

# Enhancing Legal Empowerment Through Engagement with Customary Justice Systems

## SMALL GRANTS PROGRAM

Evaluating the Effectiveness of Legal Empowerment  
Approaches to Customary Law Reform in Somaliland  
and Puntland

Maria Vargas Simojoki



International Development Law Organization  
Organisation Internationale de Droit du Développement



## EVALUATING THE EFFECTIVENESS OF LEGAL EMPOWERMENT APPROACHES TO CUSTOMARY LAW REFORM IN SOMALILAND AND PUNTLAND

Copyright © International Development Law Organization 2010

### **International Development Law Organization (IDLO)**

IDLO is an intergovernmental organization that promotes legal, regulatory and institutional reform to advance economic and social development in transitional and developing countries.

Founded in 1983 and one of the leaders in rule of law assistance, IDLO's comprehensive approach achieves enduring results by mobilizing stakeholders at all levels of society to drive institutional change. Because IDLO wields no political agenda and has deep expertise in different legal systems and emerging global issues, people and interest groups of diverse backgrounds trust IDLO. It has direct access to government leaders, institutions and multilateral organizations in developing countries, including lawyers, jurists, policymakers, advocates, academics and civil society representatives.

Among its activities, IDLO conducts timely, focused and comprehensive research in areas related to sustainable development in the legal, regulatory, and justice sectors. Through such research, IDLO seeks to contribute to existing practice and scholarship on priority legal issues, and to serve as a conduit for the global exchange of ideas, best practices and lessons learned.

IDLO produces a variety of professional legal tools covering interdisciplinary thematic and regional issues; these include book series, country studies, research reports, policy papers, training handbooks, glossaries and benchbooks. Research for these publications is conducted independently with the support of its country offices and in cooperation with international and national partner organizations.

Images: © Maria Vargas Simojoki

Author: Maria Vargas Simojoki

Published by:

International Development Law Organization in conjunction with UNDP Somalia and the Van Vollenhoven Institute, Leiden University.

### **International Development Law Organization**

Viale Vaticano, 106  
00165 Rome, Italy  
Tel: +39 06 4040 3200  
Fax: +39 06 4040 3232  
Email: [idlo@idlo.int](mailto:idlo@idlo.int)  
[www.idlo.int](http://www.idlo.int)



**Disclaimer**

IDLO is an intergovernmental organization and its publications are intended to expand legal knowledge, disseminate diverse viewpoints and spark discussion on issues related to law and development. The views expressed in this publication are the views of the authors and do not necessarily reflect the views or policies of IDLO or its Member States. IDLO does not guarantee the accuracy of the data included in this publication and accepts no responsibility for any consequence of its use. IDLO welcomes any feedback or comments regarding the information contained in the publication.

All rights reserved. This material is copyrighted but may be reproduced by any method without fee for any educational purposes, provided that the source is acknowledged. Formal permission is required for all such uses. For copying in other circumstances or for reproduction in other publications, prior written permission must be granted from the copyright owner and a fee may be charged. Requests for commercial reproduction should be directed to the International Development Law Organization.

## ABOUT THE PROGRAM

This program aims to expand the knowledge base regarding the relationship between the operation of customary justice systems and the legal empowerment of poor and marginalized populations, and identify entry points and tools of engagement for working with customary justice systems to strengthen legal empowerment. Such knowledge will be generated through a number of individual research projects based in Namibia, Rwanda, Somalia, Tanzania, Mozambique, Papua New Guinea, Liberia and Uganda. These research projects seek to evaluate programmatic interventions designed to enhance legal empowerment through improved operation of customary justice systems with a view to collecting empirical data on the effectiveness of such approaches, lessons learned and best practices. The results will be brought together in two publications that will be disseminated among international and national legal practitioners, country specialists and development actors working in the areas of customary justice and/or legal empowerment.

## PARTNERSHIPS

This program is being implemented by IDLO in partnership with the Van Vollenhoven Institute for Law, Governance and development, Leiden University (<http://law.leiden.edu/organization/metajuridica/vvi/>) and the United Nations Development Programme (UNDP), Somalia.

The Van Vollenhoven Institute collects, produces, stores, and disseminates knowledge on the processes of and relationships between law, governance and development, particularly in Asia, Africa, and the Islamic Middle East. Through research and teaching, the Van Vollenhoven Institute seeks to contribute to a better understanding of the formation and functioning of legal systems in developing countries and their effectiveness in contributing to good governance and development. The Van Vollenhoven Institute's research employs a socio-legal approach to develop insights into the workings of national legal systems in their historical, social and political contexts. It includes both state law and legal institutions, as well as customary and religious normative systems, with a special focus on access to justice. In their research projects the processes of law-making, administrative implementation, enforcement and dispute resolution have a prominent place. Local case studies help us to find out how law functions in society.

UNDP is the UN's global development network, working with developing countries on their own solutions to global and national development challenges. UNDP's focus is helping countries build and share solutions to the challenges of: democratic governance, poverty reduction, crisis prevention and recovery, environment and energy, and HIV/AIDS. UNDP works with 166 countries to develop local capacity and ensure the most effective use of UN and international aid resources.

## DONOR SUPPORT

This research is being supported by the Bill and Melinda Gates Foundation ([www.gatesfoundation.org](http://www.gatesfoundation.org)) as part of IDLO's broader research program: *Supporting the Legal Empowerment of the Poor for Development* and UNDP Somalia.

## ABOUT THE AUTHOR

Maria Vargas Simojoki holds a Bachelor of Social Science from Roskilde University, and a Masters (double subject) in International Development Studies and Religious Studies from Roskilde and Copenhagen Universities. She has extensive experience with participatory movements in India and Latin America, and has worked with the Danish Refugee Council in Somaliland and Puntland as both a program officer and a protection manager. She is currently the Programme Advisor for the Danish Demining Group in Galkayo, Somalia, working with their Community Safety and Armed Violence Reduction program.

## ACKNOWLEDGEMENTS

A debt of gratitude is owed to all Somali counterparts, local non-government organizations (NGOs) and individuals that believed in the value of this research and provided support. The author would like to express her thanks to all interview participants for sharing their views and being extremely honest, particularly when discussing sensitive subjects. In Garowe, the help of Ahmed Noah from UNDP Rule of Law Access to Justice program was instrumental in managing meetings even during holiday periods; his dedication and assistance went beyond what was expected and his interest in the project proved very motivating. In Hargeisa, the local NGOs Horn Peace and Gaashaan provided assistance in facilitating focus group discussions, assisted with logistical arrangements and generously allowed use of their conference rooms. Moreover, Abdulhakim Abdi from UNDP Rule of Law Access to Justice helped facilitate many contacts and his liaison work with the legal clinic allowed for a successful validation meeting. UNDP colleagues in Nairobi provided excellent feedback and comments; a special debt of gratitude goes to the Access to Justice section (both those based in the field and in Nairobi) for providing important inputs, good humor and offering a level of assistance that exceeded expectations. Finally, thanks are extended to Dr Erica Harper from IDLO for her guidance and feedback throughout the research process. The views expressed in this report are those of the author.

# Contents

Executive summary .....	V
Summary of recommendations .....	V
1. Accountability .....	V
2. Dissemination .....	V
3. Linkages .....	V
4. Institutionalization .....	VI
5. Holistic approach .....	VI
1. Introduction .....	1
1.1 Research question .....	2
1.2 Research goal .....	2
1.3 Research outcome .....	2
1.4 Central research questions .....	2
1.6 Methodology .....	2
1.6.1 Quantitative versus qualitative methodologies .....	3
1.6.2 Semi-structured interviews .....	3
1.6.3 Focus groups .....	4
1.7 Data collection and field based research .....	4
1.7.1 Locations .....	4
1.7.2 Validation of data .....	5
1.7.3 Consent of participants .....	5
1.8 Challenges and constraints .....	5
1.8.1 Lack of youth involvement .....	5
1.8.2 Facilitation of focus groups .....	6
1.9 Partner organizations .....	6
1.10 Practical arrangements .....	6
1.10.1 Logistics .....	6
1.10.2 Language and communication .....	6
1.11 Security assessment .....	7
1.11.1 Security issues and interviews .....	7
1.11.2 Local authorities .....	7
1.11.3 Sensitiveness of <i>xeer</i> interventions .....	7
1.11.4 Upcoming elections in Somaliland .....	7
1.11.5 Heightened insecurity in Puntland .....	7
2. Background .....	8
2.1 The clan structure and its impact on daily life .....	8
2.2 Somali customary law: <i>xeer</i> .....	9
2.3 <i>Xeer</i> in practice .....	10
2.4 Access to justice in Somalia .....	10
2.5 A plural legal framework .....	11
2.6 Collective responsibility .....	11
2.7 Representation and participation in <i>xeer</i> .....	12
2.8 The protection of women and children under <i>xeer</i> .....	13
3. The National Declarations: working with elders to revise and reform <i>xeer</i> .....	14
3.1 Assessing the impact of the National Declarations .....	15
3.2 Community awareness of the national declarations .....	15
3.3 Referral of serious crimes to the state justice system .....	16
3.4 Heightened protection for vulnerable groups .....	17

3.4.1 Women .....	17
3.4.2 Children .....	18
3.4.3 Minority and IDP groups .....	18
3.5 Evaluation of impact.....	18
4. Lessons learned from evaluating the impact of the Declarations .	20
4.1 Ineffective dissemination .....	20
4.2 Accountability.....	20
4.3 Broader problems of discrimination.....	21
4.4 Flaws in the state justice system.....	21
5. Reforming Xeer as legal empowerment.....	23
6. Conclusion.....	25
National declaration of Somaliland Traditional Leaders.....	27
Interview guidelines .....	37
Focus group guidelines.....	39
Research goal .....	39
Outcome .....	39
Central research questions.....	39
Sample consent form .....	41

# Executive summary

In recent years, the idea of promoting legal empowerment as a means of increasing access to justice has sparked growing interest in donor circles. At the same time, recognition that non-state justice is the reality for many of the world's poor has led to greater acceptance of the need to include customary justice systems within the scope of legal reform and development efforts. Indeed, the question is now becoming how, rather than if, efforts should be made to promote greater access to justice through engagement with customary justice systems. However, once the decision to engage is made, a second dilemma presents itself – how to do so in a way that has local legitimacy and maintains the positive aspects of customary law that make it popular with justice seekers, but that also encourages the modification of those rules and practices that do not comply with international human rights standards or that otherwise disadvantage vulnerable sections of the community.

In an attempt to shed some light on the issue, this research report examines the short and medium term impact of attempts by traditional elders in Somaliland and Puntland to revise elements of Somali customary law (*xeer*) with the aim of bringing it into greater alignment with both *shari'a* (Islamic) law and international human rights standards. Supported by the Danish Refugee Council, the elders initiated a process of dialogue culminating in the making of regional and national declarations in the two de facto autonomous regions, containing revisions to *xeer* in a number of key areas. Six years after the first dialogues commenced, the research on which this chapter is based indicates that the declarations can be linked to certain positive changes in non-state justice, including the abolition of harmful practices such as widow inheritance, improvements in women's inheritance rights and a shift towards individual rather than collective responsibility for serious crimes. Other objectives, however, particularly in relation to enhancing access to justice for vulnerable groups such as displaced populations, minorities and victims of gender crimes, do not seem to have met with the same level of success.

## Summary of recommendations

### 1. Accountability

Accountability of the leaders of the customary system remains extremely weak and was a pillar that was not targeted in the design of the intervention. Mechanisms to promote accountability, particularly more effective dissemination and ensuring information flow between stakeholders, should have been devised. Three potential entry points are: information strategies targeting beneficiaries so they are better able to claim their rights, introduction of linkages between elders and other stakeholders (particularly the civil society) in order for there to be a check and balance on elder actions; and complaints mechanisms.

### 2. Dissemination

Creative dissemination strategies should be devised to target rural areas by working at the district level as opposed to the regional level, for example through street theatre and drama, working through schools (drawing and creative art projects focusing on the Declaration), training communities and "Declaration Days".

### 3. Linkages

Linkages should be established between stakeholders who are active within the three pillars of the justice system: *xeer*, *shari'a* and the statutory courts. Links should be aimed at eliminating confusion surrounding the procedural aspects of the formal legal system and designate clear roles and responsibilities. Entry points include the Elders' Network (in Puntland) and Houses of Elders (in Somaliland).



#### 4. Institutionalization

The Elders' Network in Puntland and House of Elders in Somaliland should be institutionalized, strengthened and linked to related interventions such as the UNDP Community Safety Project. Such efforts would provide the institutional stakeholders – such as the judiciary – with a permanent contact within the clan system, promote information sharing, and facilitate data collection on and monitoring of serious crimes cases.

#### 5. Holistic approach

Integrating interventions aimed at increasing access to justice at the customary level into sector-wide justice strategies are imperative in pluralistic contexts such as Somalia as such fora are often the only justice option for vulnerable groups.

# 1. Introduction

In 2003, a small group of traditional leaders from Togheer, Somaliland, approached the Danish Refugee Council (DRC) for support in revising their customary law, to bring it into greater alignment with *shari'a* and international human rights standards. Following a series of dialogues, a Regional, followed by a National Declaration was signed, which committed elders to curbing the main causes of inter-clan conflicts, expanding access to justice, and enhancing the security and protection of vulnerable groups. Particularly interesting were the attempts to promote a transition from communal to individual notions of criminal responsibility by elders ceding their jurisdiction over serious crimes, including rape and murder, to the formal justice system, and paying compensation directly to the families of victims (as opposed to compensation being shared by the larger clan). They also committed to protecting the rights of widows to inherit according to *shari'a* principles and to be able to re-marry without restriction, and to providing greater legal protection to internally displaced populations (IDPs) and minority groups. The success of the program led to an expansion into Puntland, resulting in a similar revision of customary law and culminating in a National Declaration in early 2009.

These interventions are of particular interest as they attempt an innovative model of legal empowerment that looks to enhance access to justice by reforming customary law from within its leadership. In contrast to orthodox, “top-down” approaches that centre on the reform of state legal institutions, it was hypothesized that an approach focusing on the locus of conflict resolution for the majority of rural poor was more likely to yield impact. Initial evaluations of the project conducted by DRC revealed a 90 percent reduction in murder cases as well as anecdotal evidence of widows being permitted to re-marry freely and suspected murderers being referred to the formal justice system. Other evaluations, however, indicated that vulnerable groups still had difficulty accessing justice as customary leaders continued to mediate serious cases such as rape as opposed to referring them to the formal justice system.

To gain a better insight into the medium-term impact of the intervention, IDLO conducted field research in Garowe and Hargeisa, between February and March 2010. This research aimed to generate new knowledge concerning the possibilities and limitations of using legal empowerment approaches as a means of facilitating reform in customary justice systems and bringing them into alignment with human rights standards. The arguments presented in this research paper draw on data collected principally through qualitative data collection methods; 40 semi-structured interviews were conducted with implementing partners (20), governmental authorities (10) and law associations and legal aid clinics (10), in addition, focus group discussions were conducted with 4 groups in each location (women, minorities and international displaced persons and elders).

The main research questions are outlined below, followed by a brief overview of the social structures in Somalia, the pluralist legal framework, and the principal challenges to accessing justice. The report then moves to a more specific presentation of the interventions and an analysis of the research findings in the critical areas of investigation: general awareness of the provisions of the National Declarations, referrals of serious criminal cases to the formal justice system, and the extent to which legal protection and access to justice has improved for vulnerable groups. The analysis of the data shows that the National Declarations did prompt certain positive changes in customary practice, including the abolition of harmful practices such as widow inheritance, improvements in women’s inheritance rights and changes in attitudes away from collective and towards individual responsibility for serious crimes. Other objectives, however, particularly those in relation to enhancing access to justice for vulnerable groups, were not made out. The challenges impacting the effectiveness of the interventions and lessons learned are then considered both from the standpoint of continuing efforts to reform the Somali justice sector, and as an approach to legal empowerment that might be adapted and trialled in other locations.

## 1.1 Research question

To evaluate the impact of both interventions from the perspectives of users of the *xeer* system and to gather knowledge about the effectiveness of this type of legal empowerment approach as a means of facilitating reform in customary systems.

## 1.2 Research goal

To improve the functioning of customary justice systems so as to empower users and better protect the rights of vulnerable and marginalized groups.

## 1.3 Research outcome

To generate new knowledge concerning the possibilities and limitations of using legal empowerment approaches to bring customary law into alignment human rights standards, and harmonize formal and customary justice fora.

## 1.4 Central research questions

1. What was the impact of: (i) the revision of *xeer* culminating in a national declaration; and (ii) efforts to harmonize the customary and formal legal systems in terms of enhanced access to justice,<sup>1</sup> particularly with respect to vulnerable groups:
  - Did the revisions under the points of revenge killings, rights of women, children, IDP's and minorities committed to in the National Declaration translate into practice? Following the interventions, do disputants perceive any difference in terms of their ability to access justice? Is there a change in the number, substance, or outcome of disputes?
  - Were cases of murder and rape referred to the formal legal system?
  - Where serious criminal cases were not referred to secular courts, why not?
2. What conclusions can be drawn regarding the effectiveness of legal empowerment approaches to reforming customary justice processes?
  - Was success rooted in its legal empowerment aspects i.e. change from within as opposed to change from above?
  - Were the impediments or challenges encountered linked to its legal empowerment aspects?
3. What other lessons can be learned from these interventions in terms of engaging with customary justice systems as a means of strengthening access to justice in Somalia or other contexts?
  - What were the particular conditions in play that facilitated this intervention?
  - What challenges were encountered/impediments faced?
  - What are the possibilities and limitations of these types of interventions with respect to enhancing access to justice, legal empowerment and aligning of customary justice systems with international human rights and criminal justice standards?

## 1.6 Methodology

This section provides information on how the main research question was examined, including a summary of the data collection methods employed and associated limitations,

---

<sup>1</sup> Access to justice is understood as: i) disputants ability to access a just and fair outcome; and ii) ability to access the correct legal forum.

as well as information relating to partner organizations, logistics, informants and security assessments.

### 1.6.1 Quantitative versus qualitative methodologies

The question of quantitative data collection versus qualitative data collection is pertinent when working in the Somali context due to the limitations on accessing data. Principal considerations were the length of time that employing a quantitative approach would take, and the lack of quantitative data available in the Somali regions.

First, a quantitative approach would have been possible in Somalia, but such an effort would have required an extensive network and long preparation phase to ensure that the training of enumerators was adequate and that data would be handled appropriately. Second, following the collapse of the state of Somalia in 1991, previously collected data was lost, leaving the emerging states of Somaliland and Puntland without any mechanisms to collect and record information on cases being adjudicated by the formal legal system. There is also a dearth of information available on the informal justice system. Case information is rarely collected by elders, and while some elder agreements are ratified by courts, this system operates erratically and is only available in areas where there are courts (mainly urban areas). For cases resolved in rural areas, information on case outcomes is only available through informants.

Taking into account these considerations, a decision was made to focus solely on qualitative data collection. This was gleaned through desk research and interviews, the latter comprising semi-structured interviews with key informants (government, elders and non-state actors) and focus group discussions (women, internally displaced groups and minorities). At the end of the data collection process, a validation session with all stakeholders was held in order to present preliminary results and elicit feedback. It is important to note that although no quantitative data collection was conducted, the report does draw upon data and statistics sourced from research conducted by other organizations and institutes.

### 1.6.2 Semi-structured interviews

The aim of the semi-structured interviews was to gain insights from key stakeholders regarding the impact of the revisions to customary law and the associated changes in the legal empowerment of individuals and communities. This information could then be validated by comparing it to other key informant interviews, information gathered from the desk research, and the focus group discussions. A pre-established format was developed during the preparation stages (see annexes). Questions within the semi-structured interview guide focused on three main areas, namely: awareness and changes due to the declaration, revisions of the *xeer* and legal empowerment, and conditions and circumstances that might have hindered the effectiveness or impact of the interventions. Due to time limitations it was not possible to pre-test the guidelines prior to the first interviews. However, the initial interviews conducted in Nairobi provided an opportunity to critically evaluate the guidelines and make refinements before applying it in the field. The following actors were interviewed:

- (i) Key staff from the two organizations responsible for supporting the *xeer* interventions (UNDP and DRC) in Garowe, Hargeisa and Nairobi. The Nairobi-based staff interviews helped to provide holistic insights into the functioning and challenges of the interventions.
- (ii) Staff of the implementing partners of DRC and UNDP that had worked with the National Declaration or the harmonization project. The main partner for both organizations in Hargeisa and Garowe was an elder-run local NGO, Horn Peace. Other partners included: Haqsoor (local NGO) and the women's organizations Gaashaan (Somaliland) and WAWA (Puntland).



- (iii) State actors, principally from the Ministry of Interior and the Ministry of Justice. Such interviews were conducted with a view to understanding how the state interacts with and perceives the revision of customary law.
- (iv) Non-state actors involved in either access to justice or legal empowerment (for example, members of the bar association in Somaliland and Puntland and legal aid clinic staff). Such actors provided insight into how the different parallel legal systems function and how a variety of actors view the *xeer* interventions.

### 1.6.3 Focus groups

Focus group interviews were used to access members of the population that utilize customary law. As depicted below, similar focus groups were held in both locations.

Table 1 Focus groups and their locations

Location	Facilitating Organization/ Arranged by	Focus group	Number of participants
Garowe	Direct contact: Elders Network	Elders	4
Garowe	WAWA	Women	5
Garowe	Legal Clinic	IDP's (women)	3
Garowe	Legal Clinic	Minorities (women and men)	7
Garowe	PUNSA	Non state actors	10
Hargeisa	Horn Peace	Elders	6
Hargeisa	Gaashaan	Women (IDP's and minority)	10
Hargeisa	Legal Clinic	IDP's (women and men) / Minorities (women and men)	15

Particular emphasis was placed on conducting focus groups within vulnerable populations (IDP, women and minorities) as they were the main beneficiaries of the National Declaration revisions.

Prior to conducting the focus group discussions, both general and group-specific frameworks to guide the discussions were drafted. The discussions were not completely structured, however, in that the framework integrated opportunities for participants to discuss and give direction to the interviews (see annexes).

All focus groups were conducted in Somali. In Garowe, the UNDP Judiciary Advisor provided translation, while in Hargeisa a translator was hired for the purpose of assisting with the research.

## 1.7 Data collection and field based research

### 1.7.1 Locations

For security reasons, the field research was conducted in the capitals of the Somali regions of Somaliland and Puntland – Hargeisa and Garowe. These are both urban centers with more state presence than in rural areas, and with heterogeneous populations.

#### Hargeisa, Somaliland

The city of Hargeisa has an estimated 500,000 inhabitants. As in most areas in Somaliland, the city of Hargeisa was slowly reconstructed throughout the 1990s. As the capital city, Hargeisa attracted many rural people returning to Somaliland from refugee

camps in Ethiopia. This resulted in five main IDP settlements, which continue to grow with influx from drought-affected populations in Somaliland and IDPs from the South Central region. There are also many traditional leaders that reside in the city. Hargeisa has become a hub for state interventions, however such efforts are marred by high rates of criminality, particularly gender-based crimes such as rape. Due to its mix of clans, the presence of minorities (for example the Gaboye) and being a focus area of the interventions, Hargeisa provided an opportune arena for analyzing the impact of *xeer* interventions on different groups.



Figure 1 Research participants at the UNCC Compound in Garowe, Puntland on 26 February 2010.

### Garowe, Puntland

The city of Garowe is the political capital of Puntland and was established in 1998 when Puntland became an autonomous region of the Somalia state. The city has an approximate population of 40,000, making Garowe the third largest city in Puntland (after Bossaso and Galkayo). Due to its geographical location, Garowe has not received a large influx of displaced populations from the south. It was selected for this research, however, due to the presence of state and non-state actors and because it was a location that was targeted during the *xeer* interventions.

#### 1.7.2 Validation of data

Validation sessions were held in both locations after the field interviews were completed. In both locations, most stakeholders that had been interviewed participated. The validation workshops commenced with a presentation of the research findings and recommendations. The floor was then opened for participant comments. In both sessions participants were actively engaged, presenting conflicting views and leading to vigorous debates and further discussions. These discussions centered around topics such as the lack of consultation between elders and civil society groups, as well as how particular cases are dealt with, with an emphasis on the crime of rape. Participants expressed a genuine interest in the preliminary findings and felt that through the validation exercises they had gained a sense of ownership. Participants also felt that as a result of the workshop, they were better informed.

#### 1.7.3 Consent of participants

At the outset, it was envisaged that all participants in the research would express their consent in written form. In the field, however, it became apparent that the practice of obtaining a consenting signature from interviewees made participants distrustful and suspicious (despite having had the form verbally translated and explained by the translator). Due to this and following subsequent discussions with different members of the UNDP national staff, consent was obtained orally rather than in written form.

## 1.8 Challenges and constraints

#### 1.8.1 Lack of youth involvement

Focus group discussions with youths had been planned in order to analyze the relationship between the youth and customary structures (desk research indicated that there was an ambivalent relationship between youths and customary authorities and that youths exhibited a preference for state institutions).<sup>2</sup> It was not possible, however, to

<sup>2</sup> M Vargas Simojoki, *Help me, Assist me, Protect Me – who does what? Perspectives on Security Providers in Somaliland* (2010) Masters Thesis, Roskilde University, Denmark.

conduct focus group discussions with young people as in both Garowe and Hargeisa partners could not facilitate such contacts. The only instance where youths were involved in focus group discussions was in Puntland where, by chance, a reasonably young group of women and non-state actors were identified.

### 1.8.2 Facilitation of focus groups

There were significant differences in how focus group discussions were held in both locations. In Garowe, group meetings were facilitated by UNDP, while in Hargeisa different organizations contacted participants which resulted in differing expectations. Some respondents believed that the information collected would result in direct and tangible results, such as increased assistance or direct trainings. At the same time, there was little consistency in the number of focus group participants (see Table 1), despite specifications being given as to the size of focus group discussions (8-12 people). This meant that the interview techniques employed needed to be restructured.

## 1.9 Partner organizations

The main partner organization throughout the research was UNDP (Access to Justice section). UNDP facilitated the field-based research in Nairobi, Kenya as well as in both field locations. They facilitated contact with stakeholders and, in Garowe, the UNDP Judiciary Advisor acted as liaison and translator during all interviews and focus group discussions.

In terms of due diligence on local NGO partners, in Garowe, all data was collected through UNDP partners in direct liaison with UNDP staff. In Hargeisa, assistance for conducting focus group discussions came from three different sources: the local NGO Horn Peace, a local women's NGO Gaashaan and the Legal Clinic (Human Rights section). Horn Peace and the Legal Clinic are UNDP certified partners and have been working with UNDP in previous years. The women's NGO – Gaashaan – although not a partner of UNDP, has worked for many years with IDP women (with particular focus on IDPs from South Central Somalia) and have conducted projects for UNHCR, DRC and other international organizations. The organization is a partner within the protection-monitoring network and was involved in the dissemination of the National Declaration in Somaliland. Discussions with partners revealed that it was a legitimate organization with high standards of accountability and transparency towards beneficiaries.

## 1.10 Practical arrangements

### 1.10.1 Logistics

UNDP facilitated travel into Somalia through the UN Humanitarian Air Service, which regularly flies to Garowe and Hargeisa from Nairobi, Kenya. UNDP local staff, in accordance with UN security regulations, were responsible for logistical arrangements in each location. In Garowe, as movement outside of the international compound is not common, field visits were made with the accompaniment of an armed escort.

### 1.10.2 Language and communication

Throughout the interviews and focus group discussions, Somali was the main language utilized. Where key informants spoke sufficient English, interviews were conducted in English, however, all focus group discussions were conducted in Somali, so that all members of the focus group understood and could follow the discussion. Validation sessions were also conducted in Somali, except for a brief presentation at the beginning, and subsequent questions posed by the researcher.

Both translators were presented with a copy of the interview guidelines prior to the fieldwork so they were able to familiarize themselves with the types of questions they would be asking. They were also briefed as to the aims and objectives of the research.

Translation was very good with the exception of a few instances where the translator was noted as expressing his own opinion rather than simply translating. Interviews were not recorded, however, notes were taken during all interviews and focus group discussions, with translators taking complementary notes during the focus groups discussions. Notes were reviewed on a daily basis as the preliminary findings for each location were being drafted.

## 1.11 Security assessment

Traveling and working in Somalia, in any region, involves some level of risk. Prior to traveling to Kenya, security was assessed jointly by UNDP and IDLO and it was deemed that in order to ensure maximum protection, UN regulations would be followed. Specific UN regulations for consultants require the completion of two “Security in the field” modules, a country briefing and hostage incident management (HIM) training before going to the field. While in the field, regulations to be followed include a daily radio check, specific region briefings on arrival and a dusk-dawn curfew. All security regulations were complied with, and travel in Garowe was facilitated by an armed escort.

### 1.11.1 Security issues and interviews

Due to security reasons, the locations for interviews were restricted to UNDP pre-approved locations or their offices. Although such locations do not provide the most neutral settings, this facilitated a wider research project as participants were able to easily attend the offices and elders were able to travel from rural destinations in order to participate in the focus group discussions.

### 1.11.2 Local authorities

Any research into or evaluation of the *xeer* interventions had to be handled sensitively as there is a high level of mistrust from authorities regarding the level of support given to elders. Empowerment of elders, particularly in Puntland, was previously regarded as undermining the state and an encroachment on state authority. Agreements with the governments in both locations were hence set in place prior to the research, resulting in strong collaboration and participation by government staff.

### 1.11.3 Sensitiveness of *xeer* interventions

Interventions involving *xeer* are deemed sensitive for both elders and community members because *xeer* regulates interactions between groups, and deals with criminal cases, such as homicide and rape. All interviews were hence conducted following a general ‘do no harm’ approach, and in addition the researcher ensured that all respondents felt comfortable talking about sensitive issues.

### 1.11.4 Upcoming elections in Somaliland

Elections in Somaliland were due to be carried out in autumn 2008. For a variety of reasons they have been postponed and the latest information available predicts that elections will be held in April 2010. The months prior to the elections will be politically volatile with potentially violent demonstrations. The situation was closely monitored and apart from direct attacks in the border town of Las Anood there were no incidents while the research in Somaliland took place.

### 1.11.5 Heightened insecurity in Puntland

The months preceding the research saw an increase in assassinations in the main towns of Puntland. Though the assassinations have mainly been targeted national politicians or other members of the administration, there is a heightened climate of insecurity in the region. The time spent in the field in Garowe met with no security threats or constraints.



## 2. Background

In 1991, Somalia descended into civil war and began to fragment along regional and clan-based lines. In May 1991, clans in the north-west of the country declared independence and formed the Republic of Somaliland, and in 1998 the north-eastern state of Puntland became semi-autonomous and self-governing.<sup>3</sup> Despite the formation of a Transitional Federal Government in October 2004, the formal justice system in Somalia remains weak and dysfunctional, and most rely upon local modes of conflict resolution including customary law (*xeer*), Islamic law (*shari'a*) and ad hoc mechanisms established by militia factions. Of these, *xeer* is the most widely utilized and influential; it functions in parallel to state law, making the legal framework in Somalia pluralistic.<sup>4</sup>

### 2.1 The clan structure and its impact on daily life

Despite differences in modalities of governance, Somalis share a common language, religion and ancestry. The population is grouped into clans that follow agnatic (patrilineal) descent, with all Somalis claiming relation to the State's founding fathers.<sup>5</sup> While there is some disagreement within the literature regarding the influence of the clan structure on modern daily life, particularly with respect to the growth of new social networks, the clan remains the principal ordering structure and source of collective protection and security.<sup>6</sup>

In each geographic area, clans are divided into 'majority' and 'minority' units based upon their size and social status.<sup>7</sup> Minority clans can also be so-labeled due to the dominant trade practiced by their members. The Gaboye clan, for example, is classified as a minority clan not only due to its size, but also because its members are principally leatherworkers and blacksmiths.<sup>8</sup> Clan families are then sub-divided into smaller groups as depicted in the diagram below:<sup>9</sup>

Figure 2 Subdivisions within the clan family (high to low)



The basic functional unit of social organization is the '*diya*-paying' or blood compensation group. This group is composed of several lineages that share a common ancestor and may vary in size from a few hundred to a few thousand men. The *raison d'être* uniting the *diya*-paying group is collective security and social insurance.<sup>10</sup> Group members are obliged to support each other in their political and juridical responsibilities, including by making compensation payments for illegal acts committed by other members. In this

<sup>3</sup> The state of Somaliland is a de facto independent state but without international recognition. For all international actors Somaliland remains a region of Somalia, yet for all practical purposes Somaliland functions as a state and provides basic security and other services to its citizens. As the current government was elected democratically and in their self-understanding Somaliland is a state, it will be referred to as such throughout this paper. The region of Puntland functions under a de facto separate administration than the rest of Somalia. The government held peaceful elections in 2008 and in practical terms is independent, however, as it has stated a preference to remain part of greater Somalia, it is not considered to be a separate state. A Le Sage, *Stateless Justice in Somalia – Formal and Informal Rule of Law Initiatives* (2005) 13-26.

<sup>4</sup> J Gundel, *The predicament of the Oday: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia* (2006) ii-iii; see generally Academy for Peace and Development, *The Judicial System in Somaliland* (2002) available at <[www.apd1996.org/docs/Judiciary\\_Report.PDF](http://www.apd1996.org/docs/Judiciary_Report.PDF)>.

<sup>5</sup> See generally I M Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa* (1961).

<sup>6</sup> Ibid 242; see further M Bradbury, *Becoming Somaliland* (2008).

<sup>7</sup> Ibid.

<sup>8</sup> Lewis, above n 5.

<sup>9</sup> Ibid.

<sup>10</sup> Gundel, above n 4, 6.

regard, *diya*-paying groups need to be a specific size in order to be capable of paying (or exacting) compensation payments and defending themselves in the event of conflict. According to Gundel, “the most overriding rule for the unity of *mag*-paying [*diya*-paying] groups is that all other conditions usually are subordinate to the need to maintain solidarity in the face of an external threat.”<sup>11</sup> Within a *diya*-paying group, the importance of the role played by elders (*aquil*) in inter-clan governance cannot be overstated; elders simultaneously act as legislators, executive officers and judges of their clan units. Moreover, these traditional authorities are seen as the creators and guarantors of relative peace in a context of political instability, communal insecurity and lawlessness.<sup>12</sup>

## 2.2 Somali customary law: *xeer*

*Xeer* is comprised of unwritten agreements or contracts, entered into bilaterally between clans, sub-clans and *diya*-paying groups that denote specifically agreed upon rights, obligations and duties (*xeer dhiig*).<sup>13</sup> *Xeer* can regulate issues ranging from inter-clan relations, to levels of compensation for different illegal acts, to the management of disputes.<sup>14</sup> Each *diya*-paying group has its own body of law embodied in an unwritten *xeer* code, formalized and entered into by the assembly of clan elders (*shir*).<sup>15</sup> *Xeer* is dynamic, flexibly applied in accordance to changing needs and circumstances, and varies considerably between different lineage groups.

*Xeer* also exists on a more general level as basic prescriptions for behavior that apply to all Somalis (*xeer dhagan*). These principles include the collective payment of blood compensation (*diya*) for certain crimes such as murder, assault, theft and rape; the promotion of inter-clan harmony through the protection of certain social groups including women, children, the elderly and guests; and the payment of dowry obligations.<sup>16</sup>

It is important to highlight that *xeer* is not a moral code in the same manner of certain aspects of religious laws, such as the *shari’a*. Its norms do, however, impact upon elements of social structuring such as whom widows are permitted to marry, how cases of rape should be resolved, and other prescriptions that set out boundaries for acceptable behavior. Importantly, *xeer* is a collective system that places responsibility for actions onto the group rather than the individual. This allocation of responsibility operates to protect the group and its collective strength – in harsh and unstable environments it is deemed more beneficial for the group to collectively assume responsibility for compensation payments rather than lose one of its members. In this way, *xeer* has functioned as an effective tool for promoting social cohesion and for the regulation of inter-clan affairs.<sup>17</sup>

The importance of *xeer* is widely recognized — it represents an integral component of the Somali way of life and continues to be the preferred and most utilized legal system in all Somali regions, being applied in up to 80-90 percent of disputes and criminal cases.<sup>18</sup> *Xeer* is also regarded as fundamental to maintaining social relations within clans. During the war and its aftermath, traditional structures (*xeer* and the elders, or *aquils*, that regulate *xeer*) gained elevated importance due to their ability to provide some level of security.<sup>19</sup> Today, the elders are regarded as the guarantors of peace and stability, and *xeer* “the glue that prevents a collapse into anarchy”.<sup>20</sup>

---

<sup>11</sup> Ibid 7.

<sup>12</sup> Ibid iv-vi.

<sup>13</sup> Ibid 6.

<sup>14</sup> Ibid 10-11; Le Sage, above n 3, 32-33.

<sup>15</sup> V Justiniani, *Xeer procedure in Somaliland*, final report for UNDP, Somalia (2007).

<sup>16</sup> Le Sage, above n 3, 32-33.

<sup>17</sup> Gundel, above n 4, 9.

<sup>18</sup> Ibid 51.

<sup>19</sup> Ibid iv-vi. See generally K Menkhaus, *Local Security Systems in Somali East Africa* in L Andersen (ed.), *Fragile States and Insecure People? Violence, Security and Statehood in the Twenty-First Century* (2007).

<sup>20</sup> Gundel, above n 4, vi.

## 2.3 Xeer in practice

*Xeer* cases are adjudicated at the lowest appropriate genealogical level of the clan, commencing with the nuclear family, followed by the extended family, through to the sub-clan and clan levels.<sup>21</sup> Outcomes are determined by a jury of elders (*xeer beegti*) in reference to *xeer* rules and driven by what is deemed to be in the best interests of the group (as opposed to the best interests of the individuals involved). It is important to highlight, however, that while *xeer* plays a pivotal role in decision-making, a clan, sub-clan or *diya*-paying group's size and military strength is always a factor in reaching an enforceable consensus. If one party is dissatisfied with an outcome, the dispute can be referred up the clan structure for adjudication at a higher level.<sup>22</sup>

*Xeer* adjudication is generally open to the public, and participation is open to all with the exception of women, relations of the disputants, persons with a personal grievance against either disputant, and persons who have previously sat in judgment over the case. Neither party is represented by a lawyer; however other trial techniques, such as the use of witnesses and cross examination, are commonly employed.<sup>23</sup>

The *xeer* system is compensation-based, with penalties ranging from an apology through to monetized assessments of damages payable in livestock or (more commonly) cash. The only exception to this is homicide, where the family of the victim is able to choose between compensation and the execution of the perpetrator.<sup>24</sup> It is important to highlight that the rationale of compensation is to provide a social and financial safety net for the victim or the victim's family, by replacing the earning value of a deceased or injured member or, in cases of rape, allowing the family to recover some funds that would have otherwise been received if the victim had received a dowry.<sup>25</sup> It is the responsibility of the elders of the *diya*-paying group to ensure that the terms of *xeer* agreements are abided by.<sup>26</sup>

## 2.4 Access to justice in Somalia

The justice options in Somalia comprise the state justice system, religious (*shari'a*) law and customary law. While legislation recognizes the supremacy of the state justice system and significant effort has been put into strengthening the capacity of courts at the national, regional and district levels, such fora are physically inaccessible to the majority of the rural poor. *Shari'a* deals principally with family issues such as divorce and inheritance and, again, courts do not exist in most rural areas.<sup>27</sup> In practice, *xeer* is the most accessible, utilized and preferred system for resolving disputes.<sup>28</sup>

This primacy of *xeer* is accepted, and in some ways perpetuated by the state justice system, with courts routinely registering or confirming decisions made by traditional leaders.<sup>29</sup> However, while *xeer* is an efficient mechanism for regulating inter-clan affairs and maintaining stability, it fails to provide adequate protection for vulnerable groups such as women and children, and tolerates harmful customary practices in abrogation of both international human rights standards and the *shari'a*. This places limitations on the

---

<sup>21</sup> Ibid 12.

<sup>22</sup> Ibid 8-9, 12; D J Gerstle, *Under the Acacia Tree: Solving Legal Dilemmas for Children in Somalia*, (2007) 40-41.

<sup>23</sup> Le Sage, above n 3, 35-36; Gerstle, above n 22, 40-41.

<sup>24</sup> Gerstle, above n 22, 31.

<sup>25</sup> This of course presupposes that the woman raped will not marry. Although this is not strictly the rule, most respondents pointed out that rape victims (in cases that are semi-public or public) have very little chance of marriage.

<sup>26</sup> Gundle, above n 4, 6.

<sup>27</sup> Gundle, above n 4, 21.

<sup>28</sup> Ibid iii; see further H M Kyed, *Traditional authority and localization of state law*, in A Jefferson and J Steffen (eds.), *State Violence and Human Rights: State Officials in the South* (2009).

<sup>29</sup> Gundle, above n 4, 21; see further Danish Refugee Council, *Harmonization of Somali legal systems*, (2002) 78-79.

ability of marginalized groups to access justice both in physical and procedural terms.<sup>30</sup> Moreover, because the level of protection enjoyed by individuals under *xeer* is dependent upon the strength and alliances of one's clan, vulnerable groups such as minorities and IDPs are also at great disadvantage when accessing remedies.

## 2.5 A plural legal framework

As noted above, the legal framework of Somaliland and Puntland is pluralist, comprising state law (a *melange* of inherited British and Italian common law), religious law (*shari'a*) and customary law (*xeer*).<sup>31</sup> In practice, this pluralism has given rise to a state of 'lawlessness' due to a lack of parameters for determining when and where a particular system of law applies.<sup>32</sup>

Multiple, overlapping and often contradictory sources of law have led to determination of jurisdiction being a highly confusing and contentious process. This is compounded by the lack of formal training of many judges and lawyers, widespread public ignorance and distrust of the state justice system (particularly in rural areas), and efforts by some Islamic court leaders to impose fundamentalist beliefs through *shari'a*. Amidst this confusion, the choice of applicable law in a given case is largely driven by two factors: first, where the self-interest of the stronger party to the dispute is served; and second, how a decision that will preserve security and peaceful inter-clan relations can be reached. These factors have limited the equality of all Somalia citizens before the law, as well as the degree of protection that the legal system can offer on a personal basis, particularly when powerful clans, politicians or businessmen exercise direct influence over how cases are decided.<sup>33</sup>

In contrast, the current system of legal pluralism restricts access to justice for vulnerable groups who are less informed about their rights and less able to negotiate the different options. Women are in a particularly vulnerable position since, although their rights are in many cases better protected under statutory law and *shari'a*, their capacity to access the courts is highly restricted.<sup>34</sup> Elders place pressure on women to settle crimes committed against them through *xeer* and, as will be explained later, where women do commence litigation, elders routinely petition judges to have such cases withdrawn and returned to the customary level.<sup>35</sup>

The strength of *xeer* (and the elders) vis-à-vis the courts is closely linked to the role of the customary system during the civil conflict. Throughout this period, in both Somaliland and Puntland, *xeer* was seen as a mechanism that promoted stability and facilitated initial peace negotiations. Its strength and durability elevated its status within wider judicial framework, with the result that when elders seek to assert their jurisdiction over a matter, judges generally facilitate this believing that the elders best understand how to maintain the peace and avoid further inter-clan conflict.<sup>36</sup>

## 2.6 Collective responsibility

*Xeer* is based on a doctrine of collective responsibility and as such there are no provisions for the punishment of individual perpetrators. Instead, when a crime is

---

<sup>30</sup> Gundle, above n 4, 55.

<sup>31</sup> Le Sage, above n 3, 7, 14-5.

<sup>32</sup> Academy for Peace and Development, above n 4.

<sup>33</sup> Le Sage, above n 3, 53.

<sup>34</sup> Gerstle, above n 22, 32-33.

<sup>35</sup> Academy for Peace and Development, above n 4; Gerstle, above n 22, 82-83. The director of the female lawyer's association in Somaliland noted that of the cases of rape might start in the courts, an estimated 80 percent are removed by male relatives of the victims on the grounds that they have requested elders to resolve such cases through *xeer*; interview with Executive Director for the Somaliland Women's Law Association, Somaliland Lawyer's Association office, Hargeisa, Somaliland (9 March 2010).

<sup>36</sup> Gundle, above n 4, v-vi; Academy for Peace and Development, above n 4; Danish Refugee Council, above n 29.



committed, *xeer* holds the entire *diya*-paying group collectively responsible.<sup>37</sup> The rationale for collective responsibility is that:

[n]omadic individuals have too few personal resources to pay for a given obligation. Hence, if mag is not paid, the aggrieved clan may opt to kill the criminal, or members of that person's clan. The unfortunate result is that the clan will lose a valued (economically and militarily) member, setting off a cycle of revenge killings and persistent insecurity. Moreover...the number of men must be protected and sustained because the perceived strength and wealth of the clan depends on the size of the clan. Hence the very notion of private property has to be subordinate to the clan interests, and becomes part of the 'collective property' of the clan ...<sup>38</sup>

However, the practice of not allocating individual responsibility for crimes removes guilt from the individual and furthers a culture of impunity, with the result that the rights of individual clan members are secondary to the interests of maintaining clan strength and unity.<sup>39</sup> Moreover, the compensatory nature of the system denies the rights to justice and equality before the law in that outcomes are determined not based upon the nature of the crime, but on the gender and status of the victim. For example, for identical crimes, the level of compensation payable where the victim is a married woman will exceed that payable where the victim is single, and will be even less where the victim is a widow. Likewise, the compensation payable when the victim is a male will always exceed that which is payable when the victim is a female.<sup>40</sup> Compensation-based systems also give rise to impunity in cases such as honor killings and intra-family crimes, where the compensation-paying group and the compensation-receiving group are one and the same.<sup>41</sup>

## 2.7 Representation and participation in *xeer*

*Xeer* and the rulings of *xeer* are not based on an equal representation of all groups. Traditionally, *xeer* is entered into by the elders of the *diya*-paying group.<sup>42</sup> Although in theory, all men can participate in negotiations and mediation, access is generally restricted to adult men from majority clans, and no access is provided to women. Women can only be represented by male relatives as participants, decision-makers, witnesses or victims.<sup>43</sup> Minorities, due to their status in the Somali clan lineage system, are similarly denied representation or inclusion in *xeer* negotiations.

Until quite recently, access to justice for minority groups through customary fora was preconditioned upon them being sponsored or 'adopted' by elders of majority groups. There has now been a marginal improvement in this situation, and minorities can gain access to customary processes through their own elders, although their level of protection and the quality of justice meted out remains limited. This is because minority elders do not enjoy the same status as majority elders, violations committed against minority individuals are rarely viewed as priorities, and the enforcement of decisions can be problematic.<sup>44</sup>

The situation of IDPs is even more troubling, especially in Somaliland and Puntland where conflict and drought displaced populations are growing rapidly. IDPs have little access to land or employment and are exposed to high levels of criminality. They cannot, however,

---

<sup>37</sup> In the case of a homicide, for example, irrespective of the presence of *mens rea*, it will be common for the clans to negotiate a settlement in the form of compensation paid by the *diya*-paying group of the perpetrator to the *diya*-paying group of the victim.

<sup>38</sup> Gundle, above n 4, 9.

<sup>39</sup> Ibid iii.

<sup>40</sup> Ibid 55-56; Gerstle, above n 22, 43.

<sup>41</sup> Gerstle, above n 22, 31.

<sup>42</sup> Gundle, above n 4, 6-9, see generally Lewis, above n 5, and I M Lewis, *Understanding Somalia and Somaliland* (2008).

<sup>43</sup> Gerstle, above n 22, 41; Danish Refugee Council, above n 29, 72; Interview with members of the SARC, SARC offices, Hargeisa Group Hospital, Hargeisa, Somaliland (7 March 2010).

<sup>44</sup> Gundel, above n 3, 56-57.

enter into *xeer* agreements with host communities either because they have been separated from their elders, or because their elders are not respected by, or do not have strong ties to, the majority clan.<sup>45</sup> Without such clan representation, their opportunities for accessing justice are severely limited.

## 2.8 The protection of women and children under *xeer*

A number of *xeer* practices contravene basic human rights and standards of gender equality including *dumaal* (where a widow is forced to marry a male relative of her deceased husband), *higsiiian* (where a widower is given the right to marry his deceased wife's sister) and *godobtir* (the forced marriage of a girl into another clan as part of a compensation payment or inter-clan peace settlement). Crimes of rape are commonly resolved through the marriage of the victim and the perpetrator. Although the *xeer* of many groups protects the right of a victim to refuse a marriage in cases of rape, they face enormous societal pressure to do so; marriage is widely believed to be the best option in such situations to 'preserve' the victim from a life of shame and as a means of stemming future retaliatory violence.<sup>46</sup> *Xeer* also tolerates revenge and honor killings, denies women inheritance rights, and views domestic violence as a personal rather than a legal matter.<sup>47</sup> Children, in addition to their vulnerability to the abovementioned rights violations, are also denied basic legal protections under *xeer*, in large part because it protects parents' right to raise children without interference and because the age of majority is set at 15 years.<sup>48</sup>

---

<sup>45</sup> Ibid 57.

<sup>46</sup> Gerstle, above n 22, 32-33, 40-41.

<sup>47</sup> Ibid 41; Gundle above n 4, 55-56; Le Sage, above n 3, 37-38; Danish Refugee Council, above n 29, 16-17.

<sup>48</sup> Gerstle, above n 22, 41, 59.

### 3. The National Declarations: working with elders to revise and reform *xeer*

In 2003, a small group of elders from the Somaliland region of Togdheer approached the DRC seeking support for their attempts to gain better insight into how *xeer* might be revised to align it more closely with both the *shari'a* and human rights standards. In the ensuing discussions, weaknesses within the operation of the *xeer* system were identified, in particular the phenomenon of revenge killing which was deemed to be a threat to inter-clan peace and stability. Recognizing the importance of *xeer* as the dominant method of conflict resolution, the DRC decided to support a pilot project aimed at strengthening the customary *xeer* system in order to enhance the security and protection of vulnerable groups.<sup>49</sup>

The first step was to facilitate a series of dialogues that brought together over 100 elders from five clans in Togdheer. This resulted in a 'Declaration of the Togdheer House of Aquils' which the elders signed in September 2003, committing themselves to curbing the main causes of inter-clan conflicts and addressing specific aspects of *xeer* that violated *shari'a* and human rights. An awareness campaign followed, led by 54 elders and reaching over 100 villages in Togdheer.<sup>50</sup> A further conference, attended by 92 elders, was held in Burao from 28 December 2003 to 1 January 2004. This conference produced a final resolution, the key feature of which was to limit communal responsibility in the cases of intentional and revenge killings. Specifically, in the event of a revenge or intentional killing, the clan membership committed to refrain from immediate execution of the alleged perpetrator and to instead hand that person over to the state authorities. In such cases, the compensation (*mag*) payment would be limited to 100 camels and would be paid directly to the family of the deceased as opposed to being shared by the membership of the clan. Other points of agreement included, *inter alia*:

- protection of the right of widows to inherit according to *shari'a* principles;
- protection of the right of widows to marry men of their choice (eliminating the practice of *dumaal*);
- increased protection for vulnerable groups such as orphans, street-children, persons with disabilities and IDPs; and
- the formation of committees to resolve unresolved conflicts that were deemed threats to ongoing peace and security.<sup>51</sup>

Interest in the intervention led to parallel dialogue processes in other regions of Somaliland including Awdal, Maroodi Jeex, Sahel, Sool, and Sanag. With support from the DRC, the UNDP and the Office of the United Nations High Commissioner for Refugees (UNHCR), a further conference was held in 2006 where a National Declaration (a composite of smaller Regional Declarations) was signed, followed by a process of dissemination that continued into 2009.<sup>52</sup> At the conference, particular elders were tasked with lobbying the Parliament to ratify the National Declaration, however this is still pending.

The success of the project in Somaliland generated interest in extending its scope of operation to include Puntland. Accordingly, traditional leaders there followed a similar process and came together in regional meetings to discuss revisions of *xeer*. This culminated in the signing of a National Declaration in February 2009, followed by a process of dissemination and awareness-raising.<sup>53</sup> Importantly, the National Declarations in both Somaliland and Puntland contain the key points from the final Declaration of the Togdheer House of Aquils set out above.

---

<sup>49</sup> V Justiniani, *The Togdheer Experience*, Danish Refugee Council final report (2006).

<sup>50</sup> Ibid 14-16, 23-5.

<sup>51</sup> Ibid 21-22, 28-32; Gundle, above n 4, 22-23.

<sup>52</sup> Danish Refugee Council, above n 29. Dissemination was conducted jointly by the local NGO Horn Peace and elders from each region; Danish Refugee Council, *Follow up and dissemination of the national declaration* (nd).

<sup>53</sup> Horn Peace, *State Conference for the Traditional Leaders of Puntland*, final report of implementation (2009).

The process of revising *xeer* through National Declarations prompted thinking about how customary law might be used to promote enhanced access to justice for marginalized and vulnerable groups. Attention centered on the problems associated with legal pluralism and the need to harmonize the different legal systems operating in the Somali regions. One initiative focused on the elders' commitment in the National Declarations to relinquishing their customary jurisdiction over serious crimes to the formal legal system, specifically those involving intentional/revenge killings and rape. Interventions included providing the elders with a visiting lawyer to advise on legal matters, support to create 'Elder Houses' across Somaliland, and the creation of an Elders Network in Puntland. It was reasoned that linking elders through a network and facilitating inter-clan contact would be critical to successfully implementing the revised *xeer*.

### 3.1 Assessing the impact of the National Declarations

Five months after the signing and dissemination of the "Declaration of the Togdheer House of Aquils", the DRC conducted a monitoring study comprising 560 interviews covering 16 villages. The evaluation revealed a 90 percent reduction in murder cases, and in the two murder cases that did take place, the perpetrators were quickly turned over to authorities.<sup>54</sup> The mayor of Burao reported that 250 inter-clan land conflicts had been resolved, and 5 cases where widows had freely married men of their choice were identified. According to a DRC report, community members stated that they had received clear messages from the elders regarding the National Declaration and expressed their "full support in the *aquils'* drive for keeping peace, stopping revenge, upholding women's rights, protecting their grazing land and environment."<sup>55</sup>

Data from monitoring visits conducted by the DRC during 2009 showed that within the IDP settlements of Hargeisa, 91.2 percent of respondents were supportive of changes to the *xeer*.<sup>56</sup> Other evaluations, however, indicate that while there has been a decrease in revenge killings, vulnerable groups continue to have difficulty accessing justice as traditional leaders continue to mediate serious cases such as rape rather than referring them to the formal justice system.

In order to provide further insights into the medium term impact of the intervention, this section presents the results of field research conducted in Garowe and Hargeisa in February and March 2010. The critical areas of investigation were: general awareness of the provisions of the National Declarations; the extent of referral of serious criminal cases to the formal justice system, and; whether there had been any improvement in access to justice and legal protection for vulnerable groups.

### 3.2 Community awareness of the national declarations

Four years and one year after the commencement of dissemination activities in Somaliland and Puntland respectively, awareness of the National Declarations among the general population was found to be minimal. Out of eight focus group discussions (with approximately 12 participants each) the only group that expressed knowledge of the Declaration was minority women in the settlement of Daami in Hargeisa. This is consistent with other interviews conducted during the course of the research, which revealed that only elders and direct implementing partners such as Horn Peace and UNDP were aware of the Declaration. It is also consistent with research conducted by the DRC in 2009, which found that only 20.5 percent of residents in Hargeisa were aware of the Declaration.<sup>57</sup>

---

<sup>54</sup> Le Sage, above n 3, 52.

<sup>55</sup> Justiniani, above n 49, 4, 33-34.

<sup>56</sup> It should be highlighted that the sample size for this study is unknown. Danish Refugee Council, *Satisfaction and Awareness Survey on the Dissemination of the Elders Declaration* (2009).

<sup>57</sup> Ibid.



The greater awareness of the National Declaration in Hargeisa compared to Garowe can be at least partially explained by the length of time since dissemination activities had commenced (dissemination was started in 2004 in Hargeisa, while in Garowe dissemination commenced in 2009). Yet, even in Hargeisa, it was only respondents who had been directly targeted in the dissemination campaign in the IDP settlements that had retained knowledge of the provisions of the National Declarations; focus group discussions with other community members suggested that awareness among targeted groups had not been carried over to the broader population. Some respondents noted that while they were aware that the elders had met, they had not been informed as to the outcome of the meeting. As one relayed, “we heard that the elders were meeting in the Ambassador Hotel but we never heard what it was that they met about...”.<sup>58</sup>

The ten elders interviewed during this research stated that they had disseminated the Declarations and were trying to utilize their provisions in dispute resolution. However, they noted that a key constraint was the length of time required before the population would accept such changes in practice. Moreover, the research revealed widespread confusion, amongst both the elders and the users of the *xeer* system, regarding the functioning of the state justice system. In many cases, parties taking cases to the courts were not sure which law would be applied (*shari’a* or statutory law) or what the outcome might be. As noted by the Chief Justice of Puntland, “it depends on the judge and whether he knows *shari’a* or the formal laws; a judge trained in *shari’a* will only apply *shari’a*, as he doesn’t feel comfortable judging with formal laws.”<sup>59</sup>

### 3.3 Referral of serious crimes to the state justice system

Under the National Declarations, elders committed to refer serious criminal cases, including murder and rape, to the formal legal system for resolution. Encouragingly, there has been a notable increase in the number of cases being processed by the courts since the Declaration in Somaliland was made. According to UNDP, in 2006 the caseload across Somaliland was 1,852 cases; in 2007 this had increased to 3,293 cases, and in 2008 it had further increased to 3,833 cases.<sup>60</sup> Given that overall levels of criminality over the period decreased rather than increased, there is reason to believe that this change may be at least partially linked to the National Declaration.

In this regard, the data collected indicates that elders are referring cases to the courts, particularly those involving murder. In Somaliland, there has also been a significant decrease in the practice of clans shielding perpetrators from the courts.<sup>61</sup> Representatives from the Ministry of the Interior and the Ministry of Justice reported that clan shielding of murderers is no longer common practice, and that even elders now regard such practices as improper.<sup>62</sup> Improvements were also observed in Puntland, although to a lesser extent.

The same improvements were not observed in the handling of rape cases, but for different reasons. The research found that while elders are prepared in principle to refer such cases to court, and are no longer as likely to petition judges to discontinue proceedings, victims remain under significant social pressure to resolve such cases through *xeer*. In most instances, therefore, rape cases will either not be reported to the state justice system in the first instance (and leaders will not actively encourage such referral), or victims will elect to discontinue proceedings.

---

<sup>58</sup> Focus Group Discussion with IDP’s and minorities, Legal Aid Clinic, Hargeisa University, Hargeisa, Somaliland (9 March 2010).

<sup>59</sup> Interview with Puntland Chief Justice, Garowe Court House, Garowe, Puntland (28 February 2010).

<sup>60</sup> UNDP, *Annual Report, Access to Justice Section* (2009) 5.

<sup>61</sup> Interview with Haqsoor representatives, Haqsoor office, Hargeisa, Somaliland (6 March 2010); interview with Mohammed Ali, Hornpeace representative, Horn Peace office, Hargeisa, Somaliland (6 March 2010).

<sup>62</sup> Interview with Minister of Justice, Ministry of Justice, Hargeisa, Somaliland (7 March 2010); interview with the Director General of Minister of Interior, Ministry of Interior, Hargeisa, Somaliland (7 March 2010).

It is important to highlight that although there is some evidence of change in the willingness of elders to refer serious criminal cases to the formal justice system, security concerns continue to dictate the modality of conflict resolution in Somaliland, and even more so in Puntland. Both elders and the Chief Justice of Puntland noted that the maintenance of peace and stability are the chief factors influencing the resolution of criminal cases. As such, conflicts that might lead to inter-clan clashes will be resolved according to *xeer* as this is perceived to be the most effective means of preventing armed conflict.<sup>63</sup> Moreover, the research also revealed a high level of confusion on the part of elders between referring cases to the courts and reporting cases to the police. In Somaliland, elders argued that they were strictly reporting all serious cases to the police, but understood that once this had occurred they were under no further obligation to ensure that cases were adjudicated by the courts.<sup>64</sup>

In contrast, minority clan members and IDPs routinely refer serious cases (both murder and rape) to the state justice system. Once referred, elders rarely petition courts for the cases to be returned to the *xeer* level, or take action to have perpetrators released from prison. However, this trend appeared to be quite unrelated to the existence of the National Declaration. For example, although minority clans now have representation through their elders, these elders do not have sufficient power to negotiate fair *xeer* with majority clans, or to exact compensation in the event of a dispute.

Moreover, discriminatory practices within *xeer* act to prevent equitable solutions for minority clan members and IDPs. In the case of rape, for example, minority victims may have no access to customary justice because when the perpetrator is from a majority clan, the traditional *xeer* resolution whereby the victim is married to the perpetrator is not permitted. In the case of IDPs, access is even more problematic as they find it difficult to enter into *xeer* with neighboring clans. IDPs therefore often have no other option than to refer matters to the state justice system. It is also important to highlight that although these groups exhibit a preference for the formal justice system (perhaps largely through necessity), once at court they still feel discriminated against and believe that their cases are not taken seriously.

## 3.4 Heightened protection for vulnerable groups

Under the National Declarations, elders committed to the better protection and enhanced access to justice of certain marginalized groups including women, IDPs, minorities and children. Problematically, elders did not articulate or set specific benchmarks for how this would be achieved. Research conducted into the effectiveness of this aspect of the National Declaration was hence somewhat anecdotal in nature.

### 3.4.1 Women

As discussed above, with the exception of cases involving IDPs and minorities, rape cases are likely to be resolved according to *xeer*. In most cases, victims are reportedly pressured by families to settle their complaint outside the courts. In other cases, lack of evidence prevents judges from delivering a verdict and the matter is referred back for resolution under *xeer*. Both the Chief Justice of Puntland and regional court judges in Somaliland reiterated that in Somali culture, such cases cannot be left unresolved and that a *xeer* resolution was preferable to no resolution at all.<sup>65</sup>

Under *xeer*, the outcome of rape cases is determined by the victim's male relatives and/or elders through negotiation on the level of compensation payable, the size of which will be a function of the relative size of the clans, the relationship between the clans, and

---

<sup>63</sup> Interview with the Chief Justice of Puntland, Garowe Court House, Garowe, Puntland (28 February 2010); focus Group Discussion with elders, UNCC Compound, Garowe, Puntland (27 February 2010).

<sup>64</sup> Focus Group Discussion with elders, Horn Peace office, Hargeisa, Somaliland (8 March 2010).

<sup>65</sup> Interview with Chief Justice for Puntland, Garowe Court House, Garowe, Puntland (28 February 2010); statement by Regional Court Judge of Hargeisa during prosecutor workshop, Mansoor Hotel, Hargeisa, Somaliland (7 March 2010).

the age and status of the victim. Such compensation is typically distributed among the members of the *diya*-paying group, and rarely delivered to the family of the victim as required under the National Declarations. Women interviewed considered their non-receipt of compensation to be highly unjust.<sup>66</sup> Moreover, the traditional practice of marrying the victim to the perpetrator continues to be seen as a legitimate means of resolving gender crimes because marriage offers both economic and social protection to the victim.<sup>67</sup>

### 3.4.2 Children

*Xeer* continues to offer little protection to minors. *Xeer* protects a parent's right of absolute authority over their children within the home, and as the following extract from the National Declaration in Somaliland confirms, the resolution of crimes involving children should occur at the customary level:

The traditional leaders see that the traditional system is best suited to deal with juvenile justices. They call the police and all concerned parties to settle all cases that involve children through the customary law before passing them to the police stations and public prisons.<sup>68</sup>

As a result, where the family of the minor victim decides not to take a case to court or withdraws a case from the court (a common occurrence), the state justice system is unable to provide adequate protection to the victim.<sup>69</sup>

### 3.4.3 Minority and IDP groups

The legal protection afforded to IDP and minority victims of gender-based crimes remains extremely limited. As set out above, for crimes of rape perpetrated by majority clan members upon minority or IDP victims, there is often no access to justice. If referred to court, cases will often be withdrawn by the majority clan elder, however the solutions offered at *xeer* are unattractive because marriage between a majority and minority member is not permitted and the power of a minority clan to exact fair compensation from a majority clan is weak. Respondents stated that victims in such situations, unable to marry and socially 'tainted', may commit suicide or leave (or be forced to leave) their communities.<sup>70</sup>

Where cases do reach court, outcomes are inconsistent. If trials are completed, acquittals on the basis of lack of evidence are common, although where the evidentiary requirements are fulfilled, sentences of between 10-15 years (as provided for in the Penal Code) are imposed.<sup>71</sup> According to a Regional Court judge in Hargeisa, 44 cases of rape were prosecuted in court in 2009. Of these, only eight convictions were obtained, while the other cases were either dismissed due to lack of evidence or withdrawn from court.<sup>72</sup>

## 3.5 Evaluation of impact

The research indicates that the impact of the National Declarations has plateaued in terms of enhanced access to justice and legal protection for vulnerable groups. It also seems unlikely that the goodwill of the elders alone will facilitate any further progress under the current conditions. This is not to say, however, that no improvements have

---

<sup>66</sup> Interview with Sexual Assault Referral Centre employees, Hargeisa Group Hospital (7 March 2010); interview with Minister of Justice (Somaliland), Ministry of Justice (7 March 2003).

<sup>67</sup> Interview with Gaashan NGO, Ambassador Hotel, Hargeisa, Somaliland (6 March 2010).

<sup>68</sup> Excerpt from National Declaration of Somaliland Traditional Leaders, Hargeisa, Somaliland (4-10 December 2010).

<sup>69</sup> Information provided by Regional Judge of Hargeisa, prosecutor workshop, Mansoor Hotel, Hargeisa, Somaliland (7 March 2010).

<sup>70</sup> Focus group discussion with minority group, UNCC Compound, Garowe, Puntland (7 February 2010); interview with representatives of Haqsoor, Haqsoor office, Hargeisa, Somaliland, (6 March 2010).

<sup>71</sup> Information provided at prosecutor workshop, Mansoor Hotel, Hargeisa, Somaliland (7 March 2010); interview with Chief Justice of Puntland, Garowe Court House, Garowe, Puntland (28 February 2010).

<sup>72</sup> Regional Court Judge of Hargeisa, prosecutor workshop Mansoor Hotel, Hargeisa, Somaliland (7 March 2010).

occurred. There is now increased and more consistent referral of intentional and revenge killings to the state justice system, harmful practices such as *dumaal* (where a widow is forced to marry a male relative of her deceased husband) have been abolished, and women's access to inheritance has been increased. There have also been improvement in perceptions surrounding crime and how to deal with criminals, with elders more aware that the clan should not protect criminals and that serious criminal offences should be referred to the courts.

On the other hand, there has been more limited progress in resolving gender-based crimes through the courts, or in achieving enhanced protection of vulnerable groups (for example by paying compensation directly to victims and stemming the practice of marrying the perpetrator of a rape to the victim). In terms of the protection offered to minority clans and IDPs, their situation also remains grave with little notable change as a result of the intervention. Although their access to the state justice system has improved marginally, it appears that this is less the result of the National Declarations than other civil society activities.

In terms of associated or 'spinoff' effects, the goodwill on which the interventions were premised remains, and members of the judiciary and elders are slowly working towards better collaboration and linkages. For example, elders and the Chief Justice in Garowe are in discussions concerning the introduction of a mobile court targeting rural areas. Similarly, in an attempt to respond to the sparse law enforcement presence in rural areas, the judiciary has asked elders to assist with apprehending suspects, maintaining the peace during trials, and collaborating with the courts to ensure that sentences are enforced.<sup>73</sup>



Figure 3 Validation session with stakeholders held at the Legal aid Clinic, Hargesia University, Somaliland in March 2010.

---

<sup>73</sup> Interview with UNDP staff Garowe, UNCC Compound, Garowe, Puntland (3 March 2010); interview with Chief Justice of Puntland, Garowe Court Houses, Garowe, Puntland (28 February 2010).

## 4. Lessons learned from evaluating the impact of the Declarations

The interventions described above represent an innovative approach to enhancing access to justice by reforming customary law from within its leadership. The DRC project was established neither under an orthodox rule of law framework, nor with a strict legal empowerment focus. It was deemed that in the context of strong customary law and emerging, but nonetheless weak, state judicial structures, a creative middle-ground approach was required. Given all that was 'right' about the project's genesis, understanding the limitations of the intervention and what might have been done to promote enhanced impact deserves further examination. This is so both in light of continuing efforts to reform the Somali justice sector, and from the perspective that this is an approach to legal empowerment that might be suitable for adaptation in other locations.

### 4.1 Ineffective dissemination

Widespread lack of awareness regarding the National Declarations was a key limiting factor to enhancing the legal protection of vulnerable groups, as ignorance of one's rights restricts one's ability to assert them, or hold duty bearers accountable for the realization. This low level of awareness raises concerns about the effectiveness of dissemination activities carried out in both locations. In Somaliland in particular, this is somewhat curious given that the outreach component of the project appeared to have been carefully implemented and monitored by the donor partner. A possible explanation is that when the program expanded beyond its pilot phase (and beyond the initial group of elders who spearheaded the initiative), it did not integrate accountability mechanisms or tools to ensure that the elders disseminated the National Declarations effectively. Further, assigning responsibility to the elders alone was overly optimistic given their lack of experience in advocacy, their limited skills in managing the logistics of such an ambitious exercise, and their absence of resources to facilitate dissemination.

### 4.2 Accountability

The intervention relied strongly on the goodwill of elders to deliver on the commitments they had made under the National Declarations without the establishment of any accountability mechanisms or systems to support implementation. A key issue is that the elders did not bind themselves to any tangible goals at the national summit. In some cases, the revised *xeer* contained vague language that committed the elders to an improved situation for vulnerable groups more generally without articulating how this was going to occur or addressing any specific rights. For example, on the rights of minorities, the National Declaration of Somaliland states:

The traditional leaders acknowledge that little progress has been made so far on the free inter-marriage with the minority groups. They call for the social reintegration of the minority groups in all aspects of their daily life.<sup>74</sup>

One factor here may have been the challenges inherent in attempting to bring *xeer* into alignment with statutory law, *shari'a*, and international criminal justice standards. *Xeer* is an oral, flexible and dynamic system that applies differently to different groups, whereas the other sources of law are based on static, written codes that are universally applicable. Not only was it problematic to standardize *xeer* in a way that applied to all groups, but there was no governing authority to oversee or enforce these changes. It is thus likely that irrespective of intent, the elders did not understand how, or were

---

<sup>74</sup> Excerpt from National Declaration of Traditional Leaders, Hargeisa, Somaliland (4-10 December 2010).



otherwise not equipped, to effect increased protection through the designation of specific rights and practices.

While more specificity in the rights afforded and accountability mechanisms may have aided effectiveness, it must be highlighted that the strength of this initiative was that it was 'born and raised' from amongst the elders themselves. Externally imposing pressure in terms of targets and accountability may have irrevocably tainted what was otherwise a genuinely bottom-up movement for reform. The question is therefore how to encourage a level of accountability that facilitates action, but in such a way that preserves local ownership.

One such form of 'soft' accountability might have been greater involvement of civil society. The unilateral focus on the elders as agents of change in their communities, and consequent lack of engagement with the users of *xeer*, might be seen as a missed opportunity in terms of bottom-up accountability. Even if Somali civil society lacked the strength to hold their elders accountable, their involvement might have manifested itself in some level of upward pressure for elders to abide by the agreements, or served as a reference point in the deliberation of certain disputes.

### 4.3 Broader problems of discrimination

The program rested on the assumption that the goodwill of the elders would be sufficient to overcome broader issues of gender and social discrimination deeply entrenched in Somali norms and culture. Intention alone, it turned out, was not sufficient to modify such belief patterns, and correspondingly, the structure of the *xeer* system which failed to provide equal access to minority and IDP groups. For example, social attitudes preventing women who have pre-marital sex (whether consensually or through rape) from marrying could not change overnight, nor be divorced from a longer process of social and economic change. While such attitudes remain, the practice of marrying victims to perpetrators in such cases and exacting compensation under *xeer* will continue (as opposed to referring such cases to court) as this represents the only societal and financial protection available to such women.

Likewise the intervention did not respond to the underlying factors that prompted elders to remove cases from the state justice system. Given prevailing security and governance conditions, the clan continues to be the fundamental provider of security and protection,<sup>75</sup> with the result that preserving clan strength is viewed as paramount by clan elders. While this remains the case, elders will continue to organize the release of perpetrators from prison, and transitioning from a collective to an individual-based system of justice will prove difficult.

### 4.4 Flaws in the state justice system

The intervention sought to create a bridge between formal and customary judicial fora, without responding to the inherent problems that made the courts unattractive in the first instance. First, the courts remain weak vis-à-vis elders, and are unable to protect victims who may receive little or no justice under *xeer*. Very rarely will decisions taken by the elders not be ratified or be challenged by the courts, even when complainants actively assert a preference for formal adjudication.<sup>76</sup> Further, as elders are not accountable to the courts, they cannot be penalized if they withdraw a criminal case, and

---

<sup>75</sup> Gundle, above n 4, iii.

<sup>76</sup> Information presented at prosecutor workshop, Mansoor Hotel, Hargeisa, Somaliland (7 March 2010). The director of the legal clinic in Hargeisa recalled one case taken to court that involved the rape of a woman by two men. The alleged perpetrators escaped from custody, but were later apprehended by their clans and the case resolved by *xeer*. The elders submitted the decision to the court to be ratified, however, the regional court judge refused to accept the outcome as the case was pending before the court. On appeal, the Supreme Court ratified the elders' decision; interview with Mohammed Jama, Director of Legal Clinic, Human Rights section, Legal Clinic, University of Hargeisa (9 May 2010).

there are no legal mechanisms to protect victims whose cases are removed from the courts against their will.<sup>77</sup>

A second problem relates to the formal laws in place. Unrealistic evidentiary requirements that discriminate against rape victims make the prosecution of such cases extremely difficult. Such restrictions mean that enhanced access to the state justice system has not translated into more equitable outcomes. Where such requirements cannot be made out, returning the case to *xeer* is a victim's only means of obtaining some measure of financial and social protection. In the case of IDPs and minorities, however, access to any form of justice may remain beyond reach.

---

<sup>77</sup> Prosecutor workshop, Mansoor Hotel, Hargeisa, Somaliland (7 March 2010).

## 5. Reforming *xeer* as legal empowerment

The intervention in Somalia represents an innovative approach to legal empowerment tailored to complex local conditions. In both Somaliland and Puntland, the barriers to accessing justice are many. The state justice system lacks authority and legitimacy and, until quite recently, did not have a presence in rural areas. In contrast, the customary *xeer* system, while more accessible, deviates from internationally recognized human rights standards and denies access to many marginalized groups. Compounding the situation are ongoing unstable security conditions, weak governance, and endemic gender and social discrimination. In this environment, orthodox, 'top-down' approaches that focus on reform of and access to state courts and other justice sector institutions are unlikely to yield effective results.

On the other hand, a purely grassroots approach has equally little to offer given the authority of the clan system and its role in maintaining the barriers to justice already in place. In this context, efforts to empower civil society to bypass traditional leaders or hold them to account may have been ineffective at best and counterproductive at worst, particularly in the absence of social, economic and security reforms. This is because such moves may have encouraged the elders to further tighten their grip on power, and increase the divide between the already disparate elements of the Somali justice system.

A middle-ground approach was hence devised, structured around the notion of elders as agents of change within their communities. These elders – who represented both the interface with the state justice system and the gatekeepers of access to justice at the customary level – were supported and empowered with the hope of improving the operation of *xeer* and offering better protection to vulnerable groups. Through this process, elders committed themselves to referring serious criminal acts to the courts, thus breaking the cycle of impunity inherent in the functioning of *xeer* and group compensation mechanisms. Critically, the impetus for revising customary law came from within the *xeer* membership as opposed to being externally driven. Because of this, it was argued, the process of revision was more likely to be regarded as legitimate and hence sustainable.

While the longer-term impact of the intervention appears to be patchy, it remains noteworthy because it opens up new pathways within the context of legal empowerment programming. To the extent that some progress was made, particularly in terms of elders ceding elements of their jurisdiction to the courts, there is much to be learned both in the context of continuing reform of the Somali justice system, and for other developing countries. It also brings to the fore important questions in legal empowerment theory, including how far down the formal-grassroots hierarchy must an intervention sit before it can be classified as 'legal empowerment'. An argument might run that the type of intervention presented here is not legal empowerment at all, as it did not motivate users to demand change within a normative framework.<sup>78</sup> Some might even go so far as to label the intervention 'orthodox' as it targeted the elites of the customary system, who in practical terms sit at the apex of the justice hierarchy.

The alternate position is that legal empowerment must be approached flexibly to suit country-specific circumstances and that strict definitions are unhelpful. As Wojkowska and Cunningham posit, "legal empowerment of the individual and the community is fundamentally about access and power."<sup>79</sup> Within this framework, the interventions can be seen as contributing to legal empowerment by enhancing access to justice at both the customary level (by aligning procedures and remedies with human rights standards) and the formal level (through better access to the courts in cases of serious crime). Further, although they ultimately proved relatively ineffective, the interventions did include

---

<sup>78</sup> See generally S Golub, *Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Carnegie Endowment Working Papers, Number 41 (2003).

<sup>79</sup> E Wojkowska and J Cunningham, *Justice Reform's New Frontier: Engaging with Customary Systems to Legally Empower the Poor*, IDLO Legal Empowerment Working Papers No.7 (2009).

dissemination components aimed at promoting awareness of the revisions among users of *xeer* and creating an upwards accountability mechanism. Even if the idea that *xeer* users could hold elders to account – either at the customary or court level – was not realistic, the notion of elders committing themselves publicly to heightened standards is a social experiment with enormous empowerment potential.

## 6. Conclusion

Rule of law reform in the Somali context presents formidable challenges. Somalia is a country that has been fragmented by ongoing civil war, with weak governance and formal legal structures that the population has little confidence in. Three legal systems operate alongside each other, often in competition and contradiction, while the most accessible and most frequently utilized of these – *xeer* – fails to uphold some of the most basic human rights of users. In such contexts, interventions that seek to engage with and reform the customary legal system clearly have much to offer. But while the situation of Somalia is a particular one, it does not stand alone. The intervention examined in this chapter provides valuable lessons learned when trying to engage with customary systems through a legal empowerment lens. It provides a platform that can be utilized to further promote access to justice for vulnerable groups in the country, or to tweak to suit other country-specific circumstances.

First, there is something very captivating and promising about interventions that evolve from grassroots beginnings. How best to support them without diluting their natural momentum is a fine balance that is not well understood. While it is clear that preserving local ownership is imperative, this does not mean that stakeholders do not need support in certain areas. As was seen in the Somali example, customary leaders are not likely to have skills in advocacy, logistics or strategic networking. Likewise, autonomy of process must be balanced against measures to enhance effectiveness including monitoring and/or accountability mechanisms. This might include both top-down interventions, such as complaints mechanisms covering both customary and formal justice processes, and bottom-up interventions, such as awareness-raising, facilitating dialogue between the different stakeholder groups, and establishing linkages between civil society, the courts and/or customary actors. The rationale is that complementary interventions which create both upwards and downwards pressure reach a 'tipping point' whereby certain conditions are created that allow users to more realistically demand change and hold their leaders accountable.

Second, interventions aimed at enhancing access to justice cannot overlook or ignore underlying structural issues, such as deeply entrenched attitudes that operate to discriminate against or marginalize vulnerable groups, security and economic realities that obstruct normative change, or legislation which prevents courts from presenting viable alternatives to customary justice. Where such impediments cannot be removed or will take time to remove, new pathways should be explored. In Somalia, bridging the gaps between minority and majority clans proved far more complicated than empowering elders alone. While the elders are still struggling with deeply embedded beliefs that status and the right to justice are inherently intertwined, IDP and minority groups are bypassing *xeer* and relying upon legal aid clinics and paralegal programs to access tangible solutions at the courts.<sup>80</sup>

Third, exercises in codification and harmonization of legal systems present particular challenges, particularly revising customary law to bring it into alignment with formal legislation or international standards. Although it is difficult to generalize, most customary systems are flexible and dynamic with high local variation, whereas legislation is based on static written codes that are universally applicable. Without careful planning, wide consultation and effective controls, exercises in codification can easily result in a set of rules that lack legitimacy, are too weak to be enforced, or are too vague to offer any real protection.

Finally, in plural contexts, access to justice might best be seen as creating a more even playing field where all users have viable and realistic pathways to suitable outcomes. When viewed this way, a holistic approach to enhancing access to justice that targets all

---

<sup>80</sup> Focus group discussion with IDP's and minorities, Legal Aid Clinic, Hargeisa University, Hargeisa, Somaliland (9 March 2010); focus group discussion with IDP women, Legal Aid Clinic, Garowe, Puntland (2 March 2010); focus group discussion with young women, UNCC Compound, Garowe, Puntland (1 March 2010).



stakeholder groups and components of the justice system is most likely to yield results. Reform to customary justice should hence be complemented by strengthening formal courts, particularly by extending their reach into rural areas such as through awareness-raising, free legal aid and paralegal support. Programs that 'bundle' legal assistance into existing community services have particular potential in contexts where groups least likely to be able to access suitable outcomes face exclusion on multiple grounds, such as due to gender discrimination, poverty, and/or minority status.<sup>81</sup> Likewise, programs that overemphasize one change agent (such as customary leaders) to the exclusion of civil society groups, users of customary justice, or formal and religious representatives, have fewer prospects for success.

---

<sup>81</sup> A prime example is the Sexual Assault Referral Centre (SARC) attached to the Hargeisa Group Hospital which provides basic health care, psychosocial support as well as legal assistance to rape victims. Rape cases received by the SARC were found to be most consistently referred to and resolved by courts, and the principal users of this system – IDP and minority women – are among the most vulnerable of all Somalis.

## Annex 1

# National declaration of Somaliland Traditional Leaders

**4 – 10 December, 2006, Hargeisa.**

### **Declaration**

The first ever national conference for the Somaliland Traditional leaders was held in Hargeisa from 4-10 December 2006, funded by DRC, UNDP, and UNHCR and implemented by the local NGO Haqsoor.

The traditional leaders participating in the conference included Aqils, elders, Sultans, Boqors, Religious leaders, intellectuals, cultural experts, representatives from the Legal and Environment committees of the Somaliland parliament, representatives from the social affairs committees of the Guurti, head of the Supreme Court, judges from Hargeisa Regional Court and representatives from the office of the Attorney General.

The vice president of Somaliland, H.E Ahmed Yussuf Yassin, officially opened the conference. He was accompanied by the Ministers of Interior and Justice, by Chief Aqil Haji Abdi Husein (Abdi Waraabe, the most elderly member of the Guurti), the commander of the Somaliland Police Forces, high ranking representatives of some international and local non-governmental organizations and eminent women and youth organizations members.

The objectives of this conference were to:

1. Unite and standardize the revised xeer in the customary law.
2. Adopt a national declaration on the united and revised xeer.
3. Establish a national networking body for the traditional leaders.

### **The following Agenda items were tabled:**

1. Review and deliberation on practices of the Somali customary laws (Xeer) that are contrary to the international human rights standards and the sharia law such as:
  - Revenge killing
  - Intentional killing
  - Payment and receiving of blood compensation (Diya).
  - Denial of the rights of Women, Children, Refugees, IDPs, and Minorities.
2. Standardizing the differing codes of the Somaliland customary laws.
3. Approval of a common national "Xeer" that will govern the damages caused by traffic accidents.
4. Ensure protection of the environment, both land and sea, wild games, proper management of urban land grabbing and land disputes and protection of the public properties.
5. Establish a frame work for a sustainable collaboration and dialogue among the traditional leaders.
6. Support the establishment of permanent links between the traditional leaders and other relevant national institutions such as the parliament, police, judiciary, and the ministers of interior, justice, and environment.
7. Establish a frame work for conflict resolution among clans in proximate geographic locations

8. Capacity building for the traditional leaders with a view to empower them to professionally tackle their tasks.
9. Support the proper up keeping of healthy social norms and the elimination of unhealthy mal-practices such: - drugs, importing and watching obscene films, the application of the harmful skin whitening creams and the private mingling of young men and women in public and private places.

After an in-depth and prolonged deliberation among the traditional leaders and other concerned parties, the adopted resolutions were grouped as follows:

- (a) Some resolutions were addressed to the lawmaking institutions for the purpose of codifying them into a law.
- (b) A group of resolutions aimed at strengthening the collaboration of the traditional leaders among themselves and at establishing more cooperation with the other concerned parties were set aside for the traditional leaders to implement.
- (c) Specific recommendations addressed to the government institutions, international and local organizations were made.

### **The traditional leaders agreed to nationally standardize and adopt the following customary law codes (XEER):**

#### **Revenge killings**

The traditional leaders realize that this is a criminal act against an innocent person in retaliation of a crime committed by his relative(s).

#### **Main causes of revenge killings**

The Somaliland traditional leaders identified the main causes of recurring revenge killings as follows:

- The perpetrator enjoys clan protection and is not arrested and brought to face justice
- Where compensation for a prior case is not paid or kept dragging for a long period of time.
- Where the property taken over or looted in time of conflict is not returned to the original owners.

### **The Somaliland traditional leaders declare:**

- (a) That revenge killing is totally abolished and prohibited
- (b) That the perpetrator of revenge killing should not be assisted, protected or facilitated to escape justice. From now on, the killer on revenge immediately loses the clan protection and will be considered a criminal.
- (c) The payment of blood compensations already agreed upon by the concerned parties must be promptly paid on time, without delay, to avoid more bloodshed.
- (d) All pending inter and intra conflict cases must be resolved as soon as possible by the concerned traditional leaders.
- (e) All properties looted or taken over in time of conflict must be returned to the original owners.
- (f) Judicial judgments passed on the killers and other criminals should be executed without much delay by government.
- (g) Legal action must be taken against those who propagate revenge killing or offer assistance or protection to the perpetrators.
- (h) Regular advocacy campaigns must be made by the traditional leaders to raise the public awareness on the implementation of the revised customary law codes through out the Somaliland districts.

**If the killer escapes justice, the traditional leaders agreed to take the following steps:**

1. If the perpetrator escapes, the responsibility of pursuing him to get arrested to face justice lies with his immediate clan/sub-clan members, including his traditional leaders. The support of the government authorities, the police and the community are deemed to be necessary to arrest the criminal and take him to court.
2. If the clan or the sub-clan fails in their pursuit and the situation is relatively calm, their elders are required to give a solemn oath that they have honestly tried their best to arrest the criminal and have exhausted all other means of getting hold of the killer. The other party is also required to accept the oath of the suspected killer's elders and the proceedings of blood compensation should soon follow.
3. If, however, potential confrontation and an inflamed situation prevail among the two disputing parties, it is advisable for the police and other concerned local authorities to take all necessary measures to contain the conflict. The traditional leaders approve the temporary arrest of close relatives of the killer and some of his elders if this can contribute to the general security or the safety of some members from the two sides to calm down the situation. But the option is always open for the family of the victim to wait for the arrest of the killer as long as they wish without receiving any blood compensation.
4. If the murder case is resolved in agreement with both parties, the traditional leaders consider it as closed case regardless of the position of the local authorities.

**Killings committed by the armed forces and the police members:**

The traditional leaders declare that, resolving the killing cases, committed by the members of the armed forces and the police members fall under the responsibility of the government. This includes the arrest and the trial of the killer and the payment of the blood compensation.

**Killings by the government employees:**

The traditional leaders declare that resolving cases of killing committed by the government employees falls under the responsibility of the perpetrators and their clans. This includes the arrest and the trial of the killer and the payment of the blood compensation.

**Standardization rate for the blood compensation:**

- Compensation payment for both death and injury whether accidental or deliberate to a male or a female, is determined by applying the *Shari'a*.
- Compensation should be borne by the perpetrator in the first place, while he might plead for assistance from his/her kinsmen as ordained by the *shari'a*.
- It is agreed by the traditional leaders that the cost of Diya for a male is fixed at 100 camels according to the Sharia.
- The traditional leaders propose that the price recently determined by the Supreme Court for the cost of a camel in diya paying to be 500,000 Somaliland. Shillings be revised and reduced to 300,000 per head.

### **Traffic and marine accidents:**

Following the disintegration and the break down of the insurance system, the traffic and marine accidents and the consequential rules all fall within the customary laws realm at present.

There are difficulties to classify accidents as negligence, deliberate, or unavoidable. In the event of the driver's death, compensation on his part stands. Compensation payments and the determination of those who can be held responsible for it (driver and vehicle owner) vary from region to region. The same problem prevails in the case of marine accident.

The traditional leaders support the recent endeavors taken by some vehicle owners, in some districts like Gabiilay, on the establishment of special funds raised by an association of drivers to meet this problem.

### **The traditional leaders' resolution on traffic accidents:**

The traditional leaders agreed that the traffic police report must be sought and the content of such report is binding to all concerned parties. But the cost and responsibilities of the damages caused by such traffic accidents must be dealt through the *Shari'a* laws.

In the rural areas, where it is difficult to get the required traffic police report, the *Shari'a* law is then the only binding rule. The traditional leaders all confirmed that the reports from the traffic police are considered by them to be reliable.

- The report of the traffic police is the source referred to, to determine whom to blame on the responsibility of a traffic accident and the damages that may follow it. Compensations paid for the damages incurred during the traffic accidents should be in accordance with the *Shari'a*
- The traditional leaders agreed to refer all traffic accident cases to the traffic police, respect the police report and then proceed to solve them according to the *Shari'a* law.
- The traditional leaders call the government authorities to stream-line, strengthen and make fully effective traffic and marine laws.

The adjurations of this issue under the traditional system are hence forth waved and the above mentioned points of xeer will be applicable.

### **Rights of women:**

The traditional leaders declare that the rights of women must fully be protected in accordance with the *Shari'a* law. This will cover violations such as:

- Rape, slander, harassment, inheritance rights, forced marriage.
- Arranged marriage, divorce, and dowry payment.

The parliament must pass the applicable provisions on these issues.

The current secular law will be applied on all violations on the rights of women until the passage of the new provisions on these issues by the parliament.

The traditional leaders call for the full protection of the rights of women in Somaliland. They are also committed to advocate for the implementation of all the changes made in the harmful codes in the customary law that promote more protection on the rights of women.



## **Children rights:**

The major problems besetting the children are:

- (a) Illegal imprisonment, maltreatment in prisons, and undesirable practices gained from the detention centers.
- (b) Heavy and burdensome work, low salary or lack of payment, and without redress.
- (c) The total lack of health, educational, and welfare services.
- (d) Lack of awareness of their legal rights.

## **Redress measures:**

In this context the traditional leaders propose:

- The launch of country wide advocacy campaigns to raise public awareness on the rights of children and their proper upbringing and guidance.
- The traditional leaders see that the traditional system is best suited to deal with juvenile justices. They call the police and all concerned parties to settle all cases that involve children through the customary law before passing them to the police stations and public prisons.
- Special juvenile centers should be established for children in conflict with the law. These centers must aim to properly educate and reform the delinquent children and provided with adequate educational, health and recreation facilities.
- A formal law should be promulgated to handle violation against children.
- The children should not be engaged in works with negative and damaging impact on their health physical and moral well being. The traditional leaders condemn all sorts of child labor in Somaliland.
- The traditional leaders urge the government to speedily ratify the international Child Rights Convention (CRC) law passed by the parliament.
- The traditional leaders call for the Ministry of Justice to establish a special office that would take care of the protection for the rights of the children and their general welfare.
- The government, business persons, the community, and religion authorities should co-operate on the establishment of special fund to help the poor, neglected and street children in Somaliland.
- The traditional leaders commit themselves to work hard for the protection and taking proper care of the children. They call the general public, international and local organizations to assist the traditional rulers in their engagement in the promotion and protection of the welfare of children.

## **The rights of refugees, foreign guests and IDPs:**

The traditional leaders declare:

- Traditionally, the foreigners, including refugees, in our country are considered as our guests. They must therefore be treated well, in accordance with the courtesy and hospitality enshrined in our customary law.
- Any action or utterance that poses a threat to the security, property or dignity of refugees, IDPs and foreigners is absolutely prohibited.
- Except for the right of citizenship, the refugees, IDPs and foreigners are entitled to equal rights with the citizens in regard to their safety and pursuit of their individual rights and assignments.
- Their protection is the responsibility of the society at large, the national institutions, the traditional leaders and human rights organizations.
- To be constantly informed on their daily state of affairs, the refugees and the displaced persons, the traditional leaders recommend them to form among themselves a team of elders who would liaison with other Somaliland institutions and with other traditional leaders for the protection of their rights.

- It has become apparent that district committees linked to the police through the Community Based Policing Policy, as already established in Burao, could play a vital role in offering protection assistance to Refugees and IDPs in Somaliland.
- Full advocacy campaigns must be conducted by the traditional leaders to raise the public awareness on the rights and the protection of the refugees and the IDPs in Somaliland.
- It is incumbent on the refugees and IDPs to respect the laws, the culture and the faith in their host country.

### **The rights of minorities:**

The traditional leaders unanimously declare that all forms of discrimination are hereby abolished:

- The traditional leaders acknowledge that little progress has been made so far on the free inter- marriage with the minority groups. They call for the social reintegration of the minority groups in all aspects of their daily life.
- The traditional leaders call the parliament to pass a law on discrimination to legally protect the rights of the minority groups.
- The traditional leaders call for a proportional quota to be granted to the minority groups in the elected parliament and local council bodies, so that they could have political representation.
- To raise the social status of the minority groups, they must be granted with specific portion of employment opportunities in all formal institutions.
- Since they do not possess their own geographical constituency, development organizations, international and local agencies should devise special target projects that will enhance the capabilities of the minority groups in all possible respects.
- The traditional leaders believe that a lot has to be done before the minority groups fully get reintegrated into the rest of the Somaliland community. Therefore, some long term programs on health, education, shelter and human rights awareness and promotion are required for them to attain equality with the rest of the society.

### **The preservation of the environment:**

The traditional leaders were united in addressing the disastrous devastation afflicting both land and sea environment. The livestock sector, which constitutes the single livelihood source for more than 70% of the pastoral population of Somaliland and is the foreign currency earner, is in total disarray and needs immediate interventions. Failure in this aspect will determine the fate of Somaliland society for the worst. Environment disaster is proceeding from the following:

1. Ever-expanding desertification following from over-grazing in the communal grazing lands.
2. The drainage of rain water through vehicle created tracks turning into gullies that drain water to areas outside the grazing lands.
3. The establishment of illegal individual grazing enclosures in the communal grazing land.
4. The burning of the green trees for commercial charcoal production.

The traditional leaders resolve the following:

1. That charcoal burning and cutting down of green tree is henceforth banned.
2. The Somaliland law-making institutions are requested to promulgate a law on the preservation of the environment. A provision on the total prohibition of charcoal exports and imports and transporting should be passed by the ministry of rural development and environment; while existing laws must be fully implemented.

3. The traditional leaders should form a committee of elders in all districts to protect and monitor the environment and take immediate action against all perpetrators.
4. Law making institutions should pass a law directed at those involved in charcoal trade, in transporting charcoal and those who actually engage in burning green trees
5. The Government should urgently look for, and provide alternative sources of energy, such cheap tax exempted kerosene and stoves for cooking, mining of local coal deposits, solar and wind energy.
6. The government, in collaboration with international and local agencies, should provide alternative employment opportunities for youth engaged in charcoal production.
7. The government is requested to ban the import of all the soft shopping plastic bags as they pollute both land and marine environment.
8. Rain water management projects that could have the dual purpose of providing livelihood support and diverting the flow of rain water through the gullies should be under-taken in the communal grazing land areas.

### **Illegal grazing enclosures:**

To properly address the illegal enclosures that some individuals made in the communal grazing lands, the traditional leaders declare the following:

1. The traditional leaders call for the concerned ministries of agriculture, livestock, rural development and environment and the ministry of water and mineral resources to make a definitive demarcation between agriculture and grazing lands through out the country.
2. The law making institution are required to promulgate a law rendering the activities of the private enclosures inside the communal grazing lands as a criminal act that could be dealt with adequate punishment provision.
3. The previous forestry guards should be re-established to take care of the proposed seasonal grazing reserves.
4. The previous seasonal grazing reserves should be re-instated and others established.
5. All necessary measures must be made to stop burning and cutting down green trees for charcoal production and new efforts must be made to plant new acacias trees and grass for pasture.
6. All illegal enclosures should peacefully be removed to open all the available communal grazing lands for the common pasture of all.
7. The traditional leaders should under-take advocacy campaigns and raise the public awareness to properly rehabilitate the environment.
8. The international organizations, LNGO and the Government should adequately invest in the preservation, rehabilitation and protection of the environment.

### **Protection of game and prohibition of exporting female animals:**

1. The traditional leaders prohibit hunting for game or pleasure to give more time for many species to breed.
2. The natural habitat ideal for the breeding of the wild game must be rehabilitated and protected.
3. The ban on the export of female livestock heads should be fully enforced.

### **Marine resources:**

The major prevailing issues are:

1. Massive illegal fishing in our seas.
2. Devastating fishing methods.
3. The dumping of chemical and nuclear waste in our waters.

After lengthy discussions, the traditional leaders urge all concerned to:

1. The strengthening of effective implementation of the marine laws.
2. The constant inspection and monitoring of the fishing methods of fishing vessels in Somaliland waters.
3. The Somaliland coast guides be fully equipped and trained to prevent both illegal fishing and dumping of chemical and nuclear waste in Somaliland waters.

### **Urban land disputes:**

The traditional leaders, who are always involved in conflict resolution, are very much aware of the current and excessive land grabbing going on in urban areas. This practice is a real and tangible burden for the secular, traditional and for the *Shari'a* courts. Land disputes are thought to be fuelled by the high unemployment level in urban areas, made worse by the migration of rural people to urban centers and the scarcity of resources in the country.

The traditional leaders note that the weak land management policy of the local district councils contributes to recurring land disputes and related conflicts. They call the local government authorities to formulate the applicable land policies to address the land disputes in all districts of Somaliland.

The traditional leaders acknowledge that:

1. Land is originally owned by Allah.
2. Only the government and its mandated offices take the responsibility of land management.
3. The council members in the local governments are expected to make the necessary and accurate land registration and issuance of property certificates.

### **Social norms and conduct:**

The traditional leaders are aware of the undesirable and socially damaging practices seeping into our social frame work and which need to be addressed as soon as possible. The traditional leaders urge:

1. Parents should take all possible measures to educate their children in socially healthy norms.
2. Intensive campaigns should be undertaken to educate the communities on the desirable social norms.
3. Rehabilitation centers should be established for delinquent persons.
4. Appropriate provisions should be passed by the law making institutions directed at such undesirable social practices.
5. To prohibit by law, the trading and use of all types of narcotics, the display of immoral films, the use of skin whitening drugs that pose health risks to the users.
6. To pass legislation with heavy punishment for acts and utterance that defiles the religion, God and the prophet.
7. The communities must unite to combat all forms of immoral social practices.

### **Working relationship between the traditional leaders, different organs of the state, international organizations:**

1. The traditional leaders, hereby, pledge to double their efforts on reconciliation, peace building and conflict resolution.
2. They are willing to strongly build and promote better working relationship among themselves, and to establish viable working relations with the Sultans, Garaads, Boqors, Sheikhs and other traditional leaders, government authorities and the parliament of Somaliland.
3. The government is requested to strengthen the role of traditional leaders and to provide them with adequate support, including increase of their modest

salaries, which will enable them to exercise and fulfill their indispensable responsibilities.

4. The traditional leaders call all concerned to provide them with the required support to get fully and freely engaged on promoting peace, human rights and conflict resolution.
5. The traditional leaders believe that proper programs should be developed to enhance the close collaboration between them and the other key players of peace, human rights and good governance. They advise for better working relations with the government organs, the parliament, the police and the judiciary.
6. The traditional leaders recommend the construction of meeting centers (Houses for Aqils) in all regions of Somaliland. The House for the Aqils in Burao built by the government and the one in Borama built by the Danish Refugee Council (DRC) are good examples of these centers.

### **Implementation of the revised and standardized customary law codes:**

The traditional leaders agreed on that the implementation of the revised codes and other calls would be processed into different components as follows:

1. The traditional leaders set aside some of the codes for them to adopt in their day to day activities as usual.
2. The traditional leaders would pass some of the revised xeer to the Sultans, Boqors and Garaads before taking them to the parliament to pass them into laws.
3. The traditional leaders would make the necessary lobbying in the parliament to put some of the codes discussed in the national conference and approved by the Sultans, Boqors and Garaads, into a law before implementing them.
4. The traditional leaders asked several government ministries including the ministries of interior, justice, rural development and environment and other concerned institutions to take the applicable and appropriate actions to practically support and adopt the recommendations of the traditional leaders on addressing some of the xeer in their national declaration. from district, regional and national levels
5. The traditional leaders request their followers, the local, international and UN organizations to support them to successfully implement their initiatives of promoting more respect for human rights, peace and protection for the vulnerable groups in the community. The traditional leaders make their commitments to continue to act as agents of change and human rights defenders.

### **The traditional leaders summarize the fruitful and immediate out put of this national conference as follows:**

1. Holding this historic national conference was an unprecedented milestone opportunity for the traditional leaders from the six regions of Somaliland to meet under one roof and to know each other and share their experiences.
2. It contributed to open the doors, for the first time, to a sincere dialogue between the high ranking government national authorities and the traditional leaders.
3. The traditional leaders were glad to meet and listen to the valuable ideas, advice and opinions from the civil society and other stake holders like the attending poets, religious leaders, members of the women organizations, representatives of internally displaced persons, and officers from the local, international and United Nations organizations.
4. The traditional leaders acknowledge that their attempts in revising and standardizing the customary law codes were much easier in contrary to their expectations. Thanks to the expertise of the facilitators in managing to smoothly and tactically run through the sensitive issues. This approach gained the confidence and trust of the traditional leaders and other participants and



helped them to feel comfortable to avoid quarrelling among each other and they reached common and amicable consensus agreements.

5. The traditional leaders appointed a national 30 member committee equally distributed for the six regions that would make the coordination for all the activities of the traditional leaders in the future.
6. The traditional leaders and other participants thanked the Danish Refugee Council (DRC), United Nations Development Program (UNDP), United Nations High Commissioner for Refugees (UNHCR) for funding this important and historic traditional leaders' conference and to Haqsoor local NGO for preparing and facilitating. They also express their thanks to the ministry of interior for the vital role to make this conference a success.

Thanks to Allah.

**E N D**

## Annex 2

# Interview guidelines

### Semi-structured interviews: key informants

1. Name of interviewee.
2. Position of interviewee (NGO, UN, Government, etc).
3. Location of interviews/ date/ time.
4. Person's relationship/involvement with one or more of the *xeer* interventions.
5. Current involvement (if different than above).

### SECTION 1 – NATIONAL DECLARATION

1. To your knowledge are elders utilising the revisions on *xeer* (through the national declaration) when they mediate in disputes regarding revenge killings, crimes against women, children and IDPs?
2. What are the outcomes of disputes mediated by elders in terms of revenge killings, crimes against women, children and IDPs?
3. Which aspects of the declaration are being utilised if none of the above?
4. In your perception, how have users of *xeer* (women, men, IDPs, etc) benefited from the National Declaration?
5. Would you consider that they have gained more access to justice (present definition of access to justice).
6. To your knowledge have there been any changes in terms of:
  - (i) the number of disputes
  - (ii) the type of disputes
7. Do you know what were the outcomes of these disputes? Please give examples if any come to mind.
8. To your knowledge are cases of rape and murder being referred to the formal justice system?
9. If not, why do you think this is not happening? (external / internal factors)
10. Has the situation of referrals between the elders and the formal legal system changed throughout time?

### SECTION 2 – ACCESS TO JUSTICE / LEGAL EMPOWERMENT

11. Would you say that the interventions have been successful in helping vulnerable groups access justice?
12. Why do you think that the outcome of *xeer* interventions has been like this for vulnerable groups, looking particularly at women/children/IDPs
13. What would you say are the challenges of these types of interventions?
14. What is your assessment of these types of interventions in the specific context of Somaliland/Puntland?

15. What do you think is the impact of these sorts of interventions on access to justice for vulnerable groups (women, children and IDPs)
16. Do you think there were some conditions or circumstances that affected these interventions?
17. In your opinion should interventions trying to legally empower vulnerable groups (women, children, IDPs) continue to focus on working with the elders?
18. What would be your recommendations for future projects working with customary laws?
19. What do you consider are the challenges of working with these sorts of interventions in the Somaliland/ Puntland context?

## Annex 3

# Focus group guidelines

## Research goal

To improve the functioning of customary justice systems so as to empower users and better protect the rights of vulnerable and marginalised groups.

## Outcome

To generate new knowledge concerning the possibilities and limitations of using legal empowerment approaches to bring customary law into alignment human rights standards and harmonise formal and customary justice for a.

## Central research questions

Main questions	How and to what extent did the interventions enhance users' access to justice, particularly vulnerable groups?
Secondary questions	<ol style="list-style-type: none"><li>1. Were key commitments of the declaration upheld in customary dispute resolution?</li><li>2. Following the declaration, do users of the customary system perceive any differences in terms of their ability to access justice?</li><li>3. Is there a change in the number, substance or outcome of the disputes in these key areas?</li><li>4. How consistently were cases of rape and homicide referred to the legal system?</li><li>5. What were the factors that inhibited the referral of serious criminal cases to the formal legal system?</li></ol>
Focus Group Discussions (Background information)	<ul style="list-style-type: none"><li>▪ Number of participants</li><li>▪ Geographical location where participants come from</li><li>▪ Type of focus group: women, children, IDPs</li></ul>

Focus Group  
Discussion  
guidelines  
(basic)

- Who do you go to in terms of conflicts/ disputes?
- Why do you go to this provider (elders, police, religious leaders) when you need to solve disputes or conflicts?
- Do you also utilise other providers in other situations? (for example: religious leaders and shari'a courts might be predominant when it comes to specific family affairs such as divorce).
- Are you aware of the National Declaration? If not aware, please explain the intervention (see separate presentation).
- To your knowledge are elders utilising the revisions on xeer (through the national declaration) when they mediate in disputes regarding revenge killings, crimes against women, children and IDPs?
- What are the usual outcomes of elders mediation in conflicts/ disputes involving groups: women, children, and IDPs
- What is your opinion on these outcomes?
- Have the types of disputes/conflicts changed throughout the last year? (for example: have you experienced that insecurity is greater as there have been more rapes in the neighbourhood where you reside?)
- To your knowledge, what happens in cases of rape and murder that are being mediated by the elders?
- Do you feel it is possible to access the formal legal system if you want a dispute settled by court?
- Has anyone from your community accessed the formal legal system in case of a dispute/conflict?
- What was the outcome of this?
- How do you feel about utilising the formal legal system?
- Do you feel that the national declaration and harmonisation interventions have had any impact on your life?
- What would be your recommendations for elders and or formal legal system in terms of how cases are handled?

## Annex 4

# Sample consent form

Interview Consent Form	
<b>Project title:</b> Evaluating the Effectiveness of Legal Empowerment Approaches to Customary Law Reform in Somaliland and Puntland.	
Name of the interviewee: _____	
Location of interview: _____	
Date: _____	
International Development Law Organisation funds the current research project in conjunction with UNDP ROLS (Somalia). The main objectives of the research are:	
<b>Research goal:</b> To improve the functioning of customary justice systems so as to empower users and better protect the rights of vulnerable and marginalized groups.	
<b>Outcome:</b> To generate new knowledge concerning the possibilities and limitations of using legal empowerment approaches to bring customary law into alignment human rights standards, and harmonize formal and customary justice fora.	
The outcomes of this research are:	
<div>1. Assessment report</div> <div>2. Academic Paper</div> <div>3. Field presentations / debriefings to stakeholders</div>	
The data collected throughout this interview will be utilised in one or all of the abovementioned outcomes.	
You have the option to stop this interview at any given point in time, if you feel uncomfortable.	
I give my permission for:	
<b>My name to be used:</b>	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>
If you do not agree with your name being used, all information gathered from this interview will be kept and utilised in an anonymous form.	
<b>The information made public through the specified outcomes presented to me by the interviewer:</b>	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>
<b>Signature of interviewee:</b> _____	<b>Date:</b> _____
<b>Signature of interviewer:</b> _____	<b>Date:</b> _____