

THE ROLE OF THE JUDICIARY IN THE ADMINISTRATION OF JUSTICE IN SOMALILAND JUDICIAL SYSTEM

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DECLARATION A

"This thesis is my original work and has not been pursued for degree or any other academic award in any university or institution of learning"


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DECLARATION B

"We confirm that the work reported on this thesis was carried out by the
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APPROVAL SHEET

This thesis entitled "The Role Of The Judiciary In The Administration Of Justice In Somaliland Judicial System" prepared and submitted by Hamdi Ismail Abdullahi in partial fulfillment of the requirements for the degree of Master of Criminal Law and Criminology has been examined and approved by the panel on oral examination with a grade of PASS.

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DEDICATION

This research is dedicated to my beloved Parents Zamzam Adam and Habiiba Adam as well as my Wife Asma Ibrahim who have always been there for me whenever I needed their help.

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The researcher's utmost word of gratitude goes to the Almighty Allah for always protecting and guiding him since early childhood up to now.

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LIST OF STATUTES

International:

The United Nations Charter 26 June 1945

The United National Universal Declarations of Human rights 1948

1949 Geneva Conventions

Hague Conventions (1899 and 1907)

African Charter on Human and Peoples' Rights ("Banjul Charter") Adopted: June 27, 1981 and entered into force: Oct. 21, 1986

Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held 26 August to 6 September 1985

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 25 November 1985 96th Plenary Meeting - A/RES/40/34

United Nations Guidelines on the Role of Prosecutors, September 1990

The Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 29 November 1985.

National:

The Constitution of Republic of Somaliland (May 2001)

Somali Criminal Code and Procedure (1963)

The Somaliland Law of Organization of Judiciary (Law No: 24/2003).

The Somaliland Police Act (2013)

LIST OF CASES

International:

Prosecutor v. Tadic, Case No. IT-94- 1-A, Judgment (Appeals Chamber), 15 July 1999,

– African Commission on Human and Peoples’ Rights v. Great Socialist People’s Libyan Arab Jamahiriya Application No 004/2011

- Association Juristes d’Afrique pour la Bonne Gouvernance v. Republic of Cote d’Ivoire Application No 006/2011

Application No 009/2011 – Tanganyika Law Society and Legal and Human Rights Centre v. The United Republic of Tanzania

Application No 009/2011 – Tanganyika Law Society and Legal and Human Rights Centre v. The United Republic of Tanzania

Application No 011/2011 – Rev. Christopher R. Mtikila v. The United Republic of Tanzania

National:

AH V DH Case 2005 and SH. V HA Case 1999 reflecting the weak Coordination among the Justice institutions (Particularly the Courts, Police and Prison)

SHE V DA Case 2008, The Corruptions and Capacities elements of the Somaliland Police and the current reform process

KH V LM Case 2010 to 2011, XH – MGH – NOV 2010, Good example for the current capacity of the courts particularly the regional courts where the existing facilities are far less than what is needed to serve better for the justice

SHE V DA Case 2008 will give you reflection of the access to justice for poor and vulnerable groups in Somaliland, particularly the IDPs, the details of these case can be found in the UNDP Somalia assessment report of IDPs 2010, and fully analysis in page 26 referring APD case notes

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ABSTRACT

This study reviews the literature judicial system in Somaliland and in particular reviews the experiences, challenges and capacity gaps in serving the criminal justice system.

The study finds there is a There has been much focus in recent years on reform of the formal justice sector institutions in Somaliland (the Courts, Attorney-General Department, Ministry of Justice), culminating in a National Justice Reform Strategy 2008 and Action Plan for implementation in 2009. Institutional reform of this nature alone (addressing the supply of justice services) will not be sufficient to enhance public confidence in and access to the justice sector. What is also needed is a clear understanding of the demand for justice reform – namely the barriers to and challenges facing those individuals who wish to access justice and how their demands and needs can best be addressed. As a result of low public confidence and limited access to the formal justice system, the majority of justice or legal problems continue to be solved at a community level through informal justice mechanisms. Improving people's confidence in the judicial system and improving the quality and independence of the system requires investing in the capacity of judiciary personnel, expanding the reach of the courts beyond the urban centres and improving access to the formal courts, including through the provision of legal aid. Particular attention must be paid to the most marginalized and vulnerable, including victims of sexual and gender based violence (SGBV) who often has little recourse to the formal legal system. Current judicial sector performance is hampered by inadequate and/or out-dated policies and laws, insufficiently resourced judges and courts, a shortage of skilled legal professionals, a lack of qualified judges, and a weak judicial institutional structure.

ACRONYMS

AU	African Union
AWEPA	Association of European Parliamentarians for Africa
AG	Attorney General
SC	Supreme Court
CSC	Civil Service Commission
Crpc.	Criminal Procedure Code of Somalia, 1963
Cvpc .	Civil Procedure code of Somalia, 1974
CBO	Community Based Organizations
DDF	District Development Framework
DFID	Department for International Development
DGs	Director Generals
HJC	High Judicial Council
HRC	Human Rights Commission
LRC	Law Reform Commission
MOLSA	Ministry of Labor and Social Affairs
MOI	Ministry of Interior
MOJ	Ministry of Justice
MONP&D	Ministry of National Planning & Development
UNODC	United Nations Office of Drugs and Crime
UNDP	United Nations Development Programme
NDP	National Development Plan
USAID	United States Agency for International Development

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CHAPTER ONE

Background of the Study

Conflicts often arise from the failure of a State's legal system to protect rights and punish perpetrators of human rights violations. Discrimination, corruption and abuse of power by law enforcement officials, and the military in many cases¹, fuel and exacerbate conflicts and make it even harder to achieve reconciliation after the conflict. Injustice, literally, drives people to take up arms². However, post-colonial and post-dictatorships period in Africa, most of the African legal system introduced interim democratic constitutions embodied the supreme law of the land which is binding on all judicial organs of the state³. Under these democratic systems they established an independent judiciary, including a Constitutional Court with the power to review and to abolish legislation inconsistent with the constitution, It includes almost all the justice legal framework and institutions; however the structure, mandate and the mechanisms for administering the formal justice are different in most of the countries in African due to different Historical and culture background⁴. Similar at that of most of the African Countries and (as illustrated under the Somali Penal code of 1963) the Somaliland Criminal justice system are set of mechanism (Public Officials and Government Institutions) aimed to maintain social control, deter, control crime, and sanction those who violate laws. Key institutions involved Somaliland criminal justice process includes the police, the courts, Ministry of Justice (Policy guidance body), Procurator and correctional institutions (prisons).

¹ SH. V HA Case 1999 reflecting the weak Coordination among the Justice institutions (Particularly the Courts, Police and Prison)

² The Michael Braswell, John Fuller and Bo Lozoff Corrections, 'Peacemaking and Restorative Justice: Transforming Individuals and Institutions' (Jan 15, 2001).

³ Yuval Shany, the Competing Jurisdictions of International Courts and Tribunals 3-7 (2003); Jenny S. Martinez, Towards an International Judicial System, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, the Proliferation of International Judicial Bodies: The Pieces of the Puzzle, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

⁴ Charles R. Swanson, 'Police Administration: Structures, Processes, and Behavior' (8th Edition, Aug 13, 2011)

After the collapse of the Siad Barre regime in 1991, the north-west part of Somalia unilaterally declared itself independent as Republic of Somaliland. The territory, whose independence is not recognized by international bodies, has enjoyed relative stability. Although Somaliland is not recognized by any government, this entity has maintained a stable existence and continues efforts to establish a state organs, institutions and constitutional democracy, including holding municipal, parliamentary, and presidential elections. Following the declaration of independence in 1991 from Somalia, Somaliland has succeeded in putting in place various institutional systems and structures for development. While the first decade can be characterized as path searching for development of independent institutions, stabilization and recovery of the economy, the State is now firmly in a period where it is able to consolidate the development of its identity (recognition), governmental institutions and functions, and development. Somaliland re-built its judicial and law enforcement institutions fairly soon with the Somaliland in 1993. Both justice and law enforcement institutions went through different situations and challenges as there was limited resource and limited basic law enforcement capacities, equipment and expertise available. However there has been much focus in recent years on reform of the formal justice sector institutions in Somaliland (The Courts, Police, Attorney-General Office and Ministry of Justice, Prosecutors, Ministry of Interior), culminating in a National Justice Reform Strategy 2008. Much of these efforts are ongoing yet there are very limited progress made with that respect. In general the Somaliland Justice sector performance is hampered by inadequate and/or out-dated policies and laws, weak coordination among the justice institutions, insufficiently judges and courts, a shortage of highly skilled legal professionals, a lack of qualified judges, and a weak judicial institutional structure. As the law enforcement is concerned, The Somaliland Police Force was established in 1991. It remains an authoritarian institution, inaccessible to the majority of the population, it lacks effective management, and its officers are poorly equipped and poorly trained. The current Somaliland Police Act of 1993 is out-dated and there is new Police bill in the Somaliland parliament which is yet to be approved by the parliament. Moreover there is also continuing evidence of problems regarding police awareness of

and respect for fundamental human rights. Policing is limited to the major urban centers in Somaliland. In 2010, the Somaliland National Charter for Policing was agreed, with the goal of professionalizing and modernizing the Somaliland Police. The Somaliland Police is a key institution for maintaining Somaliland's internal security and stability and the Somaliland government has committed itself to strengthening the law enforcement sector under the current National Development Plan 2012 – 2016⁵. Similar to that of the other justice institutions the current policing performance is hampered by institutional weaknesses, low capacity and education of police staff, a lack of professional integrity and discipline and high levels of corruption. The reform process currently underway in Somaliland is designed to address these problems through a comprehensive package designed to increase police accountability and enhance policing practice in line with international human rights law and established best practice. Such efforts include the development of a much-needed legal framework for the police in Somaliland that is updated and aligned with civil society aspirations and the nationally agreed vision, in order to ensure a strengthened and effective police force. With all that existing, this study is only focused to examine the existing capacities and interrelationship between formal justice Institutional Capacities and Law Enforcement in Hargeisa, mainly the Courts, Attorney-General Office, Ministry of Justice, Ministry of Interior, The Prosecutors and the Police. Most of these institutions are based in Hargeisa (Particularly Ministry of Justice, the Police Headquarter and Supreme Court), and thus this study will solely focus on those institutions in Hargeisa.

Statement of the problem

There are fewer researches and assessments done in regard to the Somaliland formal justice institutions and in particular the Judicial system, most of these reports are produced by the UN agencies and non-governmental organization who support

⁵ The overall objective of the SNDP is to address and overcome structural and institutional development constraints which Somaliland faces and achieve social and economic transformation to attain national prosperity The National Development Plan (NDP) covers the five year period from 2012 to 2016, and was structured in line with Somaliland's Vision 2030.

Somaliland government In the area of Justice and Rule of Law, these reports include, The United Nations Development Programme UNDP Somalia supported A Comprehensive Assessment Report On Court Administrative and Case Management Systems In Somaliland prepared by Abdihakeem Abdi (2007) The objective of the paper was to analyze comprehensively Somaliland court's administrative and case management systems, and to point out area of weakness that attract intervention for future action to improve the efficiency of courts in Somaliland. Moreover there was some other joint efforts made by Somaliland government and The United Nations Joint Program on Local Governance and Decentralized Service Delivery⁶ in Somalia in October 2009, to undertake an assessment of the structures, relationships, procedures, task, influence, effectiveness, relevance and recognition of institutions that exist in Somaliland as far as the delivery of local services is concerned, which justice sector was overlooked, with that said, the research will focus the institutional capacities (facilities and personal), the legal framework, court case management and coordination mechanisms between the judiciary and other justice institutions,.

Rational of the Study

The Purpose of the Study was to examine the existing judiciary and other justice institution capacities in terms of facilities, personal, legal framework and coordination under the Somaliland Criminal Justice system. This study determines the correlation between the judiciary and other justice institution capacities as well as their coordination's under the Somaliland Criminal Justice system. This study therefore tries to examine, clarify and elucidate the overall judiciary branch capacities and interrelation and coordination between the judiciary and other justice Institutional. In most of the cases, people in the society may see the Human Capacities as the outstanding factor, and yet this may not be the case as the institutions play equal important role in

⁶ The UN Joint Programme on Local Governance and Decentralised Service Delivery for Somalia is a 5 year Programme of ILO, UNCDF, UNDP, UN-HABITAT and UNICEF. The Programme is aligned to the programming frameworks of the Somalia Reconstruction and Development Programme 2008-12 and the UN Transition Plan 2008-9.

determining the effective formal justice system, the study therefore endeavors to clarify this.

Objectives of the Study

The Specific objectives of the study are;

1. To examine the effectiveness of the judiciary and other justice institution in Hargeisa.
2. To identify factors affecting the judicial institutional capacities and how they relate to proper justice system.
3. To assess the Existing judiciary legal framework and areas of gap on Justice System in Somaliland.
4. How Judiciary work are Coordinated and interrelated with the other justice institution are effective

Research Question

This study sought to answer the following research questions;

1. How effective is the judiciary and other justice institution capacities in Criminal justice of Hargeisa?
2. What factors other than the Human resource affecting the judiciary system and how does these factors relate to proper justice system
3. What are the Existing judiciary legal framework and areas of gap on Justice System in Somaliland.
4. To what extent the Coordination and interrelation of the judiciary and other justice institution are effective?

Scope of the Study

The study was conducted in Hargeisa; Somaliland situated the North Part of Somalia Republic. The study area only covered Hargeisa; as Hargeisa is the capital City of Somaliland, and hosts almost all the National Justice Institutions whether they are law-making, Judiciary or Enforcement Bodies.

The Content was limited to the judiciary and other justice institution capacities in Criminal justice system in Hargeisa, Somaliland.

Particularly the level of the judiciary and other justice institution capacities in terms of:

Structure and Mandate: e.g Departments, Coordination and Facilities

Institutional Memories: level of Expertise and Senior Staff

Technical Skills: Information sharing and Professional Skills

Methodology:

The Researcher different research approaches:

(A) Documentary Analysis

The literature review was conducted by charting the topic through the use of the library catalogue, relevant journals (in Probation, Psychology and Criminology) bibliographies, textbooks and electronic resources. Google Scholar was the search engine used. Databases such as, Social Science Citation Index, Academic Search Premier, ASSIA Applied Social Sciences Index and Abstracts, JSTOR, Sage Journals, Blackwell Synergy, Swetswise and Hein online were accessed.

(B) Qualitative Research

Questionnaires, focus groups discussions and key informant interviews offered more potential in gathering data that would address the research questions raised

(c) Methods of analysis of Data:

The focus group and key informant interviews were recorded and the content transcribed. The data was coded manually (Miles and Huberman, 1994:55-71) and themes extracted based on the topic guide used and grouped in order to identify and interpret issues pertinent to the research questions.

Concepts and Theoretical Perspectives

The theoretical framework adopted under this study was derived from Oliver Wendell Holmes Jr.⁷ of United States Supreme Court in the 1800's and was largely influential in bringing to the court a distinctively "Darwinian Positivistic" legal philosophy. This theory was adapted for this study because it mainly focuses crime and judiciary institutional aspect, Holmes argued in favor of utilitarian "strict liability" conformity to rule of law which does not require criminal intent⁸. It is sufficient to prove merely that an act was committed which is in violation of the law (*Mala Prohibita*) and the punishment is established with regard to its deterrent effect on others in which effective justice institutions are adjudicated and monitored. One theory is that the effectiveness of crime prevention in each of the justice institutional settings depends heavily on local conditions in the other institutions. In other words, the necessary condition for successful justice institutions practices in one setting is adequate support for the practice in related settings⁹. For instance Schools cannot succeed without supportive families, families cannot succeed without supportive labor markets, labor markets

⁷ Oliver Wendell Holmes, Jr. was a physician, a professor of medicine at Harvard, and an author of novels, verse, and humorous essays. Holmes returned to Boston, decided to study law, and entered Harvard Law School in 1864. Though at first uncertain that law would be his profession, he soon became immersed in study and decided that the law would be his life's work. Oliver Wendell Holmes, Jr. would serve on the Supreme Court longer than any other person—thirty years. He was called "The Great Dissenter" because he was often at odds with his fellow justices and was capable of eloquently expressing his dissents. At first, he attempted a rational, systematic, or "scientific" conceptualization. Further details are in the American History from the Revolution to Reconstruction <http://www.let.rug.nl/usa> accessed 26. May 2013

⁸ Danilet, C., Independence and Impartiality of Justice, International Standard, 2000

⁹ Laurence Helfer & Anne-Marie Slaughter, Why States Create International Tribunals: A Response to Professors Posner and Yoo, 93 CALIF. L. REV. 899, 906 (2005)

cannot succeed without well-policed safe streets, and police cannot succeed without community participation in the labor market¹⁰. These and other examples are an extension of the "conditional deterrence" theory in criminology (Tittle and Logan, 1973; Williams and Hawkins, 1986)¹¹, which claims that legal punishment and its threat can only be effective at preventing crime if reinforced by the informal social controls of other institutions. Likewise the justice institutions need strong coordination among them, through clearly established legal frameworks as well as guiding national policies. In addition to that if the independent variables, inadequate and/or out-dated policies and laws¹², insufficiently resourced judges and courts, a shortage of highly skilled legal professionals, a lack of qualified specialist judges, and a weak judicial institutional structure are appropriately development and capacitated, the justice institutions will be able to perform their duties accordingly¹³. Conceptually, the justice institutions are set of institutions concerned justice with the peaceful resolution of breaches of law or disputes over citizen rights and obligations. These institutions will comprise from Police, Judiciary, and Policy/legal making bodies¹⁴.

Clarification of Key Terms

For the purpose of this study, the following terms are defined as they are used in the study.

Justice Institutions are those are those institutions engaged in justice sector including Courts, Attorney General, Ministry of Justice, Ministry of Interior and Police.

The courts are governmental body that adjudicates legal disputes by interpreting and applying the law to specific cases.

¹⁰ Charles Call, Challenges in Police Reform: Promoting Effectiveness and Accountability (International Peace Academy, 2003), p. 4.

¹¹ Yuval Shany, the Competing Jurisdictions of International Courts and Tribunals 3-7 (2003); Jenny S. Martinez, Towards an International Judicial System, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, the Proliferation of International Judicial Bodies: The Pieces of the Puzzle, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

¹² Danilet, C., Independence and Impartiality of Justice, International Standard, 2000.

¹³ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary (1999) at 2

¹⁴ Laurence Helfer & Anne-Marie Slaughter, Why States Create International Tribunals: A Response to Professors Posner and Yoo, 93 CALIF. L. REV. 899, 906 (2005)

Judges are the guardians of liberty and human rights. Judges decide on whether there are grounds to arrest and detain a person, ensure that the person has access to counsel, preside over trials and, where there are no juries, decide on innocence or guilt.

Attorney General is the lawyer representing the State in a criminal action, he has obvious importance justice system initiatives. Their discretion to pursue criminal cases gives them great power in the administration of justice, especially in situations, where pressure to ignore or forget past crimes might be great.

Defense Lawyer A defense lawyer is an attorney that represents an accused party in legal matters, including in a court of law. The accused party is known as the *defendant*.

Victim is a person who has complained of the commission of an offence against themselves or their property.

Police is constituted body of persons empowered by the state to enforce the law, protect property, and limit civil disorder. Their powers include the legitimized use of force. Under this Study the term is associated with police services of a state that are authorized to exercise the police power of that state within Somaliland.

Ministry of Justice is the Executive organ nominated by the Somaliland President which is tasked to provide coordination and facilitation for the administration of justice and full enjoyment of fundamental rights and freedoms.

Ministry of Interior is the Executive organ nominated by the Somaliland President which is tasked to in-land peace and security in Somaliland including the control and management of the police force, coastal police guards, anti-terrorism functions, immigration, mine clearance, and collaboration with traditional elders.

CHAPTER TWO

LITERATURE REVIEW

This chapter discusses the literature review and related studies in connection to the variables.

The Judiciary Institutions

The use of the term institution has become widespread in the social sciences in recent years, reflecting the growth in institutional legal, economics and the use of the institution concept in several other disciplines, including philosophy, sociology, politics, and geography¹⁵. The term has a long history of usage in the social sciences. However, even today, there is no unanimity in the definition of this concept¹⁶. Furthermore, endless disputes over the definitions of key terms such as institution and organization have led some writers to give up matters of definition and to propose getting down somehow to practical matters instead¹⁷. According the Plato's "Republic" and Durkheim Emile (1895) "The Rules of Sociological Method" justice institutions are any structure or mechanism of social order and cooperation governing the behavior of a set of individuals within a community may it be human or a specific animal one¹⁸. Institutions are identified with a social purpose, transcending individuals and intentions by mediating the rules that govern cooperative living behavior¹⁹. In general the Justice Sector seeks to ensure property and personal safety, security, rule of law and due process. In this regard, the sector provides for the security of all the people, through prevention of crime, investigation, detection and prosecution of criminal activity²⁰. It

¹⁵ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary (1999)

¹⁶ Charles Call, Challenges in Police Reform: Promoting Effectiveness and Accountability (International Peace Academy, 2003),

¹⁷ Richard R.E. Kania and Richards P. Davis Managing Criminal Justice Organizations, 2nd Edition Oct 12, 2011) P 20

¹⁸ Laurence Helfer & Anne-Marie Slaughter, Why States Create International Tribunals: A Response to Professors Posner and Yoo, 93 CALIF. L. REV. 899, 906 (2005)

¹⁹ Robert M. Freeman Correctional Organization and Management: Public Policy Challenges, Behavior, and Structure by (Mar 2, 1999) P 34

²⁰ Harry W. More and Larry S. Miller Effective Police Supervision, Sixth Edition by (Dec 13, 2010) P 11

also seeks to ensure adherence to the rule of law through enforcement, promotion of civic education, local community participation and feedback and establishment of mechanisms in institutions such as the judiciary and law enforcement bodies²¹.

The Judiciary

Ezzard, Martha. (2002). elucidates judiciary as the branch of government that is endowed with the authority to interpret and apply the law, adjudicates legal disputes, and otherwise administers justice. Basically judiciary comprises a system of courts, tribunals, and administrative bodies, as well as the judges and other judicial officials who preside over them, The judicial system is the state machinery for resolving conflicts between individuals, and individuals and the state, according to law. It comprises a hierarchy of courts organized under the doctrines of precedent (like cases should be decided alike) and stare devises (the decisions of higher courts are binding on lower courts in the judicial hierarchy)²². The judiciary, alongside the executive and the legislature, is one of the three principal branches of government²³. Its main function is adjudication (judging) disputes between litigants (parties in a law suit) in the courts²⁴.

Cardozo, Benjamin N. (1998) pointed out under the doctrine of the separation of powers, the judiciary generally does not make law (that is, in a plenary fashion, which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case. This branch of the state is often tasked with ensuring equal justice under law. It usually consists of a court of final appeal (called the "Supreme court" or "Constitutional court"),

²¹ Yuval Shany, the Competing Jurisdictions of International Courts and Tribunals 3-7 (2003); Jenny S. Martinez, Towards an International Judicial System, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, the Proliferation of International Judicial Bodies: The Pieces of the Puzzle, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

²² Danilet, C., Independence and Impartiality of Justice, International Standard, 2000.

²³ Charles Call, Challenges in Police Reform: Promoting Effectiveness and Accountability (International Peace Academy, 2003),

²⁴ Michael Braswell, John Fuller Corrections, Peacemaking and Restorative Justice: Transforming Individuals and Institutions (Jan 15, 2001) P 56

together with lower courts²⁵. Justice Dairy (2011) explained that effective judicial system of a country must ensure that its citizens are able to live safely and in a civilized manner. Every country has its own judiciary system but the crux remains the same. Judicial system brings the culprit to the punishment he deserves. The degree of punishment is judged by the judicial system. Judicial system has been there ever since the recorded history but it has come a long way since then in terms of fairness and efficiency²⁶.

Although the United Nations Basic Principles on the Independence of the Judiciary²⁷, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors are essential tools, no universally accepted road map exists for strengthening the independence and effectiveness of the judiciary and other justice institutions *in a post-conflict environment*. For instance Peacekeepers and other justice experts working on the rule of law will have to assist the judiciary in a variety of ways, including: improving the management and administration of the courts; assisting in recruiting judges, prosecutors and court personnel²⁸; training all judicial personnel; establishing or strengthening independent oversight and disciplinary mechanisms; raising and dispersing additional material resources necessary to run a judicial system; and enhancing the capacity of law faculties at universities to educate future judges and lawyers. Civilian often have to participate in vetting exercises to scrutinize the qualifications and past performance of judicial personnel to ensure they have the requisite qualifications and professional integrity and have not been complicit in past

²⁵ Yuval Shany, the Competing Jurisdictions of International Courts and Tribunals 3-7 (2003); Jenny S. Martinez, Towards an International Judicial System, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, the Proliferation of International Judicial Bodies: The Pieces of the Puzzle, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

²⁶ Laurence Helfer & Anne-Marie Slaughter, Why States Create International Tribunals: A Response to Professors Posner and Yoo, 93 CALIF. L. REV. 899, 906 (2005)

²⁷ Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

²⁸ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary (1999) at 2

human rights violations or crimes against humanity²⁹. Staff must be assigned to monitor the judicial system to identify any problems such as the failure to uphold human rights standards, corruption, political interference or intimidation, absenteeism and lack of resources. Judges, prosecutors³⁰, lawyers, court clerks, notaries, bailiffs, all segments of the personnel of the State's legal system will be crucial interlocutors. Observing trials and monitoring pretrial procedures to ensure adherence to international and national guarantees on limits to pretrial detention, access to counsel and speedy trials, are integral to a mission's work. Seeking such information must be balanced against certain constraints on the justice system's ability to make details about an investigation public. Creating a solid working relationship with justice officials, from the minister of justice down to the lowest-level trial judge or court clerk, is also important for any work a peacekeeping operation may do in the judicial sector. Those assigned to the justice sector may also be requested to advise or assist in establishing mechanisms to address alleged past war crimes, crimes against humanity and serious human rights violations. They may provide information about what other States facing similar challenges have done and suggest possible options like special tribunals, truth and reconciliation commissions, reparations programmes and traditional justice procedures³¹. Together with domestic colleagues, justice expertise may assist in reviewing and revising domestic criminal and civil laws³². Human rights experts operation may vet existing or new laws to ensure that they are consistent with obligations set out in major treaties like the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or*

²⁹ Yuval Shany, *the Competing Jurisdictions of International Courts and Tribunals* 3-7 (2003); Jenny S. Martinez, *Towards an International Judicial System*, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, *the Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

³⁰ Buscaglia/ Dakolias, *Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary* (1999) at 2

³¹ Laurence Helfer & Anne-Marie Slaughter, *Why States Create International Tribunals: A Response to Professors Posner and Yoo*, 93 CALIF. L. REV. 899, 906 (2005)

³² Danilet, *C Independence and Impartiality of Justice*, International Standard, 2000

*Punishment*³³. In transitional administration operations with executive authority (Timor-Leste, Kosovo)³⁴,

Access to justice is often limited to the wealthy, the politically connected and the urban dweller. In many post-conflict settings, the great majority of the population has never had meaningful access to the courts. Instead, the judiciary is seen as a foreign institution, using a language that ordinary people do not understand and lawyers are unavailable or unaffordable. Bringing the courts to the people, especially marginalized groups (based on gender, ethnicity, geography, religion, race, income), so that disputes are resolved quickly, fairly and cheaply, will be a needed and revolutionary change³⁵.

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*³⁶ establishes core principles like access to justice and fair treatment for victims, restitution, compensation and assistance. These can all take many forms and in some cases traditional or customary practices, as we shall see later, may determine their exact content. Peacekeeping operations need to pay more attention to this vital issue. Justice sector officials will need to work with those who assist victims, some deeply traumatized, and link them up with the courts, prosecutors, defense lawyers and

³³ If a State has declared that it is derogating from some of its obligations under article 4 of the Covenant on Civil and Political Rights, field officers need to be aware of the exact extent of the derogation. The Human Rights Committee, however, in an important general comment established strict limitations on the use of derogations and field officers may want to confirm whether or not any derogations are valid under the standards and jurisprudence established by the Committee. See the Committee's general comment No. 29 (CCPR/C/21/Rev.1/Add.11)

³⁴ Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* 3-7 (2003); Jenny S. Martinez, *Towards an International Judicial System*, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, *The Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

³⁵ Buscaglia/ Dakolias, *Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary* (1999)

³⁶ The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General Assembly on 29 November 1985. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power consists of two parts: Part A, on "Victims of Crime", is subdivided into sections concerning "Access to justice and fair treatment", "Restitution", "Compensation", and "Assistance"; and Part B, on "Victims of abuse of power".

medical professionals. Manuals, budgets, counseling, safe houses, the whole panoply of issues related to assisting victims are part of criminal justice reform³⁷.

In Somaliland criminal legal frameworks are outdated and good number of justice elements under the criminal code is not matching the current needs of the criminal justice system particularly the institutional arrangement. Contemporary legal researches and publication was made in the area of the Criminal Code and Procedure by Iqbal Singh, Mohamed Hassan Said (1973) under the authority of the Somalia Ministry of Justice and Religion, Mogadishu. And "the legal system of the Somali Democratic Republic" Noor Muhammad (1972) elucidated the legal framework of the Somali criminal justice based on the code and procedure³⁸.

The United Nations Development Programme UNDP Somalia supported A Comprehensive Assessment Report on Court Administrative and Case Management Systems in Somaliland prepared by Abdihakeem Abdi (2007) explained the prime objective of the Somaliland judiciary is to provide citizens to some access to some form of conflict resolution and rule enforcement. The administrative functions including, among others, personnel, budget and physical facility of the courts are critical to providing this basic service. In this part of the study, the focus is to study the existing administrative functions of Somaliland courts. Furthermore the unitary system state of adopted by Somaliland has no dual court system. The Somaliland Constitution (2001)³⁹ establishes a unitary court system, which has a three level of court structure. That is to say, Supreme Court, the appeal court of regions, and First instant courts consisted of the regional courts and district courts. In addition to this civil courts there is national armed forces Court which exists separately. It is worthy to mention that one of the requirements of the appointment of judge, is that the candidate is required to meet

³⁷ Danilet, C., Independence and Impartiality of Justice, International Standard, 2000

³⁸ Yuval Shany, the Competing Jurisdictions of International Courts and Tribunals 3-7 (2003); Jenny S. Martinez, Towards an International Judicial System, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, the Proliferation of International Judicial Bodies: The Pieces of the Puzzle, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

³⁹ The Constitution of Somaliland was adopted by the Houses of the Parliament of Somaliland on 30 April 2000. The constitution was approved in referendum held on May 31, 2001 when 97% of the voters voted in its favour.

with certain formal criteria (Academic and Experience Levels)⁴⁰. However, at present time no systematic background checks on judgeship candidates are performed. There is also no systematic determination made as to the character of the people applying for judgeship. In other words, it seems that in practice there are no transparent and predetermined procedure for the appointment, promotion and dismissal of judges.⁴¹ Under this research it was discovered that political motivations have influenced appointments and dismissal of judges. Alessandro Campo and Tahlil Hagi Ahmed of United Nations Development Office for Somalia (UNDOS) in (1999) in a assessment on Somaliland judicial system, which highlighted how the Strengthening the capacities of the justice institutions will enhance the justice system to operate openly and impartially while maintaining proper oversight of their hiring, promotion and firing of personnel, budgets, procurement programmes and oversight mechanisms. Strengthening these sinews of good internal governance in the justice sector requires specific attention, expertise and legal and policy frameworks.

To reflect the commitment of the Ministry of justice, in recognition of fundamental rights and freedoms, that has been established under the Somaliland constitutions and other parliament Acts, and the need for effective and comprehensive legal mechanisms that protect citizens against oppression and abuse. the Government of Somaliland and the Ministry of Justice in Particular expressed their commitment in the newly endorsed National Development Plan, (NDP)⁴², that the Ministry is committed to take all the required steps to ensure transparency and effectiveness in the justice system, a commitment that applies to the rule of law in general including court proceedings and investigation processes of civil and criminal cases.

⁴⁰ Laurence Helfer & Anne-Marie Slaughter, Why States Create International Tribunals: A Response to Professors Posner and Yoo, 93 CALIF. L. REV. 899, 906 (2005)

⁴¹ Danilet, C., Independence and Impartiality of Justice, International Standard, 2000

⁴² The overall objective of the SLNDP is to address and overcome structural and institutional development constraints which Somaliland faces and achieve social and economic transformation to attain national prosperity The National Development Plan (NDP) covers the five year period from 2012 to 2016, and was structured in line with Somaliland's Vision 2030.

The NDP aims at creating an enabling environment that is conducive to employment generation especially among the youth, human resource development, technological advancement, effective and efficient governance, increasing competitiveness and rising income levels. This requires higher and sustained Government investment in infrastructure, *institutional capacity building, legal and policy reforms*.⁴³ Among the pillars of the National Development Plan, there is justice pillar which has strategic priorities to achieve in next five years, these include: legal, policy and institutional reforms.

Basically the justice Policy, legal and institutional reforms under the National Development Plan, (NDP) is based on the newly endorsed a National Justice Reform Strategy entitled for reforming the entire laws and procedures of the justice sector in Somaliland, and for improving the justice institutional capacities. One key institution for this initiative is the Law Reform Commission (LRC) established in August 2009 which is tasked to review and improve continuously the laws of the Somaliland. This task entails the enactment of rigorous and continuous assessment, updating, and upgrading of national statutes. Above all the LRC will coordinate its activities with those of law reform bodies and institutions in other countries by way of consultation and interaction. This collaborative effort will facilitate the exchange of consultation papers, reports, and other relevant information.

Finally the Somaliland's Ten Point Agenda for Justice Reform Strategy (2008). The reform took quite some time to commence and yet there were challenges faced along the way (mainly political will due the presidential elections held in Somaliland which resulted new government to come to power, supporting legal framework/reform and capacity elements) and the finally these challenges lead the ineffectiveness of the reform. With that said, it is very encouraging that the new government (elected 2010)

⁴³ Is a 10-point Declaration that sets the stage for justice reform in Somaliland. Covering such issues as ensuring the judiciary has adequate facilities in which to practice, the need for a judicial code of conduct, reform of outdated and incompatible laws and the requirement to draft new laws. The process was highly consultative, involving not only key justice personnel, but also traditional elders, NGOs, civil society, religious and business leaders. Details can be found www.so.undp.org

has several times indicated their political on justice both during the presidential election campaigns and under the National Development Plan, (NDP) of 2012- 2016.

The Law Enforcement (The Police)

Police reform is one of the most important and complex challenges in any environment. It is particularly challenging, however, in post-conflict situations, where the police have often perpetrated serious human rights violations. Largely cut off from the populations they are theoretically meant to serve and protect, and operating more like military contingents than public security officers, such police forces have proved difficult to transform into rights-respecting organizations that simultaneously provide protection and fight crime. The implications for the justice sector and for protecting human rights are enormous⁴⁴.

Police reform, like judicial reform or any effort to change an institution, is intensely political. Power distribution and relationships will change, and resistance is only natural and to be expected⁴⁵. Many in the old order will see reform as a direct threat, a zero-sum game, where they stand to lose and others will gain. Reform also implies that what exists or existed is flawed. People invested in the old structure will not be happy with this conclusion and can be expected to resist change. There is a built-in tension between the judgment of the United Nations that it is important to “build on what exists locally and take local ownership seriously” and the reality that the very need for reform means that what exists locally is inadequate and requires fundamental change.⁴⁶

The United Nations and others embarking on police reform must understand from the outset that the exercise involves much more than a mere “technical fix” or tinkering

⁴⁴ Yuval Shany, *the Competing Jurisdictions of International Courts and Tribunals* 3-7 (2003); Jenny S. Martinez, *Towards an International Judicial System*, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, *the Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

⁴⁵ Buscaglia/ Dakolias, *Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary* (1999) at 2

⁴⁶ Charles Call, *Challenges in Police Reform: Promoting Effectiveness and Accountability* (International Peace Academy, 2003),

purely with the operational side of a police force⁴⁷. The local population will interpret every project, every training or public awareness campaign as a political initiative and will do a political calculus of what it stands to gain or lose from the effort. Police reform will inevitably transform a society; it is a major exercise in State-building requiring the population to have confidence in the police and the police to serve the public regardless of political agendas and despite their recent experience. Such a dynamic represents a pivotal change in how society is governed in most post-conflict and crisis States. "Policymakers and critics have to recognize that civilian police missions are an integral part of a vast and ambitious project of conflict management and political and socioeconomic development." And they must also recognize, and budget for, a long-term commitment since this will take years, not months⁴⁸.

In general, The Police are the first representatives of the criminal justice system that victims encounter. The first police to arrive on scene are usually the nearest uniformed officers on patrol⁴⁹. The priorities they set and the action they take will depend on the situation as they find it. They may make an arrest and/or lay criminal charges or they may simply commence an investigation⁵⁰. Investigations may take hours, days, and weeks or months depending on how serious the situation is, the number of people involved, and the amount of other work the police have⁵¹.

A Baseline Survey⁵² conducted by Faculty of Law, University of Hargeisa, Somaliland, with support from the UNDP Rule of Law and Security Programme on

⁴⁷ Laurence Helfer & Anne-Marie Slaughter, Why States Create International Tribunals: A Response to Professors Posner and Yoo, 93 CALIF. L. REV. 899, 906 (2005)

⁴⁸ Yuval Shany, the Competing Jurisdictions of International Courts and Tribunals 3-7 (2003); Jenny S. Martinez, Towards an International Judicial System, 56 STAN L. REV 429 (2003); Cesare P.R. Romano, the Proliferation of International Judicial Bodies: The Pieces of the Puzzle, 31 N.Y.U. J. INT'L L. & POL 709 (1999)

⁴⁹ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary (1999) at 2

⁵⁰ Richard R.E. Kania and Richards P. Davis Managing Criminal Justice Organizations 2nd Edition: An Introduction to Theory and Practice (Oct 12, 2011)

⁵¹ Nathan F. Iannone, Supervision of Police Personnel (7th Edition Jun 28, 2008)

⁵² This was A Baseline Survey conducted by Faculty of Law, University of Hargeisa, Somaliland, with support from the UNDP Rule of Law and Security Programme on Strengthening the Quality and Scope of Justice Provision and Policing in Somaliland

Strengthening the Quality and Scope of Justice Provision and Policing in Somaliland indicated how the Somaliland Police struggled to undertake his normal policing duties as it remains an authoritarian institution, inaccessible to the majority of the population, it lacks effective management, has no effective rank structure and its officers are poorly equipped and poorly trained, Having mentioned that Police is the starting point of justice system, in most of the cases that will not be the case as the Current policing performance is hampered by institutional weaknesses, low capacity and education of police staff a lack of professional integrity and discipline and high levels of corruption. In Somaliland core criminal justice institutions like the judiciary, police and prison service all too often operated as separate, even quarrelling fiefdoms⁵³. Little cooperation existed. In most of them these institutions rarely fulfilled their duties as defined by law, which was one of the proximate causes of the weak institutional capacities and lack of coordination⁵⁴. So a major challenge for justice system will be to help professionalize each of these institutions while simultaneously building bridges between and among them where limited previous exchanges existed⁵⁵.

⁵³ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department, The World Bank, An Analysis of the Causes of Corruption in the Judiciary (1999) at 2

⁵⁴ Somaliland Academy for Peace & Development The Judicial System in Somaliland - Report of a Workshop 2002

⁵⁵ Alessandro Campo and Tahlil Hagi Ahmed of United Nations Development Office for Somalia (UNDOS) in a assessment Report on Somaliland judicial system, in (1999)

CHAPTER THREE

The Judiciary Legal and Institutional Framework

As for the legal system in force in Somaliland, it must be noted that since the union between the UN Trusteeship of Somalia with the former British Somaliland (1960), the civil law system was introduced in the whole country and applied by courts for the majority of matters. Shari'a' law and Customary law were applied only in civil disputes where the cause of action has arisen under the said law. Indeed, Shari'a' law is not applied to criminal cases. But rather it is applied for personal statute matters, i.e. family disputes, inheritance, child custody, etc. Shari'a' law is applied by a judge of the Civil Section of the District Court and not by a separate Shari'a' Court⁵⁶.

The Sharia Law

All judges are under a constitutional obligation to ensure that the application of formal laws is consistent with Sharia law.⁵⁷ Lower court judges, who are less familiar with formal laws, were reported to apply customary law to the cases before them to the neglect of upholding the formal laws. It is recommended that deeper research be undertaken to determine the extent and precise manner to which each body of law is applied by formal judicial actors.

The Customary Law

Three legal systems operate in Somaliland: formal, customary and Islamic Sharia. The judiciary applies these legal systems in the court proceedings. In this particular section we are concerned with the application of customary laws in the court proceedings. The

⁵⁶ Joint assessment made by Somaliland government and 'The United Nations Joint Program on Local Governance and Decentralized Service Delivery in Somalia in October 2009,

⁵⁷ Article 5(2) ("2. The laws of the nation shall be grounded on and shall not be contrary to Islamic Shari'a").

recognition of the application customary law is reflection of traditional conflict solving of the Somaliland society. As observed the courts assessed in practice apply customary laws and dispose large number of cases coming to the court on the bases of customary law practice. Courts studied apply customary law to both civil and criminal cases. At this point it suffices to discuss the application of customary law in the criminal case proceedings. The Criminal Procedure Code the regulate the process of criminal proceedings recognizes the application of customary law, and authorizes the prosecution to with draw criminal charge at any stage of the trail process if the victim of the offended act and the accused agree so throughout court settlement. And it is on the bases of this procedure that large numbers of criminal cases are resolved.

The application of customary law is also common to civil suits in the courts surveyed. Cases related to family issues is one the area that courts apply the customary laws. It is common belief that application of customary law is in many aspect contradictory to the Islamic sharia laws and formal laws, particularly human rights, and at the same time prejudicial to rights and interests of women. But there is no legal rule that determine the condition upon which the courts should observe in applying customary laws. However, courts use to apply customary laws to civil cases including family issues. This deserves to conduct further study on the impact of the application of customary law to formal justice system and the way forward to harmonize the laws.

Judges and community elders highly value the symbiotic relationship between the formal and informal systems. "The government is weak after the war, so we – the courts and the traditional leaders – are joined in resolving cases in the community."⁵⁸ Specifically, each body defers to the other to resolve a dispute where it is in the best interests of maintaining harmony in the community; likewise, each body will undertake to enforce a decision of the other to this effect.⁵⁹ Thus, though the formal courts do not apply customary law in their own right, they will take action to enforce community

⁵⁸ Interview with Acting President, Appellate Court, Hargeisa 14 Feb 2013

⁵⁹ Lawyers reported that when a case reaches court, the presiding judge first asks the parties whether they wish to resolve the case outside of court.

decisions that are based on customary law. In especially complicated cases, traditional leaders are more likely to handle a case outside of court while the court will enforce their decision to maintain community harmony. In the case of rape, forty percent of cases were reported by one regional judge as transferred to the traditional leaders.

The Statutory Law:

The Indian Penal Code (1860) was the main legal document administered the criminal justice of Somaliland prior the union with Somalia, later of the unifications of the north and south, the Somali Republic National Assembly passed Law No: 5 of 30 January 1962 which delegated to the Government power to enact within six months a Penal Code, a Criminal Procedure Code, a Traffic Code and an Organization of the Judiciary Law⁶⁰.

At page 45) remarks that to produce an integrated Penal Code and Criminal Procedure Code within six months was "*a Herculean Endeavour*". As it was "*obviously impossible to produce ex novo two original codes within the allotted time, the first question was whether to use*" the Somaliland law or the Somalia law, the deciding factor was, in end, the choice of the Somalia members "*as most of the ministers and government officials were Italian trained*" and so they opted for Italian Penal Code. Except for few changes to reflect Somali circumstances, the Code is word for word the Italian 1930 Penal Code drafted by a Special Commission presided by professor Arturo Rocco⁶¹.

The **Somalian Penal Code** was first prepared in 1957 by the "Somalia Court of Justice". After the 1962 Decree Law, a Legal Committee presided by Renato Angeloni completed the draft, which was then sent to Somaliland for comments, and according to Contini⁶²:

"Owing to the difficulties encountered by the Northern (Somaliland) judges and police officers in understanding many of the provisions, a working group of

⁶⁰ Frank Cass & Co, London Details regarding the enactment process can be referred Contini (in the Somali Republic: An Experiment in Legal Integration, , 1969 Page 23-31

⁶¹ Ibid

⁶² This note was consulted and extracted from the www.Somalilandlaw.com as well as Ganzglass M *The Penal Code of the Somali Democratic Republic*, Rutgers University Press (1971)

experts, appointed by the Minister of Justice, proposed a number of amendments for the purpose of clarifying and simplifying the text. The Special Commission, however, decided not to consider the proposed amendments and, on December 12, 1962, transmitted to the Council of Ministers the text previously approved. The Penal Code was approved by the Council of Ministers on the following day and signed by the President of the Republic three days later.”

The Code came into force on 2 April 1964. On reassertion of its independence in 1991, the Republic of Somaliland decided to continue applying the Penal Code and therefore all the references to the state and the government in the Penal Code would be those of Somaliland and not Somalia. The Code has been in force in Somaliland since then, but, under Article 130(5) of the Constitution (and prior to that under the Somaliland National Charter), all the articles in the Code which are in conflict with Somaliland sovereignty, Islamic Sharia or the fundamental rights and freedoms enshrined in the Somaliland Constitution are null and void. Human rights law has developed since the code (and its 1930s model) was drafted and there are a number of articles (such as those which protect public officials unduly to the detriment of the rights of citizens) that are likely to fail this test. The remainder of the Code, which does need some updating, is proving to be useful for Somaliland, primarily because the police forces and the legal profession have been trained on it, and it is, after all, fairly comprehensive in its coverage.

The Code consists of 641 Articles, grouped in three Books (Chapters) which are headed:

1. **Offences in General**- covering general principles that apply to all offences, such as the elements of an offence (actus rea and mens rea), the offenders, punishment etc
2. **Crimes**, i.e serious offences, such as murder, rape etc
3. **Contraventions**, i.e minor offences such as begging, failure to control large and dangerous animals etc

The **Crimes** are grouped under 13 main headings, such as crimes against: the personality of the state, the public administration, and the administration of justice,

religious feelings, public order, public safety, the economy, the morals, health, family, the person and Property. The **Contraventions** are grouped under 5 main headings, such as those relating to: Public Order, Public Safety, Prevention Of Some Offences, Morals And Public Health.

Nine years after the end of the civil war in the Northwest Somalia, significant progress has been achieved in the administration of justice, though some problems still remain unresolved. The positive factors include the qualifications of majority of judges, and the efficiency of police in apprehending and prosecuting criminals. Currently most of the judges in Somaliland possess a law degree obtained from reputable universities, such as the Somalia National University, Sudan, al Azhar and University of Hargeisa, and have a proven track record in judicial matters. Among the judges without law degrees, most of them have a solid education in Shari'a matters, especially the district court judges, and practice on judicial matters.

Many judges hope that the economy of the country will improve and that salaries will rise accordingly. Unfortunately, this does not seem to be the case for the near future, and judges cannot bear the burden of their duties on a voluntary basis forever. Another problem is the lack of legal textbooks, office equipment, inadequate services, and transport facilities. And, if this situation persists, it will be difficult to induce new potential candidates to take up a judicial career. Another constraint is the difficulty of district judges to administer civil and criminal laws/procedures. This is not surprising if one considers that civil and criminal legislation and procedures are available only in English and Italian, and the majority of district judges can read only Somali and Arabic. In Somaliland, moreover, the number of qualified judges and judicial support staff is not sufficient for the proper administration of justice.

The Judiciary Law;

The Somaliland judiciary was established as a three-tier system, including a supreme court, courts of appeal, and regional and district courts: "The district courts deal with claims up to SI.Sh. 3 million [approximately US\$600] and offences punishable by sentences of less than three years. The regional courts deal with claims that are more than SI.Sh. 3 million and jail terms in excess of three years. Six district courts and six regional courts are functioning, namely those at Hargeysa, Gabiley, Boorame, Burco, Ceerigaabo, and Berbera. There are also five appeal courts, located Hargeysa, Boorame, Burco, Ceerigaabo, and Berbera. Most of these courts have only one judge."

That said, the Somaliland legal code remains a contradictory mixture of laws and procedures drawn from both the British common law and Italian civil law heritage, as well as shari'a and clan xeer. In reality... the application of diverse legal codes continues, and interpretation of the laws remains ad hoc, non-uniform, and highly subjective.^{23A} A survey conducted by the Hargeisa-based Academy for Peace and Development (APD) in 2002, identified the following problems: the incoherent amalgamation of overlapping and at times contradictory legal principles and laws based on British common law, Italian civil law, traditional clan xeer, and Islamic shari'a; lack of professionally trained staff, including judges, lawyers, clerks and civil servants; limited number of functioning courts across the region; poorly equipped offices and courts where they exist; regular interference in court matters by both politicians and influential clan communities, leading to a lack of judicial independence; and lack of public knowledge of the role and functioning of the judiciary, as well as lack of public access and trust. The primacy of customary clan justice over the formal judicial system is ubiquitous across Somalia:

"For instance, someone guilty of homicide may be brought before court for trial under positive law, but if settlement is reached outside the court in accordance with xeer (traditional social contracts), he or she may be set free without punishment. This is

particularly so where law enforcement and the courts are weak or non-existent, where warrants cannot be enforced, and relatives apprehend the offender. When the relatives settle an offence according to customary laws outside the judiciary system, judges and law enforcement officers cannot prevent the release of the offender brought to them by the relatives who now insist on his release. Women can be particularly vulnerable to the substitution of customary law for positive or shari'a law. Elders routinely exert pressure on women to settle out of court through traditional channels and thus forfeit their legal rights. According to APD, 'Of 35 practising judges in June 2002, only 19 possessed law degrees, while the rest have some basic education and experience in administering the shari'a.' In part, this can be explained by the 'brain drain' of Somali professionals during and after the Siad Barre dictatorship. Additionally, following independence, most Somali judges and lawyers were drawn from and concentrated in southern Somalia. This was due to their experience with Italian-language legal training and practice that was adopted by the independent Somali governments, as well as the fact that Mogadishu was the capital city and the site of the country's university system.

However, not all the shortcomings of Somaliland's judicial system can be blamed on the past; lack of government action in addressing these problems is a major factor. Despite the ability of the Somaliland administration to maintain a remarkably higher degree of law and order than any other part of the country, the development of the justice system in Somaliland faces a large number of limitations. A recent report by the International Crisis Group concluded that 'Somaliland's judiciary has spent most of the past decade mired in incompetence, corruption and political indifference.' The report called on the Somaliland administration to begin 'an independent judicial review, with a view to introducing reforms strengthening both the capacity of the judiciary and its independence from political influence.' While the Somaliland administration has appointed an official Law Review Committee, since 2002, to assess all existing laws and propose changes where necessary, the committee has neither moved quickly, nor is it tasked to pay any significant attention to aspects of xeer or shari'a that are not already included in formal state law.

In the meantime, public perception of the Somaliland justice system is that the courts are too problematic, uncertain and prone to corruption. Without an agreed set of laws and without formal guidelines for determining who qualifies to sit on a court,¹ Judges differ in their application of the law according to their backgrounds, specialties, philosophy, and pragmatism. Since there are no written guidelines, judges often base their verdicts on individual assumptions and beliefs.² One lawyer interviewed for this paper stated that, “Guilt and “innocence” are not operative concepts in Somaliland. The focus of any legal decision is to arrive at a “win-win” solution that the parties to the dispute are willing to implement. Thus, the strain on government mechanisms to enforce legal decisions is as low as possible. ‘Accusations of inefficiency, lack of transparency and corruption were exacerbated by political controversy between the Minister of Justice and Chief Justice over leadership of the Justice Committee, which ostensibly exists to ensure the impartial appointment, monitoring and management of judges.

CHAPTER FOUR

PRESENTATION, ANALYSIS AND INTERPRETATION OF DATA

Introduction

This chapter presents the findings of the study and the analysis of the results. It also establishes the interpretations of the study in relation to the research objectives and the literature reviewed. Findings are derived from the questionnaires, Focus group discussions and Key informant interviews administered to various categories of respondents.

Profile of Respondents

Before answering research questions, this study determined the profile of respondents. This was done in regard to respondents' gender, age groups, education level, marital status and their level of experience. The findings regarding the profile of respondents are indicated in frequencies and percentages as shown in Table 1.



Table 1: Respondents' Profile (n=109)

Gender	Frequency	Percent
Male	74	67.9
Female	35	32.1
Total	109	100.0
Age group		
20-29	16	14.7
30-39	44	40.4
40-49	16	14.7
50-59	22	20.2
50 and above	11	10.1
Total	109	100.0
Education Level		
Primary	7	6.4
Secondary	19	17.4
Diploma	36	33.0
Bachelor	34	31.2
Masters and above	13	11.9
Total	109	100.0
Work Experience		
1 less than 1 yr	34	31.2
1 to 2 yrs	36	33.0
3 to 4 yrs	13	11.9
5 to 6 yrs	19	17.4
7 yrs and above	7	6.4
Total	109	100.0

Source: Primary Data

As indicated in Table 3, females formed 32.1 percent of the respondents while males formed 68.9 percent. The understanding from this is that much as both men and women were involved in this study as respondents, most of the respondents were men. Both men and women were sampled to participate in this study because issues under investigation such as Institutional capacities, Law enforcement and existing legal

framework. Thus, information from the two genders was complimentary to each other and this enabled fairly balanced findings based on their gender differences.

Table 3 also indicates that the majority of the respondents (40.4 %) were at the age group of 30 to 39, next was those in the age group of 50 to 59 (20.2 %), then followed by the age groups of 20 to 29 and 40 to 49, each composed of (14.7 %), then the least participants in this study were those from 60 years and above who formed (10.1 %). Differences in age group of respondents also helped in obtaining different ideas and perceptions about Institutional capacities, Law enforcement and existing legal framework hence enhancing fair research findings. The summary on the highest education qualification of respondents indicates that the majority of the respondents (33 %) had attained diploma; followed by those who had degree (31.2 %); and then those who dropped out right at their A-level secondary school (17.4 %); then those who had from master degree and above formed 11.9 percent; and lastly, those who dropped out of primary school were the least participants in this study with only 6.4 percent. From the findings on education level of respondents, it can be noted that most of the respondents well educated (76 %, those from diploma, degree, masters and above). Differences on education level helped in analytical research since some of the findings were influenced by education levels of respondents.

Concerning the Work Experience of the respondents, the finding indicated that the majority of the respondents (36 %) had 1 to 2 yrs of working experience in the field of justice, followed by those (31.2 %); who had 1 or less than year of working experience. and then those who had 5 to 6 yrs of experience which had total percentage of (17.4 %) of the respondent; then those who had 3 to 4 yrs formed 11.9 percent; and lastly, the 7 yrs and above working experience came only (6.4) percent. From the findings on Working Experience level of respondents, it can be noted that most of the respondents well experienced enough (76 %, those from 1 to 2 year and above). However the Differences on working experience level helped in analytical research since some of the findings were influenced by working experience levels of respondents.

Judiciary Institutional Capacities

The first research objective was set to determine the Judiciary Institutional Capacities in Somaliland justice System. In order to attain this objective, 15 research questions were asked (confer the questionnaire in the appendices) and each question was based on the four points scale. This ranges from one to four, where 1= strongly disagree, 2=disagree, 3=agree and 4= strongly agree.

In all the questions asked to determine the second research question, respondents were asked to rate the Judiciary Institutional Capacities in Somaliland justice System by ticking one item from the four options. Mean ranges were used to guide in the interpretation of findings. Since the most of the questions to determine Judiciary Institutional Capacities in Somaliland justice System were negatively formulated, the following mean values and their interpretations were used. The mean values from 3.26-4.00 mean that the respondents strongly agreed with the statement hence the Judiciary Institutional Capacities in Somaliland justice System are *very ineffective*; mean ranges from 2.51-3.25 show that majority of the respondents agreed with the statement hence Judiciary Institutional Capacities in Somaliland justice System are *ineffective*; then mean ranges from 1.76-2.50 indicate that majority of the respondents disagreed with the statement thus Judiciary Institutional Capacities in Somaliland justice System *effective*; and lastly; mean ranges 1.00-1.75 portray that majority of the respondents strongly disagreed with the statement hence the Judiciary Institutional Capacities in Somaliland justice System are *very effective* Table 4 on the next page presents the summary of findings on Judiciary Institutional Capacities in Somaliland justice System.

Table 2: Judiciary Institutional Capacities in Somaliland justice System (n=109)

Indicators	Mean	Rank	Interpretation
The Somaliland judiciary institutions are not well coordinated institutions in legal framework and in Practical.	3.04	1	Ineffective
The current justice institutional strictures in place are not well sufficient in serving the justice well.	2.94	2	Ineffective
The role of the Ministry of Justice in leading national justice institutional policy and legal framework is not effective.	2.90	3	Ineffective
Other than administration of Justice, Ministry of Justice is also mandated to coordinate other Justice institutions.	2.12	4	Effective
In Hargeisa, formal Justice Institutions such as Police, Courts and judges are not accessible every time in Districts.	2.83	5	Ineffective
In Hargeisa, Informal Justice Institutions such as the traditional system of justice of Elders or arbitration councils are not accessible every time in every District.	2.12	6	Effective
The Judiciary Institutions has not enough institutional faculties in place for better justice management at all levels.	2.74	7	Ineffective
The Judges/Court Personnel are not respectful and polite	2.71	8	Ineffective
It is not easy to find where you needed to be in the Courthouses at Supreme Court during case Proceedings.	2.67	9	Ineffective
It is not easy to find where you needed to be in the Courthouses at Appellate Court during case Proceedings.	2.65	10	Ineffective
It is not easy to find where you needed to be in the Courthouses at Regional Court during case Proceedings.	2.56	11	Ineffective
It is not easy to find where you needed to be in the Courthouses at District Court during case Proceedings.	2.65	12	Ineffective
The orders or decisions of the court and the information are not clear and can be understood	2.31	13	Effective
The Cases are not trailed with reasonable time	2.12	14	Effective
The Judges of the different level courts in Hargeisa are not best qualified in educational background and legal expertise.	2.65	10	Ineffective
The Best justice institutions in the country are not available in Hargeisa city.	2.56	11	Ineffective
The prosecutor lack the resources, facilities, man power in the investigations and prosecution.	2.65	10	Ineffective
Overall Average Mean	2.68		Ineffective

Source: Primary Data

The findings on Judiciary Institutional Capacities in Somaliland justice System using means in Table 2 indicate that respondents regarded the majority of items as ineffective though few items were also regarded as effective.

Respondents agreed that Judiciary Institutional Capacities in Somaliland justice System are inactive because lack of the effective legal frameworks, clear institutional mandates and competent justice personal. Judicial personal are often limited in capacity as most of the legal practitioners don't like working on justice system mainly due to low payments of the Justice personal. The Somaliland Government seeks to put in place effective mechanism on enhancing the Judiciary Institutional Capacities in Somaliland justice System with support of the UN and other international Organizations however this mechanism is yet to be efficient as it has been rated at the mean of 2.94; The Justice Institutional Personal are strongly emphasizing the need of the efficiently and modern facilities on criminal investigation, overall management of the justice system rating 2.65. The Justice Personal strongly supported that the Judges of the different level courts in Hargeisa are best qualified in terms of educational background and legal expertise compared to that of the other regions mainly because most of the effective justice institutions are concentrated in Hargeisa thus rated 2.65. Because of the new law student graduates coming in the justice the most Cases are trailed with reasonable time thus rated 2.12. Positive sign was shown on effectiveness and timely accessibility of the Informal Justice Institutions such as the traditional system of justice of Elders or arbitration councils at very remote areas, however the level of justice of such arbitrations were raised both procedural and substantive aspects. Respondent unanimously agreed that It is not easy to find where you needed to be in the Courthouses at first and second instance courts during case Proceedings thus rated 2.65. Regarding the administration of Justice, the respondents were aware the mandate of the Ministry of Justice as coordination of other Justice Institutions as well as policy guidance. However the degree of the effectiveness and competency of the Ministry of Justice in performing such tasks was large concerned and thus rated 2.65.

Furthermore, respondents disagreed on some items used to determine the effectiveness of Judiciary Institution in Somaliland. This means that they considered that these items were effective. Respondents disagreed that Judiciary Institutions in Somaliland justice System are not accessible easily to the public to hear a case or get information from the court rated at the mean of 2.35; they also disagreed that judiciary Institutions are transparent and accountable and some time cases are adjudicated on the basis of unfair and impartial trial as a way of preventing crime rated at the mean of 2.31. In order to establish the overall picture on how effective the Judiciary Institutions in Somaliland are, mean values for all the 15 items in Table 4 were added and the sum was divided by 15 to get the overall mean of 2.68, which falls under ineffective on the rating scale. This signifies that Judiciary Institutions in Somaliland are generally limited and ineffective.

The Coordination between the Judiciary and other justice institutions.

The second research objective was set to determine the Coordination between the Judiciary and other justice institutions. To achieve this research objective, 8 questions based on the four points Likert scale ranging from one to four were formulated, where 1= strongly disagree, 2=disagree, 3=agree and 4= strongly agree. Respondents were then asked to rate the Coordination between the Judiciary and other justice institutions by ticking one number from the four options.

To interpret the data, the following mean ranges were used; mean ranges from 3.26-4.00 indicated that most of the respondents strongly agreed with the statement hence the Coordination between the Judiciary and other justice institutions is *very high*; mean ranges from 2.51-3.25 indicate that majority of the respondents agreed with the statement hence the Coordination between the Judiciary and other justice institutions is *high*; mean ranges from 1.76-2.50 show that majority of respondents disagreed with the statement hence the Coordination between the Judiciary and other justice institutions is *low*; and lastly, mean ranges from 1.00-1.75 indicate that majority of the respondents strongly disagreed with the statement hence the law enforcement under the Somaliland criminal justice system *very low*. Below Table 5 are the summarized

responses from respondents on law enforcement under the Somaliland criminal justice system.

Table 3: The Coordination between the Judiciary and other justice institutions (n=109)

Indicators	Mean	Rank	Interpretation
There are weekly or monthly Coordination meetings among the Judiciary and other justice institutions	2.95	1	High
The current existing coordination mechanism between the Judiciary and other justice institutions are not strong enough to serve the justice well.	2.77	2	High
The public attitude towards the Judiciary as main competent of the justice system is not high.	1.69	3	Low
The Judiciary agencies don't work together in the community	2.61	4	High
The judiciary don't work together with the other justice institutions closely	2.59	5	High
The judiciary have the sole authority to adjudicate cases or solve legal cases	2.38	7	Low
The Judiciary Officers has not sufficient facilities and instrument for better justice management	2.33	8	Low
Overall Average mean	2.41		Low

Source: Primary Data

The findings in **Table 3** indicate that respondents lowly rated most of the items on the Coordination between the Judiciary and other justice institutions.

To some extent, respondents believed that the degree of the Coordination between the Judiciary and other justice institutions. The degree the Coordination between the Judiciary and other justice institutions is high because the basic coordination

mechanism is in place in paper work (through laws and policies). However the effectiveness of this Coordination between the Judiciary and other justice institutions outside Hargeisa are very weak rated at the mean of 2.95;

Respondents agreed fairly that most of the judiciary Officers are fair and Just in carrying out their adjudication. However there are cases where the respondents mentioned the presence of corrupt public officers in justice system. The respondent negatively responding that the judiciary doesn't work together closely with the community as there is huge gap on information sharing mechanisms i.e channels and means rated at the mean of 2.69; Although the respondents agreed that in common sense the public attitude towards the judges and other court personals as main competent of the justice system is high, the confidence of public in judiciary work is very limited thus rated at the mean of 2.61;

Interestingly The respondents were unenthusiastic that the judiciary have the sole authority to conduct examination and adjudication of Criminal violations in Hargeisa as there are other investigative mechanism sometimes deployed rated mean of 2.38. The general impression on the Coordination between the Judiciary and other justice institutions also established and this was done by adding up the mean values of the 10 items in Table 5 and dividing the sum by 8 to get the overall mean value. Since the overall mean value computed was 2.41 and this falls under low in the rating scale, it was concluded that the Coordination between the Judiciary and other justice institutions is low much as the Somaliland government is unable currently to build effective justice system bodies to support the overall justice administrations.

Discussion on the Findings relating to effectiveness of the Judiciary and other justice institutions

The Judiciary Organ is constitutionally⁶³ established as an independent organ which is institutionally composed of: the Courts; The Office of the Attorney General and a

⁶³ Chapter of the Somaliland Constitutions, Article 97, further can be also consulted with the Federico Battered and Alessandro Campo (2001) "The Evolution and Integration of Different Legal Systems in the Horn of Africa: the Case of Somaliland", *Global Jurist Topics*: Vol. 1: No. 1, Article 4.

Judicial Commission for the recruitment, promotion, dismissal and disciplining of Judges. For the purpose of this study we briefly describe below the competence and the organization of each of these components.

Court System

The Republic of Somaliland is a unitary state and has no dual Court system. The Constitution of Somaliland established a unitary Court system, which has three levels of Court structure. That is to say, the Supreme Court, the appeal Court of regions, and first instance Courts consisting of the regional Courts and district Courts. In addition to this the Somali land constitution establishes the court of the national armed forces (see Art. 100 of the Somaliland Constitution) and a High Court of Justice. The judiciary in Somaliland is primarily⁶⁴ composed of a Supreme Court, followed by Appellate Courts in each of the regional capitals, and first instance courts that consist of Regional Courts⁶⁵ and District Level Courts.⁶⁶ A national Judicial Commission is responsible for the overall administration of the judiciary, which is colloquially referred to as the "High Judicial Council."⁶⁷ Under the Constitution of the Republic of Somaliland, the Judicial Commission is responsible for "the appointment, removal of office, promotion, demotion, transfer and discipline of the judges of the lower courts (the Appeal, Regional and District Courts)."⁶⁸ The Judicial Council presently does not possess office space or receive any direct technical support. With the appropriate technical assistance, the Judicial Commission should be encouraged to operate with greater transparency;

⁶⁴ Article 100(5) of the Constitution of the Republic of Somaliland also establishes the Courts of the National Armed Forces, which has special jurisdiction in hearing charges brought against members of the armed forces in peace or war.

⁶⁵ The Appellate and Regional Courts possess jurisdiction over civil, criminal, taxation and juvenile matters.

⁶⁶ The District Courts technically include a Small Claims section, which adjudicates criminal cases that are punishable below three years of imprisonment, a Family section and a Juvenile section.

⁶⁷ Article 107 (1), The Constitution of the Republic of Somaliland ("The Judicial Commission is the body which directs the administration of the Judiciary") The Council is headed by the President of the Supreme Court and includes two additional justices from the Supreme Court, the President of the Public Service Commission, the Deputy Justice Minister from the Ministry of Justice and the Attorney General. It appears to be colloquially referred to as the "Higher Judicial Council."

⁶⁸ Article 108 (1), The Constitution of the Republic of Somaliland (Note, "the other personnel who work in the judiciary shall come under the provisions of the Civil Service Law

specifically, the procedures underlying its activities ought to be clearly articulated through the drafting and adoption of rules of operations and procedure.

Most of the Court buildings were either built during the colonial era or from 1960 to 1987. A few rooms were added after then from 1991. The Court locations were established during the colonial era before 1960. However, the cities have expanded, which has meant the location of the Courts now falls outside the city centre. The land grabbing and public property embezzlement that has become the norm of the day, which resulted from the civil war, has not spared even the Courts allocated land and buildings or the facilities. On account of this, some of the Courts have only a small space reserved for extension of land or for new buildings, while some Court buildings are currently occupied by private families and individuals. The land which has been grabbed is filled with shanty housing and/or buildings which encircle the Court perimeters from all sides; moreover, what is more worrisome from a security perspective is that nobody knows their residents or whether they have any legitimate land/building deeds. The buildings currently in use are structurally fragile, poorly designed in a manner not in line with standard Court architecture nor suitable for present day needs. The structural design and rehabilitation can be said to have been further undermined after 1991 where design and need has been forfeited due to cost considerations. Most of the judges have no private toilets; they share the roofless toilets built for the public. In addition, most of the judge's chambers are detached from the Court rooms. This poor design places the judges open to considerable risks of insecurity. No space is provided for evidence storage; or for filing or private rooms for client/lawyer consultations or witness privacy; nor holding cells and information counter etc. In addition, no provision has been made for the accessibility of elderly and disabled clients. No markings whatsoever are seen on all the buildings whether on the compound of the Courts or for distinction between the Courts in the same compound or between the rooms.

Most of the Courts are sparsely furnished with old chairs, desks, cupboards/cabinets, forms/ benches and typewriters. This furniture and the fixtures are either brought by

the judges/ Court personnel from their homes or provided through aid and assistance from humanitarian organizations. It appears too that many of these resources have also gone missing including the disappearance of all legal resources. No publicly owned legal text books, statutes, regulations, directives, circular or case files have survived. The legal resources we encountered in the Courts were privately owned by the lawyer or judge. All the Courts assessed adopt the practice of remanding suspects to prisons which are not very far from their respective buildings. The responsibility for bringing suspects remanded in the prisons lies with the Custodial Corps if the suspect appealed from a conviction by a lower Court, or with the police if the matter is at the pretrial or the end of trial stage. This is costly in that there are no transportation means accessible to the bodies responsible for taking suspects to the Court. In addition, this process leads to confusion in that the prison authorities are mandated to keep up to date records of the inmates. If the Police take a suspect from the prison to the Court, and the Court orders the immediate release of the suspect; then it becomes normal practice that the police do not report the release to the concerned prison authority.

Composition of Courts

The judiciary in Somaliland is primarily⁶⁹ composed of a Supreme Court, followed by Appellate Courts in each of the regional capitals, and first instance courts that consist of Regional Courts⁷⁰ and District Level Courts.⁷¹ A national Judicial Commission is responsible for the overall administration of the judiciary, which is colloquially referred to as the "High Judicial Council."⁷² Under the Constitution of the Republic of

⁶⁹ Article 100(5) of the Constitution of the Republic of Somaliland also establishes the Courts of the National Armed Forces, which has special jurisdiction in hearing charges brought against members of the armed forces in peace or war.

⁷⁰ The Appellate and Regional Courts possess jurisdiction over civil, criminal, taxation and juvenile matters.

⁷¹ The District Courts technically include a Small Claims section, which adjudicates criminal cases that are punishable below three years of imprisonment, a Family section and a Juvenile section.

⁷² Article 107(1), The Constitution of the Republic of Somaliland ("The Judicial Commission is the body which directs the administration of the Judiciary") The Council is headed by the President of the Supreme Court and includes two additional justices from the Supreme Court, the President of the Public Service Commission, the Deputy Justice Minister from the Ministry of Justice and the Attorney General. It appears to be colloquially referred to as the "Higher Judicial Council."

Somaliland, the Judicial Commission is responsible for “the appointment, removal of office, promotion, demotion, transfer and discipline of the judges of the lower courts (the Appeal, Regional and District Courts).”⁷³ The Judicial Council presently does not possess office space or receive any direct technical support. With the appropriate technical assistance, the Judicial Commission should be encouraged to operate with greater transparency; specifically, the procedures underlying its activities ought to be clearly articulated through the drafting and adoption of rules of operations and procedure. Mention should be made of the Somaliland security committees, which fall outside the national court system and exercise judicial powers of sentencing individuals to detention. The security committees derive their authority on the 1962 Somalia Public Order Law, which was declared under the 1999 Organisation of the Judiciary Bill by the Somaliland House of Representatives as being contrary to the Somaliland Constitution, Islamic Sharia and international human rights conventions.⁷⁴ The committees are the subject of condemnation and controversy, having been criticised as an extrajudicial organ that acts without regard to due process and other fundamental rights guaranteed under the Somaliland Constitution.⁷⁵ Review of the security committees is urgently needed, including and especially implementing measures to ensure the transparent operation of these committees and their enforcement of due process guarantees; measures are also needed to ensure the eventual enforcement of charges of public order offences through the formal court system. Without these steps, the Somaliland government risks actively undermining the integrity of the formal justice system.

Selection

⁷³ Article 108(1), The Constitution of the Republic of Somaliland (Note, “the other personnel who work in the judiciary shall come under the provisions of the Civil Service Law.”).

⁷⁴ See “Campaign for the Abolition of the Extrajudicial Activities of the Somaliland Security Committee,” available at http://www.somalilandlaw.com/Somaliland_Security_Committees/body_somaliland_security_committees

⁷⁵ A petition brought by Shuro-net on behalf of individuals being detained pursuant to decisions of the national security committees challenged the constitutional validity of these committees; the petition papers were rejected by the Chairman of the Supreme Court without written reasons. See Statement, Somaliland National Human Rights Network (2008), available at http://www.somalilandlaw.com/ShuroNet_Bayaan_English_280507.pdf. Shuro-net later dissolved allegedly from internal pressures brought about by saboteurs planted by the Somaliland government.

The judges of the Supreme Court are appointed by the President, following consultation with the Judicial Commission. Presently, the precise selection process and qualification requirements for the recruitment of judicial candidates below the Supreme Court are not clearly outlined. Judges are nominated by the President of the Supreme Court (i.e. the Chief Justice) and are then elected by the Judicial Commission/High Judicial Council. Historically, it was common for clans to approach the President of the Supreme Court and petition for the appointment of their clan members. Recently, the current Chairman of the Supreme Court has tried to curtail these practices by requesting candidates to possess university degrees and by looking to their professional qualifications. Many sitting judges were not previously vetted in such a manner and are thus being encouraged to attend legal training courses. Though the expected qualifications for judicial candidates include possession of a university degree or knowledge of Sharia, individuals falling short of these requirements have been appointed in the past. This practice has arisen due to the difficulty in staffing judges in remote locations and the overall shortage of eligible candidates; indeed, "if there is an individual who is ready to do the job, we will make the appointment," remarked the President of the Supreme Court.

Judicial Powers and Case Management

The basic laws applied by the courts include the Penal Code and the Criminal and Civil Procedure Codes. Eighty percent of the current case load was reported to consist of criminal law. The regional and appellate courts tend to hear commercial cases, land disputes and other civil matters, as well as the more serious criminal cases. Overall, the working knowledge held by district court judges of formal laws was reported to be low. Lawyers reported that the majority of cases handled at the district level courts were resolved through the application of Sharia law.

Judicial Review

Beyond application of the substantive law, many judges do not believe it to be within their professional capacity to conduct judicial review of government laws or regulations.

This attitude may stem from a lack of perceived independence from the legislature and the executive branches of government. One Somaliland jurist explained that the 'professionalization' of the judiciary must include awareness-raising on the full panoply of powers accorded to the judiciary, which include judicial review. Specifically, the jurisdiction of the Supreme Court extends to operating as a Constitutional Court in addition to its role in appellate review.⁷⁶ Appellate review, on the other hand, appears very robust. The stronger capacity enjoyed by appellate judges – in terms of education, training and general background – results in much remedying of poorly-decided cases by lower courts at the appellate level. As explained by the President of the Supreme Court, "We manage to fill errors at the lower courts; though, there are many such cases and we need additional resources to deal with them." Judges also commented on the lack of investigative capacity within the local police, which has resulted from the transfer of many police investigators to serve as prosecutors and/or judges at the district and regional levels.

Ensuring Judicial Independence, Accountability & Transparency

Somaliland judges firmly believe in their ability to decide cases without outside interference; senior judges reiterated the importance of judicial independence and acting within the ethically responsible limits of the post. For example, a particular case in Burao was reported where the sitting appellate judge recused himself because he had been involved in the lower court decision whilst sitting on that court. Judges explained that complaints against judges can be submitted in letter form to the President of the particular court; depending on the complaint, the judge may be disqualified from sitting on a particular case and a new judge will be assigned. Failing to resolve a matter at the regional level, complaints may be taken to the President of the Supreme Court.

⁷⁶ Consider Articles 97 and 98 of the Somaliland Constitution, which provide that the functions of the Judiciary as adjudicating on disputes or proceedings between the government/governmental bodies and the public as well as adjudicating on disputes that relate to compliance with the Somaliland Constitution.

Access to Justice

The right to access to justice of individuals is provided and protected in Article 28 of the Constitution of the Republic of Somaliland. On the basis of this, any individual has a right to go to the Court and file a civil action, or to defend before the Court any case against him/her whether be it civil, criminal or otherwise. What is important, is that individuals can not exercise this right to access to justice as one needs knowledge of the law or alternatively the finances to hire legal professionals to assist in presenting his/her case or to defend him/her self before the Court. In addition to this, the individual to realize his/her right to access to justice it is necessary that he/she can access easily to the location of the court and likewise cover the required court fee. That means the individual can exercise and realize his/ her right to access to justice if the individual can not able to cover the required transportation cost to reach the court physically, or cannot afford to pay the required court fee.

In one of the focus group discussions, active respondents appear to at least at first try to represent themselves in resolving their disputes, rather than seeking independent legal assistance. At the same time, many disputes are going unresolved in communities. The main reason given was the concern that a solution would take too long. However of those who took positive action to solve their problems it can be seen that the majority were able to solve their problem within 12 months.

MH is an unmarried man in his mid-twenties. He lives with his family in Hargeisa. His family became involved in a land dispute and sought legal assistance from a legal aid provider. The court case took 14 months and cost the family a lot of money, however ultimately the families were successful. MH states, "The court's decision has addressed our concern and we satisfied the decision of the court, because we received the justice we were seeking"

And similar Case was referring the same issue.

SH is a woman in her thirties living in Hargeisa. "After the rape incident, my friends and police officers brought me to the SARC office while SARC gave me the necessary psychological and medical care. Fortunately, I received good medical attention with the help of SARC staffs." Once the medical checkup was completed, CID came to investigate the crime and the case was transferred to the prosecution office and immediately went to the court. SH was unhappy with the court's decision. The court released one of the two persons who were arrested in connection to the case. Further, the man who was responsible the rape was only sentenced to 5 years (the minimum punishment). The trauma of the rape, coupled with a feeling of not receiving justice has psychologically affected SH who now has difficulty sleeping and suffers from nightmares.

Legal Representation and Legal Aid

As a general rule as per the Somaliland laws the individual is at liberty to institute a civil case or defend a criminal as well as a civil case against him/her before the Court without being assisted or represented by a lawyer. In other words anybody has the right of access to Court and to take part in civil proceedings without the assistance of a lawyer at all Courts except the Supreme Court. That means legal representation is not a legal requirement in civil cases before the lower Courts (i.e appeal, regional and district Courts), but it is only at supreme court level that the individual is required to be represented or assisted by legal counsel (See Article 54 of the Civil Procedure Code)

When it comes to criminal proceedings, the individual's right to legal counsel is protected in the Constitution at all levels of criminal proceedings from the stage of arrest (See Articles 27 and 28 of the Constitution). For the purposes of this report we will discuss individual's right to access to justice, and particularly legal counsel from two angles: at the pretrial level, the trial and post trial stages.

The Right to Legal Counsel and Legal Aid at the Pretrial Stage

The relevant provision of the Constitution recognizing the individual's right to legal counsel at the pretrial stage is Article 27 of the Constitution. Sub Article 1 of the cited Constitutional provision provides that: *"Any person who is deprived of his liberty has a right to meet as soon as possible his legal representative....."*

What we can understand from this provision is that any individual whose right to liberty is deprived shall have the right to meet with his/her legal counsel immediately after the arrest of the said individual is affected by the Police. This is aimed to enable the individual whose liberty is deprived to, among other things, prepare a defense against the accusation and to be released from custody through exercising his right to bail. Without legal counsel the arrested individual will be unable to prepare his defense appropriately and realize his/her procedural rights.

To obtain legal counsel in practice is not easy as it requires money to pay for the legal counsel's fee. However, the individual is entitled to consult with legal counsel at his/her expense or to opt not to consult with legal counsel in the investigation process of the case against him/her. It is logical to say that an arrested individual who can pay legal council's fee may likely hire a lawyer to consult. But what is the case for the poor arrested individual who needs the assistance of legal counsel but cannot afford to pay the required fee for the lawyer. There is neither express constitutional provision nor any criminal procedure rules that obliges the Government to provide free legal services to individuals whose liberty is deprived and who cannot afford to hire a legal counsel at the pretrial stage of the criminal process. As we will see, the criminal procedure code obliges the Government to provide free legal defense services to those that cannot afford Legal Council at the trial and post trial stage of the Criminal proceedings process.

To fill this gap and to enable poor individuals of Somaliland society to enjoy the right to legal counsel, the Legal Clinic at the Law Faculty of the University of Hargeisa was established recently with the support of UNDP to provide free legal aid services to

individuals remanded who cannot afford to retain legal counsel to assist in the police investigation process at the pretrial stage.

The Legal Clinic through the Somaliland Lawyers Association has taken part in a remand project aimed at providing no cost legal counsel to individuals remanded for criminal charges. The remand project of the legal clinic covers all of the Courts surveyed. This remand project is implemented by members of the lawyers associations in the five regional capitals surveyed: The number of lawyers implementing the project varies from town to town. As Hargeisa region obtains the highest number of criminal cases, a large percentage of the remand project lawyers work in the city of Hargeisa. Currently there are nineteen members of the Somaliland Lawyers Association involved in the remand project in Hargeisa; 9 lawyers in Burao, 2 lawyers in Borama, 2 in Berbera and one lawyer in Erigavo. This project is limited to the pretrial stage of the criminal process though the Legal Clinic provides free legal services at the trial stage as we will see below. This means the pilot project of the legal clinic is limited to providing free legal aid at the remand stage only. The remand project does not cover to the arrested individual whose case is transferred to the prosecution to institute a criminal charge and to go to the trial stage. So such individuals are supposed to be tried at the trial stage without being assisted by legal council

When it comes to the trial and post trial stage, the relevant Constitutional provision is Article 28 which guarantees the individuals' right to sue and defend and provides that:

"1 Every person shall have the right to defend himself in a Court. The State shall provide free legal defense in matters which are determined by the law..."

From this Article of the Constitution it is clear that any individual who is accused of committing a criminal act has the right to defend the accusation with the assistance of a professional lawyer. This of course presupposes the availability of financial resources to hire a lawyer.

However, as provided in Article 28(2) of the Somaliland Constitution, the State is responsible for providing free legal defense to individuals. This is not available to all individuals facing criminal prosecution but for individuals who are accused of a serious criminal offence.

As stipulated in Article 75(d) of the Criminal Procedure Code, it is the duty of the Court to appoint a defense counsel for the accused in a case carrying with it a punishment exceeding 10 years of imprisonment. This provision requires the Court to appoint legal counsel to all regardless of their means.

To protect the liberty of the individuals who are not entitled to free legal defense from the government and cannot afford to hire legal counsel, the legal clinic⁷⁷ is established for that purpose. It provides free legal services at both the trial and post trial stage. That means any individual against whom a criminal charge is issued and prosecuted has a right to apply to the legal clinic for free legal defense provided that such individual cannot afford to hire and pay legal counsel themselves. However, presently the services of this clinic are only available to accused persons in Hargeisa Courts. As this service is highly important and needed in other regions of the country we are recommending that the legal clinic is supported to enable it to provide free legal services to individuals in other regions.

Court Fee

Any individual who decides to institute a case other than criminal case in a court of law is required to pay a court fee to the court. Currently the prescribed court fee is 7% of the value of the case. There is a room giving a way for the poor who cannot afford to

⁷⁷ The University of Hargeisa legal clinic or law clinic is a nonprofit law practice serving the public interest. Legal clinics originated as a method of practical teaching of law school students, but today they encompass also free legal aid with no academical links. In the academic context, these law school clinics provide hands-on experience to law school students and services to various (typically indigent) clients. Academic Clinics are usually directed by clinical professors. Many legal clinics offer pro bono work in one or more particular areas, providing free legal services to clients. The remainder of this article will discuss clinical legal education. It is the largest legal aid provider in Somaliland. It was established by UNDP with University of Hargeisa. It provides free legal services and legal empowerment to the vulnerable people.

pay the required court fee to have his/her case be filed and opened to the competent court. As observed in the practice of the courts assessed there is no mechanism to enable them to identify who is eligible to exemption of court fees. The absence of such necessary mechanism paved the way for manipulation and misuse on the part of the courts. As complained by the public it becomes something common that courts exempt court fees from rich individuals who can afford to pay tit while it happened that eligible and poor individuals are refused to exempt court fee, and hence denied their right to access to justice. Accordingly, it is necessary that the court should come up with clear and transparent mechanism and procedures to determine the poor individuals who are eligible for exemption.

AR is a middle-aged man from Hargeisa. In August 2004, the Somaliland military personnel forcibly took his land. After learning about legal aid through the media, he sought the help of the Hargeisa University Legal Clinic in September 2011. He stated, "I preferred to go to the legal aid providers, because I cannot afford to hire a private lawyer".

Courts in Hargeisa Region

The Hargeisa Region which comprises 13 districts and prefectures have been provided with only 2 district Courts (one in Hargeisa City and one at Gabilay), in addition to a Regional Court and one Regional Appeal Court both located in Hargeisa City. Hargeisa City is constitutionally recognized as the National Capital city and serves as the seat of Government as well as the Supreme Court Headquarters. It is populated with 1,000,000 residents. For this study purpose, we have selected Courts within the vicinity of Hargeisa City: Hargeisa Regional Appellate, Regional and District Courts, and accordingly describe below the situation of these Courts in terms of buildings and facilities and infrastructure. A first glance the set up of Court houses of the three targeted Courts shows that the buildings do not reflect the proper functions of the Courts and are not clearly marked and cannot be differentiated from any other buildings. Similarly, all the Court rooms whether district, regional or Appeal bear no distinguishing marks for identification. They do not indicate separate entrances for the

accused, the Judiciary or Court users and have no information counter for the public. There are no distinct private and or confidential areas for prosecutorial, and or defense lawyers and their clients. The lax and ease of the Courts public accessibility cannot guarantee the security of both the Courthouse and their respective staff and judges. These Courts normally used to remand all accused in Hargeisa Prison which is not very far from them, approximately 1 km from the Courts. Currently Hargeisa Prison is under construction and cases are remanded to Gabilay and Madera prisons which are far from the Courts: Madera prison⁷⁸ is about 90 Kms and Gabilay is about 56 kms from Hargeisa Courts. As will be outlined below each Court operates with in a Court house that is not large enough to host the respective judges and staff. Moreover, all of the Courts lack the required furniture and equipment to deliver proper and reliable judiciary services to the public.

Hargeisa Appellate and Regional Courts share an old Court building constructed in the 1950's during the British colonial era. The Colonial administration had built this old building for Hargeisa Regional Court comprising of: three Courtrooms; three small offices; two store rooms; office space barely sufficient for usage as an archive, as well as working space for the registrar and clerks, and one room used as a holding cell. Hargeisa Regional Court consists of one Court room, three small offices and one small store room, and work space for the registration and filing of the Court cases. It is in these limited offices and working spaces that Court employees perform the duties and responsibilities of the Court. Presently its employees include the President and seven Judges, Chief registrar, twelve clerks' two of whom work on a voluntary basis, five bailiffs, four cleaners and one watchman.

Hargeisa Appellate Court works in the remaining part of the old building it shares with the Hargeisa Regional Court. Hargeisa Appellate Court has eight judges including the President, Chief Registrar, 5 clerks, five bailiffs and two cleaners, who work and run the functions of the Court with limited working space comprising two Court rooms, one

⁷⁸ Madera Prison/Jail located between Hargeisa and Barbara Cities it is one of the oldest and biggest prisons in Somaliland.

store room used as a Judge's office and a very narrow working place for the registration and filing of Court cases. This limited working place has meant the chamber of a Court room is also used as the office of the President of the appellate Court when cases are not being heard. The President also shares this space with the other judges and their clerks. Hargeisa is the Capital city of Somaliland and consists of five administrative districts that have a population estimated at around one million. Each of the five districts is supposed to have one district Court. However, there is only one **District Court in Hargeisa** and by this fact the court is overloaded and the individuals' right to access to justice is constrained. Fortunately, the Supreme Court is planning to expand Hargeisa District Court to other districts of the City. Hargeisa District Court has seven judges including the President, Chief Registrar, nine clerks with one working on a voluntary basis, four bailiffs with two working on a voluntary basis and one cleaner. These Court employees perform the duties of the Court in a Court building consisting of four offices and two Courtrooms. The Courtrooms and four offices are both used as offices and rooms to hear cases. Chambers of the Courtrooms are used as a working place and office for the registration and filing of cases coming to the Court. The Court buildings described above have a reliable electricity power supply, but lack the required equipment and furniture to render proper and customer friendly judicial services to the public and clients. Hargeisa Appellate Court has only 8 tables, 10 chairs, 6 bench forms, 5 old cupboards, one telephone land line, one computer and one printer. The equipment and furniture in Hargeisa Regional Court include 13 tables, 16 chairs, 18 forms/bench, 7 cupboards; 3 telephone land lines, 2 computers and 2 printers. The staff and judges of Hargeisa District Court operate and render the function of the Court with the following limited equipment and furniture: 11 tables, 15 chairs, 16 bench forms, 3 cupboards, and one telephone land line.

Selection of the Court Judges

The judges of the Supreme Court are appointed by the President, following consultation with the Judicial Commission. Presently, the precise selection process and qualification requirements for the recruitment of judicial candidates below the Supreme Court are

not clearly outlined. Judges are nominated by the President of the Supreme Court (i.e. the Chief Justice) and are then elected by the Judicial Commission/High Judicial Council. Historically, it was common for clans to approach the President of the Supreme Court and petition for the appointment of their clan members. Recently, the current Chairman of the Supreme Court has tried to curtail these practices by requesting candidates to possess university degrees and by looking to their professional qualifications. Many sitting judges were not previously vetted in such a manner and are thus being encouraged to attend legal training courses. Though the expected qualifications for judicial candidates include possession of a university degree or knowledge of Sharia, individuals falling short of these requirements have been appointed in the past. This practice has arisen due to the difficulty in staffing judges in remote locations and the overall shortage of eligible candidates; indeed, "if there is an individual who is ready to do the job, we will make the appointment," remarked the President of the Supreme Court.

With regards the qualifications, Judges come from all walks of life;⁷⁹ though, gender and minority clan representation on the bench is lacking. Lower level judges were reported to be "good persons" but lacked the professional capacity to render judgments of consistent quality. It is estimated in many interviews that only 10% of sitting judges in Somaliland possess a legal education. Many qualified judges left during the civil war and the judiciary is struggling to attract qualified candidates. Making matters worse, judges do not have access to laws, law books and other basic resources necessary to undertake their work.⁸⁰

The quality of judicial decision-making depends on the professionalism of the respective judge; some apply the formal law as it stands while others only apply procedural rules while omitting to apply substantive provisions.⁸¹ Presently, there is no standardized

⁷⁹ The Deputy to President of Regional Court in Hargeisa 14 Jan 2013

⁸⁰ The President of the Supreme Court had heard of 'court kits' but had himself never received nor seen such a thing.

⁸¹ As one judge explained, some judges will only cite procedural provisions in support of their judgments and not cite the substantive provisions of the applicable laws.

judges' training. There was a widespread call for training on legal matters that are faced on a daily basis by the courts; "without this training, we do not know how to apply and interpret the law – paradoxically, these are the laws we are expected to apply."⁸² Judges reported having attended a handful of formal training courses over the past several years, some of which were provided by UNDP. Standardized training courses were urgently requested in the following areas:

- ❖ Basic formal laws: civil, penal, criminal and criminal procedure
- ❖ Judicial Analysis: Framing legal issues; Identifying relevant facts; Applying applicable laws
- ❖ Case file management
- ❖ Computer training

Judges also emphasized that the trainings be of 3-6 months duration and mandatory for sitting judges (since many sitting judges are older and not necessarily open or interested in judicial training).⁸³ At the very least, extensive judicial training should be mandatory for all new appointees and necessary for any advancement by sitting judges. Continuing legal education by sitting judges should be encouraged and rewarded. The President of the Supreme Court suggested the establishment of scholarships for sitting judges to attend legal studies at the university since many lower court judges lack formal training in law and do not possess the means to up-grade their formal education. Correspondingly, senior judges also called for an up-grade of the current law curriculum being taught at the University of Hargeisa.

Infrastructure, Resources, Administration, and Efficiency

In Hargeisa, judicial buildings are in very poor condition. Often, regional and appellate courts take turns sitting in the same courtroom, causing delays; while, district court judges sit in courtrooms that also serve as their offices. Judges uniformly lamented the shabby office equipment currently available in the regional and district courts; they

⁸² Deputy to President of Regional Court, Hargeisa 14 January 2013.

⁸³ These judges were described as aged and lacking a basic formal education and thus unable to absorb or even if they interested and value judicial training, they are unable to absorb.

called for cupboards and filing cabinets to store case files, computers and type-writing machines, as well as new chairs and tables. Communication and transport facilities are also non-existent; "a functioning court without communication and transport is not possible," emphasized the President of the regional Court. Presently, the administration of the judiciary falls under the Ministry of Justice, which includes setting and delivery of budgetary monies. The current structure should be reconsidered to ensure a stronger separation between the judiciary and the executive to protect judicial independence. In terms of their own remuneration, judges were reluctant to characterize their salaries as inadequate in light of steadily rising costs of living; they believe that they are much better situated than most Somaliland citizens.

All Somaliland judges interviewed welcomed the idea of introducing judicial clerkships, which would place recent law graduates in the appellate and regional courts. In terms of the security situation for judges, one judge stressed that a judge's security lies in his own hands – "If you do not deliver justice, you will be insecure." Another judge referred to an instance where the family of an accused in a murder case abducted him and held him for 48 hours; fortunately, the government approached the traditional leaders who then themselves caught the abductors and "dealt with them." Though judges maintained their sense of responsibility to carry out their duties notwithstanding these security threats, the occurrence of such incidents weaken the judiciary; strategies that include collaboration with key community actors to prevent or mitigate such incidents should be considered. The Supreme Court has its seat in Hargeisa and has jurisdiction over the whole territory of the country. Each region has a regional appellate Court, a regional Court and District Courts (UNDP publications 2000 p.5). Each district has one district Court, which shall have jurisdiction over the whole territory of the district. District Courts have Small Claims Section for the adjudication of relatively minor criminal cases punishable for not more than three years of imprisonment; A Juvenile Section, and a Family Section for the adjudication of all Family Matters. Both civil and criminal cases are heard by a judge sitting alone. The Regional Court and Appellate Courts have jurisdiction as prescribed by the law of the organization of the Courts [Law

No 24/008], each composed of four Departments I.e. civil, criminal, taxation, and juvenile benches. The regional Court and appellate Courts have two sections each, namely the general and assize sections⁸⁴, The general section of the regional Court has both civil and criminal jurisdiction, and only one single judge hears both civil and criminal cases. This section adjudicates civil suits that fall beyond the domain of the district Court jurisdictions as well as criminal cases that are punishable from three to ten years of imprisonment. The assize section of the regional Court has judicial authority to only adjudicate criminal cases involving offences punishable for more than ten years of imprisonment or that carry the death penalty. Cases are heard by the President of the Court and two lay assessors selected from the public. The Appellate Court has a general Appellate section and assize Appellate section. The general appellate section has both criminal and civil jurisdiction over appeals lodged against judgments of first instance Courts, and a single judge sitting alone hears its appeals. The Assize Appellate section has criminal jurisdiction to adjudicate appeals lodged over decisions of the assize sections of the regional Court, and in this section cases are tried by the president, a judge of the Court and three lay assessors selected from the public. Article 101 of the Constitution of Somaliland provides that the Supreme Court is the highest organ of the judiciary. Unlike the Ethiopian system, the Supreme Court has dual capacities: the Constitutional Court having jurisdiction over constitutional matters and the highest court that exercises appellate and reviewing jurisdiction over decisions of the lower courts. As such, the Supreme Court has five sections, namely a civil and labor section, personal statute section, criminal section, administrative section and constitutional section. Cases in the Supreme Court fall into two forms, which are a division bench of three judges having appellate and reviewing jurisdiction in civil and criminal matters as well as exclusive jurisdiction in administrative matters, and a full bench of five judges which decides on petitions related to election and other relevant matters considered by the president of the Court to be of particular importance.

⁸⁴ The Assize section deals with serious criminal cases in both the regional and criminal appellate courts in Somaliland. Unlike the General section that is only comprised of one judge in both regional and appellate courts, the Assize section is comprised of one judge and two assessors in the regional court and two judges and three assessors in the appellate court.

However, neither the Supreme Court nor other lower courts in practice employ separate and functioning divisions and benches. Judges in both the Supreme and lower Courts exercise a general jurisdiction. That means that judges in the courts are not assigned to a particular section or bench. And this seriously affects the efficiency and functionality of the courts as we will see below in the discussion on the management of court case processes.

National Judicial Commission

To guarantee the independency of the judiciary the Constitution established a Judicial Commission, which is the authority that guarantees the independence of the members of the Judiciary. The Commission consists of ten members including the president of the Supreme Court who is also the chairman of the Commission, two Supreme Court Judges who rank highest seniority, the Attorney General, Direct General of the Ministry of Justice, Chairman of the Civil Service Agency, two members selected from the public by the House of peoples representatives, and two members selected from the public by the House of elders. From the very beginning, the membership of the National Judicial Commission questions the independence of the Courts because it is dominated by non-judges. However, one thing important to know is that the judicial commission is responsible for appointment, transfer, promotion and undertaking issues involving in disciplining of the judges of the lower courts and Deputies of the Attorney general. That means the commission has no authority over the judges of the Supreme Court In practice this body vested with the above mentioned important and constitutional responsibility does not function. As noted there is neither office space for the commission to work nor rules of procedure and operational manuals that guide its function; members of the commission are called for a meeting only to approve appointment of or take disciplinary action against lower court judges or deputies of the Attorney General, thus making them a rubber stamp commission.

Having outlined the structure and functions of the organs of the judiciary, the following sections of the paper will outline the actual situation in terms of building and facilities,

personnel and case management systems of the courts and Attorney general Offices in five major regional capitals, namely Borama, Hargeisa, Burao, Berbera, and Erigavo.

The Office of the Attorney General

The National AG⁸⁵ is composed of the Attorney General and AG deputies (Article 103 of the Constitution). The Attorney General is a branch of the judiciary, and as such it is the body of the government that is responsible for, among other things, prosecuting and instituting criminal charges against offenders who violate penal provisions. The office of the AG is structurally organized into two levels: national office and the regional office. At the distinct level the AG has no offices, but is represented by police officers assigned by the AG. Nevertheless, there are rules determining clearly the functions and division of authorities between the two levels of offices as well as representatives of the AG at the District level. This absence of adequate structural organization dismantles the operation of the AG and makes it ineffective in that the AG fails to perform its responsibilities properly. The actual structure of the AG does not reflect the reporting lines and the exact body or department that is responsible for directing the investigation or supervising the prison conditions. As observed it seems that the AG is in practice designed to perform prosecution services only. Accordingly, there is a need to review the existing organizational structure of the AG to adopt a structure that will reflect its real functions. It is not only the absence of adequate organizational structure that affects the efficiency of the AG, but there are other factors that reduced the efficiency of the office. The office is not equipped with the necessary office space, budget and facilities; skilled and qualified personnel as well as an adequate system of case management and procedural rules that guide its operation. That is to say the AG is faced with factors similar to those affecting other aspects of the Judiciary.

The office is responsible to undertake the following functions and duties:

⁸⁵ In Somaliland the Attorney General (henceforth AG) is one branch of the Judiciary, as provided in the Somaliland Constitution. The National Attorney General and his deputies are independent from other bodies of the state (See Articles 97 and 99 of the Constitution).

- To ensure the consolidation of the superiority of the Individual rights and freedoms entrenched in the Law of the Land;
- To institute criminal charges on behalf of the state against law breakers;
- To participate in civil suits in which government body is a party;
- To intervene in civil suits where public interest requires so;
- To direct investigation and supervision of crimes, or directly undertake the investigation when it considers necessary;
- To assist vulnerable individuals in civil suits;
- To supervise the conditions of prisons and prison inmates.
- To register civil and business organizations

The office of the national AG comprises the AG himself, Deputies and Police prosecutors representing the AG at regional and district levels. There is no provision in the law providing clearly the different roles of the organs of the office save as to the performance of the prosecution services. Article 12(4) of the Criminal Procedure Code provides for the jurisdiction of the AG, deputies and police prosecutors of the different administrative hierarchy. As such the Attorney General and his office at the national level are responsible to act on behalf of the state in criminal proceedings before the Supreme Court. At the regional level, either the AG himself, his deputies and police prosecutors are empowered to take part in criminal proceedings before the regional and appeal Courts. At the district level the AG office is represented by police officers.

The above mentioned organizational structure of the office of the AG arguably does not reflect the functions and responsibilities of the office and likewise does not provide a clear divisor of labor and line of authorities among the different organs of the office save in prosecution service. For instance, it is not clear whether the deputies at the regional levels will supervise the activities and performances of the police prosecutors at the district levels. Similarly, it is unclear who should be in charge of the AG's office at the region and districts and authority of the same are not provided.

Due to the absence of structural organization reflecting the function and responsibilities of the office of the AG, in practice the offices of the AG are mainly involved in the

prosecution aspect only. Accordingly the time has come for the Government to study further the existing organizational structure of the office of the AG and to develop a new one that will better contribute to the efficiency of the office. As observed the AG offices both at the national and regional level offices have no internal organizational structure reflecting its functions and responsibilities, and prescribing description of roles and authorities of the concerned personnel of the respective office. The existing staff of the offices is mainly concerned with performing only the prosecution function, which is one of the functions of the office. Under the AG, there are Deputies/prosecutors whose main responsibilities are to prosecute criminal cases at the Supreme Court level. Whereas deputies and police prosecutors are actually responsible and exercise the authority to prosecute criminal charges and participate in criminal proceedings at the lower courts, the supporting staffs are responsible for assisting the prosecution in providing clerical and finance services⁸⁶. This lack of description of duties and responsibilities has negative impact on the functionality of the office of the AG and deserves to be targeted to improve its functions. Accordingly, the Office needs to revise the existing internal organizational structure and develop a new structure that may reflect current practice better. The following sections will present the report of the survey conducted of the National office and Regional offices of the AG of Hargeisa, City. The presentation covers the administration of budget and personnel, building and facilities and the system of management of case processes.

Personnel (AG Office Staff)

The employees of the National Office of the AG are composed of the AG and two deputies assisted by a team of supporting staff including an administration and finance officer, 4 clerks, 2 cleaners, a messenger, a watchman and a driver. Members of personnel working of the regional offices of the AG include deputies, police prosecutors

⁸⁶ . Neither regional nor national offices of the AG have departments reflecting its presumed responsibilities. For instance, there is no department responsible for the direction and supervision of criminal investigation or the supervision of the prisons and prison inmates.

and supporting staff⁸⁷. Under the existing laws, there are certain criteria needed to be fulfilled to appoint somebody as a deputy AG. These are: the appointee must be Somalilander of good reputation who has attained 23 years of age and has a university degree in law. The Judicial Commission is supposed to insure that the appointee has met these conditions*. However there is no requirement obliging the process to be competitive and transparent: Selection and employment of prosecutors (AG Deputies) is conducted without advertising and without setting the minimum qualifications. Hence, the existing system determining the appointment process of the Deputies is subject to manipulation and cannot assure that qualified and competent deputies are employed. It is through this system that existing deputies of the Attorney general are dominated by former police members that lack the necessary skills to undertake proper prosecution functions.

With regards the Supporting Staff of the Offices of the Attorney General, The Civil Service Commission is responsible for the employment, dismissal, transfer and other issues related to the supporting staff of the offices of the AG. The Civil Service Commission employs, dismisses or transfers a member of staff of the national office of the AG upon the request of the AG. And at the regional offices, the deputy in charge of the concerned office makes a request for employment of necessary supporting staff to the office of the AG, and upon receiving the request the AG writes to the National Civil Service Commission⁸⁸. Most of the supporting staff are computer literate, but lack the necessary and required skill to perform their tasks as shown in the table below. As we have seen the existing supporting staff needs to be trained on record management, leadership and managerial skills, professional ethics and customer service delivery skills.

The deputies and staff of national office of the AG are supposed to report and be accountable to the AG, where as t the regional offices deputies and other personnel of

⁸⁷ The Judicial Commission upon the recommendations of the AG appoints the deputies of the AG both at national office and regional offices. As pointed out in the brief discussion on the Judicial Commission above, in practice, there is no clear and transparent procedure guiding the appointment of the deputies of the AG

⁸⁸ The Commission then effects the recruitment. Like that of the Courts, supporting staff of the AG office are paid a very poor monthly salary that cannot cover their living expenses.

the office are accountable and are supposed to report to the Deputy in charge of the respective office. But the AG as of the law does not have any authority to dismiss or take other disciplinary measures against any of his supporting staff or deputies: rather, the AG is supposed to report to the Civil Service Commission in the case of supporting staff, and to the Judicial Administration Commission in the case of the Deputies.

Efficiency – Resources and Infrastructure of AG office

The top priority for the prosecutors is the rehabilitation and construction of buildings to separately house themselves and their staff. Presently, prosecutors in the regional capitals occupy one room at their local courthouse where they must proof witnesses, prepare for court and administer their cases. At the district level, regional prosecutors explained that district prosecutors do not even enjoy a room in the courthouse but must work inside the court building.⁸⁹ District court buildings contain two rooms, which are shared between judges and prosecutors. (At times, more than 20 accused are brought to the prosecutor's office, making it almost impossible to interview witnesses and prepare cases.) With construction of new offices, the second largest building priority for prosecutors is building a constructing a juvenile offender remand home.

Only with enlarged office space, prosecutors stated that books, office equipment and other supplies should be provided; "Why purchase a computer for the office when we have no place to put it?"⁹⁰ The Attorney General stressed the need for a law library (strongly seconded by lower level prosecutors who requested law books) and means for transport. Presently, the government provides prosecutions offices with a stipend for stationary and a limited fuel allowance. Though recognizing that government means are limited, prosecutors lamented the paucity of the supplies stipend; moreover, supplies are not regularly available because monies are not always readily dispatched to the offices outside of Hargeisa. Indeed, prosecutors reported having to pay for office

⁸⁹ The Deputy Attorney General, Burao reported having received visits from UNDP ROLS individuals, who reported the pending construction of new prosecutions offices. Prosecutors are hopeful that "things will be different this time" (referring to earlier promises unfulfilled).

⁹⁰ Acting Deputy Attorney General, Borama, 11 Feb 2013

supplies out of their own pocket or request funds from the community. Overall, weak infrastructure and little technical support have resulted in weak public perceptions of the formal criminal justice system.

Prosecutors do not participate in the budget process and would welcome an opportunity have a voice in budgeting. The Ministry of Justice should allow each prosecutorial office to present budgeting priorities and have direct input in budgeting responsibilities. An important budgetary consideration, e.g., is transportation costs for witnesses. Prosecutors explained that transport costs pose a barrier for individuals accessing justice, which result in witnesses not attending court, delays for accused and in many instances, cases being transferred to the community elders for resolution.⁹¹ In addition to transport for witnesses, prosecutors also require means of transportation to visit crime scenes and verify evidence. A daily allowance for witnesses is an additional budgetary consideration that is currently not provided for by the Ministry of Justice.

Technical support is needed in the area of witness protection. Prosecutors reported that if witnesses reside in the regional capitals, where the government has a presence, they can support witness protection, they have little means to do so in the rest of the districts. Prosecutors and judges should be familiar with court-ordered protective measures, including special measures for women and children.

Professional Freedoms and Prosecutorial Independence

Local prosecutors fiercely defended their independence and credibly maintained that outside interference with prosecutorial discretion is not tolerated. Prosecutors did report concerns about their security, which is periodically vulnerable to violent retributions from unhappy accused and/or their families. (Strategic planning is needed to enable emergency responses to such situations as they arise; maintaining the safety of prosecutors is crucial to the integrity of the criminal justice system.) The only instance where prosecutorial discretion was reported to be fettered was in the case of

⁹¹ Prosecutors stressed that poverty keeps witnesses from attending court, even for those willing to testify; they stressed that it was the responsibility of the government to bring witnesses to court but that they lacked the means to do so.

government officials protected under public immunity laws – though, this immunity was said to not be applicable for serious offences requiring three years or more imprisonment.

Prosecutors reported that Somalilanders are generally distrustful of the government.⁹² By way of extension, this distrust extends to the justice system and justice actors. Prosecutors try to mitigate this distrust by protecting witnesses the best they can. Prosecutors reported receiving complaints from the public, which arise when people lose their cases in court and thus complain of the lack of justice delivery. Most complaints are brought informally; formal complaints are brought in the form of a letter, which is directed to the Deputy Attorney General. The Deputy Attorney General for the region will confront the prosecutor to whom the complaint is directed, who is expected to answer to the allegations. If the prosecutor happens to be one of the district-level prosecutors who is a member of the police force, the complaint is submitted to the police for handling. Clear procedures and protocols for handling complaints against prosecutors should be drafted and implemented. Finally, prosecutors reported that they have never come across a prosecutors' code of conduct. Consideration should be made for drafting and implementing a prosecutors' code of conduct.

Prosecutorial Functions

Case selection is undertaken according to the severity of the offence; specifically, all serious offences (e.g. murder) are allocated to the Deputy Attorney General, while other offences are carried by the regional and district level prosecutors. The regional prosecutor's office in Burao and Borama work with 5 police stations in their respective areas; prosecutors reported having to regularly send cases back to police for additional evidence-gathering. The symbiotic relationship between the formal and informal sectors is viewed positively; diversion of cases to for resolution at the community level is seen as a viable means of ensuring community harmony because enforcement of the

⁹² The Acting Deputy Prosecutor for Borama explained, "The Somalilander likes to do what he thinks is best for himself. Ninety percent of Somalilanders do not like us (the government) because we are perceived as interference; for example, no one pays their taxes."

decision is strong. Clans and clan elders were reported to only get involved in cases where the parties were ready to settle the matter; prosecutors maintained that they only accept such settlements when the victim of the crime was in agreement with the settlement – “there is no settlement unless the victim is satisfied; otherwise, we can not endorse the decision (of the clan elders).”⁹³ That being said, most cases are settled by community elders due to volume and lack of infrastructure in the formal system; “only a few cases come to the formal system.”⁹⁴ The cases determined at the community level concern lower level crimes such as theft and petty drug abuse; in the case of murder, some cases are “left to the domain of tradition,” where that is ineffective, the formal system is relied upon. Prosecutors emphasized that the importance of maintaining the traditional system in dispute resolution, which is perceived as highly effective and efficient.

Prosecutors reported that they try their best to protect the integrity of the proceedings and the rights of accused. Their top priority is to ensure a fair trial without delay. Many prosecutors are former police officers who witnessed widespread rights abuses and compromise in the criminal justice system under the regime of Siyad Barre. Prosecutors will not initiate proceedings if an accused has been charged with a serious offence is not provided counsel. (Legal aid must be provided by the state when an accused is charged with serious crimes attracting sentences of 10 years or higher.) Due a lack of state resources, however, the provision of such legal aid takes time for actual delivery, which results in delays to the proceedings and jeopardizes the rights of the accused. Donor support for the delivery of professional legal aid with senior counsel was requested.

Administration of Budget of the AG office

The national AG is part of the Judiciary as provided in the Constitution, but it is an independent organ when it comes to preparation and administration of budget. The office is responsible for the preparation of the budget for its office and all its sub-offices

⁹³ Attorney General for Somaliland, 5 Jan 2013.

⁹⁴ Ibid.

and administers the allocation of the same upon approval. However the Office does not employ strategic planning as it lacks the well trained and skilled expertise. Rather the AG office prepares the budget depending on funding needs of the prosecution of the day. The regional offices are not directly involved in the preparation of the budget, but are asked to submit their budgetary needs to the AG office. The AG assisted by his administration and finance officer will then prepare the overall budget of AG offices and submit for approval through the Council of Ministers. He will then administer the allocation and disbursement of the budget. But the AG offices both the national and regional offices, receive a budget which is not sufficient to enable it to perform its presumed functions⁹⁵. Some officials claimed that their respective offices do not obtain stationary on a regular basis. This calls for the government to consider the budget allocated to the regional offices of the AG to enable such offices to obtain the funds necessary to perform their tasks and responsibilities. Furthermore there is no mechanism to enable the office to obtain a supplementary budget in case of emergency needs. The insufficient budget of the office is arguably due to the economic situation in Somaliland today.

AG Office Facilities

The National AG office is situated in the building next to the Supreme Court and also very close to the other lower Courts in Hargeisa City. The overall condition of the office is good, and consists of eight rooms. The eight rooms of the office building include 3 rooms which were constructed 55 years ago under the then British Colony, 3 rooms were constructed in 1997 and 2 rooms built in 2005. The building was rehabilitated five years ago and is in a good condition. The office is not well equipped with furniture and office equipment. Currently there are three computers (Two very old and one new computer) and two printers. There are also a number of chairs and tables, cupboards

⁹⁵ Officials of the Regional AG offices interviewed stated that the budget allocated is not enough to pay the costs of the prosecution services of the offices. It is pointed out that the budget allocated to the offices meets the salary of the personnel and can hardly cover any other needs of the Offices

and shelves in each room. The office has no relevant legal materials, photocopiers, guest chairs, public waiting places and benches, and information desk.

Factors Common to the Justice Institutions

From the discussions and interviews from the Key informant interviews judiciary organs' facilities, personnel and case management as well as the discussion on the application of access to justice and customary law in the judiciary organs assessed, we can outline certain factors common to and negatively affecting the functionality of judiciary system of Somaliland today.

- Lack of adequate building and office facilities
- Buildings and office spaces not conducive to provision of quality judicial services to the public
- Absence of basic furniture and office facilities
- Inadequate administrative system on Judicial Personnel
- Inadequacy of the appointment process of judges and Deputies of the Attorney general
- Inadequate administrative system of court and Attorney General supporting staff
- Lack of qualified and skilled judicial personnel and Supporting staff
- Lack of effective judicial ethics and disciplinary procedure and over sight Mechanism.
- Lack of basic methods and mechanisms necessary for proper case file and case process management
- Absence of Central Archiving Systems
- Absence of adequate system of case assignment and control of case process.
- Weak and unregulated systems to access to the justice system
- Weak and unregulated legal practitioners
- Precedence of the application of customary law over the formal law

Discussion on Findings as Regards to Judicial reform

The Somaliland Judiciary, established pursuant to Article Ninety-Seven- of the Somaliland Constitution, is an independent organ of the Somaliland government.⁹⁶ The judiciary is under the administrative authority of the Judicial Commission, (widely known as the High Judicial Council- HJC).⁹⁷ The Constitution provides for the establishment of a Supreme Court, Regional Courts of Appeal, Regional Courts, District Courts, and Courts of the Armed Forces.⁹⁸ The Constitution gives the Ministry of Justice the responsibility "for the implementation of the administrative resolutions passed by the [High Judicial Council]"⁹⁹ The Supreme Court of Justice is constitutionally established as the highest court; it also serves as the Constitutional Court.¹⁰⁰ The Somaliland statutory presentment of the judiciary, its structure, operation, and court subject matter jurisdiction is found in the Somaliland Organization of the Judiciary Law¹⁰¹. The law also sets out, in more detail, the relationship of the Ministry of Justice and the Attorney General to the judicial system.

On 1 July 2010, Somaliland President, Ahmed M. Mahamoud Silanyo, and his Kulmiye (Unity) Party, was given a mandate by fifty per cent of more than five hundred thousand Somaliland voters to fully implement their manifesto of political change and Somaliland development. A cornerstone of Kulmiye's political agenda was its commitment to "promote justice for all...Kulmiye party considers that the judiciary can only be impartial when it is independent...Kulmiye will ensure the total institutional independence of the judiciary..."¹⁰² The present Somaliland governmental commitment to ensure the independence of the judiciary is a response to the Somaliland public's demonstrated lack of confidence in the formal judicial system and well documented

⁹⁶ The Somaliland Constitution, Chapter Four, Part One, Article Ninety-Seven and Article Ninety-Nine, 2. (2001), 67-68.

⁹⁷ The Somaliland Constitution, Chapter Five, Part One, Article One Hundred and Seven. (2001), 71-72.

⁹⁸ The Somaliland Constitution, Article One Hundred. (2001), 68.

⁹⁹ The Somaliland Constitution, Article One Hundred and Six, 1. (2001), 71.

¹⁰⁰ The Somaliland Constitution, Article One Hundred and One. (2001), 69.

¹⁰¹ Somaliland Organization of the Judiciary Law (Law Number: 24/03 & 06) 20 April 2008.

¹⁰² The Political Program of Kulmiye Party (2008).

instances of the denial of basic human rights that cover the entire “chain of justice”- from arrest to incarceration¹⁰³.

Judicial Reform Actors

Producing meaningful, substantial judicial system reform requires broad-based justice sector actors’ support and participation in the reform initiative. The type of support and participation need from justice sector actors, ideally, must come from the Ministry of Justice, the Ministry of Interior, the Office of the Attorney General, the President of the Supreme Court, the High Judicial Council, lawyers associations, law schools, the Human Rights Commission, the Law Reform Commission, traditional leaders and religious leaders, and the relevant Parliamentary Officers and Committees. Presently, approximately ninety-seven per cent of the mentioned actors have voiced strong support for the implementation of a comprehensive, strategically sequenced judicial reform initiative.

Public Support for Judicial Reform

In a citizen-oriented system of justice, the support and meaningful participation of the general public and justice system users is essential for effectuating comprehensive judicial reform. An essential source of data collected prior to formulating the Somaliland Judicial Reform Work-plan was the documented opinions and views of the general public on inadequacies in the delivery of justice which has given rise to a lack of trust in the Somaliland judicial system. Wide-spread public support for the work-plan was expressed during and at the closure of the 14-16 June 2011 Somaliland National Justice Conference; the conference was attended by more than two hundred and fifty Somalilanders representing justice sector stakeholders and the general public. The

¹⁰³ The political will to amend the Constitution in order to ensure the creation of an independent judiciary can be assumed to be present, as doing so was an important part of the Kulmiye electioneering program

conference participants recommended an exhaustive list of judicial reform considerations for inclusion in the conference approved work-plan¹⁰⁴.

Informal Conflict Resolution

Traditionally, intra-clan and inter-clan conflicts are resolved by elders and sometimes religious leaders. The conflicts are resolved by use of customary law (Heer) or Islamic Law (Sharia). As noted above, with the onset of the anti-Barre civil war and the destruction of the formal court system, most disputes have been and still are resolved by the informal conflict resolution system. It is estimated that between seventy-five and eighty per cent of conflicts in Somaliland are settled by elders and or religious leaders. The general public resort to informal conflict resolution as oppose to making substantial use of the formal judicial system is indicative of widespread public lack of confidence in and distrust of the formal system. It is not uncommon for sitting judges to defer cases to traditional leaders for resolution. Clan elders are often times allowed by sitting judges to intervene in ongoing court cases in order to resolve the case informally. This form of court behavior can be attributed to many factors, all of which result in a continued decline in the utility of formal courts in the public's opinion. There has been an increasing public demand for governmental action to improve the performance of the formal court system. The demand, in part, is a product of vulnerable groups and individuals who tend to experience discriminatory treatment when they are involved in matters being considered in the informal conflict resolution system. Their demand is for the government to live up to the Constitution promise of fairness in the resolution of their conflicts. As noted above, providing a positive response to their demand has broad support on the part of government and other justice sector actors.

¹⁰⁴ See Appendix Three for "Somaliland National Justice Conference Points that Must Be Given Special Consideration by the Judicial Reform Strategy."

Judicial Human Resources and Infrastructure Strengthening

Initial reform considerations will need to give special attention to prioritized capacity building, institutional strengthening and expansion, and prioritized infrastructure rehabilitation and construction.

- Prioritized capacity building and institutional strengthening: immediate training of members of the High Judicial Council to fully undertake its responsibilities of establishing and protecting the independence of the judiciary; establish and train essential members of a High Judicial Council Secretariat to effectively serve as judicial system professional administrative staff; restructuring and training of Ministry of Justice professional staff to effectively undertake justice sector monitoring and reporting.
- Institutional strengthening and expansion: immediate planning, establishment, and launch of the Somaliland Legal Training and Resource Center (SLLTRC); the SLLTRC will be the focal institution for designing and implementing an intensive judicial induction regimen and professional development for sitting judges; a court administration course of study will be designed and implemented; special attention would be given to establishing supportive relationships with well established legal training centers in other countries with a special interest in building the capacity of Somaliland law professionals to sustain and further develop the SLLTRC; establish Customary Law Sections in every District Court.
- Prioritized infrastructure rehabilitation and construction: construct a "Justice Compound" in each Somaliland Region- to include a District Court, a Regional Court, an Appeals Court; Attorney General Office, Legal-Aid Office, Ministry of Justice Regional Office, and judicial housing. Provide furniture and equipment for secure record keeping in all courts.

The required commitment necessitates marshalling adequate funds to cover the cost of transformation¹⁰⁵. The formulated work-plan will require several million US dollars for effective implementation. The present state of the Somaliland economy and overriding security imperatives will for several years to come, greatly limit its ability to allocate a substantial amount of government funds towards financing a comprehensive transformation of its judiciary. Presently, substantial financial and political support of the international community is required in order to launch and sustain reform of the Somaliland judiciary. It is also imperative that a sustainable Somaliland judicial reform financing modality be structured and implemented at the earliest point in time.

¹⁰⁵ Meaningful judicial transformation occurs within the context of multiple years of public and government commitment to taking the action necessary to establish a social order that engenders the trust of the public at-large and the confidence of the global community.

CHAPTER FIVE

CONCLUSION, OBSERVATIONS AND RECOMMENDATIONS:

CONCLUSION:

The ability of courts and judges to produce high quality legal judgments is reliant upon a wealth of factors that go beyond merely the legal skills and knowledge of the judges themselves. Whether judgments are even sought in the first place, relies upon for example, the level of awareness of community members regarding their rights and the law, the ability of individuals to access the formal legal system, the level of trust or confidence in the judicial system to provide justice, the availability of legal information and assistance (including legal aid), and the quality of legal representation.

There has been much focus in recent years on reform of the formal justice sector institutions in Somaliland (the Courts, Attorney-General Department, Ministry of Justice), culminating in a National Justice Reform Strategy 2008 and Action Plan for implementation in 2009. Institutional reform of this nature alone (addressing the supply of justice services) will not be sufficient to enhance public confidence in and access to the justice sector. What is also needed is a clear understanding of the demand for justice reform – namely the barriers to and challenges facing those individuals who wish to access justice and how their demands and needs can best be addressed. As a result of low public confidence and limited access to the formal justice system, the majority of justice or legal problems continue to be solved at a community level through informal justice mechanisms. Improving people's confidence in the judicial system and improving the quality and independence of the system requires investing in the capacity of judiciary personnel, expanding the reach of the courts beyond the urban centres and improving access to the formal courts, including through the provision of legal aid. Particular attention must be paid to the most marginalized and vulnerable, including victims of sexual and gender based violence (SGBV) who often have little recourse to the formal legal system. Current justice sector performance is hampered by inadequate and/or out-dated policies and laws, insufficiently resourced judges and courts, a

shortage of highly skilled legal professionals, a lack of qualified specialist judges, and a weak judicial institutional structure. As such, current interventions are targeting these specific weaknesses in order to ensure access to higher quality justice for more Somalis.

The Constitution of the Republic of Somaliland established the judiciary organ of the state as an organ which is independent from other organs of the state. The judiciary as established in the Constitution is the organ responsible for undertaking judicial functions, and hence to insure respect for human rights and freedoms of the individual. As organized the judiciary consists of the courts and Attorney General, and members of these two bodies of the judiciary are supposed to be independent and free from any intervention in performing their tasks. With the view to sustain the independency of the judiciary, the Constitution established a national judicial commission, which is the body responsible for appointment, promotion and disciplining of the members of the Judiciary, particularly the judges of the lower courts and deputies of the Attorney General. However, as observed through the assessment survey conducted on the functionality of the judiciary at five major regional cities (Hargeisa, Burao, Borama, Erigavo and Berbera) it shows that at present the judiciary is not in a position to render proper judicial services and can hardly satisfy the expectations of the public. The following are the main reasons that constitute the factors that affect negatively the functionality of the judiciary:

1. Inadequate office space, facilities and file management systems.
2. Lack of skilled and well trained staff.
3. Lack of an effective and adequate system of appointment of judges as well as judicial ethic, disciplinary procedures and judicial oversight mechanism
4. Application of customary law, which affects the functioning of the criminal justice system

To improve the functionality of the judiciary, therefore, we are hereby forwarding recommendations proposing the necessary measures to overcome the above listed factors.

OBSERVATIONS

Key Observation made by the research includes: the need to improve the human resource capacity and skills of the Judiciary Lack of professional and skilled man power is another major constraint hindering the judiciary surveyed to discharge their respective functions properly to meet with the expectations of the public. Accordingly, there is a need to improve the capacity and skills of the man power of the judiciary. And this necessitates the undertaking of the following activities:

RECOMMENDATIONS

Currently in Somaliland there is no check and balance on the corrupt practices of justice actors. There is no systematic monitoring undertaken or any watchdog organization, such as a strong law society or other civil society group, to hold actors to account. In addition, there is a passive acceptance of the situation by members of society and no active demand for change. The recommendations are categorized into sections, mainly, for the Ministry of Justice, Judiciary and for the law enforcement bodies, below are the details.

For the Judiciary (Courts, Attorney General and Prosecutions)

1. To improve Judiciary Buildings and working facilities. As outlined in the body of the research, there are constraints in terms of office space and working facilities which negatively affect the functionality and efficiency of both the courts and offices of the Attorney General surveyed. And, hence it becomes necessary to improve buildings and working facilities of the judiciary:
2. Renovation and extension or new construction of buildings and working places of the courts and Attorney General's offices. As observed in the research most of the regional offices of the Attorney General have no buildings and enough working offices whereas most of the courts have buildings but they are not adequate and suitable to perform proper judicial services. As observed neither courts nor has the Attorney General clearly marked buildings that reflect their respective functions and can be easily differentiated from other social buildings.

For instance, the present set up of most of the court buildings deprives courts of the possibility to deliver customer friendly judicial services to the public and to provide the required segregation and security of the parties, judges and other users of the court as well as the varied relationships court activities demand.

3. Provision of office working facilities such as furniture, equipment and legal information, and transportation as well. As outlined in the research almost all the courts and AG offices surveyed have no basic working facilities and infrastructure. To improve the capacity of the courts and AG offices to discharge their duties, therefore, requires that there should be provision of all the basic and necessary office equipment, furniture and similar infrastructure such as transportation needed for them to properly discharge their duties. Judges and prosecutors should also have access to the existing applicable laws of the land and legal reference materials to refer to in rendering cases. The implementation of this activity requires that existing codified laws should be translated into the Somali language.
4. Enhancing the independency and Accountability of the Judiciary As shown in the body of the research the judiciary system lacks certain elements necessary for the independence and accountability of the judiciary. Among others things, lack of a proper appointment procedure, absence of ethics and disciplinary rules as well as an over sight mechanism are factors that impede the independence and accountability of the judiciary.
5. To adopt improved and adequate administrative system for the Judiciary supporting staff Under the existing system judiciary supporting staff are paid an extremely poor salary that cannot sustain their living expenses; do not have a proper civil service program in place to resolve disciplinary issue; and are not motivated to serve as part of the judicial system. This has meant the judiciary and particularly the courts studied lack competent and honest supporting staff. Accordingly, it becomes necessary to recommend that the existing system

should be improved to ensure judiciary personnel do not affect the functionality of the judiciary.

6. To improve filing and case process management systems the existing systems of filing and case management of courts and AG offices surveyed are very poor and inadequate for enabling the judiciary to effectively manage its activities and integrity. Likewise, there is a need to adopt a systematic and effective case management system for the AG offices.

For the Other Justice Institutions (The Police and Ministry of Justice):

A. The Ministry of justice:

1. Establish a legal documentation Center within the Ministry of Justice.
2. To undertake measures to improve access to justice. Present system of legal aid and court fee coupled with the absence of effective and regulated law practitioners.
3. To adopt improved and transparent system of court fee administration, the present practice of court fee administration shall be reviewed to enable poor individuals to exercise and enjoy their right to access to justice.
4. To establish improved legal aid system. As pointed out in the body of the paper the existing legal aid practice fails to protect the poor individual's right to access to justice. Accordingly, it is important to insure that there is effective legal aid system available to all poor individuals who are in need of legal service. This can be done by establishing an independent and effective public defender office to provide legal aid to the poor individuals throughout the country, particularly those individuals accused of serious criminal offences. In addition to the public defender, the existing legal clinic of the faculty of law of University of Hargeisa needs to be enhanced so that its legal aid services will reach throughout the regions.

B. For the Law Enforcement (Police)

1. Improving the quality of the police force: support the establishment of an effective and legitimate police force, through building and rehabilitating adequate police stations, and also strengthening the institutional and technical capacity of Somaliland police force
2. Support the Model policing at community level: Introducing effective community policing could support the policing delivery at the community level, including support in urban, rural and coastal areas,
3. Support the Capacity of the Police: for the better policing work, the Somaliland police needs support on the capacity aspect particularly the training on investigation, case management at police station level, documentations, record keeping and coordination among the police stations and structures.
4. Support the legal and policy environment for better policing in Somaliland, it took almost two decades to have clear and comprehensive policy and legal framework for the Somaliland police, the ministry of interior recently submitted draft police bill to parliament, police and legal framework will contribute better policing service delivery and legitimacy on their work.

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APPENDIX I

INFORMED CONSENT

I am giving my consent to be part of the research study of Mr. Hamdi Ismail Abdullahi that will focus on emotional intelligence and leadership styles.

I shall be assured of privacy, anonymity and confidentiality and that I will be given the option to refuse participation and right to withdraw my participation anytime.

I have been informed that the research is voluntary and that the results will be given to me if I ask for it.

Initials: _____

Date: _____

APPENDIX I A

FACE SHEET: DEMOGRAPHIC CHARACTERISTICS OF THE RESPONDENTS

Gender (Please Tick): ☐ (1) Male
 ☐ (2) Female

Age: _____

Educational Level (Please Specify):

(1) Certificate _____

(2) Diploma _____

(3) Bachelors _____

(4) Masters _____

(5) Ph.D. _____

Work Experience (Please Tick):

_____ (1) less than/Below one year

_____ (2) 1- 2yrs

_____ (3) 3-4yrs

_____ (4) 5-6yrs

_____ (5) 7 years and above

APPENDIX I B

QUESTIONNAIRE TO DETERMINE JUDICARY INSTITUTION CAPACITIES

Direction: Please write your preferred option on the space provided before each item.

Kindly use the rating guide below:

Response Mode	Rating	Description
Strongly Agree	4	You agree with no doubt at all.
Agree	3	You agree with some doubt
Disagree	2	You disagree with some doubt
Strongly Disagree	1	You disagree with no doubt at all.

	Strongly Agree	Agree	Disagree	Strongly Disagree
1. Somaliland judiciary institutions are not well coordinated institutions in legal framework and in Practical.				
2. The current justice institutional strictures in place are not sufficient in serving the justice well.				
3. The role of the Ministry of Justice in leading national justice institutional policy and legal framework is not effective.				
4. Other than administration of Justice, Ministry of Justice is mandated to coordinate other Justice institutions.				
5. In Hargeisa, formal Justice Institutions such as Police, Courts and judges are not accessible every time and in every District.				
6. In Hargeisa, Informal Justice Institutions such as the traditional system of justice of Elders or arbitration councils are not accessible every time in every District.				
7. The Judiciary Institutions has not enough institutional facilities in place for better justice management at all levels.				
8. Judges/Court Personnel are not respectful and polite				
9. It is not easy to find where you needed to be in the courthouses at Supreme Court during case Proceedings.				

is not easy to find where you needed to be in the prisons at Appellate Court during case Proceedings.				
is not easy to find where you needed to be in the prisons at Regional Court during case Proceedings.				
is not easy to find where you needed to be in the prisons at District Court during case Proceedings.				
the orders or decisions of the court and the information are not clear and can be understood				
the Cases are not trailed with reasonable time				
the Judges of the different level courts in Hargeisa are not well qualified in educational background and legal expertise.				
the Best justice institutions in the country are not available in Hargeisa city.				
the persecutors lack the resources, facilities, man power in investigations and prosecution.				

APPENDIX I C
QUESTIONNAIRE TO DETERMINE THE EFFECTIVENESS OF LAW
ENFORCEMENT AT HARGEISA

Direction: Please write your preferred option on the space provided before each item.

Kindly use the rating guide below:

Response Made	Rating	Description
Strongly Agree	4	You agree with no doubt at all.
Agree	3	You agree with some doubt
Disagree	2	You disagree with some doubt
Strongly Disagree	1	You disagree with no doubt at all.

	Strongly Agree	Agree	Disagree	Strongly Disagree
ere are weekly or monthly Coordination meetings ong the Judiciary and other justice institutions				
e current existing coordination mechanism between the diciary and other justice institutions are not strong ough to serve the justice well.				
e public attitude towards the Judiciary as main npetent of the justice system is not high.				
e Judiciary agencies don't work together in the nmunity				
e judiciary don't work together with the other justice titutions closely				
e judiciary have the sole authority to adjudicate cases solve legal cases				
e Judiciary Officers has not sufficient facilities and trument for better justice management				

APPENDIX II

List of Somaliland Justice Sector Stakeholder key Informant interviews

- Ministry of Justice, including the Minister of Justice, Director General, Head of Department, Head of Units - 6 meetings;
- President of the Supreme Court- 1 meetings;
- Parliament, House of Elders – Chief Secretary of the House, 2 Meetings
- Parliament, House of Representative – Law and Justice Committee 2 Meetings
- Office of the Attorney General- 1 meeting;
- Chairman of the High Judicial Council- 1 meeting;
- Ministry of Labor- 1 meeting;
- Law Review Commission- 3 meetings;
- Civil Service Institute- 1 meetings;
- Judges (from various parts of Somaliland)- 8 meetings;
- Somaliland Lawyers Bar Association- 2 Meeting;
- Somaliland Women Lawyers Association; 2 Meetings
- University of Hargeisa Legal Clinic- 4 meeting;
- Dean of University of Hargeisa Faculty 1 meetings;;

The above different meetings with the Somaliland Justice stakeholder including the Ministry of Justice, The Judiciary, the parliament, the Law reform Commission, the Somaliland Lawyers association, and the academics were to aimed to get better in depth information on the gaps, the challenges and possible options for the Somaliland Judicial system, meetings were arranged in form of Key informant Interview, some were brief other extended.



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