘challenge cultural assumptions about male invulnerability to such violence’*.<sup>3</sup>
5. In Somalia, CRSV continued to be perpetrated between 2016-2020, during both inter-clan conflicts and military offensives. Whilst women and girls, particularly those who are internally displaced, remain disproportionately affected by sexual violence, cases against men and boys were reported during this period. All parties to the conflict were responsible for CRSV, including the Somali National Army and Police Force, Al-Shabaab, Jubbaland forces, and clan militias, amongst others. In areas under Al-Shabaab control, sexual violence is reportedly used as a

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<sup>1</sup> ASP uses the phrase ‘people with diverse SOGIESC’ to refer to all individuals who have diverse sexual orientation, gender identity, gender expression and/or sex characteristics, including individuals who are lesbian, gay, bisexual, transgender and intersex (LGBTI+). ASP also uses the acronym LGBTI+ in instances where it is most relevant.

<sup>2</sup> UN Action Against Sexual Violence in Conflict, Analytical and Conceptual Framing of Conflict-related Sexual Violence, June 2011, <http://www.stoprapenow.org/uploads/advocacyresources/1321456915.pdf>.

<sup>3</sup> UN Security Council, Resolution 2467 (2019), 23 April 2019, para. 32.

strategy of social dominance and punishment.<sup>4</sup>

6. The full scale of sexual violence during the reporting period remains unknown however the United Nations Assistance Mission to Somalia (UNSOM) was able to verify cases against 220 girls and 19 women in 2019; against 250 girls, 20 women and one boy in 2018; and against 32 women and girls and three boys in 2017.<sup>5</sup> In 2017, documented cases included a 15-year old boy who was publicly raped and executed by Al-Shabaab for homosexual conduct, in Lower Juba region, and an 11-year old boy in the Hiraan region, who was raped by three soldiers of the Somali National Army.<sup>6</sup> The actual numbers are likely to be higher, as sexual violence remains severely under-reported in Somalia, due to a range factors, including stigma, fear of reprisals, prevailing insecurity, lack of accountability and the absence of adequate support services for victims and survivors.
7. Additionally, an alarmingly high number of grave violations against children in Somalia were verified by the UN between 2016 and 2019, including 958 cases of sexual violence, four of which were against boys (as highlighted above).<sup>7</sup> Other reported grave violations against boys included approximately 6,000 cases of recruitment and use by state security forces and armed opposition groups; 893 cases of state detention for perceived affiliation with Al-Shabaab or pro-ISIL elements, often in excess of the of 72 hours stipulated by the standard operating procedures on the reception and handover of children separated from armed groups, endorsed by Somalia in 2014; and over 4000 cases of abduction, the overwhelming majority of which were attributed to Al-Shabaab.<sup>8</sup> ASP notes in that regard that children who are victims of these violations are frequently at heightened risk of sexual violence. For example, sexual violence against boys detained on national security grounds, including sexualised torture and attempted rape, was documented by Human Rights Watch in 2016 and 2017.<sup>9</sup> Accordingly, the number of boys victimised by sexual violence is likely to be significantly higher than the four cases documented by the UN.
8. Somali refugees living in Kenya, including cisgender, gay and transgender men have also disclosed accounts of sexual violence, both pre-flight and in flight.<sup>10</sup> Service providers assisting Somali refugees have reported that men and boys have been victimised but that few seek to access support services, owing to conservative norms within the community.<sup>11</sup> This was echoed by one refugee, who said that *“it is very shameful to talk about it. There are so many stories, but we can’t talk about it in front of people”*<sup>12</sup> Reported accounts include cases of sexual violence during clashes between rival clans, with members of minority clans being particularly vulnerable. The strategic importance of targeting males in the context of inter-clan violence was explained as follows: *“The man is the leader of the community. They rape the man to attack him-it’s the other*

<sup>4</sup> See, *inter alia*, UN Office of the High Commissioner for Human Rights (OHCHR), Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia, December 2017,

<https://www.refworld.org/docid/5a2f3e234.html>, and the following reports by the UN Secretary General on conflict-related sexual violence: UN Docs: S/2020/487 (2020) at para. 43; S/2019/280 (2019), paras. 72-75; S/2018/250 (23 March 2018); see also Report of the UN Secretary-General on Somalia, UN Doc. S/2020/798 (2020), para. 58.

<sup>5</sup> *Ibid.*

<sup>6</sup> OHCHR, Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia, December 2017.

<sup>7</sup> UN Security Council, Children and armed conflict in Somalia, Report of the Secretary General, UN Doc. S/2020/174 (2020), para. 43.

<sup>8</sup> *Ibid.*, paras. 19, 31 and 52.

<sup>9</sup> Human Rights Watch, *‘It’s Like We Are Always in Prison’: Abuses against Boys Accused of National Security Offenses in Somalia*, February 2018, pp. 19, 33.

<sup>10</sup> Women's Refugee Commission (WRC), *“We Have a Broken Heart:” Sexual Violence against Refugees in Nairobi and Mombasa, Kenya*, October 2019, <https://www.womensrefugeecommission.org/research-resources/we-have-a-broken-heart-sexual-violence-against-refugees-in-nairobi-and-mombasa-kenya/>

<sup>11</sup> *Ibid.*, p. 15.

<sup>12</sup> *Ibid.*, p.16.

*tribes who do this.*<sup>13</sup> Other refugees reported being forced to witness acts of sexual violence perpetrated against women and girls by armed groups, often in the context of home raids and village attacks.<sup>14</sup>

9. In-flight sexual violence, including at borders and checkpoints, has also been documented. Men and boys fleeing Somalia are often required to pay official and unofficial armed border guards and armed groups during their journey and are at risk of physical and sexual violence if they are unable to do so. One refugee explained that *“it’s always happening when they want money. If you don’t have any money, they might treat you like a woman [rape you].”*<sup>15</sup>

### Domestic legal framework and access to justice

10. The 2012 Somali Provisional Constitution (2012) sets out the ‘general principles of human rights’ afforded to all citizens of Somalia (Titles 1 and 2). These include the protection of human dignity (Article 10); equality (Article 11); and the right of access to a court and to redress for human rights violations (Articles 34 and 39). Somalia is also a party to a number of core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Rights of the Child (CRC); the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT); as well as the African Charter on Human and Peoples’ Rights (ACHPR).
11. Justice still eludes the vast majority of victims and survivors of sexual violence in Somalia.<sup>16</sup> Crimes of sexual violence are addressed through three separate legal frameworks, the 1962 Penal Code and 1963 Criminal Procedure Code, customary law (*Xeer*), and Sharia law,<sup>17</sup> which influences both the formal and customary system but is rarely applied directly by courts.<sup>18</sup> It has been observed that *‘the contradictions and lack of harmonization between the three systems make it difficult not only to have a common understanding of sexual [and gender-based] violence (...) but also to address [it] properly’*.<sup>19</sup> This section will focus on the customary and statutory frameworks and their application to male survivors.
12. Weak state institutions mean that in practice, the customary system, which is administered by clan elders, is the preferred adjudication mechanism for both civil and criminal matters, including sexual violence.<sup>20</sup> The primacy of customary law is also maintained by state institutions-interference by clan elders in formal legal proceedings is accepted and the police, prosecutors and judiciary in practice refers cases back to the customary system.<sup>21</sup> Under customary law, sexual violence is not conceptualised as a violation of individual bodily integrity but rather as an issue of morality and honour and a crime perpetrated first and foremost against the family, clan or wider community.<sup>22</sup> As far as ASP is aware, the experiences of male victims and survivors in the customary system have hitherto not been documented and it is unclear whether, and how, the

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<sup>13</sup> *Ibid*, p. 15.

<sup>14</sup> *Ibid*, pp. 36-37.

<sup>15</sup> *Ibid*, p. 15.

<sup>16</sup> See, *inter alia*, UN Docs: S/2020/487 (2020) para. 45-46, and S/2019/280 (2019) para 76.

<sup>17</sup> Article 4 of the 2012 Constitution gives Islamic Sharia a higher place in the legal hierarchy than the constitution itself.

<sup>18</sup> International Alert, *The complexity of sexual and gender-based violence- Insights from Mogadishu and South Central Somalia*, p. 22.

<sup>19</sup> International Alert, *supra* fn.19, p. 7.

<sup>20</sup> UN Doc. S/2018/250 (2018), para. 61, and International Alert, *supra* fn.19, p.22.

<sup>21</sup> International Alert, *supra* fn.19, p.22.

<sup>22</sup> *Ibid*, p. 20

system addresses sexual violence against men and boys. In relation to women and girls, customary justice is not survivor-centred and ill-equipped to address sexual violence crimes, particularly where the victim/survivor belongs to a minority clan. Such cases often result in double victimisation as victims and survivors are excluded from the process and may be forced to marry the perpetrator whilst a nominal fine may be imposed, payable to their male relatives, with no further sanction envisaged.<sup>23</sup>

13. With regards to statutory law, Part IX Penal Code ('Crimes Against Morals and Decency') recognises limited forms of sexual violence. Rape- defined as '*carnal intercourse with a person of the other sex*' perpetrated with '*violence or threats*' or '*against a person incapable of giving consent*'- is criminalised and punishable by a term of imprisonment of five to 15 years. The term '*carnal intercourse*' is defined as '*penetration of the male sexual organ*' (Article 398). Additionally, Article 399 further criminalises – but does not define- '*acts of lust*', other than carnal intercourse, against a person of the opposite sex with violence or threats or against an individual incapable of giving consent. The only other forms of sexual violence proscribed by the Penal Code are abduction '*for the purposes of lust or marriage*' (Article 401) and forced prostitution (Article 408).
14. ASP is concerned that the definitions of rape and of '*acts of lust other than carnal intercourse*' under the Penal Code are overly narrow and vague. As noted by the Special Rapporteur on violence against women (E/CN.4/1999/68), rape should be defined in terms of non-consensual sexual relations and not solely by reference to the presence of violence or threats. A consent-based approach would account for other types of coercive circumstances. Additionally, the crime of rape should encompass any form of penetration, including by objects or other body parts.<sup>24</sup> Moreover and critically, these provisions suggest that as a matter of domestic statutory law, rape and other forms of sexual violence constituting '*acts of lust*' are only constituted if the perpetrator is male and the victim is female, thereby denying legal protection to male survivors, contrary to Somalia's obligations under international human rights law and the 2012 Provisional Constitution which guarantees equality. In turn, this lack of acknowledgement of male-directed sexual violence in national law can restrict the availability of adequate support services, including medical care and mental and psychosocial support (MHPSS) for victims and survivors and/or discourage them from seeking access to such services.
15. ASP notes that under Article 400 Penal Code (unnatural offences committed with violence) '*carnal intercourse*' and '*acts of lust other than carnal intercourse*', as set out under Articles 398 and 399 Penal Code, are aggravated where '*committed against a person of the same sex or a person of a different sex, against nature*'. Whilst it appears that male directed sexual violence may be prosecuted under this provision, the framing of these offences as '*unnatural*' and '*against nature*', and the aggravated punishment that they carry, serves to further entrench the severe discrimination and stigmatisation faced by persons of diverse SOGIESC in Somalia.<sup>25</sup> Additionally, ASP observes that Article 409 Penal Code criminalises '*carnal intercourse with a person of the same sex*' and that this may further discourage male survivors from reporting violence or accessing services, for fear that they may themselves be arrested and prosecuted or otherwise discriminated against.

<sup>23</sup> UN Doc. S/2018/250 (2018), para. 61, and International Alert, *supra* fn. 19, p. 24.

<sup>24</sup> See Communication report on Somalia, Ref. OL SOM 1/2020 (September 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25523>; see generally Amnesty International, *Rape and Sexual Violence- Human Rights Law and Standards in the International Criminal Court*, 2011, <https://www.amnesty.org/en/documents/IOR53/001/2011/en/>

<sup>25</sup> WRC, *supra* fn.19, p.17; US Department of State, 2019 Country Reports on Human Rights Practice, Somalia, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/somalia/>

16. It appears that the Federal Government of Somalia has sought to take steps towards addressing some of the legal protection gaps regarding sexual violence crimes, including the adoption of a Joint UN Communiqué on the Prevention of Sexual Violence and of a related National Action Plan, in 2013 and 2014 respectively.<sup>26</sup> In May 2018, the Council of Ministers unanimously adopted a new Sexual Offences Bill which, ASP understands, had the potential to significantly enhance accountability for sexual crimes, for all survivors. In June 2020, a motion to return the Sexual Offences Bill to Parliament for its first reading was dismissed by the Speaker and an alternative bill, the 2020 Sexual Intercourse Related Crimes Bill is currently under consideration. This bill is said to contravene a number of Somalia's obligations under international human rights law, particularly in relation to children's rights<sup>27</sup> and has been described by the UN Special Representative on Sexual Violence in Conflict as '*a major setback for victims of sexual violence in Somalia*'.<sup>28</sup> On 1 September 2020, a number of UN Special Procedures mandate holders jointly called for the Government to withdraw the 2020 Bill and work towards the adoption of the 2018 Bill.<sup>29</sup>

### Access to healthcare and support services

17. Sexual violence has grave and devastating immediate and long-term consequences for victims and survivors, their families and communities.

18. Effective programs for medical and psychosocial support are thus essential to assist victims and survivors to rebuild their lives, yet over two decades of conflict and violence have severely degraded the availability and quality of services and infrastructure in Somalia. Research conducted by Human Rights Watch suggests health services are provided on a private basis, or free of charge by humanitarian agencies or NGOs, often with the support of external organisations. Publicly available healthcare is reportedly basic and inadequate to meet the needs of survivors, and often entails a fee.<sup>30</sup> ASP understands that the UN and its partners have also established referral pathways and basic psycho-social support and health services in some areas however, overall, access remains limited. ASP further understands that high levels of stigma within the health system, coupled with a lack of specific training and protocols, constitute further barriers to access for male survivors.

### Recommendations

In light of the above concerns, ASP encourages the Working Group to include the following in its recommendations to the Federal Government of Somalia:

**(i) Strengthen data gathering and safe, confidential information sharing on sexual violence against men and boys, as part of broader efforts to monitor and report on CRSV:**

<sup>26</sup>Joint Communiqué of the Federal Republic of Somalia and the United Nations on the Prevention of Sexual Violence, 7 May 2013. ASP understands that in July 2020, the Secretary General's Special Representative on Sexual Violence in Conflict agreed with the Government to develop a new national action plan to end sexual violence in conflict, in order to advance implementation of the joint communiqué, UN Doc. S/2020/487, para. 44.

<sup>27</sup> Report of the UN Secretary-General on Somalia, UN Doc. S/2020/798 (2020), para. 61.

<sup>28</sup> UN News, 'Somalia: Draft law a 'major setback' for victims of sexual violence, 11 August 2020, [https://news.un.org/en/story/2020/08/1070022#:~:text=The%20Sexual%20Intercourse%20Related%20Crimes%20Bill%20contains%20substantive%20and%20procedural,across%20the%20globe"%2C%20Ms](https://news.un.org/en/story/2020/08/1070022#:~:text=The%20Sexual%20Intercourse%20Related%20Crimes%20Bill%20contains%20substantive%20and%20procedural,across%20the%20globe)

<sup>29</sup> Communication report on Somalia, Ref. OL SOM 1/2020 (September 2020).

<sup>30</sup> Human Rights Watch, '*Here, Rape is Normal- A five-point plan to curtail sexual violence in Somalia*,' February 2014, [https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia#\\_ftnref29](https://www.hrw.org/report/2014/02/13/here-rape-normal/five-point-plan-curtail-sexual-violence-somalia#_ftnref29)

20. There should be a working assumption that men and boys may be at risk of sexual violence, and data gathering, and monitoring processes should be designed to identify male and female survivors. Data sharing and co-ordination among stakeholders should be strengthened while prioritising at all times the safety and wellbeing of survivors.
- (ii) Ensure that awareness raising and sensitisation activities on sexual violence are gender-inclusive:**
21. Concerted effort is needed to build broader awareness of sexual violence against men and boys in Somalia and to counter the stigma associated with it, including by ensuring that messages on sexual violence are gender-inclusive, and awareness and outreach activities are designed to reach men and boy survivors and others who are in a position to support them. This effort should include engagement with and training of community-based protection mechanisms and community leaders in community sensitisation initiatives. Care should be taken that these activities do not detract or otherwise negatively impact from the specific and grave needs of female survivors of sexual violence.
- (iii) Strengthen the provision of comprehensive care for sexual violence survivors, in particular medical, mental health and psychosocial services so that they are available to all survivors of sexual violence, including those in IDP camps.**
22. Accelerated efforts are needed to strengthen availability, accessibility and quality of services for all survivors and to ensure that gender-competent services for men and boys are integrated into programme delivery without jeopardising access, confidentiality, safety and security for female survivors. In particular:
- Minimum responses should include immediate access to safe, free, confidential, survivor-centred, and high-quality medical care for men and boys in public hospitals, health centres or in mobile clinics and in facilities run or supported by non- governmental health providers;
  - Minimum responses should also include access to psychosocial support for male and female sexual violence survivors, witnesses and for their family members. These services should be widely advertised and made available to survivors;
  - Coordination among key stakeholders should be improved especially child protection, gender-based violence and health actors; and safe and confidential referral systems for male survivors to providers of medical, psychosocial and legal services should be adopted and implemented.
- (iv) End impunity for crimes of sexual violence and fulfil victims' right to remedy by holding perpetrators to account and providing comprehensive reparations to survivors.**
23. Including by:
- Reviewing existing laws and policies, particularly in the penal code to identify and eliminate gaps in the protection of men and boys against sexual violence and barriers to accountability;
  - Adopting and enacting the 2018 draft Sexual Offences Bill, ensuring that any amendments in this are in line with international standards;

- Reviewing the National Action Plan on Sexual Violence and ensuring that it is gender-inclusive and integrates protection and response initiatives for men, boys and LGBTI+ persons in addition to women and girls;
- Strengthening the capacity of the justice system to investigate and prosecute CRSV against all victims and survivors, including by ensuring that police, prosecutors and judges are adequately trained to respond to the needs of all survivors in a safe and ethical manner; and ensuring that legal aid services are available.