



# **The State of the Judiciary in Somaliland**

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Founded in 2013, Horizon's portfolio includes managing a justice sector project in Somaliland, funded by the Department for International Development (DFID), to support the efforts of the formal justice institutions to provide a fair, efficient and effective justice system. Horizon has also worked on civil service reform and revenue generation in Somaliland funded jointly by DFID and DANIDA.

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## **Acronyms**

AG	Attorney General
AGO	Attorney General's Office
CPC	Criminal Procedure Code
CPD	Continuing Professional Development
DAG	Deputy Attorney General
DFID	Department for International Development
HJC	High Judicial Council
INGOs	International Non-Governmental Organisations
JJL	Juvenile Justice Law
JTI	Judicial Training Institute
LRC	Law Reform Commission
MoJ	Ministry of Justice
SGBV	Sexual and Gender-Based Violence
SJSP	Somaliland Justice Sector Project
UNDP	United Nations Development Program

## **Introduction**

*The State of the Judiciary in Somaliland* gives an overview of Somaliland's judiciary and examines some of the main issues and obstacles inhibiting the delivery of justice. This paper is the result of research and training carried out by Horizon Institute (Horizon) in Somaliland in 2014-2016 as part of its Somaliland Justice Sector Project (SJSP), an initiative funded by the Department for International Development (DFID). Since 2013, Horizon's on the ground research in Somaliland, and extensive work with justice sector actors, has highlighted areas of improvement within the judiciary, as well as the formidable challenges which remain.

The justice sector continues to face a range of obstacles in establishing independent, fair and efficient services. There remain deeply entrenched structural problems, in part due to Constitutional provisions and the absence of harmonisation in laws. Yet law reform, which is the responsibility of Somaliland's Law Reform Commission (LRC), has not been achieved. Moreover, there is limited oversight and enforcement of professional standards due to an ineffectual governing body for the judiciary, and little faith in formal justice, which encourages most people in Somaliland to continue to resort to customary law mechanisms.

However, notwithstanding these difficulties, there have been promising changes, such as the training of new legally qualified judges and prosecutors and the appointment, in May 2015, of a new Chief Justice who has spoken of the need for wide-ranging fundamental reforms and whose tenure has seen the beginnings of a more collaborative approach among justice sector leaders. These developments, and existing positive practices, can be built upon to strengthen the role of the judiciary, the Attorney General's Office and the Ministry of Justice (MoJ) in making formal justice a reliable system people can trust.

### **1. An Outmoded Legal Framework**

Somaliland's legal framework is outdated in the extreme. Adopted from a mixture of laws in place when Somaliland was a British Protectorate and laws from colonial Somalia, the laws in force do not meet the needs of the criminal justice system and have not evolved with society. In particular, there is a broad consensus that the Penal Code, which is the British Colonial Indian Penal Code, is in dire need of revision.<sup>1</sup> Law reform is imperative, and is a critical component of strengthening the justice sector, including the judiciary. However, with an extremely weak Law Reform Commission, and disagreement among the relevant institutions as to who can initiate, craft and present law reform to parliament and the cabinet, all efforts have fallen short of updating the relevant laws.

#### **1.1. Constitution of the Republic of Somaliland**

Provision for the judiciary is spelt out in the Constitution in terms of its establishment and independence (Article 97), powers (Article 98), and structure (Articles 99 to 101). The well-defined structure includes three levels: (i) district and regional courts as first instance courts; (ii) regional appeals courts; and (iii) the Supreme Court, which is the highest appellate tier in

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<sup>1</sup>See *Discussion Paper on Reform of the Somaliland Penal Code*, Horizon Institute (December 2014), available at: <http://www.thehorizoninstitute.org/usr/library/documents/legal-commentaries/discussion-paper-on-reform-of-the-penal-code.pdf>

the judicial hierarchy. The Supreme Court also constitutes the Constitutional Court and can hear cases on the interpretation of the Constitution.

The Constitution goes further and proposes an oversight and administrative body for the judiciary through Article 107 in the form of the “Judicial Commission,” known as the High Judicial Council (HJC). The HJC is also mandated to appoint, dismiss and discipline Deputy Attorney Generals (DAGs), as well as all lower court judges.

Despite the clearly defined role and structure of the judiciary under the Constitution, certain provisions raise concerns. In particular, while Article 97 (2) guarantees independence of the judiciary from the State, Articles 99 (1) and 103 state that the Attorney General and his or her deputies also form part of the judiciary. Inherited from the pre-1991 structure modelled on the Italian judicial system, the provision contradicts the principle that the judiciary should be independent from the Government and State. Indeed, the Attorney General is a Minister of the State, the most senior prosecutor, and represents the Government (Article 90 (3)). Moreover, according to Article 106 (2) the relationship between the Ministry of Justice (MoJ) and judicial bodies will be set out in a law, but no such law has been passed.

## **1.2. Law on the Organisation of the Judiciary**

The Law on the Organisation of the Judiciary (Judiciary Act) provides a more defined framework for the appointment and dismissal of judges and prosecutors, as well as the functions of the AGO, courts, and the establishment of the Solicitor General’s Office.<sup>2</sup> There are, still, two versions of this law and both are signed by Presidential decree. For some time now, Parliament and a committee consisting of the Attorney General, the Solicitor General and an independent lawyer are said to be working on a third version with a view to harmonising the two existing laws and addressing gaps. However, at the time of writing, the proposed new law has not been finalised.

Law reform is essential if the functions of the judiciary and the AGO are to be well-defined. Constitutional and legal provisions need to be consistent with the principle of the separation of powers in order to preserve judicial independence. However, there must be political will to discuss amending the Constitution, and at the very least, finalising the draft Judiciary Act, which will be a tough battle given the far-reaching implications. Nonetheless, reform of the current law needs to be prioritised and supported with technical assistance, and it is important to integrate the amendment and finalisation of the Judiciary Act in any future justice reform work plan as one of the key activities.

## **2. The Imperative of Judicial Reform**

The appointment of Chief Justice Adam Haji Ali Ahmed in May 2015 has given a new impetus to reforming the judiciary. The Chief Justice’s reform plan is ambitious, but focused on practical changes to the Somaliland judiciary. Very importantly, he has emphasized that such reforms have to be owned by Somaliland itself, both in defining the content and spearheading the implementation, including financial investment, however modest. The default, all too often, in the judiciary and beyond, has been to make changes in response to external funding opportunities, which usually results in unsustainable interventions. His starting point has been to build the morale of judges so that performance improves. To date, he has secured a salary increase for judges and robes for judges to wear in court, both of which have contributed to improved morale. He has facilitated public access to the Office of the CJ and has also publicised

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<sup>2</sup> Law No. 24/2003.

a zero-tolerance approach to corruption amongst the judiciary. The future will show if, and to what extent, the new policies have taken root and if they have radically changed the way the judiciary operates internally and how it engages the public.

The justice sector had long been characterised by the absence of cooperation among its key leaders — the Chief Justice, Attorney General and the Minister of Justice — fuelled in part by a struggle over scarce resources. Instead of working together, they have worked against each other. Aware that little could be achieved without collaboration, the Chief Justice has sought to facilitate institutional partnerships between the judiciary, the AGO and the MoJ and to change the old dynamic which had paralyzed the justice sector. For example, joint trips at the end of 2015 by the Supreme Court, MoJ and AGO to prisons throughout Somaliland signalled the possibility of inter-institutional co-ordination and coherence.

### **3. The High Judicial Council**

The Chief Justice has been affecting the majority of his reforms through his role as Chairman of the HJC. Pursuant to Article 107, the HJC shall be responsible for the administration and oversight of the judiciary. It is also mandated to appoint, dismiss and discipline DAGs, as well as all lower court judges. As the oversight and administrative body for the judiciary, it should ultimately be the most important organ in the administration of justice. However, in October 2015, Horizon conducted a functional review of the HJC, through which it became apparent that it faces a number of impediments to fulfilling its oversight and administrative role.<sup>3</sup>

#### **3.1. Composition**

The HJC is a constitutionally mandated body and the establishing articles do not create an institution independent of the executive. Of the ten members of the HJC, only three represent the judiciary: The Chief Justice and two Supreme Court judges. The other seven members of the HJC are from outside the judiciary: the Attorney General; the Director General of the MoJ; the Chairman of the Civil Service Commission; and four members of the public (an intellectual, a business person, a religious elder and a traditional elder).<sup>4</sup> The four lay members of the HJC, nominated by the House of Representatives and the House of Elders, are not always familiar with legal issues and are unlikely to be familiar with their responsibilities in the HJC because this has not been set out. The lay members take a passive role and some are employees of other government bodies.

The executive and legislative arms of the State, therefore, have greater representation in the body tasked with the appointment and removal of judges. This exposure to potential political influence undermines judicial independence.

In 2013, the Solicitor General began working on a schedule for constitutional amendments. No progress has been made on this to date. If constitutional amendments become more politically feasible in the future, provisions consistent with Article 97 (2), guaranteeing independence, will need to be included. Importantly, changes need to be made so that (i) the AGO is kept separate from the judiciary; (ii) composition of the HJC should be representative of, and dominated by, members of the judiciary as opposed to the executive and legislature; and (iii)

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<sup>3</sup> *Report of the Functional Review of the High Judicial Council*, Horizon Institute (December 2015), available at: <http://www.thehorizoninstitute.org/usr/library/documents/main/report-of-the-functional-review-of-the-high-judicial-council-by-horizon-institute.pdf>.

<sup>4</sup> Article 107 (1) of the Constitution.

the ambiguous wording of Article 105 of the Constitution, which concerns the appointment and removal of Supreme Court judges, should be amended and clear language on security of tenure and the grounds on which judges can be lawfully removed should be incorporated.

### **3.2. Management and Resources**

The HJC requires strong management and leadership in order to oversee the judiciary. While it has a Secretariat, it does not have the necessary staff and resources to do its work. Although there is an office structure in place, it is in name only since there is no funding.

Horizon's functional review found that a Human Resources (HR) department exists, but it is not operational. An HR Director was appointed two years ago but her role consists of basic administrative functions rather than HR management. The HJC has no personnel files, job descriptions, performance management systems or qualified staff. The lack of any systems, processes or policies in place at the HJC is a serious weakness, compounded by the absence of skills and competence in administration. Staff do not receive basic training and the premises in which both judges and support staff work are inadequate.

The administration and management of courts depends heavily on the administrative systems that are in place and the personnel who are employed to carry out the administrative functions. These are also tied in with the physical infrastructure where personnel work. Without sufficient resources in place to facilitate smooth administration, the quality and delivery of justice is compromised.

The HJC Secretariat requires a Senior Manager with the ability to work with, and influence, senior level government personnel. It also requires a competent and trained HR Manager to deal with key areas such as recruitment, training and development, conduct, benefits, communications, employee relations, recordkeeping and legal compliance.

Horizon's functional review concluded that the use of sub-committees, consisting of members of the judiciary, could assist with oversight and in dealing with various matters. These sub-committees would report to the HJC and relieve some of the Chief Justice's workload so that he can focus on higher-level matters instead of day-to-day matters. There could be sub-committees on standards, strategy and planning, innovation and reform, finance, public relations, communications and a court decisions review committee.

### **3.3. Inspection and Monitoring**

The Inspection and Monitoring department of the HJC is the only department that is functioning. However, its role in this area is tied to sporadic financial support from external agencies, rendering a sustainable future difficult.

## **4. The Judiciary**

### **4.1. An All-Male Judiciary**

The judiciary in Somaliland is comprised of only male judges. As of the writing of this paper, no female judges have been appointed to the bench. The general perception throughout the justice sector is that women are not suitable candidates as judges despite being as professionally qualified as men for the job. Instead, qualified women are appointed to other roles such as court clerks or prosecutors. This is largely the result of social prejudice and serious objection from religious leaders to women judges, even though women serve as judges in many other conservative Muslim countries, including Sudan and Pakistan.

The appointment of women judges in Somaliland will take time and will be a process that involves not only the judiciary but also the Government, religious leaders and the public at large. However, it is not a hopeless endeavour because in other Islamic states women serve as judges. As a starting point, the Chief Justice should be encouraged to appoint women as assistant judges. The Government intends to establish specialist courts for juvenile justice. This could be an opening, an opportunity to lobby for the appointment of women to the judiciary, because their involvement with juvenile justice may be seen as beneficial given the role of women in society.

## **4.2. The Existing Code of Conduct**

Somaliland introduced a Code of Conduct for judges, and prosecutors, in 2012.<sup>5</sup> The HJC's Inspection and Monitoring team has the responsibility of enforcing this code. One of the problems with regard to ethics, however, is that the body tasked with enforcing them does not have the necessary independence and capacity. Because the HJC is composed mainly of members of Somaliland's executive and legislature, there is potential for political interference in the disciplining of judges, thereby undercutting the judiciary's ability to act completely independently. This is made worse by the fact that there is no training on ethics within the HJC, and serious questions about its ability to train the judges it is meant to oversee.

### **4.2.1. Enforcement of the Code of Conduct**

As mentioned earlier, the HJC Secretariat performs the monitoring and inspection function. A team of four members of HJC staff, three of whom are Supreme Court judges with over ten years' experience, handle all complaints about judges and prosecutors across Somaliland and enforce the Code of Conduct. Horizon's functional review found that the number of inspectors is being increased from four to 15, with two based in each region, with administrative support.

The new complaints procedure has received coverage on national media. Every court is meant to have posters setting out what to do when a judge or prosecutor is perceived to have acted corruptly or is thought to be incompetent. But this idea has not been followed up in practice. One of the inspection team investigates the concern by interviewing the complainant and then writing to the judge or prosecutor for his or her version of events. The investigator then assesses if the complaint is valid and submits it to the HJC for a decision, which can be a final warning, demotion or dismissal. The person making the complaint is informed of the outcome and where a judge or prosecutor is dismissed, it is the responsibility of the HJC to inform the media, but this is rarely done. In 2014, ten judges were dismissed and 16 judges in 2015. Moreover, in 2015 the HJC also dismissed one prosecutor because the HJC enforces the Code of Conduct against prosecutors as well.

It is positive that a Code of Conduct exists for judges and that there is enforcement mechanism. But further awareness raising amongst the public, and continued legal education on ethics for judges, is required to protect judicial independence.

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<sup>5</sup> Code of Conduct and Disciplinary Rules for Judges and Prosecutors (2012) (hereinafter: Code of Conduct). [http://www.somalilandlaw.com/Somaliland\\_Judicial\\_Prosec\\_Code\\_of\\_Coduct\\_Somali\\_2012.pdf](http://www.somalilandlaw.com/Somaliland_Judicial_Prosec_Code_of_Coduct_Somali_2012.pdf)

### 4.2.2. Support Staff Under the Code of Conduct

Clerks, termed Registrars in Somaliland, typically serve directly under an individual judge, giving them enormous powers because of their role of managing every aspect of the judge's work. The power vested in a single person, combined either with poor supervision by the judge or worse, collusion, places litigants in a vulnerable position regarding demands for bribery. However, the Hargeisa Appeals Court has recently moved away from this system. Court support staff are now organised as a team supporting all judges from a centrally organised office.

Importantly, the Code of Conduct also covers support staff. The recommendations put forward in this paper, in relation to improving conduct and professional standards in the justice sector, apply to support staff, given the significant powers they can have and the accusations of corruption levelled against them.

Bolstering the enforcement system already in place will be important in tackling some of the issues the judiciary faces, such as corruption. Moving forward, there may be insufficient people with the necessary skills and experience to carry out the inspection and monitoring role. The posts could be filled with suitably qualified retired judges and lawyers or newly qualified lawyers. Consideration should be given to having an appropriately skilled support team, some not necessarily legally qualified, to which some aspects of the process could be delegated, freeing up the core of judges to deal with only that work which demands their expertise, experience and authority. The inspection function would remain under their control and they would be accountable for the work done. This structure would make it easier for standards to be enforced and the team would be able to broaden their capacity. Furthermore, the procedure set out for disciplinary action in the Code of Conduct has to be fully implemented and the decision on removal should be subject to independent review.

To maintain interest and engagement on professional standards and ethics in the judiciary, the HJC should complement the training it has offered on the Code of Conduct to date with briefing sessions on ethics and conduct in the judiciary in the regions. It should further be incorporated in the curriculum for in-service and entry level training in the judiciary and AGO. To create confidence in the Code of Conduct, the HJC has to enforce it with strict adherence to due process principles and afford all protections contained in international standards and the Code.

The HJC should continue to raise awareness on how a complaint can be made, and what to expect from the HJC in terms of disciplinary action. The HJC and MoJ's current activities—a "Know Your Rights" broadcast on television and leaflets and notices covering aspects of the justice system and access to justice—should be encouraged and continue so that momentum is not lost.

### 4.3. Obstacles to Independence

The existence of an enforced Code of Conduct, and constitutional provisions protecting Somaliland's judicial independence, do not in reality completely protect judges from improper influence. Judicial independence includes, *inter alia*, the judiciary having jurisdiction over all judicial matters, impartial decision making, no interference with court decisions, the ability to make sure proceedings are fair, and adequate resources to properly function.<sup>6</sup> Somaliland's judiciary faces numerous obstacles that jeopardise their independence.

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<sup>6</sup> UN Basic Principles on the Independence of the Judiciary.

### **4.3.1. Composition of the High Judicial Council**

A significant factor undermining the appearance of judicial independence is that members of the executive and legislature dominate the HJC. As discussed above, the HJC has constitutional authority to appoint, remove from office, demote, transfer and discipline judges of the lower courts and the DAGs. Without a constitutional amendment to change the composition of the HJC, there is still the opportunity for government interference.

### **4.3.2. Attorney General's Office**

The fact that Somaliland's AGO forms part of the judiciary damages the principle of independence.<sup>7</sup> The Attorney General forms part of the executive and yet also falls under the judiciary, thereby running contrary to the well-established principle of separation of powers. As with the composition of the HJC, there has been no discussion of a constitutional amendment to change the structural placement of the AGO.

### **4.3.3. Need for Financial Autonomy**

A fundamental aspect of independence is financial autonomy.<sup>8</sup> In Somaliland, the MoJ exercises administrative control, including preparation of annual budgets, over all courts except the Supreme Court. The MoJ is also responsible for the payment of judges' salaries, which means the executive is closely involved in the financial management and, crucially, the remuneration, of members of the judiciary, which exposes judges to undue executive influence. The Chief Justice has made clear his determination to have the budgets for the lower court – District, Regional and Appeal Courts – transferred from the MoJ to the Supreme Court. The transfer is intended to increase the independence of the judiciary by giving them full control over their resources.

Transferring the administration of the courts' budget and judges' salaries from the MoJ to the Supreme Court would strengthen the financial autonomy of the lower courts. The Chief Justice has begun lobbying for this transfer. The new Minister of Justice has not expressed, to Horizon's knowledge, an objection to ceding control, though he is said to be under pressure from long-time employees of the MoJ to tread slowly. The key issue is, therefore, how to institute transfer of budgetary control. It will be necessary for the political leadership to establish a precise timetable, setting handover targets agreed to by the executive and courts.

Yet it is not only the budgets for the courts that should be transferred from the MoJ, but also responsibility for management and organisation. The MoJ is, for the moment, funded for this activity, which is why appropriate resources and governance is even more important in the HJC. However, in order for the Supreme Court to be able to exercise budgetary control, its administrative and management capacity needs to be improved. One solution would be to transfer existing personnel working at the MoJ to the Supreme Court to help avoid delays and additional costs of recruiting and training new staff.

### **4.3.4. Tenure**

It is a well-established principle, and a key pillar of independence of the judiciary, that judges should be guaranteed security of tenure and cannot be removed for the period of their appointment.<sup>9</sup> There is express provision for security of tenure in Article 26 of the Judiciary

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<sup>7</sup> Articles 90 (3)(h) and 99 (1) of the Constitution.

<sup>8</sup> Principle 7, UN Basic Principles on the Independence of the Judiciary.

<sup>9</sup> Principle 18, UN Basic Principles on the Independence of the Judiciary.

Act. However, the Act also enables the President, in consultation with the HJC, to directly dismiss a Supreme Court judge for infractions of the Constitution and other laws (version two of Article 11 (4) C of the Judiciary Act). This basis for dismissal is broad and unspecified. Successive Presidents in Somaliland have dismissed Supreme Court judges. The last wave of collective dismissals took place in 2011 when eight Supreme Court judges were removed. There is, therefore, no security of tenure for judges in Somaliland which, in turn, weakens independence as judges' positions may ultimately depend upon the wishes of the Government.

The third version of the Judiciary Act includes a provision that makes the removal of all Supreme Court judges subject to confirmation by Parliament, which will increase the independence of the judiciary. However, as stated above, this proposed version has not been finalised.

In order to give full effect to the constitutionally mandated independence of the judiciary, and to comply with international standards, a more transparent and accountable appointment and removal process should be agreed upon. This can be achieved by supporting the amendment process of the Judiciary Act. Article 32 of the proposed third version of the Act, if accepted, requires parliamentary scrutiny for the appointment and dismissal of all Supreme Court judges. This would be a welcome move as it builds in important safeguards to protect the independence of judges.

Another means of guaranteeing security of tenure and clarity on the appointment of judges is to have specific legislation. By specifying, in law, terms and conditions of judicial service, judges are less likely to be subject to executive control, thereby further protecting their independence.<sup>10</sup> In March 2016, the HJC drafted a Judges' Benefits Bill which, if passed by Parliament, will legislate the conditions of service for judges.

#### **4.3.5. Corruption**

The recent salary increase for judges, and the increased efforts by the HJC, to enforce the Code of Conduct, are intended to reduce corruption. During the course of Horizon's judge craft training in August 2015, and during a conference organized for judges by Horizon in March 2016, judges consistently voiced the opinion that their working conditions encourage corrupt practices within the judiciary. The underlying causes of corruption within the judiciary, as expressed by those who attended the training and the March 2016 meeting, will vary from region to region, but include:

- A lack of meaningful work;
- Low pay for judges combined with the need to bear judicial expenses from their own income;
- The expense that judges incur maintaining themselves away from their homes and families (in one case there was a distance of 3,000 kilometres);
- Poor or non-existent facilities;
- Scarcity of suitable and secure accommodation;
- Secure transport; and
- Security in general.

Moreover, this corruption extends to court staff.

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<sup>10</sup> See IBA Minimum Standards of Judicial Independence, 1982, A, 1 (b).

### 4.3.6. Interference by Traditional Elders

The majority of people in Somaliland continue to rely heavily on *Xeer* (customary law) to resolve disputes. Given the absence of a distinct division in jurisdiction between *Xeer* and the formal justice system, parallel proceedings in the customary system undercut the status of the formal justice system and in particular, the judiciary, which should be free from any improper influences, inducements, pressures, threats or influences.<sup>11</sup> Many judges continue to bend to pressure from elders to accept customary agreements reached between clans and families, even in serious cases such as rape.<sup>12</sup>

### 4.4. Ineffective Case Management

Successful case management is essential to the efficient delivery of justice. It also impacts on the rights of victims and accused persons. For example, a victim's right to redress may be adversely affected where evidence (particularly medical evidence in, for example sexual offences' cases) is not collected in a timely manner. The right to be tried without undue delay will be impacted if police, prosecutors and judges do not manage investigations and cases well, which is a significant problem in Somaliland with remandees being held for unreasonable lengths of time.

The case management systems in place are not Somaliland-wide but court specific and *ad hoc*. For example, the Appeals Court in Awdal Region has a case management and follow up procedure in place so that they know exactly how many cases each judge is presiding over and the stage of each case.

It would be useful for the HJC to formulate basic criminal and civil case management rules, which could be informed by best practices in other jurisdictions. For example, Somaliland could follow the Kenyan Case Management pilot scheme currently being implemented. Then the case management rules put together by the HJC could be disseminated to the courts.

## 5. Judicial Training

When the drive to improve standards began, less than 10% of judges had attended formal education beyond secondary school and, in particular, did not have practical skills. Since then, however, there have been significant improvements. Now, 57% of judges have graduated from university and around 85% have had some form of training. Nevertheless, these statistics continue to demonstrate a lack of trained judges. Even some of those interviewed by Horizon, who considered themselves to have judicial training, actually referred to their experience as legal elders or *Sharia* judges as judicial training, and not academic or formal vocational training.

Moreover, the existing training fails to equip future judges with the necessary skills for adjudicating cases. Continuing professional development (CPD), which is essential to building and maintaining a competent judiciary and high ethical standards, is *ad hoc*, uncoordinated and often delivered by external actors without sufficient consultations with, and oversight by, the judiciary in terms of quality, or relevance.

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<sup>11</sup> Principle 2, UN Basic Principles on the Independence of the Judiciary.

<sup>12</sup> Despite a directive issued by the Attorney General in September 2015, prohibiting judges from accepting customary agreements in rape cases, such agreements continue to be accepted by the courts, as discussed later in this paper when considering the difficulties of dealing with sexual and gender based violence (SGBV) cases in Somaliland.

## **5.1.Existing Training**

Hargeisa University opened Somaliland's first law faculty in 2002 and offers a three-year Bachelor's degree in Law. Hundreds of students have since graduated, contributing to the legal profession in Somaliland. Amoud University, in Awdal region, followed in 2008 with the launch of a popular Law and *Sharia* degree, and Burao University in Togdheer region has expressed an interest in offering law courses.

In 2010, a judicial training programme consisting of a nine-month (two semesters) course was established through the Law Faculty of Hargeisa University. Entry requirements include basic skills such as reading and writing. Evaluation of the students is conducted through various methods, such as an examination and the assessment of a judge's decision in cases.

In 2011, a one-year training course was launched for 40 law graduates in preparation for their appointment as judges. The training was conducted at the MoJ and attended by 27 male and six female participants who completed their training in 2012.

Otherwise, judicial training, and training of other justice actors, as noted earlier, lacks co-ordination and consists largely of *ad hoc* initiatives by NGOs and international agencies like the UN, often without any prior consultations with the recipient institution.

## **5.2. Training Needs**

From 2013-2016, Horizon conducted several training sessions with judges, DAGs and prosecutors. The training was delivered by barristers and judges from the UK and covered a variety of subjects, including SGBV, judge craft skills, juvenile justice, law of evidence and a refresher course on appeals. The trainers found significant shortcomings in judicial skills, which negatively reflects on the training that exists and the lack of CPD. Nevertheless, Horizon's trainers were also of the view that, while there are areas for improvement, this should not detract from the judges' overall suitability and quality for the positions they hold.

### **5.2.1. Judge Craft Skills**

Horizon's judge craft training in August 2015, conducted in conjunction with the HJC, covered eight distinct topics: statutory interpretation; judicial ethics; evidence; disclosure; case management; controlling the court; judgment writing and sentencing. The attendees were also asked to consider, discuss and present two case studies, following a mock trial, which demonstrated the dearth of practical skills amongst participants.

The training identified a number of shortcomings. It revealed that Somaliland's judiciary is deficient in basic legal skills despite the increase in judges with law degrees. The attendees, when asked to approach case studies principally from the perspective of a judge, but also as a prosecutor and a defence lawyer, demonstrated that they had not done this before. Most were not accustomed to any original, analytical or methodological approach to problem solving, which suggested that the education they received did not include critical analysis. The participants further exhibited little understanding of using academic written and online resources for learning and practical application. This is not surprising given the absence of law reporting in Somaliland.

### **5.2.2. Knowledge of Existing Laws and Expertise**

Horizon's training confirmed that judges do not have substantive knowledge of existing laws. For example, many were unfamiliar with provisions of the Penal Code and the elements required to prove particular offences. This problem can be found not only amongst the

judiciary, but filters down to prosecutors, DAGs and the police. This is due to inadequate training, and also partly to the fact that Somaliland lacks legal resources, such as law reports and readily available copies of legislation.

Moreover, judges are not adequately equipped to resolve disputes involving specialised areas of law. One fundamental area is that of constitutional law. Somaliland's Constitution reflects many of the rights found in international human rights treaties. Yet courts fail to apply constitutional provisions, including for example those calling for gender equality. In particular, the Supreme Court, as Somaliland's highest court, is tasked with adjudicating constitutional law cases but does not have the capacity to do so. It should be functioning in the same manner as the US Supreme Court or the Constitutional Court of South Africa, interpreting and applying provisions of the Constitution, but to date, has failed to do so. The Chief Justice sees the advent of judges who are specialists in constitutional law as perhaps the most important channel for implementing the constitutional provisions that will help the political empowerment of women.

Added to this is the absence of knowledge or ability to resolve other specialised legal disputes, such as land disputes, which is a common problem in Somaliland and frequently escalates into violence. The Chief Justice recently highlighted to Horizon the problem of land grabbing and urbanisation encroaching on agricultural and cultural rights, which particularly affects rural and pastoral communities and, he believes, calls for judges who are specialists in environmental law. Yet judges are unable to adjudicate such problems, often deferring to customary law.

### **5.2.3. Case Management Skills**

Case management skills make it possible for cases to move along without delay and successful oversight of the courts results in improved justice delivery. Yet in Somaliland, judges, including senior judges, do not have the capacity to better manage cases and oversee and direct the administration of the courts.

### **5.2.4. Sentencing**

Horizon's research in Somaliland has shown inadequate knowledge of sentencing, leading to the passing of unlawful sentences, which are often either too lenient or too severe. Horizon's training on judge craft skills in August 2015 further confirmed the reality that the judiciary does not have knowledge pertaining to sentencing. In the exercises conducted, the variation in the range of sentencing for the same offences was extreme. For example, sentences in the mock trial based on conviction of the principal offences varied by as much as 11 years' imprisonment, stretching from sentences of four to 15 years' imprisonment, which were unlawful or wrong in principle, where the appropriate sentence would have been seven to nine years' imprisonment for the particular offence.

There is, therefore, a need for significant training and resources to be committed to sentencing practice, if a proportionate, lawful and consistent approach to sentencing by the judiciary is to be achieved. A positive step, however, has been the formulation of sentencing guidelines on a number of areas, including cases of rape and those involving juveniles.<sup>13</sup>

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<sup>13</sup> Horizon has drafted sentencing guidelines for cases involving juveniles and for the offences of affray, hurt, rape, robbery, and theft, available at <http://www.thehorizoninstitute.org/resources/>.

### **5.2.5. Judgment Writing and Legal Materials**

Participants of Horizon's judge craft training exhibited little understanding of how to use academic written and online resources for learning and practical application. This is to be expected given the extreme shortage of academic literature and written decisions, and the complete absence of law reporting in Somaliland. At most, judges may write a summary of the proceedings without any legal reasoning, making it difficult to see how a decision was reached and how it can be contested if necessary.

### **5.3. Role of the HJC**

Part of the HJC's responsibility for the administration of the judiciary is assessing the training and capacity needs of the judiciary. However, it has so far played a passive role with respect to training as illustrated in its lack of involvement in the training of entry-level judges. Reinforcing the capacity of the HJC in terms of membership, resources and understanding of its responsibilities will enable the institution to play a more active role in the preparation and implementation of programmes for entry-level training and CPD for judges.

### **5.4. Joint Training: Measures Towards Improved Training**

Joint training between the judiciary and prosecutors, and police and prosecutors, has been held in Somaliland so as to promote intra-institutional understanding and co-operation. While there are good reasons for separate training, joint training can be useful in improving the way in which the criminal justice sector works overall. Case analysis training and mock trials can assist each branch to understand the considerations and perspectives of the others. It can also be more cost-effective where resources are limited, such as in Somaliland. Horizon's joint training conducted for judges and DAGs proved to be successful. Moreover, attendees at Horizon's training have specifically asked for joint training.

#### **5.4.1. Strengthening Existing Training and Providing Further Training**

In terms of courses that already exist, it is essential to strengthen the existing training syllabus for the next group of trainee judges, by including considerable direct experience at court and placing a greater focus on judges' skills, such as legal reasoning, evidence, decision writing, and sentencing, like those areas covered in Horizon's judge craft training. A greater emphasis also needs to be placed on judicial ethics and professional standards at an early point in a judge's career, as well as upholding fundamental rights contained in the Constitution. In addition, experts conducting training in Somaliland further recommended pilot joint training as between judges, prosecutors, lawyers and the police.

Other justice sector actors that should be included in future training is court support staff. How cases are managed depends in large part on the case management skills of support staff, particularly clerks, and how they perform their job can directly impact on the efficiency of justice delivery. A training needs assessment is required to establish the skills level of support staff so as to design courses responsive to their needs. Short of a needs assessment, a number of immediate basic training courses in the following areas could be undertaken, irrespective of the level of skills: court administration; case flow management; court forms, rules and processes; collection of statistics; archiving; internal and external communications and professional standards.

### **5.4.2. A Judicial Training Institute**

In conjunction with the above measures, steps should be taken to plan for a future Judicial Training Institute (JTI). In May and June 2015, Horizon conducted interviews with key actors in Somaliland's criminal justice system to assess the need for a JTI. There was a general view that coordinated and consistent training of judges would benefit the justice sector. A permanent overarching training institution could identify training needs in the justice sector, prioritise training themes, assess the impact of training on performance, recruit suitable instructors, craft more sustainable approaches to training, and deliver training to entry level judges. A JTI could also extend CPD to the judiciary (including judicial support staff), and possibly, pursuant to specific requests, provide CPD to prosecutors, lawyers, police and prison staff.

Any future JTI should ideally be quasi-independent in that it should operate independently but report to the government. Total independence would of course have implications for funding and the government will need to fund part of it (such as salaries), though it should have minimal involvement to protect the judiciary's independence. The general view of those interviewed by Horizon, was that any potential JTI should also be separate from the University of Hargeisa.

Horizon's interviewees stated that joint training would also be useful. Indeed, given the small size of the legal fraternity in Somaliland, as well as limited economic resources, joint training for judicial and other legal professionals, so that lawyers and prosecutors can also benefit, would be beneficial to all. However, the common view of those interviewed in Somaliland was that training should, in the first place, be given separately for police, prosecutors and judges. One reason is that different institutions have jurisdiction over judges, prosecutors and the police. More importantly, there are skills which are unique, or at least more pertinent, to judges than to other professions (and vice versa) and they will have different training needs. Nevertheless, there are areas where joint training could be extremely useful, for example, when it comes to the holistic approach that justice providers need to take in relation to juvenile or SGBV cases. Here, institutions and law enforcement officials need to work together to recommend an approach that is child friendly and/or more victim-centred.

However, options need to be considered in order to overcome the shortage of resources to establish such an institute. Potential donors should be considered, as a future JTI is unlikely to be funded solely by the State. Other sources of funding could include donor funding, fundraising, training fees, and donations.

### **5.4.3. Role of the HJC**

The HJC should be strengthened so that it can fulfil its mandate to oversee training for the judiciary. It requires a functioning department responsible for formulating a formal induction and training programme and record keeping of individual training needs, and when they are met.

The HJC could be assisted in appointing a Director of Studies (DS) and a Deputy Director of Studies (DDS), both of whom would need training and when trained, would assume the responsibilities of running and devising a training package for judges in the future. The programme is not yet sufficiently sophisticated or advanced to permit this, but experts delivering training on behalf of Horizon considered that a three-year timeline would be sufficient to achieve this objective. The DS and DDS would ideally be sitting judges of experience, properly trained before taking on this role, and who would add these posts to their existing and continuing responsibilities as sitting judges.

#### **5.4.4. Law Reporting and Website**

Horizon's trainers found that a greater sharing of experience and knowledge would make a significant difference to the professional development of judges. This can be done through recording decisions, law reporting, and a website, on which decisions can appear. The Chief Justice and the MoJ support the establishment of a Law Report Unit within the HJC to publish the decisions of the Supreme Court and Appeal Courts. This initiative needs to be encouraged as students at law faculties and universities, as well as practising judges and lawyers, would greatly benefit from it.

Websites can further be useful training tools as they can include training materials, notes from training or conferences, and academic writings or discussions on particular legal issues or problems. However, the Somaliland judiciary does not have a website. There is a government entity that assists government institutions to secure domain names for a nominal fee, but resources for website development and hosting would also have to be considered.

To contribute towards better-trained judges and lawyers, there is also a need for Somali language academic writings that relate to the Somaliland legal system. This is a necessary prerequisite for increased academic rigour in the training of new lawyers. Both law reporting and a judiciary website could promote Somali language legal resources.

### **6. Attorney General's Office**

The Attorney General is the most senior prosecutor in Somaliland. While Article 103 of the Constitution states that the "Procuracy of the State shall consist of the Attorney General and his Deputies," there is no guidance in the Constitution on his powers or the AGO's governance structure. It is constitutionally part of the judiciary but represents the government and forms part of the executive, contrary to the principle of judicial independence as guaranteed in Article 99 (2) of the Constitution. This section looks at the AGO more broadly.

#### **6.1. Governing Laws and Functions**

The Penal Code and Criminal Procedure Code (CPC) flesh out the prosecutorial role of the AGO. However, in both instruments, the provisions, which are directly concerned with the AGO, are rudimentary in their description of its role and functions. For instance, Article 12 of the CPC only states that the AGO will, in criminal proceedings, be represented by the Attorney General, one of his DAGs or a police officer.

The Judiciary Act (versions one and two) includes more provisions regarding the administration of the AGO, although it still fails to present a detailed organisational framework. It states that:

- (i) The appointment process for the Attorney General and his DAGs, that the seat of the national AGO is to be in Hargeisa, and it is also to have a regional presence (Articles 44 and 45 of version one and Articles 49 and 50 of version two). The law, however, is silent on the presence of the AGO at the district level. Consequently, the AGO has no offices in districts across Somaliland except in Gabiley and a loan prosecutor in Wajale.
- (ii) The functions of the AGO, which shall include: instituting criminal charges on behalf of the State; directing investigation and supervision of criminal cases; supervising the conditions of prisons and prison inmates; assisting vulnerable individuals in civil suits and; participating in civil suits in which the government is a party or if public interest so requires (Article 49 of version two).

The AGO needs greater cohesion to give the institution a stronger foundation. A number of steps can be taken to achieve a consolidated institutional framework. In particular, the AGO would benefit from an establishing law which would, among other tasks, set out the AGO's functions, create an expanded institutional structure, and either extend the AGO to district level or create stronger mechanisms to bring police structures more closely into the fold.

The proposed text of the third version of the Judiciary Act (referred to above) includes important amendments which will have an impact on the AGO and can help remedy the substantive and practical gaps identified above, including a better defined organisational structure and an extension of the AGO's presence in the districts. The Judiciary Act proposes the creation of district level AGOs that will integrate police prosecutors into the AGO and afford better opportunities for monitoring than the present model.

## **6.2. Structure and Capacity**

### **6.2.1. Female Prosecutors**

Unlike the judiciary, there are female prosecutors in Somaliland. The AGO trained and appointed ten new DAGs in 2011 to 2012. They included five female DAGs. The appointment of female prosecutors is a first in the history of Somaliland and has opened up thinking about the prospect of women legal professionals in decision-making roles. In 2012, the AGO recruited another ten trainee prosecutors for a one-year training, five of whom were women. At the start of the SJSP in early 2014, the AG expressed his frustration at the extreme reluctance of young female prosecutors to be posted outside Hargeisa, which he said would discourage the appointment of female prosecutors, and the promotion of those who were in place. However, this situation has changed gradually and there are now female prosecutors in a number of regional offices.

### **6.2.2. Deputy Attorney Generals**

24 DAGs are ranked immediately below the Attorney General. All, irrespective of their seniority in service, experience, background or specialisation are appointed to this level and will remain in this tier for the duration of their career at the AGO. DAGs are all on the same salary scale with no distinction made between a prosecutor appointed a year ago and one who has served for over ten years. Consequently, as there is no real prospect for prosecutors to be promoted within the institution, it is hard to attract and retain the best legal professionals.

The fact that all DAGs remain at the same level, despite their seniority, qualifications and experience, is discouraging for morale. Nor does it serve to attract and retain the most qualified candidates. A system of promotions should be introduced based on seniority and performance appraisals, once the latter are properly implemented by the AGO for all staff.

### **6.2.3. Police Prosecutors**

Police prosecutors form part of the Somaliland prosecutorial service and are appointed in the districts to represent the AGO pursuant to Article 12 (2)(c) of the CPC. However, the AGO has not established a reporting mechanism between the district police prosecutor and the regional DAG or the Attorney General. The AGO, therefore, does not have control over criminal prosecutions at the district level due to weak links between police officers and the AGO's headquarters.

The inability of the AGO to monitor the performance of police prosecutors is regrettable given that the majority do not have formal legal education or training. This is being addressed, incrementally, by the training offered by Hargeisa University. At the same time, efforts are being made by the AGO to strengthen the organisational links between the AGO and police prosecutors.

The AGO has not appointed any new police prosecutors for some years because there is now a sufficient pool of law school graduates to serve as prosecutors. However, many law school graduates qualified to serve as prosecutors want to live in urban areas and not in remote areas of Somaliland, and as a result police prosecutors are likely to remain employees of the AGO for the foreseeable future.

#### **6.2.4. Resource Challenges**

The AGO is affected by the need for resources, further contributing to its inaccessibility in rural areas. Although each regional AGO is responsible for prosecuting cases occurring in the rural areas of their designated region, they often do not have the budget for transport and cannot travel to rural areas.

### **6.3. Training Needs**

Much of the training needs of the judiciary discussed in this paper, also apply to the AGO, especially entry-level staff. The AGO needs assistance to prepare a more planned and reasoned approach to training new members of staff. There is minimal structure in the training, no learning milestones are set, there is no tailored syllabus and learning materials are in short supply. In addition to making the training package solid, the capabilities of the trainers themselves must also be considered. The prosecutors of today do not have specialist knowledge, for example, in how to approach SGBV cases. Much of this knowledge gap is still filled through one off, *ad hoc* training by NGOs and international organisations.

Given that little attention is paid to practical skills on the undergraduate law course, there is a real need for CPD for DAGs, prosecutors and police prosecutors, particularly on practical skills and substantive knowledge of the law. The steps recommended above for judges and court staff also applies to the AGO.

The AGO would also greatly benefit from having a website and an online database to facilitate proper recording and archiving of data. The website could include relevant laws, the organisational structure and functions of the AGO, activities it is doing, and particular issues of concern.

## **7. Improving Service Delivery with Joint Meetings**

Monthly meetings are held in the Regional Court in Borama between judges, prosecutors, police and the Custodial Corps. The meetings are organised by the Deputy Chairman of the Appeal Court and take place in the court hall. Participants are informed a day before, attendance is recorded, and the meeting goes ahead if two-thirds of participants are present.

One important issue which the Borama meetings address is periods of detention for persons on remand. The court receives weekly reports from prisons of detainees who are held following their court appearance. An example report from 30 May 2015 listed a total of 122 prisoners on remand. The list was divided into district, regional, and appeal court and for each detainee, showed the date of arrest and what offences they were charged with.

The benefits of these meetings are numerous. They assist in protecting the rights of detainees by monitoring the periods of detention on remand and allow for judges to follow up on delayed cases. They constitute a forum for participants to share any obstacles they have faced during the month, or particular issues they have dealt with, thereby allowing others to learn from experiences and identify recurring problems. Examples include deciding on how to deal with juvenile offenders, and dealing with complaints of inappropriate sentences. Accordingly, not only are individual rights of those detained monitored, but also the administration of justice more generally is improved. However, defence and legal aid lawyers are not invited to attend the meetings. One public defender said that whenever he had a complaint, he had to raise it with the Chairperson of the relevant court.

Horizon further learnt, from interviewing the Chairman of the District Court in Borama, that the District Court has its own weekly or fortnightly meetings where they discuss problems, impending work, and areas for improvement. The six district judges and the Chairman attend these meetings.

Moreover, the President of the Appeal Court in Hargeisa described a similar system that operates for judges and prosecutors to learn from mistakes. Each month, a conference for prosecutors and judges from the region is held at which any challenging cases are discussed. Similar conferences are held in each region. The Hargeisa Appeal Court also convenes a meeting every Wednesday with lower court judges to discuss their work.

The Chief Justice has encouraged other courts throughout Somaliland to adopt these practices and hold regular meetings amongst judges, as in Hargeisa, and monthly meetings with other members of the justice sector, as in Borama.

The monthly meeting in Borama, and the monthly and weekly meetings held in Hargeisa, are excellent models for all regions. The Chief Justice should be supported in his encouragement of other regions to adapt these practices. More specifically, a guideline or directive could be issued to recommend such meetings, a monthly digest could be compiled and made available to judges and prosecutors on the outcome of these meetings, and at some future stage the information could be published on an HJC website, creating an opportunity for information-sharing, awareness raising about problem areas, and a forum for discussion and critical thinking.

## **8. Problematic Areas**

### **8.1. Access to Justice**

#### **8.1.1. Mobile Courts**

A large percentage of the population in Somaliland still live in rural areas. They have little or no engagement with formal justice institutions which are concentrated in regional cities and the capital city, Hargeisa. In response, a mobile court scheme was rolled out in 2008 between the MoJ and UNDP, and subsequently transferred to the Supreme Court in 2011. Since the beginning, the mobile court scheme has been stymied by inadequate and intermittent funding.

Despite the funding constraints, mobile courts have functioned in some capacity. In February 2016, the HJC reported that mobile courts presided over a total of 1,422 cases in 2015. However, the HJC also disclosed that this initiative still does not have reliable and consistent funding. As of March 2016, UNDP funding stopped and no alternative funding streams have

been put in place. Currently, any resources the mobile court is using are bought on credit or at the expense of the presiding judge.

Mobile courts fulfil a vital role in enabling rural communities to benefit from the formal justice system. The Somaliland government should explore how to make mobile courts more sustainable and not reliant solely on UNDP funding.

### **8.1.2. Legal Aid**

Legal aid in Somaliland is an underfunded framework of services that is not, as of the writing of this paper, extending sufficient services to the public. As of February 2016, the only legal aid institution with funding and delivering free legal services was the University of Hargeisa Legal Aid Clinic. The other legal aid groups—Somaliland Women’s Lawyers Association, Somaliland Lawyers Association and the University of Amoud in Borama—face inconsistent funding and therefore cannot provide reliable services.

As with mobile courts, the main obstacle to legal aid in Somaliland is the lack of resources. Each organization tends to wait for funding instead of actively seeking it. Until the concerned groups come up with improved strategies, resources will remain an impediment. Potentially the MoJ could use the monthly meetings to elaborate a funding strategy.

### **8.1.3. Court Fees in Criminal Cases**

A host of costs are connected with litigation in Somaliland, including the payment of tax, fees for the issuing of summons and even payment for the production of a court’s decision/judgment. Civil claims, in particular, require the litigant to pay fees from the start to the end of their case, which is true of most jurisdictions. However, court users interviewed by Horizon also describe costs that victims are expected to pay in criminal cases. These costs for victims in criminal cases are not formalised and are most likely a form of corruption.

Devising a public awareness campaign, so court users know that victims should not be paying money to the courts in criminal cases, would be an important contribution towards eliminating corruption in the courts.

## **8.2. No Division in Jurisdiction**

There are three types of law in Somaliland—customary law or *Xeer*, Sharia law, and the formal justice system—but they are not clear-cut categories or distinct justice systems. Rather, there exists a multi-layered justice system where the lines between *Xeer*, the formal justice system and Sharia law are imprecise. A division in jurisdiction does not exist, and neither is there harmonisation in the application of the three different systems. Consequently, the application of the laws is both *ad hoc* and highly subjective. Sharia law directly influences both the formal justice system, as mandated by the Constitution, and *Xeer*, by deciding, for example in the case of rape, the type and amount of compensation in customary agreements. Moreover, the formal justice system and *Xeer* are intertwined. For example, the police at times arrest suspects or conflicting parties upon the request of elders. Thus, the formal justice system and *Xeer* are interdependent and both influenced by Sharia law, but *Xeer* often takes primacy.

Because there is no division in jurisdiction between the three types of law, elders are often trying to resolve cases under customary law in parallel with court proceedings. When this happens, judges and law enforcers often defer to customary agreements and permit families or clans to withdraw cases from the courts. Consequently, the independence of the judiciary and the formal justice system as a whole are weakened.

The Constitution only offers guidance on jurisdiction in very limited circumstances. Article 104 (1) gives military courts jurisdiction over criminal cases against members of the armed forces, and Article 90 gives the executive power to enforce laws not within the jurisdiction of the judiciary. Otherwise the Constitution is silent. To address the overlap between *Xeer*, Sharia and the formal justice system, and to harmonise the laws, Somaliland should consider a constitutional amendment that stipulates jurisdictional divisions.

### **8.3. Expense of Formal Justice**

The formal justice system, especially the criminal system, is frequently out of reach for court users because of the direct and indirect costs of going to court. The court fees in civil cases and kickbacks in criminal cases are prohibitive. Moreover, the centralisation of the formal justice system in urban areas means that many rural communities remain without access to courts and lawyers and incur expenses for transport and lodging if they decide to take a case to court. Because of this, the formal justice system is an expensive process and many in Somaliland cannot afford to take a case to court. As a result, *Xeer* is often preferred.

Until the judiciary and court service can offer an impartial, affordable and accessible service to the public, the traditional justice system in Somaliland will continue to be the main port of call for most people. Serious consideration must be given to how to deal with the customary system of *Xeer*: whether those who support Somaliland's justice sector also work with the traditional justice mechanisms to make them a means of advancing justice; or whether it be determined that the traditional system be strictly excluded – a wholly unrealistic and problematic prospect. Either way, a coordinated approach involving traditional leaders and justice sector stakeholders is required.

### **8.4. Juvenile Justice**

Many children under the age of 15 are serving criminal sentences and many cases involve children who should not have been detained. While Somaliland has a relatively progressive Juvenile Justice Law (JJL) that reflects international child rights standards and includes procedures for diversion, the institutions envisaged under the JJL have not yet been established (such as an Office of Social Probation, Pre-Trial Detention Centres, and Children's Courts). Children of all ages are being arrested and detained for minor offences. Police, investigators, judges, and prosecutors are unaware of how to deal with children's cases and ultimately, often treat them as adults. Children tend not to have legal representation and contact with families once detained. In the absence of probation officers, and judges who are not adequately trained in how to deal with juvenile cases, children are not diverted from the formal justice system as required by the JJL and international human rights law.

While the JJL supports judges in how they choose to divert a juvenile case, there is a collective lack of in-depth knowledge of the JJL and its relationship to other legislation, in particular, the Penal Code, Procedure Codes and the Maintenance of Public Order and Security Law.

Judges need to look carefully at the definition of diversion. There is a wide range of arrangements that judges can take to make the entire process more child friendly. Before trial, judges should speak to the child in an informal manner so the child feels comfortable with the judge. Judges must also establish some ground rules with the prosecutors and the lawyers so they approach the witness with the necessary sensitivity. Moreover, monthly meetings like

those in Borama could be used to identify juveniles in police custody, or in prison, and to consider alternative options that are consistent with the principle of diversion.

## **8.5. SGBV**

The formal justice system's ability to deal with SGBV cases in Somaliland remains extremely problematic, as detailed in a recent report by Horizon, *Seeking Justice for Rape in Somaliland: The Role of the Criminal Justice System*. Despite cases reaching trial, elders and victims' families continue to withdraw SGBV cases at trial with the approval of judges, contrary to the Attorney General's directive of September 2015, that customary agreements not be accepted in rape cases. One particular example is of a serious gang rape. Ten defendants were convicted of raping two women. But because the families reached a customary agreement, the Supreme Court released all defendants. Even the Minister of Justice, who was informed by the prosecutor of the agreement, felt he could not interfere, demonstrating the status of customary agreements in Somaliland.

A further issue relating to the judiciary and SGBV cases is that of sentencing. If the prosecution proves the elements of rape under Article 398 of the Penal Code, the judge can sentence the accused to five to 15 years' imprisonment. However, judges often disregard this requirement and sentence the accused as they see fit. Others are simply unaware of the sentence under Article 398 and accused persons are often released early without any reasons.

Moreover, courts do not take a consistent application of victim protective measures, such as the use of screens to block the testifying victim's view of the accused, permitting a support person to accompany the victim, and closed courtrooms. Nor is there an institution-wide policy on how a presiding judge should manage court proceedings and victim questioning.

Furthermore, while the AGO established a newly created Juvenile and Sexual and Gender Based Violence Unit within the prosecution, it is not fulfilling its full potential. The Unit is staffed by trainee prosecutors and tasked with monitoring juvenile and women detainees at police stations in Hargeisa. Trainee prosecutors go out for monitoring visits twice a week which includes documentation of the age of the detainee, reasons for arrest and duration of detention. However, further training is needed.

The commitment of the judiciary to a more victim-centred approach in SGBV cases will be crucial in order for the effects to filter down to prosecutors, investigators and the police. Moreover, joint training for police, the AGO and the judiciary can bring about a common understanding of SGBV, as well as a coordinated approach, set out in concrete actions, to be implemented. This would ideally reflect agreed minimum standards which place a stronger focus on victim support and the need to succeed in a prosecution. Establishment of regular case discussion meetings in relation to SGBV could begin the process of working across the system with police, the AGO and the judiciary.

## **Conclusion: Towards an Independent, Fair & Efficient Judiciary**

A central theme running through this paper is judicial independence. Education, continued training, financial autonomy and the enforcement of ethics are all important ways of establishing an independent judiciary capable of providing a more robust, fair and efficient justice system. With this in mind, it is essential that law reform remain a priority on the agenda for the judiciary, as the laws, including the Constitution, do not sufficiently guarantee its independence.

However, in order for the judiciary to achieve greater autonomy, it further requires a fully functioning HJC, and a well-resourced Secretariat (in terms of staff and infrastructure).

Unfortunately, the physical infrastructure in the justice sector as a whole is extremely lacking. The support proposed in this paper, including in training and recruitment, will not have the desired impact while the needs for infrastructure remain unmet and the judiciary does not have adequate resources. The importance of investing in the competence and conduct of the judiciary, so the formal justice system is both impartial and efficient, must therefore continue to be impressed upon the Government and all relevant actors.

In the meantime, support can be offered to build upon existing positive practices and recent achievements, such as: continuing with training on priority areas identified in this paper; strengthening and improving upon existing training through adding to current syllabuses; and producing a curriculum for entry level training for judges, as well as a CPD programme, that can be taught at a future JTI. Moreover, the process of training of trainers has already begun and the momentum for this should not be lost. By the time a longer term sustainable JTI becomes a reality, there should be a pool of Somaliland judges and DAGs able to deliver training themselves.

Moreover, the existing judiciary and justice sector meetings need to be formalised. The model in Borama should be followed in all regions with the establishment of formal guidelines. Such meetings can play a crucial role in addressing particular problem areas, such as juvenile and SGBV cases, as well as relieving overcrowded prisons, thereby respecting the rights of accused persons and victims.

It is encouraging to see that steps are being taken to counter some of the concerns raised in this paper and there is a will to bring about change. It is hoped that this attitude can filter through to the relevant sections of the Government and the justice sector as a whole to facilitate achieving a justice system in which the people of Somaliland can have faith. Yet any work done must be mindful of the role of traditional justice. Indeed, any initiatives are likely to fail if customary law mechanisms are not taken into consideration, and traditional leaders are not involved, given the strong influence of *Xeer* at all levels of Somaliland society.

However, notwithstanding the difficulties faced by justice sector actors in Somaliland and those assisting them, the achievements which have taken place in just the last few years, have been encouraging. They offer a positive outlook for the future of Somaliland's judiciary and formal justice system.