

# THE EXPANDING ACCESS TO JUSTICE PROGRAM IN SOMALIA (EAJ)

# ACCESS TO JUSTICE ASSESSMENT TOOL: 2020

## SOMALIA BASELINE STUDY BRIEF

### 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.

### PURPOSE OF ASSESSMENT

In order to support access to justice at the local level, in-depth understanding of the plural justice landscape and the perspectives and behavior of justice seekers is essential. The Access to Justice Assessment Tool: Baseline Study focuses on the reality of justice services by investigating perspectives and experiences of individuals, groups, and those who assist them in searching for redress for their grievances or conflicts.

### BASELINE STUDY OVERVIEW

This study 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. Data was collected by the Somaliland development firm Transparency Solutions in eight districts across two federal member states and Benadir region:

#### Benadir

- Hodan
- Hamar Jabjab
- Wadajir
- Weydow

#### Jubaland State of Somalia

- Kismayo
- Dolow

#### South West State

- Baidoa
- Xudur

### KEY FINDINGS

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.



Male 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.



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## SUMMARY OF KEY FINDINGS



### LEGAL FRAMEWORK

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



### LEGAL KNOWLEDGE

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



### ADVICE & REPRESENTATION

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



### ACCESS TO JUSTICE

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



### FAIR PROCEDURE

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



### ENFORCEABLE SOLUTIONS

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



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