Gender Equality and Social Inclusion

Guidelines

Expanding Access to Justice in Somalia Program

July 2019

Contents

Abbreviations and Acronyms

CBP	community-based paralegal
CD	capacity development
CM	case management
EAJ	Expanding Access to Justice Program
FGMC	female genital mutilation and cutting
FHH	female-headed household
GESI	gender equality and social inclusion
IDP	internally displaced person
IPV	intimate partner violence
LAO	legal aid organization
SDG	Sustainable Development Goal
SGBV	sexual and gender-based violence
USAID	United States Agency for International Development

Glossary of Terms

Term	Explanation
Advocacy	Advocacy is the development and sustainment of a dialogue with change-agents in support of a particular point of view, policy, or action. The aim is to make a person, institution, or community aware of an issue and to encourage action, with a view to changing policies and/or practices.
Applied Political Economy Analysis (APEA)	An applied political economy analysis helps project staff to understand their environment and thereby plan better programs and manage risk. It seeks to determine who holds power and why, how they exercise it, and what the implications might be for vulnerable groups.
Awareness-raising	Awareness-raising seeks to increase knowledge on an existing subject. In the context of access to justice, awareness-raising largely focuses on knowing one's existing rights and how to defend them.
Case management (CM)	CM is the planned coordination of services to provide beneficiaries with the highest quality services and support. It recognizes that problems are rarely singular; usually people need multiple forms of help delivered by different professionals. In this program, for example, beneficiaries might require physical protection, counselling, medical care, and/or humanitarian assistance on top of legal aid.
Change agent	A change agent is someone who promotes and enables change to happen within any community, institution, or group. A change agent can be anyone: young or old, male or female, educated or uneducated. Sometimes the best change agents are unexpected, such as religious leaders, youth, or fathers. Usually they will have good skills at advocating and engaging people and can inspire others to join the change process.
Community-based paralegal (CBP)	A CBP is a community volunteer that has been trained in basic laws and legal processes and can provide first advise to community members on their rights and responsibilities. Ideally, the CBP is connected to paralegals and lawyers, who can provide more detailed advise and representation when needed.
Paralegal	Paralegals are laypersons who have legal literacy skills, knowledge of substantive laws, and skills in how to navigate the court system. Their function is to provide a bridge between the formal legal system and society, thus demystifying the law and making justice more accessible. Paralegals can offer a range of legal services that do not necessarily need to be provided by a lawyer, such as advice on if a rights violation has occurred; an individual's rights in a particular situation, including relevant laws and options for legal recourse; how to access legal aid; and how to file a claim in court or at an administrative tribunal.
Risk assessment	A risk assessment is a process to identify potential dangers and analyze what could happen if a that danger is realized. Not all risks are avoidable. As such, it is not enough to assess risk; teams also need to develop a plan to prevent and manage risk and to mitigate its impact. The key risks in this program are increased vulnerability, vulnerability spillover, spoiler actions, and conflict spillovers.
Standard operating procedure (SOP)	SOPs are best understood as how-to guides. They contain procedures that describe the activities necessary to carry out program work safely and in conformance with the law and the program goals. They make work more efficient and consistent, reduce scope for errors, clarify roles and responsibilities, and help resolve conflicts/troubleshoot.

Useful Somali and Arabic Terms and Their Translations

Term	Explanation
Anno	revenge killing
Dhabar-garaac	where a women or girl is abducted and abused until she marries the abductor
Diya/mag group	a blood-payment compensation group
Dumaal	forced marriage between a widow and a male relative
Fatwa	a legal ruling given by a recognized religious scholar in answer to a question of religious importance
Fiqh	the science of deducing laws from the holy texts
Gar dawe	light arbitration
Godobitir	marriage of a female as compensation
Hadith	a record of an act or saying of the Prophet Muhamad written after his death
Ijma'	literally "to agree on something;" the unanimous agreement of the *mujtahidun* of the Muslim community following the Prophet's death
Madhhab	school of Islamic jurisprudence
Maslaxo	restitution
Muhram	male guardians, usually a father, brother, or uncle
Qiyas	the application of a ruling to a new case on the basis that the effective cause was common to both
Qur'an	the holy book of Islam
Raganimo	manhood
Shafi'i	one of the schools of Islamic jurisprudence in Islam
Shari'ah	Islamic law and jurisprudence derived from Islamic religious precepts of Islam, particularly the Quran and Hadith
Sitaat	women's religious study groups
Sunnah	acts and sayings of the Prophet and everything that he approved
Tahriib	irregular migration
Tanazul	where women are pressured into renouncing their inheritance rights to male relatives, usually her husband, brother(s), or son(s)
Ulama	Islamic religious leaders
Xaal marin	compensation, usually in the form of an apology and financial remuneration
Xeer	Somali customary law
Xigisian	marriage between a widower and the sister of a deceased

1. Introduction

The Expanding Access to Justice Program (EAJ) aims to improve access to justice and mechanisms to address grievances in Somalia and Somaliland.

During its five-month inception phase, EAJ developed a gender equality and social inclusion (GESI) strategy. EAJ developed these guidelines to help staff implement the GESI strategy throughout program design and activities and to support EAJ partners and other justice actors throughout Somalia and Somaliland to implement access to justice activities that promote gender equality and include vulnerable and marginalized populations.

These guidelines unlock the where, what, who, why, and how, of GESI. They help EAJ staff and partners:

- locate *where* power dynamics between and within Somali societal groups (including men and women; youth and elders; minority, majority, and displaced clans; and religious, *xeer*, and government leaders) give rise to inequality
- identify *what* actions, behaviors, and attitudes are gendered or power driven and thus maintain the status quo
- ascertain *who* the relevant stakeholders are in achieving the desired end
- understand *why* certain attitudes and behaviors translate into or manifest as rights violations, violence, inequality, and conflict

These guidelines are particularly important because discrimination and lack of equality are major human rights violations and key drivers of poverty and conflict. Often, these attitudes are widely held, endorsed by powerful people, or upheld by state institutions. In such situations, it can be easy to forget that such attitudes and behaviors are actually against the law and equally difficult to see how they might be prevented. This is why it is so important to actively think about whether a practice, custom, decision, or action might be discriminatory, prejudicial, or excluding. Only by consistently applying this lens can EAJ take preventative action.

2. Context

2.1. Discrimination and Marginalization in Somalia

Who are the marginalized?

Marginalized individuals or groups are those who are discriminated against, face protection risks, or are otherwise excluded or marginalized, either by virtue of their gender, clan affiliation, race, or other characteristic. In Somalia, women, minority clans, children, youth, and internally displaced persons (IDPs) are considered the most vulnerable groups.[1]

If you are unsure as to whether a group or person could be marginalized, ask yourself if it is likely that a person from a different clan or of a different gender would have received a different outcome or have avoided certain treatment in the first place. If the answer is yes, the treatment is probably an example of gender discrimination or social exclusion.

Did you know?	Examples	What this means for programming
Individuals can belong to more than one marginalized group, compounding their vulnerability to rights violations.	Women can suffer gender discrimination, but IDP women, especially those belonging to minority clans, are even more vulnerable.	In contexts where many people can be classified as marginalized or vulnerable, it can be hard to decide who to target with programmatic interventions. It is therefore important to identify the *compounded vulnerabilities* of those with the greatest need and/or to prioritize in program design.
Marginalization or vulnerability to rights violations can change over time.	Divorce, the death of a spouse or parent, or displacement can leave an individual at higher risk of land grabbing or inheritance denials.	Vulnerability and risk exposure are *dynamic* and cannot be evaluated exhaustively at any given moment in time. When working with vulnerable populations, teams should set in place systems that assess both immediate risk and exposure to potential future risk, as well as systems to monitor vulnerability.
Even within a marginalized group, power hierarchies, discrimination, and exclusion will exist.	Women are equally likely as men to use their clan status, wealth, or family/political connections to exercise power over or even exploit others.	Variations in vulnerability mean that even within one group, individuals will have *different needs*. To fully understand and respond to their situation, teams should consider their age, marital status, wealth, clan affiliation, and displacement status. Also, no group should be expected to speak with one, unified voice. Teams should take care not to listen only to group leaders, even when they claim to be representatives of a marginalized groups.

Frequently asked questions about discrimination

Can men suffer gender discrimination? Yes, especially young and minority clan men. Men and boys are more likely to be forcibly recruited into armed groups and can be exposed to social sanctions for not fulfilling gender roles, such as providing family income.

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[1] See EAJ's 2019 GESI analysis.

Can women and minorities perpetrate discrimination? Yes. Power hierarchies within groups mean that discrimination and social exclusion can be perpetrated by individuals regardless of their gender or status. It also possible for an individual to be a perpetrator and a victim at the same time.

Some people assert their "right to culture" to justify discrimination. Is this legal? This is a very complex question under international law, but most experts believe that neither religion, culture, nor tradition can justify denials of basic rights. Perhaps most importantly, equality is guaranteed under the three Somali Constitutions and Somalia has ratified several treaties that explicitly prohibit discrimination, particularly on the basis of race, color, sex, language, religion, or social origin.[2]

Is it discrimination when the victim doesn't believe that the behavior against them is wrong? Yes, it is. But it is also important to take into account an individual's views and beliefs about how their protection needs can best be met. They are almost always the best judge of their own situation.

It's not practical to talk to everyone, but how can we properly understand vulnerability if we only speak to a group's leaders? Those who are easiest to access and most likely to present as group spokespersons are also likely to enjoy relative power and influence within the group. Thus, while it is pragmatic to use representative voices when conducting research and needs assessments, it is important to try to verify the information collected, including through individualized risk assessments.

2.2. The Importance of Addressing GESI Imbalances

Somali women, girls, minorities, and IDPs are among the most marginalized and discriminated against groups in the world. Principal violations include sexual and gender-based violence (SGBV; i.e., rape, forced prostitution, intimate partner violence [IPV], land grabbing or arbitrary deprivation of property, forced and early marriage, female genital mutilation and cutting [FGMC]), denials of humanitarian assistance, land disputes, child labor and trafficking, and forced migration.

Gender discrimination and social exclusion are among the causal factors driving poverty, inequality, and violence. Such behaviors, attitudes, and systems inhibit societies from experiencing increased living standards, expanded opportunity, or bolstered resilience.

Equality, protection against discrimination, and access to due process are among the most fundamental human rights set out in the international legal framework. Sustainable Development Goal (SDG) 16 is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels. SDG 5 aims to achieve gender equality, calling on all states to enact legislation and take other measures to end discrimination and violence against women and girls. The USAID Gender Equality and Female Empowerment Policy aims to create states in which "both men and women have equal opportunity to benefit from and contribute to economic, social, cultural and political development; enjoy socially valued resources and rewards; and realize their human rights."[3]

Moving toward a more egalitarian society is a principal policy objective set out in Somalia's national development strategy. The Provisional Constitution of the Federal Republic

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[2] See, for example, article 4 of the International Covenant on Civil and Political Rights Banjul Charter.

[3] USAID, 2018, *Gender Equality and Female Empowerment Policy*, accessed at https://www.usaid.gov/sites/default/files/documents/1861/FS_Gender_Equality_and_Female_Empowerment_May2018.pdf

of Somalia, the Constitution of Somaliland, and the Constitution of Puntland enshrine the rights of marginalized groups, including to access justice and be protected from violence and discrimination.

Shari'ah is a rule-based system grounded in the principles of justice, equality, freedom, and human dignity. The *Qur'an* makes reference to opportunity and access in all aspects of women's lives, equality before the law, equal rights and responsibilities, and prohibiting violence and rape.

> **Did you know?**
> - Equal societies are more stable and peaceful and enjoy faster and more inclusive growth.
> - Countries where there is a high level of SGBV are more likely to experience militarized civil and inter-state conflict.
> - Women's participation improves the success of peace negotiations, the duration of a peace agreement, and post-conflict economic recovery.

2.3. Myths about Promoting GESI

These guidelines do not apply to me. Promoting GESI is the responsibility of everyone working on a program, regardless of whether you're a project manager, paralegal, trainer, finance officer, or security guard. Not only is it a contractual obligation, but discrimination, exclusion, and prejudice can negatively impact virtually any process, from designing a program to who is hired practices to how goods are procured. It can also have adverse effects on program outcomes.

It is sufficient to conduct a GESI assessment and integrate it into the program design at its incipient stages. Gender-sensitive and inclusive programming is not a task done singularly prior to implementation. Quite the opposite, it is a process whereby GESI considerations and goals are integrated, applied, and tweaked the life of a program.

Successful GESI means only working with women and minorities. Working with marginalized groups to increase their knowledge, capacity, and protection is vital. But, it is equally valid and sometimes even more impactful to work with those responsible for upholding these groups' rights or the ones most often abrogating such rights. Some of the most progressive thought leaders in Somalia have been fathers, *xeer* leaders, and *ulama*. Beyond that, gender equality is about equal access to, control of, and use of resources and opportunities, regardless of gender. The principle concerns relations between different genders and does not apply only to women.

Gender and clan discrimination are part of Somali culture and cannot be changed by law. Activities can aim to secure better justice outcomes for the marginalized and to transform attitudes and norms. While social structures and power hierarchies can be highly resilient, they are also dynamic and capable of rapid change when conditions are right and innovative techniques are used.

Program GESI approaches and related documents are final, even if conditions change. A gender-sensitive and socially inclusive program requires an approach that is sufficiently flexible so as to allow for iterative learning, troubleshooting, and modification. The GESI assessment and these guidelines should be seen as living documents, being revisited periodically to reflect, allow troubleshooting, and incorporate learning.

Xeer is generally bad for GESI. It is often assumed that *xeer* does not support women's rights. However, it needs to be understood that xeer is based on a different socio-cultural paradigm, which may be partly at odds with the concept of individual rights. It's role therefore needs to be seen in a more nuanced way. *Xeer* are unwritten contracts inside and between clans, based on the principles

of peacekeeping and Islam. Many different versions of *xeer* exist in Somalia at any time, and they are frequently altered and adjusted. *Xeer* deals with the types of disputes most likely to disrupt clan unity.[4] *Xeer* uses flexible rules and procedures, allowing for pragmatic solutions. Outcomes are usually compromises, made on a case by case basis (*masalaxo* or *gar dawe*). Under *xeer*, disputes are resolved through a hierarchy of problem-solving forums, i.e., male family leaders, tribal elders, or those who exercise strong moral authority. *Ulama* may be called upon to resolve disputes that involve family and personal status matters, such as divorce and inheritance. It is perhaps best to understand *xeer* not as a justice mechanism, but as a conflict mitigation and peacebuilding tool. *Xeer*'s principal aim is to interrupt cycles of violence and restore intra-community harmony.

This means that *xeer* has the capacity to protect women and vulnerable groups, as their whole kin group will support them. It also provides them with effective handling of some types of violations. It is affordable, rapid, accessible, and is widely accepted. However, on the other hand, some people believe they will obtain the best result under *xeer*, often because they can exercise their power and influence to their advantage – and against those who are vulnerable. Being based on social structure and norms, *xeer* can attribute different values and allow for differential treatment of women, children, and minorities in dispute outcomes and decision-making, including rights violations may receive a lesser punishment or not being dealt with at all. Decision-making can be politicized and favor the wealthy and powerful. A woman is not an independent legal person; she is always under the jurisdiction of her *muhram* (male guardian) and is represented by him in legal proceedings.

Questions to ask when working at the xeer level:

- Which type of justice institution is most appropriate and likely to help a person solve a grievance or a rights violation?
- Is the action committed considered a wrong under law and/or *xeer*? If it is not, can the individual be connected to other services, such as counselling, humanitarian support, or medical services?
- If the action is a wrong under statutory law or *Shar'iah*, was the wrong recognized by the victim, their family, the *xeer* leader, the courts, and/or *Shari'ah*? This will impact a rights-holder's options for recourse.
- Who is most likely to adjudicate the matter? This is a question of power-sharing between the family, *xeer* leader, and the courts.
- What is the risk that the rights-holder's vulnerability is compounded? Harm might include issues of privacy, family/clan rejection, loss of clan protection, financial implications, physical revenge, stigma, exclusion, discrimination, or others.
- Who are your champions? These might include a parent, husband, relative, *xeer* leader/*ulama*, judge, or business leader. The role of champions and how they might influence how a case is resolved, heighten protection, or mitigate risk should be evaluated.

3. Vulnerability Assessment Tools

3.1. Group-based tool

Group	Principle areas of vulnerability	Compound vulnerability
Women	- SGBV, but especially rape and IPV - Housing, land, and property violations, especially land-grabbing and denials of inheritance - Lack of economic opportunity	Minorities, IDPs, female-headed households (FHHs), never married, divorced, widowed, disabled

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[4] Such as murder, assault, robbery, sexual violence, divorce, inheritance, land disputes, and natural resource sharing.

Group	Principle areas of vulnerability	Compound vulnerability
Minority clans	• Rights violations from majority clans, including violence, land expropriation, and denials of humanitarian aid • SGBV among women, boys, and girls	Women, IDPs, children, minorities
Children	• SGBV, including domestic rape (rape perpetrated by a close relative or neighbor), trafficking, and child labor • Problems for girls, including FGMC, limited access to education, and forced and early marriage	Minorities, IDPs, girls
Youth	• Extremist group recruitment, trafficking, forced prostitution, and negative coping strategies that have secondary protection implications, such as gang membership, drug abuse, or attempting *tahriib*	Unemployed males, IDPs, minorities
IDPs	• Insecure housing, poor access to safe drinking water and sanitation, and food insecurity leading to diarrhea, cholera, malaria, and malnutrition • Poverty, which forces the displaced to partake in risky survival practices, which expose them to SGBV, trafficking, and child labor; expropriation of humanitarian assistance by majority clans and officials and forced relocation	Women (especially FHHs), girls, minorities, elderly

3.2. Offence-based tool

Offence	Most common forms	At risk groups	Challenges
Sexual violence	Rape, sexual assault, forced prostitution, FGMC	Anyone can be a victim of sexual violence, but young women (ages 11–25 years), children (boys and girls), and IDPs seem to be particularly at risk. Likewise, anyone can perpetrate sexual violence, although in the case of children, perpetrators are often family members, and in the case of IDPs, perpetrators are often "uniformed."	• Social norms often discourage victims from reporting crimes against them. • Although it is a clear violation of human rights, marital rape is not criminalized under the law or *xeer*. • In some *Shari'ah*-based rulings, rape victims have been prosecuted for extramarital sex. • Perpetrators can be encouraged to marry the victim to avoid social stigma. • Gang rape is an increasingly violent and common act. Particularly problematic is rape committed by persons from different clans. In such situations, the fine is split across clans, thus making the transgression "less costly" in terms of compensation.
Intimate partner violence (IPV)	Physical violence, verbal and psychological abuse, economic violence	Women, girls, and boys are most at risk. Perpetrators are usually male and from within households, particularly in situations of displacement and/or where husbands are unemployed and unable to meet social expectations.	• Because IPV usually happens inside the home, it can be hard to detect. • IPV is widely not considered a social or legal transgression among both men and women. • Religious principles are often used to justify IPV, albeit incorrectly.
Forced and early marriage	Marriage can be forced as a solution to a crime of rape. Likewise, rape can be a tool to force marriage, usually to reduce the	Women and girls in conflict-affected areas and poverty Rural, minority, and IDP women and girls	• Forced marriage is often not considered a social or legal transgression among both men and women.

Offence	Most common forms	At risk groups	Challenges
	dowry or secure a family's consent. Early marriages are culturally accepted.		• Early marriage often leads to sexual violence, health risks, and reduced participation in education.
Restricted access to humanitarian assistance	IDPs frequently have their access to humanitarian assistance denied by officials who extort bribes or claim taxes (financial, material) or sexual favors. Alternatively, they can deny IDPs' access to areas where humanitarian aid is accessible.	IDPs and those affected by drought and/or food insecurity Access can be controlled by officials, majority clans, or more powerful persons within the beneficiary population group.	• Restricted access to humanitarian assistance is extremely difficult to monitor and largely unregulated by law and not necessarily socially sanctioned. • Reporting violations can place the rights-holder at greater risk of violence and exploitation.
Child labor and trafficking	Girls engage in domestic labor and survival sex. There is evidence of children being forcibly recruited, within and outside of Somalia, for labor in agriculture, construction, domestic service, and commercial sexual exploitation.	Girls, children living in poverty, IDPs	• State regulation of trafficking in persons is very poor. • Especially in situations of poverty, child labor is not considered a transgression.
Violations of land and property rights	IDPs renting/using property owned by a host community member that wants to evict the IDP Land grabbing and forced evictions by powerful entities Majority clans claiming customary ownership over land that is not theirs Denials of women's inheritance and property claims, including land grabbing and expulsion	Minority clan members, IDPs, female property owners (especially FHHs)	• IDPs are highly vulnerable because they lack clan protection and land use agreements are usually informal. • Forged documentation and counterfeit title documents can very easily be obtained.

4. Expanding Access to Justice for Women and Vulnerable Groups

Problem:	Action:	Outcome:
Women, minorities, IDPs, and marginalized groups lack the tools and knowledge and lack the enabling environment needed to access better justice outcomes, increasing their vulnerability to rights abrogation. This cycle worsens over time, leaving society more prone to conflict, corruption, and slow growth.	To break this cycle, EAJ will: Build awareness of rights under statute and Shari'ah and the different modalities by which groups can uphold their rights AND Provide tools, such as legal aid, to help rights holders use their agency in meaningful and constructive ways to assert power and control over their lives.	Over time, this will trigger behavioral change in communities, including among different justice actors, while enabling people to hold all justice actors accountable to uphold individual rights.

Premise: *Marginalized groups lack the knowledge and tools to uphold their rights, forcing them into inappropriate justice forums or silence.*

Marginalized groups are best protected under the *Shari'ah* or statutory laws. However, for many, implementation of these is out of reach because:

- local power holders compel rights-holders to resolve disputes on the basis of different justice norms (*xeer*, *Shari'ah*, statutory-based)
- rights-holders lack access to good legal advice and representation
- their access to the appropriate justice forum is impeded
- accessible justice institutions don't provide fair and rights-based justice
- enforcement of formal judgements is weak

Marginalized groups engage inappropriate justice forums that are likely to not respect their rights. Minorities and IDPs have even fewer justice options. Where minorities exist outside the traditional clan structure, they are not protected by inter-clan *xeer*. Likewise, IDPs have no one to represent them in negotiations and no *diya*-paying membership to support a victim or perpetrator in the event of a conflict. With little or no clan protection, minorities and IDPs are both highly vulnerable to retribution and less likely to have officials take their complaints seriously. The outcome is that violations against them often go unreported.

Poor access to justice, denial of choice, and an expectation of impunity are consolidating the polarized and unequal nature of Somali society, undoubtedly driving the increased incidence and complexity of violence.

This will continue until marginalized groups are aware of their individual-based rights enshrined in Shari'ah and statutory law, broader normative and behavioral change takes place, and justice actors are held accountable for their delivery of rights-based justice.

When setting program goals, remember:

- To the extent that discrimination and exclusion is rooted in culture, entrenched norms, and established power hierarchies, progress will often be incremental and non-linear.
- Set goals that are realistic, pragmatic, and, thus, modest in terms of protection outcomes and attitudinal changes.
- Don't be discouraged if "small wins" occur alongside negative outcomes in terms of where and how disputes are resolved. Such wins can have disproportionately positive spillover effects in norm diffusion, capacity development (CD), identifying and empowering change agents, and providing material for advocacy actions.

5. GESI Approaches

5.1. A Do No Harm and Conflict Sensitivity Approach to Case Management

The Do No Harm principle requires that development actors and their activities do not cause any further suffering or damage to the beneficiary or targeted audience.

Principal risks			
Heightened vulnerability	**Spillover to other groups**	**Spoilers**	**Broader conflict spillover**
Referring cases to a court can create risk. There is no guarantee that the process or outcome will be fair and law based (the case may be referred back to *xeer*, the court may impose a *xeer* outcome, or the court outcome might be ignored). Or, the complainant may suffer retaliation for disrespecting the clan system, such as social exclusion, discrimination, or reduced clan protection. Even if a court does impose a fair and law-based outcome, the victim may be exposed to higher levels of vulnerability, for example if a rape victim is unable to marry or becomes a single parent or if a domestic violence victim is divorced by her husband. Thus, rights-holders and their families have much to lose if they step outside of their clan structure to obtain a court ruling.	The beneficiary is not the only person whose risk must be assessed. Judges, paralegals, lawyers, police, and family members also can face risks of violence, retaliation, discrimination, or privacy violations.	The structures and hierarchies giving rise to gender stereotypes and marginalization also maintain stability. Any shifts to the former have the potential to spill over into conflict or create discord between or within groups, thus creating opportunities for spoilers.	After decades of civil war and a period of control by Islamic extremists, Somalia remains highly fragile. In particular, the risk of conflict recidivism is high and the balancing of political power is fragile.

Programming implications
• Because a heightened risk underpins efforts to increase access to court solutions, such efforts must be structured in a way that takes all possible secondary implications, including unintended negative consequences, into account and places the informed preference of the complainant at the forefront of decision-making.   • Attempts to cater to individual justice must be balanced against broader vulnerability and conflict risk.

Questions to pose when gauging risk					
Who has an interest?	**What is their interest?**	**Of these actors…**	**What is the jurisdiction?**	**What are the potential outcomes?**	**What are the potential risks?**
• Victim • Clan leader • *Ulama* • Victim's male relatives • Perpetrator • Perpetrator's male relatives • Police • Court • Other government officials • Civil society • Legal aid provider	• Justice • Reparation • Power retention or assertion • Financial reward • Resource consolidation • Privacy protection • Shame mitigation • Marriage • Children • Clan advantage • Land • Physical safety • Preservation of honor • Loyalty • Retaliation • Silencing	• Who might be spoilers? • Who might be allies? • Who might change alliance?	• *Xeer* • Court • Land tribunal • *Ulama* • No action • Other (e.g., government officials, Alternative Dispute Resolution entities)	• *Xeer* punishment invoked by court • Judgement in accordance with law • Judgement based on *Shari'ah* • Unknown outcome	• Outcome abrogates rights • Compensation not received/not adequate • Impunity • Corruption/bribes • Case sent back to *xeer* level • Discrimination, rejection, social exclusion, lessened protection under *xeer* • Retribution/future retaliation • Privacy encroachment • Eviction from IDP camp • Forced marriage • Increased violence

Considerations	
Principal considerations	**Knock-on considerations**
Victim clan's position related to the perpetrator clan	• The availability of a *xeer* option (displaced persons may not have a clan to represent them) • Possibility of retaliation if there is power asymmetry between the victim and perpetrator group • Likelihood that the judge would be influenced/pressured by the dominate group
Clan/family preference for dispute resolution modality and outcome	• Likely outcome under *xeer* regarding protections offered under other justice forums • Preferred outcome compatible or incompatible with individual-based rights, as enshrined in the law/*Shari'ah* • Likelihood of the court judgement being realized if there is family/clan resistance • Enforceability of a court judgement

Considerations	
Principal considerations	**Knock-on considerations**
	• Potential that victim will be exposed to retaliation/greater vulnerability at community level for having access the courts • Preference/knowledge of rights-holder regarding potential outcomes
Gender/minority status	• Different legal outcomes under *xeer* based on gender or clan status regarding outcomes possible at other justice forums • Possibility of discrimination/retaliation at court and police levels
Discriminatory cultural norms	• Is the violation viewed as a crime by the community, even if under statute • Potential social implications of raising a rights violation deemed 'private' under customary norms
Role of *Shari'ah* interpretation	• *Shari'ah*'s position on the violation • Justice authority's knowledge of *Shari'ah* • Existence of a clash between *xeer* and *Shari'ah* • Relative power asymmetries between different justice actors (if different)
Economic status	• Willingness/capacity of family/clan to support a court action • Victim's access to independent financial resources • Availability of and access to legal aid • Likelihood of corruption impacting case outcome • Other costs, e.g., transport, bribes, temporary closure of a business
Security implications	• Likelihood of conflict spillover (intra- or inter-clan) • Exposure to greater vulnerability e.g., retaliatory attack, expulsion from IDP camp, social exclusion • Access to safe public transportation and travel documents
Other considerations	• Presence of and access to medical facilities • Presence of and access to psychosocial assistance and women's shelters • Access to humanitarian and/or material assistance • Access to education

5.2. Improving Public Access to Legal Information through Outreach

Description
Poor awareness of legal rights and how to access the appropriate justice institutions are principal constraints in promoting better access to justice. Two particular areas of challenge are when people do not believe that an action constitutes a violation of individual rights and deeply entrenched attitudes of discrimination. Awareness is a vital area of engagement because it is often self-reinforcing. When people are unaware and have little confidence in the appropriate justice institutions, they avoid them, thus reinforcing the application of inappropriate justice institutions. But, the reverse is also true: as people become more familiar with what justice actors should deliver, expectations rise, simultaneously promoting the use of individual rights-based justice institutions and normative and behavioral change.

Entry points
• *Dedicated awareness-raising activities* geared toward basic rights and responsibilities under statutory law and the *Shari'ah*, how to access the appropriate justice institutions, and important issues such as sexual violence and discrimination. Given the challenges of isolation, illiteracy, and limited freedom of movement, a variety of context-specific engagement tools should be considered, including radio programs, film, information sessions, and community discussion meetings (relying on existing groups, where possible).
• *Practical, low-literacy information resources* that set out the different justice options and pathways, their processes, and their laws/norms. These should include the procedural steps in chronological order, the associated cost at individual points, and how to access support and assistance (legal, medical, and psychosocial).
• As a rule-based system grounded upon the principles of justice, equality, freedom, and human dignity, *Shari'ah represents a tool to promote an individual rights-based approach*, especially when compared to *xeer*. At the community level, awareness-raising should target some of the incompatibilities between *xeer* and *Shari'ah*, such as forced marriage, sexual violence, women's inheritance, and domestic violence. To this end, EAJ might engage legal scholars to develop gender-sensitive and contextualized interpretations of the holy texts and *Qur'anic* principles to inform different modalities of information dissemination. A related entry point is engaging existing *sitaat*, which offer a space for safe discussion around sensitive topics. Men can be engaged in similar ways, for example through community religious leaders.

Good practices
• Approaches should be informed by the issues communities view as important and actionable.
• Popular media (e.g., TV, performing arts/plays, audio) are highly suited to low-literacy and remote communities because they combine entertainment with education, have the capacity to reach large audiences, and are not constrained by a need for literacy. A similarly cost-effective option is radio, which can facilitate dramatizations, interviews with key legal actors or personalities, and facilities for listeners to send questions via SMS (text) and receive answers on air.
• Showcase situations where rights-holders have navigated their way through a dispute to obtain a positive outcome. The stories of women and other marginalized groups (and even the men who have supported them, e.g., a father) can be highly motivating and inspiring.
• Base sensitization around evidence on the linkages between rights-based justice, economic development, and political stability.

Good practices
• Partner in awareness-raising efforts with influential knowledge brokers, e.g., *xeer* leaders, medical workers, women's shelters and community-based organizations, humanitarian aid providers.
• It is equally relevant to target rights-holders, perpetrators, and passive observers during awareness-raising. In all cases, positive engagement is more impactful than negative engagement.
• Lessons should be drawn from areas where awareness-raising has been effective in motivating normative change, e.g., campaigns to stop FGMC using religious leaders and Islamic messaging.

Risk management
• Avoid negative engagement. Vulnerable populations are usually very aware that their rights under law are not enjoyed in practice, and reiterating this can be interpreted as condescending or could be internalized as a form of secondary marginalization.
• All awareness-raising tools should be objective and not be written in a manner that appears to persuade a rights-holder toward court action.
• Access to justice, gender equality, and inclusion are polarizing topics. Awareness-raising should be approached in a way that mitigates negative spillovers, such as by presenting equality as a development/economic imperative, a religious issue, or an important cultural norm. Indeed, an examination of Somali history reveals that men are principally identified as protectors of women, children, and other vulnerable groups.
• Awareness-raising activities need to manage expectations. If target audiences come to expect certain rights to be upheld or processes to be followed and they are not, the results can be exposure to greater vulnerability or exacerbated loss of confidence in the state.
• Practitioners must remain aware that any effort to alter the status quo has the potential to attract spoiler actions.

5.3. Improving Public Access to Legal Information through Research and Analysis

Description
Considering the "big picture," the academic scholarship on the linkages between peace, political stability, and economic development is comprehensive and robust. A similar evidence base does not exist in relation to how access to justice and equality might contribute to state-building and conflict resilience goals. Such evidence would constitute an important asset that could be used in advocacy and when dealing with state interlocutors to prioritize justice sector reform and overcome barriers of political economy. EAJ represents an opportunity to build such an evidence base to inform the program, donor strategies, and other approaches, all the way through the global community of practice.
In view of promoting access to justice for those marginalized and vulnerable, it is key to create better understanding of people's grievances; the way they navigate power structures, political economies, different norms, and different justice institutions and authorities; and the outcomes and impacts of their cases. Such understanding can reveal concrete gaps and challenges in the current justice environment.

Entry points
• Case data collection also should *identify enabling conditions* to better understand the tools, circumstances, motivations, and other enabling conditions that facilitate effective case resolution

> at available justice institutions. These data can be consolidated to isolate factors that might prove important for CM, strategy development, and/or policy discourse.
>
> - *Shari'ah* is not frequently used as a tool for enhancing access to justice. Thus, EAJ represents a unique and important opportunity to *glean lessons on the impact effectiveness of basing rights awareness, CD, and procedural reform on religious jurisprudence and learning*. A research agenda should be developed that assesses the impact of these programs from the perspective of attitudinal change, dispute resolution outcomes (at the court and *xeer* levels), and judicial capacity.
>
> - One of the most important outcomes of increasing access to justice is the indirect influence this may have on *xeer* processes, i.e., that expanding justice options for disputants will encourage *xeer* leaders to offer more protective solutions to rights-holders in order to retain some of their influence, power, and control. A *data collection and evaluation strategy* should be set in place to identify and measure such changes, geared toward identifying lessons that can inform program troubleshooting and be fed back into broader learning on access to justice.

Good practices

- Vulnerability in Somalia is multi-dimensional. Data collection should be disaggregated for gender, clan, age, income, displacement status, and other important demographics.

- Data or other information collected should be verified and validated. Approaches include randomized data sampling, community discussion meetings, and expert round-tables.

- The value of data collected exists in how it is used. Data should be analyzed and disseminated within forums that might benefit from the knowledge insights gleaned. Likewise, programs should be flexible enough to respond to conclusions drawn from data and evidence collection.

- Apply participatory research methods, such as training and involving local partners from the incipient stages of research (methodology development, data collection, analysis, report writing, and dissemination) to ensure local buy-in and better access to key informants.

Risk management

- Data collection and research—especially research on conflicts and grievances—should follow ethics and do no harm guidelines. Key principles include risk assessment, informed consent, and protection of privacy.

- Even within a marginalized group, power hierarchies, discrimination, and exclusion exist. Teams should take care not to listen only to group leaders, even when they claim to be representatives of a marginalized group. Likewise, it is important to try to verify information collected through individualized risk assessments.

5.4. Enhancing Quality and Reach of Legal Aid Services

Description

Marginalized groups and their rights are best protected under the statutory law or *Shari'ah*. However, such protections remain largely out of reach. Formal courts, which should apply statutory laws, are insufficiently staffed and resourced and are often weak compared to the local power-holders and prevalent local norms. Thus, claimants cannot be sure what law will be applied, nor whether a court will assert its jurisdiction, and if it does, whether it will make a judgement according to statutory law or other norms. This recipe does not offer women and minorities an adequate pathway to justice, particularly given the backlash they may face for disrespecting social

Description
conventions. Thus, whether by choice or lack of options, in practice, they tend to engage the justice institutions and authorities that are less structured and more ill-equipped to protect their individual-based rights. Minority clans and IDPs may have even fewer options available because they have been separated from their kin groups or lack bargaining power. Thus, marginalized groups need knowledge and tools to navigate the plural system to their advantage and to eventually effect change in justice actors' and communities' norms and behaviors.

Entry points
Holistic CM. Legal aid should be delivered as part of a "one-stop shop," where rights-holders can avail themselves of medical, psycho-social, and legal support; be linked to relevant justice institutions; and receive or be referred to other essential care services, such as livelihoods support or youth empowerment. Key actions in this regard include case-bundling protocols, joint sensitization training, SOPs on case referral, and integrated service provision.   - Hold *mobile or roving legal aid services, telephone services, and/or "legal aid days"* (possibly coordinated with courts), especially geared towards isolated and IDP communities.   - Appoint and train *community-based legal aid enablers or community-based paralegals (CBPs)* to work directly with communal justice actors on matters pertaining to statutory law and *Shari'ah* and on accessing the most appropriate justice institutions. Work directly with community members in providing legal advice.   - Strengthen, consolidate, and confirm existing *channels of upwards dispute referral* from local authorities to legal aid providers at the district or state levels.   *Build the capacity of all justice actors in Shari'ah jurisprudence*, targeting those principles most closely aligned with marginalized groups' rights, including equality before the law, protection of women and children against violence, women's property and inheritance rights, and rights in marriage and divorce. Learned and respected religious scholars should be identified to implement such training. Furthermore, tools such as bench books and CM guidelines drawn from *Shari'ah* can be implemented.

Good practices
- Conduct political economy, gender, and access to justice assessments, investigating power holdings, clan-specific *xeer*, potential access to justice champions, relationships with courts, and how marginalization serves the interests of traditional power-holders in terms of resource control and monopolization of decision-making. Design legal aid interventions on the basis of this knowledge.   - Staffing should reflect the diversity of user beneficiaries, as well as persons who are able to access *xeer* leaders, *ulama,* court workers, and police.   - Identify community volunteers (CBPs) that have good standing in the community and that are able to help people navigate the different justice institutions and authorities to ensure the best possible outcome for their cases.   - Train community volunteers in individual rights-base laws (statutory laws and *Shari'ah*) and allow them to inject their knowledge into local justice processes to inflict social, normative, and behavioral change for more human rights-friendly processes.   - Always address the family as a key unit, not only women or those marginalized. Often men act on behalf of their women family members.

Risk management

- Mobile legal aid services lack familiarity with community dynamics and power hierarchies and are less able to conduct case follow-up. Monitoring schedules and oversight protocols need to be developed and clearly disseminated to target communities, or CBPs need to supply the relevant knowledge.
- Congenial and cooperative relationships with *xeer* leaders are most likely to promote rights-based justice outcomes. However, even when elders are not in favor of state justice options, a minimum level of information-sharing should be sought. The aim is to avoid relationships that empower or consolidate existing *xeer* processes, but are also not so oppositional that they create resistance or spoilers.
- Case monitoring for threat evaluation should cover all persons who might be targeted to dissuade a rights-holder from engaging "external" justice actors, including families, judges, police, and the broader clan.
- Breaches of privacy can disproportionately impact victims in cases involving SGBV. Specific guidelines and safeguards need to be set in place and legal aid providers need education on privacy tools, such as screens in court or the use of documented/certified testimony.
- Do no harm SOPs to assess all secondary implications of accessing the court system should inform individual case strategy and CM.

5.5. Increasing Capacity and Sustainability of Legal Aid Actors

Description

Enhancing access to justice over the long term requires a community of independent, impartial, and adequately trained legal aid actors operating at the grassroots level. However, chronic conflict and weak governance have restricted the development of a robust civil society and thus limited the number of organizations able to reliably and effectively deliver justice services. In response, systematic CD is required to strengthening management structures, organizational systems, and technical capacities. To this end, tools to measure, track, and troubleshoot against performance goals will be set in place, coupled with bespoke institutional strengthening plans. In parallel, organizations need to develop competencies in resource mobilization, accountability and risk management, and results-based management to attract donor funding and sustainably grow. Finally, the breadth of risk that marginalized groups are exposed to regarding justice options available to them means that efforts to promote economies of scale in service delivery must be promoted. Examples of where efficiency gains might be realized include specialist services coordination and integration, resource pooling, shared messaging, and mutually reinforcing activities. Again, this will require CD, especially around co-implementation and shared decision-making, as well as a period of facilitation before coordination systems can be self-managed and maintained.

Entry points

Ensure that *women and minorities are represented* in legal aid organizations' (LAOs') management and decision-making structures and hold non-traditional roles, such as accounting, procurement, and legal representation.

Good practices

- Given the deep educational and knowledge deficits, CD should be targeted, practical, broad reaching, and continuous.

Good practices

- Conduct organizational capacity assessments to tailor provision of technical assistance to the specific needs of each LAO.
- Objectives should reflect the issues that are important to participants and challenges that they are likely to cooperate around.
- When engaging a diverse and representative staffing pool, be mindful that long-term marginalization can mean that some groups require additional and specific CD to allow them to effectively fill roles. These principles should apply to LAOs and other sub-contracted parties.

Risk management

- Ensure that specialization/division of labor does not overlook the importance of mainstreaming issues around vulnerability. Ideally, every justice organization understands and practices gender mainstreaming.
- Ensure that common messaging or advocacy is sensitive to the needs and priorities of marginalized groups.

5.6. Cross-Cutting: Empowerment and Participation

Description

Exclusion from meaningful participation in decision-making is a rights violation in and of itself, as well as an impediment to the evolution of a more protective legal framework. As long as marginalized groups' views, needs, and priorities are not part of debate, adjudication, or decision-making processes, protection will remain secondary to vested interests and maintaining the status quo. Lack of participation and inclusion can be seen at most justice institutions, right through to women and minorities not participating in the justice sector as lawyers, prosecutors, defense attorneys, court staff, police, judges, or governance workers. Indeed, while the number of women lawyers is increasing and women are being slowly integrated into the police force and government, they face significant barriers. Discrimination and disempowerment means that women professionals are often relegated to non-professional roles, are sidelined, or are excluded from the substantive elements of their jobs. The takeaway is that in all actions geared toward enhanced inclusion and gender parity, the substance of participation needs to be prioritized alongside volume.

Entry points

- For all actors, *integrate CD on participation* into awareness-raising activities, including skills development around critical thinking and risk assessment, training on how to articulate viewpoints in public forums, and how to navigate justice processes.
- *Support women and minorities to attend law school* (especially *Shari'ah* studies) or obtain additional/specialized training through scholarships, mentoring, placements, and network-building.
- *Recruit and train women and minorities as CBPs.*
- Provide these groups with *leadership training*, and build their confidence.
- Conduct *gender dialogues* at the community or household levels.
- Support *advocacy or discussion around modalities to facilitate broader inclusion* at the policy level, including through research studies on the efficacy of quotas and the evidential linkages between more equal societies and peace maintenance.
- Support studies to better *understand the dynamics of inclusion* in local justice institutions and processes.

Good practices
• Efforts to enhance participation should not only target rights-holders. It is equally valid and may in some cases be more impactful to work with those who traditionally represent women in dispute processes, such as fathers, uncles, and brothers, as well as the *xeer* leaders and court officials who compel such representation. Indeed, unless these actors are open to and have the skills to facilitate broader participation, the gains stemming from empowering rights-holders to this end will be limited. • Modest targets should be set. Wins might be as basic as women being able to form opinions around their best interests and transmit these viewpoints to their representatives.

Risk management
• In promoting participation, targets should be both qualitative and quantitative. Integrating a large number of women or minorities who are either disempowered from or underqualified to fulfil their roles can be more harmful. The same outcome can follow the empowerment or integration of a predatory or rights-abrogating member of an otherwise marginalized group. • A do no harm approach must be followed in all actions to facilitate greater participation. This involves evaluating all forms of empowerment for their potential to cause harm, backlash, or recrimination (direct and indirect). • Consideration of Somalia's political history. A key objective of the Barre administration was to reduce clan power; it sought to ban clan identity, curb the use of customary law, and limit social exclusion practices. One tool for achieving this was to empower traditionally disenfranchised women as political pawns. As the state, clan leaders, and religious leaders jostled for power, women (and their empowerment) came to be seen as a symbol of this "divide and conquer" political era.

6. Troubleshooting and Risk Management

Challenging situation	Solutions
A rights-holder does not believe that the act committed against him/her is a rights violation.	Deeply entrenched attitudes of discrimination mean that some rights violations are considered normal, such as denied inheritance, FGMC, and IPV. Such attitudes can be shared by individuals regardless of their gender, majority and minority clan membership, or vocation. Such beliefs do not negate the illegality of the action, but can make it more difficult to get a fair solution. Tools include relying on legislation and *Shari'ah* jurisprudence and identifying supportive and influential local leaders who can act as change agents and help de-normalize discrimination and violence in their communities.
Referring a rights violation to court may increase an individual's overall vulnerability.	Sometimes, referring cases to a court will create risk. There is no guarantee that the outcome will be based in law. The case may be referred back to *xeer*, the court may impose a *xeer* outcome, or the court outcome might be ignored. Or, the complainant may suffer retaliation for disrespecting local justice institutions and norms, such as social exclusion, discrimination, or reduced clan protection. These risks mean that efforts to improve access to courts must be structured to take all possible secondary implications into account and to place the informed preference of the complainant at the forefront of decision-making.
The case involves marital rape.	Although it is a clear violation of human rights, marital rape is not criminalized under law, nor is it considered a crime under *xeer*. However, *Shari'ah* proscribes violence against women, including all forms of sexual violence, and many Islamic scholars argue that rape is incompatible with the principles of Islamic marriage. Following the arguments of these scholars can impact behaviors at the local level because *Shari'ah* is widely acknowledged.
There is conflict between the rights upheld in legislation, *xeer*, and *Shari'ah*.	Areas remain in the formal system where misinterpretation and flexibility create vulnerability for rights-holders. A key example is that the legal age of marriage is based on maturity as opposed to the legal age of majority. Such deficit areas should be identified, and interventions, such as legal advocacy, should be launched to promote the introduction of clear guidelines or reform. Other tools include looking for sources of authority in constitutional provisions or *Shari'ah* jurisprudence.
A rights-holder wants to use *xeer* or to accept a *xeer* solution that contradicts the law or human rights.	Rights-holders may have legitimate reasons for wanting to use the *xeer*. They may prefer the familiarity and speed offered, may want a compromise solution that is agreed upon by all, or may believe that a *xeer* solution is more likely to be enforced. In some situations, referring a case to court risks offending the clan leader, thus jeopardizing the protection and relationships offered by the clan system. Generally, legal empowerment approaches, under which rights-holders are best appraised to select the pathway that is best for them and make the ultimate decision on how to resolve a dispute, are most effective. Legal aid's role should be to ensure that rights-holders have all the information on potential pathways to justice and all potential implications so that they can make an informed decision.

Challenging situation	Solutions
The rights-holder does not want to take action.	• **Documenting a case:** Having a written account of the rights violation can be an empowering experience and gives him/her a record that can be relied on in the future. Such an account can include witness statements or a legal opinion written by a case worker. • **Legal counselling:** Providing rights-holders with explanations of their rights under the law and different options for how a case might be pursued can be a positive experience, even if they choose to take no action. • **Non-legal services:** Connecting a rights-holder to other service providers, such as psycho-social counselling, humanitarian support, or medical services, will not solve the rights violation, but may offset some of the challenges that accompany it.