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CASE STUDIES ON FORCED MARRIAGE IN SOMALIA

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EXECUTIVE SUMMARY

International law considers forced marriage to be a fundamental violation of human rights, impacting all aspects of an individual's life. It contravenes Article 16 of the 1948 Universal Declaration of Human Rights, which holds that a marriage can only be recognized if both parties are of sound mind and are consciously aware of the implications of entering into wedlock. Forced marriage is most prevalent in South Asia and Sub-Saharan Africa. It disproportionately affects girls by curtailing their education, limiting their opportunities, increasing their risk of violence and abuse, and trapping them in extreme poverty. Human Rights Watch (2013) has shown that Somalia's domestic laws have very limited metrics in place to protect women. The 1975 Family Law sets the minimum age of marriage for both parties at 18 and 16 for girls with guardian's consent. Somalia's statutory justice system dissolved in 1991 with the onset of the civil war. Although it is gradually being rebuilt, it appears that this legislation is still not being effectively enforced.

Somalis mostly defer to the sharia and customary justice (xeer) in matters concerning the family, as was also the case before 1991. Under customary justice, both parties are ready to marry once they have reached puberty. Under sharia, and specifically in Shafi'i jurisprudence, which is also applied in civil matters at the formal court, the male guardian must provide consent for his daughter to marry. Somalia has yet to strengthen its criminal justice chain and its recognition of women's rights, which received a setback (International Human Rights Commission, 2019) in order to implement its 1975 Family Law. This study examines three sets of issues: a) the effectiveness of the justice system in addressing forced marriage in Somalia; and b) the extent to which forced marriage affects women's lives; and c) the key drivers of forced marriage. It adopted purposive sampling methods to select 5 community elders and snowball sampling procedures to select 30 women in Mogadishu, who have been subjected to forced marriage. Interviews with these respondents explored three thematic concerns: the participant's life history, their family dynamics, and their experience of forced marriage.

From the findings, interviewees reported that women are rarely given leadership roles under clan management, which compromises their societal status and accords men a high level of dominance that they use to restrict women's rights through such practices as forced marriage. This scenario has been amplified in the literature. Studies claim that during and after the war, gender roles are often deeply contested as part of larger societal transformations and uncertainties (Horst, 2017; Skjelderup, Ainashe & Abdulle "Qare", 2020). Respondents argued that Somalia's current formal justice processes do not provide sufficient guarantees or structural mechanisms for forced marriage victims who seek to challenge marriage decisions in courts. According to Gonzalez (2017), victims of forced marriage rarely have access to the criminal system, and they are left in very vulnerable circumstances, especially when it is estimated that more than half of them are minors.

Furthermore, regarding the impact of forced marriages on women, respondents pointed out that forced marriage causes girls' educational goals and dreams to stagnate as they drop out. Women are allowed little or no choice regarding their education, and their husbands are empowered to decide whether they can proceed with it.

The study recommends a comprehensive structural approach to forced marriages in Somalia. The entire formal justice system in Somalia needs to be rejuvenated. The Judiciary needs to be empowered, and the police departments as well as correctional facilities strengthened. The federal government must also demonstrate full commitment to the principles and statutes it has adopted. There is a need to adopt a dual approach. While the justice chain needs to be improved at the top level, social norms change, and behavioral change need to be pushed at the local level. There is also a need for an integrative approach involving other

sectors, such as education and security. There must be enhanced collaboration and partnership among various levels and across organizational sectors.

The data gathered from indepth interviews and secondary sources was recorded and analyzed. Interview notes were manually recorded in field notebooks and responses were captured in English. Each data set was analyzed by grouping together emerging themes and categorizing them into programmatic and legal options.

1. INTRODUCTION

1.1 Background

According to Razack (2018), forced marriage occurs in circumstances whereby one or both spouses are forced into wedlock without their accord. Coercion revolves around psychological, financial, and emotional pressures from close family members who consider refusal by either party to accept the selected bride or bridegroom as a total disgrace to the family's reputation (Mirza & Meetoo, 2007). According to the International Human Rights Commission (IHRC, 2019), forced marriage is a major form of domestic violence. It obstructs individuals' right to choose a life partner to marry. Many governments have taken significant steps towards curbing forced marriage, but according to Monyane (2013), the act is still rampant in many societies, especially in Africa and Asia. UNICEF (2015), on the other hand, claims that social norms, lack of education, intergenerational norms, and poverty significantly contribute to poor decisions regarding marriage. In Somalia, forced marriage mainly occurs behind the scenes, so only few formally documented cases come into the spotlight (Judy & Akinyi, 2018). This makes it difficult to come up with statistics that paint an exact picture of the situation. Due to Somalia's weak justice chain, perpetrators of forced marriage are barely penalized. Customary law (xeer) is dominant, and the judiciary and protection mechanisms are not strong enough to address such violations. According to Chopra and Isser (2012), such trends are partially in response to the poor track record of interventions aimed at transforming formal justice institutions into well-functioning systems that meet the ideals of the contemporary rule of law. Forced marriage is based upon various factors that change from one region to another, including community-level cultures, traditional systems, environments, formal justice systems, as well as socioeconomic issues such as poverty levels and education levels. As argued in the literature, the obligation to prosecute crimes includes forced marriage to contradict the measures and systems necessary to reestablish peace among society (Chopra, 2009). The predicament gives rise to similar, though less noticeable, conditions. These challenges are also faced in many developing countries such as Somalia, where the formal justice system can be at odds with conflict management initiatives in the communities.

1.1.1 Global perspective

Forced marriage occurs in nearly all parts of the world. For example, the Forced Marriage Unit revealed that between 2011 and 2018, an average of 1,359 cases were recorded annually in the United Kingdom (Forced Marriage Unit, 2020). Although the study noted a 10% decrease of such cases in 2019, this should not be cause for celebration since these statistics only cover cases that were formally reported to the Forced Marriage Unit (FMU). Forced marriage is a deeply hidden crime within society and the reported figures do not reflect the magnitude of the actual situation.

A seven-country study from 2019 shows that in Afghanistan, a total of 54 cases of forced marriage were reported in 2019, while 559 cases were reported in Pakistan, 144 cases in Bangladesh, 65 cases in India, 31 cases in Somalia, 23 cases in Iraq and 22 cases in Romania (FMU, 2020). Although some countries registered less than 2% of forced marriages in Asia, the Middle East, Africa, Europe and North America in 2019, it should not be concluded that the situation is getting better, given that reporting of forced marriages requires high levels of courage to overcome reprisals from family members who believe they are acting in the best interests of their children.

1.1.2 Regional Perspective

Studies of forced marriage in African countries have revealed that the desire to strengthen family or clan ties is a crucial factor. Sabbe and Leye (2013) show that forced marriages in countries such as Morocco are considered an honor to the family, which must maintain high levels of honesty and integrity. This honor is seen as tainted when the decisions are rejected. Mtshali (2016) shows that perpetrators of forced marriage often use traditional systems to get their way. Forced spouses are easily brainwashed to accept the decisions made on their behalf without seriously questioning the legitimacy of the process.

Escaping from a forced marriage, especially after years have passed, is not a simple task. Studies conducted in Tanzania show that 78% of individuals in forced marriages suffer from mental illnesses such as depression or post-traumatic stress disorder. The situation worsens if the local community or society considers forced marriage as a norm and fails to recognize the emotional suffering of both spouses in forced marriages (Mollet & Chong, 2017).

The lack of strong criminal justice systems in developing states like Eritrea is linked to a greater forced marriage incidence. A report by the United Nations Human Rights Commission (UNHRC) (2019) estimates that more than 80% of forced marriages in Africa go unreported. Nammi (2019) indicates that a strong factor in this is that the perpetrators are mainly close family members of the victim or belong to powerful clans that view the reporting of cases to authorities such as the police or healthcare institutions as a shameful act (Iranian and Kurdish Women's Rights Organization [IKWRO], 2015).

1.1.3 Somalia Perspective

In the Islamic worldview, marriage is fundamental to building healthy and protective relationships, families, and societies. For an Islamic marriage to be valid, it must meet specific criteria that ensure the health, security, and wellbeing of the couple, their families, and their communities.

In Muslim communities around the world, marriage is subject to many local customs and cultural norms. Islam allows this cultural diversity as long as the practices involved do not cause harm or contradict principles of the Islamic law that protect human beings.

During the life of the Prophet Muhammad (peace be upon him), his companion Ibn Abbas spoke to him about a woman who reported that her father had forced her to marry without her consent. The Prophet (peace be upon him) gave her a choice between accepting the marriage and invalidating it. (Ahmad narr., Hadith no. 2469) Another narration of this hadith (saying of the Prophet) states that she responded "Actually, I accept this marriage, but I want to let women know that

parents have no right to force a husband on them.” (Sunan Ibn Majah narr., no. 1875).

According to Sulaiman, Magan and Kipchumba, (2017), recognition of women’s rights in Somalia remains a challenge compared with regional states such as Kenya and Uganda. It is an uphill task to change the typical profile of women in Somali communities.

Judy and Akinyi (2018) show that in Somalia, women and young girls are most affected by forced marriages, which hinder their access to education, limit their economic opportunities and ultimately engulf them in a cycle of poverty. Cultural norms and expectations contribute to forced marriages in Somalia (Judy & Akinyi, 2018), where society is organized around clans characterized by male dominance. Men are considered supreme over women, and there is little respect for women’s rights. Women are sidelined in societal decision-making processes and forced marriages are arrived at by clan elders or household heads who are usually men. However, there are also instances in which women arrange forced marriages for their daughters due to social pressures for girls to marry as early as possible. There is significant social pressure in Somalia, especially concerning the first marriage (Nuune 2011).

Razack (2018) shows that more than 75% of young girls in Somalia are forced into marriage. Most of these adolescents lack formal education and are characterized by low self-esteem. Razack further notes that approximately two-thirds of women without previous access to formal education were forced to early marriage as compared to 6% of women with higher levels of education such as college or university.

Half of Somalia’s (50.4%) citizens are female (Ali & Nomad, 2019). According to Askola (2018), forced marriage represses Somali women, depriving them of social development, educational rights, and participation in economic development processes, and further plunging the Somali nation into a vulnerable situation.

1.2 Problem Statement

Though Islamic law is fundamentally opposed to marriage without consent, forced marriages are rampant in Somalia. This negatively affects girls’ mental health, social wellbeing and economic welfare.

Various studies have established the detrimental effects of forced marriage. For instance, El Bushra and Gardner (2014) show that young girls in forced marriages are exposed to health risks not only for themselves but also for their newborn children. Similar reports by Young, Oaks, Tandon, Martorell, Dewey and Wendt (2019) have established that most girls in forced marriages are below the age of 16 and are more likely to die during childbirth or suffer obstetric fistulas as compared to women in their 20s.

Forced marriage in Somalia is frequent, but mostly unreported. Forced marriage violates various human rights standards, including the right to good health and the right to education, which are closely tied to economic freedom and opportunity. Forced marriage also hinders individuals’ enjoyment of other social rights such as the freedom to choose the right time to enter into or leave a marriage, or to leave one’s home.

However, legal redress is often difficult to obtain. According to IHRC (2019),

Somalia has yet to strengthen its criminal justice system. Society has embraced traditional dispute resolution avenues to preserve religion, life, reason, descendants, and property (Al-Ghazali 1949), popularly known as maslaha for sex offenders. It was geared towards complementing Islamic law with the ultimate goal of protecting the five basic values (Al-Bugha, 1999).

In the Somalia context, Maslaha entails the male elders in the community sitting under a tree to resolve a conflict between the affected families. Maslaha is being misused and criminal matters like sexual offenses – such as early marriages and murder should be strictly taken before a court of law so as not to compromise justice. Implementing prudent legal reforms is a challenging task.

1.3 Justification and significance of the study

According to Somalia's Center for Research and Dialogue (CRD) (2014), forced marriage accounts for more than 46% of the divorce cases reported annually in Somalia. The family is the basis of Somali society and so the high divorce rate in Somalia not only threatens the stability of its families but also weakens generational transitions.

Few studies of forced marriage have been carried out in Somalia due to the fragile security situation in most parts of the country. However, statistics released by Human Rights Watch show that 79% of parents in Somalia prefer to have their daughters forced into early marriages as a strategy of preventing them from being sexually abused by men who are not ready to follow the culturally laid down procedures. In Somali culture, parents are accorded the freedom to choose a husband for their daughter, based on norms that regard Somali girls as weak and feminine and place them in a subservient position (Human Rights Watch, 2017). Marriage is concluded through negotiations and agreements among families. In Somalia, forced marriages are said to be 43% more rampant among pastoral communities than among urban dwellers. Another cultural phenomenon is that rape survivors can be forced to marry their perpetrators. Denmark (2017) confirms that Somali women who decline forced marriages to their rapists face severe repercussions from their families and clans. Even though Somalia has dedicated itself to eradicating forced marriage by the year 2030 in line with Target 5.3 of the Sustainable Development Goals, it has achieved very little so far.

The results of this study are aimed at enhancing awareness of the key reasons for forced marriage in Somalia and spurring in-depth discussions of victims' daily struggles after being forced into marriage. The author hopes to provide a reliable knowledge base for the development of sound social policies and interventions that effectively address this issue.

This study will also provide a reliable platform for academicians who wish to further scrutinize the issue of forced marriage. The empirical evidence it presents will inform cultural adjustments and underline the necessity of young girls' empowerment as a precondition for Somalia's sustainable development.

2. METHODOLOGY

2.1 Research design

This was a qualitative case study, in which the researcher obtained detailed information in the natural setting where it occurs without interfering with research participants. This method enables a complex phenomenon to be explored by examining how various factors interact with each other (Debout, 2016).

2.2 Target population

The target population for this study was young women (aged 18 to 35) who were forced into marriage when they were not ready to marry. The study also obtained information from older women (above 50) who were considered to have better knowledge of marriage practices among the communities under study. The study sample was selected from Wada-jir, Dharkenlay and Waberi districts in Somalia.

2.2.1 Sampling and Sample Size

The study was based on 20 respondents who were interviewed about their opinions and experiences on various issues under consideration. The focus was not on obtaining a representative sample, but rather on collecting data until the saturation point was reached, as was also suggested by Faulkner and Trotter (2017). Study participants were selected through purposive and snowball sampling, non-probability sampling methods allowed the researcher to choose people who possessed data and information needed for the study.

2.3 Data Collection and Analysis

The application of both customary and sharia law in land matters is common in The study used key informant interviews (KIs) and focus group discussions (FGDs) on collecting primary data. KIs allowed the researcher to obtain data from participants who possessed valuable information. FGDs allowed for shared analysis and discussion among participants. This enabled them to express differing opinions, seek clarifications and make their case in an open discussion forum. These methods improved the quality of the data collected and allowed the researcher to obtain a deeper understanding of the subject matter. The study conducted 20 KIs and 2 FGDs comprising older women.

This study presents its results using key themes that emerged from the data analysis. Thematic analysis, when done rigorously, can produce findings that are both trustworthy and insightful (Braun & Clark, 2006). This method was chosen to give the researcher high flexibility while providing a detailed, rich and complex account of the data. Thematic analysis is also useful for summarizing the key features of a large data set, as it forces the researcher to take a well-structured approach to handle data, helping to produce a clear and organized final report (Nowell, Norris, White, & Moules, 2017).

2.4 Ethical Considerations

Research ethics require a researcher to do no harm to the participants in a study. The researcher in this study obtained informed consent from participants in advance of data collection. They were free to withdraw from the research at any time or to withdraw the information they furnished to the researcher. The researcher maintained the confidentiality and anonymity of participants and used all gathered data solely for this study.

3. LITERATURE REVIEW

3.1 Effectiveness of the justice system in addressing forced marriage

In Rwanda, Kalra (2011) assessed the effectiveness of laws to address forced marriage. Out of the 154 participants in the survey, 55% and 63% respectively indicated that forced marriage presents a great threat to domestic and international law, and most stated that many forced marriage cases go unreported. The study recommended greater dedication to the prosecution of forced marriage in line with international human rights standards. Somalia and Rwanda are similar in that traditional dispute resolution processes play an important role in both countries.

Vulnerable people's access to justice is improved by transformations to society such as greater opportunities for women. A comprehensive investigation by Clarke (2018) involving 457 pastoralist respondents shows that the rigidity of Somali government and judicial structures have affected women's access to justice. Discrimination against women by way of marriage has not yet been eliminated in rural Somalia, where women's roles are generally dictated by clans' traditional concepts. It is unclear whether there have been any successful prosecutions of forced marriage perpetrators since the promulgation of the new constitution and consequently new FGS (2012) was inaugurated.

According to Human Rights Watch (2018), the Somali government is responsible for creating relevant policies to protect and support victims of forced marriage while cracking down on perpetrators and bringing them to book, but this will require a more comprehensive strategy. Women, who compose 50.4% of Somalia's population, are severely affected by weak judicial systems that fail to address their challenges. Women's voices must be heard and their grievances given great consideration in order to find lasting solutions to their marital challenges.

3.2 The Legal Situation and Its Impact on Forced Marriage

3.2.1 The Legal Situation in Somalia

Somalia is a religiously homogeneous society. The terms for marriage in the Somali language practice correspond to those found in Islamic law. In sharia, both spouses must consent to marriage. However, few will refuse, and for those that do, according to the sharia, this refusal has little practical relevance (Nuune 2011). It is impossible to accurately quantify the extent to which women, through physical or mental coercion, are forced into marriage against their will (Gabowduale, 2010).

Somalia's current legal code is an amalgamation of Italian civil law and British common law. According to Human Rights Watch (2013) Somalia has few domestic legal protections in place for women. Somalia's Family Law of 1975 states that the minimum age for marriage for both men and women is 18 years, or 16 for women if their guardians consent. In practice, the age of first marriage is often lower than this. Rather than the secular Family Law, most Somalis follow sharia, which allows women to marry once they have reached puberty and attained full maturity.

Marriage is the sole legitimate context for sexual activity in Somalia. There is a clear expectation of reproduction after marriage, so first-time marriages with women who have passed the age of fertility are uncommon. Significant age differences within married couples are rarely in the woman's favor in Somalia, as

in most cultures. Cases exist in which a wife is older than her husband, but usually under special circumstances- for example, when the wife is very wealthy.

3.2.2 The Impact of The Legal Situations on Forced Marriage in Other Countries

Assessments have been conducted of the effect of legal frameworks on forced marriages in various countries. For instance, Muller (2018) investigated the general acceptance of marital laws in Malaysia. Out of 100 cases, 56% of victims of forced marriage reported having little trust in their states' legal frameworks; 44% indicated that they had no confidence in judicial proceedings. Muller recommended that Malaysia should appoint women judges to hear family-related cases. Although both Malaysia and Somalia are Islamic countries where sharia is commonly used, the situation in Malaysia is different from that of Somalia, mainly because Malaysia has a stronger judicial system.

In Saudi Arabia, Mernissi (2015) surveyed 126 participants to investigate the correlation between the legal framework and gender inequities. The survey showed that the indiscriminate application of marital laws in Saudi Arabia contributed to the demeaning of married women in Saudi society. The study recommended the implementation of gender equality and fairness. The level of legal frameworks differs significantly between Saudi Arabia and Somalia, so generalizing these results may not address the legal issues that affect marriages in Somalia.

3.3 What are the Impacts of Forced Marriage on a Woman's Life?

Forced marriage has great consequences in the life of women. For example, young girls tend to drop out of school during the time when they are preparing for marriage or shortly after getting married. According to Marshall and Goodall (2015), education assists them to grow and develop necessary capacities to enable them to make informed decisions in their future lives. Although the bill of rights in Somalia's constitution accords every citizen the right to education and the right to freely choose a profession and occupation, these clauses have yet to be fully implemented (Human Rights Watch, 2018).

In Ethiopia, Erulkar (2013) investigated the relationship between forced marriage and the career success of its victims. Focus group discussion participants in this study highlighted that a considerable number of girls are forced into marriage at a young age, some while they are still in primary or early secondary school, and this limits their ability to fully participate in complex economic activities that require professionalism. The study also indicated that when young girls are forced into marriage, most of them (75% to 90%) become pregnant, thus obstructing their learning process and future goals.

In Yemen, Pimentel (2014) sought to determine the relationship between educational level and the quality of relations that characterize forced marriage. This study established that when a woman is forcefully united with a husband, she is frequently taken out of school, meaning that the choice of whether she will continue her education rests with her husband. Even though Somalia and Yemen share similar values, according to Human Rights Watch (2018) the situation in Somalia is more severe in that less than 10% of husbands marrying young girls were willing to let them continue their studies.

In Tanzania, Pangilinan (2015) sought to determine the effect of forced marriage on girls' education. This study established that most Tanzanian girls who are forced into marriage are still in their teens and lack self-esteem due to their low literacy levels. Due to their young age, some are unable to adhere to basic health measures necessary for their family's wellbeing. Islam places great emphasis on education as a right, with parents and guardians given the specific instruction to ensure that their children are educated.

Nussey and Elaine (2011) investigated the influence of delayed marriage on individuals' ability to make informed decisions, using correlation analysis. They showed that delaying marriage allows girls to have more time in school, which in turn enables them to acquire knowledge that improves their ability to avoid being manipulated into forced marriage. Educational progress for Somali girls who fall into the trap of forced marriages remains largely undocumented. Most are unwilling to press for educational advancement after they become mothers, and Somali culture demands that a woman should bear many children even at the cost of their educational ambitions.

Asli and Byouki (2016) explored forced marriage in Islamic countries. They concluded the following: first, that marriage before the age of puberty is unacceptable and violates sharia; second, that marriage after puberty requires comprehensive maturity and sound adult judgement given that it is a legal contract; third, that Muslims are forbidden from doing anything that causes harm either to themselves or to others; and fourth, that Islamic sources confirm parents' obligation to protect their children from all harm. The study ascertained that the wellbeing of both females and males is protected by sharia and Muslims have an obligation to protect human life and health. It affirmed that the categorization of marriage as meethaqan ghaleezan (the most solemn form of covenant in Islam) means that the free and informed consent of both individuals is required. According to Islam, a woman is not a plaything in the hands of a man, but rather a spiritual and moral being who is entrusted to him based on a sacred pledge to which Allah is made a witness. The wife is, therefore, not meant only to provide sensual pleasure to the male, but to fully cooperate with him in sustaining the life of the family and ultimately the whole of humanity.

3.4 Drivers of Forced Marriage

Social norms play a critical role in influencing a group's collective practices and behaviors. Choudhry and Hossain (2012) sought to determine how cultural norms and principles affect young girls' social determinations in Iraq. Participants indicated that they had acted in best interests of their child, while others indicated that they had abided by cultural rules. Some indicated that they were compelled to force their daughters to marry their rapists as the only acceptable remedy for this crime. Although traditional systems and cultural values in Somalia and Iraq are similar in many ways, the prevalence of forced marriages in these two countries differs significantly especially on use of Maslaha as earlier explained.

Using empirical studies conducted by observatory agencies, Saavala (2010) revealed that 59% of forced marriages in Albania were linked with social exclusion, community profiling of women and poverty. A demographic and health survey from 2013 to 2014 indicated that early motherhood, lack of female autonomy, a high dropout rate from school and failure to involve women in marital and

household decision-making all played significant roles in Albania's forced marriages.

Similar studies have been limited in Somalia. Isse (2017) surveyed 104 respondents in the Garowe district, seeking to determine the causes of forced marriage. 85% of these respondents indicated that marrying off children, even without their consent, is a traditional cultural precept. Isse concluded that Somali parents embrace forced marriage for their daughters as a traditional obligation due to deep-rooted cultural factors.

Societies prone to authoritarian rule are more likely to subvert cultural norms and the rule of law (UNHCR, 2019). Luling and Adam (2015) surveyed 115 participants to investigate the effects of social pressure by authoritarian leadership on forced or arranged marriages in rural Somalia. They found that pressure on Somali parents to have their daughters married before age 16 made the situation worse for girls and subjected their parents to the trauma of making a wrong choice. The liberation of the Somali people from rule by authoritarian men is expected to restore native communal norms. This liberation is also expected to impart social awareness and respect for law and order.

4. FIELD RESEARCH RESULTS

4.1 The Relationship Between the Justice System and Forced Marriage in Somalia

In evaluating the effectiveness of the justice system in addressing forced marriage in Somalia, respondents in this study indicated that Somalia's current justice system does not provide strong guarantees or structural mechanisms to support forced marriage victims who wish to challenge marriage decisions in court. This is based on the way it implements the legal framework. FGD participants indicated the following:

"The current implementation of the legal framework does not provide proper mechanisms for the reporting of violations committed against women...most rural areas in Somalia are poorly covered by key government structures such as courts, police stations or correctional facilities. Thus, many forced marriage cases go unreported."

Interviewees also argued that the push and pull factors that occasion forced marriage are not properly addressed within Somalia's justice system. There is disharmony between the norms in national law and traditional justice; in fact, one seems to advocate what the other opposes. For instance, under xeer, if a man forcibly takes a girl into his house, has intercourse with her and gets her pregnant, he is able to present himself to the girl's parents with a marital claim as the baby's father; on the contrary, under Somalia's constitution, this would be considered a criminal violation. In the words of one respondent: The interviews

"The customary laws are more recognized here than the national constitution...it is challenging to embrace new rules in societies that are deeply entrenched in traditional ways of life."

show that compliance with the formal laws, especially regarding the institution of marriage, is relatively low in Somalia. According to Chopra (2009), often, due to their inaccessibility or incompatibility with local socio-cultural norms, official justice institutions in developing countries, including Somalia in this case, do not fully penetrate the whole of society. The study findings obtained from the field revealed that the largest contributing factors to poor adherence to the formal laws are social and cultural. For instance, even though interviewees noted that several significant changes to gender roles have occurred, the primacy of gender identities within Somali society remains unchanged, and women are still considered inferior to men under xeer. Interviewees elaborated that in circumstances where men divorce their wives, xeer norms maintain that their children must remain in the custody of the father. This is meant to compel women to remain in wedlock even when their marriage is not working.

Respondents indicated that the Somali government has not done enough in terms of implementing the necessary legislation and structural justice sector reforms to help prevent forced marriage, and the police have not been prepared to enforce law and order for victims. Interviewees indicated that the state has also not done enough to raise citizens' awareness of their rights or to punish criminals. According to one participant:

"Some areas within Somalia's territory are still under the control of militias who forcefully compel parents to marry off their girls without their consent or will to enter matrimony."

FGD participants concurred that:

"Militia groups have caused great violations of women's rights and social disorganization...unless the government strengthens its administrative capacity in all areas, violations and criminal acts including forced marriage will persist in Somalia."

Participants reported that there is a need to promote greater observance of formal justice and the sharia as opposed to traditional xeer. Article 3 of the Constitutions of Somalia indicates that women should effectively be included in the management of all government affairs, especially those that affect them directly or indirectly. These sentiments were echoed in the study of Horst (2017). Women should have the right to choose whom they wish to marry. Under Article 11, everyone is equal before the law and therefore considering women as inferior amounts to a rejection of the rule of law.

4.2 The Effect of Forced Marriage on Life of Women

Forced marriage has a severe impact on women. In a forced marriage, one or both spouses do not consent to the arrangement of the marriage and some elements of duress are involved. Duress as explained by Donnelly (2019) can include physical, psychological, financial, sexual, and emotional pressure. Forced Marriage is an abuse of human rights and, where a child is involved, an abuse of the rights of the child (Isse, 2017).

Following Sulaiman, Kipchumba and Magan (2017) one serious consequence of forced marriage is the increased likelihood of domestic violence and abuse and sexual abuse. Anyone, especially women forced into marriage faces an increased risk of rape and sexual abuse as they may not wish to consent or may not be the

legal age to consent to a sexual relationship (Donnelly, 2019). This in turn may result in unwanted pregnancies or enforced abortions. The main challenge, as highlighted by Chopra and Isser (2012), is a normative one where some actors regard the alternative paradigms of justice provided by local communities as desirable only to the extent that they provide accessible and restorative remedies in ways that do not contravene international standards of the rule of law as well as human rights.

Of the growing concern is the increased poverty as well as high dropout rates of girls from school. Based on this basis, the study required respondents to describe how forced marriage affects girls' education and career development. The majority of the people interviewed indicated that forced marriage causes girls' goals, dreams and educational aspirations to stagnate. According to Abdulai (2014), under sharia the acquisition and application of knowledge is a fundamental requirement for all Muslims to enable them to believe, think and act according to Islamic principles. One respondent stated that:

"Once a young Somali woman gets married, she must immediately conceive children, and this forces her to put the brakes on her life in order to carry her baby and nurse it after delivery."

Another interviewee stated that:

"Family planning decisions are made by the husband, and if a woman makes choices without her husband's consent, this amounts to disrespect, which is punishable by the clan."

It is hard for women to stop giving birth or to find time to attend classes. Human Rights Watch (2018) reports that less than 10% of husbands marrying young girls in Somali communities are willing to let them continue their studies. This implies that a whopping 90% of women see their dreams of education shattered.

Through the FGDs, the study sought to establish how active Somalia's Ministry of Education has been in preserving girl-centered education. Participants reported that:

"It is absolutely evident that the state lacks effective policies and structures to promote girls' education; in the absence of such structures girls are out of school."

The study further probed the issue of girls dropping out of school and explored what this entails regarding formal education. Participants stated that:

"When girls drop out of school, this often has serious consequences; they remain illiterate, their vulnerability increases and they are unprotected and subjected to increased violence as they walk long distances to fetch water. They help out at home instead of studying."

A lack of strictness on the part of government agencies in seeking formal education for girls has led to the adoption of informal education, which is more inclined toward family life and regressive habits. According to Monyane (2013), girls dropping out of school leads to forced marriage as this is often the best option left to their families.

Participants elaborated that most schools in Somalia have low enrolment rates for girls, even though girls represent a huge proportion of the population. One participant reported that:

"Somalia has witnessed a continuous decline in literacy rates for females since independence; this presents a scenario where women are unable to compete effectively within social and economic platforms."

This is one reason why most of the population lives in absolute poverty. Ali and Nomad (2019) affirm that denying women social development, educational rights and participation in economic development has plunged the Somali nation into a vulnerable situation.

Participants stated that forced marriage prompts physio-social trauma amongst girls. It leads to misunderstandings, expressions of discomfort and ultimately a lack of tolerance that occasions divorce in many families. Many respondents believe that forced marriage has shaken the foundations of Somalia's social fabric. Forced marriage contravenes Article 8 of Somalia's constitution, which guarantees equal treatment of all citizens before the law and forbids anyone from being accorded precedence on the grounds of gender, clan, birth, status, language, color, property, or opinion. According to a study by UNICEF (2000), exposure to early motherhood responsibilities without having attained physiological maturity denies girls the opportunity to effectively contribute to the future well-being of their family and society, unlike their educated counterparts.

Several themes emerged with regard to forced marriage's effects on educational opportunities for young women in Somalia, including women's low profile within society, weakened solidarity within communities, lower participation in social affairs and lack of voice and agency within household matters, work and institutions.

Majority of the respondents reported that due to women's low profile in society, male preference can be seen in all aspects of education. Women's education is not a priority at all, and once women get married, they start taking care of their families and no longer explore other aspects of their lives such as career development.

The absolute majority of participants indicated that young women experience a decline in solidarity within their communities and low participation in social affairs. Since most are unable to complete their education, they are branded as dropouts and seen as incapable of undertaking formal tasks.

Finally, it was agreed by majority of the respondents that girls missed educational opportunities due to forced marriage curtails women's voice and agency within household matters, work and institutions.

Respondents reported that although eight years of schooling is compulsory in Somalia, more than 50% of women are unable to read or write. Most girls fall into the trap of forced marriage while they are in primary or secondary school. According to Nosey and Elaine (2011), the state of educational progress for Somali girls who are forced into marriage remains largely undocumented. Girls in forced marriages often have to abandon school and take care of their families. Pimentel (2014) explained that in Yemen, once a woman is forced into marriage, the choice of whether she will continue her education rests with her husband.

4.3 Drivers of Forced Marriage in Somalia

Interviewees in this study described how culture and traditional systems were linked to forced marriage in Somalia. Most indicated that Somali clans tend to promote practices such as forced or arranged marriage. One interviewee reported that:

"The norms require that in case a girl is impregnated by a man, she should immediately marry that same man. Communities perceive this as an act that safeguards the welfare of the unborn and the mother"

Some community members seemed to embrace such traditions without much opposition. However, such practices have continually hampered social growth and development. Some men have reportedly taken advantage of traditional laws, leading to a tremendous increase in rape cases as a foundation for forced marriage.

Participants also described how clans' cultural setting influenced forced marriage in Somalia. Most attested that clan culture is firmly entrenched among Somalis, and anyone wishing to obtain benefits must demonstrate respect for this hierarchy. Interviewees reported that women are rarely given any leadership role under clan management, thereby compromising their roles; however, men have a high level of dominance which they use to deny women's rights. In the words of one of the interviewees:

"Our clans' men have kept our society in the dark for a long time; we lag behind other Muslim nations. Our clans' men, some of whom are educated, should have brought light, ended forced marriages and welcomed the beginning of a new era of respect for women in society. It's regrettable that although they know how repressive such norms are, most use them to enhance their dominance and control over uneducated women."

Interviewees highlighted the need to ensure women's full involvement in the management of clan affairs, to ensure that women's voices are respected in decision-making. Such primary platforms supply protection against irrational decisions such as forced marriage. Those affected should be able to directly share their objections with clan leaders. These findings reaffirm the call by Human Right Watch (2018) for women's grievances to be given great consideration in order to find lasting solutions to their marital challenges.

The study also explored how women's roles in society encourage or discourage forced marriage in Somalia. Interviewees reported that women are considered inferior and therefore unable to take important roles in governance, limiting their access to social and economic opportunities, education, employment, health, business, credit and more. Most respondents indicated that such limitations led women into assuming that forced marriage is a normal practice. One female participant stated that:

"Our fate is always determined. The best a young Somali girl can do is to prepare physiologically to follow the same cycle her mother fell into. It's a programmed life for girls and any objection to issues such as forced marriage is treated as an abomination."

Burdened with the assumption that women cannot add value to society, most girls are forced to marry and then to perform the expected tasks and responsibilities of a wife. This concurs with Judy and Akinyi (2018), who found that cultural norms and expectations contribute to forced marriage in Somalia. FGD participants were asked to describe the correlation between male chauvinism and forced marriage in Somalia. Most participants concurred with the following statement:

"Most Somali men are authoritative by choice and their decisions within their households are considered final. To show such a chauvinistic character is seen as a call that every man must embrace before graduating to become the head of household...according to cultural practices a man has to grow tougher as his family grows bigger." FGD02

This mentality occasions an instinctive determination amongst men to dominate and a desire to impose their command over women at all levels, which is justified as honor and toughness. As Declich (2018) noted, in a society where men are considered supreme, there is little respect for women's rights.

The case studies and FGDs show that many men have sought to marry young women by force through traditional arrangements. On occasions when a man takes advantage of a young woman but is unwilling to marry her lawfully, this can place her in a very vulnerable position and no other man may be willing to marry her since Somali society places a high accord on women's virginity before marriage and so defiled young women are considered unchaste and unmarriageable. The institutions of marriage and female virginity are important elements in preserving family honor. An unmarried woman who becomes pregnant is seen by her family and community as having betrayed the family honor and so her standing in society is substantially diminished. Choudhry and Hossain (2012) explain that some parents have been compelled to force their daughters to marry their rapists as the best remedy for such a situation.

According to sharia, it is forbidden for a Muslim to participate in actions that lead to Zina (unlawful intercourse), such as touching, kissing, being alone with or gazing at a member of the opposite sex, all of these things are great sins.

5. SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Conclusions

This study concludes that Somalia's clan-based traditional cultural systems, norms and gender roles are instrumental in the propagation of forced marriage. Perpetrators of forced marriage can easily find justification for their actions in these factors, while legal efforts to stop forced marriage struggle to overcome them. The current formal justice system in Somalia is not strong enough to address the issue of forced marriage. Most women find it hard to go to court as the police fail to enforce some of the laws regarding forced marriage that is already in place. The implementation of current policies is met with opposition and most Somalis continue to place traditional clan-based customs above the national constitution, rendering the bill of rights an inactive clause.

Forced marriage has a destructive effect on girls' education and career development. The government of Somalia lacks effective policies and structures to promote girls' education. Somali women's low literacy plunges them into poverty due to their inability to take up professional, economic, and business opportunities.

5.2 Recommendations

This study seeks to recommend the implementation several intersecting actions to provide a firm foundation for diverse practitioners to bring about change. The conspicuous trend in the past decade in informal justice systems has been linked to the poor track record of interventions aimed at transforming formal justice institutions. Addressing forced marriage will thus require a comprehensive structural approach. Following the constitution, sharia is the primary source of Somali law. Participants elaborated upon the effectiveness of sharia in addressing forced marriage. They revealed that although sharia does not allow forced marriage, few people live by Islamic principles. Islamic teaching can definitely reduce bad practices within society. Under Islam, children's rights must be considered even before birth. In addition to their fundamental right to be fed and clothed, children should also be protected from physical violence and harm and receive equal treatment regardless of their gender.

There is a need for the federal government to demonstrate full commitment to the principles and statutes it has adopted. Generally, women should be empowered politically and economically in order to have an impact on forced marriage. These include the right to education for all and equality and fair treatment of all regardless of race, status, literacy, or gender. There is a need to promote awareness of and respect for human rights, especially as they apply to the institution of marriage. From the findings, there is a need to ensure women's full involvement in the management of clan affairs to ensure that women's voices are respected in decision-making. Such primary platforms supply protection against irrational decisions such as forced marriage. Those affected should be able to share their objections with clan leaders directly. Such a call reaffirms the call by Human Right Watch (2018) in order to find lasting solutions to their marital challenges.

In addition, there is a need for consideration of enhancing social norms and behavior change. For example, women must be fully involved in the management of clan affairs, to ensure that their voices are heard and respected in decision-making structures. This requires an integrative approach involving the promotion of the shariah in countering forced marriage. Thus, there is need to work with the local legitimacy of the Shari'ah to get better formal justice in these cases (e.g., train local judges in the sharia); and also change social norms and behaviors by showing people how inconsiderate they may be when they push for forced marriage.

There must be enhanced collaboration and partnership among various levels and across organizational sectors. Any single solution cannot end forced marriages, and all stakeholders need to play a key role in stopping it. Due to the complex nature of forced marriage, the development of programs to end this menace should first identify its primary drivers within society. All levels of government, as well as other stakeholders (including NGOs and community-based organizations) must develop programs to end forced marriage in Somalia. Each stakeholder should appreciate how their efforts contribute towards the bigger goal. This study analyzed cases of forced marriage in Somalia. Moving forward, it is important to explore the role of NGOs and community-based organizations in curbing forced marriage. Further studies may also concentrate on the psychological and physical effects of forced marriage in Somalia.

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