

Towards Inclusive Justice: Women, Peace and Security and Access to Justice in Newly and Recently Recovered Areas

Inception Report

January 2021



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Acronyms

ADR:	Alternative Dispute Resolution
BCR:	Building Confidence in Recovery
CAFs:	Community Action Forums
CDRH:	Community Dispute Resolution House
CBOs:	Community Based Organisations
CSOs:	Civil Society Organisations
ERI:	Early Recovery Initiative
FGDs:	Focus Group discussions
KIIs:	Key Informant Interviews
IDP:	Internally Displaced Person
LAO:	Legal Aid Organisation
MOJ:	Ministry of Justice
NAP:	National Action Plan (related to Women, Peace and Security)
NRRA:	Newly and Recently Recovered Areas
NGOs:	Non-Governmental Organisations
SGBV:	Sexual and Gender-based Violence
SWS:	South West State
TDR:	Traditional Dispute Resolution
WPS:	Women, Peace and Security

Executive Summary

Experiences of a broken justice system have been linked with a resurgence of conflict and reversal of security gains.¹ Across Somalia, land and property disputes, inter and intra communal grievances, and clashes over electoral quotas can be sensitive triggers of violence. Similar drivers of conflict can also be observed in Newly and Recently Recovered Areas (NRRAs), albeit disputes of this nature can present serious setbacks to hard-won political and security achievements and plunge local communities back into conflict. Many conflicts have social roots, and their consequences play out in the everyday experiences of Somalis. Some grievances are decades, if not centuries old, and can be steeped in the memory of a community becoming multi-generational experiences, such as the case of minority groups. Others, most notably sexual and gender based violence (SGBV), manifest themselves in forms of oppression that systematically target a particular social group such as women. A large section of Somali citizens experience multiple layers of violence and stigmatisation that are often difficult to disentangle. Political uncertainty and insecurity can exacerbate already precarious conditions.

This research advocates that **inclusive justice** can mitigate the social and political roots and effects of local conflicts. To understand what inclusive justice entails and how diverse groups of people conceive of inclusive justice, this research embarks on an examination of the current state of access and delivery of justice from the vantage points of women and members of other disadvantaged groups like minorities and internally displaced persons (IDPs). For women an inclusive form of justice requires engaging women in decision-making roles within the security and justice sectors. A more inclusive sphere of justice can improve social cohesion and harmony, thereby keeping in line with the broader objectives of security and stabilisation in NRRAs.

In Somalia, access to justice is inherently gendered. There is unevenness in how women and men access and benefit from existing formal and traditional justice institutions. Research participants underscored that limited educational opportunities, financial and economic hardships, gender-based discrimination in employment and access to labour market are inseparable from access to political participation and decision-making roles. Greater effort and suitable strategies of intervention can ensure that women can have greater access to justice, rise to decision-making roles within judicial and security institutions, and ultimately benefit from safeguarding the rights of diverse female citizens, including minorities and displaced women.

The seminal Women, Peace and Security (WPS) agenda is an international normative framework that foregrounds all processes related to post-conflict reconstruction such as state building, stabilisation and security that are inherently gendered processes and advocates for greater involvement of women in all decision-making roles, including in this context justice. Inclusive justice, security and protection, safeguarding the rights of women are all crucial to achieving the objectives of WPS. Accounting for class and clan membership, in addition to gender, the research highlights that access to justice is uneven and often exclusionary. This research also laments that it is vital to expand access to inclusive justice and to address broader cultural views that restrict women's access to

¹ Saferworld report 2020.

diverse justice systems. Equally important, and even more challenging, is ensuring that justice can be delivered. In line of a holistic gendered analysis, the research's key findings and suggestions for recommendations aims to engage influential men in key roles within politics, justice and security sectors who can act as partners in shifting communal attitudes about women and other disadvantaged groups' access and attainment of justice.

In the Somali context, a key unexplored area is linking the objectives of the WPS agenda with improving access to justice while simultaneously continuing to support women's inclusion in decision making roles. This report underlines that the WPS agenda can guide efforts to improve women's access to various justice institutions, empower them to take leading roles in getting their grievances and cases effectively resolved. This is a potential area of intervention that calls for a rethinking of how international frameworks like the WPS agenda can enable women's access to justice and ensure that justice is equitably delivered for all women and other vulnerable groups.

Noting that today's Somali justice landscape is diverse and often intersects, this report examines perceptions and limitations in access to both formal and traditional justice systems and augments understanding about persisting challenges related to the delivery of justice. Two locations have been identified for mapping and conducting field research. These are Afgooye and Baidoa located in South West State (SWS). Both locations were selected due to their status as NRRAs, albeit at different stages of recovery. Al-Shabaab (aS) seized control of Baidoa in January 2009 and controlled the strategic city until February 2012 when Ethiopian and Transitional Federal Government (TFG) recaptured it. The African Union Mission in Somalia (AMISOM) replaced the Ethiopian forces in May 2012. In November 2014, the Interim South West Administration was formed. Afgooye is a town in Lower Shabelle region and the third largest city in SWS. By 2008, aS controlled Lower Shabelle when it set up Shari'a Courts that helped resolve decades-old conflicts over land. In May 2012, Afgooye was recaptured from aS, though the militant organisation continues to be omnipresent in the town. It still maintains influence and has an ability to attack a weak interim district administration in Afgooye, albeit less frequently now. Fear of aS retribution lingers among some of the local population; aS reportedly has cells in Afgooye and the surrounding areas. Research in these two locations allows for a comparative analysis of how stabilisation and state building shape access and delivery of justice, particularly for disadvantaged groups including minority women.

This research was commissioned on behalf of the British Embassy Mogadishu (BEM) by Albany Associates and Kasmodev as the research implementing partner for this pilot project that focuses on Women, Peace and Security. This research was conducted in October 2020 and completed in November 2020. The pilot project will inform and make recommendations for HMG programming including the Conflict, Stability & Security Fund (CSSF) Early Recovery Initiative (ERI) and Building Confidence in Recovery (BCR) work within NRRAs across Somalia. Research and analysis presented in this report are based on mixed methods including literature review, key informant interviews, stakeholder interviews and focus group discussions. This report seeks to better understand and identify the needs and interests of women in NRRAs, and their role in existing stabilisation, justice and reconciliation mechanisms for longer term peacebuilding in areas where ERI/BCR operates.

Key Findings:

- The justice landscape across Somalia is characteristically diverse. The current justice systems include formal, state-provided justice in the form of district, state and federal level courts. Particular to the context of NRRAs, this research views that the formal justice system also encompasses law enforcement and the security sector such as the state and federal police as well as the Somali National Army (SNA). Additionally, there are traditional mechanisms that are equally influential in the Somali justice landscape. These include the Somali customary norms known as the Xeer as well as Islamic jurisprudence (Shari'a). There is a growing consensus around the need to distinguish between Shari'a applied by local religious figures (Ulamas) and aS-provided justice. Some still access aS paths of justice, which is perceived to be inexpensive, efficient and enforceable. Based on this research, local communities have great trust in Ulama mediated conflict and dispute resolution and perceive such decisions as legitimate, swift and just.
- Formal and traditional justice institutions should not be viewed as parallel justice systems, these different paths to justice often overlap and intersect. Somali citizens, particularly women, navigate these systems and may have claims in several justice channels simultaneously. At personal and family-levels, deciding which justice system to use depends on the nature of the case/dispute, the extent to which a particular system is accessible (or is perceived to be inaccessible), and the level of awareness about alternative mechanisms. For instance, many participants view that Ulama mediated channels are best suited for resolving domestic disputes, such as divorce inheritance issues. On the other hand, most female interviewees underscored a preference to take SGBV and high-profile cases through the formal courts.
- Local communities' experiences with political administrations, law enforcement and security may influence citizen's perceptions about formal justice and may shape their decisions to pursue justice through formal channels.
- Currently, the roles, capacity and efficacy of government in the justice sector is discussed mostly in aspirational terms. Most respondents in this research expressed a desire to see greater and more positive involvement of local and state administrations in broadening access and ensuring delivery of justice to diverse citizens. This is part of broader optimistic sentiments that speak to citizens desires to see stronger state apparatus that can greatly improve their lives. However, many interviewees acknowledge that formal courts can be expensive, inefficient and are largely inaccessible for women, minorities and IDPs.
- Stages of recovery, stabilisation and state building shape communities' perceptions and awareness of rights and their ability to access justice. Communal attitudes in areas that are further along in the stabilisation and state building trajectory tend to view the formal justice system (and the rights of women) more positively and can influence individual decisions to pursue justice through formal

channels. Moreover, the growth of civil society in contexts where there had been longer periods of security and stability, contributes to greater awareness about rights and facilitates and greater access to justice. Conversely, less secure environments in the early stages of recovery tend to lack the physical structures of justice due to continued instability. For example, the research reveals that Afgooye's judiciary currently operate from Banaadir. This absence of formal judiciary in Afgooye has led many in the community to prefer traditional systems of security provision and justice.

- The **chain of justice** can be defined as the sequential process by which citizens (male and female) pursue justice. The chain of justice can depict processes related to both formal and informal, traditional justice institutions but often refers to formal, state-led justice mechanisms. The chain of justice related to SGBV cases is well established and is recognised by Somalis interviewed for this research. The SGBV chain of justice begins with reporting in a local police station, followed by investigation and prosecution. In some cases, referrals are provided to local medical and psychosocial services to survivors of SGBV. However, the current chain of justice in NRRAs does not guarantee justice for survivors. Women are more likely to drop out of the formal justice chain thereby posing problems for the resolution of their disputes through district and state courts.
- A combination of prevalent insecurity and deeply rooted and systematic discrimination against women drive the majority of legal cases and disputes brought by women. Inclusive justice entails involving women in justice and security-related decision-making roles.
- An intersectional gender analysis of citizen's experiences with various justice systems reveals that there is a distinction between access to and delivery of justice. Both male and female informants in this research, report that they have nominal access to both formal and traditional justice systems, however, the attainment of full and equitable justice is not guaranteed. The discrimination confronted by women from minority clans reflects the ways in which access to justice is determined by several factors, not gender alone. Justice is gendered, classed and clan influenced; and having access does not guarantee delivery of justice.
- The WPS agenda is resonant in the debate about access and delivery of justice. However, this research finds that the WPS agenda, in essence, is protective but not restorative. This means that the WPS agenda prioritises the protection of women and girls from sexual and gender-based violence. However, the WPS agenda is less explicit about access and delivery of justice for women and girls. It can, though, still be instructive for mitigating the gender exclusionary nature of justice if a strong justice component is built into the Somali National Action Plan (NAP), currently underway.

A set of targeted recommendations based on extensive research to promote and strengthen the inclusion and participation of women, as well as engage key influential men, in a host of informal and formal institutions are included below. These are formulated with the objective

of making the various justice institutions work for women in ways that also harness the power of women's organisations and female powerbrokers² as well as male influencers. At the national level, it is vital to ensure a sustained engagement with the Somali NAP and encourage information sharing and exchange of ideas in order to adopt a strong justice component that can benefit women in the long term. These recommendations are broken down by activities that could be initiated in this pilot project (Short term), activities and campaigns that would be applicable beyond this and in a predominantly supporting and coordinating role (Medium term), and longer-term initiatives that this research deems important for bringing about sustainable change to women's access to justice within the areas of focus (Long term).

² Women and Men powerbrokers are defined here as individuals who acquire capital through different means: symbolic capital (educational attainment, status as traditional elder, or motherhood, etc.) In addition to economic and political capital, symbolic capital elevates women and men to positions in society and allow them to become central nodes who can connect different people and networks together.

Recommendations

Afgooye	
Short-term Recommendation	Corresponding Finding
<p>Support for traditional justice systems in Afgooye through engaging and sensitising local religious leaders (Ulamas) and clan elders on the rights of women and their access to traditional justice mechanisms. This effort can be integrated into ongoing Somalia-wide programmes that aim to bolster Alternative Dispute Resolution (ADR).³</p>	<p>The justice landscape in Somalia is characteristically diverse: it includes formal as well as traditional justice institutions. This research highlights that traditional justice mechanisms are influential particularly in NRRAs. Shari’a, applied by moderate locally based religious Ulamas, is a trusted form of justice. Additionally, Somali customary norms known as the Xeer also feature prominently in individual and community dispute resolution.</p> <p>Formal and traditional justice institutions should not be viewed as parallel justice systems, these different paths to justice often overlap and intersect. Somali citizens, particularly women, navigate various justice systems and may have claims in several justice channels simultaneously. At personal and family-levels, deciding which justice system to use depends on the nature of the case/dispute, the extent to which a particular system is accessible (or is perceived to be inaccessible), and the level of awareness about alternative mechanisms.</p> <p>For most women, Ulama-mediated Shari’a is seen to best suited for resolving domestic disputes, such as divorce inheritance issues. Yet, most women prefer to take SGBV and high-profile cases to the formal courts.</p>

³ Alternative Dispute Resolution (ADR) is used as a synonym for the historic and cultural Somali customary mediation and justice system known as the Xeer. The Danish Refugee Council as well as the United Nations Development Programme (UNDP) have supported programmes on ADR in Somaliland and SWS.

Afgooye	
Short-term Recommendation	Corresponding Finding
<p>Map and begin to support the creation of a network of female powerbrokers within relevant civil society organisations (CSOs)⁴ and community-based organisations (CBOs)⁵ that target and work on women's rights.</p>	<p>Identifying key female powerbrokers within a community is a vital step towards spreading awareness about the rights and roles of women within the various justice sectors. This begins with defining who female powerbrokers are. This research underlines some key characteristics of female powerbrokers: influential women who have access to various forms of social capital (education, status as a mother, professional experience, female elder, etc.) that enable them to connect diverse social and political networks and exert influence in a number of ways. Through this research, women who fit this profile were identified in both Afgooye and Baidoa as they are engaged in CSOs and CBOs such as the Baidoa-based Isha Human Rights Organisation (IHRO).</p>
<p>Build a network of female powerbrokers and support on initial capacity building training, for example leadership and negotiation skills, mentoring, and specifics on the justice chain.</p>	<p>Fostering networks of female powerbrokers, across districts and regions can have positive effects on women's rights and roles and can address challenges within existing justice mechanisms. This research highlights the importance of spreading awareness about opportunities and pitfalls related to access to justice. Women in Baidoa have had a longer exposure to a dynamic and active civil society, as Baidoa is more advanced in recovery and stabilisation trajectory. A cross-regional networks of women (e.g., Baidoa -Afgooye network) can facilitate learning, experience-sharing and building the capacity of lesser experienced women in negotiations and leadership skills.</p>

⁴ Individuals who act as central nodes able to connect people and networks because they have and can deploy certain types of capital-whether social, cultural, symbolic, or commercial.

⁵ Examples from Baidoa include Southwest Women Human Rights Advocate Network and Bay Women's Association Network.

Afgooye	
Short-term Recommendation	Corresponding Finding
<p>Coordinate with other donors on existing services in the area and strengthen and promote the coordination on justice-related research and activities.</p>	<p>In NRRAs, over the last few years a flurry of interventions has focused on linking access to justice with wider issues of security. This has been indicative of a broader view, shared by international and Somali actors alike, to securitise justice: a preference for a preventative approach that can protect women and communities from violence and wrongdoings, though justice-focused programmes (which deal with the aftermath of individual and communal violence) also exist. The report underlines several programmes funded by UN agencies, donor governments and international NGOs that typifies both preventative and restorative approach to justice.</p>

Baidoa	
Short-term Recommendation	Corresponding Finding
<p>Provide SGBV and gender-focused training sessions to a specific cohort of male law enforcement and security providers with a focus on access to justice. (Engage with them to understand the barriers they encounter to deliver justice to women and minority groups. Lessons learned from this activity can be used to reflect on and amplify key messaging.)</p>	<p>This research includes male and female participants and has thus documented wider understandings of male perceptions and attitudes vis-à-vis women's rights and roles within both formal and traditional forms of justice. Male interviewees recognise women's vulnerabilities and the harmful effect SGBV can have on the wider community. Male participants did not seem hostile to women's inclusion in law enforcement and the judiciary, as having female in official roles can improve reporting and prosecuting crimes, especially rape. However, most male interviewees articulated the cultural attitudes and persisting gender norms that hinder women's participation in key influential positions in both formal and informal justice institutions. The research highlights that engaging male "influencers", who occupy key positions in local communities, is vital for improving the overall conditions of women.</p>

Baidoa	
Short-term Recommendation	Corresponding Finding
<p>Identify and engage local female powerbrokers from CSOs and CBOs that work on minority women's rights to support in a collaborative cross regional network and build communication channels between the regions such as through online media platforms such as WhatsApp.</p>	<p>Access to justice is determined by multiple factors informed by class, gender and clan as well as the intersections between these identity categories and social markers.</p> <p>Women from minority clans are at increased risk of violence; moreover, they face more challenges when seeking to access formal and traditional justice chains. Cross-district and cross-regional networks of female powerbrokers are vital for the spread of information about how and where to access justice and who/ which entities can provide assistance to female victims of SGBV. These female powerbroker networks can flourish through harnessing the power and widespread availability of new mobile and social media technologies.</p>
<p>Support on coordinating a forum with key stakeholders, including those engaged in the KIIs and relevant Somali government officials engaged in drafting NAP WPS. A virtual learning event would include presenting the main findings of this research, as well as captured insights from following interventions.</p>	<p>Local communities' experiences with political administrations, law enforcement and security may influence citizen's perceptions about formal justice and may shape their decisions to pursue justice through formal channels. Moreover, strategies to involve key male influencers, which encompass a range of prominent figures in the community such as local officials, clan elders and religious scholars, supplement efforts to improve women and girls' access to justice.</p>

National/Federal level	
Short-term Recommendation	Corresponding Finding
<p>Identify relevant Somali and non-Somali actors currently engaged in drafting the Somali NAP on WPS.</p> <p>Disseminate the findings of this research to actors involved in formulating Somali NAP and encourage the sharing of information and lessons learned from NRRRA locations such as Afgooye and Baidoa with specific promotion of the inclusion of a justice pillar within the NAP.</p>	<p>The WPS agenda is a set of UN Security Council Resolutions dedicated to protecting women and girls in the various stages of conflict as well as increasing the participation of women in all aspects of peacebuilding. This report highlights that the WPS agenda has a key role in current debates about access and delivery of justice in Somalia.</p> <p>The WPS agenda, in essence, is protective but not restorative. This means that the WPS agenda prioritises the protection of women and girls from SGBV. Female participants are concerned about a host of justice issues that transcend rape and other forms of sexual assault. These include land and property disputes, experiences of extreme poverty, inaccessibility of health, lack of education, all which contribute to women’s vulnerability, insecurity and subordination. However, the WPS agenda is less explicit about access and delivery of justice for women and girls especially in non SGBV-related cases.</p> <p>The WPS agenda can still be instructive for mitigating the gender exclusionary nature of justice if a strong justice component is built into the Somali NAP, currently underway.</p>

Medium-term Recommendations

Afgooye	
Medium-term Recommendation	Corresponding Finding
Support existing efforts to increase the recruitment of women in the security and justice system. For example using communication strategies to circulate and amplify information regarding recruitment opportunities for women, and specifically women from minority clans, within the security and justice sectors.	A combination of prevalent insecurity and deeply rooted and systematic discrimination against women drive the majority of legal cases and disputes brought by women. Inclusive justice entails involving women in justice and security-related decision-making roles. This corresponds to research findings that many external stakeholders and Somali citizens (including minority clans) tend to adopt a broader view of justice which also encompasses security and law enforcement services.
Support the adoption of a CAF-style committee in Afgooye with the assistance of local CBOs, in continued coordination with <i>Saferworld</i> . CAFs can encourage the inclusion of women in decision-making roles and spread awareness about access to justice for diverse women.	Women’s membership in CAFs tends to be high; in Baidoa women constitute nearly 50% of the five existing CAF committees. CAFs offer women the rare opportunity to engage in decision-making roles in their communities. Similar CAFs exist in Mogadishu and Kismayo.

Baidoa	
Medium-term Recommendation	Corresponding Finding
Support local initiatives to create a gender desk within Baidoa police station to encourage adequate reporting and investigation of SGBV cases.	The creation of safe spaces within local police stations and courts improves women’s access to formal justice institutions. The formal chain of justice, particularly around SGBV cases, is well-known in both Afgooye and Baidoa. Many female interviewees demonstrated knowledge that in cases of SGBV, reporting at the police station is a necessary first step. The presence of specialised female police officers can increase reporting and delivery of justice for survivors of SGBV.

Baidoa	
Medium-term Recommendation	Corresponding Finding
<p>Map and engage youth collectives and organisations to enhance knowledge about the distinct challenges facing young women and men related to access and delivery of justice</p>	<p>Youth groups, both women and men, represent a notable constituency in the context of justice, as the youth make up 75% of the Somali population. In Baidoa and Afgooye, youth collectives and organisations exist and there are indications that they are increasingly active and vocal about issues that affect their communities including access to justice. The youth also rightly identified other barriers that affect young women and men’s access to justice including high levels of illiteracy, unemployment and discrimination against members of minority clans.</p>
<p>Promote women’s effective participation in Community based Action Forums (CAFs)⁶ especially women from minority clans. Raise awareness of women’s participation in the CAFs through communication campaigns, and tailored messaging on minority clan engagement (male and female). Further engagement with CAFs can be achieved through collaboration with Saferworld, which has supported the formation of CAFs in Mogadishu, Baidoa and Kismayo since 2017.</p>	<p>The presence of Community Action Forums (CAFs) signals a close relationship between the local civil society and district-level law enforcement and justice personnel. In Baidoa, CAFs act as intermediaries between the local community and police and other security providers. CAFs are committees whose members are recruited from the local civil society. CAFs can enrich the justice landscape as they provide referrals for counselling and medical care (in cases of sexual assault) while familiarising citizens with relevant laws and liaising with the police, investigators and judges. Significantly, women constitute nearly 50% of the CAF committees in Baidoa. And similar CAFs exist in Mogadishu and Kismayo.</p>
<p>Facilitate trainings for members of youth organisations (male and females) on gender equality and women’s rights.</p>	<p>This research suggests that female and male youth, particularly in Baidoa, have some awareness about the rights and roles of women in the local community. This is a promising finding, as it reinforces notions of Somali youth’s readiness to participate in local politics and civil society.</p>

⁶ CAFs are committees whose members are recruited from local civil society and make referrals to improve access to justice.

Afgooye & Baidoa

Medium-term Recommendation	Corresponding Finding
<p>Cultivate public-private partnerships and engage major telecommunications companies in harnessing approaches, such as hotlines and mobile applications, to safely and anonymously report crimes such as SGBV.</p>	<p>The formal justice chain related to SGBV begins with reporting cases to the appropriate authorities—often the local police station. However, for many women reporting cases such as rape or sexual assault can be difficult, costly and risky. Women in rural areas, where there are no police stations, may have to travel in order to report.</p>
<p>Support a communications campaign that aims to amplify existing programmes that promote women’s recruitment in the justice and security sectors, and specifically engaging with women from minority clans as a key target audience.</p>	<p>Currently, numerous programmes aim to increase the numbers of women in the justice, law enforcement and security sectors. For example, UNDP has recently rolled out projects to train female attorneys and investigators. UNSOM also oversees a programme which aims to enhance the recruitment of women in state police forces (10% of new state police officers are women). Key UN stakeholders say that their goal is a 30% female police officers in the SWS police force. The existence of female police officers (including from minority clans) can improve the reporting of sensitive SGBV cases and may facilitate women’s access to the formal justice chains.</p>
<p>Support mentoring and leadership training programmes for female attorneys, investigators and police officers. Currently, UNDP is offering internships and traineeships to female attorneys in Jubaland; this activity can be replicated in SWS</p>	<p>An apparent dilemma in the access and delivery of justice relates to the limited numbers of women in the judiciary. As more women are poised to join formal justice institutions as lawyers, investigators, prosecutors and judges, experienced female professionals in the field should engage with new entrants in order to facilitate mentoring, networking and sharing of relevant experiences.</p>

Long-term Recommendations

Afgooye & Baidoa	
Long-term Recommendation	Corresponding Finding
<p>Embed gender equality and the rights of girls and women into school curricula raising awareness about gender equality among boys and girls, support in providing training to teachers about gender equality, women’s rights and diverse paths to justice.</p>	<p>Harmful attitudes towards women are deeply rooted and culturally sanctioned. Often, negative perceptions about women’s status, rights and roles are exacerbated by conflict and widespread insecurity. These contribute to restrictive conditions that make improving women and girls’ access to justice even more challenging. However, gender roles can be altered through long-term and sustained engagement that can slowly change perceptions and attitudes.</p>
<p>Provide recurring trainings to law enforcement personnel and security providers on human rights, gender equality and the rights and roles of women and other vulnerable groups.</p>	<p>New recruits to state and federal police as well as the SNA receive introductory human-rights based trainings which are important to strengthen the mandate of police officers and security providers and improve community protection. However, these training sessions tend to be one-off because of limited resources dedicated to ongoing trainings on gender relations, misconceptions and women’s rights. This research underlines that in-depth trainings on women’s rights, gender inequalities and SGBV should be ongoing activities and part of a holistic engagement with law enforcement and security sectors.</p>
<p>Engage with the Ministry of Religious Affairs on practices in place to strengthen women’s roles in jurisprudence, such as the prospect of recruiting and training female Qadhis (Judges).</p>	<p>Some interventions focused on the promotion of women in key decision-making roles within the justice sector require the involvement of federal Somali institutions, such as the Ministry of Religious Affairs. The research points out the existence of a female Somali judge who had been appointed to Afgooye district in SWS, though like all Afgooye judges, she is likely to be based in Mogadishu. Enlisting the support of key Somali institutions may lend legitimacy to elevating women’s participation in the justice system at state and federal levels.</p>

Afgooye & Baidoa	
Long-term Recommendation	Corresponding Finding
<p>Support initiatives aim at increasing the numbers of women in security and justice sectors; enlist the support of relevant civil society organisations, female powerbrokers and male influencers in recruitment of women in key decision-making roles within security and justice spheres.</p>	<p>Justice is inextricably linked to security and personal safety. Participants in this research tend to adopt a broader and more holistic understanding of justice. Many have underscored the importance of involving law enforcement and security sectors in the protection of women's rights, safety and wellbeing. This expanded view of justice, then, entails promoting the roles of women in law enforcement and security sectors as necessary steps towards making justice more inclusive and effective.</p>
<p>Develop research agendas that augment knowledge and understanding about access to the justice chain and the particular challenges faced by women that lead them to drop out of the chain completely.</p>	<p>The chain of justice can be defined as the sequential process by which citizens (male and female) pursue justice. The chain of justice can depict processes related to both formal and informal, traditional justice institutions but often refers to formal, state-led justice mechanisms.</p> <p>The justice chain is gendered. Access and progression through the justice chain are also determined by other markers such as class and clan. Women are at increased risk of dropping out of the formal justice chain related to SGBV. Further policy-focused research of the experiences of Somali women and challenges they face, particularly in NRRAs contexts, is needed in order to understand the conditions that hinder women from meaningful access and sustained presence throughout the different stages of the justice chain.</p>
<p>Promote sustainable intergenerational dialogues to bridge the gap between elders and youth and enable a safe space for challenges in accessing the justice chain to be discussed.</p>	<p>Young Somalis have particular experiences with justice institutions in NRRAs. For the youth (boys and girls) interviewed in this research, both formal and traditional justice remain largely inaccessible. One identifiable problem has been young people's exclusion from traditional justice structures, particularly clan elders' councils; youth of both genders feel undermined due to their age and assumed lack of experience. A promising example has been identified in this research: a network of Afgooye youth, including male and female members from different localities and across clan lines, which recently formed a collective of district presidents to mediate between conflicting parties before these disputes reach law enforcement or elders councils.</p>

Introduction

The nature of Somali citizens' claims and grievances varies and is context specific. In densely populated capitals like Kismayo, Baidoa and Mogadishu, land disputes are particularly conflict-laden because they can rehash old pre-civil war and wartime territorial and property claims. In addition to land and property disputes, crimes, such as intentional killing and rape, are other common issues that plague urban and rural communities and are particularly prevalent in NRRAs. Across Somalia, injustices like these often fuel local conflicts and threaten security gains.

Over the last few years, a flurry of interventions has focused on the justice and security components of state building and reconstruction across Somalia. In NRRAs, specifically, justice is integral to these efforts. In volatile stabilisation environments, there is a clear association between inaccessibility and feelings of marginalisation from justice and conflict. Mounting grievances can threaten security gains and political progress in NRRAs, presenting an imperative to focus on justice: how different individuals and groups access and can obtain justice. In this research, we examine the diverse nature of the justice landscape in South West State (SWS) and Somalia more broadly. The research explores the presence of formal state justice institutions but goes beyond them to understand local communities' perceptions about access and delivery of justice through traditional mechanisms.

In line with state building efforts, currently there is a tendency to emphasise and strengthen formal justice institutions that are considered direct extensions of the state. As this report will show, other viable indigenous forms of justice are resonant. These traditional institutions are represented by traditional and religious frameworks of justice which Somalis hold in great esteem and that can be more efficient and less costly than formal channels. All these various justice systems overlap. Ordinary citizens have a vast repertoire of experiences denoting that access and delivery of justice in Somalia today are determined by a set of factors, chief among them one's gender identity and whether communities subscribe to strict or flexible views on gender roles and women's position in public life.

The seminal Women, Peace and Security (WPS) agenda foregrounds that all processes related to post-conflict reconstruction of state building, stabilisation and security are inherently gendered processes and advocates for greater involvement of women in all decision-making roles including, in this context, justice. Inclusive justice, security and protection, safeguarding the rights of women are all crucial to achieving the objectives of WPS. Accounting for class and clan membership, in addition to gender, access to justice is uneven and often exclusionary. This report laments that it is vital to expand access to inclusive justice and to address both the physical and cultural structures of justice. Equally important, and even more challenging, is ensuring that justice can be delivered.

The research focused on the following set of objectives:

- Understand women's current level of awareness of their rights and assess their roles and current engagement in decision-making processes within stabilisation efforts in Baidoa and Afgooye.
- Understand the particular needs and vulnerabilities of women, girls and boys in Baidoa and Afgooye.
- Identify women's access to informal and formal justice systems to address specific issues, such as SGBV, in Baidoa and Afgooye.
- Understand and identify the roles of local administrations and security forces in women's access to justice systems.

Methodology

Informed by the global WPS agenda and the particular realities of Somali women specifically in a stabilisation context, this study seeks to understand the challenges facing women's access to and delivery of justice in Baidoa and Afgooye, in SWS. This research used a mixed methods design, inclusive of a literature review and qualitative research methods such as key informant interviews (KIIs) and focus group discussions (FGDs).

This research was conducted in October 2020 and completed in November 2020.

This inception report combines the findings from two simultaneous lines of inquiry: the first is based on a literature review, a survey of existing projects and initiatives and a mapping of current security and justice apparatus. The review of literature has focused on:

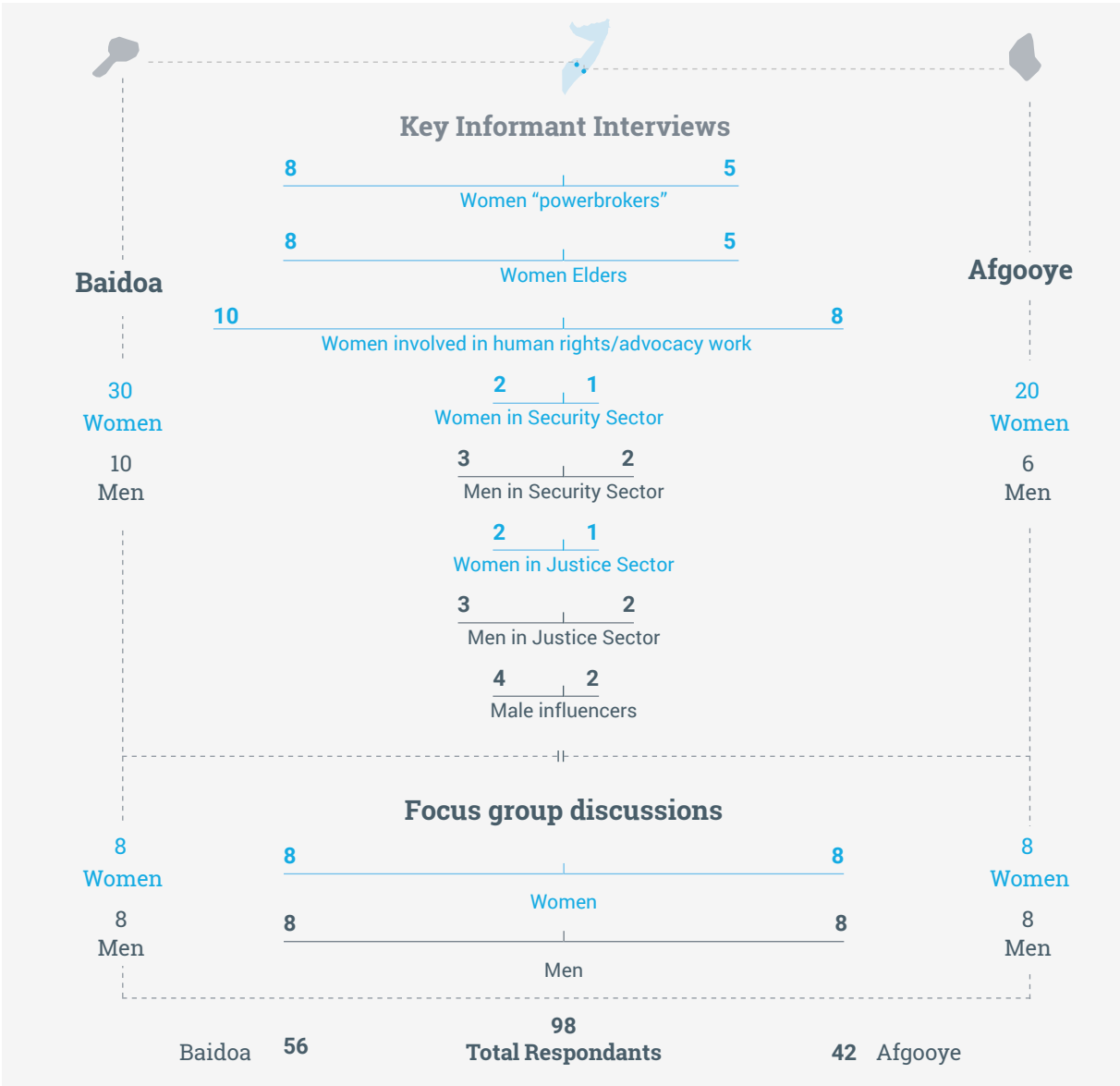
- a) Exploring intersections and linkages between WPS and justice in the context of fragile and conflict-affected states with emphasis on Somalia;
- b) In Somalia in particular, surveying of recent and ongoing initiatives aimed at facilitating and strengthening women's access to justice in the context of stabilisation which included a mapping of international actors and Somali authorities at local and federal levels as well as civil society organisations (CSOs) and civil society;
- c) Reviewing main drivers of conflict, and grievances that contribute to justice issues; and
- d) Taking stock of formal and informal interventions to address issues of justice, and underlines their shortcomings and challenges.

This component of the report also incorporates interviews conducted between September and November 2020 with ten key stakeholders including UN representatives, practitioners of international NGOs and experts and researchers in the field conducted. The review has also drawn on in-depth discussions with several international and Somali experts with substantial knowledge in areas of peacebuilding, WPS and transitional justice in Somalia.

The second component of the research is based on participatory field research in Afgooye and Baidoa communities in SWS, which was carried out through FGDs and KIIs. Working with researchers from local communities where the study is based, we relied on two female researchers who were identified because of their considerable expertise and local knowledge in both locations. As the survey target samples were mainly female powerbrokers and male influencers, a chain-referral sampling was used; that built on the knowledge of the area and existing network with female powerbrokers and male influencers. Our female researchers used a prior agreed definition of female powerbrokers to identify the survey participants. Furthermore, willing participants were given an opportunity to enrol others who met the sample definition into the survey. KIIs and FGDs were carried out by these researchers in Afgooye and Baidoa while receiving logistical support from KasmDev's Mogadishu and Nairobi offices. The research tools were developed by KasmDev and reviewed together with Albany Associates. KasmDev subsequently briefed researchers in Afgooye and Baidoa on overall objectives and methods.

Key informant Interviews (KIIs) - The KIIs with women were focused on those identified as influential and well connected, thereby fitting our definition of powerbrokers⁷. KIIs targeted women elders, those involved in human rights and advocacy work in the local community, as well as women in security and justice sectors including police gender officers. Moreover, male influencers from the communities were selected and subsequently interviewed because of their prominent positions in justice and security justice. Additionally, we conducted ten KIIs with key relevant stakeholders and parties of interest in this research. These included officials from different United Nations agencies currently operating in Somalia such as United Nations Development Programme (UNDP), United Nations Assistance Mission in Somalia (UNSOM), independent researchers, experts and academics. These interviewees have been identified for their work, research and experiences related to the fields of security and justice and gender equality and advancement of women. The KIIs were conducted virtually and reflected a gender-balance as six of ten interviewees were women.

Focus Group Discussions (FGDs):



⁷ Women and men "powerbrokers" are defined here as individuals who acquire "capital" through different means: symbolic capital (educational attainment, status as traditional elder, or motherhood, etc.) In addition to economic and political capital, symbolic capital elevates women and men to positions in society and allow them to become central nodes who can connect different people and networks together.

Moreover, this research's methodology and approach to analysis draw extensively on *Beyond Consultations: A Tool for Meaningfully Engaging with Women in Fragile and Conflict-Affected States (the Tool)*. Field research in the target locations as well as initial stakeholder engagement through KIIs with experts, researchers and practitioners were designed and carried out in accordance with up-to-date and cutting-edge guidance from the Tool. This is to ensure the effective engagement of women early in the pilot to adopt a holistic gendered approach and ensure a streamlining of women's views into the findings and subsequent recommendations of appropriate interventions. The Tool is useful for achieving the wider objectives of WPS in Somalia generally and in stabilisation contexts specifically in SWS.

Several pillars of effective engagement of women were identified and used in this pilot. Thus, the research, and the recommendations that emerge from it, are compliant with key pillars in the effective engagement as set out in the Tool. This section briefly lays out how each of the Tool's principles for effective engagement of women have been incorporated into this research:

- **Consultation Methodology**

A range of appropriate, context-specific, participatory methodologies were used throughout the research process which included clarity for all participants on how their data will be used and fed back to them

- **Support and Preparation**

Women participants' needs were assessed, followed by recommendations for tailored capacity building and support to enable them to contribute fully and effectively to the implementation process.

- **Agenda Setting**

Women were fully informed to enable them to shape the agenda and have their priorities addressed in the research's recommendations.

- **Representation**

A fully representative range of women were actively identified and engaged in the research process and subsequent recommendations.

- **Accessibility**

Intersectional inequalities such as class, clan and other socio-economic markers are considered, and all women are supported to participate fully in the research process and subsequent recommendations.

- **Safeguarding**

Women and women's organisations have been and will be enabled to participate fully and safely and without experiencing current or future risk of harm.

Moreover, the research findings as well as the recommendations presented below are gender sensitive and follow the overarching framework set out in the WPS agenda, UK NAP on WPS and a myriad of regional and international instruments. Collectively, they work to include, protect, serve and safeguard the rights of women and bolster their participation in decision-making processes related to formal and informal justice institutions across Somalia. Findings from this research also consider potential implications of improved access to justice and delivery of justice for women as well as women from historically marginalised social groups, including displaced women and women from minority clans, contributing towards stabilisation efforts in Somalia. A list of concrete recommendations is included in this report.

Background and Context

In February 2012, the United Nations Security Council adopted Resolution 2036, which, among other things, specified various dimensions of stabilisation. These included, 1) Support delivery of stabilisation plans developed by the Intergovernmental Authority on Development (IGAD) and the Somali Transitional Federal Government (TFG) in areas already secured; and 2) Establish an operational police component to help stabilise Mogadishu.⁸ Since 2013 stabilisation has been the overarching policy goal of the FGS. This resulted in a series of international development investments in stabilisation projects, alongside military operations, carried out jointly by the SNA and AMISOM. The initiative generally led to aS being pushed out of Mogadishu and other key urban centres, including Baidoa and other state capitals, provincial and district headquarters in south and central Somalia. State formation processes have also made notable progress since 2016.

By way of background, this section maps the current law enforcement, security and formal justice infrastructure in each of the target locations, Afgooye and Baidoa. This survey, while not exhaustive, also provides a background to the unique contexts of the two NRRA locations. As suggested in the Executive Summary, perceptions of law enforcement, security and formal justice institutions are informed by the stage of recovery. In contexts where the state apparatus is more developed and civil society is strong and formal, and district and state-level courts are viewed as nominally capable and functional.

Afgooye

Afgooye is in Lower Shabelle and the third largest city of SWS. aS took over Lower Shabelle in 2008. During its reign aS set up Shari'a Courts that contributed to solve a number of pending land conflicts. In May 2012, the town was recaptured from aS. However aS continues to be omnipresent with influence and ability to attack (albeit lessened) from within the town and their hideouts in the neighbouring areas. The interim local district administration remains weak. Security provision also remained difficult and the fear of aS retribution lingers among some of the locals.

Extreme poverty exacerbates common grievances experienced by populations in Afgooye such as SGBV and lack of basic services such as health and education. According to our survey, 70% of Afgooye residents are destitute; community leaders assert that the majority of citizens in Afgooye district live with under two dollars a day.

Afgooye's precarious position in the context of access and delivery of formal justice stems from deep insecurity of the district. Interviews with UN officials as well as independent observers demonstrate that key justice providers do not have presence in Afgooye; instead, they are forced to operate from Mogadishu due to perpetual security threats.

Still, some basic justice infrastructure can be found in Afgooye.⁹ There is a district court in Afgooye which has four presiding judges. However, according to interviews with UN officials, all of Afgooye's judges work from Mogadishu in Banaadir. Significantly, Afgooye

⁸ United Nations Security Council Resolution 2036

⁹ According to the Justice Snapshot website. <https://southcentralsomalia.justicesnapshot.org/federal-member-states/southwest-state/afgooye/>

has the only female judge in all of Somalia who is also based in Mogadishu.¹⁰ The District Court is said to have adequate access to Laws of Somalia and is housed in a decent building. Moreover, the local Bar has admitted eight lawyers in total, six men and two women, with license to practice in Afgooye. No information is available on whether these lawyers are based in Afgooye or reside in Mogadishu or elsewhere due to security reasons.

In the absence of an onsite judiciary in Afgooye, the presence of a well-trained and well-equipped police force becomes even more vital because it could enforce law and deter crimes against the most vulnerable groups in the district, many of whom are IDPs. According to recent data published in the Justice Snapshot portal, there is one police station in Afgooye staffed by the Federal Somali Police Force. Afgooye's lone police station has five police officers, 195 police personnel of other ranks and all but one are male. Additionally, there are two police investigators, but no women have been recruited as investigators.

Our findings indicate that the presence of federal police forces in Afgooye is seen as unconstitutional. This legal dilemma complicates the provision of security and adequate protections to civilians there. UN interviewees have suggested that since Afgooye is part of SWS, state police should be deployed in the district. Currently, however, the federal police are stationed in Afgooye due to its proximity to Mogadishu and the federal government's strategic interest in securing the Afgooye-Baidoa corridor.¹¹ SWS state police forces have not been deployed to Afgooye. This presents a dilemma: the competition between federal and member states over jurisdiction and mandate can threaten security and weaken the protection for local communities.

Political tensions can also impact local security in negative ways. The recent political gridlock between the federal government seated in Mogadishu and SWS officials has intensified in the run up to elections. Additionally, the federal constitution that can resolve questions about federal-member state relationship, jurisdiction and mandate remains contested. In light of these wider problems, coupled with persistent insecurity, many Afgooye residents view that traditional justice institutions, like the local Xeer, are more reliable and less volatile than those associated with federal, state or district apparatus. The sentiments were shared by a diverse section of Afgooye society, including some IDPs.

Baidoa

Baidoa city is currently the interim capital for SWS government and Bay region. The city served as the nation's capital city for a short period of time between 2005 and 2007 when it was the seat of the Transitional Federal Government (TFG). aS seized control of Baidoa city in January 2009 until February 2012 when Ethiopian and TFG forces took over again. AMISOM replaced Ethiopian forces in May 2012. In November 2014, the interim South West Administration was formed.

Whereas the formal justice infrastructure in Afgooye is minimal, the situation in Baidoa is markedly different. Over the years, significant international resources have been directed at law enforcement as well as district and regional courts in Baidoa.¹² This has translated

¹⁰ Interview with a UNDP official in October 2020; also see the justice snapshot portal.

¹¹ Interview with UNSOM official and independent researchers, October 2020.

¹² According to interviews with senior UNSOM officials, October 2020.

into a stronger formal **justice chain**. The security and justice infrastructure in Baidoa, such as police stations and courts, are functional; however, these are concentrated in the town centre. Little exist in the peripheries and rural communities surrounding Baidoa. One UNDP official noted in a recent interview that, “a few kilometres outside of Baidoa, the justice infrastructure is almost non-existent. This phenomenon is not limited to SWS, this scenario is the same in Kismayo, Garowe and even in Mogadishu.”¹³

Baidoa currently houses the SWS’s Supreme Court which is presided by four judges and office of the Attorney General, staffed by nine clerks, in addition to a regional and district court. Additionally, three judges preside over an Appeal Court. The State’s only Bar Association also has a seat in Baidoa and there are 37 attorneys who are admitted to SWS’s Bar. Law enforcement is also well represented. There is one central police station with 117 police officers and five police posts each with dozens of police officers. According to the justice snapshot online portal, eleven women currently serve in law enforcement in Baidoa, though they have not been ranked officially as police officers.¹⁴

In addition to the district courts and police stations, Baidoa has a robust civil society that engages in security and justice issues. Specifically, several human rights NGOs currently work in the area of expanding access of all Baidoa citizens to the formal justice institutions. The Isha Human Rights Organisation (IHRO) is a Baidoa based organisation that offers legal services to those in need of counselling. Part of Baidoa’s growing civil society are Community Action Forums (CAFs) that act as intermediaries between the local community and police and other security providers. CAFs are committees whose members are recruited from the local civil society. In Baidoa, CAFs enrich the justice landscape: they provide referrals to obtain counselling and medical care while familiarising citizens with relevant laws and liaising with the police, investigators and judges. Significantly, women constitute nearly 50% of the CAF committees in Baidoa. And similar CAFs exist in Mogadishu and Kismayo.

The contrast between Baidoa and Afgooye is stark but expected. Baidoa has been a site for a years-long and concerted international and national efforts and funding geared towards forming and subsequently strengthening both the political and justice mechanisms. While there are still issues in terms of accessibility and delivery of justice, Baidoa is an example of what is possible when nominal security is achieved, and financial and technical support is directed at setting up a formal justice system while ensuring that they are also linked with informal justice mechanisms.

¹³ Interview with UNDP officials in October 2020.

¹⁴ The Justice Snapshot Portal

Relevant Legal and Normative Frameworks:

All Somali women have the right to equal and inclusive participation. While this is primarily defined in terms of a broad range of political, social and economic rights, women's equal and inclusive participation also extends to areas of justice and security. Somali women have a right to engage directly in decision-making roles within varying levels of state and traditional justice institutions. Somali women's access to the justice landscape in Somalia influence their lives, their families and their communities.

The existence of a few Somali policies underline that progress is being made. The draft Sexual Offences Bill, for example, is the first of its kind in Somalia to propose criminalising sexual offences, including rape, gang rape, sexual assault, child marriage and trafficking. However, the bill is still awaiting approval in parliament. Moreover, the Somali NAP on WPS is currently being developed. Given that an overarching Somali constitution is still under review, there is a gap in the national legal framework that can guarantee constitutional rights for women across Somalia.

Despite these obvious gaps, the following are key international human rights instruments that can offer protection of the rights of Somali women. They can be drawn upon for strengthening women's access to formal state justice and promoting greater decision-making roles for women.

- **Article 2 of the Declaration on the Right to Development**
- **Article 21 of the Universal Declaration of Human Rights**
- **Article 25 of the International Covenant on Civil and Political Rights**
- **Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women**
- **UN Global Goals for Sustainable Development, including the Leave No One Behind commitment (particularly Goals 5 and 16)**
- **The Women, Peace and Security Framework (UN Security Council Resolution 1325 et al).**

The WPS Agenda in the Somali Context: The Status, Rights and Roles of Women in Afgooye and Baidoa

The WPS agenda is a cross-cutting, dynamic global framework that has risen to the status of an international norm in much of the world. The landmark United Nations Security Council 1325 was passed in October 2000 and is considered the foundation of nine subsequent UN Security Council Resolutions. This body of Resolutions is centrally concerned with enhancing the effective participation of women in conflict, transition and post-conflict reconstruction efforts. In the context of Somalia, the WPS agenda is particularly instructive for promoting Somali women's political empowerment. Yet, measures to increase women's access to justice institutions and delivery of justice can be specifically addressed through NAPs.

The WPS agenda identifies two key objects that are relevant for this research: a) ensuring the inclusion and engagement of women into leadership and decision-making roles, and b) safeguarding the rights of women in conflict, transitioning and post-conflict societies. The WPS agenda is explicit in its commitment to the protection of women in precarious and conflict-affected environments from sexual and gender-violence, and in particular when such targeted violence against women and girls are used as instruments of war. However, as is examined below, the extent to which the WPS agenda can serve as a path to restorative justice for women is more ambiguous. Moreover, as an international normative framework, the WPS agenda lacks enforceability thus making it difficult for women seeking justice in the aftermath of an assault. NAPs, the means through which different states adopt and incorporate the WPS agenda into their national laws and policies, can offer a means to enhance access to and the delivery of justice for women while maintaining a commitment to the guidelines set out by the WPS agenda. The WPS agenda has been adopted by numerous countries, including the UK, through their respective NAPs. NAPs allow states to articulate their key priorities within the global framework of the WPS agenda. By tailoring the NAPs to suite particular contexts, the WPS agenda can a transformative impact for women and girls in Somalia.¹⁵

Today, Somali policy makers, government officials and civil society groups draw on essential components of the global WPS framework. But Somalia still lacks a NAP that could incorporate a strong justice component.¹⁶ This is surprising because Somalia has had a long engagement with the WPS agenda that spans twenty years. Between 2000 and 2004, two key international peace processes on Somalia sought to formally engage Somali women in the negotiations and mainstreamed gender into the outcomes of these negotiations. Although domestically challenged, such efforts have resulted in instituting a gender quota for women in nascent legislative bodies first in 2000 and, again, in 2005. The landmark UN Security Council Resolution 1325 had been especially important for Somalia during that time. The UNSCR 1325 provided a framework for dedicating funds to women peace delegates, offering capacity-building programmes to Somali women who participated in these crucial national negotiations. International norms enabled Somali women civil society leaders to raise awareness about the central importance of women's inclusion in post-conflict state reconstruction and nation rebuilding.¹⁷

¹⁵ Kirby, Shepherd 2016; Hagen 2020.

¹⁶ Resolution 2467 (2019) positions conflict-related sexual violence in the broader women, peace and security agenda and stresses justice and accountability efforts. However, this is the only explicit reference to justice and accountability in the Resolutions.

¹⁷ Mohamud 2020.

The focus on the political engagement of Somali women in state institutions continued in the following decade, despite rising insecurity due to militant Islamist threat posed by aS in south and central Somalia. Women's exclusion from public life and political processes remains foundational to aS ideology. However, in 2012, when the FGS emerged from transition and subsequently gained international recognition, Somali women's quotas in the federal parliament was set at 30%. The formalisation of women's political participation was, and is, a welcome change but significant issues with implementation still remain. Moreover, outside the seat of the federal government, meeting the 30% quota for women in state and national legislative bodies and cabinets is still difficult to achieve. The problematics of access to political forums aside, there has been remarkable growth in the visibility and influence of women in the civil society realm across Somalia.¹⁸

Women's access to formal decision-making roles at the political level is a key aspect of the WPS agenda. More broadly, the WPS agenda is concerned with promoting the well-being and protection of women's rights across different sectors. This includes women's access to the vital sphere of justice. There is a robust academic and policy literature that link women's attainment of justice with political empowerment and greater access to decision-making roles in local, state and national levels.¹⁹ The broader goals of the WPS agenda can be achieved by paying special attention to the roles and efficacy of formal and traditional justice mechanisms in addressing the particular needs of women in fragile and conflict-affected societies.

The notion of women's rights in Somalia is context specific. Nonetheless, how rights are understood and framed have an impact in access to formal and traditional justice systems. In Baidoa and Afgooye, for example, education is seen by many male and female respondents as an essential right. Moreover, education is a precursor to women's entrance into decision-making roles. Approximately 85% of the women we interviewed in Afgooye held similar views to their counterparts in Baidoa, suggesting that if women acquire proper education, they can rise to leadership positions in any sector of their choosing, including justice. Education is a key consideration in levelling the uneven playing field between the genders in contexts such as Afgooye. However, in NRRRA contexts, traditional views still prevail about women's access to education. For 15% of male respondents in Afgooye, gender roles still dictate that women are best in their homes. These respondents believe that women's roles primarily revolve around educating their children and caring for their families. Significantly, these care duties can still be great contributions to the community while achieving wider stabilisation efforts, as some male interviewees in Afgooye suggested.

In Baidoa, most of the respondents identified other crucial rights and roles for women in their community. Women's rights, according to our research in Baidoa encompassed: the right to education, the right to participate in politics, the right to free choice in marriage, right to healthcare and access to adequate maternal health and the right to freedom of speech and movement. Increased awareness about the rights of women has positive impacts on their participation in leadership roles. According to the female respondents in Baidoa, these rights are exercised by more Somali women now than any time in recent memory.

¹⁸ The UK National Action Plan

¹⁹ The Oxford Handbook on Women, Peace and Security 2019.

“We seek women’s inputs in decision making to encourage their involvement, however, usually we don’t tell them that we have used their inputs in the decision even though we do”

Male Elder, Baidoa

Women’s participation in local politics, for example, has been on the rise. Currently, women’s representation stands at approximately 16% in the federal parliament. Although on the rise, interviewees in Baidoa felt that educational attainment among girls and women is still low; girls lag behind in education. Deeply ingrained cultural norms are also slowly shifting and the situation in Baidoa is said to be improving. Respondents in Baidoa credited grass root campaigns that promote girls’ literacy and education. Moreover, norms around marriage, which in this community was mostly arranged, have also changed. Respondents report that increasingly women have more freedom to choose their spouses. On the whole, these shifting norms can be attributed to women’s groups who advocate for women’s rights and spread awareness about issues related to SGBV, women’s inclusion in electoral politics, etc. Some of the women’s rights organisations mentioned in the research include Southwest Women Human Rights Advocate Network and Bay Women’s Association Network.

“The clan elders are working hard in ensuring women participation in leadership positions, for example, the now 16% representation of women in state parliament and 50% women in Dinsoor district council. However, women still face a lot of barriers in attaining their rights which includes lack of knowledge both secular and religious”

KII respondent in Baidoa

She further added that women lack sources of income to fund their campaigns compared to their male counterparts.

Increasing visibility of women in the business sector and entrepreneurship scene in Afgooye does not lessen the severity of women’s exclusion from political participation as there are currently very few women representatives from the districts. Nonetheless, it is important to acknowledge that many women in Afgooye are business owners, employed in other sectors such as education and health and are currently pursuing their education thanks to the University in the area. Yet, women’s engagement in formal politics is restricted in Afgooye. Based on the comments made by the interviewees, women still believe that they do not have rights to political participation deemed necessary to bring change to the community. Deep seated notions about women’s primary role within the family partly explains Afgooye women’s exclusion from formal politics. As female interviewees expressed, male relatives support is vital in order for women to participate in decision-

making processes outside the domestic realm. Current gender norms in Afgooye thus hinder women's participation in politics as well as conflict and dispute resolution at local levels.

Across both locations women are viewed as important partners in community-based justice and conflict resolution. Only a few respondents understood what precisely stabilisation entailed, and their understanding of the process was low. Stabilisation is considered part of a wider constellation of peacebuilding, development and humanitarian activities. Male and female respondents in Baidoa, who are more familiar with stabilisation interventions, view women as crucial partners in recovery and stabilisation activities. More broadly, there is greater awareness in Baidoa about women's inclusion in peacebuilding committees at local levels, and the roles women play in the humanitarian and development sectors. It is also promising that there are indications of community acceptance of women's inclusion in justice institutions, such as judges, prosecutors as well as adjudicators within Alternative Dispute Resolution (ADR) centres.

Related to both peacebuilding, stabilisation and justice, the area of conflict resolution represents a path and concrete opportunity to allow for women's inclusion, albeit this area is dominated by well-connected women from powerful clan families. Baidoa serves as an example of shifting community attitudes towards involving women in decision-making roles in conflict resolution projects. Most respondents in Baidoa believe that women can play a huge role in community based conflict resolution. Respondents think that including women is a rational choice. This was mostly expressed by the female respondents. They believe women can add tremendous value to resolving local conflicts because they have insight and knowledge of their neighbourhoods and are especially attuned to understanding the particular needs of their families and communities.

In addition to women's intimate understanding of the needs of their communities, another justification for greater inclusion of women in local conflict resolution mechanisms stems from the notion that women in Baidoa are perceived to be disproportionately affected by local disputes. For instance, women tend to be the ones left behind to fend for their families following the vacuum in the family that occurs due to violent disputes. Increased insecurity in the community can also have harmful impacts on women's physical security. Hence, women participants in our research articulated a need to engage women in every aspect of conflict resolution. Despite these general views, it is only men who are meaningfully involved. In Baidoa, for example, women constitute half of ADR committees with 30 women ADR members and 30 men, but women members tend to be inactive and are excluded from decision making roles, effectively placing men as leaders of these committees. Women's roles are limited to referring cases from the community to the ADR male traditional elders; the cases are subsequently handled by these men.

Women's roles in community-based conflict resolution can also be indirect and less explicit. In Afgooye, both male and female interviewees underscored that local customs and traditional gender roles have a much greater influence on women's inclusion in local conflict resolution mechanisms. They carry out less visible duties such as setting the table for ADR committee meetings, but they are never invited to sit at them. One of the interviewees told us a story that encapsulates the critical, if unrecognised, roles women have in conflict resolution in Afgooye. The interviewee's husband is a well-known respected man who is seen as a role model for many in the community. He is one of the elders in Afgooye with

a traditional mandate to arbitrate in various conflicts in the community. The interviewee said that her husband often comes to her for advice whenever he cannot figure out how to sort a dispute; additionally, the interviewee noted that her husband takes her advice seriously and often shares it with the elders' council. This testimony suggests that women are crucial for communal peace and security, even if they tend to be side-lined from formally engaging in these processes. It is normal that men ask for counsel from their wives, sisters and mothers. While this is acceptable and acknowledged in the community, women still find it near impossible to ask for a seat at the table. Nor are women able to penetrate the figurative high walls of the House of Male Elders (Aqalka Odayaasha). Women discussants expressed that gaining access to the corridors of power, including traditional clan elders' council, can lead to more inclusive politics and justice systems.

A combination of prevalent insecurity and deeply rooted and systematic discrimination against women drive the majority of legal cases and disputes brought by women. Common grievances mentioned by many women in this research included emotional and physical abuse, lack of education and forced marriage at a young age. Other grievances cited by respondents in Baidoa and Afgooye included, but also transcended issues of physical insecurity that often result in SGBV. It is revealing that respondents' views generally pointed to deeper problems related to misunderstanding women's rights and lack of empowerment. Baidoa research participants underscored that limited educational opportunities, financial and economic hardships, gender-based discrimination in employment and access to the labour market are inseparable from access to political participation and decision-making roles. All these issues are exacerbated by a lack of awareness of women's rights and, in turn, manifest in amplifying women's insecurities and vulnerabilities to harassment among other GBV incidents. These challenges are often the same constraints faced by women in other parts of Somalia.

Women participants from both locations also detailed at length the harmful impacts of SGBV in their communities. They identified that some law enforcement and security personnel, paradoxically, have been implicated in exacerbating the insecurity of women in Afgooye. Respondents have noted that most of the SGBV cases reported before 2016 were perpetrated by men in uniform. However, there is a recent shift in attitudes vis-à-vis uniformed personnel, particularly among Afgooye participants. It is difficult to know the precise factors that attributed to this shift. Our interviewees in Afgooye that included both male and female participants suggest that changes in federal laws and policies, as well as attitudes regarding SGBV committed, has been credited for such an improved view. After increases in federal government allocation of funds to law enforcement and security sectors, in conjunction with numerous gender and human rights trainings, our respondents report that there has been a drop in SGBV cases committed by SNA, police and security forces; according to Afgooye residents, "they are now respected instead of being feared", a sentiment that was also shared by women respondents in Afgooye. Additionally, as seen in ERI UK, achieving the right clan mix of the SNA and delivery of pre-deployment training can contribute to reducing SGBV incidents. The central message suggested by this is that local communities can benefit from evolutions of national policies related to SGBV and women's rights, albeit these can be slow paced.

Justice is not an end result in itself; rather it is a process and a means to address a host of related societal ills that coalesce to keep women as subordinates not as citizens with equal rights. Reflecting the entanglements of these problems, the challenges outlined above are

not unique to Somali women in NRRAs, they affect women in a variety of Somali contexts. Our research signals, for example, that women do not have a clear, independent path to vie for political positions. In the majority of cases, men are endorsed by the elders and gender quotas are seldom achieved. These attitudes can also be held by women too and affect how women can limit their own progress in the justice sector. For example, it is also common for women to support male candidates for decision making roles such as political office because many women do not believe they can advocate effectively for their families and communities or act as capable representatives of their clans. Whilst there is a base of powerful women who have pierced the traditional structures of Somali politics, there is yet to be a clear route or an alternative overarching approach to increasing women's numbers in local and national politics or in existing justice frameworks.

Key Findings

I. Processes of Stabilisation and Gendered Justice

One of the key findings of this research underlines that security and stabilisation can have direct impacts on communities' perceptions and awareness of rights, as well as on views on best justice channels to pursue. The further along a town is in the recovery stabilisation trajectory, the more likely that communities there express favourable views of existing formal, state-provided justice institutions and the rights of women. Conversely, less secure towns in the early stages of recovery and stabilisation tend to hold onto more traditional systems of governance, security provision, and, indeed, justice.

Baidoa and Afgooye are two different NRRRA contexts that provide a comparative perspective on how stages of stabilisation and recovery shape understandings of access to and delivery of justice. In the early stages of recovery and stabilisation, the state has little, if any, presence and is considered less consequential in the lives of ordinary citizens. Yet, in both instances, the situation is more complex. In environments where there had been longer exposure to the state apparatus and internationally recognised norms and relative security, as in Baidoa, formal systems of justice and governance are suspected of being corrupt, ineffective and lacking basic capacity to deliver justice and enforce courts' decisions. On the other hand, in settings like Afgooye, where recovery has been recent and is in the infancy of stabilisation, there are feelings of optimism and belief in the formal state systems and, eventually their capacity to deliver justice to a diverse population. Whilst there are feelings of optimism and belief in such a system, the current situation is one of a lack of trust and confidence in formal state justice.

Still in initial phase of recovery, Afgooye citizens rely on traditional forms of justice. In Afgooye, indigenous, culturally rooted mechanisms remain key to addressing injustices and resolve disputes. They are popular because they fill gaps in security, law enforcement and justice that are not currently provided by the state. While traditional justice is important and meaningful (and should be maintained) its frameworks are exclusionary: they undermine women's rights and roles. In Afgooye, men dominate the traditional justice landscape. Antiquated gender norms are still accepted, minimising women's engagement in public life and gender based discrimination is a common grievance raised by women and girls. There is a belief amongst women and men that men do better than women in leadership: according to interviews with women, this partly explains why women do not get elected to political office at the Afgooye district level. This marginalisation spills into other areas of life: women are seldom considered for employment and promotions due to overt gender discrimination, even when they are qualified.

Stabilisation, security and state building all have bearing on citizens perceptions of formal justice mechanisms. Baidoa is further ahead in stabilisation and recovery when compared with Afgooye. The progress in Baidoa is attributed to the improved security situation and recent growth of a diverse and vibrant civil society there.

The presence of civil society and improved security in Baidoa have led to greater awareness and more favourable attitudes vis-à-vis formal justice mechanisms. Both male and female respondents in Baidoa have articulated the importance of a functional and inclusive

judiciary. Several problems undermine the effectiveness of formal justice systems even in more stable NRRAs like Baidoa. These include high costs associated with registering, corruptions and inefficiency, which are explained below. However, women tend to hold positive views of the police and courts in Baidoa. Women, as was revealed in our study, prefer to report and prosecute SGBV cases through the formal justice chain. According to female interviewees, the formal system is more trusted and transparent, especially when it involves high-profile cases where perpetrators are elite men from the political and security classes.

If stabilisation gains in Baidoa have yielded positive attitude towards formal justice institutions, in contrast, the formal justice system is viewed with distrust and suspicion in Afgooye which is in early stages of recovery and stabilisation. Across genders, participants in this research underscored that large sections of Afgooye's community do not believe they would receive a fair judgement under the current situation. Our interviewees in Afgooye depicted the current formal justice system there as filled with biased judges thereby subjecting claimants to unfair treatment. But they hope that the justice system will improve in the future. In Afgooye, moreover, the nature of justice differs considerably as the community is generally involved in resolving disputes in accordance with local customs: at the level of families, kinfolk and elders take the lead in resolving family and domestic disputes. The process of resolving conflict begins at the family level. If relatives cannot solve an issue, they then revert to mediation by the elders. It is only when cases, such as domestic violence, cannot be fully resolved at those two levels that the matter is then referred to the formal system as a last resort.

Research findings reveal that processes of recovery and stabilisation, along with state building and growth in local civil society have impacts on ideas about women's rights, social positions and their access to justice.

"[In Baidoa] 80% of land disputes are taken to aS and perhaps 20% go to formal courts. If parties are unhappy with the court decision or their cases get delayed, they end up going to aS."

KII respondent in Baidoa

Recent studies have highlighted legal pluralism in NRRAs contexts such as Baidoa where some citizens may still seek aS to resolve disputes. In territories controlled by aS, strict and even violent application of Shari'a is the norm and aS court decisions are enforced by the same levels of brute force used to exert control over local populations. However, aS doesn't rely on violence alone. aS also "navigates communal dynamics which requires a level of respect for communal institutions, such as customary justice procedures and elders' authority." This demonstrates that aS' approach to justice is based on a mixture of fear, traditional legitimacy and a level of pragmatism.

II. The Diversity and Overlapping Nature of Justice Institutions in Somalia

A particularly distinctive feature of the justice landscape in Somalia, particularly in NRRAs, is the existence of numerous and diverse justice institutions. These range from state provided justice institutions that rely both on pre-civil war statutory laws and norms, current state and federal constitutional frameworks as well as recent national legislations, for example the recent Sexual Offences Bill. The formal justice institution also encompasses law enforcement and security apparatus alongside district, state and federal courts. Together they constitute an emergent formal chain of justice, discussed in the next section below.

Also, part of the justice landscape, delivered through Islamic jurisprudence of Shari'a and Somalia's customary Xeer, have had long strongholds in Somali society. Importantly, Somalia's justice landscape is not only limited to the existence of multiple justice institutions. These institutions, as our research reveals, often overlap and intersect. Diverse Somali citizens navigate several of these institutions as they seek to maximise access and increase likelihood of getting their cases resolved. Moreover, it is common for Somali citizens to simultaneously have cases in multiple channels. Most respondents highlighted the existence of several paths to justice and that there are overlaps between formal and traditional justice systems. The following sections outline the various justice mechanisms in Baidoa and Afgooye today.

Islamic Jurisprudence (Shari'a):

A key justice institution in Somalia today is informed by the rich body of Islamic jurisprudence also known as Shari'a. This area of justice dates back to the 14th century and is characterised with great diversity. Shari'a is not a monolith. In fact, numerous schools of thought and different ways of applying Shari'a exist in different parts of Somalia in the contemporary period. Historically and today, the application of Shari'a is influenced by the wider political landscape.²⁰ Since, aS has adopted a strict and oppressive applications of Shari'a law. To clarify, this study's approach to Shari'a focuses on understanding how local religious scholars in Baidoa and Afgooye use and apply Shari'a laws to resolve local disputes, especially regarding women's inheritance claims and other domestic matters.

Some scholars consider the relationship between religious doctrines and Shari'a jurisprudence and the Somali Xeer to be closely related. In the 16th century, the Xeer was conceived as a way of contextualising and applying complex and foreign Islamic doctrines and laws to the particular Somali context.²¹ Thus key aspects of the Somali Xeer was historically rooted in Islamic law; such influence can still be seen in Somali customary codes today. Importantly, this scholarship calls for seeing Xeer and Islamic law in Somalia as intersecting instead of two parallel and informal legal systems.

According to a study carried out by USAID, aspects of Shari'a can be found in the constitutions in Somaliland and Puntland as well as in the provisional federal constitution.²² In fact each of these political entities have been explicit in attributing their legal foundations to Shari'a while making little references to the Xeer. However, as is well

²⁰ Expanding Access to Justice Program report 2020

²¹ In Iye 2014

²² Expanding Access to Justice Program report 2020

known, constitutional frameworks across Somalia also borrow heavily from international frameworks and seek to apply global norms. Critically, thus, Shari'a and modern Somali constitutional principles are not entirely antagonistic.

Alongside the Xeer, Shari'a enjoys a powerful position in local communities across Somalia. Citizens seek out local Ulamas for legal opinions, and to address their claims and resolve disputes. In Baidoa for instance, there has been a recognition of the importance of religious scholars as a traditional mechanism of justice. International funding streams have supported local initiatives that involve Ulamas and Baidoa represents a well-cited case for this sort of activity. At the same time, and specifically in NRRAs, UN officials were careful about publicising their funding and support because "religious and Shari'a-based justice frameworks are easily manipulated and extremely politically-sensitive issues."²³

In Baidoa, Shari'a features prominently and plays a critical role in the justice landscape. Interviewees in Baidoa believe that Ulamas are well positioned to resolve disputes amicably and quickly. However, views greatly diverged on the role Ulamas play in delivering justice. Some consider that Ulamas should not be involved because conflict resolution traditionally falls within the remit of traditional elders who are mandated to institute the Xeer and maintain communal harmony. Importantly others see that district and state courts as part of the formal system and have a legal mandate to oversee and resolve criminal cases and disputes of other nature such as land and property disputes. According to respondents, formal courts have the necessary legal mechanisms in place and are therefore legitimate institutions that can effectively address the claims of diverse citizenry.

Such diversity of views, however, is less apparent in Afgooye where the discussions coalesced around Shari'a provided justice. Beliefs that Ulamas play a crucial role in justice, and society in general, were ubiquitous. Ulamas, who traditionally apply justice, are also seen as crucial for spreading awareness about moral conduct, conflict resolution and rights in accordance with religious doctrines and traditions.

Across the two target locations, there is consensus among women and men that Ulamas are trusted figures in their communities. This has huge ramifications on the justice sector of how people access justice and the result they achieve. Most respondents in Baidoa believe that Ulamas have a significant role to play in dispute resolution. In addition to arbitrating cases within their communities, Ulamas also fulfil other crucial tasks critical for expanding access to formal justice institutions. These include awareness raising among members of the community and advising local government officials on necessary policy changes in order to make justice inclusive.

The popularity of religious figures in local justice landscapes is noteworthy. In Afgooye, attitudes about Ulamas' abilities to deliver justice are equally positive. Ulamas in Afgooye are perceived to have a final say in the provision and enforcement of justice. Respondents in Afgooye reveal why Ulamas enjoy such revered status in the local justice and dispute mechanism realms as Ulamas draw on local religious and customary traditions in order to lend legitimacy to their rulings.

Most assume that Somali women harbour feelings of uncertainties and hesitations about Ulamas or religious figures brokered justice. Indeed, there is ample evidence of women's

²³ Interview with UNDP officials in October 2020.

mistreatment at the hands of some religious figures in recent memory especially in previously aS held territories.²⁴ Interviews for this research, however, suggest that women find it pragmatic and necessary to solicit local Ulamas for matters related to inheritance, and marriage and divorce-related disputes, all perceived to be clearly defined in Islamic jurisprudence.²⁵ The engagement of Ulamas in family and domestic disputes lends a gendered dimension to access and delivery of justice in locations such as Afgooye. Respondents have confirmed that in cases involving family disputes, such as those related to marriage, marital neglect or divorce, many women prefer Ulamas. From the perspective of many women, Ulamas are best positioned to address such family issues because they directly draw on widely agreed upon Islamic principles and traditions. Even more significantly, many women feel their cases can be efficiently resolved when well-respected Ulamas are involved. Research in both locations also confirmed this pathway to justice is free of charge for the community. Contrasting this with formal state institutions, authorities such as courts or police are perceived to be corrupt and often require high fees, which many in the community cannot afford, without any guarantees of resolution or enforceability of court decisions.

Effective engagement with Ulamas or religious scholars presents a clear, more transparent path toward the resolution of citizens' grievances, especially women. Multiple sources interviewed for this research suggest that cases adjudicated by Ulamas and jurists have greater legitimacy and enforceability. Inheritance and property disputes brought on by women can, in many cases, be resolved quickly through this channel. Future interventions should navigate the complex and sensitive position of Shari'a in matters of gendered justice. One source recommended strengthening the institutional capacity of federal and state ministries of religious affairs, by streamlining varying and heterogeneous schools of jurisprudence, training judges and even considering the prospect of recruiting female Qadhis (judges), a practice that can also be found in other Muslim majority states like Morocco today.²⁶ According to a legal scholar with the UN, the situation in Somalia is complicated by a lack of an overarching, national council or institution powerful enough to streamline and regulate the rich body of Islamic law and jurisprudence. In the absence of that regulatory institution, the Ministry of Religious Affairs, which would be well positioned for this role, could train and appoint judges who can be uniform in their judgements no matter where they are in the country. What is relevant for our pilot study is the extent to which this Somali justice institution proves useful to communities in the target locations and in particular to women.

Traditional Justice & Somalia's Xeer:

The Xeer dhaqameed, or the Somali Xeer, constitutes another rich and diverse pillar of justice. While the Xeer has resonance across Somalia, the specific codes that govern the Xeer and their applications vary from region to region. For example, the precise nature of the Xeer in Jubaland is expected to be different from the Xeer framework used in Somaliland. These variations emerge because both historically and today the Xeer grew out of a series of contractual agreements, and legal codes, between communities who inhabited common territory. In contemporary terms, displacement and urbanisation shape how Xeer evolves in areas that experience volatile and rapid demographic changes as a response to conflict, forced migration and increased movements from rural to urban areas.

²⁴ As per our interviews with women research participants in Afgooye

²⁵ Interviews with different stakeholders in October 2020.

²⁶ Interview with a senior UNDP official in October 2020.

Although the Somali Xeer dates to the 16th century, it has generated considerable policy interest in recent years in the context of peacebuilding and justice. Ali Moussa Iye, currently with UNESCO, previously explored the historical development of the Xeer in the Somali Peninsula. Iye emphasised that the Xeer prioritises collective interest over individual rights. And its ultimate goal, as has been discussed by others, is to ensure peace and harmony within an established community and to correspondingly seek compensation for wrongdoings including rape. This sentiment was discussed in our interview with a legal scholar currently working with UNSOM's Rule of Law and Justice Programme. The interviewee underlined that the ultimate goal of the Xeer is to keep communal peace and harmony and therefore it is effective as a tool for building and maintaining peace. While key to keeping peace, the Xeer's capacity as a tool for restorative justice to ensure that aggrieved parties get justice and to punish wrongdoers and criminals is traditionally less well defined.

Across Somalia, the Xeer is now faced with a dilemma between emphasising the Xeer's originating purpose of upholding communal peace and the collective interest and its modern aspirations and potential to address/protect individual rights, including women's rights. The question becomes what is the primary objective of the Xeer and how can the Xeer redefine itself to rise to the challenge of protecting the rights of citizens? Hamdi Mohamed is a female Somali scholar who researches women's political participation and when interviewed she contested that the Somali Xeer is "not equipped as a mechanism for individual rights". Mohamed acknowledged the established knowledge that the Xeer was originally designed to address communal problems, but went on to argue that "the Somali Xeer is extremely complex, and it has a capacity to uphold the rights of individuals." The position of the Xeer to address the women's particular grievances is a key area of interest to us.

To address the utility of the Xeer as a viable pathway to justice for women, we must briefly examine its assumptions about gender relations and the role of women in traditional Somali societies, the very environment that has given rise to the customary Xeer codes. A key assumption is an inherent unevenness in rights accorded to either gender: women's membership in kinship-based social groupings is treated as of lesser importance compared to men. This exclusionary ethos also spills into the body of elders who are tasked with implementing, arbitrating and upholding. It is extremely difficult for women to gain access to this body. These underpinning assumptions have huge implications on how women approach issues of justice. While the traditional Xeer does provide some measures of protection to women, including certain rights to compensation in cases of injury, harm and death, these rights and the associated tiers or levels of compensation, are known to be half of that what men receive. Instead of thinking about the Xeer as part of the solution, it can often be part of the problem. The Xeer can perpetuate and further entrench inequalities. Moreover, beyond compensation, the Xeer is usually unable to deal with other disputes and its enforcement is less certain.

Recent internationally funded interventions, especially in Jubaland and Puntland, have become a laboratory for reimagined Xeer so it can be more effective in protecting the rights of marginalised clan constituents, especially women. One UNDP officer discussed at length recent international projects that support elders to renegotiate and update their localised Xeer. However, we believe that interventions of this nature should be treated with care and caution. Although the UNDP reports that some elders have vocalised the need to re-examine their centuries old Xeer codes, external interference in centuries old customary codes

without a broad-based local approval might be counterproductive and will lack legitimacy and acceptance.

International partners, such as UN officials, are less persuaded by the possibility of the Xeer as a substitute for state courts in NRRAs. A senior official with UNSOM reiterated the international commitment to strengthening formal courts at district, state and federal levels and promoting a more transparent and effective justice chain.²⁷ These international actors suggest that customary forms of justice alone should not carry the task of delivering justice to citizens. Several interviewees noted that the Xeer should play a supporting role in areas where formal state judiciary institutions are still limited, such as Afgooye. The Xeer, according to this perspective, fills a gap in justice provision until state justice institutions to assume their role. For Somalis, however, especially those who have little access to formal justice or state institutions, the traditional framework that has existed for centuries does offer much needed access and recourse to justice. Whether this can translate into delivery of full justice to all Somali citizens, particularly women, is an entirely different and uncertain matter.

Noting persistent insecurities and feeble nature of state and security infrastructures in Afgooye, our discussions with the community underscored a deep reliance and necessity of maintaining the traditional justice mechanisms. Most in Afgooye still largely rely on local customs and traditional mechanisms, especially the Xeer. Diverse sections of the community in Afgooye expressed an overall lack of trust and perceived ineffectiveness of state provision of justice and law enforcement. The government is characteristically weak in the context of an insecure Afgooye and many in the community fall back on traditional governance and legal frameworks to address disputes and resolve criminal offences, including SGBV. This implies that nascent stabilisation work, and uncertainty in security gains, can weaken and limit formal justice structures in Lower Shabelle, and therefore drive ordinary people's positive perceptions and confidence in clan and traditional systems, even if these remain highly exclusionary.

Whereas there is a wide consensus on the importance of traditional justice frameworks, women pointed out the difficulties of being included in them. Female interviewees in Baidoa said they were dissatisfied with the way traditional elders handle women's cases. Women are excluded from crucial deliberations: these are usually led by men and seldom allow for women to participate. Contradicting this view, male interviewees, on the other hand, expressed satisfaction with traditional justice processes seeing that they work effectively. In Baidoa women seem to prefer the formal justice system due to its perceived transparency but also because the traditional system overtly sidelines women from conflict and dispute mechanisms.

In Baidoa, as in Afgooye, access and participation in the traditional justice structures are determined by gender as well as clan affiliation. Members of minority clans in Baidoa also cited inaccessibility to informal justice systems. Across locations, minority clans have little representation in the traditional elders' council. Such limited representation, interviewees suggested, stems from discrimination and long-standing social stigma faced by minorities and which affect their access to informal justice mechanisms. Still, members of minority clans maintain that traditional systems are more accessible in part because they are less expensive. In Afgooye, as reported by one female government employee, minorities do have

²⁷ Interview with a UNSOM official in October 2020.

access to informal justice systems where they are sometimes invited to partake in the deliberations. However, minority representation in clan elders' councils remains minimal. Interviewees with minorities in Afgooye underline their feelings that they are outnumbered and do not feel fairly represented in the decisions. Moreover, their perspectives are often met with dismissal and many minorities feel disrespected and that the majority clans have the upper hand.

Other segments of society also articulated why they found traditional structures exclusionary. For those who have been uprooted from their homes, accessing justice for the displaced is even more complex. IDPs face added discrimination when seeking justice because they lack adequate representation within local traditional elders' councils in Baidoa. Moreover, they have no advocates and receive little assistance from local civil society organisations. For the youth in Afgooye, informal justice is largely inaccessible and many feel that their opinions are often undermined due to their age and assumed lack of experience. Nonetheless, young male and female interviewees are optimistic and hopeful about social changes underway.

Formal, State-related Justice System:

Another key finding of this research underscores that formal justice is conceived to be closely related to rule of law, law enforcement and security. Particularly, international NGOs, UN agencies and numerous experts frame justice in Somalia as encompassing of security and law enforcement, thereby adopting a preventative approach that aims to stop crimes and violence against women before they occur.

In recent years, significant effort and resources have gone into strengthening the capacity and efficacy of formal justice institutions through district and state-level courts, but also law enforcement from police and investigators, and security providers including Somali Federal Police, federal Darwish forces, and the SNA. For a few key stakeholders interviewed in this research, having a robust justice sector begins with taking security seriously: diverse security providers, stakeholders argue, should understand that their mandate is to serve and protect Somalia's diverse citizenry. To facilitate this, the UN recently ran programmes to provide human rights-centred trainings to police and security providers which included components on women's rights and gender equality.

As noted above, the stage of recovery and stabilisation impacts local perceptions of formal justice. In Baidoa, perceptions about formal justice tend to be favourable and optimistic, though many challenges remain. However, Somalis across the country have expressed desire in having robust and functioning formal justice institutions. Recent research²⁸ has indicated that much of Jubaland residents' prefer formal governance structures that encompassed the district and state administrations; citizens in Kismayo wanted their administrations and courts to also lead processes of dispute resolution and justice. The desire to have the state play a prominent role in their lives, Jubaland citizens were also mindful that advocating for strong state apparatus, however, does mean the rejection of traditional and customary mechanisms in community mediation and peacebuilding.²⁹ Similar hopeful, but pragmatic, sentiments were expressed in this research. Male and female interviewees spoke optimistically about future courts and judiciary that can be accessible to all Somali citizens. Across the two locations, Somalis want strong and legitimate courts that can deliver and enforce justice.

²⁸ Saferworld report 2016.

²⁹ Saferworld report 2016.

The formal justice system links law enforcement with the judiciary as shared elements of the rule of law. The rule of law, as conceptualised by stakeholder interviewees, are extensions of wider state building projects in Somalia. Currently, several projects and interventions adopt a preventative approach by aiming to stop GBV, especially rape crimes, before they can occur. For example, the UN led Rule of Law and Justice Programme, is a multi-agency initiative that emphasises this preventative approach. Several UN agencies like UNDP, UNSOM, UNICEF and UNPOS all participate in the Rule of Law and Justice Initiative, which is said to have a broad gendered approach underpinning all its activities.³⁰ Numerous projects fall under the rubric of this initiative. One focuses on the law enforcement of federal and state police, which endeavours to recruit, train and assist in the deployment of police officers and other security forces to member states. Particularly in SWS, interviews with several UN officials indicate a special focus in training law enforcement and security providers on human rights and gender equality in order to safeguard the rights of the communities to which they are deployed. This training, however, is basic and only occurs upon initial recruitment.³¹

These programmes tend to have a hybrid approach to justice: they are designed to incorporate formal justice mechanisms with traditional approaches such as involving religious leaders and traditional clan elders. While these programmes are carried out by a UN Working Group with representation from UNSOM, UNDP and UNICEF, they are sustained by multiple funding streams. Overall, the UN and other internationally supported programmes strive to strengthen formal national, state and district-level justice institutions. Both mobile courts and ADR committees are understood to contribute to access to, and spread awareness about, formal justice institutions. As such, traditional and informal justice mechanisms are viewed, by these actors, as supplementary and supportive of formal mechanisms instead of being viable and capable institutions in their own right.

Mobile courts and ADRs exemplify two ongoing UN-supported projects that aim to promote citizens' access to justice. Both have presence in Baidoa. Afgooye is a site of one mobile court, as reported in the Justice Snapshot online portal, a joint initiative created by the European-based Governance and Justice Group (GJG) and US-based Justice Mapping program.³²

The mobile courts in particular, endeavour to expand and make justice accessible for rural communities. As in other sectors, there is a sharp divide between urban and rural communities which affects access to and provision of justice. Mobile courts aim to circumvent the urban-centric nature of justice by aiming to take justice to communities in rural areas. In Puntland for example, citizens in all 22 districts have had some form of access to mobile courts, according to UNDP. The table below generated by UNDP shows Mobile Courts beneficiaries for September 2020.

³⁰ Interview with another UNSOM official in October 2020.

³¹ Interview with a UNDP official in October 2020.

³² As state above, this report distinguishes between aS-mechanisms and approaches to justice and Shari'a law as mediated through local moderate religious scholars (ulamas).

Number of beneficiaries of Mobile courts			
FMS Location	Female beneficiaries	Male beneficiaries	Total
Puntland	46	83	129
South West	6	2	8
Jubaland	20	43	63
Hirshabelle	38	52	90
Galmudug	22	58	80
Total 2020	132	238	370
Total cumulative programme	659	929	1588

Despite this, the programme was criticised for its temporary nature which deters women from taking their cases to mobile courts. On the other hand, ADRs have more of a permanent presence and involve local NGOs and civil society groups. Several ADR forums tend to engage local religious leaders, or Ulamas, albeit such efforts are not often publicised due to misconceptions that all Ulamas are tied to aS.³³ Limited numbers of women have been known to be involved in ADR committees, as is the case in Baidoa, although exact figures are not known. Capacity-building and training programmes such as the UN supported non-violent communication workshops aim to provide ADR committees with the necessary communication skills to address local disputes. UN officials interviewed for this research underscore that the recruitment of women into these workshops is particularly important. This reflects funders' seriousness about engagement of women in alternative dispute mechanisms; nonetheless, women's effective participation, confidence and voice are all issues that cannot be resolved by including women. As per interviewees' recurring views, this requires greater awareness about the specific contributions to local peace. Respondents stated that although women are included in the ADR, it does not necessarily lead to effective participation. Their roles are more often referral than decision making roles, which are usually assigned to men. This shows the active need to not only have women involved in ADR but actively partaking in decision making roles.

Local communities' experiences of political administrations, law enforcement and security may influence citizens' perceptions about formal justice and may shape their decisions to pursue justice through formal channels. Respondents in Baidoa saw that local administration in conjunction with village and community leaders can sensitise the public regarding compliance with government rules and regulations related to the private sector. For example, warning against the misconducts of business owners. With regards to the justice sector, respondents see a much greater role for law enforcement, particularly the police. According to female interviewees in Baidoa, police officers' roles encompass: upholding national and state laws, carrying out investigations as well as refer victims of SGBV crimes to medical services, legal assistance and psychosocial support.

³³ Interview with a senior UNSOM official in October 2020.

Federal Darwish forces also have a similar mandate: the Darwish forces are tasked with investigating criminal cases and making arrests in compliance with laws. Participants also saw that the Darwish forces, which, in theory, operate at a federal level, should liaise with local administrations and district and state police. However, in practice, as has been demonstrated by discussions with key stakeholders, the relationship between federal and state institutions is fraught and volatile. Respondents in Baidoa did not clarify the role of the SNA in this sector, nor did they explicitly discuss other security providers due to mistrust.

Often, as in the case of Afgooye, the government does not feature prominently in the calculations and decision-making of ordinary citizens as they seek an appropriate recourse to justice. Several participants from Afgooye, the local administration, SNA, and police are often seen as figures of authority, but they seldom contribute to community-based conflict resolution. Yet some elements of the state can be present in everyday realities of some citizens. The respondents in Afgooye recognised that the local law enforcement and the SNA maintain security and help keep the community safe through patrolling and use of checkpoints. Local administrations, moreover, have felt a presence in Afgooye through police patrols collecting transport taxes.

Yet, of all Somalia's justice mechanisms, our research reveals that the formal district and state-level institutions are best equipped to address SGBV cases. Crucially, despite well-documented challenges that characterise the formal justice courts in Baidoa and Afgooye, the system is most suited to address SGBV cases. This finding is a theme that echoed in our discussions with women as well as men. Discussions related to SGBV cases generate one way in which access to justice is deeply gendered. In Baidoa, three in every four women reported that formal justice is most accessible to women to address SGBV cases. This is contrasted with one in every four who said that informal justice is the most accessible citing convenience in time and cost. Respondents further added that SGBV victims preferred the formal justice system to resolve their issues as it involves proper administration of justice and a clearer path through which victims can follow up with relevant authorities: this is especially so because traditional systems are perceived by women as biased and male dominated structures.

The fact that women prefer the formal justice mechanism as a pathway to addressing SGBV can largely be attributed to the years-long work of civil society in Baidoa. In Baidoa, civil society organisations, particularly women-founded and women-led community-based organisations, have continuously advocated for women's rights, including bringing justice to victims of SGBV. Such long-term and sustained engagement with women's rights has focused on encouraging women to go through the formal system for SGBV cases. The results had been an improved awareness of available legal processes for victims of SGBV. Cultural attitudes about reporting and seeking justice for women is also changing. Interviewees have stated that women who have gone through any form of SGBV are often told by their families to be discreet and to refrain from reporting because it can dishonour and shame their families. Clan mediated recourse to SGBV survivors can expose those who wish to remain anonymous, thereby contributing to perceptions that the formal system is more accommodating. Despite being well established, reporting modalities that can allow women to safely and securely report crimes or lodge claims are limited, there is a lack of transparency and accountability with limited capacity and resources dedicated to female

investigators, prosecutors, lawyers, legal aid providers and judges. Significant challenges face the formal justice systems especially when it concerns in extending justice to women and other disadvantaged social groups. Firstly, as expressed by other interviewees, there are high costs associated with pursuing justice through formal district and state courts costing around 50 USD to register a claim. The high costs associated with district and state courts deter all youth from pursuing justice through formal channels, though, on the whole, respondents viewed that many young respondents perceive that they have access to both formal and informal justice systems. Second, the law enforcement and security sectors are constrained by limited recruitment of women and men, retention of new recruits, provision of weapons and deployment as well as high turnover rates among state police officers and federal Darwish forces. This presents a gap in adequately ensuring protection of women and other groups. A third problem is the slow pace of change in organisational culture of police and security personnel with regards to their mandate and top priority as the protection of local communities and not to be in the service of political and militarised elites.³⁴ All these factors coalesce to undermine human rights-based approach to security and justice. Fourth, the political tug of power between the federal government and member states compounds all these problems making it difficult for the access and delivery of justice, especially for women.

When compared to other systems, the formal justice sector, by virtue of its linkages with district and state administrations, is politicised. It is the system of justice most susceptible to intense contestation, and as has been in recent cases, frequent stalemates. Such factors, exacerbated in contexts of stabilisation, render state justice mechanisms extremely volatile. For example, law enforcement and security provisions have recently been affected by feuds between federal government and member states. Mogadishu and Baidoa have disagreed on whose mandate it is to provide arms and deploy state-recruited forces. According to UNSOM, “SWS police are now sitting idle in Mogadishu waiting to be armed and deployed back to the state.”³⁵ This creates a huge gap in securitising and protecting local communities, with significant ramifications on women and other vulnerable groups.

Political events and insecurity are known to spill into formal justice institutions, making state and district courts and judiciary vulnerable. For instance, our research reveals that Afgooye district’s judiciary of judges, lawyers and investigators operate out of Banadir in Mogadishu due to insecurities there. The absence of the district courts has implications on physical access to justice institutions, further alienating large sections of society who are unable to travel to Mogadishu.³⁶ Notwithstanding perennial risk of politicisation, formal state justice is also seen to be weak. Moreover, formal courts often lack the capacity or willingness to enforce justice. Many of these constraints directly impact women’s access to and delivery of justice within the formal channels.

Given that state institutions’ capacity to deliver justice and rule of law remain limited and are often complicated by broader political issues, it is more likely that most citizens, and especially women, will continue to navigate multiple justice institutions in order to maximize their opportunities to obtain justice.

³⁴ Interview with UNSOM official in October 2020.

³⁵ Interviews with UN officials and independent experts in October 2020.

³⁶ Interviews with UN officials and independent experts in October 2020.

III. Somalia's Gendered Chain of Justice

The **chain of justice** can be defined as the sequential process by which citizens pursue justice. Although most of the discussions about the justice chain pertained to the formal justice system, informal chains of justice do exist.

The justice chain around SGBV cases is quickly becoming a norm across Somalia. Even in Afgooye, still early in the recovery stage, the local community is familiar with the SGBV chain of reporting, referral and the investigation of SGBV cases, especially rape. As interviewees noted, although traditional justice mechanisms are preferred in Afgooye, SGBV cases, especially rape, tend to be reported to the police first, even before elders are informed. The police may then refer a victim to seek medical treatment in case of injury. Interviews with key stakeholders agreed that it is the role of the police to launch investigations in hope of apprehending the suspect. Although these are standard procedures related to SGBV cases, many in Afgooye do not expect resolution or justice from the police or local courts. While this may in part be due to the deep stigma and shame associated with such SGBV cases, law enforcement and courts also lack the capacity to resolve and deliver justice to survivors. Many of the respondents believe that an increase in female police officers would be beneficial.

According to interviews, the justice chain should follow a linear process that starts with reporting all the way through to resolution often by a court. While the initial step of the justice chain starts with lodging a claim or reporting a crime to the police, reporting itself is very complex. Citizens tend to weigh up different options of where to take their case, assessing the benefits and downsides of formal and traditional mechanisms. Some decide to pursue a formal justice chain, others might be pressured into taking their case through the traditional chain. Less known, it is common to have cases simultaneously in multiple streams of justice: for instance, land and property disputes and cases related to inheritance.

As SGBV cases progress through formal channels and are reported to the police, an investigation ensues, however, SGBV investigations are also sensitive. For one, there is a critical shortage of female investigators with whom female survivors can be comfortable, also male investigators are in short supply. The next step in the formal justice system involves the prosecution, which subsequently takes the case to the district court. Baidoa and Kismayo as well as Mogadishu have justice infrastructure in terms of a formalised SGBV justice chain. Where available, notably in Baidoa and Garowe, legal aid, counselling services, psycho-social support and other welfare services for survivors are frequently provided, but is contingent upon the availability of funds. At the top of the justice chain are the formal courts which are tasked with adjudication and passing judgement. Court decisions and verdicts are notoriously difficult to enforce. In contrast, aS courts can enforce decisions because of aS' monopoly on violence and fear among local populations.

In situations where traditional forms of justice are salient, such as in Afgooye, traditional forms of justice chains are firmly rooted. The established traditional justice chain is centred on clan elders who often resort to compensation and clan elders-mediated resolutions that use the local Xeer as a blueprint. Although this can result in acknowledgement of

wrongdoing, traditional Xeer does not usually advocate for punitive measures for crimes such as rape and other forms of bodily harm, preferring instead to pay compensations to victims' families and kinfolk.³⁷

Again, traditional justice chains are highly exclusionary. They are still dominated by older male elders of high standing in the community. However, our research highlights the existence of creative strategies designed to puncture the dominance of clan elders in the informal chain of justice. For example, a network of Afgooye youth including male and female members from different localities and across clan lines have recently formed a collective of district presidents who mediate between conflicting parties before these disputes reach law enforcement or elders councils.

A gendered analysis of these processes reveals that women, and particularly women of less powerful status from minority clans, are unable to follow through the established chain of justice. The ability to progressively follow through this linear chain of justice is uneven and gendered. Women are much more likely to fall out of the chain of justice. As has been expressed in several interviews with independent researchers and experts, women drop out of the chain, and particularly in cases related to rape or domestic violence. In cases where incidents of SGBV are reported, many women are deterred from going through formal courts. Instead, rape crimes tend to be resolved through traditional mechanisms often mediated by clan elders of the victims and the perpetrators.³⁸ Two UN officials have expressed frustrations that the inability to follow the standard justice chain related to SGBV undermines effective responses to rape and other crimes.

Sensitising and information sharing within communities is vital to spread awareness about existing justice chains. CAFs, which are made up of local civil society members, crucially promote locals' understandings of existing justice chains. CAFs are prominent in locations such as Baidoa and also in Kismayo and Mogadishu. These CAFs were created by Saferworld in 2017 in partnership with Somali Isha Human Rights Organisation (IHRO), Somali Women Solidarity Organisation and Somali Women Development Centre (SWDC), respectively. Notably, CAFs frequently hold joint discussions with security and law enforcement providers on existing referral pathways for justice and facilitating access to paralegal aid for vulnerable groups.³⁹ CAFs are hybrid entities composed by local traditional figures and civil society actors, but with reach to formal institutions such as local and district-level law enforcement and courts. Interviews with practitioners and researchers have suggested that Somali women do participate in decision making roles within CAFs. They are systematically recruited to be part of local CAFs, but their numbers often do not exceed half of CAF groups. According to a recent report, around five CAFs have been formed in Baidoa since 2017.⁴⁰ At the local level, CAFs can work to keep women's GBV cases within the formal chain. The high participation of women in CAFs work is seen to build trust necessary for encouraging women and the wider community to report SGBV cases. The CAFs are also designed to refer SGBV survivors for free legal aid, medical care, counselling and psycho-social support. Many of these activities are funded through partnership with NGOs such as the Baidoa-based IHRO. CAFs can spread knowledge about the rights of women and the appropriate channels available to them.

³⁷ Interview with independent expert in October 2020.

³⁸ Interview with a UNDP official in October 2020.

³⁹ Interview with an NGO representative in October 2020.

⁴⁰ Saferworld report 2020.

The justice chains can be formal and traditional and both demonstrate the distinct procedures and processes associated with the pursuit of justice. It is worth deducing that these chains are gendered, classed and subject to clan influences. Experiences of the justice chain, and the likelihood that cases will ultimately be resolved, depend on the social markers and personal attributes of the claimant.

IV. Access to Justice vs. Delivery of Justice

The inadequacy and gendered exclusionary nature of formal and informal chains of justice, such as the inability of women to follow through justice chains until cases are resolved, points to another key finding of this research. There is a notable distinction between women's access to justice and delivery of justice. This distinction is essential to underline especially when designing interventions that aim to improve the justice frameworks so they can work better for diverse groups of Somali women.

The literature review as well as discussions with key stakeholders underscore that both formal state and informal traditional justice institutions fall short of delivering justice to women. Access and delivery of justice across the two locations are determined not only by gender, rather a host of other social and economic markers interact with gender to determine the level of accessibility to justice institutions. Class and clan affiliations play key roles in who has access to the formal and informal justice systems, and the extent to which grievances can be addressed and resolved.

In most circumstances, women can initially access one form of justice institution or another, though not without difficulty. High court and other legal fees coupled with shortages in female officers, investigators, prosecutors and judges complicate access for women. Similarly, most women face access issues in the traditional justice realm. Women must rely on male relatives and clan elders to seek justice in the cases of land disputes, inheritance matters, divorce or SGBV. These male relatives occupy the positions of mediators between women and elders' councils. Moreover, female interviewees suggested that women are seldom able to speak directly about their own cases.

In Baidoa, where the demographic make-up includes significant vulnerable groups, mainly minorities, youth, and IDPs, participants explained that the **4.5 clan formula** is itself a cause for community grievance.⁴¹ The clan formula is also a key determinant in terms of access to justice. The clan formula perpetuates discrimination and restricts inclusive justice. Findings in Afgooye also support that access to justice is influenced by clan: justice institutions are accessible to women from certain clans, while others may be marginalised from the same processes. Thus, not all women experience access to justice in the same way. Women in Afgooye from minority clans face greater challenges; these women view formal and informal justice systems as largely inaccessible to them. The discrimination confronted by minority women reflects the ways in which access to justice is determined by several factors, not gender alone. This finding requires a special understanding of the multiple constraints which, when combined, restrict women's access to justice. Some of the female

⁴¹ The "4.5 clan formula" is the premier power-sharing modality used in representative politics across Somalia today, with the notable exception of Somaliland. According to the 4.5 clan formula, not all clan families are equal: the Darood, Dir, Digil and Mirifle and Hawiye are each entitled to equal shares of power, while the ".5" reflects the conglomeration of all of Somalia's "minority" clans. This clan formula has been subject to intense disagreement over the last twenty years.

respondents in Afgooye noted that they have faced multiple challenges in both state-provided justice mechanisms as well as traditional mechanisms. Although women can have a limited path to justice, justice is not inclusive and cannot reflect the particular needs of women. Both systems, the formal and traditional, are male dominated and experiences of justice are uneven. As female respondents in Afgooye suggested, “women hardly get the same treatment as when a man walks into a court or police station.”

Beyond gender, diverse participants attributed their lack of access to justice and political power to daily experiences of discrimination and inadequate services like education and employment. For instance, Baidoa interviewees have discussed the subordination of young people. Our discussions with the youth revealed that their voices are not heard and their frequent experiences of discrimination and harassment at the hand of local officials. These are known constraints that limit women and other disadvantaged groups from gaining access to justice mechanisms, both formal and traditional. Despite such constraints, nominal access to justice is possible, according to extensive interviews. Equally at stake, however, is the delivery of adequate justice for women and girls.

A holistic and inclusive access to justice also requires engaging greater numbers of women in the security sector as well as raising awareness among security providers about the positive contributions of women’s inclusion. Our research in Baidoa points to how closely related women’s security is to notions of justice. This finding has also been observed in our interviews with key stakeholders: Somali women can and should be in key security positions that enable them to oversee their own safety, particularly against SGBV. Judging from our research in Baidoa, opinion is split on whether women do inhabit key roles within the local security sector. Most respondents stated that women in Baidoa are not engaged in the formal security sector. However, others like the women village heads and gender police officers highlighted that there are women engaged in security committees though not as decision-makers. Although female heads of villages and police officers are tasked with reporting SGBV cases, and other issues that impact women specifically, ultimately the decisions are made by male clan elders

The definition of security and justice differed across locations. In Afgooye, for example, women respondents, between the ages of 35-50, described security as living under the protection and care of their male relatives. But these respondents also articulated that living under the protection of men can erode women’s rights: rights, in this context, can only be guaranteed by male relatives. When male respondents in Afgooye were asked about the status of women in their community, they expressed that women’s rights are protected hence there were no problems faced by women, and that women in Afgooye “are treated well.”

The context in Afgooye is noticeably different: women in the security sector remain very few and face challenges such as overt gender discrimination. There are not many women who are interested in this sector, knowing that it is an extremely male-dominated field. Only a handful of women occupy roles in the limited law enforcement and security apparatus in Afgooye, and they are discriminated against by virtue of being women. Notably, there is one female police officer who also advocates and champions for the recruitment of more women in the force through her engagement with civil society and the media.

In Baidoa, most respondents highlighted that both formal and traditional justice systems are nominally accessible for women. The decision of which system to pursue depends a great deal on the type of case. The community has preferences on what cases should be referred to what system, meaning they seek a system that they believe will lead to a just outcome for them. Criminal cases that go to the formal courts were identified as murder and SGBV. Family-related, marriage, land and inheritance disputes are often solved through the traditional systems. Women are not the ones that take their cases to the elders, male relatives do so on their behalf, thus highlighting women's exclusion from a key element of the justice chain.

Inclusive justice reflects, at the highest levels, the distinct circumstances and interests of citizens from sections of society that have not been previously included in state and traditional institutions or systems including the justice sector. Inclusive justice recognised that access to and delivery of justice is gendered but it is also classed and clan influenced, thereby advocating for understanding on how the positions of society function. For justice to be inclusive, it must carve spaces for women's participation as well as minorities in decision-making roles at various levels in the justice and security sectors.

v. Inclusive Justice and the Global WPS Agenda: Protective but Not Restorative

Recent scholarship and advocacy around WPS indicate that the agenda yields huge potential for meaningfully improving the lives of women in fragile and conflict-affected countries. In numerous countries, including Somalia, long-term sustained engagement with key pillars of the WPS agenda has been formative in promoting Somali women's inclusion and participation in the highest ranks of power and decision making. Women are making steady, though difficult, progress in terms of political participation in state and national institutions. As Ladan Affi writes, "SWS has the highest number of women representatives in the FGS Parliament, with 17% (16 out of 95 MPs), even though the SWS constitution stipulates 20%." ⁴²

Where it concerns gender and justice, we argue that while the WPS agenda has a strong protective mandate, its position as a restorative instrument is not well-defined. Half of the resolutions within the WPS agenda deal explicitly with sexual violence against women in conflict and call for greater protection of women from systemic and targeted sexual violence, especially rape. As such, the WPS resolutions are adequate in terms of calling for protection. ⁴³ While these resolutions urge for increased accountability and reporting of perpetrators of SGBV in contexts of conflict and post-conflict contexts, the resolutions do not chart a clear path for women, especially for grievances that fall outside the SGBV remit.

Recent trends to recognise the internal diversity among women within global WPS discourses and practices were spearheaded by a slew of academics and advocates. ⁴⁴ Their contributions have depicted the multiple forms of oppression often faced by women and advocated against the abstraction and oft sweeping language of the WPS resolutions.

⁴² Affi 2020.

⁴³ The concept of restorative justice refers to the different approaches of "responding to crime, or other types of wrongdoing, injustice or conflict, that focuses primarily on repairing the damage caused by the wrongful action and restoring, insofar as possible, the well-being of all those involved".

⁴⁴ For useful references, see Davies, True 2019; Shepherd 2017; Basu, Kirby, Shepherd 2020.

While this is a valid criticism, current realities in NRRAs point to the fact that most Somali women remain vulnerable to generalised insecurities, targeted forms of violence, and face degradation of their basic rights.

Inclusive justice requires greater involvement of women in key decision-making roles, which is an objective that is in line with the WPS agenda. For participants in Baidoa, the notion of women's participation in decision-making roles within the justice sphere raised comparisons to recent strides and challenges faced by Somali women in political life.

Interviewees in Baidoa discussed women's participation in the political arena, where there was a special emphasis placed on women's quotas at federal and state levels. Beyond formal politics, participants in Baidoa underscored that women increasingly occupy leadership roles in civil society as heads of women's associations, community-based organisations and as key figures in state governments as ministers. There had been some progress made in involving women in the security sector and in local dispute/conflict resolution bodies. For instance, new roles encompass engaging women in Baidoa's civil society to participate in local dispute resolution committees, offer referrals to services in the community and assist in formulating policy.

Still, there are daunting challenges ahead if women were to assume greater roles in decision-making within formal and traditional justice realms. In Baidoa, women, despite their progress, lack a set of requisite skills, education and capacity to rise to leadership positions. Nearly all participants also pointed to the symbolic nature of women's inclusion in the security and justice sectors: while increasingly visible, women's voices are often not heard. A set of interventions can address the lack of effective and meaningful inclusion of women: awareness raising, mentorship and leadership training that target building the confidence of women, in order to mitigate concerns about the tokenistic participation of women in Baidoa.

Views about women's roles in decision-making differed in Afgooye. Women are understood to be indirectly involved in decision-making processes in Afgooye, where they hold positions of responsibility though not senior positions of power within the community. Social change about gender roles is slow, but many interviewees have reasons to be optimistic as more girls and women are enrolled in schools and the local university, and more are employed in the health and education sectors and occupy supervisory positions. While there is a slow shift in local attitudes about women's contributions, interviewees noted the lack of policies and institutional frameworks necessary to oversee women's greater participation in decision-making roles.

In Afgooye, according to the research findings, women lend unique perspectives to conflict resolution at the community level. Women can occupy a distinct social position that enables them to mediate between parties to conflict. In Somali society, women are considered symbols and agents of peace. Young women are traditionally exchanged by warring clans during periods of reconciliation; once married, these young women are considered to seal the peace. This custom reportedly re-emerged since 1991, as argued by a recent report by Life and Peace Institute that captured the dynamics of women's involvement in Kismayo's recent peace process.⁴⁵

⁴⁵ Life and Peace Institute report 2018.

One commonly held view in Afgooye is that women tend to show compassion and can be especially attuned to issues of local security due to traditional gender roles. Women's care duties extend to the safety and well-being of their children, families as well as the wider community. Afgooye participants, of both genders, understand that women are well positioned to take on such responsibilities and protecting their families' assets.

Attitudes related to gender roles and inequalities are steeped in contexts such as Afgooye and have significant ramifications on who can have better access to traditional as well as state justice systems. Strict gender roles and inequalities, as our respondents have clearly underlined, take root from a young age and start at home. Girls and boys are exposed to gender inequality in their homes and immediate community surroundings; moreover, children experience everyday differentiated treatment based on sex. These inevitably spill into the formal and informal justice realms. Almost all interviewees mentioned this as a primary factor for why girls and women do not have equitable access to a variety of justice institutions. Insecurity compounds already existing discrimination against women. Cultural barriers and a misinterpretation of religion were clearly cited as challenges to inclusive justice. Women's contributions and potential as decision makers within the justice sector are often overlooked and undermined. Making this even more difficult as women in Afgooye lack financial resources, role models, mentors and other forms of support, including emotional support, are all deemed necessary for subverting the status quo.

The final finding points to the uncertainties inherent with WPS as a restorative normative instrument that can address issues of justice beyond SGBV. We maintain that the WPS agenda can enhance its role as a promoter of access and delivery of justice for women in conflict-affected and stabilisation contexts. This can be achieved by solidifying the linkages between the WPS agenda and national justice mechanisms. Going beyond the protective elements and bolstering the WPS agenda's restorative potential will entail strategic interventions that are firmly focused on the Somali National Action Plan. A consultative and participatory driven Somali NAP with a strong justice component is a vital area to support in the long term. A strong justice component within the WPS framework can simultaneously work to promote women's entry into leadership and decision-making roles in state justice mechanisms while raising awareness to communities through engagement with CAFs, women's rights organisations and CSOs more generally. Accelerating the recruitment of women in law enforcement, security and justice sectors and subsequently providing leadership, mentorship and specialised training on women's rights is key.

Conclusion

The case for making justice more inclusive is both pragmatic and moral. This research underscored that broadening the field of justice, both in access and delivery of justice, is beneficial to communities that have experienced prolonged violence, insecurity and instability. Inclusive justice presents a sure way of preserving the gains made in terms of community-level peace as well as security gains. At the same time, inclusive forms of justice can uphold and preserve the rights of citizens who have been marginal in politics and society, including, though not limited to women and men from disadvantaged social and economic backgrounds.

This research highlighted that the constraints faced by women in terms of access and delivery of justice are similar and overlap with other challenges seen in political participation. Cultural barriers, misrepresentation of religion, lack of opportunities such as education, employment with access to decent and dignified livelihood, health and gaps in awareness about rights all have impacts on equitable and inclusive access to justice. Similarly, we note that the justice sector, akin to politics, is gendered, classed and clan influenced. Not all women or men experience hardship in penetrating the formal and informal justice mechanism; this access is determined by location as much as it rests on the particular social and economic standing of individuals. During this research we have identified women in Baidoa and Afgooye who are well respected advocates in their communities who can act as potential female powerbrokers to mentor other women. They are crucial assets to cultivate in tailored strategies for interventions such as awareness raising and mentorship.

There is a myriad of activities across Somalia that are now focused on justice and security, some of those have been outlined above. Interviews and surveys of existing literature demonstrate that the intersection between justice, security and state building is of key interest to local district, national and international actors. Similarly, there is a great deal of research and knowledge base as well as a flurry of programmes but no effective platform to share such knowledge, presenting a dilemma in understanding who is doing what and where but also gaps in sharing lessons learned opportunity for stakeholders within this arena. This pilot research has attempted to capture this. Yet, a focus on women's access and delivery of justice remains a key gap. Another dilemma, as had been aptly captured by one UN official, is that implementation is a key issue. He noted, "The issue is not with understanding and research, the most significant problem we face is implementation."

Dilemmas associated with implementation aside, there is a common misconception about the gendered nature of access and delivery of justice in the Somali context today and particularly in NRRAs. Women's access to justice can be strengthened by different means. Enabling greater access to justice for women is vital. Delivering justice to diverse groups of women, including minorities, is equally important. This research has identified gaps in the accessibility and delivery of justice to women and the ways in which women can rise to decision-making roles in the justice, law enforcement and security sectors.

Recommendations

This inception report, based on the research findings and local context, suggests the below recommendations. These include short-term recommendations within the scope of the pilot project timeline, as well as recommendations beyond this and wider long-term initiatives that would be beneficial for women's access to justice within the target locations.

Short-term recommendations Afgooye

This inception reports suggests the pilot project to provide support for traditional justice systems in Afgooye through engaging and sensitising local religious leaders (Ulamas) and clan elders on the rights of women and their access to traditional justice mechanisms. This effort can be integrated into ongoing Somalia-wide programmes that aim to bolster Alternative Dispute Resolution (ADR).⁴⁶

The pilot project should also map and begin to support the creation of a network of female powerbrokers⁴⁷ within relevant civil society organisations (CSOs) and community-based organisations (CBOs)⁴⁸ that target and work on women's rights. The project should thereafter build out this network and support on initial capacity building training, for example leadership and negotiation skills, mentoring, and specifics on the justice chain.

Additionally, the project should coordinate with other donors on existing services in the area and strengthen and promote the coordination on justice.

Short-term recommendations Baidoa

The pilot project should aim to provide SGBV and gender-focused training sessions to a specific cohort of male law enforcement and security providers in Baidoa, with a focus on access to justice. The project would engage with them in this channel to understand the barriers they encounter to deliver justice to women and minority groups. Lessons learned from this activity can be used thereafter to reflect on and amplify key messaging.

The pilot project could also promote women's effective participation in Community based Action Forums (CAFs) especially women from minority clans. This would be done through raising awareness of women's participation in the CAFs through communication campaigns, and carrying out tailored messaging on minority clan engagement (male and female). This further support to CAFs would be achieved through collaboration with Saferworld which has supported the formation of CAFs in Mogadishu, Baidoa and Kismayo since 2017.

The pilot project could also identify and engage local female powerbrokers from CSOs and CBOs that work on minority women's rights to support in a collaborative cross regional network and build communications channel between the regions such as WhatsApp.

⁴⁶ Alternative Dispute Resolution (ADR) is used as a synonym for the historic and cultural Somali customary mediation and justice system known as the Xeer. The Danish Refugee Council as well as the United Nations Development Programme (UNDP) have supported programmes on ADR in Somaliland and SWS.

⁴⁷ Individuals who act as central nodes able to connect people and networks because they have and can deploy certain types of capital-whether social, cultural, symbolic, or commercial.

⁴⁸ Examples from Baidoa include Southwest Women Human Rights Advocate Network and Bay Women's Association Network.

The project could also support on a forum with key justice and security actors, elders, and local administration in Baidoa on barriers to justice in the region.

Short-term recommendations National/Federal level

This inception report recommends wider short-term outputs on a national and federal level that would support the project concept. These include identifying relevant Somali and non-Somali actors currently engaged in drafting the Somali NAP on WPS. As well as disseminating the findings of this research to actors involved in formulating Somali NAP, and encourage the sharing of information and lessons learned from NRRRA locations such as Afgooye and Baidoa with specific promotion of the inclusion of a justice pillar within the NAP.

Medium-term recommendations Afgooye

From this inception research, the project suggests supporting existing efforts to increase the recruitment of women in the security and justice system. For example using communication strategies to circulate and amplify information regarding recruitment opportunities for women, and specifically women from minority clans, within the security and justice sectors.

The pilot project also recommends efforts to support the adoption of a CAF-style committee in Afgooye with the assistance of local CBOs, in continued coordination with Saferworld. CAFs can encourage the inclusion of women in decision-making roles and spread awareness about access to justice for diverse women.

Medium-term recommendations Baidoa

The project recommends supporting local initiatives to create a gender desk within Baidoa police station to encourage adequate reporting and investigation of SGBV cases.

Mapping and engaging youth collectives and organisations to enhance knowledge about the distinct challenges facing young women and men related to access and delivery of justice is would also support in promoting wider access to justice. Moreover, the project encourages facilitating trainings for members of youth organisations (male and females) on gender equality and women's rights.

Medium-term recommendations Afgooye and Baidoa

The project recommends cultivating public-private partnerships and engaging major telecommunications companies in harnessing approaches, such as hotlines and mobile applications, to safely and anonymously report crimes such as SGBV.

Additionally, we recommend developing a communications campaign in both target locations that aims to amplify existing programmes that promote women's recruitment in the justice and security sectors, which specifically engages with women from minority clans as a key target audience.

The project also suggests supporting mentoring and leadership training programmes for female attorneys, investigators and police officers. Currently, UNDP is offering internships and traineeships to female attorneys in Jubaland; this activity can be replicated in SWS.

Long-term recommendations Afgooye and Baidoa

This report recommends embedding gender equality and the rights of girls and women into school curricula in the long term, raising awareness about gender equality among boys and girls, and supporting in providing training to teachers about gender equality, women's rights and diverse paths to justice.

Providing recurring trainings to law enforcement personnel and security providers on human rights, gender equality and the rights and roles of women and other vulnerable groups would also be beneficial to the target locations.

Efforts could also be made to engage with the Ministry of Religious Affairs on practices in place to strengthen women's roles in jurisprudence, such as the prospect of recruiting and training female Qadhis (Judges).

Initiatives aimed at increasing the numbers of women in security and justice sectors should also be supported; including enlisting the support of relevant civil society organisations, female powerbrokers and male influencers in the recruitment of women in key decision-making roles within security and justice spheres.

Wider research agendas that augment knowledge and understanding about access to the justice chain and the particular challenges faced by women that lead them to drop out of the chain completely should be developed.

Finally, sustainable intergenerational dialogues to bridge the gap between elders and youth and enable a safe space for challenges in accessing the justice chain to be discussed should be promoted and facilitated.

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