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Front Cover photography and design by Sagal Ali

November 2020
PUBLICATIONS

The Expanding Access to Justice Program produces knowledge products that include research reports on important aspects of Somalia’s justice institutions and evaluations, for which this Baseline Study aims to set benchmarks. These publications are available via: https://eajprogram.org/index.php/resources


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<td>RRA</td>
<td>Rahanweyn Resistance Army</td>
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<td>SEDO</td>
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<td>Somali Enlight &amp; Development Organization</td>
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<td>SGBV</td>
<td>Sexual and Gender-based Violence</td>
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<td>SNA</td>
<td>Somali National Army</td>
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EXECUTIVE SUMMARY

The Expanding Access to Justice Program (EAJ) is a five-year associate award (2018-2023), funded by the United States Agency for International Development (USAID) via the Freedom House-led Human Rights Support Mechanism (HRSM) and implemented in partnership between Pact and the American Bar Association Rule of Law Initiative (ABA-ROLI). The Program aims to improve access to justice and mechanisms to address grievances in Somalia and Somaliland. This Baseline Report for Somalia follows the conceptual model of the EAJ, which includes six elements, based on ABA’s Access to Justice Assessment Tool (AJAT):

1) Legal and Policy Framework
2) Legal Knowledge and Confidence
3) Citizens can obtain Advice and Representation
4) Citizens not impeded from Justice Forums
5) Justice Mechanisms address Grievances Efficiently and Fairly
6) Solutions are Enforceable

This Baseline serves to:

1) Establish Baseline data to measure the performance of EAJ interventions
2) Inform EAJ Program design and activities

Employing a robust mixed-methods approach, data was collected by the Somali-led development firm Transparency Solutions in eight districts across two federal member states and Benadir region:

A. Benadir
   1) Hodan
   2) Hamar Jabjab
   3) Wadajir
   4) Weydow

B. Jubaland State of Somalia
   1) Kismayo
   2) Dolow

C. South West State
   1) Baidoa
   2) Xudur

Given other existing research on conflict resolution and justice provision in Somalia, this study focused especially on land disputes and sexual and gender-based violence, as these two currently sit uneasy in Somalia’s justice landscape, but each hold strong potential for escalation of armed violence.

The Somali justice sector is made up of multiple legal and institutional frameworks. Over decades of state collapse, civil war, and insurgency, clan elders and, to a lesser extent, ulama (religious scholars) have stepped in to fill the void left by the breakdown of statutory institutions and practice. The current statutory sector is nascent, under-equipped, and not independent of the government executive as well as clan-based politics. Integrity and efficacy of courts and security forces vary by location and are shaped by social cohesion and political economies. In other words, the ease with which their decisions are considered legitimate and abided by depends on how amicable local communities are and how contested the local administration is. This cements the primacy of elders and allows Al Shabaab to offer an alternative justice provision that many citizens consider a valid option, especially for often volatile land disputes, although most would prefer functioning and accountable statutory institutions.

The primacy of elders is a result of the instability and lack of legitimacy of the statutory sector, but also of a protracted social conflict in which clan remains an important reference point. Because of this level
of clannism, and because security forces often retain clan affiliation and clan militias continue to operate, disputes can quickly escalate to armed violence. Because potential for conflict is inherent in most legal disputes, elders are forced to not only mediate between groups, but also adjudicate criminal cases, which many openly consider to be outside their technical remit.

The customary approach based on collective responsibility and compensation does little to safeguard individual rights and, especially in the case of sexual and gender-based violence, fails to hold perpetrators to account. For this reason, perpetrators, particularly from militarily or politically stronger clans, often favor customary proceedings, whilst victims tend to ask for rights-based proceedings. However, perpetrators’ kin can exert strong social pressure on victim’s families, who are additionally concerned about the reputational damage to the extended family. This incentivizes male family members to press for incidents of sexual violence to be handled at the most local level by local elders. Victims are often individually stigmatized regardless of the choice of institution.

Threats and intimidation beyond mere social pressure are not uncommon. Militia or clan-based security forces are often complicit in such activities or support individuals in ignoring court orders. This can extend to direct interference by political office holders in court proceedings, although this is less prevalent where civil society can leverage greater civic space to hold government, justice, and security actors accountable. Otherwise, justice seekers may turn to elders or Al Shabaab for support. Elders depend on voluntary compliance or their clan’s political and military wherewithal to do enforce decisions, whilst Al Shabaab uses its military strength and threats of targeted assassinations to back up its verdicts and does not recognize rulings by statutory courts. The group appears to respect elders’ verdicts in locations in which communal support is important. Both institutions employ patriarchal legal frameworks that are detrimental to women’s rights: localized customary laws (xeer) that have not been reviewed in years and a Hanbali interpretation of shari’ah that is somewhat at odds with Somalia’s traditional Shafi’i madhab (school of jurisprudence).

Islam is central to everyday life and culture. Accordingly, shari’ah enjoys great legitimacy across all communities and underpins xeer, the constitution, and all statutory law. Xeer invokes shari’ah throughout as point of reference for elders, who employ it during deliberations. Both federal and federated constitutions declare it the inviolable source of law in Somalia. This provides an entry point for greater support for rights-based justice provision via statutory law, but for this to happen, legislation must be reviewed, institutions act independently, be accountable, and be well-resourced, and more people need to know about the statutory framework and processes.

This applies equally to users and practitioners, including those offering legal advice and representation. Justice practitioners in Somalia are not trained according to a standardized curriculum and few courts apply statutory law. Instead, many elements of customary practice shape legal proceedings. This underscores the importance for well-trained, affordable, and locally available legal aid services to ensure that justice seekers are well-informed, do not have to compromise their daily livelihoods to open cases, and are treated fairly according to due process.

The trifecta of political and military interference, corruption, and lack of professionalism shapes access to justice in Somalia. It erects cost barriers in all aspects, including enforcement, and renders treatments and outcomes unpredictable. All this applies more so to displaced and rural communities and is magnified for land disputes. Land ownership has long been central to political patronage. Currently, no land registry is in operation that can verify land claims. Elders navigate competing customary norms and often steer clear of volatile land disputes. With widespread forgery of land titles, inheritance disputes that frequently involve returning diaspora, and a long and as of yet unresolved history of land grabbing, land disputes remain the most incendiary kind of cases for which all of Somalia’s justice actors are ill-equipped – except for Al Shabaab, who adjudicate disputes in well-known courts near major towns and enforce their verdicts with force and without appeal.
RECOMMENDATIONS & UPTAKE

**LEGAL FRAMEWORK**

- **Shari’ah:** The Shari’ah commands immense legitimacy in Somalia and is the basis for both customary and statutory law. It also provides an entry-point for greater protection of individual rights, especially for women and minorities. The EAJ Program has and is producing in-depth studies into the shari’ah in Somalia, has produced guidelines for a shari’ah interpretation focusing on women and marginalized groups’ access to justice that has been advertised via media and workshops, and uses these insights to inform the Program’s approach to Women, Peace & Security.

  - **Recommendation:** Ensure that uptake of guidelines and shari’ah-based review processes are participatory. Where community leaders, including women’s representatives and those representing marginalized groups, partake, they engage in dialogue with other justice actors, become better informed to support their communities, can ensure that their constituents’ concerns are taken into account, and establish networks and relations towards more inclusive local governance institutions.

**LEGAL KNOWLEDGE**

- **Curriculum:** The EAJ Program is working with two Mogadishu-based universities to develop a coherent curriculum to be taught to lawyers and other jurists in training.

- **Pocket Book:** The EAJ Program is working to produce a ‘pocket book’ that supports justice users in understanding Somalia’s legally pluralist and especially the statutory justice chain.

- **Justice Campaigns:** The EAJ Case Review Team (see below) will distill issues from case review and provide information on them via media outreach.

  - **Recommendation:** The training of lawyers, judges, and other jurists must adapt to the dynamic nature of justice provision. Graduates must be versed in different interpretations of the shari’ah as it forms the conceptual and inviolable underpinning of the constitution. They must also understand the rudiments of the xeer to interact with elders. Given that the xeer is subject to dynamic change, a basic understanding would be sufficient. Schools and universities will require textbooks, and these textbooks may require adaptation after still-provisional constitutions are reviewed and new legislation passed.
- **Justice Promoters:** The most extensive component of the EAJ Program is support for advice and representation. The core of which is the training of justice promoters, both on the legal norms as such and on local context. This provides immediate and accessible support to justice seekers locally and likely the most immediate tangible impact of the Program.

- **Case Review Team:** Given the contentious position of SGBV cases, the EAJ Program maintains a Case Review Team on stand-by to support EAJ partners with such cases.

- **Land Accountability Platforms:** These platforms bring key stakeholders from community and institutions together for accountability and dialogue over volatile land disputes.

- **University Legal Aid Clinics:** Part of the EAJ Program’s engagement with Mogadishu-based universities are student-run legal aid clinics to provide support to justice users and practical experience to future justice actors.

- **Recommendation:** The two main components that must be prioritized in these interventions are accountability and sustainability. The work of each promoter, team, and platform must be scrutable and users must have avenues for feedback and grievances. Sustainability comes in two parts. The financial viability of each element must transcend the EAJ funding cycle. Given the government’s brittle revenue base, the program could explore local match-funding, which would add a layer of accountability and the possibility of growing local oversight institutions as well. The second part concerns the personal safety of each participant. The program operates in an environment of protracted and often armed conflict in which small arms ownership is common and militias are ubiquitous factor. Justice promoters and members of accountability platform must be versed in local context and cognizant of risk, mitigation strategies, and clear risk thresholds.

- **Alternative Entry Points:** The above-discussed Justice Promoters, Case Review Teams, Land Accountability Platforms, University Legal Aid Clinics, and the below-noted Court User Committees are geared to provide justice users with local and accessible sources of advice and support that can help facilitate their access to statutory institutions, both by helping them navigate the justice landscape and by taking over some aspects that allows justice users to maintain their daily livelihoods whilst their court proceedings are attended to.

- **Model Court:** The below-outlined Model Court is a vehicle for an improvement of procedure, including accelerating and facilitating access and progress to verdicts.

- **Recommendation:** As noted above, new platforms will require financial and risk-based viability in the medium- and long-term. Platforms should also work with key community leaders and influencers, who vary by location, to ensure that justice users know of them.
- **Shari’ah:** Norms drive rules and engagement. The EAJ Program therefore engages with the strongest normative base of legal frameworks in Somalia, the shari’ah, to ensure fair and rights-based adjudication, as outlined above.

- **Model Court:** The EAJ Program is supporting a court in Wadajir district in Mogadishu to provide a point of reference for fair and efficient procedure.

- **Court User Committees:** These Committees will comprise community representatives to hold justice actors accountable. The CUCs are launched and will begin operating in conjunction with the Wadajir Model Court.

- **Recommendation:** Sustainable inclusion requires new members of institutions that are mandated to represent disadvantaged or marginalized groups to exhibit capacity that is at least equal to more long-standing members. In forming committees, the program should consider through which pathways community representatives can attain such skill and support committee members to ensure their long-term viability.

- **Coordination:** The EAJ Program coordinates with the actors already engaged in security sector reform on information sharing and synergy. Given that the security sector is as fractious as the justice sector, if not more so, direct involvement in security sector reform would detract from the EAJ Program’s engagement in strengthening and consolidating the statutory justice chain and its institutional coordination with other justice actors.

- **Recommendation:** Institutional set-up, performance, and legitimacy varies across Somalia. The EAJ Program should continue emphasizing its strong focus on context and conflict sensitivity with regularly updated local context analyses where needed or cooperate closely with other programs working in the same locations to ensure that context is consistently taken into account towards several ends: the program acting conflict sensitive implies that the program is conscious of its own position within local conflict dynamics and works towards creating a more peaceful environment; context awareness improves risk assessments that in turn support the safety of local partners and EAJ teams; information sharing ensures that progress is not undone by parallel but uncoordinated and not conflict-sensitive programming.
INTRODUCTION

The Expanding Access to Justice Program (EAJ) is a five-year associate award (2018-2023), funded by the United States Agency for International Development (USAID) via the Freedom House-led Human Rights Support Mechanism (HRSM) and implemented in partnership between Pact and the American Bar Association Rule of Law Initiative (ABA-ROLI). The Program aims to improve access to justice and mechanisms to address grievances in Somalia and Somaliland.

The three main project objectives are: 1) Support and improve inclusive community engagement in justice solutions; 2) Strengthen justice services; 3) Improve navigation of justice pathways by aggrieved parties.

The EAJ Program’s approach takes into consideration the legally pluralistic and often political character of justice services in Somalia. Rather than focusing on the strengthening of formal institutions and capacities only, the program supports aggrieved individuals or groups in identifying the justice institutions and authorities with the most promising rights-based outcome for their grievance. While statutory and Islamic law will be key conduits for rights-based solutions, the EAJ Program also aims at supporting normative and behavioral change at the local level. This should eventually result in changed attitudes of local justice providers.

The conceptual model of the EAJ includes six elements, which are based on ABA’s Access to Justice Assessment Tool (AJAT):

1) Legal and Policy Framework
2) Legal Knowledge and Confidence
3) Citizens can obtain Advice and Representation
4) Citizens not impeded from Justice Forums
5) Justice Mechanisms address Grievances Efficiently and Fairly
6) Solutions are Enforceable

PURPOSE OF ASSESSMENT

The EAJ Program Goal is ‘Lasting improvements in access to justice and effective mechanisms to address grievances.’ Goal indicator 1 is the ‘Access to Justice Assessment Tool Score,’ which also forms an HRSM-wide indicator, of which the EAJ is part. This Baseline serves to:

1) Establish Baseline data to measure the performance of EAJ interventions
2) Inform EAJ Program design and activities

In order to support access to justice at the local level, in-depth understanding of the plural justice landscape and the perspectives and behavior of justice seekers is essential. This study focuses on the reality of justice services by investigating perspectives and experiences of individuals, groups, and those who assist them in searching for redress for their grievances or conflicts. Based on these insights, the study 1) feeds into the design of training manuals for lawyers, paralegals, and community-based paralegals, which are based on concrete knowledge gaps and needs of justice seekers; 2) informs advocacy processes by legal aid suppliers in view of policy or legislative change; 3) informs the Judiciary and Ministry of Justice at the federal and state level and other official actors on gaps and challenges in the provision of formal justice services as well as judicial services.

Given other existing research on conflict resolution and justice provision in Somalia, this study focused especially on land disputes and sexual and gender-based violence, as these two currently sit uneasy in Somalia’s justice landscape, but each hold strong potential for escalation of armed violence.

Data for this study was collected between January and May 2020.
METHODOLOGY

This study employs a robust mixed methods approach, inclusive of a quantitative survey, semi-structured in-depth interviews, case studies, and a legal review. The research tools were designed by the EAJ expert consultant and author of this study, based on extensive prior experience, desk review on legal pluralism in Somalia as well as the EAJ team’s prior work to operationalize the ABA’s AJAT framework, and a previous AJAT Baseline research conducted in Somaliland. Data collection was carried out by the UK-, Hargeysa-, and Mogadishu-based development firm Transparency Solutions (TS), overseen by a TS project manager and a local consultant with strong qualifications and experience in Somalia’s legal and juridical sector as well as qualitative research. The consultant also carried out the legal review, which is presented as a summary in this report and available separately.

The EAJ expert consultant facilitated a two-day training with TS lead researchers in Mogadishu in December 2019, which allowed for an in-depth review of tools and translations, on which TS led. Translations were checked by researchers from each study district for appropriateness to local dialect and vernacular. The team also discussed the six elements of the ABA AJAT framework, which structured the development of tools, analysis, and subsequent reporting. Quality assurance was provided by TS in close coordination with the EAJ expert consultant and is unpacked by component in the following.

QUANTITATIVE RESEARCH

The quantitative component of the study was carried out via computer-assisted telephone interviews (CATI), using the Android-based data collection software Open Data Kit (ODK) Collect. The survey was designed and scripted by EAJ’s expert consultant, reviewed and translated by TS’ research team, and overseen by TS’ project manager and IT specialist. Data was stored on the encrypted online platform Ona.io, which allowed the research team to submit and monitor data for quality and demographics daily. The survey addresses the six components of the ABA AJAT framework.

Households were identified by local researchers using random walk methodology. Residents were informed of the purpose of the study and, upon providing informed consent to participate, entered their contact details into a pre-scripted short survey. More numbers than target sample were collected, accounting for likely attrition. Enumerators trained in operating data collection software, administering surveys, and research ethics administered the survey via phone based in TS offices. This allowed team leaders to interact directly with their team in case of challenges and maximized the sample for resources expanded. Somalia’s physical transport infrastructure remains poor but phone coverage is high, allowing surveys to target large samples in shorter timeframes irrespective of respondent movement away from the point of residence.

Data was collated by the TS team and cleaned and analyzed by the EAJ expert consultant. Any associations between variables that are presented in this report were statistically significant at the 95% confidence level (Pearson’s chi-square test yielding a p-value of 0.05 or below). Associations were tested on their strength using Cramer’s V. In total, 469 survey respondents were reached across eight districts in three Federal Member States.

![Survey Respondents by District & Sex](chart.png)
QUALITATIVE RESEARCH

Qualitative data collection comprised focus group discussions, key informant interviews, and case studies. The purpose of these was to complement the quantitative data by providing insight into socio-political context, mechanisms that facilitate interactions along the justice chain, and other factors that may be at play but that the research team had not thought of. The interview and discussion guides followed the quantitative survey in structure, divided across all six AJAT framework components, and largely deployed open questions encouraging respondents to provide substantive accounts, followed by instructions to researchers for probes and follow-up questions. The research team discussed social and clan dynamics in each location during training to ensure that the sample would both be representative and allow sufficient space for minority groups who struggle to have their voices heard.

FOCUS GROUP DISCUSSIONS

Focus groups were chosen so as to represent younger community members, more at risk of being excluded from decision making and justice processes. Facilitators were instructed not to recruit any holders of positions of authority or otherwise acknowledged community leaders as well as no members of security forces, to ensure that community members were at ease in sharing information. Per district, researchers conducted two focus group discussions with 3-4 participants each, split by gender, and aged 18-35. This amounts to a total of 16 focus group discussions, eight with young men, eight with young women. Focus group participants were informed of the purpose of the study and gave their informed consent before discussions commenced. TS research staff transcribed the discussions, and the EAJ expert consultant reviewed and analyzed the transcript.

KEY INFORMANT INTERVIEWS

Key informant interviews were conducted with community representatives, government officials, and justice actors who are relevant to the justice chain. This included medical practitioners as crucial first responders to cases of sexual and gender-based violence (SGBV). Lead researchers conversant in local socio-political dynamics recruited respondents from these categories:

- Local government/court officials
- Religious leaders (ulama)
- Traditional elders
- Youth representatives
- Women’s representatives
- Lawyers
- Medical practitioners
- Activists/NGO staff

In each district, researchers conducted eight interviews with one representative for each of these categories. In total 64 key informant interviews were conducted. Whilst different interview guides were developed with variations geared to each category, TS research staff took notes into a standardized debrief form to facilitate the coding of responses during analysis, conducted by the EAJ expert consultant. Key informants were informed of the purpose of the study and gave their informed consent before interviews commenced.

CASE STUDIES

In each district, TS researchers conducted one case study on a land dispute and one on an instance of sexual and gender-based violence, to illustrate how such processes unfold in practice. For each case study, up to six persons were interviewed, encompassing members of the accused and aggrieved parties, justice practitioners, and knowledgeable community members, in order to elucidate a case from numerous perspectives. Participants were informed of the purpose of the study and gave their informed consent before interviews commenced.
LIMITATIONS

- **Insurgency/Counterinsurgency environment.** The districts in which data was collected are all to different extents exposed to Somalia’s ongoing insurgency. Although mention of Al Shabaab was frequent as many citizens use the group’s court, it was often indirect, using other designations such as ‘the opposition,’ or ‘the militants.’ Whereas this information remains easily discernible in focus group discussion transcripts or interview notes, the quantitative survey sought to gauge information on Al Shabaab via the designation of ‘mobile courts’—albeit cognizant that Al Shabaab courts are not necessarily mobile. Researchers were instructed to probe and explain accordingly and with necessary caution, but figures on Al Shabaab courts should be treated as not definitive and endorsements read with caution, as respondents may not have been comfortable to voice frank—and, especially in focus groups, critical—opinions.

- **Ongoing stabilization and state-building efforts.** State building in Somalia remains incomplete, including provisional constitutions and modalities of legitimizing government institutions and officials. In addition to counterinsurgency, state-building is marred by protracted social and inter-communal conflict, which has been addressed by a series of more or less stable elite compacts.\(^1\) Although each successive elite bargain, interim administration, and provisional constitution has a lasting impact by reducing armed violence\(^2\) and leaving some elements in place that stick and stabilize processes, the political environment remains subject to rapid changes and bouts of often armed conflict. Justice institutions remain politicized and involved in peace-making or conflict resolution or can cause conflict when coopted. This report thus endeavors to delineate broader trends in justice practice in Somalia, recognizing that minuiae are subject to change and far from being finalized.

- **Elections.** Data was collected while elections in Jubaland State had only recently been concluded, federal elections were in a phase of preparation, and, just before, the SWS Assembly was reduced and reshuffled. Each of these elements carries potential for a realignment of power relations and influence, which affected the extent to which respondents were at ease and forthright in sharing information. In South West State and Jubaland State, these effects were minimal, and TS deployed experienced researchers to mitigate. In Mogadishu, the main implication was that case study informants were loath to share details on the politically sensitive land and SGBV cases, explicit that they feared for their own and their families’ safety. This was mitigated through patience and calling upon more experienced researchers to assure respondents that data will be treated with the appropriate discretion, which ultimately yielded in-depth information as required for this Baseline.

- **Security in Dolow.** One major event during elections was the arrest and subsequent escape of Jubaland Minister for Internal Security and former Dolow District Commissioner Abdirashid ‘Janan.’ His escape to the borderlands near Dolow has led to a tense military stand-off at the border, which, along with a reshuffle in local police and administration, required additional researchers in Dolow to facilitate access and ensure all data could be collected safely.

- **Remote locations.** The study will discuss a general lack of knowledge and competence among justice practitioners following decades of institutional collapse under civil war. Rural communities are particularly affected by drought and lack of infrastructure, struggling to reach services that are being provided again in major cities, and are more exposed to inter-clan and insurgent fighting. Recruiting researchers with the necessary skill-set and respondents with the needed knowledge was therefore an additional challenge, for which TS was provided with additional time when some research in Dolow and Xudur had to be redone due to poor quality.

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\(^1\) Ken Menkhau (2018). *Elite Bargains and Political Deals Project: Somalia Case Study.* DFID Stabilisation Unit.

- **Availability bias.** Somalia has undergone three decades of almost continuous civil war and insurgency, following several decades under a *de facto* military government. In the period prior to state collapse, legislation was sparsely updated and conflicting legal frameworks not fully aligned. Religious scripture is mostly taught in Arabic script, which most students cannot read at the time. Somali customary law is transmitted orally and the province of elders. Nevertheless, the following findings show that many respondents still ranked their own understanding of legal frameworks as good or excellent, contradicting interviews and focus group discussions, during which respondents asserted that legal knowledge in the wider population is scant. Possible explanations are twofold. It is possible that survey respondents have such little knowledge of legal frameworks that they are not aware of their relative limitations or have accepted these as inherent differences between justice actors and justice users. It is also possible that, because justice institutions in Somalia do not so much apply legislation or provisions, but rather follow the same shari’ah-inspired procedure and pursue mutually acceptable outcomes, respondents limit the possible available knowledge for justice users to these proceedings, with which they are familiar.

- **Is vs. Ought.** Case documentation and mandates are crucial reference points for the understanding of courts and their operations. In Somalia, neither is present in any functional capacity. Most judges are not trained in Somali law, most courts can barely provide their staff with furniture, and much legislation is outdated, largely unknown, and barely applied. A Somali legal expert undertaking a supplementary legal review found that justice actors in all study regions could not name mandates or frameworks that they consistently follow. Instead, they pointed to the above noted formalized – albeit unwritten – procedure based on customary and shari’ah precepts that is usually followed. The consultant also found that applicable mandates and frameworks are almost impossible to discern. This study will focus on the *de facto* workings of courts rather than their technical mandates.
The Justice Snapshot, funded by DfID and produced by a collaboration between Transparency Solutions, the Governance and Justice Group, and Justice Mapping, features an interactive and multi-layered mapping of justice institutions in several of these districts and additional locations, available at: https://southcentralsomalia.justicesnapshot.org/
**BENADIR REGION**

**HODAN**

To the west of Mogadishu’s port and north of the Aden Adde International Airport lies Hodan district, which hosts the Bakaaro market’s fruit and vegetable section. The Bakaaro market still holds fame as East Africa’s largest open market and is the most important source of income for residents in Hodan. The district comprises Mogadishu University’s Faculty of Medicine, Digger Hospital, and departments of the Ministry of Public Works and the Ministry of Mines. Benadir Hospital and Medina Hospital are in the neighboring district Wadajir, along with numerous Ministries lining the border to Hodan.

During the early fighting between Al Shabaab and AMISOM, Hodan saw some of Mogadishu’s most intense battles. These followed the flight of a predominantly Darood population. The current residents mostly hail from the Hawiye sub-clans Habar Gidir and Duduble. As more and more displaced communities are being pushed towards the outskirts of the fast-growing capital, Hodan is becoming home to an increasing number of settlements for internally displaced persons. This trend, notwithstanding, community members who partook in this study praised a relatively good level of security and quality of life as well as high levels of social cohesion.

**WADAJIR**

Also sometimes referred to as Medina, Wadajir is home to a multitude of government institutions, including the Ministries of Planning and Coordination, of Foreign Affairs, of Higher Education and Culture, part of Mogadishu University, and Benadir and Medina Hospital. In addition to multiple justice institutions, several major businesses are based in Wadajir, including the telecommunication companies Hormuud Telecom, Nationlink, and Telesom. The hotels Peace, Sahafi, Shamo, and Paradise are important meeting spots. The density of political, economic, and public infrastructure is a result of long-term external investment in rehabilitation and has resulted in relatively high land value.

During Somalia’s civil war, Wadajir remained a stronghold for Somalia’s transitional government. The district is mostly inhabited by members of different Hawiye sub-clans, predominantly Abgaal, but also Habar Gidir, Murusade, and Xawaadle. The militias maintained by each clan group and influential individuals were important in denying Al Shabaab access during the fighting over Mogadishu and remain active today.

**HAMAR JABJAB**

Hamar Jabjab stands in stark contrast to Wadajir. The district contains part of the seaport, major police and Darawish security force stations, and the Serendi Defector Rehabilitation Center. Aside from the seaport, the infrastructure provides little economic benefit to residents, many of whom hail from the Somali Bantu. The Bantu, who have begun to reclaim the derogatory label ‘Jareer’ (‘hard hair’ – used to distinguish Bantu, now adopted by Bantu as ‘Jareer-waye’), have little access to power, as the district administration is mainly led by members of the Habar Gidir sub-clan of the Hawiye.

After fighting over Mogadishu, much of the then-district commissioner’s militia transformed into the local police force, but these early days were marked by significant infighting among the local Habar Gidir leadership over key positions. This conflict appears to continue. In 2016, the district commissioner was ousted over his opposition to influential individuals’ use of paramilitary forces to seize land. Focus groups in Hamar Jabjab during this study lamented higher levels of insecurity and hardship, especially for displaced communities.

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4. Ibid.
The Weydow IDP settlement was originally located 30 kilometers outside Mogadishu and home to an estimated 3,000 families. The settlement was established by the local non-governmental organization Kalama-Shoorto in 2017, and has been connected to Mogadishu city by public transport, which remained unaffordable for most of its inhabitants. In the past years, against the backdrop of rapid urbanization, some IDP settlements have merged into the growing city and become a settlement-slum hybrid. Displaced communities in Somalia are marked by few to no kinship ties to their host communities, exposing to eviction or abuse with little recourse, and dependence on camp administrators and external support. Their overlap with or movement towards slumdwellers and normal inhabitants poses challenges to external actors’ capacity to appropriately meet displaced persons’ needs and may require further research to ascertain the implications of this development.

**SOUTH WEST STATE**

**BAIDOA**

Baidoa is the capital of Bay region, former seat of the Transitional Federal Government, and interim seat of the South West State government. The district is central to the Mirifle clan’s Group of Eight (Siddeed). The district, regional, and state administration are a legacy of the schism within the Rahanweyn Resistance Army (RRA) following their successful campaign against occupation by the United Somali Congress (USC) under General Aideed. Two of the major wings of the RRA, furnished by the sub-clans Harin and Leysan, divided control over different levels of the administration and security forces between themselves, effectively securing control over Baidoa and its commercially and politically important location – much to the chagrin of other Mirifle groups, in particular the Elay, who had laid claim to Baidoa before.

Inter-communal schisms have long been prevented by external pressure, which has marked the life of communities in its vicinity since colonial times. The largely sedentary agro-pastoralist communities in this fertile inter-riverine region provided fierce resistance against Italian colonization, but the absence of substantive Mirifle militia forces led to repeating occupations by outside militia and insurgent forces, culminating in two major famines – one exacerbated by fighting among Darood and Hawiye militia over the city, one by the then-Al Shabaab-led administration’s decision to block humanitarian aid during a severe drought. The latter instance and the extensive use of Mirifle fighters loyal to former Al Shabaab deputy leader Mukhtar Robow as frontline fighters against AMISOM troops during the Battle for Mogadishu in 2010 have engendered much resentment towards Al Shabaab among Mirifle communities.

The most recent presidential election was contested and controversial. After the incumbent President Sharif Hassan Sheikh Aden announced that he would not seek re-election, defector Mukhtar Robow leveraged his popularity among especially the Leysan community to become frontrunner but was arrested by Ethiopian troops at the behest of the Federal Government of Somalia. The ensuing protests claimed more than a dozen lives, and the election resulted in a victory for former FGS-Minister Abdiaziz ‘Laftagareen.’ This upended the Harin-Leysan compact and confronted the newly elected President with a steep challenge to regain communities’ trust. President Laftagareen has since embarked upon extensive community outreach that has been met with largely positive responses.

Baidoa hosts a great number of international and local organizations as well as civil society groups, but these remain largely confined to the town. Travel to nearby districts such as Dinsor, Buurhakaba, or

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Berdale as well as Baidoa’s surrounds must occur either along roads with Al Shabaab presence or by flight. The group also maintains its own elders, offering alternative arbitration for frequent land disputes and catering to the more central positions Mirifle elders (Malaaq and Samadoons) take in communal life compared to their counterparts among traditionally more pastoralist clans.

The capital of the Bakool region is also the center for the Mirifle Group of Nine (Sagal). The town is largely cut off from land-based transport as it is encircled by Al Shabaab, but a mix of SWS, ENDF, and militia forces prevent the group from approaching the town. Xudur’s highly cohesive communities drew Al Shabaab’s ire through their support for Mukhtar Robow after the group’s former spokesperson defected and found shelter near his birthplace. With few exceptions, Xudur’s communities reject Al Shabaab entirely. One interview for this study described the communal attitude towards the violent extremist group as a ‘boycott.’

The encirclement by Al Shabaab affects the communities by blocking commercial traffic, forcing farmers to leave their farmlands idle, and causing steady displacement from the surrounding villages such as Garasweye and the neighboring districts under Al Shabaab control, Rab Dhure and Tiyeqlow. Nearby fighting has increased since militia fighters loyal to Mukhtar Robow have joined the town’s defenders and begun attacking Al Shabaab bases nearby.

Infrastructure in Xudur is weak, the sole hospital underequipped and understaffed, and post-primary education is largely unavailable. Although its major clans are well-represented in the SWS government, Xudur’s community has little interaction with the SWS administration. The recent recurring presence of ministers accompanied the formation of a District Council under the Wadajir Framework for Local Governance. The formation was facilitated by the high degree of social cohesion among clans, but the level of social conservatism among the community became evident as community leaders vehemently rejected the inclusion of a female candidate, who subsequently fled the town.

The port city of Kismayo holds strategic and commercial value and was fought over intensely throughout Somalia’s civil war and subsequent insurgency. The seat of the Jubaland State of Somalia (JSS) government has become a focal point for tensions between local power holders and the Federal Government of Somalia (FGS), which acts through allies in Gedo region. This conflict has been ongoing since Jubaland State’s formation and reignited during the state’s recent presidential election.

Current JSS President Ahmed Mohamed Islam ‘Madobe’ draws his legitimacy from having ousted his former allies within Al Shabaab from their important revenue-base, combining his Raas Kamboni militia with political and military backing from nearby Kenya. Whilst his main challengers hold power in Gedo, President Madobe presides over a city that is home to a wide variety of clans, spanning several Darood sub-clans, within which the intra-Ogaden rivalry between the President’s Mohamed Zubeyr sub-clan and the Cawlyahan is perhaps most pronounced, but among whom Marehan and Majerteen groups also play an important role. The main Hawiye sub-clans present are the Gal Jecel and the Shikhaal, although the latter’s affiliation with the Hawiye remains contested. Digil, Mirifle, and Somali Bantu are present throughout the city and region, but hold little influence or military prowess, and constitute much of the city’s displaced population, relegated to its outskirts.

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15 Information on Xudur is based largely on primary and secondary data available to the author, but not shareable with other parties.
The administration under President Madobe maintains a high level of securitization. The capable Jubaland Intelligence and Security Agency (JISA) has been mostly successful in denying Al Shabaab access to the city, and Jubaland security forces have managed to keep the group outside a perimeter, but have made little further gain in breaking its hold over rural areas. This is in turn important to Al Shabaab, which offers effective arbitration for land disputes, the primary source for inter-clan clashes in and around Kismayo. 19

Dolow is central to the important trade corridor that includes nearby Beled Xawa and Luuq. It provides an important thoroughfare for goods and refugees at the confluence of the rivers Dawa and Juba, and the border triangle between Somalia, Kenya, and Ethiopia. The district is highly securitized due to a strong presence of Ethiopian National Defence Forces (ENDF), which has allowed numerous international organizations and agencies to operate offices in the town. Dolow is also home to two settlements for displaced communities, often comprising those who did not have the means to cross into nearby Ethiopia towards their own kin or the major refugee camp in Dolo Ado. 20

The presence of ENDF units stems from repeated incursions to oust the Islamic group Al-Ittihad Al-Islamya during the 1990s and 2000s. The Ethiopian government deemed the group a national security threat in its own right, but also accused it of supporting the Ogaden National Liberation Front (ONLF) in Ethiopia’s Somali region. 21 Both ENDF and local security forces have been effective at keeping Al Shabaab from establishing a presence in the district, and operate towards its residents with impunity. 22

The current administration in Dolow is a result of prolonged inter-communal conflict in Gedo region that has pitted Dolow’s administration against the regional government in Garbaharey. A key figure in these conflicts was and is Dolow’s previous district commissioner and current Jubaland Minister of Internal Security Abdirashid ‘Janan’. Having successfully maneuvered his previously minor Marehan sub-clan, the Reer Axmed – Reer Samatar, through intra-Marehan disputes in Gedo, 23 Minister ‘Janan’ was arrested for human rights violations during the Jubaland presidential elections. His subsequent escape to Kenya coincided with an increase in the presence of Somali National Army (SNA) forces in Gedo region. At the time of writing, clashes between SNA and militia fighters loyal to Janan have led to fighting along the border triangle that threaten to draw in Kenyan, Ethiopian, and Somali troops. 24

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22 Ibid.
KEY FINDINGS

Before outlining and discussing the main findings of this study, five aspects are important to note.

- **Case study content on sexual and gender-based violence**
  Case studies in this report concern land disputes and cases of sexual and gender-based violence. Several case studies concern instances of rape and other forms of sexual abuse. Although they refrain from graphic descriptions, readers are asked to determine whether they are likely to suffer psychological harm from engaging with this content and approach these case studies accordingly.

- **Case study participants**
  For each case study, the main litigant or victim alongside opposing parties, family members, neighbors, justice actors, or other witnesses or concerned parties were asked to be interviewed to gain a more complete picture of the case in question. In many instances, especially in those in which a case had been decided in favor of one party and undue interference was alleged, the party that was accused of such interference refused to speak to researchers. This included particularly those who had been convicted of fraudulent land claims or sexual abuse. Given the sensitivity of cases, names and ages of all persons have been changed.

- **Graphs and tables**
  The quantitative data collection for this study has yielded a wealth of data. During analysis, these were broken down by demographic factors such as sex, age, location, literacy, monthly household income, and clan belonging. These associations were tested for statistical significance (via Chi Square test at a 95% confidence interval) and strength (via Cramer’s V for moderate or strong correlations) with the caveat that neither can speak to the directionality of associations. Including all correlations that pass these thresholds and underpin findings from interviews and desk reviews as graphs and tables would render this document unwieldy. A selection of such graphs is annexed for the reader’s consideration.

- **Statutory law**
  Somalia, like many other states, is in a state of legal pluralism. To distinguish state-based law and institutions from customary and religious counterparts, this study will refer to these as ‘statutory’. This comprises legislation passed by parliament, including the current parliament and all legislation dating back to independence and before that is still nominally in effect, as well as state courts from district to constitutional level, and, as relevant, federal and state constitutions. This study refrains from using the often-employed distinction between formal and informal law/courts, as this dichotomy disavows the formalized procedures, regulations, and precepts that permeate customary and religious institutions.

- **Highlights**
  The study emphasizes key points in bold font. These are not section headings, but key takeaways for readers, cognizant that the report is extensive but also intended as a reference document.

  “People are not satisfied with the existing justice institutions.”

  - Focus group participant, male, Hamar Jabjab
LEGAL FRAMEWORK
- Statutory institutions are far younger than customary and religious traditions, with which most justice seekers are familiar.
- A court system is still being rebuilt. Elders remain the primary justice providers.
- Courts and elders follow customary procedures. Legislation is rarely applied, outcomes often unpredictable.
- Shari’ah is the constitutional basis of statutory law, permeates customary processes, and enjoys strong legitimacy.
- Justice seekers frequently use Al Shabaab courts, especially for land disputes.

LEGAL KNOWLEDGE
- Most users and practitioners have only a rudimentary understanding of statutory law.
- Most lawyers and judges are not trained in Somali law. No standardized curriculum or examination exists. Legislation has often not been reviewed in decades.
- Customary xeer is the province of elders, passed on orally, but in some locations is starting to be documented.
- Women and rural populations are particularly disadvantaged.
- Justice seekers liaise with institutions via community leaders, mostly clan elders.

ADVICE & REPRESENTATION
- Lack of legal knowledge extends to most advice and representation.
- Customary and religious procedures, and Al Shabaab courts, do not require or accommodate advice or representation.
- Lawyers or civil society are mostly available to main urban areas, especially Mogadishu, but quality is unreliable. Most other communities rely on elders.
- Marginalized groups often cannot access advice or call upon influential elders.
- Most high-paid advice and representation comes to bear in land disputes.

ACCESS TO JUSTICE
- Main access barrier is cost, which interacts with clannism as local minority clans tend to be poorer and less well-connected.
- Precarious livelihoods and lack of adequate and affordable representation render the time needed to file cases prohibitive.
- Elders, ulama, and Al Shabaab work free of charge. Elders require refreshments, remote Al Shabaab courts transportation.
- Security forces are often linked to clans, putting justice seekers at risk of retaliation.
- SGBV victims face social stigma when seeking redress. Elders handle most cases.

FAIR PROCEDURE
- Statutory courts have a reputation for endemic corruption, requiring official and unofficial payments throughout processes that determine outcomes.
- Reputation of elders has been tarnished by ‘political elders’ participating in patronage and corruption but is largely intact – and crucial as their authority derives from it.
- Political and security actors can and do intervene in court processes. Judicial independence is not protected.
- Perceived unfairness/corruption is the main push-factor towards Al Shabaab courts.

ENFORCEABLE SOLUTIONS
- Elders and ulama rely on authority for enforcement, ask parties to commit prior to proceedings.
- Enforcement by security forces entails further costs, especially in land disputes.
- If kinship ties or payments sufficient, security forces may act irrespective of court/elder verdict or ongoing appeal.
- Displaced and minority communities are often unable to have decisions enforced.
- Ability to enforce decisions swiftly is the main pull-factor for Al Shabaab courts.
LEGAL FRAMEWORK

KEY FINDINGS

- Statutory law and courts are recent additions to Somalia’s legal frameworks, shaped by customary and religious norms, and are the least developed public infrastructure in the context of ongoing state building.
- For the past three to four decades, generations in Somalia have grown up without the experience of functioning courts or a legislating parliament, but with protracted conflict and state institutions as part of (clannist) patronage.
- Courts are still not politically independent, but part of power sharing arrangement (4.5 system) and rent-seeking politicking.
- Shari'ah forms the constitutional basis of statutory law and permeates customary law, is the strongest source of legitimacy, but is not consistently applied as a separate framework for adjudication.
- Customary institutions comprise elders who consult witnesses and arbitrate or mediate towards mutually acceptable solutions based on the primacy of conflict prevention, collective responsibility, and compensation.
- Most courts do not apply statutory law but follow customary procedures. Together with political influence, this renders outcomes unpredictable.
- Al Shabaab courts claim to apply a Hanbali form of Shari'ah, but also largely follow customary procedures.
- Institutions collaborate ad hoc, drawing on local personal connections rather than mandates or referral mechanisms.
- Documentation is not practiced consistently, but depends on the individual practitioner, capacity, and availability of resources.
- Land as the primary revenue source and the absence of a functioning land registry or cadaster offices renders land disputes political (land is central to patronage) and volatile (parties may employ violence to enforce claims).
- Absent credible land documentation, justice actors conduct site visits and interrogate neighbors to confirm veracity of claims.
- Among pervasive graft and politicized land-conflict, spoilers have incentives to prevent a more capable justice sector. Widespread corruption provides space for such disruption. Many citizens prefer Al Shabaab courts for land disputes and generally praise their simplicity and efficiency.
- Some elders are decried as 'political elders', accused of violating their commitment to communal welfare in pursuit of own gain. Yet, social pressure to first call upon elders remains high everywhere.
- Elders continue as first responders to SGBV cases to defuse potential for collective retaliation, often to the detriment of the victim's rights and integrity.
- Perpetrators tend to favor customary institutions leading to compensation payments or even forced marriage, whilst victims prefer statutory courts and individual punishment.
The legal and judicial frameworks in Somalia are plural. Statutory, customary, and religious institutions co-exist and often cooperate. Elders and statutory courts frequently invoke shari'ah principles. Only the violent extremist insurgent group Harakat Al Shabaab Al Mujaheddin (Islamic Youth Movement, abbreviated to Al Shabaab) operates courts that do not collaborate with any other justice providers.

The customary xeer dhaqamed is rooted in Somalia’s clan system, an agnatic, segmentary framework for group identities that traditionally determines the delineation of home territory (deegaan). Like many customary justice institutions, xeer aims at conflict prevention through collective compensation rather than law enforcement via individual punishment. It is implemented and passed on orally by elected elders. The xeer comprises a general framework for processes, punishments, and some local regulation for relations of production- Otherwise, it consists of re-negotiable localized agreements between clans that stipulate rights and duties for hosts (guri) and guests (galti) in each deegaan. These are rooted in nomadic herders seeking access to pasture, but take on a different shape among the more sedentary agro-pastoralist communities in the southern inter-riverine and riverine regions, where location joins lineage as an important source of identity, and thus relations to elders.

The Shari’ah is central to everyday life in Somalia and the administration of justice. Both federal and federated constitutions stipulate shari’ah as the primary and inviolable source of all legislation. Religious scholars (ulama) wield great influence across communities. Whilst xeer predates Islam, both have become deeply intertwined. The shari’ah calls for local customs to refine its application and in Somalia furnishes customary institutions with precepts for compensation. Elders are often steeped in shari’ah teachings, which in Somalia largely follow the Shafi’i school of jurisprudence (madhab), although the stricter Hanbali madhab gradually increases in influence.

Statutory law and its institutions are relatively recent additions to Somalia’s judicial and legislative landscapes. Although several political entities have existed throughout Somalia and were to some extent embedded into regional or local sultanates, the current statutory institutions have their roots largely in colonial administrations and the central government that followed. This legacy has produced a difficult-to-handle mix of Italian Civil Code and British Common Law, filtered by socialist-inspired policies of the previous military government, and institutions shaped by intensely contested and fractious state building. The judiciary remains embroiled in politics, lacking defined roles and responsibilities, performance standards, administrative and management frameworks, ethical or training guidelines, standardized curricula, as well as funding and, perhaps most crucially, independence – and remains limited to major urban centers.

Al Shabaab courts operate not only in the mostly rural areas under the group’s control, but also near several major urban centers, including Afgoye, Baidoa, and Mogadishu. The insurgent group maintains a complex government system for all regions in Somalia, and its ability to provide swift adjudication and enforcement, following the Hanbali madhab of the shari’ah, remains a pull and recruitment factor.

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Decades of inter and intra-communal conflict, state collapse, and violent extremist insurgencies have left government-affiliated institutions hamstrung. Statutory courts operate in government-controlled cities, without jurists trained in statutory law, and often without furniture. Traditional elders have risen to prominence as justice providers not by design, but by default after Somalia’s state institutions imploded into clan-based civil war. Although expert conflict mediators, elders themselves had become politicized as Somalia’s military government relied increasingly on clannist patronage during its descent. The subsequent death toll and level of displacement has overstrained customary structures, which struggle to adapt as thorough review is traditionally conducted during peacetime – a condition that has been absent in most of Somalia for three decades.

A number of internationally supported initiatives have sought and are working to support, strengthen, and open up customary institutions. Various innovative processes encompass xeer review and greater inclusion within the patriarchal and gerontocratic elder councils, their incorporation into the state’s justice structure, and mitigation of rights-abrogating practices. Ulama wield authority, but given their religious roles, a long history of political Islam in Somalia, and an ongoing extremist insurgency that emphasizes shari’ah-based justice, refrain from taking on leadership in the justice sector. This should, however, not disavow the centrality of shari’ah for justice and justice reform in Somalia, upon which the EAJ Program has expanded in a previous report.

In addition to the lack of coordination mechanisms and clarity of roles, responsibilities, and capacity among justice actors, much of Somalia’s population has grown up without an intact statutory governance and justice system. This provides space for Al Shabaab to offer alternative avenues. Many interviewees during this study observed that the uncoordinated institutional pluralism with an insurgent alternative allows for forum shopping: for community members to choose institutions not because of appropriate mandate, but for social pressure or likelihood of a favorable outcome. Whilst agency for justice seekers can be conducive to access to fair and appropriate justice, it can also undermine the integrity of the justice system if it is uncoordinated and users are ill-informed.

“Members of the community compare the institutions to decide which to go to. They also weigh their cases. If it is a simple one, they go to the elders. If it is heavy and big, they go to the courts or Al Shabaab. If it is a family issue, they go to the Ulama.”

- Youth activist, female, Hamar Jabjab

INSTITUTIONS

Civil war and insurgency obliterated most government infrastructure in Somalia. This left ulama and elders as the primary ports of call for justice seekers. Since then, a decade of state building efforts has (re-)constructed administrative and judicial infrastructure where possible. Districts often have district-level courts. Most regional centers now operate regional courts. State capitals host courts of appeal. Yet, availability of and access to justice practitioners remains an important geographical impediment. Any study will face challenges when attempting to identify which institutions are present in a district, because definitions and designations are not necessarily known to all residents, let alone agreed upon.

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21 Egar, Stapleton & Albrecht (2017). Understanding Potential Development of the Justice System in Somalia. The study found that in Kismayo, the regional courts and district courts drew on the shari’ah in 65-75% of cases and on xeer in 25-35% of cases but did not once employ codified legislation in their approaches (p. 15). As discussed in the next section, most judges in Somalia, if trained in law, are trained either only in Islamic law or in a different state legal system, such as that of Egypt or Sudan.
26 With the exception of Luuq in Gedo region, these tend to be located in the administrative capitals.
**Statutory courts, police & government officials.** The lines separating executive and judicial institutions in Somalia are blurred. Many appointments are political, security forces often overlap with clan militias and are frequently affiliated with local government officials, who in turn often get involved directly in conflict resolution and justice processes. Study districts were mostly regionally or nationally important urban centers, and respondents accordingly mentioned police stations most frequently (76%), but fewer knew of statutory courts (63%). Almost one in ten respondents classified government officials as justice providers, testifying to the lack of institutional separation.

**Elder councils & Alternative Dispute Resolution.** An assessment of alternative dispute resolution initiatives observed that government-led initiatives creating centers for alternative dispute resolution (ADR), supported by the United Nations Development Programme (UNDP) and the International Development Law Organization (IDLO), mostly institutionalize councils of elders (Guurti), and often comprise the same elders as other councils and the Danish Demining Group’s (DDG) more inclusive Guurti+ institutions. The study also found that most community members do not clearly distinguish between ADR centers and elder councils in their various guises, but use ADR and customary institutions as interchangeable designations. Only in Mogadishu, where other justice infrastructure is most developed, did fewer than 84% of respondents consider elders as justice providers.

**Shari’ah & Al Shabaab.** Somalia has a long history of prominent Sufi orders, and most major clans trace their lineage to disciples of the Prophet. To many, Somali culture and Islam are inseparable, but the traditional Sufi adoration of saints and shrines has become increasingly controversial. It is especially opposed by ever-greater influence of conservative tenets within Salafism, following the teachings of Muhammad Ibn Abd al-Wahhab (1703-1792), of which the Union of Islamic Courts had been a wide-ranging expression, and whose most extreme and violent grouping has remained in Al Shabaab. With ever greater financial and political entanglement with Gulf states, and recently also Turkey, religious leaders and communities thus find themselves in between competing traditions. This was evident in the fact that Mogadishu focus groups conflated ‘shari’ah institutions’ and ‘religious courts’ with Al Shabaab courts, whilst respondents outside Mogadishu consider ulama as important justice providers and expressed mixed views towards Al Shabaab courts.

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**FIGURE 1: POLICE, ELDERS, AND COURTS ARE THE MOST FREQUENTLY LISTED JUSTICE INSTITUTIONS ACROSS DISTRICTS, BUT INDIVIDUALS ARE ALSO CONSIDERED JUSTICE ACTORS**

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29 For the Danish Demining Group’s Guurti+ strategy, see: Mydlak (2019). Engagement of Somali Customary Institutions in Justice Programs. The program engages elders and works towards the inclusion of women’s youth, and minority representatives in elder councils, locally called Guurti, Dubaab, or Malaq.


The figures listed in the above chart and the below table are therefore not necessarily reflective of the de facto presence of justice institutions in each district. Instead, and perhaps more pertinent to the Expanding Access to Justice Program (EAJ), they indicate community members’ awareness of their avenues for obtaining justice. Most notable among these is that residents in the Weydow area did not consider their elders justice providers. This may be due to IDP elders’ inability to implement any decisions for lack of local authority, as in Somalia IDP status connotes not only displacement, but also lack of kinship ties with more powerful host communities. Residents who hail from host communities, in turn, may look to statutory institutions through their kinship linkages to district administrations.

Few mentions of institutions may also suggest that some specific ones are compromised or inaccessible to many residents. Respondents with a household income below 1 million SOS per month most frequently mentioned elders and ulama as justice providers in the vicinity, whilst those earning above 2.5 million SOS tended to list courts and police stations more often. In Hodan, only one respondent listed statutory courts among justice institutions, even though focus groups mentioned their presence, but 11 respondent noted influential individuals. This stands in stark contrast to all other districts, except for Hamar Jabjab, where a 2010 political economy analysis by TANA Copenhagen observed that the majority of the residents belong to different clans than the district’s administration and associated militias who double as police. Reflecting this, police stations were most infrequently listed in Hamar Jabjab, followed by Wadajir, where TANA had noted the same demographic pattern.

<table>
<thead>
<tr>
<th>What justice institutions exist in your community?</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadajir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory court</td>
<td>2%</td>
<td>78%</td>
<td>74%</td>
<td>92%</td>
<td>66%</td>
<td>27%</td>
<td>86%</td>
<td>47%</td>
</tr>
<tr>
<td>Religious court</td>
<td>0%</td>
<td>12%</td>
<td>37%</td>
<td>2%</td>
<td>91%</td>
<td>68%</td>
<td>82%</td>
<td>53%</td>
</tr>
<tr>
<td>Elder councils</td>
<td>52%</td>
<td>56%</td>
<td>61%</td>
<td>2%</td>
<td>88%</td>
<td>84%</td>
<td>97%</td>
<td>100%</td>
</tr>
<tr>
<td>Police stations</td>
<td>82%</td>
<td>48%</td>
<td>52%</td>
<td>100%</td>
<td>88%</td>
<td>62%</td>
<td>88%</td>
<td>59%</td>
</tr>
<tr>
<td>Al Shabaab mobile courts</td>
<td>0%</td>
<td>14%</td>
<td>24%</td>
<td>0%</td>
<td>1%</td>
<td>0%</td>
<td>45%</td>
<td>0%</td>
</tr>
<tr>
<td>Lawyer’s offices</td>
<td>0%</td>
<td>20%</td>
<td>20%</td>
<td>0%</td>
<td>12%</td>
<td>0%</td>
<td>8%</td>
<td>2%</td>
</tr>
<tr>
<td>ADR Units/Mechanisms</td>
<td>90%</td>
<td>56%</td>
<td>24%</td>
<td>41%</td>
<td>21%</td>
<td>3%</td>
<td>4%</td>
<td>2%</td>
</tr>
<tr>
<td>Local/state officials</td>
<td>0%</td>
<td>54%</td>
<td>20%</td>
<td>2%</td>
<td>2%</td>
<td>0%</td>
<td>2%</td>
<td>0%</td>
</tr>
<tr>
<td>Influential individuals</td>
<td>22%</td>
<td>32%</td>
<td>7%</td>
<td>0%</td>
<td>2%</td>
<td>0%</td>
<td>2%</td>
<td>0%</td>
</tr>
</tbody>
</table>

In Dolow, local security forces converge with militias loyal to politically influential individuals. First among these is former district commissioner Abdirashid ‘Janan’, whose support to Jubaland President Ahmed Mohamed Islam ‘Madobe’ elevated him to Minister of Internal Security. His consolidation of control over the Beled Xawa-Dolow-Luuq corridor has been politically incendiary, as illustrated by his imprisonment, escape, and the subsequent escalation of armed violence along the border triangle between Somalia, Kenya, and Ethiopia. This is reflected in the relative hesitation with which Dolow residents considered statutory courts and police as justice institutions. Past studies found that security forces, spanning local militia working as police as well as Somali National Army (SNA) and Ethiopian troops, operate with impunity and violate especially IDPs’ physical security.

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43 Menkhaus (2017), Dadaab Returnee Conflict Assessment, that the majority of respondents in Weydow hailed from the otherwise very influential Hawiye-Abgaal clan reflects the enmeshing of displaced communities with expanding urban slums in Mogadishu and their being interspersed with host communities.
44 Poorer respondents listed ADR centers less often. This may be mediated by the fact that almost all mentions of ADR centers stemmed from Hodan and Hamar Jabjab, where respondents with higher monthly household incomes made up a larger portion of the sample.
More infrequent mentions of statutory institutions, ADR centers, and influential individuals may also reflect remoteness to central infrastructure, to external resources that might encourage rent-seeking behavior among individuals, or to justice sector reform activities. In Baidoa, DDG works with local customary institutions and minority representatives, and Baidoa’s elders have long been organized and wielded political influence.41 Dolow may be of military and commercial importance, but Gedo’s regional court operates from Luuq and the region’s administration from Garbaharey. Xudur hosts both court and administration but both lack capacity and do not reach beyond the town, encircled by Al Shabaab.

Mogadishu Focus groups explained such unevenness by stressing that in Somalia’s stabilization process, the justice sector remains the most insufficiently developed. Constitutional scholars Christine Bell and Kimana Zulueta-Fülscher point out that this rudimentary state of statutory institutions is not unusual for post-conflict environments.50 Their efficacy requires an agreed upon legal framework, independent institutions, and a legitimate monopoly of force to enforce verdicts and safeguard individual rights. Bell and Zulueta-Fülscher note that not only does Somalia remain engulfed in conflict, but also that the lack of governmental legitimacy provides ample space for spoilers to disrupt the formation of an effective rights-based justice system – most prominently Al Shabaab, but also other political actors.

“A case may be completed through the statutory process, but then may be reopened by the opposition party [Al Shabaab] in the Islamic courts.”

- Focus group participant, male, Hamar Jabjab

As long as state-building is contested, both among local political factions and regional governments as their backers,51 legislators are unable to comprehensively review and reform existing legislation, which interviewed lawyers deemed of utmost importance. Most dates from the 1960s, Somalia’s early days of independence, and is based on Italian and Egyptian codes of the 1940s and 1920s. Elements of British Common Law have gained prominence since 1991 but are poorly integrated, if at all. Neither is aligned with the shari’ah, which forms the constitutional basis and source of all law. Justice practitioners across districts, concurred that without a comprehensive review and as long as the majority of practitioners are not trained in a standardized Somali curriculum but instead abroad, if at all, Somali statutory law will remain outdated and internally inconsistent, and likely hardly applied in practice.52

“Our current legal practitioners have gone abroad for higher law studies. They mainly went to Sudan, Malaysia, UK, Egypt, and many other countries that have adopted the Common Law. Those practitioners are using their knowledge of Common Law in a country that has adopted Civil Law. This makes room for legal crisis. All of our universities, except the Somali National University, teach Common Law, which creates even more confusion.”

- Lawyer, male, Hodan

“The Sharia is the basis for all of these legal norms and rules.”

- Lawyer, male, Baidoa

Common across all branches of this disparate legal pluralism is the use of and grounding in shari’ah. Customary, statutory, and insurgent justice practice are all anchored in the compendium of rules and precepts derived from the main two Islamic scriptures:

- **the Qur’an**, considered as infallible divine revelation;
- and the accounts of the Prophet’s actions and sayings in the **Sunnah**.

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Rather than a pillar in its own right, most respondents, practitioners and non-practitioners, described shari’ah as the most accessible entry point and essential underpinning of all others. In turn, when adjudicating domestic issues, ulama consider aspects of both customary and statutory traditions.

“We have two main legal frameworks. The one with traditional elders based on cultural norms. The other one is the government legal framework with its different institutions.”

- Focus group participant, female, Wadajir

“Elders and Ulama work together and interact well. (…) The courts use the shari’ah in their laws, so they do not need to go back to us or interact with us.”

- Religious leader, male, Hamar Jabjab

Ulama record and file cases. Yet, respondents cautioned, they do not do so consistently, and much of their practice is dependent on interpretation and oral proliferation of teachings. This proffers little scope for users to hold practitioners to account. Past population estimates set Somalia’s literacy rate around 40%, and even lower amongst rural (27%) and nomadic (12%) communities – and many who are literate do not know Arabic, in which Qur’an and Sunnah are to be read. This leaves most users dependent upon religious scholars for teaching and interpretation, bestowing these with great influence on what can be considered legitimate governance and justice.

The authority of ulama and elders derives from their personal reputation. In many instances, ulama and elders indeed collaborate closely. In Baidoa, they share offices and operate as one institution, whilst elsewhere ulama may convene as panels for more extensive cases that exceed other institutions’ capacity. Most interviewed ulama and sheikhs (religious leaders) stressed that despite tension between Sufi and Salafi communities, ulama’s selection as arbiters depends on how well they are versed in Shafi’i jurisprudence, stressing that: “there is no other interpretation.” The extent to which the majority of community members can distinguish between Shafi’i and the increasingly used Hanbali teachings is questionable. Many Shafi’i scholars reject Hanbali practice as foreign and linked to Gulf states’ campaign for influence. Those practicing Hanbali jurisprudence and Al Shabaab, however, leverage the universal appeal of shari’ah among a deeply religious population.

“Some other religious leaders use the Hanbali school because of their ties with Saudi Arabia.”

- Religious leader, male, Weydow

“Islamic courts operate using Sharia law, which is accepted by everybody.”

- Focus group participant, male, Hamar Jabjab

Respondents considered shari’ah as most straightforward and understandable for justice users. Few know statutory legislation or can obtain direct knowledge of customary arrangements. These are the province of traditional elders, who pass them on orally and in some cases guard this knowledge as a source of their authority. Customary procedures also draw on precedent, little of which is documented. To address this gap and enhance communities’ ability to hold elders to account, some programs cooperate with elders and community representatives to review and document local xeer. Such interventions include DDG’s 13-year engagement with elders, who have welcomed the removal of the need to first agree on the applicable and valid xeer – long overdue for review and muddled by displacement and political interference. The otherwise drawn out processes ultimately erode elders’ esteem among their communities, who may question elders’ integrity or competence.

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54 Islam is not monolithic. Sufism and Salafism are two major movements within the Ummah that interpret and practice scripture differently. For more information, see: Ahmed, A.; Harper, Choppa & Mydlak (2020), The Shari’ah in Somalia.

Reliance on past agreements and precedent entails that many current issues are beyond the xeer, including escalating sexual and gender-based violence (SGBV), cases concerning information and communication technology, and those related to other infrastructure or social trends not present at the last review of individual xeer. Interviewed elders explained that in these cases, they mostly rely upon shari’ah, which elevates the importance of an informed and educated discourse on applicable madhab and religious education among justice users (and elders) further.

“There is a transfer of cases. We make sure that religion and the process [coincide], and we cooperate with the shari’ah court, but people usually come to the elders the most.”

- Traditional elder, Kismayo

Elders’ role as pre-eminent providers of adjudication comes with drawbacks for rights-based justice:

<table>
<thead>
<tr>
<th>Customary Norms &amp; Rights-based Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Collective vs. Individual Responsibility.</strong> Customary law operates at the group level. Depending on the severity of the transgression, different levels of clan or sub-clan are liable. Individuals do not necessarily face consequences for their actions. Clan groups can exile repeat offenders (dayro), fine them, or seize their belongings, but usually older male clan members answer for their kin.</td>
</tr>
<tr>
<td><strong>Compensation vs. Punishment.</strong> The main goal of customary institutions is to avert violence. Killings can trigger revenge killings, of particularly disastrous consequences for nomadic pastoral communities in harsh environments. Rather than punish offenders, proceedings seek mutually acceptable compensation in livestock or monetary equivalent, rather than individual accountability.</td>
</tr>
<tr>
<td><strong>Patriarchal underpinnings.</strong> Traditionally, women cannot directly approach elders, are valued less when blood money for death or injuries (mag in Somali, diya in Arabic) is calculated, and are subordinate to fathers or husband, whose clan affiliation they adopt upon marriage. This predisposition is reflected in concrete practice, such as marriage of female clan members as compensation, forcing victims of SGBV to marry their abuser, stigma for victims of SGBV, and forced marriage to close kin (sister of a deceased wife or brother of a deceased husband).</td>
</tr>
</tbody>
</table>

Where statutory courts have been established and are improving in capacity and legitimacy, they take on an increasing load of criminal cases, for which customary institutions are more and more deemed unsuitable. However, the importance of clan and social reputation exerts considerable social pressure on victims to take their cases to elders first, civil and criminal – not merely from other community or family members, but also from law enforcement or statutory justice practitioners.

“The police will ask us to settle first. If we cannot finalize the case, we can report to them.”

- Focus group participant, female, Hodan

“Traditional elders work closely with the statutory courts. Parties often take a case before the courts and are given the chance to settle their disputes outside of the courts.”

- Youth representative, male, Baidoa

“[Elders] deal with criminal cases after they are transformed into civil cases. Turning a criminal case into civil one means that both parties agree to seek reconciliation. That is common. Most of time, it is a case between two sub-clans or two major clans, and usually a case such as murder case, robbery, looting, and others.”

- Focus group participant, female, Hodan

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Elders relegate most cases to the lowest possible sub-clan level. The more contained immediate proceedings are, the smaller is the likelihood that disputes escalate and draw in wider clan groupings and, crucially, their militias, potentially doubling as state security forces.67 In Somalia’s protracted and armed social conflict, the ability of elders to step in and defuse disputes is crucial for social cohesion and the prevention as well as reduction of armed violence.

“The clan and religious leaders have done great work to keep the community together.”
- Focus group participant, female, Dolow

For displaced communities, elders are often the only option. In Somalia’s main urban centers, however, elders must insert themselves into increasingly complex community arrangements with a multitude of justice and governance actors. Mogadishu focus groups mentioned ‘community leaders’ – women, youth, and civil society representatives and non-governmental organizations (NGOs) – who settle cases before elders become involved or accompany victims.

Somalia analysts warn that investment of resources in customary institutions beyond transport and refreshments or trainings and workshops risks undermining elders’ traditionally voluntary role and immersing customary structures in the rent seeking behavior that has characterized Somalia’s protracted social conflict.68 Where successful, however, inclusive elder councils as Guurti+ or ADR centers, or in some locations in the form of district peace committees, can help integrate elders, and improve case processing and social accountability.

“If the elders are unable to resolve a case, then the case is registered and given a file.”
- Focus group participant, female, Wadajir

“The district peace committee works to resolve all minor issues with the help of the ulama, elders, and youth. It then refers all major disputes to the police and the court and vice versa.”
- District official, female, Hodan

Al Shabaab’s courts exist both in opposition and in parallel to these institutions. The group operates several permanent courts in locations near major towns and mobile ad hoc tribunals. Nominally, these stand in opposition to government institutions, but usage of Al Shabaab courts does not equate to support for the group. The two may coincide, but most community members simply approach the group for pragmatic reasons. In turn, Al Shabaab may reject cases already settled by elders.

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LAND DISPUTES

Article 43(1) of the Provisional Constitution of the Federal Republic of Somalia stipulates land as “Somalia’s primary resource and the basis of people’s livelihood.” The absence of comparable revenue sources imbues land with political significance and, as cadaster offices and land registries collapsed with Somalia’s government, potential for violent disputes. Even prior to the breakdown of the military government, land ownership had become central to political patronage, which gave rise to duplication of land titles and displacement. After clan-based militias had overthrown the discredited government, they engaged in widespread land grabbing across the fertile riverine and inter-riverine southern regions. Without functioning land registries and cadaster offices, courts have few means to verify individual claim to land ownership.

<table>
<thead>
<tr>
<th>RIGHT TO OWNERSHIP</th>
<th>LAND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absent land registries and with documentation unavailable or questionable, land disputes often fall upon elders to arbitrate, who must then draw upon three competing customary norms:</td>
<td></td>
</tr>
<tr>
<td>1) <strong>U dashay</strong> (‘right by blood’): right to land derived from kinship ties, claims that clan has inhabited area for a long time</td>
<td></td>
</tr>
<tr>
<td>2) <strong>Ku dashay</strong> (‘right by birth’): right to land by birth in area, irrespective of clan belonging</td>
<td></td>
</tr>
<tr>
<td>3) <strong>Ku dhaqmay</strong> (‘right by citizenship’): does away with blood or birth-based claims, argues that all Somali citizens can own land anywhere in Somalia</td>
<td></td>
</tr>
<tr>
<td>Each norm favors different groups. <strong>U dashay</strong> can be invoked by marginalized groups with a long history of residency. <strong>Ku dashay</strong> favors second or third generations of guests (galti). <strong>Ku dhaqmay</strong> is most compatible with a nationwide and streamlined rule of law, but also favors groups that wield power at government level and have previously engaged in land grabbing.</td>
<td></td>
</tr>
</tbody>
</table>

The intensity with which different institutions vie over jurisdiction on land matters is illustrated in competition between the Benadir Regional Administration and the federal Ministry of Public Works over authority on land in Mogadishu. Both invoke decades-old legislation to claim primacy, further politicizing the adjudication of land matters. Mogadishu Elders explained that because of this political dimension, they mostly refer land disputes to courts, except for Hodan, where land cases are frequently taken on by the District Peace Committee.

**Without reliable registries to verify documents, justice providers conduct site visits to validate measurements and descriptions of the property in title deeds, and ask neighbors as witnesses about their knowledge of the claimant or if the claimant’s family has lived in or owned property in the area before.** In each case, law enforcement officers first record cases and then refer them to the appropriate institution. Cases that concern property valued above 3,000 USD are referred to regional courts. If affordable and/or available, parties call upon legal representation in these cases, either by private lawyers or legal aid organizations (LAOs).

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Interviewed lawyers added that the majority of land disputes concern inheritance claims by multiple family members, claims by members of the diaspora against current occupants or competing claims by local buyers, or contestation of inheritance if documentation is unavailable. Outside Mogadishu, such matters are mostly dealt with by elders, but can escalate to statutory institutions if elders are unable to find a mutually agreeable settlement.

In Baidoa, the interviewed lawyer explained that notaries are often consulted to formalize ownership in documents locally called sabor lago but warned that this process is vulnerable to bribes, intimidation, and nepotism, and that forgery is rampant. Because of this, four or more witnesses are usually asked to attest to the validity of the documentation. This provides another point at which bribes or favors can result in competing with formally valid documentation. It also puts into question the integrity of the very institutions whose prerogative lies with the verification of documentation.

<table>
<thead>
<tr>
<th>DOLOW</th>
<th>ACCUSATIONS THAT NOTARIES PARTAKE IN FORGERY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muse is a 46-year-old man from the Horwarsame sub-clan of the Darood-Marehan in the Gedo region and has never received a formal education. Muse inherited land from his father outside of Dolow, which he had owned for many decades. Just over 10 years ago, a man by the name of Ali approached Muse with a title for the land, claiming that he had purchased it through a third-party seller. According to Muse, Ali, 49 years old with no formal education and from the Reer Dini sub-clan of the Marehan, proceeded to occupy Muse’s plot of land. In response, Muse filed a suit against Ali with the district court’s land department. Muse stated that Ali has since claimed that he had lost contact with the third-party seller and was unable to provide a witness to corroborate his story. Muse also presented the researcher with physical copies of his own title, which are updated and easy to read, and include the proper land measurements, dates, and signatures. He also showed the researcher copies of Ali’s documents, which looked hastily written, somewhat rugged and difficult to read, and appeared to be a photocopy of a previous copy. Land measurements showed a typo (instead of 50x50 hectares “50 and 50” hectares), which Muse believes indicates that the documents were forged. Muse explained that forged land documentation is a common problem across Somalia, and the place where most fake documents in Gedo originate is the Notary’s office, although some individuals own equipment to forge titles. Throughout the court process, Ali has repeatedly denied having forged the documentation, claiming that he is “not sophisticated” enough to do so. At the time of data collection, the court had not yet reached a decision. Muse claimed to have spent a significant amount of money on the case but has seen little progress. Hearings and court decisions have repeatedly been pushed back or cancelled. Muse is unsure if the process will reach a conclusion and if he will regain the land. He professes to have lost trust in the justice system, as despite his evidence – documentation and witnesses – his land remains occupied by Ali. He was “frustrated that cartels and fraudsters can take what is not theirs” and “bail themselves out of mess.” He and his family have begun to consider other avenues to regain possession of their land.</td>
<td></td>
</tr>
</tbody>
</table>

If institutions are unable to deliver, their inertia often gives way to or is a result of clannist politics. A Baidoa youth representative recalled that a SWS government official seized land from an ulama whose belonging to a minority clan prevented him from obtaining redress despite his religious authority. Focus groups levelled a similar accusation against the SWS Police Commissioner and warned that land grabbing by government, justice, and security actors might push more residents to seek out Al Shabaab courts, even though the group does not enjoy widespread support in Bay and Bakool regions, and had been on the backfoot up until FGS interference in the 2018 presidential election in SWS. Since then, the FGS-backed new President Abdiaziz ‘Laftagareen’ has embarked on a campaign of community outreach to reassure SWS citizens and prevent further disenfranchisement with his administration.

**Land grabbing adversely impacts stabilization and counterinsurgency efforts. Its political dimension implies that land disputes are not merely a procedural matter for justice providers.** Respondents across locations described land disputes as the cases with the highest potential for triggering armed violence and the quickest to escalate beyond the control of local elders. Elders and ulama in Mogadishu and Kismayo explained that they attempt to avoid handling land disputes for this reason, relying on strong if not necessarily impartial administrative, judicial, and security infrastructure instead.

> “Elders cannot get involved with land disputes because of the riskiness and potential loss of life to them.”
> - Focus group participant, female, Wadajir

**Displaced communities are more exposed to violence if they contest land ownership than others,** often by security forces hailing from a different clan. Residents of the Weydow area in Mogadishu explained that, for want of alternatives, their elders do handle land disputes and are often targeted. A law enforcement official recalled a concrete case in which a returnee in had obtained confirmation of his clan's land rights, freezing ongoing cases and blocking new ones. This exerted pressure on elders to step in, and although this move could have been intended to calm inter-communal tensions, it ensures that a clan dimension remains with land disputes in SWS. The following case studies illustrate how tightly inter-communal cohesion and institutions’ ability to handle land disputes are linked. In Xudur, where clans exhibit a high degree of homogeneity and cohesion, statutory institutions can process land disputes with little fear of triggering violent conflict. In Baidoa, elders can leverage this level of cohesion for a case concerning two clans from Xudur, to avoid statutory proceedings inviting other interests and interference.

<table>
<thead>
<tr>
<th>Baidoa</th>
<th>Inter-clan cohesion facilitates dispute settlement</th>
</tr>
</thead>
</table>
| Khalif is a business owner in the Wadajir district of Baidoa. His small shop allows him to send two of his four children to school. In 2017, Khalif bought an unoccupied plot of land north west of Wadajir from Ibrahim, a man from the Hadamo clan, who had inherited the plot and the surrounding area, which at the time was sparsely populated and most land sales were occurring in other parts of the city. Following the purchase, commercial real estate sales in Wadajir mushroomed. In December 2019, Khalif was informed that land surrounding his plot was being bought up by a real estate company. He found his plot already enclosed within a new boundary declaring it the property of the company. Khalif contacted Abshir, the manager of the real estate group, who claimed to have bought the land from Ibrahim, who in turn had left for Saudi Arabia. Both men agreed to go take the case to the regional court. At this point, Khalif sought advice from his brother Warsame, a well-known and influential person in Wadajir. Warsame approached the real estate group, which insisted that the land was legally theirs, backed up with relevant documentation, and pushed for a court case. However, the Bay regional court informed both parties that, as of February of the same year, the SWS Ministry of Justice had barred them from handling land disputes. The parties then approached their traditional elders. Both Khalif and Abshir are from the Hadamo and Luway sub-clans of the Mirifle, whose elders maintain a good relationship.
On the day of their appointment, both parties, their elders, and their relatives gathered in a private residence in Wadajir village to listen to arguments by both sides. On the first day, the elders did not reach a decision, and agreed to reconvene after seven days. In a new venue in Horseed village, the elders listened again to the arguments, reviewed the documents, and questioned the witnesses both had brought. They then unanimously granted ownership to Khalif, because the four witnesses he
presented in the hearing were well-known and trusted individuals and had been present when he bought the land in 2017.

The elders then contacted Ibrahim, who had evidently sold the land twice. As both Ibrahim and Khalif hail from the Hadamo clan, the clan’s elders easily agreed that Ibrahim should reimburse Abshir within two months. Ibrahim requested additional time to pay back the money in installments and was granted three more months. After this, both parties forgave one another and prayed together. Khalif believes had the case remained with the courts, both parties would have had to pay more money and a “fair and transparent” decision would not have been achieved. He thinks that his case has encouraged other community members to bring their land disputes to traditional elders.

**REGIONAL VARIATIONS IN EFFECTIVENESS OF INSTITUTIONS**

Sihaam was born and raised in Ceel Barde. After finishing her university education, she moved to Xudur to work with an international NGO. There, she married a shop owner named Barre, who had received no education, and gave birth to their first child a year later. Sihaam’s income allowed her to cover her family’s needs and send money to family members in Jigjiga. With some savings, she bought two plots of land in the corner of Xudur town for a future business venture. In 2018, Sihaam left her job and traveled with her small daughter to Ceel Barde to care for her sick mother. To stay, Sihaam accepted a job with a local NGO and asked her husband to join them. He asked that she move back to Xudur. Finding no compromise, they divorced. A few months later, Sihaam re-married, after which Barre stopped contact and started a new family.

In late 2018, relatives in Xudur told Sihaam that Barre had sold one of her plots. She returned within a week and asked her relatives for legal advice. They recommended traditional elders, but Sihaam believed that she would have better access to statutory courts because her clan’s elders were not common in Xudur. She was also under the impression that the statutory court process would take less time and be less corrupt. The Bakool regional court summoned Barre and the man who purchased the land. Unable to find a professional lawyer in the area, Sihaam was accompanied by her uncle, a respected elder in Xudur. After both sides presented their case, Sihaam submitted her documentation. Barre brought four witnesses, who claimed that her documentation was forged. A week later, the court granted the land to Sihaam and ordered Barre to reimburse the buyer. Sihaam believes that with the relevant legal documents, statutory courts are the right institution to solve land disputes, whereas the customary institutions would take a long time and may not reach a fair decision. She is happy with her experience with the court and feels that she was treated fairly. She did not report that she was forced to pay any additional fees or bribes on top of court fees.

For elders to handle land disputes, witnesses, especially neighbors, are of utmost importance. The presiding elders (*xeer begti*) ensure that each party and witness is heard in full during proceedings, which elders and other key informants in Kismayo and Baidoa underlined as distinguishing customary from statutory institutions. Although all institutions draw on shari’ah, the above examples show that it is vital for justice seekers to understand the political and clannist positions of institutions and of themselves to obtain a fair and affordable process. In some instances, however, courts that fail to arrive at a resolution transfer the case to elders – potentially at the expense of eroding their own legitimacy, but more likely to achieve a widely accepted outcome.

“When you are taking a land dispute to court, you can expect it to not produce the desired result, to take a lot of time, and to be eventually returned to the traditional elders.”

- Focus group participant, male, Dolow

As if to illustrate how localized and complex navigating institutions is in Somalia, respondents’ perceptions of institutions’ appropriateness for land disputes differed strongly across districts. In Weydow, options are few for displaced persons. Xudur respondents mostly mentioned elders. In light
of the above case study, this suggests that courts are mostly frequented by those with a stronger education or economic background or with family connections to ensure that processes are swift and effective, whilst customary institutions are preferred by those who can call upon influential elders.

In what constitutes capacity to handle land disputes, affordability was most important to more remote – and thus likely more impoverished – communities in Dolow and Xudur. In districts with strong administrations capable of enforcing their decisions, such as Hamar Jabjab and Kismayo, respondents were more likely to follow official mandates. With the least stable livelihoods and access to infrastructure, Weydow residents considered time spent and sheer availability as decisive. Corruption and fairness figured most prominently in Baidoa, where efforts to strengthen participation and accountability have been ongoing for perhaps the longest time of all study districts.

**Figure 2: Perceptions of Which Institutions Are Most Capable to Handle Land Disputes Reflect Local Power Relations and Available Infrastructure**

<table>
<thead>
<tr>
<th>District</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadajir</th>
<th>Waydho</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Hudur</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Most affordable</strong></td>
<td>6%</td>
<td>10%</td>
<td>43%</td>
<td>4%</td>
<td>4%</td>
<td>59%</td>
<td>22%</td>
<td>24%</td>
</tr>
<tr>
<td><strong>Fairer than others</strong></td>
<td>10%</td>
<td>22%</td>
<td>59%</td>
<td>2%</td>
<td>29%</td>
<td>11%</td>
<td>46%</td>
<td>16%</td>
</tr>
<tr>
<td><strong>Only one available</strong></td>
<td>64%</td>
<td>10%</td>
<td>63%</td>
<td>29%</td>
<td>11%</td>
<td>5%</td>
<td>23%</td>
<td>4%</td>
</tr>
<tr>
<td><strong>Least corrupt</strong></td>
<td>8%</td>
<td>18%</td>
<td>30%</td>
<td>6%</td>
<td>15%</td>
<td>11%</td>
<td>66%</td>
<td>57%</td>
</tr>
<tr>
<td><strong>Fastest process</strong></td>
<td>22%</td>
<td>16%</td>
<td>30%</td>
<td>39%</td>
<td>12%</td>
<td>14%</td>
<td>55%</td>
<td>14%</td>
</tr>
<tr>
<td><strong>Appropriate mandate</strong></td>
<td>38%</td>
<td>50%</td>
<td>26%</td>
<td>18%</td>
<td>36%</td>
<td>14%</td>
<td>14%</td>
<td>0%</td>
</tr>
<tr>
<td><strong>Most skilled individuals</strong></td>
<td>2%</td>
<td>16%</td>
<td>11%</td>
<td>2%</td>
<td>10%</td>
<td>3%</td>
<td>6%</td>
<td>2%</td>
</tr>
</tbody>
</table>
SEXUAL AND GENDER-BASED VIOLENCE
Cases of SGBV sit uneasily within Somalia’s pluralist legal framework. *Prima facie*, and according to most international standards, SGBV constitutes a crime against an individual that warrants protection of rights and punishment of perpetrators. In an environment of (protracted) conflict and weak statutory institutions, however, SGBV also constitutes an often-deliberate attack on a collective, a despoilment of a group ‘asset’ for marriage, alliance, or livelihood, and thus a strong potential for escalating revenge violence. This potential for collective retaliation necessitates involvement of clan elders, with all their above outlined rights-abrogating practices harmful to the victim’s integrity. Interviewed elders regretted this dilemma. In Mogadishu and Baidoa, elders insisted that they refer SGBV cases to courts wherever possible, after defusing them and gathering evidence.

“If someone rapes or sexually abuses a girl from a major clan, disputes automatically arise.”
- Religious leader, male, Xudur

Baidoa elders credited previous programming and engagement with helping them and their peers understand why their handling of SGBV cases is problematic. Customary institutions are geared towards collective compensation but are not designed for an environment in which SGBV is rampant and often carried out by security forces. Community members in Mogadishu warned that the lack of individual accountability may even encourage especially young men to commit violence towards women.64

“As a citizen, I refuse to deal with SGBV cases through traditional norms that encourage such behavior. I would rather deal with these cases through statutory legal rules.”
- Focus group participant, female, Wadajir

“The perpetrator always wants to go to the elders, but the victim does not want that.”
- Medical practitioner, female, Weydow

Those accused of SGBV tend to favor customary procedures, whereas victims generally prefer rights-based avenues. Elders often decide on forcing victims to marry their abusers – justified with the social stigmatization of female victims that renders them otherwise ‘unmarriable.’ Discussants in Baidoa considered this not only a gross violation of a victim’s personal integrity, but essentially a reward for rapists. Accordingly, institutional preference for SGBV cases was split by sex. Female respondents were significantly less likely to look to elders and ADR centers than their male counterparts, and significantly more likely to consider police as most able to handle such cases primarily.

![Figure 3: Men are more likely to look to elders to settle SGBV cases, women more likely to look to police](image-url)

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64 The breakdown of state institutions has allowed more conservative religious norms to take hold, and as with the Hanbali madhab, these come with a disposition towards women that resembles and amplifies the most patriarchal tenets within customary institutions. More effective prevention of SGBV may therefore also require normative changes toward women’s value, including their active and meaningful participation in decision making processes. For the interlinkages between social norms and effective justice provision, see: Alejandro Bendaña & Tanja Chopra (2013). Women’s Rights, State-Centric Rule of Law, and Legal Pluralism in Somaliland. *Hague Journal on the Rule of Law*, 5(1).
That police and security forces are often perpetrators of SGBV puts elders in displaced communities such as those in Weydow and in highly securitized environments such as that of Kismayo in a difficult position. Those without kinship ties to locally politically powerful clan groups have few means of holding security providers accountable, which bereaves elders of the capacity to protect their communities. Respondents in Weydow and Kismayo accordingly expressed a preference for police to handle cases.

A medical practitioner cautioned that many elders still do not cede their role as first responders easily. This warning reflects a widespread division among elders that is not always apparent or clear even to community members. The legacy of politicization and the normalization of rent seeking behavior provides space for what community members call ‘political elders’ who, by contrast to their traditional counterparts, pursue own gain, from political influence to siphoning off parts of compensation payments. The medical practitioner went as far as to accuse some elders of using the threat of violent retaliation to hold communities “hostage.”

This results in immense social pressure on victims’ families to eschew statutory institutions to avoid public stigma and instead address elders at the lowest possible level. Community members elsewhere confirmed that this pressure is strong. In Baidoa and Xudur, elders and ulama considered the most capable institutions to handle SGBV cases, and researchers found that social conservatism and pressure on women to subordinate their rights to family reputation and tradition were stronger than elsewhere.

**FIGURE 4: PERCEPTIONS OF CAPACITY TO HANDLE SGBV CASES ALSO REFLECT LOCAL CONDITIONS AND AVAILABILITY**

<table>
<thead>
<tr>
<th>Region</th>
<th>Statutory court</th>
<th>Religious court</th>
<th>Elder councils</th>
<th>Police stations</th>
<th>Al Shabaab courts</th>
<th>Lawyer’s offices</th>
<th>ADR Centers</th>
<th>Local/state officials</th>
<th>Influential individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hodan</td>
<td>26%</td>
<td>58%</td>
<td>16%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hamar Jajab</td>
<td>10%</td>
<td>32%</td>
<td>10%</td>
<td>30%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wadajur</td>
<td>35%</td>
<td>9%</td>
<td>30%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wayda</td>
<td>92%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kismayo</td>
<td>11%</td>
<td>17%</td>
<td>66%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dolow</td>
<td>14%</td>
<td>30%</td>
<td>35%</td>
<td>22%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baidoa</td>
<td>8%</td>
<td>38%</td>
<td>36%</td>
<td>15%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hudur</td>
<td>41%</td>
<td>55%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Nimco is a 23-year-old woman of the Yintaar clan. Her family purchased a farm not far from Baidoa and a second plot of land in the southern outskirts of the town. At the age of 19, her parents arranged a marriage, but her husband beat her, so she divorced him and returned to her family farm. While weeding, she was approached by four young men who attacked and raped her. Neighbors found Nimco injured and bleeding, and her parents rushed her to the hospital where she received medical treatment. With hospital documentation, family members reported the case to the police.

Nimco was able to identify two attackers as from the adjacent farm. The police found and arrested the third and fourth attacker. Simultaneously, elders were consulting with each other and, with other community members, pressured Nimco’s family and her father in particular not to take the case to the courts. Elders warned that it would drag on for months and involve an endless number of bribes. He was also told that he would waste resources and time traveling to and from the courts. Instead, they asserted that their procedure was straightforward and reaches a verdict immediately.
Nimco’s father, brothers, and other male members of her sub-clan decided to bring the case to the elders without consulting her and went with elders to the police station to request that the case be closed. Police officers called Nimco, who confirmed, and case and evidence were handed over to the elders. After another investigation, the elders announced their decision to the parties separately and in private. Following this, a date was sent for male family members of both parties to appear before the elders. The venue was agreed and refreshments were provided by the family members of the four accused. According to witnesses of the proceedings, each elder spoke to explain the seriousness of the crime committed and warn the young men’s fathers that a heavy price would be paid.

The members of Nimco’s clan who then spoke were no close family members. The elders sentenced the young men to pay a three-year-old cow (Sedy jir), or the value of the cow at the current market rate. Elders representing the perpetrators ensured that their fathers paid within seven days. Within two months, the case had been closed. The perpetrators themselves did not pay the fine. Nimco’s father received the cow. She has since been ostracized as a rape victim by other community members and has received no psychological support. During the interview, Nimco professed anger towards the elders, her parents, and the community, of which she considers herself to no longer be a member.

Following the trial, Nimco asked her father for 120 USD to start a small business and moved to Bossaso in Puntland. She is still running a small business and occasionally sends her family money. She has not remarried, remains fearful of men, and does not wish to return. Although most community members expressed sympathy for Nimco, many maintained that the case was well-solved as “justice delayed is justice denied,” and because the elders were following tradition.

In Kismayo, cases are also frequently handled by elders, despite their reservations. Focus group discussants and a law enforcement officer explained that, wherever possible, community members rely on elders because of trust. Procedures for statutory institutions are in place, mandating a medical form to open a case, the police to arrest the accused, and courts and elders to jointly determine the appropriate process going forward. Yet, according to respondents, this procedure is rarely followed.

“The biggest challenge is that this correct process is never followed, and most people prefer the elders to close such sensitive matters by coming to a mutual agreement.”

- Focus group participant, male, Kismayo

Without an initial medical examination of SGBV victims, mandated by federal guidelines, cases should not be opened, but this procedure depends on the level of training and experience of medical practitioners as well as the quality of medical infrastructure, where practitioners and infrastructure are available at all. Support from civil society, NGOs, and LAOs such as the Somali Women’s Development Center (SWDC) is often needed for victims to receive medical and, if possible, psychological support.

**MEDICAL PROCEDURE**

Medical assessments and procedures are not universally performed as standard practice in SGBV cases, despite technical standardization in official guidelines. Interviewed medical practitioners converged on some aspects but differed on others.

1) In Baidoa, the medical practitioner explained that the most urgent step in treating a victim of SGBV is to assess the extent of injury to **determine whether lifesaving measures are needed.**

2) In most places, medical practitioners stated that victims first receive **immediate psychological support**, taking the form of counselling where available. In Kismayo, the medical practitioner emphasized the sense of shame among victims. Without a sense of security and support, most subsequent steps are difficult to impossible to implement, beginning with obtaining a victim’s consent to be examined. Only Baidoa maintains a designated mental health clinic.

3) **Medical history** is taken and **consent is obtained and recorded** on a form.
4) Medical staff conduct an **examination** as well as a **basic checkup**. In Kismayo, the medical practitioner pointed to set procedures for clinical management of rape survivors (CMR), including handing out a PEP kit to prevent sexually transmitted diseases.

5) Any available **evidence is recorded**.

6) In Mogadishu, medical practitioners noted that at this stage, they would **determine whether a victim was likely to be under threat and required shelter** in a safe house, and **support victims in obtaining legal advice and representation**.

7) **Documents are then submitted to police and court for the case to be opened.** Mogadishu respondents noted that Medina Hospital works closely with statutory institutions, which, as the interviewed practitioner in Wadajir explained, allows them to accompany cases:

   “We follow up until the end of the case.”

When asked what renders an institution more able to handle SGBV cases, respondents considered the individual skill of justice providers and the duration of the process as most important. This may stem from the social shaming of survivors and the potential for retaliatory violence, both of which increase in probability and reach the longer and more visible a process becomes.

<table>
<thead>
<tr>
<th>Reasons for perception as able to handle SGBV cases</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadajir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most affordable</td>
<td>6%</td>
<td>6%</td>
<td>37%</td>
<td>4%</td>
<td>9%</td>
<td>57%</td>
<td>18%</td>
<td>22%</td>
</tr>
<tr>
<td>Fairest than others</td>
<td>6%</td>
<td>26%</td>
<td>54%</td>
<td>2%</td>
<td>10%</td>
<td>16%</td>
<td>53%</td>
<td>14%</td>
</tr>
<tr>
<td>Only one available</td>
<td>68%</td>
<td>8%</td>
<td>70%</td>
<td>31%</td>
<td>6%</td>
<td>5%</td>
<td>22%</td>
<td>16%</td>
</tr>
<tr>
<td>Least corrupt</td>
<td>8%</td>
<td>12%</td>
<td>33%</td>
<td>4%</td>
<td>8%</td>
<td>16%</td>
<td>47%</td>
<td>59%</td>
</tr>
<tr>
<td>Fastest process</td>
<td>12%</td>
<td>28%</td>
<td>30%</td>
<td>39%</td>
<td>43%</td>
<td>11%</td>
<td>59%</td>
<td>8%</td>
</tr>
<tr>
<td>Appropriate mandate</td>
<td>42%</td>
<td>30%</td>
<td>24%</td>
<td>18%</td>
<td>27%</td>
<td>11%</td>
<td>13%</td>
<td>0%</td>
</tr>
<tr>
<td>Most skilled individuals</td>
<td>4%</td>
<td>36%</td>
<td>15%</td>
<td>2%</td>
<td>15%</td>
<td>3%</td>
<td>14%</td>
<td>2%</td>
</tr>
</tbody>
</table>

### COOPERATION

“There are mutual agreements between the justice institutions so that they can transfer cases between each other.”

- Focus group participant, male, Kismayo

Clear mandates and referral arrangements can help justice users to navigate a legal pluralist landscape successfully. In Somalia, mandates and referrals are neither clear to justice seekers nor standardized. Referrals mostly occur *ad hoc* and depend on direct or indirect personal relationships between justice providers. Coordination is thus largely informal, and, according to respondents, can be influenced by personal connections or financial incentives, with which aggrieved or accused parties can have cases referred to their preferred institution. This entrenches forum shopping and can undermine the integrity and legitimacy of the wider institutional topography.

“Institutions cooperate if they are networked by you, the complainant, and if you pay them.”

- Focus group participant, female, Weydow

That being said, cooperation does deepen with greater interaction among justice providers, law enforcement, and community members. Focus group participants in Mogadishu gave as an example
the clustering of community leadership and elder councils into district sub-units (ten households, grouped in 50 households, to sub-districts, to districts) as establishing a framework in which such interaction becomes regular and thus more efficient. One elder in Hamar Jabjab cautioned that although ulama, law enforcement, lawyers, and LAOs coordinate well, and that statutory courts accept referrals, but accused local courts of not reciprocating the referral to guard revenue – in contradiction to the above-noted observation that many court cases return to elders after periods of inertia.

Several respondents speculated that courts may want to hold onto cases and even prolong them as much as they can for the official and unofficial payments they stand to receive. Interviewees in Baidoa noted that this proclivity to accept additional payments incentivizes well-off residents who have received unfavorable sentences by elders to approach courts, and that some courts have begun to call upon elders as witnesses to ensure that both are not played against one another. Elders and ulama interact regularly as both draw on shari’ah and act as respected scholars in their communities.

The variance of institutional preferences reflects local circumstances, with two potential inferences:

1) Remote or minority communities benefit most from institutional separation and rule of law,
2) Elders and ulama are most appealing where social cohesion and absence of conflict means that their decisions are more likely to be voluntarily accepted by all parties but appear less effective where relations between administration and community are strained or conflictual.

The figures above either understate support for Al Shabaab courts as respondents are hesitant to admit support for the group or suggest that justice seekers turn to Al Shabaab courts without necessarily considering them the most suitable institution. Whilst Al Shabaab courts were never mentioned by more than 10% of respondents, focus groups throughout Mogadishu and in Baidoa praised them for the “transparency, equality, and shortness of the period for the case process.”

“Al-Shabaab courts are different from the other institutions. They have no levels or degrees. Their process is fast. It takes a short time to reach a verdict, and the enforcement of the decision is rapid and reliable compared to [other institutions].”

- Focus group participant, male, Baidoa
Focus groups in all districts highlighted the efficiency with which Al Shabaab opens, closes, and enforces cases, both those who appreciated the option of calling upon Al Shabaab for arbitration and those who expressed opposition towards the group, especially in Kismayo, Dolow, and Xudur. How efficient Al Shabaab can operate, however, depends on context. The table below shows the average rating respondents gave on the duration of processes, where 1 denoted the fastest and 5 the slowest. Al Shabaab can operate, however, depends on context. The table below shows the average rating expressed opposition towards the group, especially in Kismayo, Dolo, and local forces render approaching Shabaab courts tend to outflank statutory courts in perceptions of speed, if Kismayo and Dolow, where Ethiopian, Kenyan, and local forces render approaching Al Shabaab courts difficult, are removed. Their exclusion yields an average of 3.2 for Al Shabaab and leaves statutory courts at 3.6.

### Length of Process

<table>
<thead>
<tr>
<th>Length of Process</th>
<th>Hodan</th>
<th>Hamar Jab Jab</th>
<th>Wadajir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statutory courts</strong></td>
<td>3.1</td>
<td>4</td>
<td>2.7</td>
<td>5</td>
<td>2.4</td>
<td>2</td>
<td>3.2</td>
<td>3.4</td>
<td>3.2</td>
</tr>
<tr>
<td><strong>AS courts</strong></td>
<td>2.2</td>
<td>3.3</td>
<td>2.9</td>
<td>4.9</td>
<td>4.8</td>
<td>4.6</td>
<td>2.8</td>
<td>3.2</td>
<td>3.6</td>
</tr>
<tr>
<td><strong>Religious courts</strong></td>
<td>4.5</td>
<td>1.9</td>
<td>2.3</td>
<td>4.8</td>
<td>1.2</td>
<td>1</td>
<td>2.2</td>
<td>2.5</td>
<td>2.4</td>
</tr>
<tr>
<td><strong>Xeer</strong></td>
<td>4.6</td>
<td>2.5</td>
<td>2.8</td>
<td>4.8</td>
<td>2.1</td>
<td>2.8</td>
<td>2.2</td>
<td>2.7</td>
<td>2.9</td>
</tr>
</tbody>
</table>

As long as statutory courts are seen as sluggish and enmeshed in politics as well as open to influence, Al Shabaab courts are likely to retain their appeal. Especially in land cases do statutory courts meet mistrust. Recently, a high-ranking SNA commander publicly expressed dismay with statutory courts over land disputes and considered turning to Al Shabaab courts in future instances. This highlights justice actors’ key role in counterinsurgency efforts.

“The only institution that no one can work with are Al Shabaab courts, which are not too far away from us. There are still people that seek justice there, but it is not common anymore.”

- Law enforcement official, male, Baidoa

The following boxes detail the institutional landscape for each district, as described by respondents:

**HODAN**

In Hodan, community members claim to uphold the principle of mutual support (deriseyn), which involves fundraising to support poorer families and occasionally assistance from the Ministry of Justice (MoJ). Strong social cohesion entails community groups with a high number of women’s representatives, whose important informal role increases social trust in institutions they work with. These comprise a district court, the Regional Appeals Court, the Federal Supreme Court, and a police station with a criminal investigations department. Focus groups described the district court as of “questionable” quality. Interviewed police officers reported that guidelines for their conduct exist, especially for nightly patrols, including a Criminal Procedural Code (CPC) and human rights standards. These appear to be locally drafted and may or may not correspond to international standards.

The District Peace Committee (DPC) was established during the height of armed conflict in Mogadishu. Its Uganda-trained mediators enjoy general support from their community and are described as inclusive, comprising women, youth, and IDP representatives. A law enforcement official deemed the DPC pivotal for coordination and cooperation among Hodan justice institutions as it convenes elders,
ulama, and civil society representatives who liaise between community and administration. Elders and ulama in ‘Islamic centers’ act as first ports of call who then refer as appropriate, even though courts rarely reach out to them in return. Respondents grouped ulama with elders but used the label ‘Islamic courts’ for Al Shabaab courts “outside the city,” which are frequently sought out by residents.

WADAJIR

Wadajir is home to numerous ministries and educational institutes. In addition to district court and police station with a criminal investigations department, Wadajir hosts a public prosecutor’s office that oversees police operations, the Somali Bar Association, and the Ministry of Justice. Respondents did not specify – and likely did not know – if what they described as a conflict resolution committee is an MoJ-run ADR center or a District Peace Committee, or another ADR initiative, but it appears similar in composition and embedded within the district administration and social volunteering programs. Respondents stated that the community harbors extensive mistrust and grievances towards local security forces, accusing them specifically of killing Bajaj drivers at checkpoints. Young Bajaj drivers often make important contributions to families’ incomes, which implies that their killing is not just homicide but has tangible ramifications on extended family groups’ livelihoods.

Elders in Wadajir apply a single, consolidated xeer, and work closely with ulama. These are increasingly integrated into customary institutions, follow the Shafi’i madhab, and refer to xeer in their deliberations. Respondents noted that some Saudi-educated ulama diverge from this trend and implement Hanbali-oriented shari’ah arbitration instead. Elders’ and ulama’s capacity to handle land disputes is limited, which may be compounded by the higher value of land in Wadajir – even though discussants still considered infrastructure to be inadequate and levels of education rather basic. Al Shabaab courts outside Mogadishu were mentioned as a frequently used alternative.

HAMAR JABJAB

In addition to district court and police station, including postings in each sub-district, Hamar Jabjab contains the Benadir Regional Court, a corrections office for enforcement and prison oversight, an office for the public prosecutor upholding the Criminal Procedural Code, and what respondents referred to as the ‘MoJ court’, likely denoting an ADR center. Elders leave most criminal cases to statutory institutions, cooperate closely with civil society and ulama, and implement a district-wide xeer, which community members call the “Xeer Jabjab.” The streamlining of the xeer has allowed for the removal of some customary norms that participants in the process deemed no longer appropriate, and for the addition of new ones. One of these additions is takuulo (‘help’), which asks the community to pool money to cover poor members’ health expenses.

Respondents differed widely in their description of how customary norms are institutionalized in their district, spanning labels such as: “well known body for conflict resolution,” “committee for conflict resolution,” and “conflict resolution committee.” A district official explained that these descriptions addressed a generic conflict resolution committee, composed of MoJ officials and elders, which has replaced the DPC and works closely with local civil society. This may well be an ADR center, which are frequently simply re-labelled DPCs put under the MoJ’s aegis.65 A law enforcement official reported working with a “conflict resolution center” located within the district administration in a building separate from the “district peace committee,” which, he added, both cooperate. This level of confusion underscores the importance of coordination not merely among justice actors, but also among their international supporters, because it suggests that multiple institutions operate potentially comprising the same individuals, and both public and administration struggle to distinguish the different but overlapping initiatives. Sharī’ah-based adjudication in Hamar Jabjab follows the Minhaj book of Imam Nabawi, which a sheikh argued summarizes the Shafi’i madhab. Al Shabaab courts operate outside the city and remain a frequently noted option.

Weydow has been subsumed into the expanding districts of Mogadishu but remains deprived of and remote from most justice infrastructure and service delivery. The closest police station is located in the fourth section of Garasbaley district, but residents described police officers as inactive and remote. They stressed that this absence of security or law enforcement provides space for high rates of SGBV, including gang rape. The nearest district court (respondents estimated the distance at 5-7 kilometers), and the regional court (10 kilometers removed) are both in Hodan. Residents largely cover these distances by foot, unable to afford other means of transport.

The Weydow communities appear to rely mostly on their elders. Elders are involved in most of the communities’ activities, and work closely with community leaders, who focus group participants asserted are mostly female. An elder, however, lamented that the xeer frameworks at their disposal have not been reviewed for a long time and are thus inadequate to address the communities’ current needs. Ulama appeared more flexible, allowing for Hanafi or Maliki influences, but still rejected Hanbali jurisprudence as only practiced by ‘Saudi-influenced’ ulama. The community does call upon Al Shabaab courts, and focus group participants expressed frustration with misconduct among government officials and security forces.

KISMAYO

The capital of Jubaland State of Somalia hosts district courts, a regional court, an appellate court, and its own supreme court. A district official claimed that courts follow the legal codes of 1962 and shari’ah. This would be a departure from prior practice. A 2017 assessment by Coffey that found statutory code was applied in 0% of cases. Respondents noted that the UNDP-funded and MoJ-supported ADR center has improved collaboration between administrative institutions and elders. Communities’ trust in both is strained after many years of clannist political contestation and cooptation. Respondents disagreed on whether or not courts or elders predominantly handle criminal or civil cases, are the primary arbiters for land disputes, or even the extent to which SGBV cases are brought to either institution.

A local district official asserted that courts also handle civil cases whilst elders mostly oversee family and land disputes. Community members stated the inverse. An elder claimed that he and his peers have received special training for civil cases, which he argued are the province of elders. Ulama were said to arbitrate domestic cases and occasional land disputes, providing a shari’ah based adjudication respondents called hakom. Other informants argued that all three share the civil caseload and courts lead on the implementation of settlements. This suggests that no case referral framework is in place.

DOLOW

In Dolow, elders and imams operate alongside a district court. The regional court is located in Garbaharey, which Dolow residents can only access via flight. Whilst the district court handles civil cases, elders reportedly deescalate armed conflict, preside over land disputes, and address most SGBV cases. Focus group participants suggested that elders can maintain this broad scope of influence through clan-based power sharing at higher levels of governance, which conserves their political relevance even at district level. Local imams are called upon to advise on matters concerning inheritance and payment of blood money, and mostly act as mediators. Displaced communities in Dolow rely almost entirely on their elders and camp leaders, unable to afford opening cases with courts. Respondents did not mention any ADR center operating in Dolow.

BAIDOA

Baidoa contains district courts, the Bay regional court, the SWS appellate court, and the SWS supreme court. Statutory courts oversee police, and district courts comprise sections for both criminal and civil

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cases. An official land register does not exist. Land titles are produced and managed by private court-certified notaries. The Malaqs, the main elders among the Mirifle in Baidoa, have always been central not merely to justice and conflict prevention as their counterparts among other clans, but also to the political and social stability of their communities. Focus groups confirmed that this remains the case and warned that customary arbitration that is perceived as unfair would have socio-political repercussions, especially as elders lead the process of selecting political representatives, as seen in the recent reduction and reallocation of seats in the SWS Assembly. 67

Lower level elders (samadoons) work with ulama in a ‘conflict resolution committee’, but respondents did not specify whether this committee denotes DDG’s Malaq+ or an ADR center or is a separate entity. The reportedly well-trusted committee resolves civil cases, such as family matters and business arbitration, but transfers land disputes to courts after the SWS administration had disbanded the land dispute committee of elders established by its predecessor. However, following the President’s freeze on the handling of land disputes in statutory courts, elders again oversee their resolution. Ulama and elders in Baidoa largely follow the teachings of Mohamed Abduwahab, a strict version of the Shafi’i madhab that practitioners noted is difficult to reconcile with the Hanbali tradition employed by Al Shabaab, which is more complex to apply. Respondents stressed that not only do elders and ulama cooperate closely, but that shari’ah per se is central to both SWS justice and politics.

Xudur hosts a district court, the Bakool regional court, and an appellate court. Their remit is limited in scope as most cases are handled by elders and ulama (by far the most trusted) and in substance as no trained legal practitioners are available. Most court proceedings are overseen by madrassa teachers and follow shari’ah only. Justice seekers usually approach courts via law enforcement. Elders are mostly trusted, only some are of contentious reputation. They handle most sensitive cases, including SGBV, which many respondents criticized. Focus groups were aware of a UNDP-supported and Modelled ADR center, which a police officer confusingly claimed applies mostly statutory law.

67 The South West State Constitution, not yet finalized, somewhat contradictorily provides for both selection by elders (Article 37(3)) and participatory elections including a multi-party system (Article 63) and an Electoral Commission (Article 65).
LEGAL REVIEW SUMMARY

A legal expert consulting with Transparency Solutions conducted a review of legislation and justice practices as regards land disputes and cases of sexual and gender-based violence (SGBV) in the study districts in parallel to the data collection for the main study. The full review is available as a separate document, but its main points that did not figure as findings of the overall study are summarized here.

The main finding of this review lies with what it did not find. Justice actors in the different districts were unable to provide the expert with a coherent set of legislation and guidelines which they follow in land or SGBV-related cases. Decades of high intensity conflict have also destroyed public infrastructure, affecting both statutory justice and standardized education. Consequently, neither users nor practitioners show more than a rudimentary understanding of the three traditions and their interplay, far from sufficient to underpin a regular, coordinated, and effective practice. In short, most justice actors follow a similar procedure based on witnesses and reputation, but neither apply nor are aware of mandates, statutes, or other legislation.

Land

Most articles and laws that regulate land ownership are either part of the federal constitution and sub-state constitutions and therefore of little granularity or applicability, or they date back to the 1960s and 1970s and had little effect even under the government that passed them. The first attempt was the Land Law Reform of 1960, which was never adopted. Instead, in 1970, Law 67 nationalized all land, which was formalized by the Urban Land Disruption Law of 1973. This law fixed a price per square meter for purchase of government-owned land by Somali citizens and another set of prices for purchase by foreigners. An amendment to the law further divided land thus purchased into temporary ownership (munishibaale) and permanent ownership (duminyaale), stipulating that any construction work must be concluded within one year on munishibaale land and within two years on duminyaale land, to be overseen by the Mogadishu municipality.

The law also granted the right of land purchase to “all Somalis over the age of 18” who did not already own another plot. The current Article 26 of Somalia’s Provisional Federal Constitution of 2012 removes the ownership-related restriction, limits nationalization of land to evident public interest, and demands a compensation to be paid to owners of nationalized land. Sub-national constitutions reiterate these rights with different levels of nuance. Article 17 of the South West State constitution declares that “every citizen has the right to own property,” whereas Article 23 in the Constitution of Jubaland State of Somalia specifies that “every citizen has the right to own property, to reside, to enjoy, to sell and to transfer such property at will.”

Most other existing legislation concerns official lease agreements, such as restricting evictions to lease violations. However, costs for official lease filings are prohibitive, which allows landlords to enter informal agreements with tenants that circumvent these provisions. The Provisional Constitution’s Article 43 demands a more comprehensive national land policy that would be subject to constant review, but no such policy exists as of yet. Its absence reflects the lack of other infrastructure necessary for statutory treatment of land disputes, such as cadaster offices, land registries, or formalized procedures for land cases. This is problematic as more than 80% of cases brought to the Benadir Regional Court concern land disputes. Many of these are passed onto traditional elders who oversee most land-related arbitration and adjudication. Aside from local xeer, they mostly rely on traditional practices guided by Islamic principles that prioritize trustworthy witnesses over documentation.

Sexual and Gender-based Violence

The treatment of sexual and gender-based violence presents a similar picture: unclear legislation, lack of knowledge among users and practitioners, and protracted conflict hinder statutory courts from approaching cases in a consistent and structured manner, and cases are mostly passed onto customary institutions. The Somali penal code of 1962 provides for a criminalization of rape and forced
prostitution, but also for ‘carnal intercourse with a person of the same sex.’ The last point violates international norms, whilst provisions for rape and forced prostitution are rarely applied in practice.

The Federal Republic of Somalia is signatory to the African (Banjul) Charter on Human Rights and Peoples’ Rights (1985), the Protocol to the African Charter of Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol, 2006), and has ratified the following list of international treaties:

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- The Optional Protocol to the International Covenant on Civil and Political Rights
- Convention of the Rights of the Child, 2015
- International Convention on the Elimination of all forms of Racial Discrimination, 1975

The Republic is not party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1993 United Nations Declaration on the Elimination of Violence against Women, or the UNSC Resolution 1325 (2000) on Women, Peace, and Security. In 2018, following similar bills adopted or under debate in Puntland State of Somalia and the Republic of Somaliland, the Somali Council of Ministers approved a Sexual Offences Bill that demands the formation of an Inter-Ministerial Committee and National Framework for the prevention of sexual violence. Neither of these two provisions have thus far materialized.

In addition to pervasive SGBV that is often condoned by political and communal leaders in a strongly patriarchal environment, female genital mutilation (FGM) also remains widespread. This is in violation of Article 29 of the Provisional Constitution, which stipulates rights of children, albeit in vague terms. Article 16 of the Jubaland Constitution specifies women’s rights and bans FGM. Neither constitutional provision has found translation into concrete legislation or judicial action to halt the practice. Even the formulation of concrete legislation may have little effect if users and practitioners continue to be ignorant of most laws and other branches of government do little to implement them – and indeed often comprise the very perpetrators such legislation would seek to deter or punish.

The lack of effective protection against or consistent prosecution of SGBV is reflective of wider socio-political discrimination against women and minority groups, which itself is in violation of Article 43 of the Provisional Constitution. This article entitles every citizen to bring a case before a competent court and defend themselves or receive appropriate legal defense. In Dolow, for instance, women are still prevented from approaching a court unless elders have failed to resolve the case three times. Should a woman open a case with a court directly, elders intervene.

Federal and sub-state constitutions contain provisions against the discrimination of any citizen on the basis of identity and status. The Benadir Regional Administration Law 3.3 tasks the administration with the protection of marginalized or vulnerable communities. The National Policy on Refugees, Returnees, and Internally Displaced Persons (2019) seeks to prevent arbitrary evictions. As to xeer, the customary norm Biri Mageydo (those saved from the spear) protects women and vulnerable groups against any form of violence. Few of these norms are applied in practice or find uptake in further legislation.

This extends to shari’ah. In several verses, the Qur’an declares equality between sexes (4:1), defines adultery (zina) and demands severe punishment for false accusation of adultery, as well as the death penalty for rapists (24:2). The Sunnah speaks of the Prophet’s (PBUH) wives as educated, educators, and as otherwise in important positions. Women are exempt from some obligations for biological reasons, but scripture draws no socio-political inference from this. In the Bukhari, the Prophet (PBUH) furthermore called for respect for women and concern for their welfare. Although the scriptural Shafi’i school of shari’ah should observe these provisions, patriarchal customary norms often obtain.
LEGAL KNOWLEDGE

KEY FINDINGS

- Most justice users have some familiarity with customary procedures and acknowledge authority of elders and ulama, but do not know the contents of customary, religious, or statutory laws.
- The main element of legal knowledge for users is knowing which community leader (elder, ulama, family member, district official, police) to turn to with grievances.
- No standardized curriculum is taught in law schools. Most users - and many practitioners - have only received schooling at madrassas or primary schools.
- Institutions are chosen not for mandate, but based on social pressure, kinship ties to judges and political actors, likelihood of success or retaliation, affordability, proximity, and likely duration of process.
- Women are slightly less confident in their understanding of legal frameworks than men. Due to disadvantages in access to education, they are also less likely to have been taught Arabic to consult religious texts directly.
- Especially rural populations have little to no knowledge of statutory law and institutions and rely on elders and Al Shabaab for justice provision.
- Widespread poverty implies that few households can spare time to learn more about legal frameworks and access to justice. Most hear about any civic issues via radio or friends and family.
- As customary law is documented and education improves, some elders or ulama may oppose wider dissemination to safeguard own authority, but others have explicitly endorsed these processes.
- Ad hoc collaboration requires different justice actors to at least have a working understanding of other frameworks.
- Insufficient legal knowledge among users and practitioners favors conflict profiteers and renders the relative simplicity and efficacy of Al Shabaab courts more appealing.
“The statutory court follows written Somali laws and records the cases. The traditional leaders follow unwritten traditions, which vary from clan to clan. The shari’ah rules are quoted from the Islamic tradition and books. The average person does not know any of these legal norms.”

- Focus group participant, female, Dolow

Somalia’s justice institutions act and interact differently in each location. Interpretations of shari’ah are largely Shafi’i, but there are exceptions. Customary agreements are essentially local and bilateral but have been consolidated and documented in some places. Each federal member state in Somalia has its own constitution, but to what extent these and associated legislation are applied and followed stands to question. Prior assessments have found that some statutory courts do not apply any statutory law at all. Accordingly, legal knowledge differs among users and practitioners.

USERS

The disparate juridical landscape poses a challenge to justice seekers. A multitude of factors determine the appropriateness of an institution: kinship ties, likelihood of retaliation, affordability, physical distance, and likely duration of process. Good knowledge of legal frameworks is not one of them. A Baidoa youth representative explains that most Somali citizens have grown up after the last central government had collapsed, and thus have only ever seen elders as arbiters and ulama or sheikhs as institutions of governmental authority. Statutory institutions are a recent addition that sits uneasily in a context of protracted communal conflict and extraversion. The youth representative admitted to understanding little about these norms and institutions himself, despite occupying a position to hold government and justice actors accountable on his community’s behalf.

Customary frameworks are more familiar to many community members. They may not know them in substance, but elders’ and ulama’s traditional importance to culture and community inspires trust. Their centrality applies to urban and rural communities alike and thus provides an important entry point for displaced populations from rural areas struggling to integrate in an urban or peri-urban context. The usage of shari’ah by both and the respect with which shari’ah treats customary norms relieves justice seekers of having to disentangle the two.

“The traditional norms are often known by the people because they are passed down from generation to generation. In addition, people have a common understanding of the shari’ah as most receive basic Islamic education. But, the general public has far less knowledge about the statutory rules and their constitutional rights, because most of them are illiterate. Even those who can read and write cannot get access to the legal norms and frameworks.”

- Focus group participant, female, Baidoa

“People know to apply these norm-based judgements before using legal frameworks to settle their differences.”

- Focus group participant, female, Wadajir
### Figure 6: Understanding of Own Rights Under Statutory Law (Self-Assessed)

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<tr>
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<th>Good (have an understanding of my rights, but am not confident to claim them publicly)</th>
<th>Poor (have a notion what my rights are, but don't know for sure)</th>
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### Figure 7: Understanding of Own Rights Under Shari'ah (Self-Assessed)

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### Figure 8: Understanding of Own Rights Under Customary Law (Self-Assessed)

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### Figure 9: Understanding of Own Rights in Al Shabaab Courts (Self-Assessed)

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Statutory norms contrast with this dynamic and symbiotic relationship of customary and religious norms. In the somewhat remote Xudur and Weydow, many respondents showed little clarity on different norms, confused them, or admitted ignorance outright. The above quoted Baidoa youth representative explained that in addition to a legacy of state failure and armed violence, education across Somalia does not follow a standardized curriculum, and in most places, only madrassas or primary schools are available, if at all. Schools are often private, charging fees. This instates a class barrier to greater civic education and thus a cost barrier to legal knowledge, especially in Hamar Jabjab and Weydow, comprising some of Mogadishu’s most disenfranchised communities.

Quality of education in most schools remains poor, fee-paying or not, and discriminates based on sex. Despite multi-year programs to support girls’ access to schools, they are still more likely to leave school early to be married, miss school due to household chores or menstruation without access to sanitary equipment, are more severely punished in schools, and are less likely to attend school in the first place. When respondents self were asked to assess their own understanding of their rights under different frameworks, as well as their confidence in knowing whether or not appeals are possible, women were more likely to consider their knowledge poor and to admit to not knowing about technical matters.

When asked about Al Shabaab courts, many respondents refused to answer – not necessarily unclear about their proceedings, but aware of their political sensitivity. In Baidoa, authorities prohibit residents from seeking out Al Shabaab courts and have initiated proceedings against some who have attempted to do so. In Kismayo, confidence in understanding institutions was limited to shari’ah-based practice, reflecting the lack of participatory politics, and that Al Shabaab has little reach within the port city.
Poor knowledge and limited access to education disproportionately affects members of minority clans, women, and displaced communities. Many IDPs arrive from rural areas, where statutory institutions do not exist and have not existed for several decades. Members of minority clans are blocked from intermarriage with members of majority clans, equal participation in the labor market, and access to political office. Lack of participation in these spheres limits these groups’ capacity to navigate a legal and juridical landscape that rests on informal interpersonal relations more than on rules and guidelines.

“Minorities, women, and IDPs know far less than others. This is because very few girls are taken to school. Minorities have not had the same opportunities as others in all fields.”
- Youth representative, male, Baidoa

Households without stable livelihoods and greater informal obligations to family and community often cannot spare the time to obtain legal advice, verify the credibility of advice and representation to avoid being taken advantage of, or educate themselves about what possible avenues for advice, representation, and recourse exists.

“Most of them do not have enough time to search and obtain copies of laws, because they are struggling to provide a livelihood for their families.”
- Focus group participant, male, Wadajir

Sources of information are not readily available. State institutions are still in their own development and cannot or do not provide resources towards civic education. Schools do not operate a standardized curriculum. Especially for remote communities, radio remains the main access to news and information in a timely fashion and for information to spread at scale, rather than via word of mouth. Many international and governmental actors including the United Nations and the Ministry of Constitutional Affairs (MoCA) therefore fund information radio programs. Several key informants cautioned that most radio programs are of poor quality and generally do not educate on legal or justice matters at all.

“The media is not run in the interest of teaching people about governance and justice. Anyone can train to be a journalist in a month and have all the equipment: cameras, websites, social media and so on. But their priority is getting an income rather than contributing to the development of the country.”
- Focus group participant, female, Hamar Jabjab

“We rarely see updates about proceedings in courts on Juboland TV. The majority of the media are not concerned about legal education for the public.”
- Focus group participant, female, Kismayo

TV and social media require expensive equipment and electricity, which renders prices prohibitive for most communities and confines their reach to largely urban and middle- or upper-class households, and in the case of social media to mostly younger users. Nevertheless, especially Youtube is becoming an increasingly popular platform for young people to learn about Islam and shari’ah, which opens this discourse to global influence beyond local ulama’s control.

Settlements for displaced populations are often outside the reach of broadcasters and thus struggle additionally to participate in the socio-political and economic life of their host communities. Although Weydow cannot be compared to remote settlements, focus groups still noted lack of infrastructure and access vis-à-vis other parts of Mogadishu. Nonetheless, respondents from all locations expressed great appetite for a better civic education and more active participation, and hope that governments invest more in legal education and wider accessible information, and for media to disseminate such points of interest more proactively.
In Baidoa, the SWS MoJ reportedly maintains an active social media presence to precisely such end, albeit limited to those who can afford access. The table on the left lists the TV and radio stations respondents mentioned as frequently consumed in their location and potentially suitable for more informational content. For most people without prior education or access to such information platforms, engagement with the justice sector entails ‘learning by doing’ – as one focus group participant in Hamar Jabjab put it: “The first time that the person can study is having a case.” Most justice seekers reach out to elders for support and advice. Only in Wadjir and Hamar Jabjab, were respondents more likely to look to family members and friends before approaching elders.

“People do not know the different norms and rules, but those who lead the community know much more about them.”
- Focus group participant, female, Hamar Jabjab

Without basic legal or civic education, knowledge of the law or justice opportunities becomes simply a ‘knowledge who to turn to.’ This can work effectively in an environment that encourages civic duty, constitutionalism, and accountability, all of which are structurally underincentivized or poorly developed in Somalia. By contrast, the reliance on liaisons and gatekeepers provides incentives for rent seeking behavior in securing of positions of community leadership and renders effective community committees in the justice sphere crucial for social accountability.

“Only those designated officials know the rules very well and have copies of them. It is difficult for normal citizens to get them. Yes, academics, practitioners, and some civil servants may have copies, but it is rare.”
- Focus group participant, male, Hodan

Key informants, often community leaders, demonstrated much more granular knowledge of legal and justice institutions than focus group participants. A lawyer in Baidoa emphasized the importance of appreciating different institutions’ relative advantages: customary norms as conducive to peace maintenance, shari’ah and statutory law for rights-based justice. Yet, xeer and shari’ah are particular to localities or communities and designed to be exclusively known by elders and ulama. As communities demand greater transparency and participation, a Kismayo lawyer warned that rent seeking or politically minded practitioners who currently leverage this traditional exclusivity may seek to prevent wider public education to safeguard their authority and avoid being held accountable.

“Traditional xeer is not written down or recorded. Only the elders know these norms. I have asked them to tell me these rules, but this is not easy, because each clan has its own norms.”
- Lawyer, male, Kismayo

“There are gaps when it comes to Islamic shari’ah and the statutory laws, which are limited to circles of the sheikhs and the judges. Sheikhs, for example, preach about piety and devotion but do not teach the Islamic laws.”
- Focus group participant, male, Dolow
In several places, the documentation and dissemination of district-wide xeer is beginning to offer opportunities for greater participation and accountability. Such initiatives may need to consider alternative means of presenting contents to address persistently high illiteracy rates, particularly among rural communities and marginalized groups in urban settings. Both lack, for the most part, a basic understanding of rights and procedures, let alone concrete steps of processes.

“The only available source for training is the madrassa where the ulama teach basic Islamic principles.”

- Traditional Elder, male, Xudur

“Many people have little knowledge about their rights granted in the constitution and the shari’ah in comparison to the xeer.”

- Focus group participant, male, Baidoa

Accessing justice services based on knowledge of xeer or shari’ah opens two further challenges. Most qur’anic teaching is done in Arabic, and even though Article 5 of the Provisional Federal Constitution of Somalia stipulates Arabic as the second national language, its command is far from widespread. A Baidoa district official thus demands that all legal texts should be available in locally understood languages, stressing the importance of dialects.68

“Most justice-focused websites are written in English and the Islamic content websites are written in Arabic which makes it difficult for the normal citizen who doesn’t speak in any of these languages to understand their content.”

- Focus group participant, male, Dolow

Several elders cautioned that xeer may be outdated, and especially the more high-ranking among the interviewed elders questioned the continued viability of oral transmission among elders. The highest-ranking elder among all key informants, a Mogadishu-based Suldaan, explicitly called for a documentation of xeer to overcome disagreement among elders over the applicable norms and elements. His colleagues in a different district of Mogadishu and in Kismayo suggested an all-Somali gathering of elders to draft universal xeer norms that are compatible with international justice norms and updated to address contemporary needs. The demand for greater accessibility and actuality thus appears to emanate not merely from justice seekers, but also from senior practitioners, and reflects previous programmatic efforts, such as the review and documentation of district-wide xeer.69

“The only problem we have with the xeer norms is that they are old and not documented or written. For that reason, people may opt for different agreements and understandings. Writing them down is important as that will remove any existing disagreements between elders.”

- Traditional elder, male, Hamar Jabjab

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68 Most of the population in South West State speaks the Af-Ma’ay dialect, not mutually intelligible with the Af-Mohantri dialect that is predominantly spoken in other parts of Somalia. Article 5 of the Provisional Constitution stipulates that both Af-Mohantri and Af-Ma’ay constitute Somalia’s primary national language.

“In today’s world, there are new challenges coming to light every day, and the customary laws I use are staying the same, which makes it challenging to apply them.”

- Traditional elder, male, Wadajir

An ulama warned that the current interpretation of shari‘ah needs updating, which opens a wider debate on acceptable and applicable tools to interpret and reform Islamic jurisprudence that are discussed in-depth in a separate EAJ publication. The extent to which review processes of constitutions, xeer, and shari‘ah can be participatory is likely to influence the extent to which justice processes are accessible to the public.

PRACTITIONERS

“Although I do not believe it, they all claim that they have good legal knowledge. But, if their professionalism was acceptable, they would not demand bribes from vulnerable people.”

- Focus group participant, female, Kismayo

A successful review of each normative and legislative framework that guides justice processes would require well-educated and committed practitioners. Most key informants with legal education or those involved in justice provision, however, deemed practitioners’ level of education drastically insufficient. This varied by location, with interviewees in Mogadishu more confident in local practitioners, whilst their counterparts in Baidoa noted that often judges are unable to explain verdicts, and that most practitioners have not received any education in legal matters.

“People who work in the courts are often selected on a clan basis, so they do not know what they are doing.”

- NGO staff, male, Baidoa

This phenomenon is, in many cases, a symptom of Somalia’s clan-based power sharing. The consociational design was used to quell armed violence by balancing institutions among the major factions holding armed veto power during the peace process. Many respondents criticized the set up as prioritizing kinship ties over qualification. This suggests that some constituencies are ready to engage in political reform. The enthusiasm with which the newly elected SWS President’s appointment of a younger and more well-educated cabinet and Chief Justice was greeted appears to indicate as much for Baidoa.

The current state poses concrete problems for local ownership of current justice sector reform or construction efforts. Respondents in Kismayo questioned the viability of vetting for new appointments when those overseeing the process are themselves inadequately trained and often not qualified for their own positions. Given that knowledge of different frameworks varies from location to location and practitioner to practitioner at the current time, such mechanisms may be of limited efficacy.

Previous initiatives to document xeer have found that participatory workshops are integral to institution building and, more importantly, function as training on norms and procedures for all

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Similar to elders quoted above, lawyers interviewed for this study also emphasized that most legal codes have not been reviewed for decades and are not reflective of current circumstances. They cited as examples one law stipulating a fine of 2,000 Somali Shilling, which “had value at the time” of drafting, but has long been devalued by climbing inflation, or laws setting the age of maturity at 14, thereby contradicting the constitutional stipulation of maturity at 18 years of age.

This could also provide a platform for practitioners of different frameworks and institutions to interact and consult one another. Elders in Mogadishu, especially in Hamar Jabjab and Hodan, lamented a lack of knowledge on xeer and shari’ah not merely among statutory practitioners, but also among their peers. They explained that some of these hold their position due to age, or have held these positions a long time, may have a different and outdated understanding of applicable xeer, and are uninformed about the current specificities and requirements of customary adjudication.

Focus group participants and key informants cautioned that knowledge matters little where practitioners have ulterior motives. Especially lawyers castigated court officials and other practitioners for widespread corruption. Only in Wadajir did respondents attribute greater integrity to practitioners. Elsewhere, informants warned that self-enrichment and nepotism nullify any other positive trends.

“I would say it is a case of 70 to 30: 30% of [justice practitioners] have good knowledge of the norms, while the other 70% have little understanding and knowledge of the legal norms they use. But, most importantly, knowledge is only important when coupled with honesty.”

- Lawyer, male, Hamar Jabjab

CONSEQUENCES

A politicized justice system and security forces that are hardly accountable to communities reinforce and benefit from barriers to legal knowledge among users and practitioners. Although this entails greater demand for a streamlined, accountable, and constitutional rule of law, even if knowledge of current constitutions is poor, it also renders Al Shabaab courts more credible – not because these are more transparent or easy to understand. When asked to rank institutions from 1 (clear) to 5 (unclear) on their understanding of how they work, respondents ranked Al Shabaab courts as the opaquest institution. But the simplicity and efficiency of Al Shabaab continues to outflank other providers.

“People learn things when they find them, but we have not seen or heard of the norms or rules you’re asking of. We go to the institutions, listen to the proceeding and when it is finished, that is all and you go.”

- NGO staff, male, Xudur

<table>
<thead>
<tr>
<th>Confidence in Understanding</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadjir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
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<td>2.8</td>
<td>2.9</td>
</tr>
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</table>


72 Even though justice practitioners do not formally operate across frameworks, in most cases they do interact or collaborate ad hoc and apply a mélange of norms, precepts, and procedures.
ADVICE & REPRESENTATION

KEY FINDINGS

- Lack of legal knowledge extends to much of the available advice and representation.
- Lack of advice and representation affect mostly statutory law, unfamiliar in procedure and practice to rural communities in particular. Customary and religious institutions, as well as Al Shabaab courts, entail no role or need for advice or representation.
- Publicly appointed lawyers are only available in major urban locations, especially Mogadishu. At the outskirts of Mogadishu, in remote towns, and in rural locations, elders remain the first port of call for advice and representation regardless of legal framework.
- Marginalized ethnic or 'occupational' groups cannot call upon influential elders and are often impoverished, left without recourse to advice or representation.
- Almost all survey respondents outside Dolow stated that some groups in their community cannot access any legal advice or representation.
- Civil society organizations and local NGOs offer advice and representation but can lack professionalism and training. Communities who relied more on lawyers, ulama, or elders considered advice and representation as of higher quality.
- Survivors of SGBV often refrain from seeking advice or representation to avoid social stigma.
- Most advice and representation is sought after for land disputes due to high value of cases and capacity of parties to afford advice and representation.

The low level of legal knowledge throughout Somalia reinforces the need for accessible and competent legal advice and representation. Yet, lack of knowledge among practitioners and poor educational and juridical infrastructure as well as politicization and cost barriers render legal advice and representation hard to come by and often of poor quality. Certification systems to assess providers’ qualifications are few and far between, and where they exist, the qualifications of the officials staffing them is likely to be similarly inconsistent. This applies almost only to statutory institutions. Customary and religious arbitration require neither advice nor representation. Elders and ulama operate not based on their office and procedure but on their authority, which in turn is anchored in social trust. Justice seekers approach them with grievances and trust that they follow the precepts of their normative frameworks.

"We have no independent shari’ah courts here. The traditional elders and the religious leaders work together as the council of elders. You do not need to have legal advice or representation. You will defend yourself openly and will be listened to by the practitioners. The judgement will be based on evidence and witnesses. There is no fear of threats or attacks. Everybody tells and talks how he wants to defend himself. There is no legal advice involved in the traditional justice system."

- Focus group participant, male, Baidoa
For statutory institutions, legal support is in equal parts necessary and scarce. As with legal education, discussed above, the primary barrier is cost. Many households struggle to afford school fees and have little time to spare to pursue long justice processes, let alone the journey to institutions. They have even fewer resources to spend on legal representation. Consequently, those with means to afford it stand a greater chance of obtaining favorable outcomes or even pursuing a case via courts in the first place, which compounds inequality and provides further incentives for rent seeking behavior or land grabbing at the expense of marginalized and poor communities.

“For a community in which 47% of people are struggling to get enough food, and cannot afford to eat two meals every day, something like legal representation is considered a luxury. The few who can afford legal representation do not understand the importance of it.”

- Youth representative, male, Baidoa

Access to public or pro bono support is vital for many justice seekers. Among study districts, only Wadajir had more than a third of respondents list government-provided lawyers as an available source for legal advice. The more remote a location, the more relevant elders become in this respect, reaching the most mentions in Dolow and Xudur. Civil society and LAOs, pivotal in this respect, were most often mentioned in Hodan and Baidoa, where government institutions and relative stability have allowed for such organizations to emerge in numbers.

The securitized environment in Kismayo has historically offered little civic space. Comparatively fewer civil society organizations operate there, and residents depend primarily on elders and ulama. The high frequency with which private lawyers were mentioned in Weydow raises more questions. One member of the research team suggested that more affluent residents may move to IDP-dominated urban areas to benefit from external resources deployed to support displaced communities – who may then call upon private lawyers as other public infrastructure remains scant and distant.

“If you bring a case to a statutory court, whatever the case is, you have to pay the case establishment fee. Then, lawyers are available if you can afford them. The bar association can help you to get a qualified lawyer. There are some people who cannot afford to hire a lawyer. So, they do not get legal advice or legal representation.”

- Focus group participant, male, Baidoa
### Legal Advice (N=271)

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<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
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### Representation (N=252)

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</table>
In Xudur, Baidoa, and Dolow, advice is more available than representation, but respondents cautioned that **public attorneys may be available but may not be qualified**. Even where financially struggling households can raise the money to obtain qualified legal support, they may face additional obstacles based on their identity, lack of political network, or threat of violence should they pursue their claims. An ulama in Weydow stated that he discourages his community from seeking out statutory courts, even if they can afford it, because they may lose time and fail against the system’s endemic corruption.

“No groups in the community are excluded from legal representation, unless they cannot afford it. There are costs for legal representation up until the very last stage of the process.”
- NGO staff, female, Hodan

“Legal representation depends on your financial capacity. You need to have enough. If you pay accordingly, your legal representation will accompany you through all of the process.”
- Focus group participant, male, Hamar Jabjab

Respondents across districts noted that the Somali Bantu (*Jareer*), the coastal Barawani and Benadiri communities in Barawe and Mogadishu, and occupational groups, such as the Madhiban, Tumaal, and Yibir are economically and politically marginalized and cannot call upon their elders as these can neither muster their social standing nor armed support. Many community members shun these groups, not necessarily out of contempt, but out of fear of being associated with them.73

“Normally, when people take a case to the courts, the courts will ask the parties present if they have consulted with the elders. If the parties confirm that the case was presented to the elders, but that they failed to resolve it, then the court will begin the proceedings. The quality of advice in the courts is acceptable. There are, however, minority groups such as the Somali Bantu, the Barawani, and the Tumaal, the blacksmiths, who cannot access this legal advice. This is only because they are a minority group, and the courts and elders fear being asked why they provided legal advice to them.”
- District official, male, Baidoa

This pattern extends beyond access to legal support to the ability to obtain information and receive fair treatment. It also comes with a linguistic dimension, as most of these groups speak a dialect other than *Af-Mahatiri*. An illustrative case is a current and heated debate sparked by a SWS Minister’s decision, carried out by Barawe’s new district commissioner, to prohibit the broadcasting of radio programs in Chiimini, a Swahili dialect spoken by the Barawani community.74 As part of many past Somali and Omani Sultanates along the coastal trading routes, the Barawani community claims to predate other clans as residents of Barawe and its surrounds. Other marginalized groups issue similar claims: Digil and Jareer-Bantu along the Shabelle and Juba rivers, and the Benadiri community in the oldest harbor districts in Mogadishu. Here, exclusion is interspersed with a history of land grabbing and a debate over indigeneity and belonging which still pervades current local and regional politics.75

The extent to which this practice is common across Somalia is reflected in that **almost all survey respondents outside Dolow conceded that some communities are excluded from access to advice and representation**. The high concentration of international and national NGOs in the relatively secure Dolow or a reluctance to accuse local power holders of discriminatory practices, or less diversity among community groups, not accounting for displaced communities, may underpin this discrepancy. In most districts, however, **groups exist who cannot access legal advice or representation at all**.

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73 On discrimination against minority groups in Somalia, see: Martin Hill (2010). *No redress: Somalia’s forgotten minorities*. Minority Rights Group International. The term *Jareer* (Somali: hard hair) has been used in the past as an invective towards Bantu communities but has in recent years been reclaimed by the community.


75 Kapteijns (2012). *Clan Cleansing in Somalia*. 
The presence of NGOs and civil society organizations provides an important alternative to expensive private practitioners or public services of questionable quality and potential politicization. The discrepancy between Baidoa and Xudur is instructive. Both towns host predominantly Mirifle communities and have elders who are well-integrated into communal and political structures. Although Xudur boasts higher social cohesion, access to legal support is limited by the town’s remoteness, lack of infrastructure and education, and relative poverty. Baidoa, by contrast, is a seat of government, and host to NGOs and development projects aplenty. Non-professional groups offering or supporting legal advice and representation span women’s and youth networks, peace committees, community-based NGOs, and local LAOs.

“Knowledge of the law is so limited here; you cannot find someone who can give you legal advice even if you have money.”
- Focus group participant, male, Xudur

“There is close cooperation among those institutions. For instance, if a case is brought to the youth organization, which works as a justice institution inside the district, then the case can involve other organizations like the Women’s Network, the Peace Committee, or the justice offices. We work together effectively.”
- District official, male, Hamar Jabjab
**FIGURE 14: IS LEGAL ADVICE AVAILABLE LOCALLY? MUCH MORE SO IN DOLOW THAN IN OTHER DISTRICTS OUTSIDE MOGADISHU**

<table>
<thead>
<tr>
<th>Support to obtain fair solutions (N=469)</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadajir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Hudur</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private lawyer</td>
<td>18%</td>
<td>24%</td>
<td>59%</td>
<td>84%</td>
<td>29%</td>
<td>5%</td>
<td>23%</td>
<td>20%</td>
</tr>
<tr>
<td>Government-provided lawyer</td>
<td>10%</td>
<td>10%</td>
<td>26%</td>
<td>0%</td>
<td>9%</td>
<td>0%</td>
<td>14%</td>
<td>2%</td>
</tr>
<tr>
<td>Religious leaders</td>
<td>0%</td>
<td>42%</td>
<td>30%</td>
<td>8%</td>
<td>15%</td>
<td>62%</td>
<td>36%</td>
<td>14%</td>
</tr>
<tr>
<td>Religious teachers</td>
<td>2%</td>
<td>34%</td>
<td>33%</td>
<td>6%</td>
<td>4%</td>
<td>5%</td>
<td>29%</td>
<td>8%</td>
</tr>
<tr>
<td>Elders</td>
<td>26%</td>
<td>40%</td>
<td>22%</td>
<td>2%</td>
<td>10%</td>
<td>70%</td>
<td>35%</td>
<td>59%</td>
</tr>
<tr>
<td>Legal Aid Organization</td>
<td>60%</td>
<td>6%</td>
<td>24%</td>
<td>0%</td>
<td>24%</td>
<td>5%</td>
<td>51%</td>
<td>6%</td>
</tr>
<tr>
<td>Women’s organization</td>
<td>14%</td>
<td>4%</td>
<td>13%</td>
<td>0%</td>
<td>1%</td>
<td>0%</td>
<td>43%</td>
<td>0%</td>
</tr>
<tr>
<td>Youth organization</td>
<td>12%</td>
<td>8%</td>
<td>11%</td>
<td>0%</td>
<td>1%</td>
<td>5%</td>
<td>32%</td>
<td>2%</td>
</tr>
<tr>
<td>Other Civil Society Organization</td>
<td>60%</td>
<td>12%</td>
<td>7%</td>
<td>0%</td>
<td>26%</td>
<td>0%</td>
<td>19%</td>
<td>0%</td>
</tr>
<tr>
<td>NGOs</td>
<td>2%</td>
<td>4%</td>
<td>4%</td>
<td>0%</td>
<td>46%</td>
<td>11%</td>
<td>10%</td>
<td>18%</td>
</tr>
<tr>
<td>Local authorities</td>
<td>66%</td>
<td>12%</td>
<td>2%</td>
<td>2%</td>
<td>4%</td>
<td>38%</td>
<td>9%</td>
<td>2%</td>
</tr>
<tr>
<td>Family members</td>
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<td>4%</td>
<td>0%</td>
<td>7%</td>
<td>5%</td>
<td>2%</td>
<td>0%</td>
</tr>
<tr>
<td>Al Shabaab</td>
<td>0%</td>
<td>6%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>1%</td>
<td>0%</td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td>0%</td>
<td>4%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Refused</td>
<td>2%</td>
<td>2%</td>
<td>0%</td>
<td>4%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

**FIGURE 15: IS LEGAL REPRESENTATION AVAILABLE LOCALLY? THE RESULTS ARE SIMILAR TO LOCAL ADVICE.**
It is thus unsurprising that with limited civic space in Kismayo and Dolow, neither advice nor representation are easily available. In Baidoa, by contrast, respondents most frequently mentioned LAOs to call upon to achieve a fair outcome, followed by women’s organizations even though advice and representation overall appear largely unavailable in Baidoa. In other locations, elders and ulama once more ranked highest, except for Hodan and Wadajir, where residents can draw upon better infrastructure and potentially higher income.

Among the various NGOs, civil society organizations, or LAOs, respondents in Mogadishu and Baidoa singled out the Somali Women’s Development Center (SWDC) and Save Somali Women and Children (SSWC) as major support on legal advice and representation, especially for SGBV cases. Respondents from displaced communities in particular lauded the two organizations for their work with justice seekers who have few avenues for redress, if any.

“For cases related to sexual violence, we have the strong NGO, SWDC, that provides thorough support to the victim. They take the victim to Benadir hospital and they process the case at the police station and the district court.”

- Focus group participant, female, Hodan

Other organizations who support SGBV survivors with immediate help and ‘dignity kits,’ reported refer cases to organizations such as SSWC, as well as hospitals or safe houses for medical checkup, protection, and advice and representation going forward. This illustrates the centrality of these two organizations in providing legal aid especially to victims of SGBV. One recorded case study, however, casts doubt on the level of professionalism among some staff members.

**CIVIL SOCIETY ASSISTS, BUT CAN LACK PROFESSIONALISM**

Khadra, 46 years old, was raped by four men who had followed her into her home. A friend of hers advised her to approach the a local NGO for help. Her friend explained that a local NGO would be able to provide both medical and legal support, both of which Khadra urgently needed. Upon reaching out, the NGO’s staff immediately took her to the SOS hospital in Mogadishu for a medical examination.

The staff member encouraged Khadra to share her story and asked her if they could audio-record an interview with her while the incident was still fresh on her mind. Khadra also claims that she was offered a job by the NGO. Later, however, she found out that the interview was broadcast publicly on a local radio station without her consent, making her case even more public than it already had been.

Disappointed by the NGO, Khadra turned to the elders in her village, who engaged members of the local community, particularly the youth, to try to find the perpetrators, but that their efforts came to nothing. Next, Khadra approached the district officials and the police for help, with the same outcome. She believes that no one could help her because she could not identify her attackers.

Respondents’ perception of quality of advice and representation seems to corroborate that quality among providers in civil society and LAOs may be somewhat wanting. The locations relying most on these actors, Hodan and Baidoa, most often deemed advice and representation of poor or bad quality, whereas those who predominantly relied on private lawyers, ulama, or elders were more often satisfied than not. Kismayo constitutes an outlier, and qualitative data offered little to explain why this was the case.

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36 For dignity kits, see: UNFPA (2020). *What is in a UNFPA Dignity Kit?*, available at >https://www.friendsofunfpa.org/whats-in-a-unfpa-dignity-kit/
FIGURE 16: QUALITY OF LEGAL ADVICE APPEARS LACKING IN BAIDOA AND KISIMAYO, BUT IS STRONG IN XUDUR, WHERE COURTS ARE OPERATED BY LOCAL QURANIC TEACHERS

- Excellent (feel fully confident to proceed successfully with advice received)
- Good (feel more informed, but not fully confident to proceed)
- Poor (uninformative, unhelpful, feel less confident to proceed)
- Bad (person providing advice seems to be uninformed as well)
- Refused

FIGURE 17: QUALITY OF REPRESENTATION IS PERCEIVED AS SLIGHTLY WORSE THAN AVAILABLE ADVICE

- Excellent (feel fully confident to proceed successfully with representation)
- Good (feel better represented, but not fully confident that we will be successful)
- Poor (unhelpful representation, feel less confident to proceed with representative)
- Bad (person providing representation seems to be completely unqualified)
- Refused
Private and public legal aid providers reportedly refrain from defending individuals accused of having perpetrated acts of SGBV, for fear of tainting their reputation due to the attached social stigma. Although this may indicate a welcome shift in social perception of SGBV, shaming perpetrators rather than victims, it also suggests a lack of appreciation for the importance of defense for due process – a particularly important safeguard if potential outcomes include capital punishment.

“If you are accused of a sexual violence, you may never get a legal representation because of the stigma.”

- Focus group participant, female, Kismayo

As with other parts of the justice chain, accusations of corruption among legal aid providers came from all districts and categories of interviewees, cementing the picture of a substantive informal payment system that facilitates patronage and nepotism and compounds existing inequality. Lack of appreciation for transparency and due process was also evident in dismissive attitudes towards legal aid. A district official in Hodan argued that district-level cases were too small and insignificant to justify expenditure of resources on representation. Respondents agreed that advice and representation for land disputes, the most lucrative and politically charged category of cases, is most expensive and least accessible.

“There are paralegals, lawyers, judges, and attorneys. All you need to do is pay them unofficially.”

- Focus group participant, male, Hodan

“Land disputes are the most critical cases that you cannot easily deal with. You need power, money, clan influence, and powerful support from government officials.”

- Focus group participant, female, Hodan

Distrust towards legal aid providers who work within the statutory system plays into the hands of Al Shabaab. Its courts do not provide for advice or representation but build on the long-established customary and religious norm that parties represent themselves, present their cases and all evidence, and be treated as equal to opposing parties. It may be questionable to what extent the norms employed provide such equality to women, which will be discussed further below.

“In the Islamic courts, you do not need legal representation, because everybody is free to defend him or herself. People have the right to defend themselves openly without fear. There is equality here in the Islamic courts.”

- Female focus group representative, Hodan

The national capital and seat of the federal government boasts the greatest density of justice actors, including legal aid providers. Respondents pointed to public attorneys and the Somali Bar Association as the main public infrastructure that supports justice seekers and defendants. Aside from government-provided assistance, respondents listed the civil society organizations SEDO in Weydow (providing psychological support, medical assistance, a safe house, and occasional assistance in finding representation), HIWA in Hodan (general legal aid), unspecified UNDP-funded legal aid programs, and SWDC and SSWC across all districts. These two organizations reportedly operate a safe house and accompany victims to hospital and police stations, with paralegals among their team.

Respondents in Wadajir have more access to public justice infrastructure than most others, and many expressed confidence that sufficient legal aid would be provided once they had taken their case to court. A district official explained that justice seekers are provided with public attorneys on arrival, although other respondents cautioned that this only apply to those who can afford their fees and transport to the relevant institutions.
<table>
<thead>
<tr>
<th>Location</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kismayo</td>
<td>Informants and focus group discussants only mentioned lawyers but considered them unaffordable.</td>
</tr>
<tr>
<td>Dolow</td>
<td>Respondents in Dolow only mentioned (international) NGOs as providers of legal aid but noted that these are mostly focused on displaced communities. This may engender resentment among host community members; a delicate balance initiatives to support displaced communities must consider.</td>
</tr>
<tr>
<td>Baidoa</td>
<td>Informants and focus groups corroborated survey findings and pointed mostly to (international) NGOs, LAOs, and civil society organizations as providers of legal advice and representation. They added, however, that women cannot universally access these, but may be required to do so via male intermediaries, mostly fathers, brothers, or husbands. Those residents who can afford to pay have access to lawyers, and even public attorneys were described as charging fees.</td>
</tr>
<tr>
<td>Xudur</td>
<td>By contrast to survey findings, which indicated that elders and ulama provide advice and representation, key informants stated unanimously that no such services are available in Xudur. Focus group participants claimed that some unspecified NGOs provide advice, but that their paralegals have limited scope and qualifications, and may also charge for their services.</td>
</tr>
</tbody>
</table>
KEY FINDINGS

- Main access barrier to statutory institutions, education, advice, representation, and enforcement is cost. All steps entail different levels of official and unofficial payments, which most households cannot afford.
- Cost barriers go hand in hand with clannism. In each location, economic divisions correspond to clan divisions. In other words, members of locally dominant clans tend to have better access to stable or even lucrative livelihoods, and thus to better justice provision. Members of locally marginalized clans or groups are more likely to be impoverished or live precariously and have little or no access to justice.
- Influx of external resources from regional or international actors enables justice actors to avoid social accountability, as they do not depend on tax paying constituencies or oversight by an otherwise accountable branch of government.
- Elders, ulama, and Al Shabaab courts are free of charge. For Al Shabaab courts, justice seekers must pay for their own transport and accommodation. Elders require refreshments and occasionally accommodation, for which the party that initiated proceedings must provide (Xaqq Fadhi - the right of the sitting).
- Inability of elders to defuse disputes early can lead to escalating armed violence, especially in cases of rural herder conflict.
- Linkages between security, justice, and political actors can put justice seekers at risk of intimidation or retaliation. This is particularly severe for land disputes.
- Elders remain first responders in SGBV cases to prevent further violence, both from the perpetrator and from potential collective retaliation. This limits victims’ choice of institution and thus their access to rights-based justice.
- Al Shabaab can also side with one party to dissuade the other party from seeking redress by way of threats of violence or use violence to intimidate court users and demand their own courts be called upon instead.
- Somalia’s public infrastructure is not designed to be accessible to people with special needs.

“Theoretically, the system says that you would have all the necessary access to deal with a case at the statutory courts. Practically, this is not working.”

- Focus group participant, male, Hamar Jabjab

It may be redundant to reiterate the primacy of cost barriers and their amplification of inequality at this point, but for no other component of the justice chain is affordability as important and cost as prohibitive as for the most fundamental: access. Focus groups and interviewees almost unanimously stressed that class distinctions and a plethora of unofficial payments restrict access for poor people, in a country in which poverty is pervasive and, to a significant extent, political.

A breakdown of respondents by clan and income group yields a statistically significant and moderately strong correlation between clan and income group, which grows stronger when moving from clan family to clan group to sub-clan level. The same holds for location: moderately strong for regions,
The clannist and patriarchal political economy ties together seemingly distinct patterns of exclusion or marginalization of ethnic, occupational, or clan minority groups, women, and youth. It is sustained by individuals who benefit from it and extends through all areas of state building, including the justice sector.

In other words, cost barriers are not separate from identity-based exclusion by ethnicity, clan, sex, and age. They also interact with the obstacles imposed by geographical distance and institutional inefficiency. Precarious livelihoods that do not yield sufficient resources to pay for justice services also render the time spent on them prohibitive. Without affordable representation, the need to physically appear before courts or contact law enforcement suffices as a barrier and is compounded manifold by the inefficacy and corruption among courts.

“You need to have enough money, power, and a strong clan.”
- Focus group participant, female, Hodan

“Life in Mogadishu today falls into three categories: the top class, which is composed of government officials; the mid-level class, which is composed of working professionals and business people; and the lower class, which is composed of the largest portion of the population. Those in the lower class are those that need to be supported by everyone.”
- Focus group participant, male, Hamar Jabjab

“I agree with my friends: affordability determines access, as do influence and connections to the powerful”
- Focus group participant, female, Baidoa
Respondents across districts denounced both corruption and inefficiency. Many stated that courts require plaintiffs to appear daily to open a case, often waiting for hours only to be turned away, either because courts are dealing with other cases and have no scope to open a new one, or because officials ask for bribes to be paid before they open a case and refuse justice seekers until they receive a sufficient amount. For households dependent on casual daily labor, petty trade, or humanitarian assistance, the loss of time to transport and waiting day after day can endanger their very subsistence. Those who can muster neither the financial resources to meet demands for official or unofficial payments nor the personal connections to circumvent these have little hope of fair and timely redress.

“If you do not pay bribes, you will gain nothing. Your case will not be processed. You will be told differently. They will tell you your case is in the system. You will be told to come tomorrow. Then, tomorrow, another tomorrow. (...) You will be asked for money again, and again, and again.”

- Focus group participant, female, Hamar Jabjab

Frustration with courts using access as leverage or moving slowly out of mere incompetence was common across locations. Survey respondents, asked to rank institutions they had stated exist in their district by difficulty of dealing with them with 1 denoting greatest ease and 5 denoting greatest difficulty, ranked statutory courts and police stations the most difficult. Al Shabaab courts were only viewed negatively in Weydow, where respondents are among the most vulnerable, and in Kismayo, where the group itself has little access. Ulama, lawyers, and elders ranked as least complicated – as did influential individuals, underscoring the importance of informal pathways that undercut due process.

<table>
<thead>
<tr>
<th>Difficulty of engaging with:</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadajir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory court</td>
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<td>1.5</td>
<td>3.6</td>
<td>5.0</td>
<td>2.6</td>
<td>1.1</td>
<td>3.2</td>
<td>3.3</td>
<td>3.1</td>
</tr>
<tr>
<td>Religious court</td>
<td>-</td>
<td>1.0</td>
<td>3.1</td>
<td>4.0</td>
<td>1.3</td>
<td>1.1</td>
<td>2.8</td>
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<td>3.1</td>
<td>5.0</td>
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<td>1.2</td>
<td>2.7</td>
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<td>ADR centers</td>
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<td>2.5</td>
<td>4.8</td>
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<td>2.0</td>
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<td>2.0</td>
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<td>3.2</td>
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<td>-</td>
<td>2.5</td>
<td>4.0</td>
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<tr>
<td>Local/state officials</td>
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<td>1.0</td>
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<td>Police stations</td>
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<td>2.8</td>
</tr>
<tr>
<td>Influential individuals</td>
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<td>1.9</td>
<td>1.0</td>
<td>-</td>
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<td>-</td>
<td>1.0</td>
<td>-</td>
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<tr>
<td>Al Shabaab courts</td>
<td>-</td>
<td>2.0</td>
<td>4.6</td>
<td>-</td>
<td>5.0</td>
<td>-</td>
<td>2.7</td>
<td>-</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Ranking institutions by affordability, with 1 denoting the most affordable and 5 denoting the least affordable, yields a similar picture. The highly securitized Dolow and Kismayo skew the average for Al Shabaab courts, who would otherwise rank closer to statutory courts with 3.3. The main cost barriers to accessing Al Shabaab stem from the need for transport and accommodation as they are remote. Costs also vary per court. Regional courts charge higher fees for land cases and other more complex cases they handle. Their central location also imposes greater transport expenses on those living at the outskirts of towns or in rural areas, which dissuades many justice seekers from pursuing a case further.
### Expanding Access to Justice Program

#### Affordability of Institution

<table>
<thead>
<tr>
<th>Affordability of Institution</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadjir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
<th>Total</th>
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<td>3.6</td>
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<td>2.5</td>
<td>1.8</td>
<td>3.5</td>
<td>3.4</td>
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<td>AS courts</td>
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<td>3.1</td>
<td>3.3</td>
<td>5</td>
<td>4.8</td>
<td>4.6</td>
<td>2.7</td>
<td>3.3</td>
<td>3.6</td>
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<tr>
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<td>Xeer</td>
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<td>3.4</td>
<td>2.9</td>
<td>4.9</td>
<td>2.1</td>
<td>2.7</td>
<td>2.2</td>
<td>2.6</td>
<td>3</td>
</tr>
</tbody>
</table>

“Some people would have to travel far to the statutory courts. Wadajir is a large district.”

- Focus group participant, female, Wadajir

“Of course, there are some members [of the community] who are unable to access these courts. They live in a remote area and cannot afford to pay either of the transportation fees or the case filing fees.”

- Focus group participant, female, Kismayo

Data was collected in urban areas where district courts are relatively accessible. Rural populations or communities in newly recovered areas struggle far more to reach statutory institutions and thus rely upon elders and ulama for their justice needs. Only in Hamar Jabjab and Weydow did rankings of difficulty to reach and affordability differ, with statutory courts either far or largely unaffordable.

### Kismayo

#### Delays are Common and Cases Often Inconclusive

Ayan, 26 from a sub-clan of the Darood, lives with her family in Yontoy on the outskirts of Kismayo. She spends most of her days collecting firewood to prepare with whatever food she can afford. When she fell asleep whilst foraging for wood on a Friday, Ayan was raped. She woke up briefly, but her attacker struck her with a stick until she lost consciousness. She woke up in hospital. Her family reported the attack to the police and took her into the country for a few weeks to help her recover from the trauma.

On her return, the police had a list of suspects from whom Ayan identified Guled, a 30-year-old man from a neighboring clan. However, the case stalled at the court, where officials argued that they could not proceed without witnesses, reflective more of customary and shari’ah-based proceedings. Ayan’s family members spoke of attempts at intimidation by Guled’s family, which accused them of having hurt Guled with the accusation to the extent he was unable to work, causing his family great hardship – without ever claiming his innocence. To the contrary, Ayan’s family was told by neighbors that Guled was known to have sexually assaulted women in the past.
Ayan explained that the threats did not dissuade her, but that the continued postponement of the case by the courts frustrated her to the point that her family reached out to traditional elders. Elders from both families discussed the matter and spoke to each family. At a formal meeting, Ayan presented her claim, which Guleed then denied. Without witnesses, the elders were reluctant to express a definitive conclusion, but ordered Guleed’s family to pay a small amount of money to Ayan and her family. His clan’s elders formally apologized to the elders representing Ayan, and the case was closed. Our researcher was unable to meet with Guleed, who is leading a nomadic life with his camels but spoke to some of the elders who represented him. They reiterated that the lack of witnesses left only circumstantial evidence, which they said forced them to impose only a small compensatory payment. Ayan’s family is only partially satisfied with the outcome. Ayan herself has physically recovered, but is stigmatized and socially excluded in her community, and feels physically and mentally drained.

Focus groups especially in Mogadishu condemned the corruption that perpetuates inequalities in access. Some argued that the inflow of external resources, particularly from Gulf States, allows political actors and affiliates to maintain these practices. The ubiquitous demands for bribes and the unaffordability for most, they added, encourages reliance on informal access, nepotism, and clannism – and ultimately forum shopping according to personal favorability.

“There are some people that have better relationships with the justice institutions because of their clan, or maybe because they are government employees.”

- Focus group participant, male, Kismayo

Linkages among security forces, justice practitioners, and political or business actors add an additional dimension to this access barrier and puts justice seekers who cannot harness such connections at risk of intimidation or retaliation. As much these processes sidestep official protection, and even where statutory courts are involved, court officials and security forces may not observe these duties. Interviews and focus group discussions were rife with reports of threats against justice seekers or additional abuse of victims.

“I had an experience as a young girl, bringing my case to the district court after a customer at [my place of work] from the Office of the Prime Minister asked me to have an affair with him. The first guy at district court asked me the same thing: to have an affair with him.”

- Focus group participant, female, Hamar Jabjab

This trend appears particularly egregious in Hamar Jabjab, where focus groups deemed law enforcement as not capable of protecting residents against militias or lacking the integrity to do so. In other areas of Mogadishu, respondents also recalled instances in which justice seekers were threatened or killed.

“The case of Abdi Dowlo is a famous incident in Mogadishu. He was murdered and burned to death when he tried to seek justice.”

- Youth representative, male, Wadajir

Respondents stated that threats are most frequently issued by members of majority clans towards plaintiffs from minority clans and by perpetrators of SGBV against survivors to dissuade them from pressing charges or pursuing already opened cases. In Xudur, respondents explained that this is another reason for elders to handle SGBV cases in the first instance, leveraging their authority and good relations with other elders to ensure that victims and their families are safe. Elders can do so by virtue of their personal authority within their social groups, although displacement, generational change, and influence of warlords and political actors have diminished this ability in some places.
“The plaintiff is often afraid during the course of the case, especially if the defendant has more power and access than the victims. Police and other security agencies promise the security of the victim, but that does not mean they do not face threats.”
- Focus group participant, female, Kismayo

Land cases magnify all dimensions. A Baidoa lawyer estimated costs of opening a case at the regional court to reach up to 1,000 USD, which, respondents lamented, drives courts to seize land disputes from other institutions. Focus groups in Hamar Jabjab explained that because of this, the district maintains a ‘poor file’, a small budget to support poor households and waive some costs. Land disputes, however, can reach high levels among political ranks or security forces, either by direct involvement or kinship ties, which loads opposition to land grabbing with personal risk.

“Those who bring their land-related cases to the courts will face many risks and threats. They may even be assassinated.”
- Focus group participant, male, Wadajir

“If you pay them well and unofficially, they will service you. If you fail to feed them, you will suffer. They spend most of their time on land dispute cases because of the income that comes from those.”
- Focus group participant, male, Hamar Jabjab

As most political institutions are viewed as biased, many justice seekers look to women’s and youth networks and civil society organizations to hold justice seekers accountable. Where these are not easily available and have access, community members turn to elders. Elders work per se free of charge, traditionally taking only accommodation and food, to be provided by the party that initiates a case. This tradition is called Xaqu Fadhi: the right of the sitting.

“Elders are the easiest of all justice institutions to access. Elders are always ready to defend their people and they give their support voluntarily. There are no costs for xeer-based mediation and there is no need to travel.”
- Medical practitioner, female, Hamar Jabjab

Focus groups emphasized the ease of accessing elders who “live in the community” and whose “door is always open.” For rural populations, this holds true for issues concerning the immediate family and local community. Should disputes escalate to higher clan levels, as especially clashes among nomadic pastoralists or between herders and farmers often do, higher level elders are required to travel from urban to rural areas and mediate. This is not always possible, for lack of resources or due to the presence of Al Shabaab and absence of law enforcement. This allows rural disputes to escalate and even draw in state security forces, of which Galkayo is a prominent example. International actors have repeatedly sponsored ‘peace caravans’ for important elders to travel from village to village. Because of the political and financial charge of land disputes, elders who are not involved in land disputes may be seen as of greater integrity. This is of importance insasmuch as accusations of taking bribes, being politically compromised, or siphoning off part of compensation payments hollow out the

<table>
<thead>
<tr>
<th>BARRIERS</th>
<th>WOMEN</th>
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<tbody>
<tr>
<td>Traditionally, women cannot approach elders without a male representative. Some initiatives that aim at rendering elder councils more inclusive have addressed this by facilitating xeer review and enabling women’s representatives to accompany women throughout processes.</td>
<td></td>
</tr>
<tr>
<td>“It can be complicated to access the elders because they do not act easily and are not always available.”</td>
<td></td>
</tr>
</tbody>
</table>
- Youth rep., female, Hamar Jabjab

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reputation of elders, which is essential to their work. In Dolow and Xudur, interviewees directly accused local elders of taking bribes. Another potentially detrimental aspect of relying too strongly on customary pathways is that minority groups remain excluded for want of strong elders. In Xudur, a youth representative noted that the Eyle minority group was “pushed into the corner” without any options of redress within government frameworks, even facing violence when they attempt to do so, with which both a district official and an elder from major Mirifle sub-clan agreed.

“Many people fear being killed if they bring their cases before courts. Some people are silenced. Some others receive death threats, which could later force them to withdraw their cases. For minority groups, they might face all those threats and risks with the addition that they have no powerful allies to help them. For women, especially those who experience sexual violence, they can be blackmailed or shamed, which can then force them to go silent.”

- Lawyer, male, Hodan

**SOCIAL PRESSURE NOT TO REPORT CASES OF SGBV**

Ruqiya is a 34-year old housewife from the Hawiye sub-clan Habar Gidir. At the age of 9, Ruqiya worked as a household assistant for a pregnant woman, Salma. Salma’s father-in-law began grooming Ruqiya, eventually calling her into his bedroom to give him intimate massages and soon after forcing himself on her. Ruqiya was afraid and did not understand at the time what was being done to her. Because of the relationship between her employer and her rapist, the abuse was kept a secret, including to others in the household who were unaware that it was taking place.

When Salma realized that he was calling Ruqiya to his room each day, she confronted her father-in-law who denied all of her allegations. Salma then called her family together to explain her observations to them. She says she was surprised to be met with hostility as her family questioned of the truthfulness of her allegations. Eventually realizing that the family would do nothing, Salma escalated the case to the elders of the father-in-law, who decided to conceal the case to protect him from public shame.

Salma continued to seek justice for Ruqiya for a year, which significantly impacted her relationship with her husband, who ordered Salma to abandon her efforts because, he claimed, they intimidated his father. Salma refused and the two divorced. She moved to a new house and took Ruqiya with her. She has not been able to find another justice institution to take up the case due to the outbreak of civil war, approaching other elders in vain. Salma raised Ruqiya as her own daughter and both still live in the same home. Ruqiya is now married with three children, but never received redress for the abuses committed against her.

Although Al Shabaab courts require expenses for transport and sometimes accommodation, respondents especially in Mogadishu described them as an “open platform,” for members of marginalized and powerful groups alike, and free of charge. Some added that even public transportation is sometimes available, and somewhat affordable. The capacity to enforce summons and sentences with armed violence can also counteract social pressure and threats, leading victims who know they have little prospect of redress with local elders and courts to approach Al Shabaab instead.

“There are no exclusionary factors like gender, minority, or economic status, clan power, or the influence of government officials.”

- Focus group participant, female, Wadajir

“The accused can use other forces like Al Shabaab against the victim. There can also be assassinations. Being silenced is a major risk one can face.”

- Lawyer, male, Weydow
At the same time, those calling upon Al Shabaab can also do so to intimidate the other party. The group usually issues threats or contacts individuals by phone. As a result, many of those in areas in which Al Shabaab is active or towns surrounded by the group may react with fear to calls from unknown numbers. On occasion, the group also issues threats when justice seekers approach statutory courts or law enforcement, but less so when they work with ulama or elders. Although clan militias do so as well and even more boldly when statutory courts oversee a case, Al Shabaab links this to recruitment. Interviewees recalled instances in which relatives of victims who had little hope of obtaining justice with elders or courts outright joined Al Shabaab’s fighting ranks for the opportunity to kill the perpetrator or one of their family members in revenge.

“The militants, Al Shabaab, see statutory courts as illegal. They call the victims and tell them to stop from going there or else expect actions from them.”

- Religious leader, male, Wadjir

“There are even security risks surrounding frequent visits to the court premises. Some people have been threatened by the militant group telling them not to seek justice to those courts. The risks people face are large in number.”

- Lawyer, male, Hamar Jabjab

As with other issues, displaced communities face the same challenges more steeply than host communities. Poverty is ubiquitous, pronounced, and worsening. Interviewees accused security forces of committing human rights violations against displaced communities almost indiscriminately, in particular SGBV. This leaves IDPs dependent upon humanitarian organizations, which in turn often need to work via gatekeepers, some of whom act as guardians for displaced communities, whilst others are complicit in abuse and diversion. 78

“The other thing you need [to access] the justice system is to bribe. So, if you do not have money to pay a bribe, what can you give to those whom you need to deal with?”

- Focus group participant, female, Weydow

“Internally displaced people rarely go to the district court, not because they do not trust them, but because of financial affordability.”

- Focus group participant, female, Dolow

Members of rural communities face similar challenges when they arrive in urban areas. In rural settlements, choices are usually restricted to elders, ulama, and Al Shabaab courts where the group is present. Respondents noted favorably that ulama are available at the closest mosque, can help facilitate identifying more appropriate ulama depending on case and preference, and provide mediation and arbitration free of charge. However, the traditional norms that allow elders and ulama to work for free can be detrimental to victims of SGBV in particular.

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“Most of the communities that live in rural areas are unable to access the courts for fear of repercussions from Al-Shabaab. In addition, those that live in the rural areas are poor and cannot afford the court fees or may be from minority clans and therefore fear taking a case to court for risk of revenge from dominant clans.”
- Youth representative, male, Baidoa

SGBV Survivors benefit from a strengthening of civil society to hold justice providers accountable and shield victims from social pressure not to report or to accept compensation. In Hodan, respondents noted that most sub-clusters (of ten households) are led by women, which they described as conducive to this end. Youth organizations can play a similar role, as interviewees added that access to official positions within justice system remains closed to most youth and women. Civil society may help lobby for changes, and can pressure institutions through other channels than direct representation:

“Social media is the fastest way to report cases through the use of video clips.”
- Focus group participant, female, Wadajir

People with special needs face a different set of challenges. Barely any physical infrastructure is designed to provide access to those with impaired mobility, and transport restrictions apply more severely. Moreover, where most community members struggle to navigate the legal and justice topography in their districts, people with special needs have little specialized, trained, and free support to call upon – free as a necessary factor because people with special needs are largely excluded from formal or informal employment in an environment largely shaped by casual labor, livestock rearing, agriculture, and poverty.

<table>
<thead>
<tr>
<th>BENADIR</th>
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<tbody>
<tr>
<td><strong>Statutory courts:</strong></td>
</tr>
<tr>
<td>When accessing statutory courts, justice seekers go through court officials, paralegals, or police</td>
</tr>
<tr>
<td>o <strong>District court:</strong> 30 USD fee to open case (official, can go up to 100 USD), unofficial payments vary, but are usually necessary</td>
</tr>
<tr>
<td>o Operate ‘poor file’ (<em>Galka Saboolka</em>) to support those who cannot afford costs</td>
</tr>
<tr>
<td>o <strong>Regional court:</strong> fee around 120-200 USD</td>
</tr>
<tr>
<td>o <strong>Appellate court:</strong> fee around 100-120 USD</td>
</tr>
<tr>
<td>o <strong>High court:</strong> fee around 20-50 USD</td>
</tr>
<tr>
<td>o Land disputes: The victorious party is often required to pay 1% tax on the value of the property in question</td>
</tr>
<tr>
<td>o General level of knowledge on how to access courts is low, mostly vague, but there is general agreement that unspecified and unpredictable bribes must be paid in all cases</td>
</tr>
<tr>
<td><strong>Islamic courts:</strong></td>
</tr>
<tr>
<td>o Fees either voluntary or around 30-50 USD</td>
</tr>
<tr>
<td>(Hodan ulama insists that as opposed to statutory courts, payments end with this fee)</td>
</tr>
<tr>
<td>o Weydow ulama adds that these fees are only applicable to land disputes, family disputes are free of charge</td>
</tr>
<tr>
<td>o ‘Islamic courts’ mostly used as description for Al Shabaab courts: no fees charged, transport and accommodation must be covered by individual, court sets date, invites both parties, proceeds</td>
</tr>
<tr>
<td><strong>Elders:</strong></td>
</tr>
<tr>
<td>Immediate access via community leaders, also required to ensure that formalities are observed</td>
</tr>
</tbody>
</table>
- **Statutory courts:**
  - Civil & SGBV cases: 20-30 USD fee
  - Land disputes: 50/100-200 USD fee (depending on case, can reach 500 USD)
  - Operate “poor file” (file miskin) to support those who cannot afford costs

- **Statutory courts:**
  - 25-50 USD fee

- **Statutory courts:**
  - District court: $25-50 fee to open case
    - SGBV cases:
      - Medical support is arranged, often involving (I)NGOs
      - Including psychological support
      - If party personally known to court officials, fees can drop to 10 USD
    - If armed violence is involved, police is included in process

- **Islamic courts:**
  Not mentioned, ulama work as part of elder councils

- **Elders:**
  Justice seekers contact local elder with case, who then initiates proceedings
  - Elders available locally anytime for free, reportedly do not take bribes

  “At the [customary] justice system, the victim reports the case to his clan elder, then the elder takes the case to the council where the elders listen to representatives from both parties and reach judgments based on the witness, evidence, and sometimes have them take an oath.”

  - Focus group participant, female, Baidoa

- **Statutory courts:**
  Availability generally sparse
  - Costs for ordinary cases $25-50, but reach up to $300 for land disputes (including “extra money,” according to focus groups and key informants)
  - Average fees barely affordable to poor community, unaffordable to rural dwellers

- **Elders:**
  Ask for small compensation (amount varies), usually accept and proceed with cases on Fridays so people have time, women require male representation
FAIR PROCEDURE

KEY FINDINGS

- Most respondents construe 'fairness' as equality before law and institutions, but some (especially elders and ulama) depict a 'fair outcome' as one that is acceptable to all parties, reflecting customary norms.
- Anchorage in shari'ah, even if only nominal, leads to a procedure or outcome being perceived as fair due to the moral authority and legitimacy that shari'ah commands.
- Respondents listed endemic corruption among justice actors, especially courts, as the main reason for unfair procedures and cost barriers in general. One summarized: "justice depends on your pocket."
- Some elders advise community members against statutory institutions, warning that procedures will be delayed and payments required throughout, with little prospect of a resolution or fair treatment.
- Political office holders can intervene in judicial processes or even close processes and take decisions themselves, depending on their own influence or coercive power. This is especially frequent in land disputes.
- Law enforcement can be equally receptive to bribes and take action on behalf of one party whilst procedures are still ongoing. Members of security forces often act with impunity. Victims of SGBV perpetrated by members of security forces can face additional risks when reporting cases.
- Elders are largely seen as fair as they provide arbitration or mediation free of charge. Political clannism and elders siphoning off compensation payments undermine this reputation.
- Perceived unfairness is single biggest contributor to popularity of Al Shabaab courts.

"Powerful clans undermine weak clans. A powerful person undermines the weak person."
- Focus group participant, male, Weydow

Most respondents construed fairness as the absence of exclusion, corruption, and violations of due process. In other words, they argued that fairness centers on equality among rights holders before institutions and observance of procedures. Especially focus groups called for greater transparency and reiterated that all those involved in the justice chain, from community leaders to government officials and other authority holders, must abide by existing laws. They insisted that – given the prevalence and proliferation of corruption – such observance should not merely be evinced by action, but the disposition towards such fairness should be a criterium for the selection of justice practitioners.

"You cannot expect a fair outcome from a corrupt judge."
- Focus group participant, male, Baidoa

"Every process that is based on the Qur’an and the Shari’ah, which gives equal rights to everyone, is a fair outcome. That process should also give birth to love among people. It should bring safety."
- Religious leader, male, Hamar Jabjab
Mostly elders and ulama somewhat diverged from these depictions of fairness and described a fair decision as one that is satisfactory for both parties involved. The prioritization of consensus over procedure or other principles is illustrative of the influence of customary norms on how these actors conceive of their mandate as justice providers: one of mediation and peace keeping rather than rights protection. Some ulama added, however, that shari’ah-based adjudication allows for both mediation and rights-based elements. Focus group discussants, especially in Xudur, went further and insisted that processes or decisions can only be fair if they are grounded in and compliant with the shari’ah.

Although only a minority of respondents mentioned shari’ah as part of what constitutes fairness, most considered Islamic institutions to be less involved in the widespread corruption and more likely to achieve fair outcome. Although the variance in how free of undue influence institutions operate was slight, it was statistically significantly more favorable towards shari’ah-based institutions.

“The fairest of these norms is the shari’ah. Everyone is happy with shari’ah, but people do not apply it most of the time.”
- Focus group participant, male, Hamar Jabjab

“A lot of the time, it is easier and better to access the Islamic institutions, because they are fair and take less time.”
- Focus group participant, female, Kismayo

“People are content with the judgement of the sharia and see it as the fairest, cheapest, and most accessible alternative they can find.”
- Focus group participant, female, Dolow

Aside from Hodan, where respondents appeared most critical of ulama, survey respondents deemed shari’ah-based institutions as the fairest among justice institutions and practitioners. Asked to rank institutional fairness from 1 as most fair to 5 as least fair, respondents deemed elders, lawyers, and NGOs as neither particularly fair nor particularly unfair, with the exception of respondents in Weydow, who rejected all institutions as mostly unfair – reflective of their marginalized status.

<table>
<thead>
<tr>
<th>Fairness</th>
<th>Hodan</th>
<th>Hamar Jabjab</th>
<th>Wadajir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory courts</td>
<td>3.1</td>
<td>2.8</td>
<td>3.4</td>
<td>5</td>
<td>2.4</td>
<td>1.6</td>
<td>3.3</td>
<td>3.3</td>
<td>3.1</td>
</tr>
<tr>
<td>AS courts</td>
<td>2.1</td>
<td>4.1</td>
<td>3.3</td>
<td>5</td>
<td>4.8</td>
<td>4.4</td>
<td>2.6</td>
<td>3.3</td>
<td>3.7</td>
</tr>
</tbody>
</table>
When controlling for the outlier in Hodan, the average ranking for ulama is 2.3, substantively closer to fairness than most other institutions. Al Shabaab courts are assessed as mostly unfair, not merely by respondents in Kismayo and Dolow. This appears to contradict community members’ previously outlined portrayals of courts, may be linked to respondents’ hesitation to endorse Al Shabaab in a survey, but will be further unpacked below.

Respondents in Hodan, Kismayo, and Baidoa appeared most critical towards institutions’ freedom from undue influence (see charts below). Focus group participants in Kismayo explained that some hesitation towards describing especially elders as ‘fair’ justice providers may lie with their province being the prevention of armed violence, in the course of which they might violate principles of fairness as it is understood in a procedural or rights-based context. Qualitative data did not yield explanations for the more critical attitudes in Baidoa and Hodan vis-à-vis other locations.

**Figure 20: Statutory Courts Are More Trusted Outside of Capitals and Power Centers**

- Completely free (no undue influence whatsoever)
- Most likely free (no influence to my knowledge, but cannot rule out)
- Largely free (mostly uninfluenced, but occasional cases)
- Frequently influenced (frequent cases of undue influence)
- Don’t know
- Refused
Generally, respondents attributed a lack of fair procedure to widespread corruption. Respondents in Mogadishu deemed the preoccupation with own gain at the expense of mandate or integrity as far greater barriers to effective justice provision than deficits in education and qualification, but as somewhat on a par with cost barriers. Both are interlinked, as unofficial payments drive up costs for justice seekers.

Only one focus group participant defended practitioners, arguing that they must claim their salaries as any other profession would, but other discussants in the same focus group and across others stressed that the distinction between receiving a salary and taking bribes is essential for a fair justice system. Such a system, one discussant remarked, would not function according to the maxim: “justice depends on your pocket.” Such indictments by community members were common across districts:

“You need to pay them unofficially at each stage. They are professionally dishonest people.”
- Focus group participant, female, Hodan

“If you do not pay, they will be paid off by your opponent. So, you need to keep track of procedure and pay them. It is unofficial but is nevertheless compulsory.”
- Focus group participant, male, Wadajir

“You cannot avoid the unofficial payment. You need to be prepared for it. If you pay well, then you will have the expected results. If you do not pay them, then expect a bad time.”
- Focus group participant, female, Weydow
When asked to rank the extent to which institutions demand unofficial payments, from 1 taking none to 5 as asking a lot, results did not correspond with what the majority of interviews and focus group discussions had yielded. The relatively high averages of elders and ulama may suggest that respondents grouped Xaqu Fadhi (see page 67, compensation for elders) expenses under this category.

<table>
<thead>
<tr>
<th>Extent of Unofficial Payments</th>
<th>Hodan</th>
<th>Hamar Jabbab</th>
<th>Wadajir</th>
<th>Weydow</th>
<th>Kismayo</th>
<th>Dolow</th>
<th>Baidoa</th>
<th>Xudur</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory courts</td>
<td>3.2</td>
<td>4.1</td>
<td>2.6</td>
<td>5</td>
<td>2.4</td>
<td>1.4</td>
<td>3.1</td>
<td>3.1</td>
<td>3.1</td>
</tr>
<tr>
<td>AS courts</td>
<td>2.2</td>
<td>2.4</td>
<td>3.2</td>
<td>5</td>
<td>4.7</td>
<td>3.8</td>
<td>2.7</td>
<td>3.3</td>
<td>3.4</td>
</tr>
<tr>
<td>Religious courts</td>
<td>4.4</td>
<td>1.2</td>
<td>2.5</td>
<td>4.9</td>
<td>1.2</td>
<td>1.1</td>
<td>2.3</td>
<td>2.8</td>
<td>2.5</td>
</tr>
<tr>
<td>Xeer</td>
<td>4.6</td>
<td>3.3</td>
<td>2.9</td>
<td>5</td>
<td>2.2</td>
<td>2.8</td>
<td>2.1</td>
<td>2.4</td>
<td>3</td>
</tr>
</tbody>
</table>

An extension of corruption is the broad influence it bestows on individuals. Many respondents criticized that political actors can and do influence statutory court proceedings. They added that good relations with court officials, be they familial or as acquaintances, are decisive factors for statutory proceedings.

“Businessmen and state leaders have a great influence on the courts, and they get what they want easily. The businessmen use their money and the state leaders use their authority or power so the most of the courts are corrupted and there [is] no justice.”

- Medical practitioner, male, Kismayo

“If there is a land dispute between you and me, and I have a relative or friend in the court, I will be the winner of the case regardless of the law.”

- Local NGO staff, male, Baidoa

“Those interest-based groups, those business people and those involved in land disputes, those organized groups, those who have close relations with powerful government officials – they all combine and are part of the problematic justice system of our country, particularly in statutory institutions.”

- Focus group participant, male, Wadajir

Both parties can bring such relationships to bear. The following case study illustrates an instance in which one party’s direct linkages to court officials was undone by the opposing party’s ties to senior members of the government executive – a branch that should not be able to exert such sway over the course of proceedings, let alone finalize their outcome, if the judicial branch is to be independent. Especially in Baidoa did respondents express a sense of disillusionment with the conduct of past administration, but other locations had similar stories to tell, as this case study shows.

DIFFERENT LEVELS OF CORRUPTION AND PATRONAGE

Before the onset of Somalia’s civil war, Nasra, of the Marehan clan of the Darood, purchased a plot of land, 20 m by 20 m, in Farjanno village. She had originally planned to construct a house on the land, but due to financial challenges she was never able to do so. Nasra claims that although she received legal documentation at the time of the purchase, she lost the documentation during civil war and displacement. In early 2019, a man named Rashid learned about the empty plot of land, and, according to Nasra, also learned that the owner of the land had lost her proof of ownership. Backed by a powerful clan, Rashid took the land by force and threatened to kill Nasra if she attempted to claim the land.
Nasra prepared to take her claims to the court, because Rashid’s elders were more powerful than hers. As Rashid began construction on the land, Nasra hired clan fighters to defend the land and prevent any further construction, at a cost of 1000 USD. She also approached the land department within the regional court but received no support. She believes that Rashid has ties within the court system and bribe officials to postpone the case indefinitely. The courts gave her 10 separate dates, and each time she appeared at the court her appointment was rescheduled. Nasra then attempted to escalate her case to the regional and appeal courts, but she claims she received threats from Rashid, which, alongside the increasing costs, prevented her from doing so.

Having exhausted her options within the court system, she took her case directly to the President of Jubaland via a personal connection in the State House. She met with the President who appointed a group of officials to investigate the case. They interviewed Nasra and Rashid separately and witnesses Nasra provided upon request. Her neighbors and the nearby households confirmed the land had indeed belonged to Nasra since 1995. Rashid presented apparently forged documentation. The officials presented the results of their investigation to the President, who declared that the land belonged to Nasra. After an 11-month process, Nasra regained her plot of land in December 2019. The chairperson of the ad hoc committee explained during an interview that the witnesses had swayed the President. The case appears to have contributed to the wide perception of courts as corrupt.

Respondents in Kismayo confirmed that bribes during land disputes are obligatory and accused officials of routinely influencing and even overruling courts. The politicization of especially higher value cases undermines not only the integrity of courts, but also the ability of justice seekers, civil society, and other justice providers to hold them to account. Elders and ulama straddle both roles, providing justice on the one hand but also acting as moral community leaders on the other. Yet, should less powerful elders publicly speak out against procedural flaws and political influence, they risk enmeshing their community in political and potentially armed conflict.

“We can say that [elders and ulama] interact and work together. But the statutory courts only do things on their own and complete every process by themselves. They do not interact with the other forms of the justice system.”

- Religious leader, male, Hodan

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<tr>
<th>HAMAR JABJAB</th>
<th>POLITICS DETERMINING PROCESSES</th>
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<tr>
<td>Anwar, a 42-year-old carpenter in Mogadishu of the Benadiri Reer Faqi clan, is the owner of a plot of land in Hamar Jabjab, which he inherited from his father. His father previously owned three plots of land but sold two of the three plots of the land in 1980 to a buyer. Since then, the buyer has claimed that he purchased all three plots. This immediately led to a dispute, but the case has been neglected since 1980. The buyer has taken advantage of this neglect and occupied all three plots of the land. In 2018, Anwar decided to approach the Hamar Jabjab district court to open a case. He claims that he lost a large amount of money to court fees and other unofficial payments but was initially offered support by the district commissioner. He recounts that the commissioner stopped assisting him when Anwar insisted on submitting his documents of ownership and evidence to the court rather than to the district commissioner directly. Since then, Anwar district officials have refused to cooperate and even obstructed proceedings. Anwar was even arrested and held in the district jail for five days. He was then released by the court through the General Prosecutor’s office. In 2019, a new commissioner was selected, and advised Anwar to find a lawyer, then take his case to the Benadir regional court. The regional court requested both parties to submit their legal documents or other evidence of land ownership. After the other failed to do so, the court ordered the police to close the house on the occupied land until a final decision would be reached. The case is still ongoing, and the self-proclaimed buyer has not yet submitted documentation, which the court awaits.</td>
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Focus group participants in Hodan and Wadajir spoke of instances in which regional courts overrule district courts due to political or individual interests rather than due process among institutions. They added that political appointments of statutory practitioners are frequently used for patronage purposes, which undermines judicial independence and the statutory sector’s integrity. The interaction of patronage with corruption and inadequate training renders outcomes unpredictable, let alone fair.

“There are different clan affiliations in the different federal state members, and you need to be aligned with a government official.”

- Focus group participant, male, Hamar Jabjab

Law enforcement appears to be equally involved in extortion and bribery. Focus groups argued that clan belonging and political influence allow some members of the security forces and their family members to commit crimes with impunity. As the following cases show, this trend further undermines due process and public confidence in government-affiliated security and justice actors.

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<tr>
<th>CORRUPTION WITHIN LAW ENFORCEMENT UNDERMINES DUE PROCESS</th>
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<tr>
<td><strong>WADAJIR</strong></td>
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<td>Fartuun, a 45-year-old housewife from the Hawiye sub-clan Hawadle, and her family members have lived on a block of land in Wadajir for 25 years. The family has a government-certified land title. In 2015, three men approached the family, claimed ownership of the land, and proceeded to intimidated Fartuun and her family to force them to vacate the land. They produced documentation detailing their purchase, submitted it to the courts, and filed a lawsuit against Fartuun’s family. The Benadir Regional Court summoned Fartuun and her family, but upon seeing her family’s land title, the court redirected them to the Wadajir district administration where the district officials explained they wanted to attempt to solve the case “internally.” The interviewed participants in the case could not explain why, but the case stalled there, was not resolved, and did not proceed to any courts. After the case had remained stagnant for three years, the three men once again approached the family. Together with local police officers, the men destroyed the family’s home and took all the family’s belongings from the property. According to Fartuun and a neighboring witness, the police were bribed, but were able to get an official court warrant detailing the purpose of their operation. The court denied having issued such a warrant, but district officials took no steps to compensate the family. A year later, the Wadajir district court referred the family to the Committee of Conflict Resolution located at the Benadir Regional Court. The Committee is now processing the case. Fartuun and her family claim that they have so far paid more than 3000 USD in official and unofficial legal costs. They are now working with SWDC to obtain a lawyer and live in a rented house, which Fartuun says they can barely afford, and state that they harbor deep mistrust towards the statutory system.</td>
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Hodan, a 45-year-old casual worker of the Darood-Harti-Majerteen, has been married to her husband for 17 years with three children. He had regularly beaten and abused her and left her in 2015 to join the Somali military. According to Hodan, he married another two wives before also returning to her but refused to provide for her or their children and beat and abused her again when she insisted. He then divorced her formally and took the children with him. Hodan claims that the children did not attend school or were well cared for. When she asked that the children be returned to her, he demanded that they remarry, which she ascended to.

When he beat her again following an argument, Hodan reported him at the Wadajir Police Station. The police officers asked her to bring a referral letter from Medina Hospital detailing her injuries. While she went to obtain the referral, the police summoned the husband to the station. He asked for a three days delay as he was on a military duty. Hodan learned only later that he was friends with the police officers and that his arrest three days later had been a charade. When she complained, she was told that the police had no jurisdiction to prosecute a soldier.

Upon a neighbor’s suggestion, Hodan approached her elders, who proposed that her husband pay 50 USD in compensation for her injuries. Her husband’s clan’s elders refused and disbanded the proceedings. Next, Hodan complained to the military court, which arrested her husband. His family posted bail and the court closed the case. Her protests were rejected and she was told to go home.

Most key informants and focus groups depicted elders as largely fair, especially those who work on a voluntary basis. Yet, as elders and ulama cannot charge fees without compromising their reputation, the source of their authority, the voluntary nature of payments diminishes their transparency, and thus provides scope for doubt and even accusations of misconduct. Some respondents warned that clannist patronage and politicization of elders has corroded elders’ reputation, especially in Lower Juba and Gedo, and that elders who are involved in political affairs or lead major armed clans may also be less accountable towards their communities.

“It is a cultural norm to compensate elders for their services, but it is not compulsory to pay.”

- Focus group participant, female, Kismayo

Faduma is a 25-year-old woman from the Marehan sub-clan Reer Hassan clan. On a hot night in December, she shut the door to house, went to bed, and woke up to a man standing over her. He pressed one hand over her mouth, a knife against her chest, and raped her. Her screams woke her neighbors, who attempted to chase and catch the rapist. An organized and lengthy search effort ended with the arrest of a newcomer to the village whom few people knew well.

Faduma did not mention any medical attention after the incident but recalls giving a statement at the police station. She was promised protection, identified the arrested as her rapist, and the man confessed. The police then transferred the case to traditional elders who had become involved after the arrest upon request by both parties. Those interviewed for this study note that cases that go to statutory courts quickly become public knowledge and the social stigma for rape victims is severe.

After the elders had taken on the case, the police released the accused. Approximately two months after the incident, the elders tasked the accused to pay 200,000 SOS in compensation. Participants in the proceedings who were interviewed for this study noted that this was the amount requested by the victim’s family and was considered a payment of ‘good will’. Faduma claims that the elders representing her also received a payment from her attacker, arguing that the decision was not “for her benefit, but rather for the benefit of the elders.”
The tendency to avoiding opening cases with courts is common for domestic, sexual, and gender-based violence. Interviews and focus group discussions were rife with accounts of such abuse that were met with dismissal from law enforcement officers, further abuse, or immediate closure after abusers assert their intent to change their behavior. Especially the latter exhibits elements of customary mediation seeking a cessation of conflict rather than statutory protection of individual rights.

“Just few days ago, a woman that reached out to the police station complaining about her husband. The office at the district court received the woman via the police. When they called the man and told him why his wife was there, he promptly told the officials that he would respect his wife and would care for his family. Spouses may reach high tempers in conflicts, but the community leadership and the district authority work closely together and manage many different cases with a civics-based approach.”

- Focus group participant, female, Wadajir

Many interviewed elders acknowledged that their norms and processes are not suitable for SGBV cases. Yet, absent better coordination and viable statutory institutions, elders especially in more remote areas continue to accept SGBV-related cases and work to resolve these towards compensation to prevent further escalation and avoid stigmatization of the victim. Coupled with the subordinate role women are assigned in these processes, many respondents, including elders, concurred that customary institutions are effective in conflict prevention, but did not consider them fair to survivors.

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<th>XUDUR</th>
<th>ELDERS ACTIVELY INTERCEDE IN SGBV CASES</th>
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<tr>
<td>Hawo is a 12-year-old girl from a poor community in Xudur. Her family had fled Tiyeglow when Al Shabaab arrived took the town for fear that her father’s position as a soldier in Somalia’s National Army would put them at risk. After her father died, her mother, Amina, worked as a petty trader and Hawo received tuition support from a local NGO for school. Her siblings, who could not attend school, were harassed or beaten by other youth because her father’s clan is a minority within the community. On her long walk to school each day, a middle-aged man named Abdisalam who lived near the school would occasionally give her vegetables and other food for her family. One day, he asked her to join him in his vegetable garden, telling an old man who stopped them that she was his paternal cousin. In the garden, he raped her. He then gave her some money and told her not to speak to anyone about what he had done to her. Hawo was in pain and unable to walk. A relative passing by on a motorcycle took her home to her mother and then to a hospital, where doctors found that she had been raped. Her mother reported the case to the police with the hospital’s medical report and asked to open a court case. The police arrested Abdisalam, who immediately contacted his clan’s elders. Abdisalam’s elders contacted those of Amina’s clan, a major clan in Xudur. Both decided to take the case against the express wishes of her mother. The elders representing Amina had assumed that it had been her who was raped and soon insisted that Abdisalam’s elders should confer with those of Hawo’s father’s clan. Because only a few of this clan live in Xudur, Amina was unable to find any elders in the town. Without any other advice and representation, Amina asked her own clan elders to represent her daughter. They agreed and quickly reached a settlement for a compensation payment, which Amina described as a small amount of money that did not suffice to cover the medication that Hawo needed to treat her injuries. Amina added that Abdisalam was permitted to return to his home next to the school and doubted that the payment would dissuade him from hurting and abusing other children.</td>
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“My daughter is living in a nightmare. She is no longer a playful and happy child. She wakes up once or twice a night crying that someone is doing bad things to her, and she no longer wants to learn.”
Accusations of misconduct are more likely to be levelled against elders than against ulama, who continue to command a largely impeccable reputation in the justice sphere. The esteem in which shari’ah-based adjudication is held extends to both ulama following the Shafi’i madhab and Al Shabaab’s Hanbali-inspired practitioners. However, at this point qualitative and quantitative data diverged. Whereas survey respondents outside Hodan did not consider Al Shabaab courts particularly fair, informants and focus group participants repeatedly asserted that the group’s procedures and decisions are fair compared to those of many elders and most courts – which may also indicate hesitation in groups to criticize Al Shabaab and its courts, but corresponds to their widespread use.

“There is justice here at the Islamic courts.”
- Focus group participant, female, Weydow

“The more you prepare and the better you debate, the better chance you have to win against your opponent [in Al Shabaab courts]. You do not fear threats, risks, or abuses of power.”
- Focus group participant, female, Hodan

Any perceived unfairness among other institutions benefits Al Shabaab. The group must therefore cater towards communally held norms, but also address any and all shortcomings of other institutions, and it does so from the vantage point of its own highly conservative interpretation of the shari’ah. This puts especially women in an ambiguous position as they can be treated more favorably than in customary processes or by complicit court and security officials, but they may also be treated according to a strongly patriarchal form of shari’ah. In other cases, Al Shabaab employs entirely different approaches to arbitration, as the following case studies exemplify.

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<th>WEYDOW</th>
<th>INSTITUTIONAL FAILURE TO UPHOLD RULE OF LAW BENEFITS AL SHABAAB</th>
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| Hussein, aged 56 of the Hawiye-Abgaal, has inherited 14 blocks of land in Siinka Dheer, a neighborhood in Weydow, 15 kilometers southwest of Mogadishu. In 2016, a group of men approached Hussein, showing complete land titles dating from 1988. As a public servant prior to 1991, Hussein had faith in the judiciary system, opened a case with the Benadir Regional Court, and obtained a lawyer. After regular procedures and hearings, the judge ruled in favor of the opposing party, and Hussein appealed. While the appeal was still ongoing, the other party and a group of police officers demolished Hussein’s house. His family attempted to intervene, but the police responded with force, killing two of his aunts. Later, Hussein’s appeal was successful and the case was reopened. He claims to have spent 27,000 USD on fees and other costs, but with no progress began to look for other means to secure his land.
In mid-2018, Hussein took his case to Al Shabaab, which he described as a parallel, shadow government. Al Shabaab opened the case and summoned the other party. The jurors instructed both parties to gather eight witnesses of at least 80 years of age, which Hussein accomplished. The other party failed to provide the witnesses, after which, and after reviewing additional case evidence, Al Shabaab ruled in favor of Hussein. The case was closed within six months and Hussein incurred 3,000 USD in expenses. The opposing party complied with the decision and since vacated the land. Hussein reiterated that he had expected due process and fair treatment in the statutory courts but claims that he witnessed bribery and other forms of corruption that led him to approach the Al Shabaab courts. |

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<th>HODAN</th>
<th>SOCIAL NORMS PERMEATE INSTITUTIONS, CAN UNDERMINE FAIRNESS</th>
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<tr>
<td>Ahmed, a 40-year-old worker of the Hawiye-Habar Gidir, bought a plot of land in Hodan in 1998 and built a villa in which he proceeded to live. In 2017, a woman named Zaynab approached him, claiming that she owned the land, had fled in 1991, but still has all relevant documentation. They agreed to go to take their dispute to the Benadir Regional Court, which opened the case, listened to each party, and gathered evidence and documents. The court also dispatched a team with experience in land marking, land documentation, and land transfers. Ultimately, the court granted the land to Ahmed.</td>
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Zaynab protested and approached the closest Al Shabaab court. The court also sent a team to investigate and asked Ahmed to bring his documents as well as the people who sold the land to him. Both Ahmed and his seller appeared with documentation, which the court found to have been falsified by a previous seller. Based on these findings, the court sent a team to determine the costs incurred by Ahmed to build on the land, which the team estimated at 125,000 USD. The court proclaimed that Zaynab or the original seller should pay each other half this amount if they wished to claim the land. Zaynab refused to pay money for the land she owns, which was a matter of general agreement and supported by her valid documentation. The seller paid 65,000 USD to Zaynab and returned the land to Ahmed. Zaynab complied out of fear of Al Shabaab, accepted the payment, and left again.

Justice seekers who approach statutory courts seldom know how cases will turn out. The many exogenous factors that determine cases, from patronage to bribery or toleration of SGBV, let alone the unpredictability of which framework or procedures will be employed, render it impossible for plaintiffs to predict their outcome. Predictable governance, of which the justice sector forms a crucial part, is pivotal in counterinsurgency environments. Counterinsurgency expert David Kilcullen argues that predictability is the fulcrum on which the traction of insurgents vis-à-vis government actors among communities hinges. He cites the early counterinsurgency theorist Bernard Fall with: “a government that is losing to an insurgency isn’t being out-fought, it’s being out-governed.”

Predictability would also fulfil the two major criteria community members set for fairness of procedure: equality of rights and observation of due process. With these two elements in place, and with sufficient legal knowledge or advice, justice seekers should be able to anticipate outcomes. This section and preceding sections on legal knowledge and advice have sketched a litany of factors that render processes unpredictable, highly dependent on local context and the power relations between opposing parties, as well as wider political and business interests.

“There are in government positions, those that work in international organizations, and those who are rich can influence those in the justice system. They offer bribes or favors.”
- Youth representative, male, Baidoa

“There is a police station, which is not known for its quality service, because it is corrupt.”
- Focus group participant, male, Hamar Jabjab

“You need to pay police officials, subordinate staff at the district courts, and so on.”
- Focus group participant, female, Hodan

“There is no specific amount of money required as fee. Some parties may pay undisclosed money to the elders.”
- Focus group participant, female, Kismayo

Shari’ah-based mediation appears relatively exempt from these accusations. Asked to rank the predictability of processes from 1 as highly predictable to 5 as not at all predictable, respondents in almost all locations other than Wadajir, Baidoa, and Xudur characterized ulama as almost entirely predictable—and even those three outliers ranked them above most others. That respondents in Dolow deemed courts and police predictable suggests that even a system marked by clan or group capture may exhibit some regularity, as power relations are clear cut. Respondents in Weydow, by contrast, who had consistently ranked almost all institutions negatively, made an exception and bestowed positive marks on elders and ulama, considering both entirely predictable, and others not at all.

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Albeit no panacea, focus group discussants and informants suggested stronger coordination and clearer frameworks as useful steps to tackle drivers of unfair treatment and unpredictability. They hoped that these structures and trends would facilitate greater mutual and overall social accountability, because multiple institutions and people, as a medical practitioner in Wadajir put it: “cannot be misled at once.”

“The community believe in the Islamic law and see it [as] fair. Also, they have some respect for the elders, but they do not believe [in] the statutory courts because they see them [as] corrupt, and they do not like them.”

- Medical practitioner, female, Kismayo

Others argued for a deeper change in ethos among justice practitioners. As far as this can be catalyzed by changes in infrastructure, training, and frameworks, actors involved in justice sector development and reform may be able to contribute to such a shift. However, such attitudinal transformations tend to be gradual and slow, and require bottom-up activity by civil society actors exerting pressure on power holders, wielding sufficient leverage, possibly with external support, to hold them to account.

“These legal practitioners are part of the problem. They need to improve their ethics.”

- Focus group participant, female, Wadajir

“We have enough practitioners on the ground, but the problem is that they are not ethical.”

- Focus group participant, female, Hodan

Yet, some people with the necessary financial wherewithal entirely sidestep justice institutions. Rather than bribing justice actors, focus group participants in Dolow explained that wealthy actors pay off aggrieved parties directly and prevent cases from reaching institutions in the first place. In short, the lack of safeguards and the endemic corruption are symptoms of a lack of constitutionalism, resources, and accountability that will need to be addressed holistically, at direct, structural, and cultural levels.

“[Wealthier people] can exert influence by convincing the other party to settle for an unfavorable decision in exchange for compensation.”

- Focus group participant, male, Dolow
**ENFORCEABLE SOLUTIONS**

**KEY FINDINGS**

- Statutory courts rely on security forces for enforcement, but these tend to retain clan allegiances. Reports of clannism, abuses, and corruption within security forces further delegitimize the fledging statutory sector.
- Except for Dolow and Kismayo, respondents in all locations considered unofficial payments necessary for sentences or resolutions to be enforced. Direct access to clan militias or linkages to clan-based security forces can sidestep the need for payment.
- High social cohesion in locations such as Xudur mitigates clannism and facilitates the compliance with verdicts by elders and ulama.
- Interference of clan militias and clan-affiliated security forces can extend to interventions in ongoing trials or action on behalf of the losing party in contradiction of court or elder verdicts, or on behalf of victorious parties during ongoing appeal processes.
- Given the importance of clan power in enforcement, displaced and marginalized communities’ access to effective justice is further curtailed.
- The most volatile cases for enforcement are land disputes, in which attempted enforcement can escalate to or be met with armed violence.
- In SGBV cases, threats of violence often interrupt cases prior to enforcement to dissuade victims from pursuing cases.
- Swift and effective enforcement - via its capacity for armed violence or threats thereof - is central to Al Shabaab’s appeal as a justice provider.

“Most people do not respect judgements because of the weak capacity of the government to enforce them. There are specific groups that reject the judgements. At the same time, there can also be interference from powerful officials. One needs to pay for enforcement.”

- Focus group participant, female, Hodan

“Any case that is not financed by the successful party will be stuck somewhere in the dust. Unofficial payment is involved in all of the stages, and the most at the enforcement stage.”

- Focus group participant, male, Hamar Jabjab

Discussing the factors that facilitate or obstruct enforcement will be, for the most part, a reiteration of the preceding sections. Cost barriers, corruption, political interference, clannism, threats of violence, greater legitimacy of shari’ah-based processes, greater vulnerability for displaced communities, greater potential for violence during land disputes, an uneasy position for SGBV-related processes, and Al Shabaab benefiting from shortcomings pervade all aspects of justice in Somalia, including enforcement.

The Somali National Police Force (SNP) receives support from the UK Department for International Development (DFID)-funded Somalia Security and Justice Programme and the UN-led Joint Police Program. Efforts to build Somalia’s statutory justice sector must engage with police forces not only as investigators or for enforcement purposes. Police violence, especially along clan lines, undermines the
sector’s legitimacy. Several respondents noted that such violence remains part of everyday experiences with police. One Baidoa district official attributed this to a lack of procedure and standards, outdated frameworks, and insufficient training.

**Statutory courts rely on prosecutors and security forces, especially police, to enforce their decisions.** All have been implicated in corruption, nepotism, and political patronage under almost all other components. Enforcement is no different. This is not to say that every person in these institutions is implicated in such practices or that these factors shape every aspect of their work. According to the majority of respondents, however, they are sufficiently widespread to constitute a systematic pattern that shapes citizens’ perceptions of and experiences with these institutions.

Some community members thus choose not to abide by court decisions unless supported by sufficient force or influence, and security forces may not enforce decisions without payment of what respondents in Mogadishu called an “enforcement tax.” A lawyer in Mogadishu noted that such a “tax” does not exist, nor is it legal, but that demands for additional bribes are framed as official tax payments—capitalizing on justice seekers’ lack of legal knowledge and limited access to advice and representation.

> “Most of the community do not respect the judgement unless there is someone powerful supporting your case.”
> - Focus group participant, male, Hodan

**Except for Dolow and, to a lesser extent, Kismayo, respondents in all locations asserted that justice seekers must pay unofficial fees to ensure that decisions in their favor are implemented.** This is mitigated by clan influence or access to armed militia. Parties who wield these can reportedly undercut bribes to security forces or law enforcement, countering with greater political influence or sheer force.

> “Concerned applicants must make unofficial payments to ensure enforcement. This is the ‘final stage’ of the statutory procedure. You would lose if you do not. This stage is critical.”
> - Focus group participant, female, Wadajir

> “When you win, it is up to you to get it implemented by the police, [which] is not easy.”
> - Focus group participant, female, Baidoa

As the graph on the following page shows, payment for enforcement is needed with all institutions. Elders and ulama claim to side-step these by requiring parties to pledge to abide by their decisions before the proceedings begin and by bringing to bear their moral authority. And indeed, elders and ulama receive notably fewer mentions than statutory courts in most locations. However, those who intend to subvert institutions and apply influence, threats, or force are unlikely to be bound by pledges. In such instances, elders and ulama do rely upon security forces to enforce their decisions—who in turn likely demand payment for action.\(^80\)

In this context, it must be mentioned that Somali federal and state authorities are still in the process of establishing a reliable and accountable registration system for the payment of salaries—a process that some states have yet to begin. That security forces go unpaid has been a recurring observation of the UN Security Council’s group of experts and has led to repeated protests by units throughout Somalia.\(^81\)

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In places where local security forces are congruent with major clan militias, payment might become redundant, as the implementation of decisions is contingent upon the clan affiliation of the victorious party. In places such as Baidoa, where clan belonging of security forces is an open point of contention in wider political debates, enforcement by security forces may even invite retaliation, both by armed forces and, should major business owners be involved, of economic nature.

“The police are supposed to implement the court decisions but have no capacity to do so. Clan militias dominate the police.”

- Focus group participant, male, Xudur

“It depends on who is involved, but if Members of Parliament or politicians as well as big clan groups are, then it may cause violence between both sides.”

- NGO staff, male, Baidoa

“The police will take bribes to enforce or not enforce decisions. If perpetrators are powerful, they can easily reject court decisions.”

- NGO staff, male, Weydow

Dolow was the only place in which almost no survey respondents reported any unofficial payments for enforcement. This may be due to fear of accusing security forces of corruption or due to the presence of NGOs and Ethiopian forces – or the political situation in Dolow is such that once courts take decisions, they are indeed enforced. Interviewees in Dolow depicted enforcement as reliable and swift. However, this was not accompanied by greater trust in statutory institutions. This suggests that enforcement is facilitated by the high degree of securitization and militarization of the district and is not accountable to due process or Dolow’s wider community. In Xudur, by contrast, high social cohesion renders enforcement unnecessary as residents comply with verdicts, especially those of ulama.

“Judgements are not enforced in Xudur, the community complies with the outcome.”

- Focus group participant, male, Xudur
The overlap between clan militias and security forces not only undermines enforcement but can undermine entire justice processes. A district official in Baidoa recalled incidents in which clan militias appeared at a trial or confronted police officers to intimidate them on behalf of one of the parties. Such incidents illustrate not only the fragility of the fledgling state security and justice sectors, but also the power relations between institutions as such and the informal structures that shape them.

“The police are supposed to implement the decisions reached by the courts, but the police have no capacity to implement. Clan militias dominate the police.”
- Focus group participant, female, Baidoa

“Sometimes the police clashes with clan militias when a convicted person refused to abide.”
- Focus group participant, male, Baidoa

When security forces intercede on behalf of stronger parties, displaced and marginalized communities are most at risk. Although Madhiban communities have in the past taken up arms in rare instances, most cannot muster armed forces in their defense. Displaced communities are most vulnerable to abuse and eviction from settlements as land is repurposed to commercial ends. They have little to no recourse to legal or judicial support, and even were they to obtain fair treatment and favorable decisions, they are unlikely to have the means to ensure that such decisions are enforced. The threat of violence from the very security providers charged with enforcing verdicts adds yet another incentive for those lacking wealth, networks, or political office not to engage with statutory courts.

“The lack of impartial enforcement mechanisms may present problems when a militarily strong clan openly refuses to comply with a judgment that favors a militarily weak clan. As a result, Somali minority groups, particularly those of Bantu and Arab origin, are heavily discriminated against through the customary and the statutory processes. To address these problems, there should be strong and impartial law enforcement.”
- Traditional elder, male, Baidoa

Elders and especially District Peace Committees do intervene to prevent the escalation of violence. Displaced and marginalized communities are once more disadvantaged, as their elders wield less authority than those of more politically or militarily stronger clans that just happen to be a minority locally. The reliance upon elders reverts justice-based processes to basic peacekeeping – two components of post-conflict stabilization that are not always mutually compatible.82 Elders’ efforts may succeed in halting violence, but do so at the expense of protecting individual’s rights, the violation of which may have incepted the underlying dispute in the first place.

“You should anticipate that your opponent will not comply with the court judgement.”
- Focus group participant, female, Wadajir

“People do not comply and accept judgements unless they are forced to.”
- Focus group participant, female, Weydow

In customary proceedings, all parties must commit at the onset of the process to abide by elders’ or verdict. Presiding elders ask parties to publicly confirm their satisfaction with the process before announcing the verdict or proposed resolution. Parties can appeal a decision, upon which a new panel of presiding elders (xeer begti) is convened. Parties can also call upon a third clan group to send elders as observers. A party that refuses to abide is publicly condemned by the other xeer begti.

Compliance also depends on elders’ social standing in their communities. Once carrying weight, this condemnation has lost force as armed factions have gained influence at their expense. In Baidoa, where elders occupy a more central position and most communities are of the Mirifle clan, decisions are more likely to find voluntary acceptance. In Mogadishu, elders can reportedly ask for law enforcement officials to be present during the final steps of the process to ensure enforcement, or to force a potentially non-compliant party to reject the resolution publicly. Once again, these tactics are compromised if law enforcement is biased or one party wields sufficient power to ignore condemnations or enmity and to not fear prosecution.

“The elders' role is to mediate, not to force participants.”
- Focus group participant, male, Wadajir

“If we compare the decisions made by statutory court and elders, the elders’ decisions are more likely to be enforced effectively than the others because people respect the elders. No group refuses the elders’ decision.”
- Focus group participant, male, Baidoa

Neither elders nor ulama can directly enforce judgements. Both may charge a small fee for enforcement by persuasion, mostly in the form of compensation paid by the losing party. Ulama operate similar to elders, asking both parties to take a religious oath that they will comply with judgements and implement outcomes. Religious leaders’ moral authority renders a refusal of an ulama’s judgement a public loss of face. Should their leverage over their communities fail, however, both elders and ulama refer cases to statutory courts or police for enforcement. This may be the reason for a less pronounced role for elders and ulama in Wadajir and Kismayo, where courts and law enforcement appear to operate most effectively and with public support, albeit less enthusiastic in Kismayo. In Baidoa and Xudur, the roles are reversed.

“Clan elders have a good relationship with the community, while exact judgment and punishment is carried out by the Islamic courts.”
- Religious leader, male, Xudur

Land disputes hold the greatest potential for escalation of violence during enforcement. This reflects the importance of land ownership and access to land-based resources and suggests that parties willing to engage in high value land disputes possess the means to challenge verdicts by force.

“Parties involved [in land disputes] are organized to clash with one another at any moment, and especially when there is enforcement of the law or judgement. There are experienced, clan-oriented militias fighting for this purpose only.”
- Focus group participant, female, Hodan

“Only those who have power and are affiliated with strong clans can experience the final enforcement of the judgement of their case.”
- Focus group participant, male, Hodan

Especially in Baidoa, elders appear prepared for outbreaks of land-related violence and sufficiently respected to mediate and deescalate. Respondents observed that the decision by President Laftagareen to suspend land disputes in courts has elevated the role of elders. Some claimed that elders collaborate closely with police, but the interviewed court official in Baidoa demurred, arguing that police officers do not enforce verdicts that would negatively affect other police officers. In Kismayo, security force behavior was described in similar terms.
In cases of SGBV, threats are issued and violent crimes committed to dissuade victims from speaking out or to take revenge against perpetrators before processes arrive at compensation. It stands to reason that instances of gang rape render it more likely that perpetrators’ combined families can intimidate victims or exert pressure otherwise. In short, violence occurs before the process opens, less so to challenge the enforcement of a verdict. Only if parties are dissatisfied with judgements and dispose of means to reject them and move against the perpetrator’s clan is enforcement questionable. A medical practitioner explained that the perpetrator’s clan militia or security forces who have committed SGBV can construe a victim bringing a case to court as a direct challenge to them.

“When a man from a different clan rapes a woman from another clan, and the ruling does not turn out to be fair or [is] biased, a clan conflict can erupt and lead to devastation.”
- District court official, male, Kismayo

“Sexual violence cases always cause more violence.”
- NGO staff, female, Wadajir

Should a defendant or victim reject a verdict and appeal, possible in both statutory and customary contexts, stronger parties may move to impose the sentence on the opposing party regardless of the state of proceedings. Such incidents were mentioned in the case studies above when land grabbers mobilized security forces to demolish houses. Especially respondents in Wadajir mentioned this possibility, pointing to a case that recently unfolded.

“In Wadajir district, there was a recent case that caused the death of many people. It was a land dispute. That violence happened when the regional court ordered one of the parties to vacate the land. He did not listen. The other party waited and waited, and finally used their armed militia to clear the land.”
- Law enforcement official, female, Wadajir

“Violence can sometimes happen if the party that is ruled against is from a strong clan or family. A [retrial] of the process is done in most of those cases to prevent more violence.”
- Religious leader, male, Hodan

Swift and effective enforcement is central to Al Shabaab’s appeal as a justice provider. The group backs its decisions and their enforcement with their military power, both overtly and via the threat of assassination. On the one hand, its courts draw legitimacy from their use of shari’ah. On the other hand, the group can leverage discontent with justice institutions, mistrust in administrations, and widespread unemployment to recruit enforcers that are not otherwise members of the group, paying unemployed youth to intimidate individuals into compliance. This puts reluctant parties at risk of being targeted by otherwise inconspicuous individuals in their immediate environment and renders enforcement less resource-intensive for the violent extremist group, as well as free of charge to justice seekers.

“Judgements of Islamic [Al Shabaab] courts are accepted by the community. They are respected and people comply because they are based on shari’ah law. Those in charge are serious about enforcement, and people have the freedom during the hearing to openly defend their case.”
- Focus group participant, male, Hodan

“Many people prefer Al Shabaab courts because of the strong enforcement. Al Shabaab threatens the people so that no one can refuse its decisions, and their judgments are enforced quickly.”
- Focus group participant, male, Baidoa
“People comply with the judgement as if it were declared by a government authority. People cannot reject the Islamic court judgements because the Islamic courts have the power to seek, catch, and execute those who would deny the court’s judgement.”

- Focus group participant, male, Wadjir

At the risk of repeating this point *ad nauseam*, Al Shabaab is able to gain relevance as a justice provider not by offering particularly sophisticated services, but simply by avoiding the practices that delegitimize other institutions. The appeal of Al Shabaab courts is thus less of the group’s own making but builds on other institutions’ inability to enforce, cost barriers, and lack of independence and integrity. In this environment, justice seekers appear willing to tolerate the group’s harsh methods if the guarantee that other parties cannot muster influence or kinship to ignore the outcome of the process. This presents a further setback for women’s rights as well, as the following case study shows.

| AL SHABAAB’S CAPACITY TO ENFORCE ALLLOWS IT TO OVERRULE OTHER INSTITUTIONS |
| HODAN |

Basma, a 35-year-old resident of Hodan, is mother to eight children and married to her cousin. Since their wedding 12 years ago, the couple has quarreled and her husband has been beating her. For the first six years, Basma tried to hide the abuse, hoping it would change, but in 2014 others around her became aware of it after her husband had beaten her particularly badly. She approached the elders for a solution, with which she was satisfied, although she refused to share the details. When he beat her again, she called upon her elders and was granted a divorce.

Some time later, Basma remarried her husband, apparently for the benefit of their children. Once more, he began physically abusing her, and once again she reported the abuse to her elders. This happened four more times, until the elders “gave up” on the family and stated that they could not continue to step in and resolve their issues. Basma asked for another divorce, but her husband refused. She then took her case to the Hodan district court with support from the elders. The court reviewed the case and supported the divorce. When her husband refused to comply, the court sent the police, which ordered him to divorce her.

Her husband seemingly complied, but also went to the nearest Al Shabaab court, arguing that he was forced to divorce his wife against his will. The Al Shabaab courts do not recognize rulings of government-affiliated courts and thus deemed the divorce illegal. The court summoned Basma and ordered her to stay in a private room near the court with her former husband for seven days to engage in “husband-wife activities,” as the court reportedly phrased it. According to Basma, she was not allowed to leave this room and was forced to comply with the activities ordered by the court – instances of sexual violence given her lack of consent. After the seven days had passed, she was also ordered to go to her house and stay with her husband. Basma now stays with her former husband in a relationship she describes as akin to slavery. She does not report this to the Somali security forces because she does not think they can guarantee her safety from Al Shabaab.
CONCLUSION

“People would like to see the statutory justice institutions working and serving the public without discrimination, bias, or bribe.”

- Focus group participant, male, Baidoa

Despite Somalia’s legally pluralist complexity, several findings pervade all six aspects of access to justice.

- **The statutory court system and law enforcement** are rudimentary, ill-equipped and ill-trained, and enmeshed with other, more political branches of government. Along with some legal aid providers, all institutions are accused of partaking in corruption, demanding unofficial payments, and side-stepping due process depending on circumstances and parties’ influence.

- **Cost barriers** are one consequence of the relatively unregulated and unaccountable practice. They are both a result and a component of the rent-seeking political economy that pervades Somalia’s state building process and economic activity, and they enshrine or even deepen existing inequality – most adversely affecting displaced and marginalized communities.

- **Customary institutions** remain the first port of call for a number of reasons, including the lack of capacity, legitimacy, and accountability of statutory courts, as well as the clan-based power sharing that underpins Somalia’s state formation. Elders are pivotal for preventing civil or criminal disputes from escalating to armed violence, but the orientation of customary norms towards collective compensation undermines individual rights protection and deterrence of violent crimes, first and foremost sexual and gender-based violence. Elders profess to be open to a review of existing customary agreements and practice to better fit human rights norms and current challenges, and many are critical of fellow elders who partake in the rent-seeking and clannist politicking, which somewhat taints their reputation without changing their position within the justice framework.

- **Shari’ah** is less of a separate justice framework or tradition than the normative base for both customary and statutory practice, and by far the most legitimate normative framework among the Somali population. It combines moral authority with rights-based components, but its teaching is in Arabic, and the continued politicization of justice provision prevents ulama from more direct involvement in customary or statutory proceedings.

- **Al Shabaab** can leverage shortcomings in due process, accusations of corruption, and the inability of institutions to enforce verdicts against unaccountable armed militias. As part of its wider insurgency – a bid for legitimate governance that entails the maintenance of a Somalia-wide administrative structure – the group offers an alternative court system based on similar procedural norms as customary institutions and a more socially conservative Hanbali interpretation of shari’ah. Its courts have traction among a population that frequently laments unfair treatment by courts, men seeking to reverse judgements that safeguard women’s rights, or individuals seeking redress against more powerful adversaries that courts do not provide.

- **Institutional independence**: Courts are not independent in Somalia. Justice institutions are to differing extent enmeshed in legislative and executive branches, clan-based politics, and rent-seeking. Although civil society is not entirely exempt from these dynamics either, some organizations have started supporting justice seekers in navigating the justice landscape and victims in receiving treatment and redress. These dynamics vary from location to location. Any justice sector support program must take into account local circumstances at district and state level. They also cannot be separated from other stabilization, state building, and peacebuilding efforts as access to justice straddles all three, is shaped by them, and can undermine them where its practice reinforces discrimination and conflict profiteering.
**RECOMMENDATIONS & UPTAKE**

**LEGAL FRAMEWORK**

- **Shari’ah:** The Shari’ah commands immense legitimacy in Somalia and is the basis for both customary and statutory law. It also provides an entry-point for greater protection of individual rights, especially for women and minorities. The EAJ Program has and is producing in-depth studies into the shari’ah in Somalia, has produced guidelines for a shari’ah interpretation focusing on women and marginalized groups’ access to justice that has been advertised via media and workshops, and uses these insights to inform the Program’s approach to Women, Peace & Security

- **Recommendation:** Ensure that uptake of guidelines and shari’ah-based review processes are participatory. Where community leaders, including women’s representatives and those representing marginalized groups, partake, they engage in dialogue with other justice actors, become better informed to support their communities, can ensure that their constituents’ concerns are taken into account, and establish networks and relations towards more inclusive local governance institutions.

**LEGAL KNOWLEDGE**

- **Curriculum:** The EAJ Program is working with two Mogadishu-based universities to develop a coherent curriculum to be taught to lawyers and other jurists in training.
- **Pocket Book:** The EAJ Program is working to produce a ‘pocket book’ that supports justice users in understanding Somalia’s legally pluralist and especially the statutory justice chain.
- **Justice Campaigns:** The EAJ Case Review Team (see below) will distill issues from case review and provide information on them via media outreach.

- **Recommendation:** The training of lawyers, judges, and other jurists must adapt to the dynamic nature of justice provision. Graduates must be versed in different interpretations of the shari’ah as it forms the conceptual and inviolable underpinning of the constitution. They must also understand the rudiments of the xeer to interact with elders. Given that the xeer is subject to dynamic change, a basic understanding would be sufficient. Schools and universities will require textbooks, and these textbooks may require adaptation after still-provisional constitutions are reviewed and new legislation passed.
- **Justice Promoters**: The most extensive component of the EAJ Program is support for advice and representation. The core of which is the training of justice promoters, both on the legal norms as such and on local context. This provides immediate and accessible support to justice seekers locally and likely the most immediate tangible impact of the Program.

- **Case Review Team**: Given the contentious position of SGBV cases, the EAJ Program maintains a Case Review Team on stand-by to support EAJ partners with such cases.

- **Land Accountability Platforms**: These platforms bring key stakeholders from community and institutions together for accountability and dialogue over volatile land disputes.

- **University Legal Aid Clinics**: Part of the EAJ Program’s engagement with Mogadishu-based universities are student-run legal aid clinics to provide support to justice users and practical experience to future justice actors

- **Recommendation**: The two main components that must be prioritized in these interventions are accountability and sustainability. The work of each promoter, team, and platform must be scrutable and users must have avenues for feedback and grievances. Sustainability comes in two parts. The financial viability of each element must transcend the EAJ funding cycle. Given the government’s brittle revenue base, the program could explore local match-funding, which would add a layer of accountability and the possibility of growing local oversight institutions as well. The second part concerns the personal safety of each participant. The program operates in an environment of protracted and often armed conflict in which small arms ownership is common and militias are ubiquitous factor. Justice promoters and members of accountability platform must be versed in local context and cognizant of risk, mitigation strategies, and clear risk thresholds.

- **Alternative Entry Points**: The above-discussed Justice Promoters, Case Review Teams, Land Accountability Platforms, University Legal Aid Clinics, and the below-noted Court User Committees are geared to provide justice users with local and accessible sources of advice and support that can help facilitate their access to statutory institutions, both by helping them navigate the justice landscape and by taking over some aspects that allows justice users to maintain their daily livelihoods whilst their court proceedings are attended to.

- **Model Court**: The below-outlined Model Court is a vehicle for an improvement of procedure, including accelerating and facilitating access and progress to verdicts.

- **Recommendation**: As noted above, new platforms will require financial and risk-based viability in the medium- and long-term. Platforms should also work with key community leaders and influencers, who vary by location, to ensure that justice users know of them.
- **Shari‘ah**: Norms drive rules and engagement. The EAJ Program therefore engages with the strongest normative base of legal frameworks in Somalia, the shari‘ah, to ensure fair and rights-based adjudication, as outlined above.

- **Model Court**: The EAJ Program is supporting a court in Wadajir district in Mogadishu to provide a point of reference for fair and efficient procedure.

- **Court User Committees**: These Committees will comprise community representatives to hold justice actors accountable. The CUCs are launched and will begin operating in conjunction with the Wadajir Model Court.

- **Recommendation**: Sustainable inclusion requires new members of institutions that are mandated to represent disadvantaged or marginalized groups to exhibit capacity that is at least equal to more long-standing members. In forming committees, the program should consider through which pathways community representatives can attain such skill and support committee-members to ensure their long-term viability.

- **Coordination**: The EAJ Program coordinates with the actors already engaged in security sector reform on information sharing and synergy. Given that the security sector is as fractious as the justice sector, if not more so, direct involvement in security sector reform would detract from the EAJ Program’s engagement in strengthening and consolidating the statutory justice chain and its institutional coordination with other justice actors.

- **Recommendation**: Institutional set-up, performance, and legitimacy varies across Somalia. The EAJ Program should continue emphasizing its strong focus on context and conflict sensitivity with regularly updated local context analyses where needed or cooperate closely with other programs working in the same locations to ensure that context is consistently taken into account towards several ends: the program acting conflict sensitive implies that the program is conscious of its own position within local conflict dynamics and works towards creating a more peaceful environment; context awareness improves risk assessments that in turn support the safety of local partners and EAJ teams; information sharing ensures that progress is not undone by parallel but uncoordinated and not conflict-sensitive programming.
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ANNEX A. SAMPLE

The following includes visualizations for the breakdown of the sample of survey respondents for this study. The split between male and female respondents was almost equal, whilst the breakdown by age reflects the likely ages of justice users, albeit with a slightly higher percentage of 26-35-year-olds as these often represent their households in surveys.
Although clan remains a central determinant in socio-political and economic dynamics, its relevance to this study’s main research areas was mediated by income. In only few cases did clan belonging significantly predict outcomes. This is in part due to the sample spread over a wide variety of sub-clans, leaving too few respondents per specific sub-clan to derive representative results. However, clan was significantly associated with monthly household income in all locations, which in turn appeared in many significant and often strong correlations with perceptions of access to justice.

The education attainment of respondents is reflective of the current state of public infrastructure, even in urban areas. Notably, however, the high level of those who have received no education did not directly translate into literacy rates, as those who reported to be illiterate were in equal parts composed of respondents with no education and respondents with Qur’anic education. Only two of the 124 illiterate respondents had received some primary schooling or vocational training. This suggests that only finished primary education can guarantee literacy, whilst those with no or Qur’anic education depend on family members or social environment for this crucial skill.
ANNEX B. GRAPHS AND TABLES

Cost barriers are perhaps the most frequent determining factor of unequal access to justice, as financial means stand in for clan background, socio-economic standing, and political access. This is reflected in income groups’ standing on issues. The perhaps most evident expression of this is institutional preference. Those with lower household income were significantly more likely to consider elders and ulama most able, whilst those with a monthly household income above 1-2.5 million SOS considered courts and police more appropriate.\(^83\)

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\(^83\) All other institutions received less than 10% of mentions and are not listed here.
Another such statistically significant association concerned access to legal advice. Respondents earning more than 2.5-5 million SOS per month were more likely to consider advice and representation available (see graph above) and turn to private lawyers, government officials, and legal aid or civil society organizations. Although those earning less than 1 million SOS had similar responses to those earning between 2.5 and 4.65 million SOS, those groups sought help primarily from elders and ulama. The data obtained did not clarify how the 31% of households earning less than 100,000 SOS per month are able to access private lawyers.