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The missing link
Access to justice and community security in Somalia

This briefing paper presents key challenges and recommendations on strengthening community safety and addressing barriers to peace in Somalia. These were identified during an exchange event organised by Saferworld and partners Somali Women Development Centre, Somali Women Solidarity Organization and Isha Human Rights Organization. The cross-learning event brought together 40 representatives (17 women and 23 men) from community action forums – groups set up to share and learn from each other by working together to identify and address safety and security concerns in their communities.

The findings and recommendations from these discussions highlight how experiences of a broken justice system in locations around the country are undermining access to justice and safety gains, as well as fuelling community grievances. This poses a challenge to community-based efforts to address insecurity in Somalia. From the discussions, the groups prioritised four safety issues as the most pressing: land conflicts, gender inequality and gender-based violence, youth gang violence, and ineffective law enforcement. The identified issues were all linked to the lack of a rule of law and a poorly functioning justice system in Somalia. The prevailing injustice at all levels was seen to have pushed citizens to seek alternative justice providers such as al-Shabaab.

The communities represented in the exchange event believed the principal drivers of insecurity in their areas are rooted in experiences of injustice characterised by: discrimination, disenfranchisement, exclusive governance structures, corruption, and abuse of power by government security forces. For some members, grievances were worsened by the shortcomings of the state – which they considered weak, corrupt, violent, or all three.

Participants concluded that the barriers preventing people from accessing justice not only deprived marginalised groups of attaining their rights, but posed the risk that unresolved grievances, disputes and conflicts among the community could exacerbate an already volatile situation.

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A representative of a CAF from Mogadishu discusses the successes and challenges of their work so far, as part of the cross-CAF learning event in Baidoa.
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Background

Over the past two decades, security policies and decisions in Somalia have largely been top-down. Following the collapse of Siad Barre's military government in 1991 and the subsequent violent struggles for power and control, formal state institutions have effectively ceased to function. International assistance for Somalia's state-building and stability efforts has largely relied on formal security structures, with minimal input from or involvement of communities.

In 2017, Saferworld – in partnership with the Somali Women Development Centre (SWDC), Somali Women Solidarity Organization and Isha Human Rights Organization – established 15 informal community action forums (CAFs), consisting of 20 members per CAF, in Mogadishu, Kismayo and Baidoa. CAFs hold bi-weekly meetings and discussions with communities and authorities on safety and security[1] matters in their respective areas. Police advisory committees (PACs) – civilian oversight committees comprising retired police officers, lawyers and community members – also hold joint discussions with CAFs to strengthen police-community relationships. Both CAFs and PACs work closely with communities, including using existing referral pathways for justice and facilitating access to paralegal aid for vulnerable detainees.

Importantly, two of the three partners are women-led organisations. This ensures that CAFs embrace women's meaningful participation in the composition and decision-making of CAFs, and take on leadership positions. It also means that CAFs understand and recognise women's safety and security concerns as community security concerns that are no less important than those affecting men. Being gender and conflict sensitive was at the heart of each step taken during the process of CAF and PAC formation, and selection criteria were developed with the aim of reaching a gender balance of close to 50 per cent for CAF members, as well as representation from other marginalised groups. The participation of women in CAF work is seen to build the trust needed in the wider community to report sensitive cases, including gender-based violence (GBV). The programme is also designed to refer GBV survivors to SWDC for free legal aid, healthcare and counselling.

The national cross-CAF learning event was organised by Saferworld, SWDC, Somali Women Solidarity Organization and Isha Human Rights Organization from 25–27 February 2020 in Baidoa, South West State. The annual event aims to create a platform where CAFs in different regions can exchange experiences and information about the changes that have occurred in their respective areas as a result of their interventions. As part of this discussion, participants unanimously agreed that there is an urgent need to develop Somalia's justice system for communities to live peacefully. They warned that a lack of action has the potential to fuel oppression and marginalisation, leading to intra and inter-communal conflicts, migration and possibly the loss of more lives. It was also noted that the consequences of civil society organisations, donors and government officials focusing on communities that are easy to reach risk further excluding the already marginalised, and even increasing the likelihood and/or intensity of conflict.

Safety and security concerns

The following safety and security issues were identified as priority areas of concern at the three-day meeting between CAFs and partners, who also established a set of recommendations for local, state and national government, civil society organisations, and donors. The majority of the safety and security concerns identified at the meeting were linked to ineffective law enforcement and a weak justice system.

There are three avenues through which Somalis pursue justice and dispute resolution: the customary system, the statutory system and the religious system. The customary system is underpinned by *Xeer* – the negotiated dispute resolution norms established between clans. *Xeer* is not based upon clear, objective and equitable principles of justice, and can be characterised by the phrase 'It's not justice, but a solution'.[2] The underlying concept of *Xeer* is the mitigation of violence through the transfer of compensation from a perpetrator's clan to a victim's clan based on negotiations among elders. As an inter-clan dispute resolution tool, it is grounded in collective responsibility and lacks individual accountability; as such, it renders individual perpetrators immune from punishment and sanction.

Land conflicts

Participants stated that land disputes are a major driver of conflict in the areas where they work. Conflicts arise over disputed land ownership, where both previous and current tenants hold documents to prove ownership. While most cases of land disputes stem from inadequate land regulations and policies, lack of law enforcement and poor access to justice were seen to be at the heart of the problem.

Participants noted that formal courts take a long time to decide on land cases. In many areas, when they do decide on a case, the government rarely enforces the decision. They explained that for cases taken through formal courts, interference from senior political, army or clan leaders, coupled with the turnover of judges, complicates matters. Judges who do not get paid on a regular basis were seen as being subject to either corruption or intimidation when dealing with cases that involve dominant clans. Participants stated that unclear land regulations and policies and a lack of proper land registration have created further distrust with government land systems and courts.

Other issues of concern in relation to land are fraud and forgery schemes. The discussions highlighted that the existing process of land acquisition has loopholes that have reportedly led to the fraudulent sale of land, delays in land allocation, unbalanced and unfair land allocation, and the double allocation of plots due to a lack of qualified local government officials and poor land registration systems. The eviction of internally displaced people (IDPs) from camps (which are subsequently re-allocated to wealthy individuals and companies) is of increasing concern. Participants also indicated that a lack of clear demarcation is a source of border disputes among states, districts, wards and even neighbours.

Participants stated that al-Shabaab has assumed a greater role in providing justice in general and in relation to land in particular, due to increased conflict over land; its perceived justice services are in turn affecting the credibility of the Somali federal government. According to a recent Expanding Access to Justice Programme report, al-Shabaab has delivered what the government and the judiciary could not: justice beyond power and clan structures and the enforcement of rulings.[3] The report further states that more and more Somalis seek al-Shabaab justice services, including outside of al-Shabaab-held territory, such as in Mogadishu and in most regions in South and Central Somalia. Fear of the group's harsh treatment against those who defy its rulings has forced many to swiftly adhere to the court's decisions.

Unlike CAFs based in Baidoa and Kismayo, which intervene in minor land conflicts through working with communities to peacefully settle disputes, CAFs in Mogadishu avoid getting involved in land-related disputes for security reasons and make referrals to the formal system (though the latter is perceived as weak). However, participants agreed that regardless of the policies passed, it is actually the implementation and enforcement of the policies, and the integrity and professionalism of the authorities, that make the difference in winning community trust.

Recommendations for the federal government

- Harmonise land policies and operationalise land administration institutions and land commissions.
- Engage community structures in the development and implementation of effective land laws, and ensure marginalised groups such as women and minorities have access to legal land protection.

Recommendations for local and state governments

- Enforce land decisions fairly and equally across clan divides, and ensure women have access to legal land protection; enforce registration as required by state and federal legislation.
- Fight corruption by training land officials and allocating an appropriate salary to them; prosecute corruption cases in collaboration with the Anti-Corruption Commission.

Recommendations for civil society

- Raise awareness among communities of existing land policies and provisions to ensure that land disputes are addressed in line with existing legal frameworks.
- Organise community dialogues together with relevant local and state governments to discuss and address land disputes.

Gender inequality and sexual and gender-based violence

From the discussions and the lived experiences of the women in the exchange workshops, it was clear that women in Somalia face multiple and layered inequalities and injustices. Security provision that responds to the needs of women was seen as almost absent. It was noted that women are confronted with the choice of either turning to traditional or informal security and conflict-resolution mechanisms, or formal security and justice providers. Informal security and conflict-resolution mechanisms are dominated by men and decisions and processes are informed by patriarchal gender norms that exclude women from substantive involvement and compromise women's rights and access to justice. When women turn to formal security and justice providers, they experience regular abuse of power and, at best, these providers have little knowledge of the specific needs of women or of gender-sensitive responses and practices. All three justice options perpetuate exclusion, discrimination and injustice. Participants were concerned that the limited security

and justice options for women persisted because women are seen as a low priority group. For example, the draft Sexual Offences Bill is the first of its kind in Somalia to propose criminalising sexual offences, including rape, gang rape, sexual assault, child marriage and trafficking. However the bill is still awaiting approval in parliament.

Participants from different regions identified GBV as one of the most pressing issues of insecurity in Somalia, with significant cases of rape, sexual assault and domestic violence reported. In relation to women's lack of access to justice, participants prioritised cultural and legal practices that further drive gender inequality and GBV; for example, the practice of allowing perpetrators of sexual abuse to marry survivors. This practice stems from gender norms that view women as being the property of men, and is seen to encourage violence and impunity, denying survivors their right to pursue justice.

CAFs have opened up opportunities for women to participate in and lead community forums, and this was said to be changing the perception of women in their communities. However, participants reported that gender inequality persists across the country, with few women being able to exercise their rights to own and inherit property, and limited participation of women in public life and decision-making in community and state affairs. It was also noted that women in rural areas are denied access to economic opportunities and to their resources, which are all controlled by men. Major decisions on public matters are, in most cases, handled by men. Although some state governments have declared their support for women's rights and inclusion and have appointed women to state government positions, community members say that women are often only appointed to non-essential decision-making roles. Compared to men and boys, women and girls in many communities still have limited opportunities in terms of public participation and decision-making, education and economic opportunities. The majority of private companies also do not hire women. Participants stated that many girls drop out of school due to combined factors such as cultural practices of preferring or prioritising boys, economic hardship, and early and forced marriages.

Women are also largely excluded from formal decision-making structures that govern peacebuilding and conflict transformation.

They are given space to engage in minor disputes within clans, but left entirely out of higher-level and more formalised decision-making processes. Quotas brought in to ensure women's participation in government at all levels have in reality failed to provide a legitimate platform for their inclusion in peacebuilding spheres; and, as with informal clan structures, women's role is largely tokenistic. While it will be important to continue efforts to promote women's access to formal avenues of justice, reconciliation and peacebuilding, without addressing the harmful effects of exclusion and marginalisation of women at the informal level – rooted in cultural norms and values – the social dynamics that reinforce their limited ability to participate will continue. Women in Kismayo are creating opportunities to bridge the gap across clan divides. Women from different clans are coming together to share information; their meetings serve as a platform to find ways to address inter-clan conflict.

Recommendations for the federal government

- Pass the Sexual Offences Bill and enforce its implementation to guarantee access to justice for survivors of sexual and gender-based violence (SGBV) and to prevent perpetrators from marrying them.

- Promote women's participation and leadership roles in all processes of prevention, management and resolution of conflicts and decision-making, and introduce a national action plan on women, peace and security.

- Enable women's engagement in decision-making processes by appointing qualified women leaders to key positions; jointly provide training to community leaders, chiefs and elders on gender issues.

Recommendations for state and local governments

- Work with traditional leaders to include the protection of women and girls in the administration of customary justice and ensure they are well informed on women's rights issues.

- Integrate gender into training manuals and training for police at the district level and ensure gender experts are recruited at the senior level.

- Advocate for and implement the Sexual Offences Bill once passed into law.

A CAF in Baidoa holds one of its usual bi-weekly meetings to discuss community security and safety issues with a member of a local authority.
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Representatives of CAFs from Kismayo, Baidoa and Mogadishu discuss the challenges of working on gender in their locations, as part of the cross-CAF learning event in Baidoa.
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Recommendations for civil society

■ Advocate for women's inclusion as key decision makers in local, state and national government, integrating and supporting the messages and advocacy of Somali women's organisations and networks.

■ Organise awareness-raising initiatives on SGBV to inspire behaviour changes in society.

■ Raise awareness of referral pathways to life-saving services and legal remedies for SGBV survivors.

■ Train and work with communities, elders and traditional leaders to highlight the effects of SGBV; challenge harmful gender norms and behaviours that perpetuate inequality and violence against women.

Youth gang violence

During the exchange event, all participants agreed that economic hardship has led to increased criminality, such as robberies, and other criminal offences. Through the annual community security assessments carried out under this programme, gang violence involving young men was identified as a contributor to conflict and insecurity. It was seen to have a significant impact on the safety and the movement of communities, especially the most vulnerable.

While unemployment is often emblematic of systemic sources of frustration and marginalisation, employment status alone does not appear to determine the likeliness of a young man joining a criminal network. The participants highlighted that the principal driver of gang violence is rooted in young men's experiences of injustice: discrimination, disenfranchisement, exclusive governance structures, corruption and abuse by government security forces. Mismanagement of public resources, corruption, nepotism and lack of accountability by public officials were therefore seen by communities as a threat to their safety and security.

Women are reportedly particularly affected by the criminal activities of gangs, who were said to be under the influence of a popular addictive drug known as *tabuu*. Armed robberies in neighbourhoods such as Wadajir, in Mogadishu, were said to be a common occurrence on a number of major roads. Participants reported that the vast majority of police officers are on short rotations, which hamper their effectiveness in responding to these crimes when they occur. Police patrols, especially night patrols, are infrequent and cover only a small fraction of districts, almost exclusively on the main roads. It was noted that CAFs are trying to do something about these violent networks of youth gangs, by working closely with the police and creating community awareness in schools, mosques and community centres on drug abuse and the effects it has on young people. However, detained young men are often released without due process, as there is no juvenile justice system in the country. This highlights the importance of making the justice system fit for purpose, and of addressing the drivers of gang violence as part of a more comprehensive approach.

Recommendations for the federal government

■ Create more employment opportunities for young men and roll out self-help programmes or micro loans for young entrepreneurs.

■ Deploy more police officers and increase police patrols around crime hotspots.

Recommendations for state and local governments

■ Strengthen police patrol units to enable them to respond quickly and adequately.

■ Establish recreational facilities and vocational skills training centres for young people.

Recommendations for civil society

■ Carry out awareness-raising campaigns for communities – in particular for young men – on the consequences of criminal activities.

■ Work on positive masculinities with young men.

The missing link: improving access to justice to increase community security

Participants strongly linked the issues outlined in this briefing to gaps in the justice system in Somalia. The following summarises their thinking and recommendations on the challenges faced.

Ineffective law enforcement

The lack of well-trained and inclusive police officers, particularly at the local level, has reportedly delayed progress for CAFs when it comes to addressing community concerns beyond CAFs' mediation scope. Police services are perceived as inadequate in delivering security and justice, particularly to women, IDPs and rural populations. Participants stated that many police officers are former members of clan militias and some may have not gone through proper screening or training. CAF members raised concerns about police officers' behaviour and the poor handling of civil cases, and they repeatedly highlighted the community's limited trust in security providers, as they are seen as vulnerable to bribes. CAFs reported arbitrary arrests and detention for long periods without trial. These factors fuel conflict between communities and deepen mistrust between the police and communities.

The liberation of more territories from al-Shabaab and the expansion of government control have put pressure on the already overstretched law enforcement agencies and their ability to deploy officers to new administrative units. For example, the federal government has deployed contingents of police in South West State, Galmudug and the Gedo region. According to the participants, logistical challenges, limited communication equipment, scarcity of vehicles, lack of fuel for police patrols, lack of a gender desk and low morale among police officers hinder their ability to effectively meet community security needs.

Participants highlighted other challenges including a culture of impunity that is perpetuated by some political leaders and military commanders, and political interference within the local justice system. Other factors identified as contributing to the vicious cycles of violence were corruption in the administration of policing and justice, and unequal application of the law towards family members and friends of high-ranking and influential individuals. Community members who perceive that they have received an unfair judgement in their case, or believe that influential people have denied them their rights by interfering in court processes, were reported to have taken the law into their own hands. This culture of impunity was seen as posing a potent threat to security and social cohesion.

Participants also raised concerns over the ineffective dispute resolution mechanisms that fuel violent confrontations when one party feels that they have been denied justice. Traditional chiefs felt that their authority and powers to adjudicate cases had been hijacked by politicians, the police and the courts, and that the overlapping roles have rendered the traditional justice system ineffective in preventing conflict among communities. This in turn was seen to be causing a rise in the number of revenge attacks, and leading to an increase in assassinations and violent attacks.

Barriers to accessing justice in Somalia

Somalia has a patchwork of legal systems and structures that directly affect access to justice.[4] To resolve disputes, justice issues are handled either through the formal system or informal clan-based institutions.

The formal system involves litigants going to court and getting judgements and rulings. The penal code of law is applied under the formal system. However, the issuance of judgements by the formal courts is similar to declaring one party a winner and the other the loser, as opposed to reconciling parties. This has led to a mistrust of the courts, as mentioned in recent reports by the Expanding Access to Justice consortium.[5]

Somalis also use customary law and Sharia law to resolve disputes informally. Customary law – which will be a feature of Somali society for the foreseeable future – calls for synergies between alternative dispute resolution and formal institutional law. However, it is clear that alternative dispute resolution needs to be brought in line with the concepts of basic human rights and respect for gender equality.

The reported lack of knowledge by citizens about laws and their rights, mostly in the rural and peri-urban areas of Somalia, and among women and IDPs, is seen as a hindrance in accessing justice. Most people do not realise when their rights are being violated, and if they do, on the whole they prefer clan-based (elder-led) dispute resolution mechanisms, which may yield positive or negative outcomes. This is positive in the sense that if there is a dispute between two individuals from different clans, it can be resolved amicably. However, if the dispute relates to SGBV, the rights of the survivor might not be upheld in this system as women's rights are not respected. There is an urgent need for raising awareness among communities about their rights, especially women's rights. Civil society organisations have direct interactions with citizens and are therefore well-positioned to raise awareness, provide information about the laws and how communities can protect themselves, and explain the remedies that are available to them.

Participants in the exchange event also stated that the inadequate capacity of the justice system contributes to communal conflict and revenge killings in some areas. The limited number of judges assigned to states and counties causes backlogs and delays in local and magistrate courts adjudicating cases, as seen for instance in the regional courts in Mogadishu. Community members from rural regions are also required to travel long distances to access these courts, often through insecure areas.

Many of the difficulties for Somalis trying to access justice are caused by the government's failure to implement relevant laws. The Federal Government of Somalia, through the Ministry of Justice, has made concerted efforts in drafting legislation and reviewing other laws that enhance access to justice. The Ministry of Justice has also drafted a legal aid policy to guide the courts in implementation. Despite the commendable work that has been done, implementing provisions by formal institutions is minimal due to a lack of enforcement capacity.

Recommendations for the federal government

■ Support the recently launched independent Anti-Corruption Commission, revive state-level anti-corruption commissions, and support and equip them to hold people to account.

■ Prioritise and invest in the capacity of law enforcement agencies, such as the police and prison services, in particular on community-based policing.

■ Pass the draft legal aid bill and explore ways for traditional dispute resolution mechanisms to complement the formal court system.

■ Clearly define the roles and responsibilities for customary law, the formal courts, the police and criminal investigation departments.

■ Accelerate the resolution of cases through the provision of financial and human resources.

Recommendations for state and local governments

■ Clarify roles and responsibilities between customary and statutory justice systems; ensure that traditional chiefs exercise their roles without interference from influential people; and that chiefs dispense justice in accordance with human rights standards, particularly for women and girls.

■ Support chiefs and traditional leaders to handle customary cases, including through training on the legal framework at the local and state levels.

■ Introduce an education programme to raise awareness among communities on existing laws.

■ Recruit more police officers and judges, ensuring that funds are properly allocated and used to strengthen the justice sector; build the capacity of judges and police officers on community-based policing.

■ Work with the independent Anti-Corruption Commission and apply the relevant legislation.

Recommendations for civil society

■ Mobilise national and international expertise, including by deploying technical experts within relevant justice institutions.

■ Conduct regular awareness-raising campaigns among communities on their rights under existing legislation, and employ lawful techniques to address grievances and conflicts in non-violent ways – for example by promoting dialogue as a means of resolving conflict over resources.

■ Build the capacity of chiefs and traditional leaders to ensure fair delivery of justice to communities, protect the rights of women and girls, and challenge harmful gender norms and behaviours that perpetuate inequality and violence against women and girls.

■ Conduct dialogue between security providers and communities, and train security providers on legal frameworks, human rights, gender sensitivity and professional conduct.

About the project: Restoring Stable Communities in Somalia

Launched in 2017, the 'Restoring Stable Communities in Somalia' (RSCS) project is a five-year Dutch-funded community security programme implemented by Saferworld and three partners: Somali Women Development Centre (SWDC), Isha Human Rights Organization (IHRO) and Somali Women Solidarity Organization (SWSO) in Mogadishu, Baidoa and Kismayo, respectively. The project intends to support communities to create their own structures, such as community action forums, that research, identify, analyse, prioritise and implement solutions to community security issues in collaboration with local authorities, formal security actors and civil society.

Somali Women Development Centre (SWDC) is engaged in human rights protection with a focus on vulnerable groups. It enhances the capacity of women, conducts lobbying and advocacy with concerned parties, promotes reconciliation and peacebuilding, and provides free legal aid to women in order to end impunity in Somalia.

Isha Human Rights Organization (IHRO) is a non-governmental, non-political, non-partisan peace and development organisation committed to protecting human rights and working with all communities in Somalia, particularly in South West State. IHRO formally launched its activities as a national non-governmental organisation in November 1999, and is based in Baidoa, Somalia.

Somali Women Solidarity Organization (SWSO) is a non-governmental organisation formed in 2006 and registered in Jubaland. SWSO was founded as a result of consultations between indigenous communities and activists in Jubaland. The organisation enhances the capacities of communities to meet their basic needs and to advocate for action to address their concerns and interests in both the national and international arenas.

> " Civil society [should] conduct regular awareness-raising campaigns among communities on their rights under existing legislation, and employ lawful techniques to address grievances and conflicts in non-violent ways. "

Notes

1 Security is defined as the protection of people and their assets from violence or theft. It relates to potential harm caused by actions that are either intended to harm specific people or groups, or which indirectly cause harm to other people or groups. Safety is connected to but is broader than security. Safety is defined as the protection of people from harm. Such harm may arise as a consequence of insecurity but also from accidents, fire, flood, disease or other causes including threats posed by the environment or animals.

2 Crouch J, Chevreau O (2016), 'Forging Jubaland: Community perspectives on federalisation, governance and reconciliation', April, Saferworld (https://www.saferworld.org.uk/resources/publications/1064-forging-jubaland-community-perspectives-on-federalism-governance-and-reconciliation)

3 Expanding Access to Justice (2020), 'Pathways and Institutions for Resolving Land Disputes in Mogadishu', January (https://www.usaid.gov/somalia/documents/pathways-and-institutions-resolving-land-disputes-mogadishu)

4 Access to justice is defined as the ability of people to seek and obtain remedy through formal and informal institutions to address grievances. Expanding Access to Justice (2020), 'The Shari'ah in Somalia', March (https://www.usaid.gov/somalia/documents/expanding-access-justice-program-eaj-somalia)

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity. We are a not-for-profit organisation working in 12 countries and territories across Africa, Asia and the Middle East.

Cover photo – A CAF in Baidoa holds one of its usual bi-weekly meetings to discuss community security and safety issues with a member of a local authority.

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