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Pathways and Institutions for Resolving Land Disputes in Mogadishu

The Expanding Access to Justice Program in Somalia (EJ)

January 2020



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Abbreviations and Acronyms

ADR	alternative dispute resolution
ADRC	Alternative Dispute Resolution Center
ADRU	Alternative Dispute Resolution Unit
AMISOM	African Union Mission in Somalia
EAJ	Expanding Access to Justice program
FGS	Federal Government of Somalia
HIPS	Heritage Institute for Policy Studies
ICU	Islamic Courts Union
IDP	internally displaced person
km	kilometers
MCHC	Mother Child Healthcare Clinic
MOJ	Ministry of Justice
N/A	not applicable
n.d.	no date given
NGO	non-governmental organization
RVI	Rift Valley Institute
SWDC	Somali Women’s Development Center
TFG	Transitional Federal Government of Somalia
TNG	Transitional National Government of Somalia
UNDP	United Nations Development Programme
USC	United Somali Congress
USD	United States dollars

Key Terms and Translations

<i>abbaan</i>	Host or protector.
<i>daminyaale</i>	Land for permanent development.
<i>deegaan</i>	Home territory, environment, locality, stronghold, or turf. Where those who share a common clan affiliation can claim ultimate authority over the land and its natural resources. ¹ Similar the Western concept of land tenure, but more closely aligned to identity.
<i>dhul-boob</i>	Land grabbing.
<i>duq</i>	Also known as <i>koofi</i> . A head of families, or <i>qabiil</i> .
<i>galti</i>	Newcomers or outsiders. Used to refer to invading clans during the 1991–1992 civil war.
<i>gatekeepers</i>	Also called “black cats.” Individuals, usually from the dominant local clan, that control, represent, and provide security for internally displaced person (IDP) camps and other types of informal settlements. ²
<i>guri</i>	Indigenous inhabitants.
<i>ku dhaqmay</i>	Where a person lives or has citizenship. A kind of universal Somali citizenship.
<i>ku dhashay</i>	Born in a region, thus having rights because of place of birth.
<i>munishibaale</i>	Land for temporary use.
<i>sheegad</i>	Clients. A designation given to outsiders, giving them certain rights and obligations and thus embedded them in the local <i>xeer</i> of the host clan.
<i>u dhashay</i>	Blood rights. Born to a <i>deegaan</i> through kinship.
<i>xeer</i>	Customary justice, or “a complex set of norms and rules that govern inter and intra-clan relationships.” ³

¹ Cassanelli, 2015, p. 11.

² RVI and HIPS, 2017, p. 79; Bryld, et al., 2013, p. 34.

³ RVI and HIPS, 2017, p. 63.

Executive Summary

One of the thematic areas selected as a result of the inception phase analysis of the United States Agency for International Development (USAID)-funded Expanding Access to Justice Program in Somalia (EAJ) was a focus on land disputes and grievances in Mogadishu. Disputes often start with the aggrieved parties addressing the elders in traditional institutions and may even end at the Supreme Court. However, at the same time, in the urban environment, elders often lack the mandate and power to resolve these issues and the judiciary plays a very small role in actually solving land disputes. Even where judgments are delivered, the police have shown little capacity to enforce them.

In order to inform its planned interventions with granular understanding of the origin and types of land conflicts and of the justice pathways aggrieved parties take, EAJ carried out research on access to land rights in Mogadishu. Key research questions concerned the historical background of Mogadishu and how historical population movements explain the depth and nature of some types of contemporary land grievances. In view of the present day land disputes, the research questions focused on the type of justice institutions available to justice seekers, the justice pathways people or groups of people take in order to seek solutions to their grievance, and what constituted vulnerability in the context of land disputes. EAJ aimed to understand the “user perspective” and elaborate on how people navigate different justice institutions and authorities and on the basis of what type of advice, information, or contextual factors users take their decisions to address a particular institution or authority. Such perspective promises a more comprehensive view of justice sector challenges, rather than only focusing on the performance of a selected justice system. The scope of findings follow and demonstrate how access to justice is a feature of power controlled by economic, social, and political networks.

Sources and Context of Land Disputes

Land dispossession in Somalia occurred in multiple forms at different levels. Urban land was violently seized, especially in Mogadishu during the wars of 1990–1992. The capital was “clan-cleansed” of Darood during this period. With subsequent conflicts and more recently with economic development, urban real estate has dramatically increased in value. However, the history of land seizures and the numerous cases in which land has been inherited, divided, leased, or sold without a sovereign authority to authenticate the transactions have led to an extraordinarily complex problem of contested land ownership in the cities.

In terms of the major sources of land disputes, land grabbing (*dhul-boob*) by powerful groups and individuals remains rampant and constitutes the most significant source of conflict. Land grabbing often involves government officials acting in collaboration with private interests, and the main victims are the poor, minorities, or other vulnerable groups who are powerless and cannot defend themselves.

Overlapping with the land grab issues are land disputes relating to Somali diaspora. Returning from overseas, diaspora members either try to claim back their land that they lost during the civil war, or to obtain land using the wealth from abroad. The claimants are mostly from the Darood sub-clans, and their attempts to reclaim land causes a variety of land grievances since the land has often been occupied by others in their absence, in many cases by internally displaced persons (IDPs), but also by the mainly Haber Gedir clans who took over after the civil war.

The issuance of multiple and fake title deeds since the civil war has fueled multiple claims to the same land. Without a clear land registry this is a cause of complex land disputes. Many land disputes in Mogadishu could be solved by establishing a well-functioning land registry. However, the land registry issue is linked to a more general lack of interest in making justice work because “political disorder” enables illegal land grabbing. While a diaspora Somali in Sweden tries to maintain the old land registry, he prefers not to hand it over to the government because he is afraid it will be manipulated and corrupted.

Arbitrary and illegal sale of public property, in favor of private government officials interests and/or private businesses or individuals who bribe governmental officials, has been increasing and is a major problem as is illustrated by the media cases found in this study. Government handing over land to

individuals for personal interest without consultation or prior information to owners, leads to forced eviction of IDPs and returnees from land on which they have settled.

Inheritance disputes can be complicated due to the complex Somali family structures and the tradition of collective family ownership or use of land rather than individual. The status of women regarding inheritance, which differs significantly in the different legal normative orders, does not promote women's access to land and, therefore, economic resources. In addition, the diaspora's claims to property inheritance can be very complicated because of historical perspectives. These claims pit customary land rights, registered land titles, and forceful takeovers against each other.

Disputes also arise from informal and unplanned land occupation in Mogadishu due to overlapping and uncoordinated land administration systems. This includes the grabbing of farming and grazing lands in rural and peri-urban areas without demarcations, although such areas are quickly disappearing as urban Mogadishu spreads.

Pathways to Justice

The pathways of justice in land rights cases vary based on the type of case and the social, economic, and political positions of those aggrieved and their opponents. The general image is of a mosaic of paths, which in most cases appear to disadvantage the weaker parties. The common order of chosen paths begins with the confrontation between the individuals or families, then the involvement of clan elders. If necessary, the case is taken to the formal courts, then often to Al-Shabaab courts as a last resort. Many cases *de facto* receive a temporary resolution as case pathways do not continue due to the use or threat of illegal force. But, even where solutions are identified or judgments rendered, the police rarely enforce decisions. There have been a few successful cases where the local community has been mobilized. None of the justice users interviewed mentioned alternative dispute resolutions (ADRs) as an option, except for the three selected ADR users, which may indicate that very few know about this possibility.

People choose customary dispute resolution handled by the elders because it is cheaper, and generally the court system is avoided because it is considered time consuming and corrupt. However, in the urban environment, elders often lack the resources and power to resolve urban land disputes and *xeer* is not well adapted to the urban social structure, thus rendering it unable to help solve urban types of disputes.

Interview data showed that the judiciary is often not able to solve land disputes satisfactorily, and when verdicts are granted, the police has little capacity (or will) to enforce them. Political, clan, and spoiler interests often block the justice system from functioning, reflected in the widespread corruption in the system. Weak government and judicial institutions allow for strong clans, private individuals, and companies to dominate land grabbing efforts in Mogadishu and the larger Benadir Region.

In the rural and peri-rural areas, government officials get away with illegally allocating land arbitrarily to private companies and for personal interests because grazing lands are not clearly demarcated nor registered. The expansion of urban Mogadishu puts the rural inhabitants in vulnerable positions because they have no formal ownership over their land. This especially affects Bantus and other minority groups.

Access to justice and positive outcomes seem to depend on the applicant's or defendant's wealth, connections, and social standing, in other words, money, power, influence, and clan. The main obstacles against winning cases mentioned in the interviews was the degree of vulnerability of the justice user, the degree of corruption, nepotism, and lack of enforcement. This confirms the widespread experience of corruption in the court system, which, together with weak structures for verifying claims, endemic nepotism, clan dominance, and family relations, render the justice system nearly inaccessible for the average Somali citizen. This is even more true for vulnerable minorities because they lack essential social power and are often forced to pay larger bribes and fees than other groups.

For many land cases, having legal documents and/or the money to buy copies from the privately owned archive is vital for the outcome. Without title deeds, many resort to the elders, where the best achievable outcome in the urban context mostly is a compromise. Elders appear powerless in cases where the losing party has the force to refuse their verdict.

Challenges for Vulnerable Groups

Access to justice remains especially challenging for members of vulnerable groups. The primary obstacle for **women's** access to justice is the dominant patriarchal culture, religion, and male-dominated political structures in Somalia. Most women cannot access justice without a male to represent them, there are no laws that specifically protect women's rights in land ownership, and women are expected to pay higher fees and bribes than non-vulnerable groups. These problems are aggravated by the comparable poverty of women to men because the former traditionally are not allowed to oversee their own financial situation. However, women from powerful and armed clans may be quite strong in land disputes, especially successful businesswomen or wives of influential politicians, who may often even be the instigators of land-grabbing attempts.

For **IDPs** in Mogadishu, the major issue and conflict potential is the determination of their fate and status as citizens considering that they have *de facto* been living in Mogadishu for many years. It remains to be seen whether they can achieve *ku dhaqmay* (citizenship) status or whether they will remain as pawns for powerful groups' interests.

Although the ethnic **Bantus** have historical rights to live in Mogadishu, the land they settle on has become subject to land grabbing by government officials, private company owners, and other influential and wealthy individuals. The Bantus stand in such a weak position in terms of documented ownership that they are in a similar position to IDPs, facing issues such as poverty, marginalization, low economic status, and lack of education. With access to justice, these factors translate into low rights awareness, under-representation in the judicial institutions, and subjugation to high bribes and manipulation.

While most of the **Benadiri** people moved abroad during the civil war, a few remained to take care of the family properties, which cannot be sold because they belong to the Benadiri families and are not subject to individual ownership. The primary Benadiri land disputes relate to inheritance, which can be complicated when many of the family members are abroad.

Core Challenges for Access to Land Rights in Mogadishu

The observed paths to justice in land cases and the challenges people face in accessing justice in Mogadishu appear to be symptoms of bigger problems, including the judiciary's continued dysfunctionality and the overall problems of the Somali predicament. This study found that the dysfunctionality of Somalia's justice system described in Gundel, Berg, and Ibrahim (2016) largely persist and that political and clan domination of the judicial and justice institutions has worsened since 2014.

In addition, Al-Shabaab's justice service delivery has undermined the courts, and Al-Shabaab appears to have used its influence on taxation of property transfers to gain leverage on land disputes. Al-Shabaab largely benefits from demonstrating the Federal Government of Somalia (FGS)'s dysfunctionality, while showing that its own justice service is superior, contesting service delivery provisions in general as a significant elements of its insurgency strategy. In this situation, Al-Shabaab can deliver what the government and the judiciary do not: justice beyond power and clan structures and the enforcement of rulings. Therefore, Al-Shabaab's justice services are a serious impediment to FGS credibility.

This study also confirmed the continuation of political and opportunistic manipulation of land rights in pursuit of spoils politics and clan dominance in Mogadishu. The historical issues that have fueled land disputes persist, including the land and properties acquired during the Siyad Barre regime, mainly by Darood clan members, and the post-civil war land grabs, mainly by Hawiye clan members.

In sum, access to justice is still underpinned by power and based on access to resources, networks, and alliances rooted in kin, religion, and business relations. The persistence of spoils politics and attempts at clan dominance combined with elite manipulation of land rights, illegal grabs of public property, and Al-Shabaab infiltration are likely to prevent effective reform of the judiciary in the near future. These issues generate a complexity of political interests aligned against the development of a functional judiciary. Rights to land as they are perceived and experienced in Somalia are also linked to these political realities.

Conclusions and Next Steps

The different justice pathways that land users take to find solutions for their land disputes show that none of the justice institutions and authorities in Mogadishu have the full capacity and power to effectively handle land disputes. The formal justice system is not reliable because it cannot help pacify and create order in regards to land disputes that relate to historical movements and cannot provide rigorous justice opportunities with enforcement of judgements to counter Al-Shabaab's provision of justice services. Next to a variety of court technical challenges that have been pointed out in other assessments, the historical fault lines between clans, resulting from the movements in Mogadishu, still underpin the state-building attempt and are part and parcel of the formal justice institutions, thereby hampering court performance. Because of Mogadishu's urban and peri-urban environment, elders often lack the resources and power to resolve urban land disputes, and *xeer* is not well adapted to the urban social structure to help solve urban types of disputes. At the end, disputes and their outcomes are less determined by justice institutions and their underpinning normative orders than the simple fact of who has power. This explains, why, across the board, justice institutions do not have the capacity to possibly address some of the issues underpinning land disputes. As this report shows, the situation in Somalia has created lots of coping mechanisms out of people's land-related justice needs of people.

At a program level, planning considerations need to allow for discrete interventions along the different justice pathways in order to impact them and possibly change some of the processes and guarantee more rights-based solutions. As indicated in this report, such interventions need to respond to the different types of land conflicts in different areas in Mogadishu, the technical gaps faced by formal institutions, and the different socio-political challenges the research identified. What has become very clear as a result of this study is that certainly no generic template will fill or even affect this irregular space.

1. Introduction

1.1. Study Background and Purpose

In Mogadishu, historical grievances related to land occupation and illegal land and property acquisition have led to current land disputes and, as one of the key underlying political tensions in the area, will inevitably continue to surface in various locations and contexts depending on the political dynamics at play. According to Action for Development Research, 85% of cases filed at Mogadishu’s formal courts are related to land,⁴ and a Rift Valley Institute (RVI) and Heritage Institute for Policy Studies (HIPS) study on land in Mogadishu estimated that 80% of cases filed at the Supreme Court are connected to land grievances.⁵ In addition, as Mogadishu has grown and seen significant investments in recent years, competition for land and speculative investment in real estate have further raised the potential for disputes. As the region grows, land dispute resolutions will be crucial to Somalia’s stability and development.

Because land disputes play such a key role in Mogadishu, the Expanding Access to Justice (EAJ) program used this issue as an entry point for its work in the region. EAJ, funded by the United States Agency for International Development (USAID) through the Freedom House-led Human Rights Support Mechanism (HRSM) and implemented in a partnership between Pact and the American Bar Association Rule of Law Initiative (ABA ROLI), aims to sustainably strengthen access to and understanding of justice mechanisms by individuals and communities in Somalia and Somaliland. EAJ has carved a niche within the broader justice reform sector to support sustainable improvements to the quality and expansion of access to justice, while promoting a rights-based interpretation and application of laws by formal and informal justice actors. In doing so, the program helps reduce discriminatory practices against women, minorities, and other marginalized groups and promotes access to individual rights. Within the focus on access to justice, EAJ supports civil society and state justice partners to create the network-based platforms necessary to foster critical collaboration among diverse justice actors. To deepen its understanding of the complex legal environment and citizens’ needs, EAJ continuously employs research and learning so it can refine and adapt the program to optimize impact.

The in depth research presented in this report provides EAJ with the background knowledge necessary to shape its key strategies and interventions in Mogadishu. The research aimed to answer two questions:

- What historical population movements and concepts of land use and ownership underpin current land disputes?
- What pathways do particularly vulnerable groups use to identify and reach solutions to their land conflicts?

This report is divided into four main parts, followed by conclusions and recommendations:

- A history of land disputes in Somalia, Mogadishu in particular, including different normative views on land rights and use, broader political tensions, and underpinnings of current day land disputes
- The main and alternative justice institutions available for aggrieved parties
- Different justice pathways that aggrieved individuals or groups take to reach solutions to their land disputes, including reasons behind choosing said pathways
- A focus on land dispute issues and justice pathways among vulnerable groups

Box 1: Vulnerable Groups in the Land Rights Context

For the purpose of this study, but also for the EAJ program in general, it was necessary to clarify the definition of vulnerable groups, particularly in the context of land disputes, because such contextual definitions may not always follow the typical definitions of vulnerable groups. As such, vulnerability in view of land rights is defined by distinct contexts, depending on which individual or group aims to access rights at a given time in a particular socio-political setting. Beyond the “usual” vulnerable groups, such as minorities, women, children, and internally displaced persons (IDPs), vulnerable actors can be people who belong to strong powerful clans in their locations of origin, but in the given context may be weak and powerless. Thus, vulnerability in the context of land disputes in Mogadishu mainly refers to individuals or groups that stand largely powerless in a given case.

⁴ Action for Development Research, 2017.

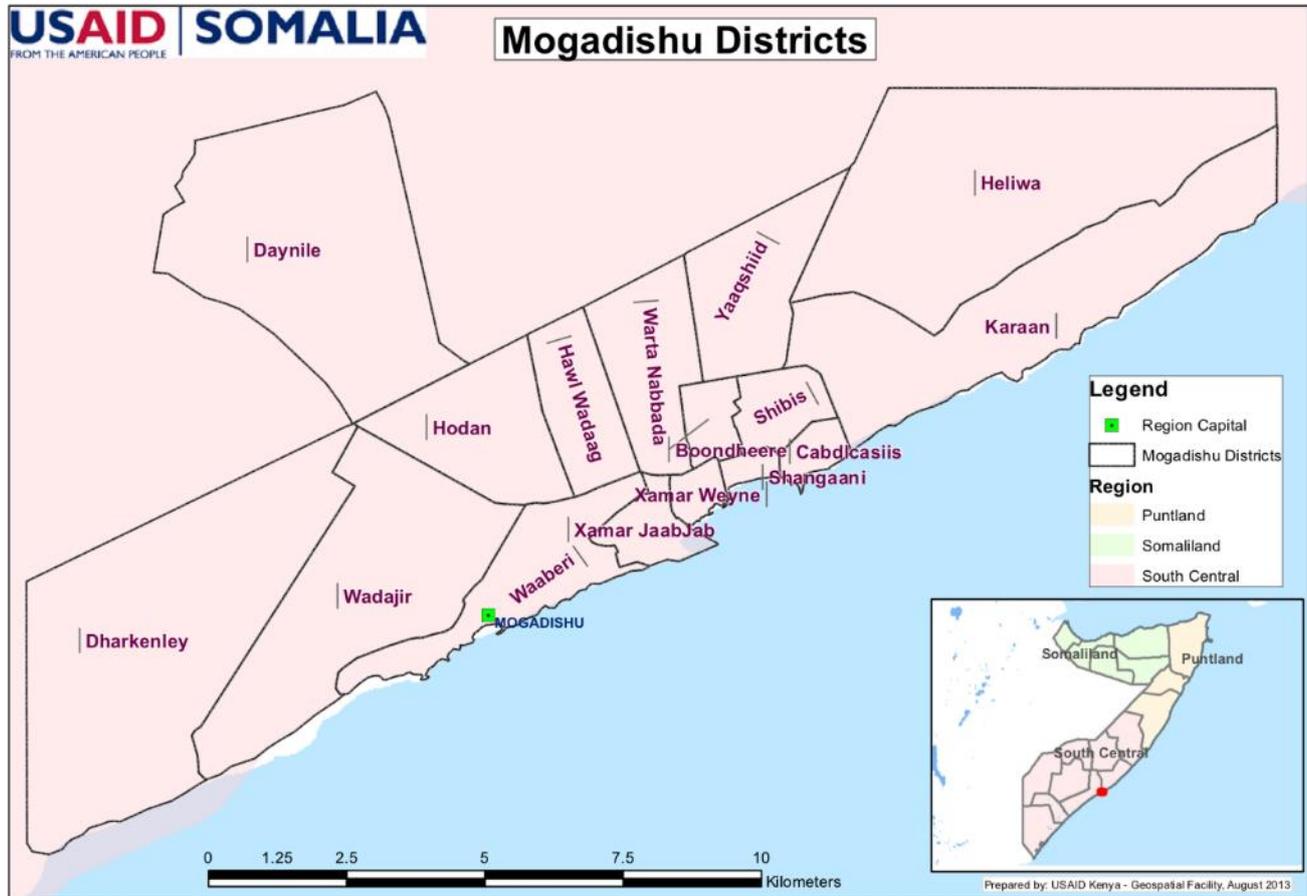
⁵ RVI and HIPS, 2017, p. 67.

1.2. Study Methodology

1.2.1. Geographic Scope

The study covered urban, peri-urban, and rural areas of Mogadishu in order to present granular challenges pertaining to those different types of geographies. While some of the urban areas are subject to high-value land and, therefore, are a prime target for the issuance of fake land titles or land grabbing, rural land may be mainly used by populations that adhere to different concepts of land use and ownership and, as such, do not have land titles.

Diagram 1: Map of Mogadishu's districts⁶



1.2.2. Qualitative Methods Used

This study employed three types of qualitative data collection methods: a desk review, semi-structured interviews, and case studies.

The **desk review** aimed to understand the historical movements of populations in and around Mogadishu as they underpin contemporary land conflicts and the current state of knowledge and context surrounding land disputes in Mogadishu. The desk review included policies, laws, research reports, and other sources. News articles from Somali sources covering the past four years only (to ensure appropriate/recent context) were reviewed to understand land conflicts as they are presented in the Somali media.

The **semi-structured interviews**,⁷ conducted in April, May, and July 2019, used an open-ended approach, wherein guides and questionnaires were used to frame the research and were supplemented by open questions. Interviews were conducted with two groups: justice experts and justice users. Interviews with 11 justice experts illuminated the opportunities for Somalis seeking justice, including marginalized and vulnerable groups. The experts included civil society organization staff working on land issues or

⁶ Map created by USAID | Kenya and East Africa Mission, GIS Team.

⁷ Interviewees' identities have been kept confidential because of this study's sensitive topic.

gender equality and inclusion, justice actors from different justice institutions, and other relevant power holders. The 14 justice users came mainly from vulnerable and marginalized groups and spoke of their experiences with their chosen paths to justice, their knowledge about their opportunities to pursue justice, and how they perceived their chances of successfully pursuing their cases. The selection of justice users comprised comparable numbers from the study's three areas of focus (urban, peri-urban, and rural).

The interviews of justice users fed into **case studies** of land grievances, revealing insights into how aggrieved parties navigate the complexity of legally plural institutions and authorities in search of justice, what knowledge the aggrieved parties have of their rights under different legal and normative systems, what advice and representation aggrieved parties have access to, the “logic” behind choosing the specific justice pathway, and the impact of justice outcomes. The case studies also included a focus on understanding current government behavior regarding land dispute cases; as such, the researchers observed events and incidents that occurred during the research process, including the judicial dynamics that impacted the context for land rights.

1.2.3. Limitations

- The quantity of the justice expert interviews was limited by availability, visibility, security concerns, and time restrictions. This places limitations on the variety of perspectives from justice experts.
- The applied qualitative research approach used in this study does not provide statistically valid or generalizable results, rather a snapshot of more-recent land dispute resolution mechanisms.
- The research process faced several delays and obstacles. Major unanticipated security and movement restrictions in Mogadishu, wherein the city was locked down for long periods of time, caused delays and limited access to a wider number of interviewees. The field researcher had to physically relocate from his home to another district to be able to access it for several consecutive days.

2. History of Land Disputes in Mogadishu

The historical and modern origins of Somalia’s ongoing land disputes and conflicts are complex and often interwoven.⁸ While this history might not provide clear solutions to the current situation, it does shed light on the historical claims, shifting legal systems, and legitimacy of various rights as they relate to land.

Decades of civil war in Somalia have led to fundamental changes in the composition of Mogadishu’s population,⁹ a near complete destruction of infrastructure and law and order institutions, breakdown of security and safety, illegal appropriation and occupation of land and properties, the emergence of rival “warlords” and business “classes,” and evolving political settlements in an unregulated stateless context. Although the conflict dynamics over the past 12 years have been increasingly overtaken by the apparent religious-ideological war between radical Islamic militant groups, Al-Shabaab in particular,¹⁰ and the Federal Government of Somalia (FGS) and allied groups, the above dynamics linger under the surface and risk reappearing as primary conflict drivers when the present national-level confrontation and “war on terror” disappears.

Since the initial civil war, violent conflicts and settlement patterns in Mogadishu have reflected rivalries between new, post-civil war warlord-business groups. With the experience of the Siyad Barre regime in mind, these groups have aimed to take full control over any new Somali state in a “winner takes all” logic.¹¹ When not able to do so, they have aimed to at least prevent others from gaining control over state institutions, assets, and resources. The details of this history are complex, but they have produced a lasting impact in Somalia, especially in Mogadishu.

2.1. Italian Colonization

Italian colonialization started with the proclamation of the Italian Empire in 1936 and lasted throughout the Italian trusteeship of Italian Somaliland until independence in 1960. Since then, and particularly since the start of the Siyad Barre regime¹² in 1969, there have been attempts of formalizing land ownership in at least urban areas of Somalia. The Italian colonizers had started formalizing the distinction of land rights between *munishibaale* (land for temporary use)¹³ and *daminyaale* (land for permanent development).¹⁴

⁸ RVI and HIPS, 2017, p. 89.

⁹ Gundel, 2011.

¹⁰ There have been various groups such as the militant Al-Ittihad, Al-Ittisam, Ras Kamboni, and the Sufi-based Ahlu Sunnah Wal-Jamaa. In addition, different non-militant Islamic political groups exist; for a description, see Gundel, et al., 2016, pp. 15–18.

¹¹ While most of the upper and middle class left Mogadishu in 1991 and 1992 and fled to Kenya, Europe, North America, and Australia (mainly Darood and Benadiris), a new business class emerged in the vacuum left behind. Thanks to access to remittances from abroad, the development of the informal economy in Mogadishu thrived and allowed the development of a new group of traders who took important risks and utilized trade connections with Dubai and Jeddah in particular. Several of these “new” traders were linked to the various warlords who made fortunes by providing services to UNOSOM (1993–1995), and four later formed a cartel, taking a de facto monopoly on the lucrative food aid business to Somalia. These new businesspeople were not only from the Abgal and Habr Gedir, but included Rahanwein businesspeople like Shariff Hassan, who came to Mogadishu to access the major economic opportunities provided by international aid. See Gundel, 2011.

¹² Siyad Barre served as president of the Somali Democratic Republic from 1969 to 1991, an era commonly referred to as the Siyad Barre regime.

¹³ In the case of *munishibaale* applied to for the land requested, the applicant pays a fee and the land is granted. However, after the granting of the land, and if the local government wants to use land for public interest, they can take it back without any refund, and sometimes it is not necessary to give the user another piece of land. It may be this perceived practice, that the local government of Mogadishu uses to justify their arbitrary granting of land to their interest. However, this often turns out to be land taken for the private use of the office holders and/or relatives or business partners.

¹⁴ Norton, 2008, p. 158; RVI and HIPS, 2017, pp. 33–34, 55, 59–60.

2.2. The First Civil War

In the 1990s, the struggle for land in Southern Somalia, as well as in Mogadishu, was described as “the war behind the war.”¹⁵ Competitions over land have been identified as key ingredients, as war, behind the civil war. A key objective of the Somali conflict then—and still today—is domination and control of the fertile river banks and inter-riverine areas by the nomadic clans from the central and northern parts of the Somalia. This included the domination of the farming peoples of the Juba and Shabelle valleys, especially the minority groups known as Gosha, Shiidle, or Makane (the so-called Somali Bantu), who dwell in and cultivate these fertile countrysides. The Bantu have been subject to several waves of dispossession during the colonial era for plantation farming; during the Siyad Barre era by well-connected businessmen, government officials, and army officers for land speculation and commercial agriculture;¹⁶ and during the wars of 1991–1993 by the victorious “liberators” of the anti-Barre forces who committed land-looting.¹⁷ Therefore, it is not surprising, that they emerged as a “vulnerable” group in contemporary land disputes considered by this study.

In south-central Somalia, the civil war became a war of conquest by the Hawiye clan-dominated United Somali Congress (USC) faction.¹⁸ These dynamics in Benadir were distinct from those in northern Somalia, where the war took on the character of a liberation struggle from the Siyad Barre regime by local clan-based factions (Isaaq/Somaliland National Movement and Darood/Majerteen/Somali Salvation Democratic Front).¹⁹ When the USC militias entered Mogadishu in early 1991, most of the non-Hawiye clans, in particular the Darood and the initial non-Hawiye inhabitants of Mogadishu known as Gibil Cad, Reer Hamar, or Benadiri, were either killed or expelled from the city.²⁰ The Hawiye/Abgal clans, who were also among the original inhabitants of Mogadishu, were spared by the USC militias because they were composed of their Hawiye “cousins” from the central regions.²¹ The impact on the population of Mogadishu was significant. The land left by the fleeing non-Hawiye clans was mainly taken over by Hawiye sub-clans from the Mudug, Galgadud, and Hiran regions when the USC militias brought their families to Mogadishu.²² The most numerous Hawiye sub-clans were the Habr Gedir (especially Ayr and Sa’ad, and less so Saleeban) and Abgal.²³

The migration of Hawiye from the dry, central regions was fueled by the perception that during Siyad Barre’s regime, the clans who controlled the capital (primarily the Darood sub-clans of Marehan, Ogaden, and Dulbahante) would also control the nation’s resources, access to jobs and education, and the fertile lands along the Shabelle and Juba rivers. Those who controlled Mogadishu were also seen as the legitimate representatives of the Somali State, with access international aid and other resources; this sentiment still underpin fights for land in the country’s capital. The Hawiye expected that they would replace the Darood as the main recipients of foreign aid and, as such, encouraged their militias and families to reside in Mogadishu in order to build a constituency there. Moreover, humanitarian aid was distributed in ways that required many people to leave their villages and go to Mogadishu.²⁴

Additional settlement occurred in the bay region during the famine in 1992, when up to 100,000 members of the Rahanwein clan (which is also recognized as one of the major clans of Somalia under the 4.5 clan formula²⁵) fled to Mogadishu for help. They remained in Mogadishu as IDPs until 2007, when many fled elsewhere due to shelling of their neighborhoods by the Transitional Federal Government of Somalia (TFG)²⁶ and Ethiopian Army. The net result was a dramatic increase in the number of IDP camps in Mogadishu, which often were controlled by individuals from powerful clans, known as

¹⁵ Besteman and Cassanelli, 2003.

¹⁶ Besteman, 1999.

¹⁷ Kapteijns, 2013.

¹⁸ Kapteijns, 2013.

¹⁹ Gundel, 2011.

²⁰ It should be noted that the pattern of clan-cleansing also happened elsewhere in Somalia, where Hawiye were victims of killings.

²¹ Gundel, 2011.

²² Kapteijns, 2013.

²³ Other Hawiye sub-clans included Murosade, Duduble, and Hawadle.

²⁴ Gundel, 2011.

²⁵ The 4.5 formula in Somalia assigns equal representation for what is considered the four main clans plus “others” (the 0.5).

²⁶ The TFG was the internationally recognized government of the Republic of Somalia from 2004 until 2012, when the FGS was inaugurated.

“gatekeepers,” who used them to claim humanitarian aid that they later sold on the markets of the capital city.²⁷ A similar situation occurred in 2011, when many IDPs from Bay and other regions came to seek help in Mogadishu due to conflict and drought-induced food shortages.

Darood and other clan traders gradually returned to the city. However, the return of Darood at that time still contributes to current land disputes as they found their initial lands occupied. Non-Hawiye returned in order to reestablish old friendships and business contacts across clans that could provide them with a minimum of protection, while still lacking the power to contest the occupation of their land. At that time already, cross-clan alliances were necessary for business, to keep national territory, and to achieve international recognition for efforts to reconstitute the Somali nation state (such as the TFG in the early 2000s). Furthermore, trading with neighboring Kenya required trust with the dominant clans in the border areas, such as the Darood Marehan and Ogaden clans. Even more important for the non-Hawiye was the need to maintain influence on the government in Mogadishu. Hence, non-Hawiye clan families feel they must establish foothold in Mogadishu.²⁸

2.3. Post-War Rivalries

As a result of wartime changes, settlement in Mogadishu became predominantly determined through clan affiliations. In pre-civil war Mogadishu, the Hawiye/Abgal predominated demographically, but left plenty of room to accommodate people of other backgrounds. Mogadishu was the capital of the nation, and Somalis of all ethnic clans could easily be found in the most central districts. While most districts were dominated by a single clan, other clans often resided among them. However, following expulsion of Siyad Barre and the Darood, the city split between Hawiye sub-clans due to a rivalry between Ali Mahdi Muhammed (Hawiye/Abgal) and General Aidid (Hawiye/Habr Gedir),²⁹ effectively partitioning Mogadishu into a northern and southern zone (geographically actually east and west), divided by a green line.³⁰

With the city divided, people could not move freely and relations were constrained by separate protection economies. North Mogadishu came under the control of Ali Mahdi and included Kaaraan, Yaaqshiid, Shangaani, Shibis, Abdi Aziz, and Bondhere districts; parts of Wardhiigley district; and the so-called “Barmuda triangle,” center of the city, including parts of Hamar JabJab, Waberi, Hodan, and Holwadag.³¹ The southern part of Mogadishu was more diverse, but it was under the control of General Aidid’s supporters from 1992 to 2005, and the Habr Gedir clan dominated in several districts.³² Medina (Wadajir and Dharkenley clans) remained an Abgal-controlled enclave under the control of Muuse Suudi Yalahow, Ali Mahdi’s deputy. Yalahow ruled for several years, established the first Islamic court in Mogadishu,³³ and moved to North Mogadishu in late 1997 to play a greater role in Abgal politics and in the discussions leading to the creation of a Benadir Administration in the aftermath of the Cairo Peace Conference Agreement in December 1997.³⁴

²⁷ “Gatekeepers,” also known as “black cats,” are individuals, usually from the dominant local clan, that control, represent, and provide security for IDP camps and other types of informal settlements. They charge IDPs rent and take large cuts from aid provided to those in their camps. The gatekeepers have armed militias to provide security and operate with or on behalf of networks of power-brokers. Due to the absence of government and law enforcement, the gatekeepers have also been able to create opportunities to lay claim to public and private land. See RVI and HIPS, 2017, p. 79, and Bryld, et al., 2013, p. 34.

²⁸ Gundel, 2011.

²⁹ Ali Mahdi Muhammed served as nominal President of Somalia from 1991 to 1997. He rose to power after a coalition of armed opposition groups deposed Siyad Barre. General Mohamed Farrah Aidid was the Chairman of the United Somali Congress and later led the Somali National Alliance. Along with other armed opposition groups, he drove Siyad Barre out of power. See Gundel, 2011.

³⁰ Heavy fighting from mid-1991 to 1992 between rival Hawiye clans, the Abgaal and Habar Gedir, led to destruction of much of the city center and establishment of a green line separating northern and southern Mogadishu. See RVI and HIPS, 2017.

³¹ Gundel, 2011.

³² Gundel, 2011.

³³ Gundel, 2011.

³⁴ The Cairo Agreement was the result of a “peace conference” between the Mogadishu-based warlords, hosted by Egypt in Cairo. Find the full declaration at <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/som1.pdf>. It called for the creation of a National Reconciliation Conference and the principles of a transitional government.

The Cairo Agreement included dismantling of the green line that had divided the city.³⁵ The divisions remained in peoples' minds, fueled by the Abgal-Habr Gedir rivalry over their claims to own Mogadishu;³⁶ the Abgal considered the Port of Mogadishu to be theirs, that they were the owners of all Mogadishu indefinitely, and that the Habr Gedir were strangers to Mogadishu.³⁷ Nonetheless, public confidence began to rise. By the summer of 1998, local businesses grew and local industries started to emerge, despite the continued lack of any effective central administration.³⁸ The return of diaspora Somalis to start businesses, reconstruct houses, and work in civil society organizations benefitted the Mogadishu economy as they began to invest in small industrial plants, micro-industrial projects, and services. However, the return also meant that questions and disputes of ownership over their property would arise regarding the land they used to own. Fatigue with warlord rivalries and extortion by their *mooryan* (freelance militias/guns for hire) at checkpoints led small businesses to work together with elders and religious leaders to seek new local solutions for security. One outcome was the emergence of the local district-based Sharia courts, which provided safe spaces with their own *madanis* (vigilante militias).³⁹

2.4. The Islamic Courts Union

Local efforts to improve security eventually fueled the rise of the Islamic Courts Union (ICU) in 2006, which has become a landmark in justice provision in Somalia. The ICU was a union of Sharia courts that administered justice in a relatively consistent way. After the chaos in the 1990s, each court had a militia force to act as police and enforce judgments. A high court was created with a most senior judge, known as the Supreme Islamic Court of Banadir. Despite the relative stability that the ICU established in Mogadishu, it was linked to radical Islamic groups, such as the former Al-Ittihad, Sheikh Aweys (Hawiye/Habr Gedir/Ayr), and what would later be known as Al-Shabaab. Yet, it controlled most of southern Somalia with the majority of the population.

Some of the leading businessmen from the food aid cartel, consisting of contractors delivering international humanitarian aid who had formed a cartel around the business opportunity of aid delivery,⁴⁰ El Maan Port operations, and the remittance and telecommunications companies, sought to get rid of warlord protection rackets.⁴¹ These businessmen realized that small businesses could become powerful allies in their drive for de facto control of a new Somali state, which would provide them with a virtual monopoly over Mogadishu business, the port, and the airport, and supported the 2000–2003 Transitional National Government of Somalia (TNG) and the ICU's rise. Clan-wise, this group of businessmen were Abgal (Warsangeli sub-clan) and Habr Gedir (Ayr sub-clan) and mainly feuded with the Darood and Hawiye/Sa'ad warlords and businessmen.

In 2007, the Ethiopian invasion against the ICU paved the way for a Darood-led government in Mogadishu for the first time since the 1990s. This evoked resistance from the Hawiye, who saw this as a threat to their acquired interests in Mogadishu, including land occupation, and led to shelling of primarily Habr Gedir-inhabited neighborhoods because this clan had also become strong supporters of the Islamic groups. The shelling displaced thousands of Habr Gedir to the Elasha Biyaha settlement on the Afgooye Corridor and back to the central regions where they originally came from.

In the meantime, Al-Shabaab had developed as the ICU's armed youth wing and vied for control of Mogadishu. After the Ethiopian invasion, Al-Shabaab retreated to the south, morphing into a full-fledged insurgency. While in reality al-Shabaab never left Mogadishu, in spring 2009 an offense by al-Shabaab and Hizbul Islam⁴² made them both control large parts of the city.

³⁵ Aidid and Mahdi had signed an agreement to end the green line.

³⁶ Gundel, 2011.

³⁷ The Abgal clan still invoke a historical claim to Mogadishu, based on oral traditions telling of the 'occupation' of Mogadishu by Abgal pastoralists in the seventeenth century. After wars with the Ajuraan (sultanate), the Abgal occupied the city and the historical Shangani district became the headquarters of the Abgal Imam. The Abgal still refer to these historical narratives today when claiming their hereditary rights to the capital city. See Cassanelli, 2015, p. 9.

³⁸ Marchal, 2002.

³⁹ Marchal, 2002.

⁴⁰ Somalia Monitoring Group, 2010, pp. 59–66.

⁴¹ Gundel, 2011.

⁴² Hizbul Islam was a Somali Islamist insurgent group that joined Al-Shabaab in 2010, but re-separated in 2012.

2.5. Present Day

Two years after the 2009 Djibouti Agreement⁴³ and the establishment of a new TFG in Mogadishu, the existing TFG and the African Union Mission in Somalia (AMISOM)⁴⁴ took control of all districts in Mogadishu from Al-Shabaab.⁴⁵ The struggle between the TFG and Islamic groups has continued, with its underlying clan dimensions, even after AMISOM replaced the Ethiopian army and a new TFG was established.⁴⁶ One of the main sources of grievances is that the Habr Gedir, especially the Ayr sub-clan, feel marginalized in this new arrangement because they have been pushed out of the political and power center. There are also conflicts over control of key commercial interests in Mogadishu, including the port, its resources and customs, the airport, and the Bakara market, and of lucrative businesses like telecommunication, remittances, and foreign aid. Whoever controls these resources can control the government.

It is not yet clear how Mogadishu's districts will settle in terms of clan-composition, power, and control, which partially depend on how land disputes or land grabbing is handled. Recently, the landscape has become more complicated since President Farmaajo's political group has reduced the number of district commissioners from the Abgal sub-clans, nominating Darood and Dir instead in some districts like Abdiaziz and Dharkeynley.⁴⁷ There are numerous allegations of power abuse and corruption by these district commissioners.⁴⁸ According to local sources, Al-Shabaab has taken advantage of the installed officials' general lack of political legitimacy to escalate its attacks in these areas.⁴⁹

The Somali diaspora has played a mixed role. Several members of the diaspora have actively driven and funded the conflict from abroad, while others have strong ambitions of returning to Somalia in high-level political offices, rather than uniting abroad in a movement for peace in Somalia. However, most have focused on helping their relatives survive by sending considerable amounts of remittances to Somalia. Remittance and telecommunications companies have grown to a multi-million dollar industry that contributes minimally to taxes or to government institutions and their owners wield political power in Mogadishu. In addition, returning diaspora Somalis figure prominently in Mogadishu's land disputes, partly as particular Darood clan members try to get their land back and partly as members of all clans try to use wealth acquired abroad to make quick money through land grabbing, among other tactics.⁵⁰

2.6. Key Types of Land Disputes in Present-Day Somalia

Real estate is increasingly central to land tensions in Mogadishu and surrounding rural areas that are linked to Mogadishu by clan affiliation. Little progress has been made on urban real estate disputes, which are ubiquitous in high value markets such as Mogadishu. Indeed, an RVI and HIPS study on land in Mogadishu estimated that up to 80% of cases filed at the Supreme Court are connected to land grievances.⁵¹ Several types of land disputes in Mogadishu create dangerous flashpoints for violence, discourage private sector investment, and complicate national reconciliation. Table 1 describes the main categories of land-related grievances based on the RVI and HIPS study and on interviews conducted for this study.⁵²

⁴³ The 2008 Djibouti Agreement between the TFG and the Alliance for the Re-Liberation of Somalia formally ended the conflict between the political groups behind the ICU (except Al-Shabaab) and the TFG and established a new TFG in Mogadishu in 2009. See <https://peacemaker.un.org/somalia-djiboutiagreement2008>.

⁴⁴ AMISOM "is an active, regional peacekeeping mission operated by the African Union with the approval of the United Nations." See more at <http://amisom-au.org/>.

⁴⁵ Gundel, 2011.

⁴⁶ From 2009, the TFG was led by the former ICU chairman and Abgal, Sheikh Shariff, as president. In 2012, it transitioned into the FGS, led by another Abgal president, Hassan Sheikh, until 2016, when Darood/Marehan President Farmaajo took power.

⁴⁷ Interviews in Mogadishu, April 2019.

⁴⁸ Interviews in Mogadishu, April 2019.

⁴⁹ Interviews in Mogadishu, April 2019.

⁵⁰ Gundel, 2011.

⁵¹ With research carried out in 2014, RVI and HIPS, 2017, remains the most comprehensive contemporary analysis of the land conflicts and disputes in BRA.

⁵² RVI and HIPS, 2017, notes that its categories are not mutually exclusive and that individual cases can be classified under more than one root cause.

Table 1: Types of land disputes

Type	Description
Land grabbing (<i>dhul-boob</i>) by elites	Powerful groups and individuals, often from powerful clans and/or with government authority, take land illegally from the poor, minorities, or other vulnerable groups who are powerless and defenseless. In some cases, government officials hand over land to individuals without consultation with or prior information given to owners. The lack of a clear land registration archive creates numerous opportunities for abuse. Skyrocketing land prices in Mogadishu have fueled rampant abuse by private companies and local authorities. ⁵³
Return of diaspora members	Somalis returning from overseas often claim back their land, which causes a variety of land grievances because the land has often been occupied by others in their absence. ⁵⁴ Many private homes abandoned by fleeing residents were subsequently occupied by members of winning clans during the civil war. Some of these properties have been returned to their original owners thanks to negotiations by elders and, usually, payments. However, many disputes remain unresolved, and properties that remain occupied form part of clan grievance narratives.
Inheritance disputes	There are multiple questions of land inheritance, especially given the large number of members in a given family and the return of diaspora members who may have inheritance claims. ⁵⁵ Inheritance disputes within families often take the form of denial of female inheritance, and disputes between family members of polygamous fathers. ⁵⁶
Multiple title deeds	With Mogadishu's history of contestation, occupation, and civil war, multiple title deeds have been issued over the years and continue to be manufactured. The reselling of falsified land title deeds is a frequent cause for land disputes as multiple owners put claims on a single piece of land. ⁵⁷
Sale of public property	Of concern to the citizens of Mogadishu is the unregulated sale of public property and the destruction of historic property. Sales often take place between government representatives and private interest groups, without any possibility for recourse by citizens. Private land sales have been the source of endemic and sometimes violent disputes featuring multiple claimants, paid witnesses, and the rise of an entire industry devoted to the generation of fraudulent claims designed to earn settlement money.
Growing informal and unplanned land occupation	Land occupation in Mogadishu is ongoing and has the potential to result in greater conflicts.
Forced eviction of IDPs and returnees/squatting	In some cases, land and property are occupied by squatters, some of whom are IDPs. Because they can be armed or violent, squatting can be a serious challenge for land owners. On the other hand, IDPs and returnees are forced away from their land by more powerful parties, which turned them into IDPs in the first place.
Disputes over farming and grazing land	Rural and peri-urban areas do not have demarcations, meaning that disputes over land boundaries can easily occur, especially where agricultural and pastoralist land use conflicts.
Contested ownership	Rival land or property ownership claims can be based on different historical property claims or even on different concepts of land ownership. Some disputes arise from occupation and ownership claims of state property from the Siyad Barre era, for example.

⁵³ RVI and HIPS, 2017, p. 53; SWDC.

⁵⁴ RVI and HIPS, 2017, p. 54.

⁵⁵ RVI and HIPS, 2017, p. 57.

⁵⁶ Interview with SWDC, May 2019.

⁵⁷ RVI and HIPS, 2017, p. 58.

Box 2: Land Grabbing Cases as Reported in Somali Media

The Somali media has reported severe land-grabbing cases, most of which are facilitated by government agents for private company interests. These cases highlight the bleak pathways of justice for the victims.⁵⁸

In 2015, Hormuud Telecom was accused of illegally taking land from vulnerable people in rural areas close to Mogadishu.⁵⁹ The landowners sent a message to the owner of Hormuud complaining about the forceful land grab and corruption of government officials. Most Mogadishu-based media outlets did not report on this case because they were afraid of losing advertisement money from Hormuud, which is one of the biggest businesses in Somalia. Because the affected people were mostly illiterate semi-nomads without sufficient funds, organization, or support to confront a company like Hormuud, there was no clear pathway for justice.

In 2015, a resident reported that wives of the then-head of government and the mayor of Mogadishu were grabbing land in former National Fair areas in Hodan district, close to the airport and former Polytechnic, with the intent of dividing them into 20x20 meters plots and selling them off at USD 50,000 each.⁶⁰ Because the inhabitants are under the protection of the armed Habar Gedir clan, they were offered compensation, but with less valuable land at a location outside of town.

In 2016, Ahmed Osman Dhoore was dismissed as district commissioner of Hamar JabJab after he reported to the media that he had complained to senior government officials who were interfering in land issues in the district and told them to stop taking the lands of the poor by force. He claimed that the officials were sending men dressed in army uniforms to grab land.⁶¹

In 2018, the local government in Mogadishu was reported to give land belonging to a minority clan to companies and individuals.⁶² The residents were forced to vacate their houses without any compensation. The companies and individuals had obtained documents from the Ministry of Local Government ordering the police to evict people by force. The houses were destroyed the same day, allegedly because diaspora individuals “buying” the land did not want to wait any longer for their land.

⁵⁸ Somali media are unfortunately not consistent in reporting on land disputes, but rather sporadic, and there are rarely systematic follow up on cases. Often this is due to fear of facing reprisals or losing financial support from private companies for instance. Hence, with regards to secondhand sources for the desk review section of the report there were regrettably barely any English language news stories and or case description available. The desk review only found a few Somali language news stories in Somali news websites, which are presented in this section

⁵⁹ Baidoa News, June 2015.

⁶⁰ Caasimadda, June 12, 2015.

⁶¹ Saadaal News, January 2016.

⁶² Mogadishu Online, February 1, 2018.

3. Available Justice Institutions for Land Disputes

3.1. Primary Institution Types

Table 2 summarizes available justice institutions and their services and faced obstacles. Each has both advantages and limitations, and they can vary considerably depending on the nature of the case, the individuals involved, and the groups to which the individuals belong.

Table 2: Services and obstacles to justice in land disputes⁶³

	Xeer/traditional elders	Sharia courts	Formal courts/judiciary
Methods for achieving justice	<ul style="list-style-type: none"> • Negotiation • Mediation • Arbitration 	<ul style="list-style-type: none"> • Arbitration • Adjudication 	<ul style="list-style-type: none"> • Arbitration • Adjudication
Obstacles to equal access to justice	<ul style="list-style-type: none"> • Exhibit bias toward the most powerful clans • Not able to enforce outcomes, especially in the case of minor clans • Struggle with complex formal legal questions 	<ul style="list-style-type: none"> • Accusations of “arbitrary” rulings, at least partially due to lack of training in secular law 	<ul style="list-style-type: none"> • Often unable to enforce verdicts against powerful or well-connected groups • Exhibit widespread corruption • Require high legal fees, making it inaccessible to the poorer strata of society

The current FGS is an inheritor of elements from each of the three legal traditions. Unfortunately this has resulted in unclear legislation and justice actors ruling arbitrarily, applying norms from the different legal traditions, depending on their personal preferences.⁶⁴ In addition to clan cleansing, the civil war left other legacies that have fueled disputes and served as obstacles to justice. For instance, one direct consequence was the rise of Mogadishu’s district commissioners, who have been one of the most important security providers and, effectively, gatekeepers to justice and its enforcement.⁶⁵ Other factors include flight and return of the diaspora, the influx of IDPs, the lack of centralized authority, the endemic corruption, and the prevalence of “might makes right,” meaning that whomever has power has justice on his side.⁶⁶ Under the FGS, former powerholders with influence and armed backing continue to issue land deeds and allocate plots, further adding to the confusion. These trends have all contributed to making the fair reconciliation of land issues in Mogadishu nearly impossible.

3.1.1. The Xeer

Concepts Under the Xeer

The **xeer**, literally meaning “there is an agreement between us,” is “a complex set of norms and rules that govern inter and intra-clan relationships.”⁶⁷ It is important to note that the *xeer* is not a static legal code; it differs significantly between communities in south-central Somalia (of which Mogadishu is part) and the north, which consist more exclusively of pastoralist populations;⁶⁸ is based solely on precedent; and varies with the different agreements, norms, and outcomes of disputes among the Somali clans as they have evolved over time. Hence, a *xeer* between clans can be changed to reflect land capture by stronger clans or the protection of weaker clans. And, although Sharia is considered integral to the *xeer*, it cannot be considered or treated as formal law; it is mainly an oral tradition, and only legitimate elders who have memorized its history can facilitate customary processes.

In regards to how the *xeer* is used in land disputes and how it changes, it is useful to consider the Somali notion of **deegaan**, which captures the concept of a home territory and defines belonging and identity

⁶³ RVI and HIPS, 2017, pp. 64–75.

⁶⁴ Gundel, et al., 2016.

⁶⁵ RVI and HIPS, 2017, p. 61.

⁶⁶ Norton, 2008, p. 22.

⁶⁷ RVI and HIPS, 2017, p. 63.

⁶⁸ Gundel, 2006.

for Somalis.⁶⁹ It can mean both “local” or “environment,” but in the context of land rights roughly translates to “stronghold” or “turf.” It is the place where those who share a common clan affiliation can claim ultimate authority over the land and its natural resources.⁷⁰ Hence, the concept of *deegaan* is like the Western concept of land tenure, but probably more synonymous with ideas of entitlement, security, usage, and identity. In the last 50 years, *deegaan* has started defining the area where one lives, operates a business, and feels secure enough because of the presence of one’s clansmen. Nevertheless, clansmen who have settled in other parts of the country, live in cities, or have moved abroad will still identify with their *deegaan* and can still be called upon to help defend the collective rights of their clan’s resources.⁷¹

Under the umbrella of *deegaan*, the traditional Somali perceptions defining rights to land are also shaped by the norms of *u dhashay*, *ku dhashay*, and *ku dhaqmay*.⁷² *U dhashay*, or blood rights (born to a *deegaan* through kinship) partially defines rights to land. *Ku dhashay*—born in a region, thus having rights because of place of birth—extends rights to the descendants of adopted outsiders, who might even acquire full tenure through incorporation into the host community’s clan. In urban areas, *ku dhaqmay*—where a person lives or has citizenship—acknowledges the property rights of all Somalis regardless of clan or place of birth; it denotes a kind of universal Somali citizenship. This cosmopolitan form of citizenship, with secure rights to residence and inheritance, appears to have operated in the pre-colonial coastal towns of Somalia, which were made up of families and communities of many origins. However, even in these urban settings, incorporation of newcomers into the civic community typically required founders, usually the most powerful families, to acquiesce.

Traditionally, mechanisms existed through which outsiders could be incorporated into local communities as *sheegad* (clients). This norm gave the newcomers certain rights and obligations, including to land, thus embedding them in the local *xeer* of the host clan.⁷³ Another aspect of *deegaan* that may explain how newcomers justify rights to land is the historical practice of segments of neighboring clans settling within the recognized boundaries of another clan’s *deegaan*, usually with the formal or tacit approval of the host clan.⁷⁴ This has been the reason why most of the major clans’ home territories include pockets of “outsiders” residing within them. Smaller or weaker clans look to strike alliances with more powerful clans to enable them to use the latter’s resources. The frequency of this arrangement seems to reflect what was once a widespread Somali view that land and natural resources are “gifts from God” and that no one individual or group should claim exclusive rights over their use.⁷⁵

Dynamics of Xeer and Land Rights

Events over the past four decades have eroded traditional *xeer* practices. These events and processes have resulted in a series of overlapping/competing claims and reflect quite different senses of entitlement and methods of occupation, which persist today. The various contenders all cite their selective historical “evidence” in support of their claims as legitimate owners or occupants of the land. The *xeer* was first weakened by Italy’s colonialization and later by the Siyad Barre regime in all of Somalia through establishment of formal legislation, efforts to end clan identities and structures,⁷⁶ and alignment with the Soviet Union.⁷⁷ The elders lost authority after being removed as the primary source of law and mediation, especially in Mogadishu, and the appointment and rise of “false elders” to serve as political proxies after the civil war, which was detrimental to an institution with legitimacy rooted in the concepts of integrity and incorruptibility.⁷⁸ The ensuing conflict displayed elements of clan vendettas and clear cases of clan cleansing.⁷⁹ But below the surface of clan mobilization were efforts by the incoming

⁶⁹ Cassanelli, 2015, p. 10. For pastoral populations in northern and central Somalia, the home territory was centered on permanent water sources—the home wells—where the clan’s livestock concentrated during the long dry season. In times of war, the home wells and grazing reserves were and still are the most fiercely guarded of all the pastoral resources.

⁷⁰ Cassanelli, 2015, p. 11.

⁷¹ Cassanelli, 2015, p. 11.

⁷² Cassanelli, 2015, p. 20.

⁷³ Such practices were especially common among the agro-pastoral Rahanwein clans, who were more open to newcomers than the northern pastoral clans. See Gundel, 2006.

⁷⁴ Cassanelli, 2015, p. 11.

⁷⁵ Cassanelli, 2015, p. 11.

⁷⁶ Gundel, 2006.

⁷⁷ Norton, 2008, p. 88.

⁷⁸ Norton, 2008, p. 33.

⁷⁹ Kapteijns, 2013.

warlords not only to grab property abandoned by supporters of the expelled regime, but also to lay claim to other productive assets in the country.

Historically, customary rights to land for members of a host community were based on a combination of acknowledged primacy in settling the land, numerical strength, and religious sanctions, all backed by community consensus. The introduction of national land titling in the 1970s and the militarization of Somalia since the 1980s changed the rules, giving state-backed elites or armed militias a decided advantage over local landholders and rendering customary practice increasingly irrelevant.⁸⁰ Armed land grabs have become the norm in recent decades, especially in southern Somalia. Forcible transfers of land to more powerful outsiders occurred regularly in the past, but they were legitimated through customary norms.⁸¹ Shifts in power on the ground were typically accompanied by the renegotiation of resource rights among local parties, new xeer agreements, and eventually reformulations of local collective histories to acknowledge the new power balance. Whether in deference to prevailing cultural norms or simply to make coexistence possible, outsiders who seized control of local resources usually legitimized their claims by customary means: marrying into local lineages, setting up businesses in the local economy, and inventing new “histories” to reflect their claims to membership in the community. Even in instances where new claims originated from the assertion of superior force, such claims gradually became regularized in customary law, practice, and tradition. An often-used strategy by occupying outsiders is to ally with a smaller clan that previously held customary or adoptive rights to the contested land in order to create a legitimate narrative to justify their land occupation. This happened widely in southern Somalia with the events following the civil war of 1991–1992, as the *galti* (outsiders) invaders used such narratives to justify their claims to land they came to take.⁸²

While it is possible to view the clan invasions after the civil war as a return to pre-colonial clan politics,⁸³ this phenomenon instead has pointed to new trends. New waves of occupations occurred when *galti*, or in some cases former guests in partnership with powerful outsiders, asserted control over local resources at the expense of groups that had previously enjoyed customary ownership.⁸⁴ Forced handover of land is often accompanied by a narrative that redefines the customary rights to justify the land acquisition. Sometimes, small clans may ally with more powerful clans who lack local customary rights to land (*deegaan*), but who have the power to protect the small clan’s access or rights to their land. In some cases, such alliances between locally vulnerable clans who have a historical right to land (*guri*), and stronger-armed or wealthier *galti* clans provide the latter with a narrative of legitimacy and leverage to pursue land. This is to a large extent what happened at both regional and national levels when the Habr Gedir sub-clans came south and claimed land during and after the civil war in 1992. When this happens, the collective memory of those groups who lost land may survive for many generations, but the new discourse of the dominant group will ultimately become the official local history.⁸⁵

Box 3: Considerations in Turning to Elders for Dispute Resolution

The elders hold an important place in the resolution of land conflicts in Mogadishu, but they are usually the entry point into the legal conflict and rarely the exit point⁸⁶ because of powerful clans’ ability to impose their preferred decisions on weaker clans, resolution depends on the willing cooperation of the contesting parties, and the elders are unwilling or unable (lack of mandate and power) to enforce agreements and resolve the issues.

⁸⁰ Cassanelli, 2015, p. 18.

⁸¹ Cassanelli, 2015, p. 19.

⁸² The distinction between *guri* (indigenous inhabitants) and *galti* (newcomers) has counterparts in most other regions of southern Somalia. In the past, newcomers seeking refuge or protection were frequently “adopted” by the established residents as *sheegad*, receiving protection and limited rights to use local resources in exchange for acknowledging the host clan’s authority. There are parallels here with the venerable Somali institution of the *abbaan* (host or protector), who offered temporary shelter and security for traders or travelers. The *abbaan* and his kinsmen served as guarantors of the guests’ safety for the duration of their stay; in turn, the patronage of the *abbaan* ensured that guests would conduct their business in their hosts’ interests. Today, an *abbaan* might be equivalent to a rentier, offering outsiders protection and access to local resources in exchange for a service fee. See Cassanelli, 2015, p. 16; Gundel, 2006; and Kapteijns, 2013.

⁸³ Cassanelli, 2015, p. 21.

⁸⁴ Cassanelli, 2015, p. 21.

⁸⁵ Cassanelli, 2015, p. 21.

⁸⁶ RVI and HIPS, 2017.

Further, several elders in Mogadishu have become embroiled in politics, although traditionally elders have not been political, and some are reputed for having been corrupt and self-interested over the past 20 years. Still, lower-level elders, who are functionaries of the immediate sub-clan families with titles such as *Nabadoon*, may be relevant for dispute resolution. They are numerous, and it would make sense to identify these legitimate elders in Mogadishu, community by community in each district, to strengthen district justice. This would require a survey on the ground. While traditional elders can play a useful role, it is important to distinguish between real elders representing the families and clans in the communities and those created by politicians for to pursue political interests, i.e., the “false elders.”

3.1.2. The Sharia Courts

Islamic law’s role in land disputes has increased over time. The Siyad Barre regime sought to crack down on Islam,⁸⁷ which paradoxically fueled the introduction of more dogmatic schools of Islamic interpretation, such as the variations represented by Salafism and the Muslim Brotherhood.⁸⁸ After the outbreak of the civil war, Sharia courts came to play an integral role in providing stability in Mogadishu, especially when they developed into the ICU.⁸⁹ As described above in the historical section, following the ICU’s defeat by Ethiopian and TFG forces and the loss of Mogadishu, large parts of the ICU’s militia reformed into Al-Shabaab,⁹⁰ which defeat the Ethiopian and TFG forces and controlled Mogadishu until it withdrew in mid-2011 due to pressure from AMISOM. Al-Shabaab continues to be a powerful presence in Mogadishu (and beyond), launching attacks, infiltrating areas and institutions, and operating mobile courts with harshly implemented verdicts. The remaining Sharia courts in Mogadishu, which are not under Al-Shabaab control, are still popular because they are perceived as less corrupt and less clan biased than the alternatives of xeer and the government formal courts.⁹¹ However, as this study will show, their role in adjudicating land disputes appears to be minor.

3.1.3. The Formal Courts

The Italian colonizers and the post-independence governments and military dictatorship began formalizing legal land ownership. Pre-civil war land deeds are often considered the most valuable evidence in any contemporary land dispute due to a degree of formal legitimacy from an explicit title deed and verifiable claims. These deeds were issued during the post-independence period⁹² and the Siyad Barre regime, which granted the still-relevant *munishibaale* (land for temporary use)⁹³ and *daminyaale* (land for permanent development) claims that were inherited from the Italian administration.⁹⁴ The land was sold at fixed prices after the nationalization of urban land in 1974, and a 1980 amendment made continued ownership dependent on use and development. During the civil war, archives containing *munishibaale* land ownership records, as well as records from other types of deeds, were rescued by a specific individual, which have since become a business in itself (see section 4.3.4).⁹⁵ The *daminyaale* claims were published in newspapers to allow for contestation, making verification of these deeds accessible. It should also be noted that the privatization of land during both periods was highly biased due to political and economic corruption.

Now, the formal courts are highly involved in land disputes and conflicts, but they face major limitations. Widespread corruption at all levels of the judiciary is exacerbated by its tendency to insist on a linear progression through the court ranks, with illegal fees being demanded at every level.⁹⁶ As a result, the court system is effectively inaccessible to the poorer strata of the population. The problem of corruption

⁸⁷ RVI and HIPS, 2017, p. 66.

⁸⁸ Salafism is revivalist movement or branch of Sunni Islam. The Muslim Brotherhood is a Sunni Islamist religious, political, and social movement. See Norton, 2008, p. 55.

⁸⁹ Norton, 2008, p. 19.

⁹⁰ RVI and HIPS, 2017, p. 7.

⁹¹ RVI and HIPS, 2017, p.67.

⁹² Norton 2008, pp. 82 and 116; RVI and HIPS, 2017, p. 48.

⁹³ In the case of *munishibaale* applied to for the land requested, the applicant pays a fee and the land is granted. However, after the granting of the land, and if the local government wants to use land for public interest, they can take it back without any refund, and sometimes it is not necessary to give the user another piece of land. It may be this perceived practice, that the local government of Mogadishu uses to justify their arbitrary granting of land to their interest. However, this often turns out to be land taken for the private use of the office holders and/or relatives or business partners.

⁹⁴ Norton, 2008, p. 158; RVI and HIPS, 2017, pp. 33–34, 55, 59–60.

⁹⁵ RVI and HIPS, 2017, p. 92.

⁹⁶ On sample fees, see Gundel, et al., 2016, p. 22.

extends to favoritism and clan loyalty among judges. The formal courts also face major problems in enforcing rulings, especially vis-a-vis powerful individuals and groups. Justice through the formal system has been described as a marketplace, where those who can afford it will receive a sentence in their favor.⁹⁷ The courts are also constrained by private armed militias, which the police cannot or will not engage, in order to enforce a judgement. There are also gatekeepers within the system who ensure that judgements are favorable for certain groups.

3.2. Alternative Institutions

The case studies revealed several alternative approaches to seeking justice beyond the primary institutions. These alternatives are less subject to constraints of costs, status, and discrimination or may help equalize the power imbalances by serving as alternative forms of pressure. However, each option has its own obstacles and limitations.

3.2.1. Community Mobilization

Aggrieved parties sometimes turn to their communities to help them pursue justice, often with tangible results. Most often, communities are sought to support cases of illegal land grabbing, either prevention or solution. The community organizations and networks used vary and have included a local women's organization, a network of religious people related to students attending a contested Quranic school, and members of a local community that was benefitting from services provided by a community organization. Their function seems to be to alleviate an individual's vulnerability by showing that the individual has backing in the relevant area and to directly pressure the encroaching party to cease its attempts of illegal property acquisition.

Community mobilization often is cited as the most effective method to combat land grabbing.⁹⁸ However, it is not necessarily a tool to achieve justice, but to empower the community's interests. As such, community mobilization also can be used to sustain injustice.⁹⁹

Box 4: Cases of Community Support

A 40-year-old woman of poor economical means was informed that two men were claiming her property at the local police station. She went to the police station, accompanied by a neighbor and representatives from a local women's organization. The two men fled from the police station when confronted, and the police agreed to issue an arrest warrant for them for fraud.

Another 40-year-old woman and medical doctor established a Mother Child Healthcare Clinic (MCHC) in Dharkenley on land given to the clinic by the local authorities. She had constructed two buildings on the land by the time a group of businesspeople from the diaspora declared that they wanted the undeveloped parts of the granted land for commercial use. She concluded that the businesspeople were too powerful to be opposed in court, so she decided to turn to the community, especially those benefitting from the MCHC. Through community organizing, activism, and media exposure she managed to get the businesspeople to back down.

In April 2019, Shabelle Media reported that large-scale land grabbing was taking place in the southwest peri-urban areas of Mogadishu and the Jazeera area. During a community meeting of elders, women's organizations, religious representatives, and youth representatives of the Sheikhal Gandershe clan and Benadiri in the Jazeera area, residents complained that government officials and big companies were trying to grab their land and that their communities consisted of weak and vulnerable minority clans who were not armed and did not have the financial power to withstand the land grabbing. The community representatives appealed to the companies not to spend their money on illegal land ownership.

⁹⁷ Gundel et al., 2016

⁹⁸ Confirmed through interviews, for example: "I can say using the community which benefits us is the best instrument against land looters."

⁹⁹ For example, one respondent claimed that the local Benadiri community is actively preventing him from using and developing his land.

3.2.2. Media

This study found few media reports of land disputes, pointing to the limited exposure of this highly important matter.¹⁰⁰ The types of cases in which aggrieved parties turn to the media most often relate to land grabbing attempts, especially when the government or business owners are involved (see the second example in Box 4). As such, there appears to be untapped potential to use the media to ease access to justice. Public pressure and awareness can be powerful tools for achieving justice,¹⁰¹ and journalists report on cases despite the risks. As Box 4 shows, the media can spread information on the legal rights of all citizens, specifically minority groups; raise awareness of the various pathways to justice and the related regulations and requirements; and affect individual land dispute cases by creating awareness.

Box 5: Using the Media

In June 2018, inhabitants of Yaqshid district, mostly from the armed Abgal/Warsangeli sub-clan, protested that the local government was planning to give their land to other people, holding a press conference, presenting their documentation of ownership to the media, and insisting that the validity of the documentation could be checked with the Mogadishu Land Registry. The affected part of Yaqshid district is not fully under FGS control, but is rather a no-man's land between Al-Shabaab and the FGS. The inhabitants also issued a press release, saying:

We, the inhabitants, declare that the local government has begun to destroy our land and is giving it to other people from the Diaspora and elsewhere. We want to inform the federal government that steps must be taken to protect property owners' rights. We have all the legal documents. Even the Mayor of Mogadishu confirmed the validity of our ownership of the land. We have found no justice in the courts. We request that the President of the Republic, the Prime Minister, the Speaker and other local and international organizations intervene in our case. We only want justice.

The Warsangeli held negotiations with the mayor's sub-clan, Abgal/Matan, and threatened to kill them if he did not stop the land destruction. The case is still not fully resolved.

3.2.3. Alternative Dispute Resolutions

People generally prefer to use alternatives to the formal courts because they do not trust judicial institutions and expect them to be highly corrupt.¹⁰² Further, most alternative dispute resolution (ADR) mechanisms are generally cheaper and faster than the courts. However, such systems depend on parties' mutual acceptance of the outcome of the process.

A good example for an ADR initiative¹⁰³ is the Alternative Dispute Resolution Unit (ADRU) established in August 2018 and implemented by the Ministry of Justice (MOJ), which maintains Alternative Dispute Resolution Centers (ADRCs) in various states across the country. The ADRU has three branches in Mogadishu—Hamar JabJab, Hodan, and Karan—and provides each branch with a one room office, a secretary, and a monthly transportation allowance of USD 100. The three centers solve around 35–40 cases per month (see Box 6 for how).

Box 6: The Alternative Dispute Resolution Unit's Functions and Processes¹⁰⁴

The ADRU is an initiative that establishes and coordinates local committees that mediate civil disputes. It does not deal with criminal law and addresses inheritance issues only to a very limited degree. The ADRU administers ADRCs, in which ADR committees operate. A committee has 10 members (eight men and two women) and a mixture of religious leaders, elders, clan leaders, and other respected society members in the area. The members are selected by the MOJ, the district authority, and local civil society. The ADRU trains the committee members in human rights, conflict resolution, policy and procedures, female empowerment, and the importance of justice in society.

¹⁰⁰ According to sources at the courts.

¹⁰¹ As suggested by some interviews and case studies.

¹⁰² One interviewed expert listed the following alternatives as preferable options for citizens: "religious men interference, elders, dispute resolution groups, women organizations, free lawyers." Another expert listed "elders, human rights agencies, women's groups, free lawyers association, religious groups."

¹⁰³ Several experts consulted during the interviews recommend that existing systems become recognized by the government and developed further.

¹⁰⁴ Interview with ADRU coordinator Ahmed Ali Aden, Mogadishu, April 17, 2019.

Once a party has filed a case, which is free of charge, the committee contacts the accused party and arranges a mediation that includes elders and witnesses from each side, if they are so willing. If an agreement is made at the mediation, it is written down and formalized, with a copy made for each party and one for the court system. If no accord is reached, the committee sends all the case files to the court system. The committee has no power or authority to implement decisions.

ADR initiatives may be helpful, though the ADRCs may suffer from a lack of enforcement capacities, hence their resolution may either be compromised or resolved by verdict only if the losing party does not have power and contradicts the case. And, if an ADR relies on the traditional system, it is probably redundant because most cases begin by approaching the traditional elders. The ADRCs may have some additional merit in providing mediation and peaceful conflict resolution; mediation techniques may relieve disputes that ultimately stem from misunderstandings. However, this would not have much effect on the serious land disputes involving document fraud and outright land-grabbing attempts, which likely require a deep reconciliation process to find a consensus on resolution.

3.2.4. Al-Shabaab Courts

There are indications that Al-Shabaab is assuming a greater role in providing justice in land conflicts. More and more Somalis seek its justice services, including outside of Al-Shabaab-held territory.¹⁰⁵ For instance, it has been observed that people are queuing to use Al-Shabaab courts in Mogadishu. In a clear but indirect acknowledgement that people are opting for Al-Shabaab courts, the new Chief Justice for Somalia warned locals on December 29, 2018, against travelling to seek justice from Al-Shabaab-run mobile courts.¹⁰⁶ Indeed, Al-Shabaab courts appear to have become part of Somalia's plural legal environment, and with the obstacles to achieving justice in the government system,¹⁰⁷ this is not surprising. Not only do litigants turn to them, but justice officials sometimes do so as well. If a case cannot be finished at the formal court, there are instances in which the chief of the court will pass the contact of an Al-Shabaab court to the litigants in need so an Al-Shabaab judge can end the case.

The Al-Shabaab court system consists of the *deegaan* courts, an Appeals Court located in Lower Shabelle, and a special court called *Radul Madaalim* that deals with cases involving powerful individuals, groups, or clans. In this context, *deegaan* denotes the local court for the respective area, village, or district. In Mogadishu, there are Al-Shabaab courts in Heliwaa, one in Daynile, one in Bakara, at Arbacow area of KM 13, and Eelasha Biyaha. Each *deegaan* consists of 2–4 judges who have the power to implement decisions and who are appointed either due to their knowledge of Sharia or, if they do not know Sharia, due to their loyalty to Al-Shabaab. In cases where Al-Shabaab does not have sufficiently capable members in a given area to serve as judges, it enlists outsiders who are proficient in Sharia.¹⁰⁸ Either way, rulings are founded on Al-Shabaab policies, not broader interpretations of Islamic law. Previously, the *deegaan* judges were from other districts, but now most are from the local area. The judges in the bigger courts, like the regional or mobile courts, and the top Al-Shabaab court derive from different clans. Additionally, Al-Shabaab court processes are kept secret due to the war against it; once a date is set for a case, “someone” will take the two parties to the area of the mobile court, but will never tell them where in advance.

Benefits of the Al-Shabaab Justice System

Al-Shabaab justice services generally are viewed as fast, efficient, and less corrupt.¹⁰⁹ And, unlike the federal courts, it is free to file a case at the Al-Shabaab courts. The courts make decisions on the same day as the trial, and Al-Shabaab executes judgements immediately, rather than leaving it to the litigants or an independent enforcement power. Therefore, people generally follow Al-Shabaab rulings because they are afraid to be killed or arrested. This appears to affect the choice of justice forums in land cases because there is a perspective of actually having a ruling enforced, as opposed to the lack of enforcement

¹⁰⁵ In two of the cases analysed for this study, the opposing parties chose Al-Shabaab courts to solve their land cases. Both cases are still pending, but one interviewee, whose case has passed through its initial meeting with the Al-Shabaab mobile court, is expecting justice and implementation.

¹⁰⁶ Garowe Online, 2018.

¹⁰⁷ See also Gundel et al., 2016.

¹⁰⁸ “If none of the Judges of Al-Shabaab is knowledgeable in the area the Fiqi of Sharia, they hire someone who knows it in order to show the people that they apply Sharia, but the decision will still be based on the policy of Al-Shabaab.” Interviews in Mogadishu, May 2019.

¹⁰⁹ Based on interviews.

capacities in other justice forums. Moreover, there is a difference between the justice experienced by people living in Al-Shabaab-controlled areas, and those coming from outside to seek justice in Al-Shabaab courts. While those living in Al-Shabaab-controlled areas are subject to extortion and corruption, the Al-Shabaab courts provide a fairer and less corrupt service to those from the outside, ostensibly as a propaganda tool.

In addition, Al-Shabaab explicitly advertises that it defends marginalized and vulnerable populations. Because vulnerable members of society may not have the funds or social connections to navigate the formal justice system successfully, Al-Shabaab courts, with their focus on immediate enforcement of judgments, their disregard for clan backgrounds, and clear cost structure, emerge as a welcoming and novel option. The courts challenge the socio-political and economic power structures that determine who can achieve justice in most of the other formal or informal institutions (where more powerful clans, for example, will get their way), provide the possibility to bypass power structures that otherwise determine every justice outcome, and enforce rulings.

Box 7: Justice Under Al-Shabaab

The Hawaadle and Abgal clans fought over control and ownership of the area around Halfuoy village, 29 km from Mogadishu. The case was tried in the *Radul Madaalim* court, which has a lengthier process than the traditional *deegaan* courts. After two years, the Al-Shabaab court decided that the land belonged to the Abgal, and the Hawaadle were given time to leave. However, they chose to stay and resist. As a result, Al-Shabaab destroyed the village, including all wells, pools, and farms. However harsh, this event raised confidence in the Al-Shabaab courts because it showed that they could enforce rulings, even against major clans. This may have been a turning point toward an increase in the number of people seeking Al-Shabaab courts for justice.

Drawbacks to Using the Al-Shabaab Justice Institutions

Despite all these benefits, Al-Shabaab's court system is often unappealing, for the reasons listed below. Some interviewees chose not to involve Al-Shabaab, mostly citing practical concerns, including the time and cost of travelling and the danger of being associated with the group. Other interviewees stated that they rejected the idea outright, though without any elaboration on why.

- Using the courts risks incurring retaliation by the government. Because Al-Shabaab justice provision has created fierce competition for government-led formal justice, the FGS has tried to discourage people from using Al-Shabaab courts.
- There is a perception that Al-Shabaab has corrupted Islam, for instance in collecting *zakat* twice a year and forcing people to make "donations."¹¹⁰ Further resentment stems from the prohibition of traditional practices, such as weddings, wedding dances, and women's gatherings. This, along with Al-Shabaab's network of informers, create an atmosphere of fear.
- Al-Shabaab judgments are said to be based on different sources of law. As a radical, neo-Salafi-backed jihadi Islamist organization, it follows strict interpretations of the Hanbali school of thought favored by Salafi groups.¹¹¹ However, Al-Shabaab judges may also draw on secular law and *xeer*, where necessary. For example, in land disputes, they will accept land titles from the Italian period, or in rural land disputes, they will consult the elders for the history of the land and parties in dispute.
- Al-Shabaab has infiltrated government institutions and every clan, with significant consequences. Al-Shabaab directly threatens security in Mogadishu, as demonstrated by the recent attack against the Benadir Regional administration.¹¹² Through access to key information on staff data and payrolls, Al-Shabaab has succeeded in extorting money from well-paid staff and internationally supported advisers and in infiltrating the government and influencing its operations.
- With regards to land cases, it appears that Al-Shabaab has become a key middleman in real estate sales through its practice of collecting taxes on land and property sales. With the information it has collected to calculate this tax, Al-Shabaab has taken on a quasi-registry role.

¹¹⁰ *Zakat*, or alms, is one of the five pillars of Islam. The wealthy must provide to the needy in their communities, while the poorer can choose to make voluntary contributions known as *sadaqat* in order to fulfill their obligation. In Somalia, Al-Shabaab has been enforcing *zakat* upon all as a tax, so it loses its original religious essence.

¹¹¹ Gundel, et al., 2016, p. 19.

¹¹² Associated Press, 2019.

4. Pathways for Land Dispute Resolutions

4.1. The Case Study's Chosen Pathways

The analysis of 14 land dispute cases carried out for this study demonstrates a mosaic of pathways rather than one or a few linear paths. The main trend in all 14 cases collected was that elders are approached for assistance before cases are filed at the courts.¹¹³ District and regional courts were used in five cases, of which two cases were brought to the Appeals Court, and one case was taken further to the Supreme Court. Al-Shabaab courts were used as a last resort in two cases, and three cases used an ADR mechanism, which basically activates a committee of elders. Only one case started out with the aggrieved party contacting a lawyer for legal advice and representation. Table 3, on the next page, illustrates the chosen steps parties take to have their grievance addressed, leading to distinct pathways in the 14 cases.

The pathways of justice sought by people to obtain their land rights seem to vary considerably based on the given case and who the aggrieved individual is or which group he or she belongs to. Those factors largely determine the available options. This creates a mosaic of paths, which in most cases appears to disadvantage the weaker parties in a given land disputes. Both justice users and experts mentioned that many cases end with a temporary “resolution” using illegal force and confrontation and that the police rarely ever enforce court decisions. There also appears to be a difference in behavior between urban and peri-urban areas. In the urban parts of Mogadishu, people consider addressing the courts first, while in semi-urban and rural areas appear to prefer the elders first.¹¹⁴

Box 8: A Deeper Look at Two Pathways

A 35-year-old man of little means inherited a plot of land from his mother and built a mosque on it. He or the family before him had lost the legal deed to the plot of land. A group from a powerful clan claimed the plot of land, demolished the mosque, and started construction of their own. The man went to the elders for mediation in the land dispute, who negotiated a payment on his behalf that was equal to half the value of the plot. The elders urged him to accept this settlement because they considered his case weak due to the missing deed, which he did because he saw a lack of other options. He considered the formal court system too distant and too expensive and the Al-Shabaab courts too geographically inaccessible and too risky.

A 50-year-old man has been locked in a land dispute with a group of Benadiri in Hamarweyn. The case has been tried at all levels of courts. He says that the courts all ruled in his favor due to him possessing legal documents from the Siyad Barre period, but the Benadiri possess documents in Arabic stating their historical ownership of the plot. He says that despite the court rulings, the local Benadiri group opposes his ownership and construction plans, and he does not want to use force against them because they are powerful. The case remains unresolved.

¹¹³ RVI and HIPS, 2017, p. 64, corroborates this trend, stating that cases most often start with the elders, move through the court system, and end in the Supreme Court.

¹¹⁴ The applicability of the *xeer* to the urban sectors are limited because customary norms often cannot cover the types of cases that occur in urban modern economy settings. See Gundel, 2006.

Table 3: Case study pathways

Case/path	Dispute type(s)	Case information	Location (urban, peri-urban, rural)	First step	Second step	Third step	Fourth step	Fifth step	Case outcomes
1	Land grabbing	A 35-year-old man had his land taken by members of a powerful clan.	Karaan (peri-urban)	Elders	N/A	N/A	N/A	N/A	Elders negotiated payment to the aggrieved party of 50% of the land value.
2	Land grabbing Squatting	A 60-year-old man from Banadiri diaspora had his property occupied by member of powerful clan.	Abdiaziz district (urban)	Elders	District court	N/A	N/A	N/A	Still unresolved. Although the court ruled in his favor, the ruling is not being implemented.
3	Squatting	A 68-year-old man had his land occupied by armed IDP squatters with strong clan connections.	Gubadley, part of Hiliwa district (rural)	Elders (could not use because of threats of violence)	District commissioner	Police commander	Filed documents	N/A	Unresolved. Because of lack of police enforcement, the land occupiers still hold the land via force.
4	Land grabbing	Two men tried to claim ownership of a 40-year-old woman's house.	Shibis district (urban)	District commissioner	Police station	Filed documents	Women's organization	N/A	Resolved after pressure from the women's organization and the community.
5	Land grabbing Contested ownership	A 50-year-old man from a strong clan was locked in land dispute with Banadiri who were making rival ownership claims.	Hamarweyn district (urban)	District Court	Regional court	Appeals court	Supreme Court	N/A	Ongoing. Although the plaintiff won the case, police have not enforced the resolution.
6	Squatting Land grabbing	A 75-year-old man from the diaspora had his house occupied by members of the Habargidir clan.	Wardhigley district (urban)	Lawyer	District court	Regional court	Appeals court	Al-Shabaab	Ongoing. He is waiting for a final decision from and implementation by the Al-Shabaab court.
7	Squatting Land grabbing	A 32-year-old Bantu female had her family's land occupied by armed and violent clansmen.	Hamar JabJab district (urban)	District court	Regional court	N/A	N/A	N/A	Ongoing. She is waiting for the police to implement a court order. See Box 11.
8	Land-grabbing	A 65-year-old woman small business owner had land in Hawl Waddag that was claimed by returning	Howl Waddag district (urban and peri-urban)	District court	Regional court	Al-Shabaab	N/A	N/A	Ongoing. She demanded that they pay her court expenses and make recompense for lost profits, but they refused to meet and settle in court. They

Case/path	Dispute type(s)	Case information	Location (urban, peri-urban, rural)	First step	Second step	Third step	Fourth step	Fifth step	Case outcomes
		diaspora members with powerful connections.							contacted Al-Shabaab instead. The first court date is pending at the time of writing.
9	Squatting	A 40-year-old woman inherited land from her father that was lent to IDPs who refused to relocate when asked.	Karaan district (peri-urban)	District commissioner	Police station	N/A	N/A	N/A	Ongoing. She accepted an offer from the district authority to give it half of her land, while it would provide the IDPs with new land on which to settle. That deal is still being processed.
10	Land grabbing	A district officer attempted to grab land from a 35-year-old man.	Daynile district (peri-urban and rural)	Police station	District court	N/A	N/A	N/A	The district officer ended up revoking his claim. The case is resolved.
11	Land grabbing	A 40-year-old female established an MCHC on land given by the government. Diaspora businesspeople wanted the land for commercial use.	Dharkenley (peri-urban)	Police station	District authority	Community mobilization	N/A	N/A	Resolved because of community mobilization. Through community organizing, activism, and media exposure she got the business group to back down.
12	Ownership issues	A 56-year-old man bought land from the owner's sister, causing a dispute when the owner returned from the diaspora.	Hamar JabJab district (urban)	Police station	District court	ADR committee	N/A	N/A	Resolved by the ADR committee. Solution was to pay USD 5,000 extra because the price of the land had gone up and he had no documents, only tax receipts.
13	Inheritance dispute	A 63-year-old man had his inheritance disputed by siblings after their father's death.	Wadajir district (urban)	Community (families in the area)	ADR committee	N/A	N/A	N/A	Resolved by the ADR committee. Elders negotiated an equal split of the inheritance.
14	Unpaid rent	A 50-year-old man rented rooms to man from the diaspora who locked the rooms and was unreachable for 10 months.	Hamar JabJab (urban)	Police station	Criminal Investigation Department	District court	Regional court	ADR committee	Resolved by the ADR committee. The man came back and paid for the 10 months he was away and the two months he requested from the elders.

4.2. Reasons for Choosing the Pathways

4.2.1. Expectations for Justice

The case studies and experts' opinions suggest that the choice of pathway aligns with expectations for the outcome. However, the basis of these expectations is unclear, and several experts emphasized the general significant lack of legal knowledge and awareness among justice users. It is possible that unfounded negative expectations, among other factors, cause individuals and groups to avoid seeking legal resolutions. Yet, the overall trend among the cases was that the initial expectations of the aggrieved parties were realistic, at least in the sense that none expressed surprise at the outcomes. This finding could indicate a fair knowledge and assessment of legal opportunities by the aggrieved parties. Most of the justice users interviewed for this study corroborated this conclusion, stating that they chose their pathways based on their positive and negative expectations. For example, those interviewees claiming possession of legal deeds expressed that they had confidence that they would win their cases, both with the elders and in the formal courts. In some cases, people went to the police station and district commissioner's office first, mostly because they knew the individuals there and felt confident that the officials knew that the land belongs to the complainants. However, this confidence did not translate into expectations of tangible enforcement.

4.2.2. Costs and Corruption

Lack of money to pay for formal court processes often influences people to choose less formal means, particularly the elders. The court system was considered a time-consuming and corrupt process, whereby sufficient wealth or social connections were a prerequisite for accessing formal justice institutions. One interviewee expressed that he would have taken his case to court if he had been able to afford it. The length of the trials also increases their costs, and some interviewees expressed that the judicial process is problematically long.

Most interviewees chose the court system when they felt they had no other choice. For example, one aggrieved party had to accept the settlement proposed by the elders because he did not have enough funds to pursue the case through the formal courts. In other cases, similar considerations led justice users to pursue alternative venues to redress their disputes because they did not expect a fair process, even if granted access to formal courts; in two cases, the parties turned to a religious community and a local consumer community network.

The cost of the court system stems in part from widespread corruption. Users and experts emphasized the effects of nepotism and demand for bribes, which limits access to justice and delegitimizes the justice system. Interestingly, the wealthier respondents did not stress corruption as a major issue, unlike their poorer counterparts. This suggests that not much has changed since 2014, when a study of the Judiciary in Mogadishu found that it was "perceived as costly, arbitrary, and subject to manipulation. Payments required to process a case [went] far beyond the legally mandated court fees."¹¹⁵

4.2.3. Status and Clan Alliances

The formal courts are also perceived to discriminate along clan lines. The composition of judges in the Supreme Court and several Mogadishu local courts has increasingly shifted toward predominance of Dir clan members, who mostly hail from the northwestern state of Somaliland. According to a 2014 study, the judiciary was seen as the domain of the Dir clan because both the Supreme Court and the Justice Service Commission were headed by members of this clan.¹¹⁶ Because most of the population in Mogadishu are Hawiye/Abgal and other non-Dir groups, a common perception is that the Dir clan is using its position as head of the Supreme Court and its 62 members of parliament to cement control over the entire judicial system in Mogadishu. Clan-based dominance of the judiciary may also create incentives to resist judicial reform efforts that could undermine clan control over these resources. In the last year, most of the older and experienced officials, who knew about the backgrounds of Mogadishu's land disputes, have left the judiciary or been fired. According to respondents, while it is difficult to

¹¹⁵ While the courts in Mogadishu collect USD 200 in formal fees, the informal fee take is USD 400 or more. These fees are never accounted for. See Gundel, et al., 2016, pp. 3, 22.

¹¹⁶ Gundel, et al., 2016, p. 16.

determine exactly who the replacements are because they are not publicly known and the administration is reluctant to provide information, they appear to be primarily young Dir men lacking relevant qualifications.

An overview of the judicial branch in Mogadishu from a clan perspective lends credence to the allegation. In 2014, Mogadishu's district courts were dominated by the local resident clans of each district (mainly Hawiye/Abgal and Habr Gedir).¹¹⁷ Today, Mogadishu's regional court has eight judges (Qadis), of whom six are from the Dir clan and two are from the Abgal clan. Apart from two judges—one Hawadle and one Murusade—the Appeals Court consists of Dir clan members. The Supreme Court consists of three judges from the Dir clan, one from Majerteen, one from Murusade, and one from Rahanweyn (Digil and Mirifle).

4.2.4. Access to Legal Documents

It appears that possession of legal documents from before the civil war leads to greater faith in the formal court system, though that faith does not extend to the perception by aggrieved parties that the formal institutions will implement or execute rulings. Along these lines, one case experienced support at a police station after presenting documents, although the litigant was also accompanied by witnesses, another typical form of evidence in land disputes. In several cases, litigants emphasized the importance of having legal documents or enough money to buy the copies from the privately owned archive.

Although several experts emphasized the absence of a public land registry that could help solve most of the land cases, there are ways to secure legal documents for land cases. Several users mentioned registering or filing documents without mentioning further details. One expert explained that since the civil war, there has been no document reference archive, so different approaches to verifying information are followed. One method is to ask individuals in the neighborhood and the area if they knew the owners of a disputed plot of land before the civil war.

Another way to verify land rights is to approach Omar Tugunbe of the Abgal sub-clan and Somali diaspora in Sweden, who saved significant numbers of documents from the municipal archive during the civil war and brought them to Sweden. He now has a business selling copies of land ownership documents and has opened a shop in Karaan district of Mogadishu for this purpose. The office usually charges USD 100 per copy of a title deed. Several experts assert that if Tugunbe were to hand over these documents to the local government, they would get “lost,” sold to other individuals, falsified, or even destroyed, and he concurs.¹¹⁸ Therefore, they think that it is better that he keeps them. However, Tugunbe has stated that he does not want to keep the documents and would hand them to a trustworthy government, if one existed.

4.3. Differences between Urban, Peri-Urban, and Rural Areas

There are differences in how disputes arise and are resolved in Mogadishu's urban, peri-urban, and rural areas. According to justice users, in the rural areas, disputes arise from neighboring families moving into some land of another neighboring family, while in peri-urban and urban areas, disputes more often arise from illegal or fraudulent documentation of land title deeds or occupation of land and properties. In rural areas, grazing lands are not clearly defined and are privately owned, allowing the government to allocate land arbitrarily, and the custom-based rights of the pastoralists over grazing land are not registered and secured through governmental regulations, which makes them vulnerable to land grabbing, often resulting in conflicts or even wars.¹¹⁹ These problems are exacerbated in peri-urban areas because “there is no clear demarcation among agricultural, grazing, and urban land, leading to confusion and overlap in Mogadishu.”¹²⁰ These differences in how disputes arise and who has jurisdiction over the land lead to different pathways that are tailored to fit the area. But, resolving these disputes is crucial to preserving inter-communal peace and to maintaining the delicate balance of power among elders from different families or clans, particularly in the rural areas.

¹¹⁷ Gundel, et al., 2016, p. 17.

¹¹⁸ Interview in Mogadishu, July 28, 2019.

¹¹⁹ Written interview response from SWDC, May 19, 2019.

¹²⁰ Written interview response from SWDC, May 19, 2019.

4.3.1. Resolving Disputes in Urban and Peri-Urban Areas

Resolving land disputes in urban and peri-urban areas is especially complicated because inhabitants freely switch between the formal justice system and *xeer*/clan justice. People go to elders first, then to the nearest district authority or courts, if they exist. However, where courts are available, negotiations between elders may fail more easily because formal courts are available as a next step. This means that if people do not like outcomes from the elders, they will address the court. If the courts cannot solve the dispute, it is passed to the regional authority. Formal documentation is required for all these steps. Or, justice seekers use militias and clans to pressure the other party in a conflict. When parties decide to not accept a solution, they tend to be more powerful and have other options for winning their cases.

4.3.2. Resolving Disputes in Rural Areas

Land in the rural areas is collectively owned by the clans, rather than individuals, and there is no direct government control. The rural clan has the responsibility to defend the land against intruders or claimants. In rural areas, people therefore never go to court for land disputes but use the elders and the *xeer*, as only the elders have the historical knowledge on land use and clan histories. As such, land disputes in rural areas are more likely to be solved through *xeer* and clan elders or dominant clan militias and almost never through courts.

Legal evidence in Mogadishu's rural cases is based solely on witness testimony because no documentation is available. Elders serve as the key witnesses and "memorizers" of what land belongs to which clan. Formal laws that rely on a land document for proof of land ownership are conceptually contradicting traditional ways of proofing land ownership. Formal modes have not yet penetrated rural societies. As one expert stated, the rural inhabitants "will never accept that with small paper [document] you can own a land. You can own land with clan power." These realities coupled with Mogadishu's expansion put rural inhabitants in a vulnerable position because they have no formal ownership over their grazing land.

5. Vulnerable Groups and Land Disputes

The research highlighted the particular challenges faced by members of vulnerable groups in pursuing justice for land disputes; in this context, this research focuses on women, IDPs, Bantus, Benadiri, and diaspora members. Briefly summarized, access to justice depends on money, power, influence, clan, and location. Widespread corruption in the court system, weak structures for verification of claims, endemic nepotism, and the importance of clan and family relations are rendering the justice system nearly inaccessible for the average Somali citizen. These obstacles are especially pronounced for vulnerable groups and minorities because they lack essential clan support and political connections and are often forced to pay larger bribes and fees than other groups, which are necessary for justice even when claims are justified and truthful.¹²¹

When justice users from vulnerable groups were asked what they perceived as the greatest obstacles to resolving their cases, three mentioned their vulnerable status as a paramount, while six mentioned corruption, including nepotism and four mentioned non-enforcement. These two latter reasons may be related to the issue of vulnerable status because corrupt or nepotist acts require that one party has increased access to money or assets or more social connections. In these cases, aggrieved parties feel that they do not have the same socio-economic or political standing as the opposition party.

The lack of enforcement of court rulings also relates to differences in power. A justice user lacking social connections with enforcement bodies and funds to pay enforcement bodies or enforcement bodies being unwilling to confront a more powerful (and possibly armed) opposition are all expressions of different levels of power and access to monetary and social resources, which, interestingly, are all extra-judicial factors. In turn, the lack of enforcement severely lowers vulnerable groups' trust in the formal justice system; some interviewees even expressed that the lack of enforcement caused them to consider turning to the Al-Shabaab courts. These issues are of special concern for the vulnerable and minorities because they appear to make it nearly impossible to gain justice from the justice system.¹²²

5.1. Women

The usual pathways to justice for women in Mogadishu are addressing the elders for arbitration, often via male family members, or addressing neighbors or the clan committee for land disputes. If these pathways do not lead to successful solutions or if such are unavailable, women may address the formal court system for adjudication and ultimately the Al-Shabaab courts. Even with such options, women face severe obstacles to accessing justice and many face harassment, threats, and limited enforcement of judgments not only in land cases, but in all cases.¹²³

Foremost is the country's dominant patriarchal culture, influenced by traditional culture, religion, and male-dominated political structures. Due to female dependency on male relatives, women generally need a male relative to support their case, represent them, and accompany them to the courts.¹²⁴ Many judges, referencing conservative Islam, do not allow women to attend court alone without a male protector. Somali women also tend to lack legal knowledge and awareness, which is not surprising considering their low literacy rate.¹²⁵ Hence, women further remain dependent on male relatives to represent them in legal cases.¹²⁶

Women are expected to pay higher fees and bribes. For example, between November 2014 and December 2018, SWDC lawyers represented a case of a woman from a minority group being denied her land inheritance. SWDC suspected that the aggrieved party was required to pay more bribes than a man would have paid. This problem is aggravated by the comparable poverty of women to men. Traditionally,

¹²¹ RVI and HIPS, 2017, p. 75.

¹²² For example, one respondent stated that the whole situation is hopeless because no one can implement rulings or solutions to arbitration. Another said he learned that "no money, no justice." Interviews in Mogadishu, April 14, 2019.

¹²³ Written interview response from SWDC, May 19, 2019.

¹²⁴ Several experts stated that the only real option for women to navigate justice institutions is to have male relatives represent them.

¹²⁵ Literacy rate of women is at 25.8% according to Borgen Project, 2018.

¹²⁶ Per Mogadishu interview, April 8, 2019: "She cannot defend her rights in front of the people. If inheritance, the people will say she is a woman and she accuses her own brother even if he is criminal. Most of women are poor [compared] to men."

women are not allowed to oversee their own financial situation.¹²⁷ The exceptions are the few well-educated and wealthy women and the few women that manage to get free legal aid.

Although both customary and formal laws intend to protect the entire community, implementation and application of these laws is inconsistent, especially for women. No law explicitly protects women's right to land ownership. There is also a big gap between the rights of women to inherit land under the *xeer* and under Sharia. While Sharia is, in principle, more protective of women, *xeer* may be applied more frequently when cases are adjudicated in the community.¹²⁸

Where Sharia law is applied, women have the right to inherit, but generally inherit a smaller share than men. A daughter has the right to a share the inheritance that is half of her brother's share. In areas where customary law is applied to inheritance cases, women may be denied all inheritance rights. The position of women with regards to land and property ownership has been weakened by conflict and breakdown in law and order. Land grabbing by male relatives following the death of a husband/father is a widespread problem. Widows rarely inherit land under customary norms and are often deprived of access to their husband's land if they have no children. Land is therefore vested in trusteeship with uncles and other male relatives and inherited by children when they come of age.¹²⁹

Women's social status and clan membership also matter. Women who are educated, originate from wealthy and well-known families, or are related to powerful individuals in political office face fewer obstacles. For the vast majority that are not well connected, educated, or wealthy, the options for fair and equal access to justice are meagre. Intersectionality can further compound vulnerability of women. For example, women from minority clans or female IDPs may be much worse off than a woman from a majority clan with powerful positions.

Box 9: Obstacles Facing Women Working in the Judiciary

Gender bias is widespread for women working within the judiciary. There are only a few female lawyers (who often have difficulties working because clients do not address them because they are women) and one female judge in Somalia (in Afgooye district). Women are also voiceless in the legislative, executive, and judicial branches of government. In the 2016 parliamentary elections, a quota for women was introduced, which led to a slight increase in numbers of women in the legislative. However, these women were often from powerful men's families.¹³⁰

One of the few options for women to improve their access to justice are legal aid organizations, such as the SWDC (see Box 10) and the Somalia Women's Lawyers Association. In most cases, these organizations depend on outside donor funding. Some women are fortunate enough to find lawyers willing to work pro bono or to find support in women's organizations and communities. Some experts also state that media exposure increases the chance of accessing justice. Nonetheless, the obstacles are daunting. As one representative of SWDC noted, "Defending land issues is very challenging in Somalia, but women are more vulnerable and sometimes due the long process of the courts, high rate of corruption, threats faced, many women withdraw their cases. On the other hand, negative social norms for women's ownership of land result in their opponents to win cases."¹³¹

Box 10: The Somali Women's Development Center (SWDC)

SWDC is an NGO that provides free legal aid and representation on criminal cases and civil matters. Its objective is to strengthen access to free legal aid for vulnerable and economically deprived groups, including IDPs, returnees, refugees, host communities, and survivors of gender-based violence.

In 2018, SWDC aided 522 cases at different court levels in Mogadishu and Baidoa, 347 of which were land cases. Of those land cases, 135 complainants were male and 212 were female. The land cases included:

¹²⁷ One expert noted that the costs of pursuing justice are higher for women, both in terms of fees and outright bribes, and that unaffordable fees are imposed on women by court employees just to file a case, making it difficult for women to get justice. Interview in Mogadishu, April 8 and 13, 2019.

¹²⁸ Written interview response from SWDC, May 19, 2019.

¹²⁹ UNDP, et al., 2018.

¹³⁰ Chopra, n.d.

¹³¹ Written interview response from SWDC, May 19, 2019.

- Land grabbing directly or sponsored by individuals with clan power or government authority
- Land disputes within families over inheritance, most of which are based on denials of women's rights to their inheritance, and polygamy
- Farming and grazing lands without proper demarcations
- Falsified title deeds and the reselling of false deeds
- Forced evictions of IDPs and returnees
- Government appropriation of land with consulting or informing the owner

For example, SWDC defended a woman's ownership claim to plot of land in a court case that lasted for almost two years, ending in March 2019. The case highlights a problematic practice of the courts, where they make an official ruling without taking the steps necessary to implement the verdict. In this case, the regional court ruled in favor of the woman, but rather than sending the necessary orders for eviction to the police and the squatters, suggested that the woman pay a settlement of USD 50,000 to the losing party. The woman took the case to the Appeals Court, but despite the ruling being in her favor again, the outcome was the same as before. In the end, the woman paid a USD 30,000 settlement to end the dispute.

5.2. Internally Displaced Persons

Due to armed conflict over the last 30 years and the resulting humanitarian crises, nearly 1.1 million Somalis are internally displaced.¹³² Most are from poor, low-status, southern Somali agricultural communities, such as the Digil-Mirifle (Rahanwein) and Somali Bantu. Most are settled in urban areas, and some have resided in these cities and camps for more than 20 years. The crowded slums that pass for IDP camps have been altering the demographic composition of these urban areas and challenging exclusivist clan claims to the cities. The IDPs' presence is generally tolerated by host communities because they serve as a useful pool of cheap unskilled labor, but they are treated as guests with limited rights, whose citizenship rights (*ku dhaqmay*) are perceived to be in distant home territories.¹³³

IDPs usually are not parties in land conflicts in the traditional sense because they typically do not own land or have any customary rights to land usage. Having been displaced from elsewhere in the country, they typically are allowed to settle on public or private land owned by individuals, groups of individuals or clans, or private companies—i.e., land/property that does not belong to them—and, as such, do not have legal rights to land. The main issue for IDPs is that they are pushed around between owners, governmental authorities, and land grabbers. Some disputes arise when legitimate owners try to force IDPs to vacate land they have settled on for long periods of time and the IDPs refuse because they have nowhere else to go.

When trying to access justice to mitigate these situations, IDPs in Mogadishu face three main obstacles:

1. Lack of legal awareness because many do not know they have the right to have cases tried at court
2. Corruption, a major obstacle due to IDPs' poverty
3. Their precarious situation, particularly their vulnerability to predation, due to being displaced from their own land, communities, and networks of support

Several experts stated that IDP cases are deliberately ignored by the court system. Therefore, their only chance is to align with and rely on a stronger clan. As a result, many IDPs depend on gatekeepers linked to powerful clans.¹³⁴

Given these obstacles, IDPs have few opportunities to access justice, if any at all. Some experts stated that IDPs could access justice if provided with free legal aid or NGO support or if they had media awareness. One expert stressed that IDPs must organize into entities capable of raising the public's awareness. IDPs frequently attempt to go through the gatekeepers of their settlement to access justice because they tend to be local and influential, but this is not really a viable strategy because most gatekeepers are de facto land occupiers themselves, who tend to use IDPs as a means of appropriating aid resources or grabbing land. The best strategy for IDPs in land disputes is to postpone eviction and seek alternative land or resettlement to home areas, if possible, but the experts stressed that the best outcome an IDP realistically can expect is a monetary settlement.

¹³² Menkhaus & Adawe, 2018, p. 35.

¹³³ Menkhaus & Adawe, 2018, pp. 35 and 39.

¹³⁴ Gundel, 2006; Cassanelli, 2015.

5.3. Bantus

Historically, Bantu communities resided in the Mogadishu area before the slave trade was banned at the beginning of the twentieth century. They were brought to Xamar (Mogadishu's previous name) to cultivate the land for the Benadiri people.¹³⁵ After the slave trade ended, most of them went to the so-called Gosha areas of the Lower Shabelle river to live as farmers because they could not become livestock owners (the Bantu had been keeping cattle, but nomadic Somalis would steal their livestock). During the Italian colonial period, some settled in the Bondhere District of Mogadishu, which was rural then. Very few have documents for this land, other than occasional receipts from past yearly land tax payments. As a result, most Bantus have a similar position as IDPs, with the only difference being that the Bantu families have been living on the land for centuries. Today, this land has become part of the city, and the value of the land has increased, thereby increasing government officials and private company owners' interest in land grabbing. In addition to Bondhere, Bantu communities can be found today in the poor areas of districts such as Wadajir, Yaqshid, and Hamar JabJab. Not one property in the districts where rich families live, such as Hamarweyne, Shangani, Abdiaziz, and Hodan, belongs to a Bantu community member.

Only Abgal recognize the Bantus because they have been living side by side for centuries, although the Abgal see themselves as above the Bantu communities and have been exploiting them as well. For example, part of the Hawiye/Habr Gedir sub-clans' motivation to engage in the civil war against Siyad Barre was being able to take the fertile lands along the Shabelle and Juba rivers in southern Somalia, thereby dominating the people cultivating the land along the rivers, namely the Bantus.¹³⁶ Hence, the Abgal political leader, Ali Mahdi, said that since the Bantus are Somalis and outnumber some of the other Somali clans, they should have representation. The Abgal had an interest in granting them some representation in order to ensure their allegiance. The Bantus were eventually granted representation in parliament and the government, but as minorities and far less than what their numbers merit.¹³⁷

The Bantus have few representatives in the judiciary, and the existing members are usually powerless because they come from a clan with little strength. As such, Bantu access to the formal justice system depends on their ability to pay money (bribes) and/or to access legal aid. When a few cases are resolved in their favor, they are rarely, if ever, enforced by police or armed forces. The Bantus are unarmed, which reflects the little power they have.¹³⁸ Other issues faced by IDPs and women, including poverty and lack of education, also affect the Bantus communities in Mogadishu. Widespread poverty and low socioeconomic status pose challenges for meeting the costs of court processes. Like women, Bantus are expected to pay larger bribes in the justice system. Lack of education undermines their awareness and contributes to their under-representation in judicial institutions.

According to one expert, the usual pathway to justice for Bantus in Mogadishu is to "first address Bantu elders, then they go to a land dispute resolution group, then to humanitarian and human rights organizations, and then to local authority or courts, then to Al-Shabab." Resolution of claims often depends on support from more powerful clans; however, this always comes with a price of subordination to that clan.

Box 11: Bantu Land Dispute Case Study

A 32-year-old woman from a prominent Bantu family inherited land from her father, a former general, who had inherited it from his father, who bought the land in 1951. After the civil war, the building on the land was occupied by the head of a Habr Gidir militia, who rented out parts of the building. When the local community and traditional and religious leaders refused to intervene in the dispute because they were afraid of the militia, the father of the woman took the case to the court. When he refused to end the case, the militia attacked the family, kidnapped and killed three of the woman's brothers, and wounded the father. During their tenures, both President Abdikassim and President Abdullahi Yusuf wrote letters ordering that

¹³⁵ Gundel 2006 and 2009.

¹³⁶ Kapteijns, 2013.

¹³⁷ Bantu communities are not a minority in numbers (they are very numerous in 9 regions in Somalia and de facto a majority in several districts), but they have little social, economic and political power. Rather, they are scattered, not united, and often live under the umbrella of a dominant clan. They do not have their own districts, although there are districts in southern Somalia where the Bantus compose up to 80% of the population.

¹³⁸ Some experts note that some Bantus are strong and should not be viewed as a weak minority, but overall are highly vulnerable and divided due to their social status.

the land be given back to the former general, and both the district and regional courts ruled in the father's favor, with the regional court making a public announcement of its ruling in front of the disputed building. But, neither resolution led to a positive result, and the case remains unresolved.

5.4. Benadiri

The Benadiri are a small minority group that descends from the Arabic founders of Mogadishu, mostly reside in Hamarweyn and Shangani districts. They are a non-Somali minority of Arabic descent. During and after the civil war, most of the Benadiri people moved to Kenya, Arabic countries and the United Kingdom, and very few remained in Mogadishu. Those who stayed in Mogadishu hired gatekeepers to secure their lives and properties and still have land in Mogadishu that cannot be sold because it belongs to their families, not to them as individuals. Their properties also remain, although their shops and banks were looted during the war. Today, there are Benadiri parliamentarians, and the district commissioners in Hamarweyn are Benadiri, although they are not as powerful as those of the dominant clans in other districts.

Despite these advantages, the Benadiri face their own challenges in accessing justice around land claims. Common stereotypes about the Benadiri people are that they generally are wealthier than other minority groups, allowing them to have access to the courts, and have connections to the Mogadishu power elite through marriages. While these things may only be true, they are not enough to protect the clan's rights, and its low population numbers and lack of arms keep them vulnerable. Benadiri women may face even greater disadvantages than their male counterparts. One expert argues that the Benadiri's Arab and dogmatic Muslim culture stigmatizes women and restricts them in public, and they cannot address the courts themselves to resolve land disputes.

The Benadiri also maintain distinct traditions from those of the pastoral Somalis, which may put them at a disadvantage when dealing with more powerful groups. The Benadiri social structure is not based on the same segmentary clan structure and customary code. They do have a head of families (*qabiil*) known as *duq*, whose responsibilities include marriage, dowries, and solving minor family conflicts, among others;¹³⁹ lack of an effective government since the civil war has the *duq*'s responsibilities. Since the civil war, the Benadiri had to accept the *Hirab* (alliance of dominant Hawiye clans) in all crime disputes and conflict issues between them.¹⁴⁰ Because they do not have camels, which are a popular payment to solve conflicts, they have to compensate in cash. Hence, the Benadiri had to 'act as a Somali clan'. In the first years of the civil war, pastoralist clans would not consider demands from victims from the Benadiri community, instead seeing them as outside the jurisdiction of the Somali clans. As such, the Benadiri had to enter into *xeer* agreements with the pastoralists.

Today, the Benadiri's primary land disputes are related to inheritance, which can be complicated when many of the family members are abroad. Usually they will try to access justice by addressing their own elders and will only move to formal courts if necessary. They have their own courts in Hamarweyn and Shangani districts, such as the Benadiri Folks Traditional Court, which handles all their internal disputes. It is equivalent to the *xeer*, but works according to Benadiri customs rather than nomadic ones.¹⁴¹ Outside their own districts, though, Benadiri people face obstacles in accessing justice; one expert claimed that the Benadiri have no rights outside Hamarweyn district.

However, the Benadiri have an educated core, which includes lawyers, that eases their access to the court system. They also may have an advantage in Sharia courts. As an Arabic population that is perceived as descendants of the prophet, they are thought to have a better understanding of Sharia, and thus may benefit when the legal dispute is resolved through Islamic law. The Benadiri community cannot access the Al-Shabaab courts due to their geographical constraints.

Box 12: Benadiri Land Dispute Case Study

A 60-year-old man from the Benadiri minority left Mogadishu after the civil war and became part of the Somali diaspora in the United States. During his absence, his house was occupied by a man from a powerful clan. Having returned to Mogadishu to reclaim his property, he initially hired the traditional elders, and a

¹³⁹ Gundel, 2006, p. 34.

¹⁴⁰ Gundel, 2006, p. 35.

¹⁴¹ Gundel, et.al. 2016, p. 18.

meeting was arranged with the other party. The two parties agreed on a monetary settlement for the squatters, who would have two months to vacate the premises. He made the payment to the squatters, but they did not vacate after two months. He then took the case to the district court, which ruled in his favor due to his possession of a legal deed. However, he was informed that the court ruling would not be enforced.

5.5. Diaspora Members

The diaspora consists of various clans, some of whom fled Somalia during the civil war and others who worked as expatriates in Arab states like the United Arab Emirates and could not return to Somalia when their work permits expired.¹⁴² The diaspora cannot be treated as homogeneous group because roles, actions, and obstacles depend on such factors as clan, wealth, network, and ambition. Although examining the role of diaspora members is important for understanding land disputes in Mogadishu, it is too broad a category to illuminate specific obstacles toward accessing justice in land dispute cases.

Indeed, the diaspora can occupy a multitude of roles in Mogadishu's land disputes, but it is useful to distinguish two categories of issues. One category of disputes relates to the diaspora clans (mostly Darood, some Isaaq and others) that seek to repossess their lost properties. Some of these properties remain disputed because other clans, the Hawiye in particular, claim that the Darood did not obtain rights to these properties in a legitimate manner during the Siyad Barre era. The other category of disputes relates to members of all clans who have managed to accumulate some wealth abroad and try to use it to acquire properties in Mogadishu. They also use other more subversive means, including faking documentation and influencing political office, to ensure that they get a hold of the property no matter what. As one respondent said, "The diaspora have two faces. On one hand they come and say that they are educated and want to help us, and on the other hand they try to grab public land for themselves."

Box 13: Diaspora Member Land Dispute Case Study

A 65-year-old woman and small business owner owns a plot of land in Hawl Wadaag. The land was claimed by returning diaspora members, who are relatives of a former vice president under Siyad Barre. The case has been tried in both the local and regional courts. Six months into the regional court trial, the diaspora members recused themselves, stating that they had made a mistake and that they did not own that specific plot of land. The woman demanded that they pay her court expenses and compensate her for lost profits, but they refused to meet and settle in court. They have contacted Al-Shabaab instead, and the first court date is pending.

¹⁴² Gundel, 2002.

6. Conclusions and Recommendations

Access to land rights remains a significant challenge for stabilizing Mogadishu. This study confirms that land disputes are the overwhelmingly largest justice issue in Mogadishu that concretely relates to instability. They are also a significant source of tension, combining historical grievances with recent struggles over political and economic power. As in many of these conflicts, vulnerable groups are most affected and least able to seek satisfactory recourse. The different justice pathways that land users take to find solutions for the land disputes show that none of the justice institutions can guarantee fair and accessible justice services. Part and parcel of this is the fact that the historical fault lines between clans, as they resulted from the historical movements in Mogadishu, still underpin the state-building attempt and are an integral part of all justice institutions. This raises questions about what to do to address these issues.

At a broader level, a reform of justice service delivery would need to be based on political restructuring and deep reconciliation. Reconciliation, constitutional, and functional systems of governance should be developed from the grassroots level,¹⁴³ which will be the most efficient way to achieve a lasting sense of inclusivity in Mogadishu specifically and Somalia as a whole that is severely lacking today.¹⁴⁴ In the meantime, a focus on justice service delivery needs to help build functional institutions that are led by communities in order to reflect socio-cultural requirements and needs. To do this, research can be expanded to a more granular political economy analysis of the formal system, but also beyond the formal system, investigating the political economy of all the other approaches identified to provide more granular insights into the networks behind justice institutions, including possible perpetrators and victims.

Further, planning considerations need to be developed that allow for discrete interventions along the different justice pathways in order to potentially improve some of the processes and guarantee more rights-based solutions. Such interventions will, by default, be multi-dimensional, and they need to respond to the different types of land conflicts, areas in Mogadishu, and socio-political and other challenges. They can include modeling of a local court to ensure it responds to social needs, norms, and perspectives; to ensure it improves on technical challenges; to create increased accountability; and to include enforcement guarantees. Other activities could consist of providing legal and justice advice in the initial steps of justice users' pathways, enabling individuals to make more informed choices in their selection of justice institutions that will benefit a rights-based outcomes. Or, accountability platforms can allow for aggrieved justice users to air their concerns and enable them to communicate these to powerholders. The provision of power interlocutors (through civil society organizations with appropriate social standing and powers) can enable members of vulnerable groups to navigate justice institutions and authorities with greater perspectives for success.

¹⁴³ Gundel, 2018.

¹⁴⁴ Menkhaus & Adawe, 2018.

Works Cited

- Action for Development Research. 2017. *Land Ownership in Mogadishu*. Unpublished report.
- Associated Press. 2019, July 25. Bomber in Deadly Attack on Mogadishu Mayor's Office Was a Woman. *The New York Times*. Available at <https://www.nytimes.com/2019/07/25/world/africa/bomber-in-deadly-attack-on-mogadishu-mayors-office-was-a-woman.html>.
- Besteman, Catherine. 1999. *Unraveling Somalia: Race, Class and the Legacy of Slavery*.
- Besteman, Catherine, and Lee Cassanelli. 2003. *The Struggle for Land in Southern Somalia: The war behind the war*.
- Borgen Project. 2018, July 13. *10 Important Facts About Girls' Education in Somalia*. Available at <https://borgenproject.org/tag/literacy-in-somalia/>.
- Bryld, Eric, Christine Kamau, and Dina Sinigallia. 2013. *Gatekeepers in Mogadishu*. Tana Copenhagen/The Somalia Cash Consortium.
- Cassanelli, Lee. 2015. *Hosts and Guests: A historical interpretation of land conflicts in southern and central Somalia*. RVI Research Paper 2.
- Chopra, Tanja. n.d. *The Women's Quota in the 2016/2017 Elections in Somalia*. Forthcoming in 2020.
- Garowe Online. 2018, December 30. Somalia: People warned against seeking justice in Al-Shabaab courts. *Garowe Online*. Available at <https://www.garoweonline.com/en/news/somalia/somalia-people-warned-against-seeking-justice-in-al-shabaab-courts>.
- Gundel, Joakim. 2002. *The Migration–Development Nexus: Somalia Case Study*. *International Migration* 40(5): Special Issue 2.
- . 2006. *The predicament of the 'Oday': The role of traditional structures in security, rights, law and development in Somalia*. Danish Refugee Council, Novib/Oxfam.
- . 2009. *Clans in Somalia*. Report on a lecture by Joakim Gundel, COI Workshop Vienna, 15 May 2009, revised edition, published December 2009.
- . 2011. *Overview of key actors and dynamics of the political economy in Mogadishu*. Unpublished briefing report to the UK Stabilization Unit.
- . 2018. Launching Reconciliation in Somalia. In *War and Peace in Somalia: National Grievances, Local Conflict and Al-Shabaab*, Michael Keating and Matt Waldman (eds.). Hurst.
- Gundel, Joakim, Louis Alexandre Berg, and Yahya Ibrahim. 2016. *Political Economy of Justice in Somalia*. World Bank.
- Kapteijns, Lidwien. 2013. *Clan Cleansing: The ruinous legacy of 1991*.
- Marchal, Roland. 2002. *A Survey of Mogadishu's Economy*. European Commission Somalia Unit.
- Menkhaus, Ken, and Ismahan Adawe. 2018. Looma Dhama – Political Inclusivity in the Somali Urban Context. In *War and Peace in Somalia: National Grievances, Local Conflict and Al-Shabaab*, Michael Keating and Matt Waldman (eds.). Hurst.
- Mukhtar, Mohamed H., and Abdi M. Kusow. n.d. *The Bottom-up Approach in Reconciliation in the Inter-River Regions of Somalia: A Visiting Mission Report, August 18–September 23, 1993*.
- Norton, Gregory. 2008. *Land, Property and Housing in Somalia*. Norwegian Refugee Council.
- Rift Valley Institute (RVI) and Heritage Institute for Policy Studies (HIPS). 2017. *Land Matters in Mogadishu: Settlement, ownership and displacement in a contested city*. Available at

<https://reliefweb.int/report/somalia/land-matters-mogadishu-settlement-ownership-and-displacement-contested-city/>.

Somalia Monitoring Group. 2010. *Document S/2010/91*.

United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), United Nations Economic and Social Commission for West Asia (UNESCWA), and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). 2018. *Gender Justice & The Law: Assessment of laws affecting gender equality in the Arab States region*. Available at <https://arabstates.unwomen.org/en/digital-library/publications/2018/12/gender-justice-and-the-law-in-the-arab-region>.