Policy Paper on the Somali Customary Justice System

Traditional Dispute Resolution Unit
Ministry of Justice and Constitutional Affairs
Federal Government of Somalia
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Abbreviations

ADR	Alternative Dispute Resolution
AMISOM	African Union Mission in Somalia
AS	Al Shabaab
DDR	Disarmament Demobilization and Reintegration
FGS	Federal Government of Somalia
MoJC	Ministry of Justice and Constitutional Affairs
NISA	National Intelligence and Security Agency
TDR	Traditional Dispute Resolution
TDR Unit	Traditional Dispute Resolution Unit within the MoJC

Glossary of Terms

Damiin	A 'guarantor' consisting of either a respected individual or the clan elder or elders who represents the collective clan and vouches for the enforcement of a decision reached in the customary dispute resolution process
DDR facility	Rehabilitation facility established by the FGS
Disengaged Combatant	Former Al Shabaab combatant [1]
Diya	Blood money or compensation
Dumaal	Inheritance of a widow by a deceased husband's brother
Gudubtir/Gudubreeb	Custom in which women are exchanged between two clans as part of a peace settlement[2]
Peace Committee	Board consisting of members of local civil society groups[3]

[1] The term "combatant" is usually used to describe a member of armed forces who is deployed and authorized to participate directly in hostilities, but it can also be used more generically to denote a fighter belonging to a party to a non-international armed conflict, whether that party is state or non-state in character, and without the intention on the part of a state to accord prisoner of war status to any such captured fighter. Stuart Casey-Maslen, *Disengaged Combatants in Somalia: A Review of the Normative Framework* (September 2013) 3. In the present paper, the term is used in the more generic way, with the qualification here that 'disengaged combatants' refers exclusively to former Al Shabaab combatants, and does not include ex-combatants from clan militia, freelance militia or other militia.

[2] This is often termed an "enemy obliterator" custom.

[3] The term 'Peace Committee' is used for committees of various compositions. Although the *National programme for the treatment and handling of disengaged combatants and youth at risk in Somalia* mentions "District Peace and Security Committees", comprised of the District Commissioner, district representatives of line ministries, the district/regional police commander, district or regional brigadier commander, AMISOM, UN agencies, international, multilateral and bilateral partners, NGOs and representatives of civil society, including women's groups, this term as used here does not refer to this multi-composed group but rather the organic group formed by civil society. Somali Inter-Ministerial Taskforce on Disengaging Combatants, *National programme for the treatment and handling of disengaged combatants and youth at risk in Somalia* (April 30, 2013) (hereinafter 'National Programme'). Of the four districts interviewed for this research only three had a Peace Committee which consisted of civil society actors including women, youth, elders and the *uluma*. In Kismayo there was no Peace Committee per se, however there was a security body formed that included members from the security forces and the district authority but no civil society members. Members of the other three Peace Committees reported working closely with the elders, local authorities and the police in maintaining peace and order.

Sharia	Body of Islamic law
Titled elders	Highest heads of clans[4]
Uluma	Scholars of Islamic law
Xeer	Customary law in Somalia[5]
Xeer courts	Customary dispute settlement institutions
Xigsiisin	A widower's right to marry the sister of his deceased wife

[4] There are several types of elders in Somalia. The highest leaders are "titled elders" with various titles such as *suldaan*, *ugaas, malaaq, garaad, boqor,* and at the intermediate level *caaqil.* Ordinary elders are called *ooday* and can be any older man who is trusted by his people and asked to advise or settle a dispute. A *Xeer* case is heard at the lowest possible level of the clan. *Xeer* proceedings usually involve ordinary elders, who do the actual dispute settlement, with titled elders ratifying the decisions agreed upon or coming in when the ordinary elders are unable to reach agreement. Andre Le Sage, "Stateless justice in Somalia: formal and informal rule of law initiatives" *Centre for Humanitarian Dialogue (*July 2005) 35; Joakim Gundel "The predicament of the 'Oday': the role of traditional structures in security, rights, law and development in Somalia" *Danish Refugee Council and Novib-Oxfam* (November 2006) 13. Gundel points out that the clear distinction between the high level group of lineage elders representing the clan family level and the level of elders representing the *diya*-paying group has been somewhat confused by a proliferation of elders, especially at the higher level. Gundel, 43.

[5] Arguably there is not one but many forms of customary law in Somalia which operate with considerable diversity. The term *Xeer* is used generically here to describe these systems as a collective.

Introduction

This policy paper is the culmination of literature research, a comparative study of other jurisdictions, stakeholder meetings in Mogadishu, as well as primary data stemming from consultations with 348 diverse community members[6] undertaken by the Traditional Dispute Resolution (TDR) Unit in mid-2014 in four districts of Somalia, namely Hamarweyne and Hamarjajab (both in Benadir Region), Baydhaba and Kismayo (in Bay and Lower Juba Regions respectively). Further details of the methodology and profile of the respondents for the community consultations is available in **Annex A**, while the details of the participants two Mogadishu stakeholder meetings are provided in **Annex B.** Notably, at all times during the research for this policy paper, the TDR Unit and the consultants engaged in this project applied a data-collection approach that was sensitive to gender, age and clan dynamics.

The diversity of the participants involved in the research for this policy has contributed to the richness and depth of the present document. Nonetheless, due to the (relatively) small research sample size, the research data should not be viewed as representative of all practices and views across Somalia on customary justice. Further research will need to be undertaken to have a comprehensive picture of the practices and views of Somali citizens on how *Xeer* should fit within the new Somali constitutional framework, and from that to develop an empirically grounded policy on customary justice. To this end the present document should be understood as an important beginning in the long process of understanding citizen views and Somali options for customary justice. As further research is undertaken by the TDR Unit, as the Constitutional process evolves and as pilot interventions are undertaken with customary justice systems, this policy document should be updated as to reflect emerging realities, newly gathered data and lessons learned.

The structure of this policy is as follows. **Part I** explains the objectives of this policy, **Part II** provides a brief historical overview of the role of elders and customary justice mechanisms in Somalia, reflecting on the pre-colonial era, the colonial era, and the post-colonial era, up until the collapse of the state in 1991 and the ensuing civil war. **Part III** documents the key findings from the field research in the four districts, while **Part IV** discusses comparative examples from other contexts in terms of linking the customary justice system with the formal legal system as well as strategies adopted elsewhere for improving access to and efficiency and equality of these systems, and their compliance with international or national human rights standards. **Part V** concludes with policy recommendations for the FGS with regard to the Somali customary justice system.

[6] Elders, religious leaders, local authorities, Peace Committees, youth and women groups participated in the community consultations in the four districts.

I. Objectives of the Policy

Elders[7] and customary justice systems[8] play a critical and vital role in Somali communities in relation to the administration of justice and the maintenance or restoration of peace and harmony. An estimated 90 percent of disputes in Somalia are processed through customary dispute settlement mechanisms.[9] The importance of customary dispute settlement mechanisms derives from the fact that they are closest to the people, use procedures and norms the people have known for centuries and understand, with a transparent decision-making process in which there is community participation. Disputes are resolved according to the cultural practices and customs applicable to the community in question. In contrast to the formal court system, customary dispute settlement mechanisms do not adhere to any written set of rules. They are guided by unwritten customary law or *Xeer* contracts between the various clans and sub-clans. The Somali civil war has increased the importance of the customary justice system, in a period when the absence of state courts and administration in general turned customary justice mechanisms and elders into the only available mechanisms for conflict settlements. Paradoxically, the high levels of insecurity and violence and the lack of respect for *Xeer* norms, elders, and their decisions, by Al Shabaab, clan and freelance militias, have simultaneously weakened the authority and power of these customary institutions.

The peaceful transition from an interim transitional government to the new Federal Government of Somalia (FGS) in August 2012 represented a rebirth of Somalia. The adoption of the Federal Republic of Somalia Provisional Constitution (Provisional Constitution) on August 1, 2012 ushered in a new constitutional order. The FGS is mandated by the Provisional Constitution to re-establish, rehabilitate and restructure a competent police force, correctional system and formal judicial sector. Responding to this mandate, the FGS has completed a comprehensive strategy for reforming the justice sector, the *Somali Justice Sector Action Plan* (2013-2016). The implementations of these reforms will likely take considerable time, given the dilapidated state of the justice sector. To reestablish the rule of law in the recovered areas and enhance the provision of justice in the meantime, the government aims to revive and reform Somali customary justice systems, and improve their compliance with the Provisional

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[7] See Gundel, above, n 4.

[8] Customary justice systems are also described by the terms traditional justice systems or informal justice systems. None of these terms is beyond criticism. The term 'traditional' in traditional dispute resolution mechanisms is a controversial one, often critiqued for not capturing the constantly evolving nature of these practices and denoting overly static forums. See for instance, E. Gaston et al., *Lessons learned on Traditional Dispute Resolution in Afghanistan, Building Peace* No.3, (April 2013, USIP). The term informal justice system is not suitable here as that term encompasses a wider range of non-state dispute settlers, including for instance *uluma* who settle disputes on the basis of Islamic teachings and law. In addition, this term raises questions when the informal dispute settlers are recognized or *formalized* by the state. This policy paper focuses exclusively on dispute resolution by elders on the basis of customary law/*Xeer*. Although the term customary justice system sometimes receives the same critique as is leveled against the term traditional justice system, this policy paper utilizes that term, mainly because most African countries make use of this term in their official documents.

[9] According to Gundel, 80-90% of all disputes and criminal cases are resolved through application of *Xeer*. Gundel, above, n **Error! Bookmark not defined.**, 46. A Le Sage, states 'a large majority'. A Le Sage, "Stateless justice in Somalia: formal and informal rule of law initiatives" *Centre for Humanitarian Dialogue (*July 2005) 32; M Abdile, *Customary Dispute resolution in Somalia, African Conflict & Peacebuilding Review,* 2.1 (Spring 2012) 89.

Constitution and Somalia's international human rights obligations.[10] In the document *Revival of the Somali Traditional and Religious Judicial System* (2013) the FGS proposes to institutionalize and recognize custom-based Alternative Dispute Resolution (ADR) as part of the justice system.[11] This includes a reporting and compilation of outcomes to develop and refine jurisprudence as well as a supporting, coaching and monitoring role for the Ministry of Justice and Constitutional Affairs (MoJC).[12]

Somali customary justice systems are looked upon not only to support the resolution of a broad array of conflicts, such as civil and minor criminal offences, but also to process low-risk disengaged combatants.[13] There are large numbers of disengaged combatants in Somalia who are presently returning to their communities or transition camps.[14] Substantial additional numbers are anticipated as Al Shabaab loses its grip of areas under its control. The Somali draft *National Programme for the Treatment and Handling of Disengaging Combatants* (revised 2014) provides that the FGS is looking at customary justice mechanisms "with the ultimate goal of supporting judicial processes, reintegrating of low-risk combatants, community cohesion and stability".[15] This will reduce the pressure on the formal court system as well as on correctional systems by establishing alternatives to detention. It will also form a key element for the government's future Truth and Reconciliation initiative.[16]

Nonetheless, official engagement with the Somali customary justice systems, either through the DDR process or increasing linkages with the state, is not without difficulty. Certain aspects of the customary system violate provisions of the Somali Provisional Constitution, especially regarding the rights of vulnerable groups, including women, children, minority clans and occupational social groups.[17] Increased engagement with customary justice systems thus requires improving access, efficiency and equality of customary dispute resolution processes and outcomes, as well as marking red lines where cases should be referred to statutory courts and making stronger linkages between the customary and formal justice processes generally.

In order to plan a more effective approach to engagement with customary justice processes, the MoJC formed the Traditional Dispute Resolution (TDR) Unit in June 2014. Under the TDR Unit's terms of reference, the Unit is responsible for: (i) supporting and monitoring the

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[10] Federal Government of Somalia, *National stabilization program*, (2013) 2 (hereinafter 'National Stabilization Program').

[11] Federal Government of Somalia, *Revival of the Somali traditional and religious judicial system*, (May 2013). It is understood that reference to ADR in the document primarily means reference to the *Xeer* system.

[12] Ibid, 6.

[13] Ibid, 7.

[14] *National stabilization program,* above n 10, 4.

[15] Federal Government of Somalia, *National programme for the treatment and handling of disengaging combatants and youth at risk in Somalia* (April 2013) 16; (hereinafter 'National Programme'); Revised National Programme, July 2014, 7

[16] *National stabilization program,* above n 10, 4. See also Article 111 of the Provisional Constitution which provides for the establishment of a Truth and Reconciliation Commission.

[17] Article 11 of the Draft Constitution of the Federal Republic of Somalia gives equal rights and duties before the law to all citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect.

progressive evolution of customary dispute settlement mechanisms into mechanisms that operate in line with the (Provisional) Constitution and international human rights standards; (ii) strengthening the linkages between the formal justice system and the customary justice system in Somalia and (iii) supporting, facilitating and monitoring the peaceful re-integration of disengaged combatants into their community through customary justice processes.

One of the first outputs of the TDR Unit's work plan was to develop a policy paper on customary justice systems in Somalia, which would form the basis of the Unit's future work and provide a helpful starting point for discussions on the place of customary justice in Somalia's constitutional and legal framework. The present policy paper therefore serves a threefold objective:

a) Affirm the importance of the customary justice system for access to justice for the majority of Somalis and to propose a customary justice model that is suitable to the new constitutional dispensation;

b) Provide recommendations to increase access to customary dispute settlement mechanisms, and to improve their efficiency and equality, consistent with the new constitutional order; and

c) Provide legislative and constitutional options for creating linkages between the customary justice system and the state legal system.

The TDR Unit has also developed a proposed restorative justice and reconciliation mechanism adapted from Somali customary justice processes to facilitate the reintegration of disengaged combatants, drawing from the research undertaken. The proposed process is detailed in **Annex C**, as well as in a separate TDR Unit document, *Proposed Community Reconciliation Process for the Reintegration of Low Risk Disengaged Combatants*.

II. Historical Overview of the Somali Customary Justice System

Indigenous systems of governance and dispute resolution in Somalia, based on customary law or *Xeer*, date back to the pre-colonial era.[18] *Xeer*, which I.M. Lewis characterizes as a form of social contract,[19] consists of customs and unwritten agreements that have evolved within and between Somali clan communities over generations. They are designed to prevent escalation of conflicts when these arise over sharing and use of resources, war and peace, marriage, and other issues.[20] *Xeer* is closely associated with *diya,* blood money paid as compensation for misconduct. Somali customary dispute settlement institutions have never had a formal institutional structure. Dispute settlement panels of elders were, and still are, ad hoc. They are formed when someone approaches an elder with a complaint, and the membership of a panel will depend on the nature of the case.[21]

Le Sage describes the evolution of *Xeer* as follows:

> Clans and their sub-divisions have traditionally been the key mode of social organization for pastoralist and agro-pastoralist communities in Somalia, as well as the building blocks for inter-community alliances and conflicts. As neighboring clans competed, often violently, over scarce environmental resources – particularly land and water for either livestock grazing or agricultural cultivation – a customary code of conduct, known as *Xeer* (pronounced roughly as 'hair' in English) was developed to settle disputes and guard the peace. *Xeer* is also not a strictly 'rule-based' system. A clan's political and military capabilities relative to its rivals – a factor traditionally based primarily on the size of the opposed clan – has always been a factor in reaching an acceptable and enforceable consensus.[22]

Sharia has been a significant influence on the development of *Xeer*, although it has not been adopted in full by Somali customary justice systems. While some authors say that many points of *Sharia* have been subordinated to clan tradition,[23] others point out that *Sharia's* emphasis on patience and forgiveness leaves space for negotiations between the group of the perpetrator and the group of the victim to come to peace by the exchange of compensation and forgiveness.[24] The orally made clan agreements that form the basis of *Xeer* are memorized and communicated through poems, songs, sayings and proverbs, and storytelling.[25]

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[18] Adible, above n 9, 88.
[19] I.M. Lewis, *A Pastoral Democracy. A study of pastoralism and politics among the Northern Somali of the Horn of Africa*, third edition, Oxford: J Currey, with the International African Institute, 1999, 3.
[20] Interpeace, (n.d.) *The Search for Peace. Community-based Peace Processes in South-Central Somalia*, 12.
[21] UNDP, above n 23, 31-2.
[22] Le Sage, above n 9, 16.
[23] Ibid, 16; Gundel, above, n 4, 8: UNDP, *Xeer procedure in Somaliland. A study on the Somali customary law procedure in criminal and civil cases in Somaliland,* (January 2007) 10.
[24] G Schlee, "Customary law and the joys of statelessness: idealized traditions versus Somali realities" *Journal of Eastern African Studies*, 7.2 (2013), 260
[25] Abdile, above n 9, 91.

While they differed in the content of their laws and their common law or civil law legacy, the Italian colonial administration in Somalia and the British colonial administration in Somaliland, were remarkably similar in the sense that their judicial systems managed to regulate Somali customary law to a certain extent, but did not seek to replace it, with the exception of larger crimes and other matters of public order. Somalis predominantly continued to rely on customary law for the regulation of their affairs.[26] Although pre-colonial Somali society was acephalous[27] and the traditional leaders were *primus inter pares*,[28] the colonial powers integrated traditional leaders into their administrative system by paying financial stipends and replacing independent traditional leaders with loyal ones, which changed the structures of legitimacy of traditional leadership and the accountability and responsiveness of traditional leaders to their people.[29] Particularly in British Somaliland, with its administration via indirect rule, *Xeer* and traditional leaders continued to play an important role in day-to-day administration and conflict settlement.[30]

In 1960, when British Somaliland and Italian Somalia were united to form the independent Somali Republic, four distinct legal traditions were in operation: Italian civil law, British common law, *Sharia*, and *Xeer*. In an attempt to integrate these systems, the '1962 Law on the Organization of the Judiciary' based the country's civil and criminal codes on Italian law, the criminal procedure code on Anglo-Indian law, family, inheritance and minor civil matters on *Sharia*, and allowed for optional application of *Xeer* in such matters as land tenure, water and grazing rights and the payment of *diya*.[31] These reforms did not, however, have a significant impact on local practices that continued to be regulated mostly by *Xeer* and *Sharia*.[32]

The post-colonial Somali elite considered traditional leaders as hampering modernization and development and aimed to marginalize their position. Particularly the military regime that seized power in 1969 under the leadership of General Mohamed Siad Barre officially disregarded anything traditional.[33] In the first years of its rule the regime introduced a unified civil code that aimed to sharply curtail *Sharia* as well as *Xeer*. It abolished 'tribalism' and key elements of *Xeer*, including its application to tribal land and water and grazing rights. With regard to

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[26] Le Sage, above n 9, 17-18.

[27] Acephalous societies lack political leaders or hierarchies.

[28] *Primus inter pares* is a Latin phrase meaning first among equals. It is typically used as an honorary title for those who are formally equal to other members of their group but are accorded unofficial respect, traditionally owing to their seniority in office. *Hutchinson Encyclopedia*, 2007.

[29] M Hoehne, "Limits of hybrid political orders: the case of Somaliland" *Journal of Eastern African Studies,* 7.2 (2013) 7.2, 202; M Hoehne "From pastoral to state politics: Traditional authorities in northern Somali" in *State Recognition and Democratisation in Sub-Saharan Africa: A new dawn for traditional authorities?,* ed. L. Buur and H. Kyed, 155-182 (New York: Palgrave Macmillan, 2007) 160.

[30] K Menkhaus, "Calm between the storms? Patterns of political violence in Somalia, 1950-1980" *Journal of Eastern African Studies*, 8.4 (2014), 561.

[31] Academy for Peace and Development, *The Judicial System in Somaliland*, Workshop report, (April 2002) available at: http://www.mbali.info/doc178.htm, last accessed 15 September 2014.

[32] Le Sage, above n 9, 18.

[33] Hoehne "Limits of hybrid political orders" above n 29, 202.

homicides, it determined that the offence was punishable by death and compensation payable only to the close relatives, thereby diverting significantly from the practice of *diya* payment by the collective (the *diya*-paying group[34]) of the culprit to the collective of the victim.[35] In practice, while traditional authorities "lost a considerable amount of freedom and authority to decide on matters related to their community"[36] dispute settlement by elders on the basis of *Xeer* continued to play an important role, particularly in the more peripheral areas of Somalia.[37]

Already unpopular due to corruption, repression and severe clashes with Islamic scholars (amongst others) over the promotion of legal and economic equality for women, it was the severe drought in 1977 combined with the failed military campaign against Ethiopia that lost the Siad Barre regime the last popular support. As a response, the Barre regime further monopolized political and economic power, which led to the collapse of Somalia's economy and the pauperization of the vast majority of Somalis. When the end of the Cold War significantly reduced foreign support to the Somali army, Siad Barre was no longer able to withstand the militia fractions led by disgruntled political and military leaders, who took control over Somalia in 1991.[38]

Whereas in Somaliland and Puntland, political control over large parts of the territory was quickly established by two former militia-factions, in South Central Somalia, the militia factions that had worked together to overthrow Siad Barre turned against each other in violent competition for political supremacy, introducing a second phase of the civil war.[39] The role of elders extended significantly to fill the vacuum of authority created by the collapse of the state and the ensuing civil war and lawlessness.[40] Paradoxically, the authority of the elders was also weakened, due to several factors: (i) the elders' inability to quell high levels of insecurity and violence; (ii) the proliferation of powerful clan-based leaders as well as Al Shabaab leaders who did not respect the authority of the elders; (iii) the proliferation of elders, resulting from clan-fragmentation as well as the creation of new elders by political or military leaders trying to ensure clan support; (iv) the involvement of some elders in the mobilization of their clan militia for inter- and intra-clan fighting and their loss of impartiality, siding with their clansmen in conflicts even where they were the aggressors; and (v) the breakdown of *Xeer* between pastoralists and agricultural communities, that had protected the weaker agriculturalists to a certain extent.[41]

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[34] The *diya*-paying group is the base of the lineage political divisions and the most stable political unit in the agnatic system. This is the unit, composed of a few hundred to a few thousand men, that shares the collective responsibility for its members' actions and can make claims for compensation of crimes committed against its members. Lewis, above n 19, 6.

[35] Academy for Peace and Development, above n 31, Le Sage above n 9, 20.

[36] Hoehne, "Pastoral Politics" above n 29, 162.

[37] "Limits of hybrid political orders" above n 29, 202;.

[38] Le Sage, above n 9, 21.

[39] Ibid, 21-22.

[40] Interpeace, above n 20, 13

[41] Ibid, 13-14.

In this paradox of an extended, yet weakened role for the elders and customary dispute settlement, Somali customary law has continued to be the primary source of law and order for the majority of Somalis until the present-day.[42]

[42] Le Sage, above n 9, 32; Abdile, above n 9, 89.

III. Key Findings from the Field Research

In mid-2014 the TDR Unit conducted consultations with over 348 community members, including elders, religious leaders, local authorities, Peace Committees[43] and youth and women groups in four districts, namely Hamarweyne and Hamarjajab (both in Benadir Region), Baydhaba (in Bay Region), and Kismayo (in Lower Juba Region). To assure the validity of research findings, the TDR Unit returned to three of the four districts for follow-up interviews. The TDR Unit was cautious to adopt a data-collection process that was responsive to gender and clan sensitivities, to ensure that the interviewing environment was comfortable for participants and elicited truthful responses. Further details of the methodology adopted for the field research is available in **Annex A**. The research produced the following key findings concerning attitudes towards and the operation of customary justice systems in Somalia:

(i) Customary dispute resolution remains highly relevant

Consistent with the literature, the interviews conducted by the TDR Unit revealed that *Xeer* remains the most important source of law for Somalis in these districts and that customary dispute settlement is the most used avenue for dealing with conflicts. In fact, the "*Xeer* courts"[44] have been the only operating dispute settlement institutions for the last two decades. Not surprisingly, when respondents were asked about the usefulness of, and their trust in certain legal institutions they rated formal courts as not at all useful or trusted (Hamarjajab, Baydhaba) or somewhat useful and trusted (Hamarweyne and Kismayo). By comparison, in all four research localities the "*Xeer* courts" were regarded as very useful and very much trusted.

(ii) Loss of respect for elders in some communities

While respondents reported "*Xeer* courts" as very useful and trusted, they also describe a loss of respect for elders and their decisions as a serious weakness of the customary justice system. The majority of respondents reported that the power, authority, and legitimacy of elders have significantly weakened during the era of the civil war. They assigned responsibility for this to the magnitude, scale and the frequency of clan conflicts and the inability of customary institutions to deal with the resulting mass deaths and destruction of properties. They also noted that Al Shabaab, armed clan, freelance militias, and street gangs in many areas neither showed respect for nor accountability to clan elders.

The loss of respect was also linked to the proliferation of 'fake elders'. In a practice going back to the colonial era and subsequent governments, both the regime in power in the country and the faction in power in a certain locality often created new titled elders when the titled elders in

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[43] As noted above, there was no Peace Committee in Kismayo. However it did have a security body established which included members from the security forces and the district authority. Members of the other three Peace Committees reported working closely with the elders, local authorities and the police in maintaining peace and order.

[44] Note that *Xeer* "courts" are not formal courts, but rather ad hoc meetings of different compositions of elders, who come together to deliberate and try to settle a dispute under a tree or in a building. Proceedings are flexible and informal, and do not usually include note taking.

place were not amenable to their cause. In addition, respondents reported corruption and incompetence among elders. For instance, the selection of parliament in 2012 by the 135 clan elders in the National Constituent Assembly was reported to have increased corruption among elders, tainting their authority in the community. This brings to the fore that stronger links between the government and titled elders can strengthen as well as weaken the authority and legitimacy of these elders, depending on the circumstances and the approach taken. This is particularly salient as elders interviewed propose additional political roles for elders, in line with the role of elders in Somaliland and Puntland Regions.

(iii) Concerns about discrimination within customary justice systems

A major challenge to the customary justice system reported by respondents was the position of social groups, such as women, children, minority clans, foreigners, and husbands living with their wives' clan. There was general agreement among the respondents that youth and women have no voice in the customary justice system. In three of the four research districts, respondents reported that women were allowed to be present at customary justice processes, but would be asked to leave the group when elders are making final decisions, of which they will be informed later.

In Kismayo, women were not allowed to be present at customary justice processes at all, "because women could easily provoke disharmony during the hearing of the case", as one elder explained. They were however allowed to have a male representative, preferably a well-informed relative, participating in the customary proceedings on their behalf. Also, some members of the "*Xeer* court" will visit women who are parties to the disputes or witnesses, in their premises, and question them and listen to their testimony.

Various respondents also drew attention to the marginalized role of women with respect to practices in which women are married to next kin of a deceased husband (*dumaal*)[45] or to the husband of a deceased sister (*xigsissin*).[46]

In addition, it was observed that rape cases go unpunished, and rape victims marry their rapists, sometimes against their will.[47] Nonetheless, respondents pointed out that women have other rights and protections under customary law, which, for instance include penalties for sexual assault and for failure of a husband to provide in a marriage.

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[45] *Dumaal* refers to the custom that when a married man dies his widow is 'inherited' by one of the husband's brothers. The justification for this is that *dumaal* guarantees the protection of the children by the patriclan. Gundel above, n 9.

[46] *Xigsissin* denotes the custom that when a married woman dies the widower is given one of her younger unmarried sisters as wife. The justification for this is that *Xigsissin* is to keep the children with a woman who is benevolent to them. Often the women involved have some say in whether they want to be 'inherited' and – in the case of *dumaal*, by which brother. Gundel, above, n 4, 9.

[47] This has its logic in the fact that rape means a kind of 'social death' for the victim, and destroys her chances to marriage. Marriage of the victim to the rapist is to 'legalize' the intercourse and secure her position as married woman in the society.

Respondents also highlighted the limited rights for minority clans[48] in customary justice systems. While they reported the existence of certain *Xeer* norms that were meant to protect minority clans – including the norm that when a minority clan is attacked all other clans are supposed to help and protect them, and when there is a case in the "*Xeer* court" of a minority versus a majority, the elders should be lenient towards the minority – these norms seem to represent an idealized past, and respondents agreed they have not been complied with since the civil war in 1991. Respondents reported on the inequality of the various clans, and noted that the stronger clans dictate the terms of agreement and compensation with regard to dispute settlements among conflicting clans or individual cases.[49]

Another set of norms meant to protect weaker groups, known as 'humanitarian *Xeer*' or '*bir ma geydo'* in Somali, was also described as eroding. One elder in Baydhaba stated:

> Traditionally, the war *Xeer* provided that women, children, elderly, guests, a husband living with his wife's clan, water points, farming lands and fixed properties are exempted from any harm by conflicting clans. However, in the era of civil war, these principles have changed and they are not observed any more.[50]

(iv) Concerns that punishments in customary justice systems fail to deter criminal activity

Respondents also cited concerns that that the customary justice does not effectively deter crimes, with specific mention made of the low levels of punishment for sexual assault. More generally, respondents highlighted that *diya* (blood money) is usually paid by the community, which has the propensity to diminish the sense of responsibility and impact of the punishment on the individual perpetrator.

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[48] Where this policy paper speaks of minority clans, it also refers to occupational social groups, for example, shoemakers, blacksmiths and hunters and gathers who often face discrimination and are considered lower caste.

[49] Schlee, above n 24, 262-263.

[50] These norms are generally regarded as having validity in Somali *Xeer,* See for instance Ahmed Sheikh Ali Ahmed (Buraale) *The Somali Customary Laws* (2008) 11-13. One International Committee of the Red Cross (ICRC), study even describes a "common consensus among those interviewed of the fact that acts of violence and abuse against the weak and vulnerable members of society, which ran counter to the Somali code on wartime conduct, were seldom committed and were carried out, even in those rare cases, in moderation". ICRC, *Spared from the spear, traditional Somali behavior in warfare* (1997), available at: http://dspace-roma3.caspur.it/bitstream/2307/2662/1/Spared%20from%20the%20spear.pdf (last accessed 15 May 2014). Nonetheless, there are examples even in the pre-colonial or early colonial past where 'humanitarian *Xeer'* was not respected. See for instance Giulio Baldacci, "The promontory of Cape Guardafui" *Journal of the Royal African Society* 9.33 (1909), 64-65; C.J. Cruttenden, "Memoir on the Western or Edoor Tribes, Inhabiting the Somali Coast of N.-E. Africa, with the Southern Branches of the Family of Darrood, Resident on the Banks of the Webbe Shebeyli, Commonly Called the River Webbe" (1848), 51, available at: http://archive.org/stream/jstor-1798086/1798086_djvu.txt, last accessed 21 November 2014; Hoehne, M.V. "An appraisal of the 'Dervish State' in northern Somalia (1899-1920)" (2014) 3, available at: http://cdn.wardheernews.com/wp-content/uploads/2014/05/An-appraisal-of-the-%E2%80%98Dervish-state%E2%80%99_Marcus.pdf, last accessed 21 November 2014.

The extent to which *diya* will offer an effective deterrent to criminal activity will also depend on the economic position of the group. Schlee, for instance, gives an example where members of a large *diya*-paying group chase a rival group from a water point, killing one or two of its members in the process. Due to the size of the *diya*-paying group, every member only has to contribute a small amount to the *diya* payment, which they may consider worth it to deter competing users from a water point and the surrounding pastures.[51] This is aggravated by the fact that, as mentioned above, majority clans can expect a better deal for their culprits than weaker ones. Respondents brought to the fore that the *diya* system does not mean that the *diya* paying groups never hold the individual accountable. In most cases repeat offenders will eventually cases be denounced by their sub-clan.

(v) Challenges concerning lack of standardization, resources and legal status of customary justice systems

Other challenges to customary justice systems reported by respondents included the lack of unified and standardized *Xeers* of different communities, the fact that customary law is not part of the national legal framework of Somalia, and the lack of resources of the elders and the "*Xeer* Courts".[52]

[51] Schlee, above n 24, 261-2

[52] Elders usually get some food or other gifts from the disputing parties. Email conversation between Dr Janine Ubink and Dr. Markus V. Hoehne, August 2014.

IV. Comparative Studies on Engagement with Customary Justice Systems

Many countries in Africa and the global South are operating within a colonial heritage of plural legal systems, and face similar challenges regarding the effective functioning of customary justice systems and their relationship to the state legal system. The first section will discuss the legal systems of Ghana, Namibia and South Africa, which all have strongly plural legal systems but differ in their approaches to customary justice systems and the linkages between these systems and the state legal system. These particular case studies have been chosen to provide insight into the different forms of legal pluralism and the policy options available for dealing with this issue. The second section examines interventions to enhance the functioning of customary justice systems. Namibia, Malawi and Somaliland were selected because interventions have recently been undertaken in these countries. They are analyzed to help assess the kind of process most suitable for Somalia.[53]

(i) Linkages between the State Legal System and Customary Justice Systems

- **Ghana[54]**

The 1992 Constitution of the Republic of Ghana names customary law as one the laws of Ghana, which the Constitution defines as "the rules of law, which, by custom are applicable to particular communities in Ghana".[55] State courts decide many cases on the basis of customary law. The institution of chieftaincy is guaranteed by the Constitution,[56] which defines a 'chief' as a person "who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage".[57] Who is to be a traditional leader is thus to be determined by the locality, usually by the royal family. Although the government has no say in the selection of chiefs,[58] chiefs are only recognized by the government once they have been registered in the National Register of Chiefs.[59] State funds are allocated to the Houses of Chiefs and the Traditional Councils. The functions of these institutions include an advisory role on matters relating to chieftaincy, as well as a leading role in the evaluation, evolution and compilation of

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[53] The limitations of comparisons are recognized. No two countries or areas are the same, and context factors determine the impact of structures and interventions. These comparative studies are not meant to lead to directly transplantable lessons but rather to inform about the various options for responding to certain challenges, which then need to be carefully considered in the Somali context.

[54] J.M. Ubink, *In the Land of the Chiefs. Customary law, land conflicts, and the role of the state in peri-urban Ghana,* (Leiden: Leiden University Press, 2008).

[55] Constitution of the Republic of Ghana, Article 11(1)(e), (2), (3).

[56] Ibid, Article 270(1).

[57] Ibid, Article 277.

[58] Ibid, Article 270(2) adds that Parliament shall have no power to confer on any person or authority the right to accord or withdraw recognition to or from a traditional leader.

[59] Chieftaincy Act 2008 (Act 759), Section 57(5).

customary law.[60] In addition, they have jurisdiction in all causes or matters affecting chieftaincy. Dispute settlement by chiefs in other domains, such as regarding family or land matters, is regulated by the Alternative Dispute Resolution Act, 2010 (Act 798), which includes mediation as well as binding arbitration by traditional leaders.[61] The Act limits traditional authorities' power to civil cases, but in practice chiefs also hear cases regarding minor crimes. Chiefs are not allowed to take part in active party politics.[62]

Of particular relevance for discussions in Somalia is the envisaged separation of the political from the traditional arena, both through the determination of traditional leaders by their own communities, not the government, as well as the stipulation that chiefs are not allowed to take part in active party politics.

- **Namibia[63]**

The 1990 Constitution of Namibia recognizes customary law as valid to the extent it does not conflict with the Constitution or any other statutory law.[64] In addition, it states that every person shall be entitled to enjoy, practice, profess, maintain and promote any culture and tradition.[65] In practice, however, customary law plays a relatively limited role in Namibia's state fora. State courts hardly apply customary law[66] and although the Constitution establishes a Council of Traditional Leaders, its only role is to advise government on communal land and other

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[60] Ibid, Section 3, 9, 21.

[61] There is also a line of state court cases in reviewing customary law arbitration awards given by traditional authorities. In these cases, which long predate Act 798, process rather than merit has become the test for their enforcement. Communication between Dr Janine Ubink and Justice K. Srem-Sai.

[62] Constitution of the Republic of Ghana, Article 276(2).

[63] SK Amoo, "The Structure of the Namibian Judicial System and its Relevance for an Independent Judiciary." in *The Independence of the Judiciary in Namibia*, N. Horn and A. Bosl (eds), (Windhoek, Namibia: Macmillan Education, 2012) 90; Hinz, M. "The Ascertainment of Customary Law: What is Ascertainment of Customary Law and what is it for?" in *Customary Law Ascertained: The Customary Law of the Owambo, Kavango and Caprivi Communities of Namibia,* M. O Hinz (ed) Vol. 1, 3-11. (Windhoek, Namibia: Namibia Scientific Society, 2010); N Horn. "Community Courts in Namibia: Life or Death for Customary Law?" in *In Search of Justice and Peace: Traditional and Informal Justice Systems in Africa*, M. O Hinz (ed) (Windhoek, Namibia: Namibia Scientific Society) 115-132.; E.A. Peters and J.M. Ubink, *Restorative and flexible customary procedures and their gendered impact: A preliminary view on Namibia's formalization of Traditional Courts* (November 6, 2014). Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2520158; OC Ruppel. and L. N. Ambunda, *The Justice Sector and the Rule of Law in Namibia* (Namibia: Namibia Institute for Democracy 2012), 16-17.

[64] Constitution of the Republic of Namibia, Article 66.

[65] Ibid, Article 19.

[66] Cases that have gone to court involving customary issues have been disputes over who is a rightful chief, about burial of a chief, and about widow inheritance (see for instance Kaputuaza & Another v Executive Committee of the Administration for the Hereros & Others 1984 (4) SA 295 (SWA); Moraliswani v Mamili, Supreme Court of SWA, 12 June 1985 (unreported judgement); Ndisiro v Mbanderu Community Authority & Others, 1986 (2) SA 532 (SWA); Pack v Muundjua & Others / Tjipetekera v Muundjua & Others, 1989 (3) SA 556 (SWA); Kakujaha v Tribal Court of Okahitua, Supreme Court of South West Africa, 20 March 1989 (unreported judgement); Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC); S v Sipula1994 NR 41 (HC); S v Haulondjamba1993 NR 103 (HC); Makono v Nguvauva 2003 NR 138 (HC) (communication with Dianna Hubbard, Legal Assistance Center, Windhoek).

matters.[67] Namibia's statutory law further diminishes the role of customary law. For instance the Traditional Authorities Act, 2000, requires traditional communities to seek approval from the government before they designate their chief or head of a traditional community.[68] Under the Act chiefs are custodians of customary law and perform those functions and duties as conferred on them by statutory or customary law.[69] The Act does not mention traditional dispute settlement, except regarding the designation of a person as a chief. The Community Courts Act (CCA) of 2003, in turn, recognizes and formalizes the highest Traditional Courts (thereafter called the Community Courts), brings them into the mainstream judiciary, and subjects their proceedings to evaluation by state courts. The Act – of which the implementation only took off in 2011 at a very slow pace– transfers more powers to the Traditional Courts through, for example, official recognition of Traditional Court decisions and enforcement of summons and decisions. At the same time, the CCA increases governmental oversight and influence on Traditional Courts by requiring them to keep financial records, keep detailed records of cases, and enable parties to appeal the decisions of the highest Traditional Courts to a state-administered Magistrate's Court.[70]

Namibia's system demonstrates that, unlike Ghana, the recognition of customary law as a source of law does not necessarily mean that the courts will apply it. In addition, it provides one model for recognizing customary courts.

- **South Africa**[71]

The 1996 South African Constitution recognizes both traditional leaders and customary law and explicitly provides that "[t]he courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law."[72] South Africa's Constitutional Court has declared that living customary law trumps recorded versions of customary law,[73] which is highly significant considering the amount of customary law recorded in codifications as well as in case law during the colonial and apartheid eras –often in the interests of the white minority regime.

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[67] Constitution of Namibia, Article 102(5).
[68] Traditional Authorities Act, 2000 (Act 25 of 2000), Section 5.
[69] Ibid, Section 7.
[70] There is only scant research into the implementation of the Act and it remains to be seen whether all the intended changes materialize. Peters and Ubink pose several questions in this regard: (1) Is it to be expected that Community Courts will be able and willing to keep records of their cases and their finances, and if so, how extensive and useful will such records be? Peters' field research in 2012-13 shows that where Community Courts said they complied with the requirement of extensive recordkeeping, in practice the records were rather summaries of the cases, with an emphasis on administrative data such as names, dates and the final decision; (2) Will Community Court users start making use of the possibility to appeal cases to the Magistrate's Court? So far, this has not happened. Peters and Ubink, above n 63, 17-18.
[71] C Rautenbach and JC Bekker (eds.) *Introduction to Legal Pluralism in South Africa*, 4th ed. (Lexis Nexis, 2014 forthcoming).
[72] 1996 Constitution of the Republic of South Africa, Article 211(1) and (3).
[73] Alexkor Ltd and Another v Richtersveld Community and Others, 2004 (5) SA 460 (CC), 52-54; Shilubana and Others v Nwamitwa, 2009 (2) SA 66 (CC), 44.

A number of statutes clarify the roles of traditional leaders and customary law. The Traditional Leadership and Governance Framework Amendment Act 41 of 2003 stipulates that the royal family[74] must identify traditional leaders, describes the functions of traditional leaders, traditional councils, and houses of traditional leaders, and provides chiefs with a government salary.[75] The 1927 Black Administration Act recognizes and regulates traditional leaders' role in traditional dispute resolution, both criminal and civil.[76] In 2012, parliament introduced the Traditional Courts Bill 2012 – earlier introduced as the Traditional Courts Bill 2008 – to replace the relevant provisions of the Black Administration Act. The Bill's objectives are to affirm the values of the traditional justice system and the role of the institution of traditional leadership in the preservation of traditional practices and the provision of peace and justice; to align them with the Constitution; to create a uniform legislative framework; and to enhance the effectiveness, efficiency and integrity of the traditional justice system.[77] This Bill has just been withdrawn by parliament after fierce criticism by civil society for conferring extensive powers of sanctioning on the Traditional Courts with limited possibility to appeal and denying individuals the right to opt out of the Traditional Court jurisdiction. In addition, the law was criticized for entrenching apartheid divisions[78] and negatively impacting on women's rights and securities.[79]

For Somalia, the tension between enhancing customary dispute resolution mechanisms in their preservation of peace and justice and the possible negative impact that strengthening such mechanisms may have on the rights of vulnerable groups, can serve as an important lesson.

(ii) Interventions to Enhance the Functioning of Customary Justice Systems

While there is growing recognition of the importance of customary justice systems, there are a number of issues regarding their operation that inhibit the ideal of equal justice for all.[80] First, customary justice systems can be susceptible to elite capture and may "serve to reinforce

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[74] "Royal family" means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family. Traditional Leadership and Governance Framework Amendment Act, Article 1.

[75] Determination of salaries and allowances of the traditional leaders, members of the National House and Provincial houses of Traditional Leaders, Proclamation by the President of the Republic of South Africa, No 69, 2011, *Staatskoerant* 14 December 2011.

[76] 1927 Black Administration Act, Article 38.

[77] Traditional Courts Bill 2012 ('TCB'), Section 2.

[78] The TCB was criticized for reinforcing apartheid land boundaries and thus confining rural people to enclaves governed over by traditional leaders as the traditional leaders' subjects with limited national citizenship rights.

[79] "South Africa: Traditional Courts Bill is dead" *AllAfrica.com*, 21 February, 2014, available at: http://allafrica.com/stories/201402211306.html; Sindiso Mnisi Weeks, "Beyond the Traditional Courts Bill. Regulating customary courts in line with living customary law and the Constitution" *South Africa Crime Quarterly* (2011), 38-9; Sindiso Mnisi Weeks, "Regulating vernacular dispute resolution forums: Controversy concerning the process, substance and implications of South Africa's Traditional Courts Bill" *Oxford University Commonwealth Law Journal* 12 (2012), 152-3. See also Custom Contested, Views and Voices "Traditional Courts Bill" available at: http://www.customcontested.co.za/laws-and-policies/traditional-courts-bill-tcb/, last accessed 20 November 2014.

[80] J Ubink and B Van Rooij, "Towards customary legal empowerment: An introduction" in: *Customary justice: Perspectives on legal empowerment*, (Rome: IDLO, 2011), 9-19.

existing hierarchies and social structures at the expense of disadvantaged groups."[81] Mediation and negotiation require conditions of relatively equal power, and domination by power holders can be detrimental to the poor and disempowered.[82] Second, customary criminal procedures do not necessarily provide victims and suspects with minimum fair trial and redress standards.[83] Third, customary law and customary dispute settlement and administration may violate human rights standards and constitutional provisions. This is partly caused by the fact that judges and community members are often not aware of human rights standards such as the right to equality and non-discrimination.

Yet, lack of awareness is not the only issue. Some local norms and practices that are derived from traditional values and hierarchal notions – such as public humiliation, physical violence, or institutionalized discrimination of certain groups – may directly contradict human rights standards. A typical example is where customary justice systems lack gender equality and violate rights of non-discrimination. Customary systems are widely regarded as patriarchal and therefore "systematically deny women's rights to assets or opportunities".[84] Customary gender perspectives may even be so deeply inculcated that they "leave many women [...] resigned to being treated as inferior as a matter of fate, with no alternative but to accept their situation".[85] This critique is leveled both against processes of customary dispute settlement and customary administration. Dispute settlement issues include the fact that courts lack women judges, that women face cultural impediments to participate in court debates, and that, in some cases, women are even required to have their interests represented by their husbands or male relatives. Issues concerning customary administration include that men hold most leadership positions.

Given that these concerns have come to the forefront in many areas and contexts, it is useful to explore how in these other areas state and non-state actors have sought to improve the functioning of these systems to provide equal access to justice. The following examples provide some insights into interventions that have achieved some success in improving the functioning of customary justice systems.

- **Malawi**

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[81] UNDP, *Programming for Justice: Access for All. A practitioner's guide to a human rights-based approach to access to justice* (2005), 101; cf. Asian Development Bank (ADB), *Law and Policy Reform at the Asian Development Bank* (2001) 66; World Bank, *Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance* (2004).

[82] Laura Nader therefore argues that customary dispute resolution can only work if it is backed up by state law and if there is a possibility of state law as a last resort: "The ideal of equal justice is incompatible with the social realities of unequal power so that disputing without the force of law is doomed for failure". L Nader, "The Underside of Conflict Management in Africa and Elsewhere" *IDS Bulletin* 32.1 (2001).

[83] UNDP, above n 81.

[84] L Chirayath, C Sage, and M Woolcock, "Customary law and policy reform: Engaging with the plurality of justice systems" background paper for the World Bank *World Development Report 2006: Equity and Development* (2005) 4.

[85] ADB, above n 81, 31-32.

Malawi's Traditional Tribunals are the main avenue of dispute settlement for the majority of Malawi's citizens. For more than a decade, international donors have been involved in rule of law programming in Malawi, amongst others with the aim of enhancing the functioning of Traditional Tribunals.[86] In their analyses, the main areas that needed improvement included: practices in processes and decision-making, in particular with regard to evidence, due process and record-keeping; the protection of vulnerable groups including women and children; prejudice in favor of kin and locals vis-à-vis non-kin and foreigners; the payment of court fees that obstruct access for the poorest; the custom of bringing monetary gifts to traditional leaders, which is linked to allegations of bias and corruption; and the limited accountability of traditional leaders to the people.[87] The Traditional Tribunals' waning authority and influence within communities, which negatively impacts on people's compliance with summonses and the rate of acceptance of decisions and sanctions, further hamper their operation. This is compounded in more ethnically-mixed communities.[88]

Since 1999, various programs have aimed to address the above issues through several activities, including introducing clear court procedures, rules of evidence and a case register; enhancing the participation of women, both as public and as elders on the tribunals; conducting legal awareness campaigns among traditional leaders and villagers, to increase their awareness of rights and to address certain negative cultural practices; reducing the level of fees and fines; and training community-based educators, who raise local awareness, collect data on disputes and traditional dispute settlement, and act as first point of address to local people.[89]

While this programming is ongoing, positive impacts have been reported in several fields. According to a 2011 evaluation report, the program "is clearly making a positive impact on the lives of women in the localities where it is working".[90] The program has had a positive impact on the transparency of Traditional Tribunals, on their responsiveness to women and their needs,

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[86] In May 1999, the Malawi government and the British Department for International Development (DFID) commissioned a first study on Primary Justice Systems in Rural Malawi, as part of DFID's "Malawi Safety, Security and Access to Justice systems" (MaSSAJ) program. Primary Justice Pilot Projects led to a Primary Justice Workshop in 2003, and were followed by a "Primary Justice Program" (2007-2011) and a "Justice for Vulnerable Groups in Malawi" program (2011-2016). The program has a budget of more than 16 Million GBP for the 5-year period 2011-2016. DFID, *Development Tracker*, available at: http://devtracker.dfid.gov.uk/projects/GB-1-202559/, last accessed 21 October 2014. In 2011, the Program targeted 94 of Malawi's approximately 263 Traditional Authorities and it aims to increase the number to 156 Traditional Authorities by 2016. Catholic Commission on Justice and Peace, *Malawi Primary Justice Program. Three years of implementation. 2007-2010.* (n.d.), 2; Catholic Commission on Justice and Peace, *Malawi Primary Justice Program, Inception Phase Report* (January - June 2012) 3.

[87]Catholic Commission on Justice and Peace, *Malawi Primary Justice Program. Three years of implementation. 2007-2010.* (not dated), 2; Catholic Commission on Justice and Peace, *Malawi Primary Justice Program, Inception Phase Report* (January - June 2012) 3.

[88] IDLO, *Primary safety, security and access to justice systems in rural Malawi. Final report of research findings and responses from stakeholder workshop* (May 1999) 25, 32, 36, 52, 56-7 20, 31, 56; J De Gabriele and J Handmaker *Primary Justice Pilot Projects. Consultants' Final Report,* (3 December 2003) 14, 17, 19, 34.

[89] These programs fall under the aegis of the Ministry of Local Government and Rural Development. The lead organization in the implementation of these programs has been the NGO Catholic Commission for Justice and Peace (CCJP). DFID is the main funder.

[90] A Meerkotter and R Watson, *DfID Malawi Safety Security and Access to Justice Programme Impact Analysis Study. Draft report (*30 May 2011) 4.

and led to a reduction in negative cultural practices.[91] Evaluative reports by the Catholic Commission on Justice and Peace, the lead implementing agency of the program, report many other advantages including a reduction of case loads at higher levels of Traditional Tribunals due to the fact that a higher percentage of disputes are being retained and resolved at village or group level and due to enhanced rights awareness of villagers; lower fines and fees; increased transparency through the use of case registers; as well as a decline in incidences of property grabbing.[92] Their evaluations are, however, partly anecdotal and none too rigorous and their reporting rather shoddy, and a consultancy report found the impact claimed in CCJP reports not to be realistic.[93] Field work in 2012 and 2013, however, convincingly showed that Traditional Tribunals in impact areas of the program were functioning significantly better than Traditional Tribunals in non-impact areas. It also became clear that most Traditional Authorities, councilors on the Traditional Tribunals and villagers were open for support to their customary justice system by governmental and non-governmental actors.[94]

This case study brings to the fore that external support to customary justice systems does not have to be seen as a threat, but can be welcomed as a way to improve local circumstances in areas where local capacity to initiate those changes without any external help is low.

- **Namibia**

In 1993, the six Owambo Traditional Authorities in the north of Namibia made harmonized self-statements[95] of their most important substantive and procedural customary laws while adapting some norms to conform to Namibia's Constitution, including the right of widows to stay on the land and in their houses after the death of their husbands. The self-statements also stress women's rights of active participation in traditional settlement. The latter was actively promoted particularly in one the Uukwambi Traditional Authority where the chief (the highest traditional leader) also installed several female traditional leaders.

In research on the impact of these change processes in customary justice systems a large majority of respondents reported to find decisions based on written laws easier to accept, more fair, and less prone to corruption and abuse by traditional leaders.[96] The traditional leaders themselves reported that they were content with the self-statements because people seemed more willing to accept their decisions now that they can make reference to a written document. The change in inheritance norms for women has almost fully eradicated property grabbing from widows. The research furthermore displayed that the female traditional leaders introduced in

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[91] Ibid.

[92] Catholic Commission for Justice and Peace, n.d. and 2012, above n 87.

[93] Meerkotter and Watson, above n 90 5.

[94] Fieldwork undertaken by consultant, Janine Ubink.

[95] This terminology is borrowed from M.O. Hinz, "Law Reform from Within: improving the Legal status of Women in Northern Namibia" *Journal of Legal Pluralism*, 39 (1997) 69. It refers to a recording by the community or its leaders of the most important customary norms.

[96] J Ubink, "Stating the Customary: An Innovative Approach to the Locally Legitimate Recording of Customary Justice in Namibia" In: *Customary justice: Perspectives on legal empowerment,* J Ubink (ed.), (Rome, Italy: International Development Law Organization, 2011).

Uukwambi were generally assessed as good leaders and there was not much resistance to their rule.[97] In addition, men living in villages with women leaders reported feeling significantly more positive about the notion of female traditional leadership than other men. Women were present in great numbers and participated actively at traditional dispute settlement meetings in Uukwambi and a large majority of respondents felt that men and women were being treated equally by the Traditional Courts.

This case study emphasizes the importance of bottom-up change. It provides a successful example of cooperation between various traditional leaders to adjust their customary norms and dispute resolution processes to stay relevant in the new independent Namibia, and conform to the new Constitution. The timing of the actions, shortly after the attainment of independence, provided an important momentum for change. Perhaps a similar momentum for change can be capitalized upon in Somalia, with the "rebirth of Somalia" in 2012.

- **Somaliland[98]**

In 2003, a small group of elders from the Somaliland region of Toghdeer Province wanted to revise elements of *Xeer* that were causing conflicts in the community. Supported by the Danish Refugee Council, a process of dialogue brought together over 100 elders from five clans. This resulted in the Declaration of the Togdheer House of Aquils. In this Declaration, the elders committed themselves to curbing the main causes of inter-clan conflict and to addressing specific aspects of *Xeer* that violated *Sharia* and human rights. This was followed by an awareness campaign, and a further conference, attended by 92 elders, which produced a final resolution, a key feature of which was the commitment that, in the event of killing, clan members would refrain from immediately executing the alleged perpetrator and instead hand him or her over to the local authorities. In such cases, the compensation payment would be limited to 100 camels and would be paid directly to the family of the victim, as opposed to being shared by the *diya*-paying group.

Other points of agreement in the Declaration included, *inter alia*: the protection of the right of widows to inherit according to *Sharia* principles; the protection of the right of widows to marry men of their choice; the increased protection for vulnerable groups such as orphans, street-children, persons with disabilities and IDPs; and the formation of committees to resolve conflicts that were deemed threats to ongoing peace and security. The intervention led to parallel dialogue processes in other regions of Somaliland, culminating in other Regional Declarations, and later in a National Declaration – a composite of the Regional Declarations. Dissemination of these Declarations continued into 2009.

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[97] J Ubink "Gender Equality on the Horizon: The Case of Uukwambi Traditional Authority, Northern Namibia" in: *Working with customary justice systems: Post-conflict and fragile states,* E Harper (ed.), (Rome, Italy: International Development Law Organization, 2014).

[98] M Vargas Simojoki, "Unlikely allies: working with traditional leaders to reform customary law in Somalia", in: E Harper (ed.), *Customary justice: from program design to impact evaluation*, (IDLO, Rome, 2011) 33-49.

In 2010, research was conducted into the impact of this intervention.[99] It found that there has been significant progress in the elders referring murder cases to courts and a decrease in the practice of clans shielding perpetrators from criminal investigation. In terms of rape cases, however, while the elders seemed to be prepared to refer such cases to court, victims remained under significant social pressure to resolve them customarily. In other cases, complicated evidence requirements prevent judges from delivering a verdict and the matter would be referred back for resolution under *Xeer*. At *Xeer*, the outcome of rape cases is determined by the victim's male relatives and/or the elders through negotiation on the level of compensation payable, the amount of which is a function of the relative size of the clans, the relationship between the clans, and the age and marital status of the victim. Such compensation is typically distributed among the members of the group and rarely delivered to the family of the victim as required under the Declarations. Moreover, the traditional practice of marriage of the victim to the perpetrator continues to be seen as a legitimate means of resolving gender crimes. The legal protection afforded to IDPs and minority victims (of gender-based crimes) remained particularly limited. For crimes of rape perpetrated by majority clan members on such victims there is often no access to justice. If referred to court, the elders of majority clans will usually withdraw the case; however, the solutions offered at *Xeer* are unattractive because marriage between a majority and a minority member is not permitted, and the power of a minority clan to exact compensation from a majority clan is weak.

This program has been successful in reducing tensions between different (sub)clans and has thus had an important positive impact on security and peace in Somaliland. The limited effect in the other areas displays that the impact of modifications of legal norms and structures is highly interdependent with changing values in society. And with regard to women, and perhaps even more when dealing with minorities, social change is extremely challenging as gender and clan inequalities are so entrenched in Somali society.

[99] Ibid.

V. Policy Recommendations

The research findings reaffirm the importance of customary justice systems in Somalia and the role of elders in the administration of justice, namely to enhance access to justice, restore peace and harmony, and contribute to the improvement of life for all. To guarantee the continuing importance of customary justice systems in the new Somalia, the strengths of the systems need to be built upon and the weaknesses addressed. In this regard, linkages, in some form or other, between the customary justice systems and the state legal system are indispensable.

Engagement of the FGS with customary justice systems thus entails two main elements: (i) supporting the enhancement of the functioning of customary justice systems, in alignment with constitutional and international norms as well as the *Sharia*; and (ii) creating linkages between customary justice systems and the state legal system, including the regulation of the role and position of titled elders. Recommended steps with regard to each are discussed below.

(i) Measures to Support the Improved Functioning of Customary Justice Systems

- **Address discriminatory Xeer norms and exclusionary practices:**

The research findings clearly reveal the desire of the consulted communities for customary justice systems to continue to play a role in the new Somalia. In order for them to do so effectively, Somali customary justice systems need to be reformed and modernized so that they can accommodate, give voice to, and protect all social groups including youth, women and minorities. This includes broader participation in dispute settlement procedures and decision-making structures, equal treatment and compensation in dispute settlement, and the modification of certain norms that inhibit the position of certain groups.

The research findings elucidated several norms respondents would like to see reformed, including the 'enmity obliterator' custom in which women are exchanged between two clans as part of a peace settlement (*Godob-reeb*) and customs where a woman is to marry the brother of her deceased husband (*dumaal*), her deceased sister's husband (*xigsiisin*), or her rapist. Such reforms should end marginalization and discrimination and address the special needs of groups. With regard to the latter, one can for instance think of a woman's social constraint to discuss the experience of sexual assault with male elders. Such reform processes are complicated and will take time. They cannot be externally imposed, but rather need to result from bottom-up processes and local dialogues, which many be stimulated or facilitated by governmental or non-governmental actors.

- **Undertake further research on progressive evolution of the Somali customary justice systems:**

Somali customary justice systems have proven that they are flexible and can adjust themselves to new situations. For example, the customary norms have evolved, particularly since the start of the civil war in 1991, in response to large-scale loss of lives and property by providing that the

loss of life and property due to fire, storms, flooding, and large scale intra- and inter-clan conflicts shall be settled through agreement with no compensation- Baydhaba *Xeer*.

The constant adaptation of customary justice systems is not only witnessed by the development of new norms, but also by evolutions in the administrative and judicial structures. For example, the field research undertaken by the TDR Unit revealed that the Yantar sub-clan of Rahanweyn clan family chose a woman to become the *Malaaq* of the clan, and in the city of Merca, a woman succeeded her father the Ugas of Biyomal.[100] Such evolutionary changes in Somali customary justice systems need to be further studied and could serve as informative examples to be drawn upon for the sought-after reforms in other aspects of the system. No progressive evolutionary changes have been identified with regard to the position of minorities and further research and dialogues are needed to see whether and how these issues can be addressed. If issues regarding protection and equal treatment of minorities cannot be solved within customary justice systems, then governments need to play a greater role in involvement and oversight.

- **Consider partial unification or standardization of customary practices applying an inclusive 'bottom-up' approach:**

One way for modernization of Somali customary justice systems to be realized would be through the unification or standardization of the customary law of different clans, and this is frequently suggested by elders consulted. It would be most feasible to start with a partial standardization – such as was undertaken in Namibia, Somaliland and Puntland – of those aspects of customary justice systems that pose most challenges to the people.

To achieve this, dialogues with communities and consultations among elders of the various clans need to be initiated to identify practices that local groups or individuals regard as harmful, aspects of the customary justice system that cause tension between different groups, and practices not aligned with the Provisional Constitution, the *Sharia*, or international human rights instruments signed and ratified by Somalia.

Any process of unification or standardization obviously requires collaboration between elders from different clans and sub-clans. While the majority of elder-respondents report an interest and willingness to enter into such cooperation, there are serious trust issues between the clans. Special attention should be paid in any such process to the position of minority clans. Elders from such clans have reported a fraught relationship between minority and majority clans. For instance, one of the minority communities elders – a Benadiri elder stated the following: "We have relationships with other minority clans but not armed majority clans"; while another elder reported "Meaningful collaboration between armed and unarmed clans cannot take place mainly because of the unbalanced power…There is no trust between armed and unarmed clans. Over time, we have witnessed in many occasions that armed clans do not respect the *Xeer* and culture of peaceful co-existence".

Such a standardization will most likely entail a recording of customary laws. This can be in the form of a codification, which would turn the customary law into statutory law. Historically,

[100] In both cases, the deceased leader did not have any male successors.

however, codifications have been ineffective and problematic, given that it 'freezes' practices. The method or process of codification was often problematic too, when it did not take into account the voices of all members of the community, especially women and youth. In the case of Somalia, the format of partial self-statements or declarations seems to be more suitable, as it entails greater flexibility, does not need to be comprehensive, and is not reliant upon involvement of the government. The case study of Namibia, discussed above, is an example where such a partial self-statement had a positive impact on the position of women as well as the authority and legitimacy of traditional leaders. The methodology of such exercises should, of course, take into account the lessons learnt from the earlier attempts at codification, so as to avoid that only the views of custom held by powerholders are enshrined into any recording document. Community members representing the various groups in the community need to participate and be able to voice their opinions and concerns, and need a channel to voice discontent with the process to the government. An inclusive process will ensure the popularity and legitimacy of the reformed customary justice systems.

- **Provide training to elders on enhancing customary justice systems:**

The above recommended processes can run parallel to the development of a training for elders on enhancing the Somali customary justice system, drawing on existing (evolved) customary norms, *Sharia* norms and international human rights, as well as comparative experiences with reform of customary justice systems to enhance access to justice for vulnerable groups, in particular women and minority clans, and possibly on keeping of records. The dialogues, consultations and training should lead to an actionable strategy to engage with the customary justice system and to improve access to justice for all groups.

(ii) Measures to Enhance Linkages between Customary Justice Systems and the State

There are three broad types of linkages that Somalia could consider with regards to bringing the customary justice system and formal legal system together in Somalia. First, linking customary norms to the state,[101] either through constitutional or legislative recognition.[102] Second, linking customary dispute resolution mechanisms to the state through recognition or formalization of the highest level or levels of customary dispute settlement institutions.[103] Third, linking

[101] The term 'state' refers here to nation-state, not to states in a federal structure.

[102] In its most simple form, this means that *Xeer* is recognized as a source of law in Somalia. This is usually included in a Constitutional provision outlining the sources of law of the country, but can also be specified in another legislative act, for instance a *Xeer* Courts Act. A more far-reaching way to link *Xeer* norms to the state legal system is through (partial) codifications of unified customary law by the state legislature. Alternatively or complementary, Somali state courts could apply customary law in cases where this is appropriate, such as in cases regarding communal natural resources.

[103] Thus formalized, Somalia's customary dispute resolution mechanisms could be required to administer justice in accordance with certain procedures and human rights standards. Parties that are unhappy with the decisions of customary dispute settlers could be given the right to appeal these decisions at state courts. This would open up possibilities for state courts to oversee the adjudicative work of customary dispute settlers and for the development of checks and balances that can ensure adherence to procedural and substantive standards. Such formalization may also include the possibility of enforcement of *Xeer* decisions by state authorities, clear guidelines for cooperation between

traditional authorities to the state, including through recognizing the authority of elders or even giving them a formal state function.[104] Considering the current developments in Somalia in various fields of state-building, including in the judicial sector and with regard to local administrations, the following measures are proposed as appropriate for this period:

- **Undertake legislative reform to recognize customary law/*Xeer* as a source of law:**

The FGS should recognize customary law, but also establish the limits to this recognition where customary norms contravene the *Sharia* and national law, particularly as contained in the Constitution and its human rights provisions:[105] an example of such an approach is found in the draft Constitution of the Regional Puntland State of Somalia, which states "The Constitution recognizes the traditional norms that do not contravene Islamic *Sharia*, the Constitution and the Laws of the State".[106] In addition, it provides that decisions of elders in customary dispute settlement shall be recognized as valid by the authorities and the authorities should offer help in the implemenetation of these decisions.[107]

- **Undertake further consultations and research on how to improve cooperation between customary and state institutions:**

Consultations are proposed between elders, *uluma*,[108] the judiciary and representatives from various governmental ministries, such as the MoJC and the Ministry of Women and Family Affairs, to discuss ways to strengthen the trust and cooperation between the various actors and create relevant and effective links between the two systems. At the current stage, however, it can be seen that further attempts to link them are likely to be premature. The extreme popular distrust of governmental instututions, including state courts, and military control, hinder the coming into existence of meaningful linkages between customary justice mechanisms and the formal legal system. As a first step, the consultations can focus on statutory recognition of decisions by customary justice mechanisms[109] and their enforcement with the help of

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state courts and customary dispute settlers on referral of cases as well as an outlining of their respective jurisdictions. The impact of such a form of linkages will hinge on the accessibility and effectiveness of formal courts and their enforcement mechanisms.

[104]Somalia could recognize the authority of elders, with or without defining their roles, with or without giving them formal state functions, and with or without payment of a salary. The continual expansion and development of local government structures could incorporate traditional administrative structures through the creation of hybrid local structures that combine customary and state characteristics. Alternatively, the FGS could create local structures that run parallel to – and likely end up in competition with – traditional authority structures.

[105] The Somali Justice Sector Action Plan 2013-2015 requires that the FGS enact legislation to clarify the role of traditional law within the national legal system.

[106] Draft Constitution of the Regional Puntland State of Somalia, Article 101(1), available at: http://files.garoweonline.com/dastuurpl.pdf, last accessed October 2014.

[107] Ibid, Article 105.

[108] Somali sheikhs and religious leaders, known as *uluma* and *wadeed*, undertake *qadior* judicial functions, especially in the field of marriage law and divorce. They do not represent one ideological group, and disagree on many important issues. They often also have clan ideologies that they adhere to, at least covertly.

[109] One example can be found in Article 123 of the Consultation Draft Constitution of the Somali Republic, which holds: "The courts may recognize the decisions of customary dispute resolution mechanisms, subject to limitations set

governmental institutions. A further consideration of the relationship between customary dispute settlers and state courts needs to be placed within the context of Somalia's fledgling court system and its contunining efforts to become stronger and more accessible in a larger part of the country. As the state courts mature and are able to deliver a larger amount of high-quality decisions, the question can be addressed whether state courts should be able to apply *Xeer* norms; to function as appeal court to decisions by customary dispute settlers; to decide whether a *Xeer* norm or practice contravenes the *Sharia* or national law. At that stage, a clear demarcation of jurisdiction between state courts and customary dispute settlers can also be addressed.[110] Legislation assigning jurisdiction of major crimes exclusively to state courts will not work unless judicial security and protection is improved and there is increased trust by clan leaders in the formal sector.[111]

- **Develop a code of conduct or an oath of office for elders:**

There are currently no mechanisms to ensure that elders exercise their customary dispute settlement functions within the ambits of the Constitution and the law. Besides oversight by the judiciary via an appeal and complaints system – which we have just labeled as premature due to the weak state of the justice system – this can be addressed by the development of a code of conduct or an oath of office for elders, and a national wide regular training program for elders, potentially beginning with a closely studied pilot to see which training approaches work best.

- **Recognition by the state of elders:**

There is a widespread desire in the localities to have the elders recognized by government, re-instating the genuine titled elders while weeding out the fake ones. In addition, for elders to be able to take up active, critical roles in local and national governance, there is clear evidence that they need to feel respected and protected by the government. This is particularly relevant for minority groups, as both elders and *uluma* from minority groups in the research districts reported to stay silent on important issues and disengage in certain local affairs due to fear of being targeted by the security apparatus if they were to be seen as criticizing or taking sides in certain conflicts.

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out by legislation as to the scope of this recognition." (Consultation Draft Constitution of the Somali Republic, drafted by the Independent Federal Constitution Commission. Dated, sealed and issued by independent Federal Constitution Commission on 30th of July 2010).

[110] Puntland's Regulation for Traditional Dispute Resolution (which is a somewhat misguiding title as it refers to mediation by elders, sheikhs or other trusted mediators on the basis of *Xeer*, *Sharia* and state law) excludes complex cases such as rape, terrorism, piracy and treason as not appropriate for informal resolution. Puntland State of Somalia, Ministry of Justice, Religious Affairs and Rehabilitation, *Regulation for Traditional Dispute Resolution*, (6 August 2014).

[111] The last 20 years the state courts have hardly functioned. Most murder cases, for instance, are being transferred from the state to the elders. In Baydhaba, for instance, it was reported that the police and state courts have been referring all murder cases to the customary justice system because the elders are better protected, by their clans, than the judges are. In all areas, respondents report that the police and courts release registered cases to the elders on the elders' requests in response to wishes coming from concerned parties. Sometimes, when the elders are not able to solve the case, they report them back to the police or the state courts.

Critical questions in regard to government recognition concern whether there is agreement on which titled elders are genuine and which ones are fake and whether the issue would lead to conflicts surrounding the registration of titled elders. Other issues to resolve include the level of titled elders that needs state recognition and if recognition entails a salary, what is the budgetary feasibility in Somalia.

Ideally, the recognition of titled elders by the FGS would strengthen the titled elders' position and legitimacy and in turn, the linkage of state and elders would enhance the visibility, reach and legitimacy of the government. In reality, linkages between traditional authority structures and a weak state with a government of limited legitmacy and credibility, can also decrease the standing and authority of titled elders. Especially when linkages include an increased political role for titled elders. For example, the research data indicated that the involvement of titled elders in the selection of parliamentarians has led to many claims of corruption by titled elders and corresponding loss of legitimacy. Special thought thus needs to be given to the participation of elders in governmental decision-making in their localities, as well as to an advisory role regarding national matters. Additionally, it is vital that governmental recognition be arranged in such a way that it is not up to the government to determine who qualifies to be a titled elder. The clans should choose their leaders, with the governments recognizing the locally selected clan leader. Government should, however, have a say in the number of recognized positions, so as to curb the proliferation of new titled elders.

The creation of a "National Council of Elders" may enhance both the dialogue and cooperation between elders by providing a regular meeting platform for discussion and collaboration between elders and serving as a mouth piece and advisory organ to the government.[112] The methods of representation of elders from the various clans and sub-clans can be complicated and needs careful study and consideration. If desirable, governmental recognition of, and financial support for such a council could be linked to certain conditions, such as female representation or minority clan representation.

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[112] In the research districts, there were several local initiatives to bring together elders from various clans. For instance, in Hamarjajab the Banadiri communities have tried to create a house of elders for uniting the *Xeer* elders, but the elders reported that this initiative was not supported by the government. The elders of Kismayo have an umbrella organization in which all clan chieftains are members and have an office in a house allocated for them by the Interim Juba administration.

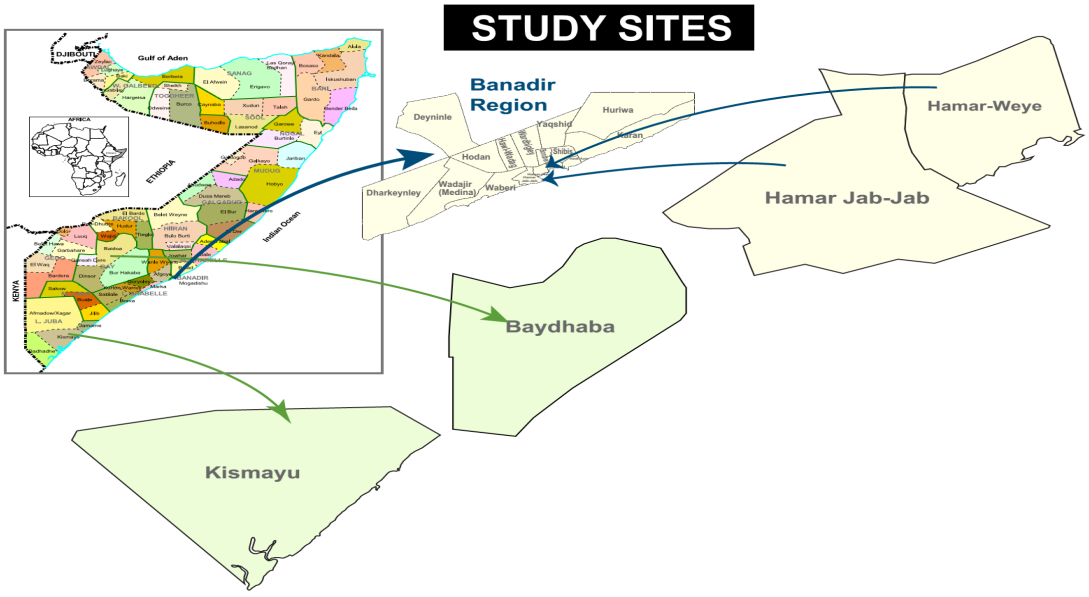
ANNEX A: Research Methodology

The research for this policy paper involved a mixture of primary and secondary methods of data collection. The researchers employed five methods:

1. review of the literature, including 9 case studies;
2. key informants interviews;
3. focus group discussions;
4. direct field observation; and
5. two validation workshops (see annex B).

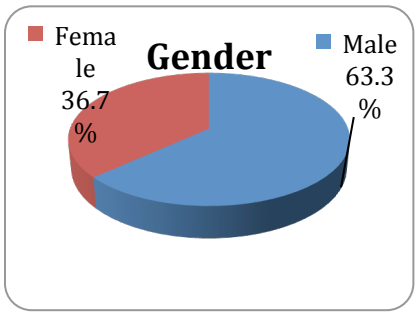
The research began with a review of the existing literature on the operation of, and state engagement with, customary justice systems as well as on the role of customary justice systems for the reintegration of low-risk disengaged combatants. A special focus was on nine case studies for the purpose of drawing comparative experiences and providing an overview of possible ways of engaging with customary justice systems. The desk research phase of the study was followed by training on primary data collection and analysis.

Prior to the field deployment, a three-day training on field data collection session was held in Mogadishu for data collectors from the TDR Unit. Training sessions covered: assessment objectives, target groups, significance of the study, culturally sensitive questions, interview techniques, note taking skills, communication skills, how to ask a right question, and record a right answer as well as research ethics. The methods used to communicate the training included lectures, discussions, role-play activities, interview techniques, and field practice interviews. The selection of the data collectors was based on their previous experience in similar studies. Additional requirements included ability to speak Somali, the language utilized during the study. Data collection was done with the aid of semi-questionnaires and an interview guide. The tools were specifically designed for the study and were adapted to the districts' contexts as thorough literature review was undertaken. Tools included: KI interview guide, FGD interview, and direct observation checklist.
Following the training, twelve enumerators and two lead researchers were deployed to four districts, Baydhaba, Kismayu, Hamarweyne and Hamarjajab districts, as indicated in the map below.



During the field deployment, community members with unique skills and professional background on the issue being studied were interviewed in key informant (KI) interviews between June 17 to 30, 2014 and also between August 9 to 18, 2014. Two hundred and eighty four (284) KIs were contacted and interviewed in the study locations. They included clan elders, women groups, youth leaders, peace committees, the *ulumas*, and local authorities including district commissioners, district Judges and district police commissioners. Each individual interview lasted between 45 minutes to 1 hour. KIs offered information related to the revival of the *Xeer* and the reintegration of the ex-combatants back to their communities.

The data collection also involved focus group discussions (FGDs). A total of 8 FGDs including 4 female-only FGDs (one from each district); 4 youth-only FGDs (one from each district), were undertaken. The study targeted for women and youth groups for purpose of establishing their views on the *Xeer* as both groups have no voice under the *Xeer*. FGDs were essential in offering information relating to the *Xeer* and community reintegration of the ex-combatants. In addition to the data collection, observations during the field visits to study sites was undertaken by TDR Unit members, aimed primarily at assessing the context and conditions in which the responses are derived from. In addition, direct observation method was used for "triangulation" and cross-checking the information gathered from the KIIs and FGDs.



An analysis into the demographic characteristics of the respondents shows that 36.7% of the respondents were women while men comprised the remaining 63.3%. Respondents were grouped into the following age brackets: 18-30 years (26.6%); 31-40 years (23%); 41-50 years (18.3%) and those above 50 years (32.1%). The educational profile of the respondents indicates that 11% had no formal education, 17.4% had primary level education, and 40.40% had secondary education. A further 17.4% had college level education while 13.8% had university level education.

ANNEX B: Stakeholder Consultations

The final data collection method employed was validation workshops with stakeholders. Two validation workshops were held in Mogadishu on August 24 and 26, 2014. The validation workshops sought feedback from various stakeholders on the findings of the study. It was attended by 55 representatives from the following institutions: Ministry of Justice and Constitutional Affairs; Ministry of National Security; Ministry of Defense; Ministry of Interior and Federal Affairs; Ministry of Women and family Affairs; the Office of the Prime Minister; Judiciary Department, the Office of the Attorney General; Somali Youth Development Network; Freelance Researchers; Elman Peace and Human Rights Centre; Somali National Youth Council; Somalia Peace Line; South-Central Non-State Actors; IIDA Titled Elders; the *Uluma*; UNSOM; AMISOM; IOM; and the US State Department.