Translating feminist norms and strategies through sexual and gender-based violence programming in Somalia

An explorative approach to understanding norm internalization

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This thesis is a product of feminist engagement. Inspired by the women working for Legal Action Worldwide (LAW) to draft the Sexual Offences Bill for Somalia, I started down a path of inquiry that led me to meet many more indomitable women passionately dedicated to the pursuit of equality for and empowerment of women. These women helped guide and direct my research; they helped me network with others on my path of intellectual curiosity and offered me encouragement when I questioned myself and my abilities. The sisterhood is strong and its vitality is present in every aspect of this thesis as a cumulative product of this engagement. I could not have accomplished this without the strength, support, and solidarity of the women who have been with me throughout the process. Their examples of strength and resilience inspired my own all the way to the finish line.

I owe an immeasurable amount of gratitude to my partner and our daughter for their patience, compassion, and unceasing support of my academic pursuits. I could not have accomplished this without their support and the generously provided time away to write. The many sacrifices my partner made to help me achieve my goals is an example of the unconditional kindness I hope to emulate in my career in human rights.

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I dedicate this work to my daughter, Olive. She is my spirited and patient little girl who was so often a lifeline for motivation and encouragement to keep moving forward.
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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AMISOM</td>
<td>African Union Mission in Somalia</td>
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<td>CEDAW</td>
<td>Convention for the Elimination of Discrimination Against Women</td>
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<td>FGM/C</td>
<td>Female Genital Mutilation and Cutting</td>
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<td>FGS</td>
<td>Federal Government of Somalia</td>
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<td>GR 19</td>
<td>General Recommendation 19</td>
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<td>IASC</td>
<td>Inter-Agency Standing Committee</td>
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<td>ICL</td>
<td>International criminal law</td>
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<td>IDPs</td>
<td>Internally displaced peoples</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>INGO</td>
<td>International non-governmental organization</td>
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<td>IO</td>
<td>International organization</td>
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<td>IPV</td>
<td>Intimate partner violence</td>
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<td>MoWHRD</td>
<td>Ministry of Women and Human Rights Development</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<tr>
<td>ODA</td>
<td>Official Development Assistance</td>
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<tr>
<td>SIDA</td>
<td>Swedish International Development Cooperation Agency</td>
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<tr>
<td>SGBV</td>
<td>Sexual and gender-based violence</td>
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<td>SNA</td>
<td>Somalia National Army</td>
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<td>South Central</td>
<td>Mogadishu</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<td>UNOCHA</td>
<td>United Nations for the Coordination of Humanitarian Affairs</td>
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“But if an experience is spoken yet unheard, half of its reality is severed and a certain essential harmony is breached.”

1 Popova. The Great Humanistic Philosopher and Psychologist on the Art of Unselfish Understanding
1. Introduction

The almost three decades of violence in Somalia have engendered a climate of extreme insecurity for women and girls as sexual and gender-based violence (SGBV) has become "normalized". In 2015, over 7,439 cases of SGBV were reported in the Mogadishu (South Central) region alone. And, in 2014, more than 75% of the 5,000 cases reported involved physical assault, rape, and sexual assault. These estimates, however, are not entirely accurate or reliable as many cases of SGBV are never reported for reasons such as: extreme social stigmatization, reprisals from perpetrators, retribution from communities, lack of faith in the justice system, or fear of being arrested.

Through foreign aid, the international donor community has been able to effectively influence what, in terms of development, humanitarian assistance, and human rights, are prioritized for the country. Funding guidelines and requirements determine which needs will be met with funding, which enables processes for norm translation in a domestic context. The myriad international actors engaging in the transition of Somalia from a “failed” state to a fragile one give opportunity for analyzing processes of norm translation, and for the subject of this thesis, feminist norm and strategy translation. I analyze and discuss these processes of translation through dominant themes observed in the data collected as they relate to feminist norms and strategies.

This process is rife with complexities. It is one that meets obstacles in the domestic setting, and also with the international and local actors implementing SGBV programming. Challenges inherent in confronting culture and religion come together as filters of translation distorting the universal value structures of the norms under analysis. Additionally, international and local actors often undermine the very values they rhetorically claim to uphold as negotiations and compromises in translation are made in the processes of finding cultural legitimation for norms. By analyzing these processes through a feminist lens and method of inquiry I have found that finding cultural legitimacy for norms is necessary for the sustainable and incremental progress of SGBV programming. However, too often the process of finding cultural

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2 Human Rights Watch. Here, rape is normal: A Five-Point Plan to Curtail Sexual Violence in Somalia
3 UNFPA. Somalia GBV Working Group Appeals for $9.5 Million. Statistics for 2015 were provided by the GBV Information Management System (GBVIMS) that collects information on all reported incidents. Statistics for 2016 were requested, but not received. However, it has been disclosed that there was an 88% increase in the number of reports from 2014 to 2016. More opportunity for and efficiency in reporting could account for the increase. (Statistics were received from respondent 4 and are on file with author)
4 Ibid
5 Gov.UK. Somalia Conference 2013: Opening Speech
6 Respondent 3
legitimation leads to fragmentation in programming, which can undermine progress made towards liberating women from violence and achieving gender equality.

With these analyses, I hope to contribute to a deepened understanding of the nuanced processes involved in norm internalization and how this impacts the long-term sustainability for SGBV programming.

1.1. Background

1.1.1. Contextualization of the fragile, semi-post-conflict setting in Somalia

The establishment of the Federal Government of Somalia (FGS) was a milestone for the fragile state. It renewed diminishing hopes for a future that could bring peace and reconciliation to the country. Since the FGS was established, the international donor community, international organizations (IOs), and international non-governmental and non-governmental organizations ((I)NGOs) have been rapidly developing responses for SGBV programming.7

Despite the presence of the FGS and its partnership in stabilization efforts with the international community, the State of Somalia remains overly complex. Lack of security is the largest obstacle to programming in any field as external and internal threats occur almost continuously and simultaneously. Security is compromised and non-existent in parts of Somalia as the country continues to suffer from instability created by the protracted conflict and also natural disasters, inter-clan conflict, the Al-Shabaab insurgency, and the counterinsurgency.

One million internally displaced peoples (IDPs) need protection and essential services, and with their host communities, they coexist in the most vulnerable and volatile settings in Somalia.8 Insufficient protection and provisions create vulnerabilities disproportionately affecting women and girls as they make up 99% of the survivors of SGBV.9 Women in Somalia have assumed many roles throughout the decades of conflict, becoming breadwinners and heads of household, for example. They have borne much suffering from the impact of long-term conflict and continue to do so as the country makes its transition. Women and girls across Somalia experience the pervasiveness of SGBV regularly, giving a sense of perma-

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7 The international donor community generally consists of countries that contribute to ODA or foreign aid in other ways.
8 Somalia Protection Cluster. Protection in focus: Mogadishu IDP profiling, pp. 1
9 Ibid, pp. 2
nence to the situation. However, the everyday vulnerability of women and girls is, at times, suddenly exacerbated when conflict re-emerges or other crises arise. Such situations expose women and girls to further risk, thus vulnerability and rates of SGBV increase.¹⁰

The myriad actors that have had or currently have a presence in Somalia, such as the AMISOM peacekeepers and Al-Shabaab (a militant Islamic extremist group) have contributed to the increase in severity of the SGBV crisis. Members from each group as well as members of the Somali National Army (SNA) and non-uniformed civilian men, have perpetrated some of the most horrific acts of sexual violence towards women and girls. Furthermore, the use of rape and sexual violence against women has also been used as a strategic tactic to “punish and assert dominance in the context of inter-clan conflicts, military offensives, displacement, and forced evictions, with women from minority clans exposed to greatest risk.”¹¹ These acts are perpetrated with a reliance on the lack of authoritative will and weakened capacity in the justice sector to punish those responsible for committing them. The culture of impunity is such that in some cases the roles of victim and perpetrator have been reversed, sending a clear message that if you choose to report an incident “[y]ou’re more likely to be arrested for reporting than are your perpetrators.”¹²

SGBV programming in Somalia has commitments in written and verbal rhetoric, but not in funding for material action. However, domestic and international actors continue to work diligently and innovatively to mitigate and prevent SGBV. The challenge in receiving funding for SGBV programming is in the distribution of aid. One figure from the OECD shows that in 2015, nearly half of official development assistance (ODA) for Somalia went to humanitarian response funding.¹³ The limitation to humanitarian versus development funding has confined SGBV programming to meeting funding requirements for a humanitarian response. As such, it has been mostly limited to intervention and short-term prevention programming, without capacity to expand or pursue long-term projects that would serve to progressively diminish the indefinite need for short-term response programming.

The SGBV programming that has had the opportunity to be implemented in Somalia provides a basis for observing the translation processes for feminist norms and strategies. I will analyze some of these processes throughout this thesis.

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¹⁰ IASC. Guidelines for Gender-based Violence Interventions in Humanitarian Setting., pp. 1 [IASC Guidelines]
¹¹ UNSOM website: Women Protection
¹² Kushner
¹³ OECD. Interactive charts by aid recipients
1.2. Aim and purpose

Analyzing the nuances of the norm translation and implementation process can improve understanding of how norms are formed and internalized in a domestic context. The ongoing and open negotiation of norms in translation is a process that includes myriad international, transnational, and domestic actors learning which form of a norm is most likely to be accepted in the domestic context while also contributing to progress. It’s a process of cultural negotiation that still receives little attention in research, especially through a feminist perspective.\textsuperscript{14}

One in three women experience some form of SGBV throughout their lives.\textsuperscript{15} It is an issue that must be addressed with urgency and commitment in action. Thus, the aim of this thesis is to explore the translation processes in SGBV programming in Somalia to improve understanding of these processes. Having a more thorough understanding of these processes can assist in informing strategies to overcome challenges in the implementation of international feminist norms. It can also help to identify programmatic inconsistencies hindering the progress in the internalization of norms. Identifying and understanding these inconsistencies can help shape more cohesive and direct strategies serving the goals of holistic programming.

Thus, the research question is as follows:

\textit{How have feminist strategies/norms in international governance been translated in Somalia, through the influence and response by the international donor community, IOs, INGOs, and NGOs, via programming for SGBV?}

Other questions about the translation process reinforced the main research question to provide a more thorough answer. Thus, further direction for the research was guided by supporting questions such as: What compromises were made and why? What were the challenges in implementation? What was gained and lost throughout the translation process?

A secondary analysis of a related translation process was also made possible through collected data. It was possible to observe a general trend in the translation of international rhetorical commitments to ending SGBV to the material action needed to fulfill those commitments. This secondary analysis provided vital information on how the inability to translate the rhetorical commitments made on the international level negatively impacts and limits the program-
ming on a domestic level. A full exploration of the secondary analysis, however, is beyond the scope of this paper.

1.3. Framework and theoretical background

1.3.1. Normative framework: International feminist norms in Somalia

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.”\(^\text{16}\) 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 SGBV programming use the CEDAW and the Maputo Protocol and make references to both in campaigns for rights awareness.\(^\text{17}\)

Additionally, 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).\(^\text{18,19}\) For most discussions on SGBV, the CEDAW only provides intuitive guidance; however, it remains the legal standard for women’s rights. For this reason, I must also refer to and include in the framework the authoritative interpretation of the CEDAW and its relevance to SGBV 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.\(^\text{20}\)

1.3.2. Theoretical background

International Human rights law 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 androcentric nature of international law and the institutions upholding it; and most importantly for

\(^\text{16}\) Vienna Convention on the Law of Treaties, pp. 336
\(^\text{17}\) Respondents 3, 4, and 6
\(^\text{18}\) UNFPA, Somalia moving towards ratifying CEDAW: 2016 Annual Report, pp. 3
\(^\text{19}\) SNDP, pp. 132
\(^\text{20}\) Caglar, et al., pp. 294
the context of this research, brought attention to the widespread experiences of SGBV for women in war and peacetime. Furthermore, feminist strategies have 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 -- I 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 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. The voices of each are featured throughout this thesis, either implicitly or explicitly, and serve as the theoretical lens for my analyses.

Additionally, I have blended 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 SGBV for Somali women.

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21 Zwingel, pp. 115
22 Edwards, pp. 27
23 Halley, pp. 70
24 Halley. *Split Decisions*, pp. 16
25 The feminist scholars who dominate the discourse on feminist international legal theory and theory in international relations that I refer to throughout this thesis are: Hilary Charlesworth, Elisabeth Prügl, Susanne Zwingel, Diane Otto, Christine Chinkin
26 Sanusi, pp. 154
27 Ibid, pp. 159
All these voices enter this thesis to support or contend instances in the translation process. Specifically, I use Sabat’s description of “filters of translation” to identify key filters influencing norm translation and implementation. These filters, as Sabat explains, are part of “context-specific repertoires of interpretation that facilitate certain constellations of argument [...] which are informed by structures as well as by interests and identities of the agents.” I also use Zwingel’s theory on the translation process not being limited to top-down diffusion because it is in fact, a multi-stakeholder process that is more of an exchange on varying levels than a diffusion of standardized norms from top to bottom. The conceptualization of the norm translation process as Sabat describes it is “a highly manipulative activity involving all kinds of stages in [the] process of transfer across linguistic and cultural boundaries.”

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. The Protocol itself is “the result of about a decade and a half of work by women’s human rights advocates.” However, 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.

These strategies garnered attention in international humanitarian and criminal law spheres (IHL and ICL, respectively) in the 1990s. In this period feminist strategies developed to ensure commitment by the international community to include rape and sexual violence as a crime against humanity and a war crime. This action was motivated by the Rwandan and Yugoslav genocides, which used sexual violence against women systematically as a weapon of war. This feminist intervention and interaction with the governing structures of international law has been labelled governance feminism (hereafter GFeminism and GFeminists) by Janet Halley. Halley’s scholarly work has intricately examined GFeminism intervention in Rome (the drafting of the Rome Statute) and in the tribunals for Rwanda and Yugoslavia. GFeminism however, is not limited to the realm of international law. The engagement on this level is just the only one within the scope of the explanatory aims of this thesis.

28 Ibid, pp. 145
29 Zwingel, pp. 111
30 Sabat, pp. 146
31 Musembi, pp. 194
1.4. Methodology

Somalia is currently classified as a “fragile” state in its transition from the decades-long classification by the international community as a “failed” state. Development opportunities have emerged through this transition coupled with the partnership between the international donor community and the FGS. The UNFPA has described the opportunity as such:

[S]omalia is at a critical stage of rebuilding its legal, security and health institutions, presenting a unique opportunity to devise the necessary instruments to curb the incidence of gender-based violence, respond to it more effectively and end impunity for perpetrators.

This opportunity and the partnership between the donor community and the FGS, makes Somalia a unique model for analysis of norm translation in general and for my research interests in SGBV specifically.

I chose to use a qualitative methodology for my exploratory approach to the research question. This approach involved semi-structured, in-depth interviews; desk research; and attendance to a monthly meeting for the (S)GBV Sub-cluster Working Group. Qualitative methodological tools, such as the interviews I conducted, gave me the opportunity to explore the topic and bring depth to my understanding of it. The interviews revealed the nuances of the process of norm translation, something not easily seen through the figures and summaries publicly reported by any organization. The participation of actors working on different levels towards the same goal brought depth to the understanding of the interactive translation process and how collaborations and clashes between actors impact it. Respondents were honest in their engagement with the questions and expressed satisfaction and disappointment with the responses to SGBV. This method enriched the quality of the research beyond what mere quantitative methods could have.

1.4.1. The interview process

Most of the interviews were conducted in Nairobi as security risks in Mogadishu have led many international and domestic organizations to establish headquarters in Nairobi. U.N. agencies, INGOs, and NGOs working in all fields of programming in Somalia operate from Nairobi. Therefore, I was able to meet with many key actors in the field of SGBV program-

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32 UNFPA. *Somalia GBV Working Group appeals for $9.5 million*
33 Sabat, pp. 144
Interviews not conducted in Nairobi were completed using Skype or email with written responses to the interview guide and follow-up questions.

Interview participants were identified and selected as part of a convenience sample, as well as through a process of snowball sampling. The initial participants I selected were those working with an organization operating within the field of SGBV programming in Somalia. I sought participants from each level of actors in the field to get a wide representation of ideas, views, and opinions (e.g. international and local actors). I interviewed 23 people working in various positions with NGOs, INGOs, IOs, and foreign aid agencies for donor countries. I interviewed 6 respondents from U.N. agencies, 5 from NGOs, 8 from INGOs, and 4 from three donor countries. The list of organizations represented in the interviews can be found in Appendix II.

I have refrained from using the respondents’ names and refer to them anonymously throughout the thesis. I do this to maintain the agreed-upon level of privacy with Norwegian Centre for Research Data (NSD). All interviews and requests for interviews were conducted in accordance with the terms provided by NSD in the approval form.

The interviews were led by the direction of open-ended questions in the interview guide (Appendix I). I designed the interview guide to cover a wide range of topics within the context of SGBV programming to probe for narratives outside the routine rhetoric of SGBV programming discussions. Referring to case studies with similar objectives and methodological approaches, such as Sabat’s study of norm translation in Lebanon, I tried to reverse engineer her findings to determine what questions she might have used to discover them. A few questions, which I will discuss in later sections, were verbally amended to the guide as their necessity became apparent.

The interviews provide the bulk of the research background and the rest is supplemented by desk research. The desk research consisted of reading books and articles from the prominent voices in feminist theories and strategies discussed above. I used two articles from Halley -- a group study with Halley, Kotiswaran, Shamir, and Thomas and Halley’s article that was mentioned earlier -- to frame the comparative analysis of the two sexual offences bills comprising chapter three.

Programming materials shared with me by respondents, as well as materials that are publicly available also serve as a basis for my analyses. I directly refer to some of these sources throughout this thesis.

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34 These two articles are detailed analyses of feminist engagement in international law (human rights, criminal, and humanitarian).

35 Halley, Janet E. et al. From the International To The Local In Feminist Legal Responses To Rape, Prostitution/Sex Work, And Sex Trafficking: Four Studies In Contemporary Governance Feminism
1.4.2. Other clarifications

Throughout this thesis I refer to SGBV in general and only identify specific forms in a few examples. Female genital mutilation/cutting (FGM/C), for example, is practiced at an alarmingly high rate of 98% in Somalia and is part of the strategic programming for SGBV. However, it is not highlighted for special consideration in this thesis. Exclusions of specific focus also include SGBV in the context of conflict. It is likely the SGBV programming covers it specifically as it is attuned to the circumstances within which SGBV occurs. For example, there is an emphasis on protection in the IDP camps as they are where the highest rates of incidents occur. But my understanding of the treatment of sexual violence in conflict in Somalia by relevant actors is limited, so it is not discussed in detail.

The key findings presented throughout have shaped the structure and explorative content of this thesis. There are many important discussions to be had based on the data collected. However, there is not enough space for me to include them or even elaborate beyond what is necessary in the discussions here. What is presented here are the most prominent and visible processes of norm and strategy translation I identified in SGBV programming in Somalia.

1.5. Definitions

Sexual and gender-based violence

Many organizations define SGBV differently. For example, in Somalia the GBV Working Group has removed the separate recognition of sexual violence and refers to an all-encompassing definition of GBV under which sexual violence is subsumed. When I asked the UNFPA Chair representative about the decision to do so, she mentioned it was policy to avoid the isolation of the two as separate or suggestively unrelated issues. This is confirmed in the “Inter-Agency Standing Committee (IASC) Guidelines for Gender-Based Violence Interventions in a Humanitarian Setting”, which officially adopts the terminology of GBV.

The UNHCR, however, stands by their use of sexual and gender-based violence by stating “UNHCR consciously uses [SGBV] to emphasise the urgency of protection interventions that

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36 UNDP. Gender in Somalia
37 Respondent 6
38 UN Women, Virtual Knowledge Centre to End Violence Against Women and Girls – Terminology and definitions and IASC Guidelines
address the criminal character and disruptive consequences of sexual violence for victims/survivors and their families.”

Given the context of Somalia, where the prevalence of sexual violence demands urgent response, as well as the focus on the component of sexual violence in the sexual offences bills I analyze, I have decided to use the same conscious approach as the UNHCR.

Because I am using feminist norms embedded in international human rights law for women, I wanted to use a definition from the suite of legal instruments addressing SGBV. However, finding a suitable definition for this research from those available was challenging. A definition of GBV is typically pocketed within the general term “violence against women” (VAW) and is understood as a form of discrimination against women. The Declaration on the Elimination of Violence Against Women, for example, defines violence against women as “any act of gender-based violence” but does not provide a definition for GBV.

The CEDAW alone is not an ideal reference for GBV, much to the disappointment of feminists and women in general, as it is a product of its time and does not address SGBV explicitly. GR 19 is the most comprehensive general recommendation adopted to correct this exclusion, but the definition for GBV given is troublesome given its limitations and contradictions to the feminist pursuit of gender equality. GBV 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.” (my emphasis) Given that this distinction will be discussed in more detail in a later chapter, I will only briefly explain the limitations and contradictions identified by feminists in this definition here. Following the CEDAW, GR 19 continues to formalize a perception of equality that uses the male as the ultimate comparator for equality achievement. 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 GBV 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 formalization of the limited understanding by the international community of the severity of the indelible personal impact and consequences of SGBV.

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.

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39 UNHCR. Action Against Sexual and Gender-based Violence. pp. 6
40 DEVAW, Article 1
The challenge in finding a definition encompassing all necessary and fundamental components needed for a working definition of SGBV is illustrative of the process of feminist engagement on the international level. 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. This inch, however, has been extended to miles in the process of developing a definition of SGBV outside legal codification.

The solution to this definitional challenge was to find a source outside the legal framework retaining the fundamental components of VAW as SGBV given in the normative legal framework I use. Thus, the following definition from the Women’s Rights and Gender section at OHCHR in the context of transitioning States (Somalia) is given:

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\text{[G]ender-based violence is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender (read discrimination). It may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices. \text{(my note)}}
\]

\[
\text{[S]exual violence is a form of gender-based violence and encompasses any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration and forced nudity.}^{41}
\]

**Governance Feminism**

Halley et al. don’t necessarily define but describe GFeminism as:

[a] term to refer to the incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power. It takes many forms, and some parts of feminism participate more effectively than others; some are not players at all. […] it piggybacks on existing forms of power, intervening in them and participating in them in many, simultaneous, often conflicting, and, in […] highly mobile ways.\(^{42}\)

Lastly, the connection to feminist engagement on the local level is of my own appointment. There are virtually no direct traces of feminist consciousness in the programming and only two respondents self-identified as feminists. The connection is made according to Halley’s designation and definition of women activists in the 1990s as feminist “on the grounds they treated women as a distinct social group, saw women as subordinated to men at least some of

\(^{41}\) OHCHR. *Sexual and gender-based violence in the context of transitional justice*

\(^{42}\) Halley, et al., pp. 341
the time, and shared the goal of finding for subordinated women some relief from, if not cessation of, their subordination.”

1.6. Reader’s Guide

The interview process allowed for a robust collection of data that quickly began to produce strands of convergences and obvious divergences in perceptions on SGBV programming. The most salient and emergent themes identified through this process will be presented and discussed.

I have divided the findings into two main chapters according to broad thematic areas. The first chapter focuses on translating culture and religion in SGBV programming. These two topics were intertwined throughout all the interviews. Almost every respondent, and especially those from Somalia, were quick to make the distinction between religion and culture and how each works to contribute to the prevalence of SGBV or counter its legitimacy -- sometimes in tandem. This chapter breaks down further into themes and processes that are influenced by the filters of culture and religion. Discussions on gender, sex, and sexuality in Somalia, for example, constitute a significant portion of this chapter.

It became clear that the legal modes of SGBV programming offer the most insight and clarity in the translation process. Access to justice and ending impunity are consistently repeated as necessary intervention and prevention methods and responses to SGBV. Thus, the final chapter before the conclusion is an analysis of the translation process through legislative reform.

I have divided the chapters as follows to maintain thematic cohesiveness and flow in the structure of the thesis. I close with a brief concluding statement followed by recommendations for holistic SGBV programming in Somalia based on the data collected throughout the research process.

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43 Ibid, pp. 31
2. SGBV Programming: a mode of translation for feminist norms and strategies

“So if it is in fact true that the full humanity of women is not our culture, then we must make it our culture.”

2.1. Introduction

Collapsing culture and religion in modern Somalia is easy, but avoiding doing so is necessary if SGBV programming is to reach the root of the issues. The development of both has not always been parallel, and there are overlap between the two in establishing what is the socially acceptable treatment of women. The interdependent relationship between the two makes the environment for SGBV programming complex. Translating feminist norms with respect to culture and religion and, also within the context of SGBV programming intensifies the sensitivity of the approach.

The approach in Somalia meets resistance from many actors for being an overtly Western or internationalist agenda. However, respect and sensitivity towards culture and faith and maintaining the substance of the universal feminist norms are not mutually exclusive modes of norm translation. As Sanusi states, “the primary purpose of informing the human rights debate with the values of a different culture is to facilitate the incorporation of the rights discourse into that culture and hence ease implementation.”

This is the process of “cultural negotiation” that Ertürk writes about in her discussions on norm implementation. The rights discourse must find its “cultural match” through this process, while still upholding the core components of the feminist norm or strategy.

This chapter is an exploration of the culture and religious mechanisms shaping the translation processes in Somalia. Some act as filters in the translation process, creating barriers and gaps that distort and compromise the universalistic values in the norms being implemented.

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44 Adichie. “We should all be feminists”
45 Sanusi, pp. 34
46 A/HRC/4/34, pp. 22
47 Sabat, pp. 145
2.1.1. A brief overview of feminist norms and strategies responding to culture and religion

Culture and religion are the most prominent bastions for justifications of discrimination and violence against women. The practice of relying on culture and religion as an excuse for tolerance, which has been given some legitimacy in international legal jurisprudence, has created consequences leading to the perpetuation of discrimination against and violence toward women.

One consequence has been the acceptance of the subordination of women in religion and culture. This is done by sympathizing with rights to religious freedom and cultural development without consideration of the detrimental impact such rights can have on women. The preference to give deference to cultural relativity over the universality of human rights for the sake of cultural development fails to recognize that this process is often exclusive of voices that have no power, i.e. those outside the male hegemony.\(^{48}\) As such, women continue to be excluded from processes of development for the country to which they belong and to which they contribute. From an African feminist perspective, Sanusi states that, “[c]ultural relativity, or the right to retain an African value or integrity, has meant a maintenance of the status quo even when certain cultural practices result in clear and unequivocal discrimination.”\(^{49}\)

Culture and religion, according to feminist discourse, are not considered to be monolithic or static.\(^{50}\) Instead, they are viewed as fluid and ever-evolving processes fluctuating with modernity and unable to evade the influence of it. They are both permeable to modernity and globalization. As such, both are products of history “in particular locations under the influence of local, national, and global forces and events.”\(^{51}\) Therefore, culture and religion as justifications for tolerance of the oppression of women, have no relevance in the past, present, or future as they are all subject to the fluidity of progressive change.

Feminists decry any use of culture and religion to forcibly halt conversations about gender equality and women’s rights. Thus, feminist strategies have challenged international law to reconcile the wide berths given to religious freedoms and the right to cultural development that serve to reinforce discrimination against women. The awareness of this reality for women and their human rights has led to the inclusion of Article 5 in the CEDAW which calls for the

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\(^{48}\) Charlesworth et al., pp. 643
\(^{49}\) Sanusi, pp. 22
\(^{50}\) A/HRC/4/34, pp. 22
\(^{51}\) Merry, pp. 11
modification of “social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all the other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.\textsuperscript{52} The Maputo Protocol makes similar obligations in Article 17, which states that women have the right to “live in a positive cultural context” and in Article 2, which mostly echoes Article 5 of the CEDAW.\textsuperscript{53}

In the following sections, I analyze how norms and strategies to delegitimize the use of culture and religion as justification for perpetrating and permitting, via complicity or inaction, acts of SGBV are being translated in the Somalian context.

2.2. The future of the CEDAW in Somalia

Ratifying the CEDAW is a strategic goal agreed on by the international donor community and the government.\textsuperscript{54} Its critical relevance to SGBV 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.”\textsuperscript{55}

In the context of SGBV, 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.\textsuperscript{56} However, as it has 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.\textsuperscript{57}

In Somalia, it is likely 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.\textsuperscript{58} Another respondent expressed skepticism at the ability of the international community and the government to agree on the controversial articles so soon. The latter respondent

\textsuperscript{52} CEDAW, Article 5
\textsuperscript{53} Maputo Protocol, Articles 2 and 17
\textsuperscript{54} UNDP (2011) pp. 6
\textsuperscript{55} Holtmaat, pp. 96
\textsuperscript{56} GR 19, Paragraph 23
\textsuperscript{57} Iraq, Kuwait, Libya, Saudi Arabia, etc. All reservations can be found at: http://www.un.org/womenwatch/daw/cedaw/reservations.htm
\textsuperscript{58} Respondent 6
explained that arguments from religious leaders have garnered support against ratification.\textsuperscript{59} With the influence and prominence enjoyed by religious leaders in Somalia this resistance makes ratification without a reservation unlikely.

Feminists have critiqued the acceptance of such reservations for the CEDAW. The readiness to comply with reservations is used as an example of the androcentric nature of the institutions of international law because the act essentially renders portions of the only international women’s convention powerless. Chinkin, for example, states “[t]he 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.”\textsuperscript{60} 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. The private sphere being a location where “[i]nequality […] [in] the family undermines women’s access to and enjoyment of rights in the public sphere of the workplace and politics.”\textsuperscript{61} It is particularly relevant in Somalia where intimate partner violence (IPV) is one of the most prevalent forms of SGBV impacting 28\% of women in South Central and 48.2\% in Puntland.\textsuperscript{62}

Although 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{63} The compromise made risks the future work of gender norms and perception changes on the grassroots level, potentially derailing the progress SGBV 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 of the experience of subordination of women and that are designed to liberate women from that subordination. The following narrative exemplifies this process:

\textsuperscript{59} Respondent 14
\textsuperscript{60} Charlesworth, et al., pp. 633
\textsuperscript{61} Freeman, Chinkin, and Rudolf, pp. 10
\textsuperscript{62} Johns Hopkins. \textit{Gender-based Violence Survey – South Central}, pp. 17 and \textit{Puntland}, pp. 16 [South Central and Puntland] (Studies on file with author)
\textsuperscript{63} Barlas, pp. 187
The pursuit of gender equality has frequently been sacrificed to religious-cultural claims defining and limiting women’s status. Yielding to such claims has served the interests of nation-building while at the same time guarding against any serious threat to the modernizing agendas of [the] political elite. Lost within such compromises is the recognition of women as bearers of rights, with equal rights to participate in the definition of religious-cultural norms.\textsuperscript{64}

2.3. Translating gender, sex, and sexuality in Somalia

2.3.1. A brief overview of the terms gender and sex

The terms ‘gender’ and ‘sex’ are often used interchangeably, however gender commonly receives preferential treatment as a term that conveniently encompasses, in one word, myriad forms of discrimination that human rights for women seek to address.\textsuperscript{65} Gender is the dominant terminology used in the mainstream feminist discourse for human rights (e.g. gender equality, gender-based violence, and gender mainstreaming). Simply defined, gender refers to a socially constructed conceptualization of the roles ascribed to women and men.\textsuperscript{66} Or, as Simone de Beauvoir wrote, “[o]ne is not born, but rather becomes a woman.”\textsuperscript{67} And sex, simply defined, refers to the biological differences that make us male or female (i.e. the penis/vagina binary).\textsuperscript{68}

In the CEDAW, the term “sex” is used consciously to refer to the discrimination of women that occurs simply because of their biological sex.\textsuperscript{69} As it is a convention designed for women, it was necessary to clarify that the prohibitions of discrimination in the Convention are based on sex (i.e. women exclusively). However, it goes on to describe prohibitions of discrimination based on traditional gender roles assigned to the female sex. And, as explained above, even calls for the adjustment of cultural practices that are used to justify the inferior treatment of women.

By the time the Rome Statute was being drafted, the term gender was “fully operationalized” by feminists.\textsuperscript{70} It was done so as a strategy to bring awareness to the idea that discrimination against women occurs not strictly because of the female anatomy, but because of the social

\textsuperscript{64} Ardar Ali, pp. 432
\textsuperscript{65} Edwards, pp. 17
\textsuperscript{66} Ibid, pp. 13
\textsuperscript{67} De Beauvoir, pp. 301
\textsuperscript{68} Edwards, pp. 12
\textsuperscript{69} Rehof, pp. 48
\textsuperscript{70} Halley, pp. 83
constructions of the female sex (i.e. gender). These social constructions inevitably lead to structural biases rooted in deliberate man-made gender power imbalances that have subordinated women since time immemorial. For feminists, the use of the term gender creates opportunity for the deconstruction of deterministic notions of inequality based on biologically-based differences. Its use is also intended to be inclusive of considerations for the experience of intersectionality in discrimination, as well as for men who experience discrimination based on their confinement to traditional roles defined by masculinity.

2.3.2. Women in the periphery: the LGBTI question

“Scholars must be reminded that as long as society is organized by patriarchy, the essentialisms that are empowered are those that support heteronormativity and reinforce homophobia and transphobia.”

Of all the filters of translation for SGBV programming identified, a most unexpectedly bare-faced filter surfaced through the “LGBTI question”. Springing from another in the interview guide asking about women who exist in the peripheries of programming, this question was intended to gauge the level of inclusivity in programming within the realm of possibilities (i.e. some women who live in Al-Shabaab controlled areas cannot be reached).

After the first interview, the guide was verbally amended to include the LGBTI question in all the interviews. The first response from everyone was almost invariably the same, even word-for-word, “[y]ou cannot talk about that here.” Some secondary responses expressed open detestation at the mere thought of LGBTI persons with statements such as, “[i]t’s gross and unnatural”. Others displayed a fundamental misunderstanding of the experience for those who identify as LGBTI, or a cognitive dissonance for the possibility of the existence of a LGBTI person living in Somalia with statements like “if they even exist here” and “[i]n Somalia, we’re not socialized to be gay.” And lastly, “[i]t’s okay if you keep it private.”

Predating the Yogyakarta Principles, feminists have been strategically advocating for the formal adoption of the term gender for its inherent inclusion of LGBTI persons. The feminist interventions during the drafting of the Rome Statute explained earlier sought to use the term gender instead of sex for the purpose (among others) of protecting LGBTI persons as their

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71 Kugle and Hunt, pp. 273
72 All respondents, except for the donor countries.
73 Respondents 3, 9, and 14
74 The Yogyakarta Principles “a universal guide to human rights which affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.”
gender identities are naturally tethered to the definition of gender. Feminism has grown up with queer theory; and, the feminist discourse has co-developed along with the LGBTI discourse in the human rights system. They are very much interconnected as feminism was made to be aware of the compounding effects of discrimination for being a woman and gender queer. As such, the consideration for LGBTI persons is inherent to the definition of SGBV as discriminatory violence perpetrated against persons who “defy their socially ascribed or designated genders.”

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 SGBV is critical to progress for the movement. For example, earlier feminist engagement with human rights law was criticized for its ethnocentric and exclusive tendencies. 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. 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 that “[t]he 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.”

In Somalia, virtually no specific protections for LGBTI persons from SGBV exists. This situation persists, despite such persons being listed as a special “at-risk” group in the IASC global guidelines, which govern the SGBV 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.” The guidelines also emphasize the necessity for trainings for a “variety of stakeholders, including humanitarian actors, government actors, and

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75 Halley, pp. 84
76 Edwards, pp. 15
77 Ibid, pp. 46
78 Sanusi, pp. 194
79 Thiam, pp. 35
80 Respondent 1
81 Under Article 409 of the Somali Penal Code it is illegal to have same-sex intercourse
82 IASC Guidelines, pp. 42
community members” for the implementation of “effective GBV-related programming, but also for engaging with and influencing cultural norms that contribute to the perpetuation of GBV.”

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 SGBV in the first place. Instead, some practitioners in the field comfortably dismiss it is either a non-issue or one that is simply not talked about. Barlas’ feminist exegesis of the Qur’an demonstrate 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 “[t]here has always been room for differing interpretations of the Qur’an, as well attested by the many shelves occupied by tafsir or exegetical literature.”

In unreading the origins for homophobia in the Qur’an, Kugle and Hunt observed that “the Qur’an makes no explicit legal case against consensual male-with-male sex acts [and] [i]n the case of same-sex acts between two women, the issue is far more ambiguous.” This observation highlights the vulnerability of religious texts to interpretations influenced by the contexts of their time, which are shaped by the prevailing and limited attitudes towards others expressed by dominant patriarchal systems. 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 (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.

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 heteronormative experiences of SGBV and subordination of women on the basis of sex only. When sex is defined as a male/female biological binary, sexual subordination does not include discrimination for those who are genderqueer. Instead, it accounts only for discrimination based on the subordination and power imbalances created based on women who identify with their biological sex (cisgender). For genderqueer 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.

83 Ibid, pp. 48
84 Kugle and Hunt, pp. 273
85 Ibid
86 Barlas, pp. 74
2.4. An analysis of gender (sexual) equality in SGBV programming

“In Somalia, you can’t say gender equality, you have to say women’s empowerment”

2.4.1. A brief overview of the normative framework for gender equality

Feminist strategies have sought a legal understanding that adequately responds to the systematic subordination and thus de facto discrimination of women based on sex and gender. Despite these efforts, however, the concept of gender equality has produced varying results in legal form for human rights for women.

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 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.” Furthermore, this mode of thinking doesn’t 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.” Lastly, 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.

Fortunately, Article 1 of the CEDAW, providing the legal definition for ‘discrimination against women’ defines discrimination as resulting in the impairment or nullification of enjoyment of rights “on a basis of equality of men and women”. This phrasing replaced the earlier version using the standard “equality with men” per the suggestion to do so from the

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87 Respondent 8
88 CEDAW (Preamble and Articles 2, 3, 7, 8, 9, 10, and 15) and GR 19 (First paragraph)
89 Edwards, pp. 146
90 Sanusi, pp. 158
91 Etienne, pp. 143
92 Edwards, pp. 161
93 CEDAW, Article 1
Netherlands. Still, other articles throughout maintained the use of the male comparator language, as in Article 3, which places obligations on the State to take certain measures to guarantee the enjoyment of rights equally with men. The Maputo Protocol has adopted the more preferable language by enshrining in it “the principle of equality between women and men.” (my emphasis) Equality defined as between sexes is one grounded in a feminist understanding and acceptance of the differences not only between men and women, but also between women and between men. An apt observation from a report on masculinities describes the differences between men as such:

[I]f some men are associated with hegemonic power, the converse is that other men are in a subordinate position. Nevertheless, the hegemonic model of masculinity creates opportunities from which all men benefit directly or indirectly.

And 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.

2.4.2. Analyzing gender equality through harmonized messaging for SGBV programming

Acts of SGBV are a manifestation of discrimination rooted in gender inequality that reinforce the inequalities they create between the sexes and genders. And, as a form of discrimination, acts of SGBV not only hinder the equal enjoyment of rights of women, but are in fact a direct violations of women’s human rights. 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 GBV Working

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94 Rehof, pp. 49
95 CEDAW, Article 3
96 Maputo Protocol, Article 2
97 Edwards, pp. 17
98 El-Bushra and Gardner, pp. 7
99 Sanusi, pp. 193
100 Johns Hopkins. Confronting GBV in Conflict (Presentation for online course)
Group. Writing the messages was a collaborative effort with (I)NGOs and other UN agencies. The messages focus on the elimination of SGBV towards women and girls by using written sound bites to convey the many consequences of SGBV and advocate a zero tolerance of it. These messages are meant to be disseminated through SGBV 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.

The harmonized messages are promoting a positive but limitedly liberatory conceptualization of gender equality. They are most productive in their challenges to patriarchal or abusive justificatory interpretations of the Qur’an. This contestation is essential to Barlas’ idea of a two-pronged process needed to “ensure Muslim women their rights” and to “establish the legitimacy of liberatory readings [of the Qur’an].”

The harmonized messaging serves to achieve the goal in this feminist process to some degree, while also contradicting the most progressive notions of gender equality with messages that work against the goal by re-entrenching gender stereotypes. For this reason, the harmonized messages serve as a prime example of the translation process. The subtext of the messages reveals a process of translation from the normative ideas of gender equality on the international level to the domestic context of Somalia.

The process includes actors on both the domestic and international level influencing the translation through their various filters of translation and agendas. The interaction between the actors reveals how ideas of gender equality have been translated to find that “cultural match” of understanding as they cross cultural and linguistic borders all the way to a literal translation from English to Somalian. This process translated those ideas into meaningful messages barely resembling the universal ideals from whence they originated.

The harmonized messages do not explicitly refer to gender equality, but the subtext of each message is indicative of a notion of a Somalia-specific gender equality. Because Islam is the dominant religion in Somalia and certain Qur’anic verses are used to legitimate certain acts of SGBV, the messaging for SGBV must use the Qur’an as a reference. Indeed, as Barlas states, “no meaningful change can occur in these societies that does not derive its legitimacy from the Qur’an’s teachings.”

Blatantly Western and secular intervention is often not well received and is easily passed off as Western-driven propaganda. Therefore, this translation process is cautious and responsive to gender perceptions of both women and men in that it “acknowledges that both individual and structural aspects determine gender relations, that is

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101 Barlas, pp. 3
102 Sabat, pp. 145
103 Barlas, pp. 3
women and men reinforce individually the social spaces in which they live, work, and operate.” (My emphasis)\textsuperscript{104}

The messages focus primarily on the consequences of SGBV through the perspective of the impacts on health, family, and community with almost no focus on women and girls as individuals; humans independent their connection to family and clan; or that SGBV is an inherent violation against human dignity. Instead, they focus primarily on communitarian values and how SGBV impacts communities and women and girls residing within them. Thus, translating the idea of individual rights in the international framework to rights and duties of the community on the regional (the Protocol) and domestic level.

Some messaging, however, for individual rights does come through. For example, in the messaging for forced and early marriage, one message states clearly it is a right for a woman to choose her husband.\textsuperscript{105} And, in a message directed towards religious leaders and followers, it is stated “Islam protects women and promotes their rights”.\textsuperscript{106} (My emphasis) The subtext of the latter message reads as the rights of women as a homogenous group of “believing” women, as well as an essentialization of women as weaker than men in their need of protection by Islam.\textsuperscript{107} Islam, in its modern practice, is deeply patriarchal. Thus, the protection it offers women translates to protection provided by men who are divinely appointed to do so in the name of a god that is ascribed a male (masculine) gender. It reinforces beliefs held by Somali men (and possibly women) such as the following, “[m]en are responsible for the world, after Allah.”\textsuperscript{108}

Further entrenchment of women into traditional gender roles assigned by religion and culture is found in the following messages:

- Treat women and girls well. They are your mothers, sisters and wives
- Violence against any woman is violence against our mothers, sisters and daughters.
- Women and girls living without fear of violence can help advance families and communities
- Every woman and girl is a daughter. So help to protect her.\textsuperscript{109}

\textsuperscript{104} Edwards, pp. 16
\textsuperscript{105} Harmonized messages, pp. 3 (Shared by Respondent 6, on file with author)
\textsuperscript{106} Ibid, pp. 8
\textsuperscript{107} “Believing” women is simply a religious distinction between groups of women who believe in Islam and those who don’t
\textsuperscript{108} El-Bushra and Gardner, pp. 11
\textsuperscript{109} Harmonized messages, pp. 9-11
These messages, using “womenandchildren” language, confine women to roles that are dependent on their relationship to male counterparts within families. While further entrenching these roles, they also render an image of SGBV as wrong because it is perpetrated against, not the women herself, but the attachment and dependency of the woman to a male counterpart. Linking the consequences of SGBV in this way perpetuates the belief that “rape as a woman harm[s] her because of its meaning to the men in her family or culture, or that it harm[s] a wife, daughter, or sister because it impugned a husband’s father’s, or brother’s honor.”

Equality between the sexes, in the private realm of marriage, does not come through in the messages. The disparate roles of man and wife are maintained in the messages with women filling the subordinate role. Barlas describes an interpretation of the Qur’an that explains how “[it] draws on the principle of sameness and similarity of human nature to define spousal relationships, and the terms in which it describes these relationships suggests that wives and husbands as equal.” And in terms of international norms, the Maputo Protocol, in Article 6 on marriage, states, “[s]tate parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.” And the CEDAW obligates States to ensure that “on a basis of equality of men and women […] [t]he same rights and responsibilities during marriage and its dissolution.”

In the coverage of domestic violence, one message uses a verse asking “[h]ow does anyone of you beat his wife as he beats the stallion camel and then he may embrace (sleep with) her?” While this message makes a clear statement that domestic violence is wrong, it suggests it is so based on the use of the authoritative position used over the wife. This message also has troubling implications for ideas about the necessity of consent in a relationship. That is, in the given insinuation of the possibility for the man to beat his wife and still expect to sleep with her. In this message, there is no voice or agency for the woman, not in the act of abuse, in the marital act of sleeping with, or embracing one another.

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110 “womenandchildren” is a term coined by feminist, Cynthia Enloe, in the 1990s and is used often to describe the political manipulation of using the necessity to protect women and children as justifications for war.
111 Halley, pp. 57
112 Barlas, pp. 184
113 Maputo Protocol, Article 6
114 CEDAW, Article 16 (c)
115 Harmonized messages, pp. 3
In contradistinction, another message indicates equality in the marital duties to nurture the bond between husband and wife with “kindness, love and understanding.” This is a positive message matched to others advocating the opposite and informs women and girls that love is not expressed through violence. Projecting this message is important because, the construction and reinforcement of gender roles is also part of an individual process. Traditional perceptions of women also reinforce negative ideas of gender stereotypes. For example, a survey conducted by Norwegian Church Aid discovered that in Somalia: 37% in the age range of 15-24, 36% from 25-34, 21% from 35-49, and 28% from 50 plus of the SGBV survivors who responded believe wife-beating is an expression of love. The same survey also found (following the same pattern of age ranges): 66%, 46%, 30%, and 50% of the respondents believe the husband has the right to discipline the wife. For Barlas, interpreting the Qur’an as giving license to abuse, but specifically in domestic abuse against a wife, makes great and illogical interpretative leaps justifying and excusing abuse already happening.

Unreading patriarchal interpretations of the Qur’an, as Barlas has done, reveals the Qur’an’s holistic nature, one transcending sex binaries and focusing on humankind as a whole. The potential to read gender equality from the Qur’an might prove beneficial in establishing a groundwork of messaging that doesn’t re-entrench women into familial and community-based positions. Rather, messaging that conveys agency and opportunity to pursue personal paths of development independent of patriarchal supervision.

Just as gender is a product of social constructions, so too are the interpretations of the Qur’an derivative “of the intellectual, social, and political processes of Muslim history.” A deconstruction of traditional interpretations of the Qur’an is necessary for the liberation of women. The harmonized messages serve both to deconstruct and reinforce traditional interpretations, which ultimately convey an ambiguous statement about perceptions of gender equality drawn from the Qur’an.

116 Barlas, pp. 184
117 Harmonized messages, pp. 5
118 Norwegian Church Aid presentation (on file with author)
119 Barlas, pp. 162
120 Ibib, pp. 103
121 Ibid, pp. 74
2.5. Conclusion and discussion

In this chapter, I analyzed and discussed a various selection of translation processes for culture and religion in Somalia. The pervasiveness of norms based on ideas of inequality and the maintenance of sexual hierarchies was discussed from the community level to religion to government to the organizational structures in place for SGBV programming. This process made observable that inhibitive ideas regarding gender and sex are not limited to the domestic context but are apparent even in the international structures designed to combat them. Collectively, the processes illustrate that the strongest influential factors distorting the universal values at the core of international feminist norms and strategies are filters produced by religion and culture, the limits of compromise and negotiation set by international actors, the limits of the normative framework, and institutional biases within norm-carrying organizations. Each process analyzed is an example of how each of these factors influences progress in SGBV programming.

In the process involving the ratification of the CEDAW, the direct interaction between the international community and the Somalian government via an international legal instrument highlights the clash between universality in the normative feminist framework and religious hegemony (read patriarchal). And, the responses to the LGBTI question show a process of translation in which feminist strategy in pursuit of gender equality is subject to a deliberate removal of entire groups of gender identities from its normative aspirations for equality. The continued silence on the issue by the international actors involved in the process reveals an understanding that compromising or neglecting the rights of others is necessary to fulfill the rights of a majority. Thus, the international actors are responding directly to the domestic context by giving deference to religion as it is used strategically to justify voiding the rights of “others”.

The translation process for gender equality reveals an understanding of the need to appeal to the cultural and religious contexts and experiences of different groups of Somalis. This acknowledgement meant compromising universal feminist ideals of gender equality that have defined the norms within the Maputo Protocol and the CEDAW to give them domestic reach. This process profoundly affirms that the “rhetoric of equality [is] weaker than the language of violence”.\(^\text{122}\) This is found in the promotion of non-violence based on its consequences and communal and familial ties being more relatable than notions of non-violence based on the inherent dignity and equality between all humans.

\(^{122}\) Edwards, pp. 141
The critical goal of SGBV programming is to liberate women from violence. Ambiguous messages may contribute towards that goal, but unnecessary compromises are made by reinforcing roles for women that are a result of gender inequities. This process works against the long-term goal of gender equality, despite having the resources at hand to formulate messages based in equality and the inherent dignity in all humans. This is an example of how a feminist consciousness informing programming for women can assist in creating more empowering, less ambiguous statements about the value of women as humans period.

Each process discussed exemplifies how “local adoption entails a metamorphosis of the norm resulting from domestic filters of translation and from the intervention of domestic actors” (and international actors). Not only are the ideas propagated by these filters prohibitive in their dominance, which has led to normalcy of male hegemony, but they also serve to endanger the lives of Somalian women through direct and indirect (in)actions. SGBV programming cannot escape these discriminatory filters, but it should be aware of them and actively work against them with acute consciousness.

123 Sabat, pp. 145
3. Legislative reform: A mode of translation for international feminist strategies

3.1. Introduction

“Men see sexual offences as an issue for women – they don’t consider it an area in which they should be involved.”124

Attaining access to justice is a key feminist strategy grounded in the recognition of structural biases preventing women from accessing justice equally and freely -- on the international and domestic levels. In Somalia, the existing structural biases limit women’s access to justice as it is “restricted both within the formal, clan based, and sharia-based judicial systems.”125 In the context of SGBV, having access to justice can be a provision of meaningful support and guidance in the life of a survivor and can lead to convictions of perpetrators. However, access to justice is rendered meaningless if the pursuit of justice leads to androcentric legal codes and biased interpretations of law by a deeply patriarchal judiciary. This is one reason why programming for SGBV focuses not only on access to justice but also legal reform as a method of adjusting traditional or cultural practices that reinforce acts of SGBV. In Somalia, some emphasis has been on the adoption of new legislation repealing former legal codes counterproductive to the pursuit of justice and equality, and which have the potential to re-traumatize survivors.

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 SGBV in both war and peacetime. Feminist advocacy in the 1990s has been spotlighted for its persistence leading to legal milestones in feminist jurisprudence. As noted before, Halley documents this process with intricate detail and her work on the subject will provide much of the background for this chapter as I analyze the translation of feminist strategies through the medium of two legal codes that criminalize sexual offences in two regions of Somalia -- South Central (Mogadishu) and the semi-autonomous state of Puntland.

Understanding how feminist strategies in international governance are translated in the domestic context provides insight into how these strategies are filtered down into a local process of negotiation. It can build an understanding of how much these strategies are influencing

124 Sperber. *Somalia sexual offences bills hailed as vital step towards lasting change*
125 UN Women webpage for Somalia

local processes that involve myriad international and local actors, and how women’s rights are compromised for the sake of achieving limited progress. In this chapter, I explore the translation process of the two aforementioned legal codes. First, however, I will briefly introduce the two primary legal systems operating within Somalia to provide a literary trajectory illustrating the progress of the legal programming for SGBV based on the contrast from its origins.

Somalia is a legally pluralistic State with three dominant legal systems: formal law, customary law (xeer), and Shari’ah law. The disconnect between these systems has created an unpredictable legal environment in which “overlap between these codes has the potential to create significant confusion for practitioners.”126 The following sections provide a brief introduction and overview of the two systems used most often for cases of SGBV.

3.1.2. 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.”127128 The Constitution also includes a bill of rights. The rights 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”.129 Additionally, equal rights and duties before the law are bestowed 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.130 Other rights granted through the constitution, relevant to SGBV, 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.131 The latter right includes the prohibition of all forms of violence, -- with an emphasis on violence against women – torture, and inhumane treatment.

Also forming part of the formal judicial structures, is the Somalia Penal Code. Sexual offences committed currently fall under the penalties prescribed in the Penal Code, which is a vesi-

126 Legal Action Worldwide. Legal Aid Providers Supporting Survivors of Gender Based Violence in Somalia. pp.16 [LAW report]
127 Somali Provisional Constitution, pp. 1
128 UNDP and UNPOS. Guidebook on the Provisional Constitution of Somalia, pp. 23
129 Somali Provisional Constitution, pp. 3
130 Ibid, pp. 3-7
131 Ibid, articles 11-15
lige of Somalia’s colonial era under Italian control. The provisions relating to sexual violence are sparse, discriminatory to the detriment of women and members of the LGBTI community, and use outdated terms referring to rape as “carnal violence” and other acts of “lust”.

This outdated terminology and blatant disregard for the legal protections and rights of women serves to endanger their lives with its silence on assault (domestic violence) and tolerance of assault in the name of honor. Discriminatory law interpreted by biased practitioners further compounds the negative legal climate for women in Somalia. Additionally, it is true the judges “may apply incorrect laws or standards, such as the requirement for two male witnesses in a rape case.” A legal standard, which is upheld in the provisional content of the Puntland Sexual Offences Act, which will be discussed later in this chapter.

3.1.3. Customary law (xeer)

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.” This consideration, limiting the legitimacy of the formal system, blends well into the earlier discussion on the tensions between Somali culture and ideas of 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 xeer system, a position women are excluded from holding. In SGBV 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 xeer is to force marriage between the perpetrator and survivor. I must note, however, one respondent said that this practice is diminishing while another said it is still common.

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132 Somalia Penal Code, pp. 283-285
133 Ibid, pp. 299 The gender bias in the structure of the Penal Code is strikingly apparent in the punishments assigned to honor crimes, Article 443.
134 LAW report, pp. 18
135 Wauters, pp. 28
136 Ibid
137 El-Bushra and Gardner, pp. 15
138 Respondents 4 and 5
One interview inspired a prolonged discussion on the general legal principles of operation in *xeer*. From that conversation, an understanding of the customary law in Somalia shed light on the inconsistencies in the two perceptions of commonality of marriage between perpetrator and survivor. *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.

3.2. Introduction to the new legislative codes for sexual offences in Somalia

The process for drafting a legislative bill responding to the prevalence of SGBV in Somalia began soon after the FGS was established. Having already acknowledged the urgency needed to address the forms in which women in Somalia experience SGBV, the Ministry of Women and Human Rights Development (MoWHRD) began drafting the comprehensive Sexual Offences Bill (hereafter the FGS Bill or Bill) for the FGS. Soon after, the states of Somaliland, Puntland, and Jubaland followed, and currently each region has its own draft of a sexual offences bill. If success is to be measured in terms of the bill being signed into law, then Puntland has been the most successful under these terms. The Puntland Sexual Offences Act (hereafter the Puntland Act or Act) was signed into law in September 2016, but the bills for the FGS and Somaliland remain in political limbo. However, there are reclaimed hopes for the FGS Bill passing into law with the support of Somalia’s newly elected president, Mohamed Abdullahi Farmajo.

139 LAW webpage for Sexual Offences Bill [LAW webpage]
140 UNFPA. *Puntland Passes law against sexual offences*

Various sources report conflicting months (February, August, and September) for passing the Puntland Act.
I am unsure about the current stages of Jubaland bills

141 Respondents 4 and 6
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.142 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.143 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.144 The selected comparable jurisdictions were: Kenya, Sierra Leone, South Africa, The Gambia, and the Great Lakes.145

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.”146 One member of the technical unit, Judge Vagn Joensen of the International Criminal Tribunal for Rwanda, described the Bill for the FGS as “[t]he most comprehensive Bill on sexual crimes, seen anywhere.”147 The comprehensiveness of the FGS Bill is indeed impressive; it covers much of what one particularly influential Working Group in GFeminism 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.”148 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 GFeminism engaging with IHL, ICL, and IHRL.149150 I am using these two legal instruments because they were the resources

142 LAW webpage
143 Respondent 18
144 LAW (Report on file with author). pp. 6
145 Ibid, pp. 5
146 LAW webpage
147 Ibid
148 Halley, pp. 49
149 Halley, pp. 3
150 All drafts of the FGS Bill and the final draft of the Act are on file with the author. The final drafts of each can be found in Appendix III.
shared with me. However, for comparison these two regions are much closer in relevancy as the FGS Bill is the Federal Bill for the Republic of Somalia and Puntland is currently a semi-autonomous state within the Republic. Somaliland has claimed independence – a claim unrecognized by the international community – and the federalization process for Jubaland is still unsettled.\textsuperscript{151}

### 3.3. A comparative analysis of the Puntland Sexual Offences Act and the Federal Republic of Somalia Sexual Offences Bill

With only a cursory glance at the first draft of the FGS Bill it is obvious the ambitions for writing a comprehensive bill were high. Ambitions that were met with impressive breadth on the coverage of the many forms of sexual violence and discrimination experienced by women. In both, the trace of international feminist strategies is unmistakable, while each also simultaneously responds directly to the contextualized experiences of Somali women. It’s apparent both are unique pieces of legislation within and out of the Somali context.

#### 3.3.1. Object and purpose

The Bill begins with a short description of its intended purpose with a short preamble, which is written as such in the first draft:

\[
\text{[t]o make provisions for sexual offences, the prevention, protection of women, children, and persons with disability from harm, amend existing Somali laws relating to sexual offences with the purpose of complying with the Somali Provisional Constitution, and for connected purposes.}\textsuperscript{152}
\]

By the second draft the Bill was tasked with further purpose to:

\[
\text{prevent sexual offences, protect vulnerable persons, including: women, children, and persons with a disability from sexual offences, punish sexual offenders and end impunity, amend existing Somali laws on sexual offences in compliance with human rights laws (added element to emphasize that the Bill is part of a human rights-based approach), and for connected purposes.’\textsuperscript{153}}
\]

In the fourth draft, gender-based violence is added to the prevention purpose of the Bill, along with the original inclusion of sexual offences. Additionally, and importantly, women are dropped from the list of vulnerable persons, while children and persons with a disability are

\textsuperscript{151} Mwangi, pp. 1
\textsuperscript{152} Sexual Offences Bill (first draft) pp. 1 [FGS Bill, first draft, second, fourth, or final draft]
\textsuperscript{153} FGS Bill, second draft, pp. 3
maintained. And, in the final draft, it was added that the Bill is purposed with “end[ing] impunity in Somalia for sexual and gender based violence.”

According to feminist critique, the second draft of the preamble would have served to further the representation of women as vulnerable or weak in comparison to men. It is a perpetuation of the portrayal of and belief that women are victimized because of their inherent vulnerability and are in need of special protection provided by men. This was pronounced with the enumeration of women in the list following “vulnerable persons”. The use of “womenandchildren” language is often used in the context of war, operationalizing women and children and the need to defend them as a valid justification for war. However, grouping them together in any context is a way of portraying women as “helpless and in need of defense [...], feminizing children and infantilizing women.” Feminists continue to advocate for the de-essentialization of women as being perceived only as mothers, deriving value as humans and need for protection inherent in that role, as though this status is more deserving of respect and protection than their humanity.

It is, however, true in the context of Somalia that women are especially vulnerable to the offences committed within this Bill and the content of it is largely directed towards the specific vulnerabilities of women and children in Somalia as each group makes up the overwhelming majority of SGBV survivors. However, strategic feminist engagement on the international level is highly critical of the use of essentialist language, discourages its usage, and would likely be critical of the legal codification of women as “vulnerable persons”. Thus, it appears as though the drafters, having a feminist consciousness of this, omitted this counterproductive language. In the Puntland Act, however, the language of “womenandchildren” was maintained and used to describe women and children as “particularly vulnerable to sexual offences.”

In the preliminary sections of the Puntland Act, it also provides a framework and purpose for the law. First, it gives deference to Shari’ah in accordance with the Constitution of Puntland, as well as the Federal Constitution. It refers to the Puntland Constitution as “enjoin[ing] the

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154 Note: I did not receive a copy of the third draft, so it is possible that elements that appear to have been introduced in the fourth draft were actually done so in the third.
155 FGS Bill, fourth draft, pp. 5
156 Otto, pp. 103
157 Enloe. Bananas, Beaches and Bases
158 Sjoberg, pp. 377
159 Annual Report, pp. 1
160 Sexual Offences Act, pp. 4 [Puntland Act]
protection of women’s rights consistent[ly] with Islamic religious norms.” Following the dominant Islamic religious norms in Somalia at present, the Act would not offer the protection needed for the most pervasive acts of SGBV – namely forms of intimate partner violence and forced and child marriage. In fact, placing Islamic norms first might counter the ultimate goals that passing the Act rests in, i.e. gender equality in justice and ending impunity for SGBV.

This preliminary framework helps to establish the list of objectives for the Act. One of which is to:

[1] Lay down deterrent legal framework for the prohibition and prevention of rape and other sexual offences […] in compliance with the general objectives of Islam, constitution and the relevant international human rights standards and principles of justice. 162

The general objectives of Islam are described earlier in the Act as to “protect sanctity of life and prohibit all forms of physical and mental harm against the human body.” 163 These objectives are upheld only to a limited degree in the Act, which reveals a limited understanding of either the mental and physical consequences of certain acts of SGBV or an intention to adhere to religious custom regardless of the consequences while espousing principles of the “sanctity of life”. A common form of patriarchal doublespeak claims beliefs in equality and justice for all while actively supporting and acting in ways contrary to that claim.

3.3.2. Interpretation of terms

Following the preambles in each, a list of interpretations for terms is provided. The interpretations given for each term in the FGS Bill were adapted and elaborated upon for interpretative legal precision throughout the process. In the subsequent drafts, terms were added and omitted resulting in a final comprehensive list of terms. Following this process is akin to following a feminist consciousness of the likelihood of interpretative gender bias based on the experiential knowledge of feminists past and present. Like the feminists discussed in the account of GFeminists at Rome by Halley, feminist interception here sought to provide the utmost in protection with the effect of shrinking space for alternative interpretations countering the object and purpose of the Bill. 164 I will only analyze one of the many terms here due to lack of space.

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161 Puntland Act, pp. 3
162 Ibid, pp. 6
163 Ibid, pp. 3
164 Halley, pp. 72
Marriageable age was a negotiable term requiring special guidance from the MoWHRD as there was concern from the ITRU that if the marriageable age given was not below the age of consent (18 years old) then it would risk the full implementation of provisions regarding forced and child marriages and the facilitation of such marriages. In the final draft, it is explicit that the age of 18 is the marriageable age according to laws of the Federal Republic of Somalia. Article 6 of the Maputo Protocol also stipulates the minimum age of marriage is 18 years. The Puntland Act, while not including a specific definition of “marriageable age” does define child as “any person below the age of 15”. 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. The Act also states “[f]or the purposes of applying this law, a child who is legally married is permitted to engage in consensual sexual acts with their spouse.” 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”. 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.

Early and forced marriages in Somalia are a widespread form of SGBV, thus it is critical to not take action reinforcing tolerance, silent or active, for these practices. A recent survey taken, found that in the South Central (FGS Bill jurisdiction) and Puntland regions of Somalia 26% and 18% of women were forced to marry; 44% and 47% reported early marriage (15 years old or less), and that 51% and 50% of the men surveyed support early marriage, respectively.

For the FGS Bill, this is a significant gain for feminist strategies working against child and forced marriage as a form of GBV. Child marriage is widely recognized in the definition of gender-based violence as a form of discrimination against women. GR 21 is explicit that provisions allowing for child marriage must be repealed. In the FGS Bill it goes so far as to

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165 FGS Bill, fourth draft, pp. 6 (comment from ITRU)
166 FGS Bill, final draft, pp. 7
167 Maputo Protocol, Article 6
168 Puntland Act, pp. 4
169 Ibid, pp. 8
170 CEDAW, Article 16 (2)
171 Johns Hopkins. South Central, pp. 8 and Puntland, pp. 6
172 General Recommendation 21, pp. 3
criminalize even the facilitation of forced and child marriages.\textsuperscript{173} This translation of feminist norms embedded in the CEDAW provisions, which call for marriage to be based on consent by both parties, is significant in the Somalian context due to the practice in customary law mentioned earlier forcing rape survivors to marry their perpetrators.\textsuperscript{174}

This is not only an achievement for international norms, however, because it also fulfills a 2014-pledge by various Somali actors (government officials, CSOs, and representatives from the private sector) to join the global movement to “end child, early and forced marriage and all forms of FGM/C for all girls within a generation.”\textsuperscript{175} For this pledge, it was emphasized that passing legislation to protect against these harmful practices would be a major step towards achieving this goal. The actors who participated in making this pledge were from Puntland as well. That the Puntland Act is itself a mode of legitimation for these acts illustrates a disconnect not only between the international community and domestic contexts, but even between actors operating on an institutional level within the domestic context. This disconnect plays to the resilient and domineering grip of the patriarchal hegemones operating in Somalia.

### 3.3.3. “Losing the battle on marital rape”

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 “[m]arriage between the couples shall constitute defense to a charge of rape under this section.”\textsuperscript{176} 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 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.”\textsuperscript{177} 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.

\textsuperscript{173}FGS Bill, final draft, pp. 12 and 16
\textsuperscript{174}CEDAW, Article 16 (b)
\textsuperscript{175}UNICEF, Somalis To Work Together to End Child Marriage and Female Genital Mutilation for Girls and Women
\textsuperscript{176}Puntland Act, pp. 9
\textsuperscript{177}Ibid
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.  

3.4. Framing consent and non-discrimination

Consent

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. 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 (i.e. was it late at night or was she in a environment where alcohol was consumed).

The definition provided in the Bill would likely elicit praise from feminists worldwide, but would also draw some criticisms from certain groups towards its more structuralist feminist components. What is provided is an extensive, page and a half list of circumstances in which a person lacks capacity to give consent, whereas consent is defined as having the “freedom and capacity to make that choice.”

The list is an amalgamation of circumstances directly relevant to the Somali context, GR 19, and other prominent discussions on violence against women. In the vein of structuralist feminists, the FGS Bill states that consent cannot be given in circumstances of a coercive environment such as:

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178 Halley, et al., pp. 337
179 Halley, pp. 99
180 Ibid, pp. 97
181 FGS Bill, final draft, pp. 8
i) military presence
ii) are armed combatants or militia present or in control
iii) is a terrorist group present or in control*
iv) there is ongoing armed conflict
v) there is ongoing widespread or systematic attack on a civilian population

Limiting consent in such a manner effectively rules out, in a strictly legal manner, the possibility of giving genuine consent. Used as an arguably necessary protective measure, it can be viewed from a liberal feminist perspective as an overcorrection in the form overprotection, reducing the sexual autonomy of those who might engage in consensual sexual relations in such an environment.

The inclusion of the circumstance of having a terrorist group present or in control is the Somali contextualization because certain regions of the country are in effective control of Al-Shabaab. Moreover, it is an exemplary, forward-looking legal strategy of the expert guidance given by the drafting team. It was noted in the fourth draft that territories controlled by terrorist groups are not only relevant in the Somali context, but also “a common security threat globally [and despite its current exclusion] in international criminal jurisprudence, it probably will be in the future.” Additionally, this list accounts for the presence of the AMISOM Peacekeepers, which are known perpetrators of sexual coercion and exploitation in Somalia.

Non-discrimination

The principles of non-discrimination within the Bill reflect those codified in the core human rights treaties but also elaborate in a more conscious and inclusive manner. A non-exhaustive list enumerates those to whom the provisions within the Bill shall apply. The list is written as such:

[clan, race, color, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, political or other opinion, disability, property, birth, immigration status, the fact that the injured party has been trafficked, smuggled, or has participated in the sex industry, or other status (my emphasis to denote the use of the term “gender” instead of “sex“)]

Sub-paragraph two applies the same non-discriminatory measures to children of parents whose status falls under any of the categories listed above.

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182 Ibid
183 FGS Bill, fourth draft, pp. 8
184 Human Rights Watch. *Somalia: Sexual Abuse by African Union Soldiers*
185 FGS Bill, final draft, pp. 9
This list might satisfy feminist strategies that have sought for the inclusion of consideration and non-discrimination on the basis of many of the statuses included in this definition. The inclusion of persons who have been trafficked, smuggled, or who have participated in the sex industry is noteworthy in the individual consideration given to these vulnerable groups. This is another element where Halley et al.’s dissection of the GFeminism process is relevant as it highlights key feminist debate on the issues of sex trafficking and prostitution. The specific enumeration of persons who have been trafficked or participated in the sex industry would satisfy both liberal and structural feminists as survivors of trafficking and their human rights are of central concern to each group.\textsuperscript{186} This definition also displays an acute awareness of the specificities of experiences directly relatable to the Somalian context, which illustrates a consciousness for the multitudinous forms of discrimination women are subjected to.

The criminalization of sex trafficking in the FGS Bill (it’s not listed as an offense in the Act) also aligns with Articles 6 and 4 (g) in the CEDAW and the Maputo Protocol, respectively.\textsuperscript{187} It even goes further to include specific consideration for the rights of survivors of sex trafficking.\textsuperscript{188} This is one of the many aspects of this Bill that makes it a champion in the context of feminist norms. The failure of structuralist feminists to look beyond their view of criminalization of such practices as direct forms of liberation for women had the effect of placing survivors in precarious legal domains.\textsuperscript{189} Halley, et al. provide examples of how the result of such activism led to legislation that created situations where survivors were left with the option to testify against the perpetrators or be deported to their homeland.\textsuperscript{190} A situation which was created, according to the authors, due to not only a lack of foresight but also a preclusion from “noticing [the] many unintended consequences of its favored reforms.”\textsuperscript{191}

Including rights for survivors of sex trafficking breaks away from the tunnel vision in the preferred methods of structuralist feminists and reserves delicate consideration for survivors by stipulating:

\[\text{[h]}\text{e or she shall have a right to lawfully reside in the territory of the Federal Republic of Somalia, either temporarily or permanently, depending on the circumstances of the case. In applying this article, the relevant authorities shall give appropriate consideration to humanitarian factors.}\textsuperscript{192}\]

\textsuperscript{186} Halley et al., pp. 351
\textsuperscript{187} CEDAW, Article 6 and Maputo Protocol, 4 (g)
\textsuperscript{188} FGS Bill, final draft, pp. 27
\textsuperscript{189} Halley, et al., pp. 340
\textsuperscript{190} Ibid, pp. 399
\textsuperscript{191} Ibid, pp. 393
\textsuperscript{192} FGS Bill, final draft, pp. 27
Paragraph two goes on further to allow for the request of “assistance to be safely repatriated to the country of their lawful residence or citizenship [...] relevant authorities in cooperation with other governments, non-governmental organizations, shall provide whatever assistance is necessary to the injured party.” And lastly, it holds that trafficking survivors shall not be “criminally or administratively liable for immigration offences as a direct result of them being trafficked.” Such considerations convey an advanced understanding and concern for the specific experiences had by survivors of trafficking. It also suggests an awareness of the pitfalls in structuralist feminist intervention in the past. Both of which are elements that work to make the FGS Bill so extraordinary.

3.5. Consequences of rule implementation

One of Halley’s primary critiques of GFeminism is its emphasis on the pursuit of “criminal enforcement. [...] speak[ing] the language of total prohibition” as a panacea to the subordination of women. She explains how excluding the experiences of men in wartime by lending women special status has led to the development of a moral blind spot that she is uncomfortable with. Traces of this blind spot do come through in the Bill and the Act, although I cannot say that the provisions are written with blindness towards any party affected by this Bill. The blind spots would be better defined as compromises made to push forward this agenda in which women have a special status.

The effect or impact of this legislation on certain parties included or excluded has yet to be seen; however, examples in the Bill and Act that compare to blind spots identified by Halley do exist. One example is the criminalization of the facilitation of marriages. Although this is a much-needed rule for the sake of prevention and to signal a shift in the tolerance of harmful practices, it is also one with potential for harm to families still rooted in these cultural practices. Despite the current unlikeness of the implementation of this rule, the potential remains. Such a scenario elicits the question of whether facilitators should be criminalized before there has been cultural or social shift in the idea of its wrongfulness. If implemented, however, it will hopefully reduce the occurrences through prevention by criminalization. But implementation could also cause some backlash towards the formal system and the foreign actors who helped devise it. This could lead to the further isolation of law to the xeer system or, as is common in such cases of abrupt criminalization without change in social or cultural attitudes,

193 Halley, et al, pp. 341
194 Halley, pp. 123
the practices could shift to others as harmful or be pushed into other less-visible locations.\textsuperscript{195} Another question for consideration is what will the impact be on the families whose members are criminalized for the facilitation of these unlawful marriages? A structuralist feminist approach would be to carry on with the pursuit to abolish these practices no matter the consequences. However, in such culturally sensitive contexts, a softer, more open approach might prove to be more positively transformative for women.

Lastly, 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.\textsuperscript{196} 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. And, I tend to agree, while also recognizing that engagement of feminists in international governance is quite a different process than in the domestic context. While cultural and religious norms are present in the international context, they are not uniform in the same way as in a setting where homogeneity in religion and culture unite to resist. Overall, I agree with Halley’s idea of the necessity for a consequentialist assessment of what rules designed to protect women will lead to.

### 3.6. Conclusion and discussion

The purpose of analyzing and discussing such specific details of the Sexual Offences Bill and Act is to illuminate the intricacies in the translation process from the broader normative context to a domestic context that needs to respond to the lived experiences of those to whom the legislation applies. Tracing the points where critical compromises were negotiated by a network of international and local actors furthers an understanding of the process of how women’s rights are created, protected, and implemented in the context of a transitioning State. It was also an objective to utilize the resources at hand to demonstrate the feminist consciousness that was present throughout drafting the Bill ultimately leading to the product of a comprehensive, survivor-centered legal code.

\textsuperscript{195} A/HRC/4/34, pp. 14
\textsuperscript{196} Puntland Act, pp. 22
Many elements of feminist norms and strategies have been incorporated into the Bill and Act. Each has been drafted with direction from the prevailing international standards set by GFeminists in the 1990s, the CEDAW, the Maputo Protocol, GR 19 and other instruments working together to form feminist norms for SGBV legislation. Next to that process, was the complementary process of shaping the content of the bills to the domestic context. The Bill and the Act, even without an in-depth analysis of their content, are evidence of the translation process and the blending of international and domestic culturally produced norms.

The endorsement of the codification of the tolerance of marital rape, child marriage, and the death penalty, is a stark revelation in the analysis of the negotiations and compromises made to further the agenda for SGBV programming. It highlights the resilience of dominant cultural norms that, despite consultations with myriad actors, resist reform and transformation. It also highlights the sense of urgency to formulate some form of protection of women, even if limited and contradictory to the larger goals. The compromise elicits questions about who is deciding for the women of Somalia which forms of SGBV they experience are negotiable and which forms they can afford to compromise until male hegemonies are ready to relinquish their control over defining and maintaining culture and traditional practices.

The legal rules don’t have to be explicit in their tolerance for some acts of SGBV, though. The implications of silence are extremely visible when there is no legal redress for certain acts of SGBV. It is also important to consider the consequences of legally codifying marital rape and child marriage. Mulvey of LAW, said herself, “it is also essential that the international community does not reinforce negative and discriminatory practices […] or allow them to turn into policies.”197 This is not to say, however, there will be no more opportunities for reform for women in the future, but in the meantime, the bills being passed should be recognized as achievements in progress. Especially when such drastic compromises were made in the case of marital rape and child marriage, along with other content being ambiguous and, in the Puntland Act, contradictory to the goals of SGBV programming. This process is yet another illustration of the “success” of women’s rights perceived in the incremental victories while their equality continues to be subordinated to dominant patriarchal attitudes.

At present, however, the contents of the Bill and the Act do not represent the prospect of immediate change in the lives of women in Somalia. Firstly, most SGBV cases are settled in the xeer system, which excludes these legislative codes entirely.198 This suggests that the focus of legal reform should be directed towards the attitudes of clan elders who mediate on this level.

197 LAW report, pp. 9 (Mulvey was not a respondent in the interview process.)
198 Ibid, pp. 8
Currently, much of the focus lies on transitioning the reliance on *xeer* to the formal structures of law that don’t yet have the capacity to manage such a shift and are also not widely accessible to many Somalians. Additionally, *xeer* has the advantage of being flexible and able to adjust its practices in ways formal law does not. That is not to say sexual offences bills are not important priorities for SGBV programming, however, if adjusting attitudes and practice is to be a predecessor to success on the federal level, then it should be recommended to bring the focus to that level.

Secondly, there is little will to implement the bills. For this reason, one respondent stated that while passing these Bills is an important step, it is a premature one.199 This respondent, speaking from the position of an INGO that has received no returns in the pursuit of funding for advocacy to get the FGS Bill passed for the past three years, understands well the lack of will and concern for stronger preventive measures. If it’s impossible to convince the donor community and government to commit to one of the “top priorities” in development for Somalia, which is to end violence against women, how can one expect the full implementation of the Bill to have success?200 Legislative reform for SGBV was also de-prioritized by the international donor community and the government when selecting twenty-two priority legislations to have passed before the recent elections— the FGS Bill did not make it to the priority list.201

As a final note, legislation as a mode of prevention is not a panacea to the occurrence of SGBV. Mulvey understands this, and stated that implementation of the bills is not the only way to prevent SGBV but is one aspect of many working towards it.203 This statement indicates an understanding that, even with the full implementation of legislation criminalizing SGBV, it is only one way to curb or deter the actions of perpetrators. As a form of prevention, though, it is limited as it does not reach to the core of the reasons why SGBV occurs in the first place. On this subject, I agree with Halley, et al. when they state, “[w]e take it as a given, […] that punishing conduct as a crime does not “stop” or “end” it.”204 The best way to stop or end SGBV is to focus on the core of its cause, which are social norms justifying and tolerating it. The legal framework can be useful, in the meantime, however. It provides legal standards

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199 Respondent 4
200 UNFPA. *Somalia GBV Working Group appeals for $9.5 million* and the Somali Compact, pp. 11
201 Somalia Constitution, pp. 55-56
202 Respondent 4
203 LAW report, pp. 9
204 Halley, et al, pp. 337
to work with in training police, military, judges, lawyers, etc. All of which should be (and are to a limited extent due to lack of funding) part of long-term and holistic SGBV programming.

Passing the Puntland Act and, eventually, the FGS Bill has been and will be a milestone in the advancement of protection of women from SGBV. Symbolism should not be discounted, while it should also not be measured as a success. The symbolism of passing the Act with special concern for the plight of women can be empowering in the recognition that there are people who care and want to help change the situation. Symbolism, however, cannot be sustained on its own; it requires follow up to prove the commitment behind the symbolic act and the rhetoric supporting it. The symbolism must be tested for authenticity.
4. All programming leads back to social norm and perception change: conclusions and recommendations for a holistic model of SGBV programming in Somalia

“Traditionalism and revolution clash against each other: there is an endless succession of advances and retreats, of rebellions and repression, of short-lived victories and temporary setbacks.”

Examining the finer details of these translational processes with a feminist consciousness has led to many informative findings that might not have been apparent otherwise. These findings magnify our understanding of how feminist norms and strategies on the international level, which are already the product of intensive and prolonged negotiation processes, have been further reduced and distorted in the domestic context. And, how this internalization process is shaped through various influences and actors and their filters. Applying a feminist consciousness has helped to dig into understanding the potential impacts of the programming and its capacity for long-term sustainability. Additionally, these processes have lent some insight into the process of norm diffusion that suggest reasons why some norms don’t latch in the domestic context. Although it is understood that norm internationalization and change are long processes, having a grasp for why they are so can assist in identifying and eliminating biases that unnecessarily complicate the process further.

For example, as discussed, domestic and international actors might be placing undue burdens on the process by sending ambiguous and contradictory messages -- explicitly and/or implicitly -- about their goals and level of tolerance for SGBV. In some cases, the institutional biases that create filters of translation distort the values of a norm before it even interacts in the domestic context, where it is then even further manipulated through domestic filters. Institutions carrying universal norms and working to implement them on domestic levels need to be conscious of internal gender and other biases. Such biases create filters of translation that might add undue burdens or constraints on programming. Awareness of these biases should be part of a regulatory reflection process and strategies that actively work against them should be integrated into all programming. It is imperative to avoid replication and transference of structural biases in the international human rights system to the domestic level.

In her discussion on Foucault’s views on power, Halley described power as “everywhere” and that “emancipatory projects [are] those that engage rather than oppose it.”

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205 Thiam, pp. 119
206 Prügl, pp. 114
207 Halley, pp. 131
critical points to this that I think the programming in Somalia, overall, is accomplishing. First, it seems that all or most actors are engaging with the power that is the dominant patriarchal system. This is made clear through the analyses conducted here. Each process has an aspect of appealing to and engaging with religious, political, and cultural leaders, i.e. those who hold (mostly) male-exclusive positions of power in Somalia. Second, is a point that has presence but is not emphasized enough. That is, in Foucault’s view, power is everywhere, meaning even where there is an imbalance of power there is power to be exercised. Somali women and girls have this power and it is not granted to them by the patriarchy. It belongs to them and programming needs to reflect that by focusing on the agency of women and amplifying their independence as the creators and writers of their own script to shape a future free from violence. This script should form the basis of a much-needed engagement in dialogue between all actors working in the field of SGBV. Women’s voices should be pronounced and heard in the dialogue, not the patriarchy’s. And in time, a dialogue on SGBV that is Somali women-centered will see how “[a] word after a word after a word is power.”

The imbalance of power between men and women is underpinned by certain perceptions and ideologies that work to maintain the status quo. The practice of sympathizing with dominant religious and cultural ideals over those of equality is one feminists have been struggling against for decades, yet the practice prevails seemingly out of necessity. It is part of the process of cultural negotiation to find cultural legitimation so that some form of a norm, even if greatly reduced in value based on its universalistic origins, can latch and begin to transform those ideologies and perceptions in favor of equality for women. It does so, as observed in Somalia, due to the influence of not only domestic actors, as might be expected due to their contextual alignment but also by international actors making compromises for incremental progress over none at all.

Finding legitimation, however, does not always advance the agenda for non-violence and equality. Progress can be stunted when certain programming endeavors directly contradict each other. Analyzing these processes made this visible as in the case of the harmonized messages directly contradicting the symbolic silence on and tolerance for certain acts of SGBV in the newly formed laws -- namely the Puntland Act. These ebb and flow processes that see where one “victory” is made another “battle” is lost have given insight into the overall translation process. This insight reveals that, despite best intentions at coordinating programming and harmonizing messages, the multiple actors working together and in parallel create fragmentation that ultimately sends ambiguous statements about commitments to and tolerance

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208 Atwood, pp. 63
for SGBV. Thus, it appears that the number of actors working on SGBV in Somalia might be one of the biggest obstacles to progress in implementation.

SGBV is a result of gender inequality and the perpetration of it creates a loop by reinforcing that inequality. For this reason, one respondent expressed thoughts that SGBV programming should not be independent of the gender equality umbrella for programming.\(^{209}\) The spine of programming should be gender equality, and liberating women from the violence created and perpetuated by inequality is one of the branches of holistic programming. Holistic programming, however, is difficult to coordinate and implement due to lack of funding for programs that reach to the core of the issue. When asked about the biggest obstacles to SGBV programming in Somalia, one respondent stated “No one cares.”\(^{210}\) This sentiment was shared in various phrasing by nearly all the respondents. The idea that no one cares about SGBV stems from the extreme difficulties in getting funding for projects within and outside the humanitarian bubble.

For example, one of the core components of SGBV programming should be social norm and perception change, a recommendation agreed on by nearly all respondents. Convincing donors to fund this mode of programming has proven difficult by those who seek it. One reason, explained by a respondent, is that measuring perception and norm change is difficult.\(^{211}\) Thus, it’s less appealing to donors because “You can’t measure the rapes you prevented.”\(^{212}\) Although, this mode of programming has been given some opportunity to be tested, it is still lacking considering its critical importance to the goals of SGBV programming.

Committed funding to SGBV programming needs to reach all countries, especially those like Somalia where the prevalence rates are so high. And programming needs to focus on the grassroots level ideologies and norms that perpetuate gender inequality. Focusing on transformation on this level will ultimately impact progress for gender equality in other spheres. If gender equality is being sought in other spheres such as, political and economic participation, before societal attitudes have accepted the change the result will be to witness a backlash against women participating and undermine the progress made.\(^{213}\) It is a process that takes time and requires a methodical approach.

\(^{209}\) Respondent 17  
\(^{210}\) Respondent 4  
\(^{211}\) Respondent 2  
\(^{212}\) Ibid  
\(^{213}\) Respondent 16 spoke about one unintended consequence of their gender equality programming for the political participation of women was a backlash in violent threats and acts.
Programming in all phases, from development to implementation, should be informed by a feminist consciousness. Engaging a feminist consciousness is “what keeps one taking seriously and staying intellectually curious about the experiences, actions, and ideas of women and girls.”\textsuperscript{214} It is not a coincidence, for example, that SIDA – the Swedish donor agency with a feminist foreign policy background -- is leading in pushing for SGBV funding to expand beyond the humanitarian bubble.\textsuperscript{215} Using a feminist approach can help balance tendencies of over-conciliation to negative cultural and religious characteristics and the imposition of a Western agenda. Somali feminists have the knowledge to develop ideas, strategies, and dialogue that can reach both women and men to build towards a transformative equality. They are in the best position to challenge patriarchal interpretations of faith that, along with culture, justify acts of SGBV. They can do this while also emphasizing the positive aspects of each that can lend themselves to ideas of inherent dignity and equality in all humans.\textsuperscript{216} Because in the end, “it is the right to equality that must have normative hegemony.”\textsuperscript{217}

It is not intended that a message taken from this thesis be one that men in Somalia are all actively or consciously participating in the subordination of women. There are many allies to the cause and goals of SGBV programming and gender equality in general. However, the compromises highlighted show there is a dominant male hegemony present in Somalia that is acting as a gatekeeper to the rights and liberation of women. These compromises are the direct consequences of that hegemony and the socialization of women and men in its patriarchal culture.

The processes discussed here are a micro-perspective of a much broader system of efforts being put forth into SGBV programming. But they are still salient and significant processes to analyze as they directly impact the long-term results and consequences of perceptions on gender in Somalia. Adding to the complexities inherent in the translation process is the fact that Somalia remains a fragile and, in some regions, unstable country that offers many physical and procedural challenges to programming for SGBV. Despite these challenges, though, there are many international and domestic actors poised and on the pulse to assert any influence that could lead to change. Somalia is a country rich with opportunity for transformative and fundamental change and it has the people needed to build a more equitable future for Somali women -- a future free from violence and subordination. Positive change is possible, needed, wanted, demanded, and will prevail as the powerful grip of the patriarchy is loosened with the realization that the agency and strength of the self and mind of women cannot be subordinat-

\textsuperscript{214} Enloe, pp. 96
\textsuperscript{215} Respondent 17
\textsuperscript{216} A/HRC/4/34, pp. 19
\textsuperscript{217} Edwards, pp. 80
ed. This transformation comes through many channels and forms of opposition to the maintenance of the status quo.

Finally, it is my hope that this insight will contribute to an improved understanding of why feminist norms and strategies in a post-conflict setting succeed and fail. Such an understanding can help us identify causes for success so that can be replicated.\textsuperscript{218} Because good policy is not created from generalizations and misperceptions. It is informed and reaches the core of the issues so that it can offer solutions that will have the most meaningful and sustainable impact.

\footnote{\textit{LAW} report, pp. 9}
## Table of References

### Treaties and Statutes

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[1]: http://www.refworld.org/docid/3ae6b3970.html
[2]: http://www.refworld.org/docid/3b00f25d2c.html
[3]: http://www.refworld.org/docid/3f4b139d4.html
[4]: http://www.refworld.org/docid/3ae6b3a10.html
UN Documents

A/HRC/4/34

E/CN.6/2016/4

General Recommendation 19

General Recommendation 21
**Somalia National Laws and Reports**

*Puntland Sexual Offences Act* [Somalia] 2015 (Final draft)

*Religious Fatwa for Banning all Forms of FGM/C* [Puntland] (no date)

*Sexual Offences Bill* [Somalia] 2014 (First draft)

*Sexual Offences Bill* [Somalia] 2014 (Second draft)

*Sexual Offences Bill* [Somalia] 2014 (Fourth draft)

*Sexual Offences Bill* [Somalia] 2015 (Final draft)


**Web Resources: UN-Somalia documents and reports**


**Web resources: UN Documents and reports**


Web resources: News articles and reports


**Web resources: unspecified**

Adichie, Chimamanda Ngozi. “*We should all be feminists*”. (TEDxEuston, 2012) Available at: https://www.ted.com/talks/chimamanda_ngozi_adichie_we_should_all_be_feminists [Accessed 5 May 2017]


Organization for Economic Co-operation in Development. *Interactive charts by aid recipients* Available at: https://public.tableau.com/views/OECDDACAidataglancebyrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no [Accessed 5 May 2017]


**Secondary literature**


Johns Hopkins. “Gender-based Violence Survey – Findings from South Central Region”. (2016)


Presentations

Norwegian Church Aid. "Protecting Women and Girls Against Sexual and Gender Based Violence (SGBV), and Harmful Traditional Practices (HTPs) and Participation of Women in Peace-Building". 2016. Presentation.

Appendix I  Interview Guide

Semi-structured interviews will be conducted with program managers from NGOs, INGOs, and IOs.

**Warm-up questions:**

How long has [name of organization] been working on SGBV in Somalia?

Which region(s) of Somalia does [organization] work in? Is there a focus on a specific region?

Is programming for [organization] focused on both sexual and gender-based violence, or is there a primary focus on one of the two?

Does [organization] focus on prevention or intervention programming for SGBV in Somalia? Or both?

Does [organization] focus on legal aid, psychosocial care, and/or economic components?

Can you describe the mode of services your organization focuses on and provides through SGBV programming?

**Program development questions:**

*Question for IOs: Are the program objectives developed on a local level based on [organization’s] overall mandate or is there independence or flexibility to operate outside of it in a local context? How does the institution influence program development on a local level?

*Question for NGOs: Do you receive funding from international organizations or entities? Is so, which ones? If so, how has their funding influenced the development of program objectives for SGBV in Somalia?

What is the process for program development? How do you determine needs and strategies based on those needs? Who is involved in this process?

Are any human rights instruments used for referencing for your work? If so, which ones? How are human rights involved in your programming?

How do you determine what/who to focus on? How does [organization] balance specialization versus diversification?

How representative are your program policies of the needs/wants of the women in Somalia?

How have international donors, via funding for SGBV programs, shaped and/or influenced the policies and program objectives for SGBV in Somalia?
How have the different actors (government, international donor community, Al-Shabaab) affected and influenced programming for SGBV? How has [organization] worked with these actors?

What are some barriers to implementation of SGBV programming?

If your organization existed prior to the FGS coming into power, how has the situation for SGBV programming changed since this development in the Somalia?

**Closing questions:**

What have been and currently are some challenges to implementation of SGBV programs?

Are there women from certain ethnic groups or of a certain socioeconomic status that are in the periphery of the target groups for SGBV programming? If so, why?

What are the long-term plans/vision for the expansion/refining of SGBV programming?

What is the most productive strategy for ensuring success in SGBV prevention/intervention?

Is there evidence towards a lack of trust in the law and institutions related to it? If so, how does your organization address this issue?
# Appendix II

## Organizations interviewed

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<td>SWACEDA</td>
<td>IRC International Rescue Committee</td>
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<td>Serve Women and Children Empowerment Development Agenda</td>
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<tr>
<td>SWDC</td>
<td>LAW Legal Action Worldwide</td>
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<tr>
<td>Somali Women Development Centre</td>
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<td>SOWDEN</td>
<td>NIS Nordic International Support Foundation</td>
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<td>Somali Women Development Network</td>
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<td>INTERSOS</td>
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### U.N. agencies

- UNFPA
- UNDP
- UNICEF

### Donor countries

- **Norway** Norwegian Agency for Development Cooperation (NORAD)
- **Sweden** Swedish International Development Cooperation Agency (SIDA)
- **Italy** Italian Development Cooperation
Appendix III  South Central Sexual Offences Bill and the Puntland Sexual Offences Act

Note: This draft version of the bill was recently updated with minor changes that don’t affect the analysis of the Bill in this thesis.
Federal Republic of Somalia

Sexual Offences Bill (2017)
Arrangement of Articles

PART (1) – PRELIMINARY
1. Interpretation
2. Meaning of Consent
3. Non-discrimination

PART (2) — SEXUAL OFFENCES AGAINST THE PERSON
4. Rape
5. Gang rape
6. Sexual assault
7. Causing a person to engage in a sexual activity
8. Sexual exploitation
9. Sexual slavery
10. Sex tourism
11. Sex trafficking
12. Forced and servile marriage
13. Sexual harassment

Preparatory offences
14. Administering a substance with intent
15. Abduction
16. Unlawful detention

Other offences
17. Unlawful recording, sharing or distributing

PART (3) – SEXUAL OFFENCES AGAINST CHILDREN
18. Child rape
19. Child gang rape
20. Child sexual assault
21. Causing or inciting child to engage in a sexual activity
22. Child marriage
23. Child sexual exploitation
24. Child sexual slavery
25. Child sex tourism
26. Child sex trafficking
27. Child sexual harassment
28. Meeting or grooming a child for sexual purposes
29. Production of child pornography
30. Sale or distribution of child pornography
31. Purchasing or possessing child pornography

PART (4) – ABUSE OF TRUST OR AUTHORITY
32. Abuse of trust or authority

PART (5) – INVESTIGATIONS
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SEXUAL OFFENCES BILL (2015)

This is a draft law to prevent sexual offences and gender based violence; protect vulnerable persons, including, children, and persons with a disability from sexual offences; punish sexual offenders and end impunity in Somalia for sexual and gender based violence; amend existing Somali laws on sexual offences in compliance with human rights laws, and for connected purposes.

Be it therefore enacted by the Parliament of the Federal Republic of Somalia, as follows:

Short title
This draft law may be cited as the Sexual Offences Bill (2015).

PART (1) – PRELIMINARY

1. **Interpretation** In this law, unless the context indicates otherwise —

   “Abuse of a position of vulnerability” shall refer to any situation in which a person involved believes he or she has no real and acceptable alternative but to submit to engage in sex acts or agree to be sexually exploited; and includes but is not limited to taking advantage of the vulnerabilities resulting from the person having entered the Federal Republic of Somali illegally or without proper documentation, pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance or reduced capacity to form judgements by virtue of being a child.

   “Accused” shall mean a person accused of an offence under the provisions of this Law.

   “Age of consent” shall mean the age a person can legally consent to a sexual act, which is eighteen years or older.

   “Bodily harm” shall mean hurt or injury likely to interfere with the physical, psychological or mental health of a person.

   “Child” shall mean any person, whether male or female, below the age of eighteen years.

   “Child pornography” shall mean any representation, written publication, or visual depiction; including: any photograph, film, video, picture, or computer or computer-
generated image or picture, whether made or produced by electronic, mechanical, or any other means, of a child engaged in real or simulated explicit sexual activities or any representation of a child primarily for sexual purposes.

“Coercion” shall mean the use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to: threats of harm or physical restraint of any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; abuse or any threat linked to the legal status of a person; or psychological pressure.

“Commercial sex act” shall mean any sexual act on account of which anything of value is given to or received by any person.

“Complaint” shall mean an oral or written statement made by a complainant to the relevant authorities that an offence under this Law was committed or attempted against any person.

“Complainant” shall mean a person who alleges that an offence under this Law was committed or attempted against them; or a representative duly authorised in writing by a person who alleges that an offence under this Law was committed or attempted against them, or any other person who is authorised by Law to file a complaint on behalf of a person who alleges that an offence under this Law was committed or attempted against them.

“Disability” shall mean a physical, sensory, psychological or mental impairment, which has a substantial or long term adverse effect on a person’s abilities.

“Gang rape” shall mean a group of two or more persons acting in union or jointly in the commission or attempted commission of an offence.

“Genital organ” shall mean the sexual organ of a person.

“Grievous bodily harm” shall mean injury inflicted upon a person that is likely to endanger the life or cause serious damage or harm to the physical, psychological or mental health of a person.

“Grooming” shall mean to prepare, train, or entice a child for a sexual purpose or activity.

“HIV” shall mean the human immunodeficiency virus.

“Injured party” shall mean “injured party” as defined by Article 14 of the Somali Criminal Procedure Code (1963).
“Intent” shall mean a person has intent where: (a) in relation to the conduct, that person means to engage in the conduct (b) in relation to a consequence, that person means to cause consequence or is aware that it will occur in the ordinary course of events.

“Intoxicated” shall mean the condition of a person whereby their mental or physical capacities are affected by drinking alcohol, taking a drug or any other substance.

“Marriageable age” shall mean the age of 18 years old or above, which is the age a person can legally marry under the Laws of the Federal Republic of Somalia.

“Ministry” shall mean the Ministry of Women and Human Rights Development, Federal Republic of Somalia or any other lawfully designated Ministry responsible for the implementation of this Law.

“Police” shall mean “police” as defined by Article 23(1) of the Somali Criminal Procedure Code (1963).

“Police officer” shall mean “police officer” as defined by Article 23(2) (b) of the Somali Criminal Procedure Code (1963).

“Police station” shall mean “police station” as defined by Article 23(2) (a) of the Somali Criminal Procedure Code (1963).

“Regulations” shall mean the Regulations prescribed by the designated Ministry under the provisions of this Law.

“Sexual act” shall mean any act which is committed for a sexual reason, or any act involving contact with the genital organ, genital area, breast, anus, mouth or any part of a person’s body, however slight, that a reasonable person would deem sexual in nature.

“Stalking” shall mean repeatedly following or watching a person, or engaging in threatening conduct directed at a person, which causes the person to fear for their safety.

“Threat” shall mean an oral or written statement made by a person declaring their intention or purpose to unlawfully inflict pain, injury, damage or take any other hostile action towards any person.

“Torture” shall mean any act of unlawfully inflicting severe mental, emotional, or physical pain or suffering on a person as a means of intimidation, control, coercion, or punishment for any reason or based on discrimination of any kind; or for the purpose of obtaining information; or a confession during an interrogation or investigation. Tor-
ture also means the use of methods to obliterate the victim’s personality or to diminish their physical or mental capacities, even if this does not cause the victim mental pain or anguish.

“Tourist” shall mean a person who is a short term visitor (and who is not a Somali citizen or national) to the Federal Republic of Somalia, and their duration of stay does not exceed twelve consecutive months. The purpose of the person’s travel may be for pleasure, business or any other reason.

“Unlawful detention” shall mean unlawfully detaining or imprisoning a person.

“Violence” shall mean acts or behaviour inflicting physical or psychological harm or threats of such acts, coercion and other deprivations of liberty.

“Vulnerable person” shall mean any person who is susceptible to a sexual offence being committed against them because of their age, gender, ethnicity, clan, religion, political opinion, social, economic or any other status; including, a child, an elderly person, a person with a disability, an internally displaced person, a stateless person, or a refugee.

“Weapon” shall mean an object designed or used for inflicting harm, injury, damage or death.

2. Meaning of Consent

(1) For the purposes of applying the provisions of this Law, a person consents to a sexual act if they agree by choice, and have the freedom and capacity to make that choice.

(2) A person lacks the capacity to give their consent to a sexual act in the following circumstances:
(a) the person is below the age of consent;
(b) the person is incapable of understanding the essential nature of the sexual act or of communicating their unwillingness to participate in the act due to a disability;
(c) the person is voluntarily or involuntarily intoxicated;
(d) the person is unconscious;
(e) the person submits to the sexual act because of the use of torture, violence, coercion, or force on themselves or someone else;
(f) the person submits to the sexual act because he or she is in a coercive environment or under coercive circumstances; this includes being in an area where there:
   i) is a military presence,
   ii) are armed combatants or militia present or in control,
iii) is a terrorist group present or in control,
iv) there is ongoing armed conflict, or
v) there is ongoing widespread or systematic attack on a civilian population;
(g) the person submits to the sexual act because of threats or intimidation against themselves or someone else;
h) the person submits to the sexual act because of fear of harm to themselves or to someone else;
i) the person submits to the sexual act because he or she is outnumbered by a group of persons;
j) the person submits to the sexual act whilst he or she is lawfully or unlawfully in detention;
k) the accused causes the person to engage in the sexual act by abusing a position of trust, power or authority;
l) the accused obtains the person’s consent by fraud or false representation about the nature of the sexual act or the identity of the accused; and
(m) the person, having consented to engage in the sexual act, expresses, by words or conduct, a lack of agreement to continue to engage in the sexual act.

(3) In determining whether a person consented to a sexual act that forms the subject matter of the charge, the following applies:
(a) The court shall not determine or conclude that a person consented to a sexual act just because –
i) the person did not physically resist;
ii) the person did not sustain an injury;
iii) on that or an earlier occasion the person freely agreed to engage in another sexual act with that person or some other person; or
iv) the accused and the other person are in a previous or current relationship as defined under Article 39(k) in the Somalia’s Legislative Decree No. 5 of 16 December (1962).

(b) The court in determining whether the accused reasonably believed that a person consented to the conduct in issue, shall have regard to all the circumstances, including any steps the accused took to ascertain whether the person consented to the conduct in issue.

(4) If an accused asserts as a defence to an allegation of an offence committed under this Law, that he or she reasonably believed that the injured party consented to the conduct in issue; the accused shall bear the burden of proof, and the standard of proof shall be on the balance of probabilities.

3. Non-discrimination
(1) The provisions set forth in this Law, in particular the measures aimed to protect and promote the rights of the injured party or a witness, including a child or person with a disability, shall be interpreted and applied in a way that is not discriminatory on any ground, such as, clan, race, colour, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, political or other opinion, disability, property, birth, immigration status, the fact that the injured party has been trafficked, smuggled, or has participated in the sex industry, or other status.

(2) A child survivor of a sexual offence shall be treated fairly and equally, regardless of their, or their parents’ or the legal guardian’s clan, race, colour, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, political or other opinion, disability, property, birth, immigration status, the fact that the parent or legal guardian had been trafficked, smuggled, or has participated in the sex industry, or other status.

PART (2) — SEXUAL OFFENCES AGAINST THE PERSON

4. Rape

(1) A person commits an offence of rape if —
(a) he or she intentionally penetrates to any extent whatsoever, however slight, any orifice of another person with their genital organ, or the anal or genital opening of another person with any object or part of the body; and
(b) the other person does not consent to the penetration.

(2) A person guilty of an offence of rape is liable, on conviction, to a minimum term of imprisonment not less than ten years and not exceeding twenty-five years.

(3) A person who attempts to commit an offence of rape is liable, on conviction to term of imprisonment not less than seven years and not exceeding ten years.

5. Gang rape

(1) A person commits an offence of gang rape if he or she —
(a) commits the offence of rape against another person; and
(b) is part of a gang whilst committing the offence of rape against another person.

(2) A person guilty of the offence of gang rape is liable, on conviction, to term of imprisonment not less than fifteen years and up to a term of imprisonment for life.

(3) A person who attempts to commit an offence of gang rape is liable, on conviction, to
term of imprisonment not less than ten years and not exceeding fifteen years.

6. **Sexual assault**
   (1) A person commits an offence of sexual assault if —
       (a) he or she intentionally commits a sexual act against another person; and
       (b) the sexual act is committed without the other person’s consent.

   (2) A person guilty of an offence under this article is liable on conviction, to a term of imprisonment not less than two years and not exceeding seven years.

   (3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than one year and not exceeding five years.

7. **Causing a person to engage in a sexual activity**
   (1) A person commits an offence of causing a person to engage in a sexual activity if he or she intentionally causes a person to engage in a sexual activity without the other person’s consent.

   (2) A person guilty of an offence under this article is liable on conviction, to a term of imprisonment not less than two years and not exceeding seven years.

   (3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than one year and not exceeding five years.

8. **Sexual exploitation**
   (1) A person commits the offence of sexual exploitation if he or she intentionally coerces or compels another person to engage in a commercial sex act by –
       (a) using threats, force, or violence;
       (b) taking advantage of a coercive circumstances;
       (c) withholding the person’s identification or travel documentation;
       (d) taking monies or earnings from the person;
       (e) demanding the payment of an illegal debt bondage;
       (f) enforcing involuntary servitude; or
       (g) any other physical or psychological means.

   (2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than seven years and not exceeding twelve years.
(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

9. Sexual slavery

(1) A person commits the offence of sexual slavery if he or she:
(a) exercises any or all of the powers attaching to the right of ownership over another person, such as by purchasing, selling, lending or bartering the person, or by imposing on them a similar deprivation of liberty, and
(b) causes such person to engage in one or more acts of a sexual nature.

10. Sex tourism

(1) A person commits an offence of sex tourism if he or she —
(a) intentionally facilitates, arranges, invites a tourist to travel anywhere in the Federal Republic of Somalia to engage in a commercial sex act with another person; and/or
(b) demands or receives anything of value as payment for the tourist engaging in a commercial sex act with a person.

(2) A person commits an offence of sex tourism if he or she —
(a) intentionally travels anywhere in the Federal Republic of Somalia as a tourist to engage in a commercial sex act with a person; and/or
(b) offers or pays anything of value to any person as payment for engaging in a commercial sex act with a person.

(3) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

(4) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than two years and not exceeding three years.

11. Sex trafficking

(1) A person commits an offence of sex trafficking if he or she intentionally-
(a) recruits, transports, transfers, harbours or receives another person;
(b) by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability,
or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or
(c) for the purpose of the sexual exploitation of that person.

(2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than seven years and not exceeding twelve years.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

(4) In applying the provisions of this article, the consent of the victim is irrelevant in determining whether an offence has been committed.

12. **Forced marriage**
(1) A person commits the offence of forced marriage if he or she intentionally enters into a marriage with another person without their consent.

(2) A person commits the offence of forced marriage if he or she intentionally facilitates, organises or arranges a marriage without the consent of one or all of the parties.

(3) A person guilty of an offence under this article is liable, on conviction, to imprisonment for a term not less than five years and not exceeding seven years.

(4) A person who attempts to commit an offence under this article is liable, on conviction, to imprisonment for a term not less than two years and not exceeding three years.

13. **Sexual harassment**
(1) A person commits an offence of sexual harassment if he or she intentionally makes —
(a) unwanted sexual demands whether by words or actions against another person;
(b) unwanted sexually coloured remarks to a person;
(c) a threat by words or actions against another person, to withhold from them an employment offer, benefit or promotion or anything of value, or to punish them, if the other person does not perform a sexual favour for them or any person;
(d) unwanted sexual advances by making physical contact, stalking, pursuing, accosting, loitering outside or near a building where another person resides, works, carries on business, studies or happens to be;
(e) unwanted sexual advances by unwelcome communication towards another person, including: repeatedly making telephone calls whether a conversation en-
sues, repeatedly sending, delivering or causing the delivery of letters, packages, facsimiles, electronic mail or other objects or messages to another person’s residence, school, workplace, or anywhere in a private or public; or

(f) unwanted sexually indecent or offensive gestures, either by words or action that causes another person to fear for their safety, or feel alarmed, anxious or distressed.

(2) A person guilty of an offence under this article is liable on conviction, to a term of imprisonment not less than six months and not exceeding two years.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than three months’ probation and not exceeding six months imprisonment.

Preparatory offences

14. Administering an intoxicating substance with intent

(1) A person commits an offence of administering an intoxicating substance with intent if—

(a) he or she intentionally administers any substance to, or causes a substance to be taken by a person;

(b) without the other person’s consent;

(c) he or she does not reasonably believe that the other person consented; and

(d) he or she intoxicates or stupefies a person, so as to enable themselves or any other person to engage in a sexual act with the intoxicated person.

(2) A person guilty of an offence under this article is liable on conviction to imprisonment for a term not less than five years and not exceeding seven years.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than two years and not exceeding three years.

(4) A person guilty of an offence under this article against a child is liable, on conviction, to a term of imprisonment not less than seven years and not exceeding ten years.

(5) A person who attempts to commit an offence under this article against a child is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

15. Abduction for sexual purpose

(1) A person commits an offence of abduction for a sexual purpose if —

(a) he or she intentionally abducts, kidnaps, or takes hostage another person; and
(b) with the intent to engage in a sexual act with the abductee.

(2) A person guilty of an offence under this article is liable on conviction to a term of imprisonment not less than five years and not exceeding seven years.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than three years and not exceeding five years.

(4) A person guilty of an offence under this article against a child is liable, on conviction, to a term of imprisonment not less than seven years and not exceeding ten years.

(5) A person who attempts to commit an offence under this article against a child is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

16. **Unlawful detention for sexual purpose= sexual slavery**

   (1) A person commits an offence if —
   
   (a) he or she intentionally detains another person against their will; and
   
   (b) with the intent to engage in a sexual act against the detainee.

   (2) A person guilty of an offence under this article is liable on conviction to a term of imprisonment not less than seven years and not exceeding ten years.

   (3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than three years and not exceeding five years.

   (4) A person guilty of an offence under this article against a child is liable, on conviction, to a term of imprisonment not less than ten years and not exceeding twelve years.

   (5) A person who attempts to commit an offence under this article against a child is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

 Other offences

17. **Unlawful recording, sharing or distributing sexual photographs or recordings**

   (1) It is unlawful for any person to take an audio recording, video, or photograph of any sexual offence under this Law, unless these actions were taken for a Law enforcement purpose.
(2) It is unlawful for any person to share or distribute by any means, an audio recording, video, image or photograph of a sexual offence, unless such actions were taken for a Law enforcement purpose.

(3) In applying this article, the court shall take into consideration whether the offence re-victimised the injured party.

(4) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than two years and exceeding five years.

(5) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than one year and not exceeding three years.

PART (3) – SEXUAL OFFENCES AGAINST CHILDREN

18. Child rape

(1) A person commits an offence of child rape, if he or she intentionally penetrates to any extent whatsoever, however slight, any body orifice of a child with their genital organ, or the anal or genital opening of a child with any object or part of the body.

(2) A person guilty of an offence under this article is liable, on conviction to imprisonment for life, if the injured party is a child aged or below eleven years old.

(3) A person guilty of an offence under this article is liable, on conviction to imprisonment for a term not less than fifteen years and not exceeding twenty five years, if the injured party is a child between the age of twelve years and eighteen years old.

(4) A person who attempts to commit an offence under this article is liable, on conviction to imprisonment for a term not less than ten years and not exceeding fifteen years.

(5) A person accused of an offence under this article, may plead the defence of mistake of fact, if there is evidence to prove that the accused took reasonable steps to ascertain whether the child was above the age of consent, and the accused reasonably believed the child was above the age of consent. However, there is no available defence of “mistake of fact” if the child is under the age of fifteen, no matter what the accused reasonably believed. The accused person
shall bear the burden of proof and the standard of proof shall be beyond a rea-
sonable doubt.

19. **Child gang rape**
   (1) A person commits an offence of child gang rape if he or she —
       (a) commits the offence of rape against a child; and
       (b) is part a gang whilst committing the offence of rape against the child.

   (2) A person guilty of an offence under this article is liable, on conviction to im-
       prisonment for life.

   (3) A person who attempts to commit an offence under this article is liable, on
       conviction to imprisonment for a term not less than ten years and not exceed-
       ing fifteen years.

20. **Child sexual assault**
   (1) A person commits an offence of child sexual assault if he or she intentionally
       commits a sexual act against a child.

   (2) A person guilty of an offence under this article is liable on conviction, to a
       term of imprisonment not less than five years and not exceeding ten years.

   (3) A person who attempts to commit an offence under this article is liable, on
       conviction, to a term of imprisonment not less than three years and not exceed-
       ing five years.

21. **Causing or inciting a child to engage in a sexual activity**
   (1) A person commits an offence of causing or inciting a child to engage in a sex-
       ual activity if he or she intentionally causes or incites a child to engage in a
       sexual activity.

   (2) A person guilty of an offence under this article is liable on conviction, to a
       term of imprisonment not less than seven years and not exceeding fifteen
       years.

   (3) A person who attempts to commit an offence under this article is liable, on
       conviction, to a term of imprisonment not less than five years and not exceed-
       ing seven years.

22. **Child marriage**
(1) A person commits an offence of child marriage if he or she intentionally enters into a marriage with a child.

(2) A person commits the offence of child marriage if he or she —
(a) intentionally facilitates, organises or arranges a marriage; and
(b) a party to the marriage is a child.

(3) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than ten years and not exceeding fifteen years.

(4) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

23. Child sexual exploitation
(1) A person commits the offence of sexual exploitation if he or she intentionally coerces or compels a child to engage in a commercial sex act by –
(a) using threats, force, or violence;
(b) taking advantage of a coercive circumstances;
(c) withholding the person’s identification or travel documentation;
(d) taking monies or earnings from the person;
(e) demanding the payment of an illegal debt bondage;
(f) enforcing involuntary servitude; or
(g) any other physical or psychological means.

(2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than fifteen years and up to life imprisonment.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than ten years and not exceeding fifteen years.

24. Child sexual slavery
(1) A person commits the offence of sexual slavery if he or she:
(a) exercises any or all of the powers attaching to the right of ownership over another person, such as by purchasing, selling, lending or bartering the person, or by imposing on them a similar deprivation of liberty, and
(b) causes such person to engage in one or more acts of a sexual nature.

(2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than fifteen years and up to life imprisonment.
(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than ten years and not exceeding fifteen years.

25. Child sex tourism

(1) A person commits an offence of child sex tourism if he or she —
(a) intentionally facilitates, arranges, invites a tourist to travel anywhere in the Federal Republic of Somalia to engage in a commercial sex act with a child; and/or
(b) demands or receives anything of value as payment for the tourist engaging in a commercial sex act with a child.

(2) A person commits an offence of child sex tourism if he or she —
(a) intentionally travels anywhere in the Federal Republic of Somalia as a tourist to engage in commercial sex act with a child; and/or
(b) offers or pays anything of value to any person as payment for engaging in a commercial sex act with a child.

(3) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than fifteen years and up to life imprisonment.

(4) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than ten years and not exceeding fifteen years.

26. Child sex trafficking

(1) A person commits an offence of child sex trafficking if he or she intentionally recruits, transports, transfers, harbours or receives a child, for the purpose of the sexual exploitation of that child.

(2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than fifteen years and up to life imprisonment.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than ten years and not exceeding fifteen years.

27. Child sexual harassment

(1) A person commits an offence of child sexual harassment if he or she intentionally makes —
(a) a sexual advance whether by words or actions towards a child;
(b) a sexual advance whether by words or actions towards a child at school, on the internet, or anywhere in a public or private place;
(c) a sexual demand whether by words or actions from a child;
a sexually coloured remark to a child;

(e) a threat by words or actions against a child to withhold anything of value or punish the child, if the child does not perform sexual favours for them or any person;

(f) a sexual advance by making physical contact, stalking, pursuing, accosting, loitering outside or near a building where the child resides, studies or happens to be;

(g) a sexual advance by unwelcome communication to a child, including: repeatedly making telephone calls whether a conversation ensues, repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to the child’s residence, school, or anywhere in a private or public; or

(h) any sexually indecent or offensive gesture, either by words or action that causes a child to fear for their safety, or feel ashamed, alarmed, anxious or distressed.

(2) A person guilty of an offence under this article is liable on conviction, to a term of imprisonment not less than two years and not exceeding five years.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than one year and not exceeding two years.

28. Meeting or grooming a child for sexual purposes

(1) A person commits an offence of meeting or grooming a child for sexual purposes if he or she —

(a) travels or arranges to meet a child in any part of the Federal Republic of Somalia; and/or

(b) grooms a child for a sexual purpose;

(c) with the intent for any person to engage in a sexual act with the child.

(2) A person commits an offence of grooming a child for sexual purposes if he or she meets or grooms a child for a sexual act in any part of the Federal Republic of Somalia, whether or not they intend to commit an offence within the Federal Republic of Somalia.

(3) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

(4) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than three years and not exceeding five years.

29. Production of child pornography
30. Sale or distribution of child pornography

(1) A person commits an offence of sale or distribution of child pornography if he or she intentionally—
(a) advertises, exhibits, sells, lets to hire, give or lends child pornography; or
(b) exports, imports, circulates, conveys, transmits or distributes child pornography; or
(c) benefits or profits monetarily, socially, politically or otherwise as a direct result of child pornography.

(2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than seven years and not exceeding fifteen years.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

31. Purchasing or possessing child pornography

(1) A person commits an offence if he or she intentionally—
(a) hires or purchases child pornography; or
(b) accesses, views or possesses child pornography.

(2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than three years and not exceeding seven years.
(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than one year probation and not exceeding three years.

PART (4) – ABUSE OF TRUST OR AUTHORITY

32. Abuse of trust or authority

(1) A person commits an offence abuse of trust if he or she —
(a) intentionally engages in an unlawful sexual act with a person; and
(b) is in a position of authority, power or trust.

(2) A person guilty of an offence under this article is liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.

(3) A person who attempts to commit an offence under this article is liable, on conviction, to a term of imprisonment not less than three years and not exceeding five years.

(4) A person is in a position of authority, power or trust if they are one of the following but not limited to a —
(a) public officer or any type of government employee;
(b) medical practitioner, nurse, or any other type of health-care worker;
(c) humanitarian, counsellor, or any other type of social worker;
(d) principal, teacher or any other type of worker in an educational facility;
(e) family member or relative; or
(f) domestic worker or any type of worker that is entrusted with the responsibility to care for a child or person with a disability.

PART (5) – INVESTIGATIONS

33. Filing a complaint

(1) A complaint about a sexual offence may be filed by a complainant, in the manner prescribed by the Regulations.

(2) There is no statute of limitations for filing a complaint regarding a sexual offence under the provisions of this Law.

(3) Any delay in reporting a sexual offence or filing a complaint about a sexual offence shall be done without prejudice to the rights of the complainant.
A complainant shall not be prosecuted or sued in civil proceedings for reporting a sexual offence; unless the complainant knew or had reason to believe the complaint was false.

An injured party at any time after a sexual offence has been committed may seek medical treatment from any hospital or any type of medical facility with or without obtaining an official referral from the police or any other relevant authority.

An injured party may produce a medical and psychological report to the police or any relevant authority detailing the injuries occasioned by an alleged sexual offence, but failure to provide such a report shall not prevent the relevant authorities from commencing an investigation.

A teacher, medical professional, health worker, humanitarian worker, or social worker, shall make a report to the police, if he or she has reasonable cause to suspect that a child or a person with disability has been a victim or a witness to a sexual offence, and only if it is in the best interests of the injured party.

A parent or legal guardian shall have a duty to make a report to a police station, if he or she has reasonable cause to suspect that a child or a person with disability under their custody or care has been a victim or a witness to a sexual offence.

A failure to report under the articles (7) and (8) may amount to an obstruction of justice under Article 41 of this Law. However, except in the case where a person has reasonable grounds to believe that their life will be in danger if they reported a sexual offence.

Duties of Police Officers

34. Handling a complaint

(1) For the purpose of implementing the provisions of this Law, any police station may establish a specialised unit to investigate sexual offences. The specialised unit may be staffed with desk officers, responding police officers and investigative officers.

(2) Upon receiving a complaint, a responding police officer has a duty to—

(a) Respond promptly to the call reporting a sexual offence and offer immediate assistance and protection to the injured party.

(b) Immediately separate the accused from the injured party, and take the accused to the nearest police station for questioning.
(c) Immediately provide the injured party with free transport to the nearest medical facility.

(d) Identify and secure any weapons that may be on hand, so as to protect all persons present.

(e) Involve a social services provider if the injured party is a child, a person with a disability or a vulnerable person.

(f) Keep the identity of the injured party and any witness confidential whether or not the injured party or witness requests their privacy.

(g) Secure the crime scene and ensure that any evidence is not contaminated.

(h) Ascertain the initial facts in order to establish the offence committed.

(i) Advise the concerned parties of their rights.

(j) Conduct an initial interview of the concerned parties, any witness, including children, in a language understood by them and in separate rooms from each other to ensure there is an opportunity to speak freely.

(k) Record initial statements in writing.

(l) Document the initial investigation, evidence, and statements in an official report and send it to an investigating officer; and

(m) Avail a copy of the initial report to the complainant or their duly authorised representative.

(3) It is an offence for a police officer or any public official to make public or disclose to the media the identity of the injured party or any witness without the express written consent of the injured party or witness. A person guilty of an offence under this article, is liable on conviction to a term of imprisonment not exceeding two years.

(4) Upon an investigation commencing, the investigating officer has a duty to:

(a) Conduct a thorough investigation of the crime scene.

(b) Conduct an in-depth interview with the injured party and any witness in a language understood by them.

(c) Involve a social services provider if the injured party is a child, a person with a disability or a vulnerable person

(d) Provide protection to the complainant and any witness.

(e) Keep the identity of the injured party and any witness confidential whether or not the injured party or the witness requests their privacy.

(f) Take all reasonable steps for the purposes of the investigation and, in particular, ensure that all reasonable lines of enquiry are pursued.

(g) Question the accused and record the accused’s statements.

(h) Utilise all possible investigative tools and aids throughout the investigation.

(i) Collect, retain, store and maintain all types of admissible evidence from the crime scene or anywhere.

(j) Complete the investigation in a timely manner.

(k) Document the investigation, evidence, and statements in an official report.
(l) Seek early investigative advice wherever possible from Attorney General’s office.

(m) Send an official and sufficiently detailed report of the case to the Attorney General’s office in a timely manner; and

(n) Provide or disclose evidence or material as requested by the Attorney General’s office.

(5) The collection and storage of evidence, including, forensic evidence, shall be prescribed by the Regulations.

Duties of Attorney General’s Office

35. Prosecuting a sexual offence

(1) The decision to prosecute a sexual offence or any other offence under the provisions of this Law shall be made by the Attorney General and not the complainant. For the purposes of applying the provisions of this Law, Article 145 of the Somali Penal Code shall not apply.

(2) For the purpose of implementing the provisions of this Law, the prosecution authorities may establish specialised prosecutorial units to prosecute sexual offence cases that are staffed with specialised prosecutors.

(3) In a sexual offence case, the prosecution authorities at all relevant stages of the legal process shall have a duty to inform the injured party in a language they understand of:

(a) their rights;
(b) the details of the relevant legal proceedings;
(c) the available services, support mechanisms and protective measures;
(d) their rights to restitution and compensation;
(e) the details of events in relation to their case, including specific places and times of hearings; and release of the accused from pre-trial detention or from jail; and
(f) the outcome of the prosecution’s case, including the sentence, penalties if any, awarded. In the event, the case is discontinued explain to the injured party in writing the reasons the case was discontinued.

36. Obstruction of justice
(1) It is unlawful for any person to obstruct, undermine or interfere with the course or administration of justice, in regards to the reporting, investigation, or prosecution of an offence under the provisions of this Law.

(2) A person found guilty of an offence under this article, is liable on conviction, to a term of imprisonment not less than three years and not exceeding ten years.

(3) A person, who attempts to commit an offence under this article, is liable on conviction, to term of imprisonment not less than two years and not exceeding five years.

Protection Orders

37. Protection orders
(1) At any stage of the investigations or the legal proceedings, the court may grant emergency or any other type of protection order to the following persons—
(a) the complainant;
(b) the complainant’s family, close relations, and dependents;
(c) a witness;
(d) a medical practitioner, or any health care worker caring for the injured party;
(e) legal representative or legal aid provider representing the injured party; and
(f) a humanitarian worker, counsellor, or any type of social worker providing the injured party with assistance.

(2) A protection order may state specific conditions to prohibit the accused from posing any threat, intimidation, or danger to the persons listed in paragraph (1) above. These conditions may include, but are not limited to, an order—
(a) to hand in any weapon in the accused’s possession within twenty-four hours;
(b) prohibit the accused from making any direct or indirect contact with the complainant or any concerned family members; and
(c) prohibit the accused from being within a certain distance from the property or residence of the complainant any concerned family members.

(3) A protection order may be granted by the court post-hearing, that is after the court proceedings have been concluded in a case, in order to protect the injured party or any witness’s safety.

(4) It is an offence for any person to breach a protection order granted by the Court under this Law. A person found guilty of an offence under this article, is liable on conviction, to a term of imprisonment not less than two years and not exceeding five years. A person, who attempts to commit an offence under this
article, is liable on conviction, to term of imprisonment not less than one year and not exceeding three years.

_Court’s Jurisdiction_

38. **Civilian court**
In a sexual offence case where the injured party is a civilian the case shall fall under the jurisdiction of the civilian court, regardless, of whether the accused person is a civilian or employed by any military.

39. **Country-wide jurisdiction**
(1) The injured party have a right to travel or move between regions if he or she feels unsafe remaining in the region where the alleged offence occurred. The court’s jurisdiction to prosecute a sexual offence follows the injured party’s location.

(2) The State shall make funds available for the travel and accommodation, as required, to move the injured party, any witness, or accused for the purposes of a court trial.

40. **Extra-territorial jurisdiction**
(1) A person who, while being a citizen of Somalia, or permanently residing in Federal Republic of Somalia commits an act outside Somalia which would constitute a sexual offence had it been committed in Somalia, is guilty of such an offence and is liable to the same penalty prescribed for such offence under this Law.

(2) A person may not be convicted of an offence contemplated in sub- article (1) if such a person has been acquitted or convicted in the country where that offence was committed.

_Rights of the Injured Party or Witness_

41. **Right to free medical care**
(1) An injured party has a right to free medical, psychiatric, or psychological treatment, psychosocial care, optional confidential testing for sexually transmitted diseases including HIV, at any stage before, during and after the legal proceedings.

(2) An injured party has a right to receive and take safe emergency contraception and/or ontragestational agents after the occurrence of an unlawful sexual act. So far as it is possible, the Somali government shall provide free and safe emergency contraception and/or ontragestational agents to an injured party.
(3) An injured party has the right to request and receive a detailed medical and psychological report specifying their injuries, medical diagnosis and treatment.

42. **Right to privacy**

(1) An injured party or a witness in a sexual offence case shall have the right to confidentiality and keep their identity private.

(2) Information that would identify an injured party or a witness shall not be published without the express written permission the injured party or witness.

(3) The court and relevant authorities at any stage of the legal proceedings may adopt measures aimed at protecting and preventing the disclosure of the injured party’s or a witness’s identity, including the following—
   (a) Order court proceedings to be conducted in private away from the presence of the media and public;
   (b) Permit use of image or voice altering devices or closed-circuit television during testimony;
   (c) Permit evidence of the injured party or witness to be heard through a video link, other communications technology, or behind a screen from the view of the accused;
   (d) Expunge names and identifying information of the injured party or witness from public records;
   (e) Assign the injured party or witness of a pseudonym; and/or
   (f) Seal the court records.

(4) If the injured party or a witness is a child, the court and relevant authorities at any stage of the legal proceedings, shall take all necessary measures to protect and prevent the disclosure of the identity of the child injured party or a child witness, including but not limited to the measures listed in this Article (3) from (a) to (f).

43. **Rights of children**

(1) In addition to any other protections provided for a child who is an injured party or a witness in this Law:
   (a) a child shall be given special care and attention;
   (b) when the age of a child is uncertain and there are reasons to believe that the injured party or witness is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age;
   (c) a child shall have a right to be heard and to express their concerns and views freely to the court and any relevant authority;
   (d) assistance to a child shall be provided by trained or specialised professionals, and in accordance with their special needs, especially with regard to accommodation, education, medical treatment and care;
(e) the court shall ensure that proceedings relevant to the testimony of a child are conducted in language that is simple and comprehensible to a child;

(f) if the child is an unaccompanied minor the relevant authority shall:

(i) appoint a legal guardian to represent the interests of the child;

(ii) take all necessary steps to establish his or her identity and nationality;

(iii) make every effort to locate his or her family when this is in the best interest of the child; and

(iv) cautiously assess any situation where a child may be at risk of being re-trafficked. A child shall not be returned to their place of origin unless it is in their best interest and appropriate measures for their protection have been taken.

(g) Information may be provided to a child through their parent or legal guardian or, in case the parent or legal guardian is the alleged offender, a support person or organisation.

44. General rights to assistance and other measures

(1) The Ministry in cooperation with non-governmental organisations, charities, civil society groups and other relevant organisations, shall provide assistance to an injured party, in the provision of:

(a) appropriate housing;

(b) counselling and relevant information in a language understood by the injured party;

(c) employment, education and employment opportunities; and

(d) any other necessary assistance required by the injured party.

(2) The Ministry shall take into account, in applying the provisions of this article, the age, gender and special needs of the injured party.

(3) The Ministry shall prescribe Regulations to establish and implement effective measures in compliance with international human rights Laws in addition to the measures under this Law, for the prevention of sexual offences; the protection of survivors of sexual offences, especially for children; and to ensure cooperation between stakeholders and Law enforcement for the prosecution and punishment of sexual offenders.

(4) The Ministry shall prescribe Regulations to provide the widest measure of mutual legal assistance in compliance with international Law for investigations, prosecutions and judicial proceedings regarding offences under this Law.

45. Rights of persons with a disability

(1) In addition to any other protections provided for a person with a disability in this Law:
46. Rights of survivors of sex trafficking

(1) If the injured party is a survivor of sex trafficking, he or she shall have a right to lawfully reside in the territory of the Federal Republic of Somalia, either temporarily or permanently, depending on circumstances of the case. In applying this article, the relevant authorities shall give appropriate consideration to humanitarian factors.

(2) If the injured party is a survivor of sex trafficking, he or she may request assistance to be safely repatriated to the country of their lawful residence or citizenship. In applying this article, the relevant authorities in cooperation with other governments, non-governmental organisations, shall provide whatever assistance is necessary to the injured party.

(3) If the injured party is a survivor of sex trafficking, he or she shall not be held criminally or administratively liable for immigration offences as a direct result of them being trafficked. This article shall apply without prejudice to general defences available to the injured party.

47. Right to initiate civil action

(1) An injured party shall have the right to initiate civil proceedings to claim material and non-material damages suffered by him or her as a result of an act specified as an offence by this Law.

(2) The injured party’s right to pursue a civil claim for material or non-material damages shall not be affected by the existence or determination of criminal proceedings in connection with the same act from which the civil claim derives.

(3) The injured party’s immigration status or the return of the injured party to his or her home country or other absence of the injured party from the court’s jurisdiction shall not prevent the court from ordering payment for compensation in a sexual offence case.

Rights of the Accused
48. **Rights of the accused**

(1) The Federal Government of Somalia in cooperation with non-governmental organisations, charities, civil society groups and other relevant organisations shall endeavour to take all necessary steps to protect the constitutional and human rights of the accused.

(2) So far as it is possible, the Federal Government of Somalia shall endeavour to provide the accused with free and impartial legal aid, in the event the accused does not have means to pay for defence lawyer’s services.

(3) The accused person shall have a right to keep his or her identity private throughout the legal process regarding a sexual offence under the provisions of this Law. Information that would identify an accused person shall not be made public by any person without the court order of a judge from a competent court.

(4) The accused person’s right to keep their identity private shall cease to apply in the event the accused is found guilty by a competent court under the provisions of this Law.

**Evidentiary Rules**

49. **Admissible evidence**

(1) A medical or psychological report may be adduced as evidence in court proceedings for an offence allegedly committed under the provisions of this Law. Failure to produce a medical report shall not be a bar to prosecution.

(2) A medical or psychological report referred to under this article, must contain details about the physical, psychological, mental or emotional injuries sustained by the injured party, and any other relevant information; but it does not need to specify or conclude that a sexual offence occurred.

(3) A government or private hospital, any gynaecologist, doctor, a nurse, or other qualified medical professional is authorised to provide the injured party with a medical report with or without a referral from the police.

(4) Any government or private psychologist, counsellor or any type of social worker is authorised to provide a psychological report to the injured party with or without a referral from the police.

(5) Any type of forensic evidence may be adduced as evidence in court proceedings for an offence allegedly committed under the provisions of this Law. Failure to produce forensic evidence shall not be a bar to prosecution.
(6) Any object, weapon, or relevant material relating to the alleged commission of an offence under the provisions of this Law may be adduced as evidence in court proceedings; but failure to provide such evidence shall not be a bar to prosecution.

(7) Any type of corroborative evidence may be adduced as evidence in court proceedings, but failure to provide such evidence shall not be a bar to prosecution.

(8) A referral from the police may be adduced as evidence in court proceedings, but failure to provide such evidence shall not be a bar to prosecution.

50. Inadmissible evidence
The injured party’s sexual history is inadmissible as evidence in a sexual offence case.

PART (6) – SENTENCING

51. Aggravating factors
(1) In sentencing a person for any offence under this Law, the court may impose a higher sentence or the maximum sentence if an aggravating factor exists, this may include the following:
(a) injured party is a child aged or below 11 years of age;
(b) injured party is a pregnant woman;
(c) Injured party is a person with a disability;
(d) injured party is a vulnerable person, including: a refuge, an elderly person, an internally displaced person, a stateless or any other person found by the court to be vulnerable;
(e) injured party was impregnated by rape;
(f) injured party suffered a serious mental injury or grievous bodily harm;
(g) offender used or threatened to use a weapon, object or instrument;
(h) offender used or threatened to use a substance to burn, disfigure or scar the injured party;
(i) offence was committed in front of a child;
(j) offence was committed in front of others publicly humiliating the injured party;
(k) offender made threats to harm the injured party or any other person if they reported the offence to the authorities;
(l) offender had previously committed an offence of a similar nature against the injured party;
(m) offender is a repeat offender with previous convictions for sexual offences;
(n) offender at the time of committing the offence was willfully evading the execution of an arrest warrant or an order of imprisonment; or
(o) offence was committed by more than one offender.
The court in determining liability for the sentencing term to be ordered against a person convicted under this Law shall take into consideration the sentencing guidelines prescribed by the Regulations and the provisions of the Somali Provisional Constitution (2012) of the Federal Republic of Somalia.

52. Injured party’s personal statement
(1) For the purposes of determining the sentence to be imposed on a convicted offender under this Law, the court may consider any statement that may have been prepared orally or in writing by the injured party describing the harm done to or loss suffered by them as a result of the commission of the offence.

(2) A statement by the injured party of an offence prepared and submitted to the court in accordance with this article does not prohibit the court from considering any other evidence to determine the sentence to be imposed on the offender.

53. Joint offender’s liability
Any person who instructs, commands, induces, counsels, procures, compels, instigates, incites, conspires with, aids or abets another person to commit an offence under the provisions of this Law is liable, on conviction, to the sentence or punishment prescribed for the principal offence.

Compensation and other orders

54. Compensation order
(1) Upon entering a judgement of conviction, the court shall in addition to any other punishment, order a person convicted under this Law to make restitution or pay the injured party or their duly appointed representative, adequate compensation within a reasonable amount of time fixed by the court. The court shall take into consideration any submissions made by the accused, injured party or prosecution authorities prior to making a compensation order.

(2) Prior to entering an order for compensation, the court shall also take into account the offender’s means and ability to pay compensation, and shall give priority to a compensation order over a fine. The court may affect a compensation order by seizing or forfeiting the property or assets of the person convicted of an offence under this Law.

(3) The purpose of an order for compensation shall be to compensate the injured party for any injury, loss or damage caused by the offender. An order for compensation may include payment for or towards:
(a) costs of medical, psychiatric or psychological treatment required by the injured party;
(b) costs of physical and occupational, therapy and rehabilitation required by the injured party;
(c) costs of necessary transportation or housing, required by the injured party,
(d) costs for relocating the injured party to a safe residence;
(e) costs for childcare in the case of forced pregnancy resulting from rape (the court may also deprive the accused of any parental rights);
(f) the injured party’s lost income or wages;
(g) compensation for the injured party’s family or dependents;
(h) legal practitioner’s fees and other related costs reasonably incurred by the injured party for preparing and attending legal proceedings, including, accommodation and travel costs;
(i) non-material damages for emotional distress, pain and suffering;
(j) material damages for any other losses incurred by the injured party; and
(k) any other costs incurred by the injured party as a direct result of the offence and reasonably assessed by the court.

(4) An order for compensation under this article shall be enforced by the Somali prosecution authorities by means available under Somali Law.

(5) The immigration status or the return of the injured party to his or her home country or other absence of the injured party from the court’s jurisdiction shall not prevent the court from ordering payment of compensation under this article.

(6) Where the offender is a public official whose actions constituting an offence under this Law, the court may order the State to pay compensation to the injured party. An order for the State’s compensation under this article may include payment for or towards all or any of the items under paragraph article 3 (a) to (k) above.

55. **Order to confiscate or seize assets**

(1) Upon entering a judgement of conviction, the court shall in addition to any other punishment, order for the confiscation and seizure of goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under this Law; proceeds derived from such offences; closure, on a temporary or definitive basis, premises used to commit such offences.

(2) The court may order that the any seizure of proceeds of crime under this article are sold or transferred and used to pay compensation to the injured party.

(3) The Ministry shall prescribe Regulations to establish measures necessary for identifying, tracing, freezing, confiscating and seizure of the proceeds of
crimes under this Law. As well as, the procedure for the government of the Federal Republic to receive requests from other countries having jurisdiction over an offence under this Law to assist with the seizure and confiscation of proceeds of crime.

**PART (7) – SEXUAL OFFENDER’S REGISTRY**

56. **Sexual offender’s registry**

   (1) There shall be a registry of all sexual offenders convicted under the provisions of this Law for an offence against a child or person with a disability, or being sentenced to a term of imprisonment exceeding four years. In the case, offenders sentenced for an offence against a child or person with a disability the details of the offender shall be in the registry regardless of the sentence.

   (2) The sexual offender’s registry shall only be accessible by the relevant authorities, law enforcement and public organisations exercising a public function.

   (3) The Ministry is responsible for the maintenance and use of the sexual offender’s registry and shall prescribe the relevant regulations.

   (4) Any person who has been convicted of a sexual offence against a child or a person with a disability shall not be eligible to work in a service, institution, organisation or association providing services to children or persons with a disability.

**PART (8) – IMPLEMENTATION OF SEXUAL OFFENCES BILL**

57. **National framework**

   (1) The Ministry shall prepare a national policy framework within six months after this Law comes into force to guide the implementation, and administration of this Law in order to secure acceptable and uniform treatment of all sexual related offences including treatment and care of the injured party.

   (2) The national policy framework will be reviewed and amended on a needs basis by the Ministry.

   (3) For the purpose of implementing a national policy framework, the Ministry shall train relevant institutions, organisations, and public at large on the prevention of gender based violence and sexual offences under this Law.

58. **Inter-ministerial committee**

   This Law hereby establishes a committee to be known as the Inter-Ministerial Committee for the management of matters relating to sexual offences (or the Sexual Violence Oversight Committee).
PART (9) – FINAL AND MISCELLANEOUS

59. Power to issue Regulations
   (1) The Minister may issue the necessary Regulations regarding:
      (a) any matter which is required or permitted by this Law to be prescribed by Regulations;
      (b) the inter-sectorial implementation of this Law; and
      (c) any other matter which is necessary or expedient to prescribe in order to achieve or promote the objects of this Law.

   (2) Regulations for the implementation of this Law shall be issued within six months of the date of entry into force of this Law.

60. Repeal
   (1) Articles 398, 399, 400, 401, 405, 407, 408 of the Somali Penal Code (1962), are hereby repealed and replaced by the provisions of this Law.

   (2) Any other Law or provision contrary, or inconsistent with this Law is hereby repealed and replaced by the provisions of this Law.

-End-
PUNTLAAND RAPE ACT (2015)

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PREAMBLE

WHEREAS the general objectives of Shari’a (Maqaasid Al-shareeca) protect sanctity of life and prohibit all forms of physical and mental harm against human body;

WHEREAS the provisional federal constitution protects human dignity (section 10) , right to life (section 13), Right to equal treatment and non-discrimination (section 11), Right to security of the person or bodily integrity (section 15), Right to Redress of Violations of Human Rights (section 39) and right to access to justice (section 34) and combating all forms of violence against women (section 15);

WHEREAS the constitution of Somali Puntland State enshrine the rights of all people in the country, including the right to life and individual security (section 18), right to bodily integrity (section 18), right to equality before the law (article12) , right to health (section 33) and enjoins protection of women’s rights consistent with Islamic religious norms (section 35) and child rights (section 31) as well;

WHEREAS international legal instruments of which Somalia is part of them and are not conflicting with Islamic Law demand Puntland State as part of Somali Federal State to combat all forms of Sexual Offences, particularly against women and children of all categories;

WHEREAS there is a high incidence of sexual offences in the country which in turn has a particularly disadvantageous impact on vulnerable persons;

WHEREAS women and children are particularly vulnerable to sexual offences;

AND WHEREAS the Somali customary law and state law fail to deal effectively and in a non-discriminatory manner with activities associated with sexual offences;

IT IS THE PURPOSE of this Act to afford complainants of sexual offences the maximum and least traumatizing protection that the law can provide, to introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act and to strengthen the State’s commitment to eradicate the pandemic of sexual offences committed in the Puntland State of Somalia or elsewhere by its citizens.

PART I– PRELIMINARY

1. Short title
   This Act shall be cited as the Sexual Offences Act, 2015.

2. Interpretation

   For the purpose of this act, the following terms should be interpreted as follows —

   “Accused” means a person accused of an offence under the provisions of this law.
“Genital organ” means the external sex organ of a person.

“Child” means any person below the age of 15 years.

“Coercion” means the use of force or threat thereof and forms of non-violent or psychological use of force; including, threat of harm or physical restraint of any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; abuse or any threat linked to the legal status of a person; or psychological pressure.

“Complaint” means an oral or written statement made by a complainant to the relevant authorities that an offence under this law was committed or attempted against any person.

“Detention” includes confinement in a police cell, lockup, place of safety, or other residential facility;

“Disability” shall mean a physical, sensory psychological or mental impairment, which has substantial or long term adverse effect on a person’s abilities

“HIV” waxaa loola jeedaa fayraska la dagaalama difaaca jirka.

“Injured party” means “injured party” as defined by Section 14 of the Somali Criminal Procedure Code (1963).

“Intoxicated” means the condition of a person who is incapacitated by drinking alcohol, taking a drug or any other substance.

“Ministry” means the Ministry of Justice, Rehabilitation and Religious Affairs of Puntland State of Somalia.

“person of a position of trust, authority or dependency“ means public officer or any type of government employee, or medical practitioner, nurse, or any other type of health-care worker, or humanitarian, counsellor, or any other type of social worker, or principal, teacher or any other type of worker in an educational facility, or family member, guardian or relative, or Domestic worker or any type of worker that is entrusted with the responsibility to care for a child or person with a disability.

“Police” means “police” as defined by Section 23(1) of the Somali Criminal Procedure Code (1963).
“Police officer” means “police officer” as defined by Section 23(2) (b) of the Somali Criminal Procedure Code (1963).

“Police station” means “police station” as defined by Section 23(2) (a) of the Somali Criminal Procedure Code (1963).

“Pornography” means any audio recording, written publication, or visual depiction; including: any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of a sexually act involving any act which would be deemed a sexual offence against a child under the provisions of this law.

“Sexual act” means any act involving contact with the genital organ, genital area, breast, anus, mouth or any part of a person’s body, however slight, that a reasonable person would deem sexual in nature.

“Stalking” means repeatedly following or watching a person, or engaging in threatening conduct directed at a person, causing the person to fear for their safety.

“Sexual slavery” means particular form of enslavement which includes limitations on one’s autonomy, freedom of movement and power to decide matters relating to one's sexual activity.

“Threat” means an oral or written statement made by a person declaring their intention or purpose to unlawfully inflict pain, injury, damage or take any other hostile action towards any person.

"Vulnerable person" means a person who became vulnerable, on account of his age, illness, disability, physical or mental deficiency, or her state of pregnancy, social or economic status and "vulnerable witness" shall be construed accordingly.

“Weapon” means an object designed or used for inflicting harm, injury, damage or death.

3. Objectives of the Act

The objectives of this Law shall include the following:
(1) to lay down deterrent legal framework for the prohibition and prevention of rape and other sexual offences among persons in compliance with the general objectives of Islam , constitution and the relevant international human rights standards and principles of justice;
(2) to provide adequate protection to injured persons of rape or other sexual offences, and witnesses thereof;
(3) to provide enabling legal rules for handling and managing prosecution of sexual offences properly and in a manner compatible with constitutional rights of both the victims and perpetrators;
(4) to set certain measures necessary to protect the rights of the injured party of a rape or other sexual offenses such as the rights to privacy, access to justice and adequate civil damages; and
(5) To enable the government track and punish perpetrators of sexual offences.

4. Meaning of Consent
(1) A person lacks the capacity to give their consent to a sexual act in the following circumstances:
   (a) the person is below the age of consent;
   (b) the person is incapable of understanding the essential nature of the sexual act or of communicating their unwillingness to participate in the act due to a disability;
   (c) the person is voluntarily or involuntarily intoxicated;
   (d) the person is asleep or unconscious;
   (e) the person submits to the sexual act because of the use of torture, violence, coercion, or force on themselves or someone else;
   (f) the person submits to the sexual act because he or she is in a coercive environment or under coercive circumstances; this includes being in an area where there: i) is a military presence, ii) are armed combatants or militia present or in control, iii) is a terrorist group present or in control, iv) there is ongoing armed conflict, or v) there is ongoing widespread or systematic attack on a civilian population;
   (g) the person submits to the sexual act because of fear of harm, threats or intimidation against themselves or someone else;
   (h) the person submits to the sexual act because he or she is outnumbered by a group of persons;
   (i) the person submits to the sexual act whilst he or she is lawfully or unlawfully in detention;
   (j) the accused causes the person to engage in the sexual act by abusing a position of trust, power or authority;
   (k) the accused obtains the person's consent by fraud or false representation about the nature of the sexual act or the identity of the accused; and
   (l) The person, having consented to engage in the sexual act, expresses, by words or conduct, a lack of agreement to continue to engage in the sexual act.
(2) In determining whether a person consented to a sexual act that forms the subject matter of the charge, the court shall not determine or conclude that a person consented to a sexual act just because –
   i. The person did not physically resist;
   ii. The person did not sustain an injury;
   iii. On that or an earlier occasion the person freely agreed to engage in another sexual act with that person or some other person; or
(a) The court in determining whether the accused reasonably believed that a person consented to the conduct in issue, shall have regard to all the circumstances, including any steps the accused took to ascertain whether the person consented to the conduct in issue.

(b) The court may take into consideration relevant characteristics of the accused when determining whether the accused held a reasonable belief that the complainant consented to the conduct in issue, including, whether the accused is a child or a person with a disability.

(3) For the purposes of applying this law, a child who is legally married is permitted to engage in consensual sexual acts with their spouse.

(4) If an accused asserts as a defence to an allegation of an offence committed under this Law, that he or she reasonably believed that the injured party consented to the conduct in issue; the accused shall bear the burden of proof, and the standard of proof shall be on the balance of probabilities.

5. Non-discrimination

(1) The provisions set forth in this law, in particular the measures aimed to protect and promote the rights of the injured party, shall be interpreted and applied in a way that is not discriminatory on any ground, such as, clan, race, colour, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, political or other opinion, disability, property, birth, immigration status, the fact that the injured party has been trafficked, smuggled, or has participated in the sex industry, or other status.

(2) A child victim or a witness of a sexual offence shall be treated fairly and equally, regardless of their parents’ or the legal guardian’s clan, race, colour, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked, smuggled, or has participated in the sex industry, or other status.
PART II — SEXUAL OFFENCES GENERALLY

6. Rape

(1) A person who intentionally penetrates, to any extent of the vagina or anus of a person by the penis without the consent of the other person is guilty of an offence of rape and shall, on conviction, be punished as provided article 29 with reading of provisions referred to in article 27 of this act.

(2) Subsection (1) does not apply to penetration carried out in the course of a search authorized by law or for bona fide medical purposes.

(3) Marrying the victim to the perpetrator shall not constitute a defense to a charge of rape under this section.

(4) Compensating the victim shall not extinguish the criminal action or the penalty imposed under this act.

(5) A person who attempts to commit an offence under section (1) shall be liable, on conviction, to term of imprisonment not less than five years and not exceeding ten years.

(6) Marriage between the couples shall constitute defense to a charge of rape under this section.

(7) If the sexual intercourse is proven to be consensual, the punishment shall be in accordance with the Shari'a provisions.

7. Gang Rape

(1) A person commits an offence of gang rape if he or she intentionally —

(a) commits the offence of rape against another person; and
(b) is part of a gang whilst committing the offence of rape against another person.

(2) A person guilty of the offence of gang rape shall be liable, on conviction, as referred in article 29 of this act.

(3) A person who attempts to commit an offence of gang rape shall be liable, on conviction, to term of imprisonment not less than five years and not exceeding seven years.

8. Sexual Assault

(1) Any person who, knowingly and with intent to arouse or gratify his/her sexual desire or the sexual desire of another person:

(a) touches another person without consent of the person or another person who is incapable of giving a consent; or
(b) compels another person to touch him/her; or 
(c) compels other person to touch themselves, 
commits an offence of sexual assault and shall be punished with an imprisonment 
term from one to three years.

(2) For the purpose of this section, “Touch” or “Touching” means any act of 
touching, including, kissing, caressing, rubbing, fondling, or petting, any part of 
a person’s body with any part of another person’s body.

(3) A person who attempts to commit an offence under this section shall be liable, 
on conviction, to a term of imprisonment not less than six months and not ex-
ceeding one years.

9. Causing a Person to engage in Sexual Activity

(1) A person commits an offence of causing a person to engage in a sexual activity if — 
(a) he or she intentionally causes a person to engage in a sexual activity without the other 
person’s consent; and 
(b) he or she does not reasonably believe that the other person consented to engage in the 
sexual activity.

(2) A person guilty of an offence under this section shall be liable, on conviction, to a term 
of imprisonment not less than ten years and not exceeding fifteen years.

(3) A person who attempts to commit an offence under this section shall be liable, on convic-
tion, to a term of imprisonment not less than one year and not exceeding three years.

10. Sexual Exploitation and Abuse

(1) A person commits an offence of sexual exploitation if he or she intentionally— 
(a) causes, coerces, sells, or smuggles a person into Puntland State of 
Somalia for sex industry, sexual slavery, servitude or for a sexual pur-
pose, 
(b) finances, owns, manages, hires, lets a place or premises for the sexual 
exploitation of a person, 
(c) abuses a position of vulnerability, differential power, or trust against an-
other person for a sexual purpose, or 
(d) Benefits or profits monetarily, socially, politically or otherwise as a direct 
result of sexually exploiting a person.

(2) A person guilty of an offence under this section shall, on conviction, be pun-
ished with term of imprisonment not less than seven years and not exceed-
ing ten years.

(3) A person who attempts to commit an offence under subsection (1) shall, on convic-
tion, be punished with term of imprisonment not less than three years and not exceeding five years.
11. Sexual Harassment

(1) A person commits an offence of sexual harassment if he or she intentionally makes —

(a) unwanted sexual demands whether by words or actions against another person;
(b) unwanted sexually coloured remarks to a person;
(c) a threat by words or actions against another person, to withhold from them an employment offer, benefit or promotion or anything of value, or to punish them, if the other person does not perform a sexual favour for them or any person;
(d) unwanted sexual advances by making physical contact, stalking, pursuing, accosting, loitering outside or near a building where another person resides, works, carries on business, studies or happens to be;
(e) unwanted sexual advances by unwelcome communication towards another person, including: repeatedly making telephone calls whether a conversation ensues, repeatedly sending, delivering or causing the delivery of letters, packages, facsimiles, electronic mail or other objects or messages to another person’s residence, school, workplace, or anywhere in a private or public; or
(f) unwanted sexually indecent or offensive gestures, either by words or action that causes another person to fear for their safety, or feel alarmed, anxious or distressed.

(2) A person guilty of an offence under this section shall be liable, on conviction, to a term of imprisonment not less than six months and not exceeding two years.

(3) A person who attempts to commit an offence under this section shall be liable, on conviction, to a term of imprisonment not less than three months and not exceeding six months imprisonment.

12. Indecent Exposure

(1) A person commits an offence of indecent exposure if he or she intentionally and knowingly exposes his or her genital organ in a public place.

(2) A person guilty of an offence under this section shall, on conviction, be liable to a term of imprisonment not not less than six months and not exceeding two years.

13. Abduction

(1) A person commits an offence if —
(a) he or she intentionally abducts, kidnaps, or takes hostage another person; and
(b) With the intent to engage in a sexual act with the abductee.
(2) A person guilty of an offence under this section shall be liable, on conviction, to a term of imprisonment not less than seven years and not exceeding ten years.
(3) A person who attempts to commit an offence under this section shall be liable, on conviction, to a term of imprisonment not less than three years and not exceeding five years.

14. Production, Selling and Distribution of Pornography

(1) A person commits an offence of the production of pornography if he or she —
(a) Intentionally produces, sales, prints or publishes pornography;
(b) Intentionally invites, compels, incites, procures, arranges, organises, or causes a person to be involved in the production, sale or distribution of pornography;
(c) is a director, photographer, camera operator, or any other type of worker who is intentionally involved in the production of pornography; or
(d) benefits or profits monetarily, socially, politically or otherwise as a direct result of pornography.
(2) A person guilty of an offence under this section shall be liable, on conviction, to a term of imprisonment not less than five years and not exceeding seven years.
(3) In applying this section, the court shall take into consideration whether the offence re-victimised the injured party.

(4) A person who attempts to commit an offence under this section shall be liable, on conviction, to a term of imprisonment not less than one year and not exceeding two years.

15. Administering a Substance with Intent

(1) A person commits an offence of administering an intoxicating substance if—
(a) he or she intentionally administers any substance to, or causes a substance to be taken by a person;
(b) without the other person’s consent;
(c) he or she does not reasonably believe that the other person consented; and
(d) he or she intoxicates or stupefies a person, so as to enable themselves or any other person to engage in a sexual act with the intoxicated person.

(2) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not less than five years and not exceeding seven years.
(3) A person who attempts to commit an offence under this section shall be liable, on conviction, to a term of imprisonment not less than two years and not exceeding three years.

16. Bewitching for Sexual purpose

(1) A person who bewitches another one for sexual purpose commits a crime if he or she administers any sort of bewitching which makes a person loose his or her power to make consent.
(2) A person guilty of an offence under this section shall be liable, on conviction, to a punishment in consistent with Shari’a provisions.
(3) If the offence under this section causes the victim to become insane or any other consistent harm, a punishment shall be imposed according to Shari’a provisions with full compensation of the harm suffered.

(4) A person who attempts to commit an offence under this section shall be liable, on conviction, to a term of imprisonment not less than ten years and not exceeding fifteen years.

PART III. INVESTIGATION OF SEXUAL OFFENCES

17. Filing a complaint

(1) A complaint about a sexual offence may be filed by a complainant, in the manner prescribed by the regulation.

(2) There is no statute of limitations for filing a complaint under the provisions of this law.

(3) Any delay in reporting a sexual offence or filing a complaint about a sexual offence shall be done without prejudice to the rights of the complainant.

(4) A complainant shall not be prosecuted or sued in civil proceedings for reporting a sexual offence.

(5) An injured party at any time after a sexual offence has been committed may seek medical treatment from any hospital or any type of medical facility with or without obtaining an official referral from the police or any other relevant authority.
(6) An injured party may produce a medical and psychological report to the police or any relevant authority detailing the injuries occasioned by an alleged sexual offence, but failure to provide such a report shall not prevent the relevant authorities from commencing an investigation.

(7) A teacher, medical professional, health worker, humanitarian worker, or social worker, shall have a duty to notify a police station, if he or she has reasonable cause to suspect that a child or a person with disability has been a victim or a witness to a sexual offence. This duty to report shall only apply if it is in the best interests of the injured party.

(8) A parent or legal guardian shall have a duty to notify a police station, if he or she has reasonable cause to suspect that a child or a person with disability under their custody or care has been a victim or a witness to a sexual offence. A parent or legal guardian who fails to report suspected offence being committed against a child or a person with disability under their custody may be liable under section 38 of this act.

18. Duties of Police Officers After Receipt of Complaint

(1) For the purpose of implementing the provisions of this law, any police station may establish a specialised unit to investigate sexual offences. The specialised unit may be staffed with desk officers, responding police officers and investigative officers.

(2) Upon receiving a complaint, a responding police officer has a duty to—

(a) Respond promptly to the call reporting a sexual offence and offer immediate assistance and protection to the injured party;
(b) Immediately separate the accused from the injured party, and take the accused to the nearest police station for questioning;
(c) Immediately provide the injured party with free transport to the nearest medical facility;
(d) Identify and secure any weapons that may be on hand, so as to protect all persons present;
(e) Involve a social services provider if the injured party is a child, a person with a disability or a vulnerable person;
(f) Keep the identity of the injured party and any witness confidential whether or not the injured party or witness requests their privacy;
(g) Secure the crime scene and ensure that any evidence is not contaminated;
(h) Ascertain the initial facts in order to establish the offence committed;
(i) Advise the concerned parties of their rights;
(j) Conduct an initial interview of the concerned parties, any witness, including children, in a language understood by them and in separate rooms from each other to ensure there is an opportunity to speak freely;
(k) Record initial statements in writing;
(l) Document the initial investigation, evidence, and statements in an official report and send it to an investigating officer; and
(m) Avail a copy of the initial report to the complainant or their duly authorised representative.

(3) It is an offence for a police officer or any public official to make public or disclose to the media the identity of the injured party or any witness without the express written consent of the injured party or witness. A person guilty of an offence under this article, is liable on conviction to a term of imprisonment not exceeding two years.

(4) Upon an investigation commencing, the investigating officer has a duty to:
   (a) Conduct a thorough investigation of the crime scene;
   (b) Conduct an in-depth interview with the injured party and any witness in a language understood by them;
   (c) Involve a social services provider if the injured party is a child, a person with a disability or a vulnerable person;
   (d) Provide protection to the complainant and any witness;
   (e) Keep the identity of the injured party and any witness confidential whether or not the injured party or the witness requests their privacy;
   (f) Take all reasonable steps for the purposes of the investigation and, in particular, ensure that all reasonable lines of enquiry are pursued;
   (g) Question the accused and record the accused’s statements;
   (h) Utilise all possible investigative tools and aids throughout the investigation;
   (i) Collect, retain, store and maintain all types of admissible evidence from the crime scene or anywhere;
   (j) Complete the investigation in a timely manner;
   (k) Document the investigation, evidence, and statements in an official report;
   (l) Seek early investigative advice wherever possible from Attorney General’s office;
   (m) Send an official and sufficiently detailed report of the case to the Attorney General’s office in a timely manner; and
   (n) Provide or disclose evidence or material as requested by the Attorney General’s office;

(5) The collection and storage of evidence, including, forensic evidence, shall be kept and may be used as evidence before any court with regard to any offence under this Act.

19. Special duties of prosecution authorities where accused is charged with sexual offence
(1) The decision to prosecute a sexual offence or any other offence under the provisions of this law shall be made by the Attorney General and not the complainant. For the purposes of applying the provisions of this Law, Section 145 of the Somali Penal Code shall not apply.

(2) For the purpose of implementing the provisions of this law, the prosecution authorities may establish specialised prosecutorial units to prosecute sexual offence cases that are staffed with specialised prosecutors.

(3) In a sexual offence case, the prosecution authorities at all relevant stages of the legal process shall have a duty to inform the injured party in a language they understand of:
   (a) their rights;
   (b) the details of the relevant legal proceedings;
   (c) the available services, support mechanisms and protective measures;
   (d) their rights to restitution and compensation;
   (e) the details of events in relation to their case, including specific places and times of hearings; and release of the accused from pre-trial detention or from jail;
   (f) The outcome of the prosecution’s case, including the sentence, penalties if any, awarded. In the event, the case is discontinued explain to the injured party in writing the reasons the case was discontinued.

(4) The prosecution authorities at all relevant stages of the legal process shall have a duty to prohibit any measures by traditional elders or any other authority or person to resolve any offence prescribed under this act through traditional or any other informal dispute resolution mechanism.

20. Failure to Discharge Duties in Investigating Sexual Offences

The police officer or the medical officer who fail or otherwise delay in discharging duties stipulated in Articles 19 and 20 of this law and causes loss of evidence which would have otherwise been obtained shall be liable to disciplinary measure in accordance with disciplinary procedure of their respective offices and punishment as per the relevant provision(s) of the Penal Code.

21. Protection orders

(1) At any stage of the investigations or the legal proceedings, the court may grant emergency or any other type of protection order to the following persons—

   (a) the complainant;
   (b) the complainant’s family, close relations, and dependents;
   (c) a witness;
   (d) a medical practitioner, or any health care worker caring for the injured party;
   (e) legal representative or legal aid provider representing the injured party; and
   (f) a humanitarian worker, counsellor, or any type of social worker providing the injured party with assistance.
(2) A protection order may state specific conditions to prohibit the accused from posing any threat, intimidation, or danger to the persons listed in paragraph (1) above. These conditions may include, but are not limited to, an order—

(a) to hand in any weapon in the accused’s possession within twenty four hours;
(b) prohibit the accused from making any direct or indirect contact with the complainant or any concerned family members; and
(c) prohibit the accused from being within a certain distance from the property or residence of the complainant any concerned family members.

(3) A protection order may be granted by the court post-hearing, that is after the court proceedings have been concluded in a case, in order to protect the injured party or any witness’s safety.

(4) It is an offence for any person to breach a protection order granted by the Court under this law. A person found guilty of an offence under this article, is liable on conviction, to a term of imprisonment not less than two years and not exceeding five years. A person, who attempts to commit an offence under this article, shall be liable, on conviction, to term of imprisonment not less than one year and not exceeding three years.

PARTY IV: RIGHTS OF THE INJURED PARTY AND ACCUSED

22. Right of the Injured Party to Free medical Care and Report

(1) An injured party has a right to free medical, psychiatric, or psychological treatment services, psychosocial care, optional confidential testing for HIV and any other sexually transmitted diseases, at any stage before, during and after the legal proceedings.

(2) An injured party has a right to receive and take safe emergency contraception after the occurrence of an unlawful sexual act.

(3) An injured party has the right to request and receive a detailed medical and psychological report specifying their injuries, medical diagnosis and treatment.

23. Right of the Injured Party to free Legal Aid Services

(1) The injured party has a right to a lawyer of his/her own choice.

(2) If the injured party cannot afford a lawyer of his/her choice, the state shall provide the necessary legal assistance that the injured party may need.

24. Right of the Injured Party to initiate civil action
(1) An injured party shall have the right to initiate civil proceedings to claim material and non-material damages suffered by him or her as a result of an act specified as an offence by this law.

(2) The injured party's right to pursue a civil claim for material or non-material damages shall not be affected by the existence or determination of criminal proceedings in connection with the same act from which the civil claim derives.

(3) The injured party's immigration status or the return of the injured party to his or her home country or other absence of the injured party from the court's jurisdiction shall not prevent the court from ordering payment for compensation in a sexual offence case.

25. Right of the Injured Party and Witnesses to Protection Measures

(1) An injured party or a witness in a sexual offence case shall have the right to keep their identity private.

(2) Information that would identify an injured party or a witness shall not be published without the express written permission the injured party or witness.

(3) The court and relevant authorities at any stage of the legal proceedings may adopt measures aimed at protecting and preventing the disclosure of the injured party's or a witness's identity, including the following—

(a) Order court proceedings to be conducted in private away from the presence of the media and public;

(b) Permit use of image or voice altering devices or close circuit television during testimony;

(c) Permit evidence of the injured party or witness to be heard through a video link, other communications technology, or behind a screen from the view of the accused;

(d) Expunge names and identifying information of the injured party or witness from public records;

(e) Assign the injured party or witness of a pseudonym; and/or

(f) Seal the court records.

(4) If the injured party or a witness is a child, the court and relevant authorities at any stage of the legal proceedings, shall take all necessary measures to protect and prevent the disclosure of the identity of the child injured party or a child witness, including but not limited to the measures listed in this Section (3) from (a) to (f).

26. Right of accused

1) The accused is entitled to all the rights provided in the Constitution of the Puntland State of Somalia.

2) The Accused is entitled to have a defence lawyer of his/her choice. If the accused cannot afford or does have a defence lawyer, the state shall provide and assign free of charge defence lawyer to the accused person.
3) The Government of Puntland shall take all necessary steps toward the full re-
alisation of the constitutional rights of the accused.

PARTY V: EVIDENTIARY RULES

27. Admissible Evidence

(1) The court may deem full admissible evidence if:
   (a) If two men or more give their witnesses as provided in the Sharia’a
   (b) If the perpetrator grants confession in front of the court
(2) If evidences provided in section (1) could not be obtained, the punishment of the
   offence may be as referred to in article 29(4).
(3) A medical or psychological report may be adduced as evidence in court proceed-
   ings for an offence allegedly committed under the provisions of this law. Failure to
   produce a medical report shall not be a bar to prosecution.
(4) A medical or psychological report referred to under this section , must contain de-
   tails about the physical, psychological, mental or emotional injuries sustained by
   the injured party, and any other relevant information; but it does not need to
   specify or conclude that a sexual offence occurred.
(5) A government or private hospital, any gynaecologist, doctor, a nurse, or other
   qualified medical professional is authorised to provide the injured party with a
   medical report with or without a referral from the police.
(6) Any government or private psychologist, counsellor or any type of social worker is
   authorised to provide a psychological report to the injured party with or without a
   referral from the police.
(7) Any type of forensic evidence may be adduced as evidence in court proceedings
   for an offence allegedly committed under the provisions of this law. Failure to pro-
   duce forensic evidence shall not be a bar to prosecution.
(8) Any object, weapon, or relevant material relating to the alleged commission of an
   offence under the provisions of this law may be adduced as evidence in court pro-
   ceedings; but, failure to provide such evidence shall not be a bar to prosecu-
   tion.
(9) Any type of corroborative evidence may be adduced as evidence in court pro-
   ceedings, but failure to provide such evidence shall not be a bar to prosecution.
(10) A referral from the police may be adduced as evidence in court proceedings,
   but failure to provide such evidence shall not be a bar to prosecution.
28. Inadmissible Evidence

(1) The injured party’s sexual history is inadmissible as evidence in a sexual offence case.
(2) The court concludes that there the offence is consensual sex.
(3) There is a prove that the victim falsely accusing the offender.

PARTY VI: SENTENCING OF SEXUAL OFFENCES

29. Aggravating circumstances

(1) A person is found guilty of unconsented penetration as provided in section 27 (1) shall be punished according to punishment options provided for highway robbery offence in Al-‘ma‘idah Chapter of 33 verse of the Holy Koran.
(2) If the evidences provided in section 27 (1) are not obtained, the punishment shall be term of imprisonment from ten to twenty years.
(3) In sentencing a person for any offence under this Act, the presence of any one of the following aggravating factors shall permit a maximum sentence where it is averred and proved that the offence has –
   (a) Been committed in the company of another person or persons;
   (b) Offender is a repeat offender with previous convictions for sexual offences;
   (c) been committed by a person who, in so doing, made an abuse of a position of trust, authority or dependency conferred upon him by his or her functions;
   (d) been committed upon a person whose particular vulnerability, on account of his age, illness, disability, physical or mental deficiency, or his state of pregnancy, or time and place, or status of stateless, refugee, or displaced is apparent or known to the accused;
   (e) been committed against a child under 15 years;
   (f) impregnated the victim;
   (g) been married;
   (h) Has been committed in front of others publicly humiliating the injured party;
   (i) been committed at the time of willfully evading the execution of an arrest warrant or an order of imprisonment;
   (j) Any other circumstance that the Judge considers to be such as to justify aggravating of the punishment.
(4) The penalties for the offences under this section 6 and 7 shall be imprisonment for life where it is proved beyond reasonable doubt that:

(a) By reason or on the occasion of the offence, the victim has become insane;
(b) The offender has intentionally infected HIV/AIDS with the victim;
(c) By reason or on the occasion of the offence, the victim has suffered permanent physical mutilation or disability;
(d) The offender committed previously an offence of a similar nature against the injured party.

(5) The penalties of for the offences under section 6 and 7 shall be death penalty where it is proved beyond reasonable doubt that:
(a) The act caused the death of the victim;
(b) The act was committed against an incest;
(c) The act was committed by the use of weapon.

30. Injured Party’s Personal Statement

(1) For the purposes of determining the sentence to be imposed on a convicted offender under this law, the court may consider any statement that may have been prepared orally or in writing by the injured party describing the harm done to or loss suffered by them as a result of the commission of the offence.

(2) A statement by the injured party of an offence prepared and submitted to the court in accordance with this section does not prohibit the court from considering any other evidence to determine the sentence to be imposed on the offender.

31. Compensation Order

(1) Upon entering a judgement of conviction, the court shall in addition to any other punishment, order a person convicted under this law to make restitution or pay the injured party or their duly appointed representative, adequate compensation within a reasonable amount of time fixed by the court. The court shall take into consideration any submissions made by the accused, injured party or prosecution authorities prior to making a compensation order.

(2) Prior to entering an order for compensation, the court shall also take into account the offender’s means and ability to pay compensation, and shall give priority to a compensation order over a fine. The court may effect a compensation order by seizing or forfeiting the property or assets of the person convicted of an offence under this law.

(3) The purpose of an order for compensation shall be to compensate the injured party for any injury, loss or damage caused by the offender. An order for compensation may include payment for or towards:
(a) costs of medical, psychiatric or psychological treatment required by the in-
jured party;
(b) costs of physical and occupational, therapy and rehabilitation required by the injured party;
(c) costs of necessary transportation or housing, required by the injured party,
(d) costs for relocating the injured party to a safe residence;
(e) the injured party’s lost income or wages;
(f) compensation for the injured party’s family or dependents;
(g) legal practitioner’s fees and other related costs reasonably incurred by the injured party for preparing and attending legal proceedings, including, accommodation and travel costs;
(h) non-material damages for emotional distress, pain and suffering;
(i) material damages for any other losses incurred by the injured party; and
(j) Any other costs incurred by the injured party as a direct result of the offence and reasonably assessed by the court.

(4) An order for compensation under this section shall be enforced by the Puntland prosecution authorities by means.

(5) The immigration status or the return of the injured party to his or her home country or other absence of the injured party from the court’s jurisdiction shall not prevent the court from ordering payment of compensation under this article.

(6) Where the offender is a public official whose actions constituting an offence under this law, the court may order the State to pay compensation to the injured party. An order for the State’s compensation under this section may include payment for or towards all or any of the items under subsection (3) paragraph (a) to (k) above.

32. Order to confiscate or seize assets

(1) Upon entering a judgement of conviction, the court shall in addition to any other punishment, order for the confiscation and seizure of goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under this Law; proceeds derived from such offences; closure, on a temporary or definitive basis, premises used to commit such offences.

(2) The court may order that the any seizure of proceeds of crime under this section are sold or transferred and used to pay compensation to the injured party.

(3) The Ministry shall prescribe Regulations to establish measures necessary for identifying, tracing, freezing, confiscating and seizure of the proceeds of crimes under this Law. As well as, the procedure for the government of Puntland to receive requests from other countries or other Somali Federal Member States having jurisdiction over an offence under this Law to assist.

33. Joint offenders liability

Any person who instructs, commands, induces, counsels, procures, compels, instigates, incites, conspires with, aids or abets another person to commit an offence under the provisions of this law is liable, on conviction, to the sentence or punishment prescribed for the principal offence.
34. Commission of more than one Sexual Offence

Where more than one offence referred in this act committed together, each punishment shall be imposed separately and in full.

35. Obstruction of justice

(1) It is an offence for any person to obstruct, perverse, or interfere with the course or administration of justice, in regards to the reporting, investigation, or prosecution of an offence under the provisions of this law.

(2) A person found guilty of an offence under this section, shall, on conviction, be liable to a term of penal imprisonment not less than three years and not exceeding seven years.

(3) A person, who attempts to commit an offence under this section, shall, on conviction, be liable to term of penal imprisonment not less than two years and not exceeding five years.

PART VII: IMPLEMENTATION OF SEXUAL OFFENCE BILL

36. Implementation Plan of the Sexual Offence Act

(1) The Ministry shall prepare 2 years implementation plan within four months after this law comes into force to guide the implementation, and administration of this law in order to clarify responsibilities and set clearer benchmarks for full enforcement of the act at all Puntland in all regions.

(2) The implementation plan will be reviewed and amended on a needs basis.

(3) For the purpose of the implementation plan, the Ministry shall train relevant institutions, organisations, and public at large on the prevention and prosecution of sexual offences under this law.

37. Taskforce on implementation of sexual offence act
This law hereby establishes a committee to be known as the Taskforce for the implementation and management of matters relating to sexual offences. The taskforce shall be led by the minister of justice and shall comprise of –

i) Ministry of Justice
ii) Ministry of Women and Family Affairs
iii) Police Commissioner Office
iv) Chief Justice
v) Attorney General Office
vi) Human Rights Defender Office
vii) Ministry of Health
viii) Criminal Investigation (CID)
ix) Or any other entity deemed necessary for the taskforce

38. Regulations

The Ministry may in consultation with the relevant ministries and justice institution, and upon approval of the Sexual Violence Taskforce Committee, issue the necessary regulations regarding:

(a) any matter that is required or permitted by this law to be prescribed by regulations;
(b) the inter-sectorial implementation of this law; and
(c) Any other matter which is necessary or expedient to prescribe in order to achieve or promote the objects of this law.

PART VIII: MISCELLANEOUS

39. Jurisdiction

In a sexual offence case where the injured party is a civilian the case shall fall under the jurisdiction of the civilian court, regardless, of whether the accused person is a civilian or employed by the military.
40. Extra-territorial jurisdiction

(1) A person who, while being a Puntlander, or permanently residing in Puntland State of Somalia commits an act outside Puntland which would constitute a sexual offence had it been committed in Puntland, is guilty of such an offence and is liable to the same penalty prescribed for such offence under this law.

(2) A person may not be convicted of an offence contemplated in sub-section (1) if such a person has been acquitted or convicted in the country where that offence was committed.

41. Sexual Offender’s Registry

(1) There shall be a registry of all sexual offenders convicted under the provisions of this law for an offence against a child or person with a disability, or being sentenced to a term of imprisonment exceeding four years. In the case, offenders sentenced for an offence against a child or person with a disability the details of the offender shall be in the registry regardless of the sentence.
(2) The sexual offender’s registry shall only be accessible by the relevant authorities, law enforcement and public organisations exercising a public function.
(3) The Ministry is responsible for the maintenance and use of the sexual offender’s registry and shall prescribe the relevant regulations.
(4) Any person who has been convicted of a sexual offence against a child or a person with a disability shall not be eligible to work in a service, institution, organisation or association providing services to children or persons with a disability.

42. Repeal of laws

(1) Articles 398, 399, 400, 401, 405, 406, 407, 408 of the Somali Penal Code (1962), are hereby repealed.
(2) Any other law or provision contrary or inconsistent with this law is hereby repealed and replaced by the provisions of this law other than the Islamic law and constitution.
(3) Provisions in the Penal Code and Criminal Procedure Code as well other relevant laws that are compatible with the provisions and objective of the law shall be applied to the matters or offences under this law.

43. Commencement
This act comes into force on the day of its publication in the Official Gazette of Puntland State of Somalia.

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