

THE EXPANDING ACCESS TO JUSTICE PROGRAM IN SOMALIA (EAJ)

ACCESS TO JUSTICE ASSESSMENT TOOL

BASELINE STUDY IN SOMALILAND: 2020



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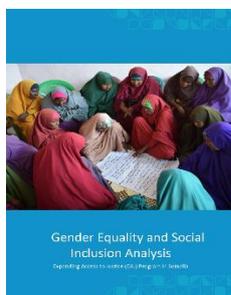
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PUBLICATIONS

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

<https://eajprogram.org/index.php/resources>



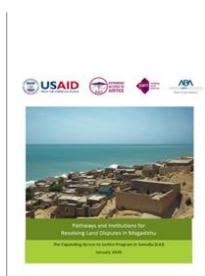
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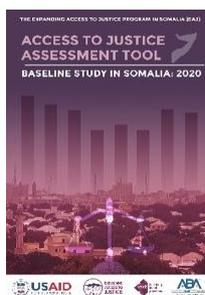
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ABBREVIATIONS AND ACRONYMS

ABA	American Bar Association
ABA-ROLI	American Bar Association – Rule of Law Initiative
ADR	Alternative Dispute Resolution
AJAT	Access to Justice Assessment Tool
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DfID	Department for International Development
DRC	Danish Refugee Council
DDG	Danish Demining Group
EAJ	Expanding Access to Justice Program
FGM/C	Female Genital Mutilation and Cutting
HRSM	Human Rights Support Mechanism
IAC	Islamic Arbitration Center
IDP	Internally Displaced Person
INGO	International Non-Governmental Organization
LAO	Legal Aid Organization
LDT	Land Dispute Tribunal
MoA	Ministry of Agriculture
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoRA	Ministry of Religious Affairs
MoRDE	Ministry of Rural Development and Environment
NGO	Non-Governmental Organization
SGBV	Sexual and Gender-based Violence
UN	United Nations
UNDP	United Nations Development Program
UNSC	United Nations Security Council
USAID	United States Agency for International Development
USC	United Somali Congress
USD	United States Dollar

EXECUTIVE SUMMARY

In Somaliland, statutory, religious, and customary justice co-exist, collaborate to an extent, and are intertwined. Statutory law – that is, government legislation and associated institutions – are the most recent and the most foreign addition to Somaliland, introduced by British colonial powers, somewhat developed by the subsequent military government in Mogadishu, largely eviscerated during its collapse, and in the process of reconstruction ever since. The shari’ah in its Shafi’i interpretation is part and parcel of Islam as a central cultural pillar of Somaliland’s society. It forms the basis of constitutional law and is the most legitimate, but also the most expensive justice provider. Customary law (*xeer*) is the most used, the most dynamic, the most easily accessible, but also the most rights-abrogating justice pathway, because it is geared towards the avoidance of communal conflict and the conservation of a patriarchal society, presided over by clan elders, instead of promoting individual rights norms.

The institutional preferences of justice users derive from uneven and largely limited knowledge of the legal frameworks, forum shopping for the most promising outcomes, evaluation of likely official and – mostly in the cases of statutory courts, but sometimes also for elders – unofficial costs by a poverty-stricken society, and personal ties to individual justice practitioners. The moral authority, simplicity, and integrity of shari’ah courts – better understood as Islamic Arbitration Centers – renders them the preferred justice pathways for those who can afford and reach them, but these limitations keep their caseloads light. Religious scholars and judges, the ulama, are increasingly incorporated into the justice system as practitioners registered by the Ministry of Justice, but the active interference of the Ministry of Religious Affairs renders them not the only interpreters of shari’ah who influence the practice of justice.

The justice landscape in Somaliland still lacks infrastructure. This includes both physical infrastructure that courts require for their work and for courts to be more widespread in their reach and accessibility to the rural populace and the justice personnel. Lawyers provide the main avenue for advice and representation in statutory settings but remain largely confined to Hargeysa. As more and more universities operate and produce trained jurists, this begins to change, but that change is gradual and slow. These impediments ensure that elders remain the primary justice providers, because every community forms sub-sections of clans with their respective elders, who are thus accessible to most and whose services come free of charge.

The justice landscape in Somaliland also lacks oversight and accountability. Influential or well-connected individuals are able to influence justice processes at all nodes up until and including enforcement, from which these individuals can often escape. This calls into question the impartiality and independence of both court officials and law enforcement, and, as many respondents to this study considered adequate compensation of ulama a major contributing factor to their integrity, also highlights the need for well-resourced and internally accountable state oversight. The same applies to universities. Despite training more and more lawyers, this study’s findings indicated that no consistent curriculum is in operation and examinations are not yet standardized. Statutory courts are perceived as the most unpredictable institutions and most likely to be unfair. Streamlined training, accessible information in emerging libraries in Borama and Hargeysa, but also beyond these current hubs of higher education, and effective oversight will be needed to tackle these shortcomings.

Until then, elders, originally tasked with the de-escalation of conflicts and community leadership, will remain prominent justice providers. In many cases, respondents spoke of elders wresting cases from courts to ensure that the patriarchal norms they safeguard be observed. This affects SGBV survivors in particular and in the most detrimental fashion to their personal integrity. Any reform in justice infrastructure must therefore also account for the normative underpinnings of the society in which it operates.

RECOMMENDATIONS & UPTAKE

- **Support justice user’s access to justice via advice and representation, e.g. through legal aid clinics.**

Lack of familiarity and unofficial costs remain major barriers for access to statutory courts, pushing many cases towards customary authorities with problematic implications for aggrieved individuals’ rights. The EAJ Program has rolled out a support program for legal aid services delivered via local justice promoters, trained in relevant knowledge to help justice users navigate the plural justice environment and the statutory justice chain. In addition, the EAJ Program could further engage the manifold universities in Hargeysa, Borama, or Burco towards integrating students via legal aid clinics. This provides direct practical experience to future practitioners and justice users with locally accessible and affordable support. In doing so, the Program should ensure that legal aid clinics and justice promoters are representative of communities’ diversity and act in an accountable and inclusive manner to avoid reproducing patterns of exclusion and marginalization.

- **Explore integrated pathways to justice for SGBV survivors in a survivor-centric approach.**

Currently, the way in which SGBV cases are handled prioritizes the observance of established norms and group reputation over the well-being and personal integrity of the survivor. This contravenes several shari’ah principles and their derivative legislation, some of which remains under review by the Ministry of Religious Affairs. A constructive avenue for the involvement of traditional elders must be found, as their centrality to group relations, social authority, and own relevance to the socio-political fabric must be acknowledged and holds potential for their role as protectors of survivors – leveraging their influence to halt further violence. This requires a normative shift, which can be encouraged by changes in institutional behavior towards a survivor-centric approach. Survivors of SGBV require support. This includes a well-known and easily accessible first port of call, such as a support hotline or medical centers, from which they can receive referral to or administration of medical and psycho-social treatment. These nodes must be linked to legal support that can advise on further engagement with elders, courts, law enforcement, and family. These can be supported by local actors such as the Nagaad Network, who have long worked toward women’s access to equitable justice, and the Somaliland Women Lawyers Association.

- **Work with the Ministry of Justice and local universities to ensure coherent oversight.**

The justice landscape in Somaliland is consolidating and part of an increasingly capable government. For its functioning, justice institutions require adequate and sustainable resources, accountability on how these resources are used, and strong coordination among all branches. Especially statutory institutions also require a coherent curriculum, examinations, and oversight that allow students of the law to enter the justice sector with a predictable path to working under the auspices of one line ministry. The EAJ Program already works with the Somaliland Ministry of Justice (MoJ), which should be encouraged to work with local universities to standardize training, produce learning materials, establish clear guidelines for professional ethics and referrals, and ensure that the curriculum takes into account the overlap of institutions. To this end, the Ministry is well-placed given that it licenses Islamic Arbitration Centers and works with elders either directly or via the Somaliland parliament’s upper chamber, the *Goloha Guurtida* (House of Elders).

- **Work with the Ministry of Justice towards effective land administration and participation.**

A final component of this collaboration must include work towards a land registry and cadaster office that can conclusively inform land-related disputes. The EAJ Program model for Land Accountability Platforms under MoJ-coordination could establish a two-way platform: for community leaders to ensure that land disputes are handled according to due process, and for justice actors to manage community members expectations towards the likely duration of processes, to communicate why due process can take time.

INTRODUCTION

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

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

The key objective of the study is to collect the initial quantitative and qualitative data that will serve two main purposes: 1) to establish the baseline data, against which the EAJ interventions in Somaliland will be measured, and 2) to inform EAJ program design and implementation. In order to support legal aid and legal empowerment processes at the local level, in-depth understanding of the plural justice landscape and the perspectives and behavior of justice seekers is essential. Based on specific knowledge gaps, and needs of justice seekers, the study is to a) feed into the design of training manuals for lawyers, paralegals and community based paralegals; b) inform advocacy processes by legal aid suppliers in view of policy or legislative change; c) inform the Judiciary and the Ministry of Justice and other official actors of Somaliland on gaps and challenges in the provision of legal and judicial services.

The conceptual framework of the study is largely based on the Access to Justice Assessment Tool developed by the American Bar Association Rule of Law Initiative. The conceptual model of the EAJ has adopted this tool. It includes six elements:

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

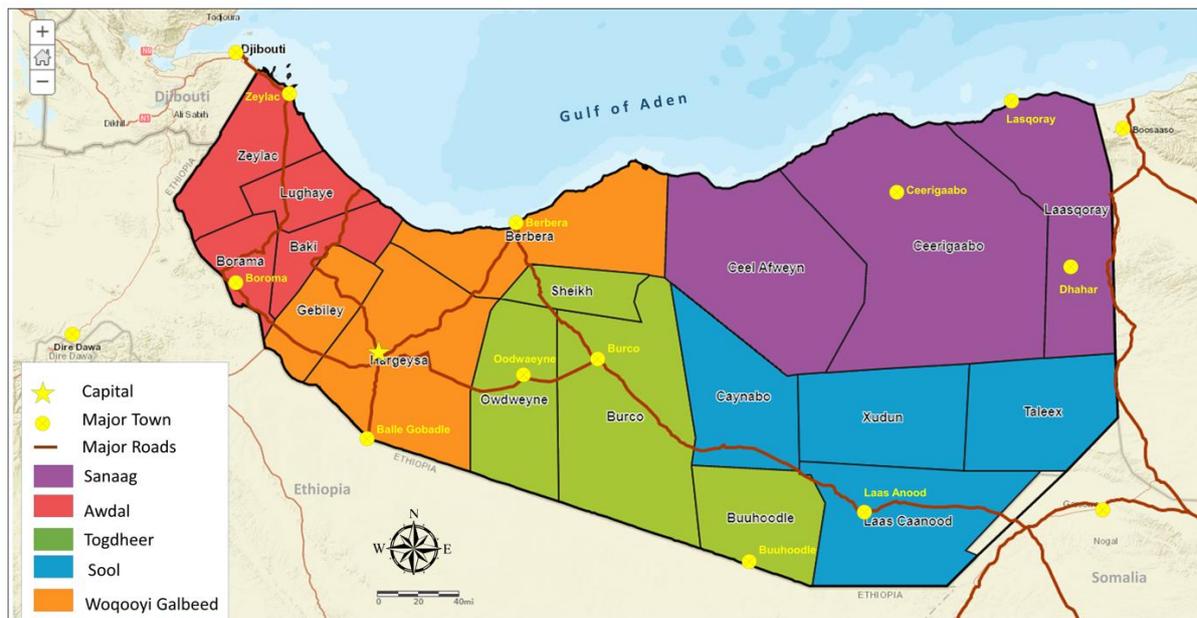
It defines access to justice to mean that citizens are able to use justice institutions to obtain solutions to their common justice problems. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizens' justice problems. In a country which struggles to be internationally recognized, practices a pluralistic justice system, and was plagued with civil conflict, ensuring effective functioning of justice institutions can be a challenge, but also an opportunity.

Data for this study was collected in mid-2019.

SOMALILAND

In 1991, the Republic of Somaliland unilaterally declared independence in the confines of the former British Somaliland Protectorate, established in 1888. It thereby severed ties with what is today the Federal Republic of Somalia, which comprises the regional states from Puntland to Somaliland's East and southwards. No other state has thus far formally recognized Somaliland as an independent state, but several maintain *de facto* diplomatic relations and representations with its government, operating from its capital in Hargeysa. The declaration of independence marked the last step in a growing divide between the Somali National Movement (SNM) and other clan-based militia that had initially cooperated in the overthrow of the military government in Mogadishu, but subsequently descended into a civil war from which the SNM and Somaliland's dominant Isaaq clan had thus extricated themselves early on.

Claims to independence note that the former British colony had achieved independence and international recognition in 1960 prior to the decision to unite with the southern Italian colony to form the independent Republic of Somalia. Following the secession in 1991, Somaliland's communities descended into two bouts of armed conflicts but ultimately formed a government with support from its diaspora and through a long deliberative process, and almost entirely without any other external support.¹ Since then, Somaliland has been in the process of slow but steady state formation and has held successive elections that included biometric voter registration and international observers.



NOTE: This map is to be used for illustrative purposes only and not as an authority on the boundaries.

¹ Mark Bradbury (2008). *Becoming Somaliland*. London: Progressio.

Maroodijeex	
<p>Maroodijeex lies within the Woqooyi Galbeed region, which stretches from the important border hub Wajaale in the south to the port city of Berbera in the north. In its center, in Maroodijeex, are the capital Hargeysa and Gebiley on the road west towards Awdal and Djibouti. Berbera port to the north of Maroodijeex and Hargeysa airport constitute Somaliland’s most important commercial entry or transfer points. Woqooyi Galbeed is also the stronghold for the Habar Awal clan with footholds in both Berbera and Hargeysa, as well as the numerous Cidegale, who make up many of the nomadic pastoralists to Hargeysa’s south – lands in which the Carab minority group also resides. Hargeysa itself is home to most communities in Somaliland, to most government institutions including the Coast Guard, and to the main cash transfer bank Dahabshil as well as several telecommunications firms, foremost among these Telesom.</p>	
<p style="text-align: right;">Awdal</p> <p>The western region Awdal borders on Djibouti and hosts the ancient port city Zeylac, as well as the regional capital Borama, famous for its universities and green vegetation. The region was the grounds for inter-communal conflict during the early stages of Somaliland’s independence, as the Dir sub-clan Gadabursi threatened secession. In recent years, Awdal has been struck by successive droughts.</p>	
Togdheer	
<p>The region to the east of Maroodijeex is split between the lands of the Habar Jalo around Burco in the north and the south around Odweyne, inhabited primarily by the Habar Yunis community. These divisions take on political shape during election times as the leadership of the opposition party Wadajir hails largely from the Habar Yunis, whereas the currently governing Kulmiye party draws most of its support from the Habar Awal and Habar Jalo communities. The region also hosts important transport pathways towards Bossasso seaport and the dry port Galkacyo in the East. These run just north of Buhodle district in Woqooyi Galbeed, which is internally split and has repeatedly hosted dual administrations, divided between those tied to the Somaliland government in Hargeysa and those threatening secession to form a separate <i>Khaatumo</i> statelet.</p>	
<p style="text-align: right;">Sool</p> <p>Sool region encompasses areas also claimed by Puntland in the east and borders on Ethiopia to its south. The rural areas outside the capital Las Caanood are vulnerable to intense droughts. Las Caanood is the heartland of the widely spread and numerous Dhulbahante sub-clan of the Darood clan family.</p>	

METHODOLOGY

The overall approach and methodology of the study is based on the Access to Justice Assessment Tool developed by the American Bar Association Rule of Law Initiative. The Tool is disaggregated into six key elements that impact the ability of people to use justice institutions to solve their legal problems:

1. Legal Framework
2. Legal Knowledge
3. Advice and Representation
4. Access to a Justice Institution
5. Fair Procedure
6. Enforceable Solution

The mixed methods approach encompassed three main methods of data collection: a quantitative household survey, qualitative interviews with justice system actors, and case studies of justice service users. The research tools were designed to generate information in these six areas. The tools prioritized user perspectives to gain further insights into user preferences and trust towards institutions and their perceptions of the quality of services. Data was collected in four regions selected with respect to the locations where the EAJ Program had planned its further activities. The selected locations represented urban, peri-urban, rural, and IDP-camp settings in the Awdal, Maroodijeex, Togdheer and Sool regions. Thematically, the study kept a broad focus on all three types of justice – formal, traditional and religious, but with emphasis on the cases of land rights and SGBV. These were identified as the most pressing themes from a rights-based justice point of view by the EAJ staff's initial assessment.

DESK REVIEW

A complementary desk review comprised relevant legislation and studies by international organizations or local civil society organizations. Where the information was scarce or not available in English, interviews with local EAJ staff filled the gaps.

QUANTITATIVE RESEARCH

The household survey was designed to generate information about individual justice users' perceptions with regards to the six AJAT elements, some user perspective information, and baseline values for EAJ program indicators to allow for the measurement of progress in the program interventions. A total of **405 respondents** were interviewed in the household survey carried out in the different settings of the above mentioned four regions. The sample was representative of vulnerable groups in the target locations, such as IDPs, women, minority and rural residents – and is disaggregated along other common demographic indicators in Annex A.

QUALITATIVE RESEARCH

To provide deeper insights into the topics covered by the AJAT elements as well as to garner professional perspectives of justice system actors, researchers conducted 20 in-depth interviews with representatives of all three types of justice frameworks in the four regions. In each region, the following were interviewed:

- A statutory court judge
- A shari'ah court/Islamic Arbitration Center juror
- A traditional elder involved in dispensing customary justice

The additional eight interviewees comprise lawyers, prosecutors, or service providers, depending on which professionals were available in a given location. Two of the interviewed professionals were women.

CASE STUDIES

The second qualitative research tool providing information about the experience of justice service users' interaction with justice were case studies describing the legal problem and its journey through justice institutions. The case studies also looked into the perceptions on how well justice was served, and what the impact of the interaction with the justice institutions had on users' lives or on the larger community. The research team recorded a total of 32 cases, eight in each of the four regions. The case studies in each region included criminal, land rights, family, and SGBV cases. Most cases had been dealt with by statutory courts (21); four had been handled solely by a customary justice forum. In several cases, two different types of justice institutions were involved, usually one after the other. In four cases, these institutions were elders and statutory court. In one instance, a case started to be heard by elders, but was finally decided in an Islamic Arbitration Center. Most justice service users whose cases were examined in case studies were women (19). Out of 32 users, ten were not comfortable sharing the information about their clan affiliation, five were from minority clans, and the rest belonged to local majority clans.

LIMITATIONS & CAVEATS

- **Clans are not monolithic entities**

In both the following overview of key findings and the previous introduction to study regions, clans are mentioned as important social groups. The authors do not assume that clans are monolithic or uniform entities and stress that members of a clan group and regardless which level or strata do not act as such. Clans do, however, remain an important determinant of social group identity with socio-political and economic ramifications, and is considered as such in this study.

- **Judiciary under reconstruction**

In many respects, Somaliland is still in the transition phase that is often marked as 'post-conflict,' which implies the reconstruction of public infrastructure. This limits the ease with which important documentation can be accessed to validate claims made by research participants, as well as the capacity of justice actors to generate and store documentation of cases and related matters. Case studies throughout this study should be read as illustrative accounts of cases that are being used by the research team in consideration of other evidence that is consistent with the implications of case studies and point to trends of which the cases are indicative.

- **Case study content on sexual and gender-based violence**

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

KEY FINDINGS

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

- **Graphs and tables**

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

- **Statutory law**

Somaliland is in a state of legal pluralism. To distinguish government-affiliated law and institutions from customary and religious counterparts, this study will refer to these as 'statutory'. This comprises legislation passed by parliament, including the current parliament and all legislation dating back to independence and before that is still nominally in effect, as well as courts from district to constitutional level that are mandated to apply such legislation, and the Somaliland constitution. This study refrains from using the often-employed distinction between formal and informal law/courts, as this dichotomy disavows the formalized procedures, regulations, and precepts that permeate customary and religious institutions, which are also frequently registered with the Ministry of Justice of Somaliland. It also elides the extent to which these norms are part of statutory court proceedings and pervade Somaliland's constitution and legislation.

- **Shari'ah courts & Islamic Arbitration Centers**

These two terms are interchangeable. In the following, this study will refer to both as Islamic Arbitration Centers, abbreviated as IACs.

- **Highlights**

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

LEGAL FRAMEWORK

- Customary, religious, and statutory institutions coexist and overlap
- Shari'ah is the source of all law as per constitution, but is often applied in combination with customary norms
- Outcomes in statutory courts are often unpredictable and disregard due process
- Especially customary norms disadvantage women, minority groups, and youth from the perspective of international rights standards
- A new *Rape and Sexual Offences Law* was adopted in 2018, but is currently under review by the Ministry of Religious Affairs
- Shari'ah courts are most trusted, but also most expensive, and thus infrequently used

ADVICE & REPRESENTATION

- Respondents are split on the availability of advice and representation, which is strongest in Awdal, where lawyers provide advice for free
- Advice and representation are only needed for statutory institutions, not for customary or religious pathways to justice
- Cost barriers are the primary obstacles
- No comprehensive framework for legal advice or representation exists
- Most look to trusted individuals for support

FAIR PROCEDURE

- Prospective fairness is a major factor in justice seekers' institutional preference
- Shari'ah courts are perceived as least corrupt and thus most likely to be fair
- Main drivers of unfair or unpredictable processes and outcomes linked to undue influence by individuals with wealth or connected to government, police, or military
- Women and minorities more likely to be treated unfairly

LEGAL KNOWLEDGE

- Most justice users assess their knowledge of their constitutional rights as poor
- Justice users do not clearly differentiate different legal frameworks and conflate especially shari'ah and statutory law
- Familiarity and ease of access sustain the primacy of customary institutions
- Information is more easily available in Hargeysa and to those with higher education attainment

ACCESS TO JUSTICE

- The main access barrier is cost
- IACs charge high fees for opening a case, but require no further expenses
- Statutory courts appear as most expensive, with unpredictable payments throughout
- Customary institutions are most accessible and affordable to urban and rural residents
- Elders do not charge fees, but require refreshments
- Women and members of minority groups can face threats and violence if they decide to pursue a case through a court instead of customary proceedings

ENFORCEABLE SOLUTIONS

- Statutory courts can call upon coercive law enforcement to implement decisions
- Elders and ulama rely on their individual social authority and the respect they command as an institution for the acceptance of their decisions
- Enforcement mainly falls short if court/elder decisions go against wealthy or well-connected individuals
- Greater cooperation between justice actors allows them to utilize each other's strengths

LEGAL FRAMEWORK

The justice landscape in Somaliland is one of legal pluralism.² Customary justice is practiced by clan elders alongside Islamic scholars (*ulama*) who apply shari’ah, and statutory law introduced during British colonial rule. This leads to a relatively complicated institutional network, in which all three normative frameworks and their respective institutions coexist under the formal supremacy of shari’ah. Shari’ah forms both the basis for most of the customary agreements that are locally negotiated by clan elders and re-negotiated as needed, and the incontrovertible source of the constitution with which all statutory law must be compliant. Yet, in practice, some customary practices run counter to shari’ah principles, which itself branches into interpretations. These have, over the centuries, formed schools of Islamic jurisprudence (*madhhab*).

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The Expanding Access to Justice (EAJ) Program has published a comprehensive introduction to shari’ah in Somalia/land, which includes a step-by-step unpacking of elements of the shari’ah, historical and political context, *madhhabs*, history in the Horn of Africa, avenues for reform, and recommendations for justice sector reform actors.³ This study will therefore only provide a brief background to three main elements.

SHARI’AH	WHAT IS THE SHARI’AH?	
Loosely translated as “ <i>the correct path</i> ”, shari’ah is not a set of laws in a civil law sense. It is a collection of duties and obligations spanning not only religious, but also economic and social life, which Muslims are required to live by. These derive from the Qur’an and the Sunna (the Prophet’s sayings and deeds).		
TOOLS FOR REFORM		IJTIHAD
As Islam spread geographically and grew more established, references in the Qur’an and the Sunna no longer directly corresponded to all Muslims’ local context or lived experiences. In response, <i>ulama</i> in different parts of the <i>ummah</i> (the community of Muslims) began to form legal opinions and guidelines via a number of methods, such as analogy (<i>quiyas</i>) or consensus (<i>ijma</i>), grouped under the term <i>ijtihad</i> .		
MADHHAB	SCHOOLS OF JURISPRUDENCE	
The divergence of views on how such opinions should be formed gave rise to different schools of jurisprudence (<i>madhhab</i>). In the Sunni Islamic jurisprudence these include four schools (Hanafi, Maliki, Shafi’i, and Hanbali) that differ by geographical areas and, most importantly, in the degree to which they allow tools of <i>ijtihad</i> to interpret the original texts of the Qur’an or Sunna, be it to soften the impact of the literal interpretation, to respond to crises of faith, or to serve public interest.		

In Somaliland and Somalia, the Shaf’i school is predominant. This school prioritizes literal interpretation of the Holy Texts but does allow for some – limited – discretion in their interpretation through *ijma* and *quiyas*, which function similarly to the concept of precedent in the British common law tradition.⁴

² Natasha Leite (2017, October 12). *Reinvigoration of Somali Traditional Justice through Inclusive Conflict Resolution Approaches*. Retrieved from African Centre for the Constructive Resolution of Disputes (ACCORD).

³ Abdirizak Ahmed, Sagal Ali, Erica Harper, Tanja Chopra & Robin Mydlak (2020). *The Shari’ah in Somalia*. Expanding Access to Justice Program, American Bar Association & Pact Kenya.

⁴ On different legal traditions, see, for instance: David, & Jauffret-Spinosi (2002). *Les grands systèmes de droit contemporains*. Paris: Dalloz.

The Somaliland Constitution stipulates that all laws shall be based on and not contravene shari’ah (Art. 5). Yet, the application of shari’ah faces challenges, in part due to a lack of knowledge among most justice actors. During the years of conflict in the country, local universities lost, and have not yet regained, their capacity to deliver rigorous and high-quality education. Many ulama have received their religious education outside Somaliland and were likely trained in different *madhhabs*, schools other than Shafi’i.⁵

Despite its formal supremacy, shari’ah coexists, and is often applied in combination with xeer norms. Especially in the absence of strong religious scholarship, the understanding of shari’ah by different justice actors is strongly influenced by customary norms. As a result, some rules and practices are common to both institutions, but some practices by elders contradict principles enshrined in the shari’ah.

Customary justice (xeer) has traditionally governed relations among clans and sub-clans and primarily aimed at de-escalating conflicts and maintaining peace.⁶ With this focus on peace between potentially armed groups, xeer prioritizes collective responsibility and compensation over the protection of individual rights. As a reflection of the society that has constituted it over centuries, xeer also embodies the strength of clans. It does not provide equal protection to minority clans, relying on clan power for its authority.⁷

WOMEN UNDER XEER	XEER
<p>The strength of a clan depends on the number and power of male clan members who can pay ‘blood money’ (<i>diya/mag</i>). Women are not <i>diya</i> paying members but come under the authority and protection of their husband, father, or brother. When marrying, women’s affiliation changes to their husband’s clan and sub-clan, although in practice women maintain close ties with their cognate family. Such marriages can also occur as part of a peace agreement between two clans, in which women are ‘given’ to appease or apologize to another clan. In each case, women figure as either secondary clan representatives or secondary clan members, including in their access to clan elders.</p>	

CONSTITUTION

The Constitution of the Republic of Somaliland, as supreme law of the land, provides the basis for all statutory legislation. It was adopted on 31 May 2001, ten years after Somaliland’s unilateral declaration of independence from Somalia in 1991. The Constitution’s Preamble declares shari’ah as the basis of all law, the separation of the powers in the state, the sanctity of human life expressed in the constitutionally proclaimed rights and freedoms, and commits to the peaceful coexistence with states in the region and the world. It emphasizes the unity of the Somaliland nation and the aspiration to build a state founded on equality and justice, in which every citizen has equal status.

In practice, this endeavor entails the merging of customary and religious traditions with modern legislative approaches. Although the Constitution lays out equality before the law, a catalogue of fundamental rights and freedoms, and a separation of powers with an independent judiciary, the supremacy of shari’ah introduces ambiguity in areas such as the freedom of religion (Art. 5 & 33) or women’s rights (Art. 36).

Equality of citizens with regard to their rights and obligations, is guaranteed irrespective of color, clan, birth, language, gender, property, status, opinion, etc. Similarly, the Constitution prohibits

⁵ Ahmed, Ali, Harper, Chopra & Mydlak (2020). *The Shari’ah in Somalia*.

⁶ For more in-depth discussions to clan and xeer, see, for instance: Robin Mydlak (2020). *The Clan System and Customary Justice in Somalia – A Brief Introduction*. Danish Demining Group.; Joakim Gundel & Ahmed Dharbaxo (2006). *The predicament of the 'Oday': The role of traditional structures in security, rights, law and development in Somalia*. Danish Refugee Council, Novib/Oxfam.; Andre Le Sage (2005). *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*. Henry Dunant Centre for Humanitarian Dialogue.

⁷ On discrimination against minority groups, see: Martin Hill (2010). *No redress: Somalia's forgotten minorities*. Minority Rights Group International. In Somaliland, this concerns especially the Gaboye and Carab minorities.

discrimination, but provides slightly different enumeration of grounds based on which discrimination is prohibited, leaving out gender, property, status, and opinion. Nationals of foreign countries lawfully residing in Somaliland enjoy the same rights and obligations before the law as those enjoyed by Somaliland nationals (Art. 8).

While Somaliland has not been internationally recognized as an independent country and, thus, cannot be a party to international agreements, the Constitution contains provisions for their observance:

- **Somaliland accedes to all agreements previously entered into by Somalia**, including the United Nations Charter, the Universal Declaration of Human Rights and international law (Art. 10).
- **Part III of the Constitution contains an obligation to be interpreted in a manner consistent with international conventions on human rights** (Art. 21). The Part deals with individual rights, fundamental freedoms, and the duties of the citizen. All branches of government at all levels of devolution are bound by the provisions of this Part.

Part III then presents a list of fundamental human rights and freedoms including the right to life and security of the person, the right to liberty and guarantees of lawfulness of detention, the right to own private property, the right to vote and to be elected, and the freedom of movement, association, expression and peaceful assembly.

The last article in Part III deals specifically with the rights of women. It states that women have the right to own, manage, trade in, or pass on property, consistent with shari’ah, but routinely denied under the xeer. Mindful of the practices that threaten and harm women and girls, the Constitution obliges the government to encourage and legislate for the right of women to be free of practices that are contrary to the shari’ah, and which are injurious to their person and dignity.

VIOLENCE AGAINST WOMEN	SGBV
<p>In most armed conflicts across the globe, sexual abuse of women is rampant, both as part of willful violence amidst chaos and as deliberate strategies to degrade the opposition morally, physically, and in some cases also to create a generation of mixed and innately traumatic heritage. The conflict that has engulfed Somalia and gave rise to Somaliland as a <i>de facto</i> separate entity was no different. The complete breakdown of judicial structures alongside the disadvantages women face under xeer have opened space for sexual harassment, abuse, and domestic violence to pass often with relative impunity. This acute violence is accompanied by the routinized practice of female genital mutilation and cutting (FGM/C) that, albeit not without detractors and attempts to legislate against it, affects almost all women in Somaliland. In addition to the above discussed position of women as secondary clan members potentially subject to forced marriage under xeer, girls can also be married at a young age especially in rural areas, which not only introduces a child into an adult relationship, but also effectively cuts off access to education, employment, and other elements of independence.</p>	

While the provision condemns several harmful practices, its application may be limited by the reference to “practices which are contrary to shari’ah.” Denials of women’s inheritance or even rape that can go without punishment under xeer would be considered contrary to shari’ah, but, depending on *madhhab* and its articulation by individual ulama, justice actors may not consider FGM/C or early marriage contrary to shari’ah. A similar qualifier in the provision states that the rights, freedoms, and duties laid down in the Constitution, are to be enjoyed equally by men and women. The provision then concludes by adding that this holds “save for matters which are specifically ordained in Islamic Shari’ah” (Art. 36). This leaves room for individual interpretation and scholarly or juridical disagreement in its application.

Part IV of the Constitution lays out provisions for the establishment, independence, and structure of the judicial branch. Part V, sections 1 and 3, further the institutions of the justice system. The judiciary has the power to interpret laws and to adjudicate disputes between the government and members of the public, between members of the public, and those disputes which relate to the compliance with the Constitution (Art. 98). The judiciary consists of the courts and the prosecution. The latter prosecutes

criminal offences on behalf of the state and is made up of the Attorney General and his deputies. The court system is comprised of District, Regional, and Appellate Regional Courts, the Courts of the National Armed Forces, and the Supreme Court. The Courts of the National Armed forces have jurisdiction over criminal charges brought against members of the armed forces (Art. 99-104). District, Regional and Appellate Courts are standard courts of first and second instance.⁸

The Supreme Court sits as a full bench. In addition to being the highest organ of the Judiciary and court of last instance, the Supreme Court also sits as the Constitutional Court and decides on the disputes relating to the constitutionality of acts and decisions of the Government or Parliament, on disputes concerning the compliance of court decisions with the Constitution, and, in cases of controversy, the Court interprets the Constitution. With additional representatives, it **also sits as the High Court of Justice** when dealing with impeachment of public officials.

The Judicial Commission administers the Judiciary. Its decisions are executed by the Ministry of Justice (MoJ). Its responsibilities are the appointment, dismissal, promotion, demotion, transfer, and discipline of judges of the courts of the first and second instance, and Deputy Attorney Generals. The Commission is comprised of the Chair of the Supreme Court, two Supreme Court judges, the Attorney General, the Director General of the Ministry of Justice, the Chairman of the Civil Service Agency, and four members of the public, two of which are selected by the House of Representatives, and the other two by the House of Elders (Art. 106 – 108).

The Ulama Council addresses both the principal role of the shari’ah as the basis of all legislation and the wide discretion that exists in interpreting religious texts. Established by the Constitution, the Council can issue formal declarations on religious disagreements and decide whether measures or decisions are contrary to shari’ah. It can also review translations that courts rely on in their rulings or those that form part of the educational syllabus. The Council also commissions various types of research into shari’ah (Art. 115).

⁸ Ibrahim Hashi Jama (2006-2020). *Somaliland Judicial System – Overview*. SomalilandLaw.com. Available at: http://www.somalilandlaw.com/somaliland_judicial_system.html

SEXUAL AND OTHER FORMS OF GENDER-BASED VIOLENCE

SGBV	SEXUAL AND GENDER-BASED VIOLENCE
<p>Although sexual and gender-based violence (SGBV) is not defined in a legally binding document at international level. The United Nations High Commissioner for Refugees (UNHCR) unpacks the concept as any act based on gender norms and unequal power relations perpetrated against a person's will. Although it can affect persons of any gender identity, the General Recommendation 19 of the Committee on the Elimination of Discrimination Against Women highlights its disproportionate impact on women and girls, defining GBV as violence directed against a woman, because she is a woman, or that affects women disproportionately. SGBV comprises rape, attempted rape, sexual abuse, sexual exploitation, forced early marriage, domestic violence, marital rape, human trafficking, and female genital mutilation.⁹</p>	

For the prosecution of criminal offences, Somaliland's legal system relies on the 1962 Somali Penal Code.¹⁰ The Code is based on Italian civil law, and though it is comprehensive, it has become outdated, especially for the effective prosecution of acts of sexual and gender-based violence. Definitions of sexual offences are included in Part IX 'Crimes against Morals and Decency,' Chapter 1 'Crimes of Sexual Violence':

Rape, referred to as "carnal violence", is defined as an act of carnal intercourse with a person of another sex, using violence or threat, and carries a sentence of five to fifteen years. Carnal intercourse is defined solely as "penetration of the male sexual organ" (Art. 398), much-limited definition compared to more up-to-date criminal legislations in other Muslim countries, such as Malaysia or the Maldives.¹¹ "Carnal violence" committed against a person of the same sex constitutes aggravated circumstance under Art. 400 and carries an increased punishment.

Marital rape is discussed neither in the article itself nor in related provisions. But neither does the law establish marriage as a possible defense, and husbands are not exculpated. In practice, however, marital rape is not prosecuted. International human rights organizations, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee, have called upon national legislations to prosecute marital rape to be in compliance with CEDAW.¹²

Sexual assault as "Acts of Lust Committed with Violence" (assault that does not involve "carnal intercourse") is defined as any sexual act other than intercourse committed against a person of another sex by the same means as specified in the definition of rape: violence and threats, inability to give consent, abuse of power by public official, etc. The punishment is one to five years. If committed against a person of the same sex, it constitutes aggravated circumstance under Art. 400.

The provisions require some degree of violence, instead of just the lack of consent, which is the key component of SGBV as per international standards. The Penal Code includes further provisions for the prosecution of exploitation of prostitution (Art. 407), compulsion to prostitution (Art. 408), slavery and slave trade (Art. 455, 456), compulsory labor (Art. 464), enforced subjection (Art. 458) or crimes abroad (Art. 459). These make up different components of human trafficking but fail to comprehensively capture the current international definition and thus do not allow for its direct prosecution.

⁹ UNHCR (2016). *SGBV Prevention and Response Training Package*. Available at: <https://www.unhcr.org/publications/manuals/583577ed4/sgbv-prevention-response-training-package.html>; WHO (2020). *Humanitarian Health Action – Sexual and other forms of gender-based violence in crises*. Available at <https://www.who.int/hac/techguidance/pht/SGBV/en/>.

¹⁰ Somaliland Penal Code, Legislative Decree No. 5 of 16 December 1962.

¹¹ Horizon Institute (2014). *Discussion Paper on Reform of the Somaliland Penal Code*. Available at: <https://www.thehorizoninstitute.org/usr/library/documents/legal-commentaries/discussion-paper-on-reform-of-the-penal-code.pdf>

¹² Paragraph 9 of the CEDAW *List of issues and questions in relation to the seventh periodic report of Iraq*, March 18, 2019, CEDAW/C/IRQ/Q/7

Female genital mutilation and cutting affects 99% of women and girls in Somaliland,¹⁴

a majority of whom have undergone its most severe ‘pharaonic’ form. Although even religious leaders have spoken out against it,¹⁵ and attempts have been made to ban some forms of FGM/C, no legislation currently prohibits all its forms. The Penal Code’s applicability is limited to ‘Hurt’ under Art. 440, which, however, requires that the hurt results in physical or mental illness – the definition of which obstructs its comprehensive application. Moreover, Art. 442, limits its application to parents or people in parental authority, eschewing professional FGM/C performers. In practice, therefore, instances of SGBV are seldom brought to justice forums.

HUMAN TRAFFICKING	SGBV
<p>Human trafficking is defined in the Palermo Protocol as requiring three constituting elements:</p> <ol style="list-style-type: none">1. Transport (recruitment, harboring, and transfer);2. Coercion (including threat, use of force, deception, abduction, fraud, abuse of power, etc.); and3. Exploitation (including the exploitation of the prostitution of others, forced labor, slavery, servitude, removal of organs, etc.).¹³	

The Rape and Sexual Offences Law No. 78/2018 was adopted on 28 August 2018 to improve the prosecution of sexual violence. The draft law introduced new and improved definitions for seven criminal offences: rape, gang rape, sexual offence, sexual assault, sexual exploitation, forced marriage and abuse of position of trust or authority (Art. 4-10) to lay down an appropriate legal framework for the prohibition and prevention of rape and other sexual offences (Art. 3 para. 1), including criminal liability for early marriage and human trafficking for sexual exploitation. The law also introduces procedural rules for prosecution of SGBV and provisions for the protection of aggrieved parties, witnesses, and certain vulnerable groups.

Shortly after the adoption, however, the law’s implementation was suspended upon request by the Ministry of Religious Affairs (MoRA). The MoRA produced a revised draft, which changes the intent of the law from providing the legal framework for the prohibition and prevention of sexual violence to providing for the punishment for rape and acts of *Zina* (intercourse whilst unmarried). It also introduces other concepts based on a conservative reading of shari’ah, such as an evidentiary requirement of four male eyewitnesses in cases of rape, punishments of lashing and stoning to death, and reduces the age of maturity to 14 years of age. As of the time of writing, the revision had not been returned to the legislative process.¹⁶

Despite its nominal alignment with shari’ah, xeer is often applied in contravention to its principles and to the detriment of women and female survivors of SGBV in particular. For example, wife inheritance under xeer includes the forced marriage of a widow to a male relative of the deceased husband (*dumaal*) or of a widower to the sister of the deceased wife (*xigisian*). Under shari’ah, marriage is strictly a consensual contract between spouses. Similarly, rape is considered both ‘a violation of personal rights, and violation against Allah’ punished by *hadd*¹⁷ and, under Shafi’i jurisprudence, also by dowry fine and a compensation for the victim. Yet, under xeer, the families of perpetrators are asked to pay compensation to the victim’s family, who may be forced to marry her rapist.¹⁸

¹³ UNOHCHR (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

¹⁴ World Bank (2011). *The Somaliland Multiple Indicator Cluster Survey 2011*. Available at <https://datacatalog.worldbank.org/dataset/somalia-multiple-indicator-cluster-survey-2011>

¹⁵ Nita Bhalla (2018). *Somaliland issues fatwa banning female genital mutilation*. Reuters, February 7, 2018.

¹⁶ Information provided by the EAJ staff in Somaliland.

¹⁷ Stoning to death for persons who are married and 100 strokes of the whip and deportation for persons who are unmarried.

¹⁸ Horizon Institute (2018). *Seeking Justice for Rape in Somaliland – The Role and Limitations of the Criminal Justice System*. Available at: https://www.thehorizoninstitute.org/usr/documents/publications/document_url/15/horizon-institute-s-report-on-prosecution-of-rape-cases-in-somaliland-march-2018.pdf; EAJ (forthcoming). *Women and vulnerable group-friendly interpretations of the shari’ah*. Pact Kenya & American Bar Association.

SHARI'AH

EARLY MARRIAGE & FGM/C

Those justifying early marriage argue that Aisha, the Prophet's wife, was married at the age of six and the marriage was consummated at the age of nine. Yet, views on the age of Aisha when married vary. Some sources put her age at seventeen or eighteen. Those opposing Islam's justification of early marriage argue the consensual nature of marriage as a contract, and that a child, due to its immaturity, is not able to give full consent (Shari'ah VG, p. 7). Similarly, the approach to FGM in Islam is divided. Though Shafi'i madhab sees female circumcision as *wajib* (mandatory), there is a growing disagreement among scholars on whether it is an acceptable or even permissible practice under Islam. It also seems to be in stark disagreement with Islam's emphasis on the sanctity of human body as Allah's creation.¹⁹

The approach of the xeer to SGBV reflects the position of women in a traditional patriarchal society and the function of xeer as a tool to maintain peace among, and within, clans – which can include forced marriage of women to members of an opposing clan for appeasement. The xeer does not treat cases of SGBV as a crime, a foreign concept to its focus on group relations, and does not provide for acknowledgement of the harm it inflicts on survivors. To the contrary, it is not uncommon that the woman is blamed as having behaved in such a way that she “led” the man to behave violently to avoid violent retaliation. Women whose violation becomes public knowledge are often stigmatized or ostracized, which serves as a justification for

her forced marriage to her rapist – to ‘save’ her and her family's reputation. Although the penal code provides for imprisonment of five to fifteen years, the authority of elders and the relative weakness of still rudimentary statutory institutions allows elders to intervene even if an alleged perpetrator is under prosecution or has already been sentenced, to return the case to the traditional system for compensation, or to shorten a sentence imposed by a statutory court.²⁰

In response to such interventions into criminal proceedings by customary leaders, the 2014 Directive of the Attorney General, Hassan Ahmed Adan, orders prosecutors and judges to refuse elders' requests to divert rape cases.²¹ In 2006, Somaliland elders had already themselves issued a declaration calling for referral of cases involving the rights of women and children, including sexual violence cases, to the statutory criminal justice system.²² In 2018, the MoRA issued a *fatwa* (a formal ruling) banning pharaonic FGM/C.

GANG RAPE

SGBV

A more recent occurrence is gang rape, in which multiple perpetrators rape one victim. Under xeer, this allows the compensation to be split between the families or clans of the perpetrators, which effectively results in more lenient punishment and has invited criticism of xeer as almost incentivizing such sexual assault.

¹⁹ EAJ. *Women and vulnerable group-friendly interpretations of the shari'ah*.; Ibrahim Lethome Asmani & Maryam Sheikh Abdi (2008). *De-linking Female Genital Mutilation/Cutting from Islam*. USAID, 17-26.

²⁰ Horizon Institute (2018). *Seeking Justice for Rape in Somaliland*, 45.

²¹ *Ibid*, 1.

²² LAW (2014). *Legal Aid Providers supporting Gender-based Violence Survivors in Somalia*. Legal Action Worldwide, United Nations Development Programme & United Nations Population Fund, 56.

LAND USE AND OWNERSHIP

The statutory legal framework for land disputes is not comprehensive, and many laws are not recognized or implemented.²³ The customary legal framework comprises multiple overlapping and, in some cases, politically charged norms. The customary norms are underpinned by a collective ownership of land with elders as guardians, whereas statutory norms are concerned with individual ownership. Like many former colonies, individual land ownership was a foreign concept imposed by colonizing powers.²⁴ Under the military government that had seized power shortly after Somalia's independence, all land was nationalized under the 1975 Land Law. Initial inefficiencies in land management escalated into land grabbing during the civil war that followed the collapse of the central government in 1991. Although Somaliland separated itself from this civil war by declaring its independence, it has not been free from communal conflict, in no small part driven by the importance of land as a key economic resource.

RIGHT TO OWNERSHIP	XEER
Customary law comprises three competing norms for claims to land ownership:	
1) <i>U dashay</i> ('right by blood'): right to land derived from kinship ties, claims that clan has inhabited area for a long time	
2) <i>Ku dashay</i> ('right by birth'): right to land by birth in area, irrespective of clan belonging	
3) <i>Ku dhaqmay</i> ('right by citizenship'): does away with blood or birth-based claims, argues that all Somali citizens can own land anywhere in Somalia	
Each norm favors different groups. <i>U dashay</i> can be invoked by marginalized groups with a long history of residency. <i>Ku dashay</i> favors second or third generations of guests (<i>galti</i>). <i>Ku dhaqmay</i> is most compatible with a nationwide and streamlined rule of law, but also favors groups that wield power at government level. ²⁵	

In this context, land use and ownership are governed by legislation enacted before and after the Somali civil war in combination with customary and religious rules. Right to land consists of two strands that can be combined or stand alone, depending on the circumstances:

- the right of disposition, typically exercised by an owner
- the right of use, typically exercised by an owner or a tenant

The Constitution states that land is a public property in common ownership, for which the state is responsible (Art. 12 para. 1). It then extends the right to own property as private property (Art. 31) to all citizens (Art. 8). Women are explicitly given the right to own, manage, oversee, trade in, or pass on property, as well as to enjoy the rights, freedoms, and duties laid out in the Constitution, except those that are specifically ordained by the shari'ah (Art. 36). The shari'ah recognizes the right of women to own property and inherit, albeit with a lesser share than that of men. In practice, however, women's rights to property and inheritance are often limited or denied through the xeer practice *tanazul*.²⁶ Women's ownership of land is seen as contrary to clan interests, because women may marry into other clans.

²³ Law (2015). *Harmonization of the Legal Systems resolving Land Disputes in Somaliland and Puntland*. Legal Action Worldwide, UN HABITAT, UN Joint Programme on Local Governance, Somaliland Ministry of Interior, Puntland Ministry of Interior, Local Governance & Rural Development.

²⁴ Mahamoud Hussein Farah (2015). *Somaliland National Land Policy Scoping Study – Legal and Institutional Analysis*, 9.

²⁵ Ken Menkhaus (2017). *Land and Conflict in Somalia's Lower and Middle Jubba Valley*. Nairobi: USAID - OTI.; Cedric Barnes (2006). *U dhashay—Ku dhashay: Genealogical and Territorial Discourse in Somali History*. *Social Identities*, 12(4), 487-498.; Lee Cassanelli (2015). *Hosts and Guests: A historical interpretation of land conflicts in southern and central Somalia*. Rift Valley Institute.; Afyare A. Elmi (2010). *Understanding the Somalia Conflagration: Identity, Political Islam and Peacebuilding*. London: Pluto Press.

²⁶ Women are pressured into renouncing their inheritance rights to male relatives, usually husband, brother, or son.

The current legislation recognizes three types of land: urban, pastoral, and agricultural. There are five main laws dealing with issues relating to the ownership and use of land.

The Regions and District Law No. 23/2002 is mandated by the constitutional provision on the administration of regions and districts (Art. 110). It grants municipalities powers for the administration of land within their jurisdiction including, the power to classify land for permanent or temporary use, the registration of lands, and the issuing of title deeds.²⁷

The Urban Land Management Law No. 17/2002 is the main piece of legislation regulating urban land. It establishes Land Dispute Tribunals (LDTs) as a main dispute resolution mechanism for the disputes relating to urban land. It further defines the state institutions responsible for urban land governance, the allocation, planning and development of land, aspects of land tenure, and appropriation of land in public interest and compensation.²⁸

The Agricultural Land Ownership Law No. 8/1999 governs agricultural and pastoral land. It defines agricultural land as any land suitable for cultivation. While it recognizes pastoral land, it does not define it, nor does it secure the rights of pastoralists over grazing land. The law assigns responsibility for agricultural land to the Ministry of Agriculture (MoA) and the responsibility for pastoral land to the Ministry of Rural Development and Environment (MoRDE). The law stipulates that disputes relating to agricultural and pastoral land are to be resolved by courts.²⁹

The Civil Code No. 37/1973 sets out general provisions for the regulation of immovable property ownership, sale and transfer, registration, and publication of related documents.

The Civil Procedure Code No. 19/1974 regulates pre-hearing procedure, case procedure, determination of evidence, execution of decisions, and appeal pathways for both courts and LDTs.³⁰

Historical reliance on oral methods to keep track of land ownership, the destruction of the land registry during the civil war, and the current unclear land legislation all set the stage for numerous land disputes. These are mostly related to three main issues:

1. **Discrimination** usually involves power asymmetries: wealthier and more powerful individuals or groups take advantage of more vulnerable ones.³¹
2. **Security of title deeds.** Even though the Regions and Districts Law grants municipalities power to register lands and issue title deeds, they are easily forged. Numerous disputes involve double sale of the same land, denial of previous sales, or issuing of multiple deeds for the same land.³²
3. **Weak enforcement of decisions by dispute resolution mechanisms** often leaves claimants with relevant ownership documents, and whose ownership had been confirmed by witness statements and acknowledged in a court judgment, unable to use their land, which continues to be unlawfully occupied by the party that has lost the case.

To resolve these issues, people can turn to shari'ah, customary justice, or approach dispute resolution mechanisms established under statutory law.

- **Dispute resolution based on shari'ah** is valued because of the respect that religious leaders command and the corresponding authority of their legal opinions. At the same time, shari'ah-

²⁷ Hussein Farah (2015). *Somaliland National Land Policy Scoping Study – Legal and Institutional Analysis*, 34.

²⁸ Law (2015). *Harmonization of the Legal Systems*.

²⁹ *Ibid*, 9 & 34.

³⁰ *Ibid*, 39.

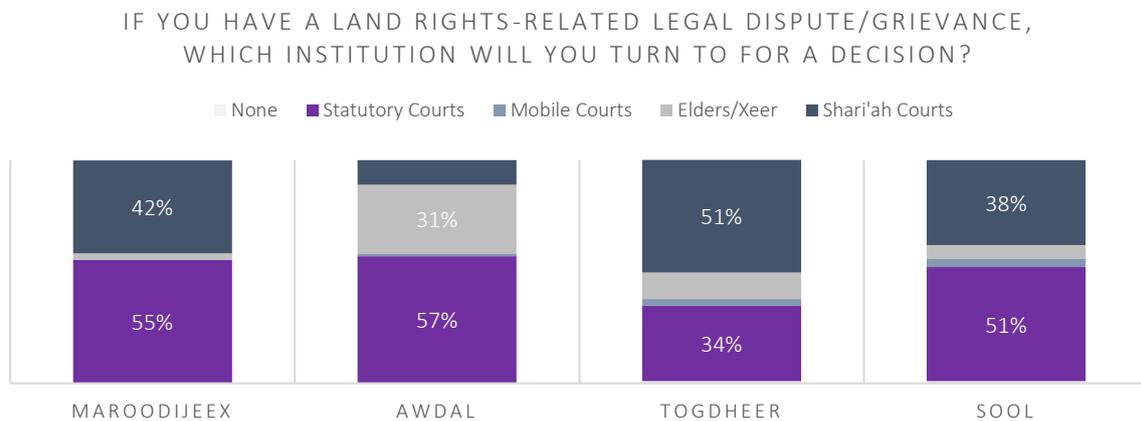
³¹ These are cases of internally displaced persons (IDPs) dealing with owners of their host lands or their home lands upon return, urban poor suffering forced evictions by business owners taking advantage of the rising prices of urban land, rural populations harassed by members of majority clans claiming land that is not theirs, or women whose land rights acknowledged by statutory law and shari'ah but denied by customary practices. See: Erica Harper (2019). *Gender Equity & Social Inclusion Strategy*. Expanding Access to Justice Program, Pact Kenya & American Bar Association, 24.

³² Hussein Farah (2015). *Somaliland National Land Policy Scoping Study – Legal and Institutional Analysis*, 45.

based legal opinions are an individual’s interpretation and, as such, depend on each individual ulama’s experiences, education, and affiliation. Moreover, the fees that are required for opening a case renders this option financially inaccessible to many justice seekers.

- **Dispute resolution through customary justice mechanisms** remains the physically and financially most accessible option to many, especially those who reside in remote areas and would not be able to travel to urban centers to approach courts or other dispute resolution mechanisms. Unlike the mechanisms established under statutory law, xeer norms cover all types of land, but relate predominantly to grazing land. Rules relating to urban land are less clearly defined.³³ The major downside of the xeer is its weak protection towards marginalized groups, including women.
- **Statutory institutions comprise two dispute resolution mechanisms for land cases:** Land Dispute Tribunals introduced by the Urban Land Management Law and regular courts. LDTs were established with the aim to “eliminate land grabbing and to devise simplified means for solving urban land disputes”.³⁴ They have jurisdiction over legality, sale, donation, administration, and disputes over ownership of urban land. They are administrative tribunals and, therefore, follow less formal procedures than the ones required to be followed in regular courts. The Law envisaged their availability in every municipality, but thus far they have only been established in Hargeisa in 2010, and in Borama and Berbera in 2015.³⁵

District courts do not have jurisdiction over land issues except for inheritance cases. Regional courts are thus the courts of first instance in most agricultural and grazing land cases. Yet, these statutory justice forums are practically inaccessible to people from rural areas. One assessment observed that this is particularly important because: “the application of the formal [*sic!*] law through formal mechanisms has the potential to encourage land grabbing by private buyers from pastoralists and communal land owners by prioritizing legal documentation and contractual agreements.”³⁶ In concordance with this observation, the below graph shows greater reliance on non-statutory forums in Awdal and Togdheer for land disputes.



³³ Law (2015). *Harmonization of the Legal Systems*, 18.

³⁴ PREAMBLE OF URBAN MANAGEMENT LAW No. 17/2002

³⁵ Law (2015). *Harmonization of the Legal Systems*, 7.

³⁶ *Ibid*, 21.

USER PERSPECTIVES

In the legally pluralist environment, justice seekers must navigate the multiplicity of institutions. Most of the interviewed justice service users were generally content with their decision to pursue a case, even if the outcome was not in their favor or if the process brought further problems and unexpected complications. It would seem, thus, that seeking justice in itself is often a positive experience for people. This generally positive anecdotal outlook accompanies a persistence of *forum shopping* – the ability or need to choose justice institutions rather than follow clearly defined mandates. It is therefore important to account for the factors that determine individual justice seekers’ preferences for different institutions.

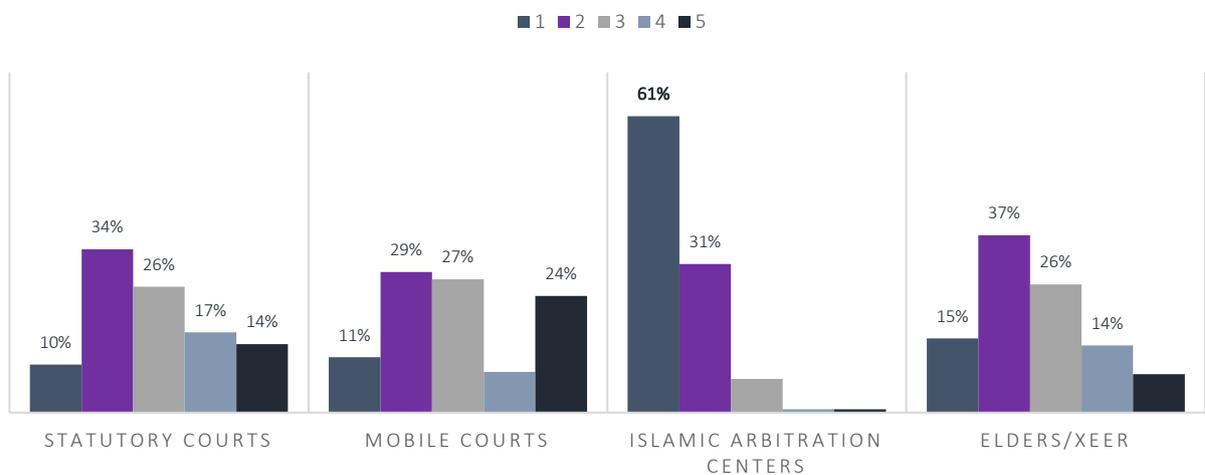
FACTORS DETERMINING PREFERENCE

- 1. Nature of the case.** Most often the decision on which forum to approach depends on the nature of the case and which forum justice seekers expect to serve their particular needs. Typically, a family or inheritance case would be taken to an Islamic Arbitration Center (IAC). A land case that involves farmland historically cultivated by a community still living on and around it would likely be adjudicated by the elders of that community. A land case involving urban land or land titles is usually addressed by local government, an LDT or a court. Low-level criminal cases are mostly dealt with by elders. Higher-level criminal offences are addressed by statutory courts.
- 2. Likelihood of favorable outcome.** Many justice seekers decide to go to a justice institution likely to confirm their claim. For example, an inheritance case is likely to be brought to an IAC, because the shari’ah puts forward clear and specific rules governing inheritance, and it typically does not take long to settle the case there. In more general terms, a *xeer* process is preferred for its accessibility in virtually any community and for its relatively low costs, which normally only include *doodqaad* money for the elders deciding on the case, covering refreshments, transport, and other necessities. IACs are valued for their minimal chance of corruption and greater predictability in terms of costs that may be substantive, but once paid at the beginning there is sufficient certainty that no other costs will be incurred during the process. Statutory courts are usually considered to take too much time to reach a final decision. In one of the interviewee’s words: “both parties may die before the final decision is reached.”
- 3. Physical accessibility.** Some institutions may be physically inaccessible to people living in remote areas or IDP settlements. This adds to the costs, in part predictable ones such as fees, costs of witnesses, transportation and subsistence, but also less predictable unofficial costs that may become necessary to make sure the case moves through the justice chain.
- 4. Capacity to enforce.** The one issue that statutory courts are unequivocally valued for is that they are the only ones which can use coercive force to implement judicial decisions. Neither *xeer* nor IACs are equipped with such executive capacity. Both rely on the respect both parties must show for the institutions and the values they represent. Parties are asked to confirm their commitment to abide by their rules upfront. Such commitment faces limitations in cases of great power asymmetries and with decisions that do not favor the more powerful party.
- 5. Agreement between both parties.** The ability to enforce is closely related to the level of agreement between the parties. IACs are typically chosen when there is a high level of agreement between the parties, for example in case of a divorce desired by both spouses. When there is a certain level of disagreement, there is a good chance that the issue be settled quickly, and with relatively low costs, by elders. In cases of deep disagreement, and especially if the losing party is unlikely to submit to a decision, the capacity for enforcement renders a statutory court the preferred forum.
- 6. Family & clan hierarchies.** Not all justice seekers can choose a justice forum individually or freely. Aside from situations in which some forums are completely inaccessible or unaffordable,

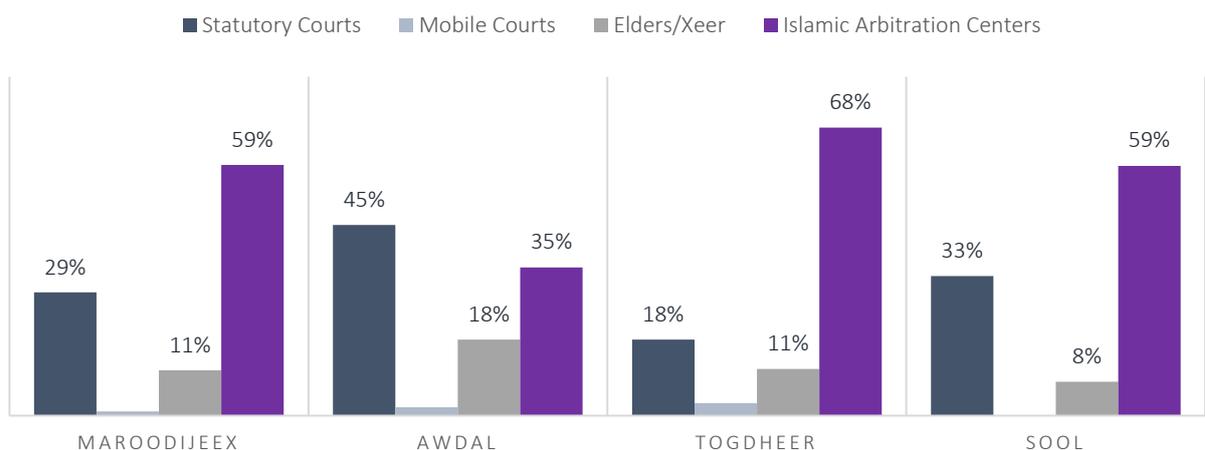
there are instances in which decisions are made by elders or other relatives. Many serious criminal offences, such as assault or gang rape, can thereby go unpunished or are dealt with in a manner that is not commensurate with the gravity of the offence. These decision makers often favor xeer norms, but urbanization alongside other factors are slowly eroding these social safety mechanisms and thus the primacy of xeer.

The preferences of survey participants reflect the general trust in and appreciation for IACs on the one hand and the importance of accessibility on the other. In all locations, IACs were ranked highly, but in Awdal, where large parts of the local population hail from a different clan than the majority Isaaq population of Hargeysa, Berbera, Burco, or Odweyne, statutory courts are favored the least, as seen below for cases of SGBV and in the previously shown graph for land disputes.

BASED ON YOUR OWN EXPERIENCE OR BASED ON WHAT YOU HEARD FROM OTHER PEOPLE, HOW WOULD YOU RATE QUALITY OF SERVICES PROVIDED BY THE FOLLOWING JUSTICE INSTITUTIONS, WHERE 1 IS EXCELLENT AND 5 IS VERY POOR?



IF YOU HAVE A SGBV-RELATED LEGAL DISPUTE/GRIEVANCE, WHICH INSTITUTION WILL YOU TURN TO FOR A DECISION?



STATUTORY COURTS

It can take great courage for individuals to defy societal pressure to turn to statutory courts and demand justice, especially for members of groups whose rights do not enjoy widespread respect and protection.³⁷ This includes community groups that have historically been discriminated against on the basis of occupation or ethnicity, as well as women and poor people. The following cases of women illustrate the pressure that communal expectations can exert on justice seekers.

CASE EXAMPLE	SOCIAL PRESSURE ON WOMEN TO TAKE SGBV CASES TO ELDERS
<p>The mother of a girl who was gang-raped refused elders to ensure that the perpetrators are imprisoned, not released after paying compensation. She was initially ostracized by other community members, but 11 out of 12 perpetrators were convicted and imprisoned by a statutory court. Some other women with a similar experience were encouraged by her example and equally refused to accept settlements by traditional elders, illustrating how commonplace this social pressure is.</p>	
SOCIAL PRESSURE ON MINORITY GROUPS NOT TO TAKE ACTION AGAINST MAJORITY	CASE EXAMPLE
<p>A woman from a minority clan won a case at a court in which she claimed a piece of land for her son as inheritance after her husband had died. She brought the case against her husband’s family from a majority clan, to which she now no longer belonged. The enforcement of the court’s decision is pending, but she believes she may have set a precedent, and is encouraging other members of minority clans to claim their rights. Yet, the ruling fails to be enforced despite significant effort from her and her lawyer. She summarized the situation as: “The court decision is fair, but without enforcement, it is useless to me and my son.” This is also common. Another woman from a minority group managed to obtain a divorce from an abusive husband who had failed to support her and their children. It took months of persistence, showing up at the court every day, for the judge to address her case. He finally granted her a divorce and ordered the husband to move out. Instead, her husband forced her and their eight children out of their house, threatening to kill her.</p>	
CASE EXAMPLE	DISPLACED COMMUNITIES HAVE ALMOST NO ACCESS TO COURTS
<p>These limitations in access to justice by statutory courts are particularly severe for those living in IDP settlements. Some displaced communities improvise. After a positive experience with a group of elders during a land dispute, the community elected them as a more permanent local court. This court of five elders is now available to resolve disputes and other grievances in the IDP camp, but it lacks the formal competences over law enforcement that a statutory court could field.</p>	

While some of these positive developments may incite cautious optimism, comprehensive access to, fair treatment by, and enforcement by statutory courts and elders remain problematic for members of marginalized groups, as their discrimination is often perpetuated by law enforcement as well. This is of importance as, despite the strong reputation of IACs and perhaps because of their high costs, statutory courts and elders handle the majority of cases, according to interviewed justice service users. Moreover, the above cases comprise instances in which courts have been responsive, which is not guaranteed.

CASE EXAMPLE	EXCLUSION AFFECTS WOMEN FROM MINORITY GROUPS IN PARTICULAR
<p>A woman of a minority group with six children was married to a man from a prominent family who was aggressive and violent towards her and the children. In one instance, he poured gasoline on them and threatened to set them on fire. On another occasion, he attacked his wife whilst she was pregnant, causing her to miscarry. The woman contacted both police and elders, but none of them interceded</p>	

³⁷ See: Hill (2010). *No redress: Somalia's forgotten minorities*.

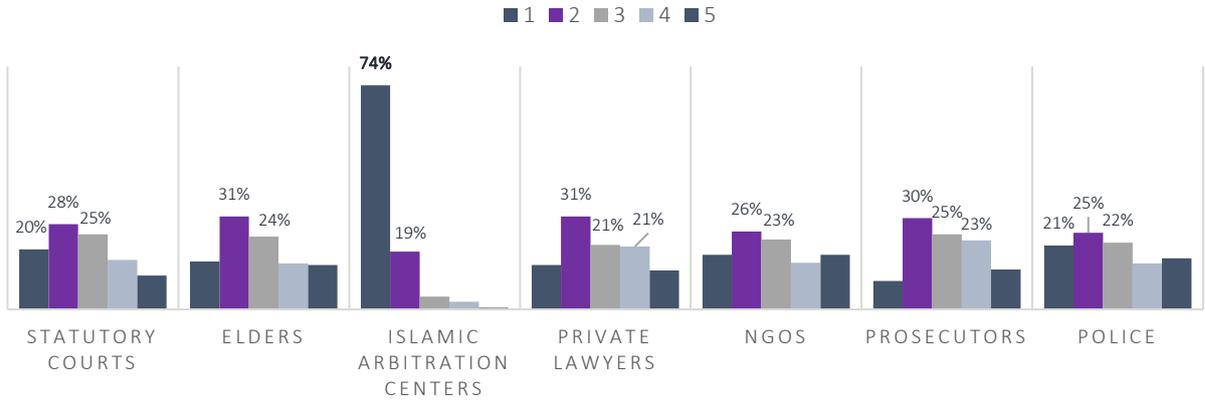
to stop her husband from abusing her. She recalls that the police officer did not take her seriously, telling her that her husband was: “just trying to scare her.” This statement reflects how normalized violence against women remains. The elders she contacted argued that the husband would not listen to them and thus did not attempt to get involved.

Threads and intimidation are widespread. Several interviewees mentioned a sense of fear and insecurity as part of their search for justice. Especially for women and girls who were raped, threats become so intense that they are forced to stay inside their house or only go out in the company of others. In some cases, entire families are forced to move out of a neighborhood to ensure safety of the survivor and other young female members of the family.

CASE EXAMPLE	IN CASES OF DOMESTIC VIOLENCE, POLICE MAY NOT INTERCEDE
<p>A woman obtained a divorce from her abusive husband, but he continued to come to the house to attack her and her children. She reported him to the police, but officers decided to let him go. She argues that her and her children are left in a vulnerable position, fearing for their safety, and she is worried about the psychological impact the violence will have on the children.</p>	
SOCIAL PRESSURE ON MINORITY GROUPS NOT TO TAKE ACTION AGAINST MAJORITY	CASE EXAMPLE
<p>After the police failed to enforce a court order to evict illegal occupiers from a plot of land, the woman who had been decreed its rightful owner was prevented from using it. The previous occupiers remained and attacked her directly.</p>	

Despite these inconsistencies and expressed grievances towards the police’s performance, the trust in the police as an institution appears at a relatively high level – albeit similar to most other justice institutions. When asked how much they trust the police to do their job in dealing fairly with people’s legal problems, 46% of survey participants gave the police the highest or second highest rating on a five-point scale. Here, as in previous ratings, IACs were by far the most highly-rated institution, with 74% of respondents ranking it as the most trusted institution. Most other institutions achieved a somewhat balanced outcome with no discernible trends.

ON SCALE OF 1 TO 5 WHERE 1 IS THE MOST AND 5 IS THE LEAST, HOW MUCH DO YOU TRUST THE FOLLOWING TO DO THEIR JOB IN DEALING FAIRLY WITH PEOPLE'S LEGAL PROBLEMS? (N=405)



The experience of justice users with statutory courts – once accessed – appeared to vary. Interviewees gave examples of cases that were dealt with efficiently, and in line with people’s expectations with respect to a just outcome. In some cases, however, interviewees claimed that courts delivered decisions that seemed to ignore standard legal rules of establishing facts. It must be taken into account that the

information was provided by lay people with a stake in the described dispute, which leaves room for inaccuracy or bias – but a striking disregard for rules of evidence pervaded several cases.

CASE EXAMPLE	COURTS CONFIRM DECISIONS IN OVERT CONTRADICTION TO EVIDENCE
<p>A woman in Awdal explained that part of her land was claimed by the owners of an adjacent plot. The dispute was settled by traditional elders in her favor. Some time later, she approached the municipality to obtain documentation for her land ownership, only to find out that the title for her land had already been issued to her neighbors. These now sought an eviction order against her, which was supposed to be executed by the original seller of the land. He refused to execute the order and requested a review. Yet, the eviction order was confirmed by the Regional Court as well as by the Regional Court of Appeal. The Supreme Court finally reversed the previous decisions but later revoked its own decisions and confirmed the Regional Courts' upholding of the eviction.</p>	
JUSTICE SEEKERS QUESTION THE EXTENT TO WHICH DUE PROCESS IS FOLLOWED	CASE EXAMPLE
<p>In Maroodijeex (Hargeysa), a woman recounted that she allowed a family with children to stay on her land temporarily until they find a more permanent place. After some time, the woman found out from the municipal office that the family's husband, a former soldier with ties to local police, was trying to register her land as his, claiming he bought it from her. The case escalated from a Land Dispute Tribunal to the Regional Court. Although the husband had no documentary evidence or witness testimonies to prove the sale, all of which the woman produced, the Regional Court decided in favor of the husband, and the Court of Appeal confirmed the decision. The case is now at the Supreme Court.</p>	
CASE EXAMPLE	UNPREDICTABLE DECISIONS CAN DISADVANTAGE JUSTICE SEEKERS
<p>A man from Togdheer filed a case with the local police after some squatters had started to build structures on his farmland and claimed a part of it as theirs. The police carried out a thorough investigation, requested ownership documents, questioned witnesses, and verified the farm license with the Ministry of Agriculture. Upon completed investigation, the man was confirmed to be the rightful owner and the squatters were ordered to move out. Following their refusal to comply, they were arrested and charged with land theft. The District Court dismissed the case, upon which the prosecutor appealed to the Regional Court of Appeal, which decided to divide the land equally between the owner and the squatters. This gave the squatters not only the right to the land, for which they had failed to prove any ownership and had been charged with occupying it illegally, but granted them a larger part than they originally claimed. The case is now before the Supreme Court.</p>	

Establishing a fully functional and efficient court system is a continuous challenge even in countries that have not had their governance infrastructure destroyed in a civil conflict, and whose statutory justice system does not assert itself against other, much better-known, justice avenues. It is therefore noteworthy that survey respondents rated the quality and trustworthiness of statutory courts, mobile courts, and prosecutors similar to that of elders (see graph on preceding pages).

TRADITIONAL ELDERS

The traditional justice provided by clan elders has been known and has been easily accessible to generations and enjoys great legitimacy. Even in remote areas or IDP settlements, most residents can access nearby elders. Justice seekers largely understand how to engage with them, know their strengths and weaknesses, and appreciate the speed with which they move, as well as their affordability. Currently, elders also prevent the fledging statutory system from being overwhelmed with cases. Yet, the reliance on respect and social authority for the acceptance and implementation of decisions truncates *xeer* somewhat.

CASE EXAMPLE	LIMITATIONS TO ELDERS POWER TO ENFORCE
<p>A wife’s family approached her husband for a divorce. With the help of elders, both families gave their consent and stipulated that the wife’s <i>meher</i> (bride payment) was not to be paid because her family had requested the divorce. Later, however, the wife’s father did demand the <i>meher</i> be paid. The case was then brought to an Islamic Arbitration Center, whose final decision was respected by both families.</p>	

In addition to sheer refusal to comply, *xeer* faces other challenges in current times. Although *xeer* generally prioritizes peaceful coexistence between and within communities and social groups, it is also a reflection of social norms, values, and hierarchies, which it is mandated to maintain. As norms change, *xeer* faces pressures to adapt, which highlights both the importance of underlying normative change for justice reform and the importance of leveraging the *xeer*’s dynamism to ensure that it remains apt in defusing conflict.³⁸

Minority groups, youth, and women have traditionally been disadvantaged when *xeer* is applied. In the words of one of the interviewed clan elders: “we need to be patient with women; both religion and traditional values put their social position lower than that of men”. As individual rights-based norms take hold in emerging institutional structures and youth, women, and members of minority groups assert themselves socio-politically and economically towards further emancipation, the *xeer* stands to be questioned on its appropriateness in addressing these changes and providing adequate protection. This is most strongly reflected in the above-discussed procedures for engaging with SGBV cases, in which both *shari’ah* and international human rights norms run counter to established customary practices.

SOCIAL PRESSURE ON MINORITY GROUPS NOT TO TAKE ACTION AGAINST MAJORITY	CASE EXAMPLE
<p>One of the women interviewed for this study recounted that she filed a case with a statutory court against her husband for failure to provide support to the family. Elders intervened and took over the case. They arranged for the husband’s release from custody without arrangements to secure his support for the family or response to his wife, who now asked for a divorce. In a similar case, a man stated that he became responsible for supporting his sister and her eight children because her husband had stopped providing for the family. The brother tried to solve the case in a traditional way, but the elders refused a proposal for divorce. Instead, they encouraged the husband to support his family and come to an agreement with his wife – to no avail. The brother then filed a case with a statutory court, which ordered the husband to provide regular contributions to rent and subsistence. Previously discussed instances of failure to protect women in courts notwithstanding, the brother concluded: <i>“I experienced the formal court system as fairer than the traditional justice system. The formal court prioritizes wife and children, but the traditional elders always want to reach a compromise, which may not benefit the vulnerable: wife and children.”</i></p>	

³⁸ Cf. Alejandro Bendaña & Tanja Chopra (2013). Women’s Rights, State-Centric Rule of Law, and Legal Pluralism in Somaliland. *Hague Journal on the Rule of Law*, 5(1); Joakim Gundel (2020). *Alternative Dispute Resolution Initiatives in Somalia*. Expanding Access to Justice Program.; Gundel & Dharbaxo (2006). *The predicament of the ‘Oday’*.

ISLAMIC ARBITRATION CENTERS

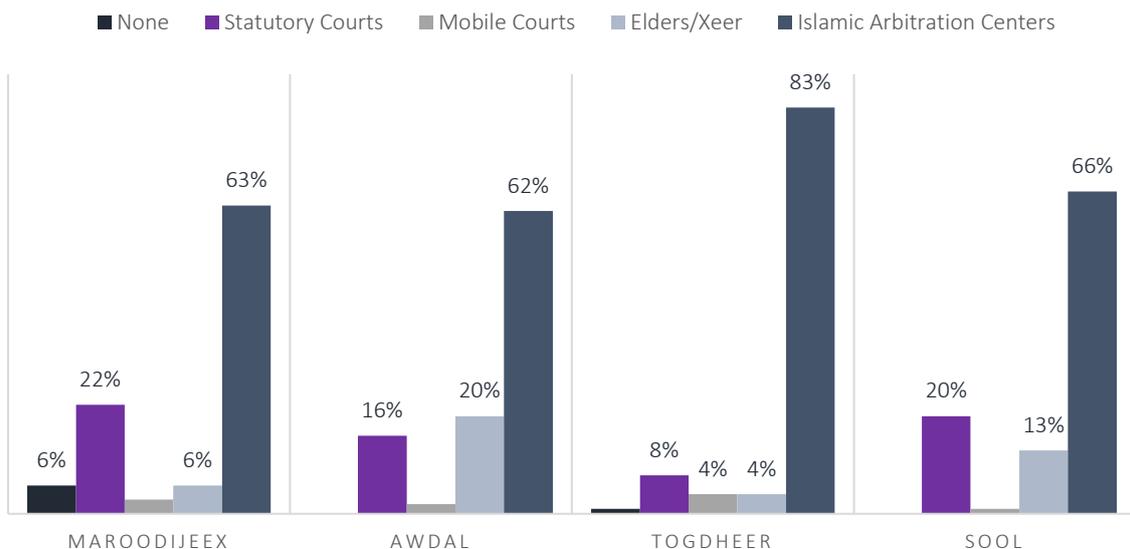
Religious justice institutions, often referred to as “shari’ah courts,” are not technically ‘courts.’ They lack a number of distinct features, including:

- **Individuals cannot file a case unilaterally.** Both parties must agree on taking the case to the ulama. In this manner, the ‘courts’ make up for the lack of coercive force to enforce their decisions, which is accompanied by societal sanction for failing to comply, underpinned by the authority rulings based on Holy Texts carry in a deeply Muslim society.
- **Rather than adjudicate, shari’ah courts arbitrate.** This corresponds to their role under the provisions on alternative dispute resolution in the Civil Procedure Code. A more accurate term to describe these institutions would be as “Islamic Arbitration Center.”³⁹

The centers assume official capacity as judges are licensed by the MoJ after examination by the MoRA. In this role, the centers only hear civil cases without any criminal aspect. However, there are no standardized qualification requirements for the jurors as regards their accountability, no agreement on the law applied by these centers to ensure predictability of rulings, and no specified legal framework for their operation in keeping with the national justice priorities. In other words, they still depend on individual interpretation. As such, centers headed by Sufi scholars lean towards Sufism, are likely to be more flexible in their interpretation of core shari’ah tenets, and produce more moderate rulings. The centers led by scholars associated with the Salafi religious groups, by contrast, are likely to be more conservative in their approach.

Most justice users interviewed for case studies had not had dealings with IACs, but survey respondents strongly favored them. Previously cited responses already indicate as much, and respondents’ overall verdict on institutional capacity underscores their perception as most capable and most trusted – according to interviewees because they are seen as the least corrupt and command the greatest societal legitimacy. This perception was consistent across regions.

WHICH OF THE FOLLOWING INSTITUTIONS YOU THINK IS BEST CAPABLE OF DEALING WITH PEOPLE'S LEGAL DISPUTES/GRIEVANCES?



³⁹ In the following, “shari’ah courts” and “Islamic Arbitration Centers” are used interchangeably.

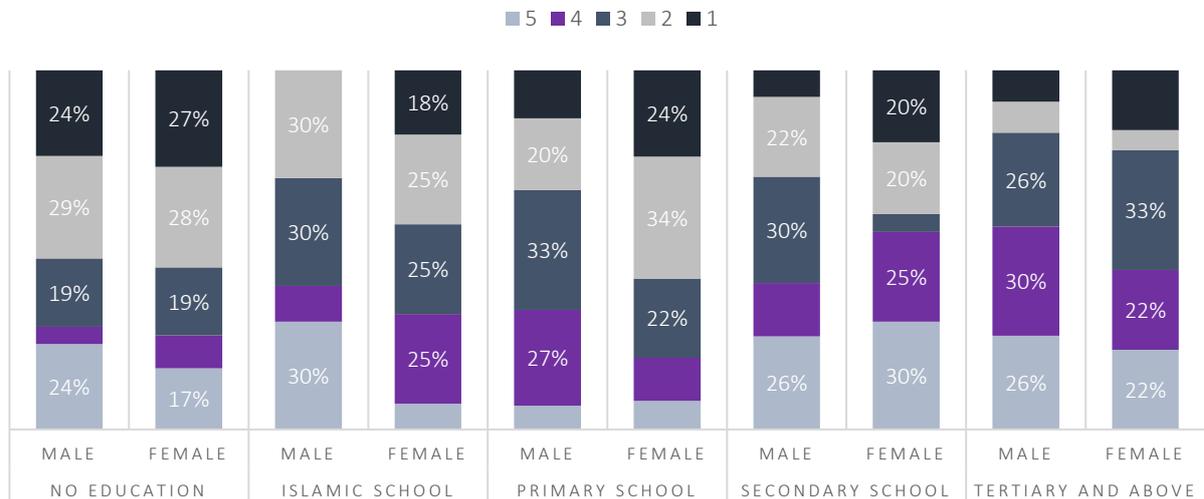
LEGAL KNOWLEDGE

For justice seekers to obtain redress and navigate the legally pluralist landscape successfully, legal education is vital. This is reflected in trust in institutions as well as in self-assessments in legal knowledge. In both cases, survey respondents who had attained a higher level of education expressed skepticism towards statutory institutions – the most foreign to widely known and culturally central religious and customary norms – and more confidence in their knowledge of rights under the constitution, which imposes additional barriers in a society with still-high levels of illiteracy.

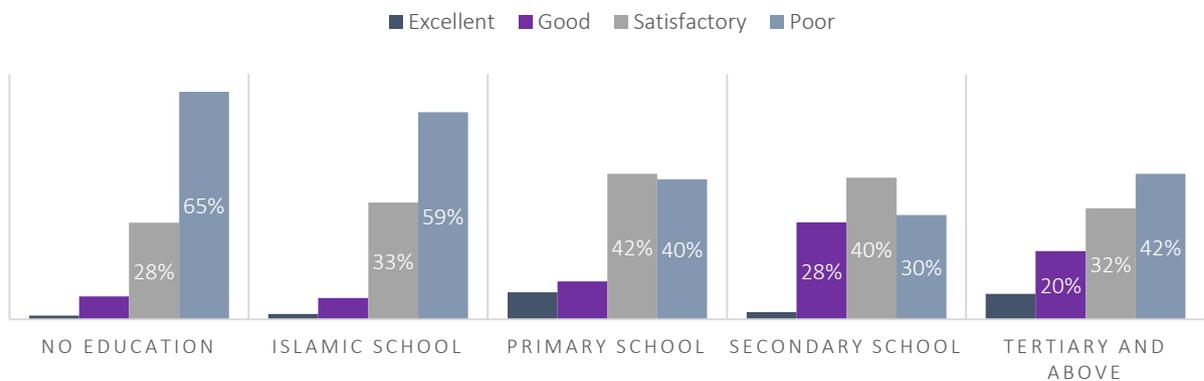
KEY FINDINGS

- Most justice users assess their knowledge of their constitutional rights as poor
- Justice users do not clearly differentiate different legal frameworks and conflate especially shari’ah and statutory law
- Familiarity and ease of access sustain the primacy of customary institutions
- Information is more easily available in Hargeysa and to those with higher education attainment

ON SCALE OF 1 TO 5 WHERE 1 IS THE MOST AND 5 IS THE LEAST, HOW MUCH DO YOU TRUST THE POLICE TO DO THEIR JOB IN DEALING FAIRLY WITH PEOPLE'S LEGAL PROBLEMS?



HOW WOULD YOU DESCRIBE YOUR KNOWLEDGE ABOUT RIGHTS AND FREEDOMS UNDER THE SOMALILAND CONSTITUTION?

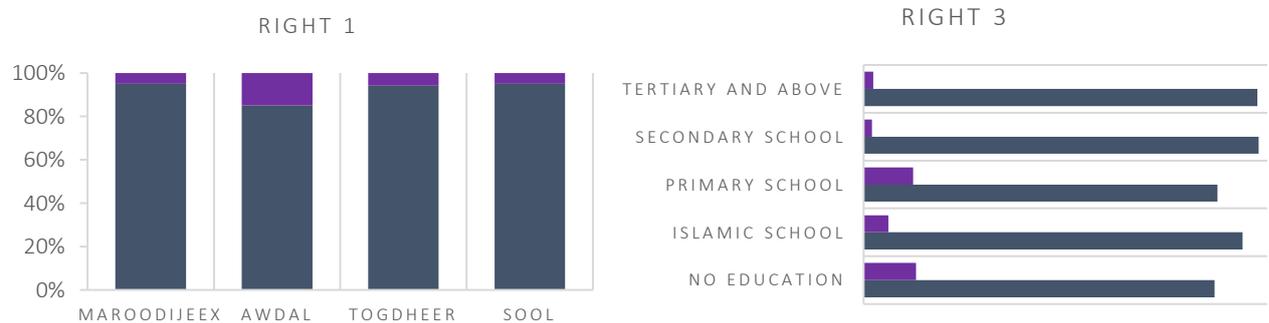
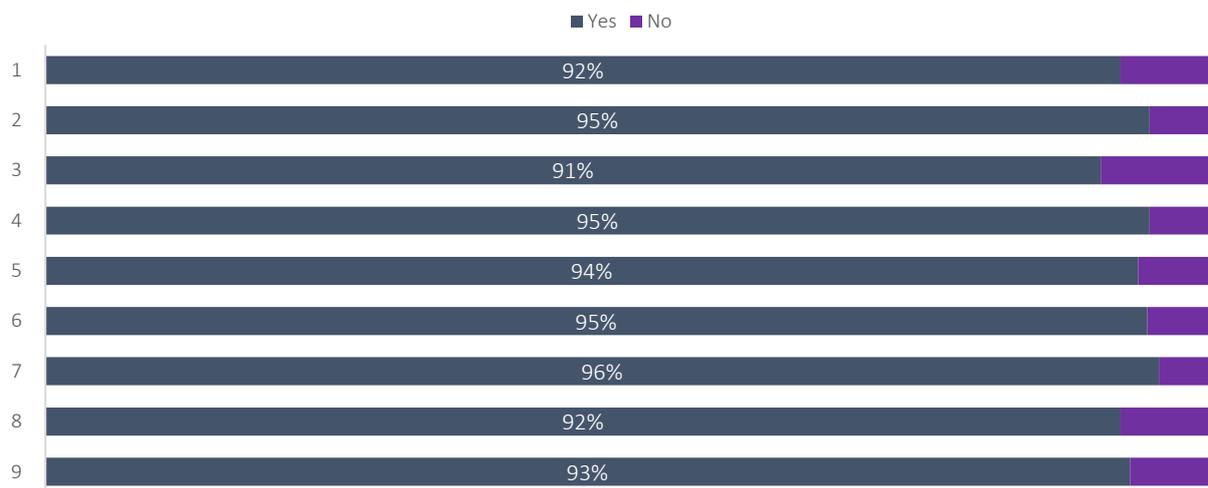


To gauge the level of survey respondents' awareness of some of their constitutional rights, the survey asked them to indicate which of the following rights included in the Constitution they think they have:

1. Right of everyone to equality before the law irrespective of gender, clan affiliation, status
2. Right of everyone to vote and to be elected for a public office
3. Freedom of everyone to move to or settle at any place of her or his choice
4. Right of everyone to security of her or his person
5. Right of everyone to have her or his dignity and reputation respected
6. Right of everyone to institute proceedings in a competent court
7. Right of everyone to own, manage, oversee, trade in and pass on property
8. Freedom of everyone to express her or his opinions
9. Right of women to be free of practices which are contrary to Shari'ah and which are injurious to their person or dignity

The results contravene the rather cautious self-assessment of knowledge, which may indicate an availability bias:⁴⁰ respondents may have been more likely to recall or agree with a right's existence after it was named by researchers. The results varied only mildly by education and region.

WHICH OF THE FOLLOWING FUNDAMENTAL RIGHTS YOU THINK YOU HAVE UNDER THE STATUTORY SOMALILAND LEGISLATION? (N=400)



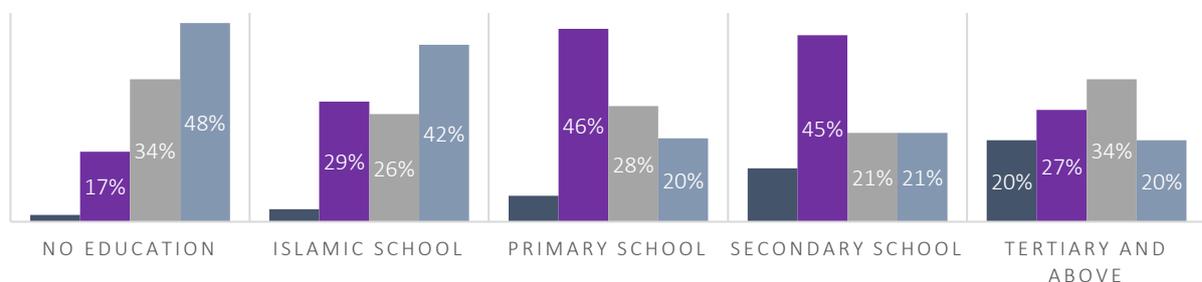
Almost all (99%) of respondents asserted that they had the same rights under the shari'ah, which illustrates that justice seekers may either know that the Constitution derives from the shari'ah or do not distinguish between legal frameworks in substance. The certitude with which respondents asserted the shared rights between Constitution and shari'ah stands in stark contrast to the poor level of

⁴⁰ cf. Amos Tversky & Daniel Kahneman (1973). Availability: A Heuristic for Judging Frequency and Probability. *Cognitive Psychology*, 5, 207-232.

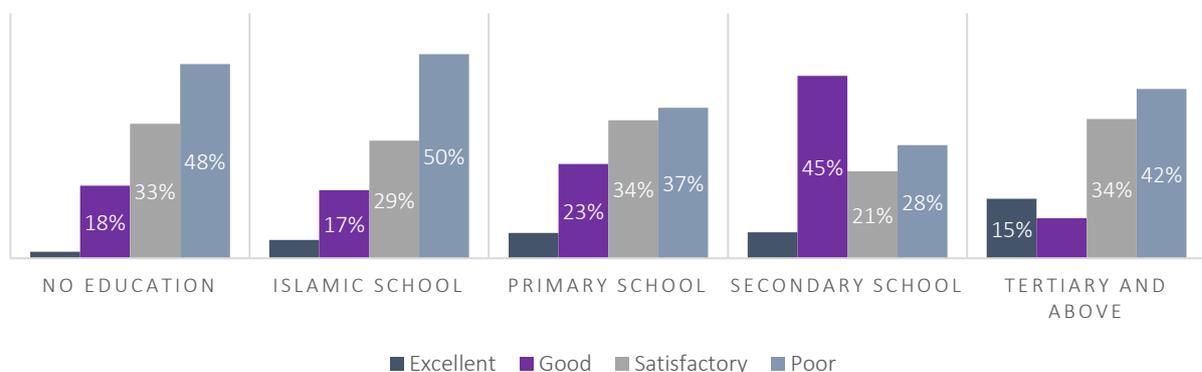
knowledge respondents attributed to themselves. Interviewed justice actors concurred with the latter perception but cautioned that this extends mostly to the statutory system. Traditional and religious justice avenues are better known to people. Indeed, the Islamic religion provides a central cultural and ethical pillar for Somaliland’s society.

In criminal cases, justice seekers can leave initial steps to the police. In civil cases, those who cannot afford a lawyer struggle to understand how to access the justice system smoothly. This is in line with case studies, which show that most of those who had problems navigating the requirements to bring their case to a justice institution were those with civil cases, unable to afford support. This explains the divergence between trust in rights-protecting institutions and usage of affordable, easily accessible, well-known, and socially supported customary justice institutions. The *xeer* overlaps with or draws upon the *shari’ah* in many instances, and justice seekers can easily reach out to elders and *ulama* to obtain more information.

HOW WOULD YOU DESCRIBE YOUR KNOWLEDGE ABOUT RIGHTS AND FREEDOMS UNDER THE SHARI'AH?



HOW WOULD YOU DESCRIBE YOUR KNOWLEDGE ABOUT RIGHTS AND FREEDOMS UNDER XEER NORMS?



The availability of information also varies by region. The Legal Aid Clinic of the University of Amoud has discontinued its operation due to funding issues. The Legal Aid Clinic in the Hargeisa University works, but with limited capacity, and focuses only on certain types of cases. Some non-governmental organizations (NGOs) work to raise awareness about legal issues, but either on very specific topics (such as SGBV), or in an *ad hoc* manner, depending on financial resources for such activities.

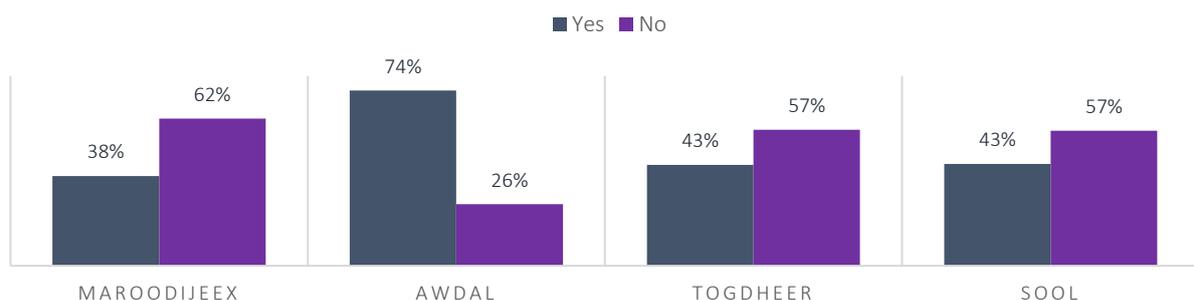
ADVICE AND REPRESENTATION

The extent to which citizens can access the legal advice and representation for common justice problems depends on several factors, including the pluralistic justice environment, availability and quality of legal advice and representation, capacity of citizens to access these services physically and financially, and social pressure or influence. Respondents were split (49%/51%) on the general availability of legal advice. Once broken down by region, only respondents in Awdal – famous for its university in Borama – were more likely to know of available sources of advice. In all other regions, more respondents considered advice unavailable. Of those who deemed it unavailable, a large majority explained that avenues for advice simply do not exist in the given area (82%). Only 18% replied that legal advice was not available because they could not afford it – which concerns especially private lawyers, even though in some locations, especially Awdal, lawyers only charge for representation, not for consultations.⁴¹

KEY FINDINGS

- Respondents are split on the availability of advice and representation, which is strongest in Awdal, where lawyers provide advice for free
- Advice and representation are only needed for statutory institutions, not for customary or religious pathways to justice
- Cost barriers are the primary obstacles
- No comprehensive framework for legal advice or representation exists
- Most look to trusted individuals for support

TO YOUR BEST KNOWLEDGE, IS THERE ANY LEGAL ADVICE AVAILABLE WITHIN YOUR REACH?



Most of the legal advice that people can afford is provided by a knowledgeable person in a justice seeker's social vicinity, which includes religious and traditional leaders, but also family and friends, especially those who have previous experience with legal disputes. Religious leaders or scholars and shari'ah judges are the ones whose opinions carry most weight, followed by traditional clan elders and lawyers. Religious and clan leaders are often approached on family matters, while a lawyer's opinion is often sought in criminal cases. Religious leaders can also calm those who are aggrieved and remind them of the obligation to be truthful in seeking justice.

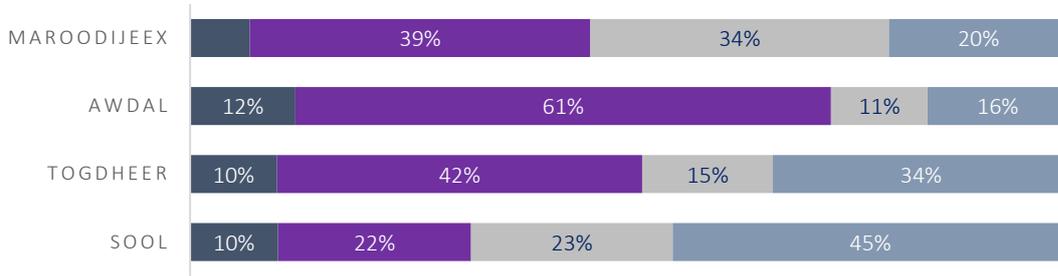
Elders and ulama are especially important in the areas remote from urban centers, where information is more difficult to come by. Traditional elders are present in each community and able to provide information on local *xeer*, including in IDP settlements. Likewise, information about shari'ah can be obtained from religious leaders and scholars in mosques, in statutory courts that apply shari'ah,⁴² as well as in Islamic Arbitration Centers.

Most respondents appeared to be somewhat satisfied with the quality of available legal advice, which also reflected the geographical spread of its availability. Respondents rated the quality of representation almost in an identical fashion, which raises the question as to whether they do not distinguish between the two terms, or whether both overlap in practice.

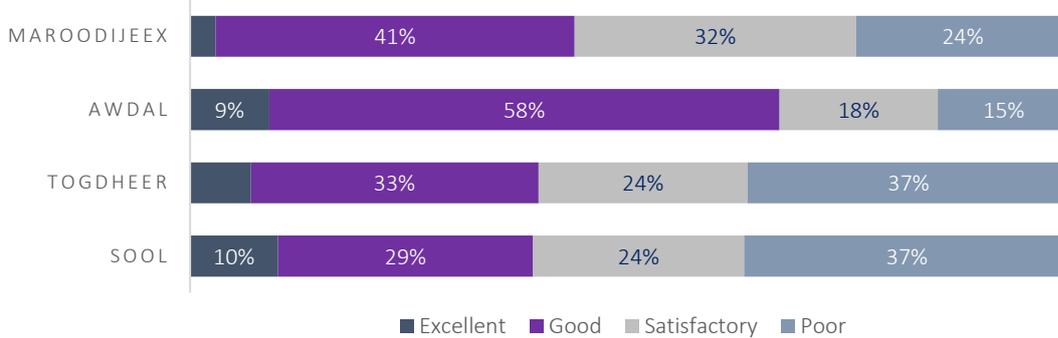
⁴¹ Interviews with a lawyer and the Chairperson of the Regional Court in Borama

⁴² For example in the family division of District Courts.

BASED ON YOUR OWN EXPERIENCE OR BASED ON WHAT YOU HEARD FROM OTHER PEOPLE, HOW WOULD YOU RATE QUALITY OF THE AVAILABLE LEGAL ADVICE?

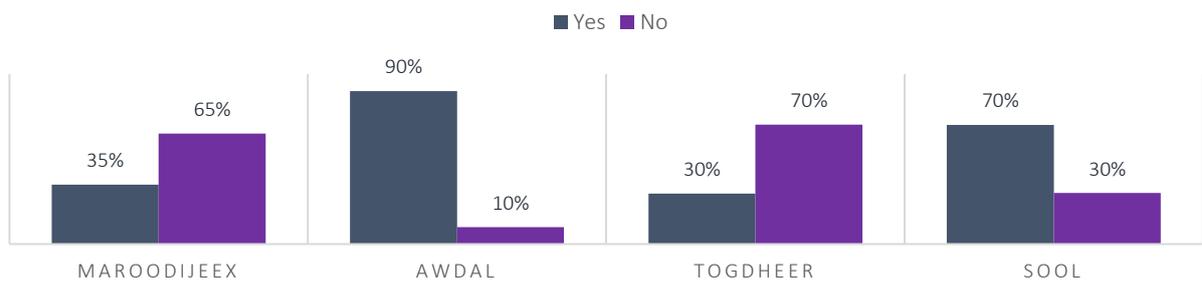


BASED ON YOUR OWN EXPERIENCE OR BASED ON WHAT YOU HEARD FROM OTHER PEOPLE, HOW WOULD YOU RATE QUALITY OF THE AVAILABLE LEGAL REPRESENTATION?



Those who are unable to pay for representation by a lawyer can apply for a lawyer to be appointed with the fees paid for by the judiciary.⁴³ This may explain why respondents generally considered representation more available than advice (see graph below). Most of those who responded that legal representation is available pointed to private lawyers (49%), followed by a designated person in the community (31%), public defenders (12%), and legal aid organizations (LAOs, 8%).

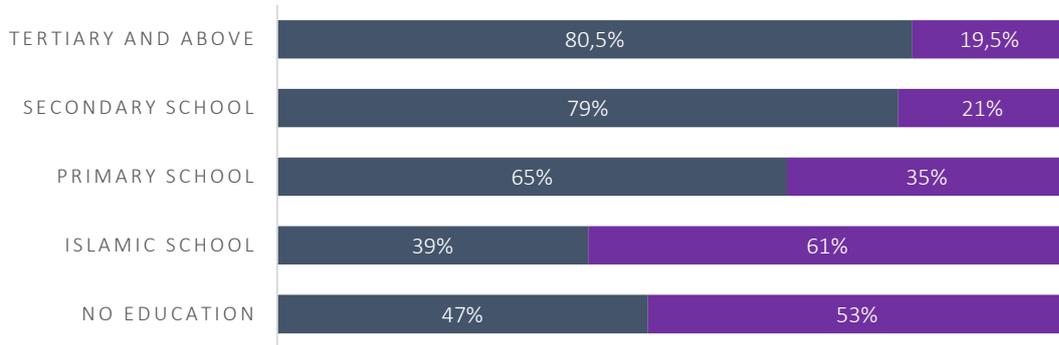
TO YOUR BEST KNOWLEDGE, IS THERE ANY LEGAL REPRESENTATION AVAILABLE WITHIN YOUR REACH?



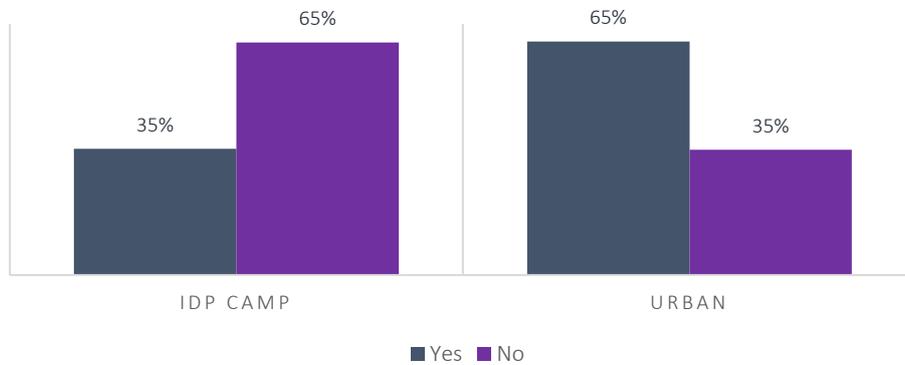
Most respondents indicated that all people have access to legal advice and representation. Only 22% responded that there were people who would struggle to get access to these services, most of whom added that this is due to cost barriers, but also affecting women, the illiterate, foreigners, and those who do not have any “ties to the government.” These barriers move with education, which can in part stand in for the ability to afford fee-paying schooling as well as literacy. Availability also varies between displaced and host communities, underlining the importance of local ties and access to resources.

⁴³ Interview with the Chair of the Supreme Court.

TO YOUR BEST KNOWLEDGE, IS THERE ANY LEGAL REPRESENTATION AVAILABLE WITHIN YOUR REACH?



TO YOUR BEST KNOWLEDGE, IS THERE ANY LEGAL REPRESENTATION AVAILABLE WITHIN YOUR REACH?



Consistent and systematic support for statutory institutions is only available from private lawyers, who have started to open offices in larger numbers in recent years. As of yet, no frameworks for accountability are in place, and their affordability and accessibility remain major obstacles for many justice seekers. Most legal practices are located in urban centers, inaccessible to rural communities. And even these are rare. An interviewed prosecutor from the Sool region speculated that there may be two lawyer offices in the regional capital Las Anod. Financial support programs are also still nascent. For example, a lawyer in Borama claimed to have provided legal advice for free to those who cannot afford to pay, and **indicated lawyers in Borama generally do not charge for providing legal advice, only for other services, upon their own initiative.**

Information on ‘legal aid offices’ attached to courts, which provide information on all judicial matters to help people navigate the court system, was inconsistent. The Chair of the Supreme Court claimed that such offices have been established in all regions, but only three out of 20 interviewed justice actors were aware of them. Two officials in Las Anod disagreed on whether such an office exists in their city.

Those unable to access or afford support from a qualified lawyer often try to identify a person who has had a similar problem or experience in dealing with statutory institutions to consult with. Community members also approach religious leaders or scholars in their mosques or in the IACs, or look for an acquaintance or relative, who either works at, or is familiar with, a court or another formal justice institution. One of the interviewed justice actors lamented that he was still being called by some people he does not even know from the village he originally comes from who ask him for advice in legal matters. These avenues reflect the informal social safety nets that underpin Somaliland’s still economically undiversified and precarious society, but also provide space for nepotism or otherwise unaccountable and thus unpredictable practices.

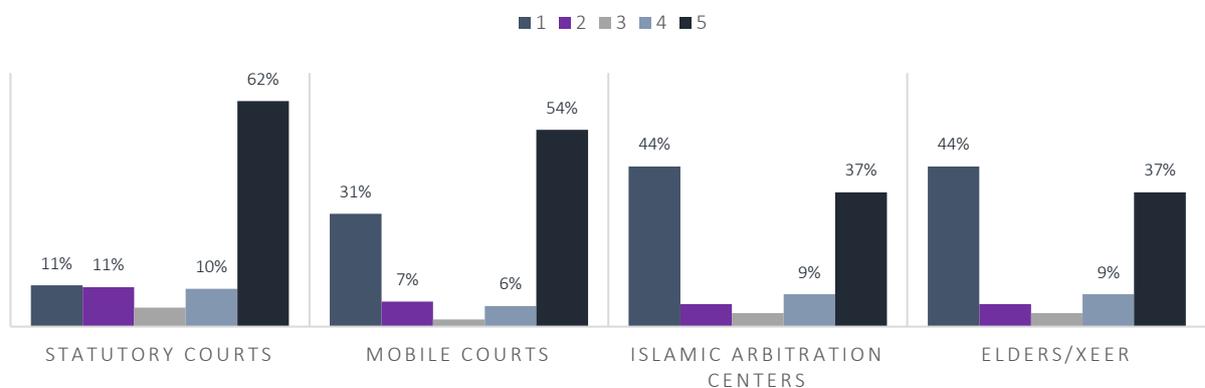
ACCESS TO A JUSTICE INSTITUTION

The main barriers for people to access a justice institution are financial constraints and lack of knowledge, followed by insufficient justice infrastructure, and varying levels of trust. Financial constraints are the primary reason for people not to approach a justice institution, or the justice institution of their choice, and reinforces the predominance of traditional justice institutions as the most affordable. Elders live close to their people, which eliminates expenses for travel, accommodation, or lost income. The only cost is the *doodqaad* charge, usually less than the costs of opening a case in a statutory or IACs.

In IACs, fees to open a case are considerable. One interviewee speculated that this in part explains why these institutions are hardly ever related with corruption and entail no hidden costs afterwards: jurors are properly compensated. Statutory courts appear as the least affordable. Standard costs include a tax to open the case, lawyer fees, costs of bringing witnesses, travel, and subsistence costs to account for lost income. All of these can compound as cases moves from lower to higher courts. This can be prohibitive for people with low income, but also for those who may need to travel long distances. Although respondents indicated measures being put in place to mitigate this burden for low income justice seekers, they cover only some expenses, such as the case opening fee or representation,⁴⁴ and are neither well-known nor widely applied.

Corruption puts further financial strain on justice seekers. It was most often mentioned in connection with statutory courts, sometimes also in relation to elders, and is the most unpredictable element for justice seekers when they approach institutions. Yet, many respondents appeared to consider it part and parcel of the experience of seeking justice. In the words of one of the interviewed prosecutors: *“people are suspicious of everyone in the justice system; they suspect the other party bribed the lawyers or the prosecutor, and they will want to know how much they paid, so they can pay more – they strongly believe that if they don’t bribe, they will not get justice.”*

TAKING INTO ACCOUNT DIRECT COSTS (FEES), ANY UNOFFICIAL COSTS, TRAVEL AND ACCOMMODATION COSTS, ETC., PLEASE RANK THE JUSTICE INSTITUTIONS FROM MOST AFFORDABLE (1) TO LEAST AFFORDABLE (5).

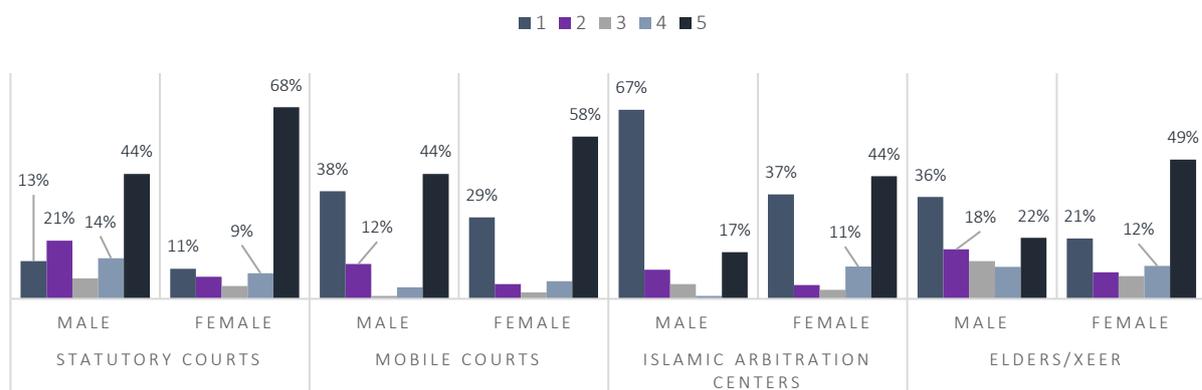


⁴⁴ This is called *“kiis miskiin”* – a poor man’s case, which allows a person to open a case at the court without a charge if he or she cannot afford to pay it. Similarly, a person who cannot afford to pay for a lawyer can have one assigned and paid for by the judiciary upon application.

Some costs are specifically borne by women. As relayed by a woman in one of the case studies: *“judges would be waiting to see a man, and they would ask me if we are all here, hinting: where is my man.”* Women who experience such treatment often ask a man to accompany them to meetings with court officials and may have to reimburse the man for the lost time and cover his travel and refreshments.

Survey respondents also perceived statutory courts as the least affordable. It is notable that female respondents were more likely to consider institutions unaffordable than their male counterparts. At an aggregate level, this generates a rather critical picture of elders, whom women can often access only via male intermediaries – and male respondents ranked xeer and IACs as the most affordable.

TAKING INTO ACCOUNT DIRECT COSTS (FEES), ANY UNOFFICIAL COSTS, TRAVEL AND ACCOMMODATION COSTS, ETC., PLEASE RANK THE JUSTICE INSTITUTIONS FROM MOST AFFORDABLE (1) TO LEAST AFFORDABLE (5) FOR SETTLING A DISPUTE

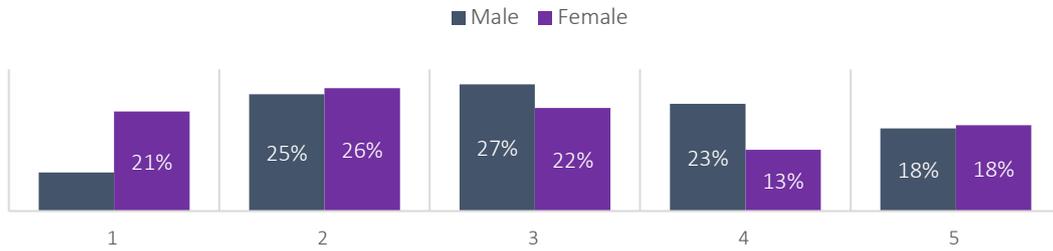


Insufficient justice infrastructure is an important barrier that prevents justice seekers from accessing a justice institution. This includes insufficient numbers of both statutory courts and IACs, which can drive up the costs of proceeding through the statutory justice chain or opening a case with an IAC. Especially statutory courts lack justice professionals, in general and especially well-trained ones. Survey participants confirmed the physical availability of xeer and IACs. More than 60% indicated that an IAC is available in their community, and more than 70% stated as much for xeer – but for also statutory courts. More than 80% responded that a police station is available in their community.

The lack of trust in courts is likely connected to the bureaucracy involved, length of the process, sometimes unpredictable outcomes, and high costs. But trust seems to be an issue in other forums as well, which entrenches *forum shopping*. Distrust is in part driven by clan affiliations. In the words of one of the interviewees, such distrust can be so severe that people: *“run away from those who genuinely want to help them, simply because of clan affiliations.”* This seems to apply to IACs as well. One of the interviewed judges claimed that clannism is not an issue in statutory courts, because judges rotate in different regions, but did not explain how regional rotation should achieve this effect.

Respondents did not identify any specific knowledge gaps but referred to general lack of information and awareness that has been discussed above. Further inquiry would be needed to identify areas of the justice chain that are particularly opaque to justice seekers. **Those with less access to education – women and members of minority groups – are also more likely to face threats or ostracism for pursuing a case or for choosing a certain justice forum.** Women with children may see their husbands withdraw material support or turn abusive towards the woman or to both the woman and children. Women may then ask elders for support in recovering support or stop the abuse but could turn to courts if elders are unsuccessful – thereby running the risk of incurring further social stigma. This may explain why women were more likely to trust NGOs in providing fair support, seeing as these often put forward a strategy that includes gender equity components, be it as a core issue or due to funding requirements.

ON SCALE OF 1 TO 5 WHERE 1 IS THE MOST AND 5 IS THE LEAST,
HOW MUCH DO YOU TRUST NGOS TO DO THEIR JOB IN DEALING
FAIRLY WITH PEOPLE'S LEGAL PROBLEMS?



CASE EXAMPLE	WOMEN FACE STIGMA, EXCLUSION, AND VIOLENCE FOR CALLING UPON COURTS
<p>The mother of a girl who was gang-raped by men from their neighborhood decided to refuse a settlement based on xeer norms and call upon a statutory court out of concern for the safety of her child and other girls if the perpetrators were not imprisoned – which would be almost ensured by pursuing a customary route. Another rape survivor also filed a case with a statutory court to later find out that the same man had been accused with raping a 13-year old girl. The survivor faced verbal abuse by the perpetrator’s family and was beaten for refusing to drop the charges before the verdict was announced. Both women were ostracized by community and family members and by elders for going against the locally accepted ways of settling these cases.</p>	
SOCIAL PRESSURE ON MINORITY GROUPS NOT TO TAKE ACTION AGAINST MAJORITY	CASE EXAMPLE
<p>A man from a minority clan who claimed partial land ownership against a distant family member from a majority clan was not only threatened, but was also arbitrarily detained, which led him to miss a court hearing. In a similar case, a woman from a minority clan claimed a plot of land for her son against her husband’s family after his death. In addition to denying the husband’s paternity and avoiding a paternity test, the family threatened the woman at gun point upon hearing that she filed a case with a court. The woman surprisingly won the case, but the enforcement of the decision is still pending.</p>	

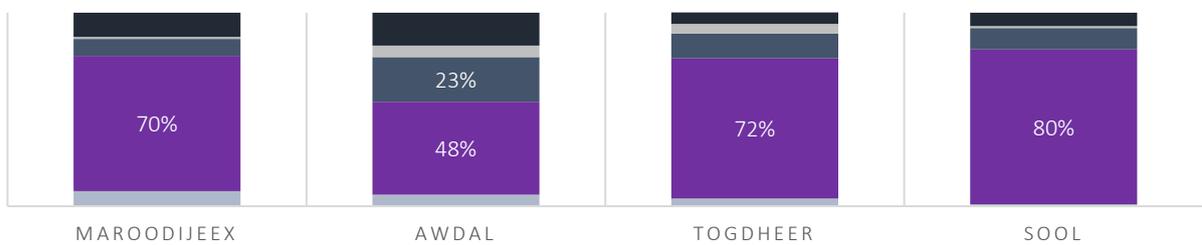
FAIR PROCEDURE

The majority of justice users choose institutions based on how fair they believe the decisions are likely to be. Statutory, religious, and xeer justice differ in the key values they are designed to promote and protect, but justice users related fairness to one or more of these broader themes: ensuring rights, avoiding undue influence, adhering to law, and being mindful of god. These aspects permeate all institutions, as illustrated by one interviewed elder, who defined fairness as: *“to live in freedom, peace and have access to basic human rights”*.

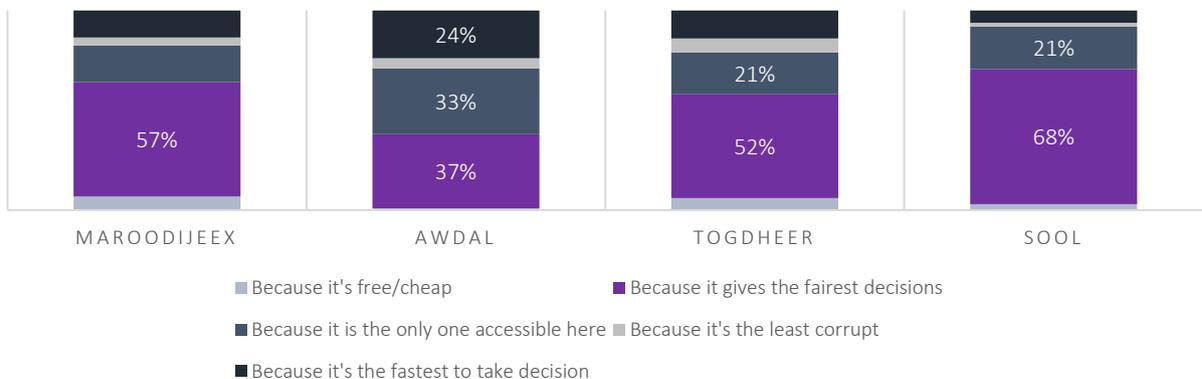
KEY FINDINGS

- Prospective fairness is a major factor in justice seekers’ institutional preference
- Shari’ah courts are perceived as least corrupt and thus most likely to be fair
- Main drivers of unfair or unpredictable processes and outcomes linked to undue influence by individuals with wealth or connected to government, police, or military
- Women and minorities more likely to be treated unfairly

WHAT WOULD BE THE MAIN REASON FOR YOUR DECISION? (CHOICE OF INSTITUTION TO ADDRESS SGBV CASES)



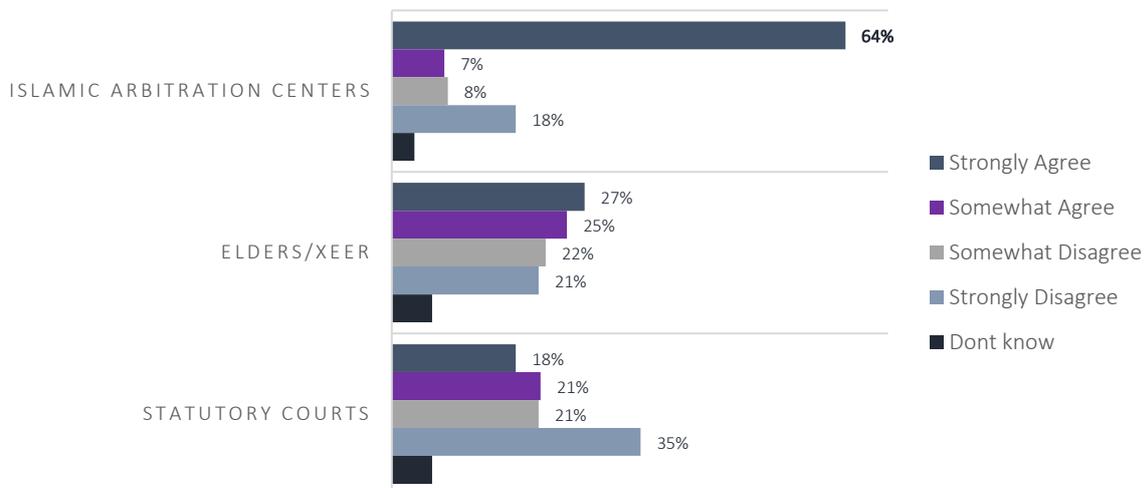
WHAT WOULD BE THE MAIN REASON FOR YOUR DECISION? (CHOICE OF INSTITUTION TO ADDRESS LAND DISPUTES)



Respondents unpacked the avoidance of undue influence as not only avoiding favoritism and corruption, but also ensuring that those who decide in the case maintain their impartiality, that they give equal importance to hearing the arguments of both sides, and that they base their decision on the presented evidence, and not on the identity or actions of the parties. Especially for statutory justice actors, this underscores the adherence to due process and written law, as one judge put it: *“the closer we apply the law, the more fairness we can achieve.”*

The strong connection between religion – the mindfulness of God – and the concepts of justice and fairness is reflected in the clarity with which survey respondents designated IACs as the most free from undue influence. All IAC jurors were of this opinion; most elders and many statutory justice actors, including one judge, held this opinion as well.

TO WHAT EXTENT DO YOU AGREE THAT THE FOLLOWING PROVIDE
JUDGMENTS THAT ARE FREE FROM ANY UNDUE INFLUENCE
(CORRUPTION, THREATS, PRESSURE, ETC.)?



Islamic Arbitration Centers are considered least corrupt and most resistant against bribery because of their grounding in religion and faith, the centrality of their reputation, their comparatively light workload, and their relatively high fees that ensure a good compensation. Respondents considered IAC jurors to be god-fearing people who “are afraid of no one but Allah” and who know “they would be in trouble if their decisions were unfair.” As religious scholars, they derive their decisions from the Quran and other Holy Texts, which are flawless *per definitionem*. This builds their reputation as impartial and not concerned with personal benefit or clan affiliation. With a lighter caseload, jurors can spend sufficient time studying facts and deliberating. Low salaries may push justice actors in other institutions to seize on opportunities for extra payment, whereas the fees required for opening a case at an IAC, which some respondents lamented as exorbitant, reduce their vulnerability to such dependence.

Respondents were split as to whether customary institutions are free of undue influence (52%) or not (43%). Most (56%) found statutory courts more susceptible to undue influence, with as many as 35% strongly agreeing with this statement. Those who deemed statutory courts free from undue influence accounted for 39% of respondents, out of which 18% agreed with this statement strongly.⁴⁵

To gain a deeper understanding of how fairly or unfairly people felt treated, this study asked 32 users of justice services in different justice institutions who provided case examples to rank their treatment. Twenty stated that they were treated fairly in the process. Of the five justice seekers from minority clans, two stated they were treated fairly and two claimed they were not treated fairly. One person did not answer the question. **Those who deemed their experience with seeking justice unfair fall into these two categories:**

1. **Women who had suffered mistreatment or violence, and**
2. **Those whose land ownership was overturned by a court without any evidence provided by the opposing party.**

Women who suffered violence accused statutory institutions of having failed to protect them against attackers, or for a sentence incommensurate with the gravity of the crime and the impact it has had on their lives. Despite the low sentences, statutory courts nonetheless seem to ensure at least some level of punishment and protection against dangerous behavior, which is rarely ensured by the xeer. This is likely the reason why most respondents (67%) agreed that SGBV cases do receive a fair trial in courts.

⁴⁵ The remaining share of respondents claimed not to know whether or not statutory institutions are free from undue influence or not.

THE PROTECTION OF SURVIVORS AND VICTIMS IS OFTEN NEGLECTED	CASE EXAMPLE
<p>In the case of a 16-year old girl raped whilst grazing sheep, the attacker was arrested but managed to escape. With apparently no action taken to return him to custody, he allegedly raped another girl while at large. A woman recalled her successful divorce from an abusive husband, who came to her house in the middle of the night to assault her. After the assault, with the help of the neighbors, she managed to have him arrested by the police, only to be told next day that he was let go because he was not feeling well.</p>	

Even if perpetrators are arrested and sentenced, female respondents argued that the sentence does not tally with the trauma the survivors carry, with the damage caused to their social status, and that of her family. The sentences range from five to fifteen years of imprisonment, established as a punishment for rape under the Criminal Code, but sentences tend towards the lower end of this range.

CASE EXAMPLE	SENTENCES RARELY CARRY THE FULL FORCE AVAILABLE
<p>A man convicted of raping a 13-year old girl in an IDP camp was sentenced to five years. Out of the three men who gang-raped another 13-year old girl, only one was sentenced to seven years. The other two evaded punishment, because the perpetrator who was caught refused to divulge their names. In a case of a mentally disabled woman who was gang-raped by 12 attackers, 11 of them were sentenced to six years. The police did not succeed in apprehending the remaining perpetrator.</p>	

About a third of the surveyed justice users suspected that powerful individuals could influence decisions by justice institutions. These are often people connected to military or law enforcement, elders, or, more generally, people with money or access to government officials, all of whom are more likely to be able to prevent enforcement of an unfavorable decision, influence decisions that lack sufficient evidence, fake documentation, influence the length of a prison sentence, or have someone released from prison. Respondents added that elders – a patriarchal social guardianship – tend to side with men. This can involve taking a case from a court to settle it via xeer, which allows for finding solutions that are far less punitive than those set out by the Penal Code for outcomes in statutory courts.

ENFORCEABLE SOLUTIONS

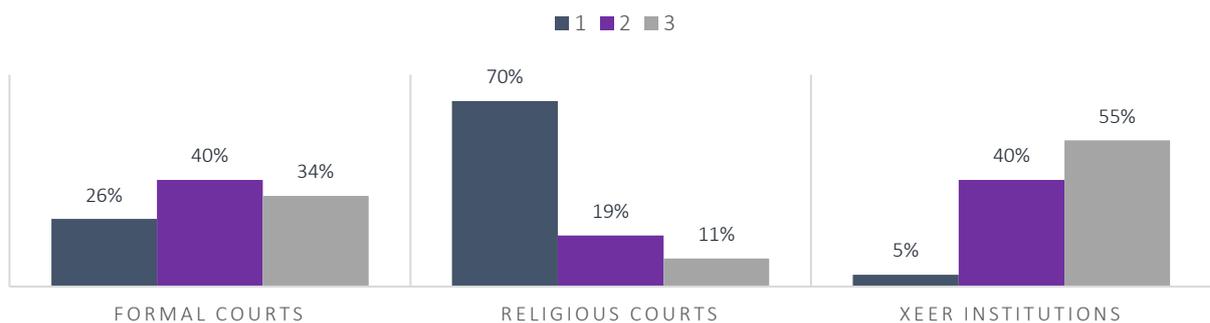
Justice institutions employ two main types of enforcement. The first exerts pressure via the coercive power of state law enforcement and is mostly applied and overseen by statutory courts. Religious and customary institutions ensure compliance through the social pressure applied by a community against members who defy social norms and disregard important communal, cultural, and social authorities. Such social sanctioning relies on deep anchorage within a community and widespread respect for the values, traditional or religious, that the justice institution represents.

Although coercive force is primarily the remit of statutory courts and the xeer wields social normative pressure that has historically evolved and taken root, the two justice forums have more recently embarked upon closer collaboration to utilize each other's strengths. For instance, should elders fail to find a solution for a case or cannot enforce a decision, they often refer the case to statutory courts. Similarly, courts avoid case overload by allowing elders to deal with a large number of disputes, which the state system in its current capacity would not be able to handle. IACs found yet another way to ensure compliance with their decisions, by requiring disputing parties to agree publicly to submit to the result of the arbitration before the process begins. The pressure is strengthened as decisions are arrived at following the instructions set out in the sacred texts, which the majority of people hold in very high regard. When asked to rank justice forums based on the ability to enforce their decision, most survey participants (70%) deemed elders the weakest, ulama the strongest, and statutory courts somewhat inconsistent. However, interviewed justice actors described statutory courts as the justice forum best able to enforce its decisions because of its coercive capability.

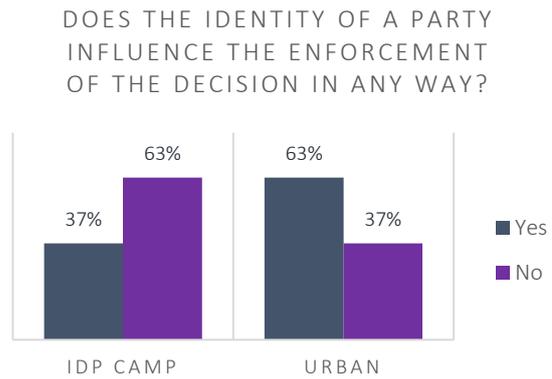
KEY FINDINGS

- Statutory courts can call upon coercive law enforcement to implement decisions
- Elders and ulama rely on their individual social authority and the respect they command as an institution for acceptance of their decisions
- Enforcement mainly falls short if court/elder decisions go against wealthy or well-connected individuals
- Greater cooperation between justice actors allows them to utilize each other's strengths

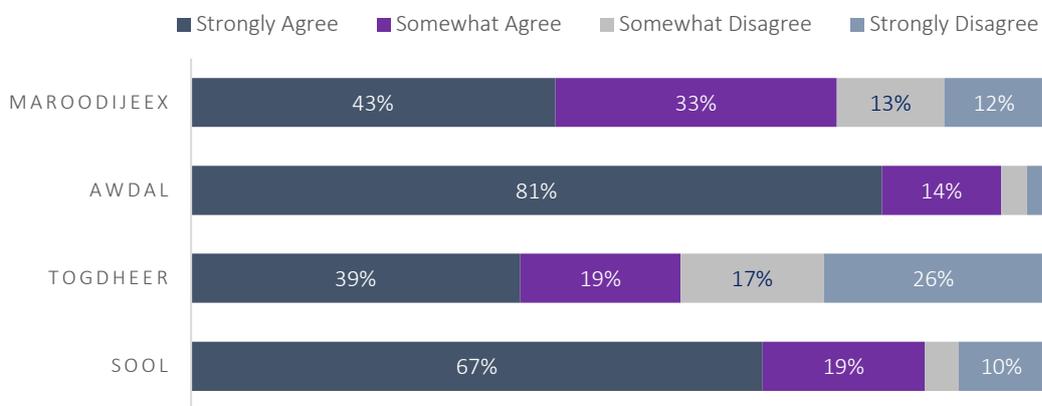
CAN YOU PLEASE RANK THE FOLLOWING INSTITUTIONS BASED ON WHICH ARE BELIEVED TO BE BEST IN ENFORCING THEIR DECISIONS (1 IS BEST, 3 IS WORST)?



The enforcement of a justice institution’s decision, as the process that lead to it, is not necessarily free from undue influence. And as before, IACs were seen as least vulnerable corruption or undue influence affects the enforceability of its decisions the least. Xeer proceedings were described as only mildly less steadfast. Only with statutory courts did a majority observe a potential for corruption during enforcement. To illustrate this, IDPs – dependent on elders and mostly poor – considered the influencing decisions more unlikely than urban dwellers.



TO WHAT EXTENT DO YOU AGREE THAT THERE ARE PRIVILEGED GROUPS THAT ARE ROUTINELY ABLE TO AVOID ENFORCEMENT OF DECISIONS AGAINST THEM?

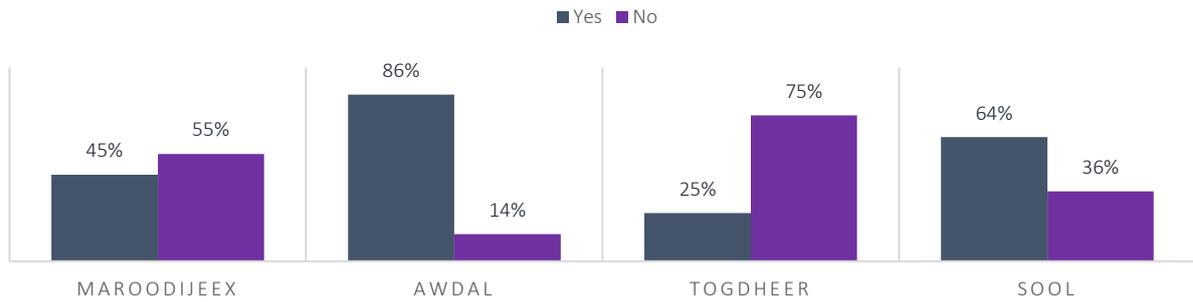


To better understand the issue of undue influence affecting the enforcement of decisions, it is important to consider the divisions along which the identity of a participant in justice processes is constituted and the role it plays during enforcement. Most respondents in the survey, as well as justice system actors interviewed, agreed that the identity of a person plays a role in the enforcement of a decision. Though, legally, everyone is equal, in practice, identity matters. The consistency with which respondents in Awdal and Sool tended to allow for identity to play a role vis-à-vis their counterparts in Maroodijeex and Togdheer draws the division between the predominantly Isaaq areas – inhabited by members of Somaliland’s majority and governing clan family – and the peripheral regions in which Darood and Dir communities have in the past voiced their discontent concerning Somaliland’s underlying political settlement.

This study did not yield data that would tie this finding unambiguously to clan identity. The simultaneously published AJAT Baseline for Somalia, however, established a strong link in a large sample of over 400 respondents between clan identity and economic status.⁴⁶ In most locations, members of locally politically more influential clans were more likely to report a higher household income. The combination of economic wherewithal and political connectedness may affect individuals’ capacity to influence justice processes – but this would require additional research to be established for Somaliland as well.

⁴⁶ Robin Mydlak (2020). *Access to Justice Assessment Tool –Baseline Study Somalia*. Expanding Access to Justice Program, American Bar Association & Pact Kenya.

DOES THE IDENTITY OF A PARTY INFLUENCE THE ENFORCEMENT OF THE DECISION IN ANY WAY?



Interviewed justice actors were more careful in this regard. Although most denied that people who are routinely able to avoid enforcement of decisions against them exist, they would reference the statutory framework as establishing equality before the law. This allows for a *de jure* / *de facto* distinction to be made. As almost one third of this group claimed that such groups exist, it is likely that previous inferences hold – especially as they added that individuals would risk losing their job should they enforce against, in the words of the interviewed practitioner: the “wrong people.”

CASE EXAMPLE	DECISIONS FREQUENTLY FALL SHORT OF BEING ENFORCED
<p>Previous cases reinforce this point: that of a mother of the Gaboye group claiming a plot of land for her son against her late husband’s family from a majority clan, who had a court declare in her favor but has not seen the decision enforced whilst husband’s family keeps using the disputed land; that of a woman in dispute with her neighbors, in whose case, despite a notarized agreement for the disputed land and an elder ruling as well as an LDT decision in her favor, the opposing party not only refuses to vacate the land but has reportedly managed to ensure that the police refuses to execute the enforcement order.</p>	
JUSTICE SEEKERS QUESTION THE EXTENT TO WHICH DUE PROCESS IS FOLLOWED	CASE EXAMPLE
<p>As previous cases have shown, women suing their husbands also face an uphill battle to obtain protection or justice: that of one woman who managed to divorce an abusive husband but was forced out of her house together with her children under the threat of being killed by her former husband and his brothers; that of a woman who sued her husband to force him to contribute to financially sustain her and their children, and who was awarded a daily allowance and a rent contribution from her husband, but has thus far only received one month’s contribution from a husband who has since fled the city.</p>	

CONCLUSION

In Somaliland, statutory, religious, and customary justice co-exist, collaborate to an extent, and are intertwined. Statutory law – that is, government legislation and associated institutions – are the most recent and the most foreign addition to Somaliland, introduced by British colonial powers, somewhat developed by the subsequent military government in Mogadishu, largely eviscerated during its collapse, and in the process of reconstruction ever since. The shari’ah in its Shafi’i interpretation is part and parcel of Islam as a central cultural pillar of Somaliland’s society. It forms the basis of constitutional law and is the most legitimate, but also the most expensive justice provider. Customary law (*xeer*) is the most used, the most dynamic, the most easily accessible, but also the most rights-abrogating justice pathway, because it is geared towards the avoidance of communal conflict and the conservation of a patriarchal society, presided over by clan elders, instead of promoting individual rights norms.

The institutional preferences of justice users derive from uneven and largely limited knowledge of the legal frameworks, forum shopping for the most promising outcomes, evaluation of likely official and – mostly in the cases of statutory courts, but sometimes also for elders – unofficial costs by a poverty-stricken society, and personal ties to individual justice practitioners. The moral authority, simplicity, and integrity of shari’ah courts – better understood as Islamic Arbitration Centers – renders them the preferred justice pathways for those who can afford and reach them, but these limitations keep their caseloads light. Religious scholars and judges, the ulama, are increasingly incorporated into the justice system as practitioners registered by the Ministry of Justice, but the active interference of the Ministry of Religious Affairs renders them not the only interpreters of shari’ah who influence the practice of justice.

The justice landscape in Somaliland still lacks infrastructure. This includes both physical infrastructure that courts require for their work and for courts to be more widespread in their reach and accessibility to the rural populace and the justice personnel. Lawyers provide the main avenue for advice and representation in statutory settings but remain largely confined to Hargeysa. As more and more universities operate and produce trained jurists, this begins to change, but that change is gradual and slow. These impediments ensure that elders remain the primary justice providers, because every community forms sub-sections of clans with their respective elders, who are thus accessible to most and whose services come free of charge.

The justice landscape in Somaliland also lacks oversight and accountability. Influential or well-connected individuals are able to influence justice processes at all nodes up until and including enforcement, from which these individuals can often escape. This calls into question the impartiality and independence of both court officials and law enforcement, and, as many respondents to this study considered adequate compensation of ulama a major contributing factor to their integrity, also highlights the need for well-resourced and internally accountable state oversight. The same applies to universities. Despite training more and more lawyers, this study’s findings indicated that no consistent curriculum is in operation and examinations are not yet standardized. Statutory courts are perceived as the most unpredictable institutions and most likely to be unfair. Streamlined training, accessible information in emerging libraries in Borama and Hargeysa, but also beyond these current hubs of higher education, and effective oversight will be needed to tackle these shortcomings.

Until then, elders, originally tasked with the de-escalation of conflicts and community leadership, will remain prominent justice providers. In many cases, respondents spoke of elders wresting cases from courts to ensure that the patriarchal norms they safeguard be observed. This affects SGBV survivors in particular and in the most detrimental fashion to their personal integrity. Any reform in justice infrastructure must therefore also account for the normative underpinnings of the society in which it operates.

RECOMMENDATIONS & UPTAKE

- **Support justice user's access to justice via advice and representation, e.g. through legal aid clinics.**

Lack of familiarity and unofficial costs remain major barriers for access to statutory courts, pushing many cases towards customary authorities with problematic implications for aggrieved individuals' rights. The EAJ Program has rolled out a support program for legal aid services delivered via local justice promoters, trained in relevant knowledge to help justice users navigate the plural justice environment and the statutory justice chain. In addition, the EAJ Program could further engage the manifold universities in Hargeysa, Borama, or Burco towards integrating students via legal aid clinics. This provides direct practical experience to future practitioners and justice users with locally accessible and affordable support. In doing so, the Program should ensure that legal aid clinics and justice promoters are representative of communities' diversity and act in an accountable and inclusive manner to avoid reproducing patterns of exclusion and marginalization.

- **Explore integrated pathways to justice for SGBV survivors in a survivor-centric approach.**

Currently, the way in which SGBV cases are handled prioritize the observance of established norms and group reputation over the well-being and personal integrity of the survivor. This contravenes several shari'ah principles and their derivative legislation, some of which remains under review by the Ministry of Religious Affairs. A constructive avenue for the involvement of traditional elders must be found, as their centrality to group relations, social authority, and own relevance to the socio-political fabric must be acknowledged and holds potential for their role as protectors of survivors – leveraging their influence to halt further violence. This requires a normative shift, which can be encouraged by changes in institutional behavior towards a survivor-centric approach. Survivors of SGBV require support. This includes a well-known and easily accessible first port of call, such as a support hotline or medical centers, from which they can receive referral to or administration of medical and psycho-social treatment. These nodes must be linked to legal support that can advise on further engagement with elders, courts, law enforcement, and family. These can be supported by local actors such as the Nagaad Network, who have long worked toward women's access to equitable justice, and the Somaliland Women Lawyers Association.

- **Work with the Ministry of Justice and local universities to ensure coherent oversight.**

The justice landscape in Somaliland is consolidating and part of an increasingly capable government. For its functioning, justice institutions require adequate and sustainable resources, accountability on how these resources are used, and strong coordination among all branches. Especially statutory institutions also require a coherent curriculum, examinations, and oversight that allow students of the law to enter the justice sector with a predictable path to working under the auspices of one line ministry. The EAJ Program already works with the Somaliland Ministry of Justice (MoJ), which should be encouraged to work with local universities to standardize training, produce learning materials, establish clear guidelines for professional ethics and referrals, and ensure that the curriculum takes into account the overlap of institutions. To this end, the Ministry is well-placed given that it licenses Islamic Arbitration Centers and works with elders either directly or via the Somaliland parliament's upper chamber, the *Goloha Guurtida* (House of Elders).

- **Work with the Ministry of Justice towards effective land administration and participation.**

A final component of this collaboration must include work towards a land registry and cadaster office that can conclusively inform land-related disputes. The EAJ Program model for Land Accountability Platforms under MoJ-coordination could establish a two-way platform: for community leaders to ensure that land disputes are handled according to due process, and for justice actors to manage community members expectations towards the likely duration of processes, to communicate why due process can take time.

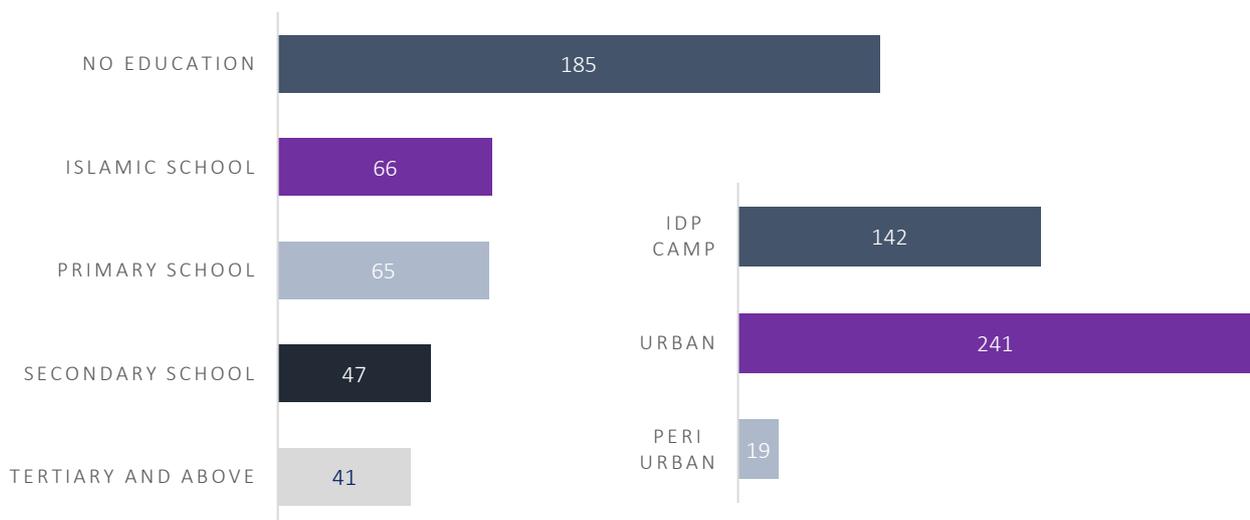
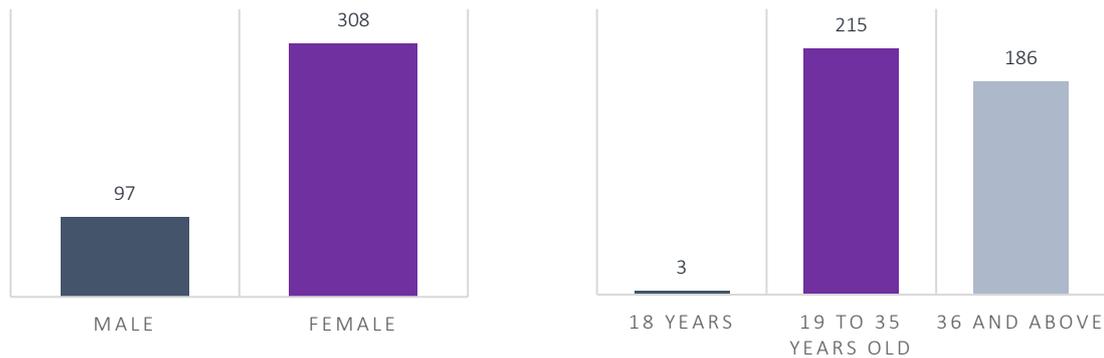
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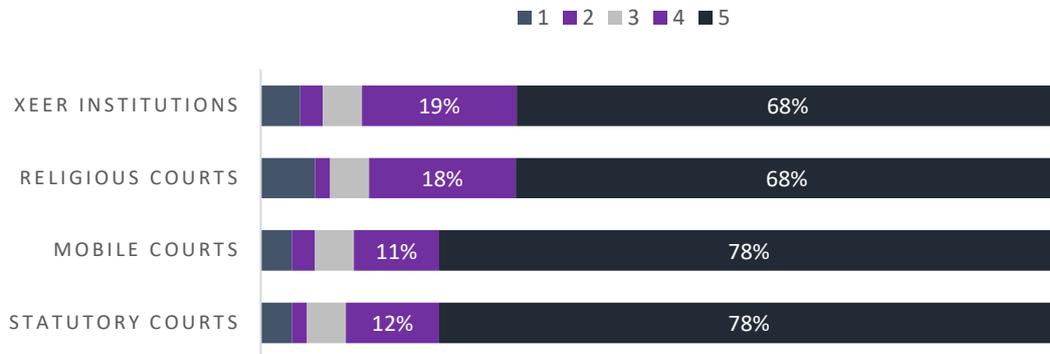
ANNEX A: SAMPLE

Majority of respondents were women (76%). A little more than half of the survey participants (53%) were 19-35 years of age, the rest were people above 36, with only 3 respondents (1%) being 18 and younger. A large majority of the sample consisted of persons who were married (73%), about a fifth were single (19%), and the rest were divorced or widowed. Respondents with no formal education made up almost half of the sample (46%), while 10% had tertiary or higher, and 12% had secondary education. People with primary education or graduates of Islamic school accounted for 16% in each category.



ANNEX B: GRAPHS

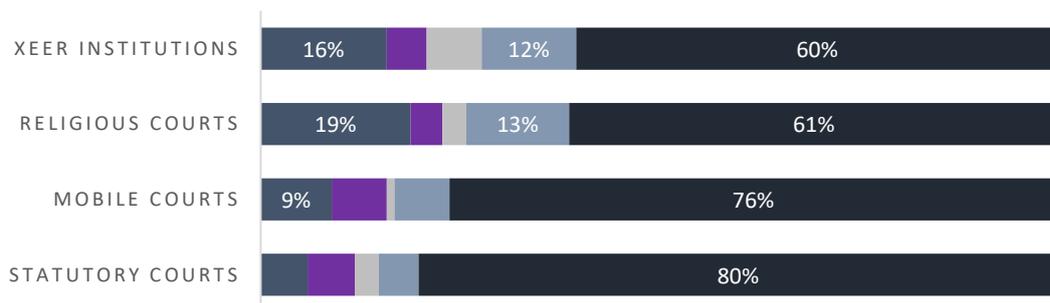
TAKING INTO ACCOUNT DIRECT COSTS (FEES), ANY UNOFFICIAL COSTS, TRAVEL AND ACCOMMODATION COSTS, ETC., PLEASE RANK THE JUSTICE INSTITUTIONS FROM MOST AFFORDABLE TO LEAST AFFORDABLE IN TERMS OF SETTLING A DISPUTE, WHERE 1 IS THE MOST AFFORDABLE AND 5 IS THE



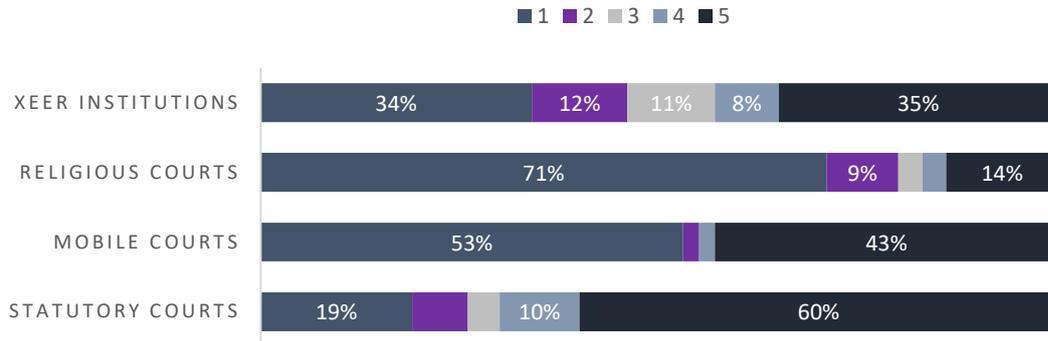
TAKING INTO ACCOUNT DIRECT COSTS (FEES), ANY UNOFFICIAL COSTS, TRAVEL AND ACCOMMODATION COSTS, ETC. ... (AWDAL)



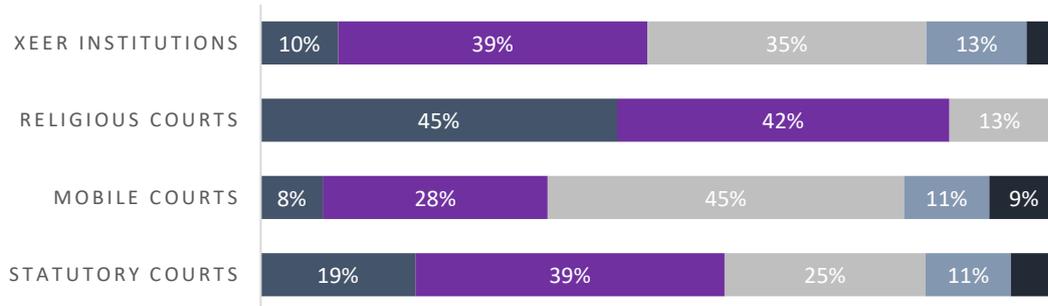
TAKING INTO ACCOUNT DIRECT COSTS (FEES), ANY UNOFFICIAL COSTS, TRAVEL AND ACCOMMODATION COSTS, ETC. ... (TOGDHEER)



TAKING INTO ACCOUNT DIRECT COSTS (FEES), ANY UNOFFICIAL COSTS, TRAVEL AND ACCOMMODATION COSTS, ETC. ... (SOOL)



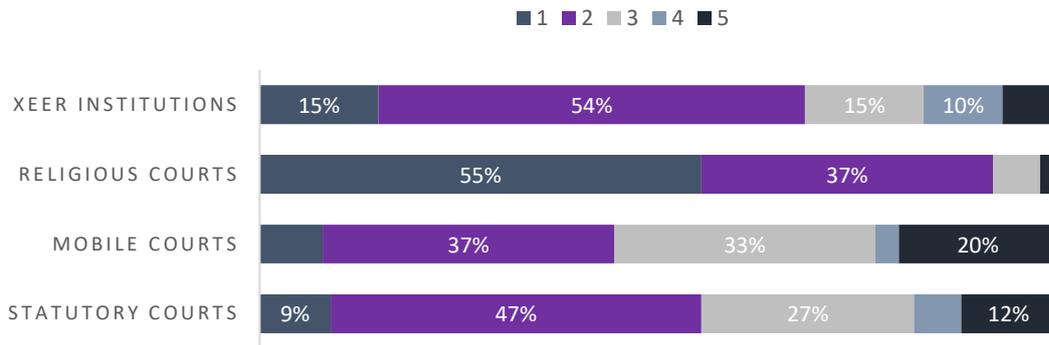
BASED ON YOUR OWN EXPERIENCE OR BASED ON WHAT YOU HEARD FROM OTHER PEOPLE, HOW WOULD YOU RATE QUALITY OF SERVICES PROVIDED BY THE FOLLOWING JUSTICE INSTITUTIONS, WHERE 1 IS EXCELLENT AND 5 IS VERY POOR? (MARODIJEEX)



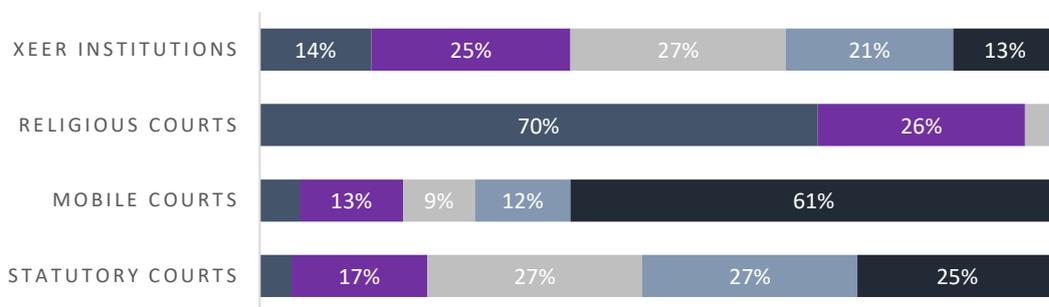
BASED ON YOUR OWN EXPERIENCE OR BASED ON WHAT YOU HEARD FROM OTHER PEOPLE, ... (AWDAL)



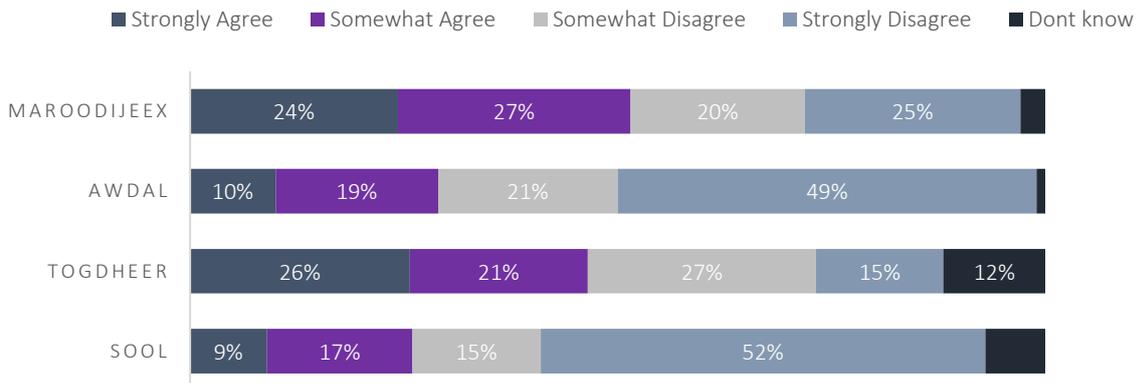
BASED ON YOUR OWN EXPERIENCE OR BASED ON WHAT YOU HEARD FROM OTHER PEOPLE, ... (TOGDHEER)



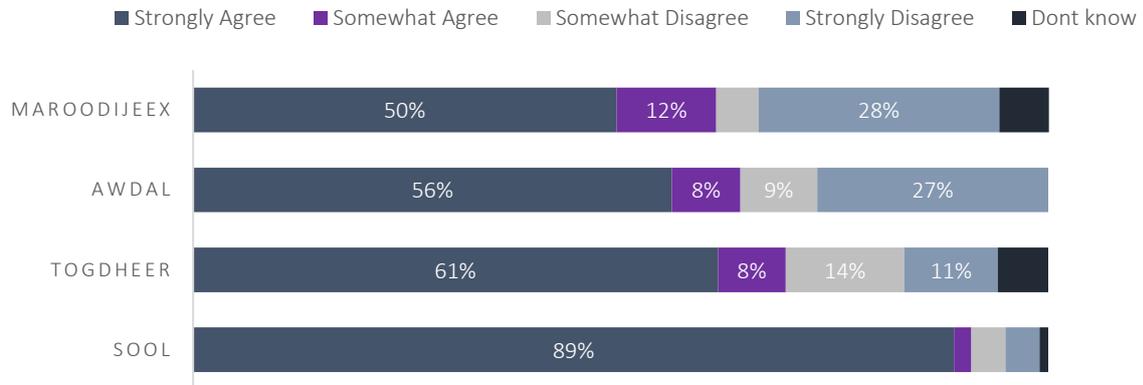
BASED ON YOUR OWN EXPERIENCE OR BASED ON WHAT YOU HEARD FROM OTHER PEOPLE, ... (SOOL)



TO WHAT EXTENT DO YOU AGREE THAT STATUTORY COURTS PROVIDE JUDGMENTS THAT ARE FREE FROM ANY UNDUE INFLUENCE (CORRUPTION, THREATS, PRESSURE, ETC.)?



TO WHAT EXTENT DO YOU AGREE THAT RELIGIOUS COURTS PROVIDE JUDGMENTS THAT ARE FREE FROM ANY UNDUE INFLUENCE (CORRUPTION, THREATS, PRESSURE, ETC.)?



TO WHAT EXTENT DO YOU AGREE THAT VICTIMS OF SGBV ARE ABLE TO RECEIVE A FAIR TRIAL?

