



# ACCESS TO JUSTICE ASSESSMENT TOOL

## BASELINE STUDY: SOMALIA

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### KEY POINTS

- **Legal Pluralism:** statutory, customary, and religious legal frameworks coexist and are intertwined
- Shari’ah forms the basis of both statutory and customary law and enjoys high legitimacy, but is also a point of political contention
- Elders are the principal justice providers
- Most court officials have not been trained in Somali law and follow customary procedure in practice
- Most justice users can neither afford nor otherwise access qualified advice or representation
- Al Shabaab courts profit from endemic corruption and offer swift enforcement

The Somali justice sector is made up of multiple legal and institutional frameworks. Through civil war and insurgency, clan elders and, to a lesser extent, ulama (religious scholars) have stepped in to fill the void left by the breakdown of statutory institutions and Somalia’s central government.

The challenges for nascent statutory and predominant customary institutions are plenty. Both are rooted in the shari’ah, which commands strong popular legitimacy, but courts rarely apply laws and judges are seldom trained. Advice and representation of quality are scarce, survivors of sexual violence often without access to rights-based justice provision, and high-value land disputes remain politicized and subject to – sometimes violent – outside interference.

Coupled with widespread corruption, this leaves space for Al Shabaab courts to step in and provide justice services that do not differ in procedure but ensure enforcement of verdicts swiftly and without interference.

### RECOMMENDATIONS & UPTAKE\*

#### LEGAL FRAMEWORK

1. Leverage *legitimacy of shari’ah*

#### LEGAL KNOWLEDGE

2. Support *coherent training for justice actors*

#### ADVICE & REPRESENTATION

3. Strengthen *legal aid, especially for women*

#### ACCESS TO JUSTICE

4. Establish *alternative entry points for disadvantaged justice seekers*

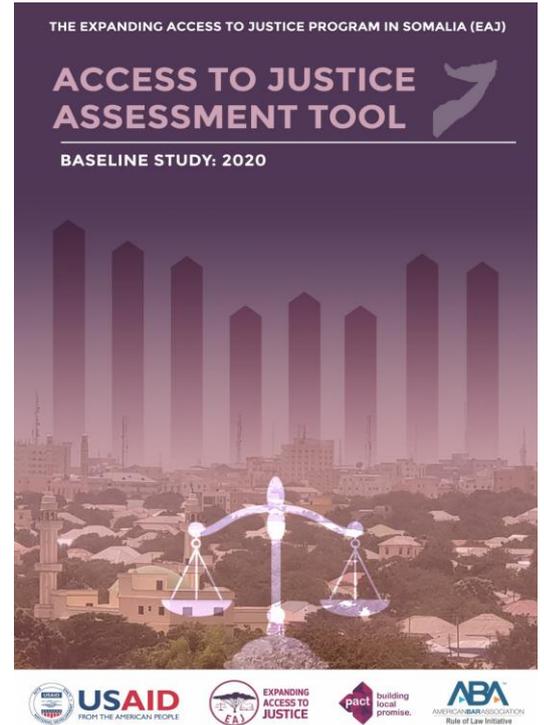
#### FAIR PROCEDURE

5. Strengthen *courts’ efficacy and integrity*

#### ENFORCEMENT

6. Coordinate with *security sector reform programs*

\*see page 8 for further elaboration and detail on recommendations and uptake



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

- 1) Legal and Policy Framework
- 2) Legal Knowledge and Confidence
- 3) Citizens can obtain Advice and Representation
- 4) Citizens can access Justice Forums
- 5) Justice Mechanisms address Grievances Efficiently and Fairly
- 6) Solutions are Enforceable

### MAIN REPORT

This Brief is based on 464 household surveys, 64 Key Informant Interviews, 16 Focus Group Discussions, and 16 Most Significant Change Studies, as well as a comprehensive literature review.

The main report as well as other EAJ Knowledge Products are available at:

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

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

– Youth activist,  
female, Hamar Jabjab

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

– Focus group  
participant, female,  
Wadajir

*“The Shari’ah is the basis for all of these legal norms and rules.”*

– Lawyer, male,  
Baidoa

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

– Religious leader,  
male, Hamar Jabjab

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

– Traditional elder,  
Kismayo

## LEGAL FRAMEWORK

In Somalia, multiple legal frameworks co-exist – not in parallel to one another but drawing on one another in concepts and collaborating with each other in practice. The shari’ah commands great social authority due to the cultural centrality of Islam. It is the constitutional and incontrovertible source of all statutory law. Customary *xeer* invokes shari’ah as its main point of reference.

Ulama, however, seldom act as direct justice providers. Statutory courts, elders, and Al Shabaab courts alike also rarely apply direct articles of law from any framework. Instead, they mostly follow the shari’ah-inspired procedure that requires at least two reputable witnesses to substantiate a case and either impose or deliberate verdicts.

### CUSTOMARY JUSTICE (XEER)

*Xeer* denotes a common framework for many localized and frequently renegotiated agreements among clans, mostly bilateral, that regulate access to local resources for guests, as well as dispute settlement and compensation procedures between two clans. The *xeer* is deeply interwoven with the tradition of agro-pastoralist livelihoods. It thus takes on forms among the historically nomadic pastoralist groups in arid and semi-arid central and northern regions different from its practice among the long-standing sedentary farmers in the riverine south.

Following state collapse in 1991, the *xeer* and the elders who negotiate and apply it became the principal justice providers and local socio-political authorities. This extended the elected clan leaders’ remit into justice areas for which their consensus- and compensation-oriented approaches are, avowedly, ill-suited. Yet, in the absence of a legitimate and accountable state monopoly of violence, elders remain the first port of call for issues such as sexual and gender-based violence (SGBV) to prevent an escalation of armed inter-clan violence.

The prolonged conflict has also halted the *xeer* review process, which traditionally takes place in peacetime meetings of adult male clan members. In some towns, justice

sector reform efforts are working with elder councils to integrate women’s and youth representatives as well as members of minority groups to review and document the local *xeer* for their reference and to account for large-scale displacement.

This is of particular importance as women can traditionally only access elder councils via male representatives and can find their integrity infringed upon as they are forced to marry their abuser or be married as appeasement to ensure the clan’s peace and reputation. Minority groups have also historically suffered from the *xeer*’s roots in clan, and therefore clan power – the politicization of which had precipitated Somalia’s civil war and inflicted lasting harm upon many elders’ reputation.<sup>ii</sup>

### SHARI’AH<sup>iii</sup>

Islam has a long history in Somalia, both politically as Sufi orders resisted colonial rule and juridically as a stronghold of Shafi’i jurisprudence. The Shafi’i school remains dominant, although Hanbali teachings have been growing as influence from Gulf states has increased since the 1980s. Today, especially Al Shabaab propagates Hanbali jurisprudence, whilst most other ulama remain committed to the Shafi’i school.

This has implications for the potential of shari’ah reform, which is of relevance inasmuch as, rather than applied directly, shari’ah forms the basis of much of customary and all of statutory law in Somalia. Different interpretations allow or restrict the usage of different jurisprudential tools for the reinterpretation of holy scriptures to form opinions on shari’ah (*fiqh* and *ijtihad*).

The EAJ Program has published a separate report on the role of shari’ah in Somalia and on perspectives towards its reform. A second report is forthcoming. For the purposes of this assessment, it is important to note that shari’ah commands immense social legitimacy in Somalia – far more than the relatively foreign statutory institutions – and encompasses rights-based provisions that contrast with some of the more rights-abrogating practices of the *xeer*.

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

– Youth activist, female, Hamar Jabjab

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

– Focus group participant, female, Hodan

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

– Focus group participant, male, Dolow

*“Elders cannot get involved with land disputes because of the riskiness and potential loss of life to them.”*

– Focus group participant, female, Wadajir

*“If someone rapes or sexually abuses a girl from a major clan, disputes automatically arise.”*

– Religious leader, male, Xudur

*“The perpetrator always wants to go to the elders, but the victim does not want that.”*

– Medical practitioner, female, Weydow

## STATUTORY LAW

This study uses the term ‘statutory’ to distinguish this framework from customary and shari’ah ones. Previous studies have often employed the distinction between ‘formal’ and ‘informal,’ which eschews both the extent to which customary procedures are formalized and the extent to which statutory courts apply ‘informal’ norms instead of Somalia’s outdated and new laws.

These laws are a legacy of British and Italian colonization – foreign to many the normative underpinnings of Somali culture and internally inconsistent because they are now a fusion of mutually incompatible civil law and common law components. Much of Somalia’s legislation has not been reviewed since prior to the coup that elevated the military government to power in 1969.

Beyond up-to-date and internally consistent legislation, current statutory courts in Somalia lack clear mandates, guidelines, judges and other court officials trained in Somali law, furniture, legal reference material, and institutional independence.

The courts are limited to urban centers under government control. Judges are often either madrasa teachers in more remote towns or appointed based on kinship, as the judiciary is part of Somalia’s clan-based power-sharing agreement that ended the civil war and paved the way for federalist state building.

## AL SHABAAB

Al Shabaab courts are outliers only inasmuch as they do not cooperate with other institutions and outright oppose statutory courts, but, in many places, they do recognize the authority of local elders and will refuse cases that have already been settled through customary pathways. Otherwise, Al Shabaab operates as part of its extensive shadow government both mobile and stationary courts, often just outside Somalia’s main cities. These are well-known to and frequently used by the local populace – in urban communities by choice, in many rural communities as the only justice provider available.<sup>iv</sup>

## LAND DISPUTES

As civil war eviscerated Somalia’s central government institutions, land registries and cadaster offices were destroyed as well. One refugee from Mogadishu took a repository of land titles with him at the onset of the fighting and today makes copies available for a charge. Otherwise, no operational system exists to verify land claims. This leaves space for forgery, duplication, land grabbing, and land passed on for political patronage.

Somalia’s Provisional Constitution Article 43 explicitly notes that land is Somalia’s primary resource and the source of its people’s livelihoods. Coupled with lucrative land-based resources, rapid urbanization that invites land prospecting, and competing customary norms on land ownership that leave room for interpretation, land disputes are among the most high-value, politicized, and potentially conflict-laden of cases.

As if to illustrate this point, the newly elected President of South West State immediately ordered all courts to stop working on land disputes. He had come to power in a controversial election, and land disputes threaten to deepen inter-communal fissures. Because courts often lack independence and are often accused of corruption, many land disputes are handled by Al Shabaab courts.

## SEXUAL & GENDER-BASED VIOLENCE

Customary justice institutions are not primarily concerned with the protection of individual rights. Yet, absent other guarantees, elders remain the primary justice providers in cases of SGBV.

In many urban settings, medical practitioners are first responders, but even this step can be discouraged by intense social pressure. To avoid stigmatization and ostracization as well as potential retaliation, most SGBV cases are brought to elders – not by choice of victims, but by their families.

This favors perpetrators. The payment of compensation – to the victim’s family – falls to their families and in cases of gang rape can be spread across multiple perpetrators.

*“We rarely see updates about proceedings in courts on Jubaland TV. The majority of the media are not concerned about legal education for the public.”*

– Focus group participant, female, Kismayo

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

– Youth representative, male, Baidoa

*“Most of them do not have enough time to search and obtain copies [of laws], because they are struggling to provide a livelihood for their families.”*

– Focus group participant, male, Wadajir

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

– NGO staff, male, Baidoa

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

– Focus group participant, male, Dolow

## LEGAL KNOWLEDGE

*“The statutory court follows written Somali laws and records the cases. The traditional leaders follow unwritten traditions, which vary from clan to clan. The shari’ah rules are quoted from the Islamic tradition and books. The average person does not know any of these legal norms.”*

– Focus group participant, female, Dolow

## USERS

Most justice users – community members – have a general idea of what each branch of the justice system does, because they understand the social role of elders and ulama, as well as the political involvement of courts. Beyond this, few users know or understand any of the systems in any depth.

The linkage between users and justice providers therefore remains mostly indirect. Most liaise with institutions via influential or knowledgeable community leaders. These include elders, ulama, and civil society members, but most of all family members wherever possible.

Information is hard to come by. Most universities are private, charge fees, and offer education of varying standards, sometimes with curricula taken from other countries. Libraries are still few and far between, even courts lack legal reference material, and literacy is not yet ubiquitous.

## PRACTITIONERS

This means that even justice actors who have enjoyed a university education are by no means trained in Somali law. No standardized examinations or criteria for appointments exist. Justice users therefore cannot anticipate what procedures or quality they are likely to meet when engaging with courts, lawyers, or legal aid organizations.

Absent a common education and standardized referral mechanisms, most collaboration between justice actors occurs *ad hoc*, based on direct local – often personal – relationships. In particular with land cases, elders and ulama interviewed for the study noted that statutory courts are unlikely to involve them – not because the

caseload is light or cooperation would not add to the efficacy of the process, but because of the prospect of official and unofficial payments that increase with the value of cases.

## NON-STATUTORY FRAMEWORKS

For elders and ulama, their knowledge of *xeer* and shari’ah is part of their claim to social authority. An interviewed lawyer reported that he had attempted to learn more about local *xeer* but struggled to learn all the various individual agreements.

This stands in contrast with the fledging local *xeer* documentation processes. These are in part driven by elders frustrated with the disparity of knowledge and understanding among their own, which can bog down the early stages of deliberation – as elders must first agree on applicable *xeer* as well as precedence, which forms an important part of its adjudication.

By contrast to the exclusive transfer of the *xeer* among elders, most Somalis are taught about Islam in madrassas, often before they enter primary school. Yet, the texts are taught in the original script, and command of the Arabic language, let alone literacy, is not universal. Aside from the depth and accuracy of the teaching, this leaves many justice users dependent on teachers, ulama, and elders for interpretations of Holy Scripture.

## ADVICE & REPRESENTATION

The limits to statutory legal knowledge extend to those actors who provide advice and representation: quality, efficacy, and availability are by no means assured or in any manner controlled. This entrenches power asymmetries as those with better access to education and able to afford more well-informed and well-connected legal support stand even greater chances against those unable to afford such aid and likely less familiar with or influential within courts.

It also further entrenches elders and Al Shabaab as alternatives to courts. Neither customary nor shari’ah proceedings require advice or representation. Both interrogate

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

- Youth representative, male, Baidoa

*“The traditional elders and the religious leaders work together as the council of elders. You do not need to have legal advice or representation. You will defend yourself openly and will be listened to by the practitioners. The judgement will be based on evidence and witnesses. There is no fear of threats or attacks. Everybody talks how he wants to defend himself.”*

- Focus group participant, male, Baidoa

*“Affordability determines access, as do influence and connections to the powerful.”*

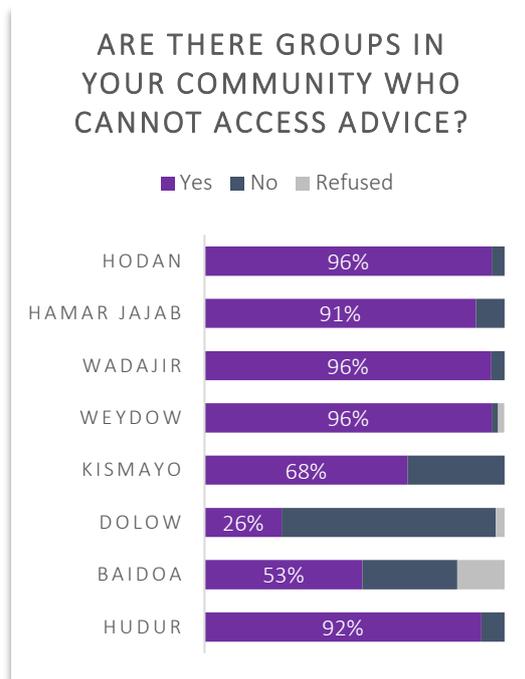
- Focus group participant, female, Baidoa

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

- Focus group participant, female, Hamar Jabjab

witnesses and leave it to presiding arbiters or jurors to render the final verdict. Justice seekers can appeal directly, in which case a new panel of elders reconducts the trial. Al Shabaab does not allow for appeals.

As with access to information, many justice users rely on elders or family members for advice and support in navigating the justice chain. This further disadvantages members of marginalized and political minority groups, whose elders or family members can rarely parallel the influence of opposing parties or call upon kinship ties within institutions.



Civil society groups and legal aid organizations proffer a potentially affordable and accessible source of support. Yet, NGOs and legal aid organizations do not exist outside Somalia’s power dynamics or have access to legal knowledge different from most citizens. Organizations can be coopted or lack professionalism and thus would equally require oversight and standardized qualifications.

### ACCESS TO JUSTICE INSTITUTIONS

*“You need to have enough money, power, and a strong clan.”*

- Focus group participant, female, Hodan

The importance of clan and group extends to access to justice institutions – albeit not

### SUPPORT FOR FEMALE JUSTICE SEEKERS

Traditionally, women require male representation to access elder councils with grievances. They are also more likely to be dismissed or face abuse from law enforcement and court officials, especially when reporting domestic violence and sexual assaults. SGBV survivors often already face threats and intimidation when seeking advice, dissuading them from seeking redress at the very onset. In other words, women stand to gain the most from effective legal support.

directly. The major barrier for justice users who wish to approach statutory courts is cost. Respondents especially in Mogadishu stressed that proceedings at courts start with payments, continue with payments, and will only be enforced against more payments. The majority of justice users is unlikely to be able to distinguish between official and unofficial payments.

The study found that in each location clan belonging and average monthly household income were significantly and moderately correlated. Alongside direct clannism, which allows members of more powerful clans or families to work through influential relatives or intimidation, members of local majority clans are also more likely to have access to economic opportunity.

Not only does this access enable its beneficiaries to afford better advice and representation, as well as to pay the many expenses that accompany court cases. Such income sources and social safety nets of better-off families allow justice users to attend court as needed.

Households who depend on a single income, casual daily labor, or agro-pastoralism cannot afford to spend days at court – which are reportedly often necessary for a court to even consider opening a case. In some districts of Mogadishu, local communities and administrations have begun pooling money for mutual support (*deriseyn*), but the time lost on lengthy court proceedings raises the barriers for rural communities even higher.

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

- Lawyer, male, Hodan

“[Before Al Shabaab courts, t]here are no exclusionary factors like gender, minority, or economic status, clan power, or the influence of government officials.”

- Focus group participant, female, Wadajir

“Powerful clans undermine weak clans. A powerful person undermines the weak person.”

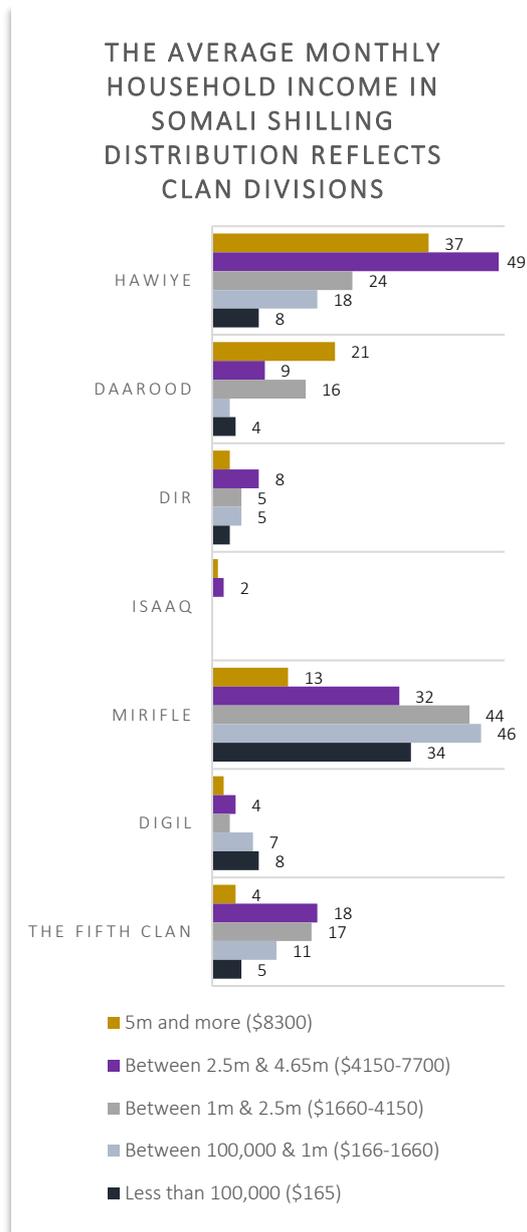
- Focus group participant, male, Weydow

“You cannot expect a fair outcome from a corrupt judge.”

- Focus group participant, male, Baidoa

“The fairest of these norms is the shari’ah. Everyone is happy with shari’ah, but people do not apply it most times.”

- Focus group participant, male, Hamar Jabjab



### JUSTICE, FREE OF CHARGE

In an environment of high unemployment and widespread poverty, cost barriers affect large swathes of the population. Another reason for the general preference for elders and Al Shabaab is thus that their services come free of charge, as do those of ulama for family-related (domestic) cases.

Elders may need to travel to reach places. They require refreshments and, in some cases, accommodation. These expenses are summarized as *Xaqu Fadhi* (the right of the sitting) and usually born by whichever party initiates the case.

However, elders’ need to travel also touches upon their security. Most inter-communal conflicts and land disputes that

require the intervention of higher strata of clan elders’ originate with herder clashes over pasture – often in rural areas beyond government-control, but not beyond that of Al Shabaab. As elder intervention becomes hazardous, access for rural communities to elders becomes scarcer.

In such areas, Al Shabaab courts are often the easiest option for disputes that local elders cannot solve. One of the reasons that many urban residents also call upon Al Shabaab courts is that beyond logistical expenses – transport, food, and, if necessary, accommodation to travel to the court for the process – their services are free of charge. And because processes are often quick, justice users and their households lose less valuable time.

### FAIR PROCEDURE

The corruption implicit in reports of unofficial payments throughout court procedures taint perceptions of their fairness and efficiency. Most respondents for this study construed fairness as equality before rules and institutions, and some added that these should be aligned with shari’ah and oriented towards consensus.

Even though shari’ah forms the official basis for statutory law, court processes seldom apply them, users seldom know them, and respondents ranked statutory courts as the least fair institution.

As a result, Al Shabaab can draw both on the legitimacy that their nominal commitment to shari’ah bestows and on grievances that endemic corruption or interference by powerful individuals in court processes entail.

Yet, their processes can also be deeply unfair, especially to women. More than one case study cited tells of cases in which a husband accused of domestic violence or in disagreement with a divorce called upon Al Shabaab courts to reverse government court decisions that had favored their wives, often with threats of violence towards them.

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

– Focus group participant, male, Wadajir

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

– Local NGO staff, male, Baidoa

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

– Focus group participant, female, Baidoa

“When you win, it is up to you to get it implemented by the police, [which is] not easy.”

– Focus group participant, female, Baidoa

“People comply with the judgement as if it were declared by a government authority. People cannot reject the Islamic court judgements because the Islamic courts have the power to seek, catch, and execute those who would deny the court's judgement.”

– Focus group participant, female, Baidoa

Elders are by and large seen as fair justice providers. That the importance of clan power that may skew processes as well as the strongly patriarchal *xeer* components that still disadvantage or even endanger women did not taint this perception illustrates how deeply these aspects are engrained in justice users' conceptions of justice processes.

#### PUSH-FACTOR FOR AL SHABAAB COURTS

Although elders are the main justice providers, they often refrain from engaging with land disputes, because the potential for violence puts elders at risk, and their reliance on voluntary compliance does not suffice to sway powerful interests at play in many land cases. That statutory courts are widely perceived as almost intrinsically corrupt is one of the strongest push-factors for justice seekers to call upon Al Shabaab courts, especially for land cases that require coercive enforcement.

#### ENFORCEMENT

Statutory courts command the coercive power of law enforcement and security forces, at least nominally. Without institutional independence, however, this capacity is also contingent upon the parties' influence or ability to pay. Respondents in all locations stressed that at the point of enforcement, additional payments – in Mogadishu: “enforcement tax” – are needed to ensure that decisions are enforced.

Moreover, Somali security forces are not cohesive units. Many have retained their clan allegiances, and some existing clan militias are strong enough to sidestep law enforcement to implement decisions – or prevent their implementation.

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

– Focus group participant, male, Xudur

This is not to say that all justice actors are implicated in such practices, but they are sufficiently common and widespread to constitute a systemic pattern. More influential or affluent parties can avoid

enforcement, whilst the impoverished or marginalized may not see verdicts in their favor enforced – or turned against them by law enforcement and clan militia.

Customary and religious institutions rely on their social authority for enforcement. Elders require parties to vow publicly that they will abide by rulings before proceedings begin, and ulama may only accept cases brought to them by mutual consent.

However, the politicization of clan over the past decades and the proliferation of clan militias, along with displacement and urbanized youth, have eroded some of elders' authority. Rulings that do not favor influential parties may simply be ignored.

Where collaboration is strong among justice actors, law enforcement may be available to support the implementation of elders' verdicts. In places that boast high social cohesion, such as the encircled town of Xudur, enforcement poses less of a problem as elders across sub-clans cooperate and stand in good terms with both district and regional administrations.

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

– Focus group participant, male, Xudur

#### PULL-FACTOR FOR AL SHABAAB COURTS

Al Shabaab's capacity for enforcement stands in stark contrast to all other institutions and constitutes the major point of attraction for their courts. The group can utilize both its direct military and intelligence prowess and its ability to pay otherwise unconnected youth or other individuals for singular assignments to enforce their decisions swiftly with threats and – if threats are unheeded – application of possibly lethal force. The group's decisions are final and enforced, a contrast to drawn-out proceedings that are often without consequences.

## RECOMMENDATIONS & UPTAKE

### LEGAL FRAMEWORK

#### *Leverage legitimacy of shari'ah*

All of Somalia's pluralist frameworks are anchored in the shari'ah, which also enjoys strong cultural legitimacy. It also provides an entry point for more rights-based justice than especially women currently meet in customary institutions. The EAJ Program has produced detailed research into the role and potential of the shari'ah in Somalia, as well as guidance on shari'ah interpretations that support access to justice for women and minority groups. This guidance has been rolled out via media and workshops and informs EAJ's approach to Women, Peace & Security.

### LEGAL KNOWLEDGE

#### *Support coherent training for justice actors*

Few actors operating in Somalia's statutory justice chain are trained in the law they are mandated to apply. Consequently, many follow customary and shari'ah-informed procedures. The EAJ Program is working with two Mogadishu-based universities to improve and standardize justice education, as well as enhance universities' legal aid services. It has also begun public awareness campaigns via media platforms and is currently drafting a 'pocket book' for justice seekers alongside a 'justice promoter' model to help users navigate the pluralist institutions.

### ADVICE & REPRESENTATION

#### *Strengthen legal aid, especially for women*

In a highly politicized justice environment that lacks oversight and available information, advice and, if possible, representation are crucial, especially for those with limited access or those disadvantaged in justice processes. The EAJ Program supports local partners in rolling out legal aid education, designed to combine with the 'justice promoter' model to enhance local access to qualified advice. This approach is guided by EAJ's focus on Women, Peace, and Security to take into consideration women's historical marginalization in justice forums and their vulnerability to SGBV.

### ACCESS TO JUSTICE

#### *Establish alternative entry points for disadvantaged justice seekers*

Marginalized, poor, and otherwise vulnerable justice seekers need support to access existing institutions with fair prospects. The EAJ Program has established a Case Review Team that assists local partners in engaging with SGBV cases, including training on survivor-centered practices and a support hotline, and works towards improved referral pathways and medical support. The Program also plans to implement Land Accountability Platforms that facilitate dialogue and accountability between communities and justice actors.

### FAIR PROCEDURE

#### *Strengthen courts' efficacy and integrity*

The reputation of courts in most areas remains colored by long processes, unpredictable outcomes, unofficial payments, and lack of accountability. The EAJ Program is supporting a model court in Wadajir district – building on strong extant public infrastructure – to provide a reference point to justice actors and users alike. The Program is also in the process of establishment court user committees. Linked with EAJ's work on shari'ah to anchor rights-based justice, the user committees aim to hold justice actors to account and strengthen public confidence.

### ENFORCEMENT

#### *Coordinate with security sector reform programs*

The main points of criticism towards corruption and political (often clannist) interference in justice processes extends to law enforcement. The EAJ Program is focused on strengthening the statutory justice chain to provide accessible, fair, and accountable justice services. The Program engages enforcement indirectly by working closely with security sector reform, stabilization, and governance programs on information sharing and programmatic coordination.

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<sup>i</sup> Data for this study was collected by Transparency Solutions. The author oversaw the study as Expert Consultant with the American Bar Association for the Expanding Access to Justice Program, building on extensive prior work by Research Team Leader Tanja Chopra and the ABA team on the conceptualization and operationalization for study design of the ABA-ROLI AJAT components. The author thanks the ABA and EAJ teams for their support and valuable input, and especially Tanja Chopra and Sagal Ali for their support from inception to final reporting.

<sup>ii</sup> For further background on DRC/DDG's past engagement with Somali Customary Justice Institutions, see: DDG (forthcoming). *The Time is Now: Strengthening Police Accountability and Justice in Somalia- An Implementation Strategy Review*. Danish Demining Group. Available via: <https://somhub.org> & Robin Mydlak (2019). *Engagement of Somali Customary Institutions in Justice Programs - Establishing a Knowledge Base*, Forcier & Danish Demining Group.; The EAJ Program has also published a recent evaluation of various justice sector reform initiatives that have engaged with elders as *Alternative Dispute Resolution* forums. See: Joakim Gundel (2020). *Alternative Dispute Resolution Initiatives in Somalia*. Expanding Access to Justice Program, American Bar Association & Pact Kenya.

<sup>iii</sup> The EAJ Program has published a comprehensive report on the shari'ah, the role of political and juridical Islam in Somalia, and potential pathways for reform that includes background on the different schools of jurisprudence (*madhhab*), the various elements of reform (*fiqh/ijtihad*), and examples from other states with shari'ah-inspired legal frameworks. See: 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.

<sup>iv</sup> For the following box on land disputes, the EAJ Program has published a study on pathways for justice in Mogadishu, detailing the political economy of land, its role within justice institutions, and the factors that retain a role for Al Shabaab courts as alternative points of access. See: Joakim Gundel (2020). *Pathways and Institutions for Resolving Land Disputes in Mogadishu*. Expanding Access to Justice Program, American Bar Association & Pact Kenya.

<sup>v</sup> Clans are stratified into different sub-groups, from clan families that span territories to the smallest local unit that can group together and pay *mag* (or *diya*, blood money). See: Robin Mydlak (2020). *The Clan System and Customary Justice in Somalia – A Brief Introduction*. Danish Demining Group.