



*Informed Investment in Somaliland's Justice Sector*

**Baseline Study Report**

**31 July 2017**

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Horizon's reports and discussion papers explore issues identified through our work. They are intended to stimulate debate among stakeholders, the public and donors and promote government policies based on respect for human rights, strengthening institutions and encouraging self-reliance.

Founded in 2013, Horizon's portfolio has included managing a justice sector project in Somaliland, funded by the Department for International Development (DFID), and work on civil service reform and revenue generation in Somaliland funded jointly by DFID and DANIDA. The *Baseline Study Report on Informed Investment in Somaliland's Justice Sector* was funded by DFID.

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*Horizon Institute* would like to express its sincere appreciation to Somaliland's justice sector institutions, especially the Chief Justice and the judiciary, who devoted considerable time and energy to facilitating the field research for this report. Publication of this baseline study, *Informed Investment in Somaliland's Justice Sector*, was made possible because of the involvement of Somaliland's justice sector institutions, namely the judiciary, Ministry of Justice, Attorney Generals' Office and the Custodial Corps.

Horizon would also like to thank the members of the public, legal aid providers, private lawyers, human rights defenders and members of parliament who shared their experiences and insights with Horizon's researchers.

Horizon is immensely grateful to the Department for International Development (DFID) for making this research possible through their generous support.

## ACRONYMS

AG	Attorney General
AGO	Attorney General's Office
CID	Criminal Investigations Department
CJ	Chief Justice
CPC	Criminal Procedure Code
DAG	Deputy Attorney General
DFID	Department for International Development
HJC	High Judicial Council
HoR	House of Representatives
HRC	Human Rights Centre
LDT	Land Dispute Tribunal
LLEC	Lawyers Licensing and Ethics Committee
MoF	Ministry of Finance
MoJ	Ministry of Justice
NHRC	National Human Rights Commission
PC	Penal Code
PD	Public Defender
PDU	Professional Development Unit
SC	Supreme Court
SGBV	Sexual and Gender-Based Violence
SWLA	Somaliland Women's Lawyers Association
SOLLA	Somaliland Lawyers Association
UNDP	United Nations Development Program

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## INTRODUCTION

From 15 December 2016 to 31 July 2017 Horizon Institute (Horizon) conducted extensive quantitative and qualitative data collection for a Baseline Study of Somaliland's justice institutions to identify the most appropriate areas for investment by Somaliland and donors in the justice sector. The *Baseline Study Report on Informed Investment in Somaliland's Justice Sector* is the product of this field research in all the regions of Somaliland. Through wide-ranging interviews with justice sector leaders and those who work in, and engage with, the different institutions, a detailed and comprehensive picture has emerged which reveals progress, hopes and aspirations, as well as the enormous challenges which persist.

The findings of the report, first and foremost, reflect and concern the justice sector in Somaliland, and by extension, the Government and people of Somaliland. But the analysis is, necessarily, also of immense concern to the international donor community which has invested in the development of these institutions, and to the international agencies and local NGOs which have, with donor support, implemented programs in this sector.

The research highlights the extent of inter-dependence among the different institutions for any of them to be able to fulfil their mandate and responsibilities. A fair and efficient judiciary, which upholds the rule of law, is impossible if the prosecution service is unprofessional, ineffective and lacks independence from the Executive. Neither the judiciary nor the prosecution can do their work if the police force disregards the rights of citizens, including access to a lawyer, and acts with impunity as a law unto itself. The prison service is overwhelmed and incapable of protecting prisoners if the judiciary fails its duty to ensure that innocent people are not convicted and that prisoners who have completed their sentences do not languish in prison. Unregulated, and often unlicensed, lawyers who are not subject to any code of conduct, make a mockery of the administration of justice. The search by citizens for justice and redress suffers when their members of parliament are unable, or unwilling, to hold justice institutions to account. The justice sector, as a whole, cannot move forward and grow, as it needs to, if the Government does not provide it with sufficient attention — financially, by imposing discipline and demanding accountability. Political institutions, and by definition stability, are threatened when justice is not seen as capable of providing a sense of security and fairness.

The striking disconnect between the capital, Hargeisa, and the regions, is one of the most significant findings of the report. Hargeisa is where most of the limited resources, and attention, are concentrated, by Somaliland, donors and implementing agencies. The regions, where the needs are the greatest, are being neglected by comparison. Ironically it is easier to have much more of an impact by working in the regions, with less of a financial burden.

A central feature of the research was simply the extreme difficulties in gathering the most basic data, and the enormous amount of time it required to check information and to keep returning to the same institutions. The absence of data, reliable or not, is not necessarily linked to a lack of technical expertise or the absence of technology since useful records and information can be stored manually. Even more importantly, it demonstrates the absence of emphasis on institution-building. Without data, there can be no institutional memory, and no basis for formulating relevant policies and initiatives.

The *Baseline Study Report on Informed Investment in Somaliland's Justice Sector* provides a wealth of information that makes investment, reform and collective action possible.

# EXECUTIVE SUMMARY

## Key Findings

### SECTOR-WIDE

***The Near Complete Absence of Data:*** No justice institution has a reliable system in place to record data. Gathering even the most basic information, such as the number of judges and how many cases mobile courts handled in a given year, was difficult and time-consuming. Where statistics are collected, it is for reporting purposes only, either to the central government or a donor. Without the most basic data, reforms lack a foundational basis.

***A Profound Disconnect Between Hargeisa and the Regions:*** Resources across the justice chain are scarce. What little is available is concentrated in Hargeisa. Head offices in Hargeisa do not monitor their regional offices adequately and, consequently, are not well-informed about the challenges they face.

***Leadership of the Justice Sector:*** Successive governments in Somaliland have failed to clarify the leadership structure of the justice sector, and what the relationship should be between the Chief Justice, the Minister and the Attorney General. The result is a fragmented and compartmentalized sector, with a Ministry too weak to play a meaningful role in policy formulation and ensuring adherence to the policies through effective monitoring.

***The Importance of a Holistic Approach:*** Improvements in any part of the justice sector are important in themselves. However, focusing exclusively on one institution, in isolation, is counter-productive given the extent to which it cannot fulfil its responsibilities unless other agencies are committed to similar goals. The police, for example, frustrate the efforts of the judiciary to limit abuse of remand and end the unlawful arrest and detention of journalists and human rights defenders.

***Imposed Interventions Have Negligible Effect and Create Dependency:*** The importance of enabling the concerned institutions to drive change and lead on donor investment cannot be emphasized enough. To date, external actors have defined the problems, proposed solutions and implemented programs. The interventions have not brought about lasting changes since the activities were in response to external programs or put together in order to absorb funds. What they have done is discourage initiative and undermine the independence of justice sector actors.

***Improved Relations Between Justice Sector Leaders, But Cross-Institutional Collaboration Remains Largely Ad Hoc:*** The Chief Justice, the Minister and the Attorney General have forged a good working relationship. However, meetings between their institutions, in Hargeisa or the regions, do not take place on a regular basis, but when necessary to address specific difficulties.

***Crippling Shortages of Every Necessity:*** From working space to stationery, furniture, computers, Internet, legal resources, security infrastructure, transport and electricity, all courts, the head office and regional offices of the MoJ and the Attorney General's Office and prisons across Somaliland lack the essentials to operate as they should. Staff often pay for furniture, stationery, electricity and Internet out of their meagre salaries. Crowded facilities demoralize staff and have a negative impact on their productivity. Insufficient transport

facilities hamper the work of mobile courts. Offices often double as courtrooms and judges sometimes work in courtyards. A prosecutor's office may be separated from the court by makeshift wooden walls, jeopardising confidentiality. The lack of Internet makes interventions involving online systems a distant prospect. Instead of encouraging ingenuity, the dearth of funds has led to inertia on how to improve services without a large injection of financial resources.

***Weak Administration/Human Resource Management:*** District, regional and appeal courts have no systems of governance. No court had a vision, a mission or a strategic plan. At most, they had a needs list. Human resource systems are virtually non-existent, and this is also true for ensuring a fair distribution of work and managing caseloads. There is no system-wide approach to case management. In the regions, there is no position dedicated to administration and finances. No court distributes resources in line with the statistics they collect. Outreach and information to the public is inadequate, and feedback from the public is on a purely informal basis. Very short working hours contribute to poor work habits and impede progress.

***Limited Resources Spent Mainly on Salaries, Little Earmarked for Operational Costs:*** Most of the budget of all the institutions is spent on salaries, making the work too dependent on donor support through international agencies or local NGOs.

***No Oversight by Parliament:*** The Justice, Judiciary and Human Rights Committee of the House of Representatives provides no oversight, does not act on information, is currently not issuing any reports and only goes on monitoring visits when donor funding is provided. In the 12 years of its existence, Parliament has only passed four laws related to the justice sector.

## THE COURTS

***A New Energy:*** The appointment of a reform-minded young Chief Justice in June 2015 has energised the judiciary and encouraged public awareness of justice-related issues and use of the courts.

***The Reforms of the Chief Justice Have Had Limited Impact:*** In the regions, and even in Hargeisa, implementation of the CJ's reform strategy is weak, in part because this strategy has not been developed into written policies and action plans, making it difficult for judges to know what is required of them to meet the goals. The speed of trials has improved, but there has been little progress in increasing working hours, eliminating the abuse of remand, promoting women to senior positions, making the judiciary more sensitive to the needs of women and children, fighting corruption and making the judiciary a human rights friendly arena. The CJ does not have a dedicated office that can help him articulate, execute and monitor his reforms. Nor can he depend on the High Judicial Council where staff capacity is extremely low.

***Increased Public Use of, and Confidence in, the Formal Court System:*** Confidence in the formal courts is growing. More people, particularly in the cities, are using them, especially because of their powers of enforcement and women because of more equal treatment. Judges in rural areas are also increasing.

***All Judges Requested Training:*** Judges lack sufficient capacity and they all requested additional training. The new Professional Development Unit (PDU) within the HJC has not

carried out any significant work and judicial training continues to be given by different organizations on an *ad hoc* basis without coordination.

***Significant Public Support for the Appointment of Female Judges:*** 70% of those interviewed on the appointment of female judges were in support, describing women as more hardworking and less susceptible to corruption.

## **MOBILE COURTS**

***An Integral Program of the Judiciary:*** Mobile courts enable the judiciary to increase access to justice, but there is little public awareness. The CJ has broadened the mobile courts and created a team at the Supreme Court level. They are part and parcel of the court system and consequently suffer from the lack of systems described above. There is no subject matter focus, and the type of cases varies from region to region. There is no priority given to cases involving SGBV or juveniles.

***Insufficient Funding Which Has Come to an End:*** The main source of financial support came from the UNDP. Each mobile court team was allotted \$400 per month for fuel and \$200 per month for stationery which was grossly insufficient. UNDP funding ended in March 2016.

***Reporting and Case Statistics Driven by Funding:*** Reporting and collection of case statistics for the UNDP has created a desire to improve statistical outcomes rather than service delivery.

## **LEGAL AID**

***A Nascent Public Defender System:*** The system of Public Defenders (PDs), to represent people accused of crimes with a minimum of 10 years' punishment, is the only government legal aid service. The initiative was launched by the MoJ in 2014 when UNDP funding to legal aid providers was cut back. With only 5 PDs in the regional capitals, and no financial support other than a salary, their contribution is constrained by their numbers and the absence of transport and funds. PDs only handled about 5% of criminal cases in 2016.

***Non-Governmental Legal Aid Providers:*** The Somaliland Lawyers Association (SOLLA); Somaliland Women's Lawyers Association (SWLA); University of Hargeisa Legal Aid Clinic) and the University of Amoud Legal Aid Clinic in Borama are meant to provide legal aid services. They only do so when they get external funding, which is available sporadically. Currently, they only operate, on a small scale, in two urban areas, Hargeisa and Borama.

## **THE ATTORNEY GENERAL'S OFFICE**

***No Formal Systems for Timely Case Processing and Managing the Workload of Prosecutors:*** Most prosecutors have a substantial caseload, compounded by the absence of efficient systems to manage their caseload.

## PRISONS

**Population:** The majority of the prison population is young men in urban prisons. Juveniles account for 7.9% and women for 2.3%. Prisoners include many who have completed their custodial sentence but have not paid a fine or compensation to the victim.

**Urban Prisons Operating Far Above Capacity:** Rural prisons operate at about two thirds of their capacity while urban prisons operate well above capacity, leading to severe overcrowding. The central prison in Borama is at 350% of its capacity. Young people are held together with adults convicted of murder and rape.

**Conditions and Facilities:** Prison buildings need urgent repairs. Prisoners rely on families for bedding, clothes and toiletries. Only three prisons - Borama, Berbera and Burao - provide food without contributions from families. Only three prisons offer prisoners the chance to work or learn a skill through vocational rehabilitation.

## INDEPENDENT DEFENCE LAWYERS

**Few in Number and Concentrated in Urban Centres:** There are less than 100 defence lawyers and they work exclusively in the main towns. Court users in rural districts either represent themselves or bring a traditional elder to represent their interests.

**Unregulated and Accountable to No One:** Many lawyers practise without a licence. There is no formal Code of Conduct or a Bar Association to ensure lawyers have a minimum educational requirement, hold a valid licence, set standards, investigate malpractices, enforce discipline, impose penalties or promote ethical behaviour.

**Strong Condemnation of the Formal Justice System:** The police and prosecution, regarded as “one and the same” by most lawyers, often deny defence lawyers access to their clients. Evidence is disclosed by the prosecution only just before, or during, the initial hearing. Judges are seen, even by members of the public, to side with the prosecution.

## THE POLICE

**The Actions and Attitude of the Police Constitute a Major Obstacle to the Rule of Law:** A militarized police force with no civilian oversight casts a pervasive and troubling shadow over the entire justice sector. Without profound changes in how the police operate, and interact with the courts, prosecution, defence lawyers and the public, human rights abuses will continue and it will be difficult to institutionalise the rule of law.

## KEY RECOMMENDATIONS

- **Empowering Institutions to Direct Interventions:** For donor funding to make a meaningful contribution, institutions must be able to direct reform themselves. The technical assistance provided should be of a supportive nature, not the imposition of pre-determined policies and activities.
- **Gearing Investments Towards the Regions:** Far greater emphasis should be placed on supporting work in the regions where the needs are more severe and the returns greater.

- ***Using the Judiciary as the Key Point of Entry:*** Courts come into contact daily with all the other justice sector actors and can therefore demand that the police, prosecution, lawyers and prisons carry out their work in a law abiding and timely manner. Training judges and registrars, who are often responsible for the miscarriage of justice, should be a priority. The only viable long-term prospect for training is to establish a permanent training institute. The development of governance, financial and human resource systems is critical for sound management of the judiciary. The CJ's office should be supported with the human resource capacity to execute and monitor the implementation of his ambitious reform strategy.
- ***Strengthening Mobile Courts Through Continued Financial Support:*** Mobile courts have a strong potential to increase access to justice beyond the urban towns, especially because of their relatively low cost in Somaliland where no honorarium is paid.
- ***Expanding the Nascent Government-Led Legal Aid Program:*** The framework provided by public defenders can be bolstered to enable the MoJ to extend legal aid to far more people who cannot afford to pay for legal services.
- ***Reinforcing the Existing Structures for Monitoring:*** A successful monitoring system must be seen as an obligation between local institutions, and not merely as conditions tied to external donor funding. Improving how courts in the regions communicate with the CJ's office in Hargeisa, and providing resources for regional inspections, will strengthen the existing monitoring mechanisms.
- ***The Police:*** Given the extent to which the police undermine respect for the rule of law, future donor support for the police needs to take this into account. Addressing the needs of the police in a rule of law vacuum is counter-productive. If people fear the police, justice, as well as security, will continue to remain elusive.

## **METHODOLOGY**

Between 15 December 2016 and 31 July 2017, Horizon conducted quantitative and qualitative research in all the regions of Somaliland which built on, and leveraged, its previous DFID-funded work, 2013-2016, on Somaliland's formal, customary and religious justice systems. The field research collected data from the regions, including remote districts, as well as urban areas, as listed below. The objectives of the field research were to find out: (1) what prompts beneficiaries to seek justice, which system they look to and why; (2) how they access justice; and (3) how the formal system delivers justice and with what results.

### **Locations Visited**

Horizon chose to conduct the study in each regional capital city, as the majority of the justice sector institutions in the regions are located in these towns. In each regional capital there is a prison, the Attorney General's Office (AGO), a Ministry of Justice (MoJ) office, a District, Regional and Appeal Court, and a mobile court. The regional capitals covered were:

1. Hargeisa (Maroodi-Jeex);
2. Berbera (Saahil Region);
3. Burao (Togdheer Region);
4. Borama (Awdal Region);
5. Erigavo (Sanaag Region);
6. Las Anod (Sool Region).

In addition to the regional capitals, the following districts were chosen to highlight areas where only some justice actors are located, and the difficulties this presents for populations trying to access justice in these areas.

7. Gabiley (Maroodi-Jeex);
8. Baligubedle (Maroodi-Jeex);
9. Oodwayne (Togdheer);
10. Aynabo (Sanaag).

Thirdly, the following remote districts were selected to highlight the impediments to justice in rural areas.

11. Darasalaam (Maroodi-Jeex);
12. Sabawanaag (Maroodi-Jeex);
13. Salahley (Maroodi-Jeex);
14. Wajale (Maroodi-Jeex);
15. Sheikh (Saahil);
16. Abdaal (Saahil);
17. Mandera (Saahil);
18. Dilla (Awdal);
19. Boon (Awdal);
20. El-afwayn (Sanaag);
21. Garadag (Sanaag);
22. Oog (Sool).

## Data Collection

**Data Collection Sheets:** The quantitative research was conducted using data collection sheets for each justice institution. The questions used in the data collection sheets were developed based on Horizon's previous data collection work within the justice system, and by incorporating relevant aspects of the Court Excellence questionnaire<sup>1</sup> and domestic and international laws and standards. Information about the impact of the Land Dispute Tribunal, an administrative tribunal that has jurisdiction over urban land in Hargeisa, Borama and Berbera, was included in the analysis about the formal courts.

Questions were primarily quantitative, with a focus on identifying key figures, statistics and measurements. The respondents selected were those in a position of leadership and in the best position to provide information, such as Chairpersons, Heads of Office, and Prison Commanders.

During the first six weeks (15 December 2016 - 31 January 2017), Horizon tested the Mobile Court Data Collection Sheet and the Formal Court Data Collection Sheet in three locations: Gabiley, Abdaal and Berbera. The responses and feedback served as a basis for refining the questions asked and data collected.

The simplified data collection sheets were translated into Somali to ensure data was collected as accurately as possible. Horizon followed up with visits and phone calls with any institution that did not answer certain questions, or where their responses were unclear or contradictory.

The final list of questions is contained in Annex 2. These include the questions for the formal courts; mobile courts; legal aid; Ministry of Justice; Attorney General's Office and prisons.

**Court and Case Observation Sheets:** The one-off data collection visits were supplemented by continuous monitoring of the regional courts by Horizon's Regional Representatives. Two court observation sheets and one case observation sheet were used to track and gather data at the regional courts with the aim of identifying patterns and processes in the day-to-day operations of the courts. The sheets were translated into Somali and updated on a weekly basis to ensure that the data was accurate and relevant.

**Police:** Due to the closed off nature of the Somaliland police as an institution, data was not separately collected from police stations. Nevertheless, questions on police locations and their role in trials were asked of the formal courts, and requests for remands by the police were included in the Regional Representatives' observations. This data helped to establish how best to approach data collection from the police in the future.

**Beneficiary Survey:** A Beneficiary Survey was used to guide the field research for an assessment of where the formal, customary and religious justice systems intersect and the drivers determining how beneficiaries choose and access justice.

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<sup>1</sup> An evaluation tool developed by the International Consortium for Court Excellence that evaluates a court's performance in seven areas: leadership and management; planning and policies; resources; proceedings and processes; client needs and satisfaction; affordable and accessible court services; and public trust and confidence. Available at <http://www.courtexcellence.com/>.

The survey was designed to capture the public's perception of the formal court system and the decision-making process that shapes an individual's decision to take a dispute to either the courts, the customary system or *Sharia* courts.

***Appointment of Female Judges Survey:*** The Appointment of Female Judges Survey asked a range of questions designed to gauge how different demographics of the public view the possibility of the appointment of women judges and what they think are the obstacles to achieving this goal.

***Defence Lawyers:*** A separate questionnaire was developed for defence lawyers to determine the specific challenges they face, as well as the extent to which defence lawyers help or hinder the administration of justice. This included questions on how the police, judges and prosecutors treat them, what access they have to evidence and their clients who are imprisoned, and how they interact with clients.

## **Data Analysis and Presentation**

The data collected was checked for any gaps or errors, and then inputted into spreadsheets. From these spreadsheets, the data was aggregated and compared at various levels, including across the regions, by region, by urban/rural location and by court level.

The resulting figures and statistical trends were converted into various tables and data visualisations, including maps, bar charts and pie charts. These tables and visualisations are included in the main report and Annex 1 as simplified representations of otherwise complex or difficult to understand data.

Unless otherwise indicated, numbers have been rounded to one decimal place.

It is important to emphasise two points. Firstly, as the report will discuss, few institutions in Somaliland have reliable systems in place to record statistics and other relevant data. This means that much of the data collected is based on the estimations of respondents and, despite Horizon doing its best to follow up on any missing or erroneous data, there are inevitably some gaps in the data collected. Where possible, missing data or questionable responses are clearly indicated in the report.

Secondly, although almost all justice institutions were visited as part of this study, some were not; the data collected is a substantial sample, not a complete survey of every justice institution in Somaliland. Unless otherwise indicated, the sample sizes for the data analysis and presentation are:

- Formal courts: 37 of 55 (67%).
- Mobile courts: 7 of 7 (100%)
- AGOs: 7 of 8 (87.5%). The only office which was not visited is the Hargeisa AGO.
- Prisons: 12 of 13 (92.3%). The only prison which was not visited was in Salahley, Maroodi-Jeex region, which consists of one small room.
- Legal Aid: 3 of 4 (75%). It proved difficult to obtain new information from the Somaliland Lawyers Association, SOLLA, but their work on legal aid was covered in depth by Horizon in 2015, since when SOLLA has stopped work in legal aid for lack of funds;
- Ministry of Justice: 4 of 5 (80%). The MoJ does not have an office in Berbera, but the temporary officer for Berbera was interviewed. Data was not gathered from the Hargeisa office.

## **Chapter 1**

### **THE FORMAL COURTS**

#### **THE SUPREME COURT**

The Supreme Court (SC) is the highest appellate tier in the judicial hierarchy. The SC also constitutes the Constitutional Court and can hear cases on the interpretation of the Constitution.

##### ***Staff***

The SC does not have an official organizational structure. In addition to the Chief Justice (CJ), there is a Deputy Chief Justice and nine judges. Most of the staff of the SC are unable to say whether they work for the SC or the High Judicial Council (HJC). The HJC, established under Article 107 of the Constitution, is the body responsible for the administration and oversight of the judiciary, with the power to appoint, dismiss and discipline Deputy Attorney Generals (DAGs), as well as all lower court judges. SC Judges are appointed by the President after consultations with the HJC, in line with Article 11 (3) of the Organization of Judiciary Act Law No: 24/03&06. The work, and the staff of the two institutions, are merged together, complicated by the absence of job descriptions which would clarify responsibilities. On the payroll, no distinction is made between the staff of the SC and the staff of the HJC.

Currently, the SC has 24 registrars whose principal task is to receive the cases coming to the court, write down the proceeding while the court is in session and to record the cases in the court registration book. They are supplemented by five bailiffs who deliver summons and warrants. The Administration and Finance section has four staff members, and there are 23 other employees, who work both for the SC and HJC, in different sections, such as Planning, the Professional Development Unit (PDU) and Statistics amongst other units.

##### ***Equipment***

The SC has 15 computers, 15 printers and three photocopy machines for its exclusive use. Not everyone has their own desk and chair, and staff have to share work space. There are nine cabinets for storage, most of which do not lock.

##### ***Cases***

In 2016, the SC handled 352 cases, of which 86 were criminal and 266 were civil.

##### ***Statistics***

There is poor maintenance of case statistics. The statistics department only had the soft copy of the 2016 statistics. The SC records only civil and criminal cases. Administrative cases, which are usually land disputes, are recorded as civil cases. No details are provided as to whether the cases were acquitted, convicted or settled outside the court. Instead, there are two classifications: concluded and pending.

Constitutional cases are not recorded or submitted to the statistics department. In 2016/2017, three constitutional cases were heard and resolved, all related to interpretation of constitutional provisions that impact elections.

The statistics compiled by the SC are forwarded to the Ministry of Planning which issues a document entitled *Somaliland in Figures* that includes the information from the SC. The SC also sends its statistics to the Ministry of Justice (MoJ), the Attorney General's Office (AGO), the National Human Rights Commission (NHRC) and the Ministry of the Presidency. Beyond sharing the information with these institutions, the SC makes no other use of the statistics and has no idea what is done with the information sent to these other institutions.

### ***Engagement with the Lower Courts***

The SC engages with the lower courts principally by monitoring their activities and collaborating with the HJC in conducting these monitoring exercises, receiving the annual and quarterly case statistics, resolving disputes between the lower courts and responding to complaints from the lower courts.

However, nothing is done by the SC with the data provided by the lower courts.

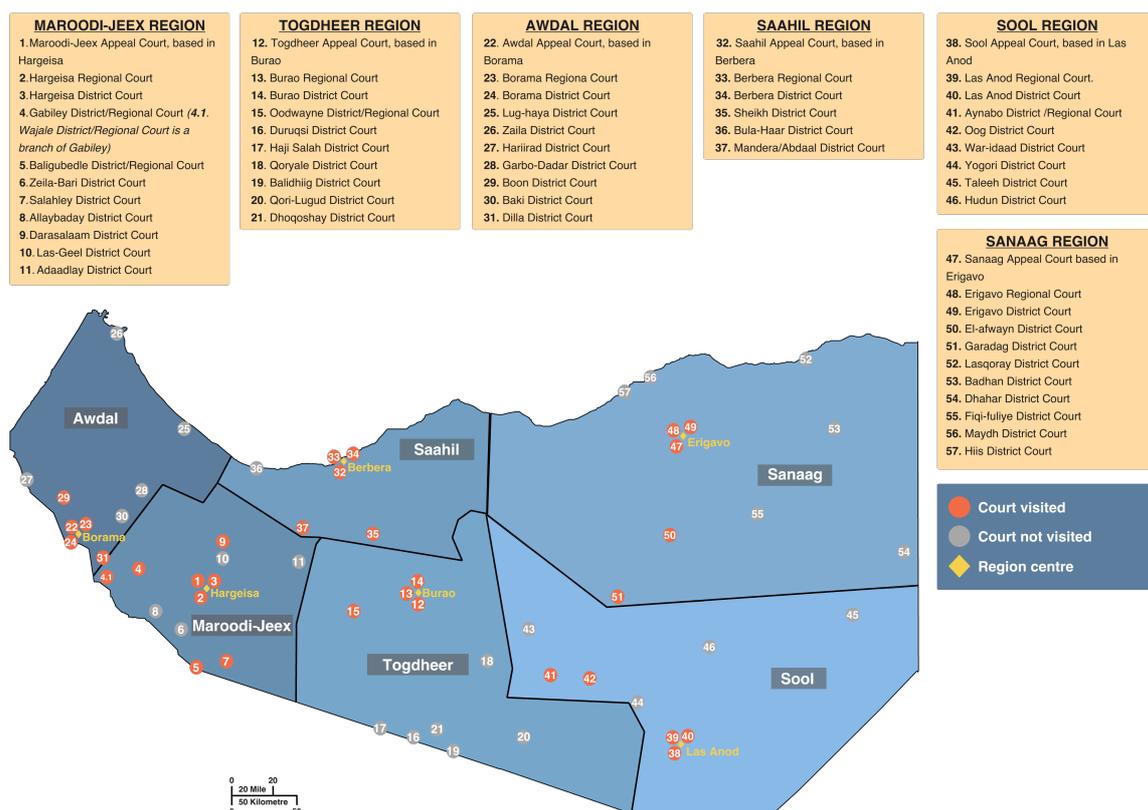
## THE LOWER COURTS

This section highlights the current trends occurring in Somaliland’s lower court system. It looks at the demand for services, the budget, resources, workforce, infrastructure, performance and the impact of the CJ’s reforms since he took over the reins in June 2015. The lower court system is comprised of district, regional and appeal courts, and a handful of district/regional courts that have dual jurisdiction. District and regional courts are courts of first instance and appeal courts have jurisdiction over cases appealed from the district and regional courts. The demand for services is measured by the inflow of cases in 2015 and 2016. The budget, resources, workforce and infrastructure trends, and the CJ’s reforms, are distilled from data collected from January to May 2017 at 37 of the 55 courts. Performance is measured by the average length of cases, disposition and clearance rate in criminal cases, and the perception of members of the public.

### Locations

(See, Figure 1, below).

Figure 1: Map of Somaliland Courts



### Demand for Court Services

**Evident Upward Trend for Use of Lower Courts:** Demand for court services at district, regional and appeal courts appears to have increased between 2015 and 2016 with 12,444 and 14,320 cases lodged, respectively (see Annex 1, Figures 1 and 2). At the regional level, the upward trend was not across the board. Demand increased in four regions between 2015 and 2016: Maroodi-Jeex (6,973 in 2015 to 8,319 in 2016); Togdheer (1,700 to 2,248); Sanaag

(723 to 922) and Sool (698 to 957). In Saahil, there was only a slight increase from 726 to 808. In Awdal, however, the number decreased from 1,624 in 2015 to 1,066 in 2016. In 2015, more than half of all cases were lodged in Maroodi-Jeex Region where Somaliland's capital, Hargeisa, is located; this was also true in 2016.

***Demand Highest in Cities:*** With at least 53% of Somaliland's population living in urban areas,<sup>2</sup> demand for court services is highest in cities (*see Annex 1, Figure 3*). Of the 14,320 cases for 2016, the vast majority came from the regional capitals: 7,056 in Hargeisa; 1,051 in Borama; 727 in Berbera; 2,176 in Burao; 735 in Erigavo; and 796 in Las Anod. In the courts visited outside of the main urban centres, there were only 1,779 cases in 2016.

***Overall Number of Civil Cases Only Slightly More Than Criminal Cases:*** In 2016, civil cases accounted for a slightly larger share of overall cases, with 7,622 civil cases compared to 6,736 criminal cases. However, of the five regional capitals monitored for fifteen weeks from February to May 2017, the divide was more mixed. The regional courts in Berbera and Erigavo had twice as many civil cases as criminal cases. Courts in Las Anod, Sool Region, and Borama, Awdal Region, had a nearly even split. Only courts in Burao, Togdheer Region, saw more criminal cases.<sup>3</sup>

***District Courts Handle More Civil Cases:*** Of first instance courts, district courts handle more civil cases than regional courts; regional courts saw more criminal cases than district courts. There was a more even split in civil and criminal cases at district/regional courts that have dual jurisdiction (*see Annex 1, Figure 4*).

***Caseload Heaviest at District Court Level:*** 8,418 of the 14,320 cases entering the lower court system in 2016 were at the district court level. 4,654 were at the regional court and 1,248 at the appeal court levels.

***Small Number of Land Disputes in the Lower Courts:*** Of the civil cases in 2016, nearly half were family cases and a small percentage was land disputes. Only 384 civil cases in the 37 courts visited for the baseline study were land disputes, compared to 3,392 family cases. This trend held true for courts in three of the regional capitals monitored from February to May 2017: courts in Berbera saw six land disputes compared to 32 family cases; courts in Erigavo handled eight land disputes and 24 family cases and courts in Burao dealt with 36 land disputes compared to 78 family cases. In two courts, however, there was nearly an even split between land disputes and family cases: courts in Borama saw 34 land disputes and 32 family cases; and courts in Las Anod took up 29 land disputes and 27 family cases.

The trend towards few land disputes entering the court system was evident in the public surveys as well. Of the 101 members of the public surveyed on formal courts, only 27 had used the courts for land disputes.

***Low Number of SGBV and Juvenile Criminal Cases:*** Of the criminal cases entering the system in 2016, only a small percentage were related to sexual and gender-based violence (SGBV) or cases involving a juvenile (*see Annex 1, Figure 5*). Of the 6,736 criminal cases in 2016, only 239 were categorised as SGBV cases and only 345 were classified as juvenile cases.

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<sup>2</sup> Somaliland Development Fund, "Somaliland Perception Survey," (29 May 2015).

<sup>3</sup> The case statistics were Berbera: 109 civil, 56 criminal; Erigavo: 83 civil, 36 criminal; Las Anod: 95 civil, 85 criminal; Borama: 124 civil, 117 criminal; Burao: 198 civil, 301 criminal.

The trend towards few SGBV and juvenile cases was also present at the five regional court centres monitored from February to May 2017. Of the reported criminal cases at courts in Las Anod during this period, 0% were SGBV cases. In Borama seven of 117 reported criminal cases (5%) were rape cases. The same was true in Burao where reported SGBV cases (one sexual assault, five attempted rapes and 11 rapes of 301 criminal cases) made up 5% of all criminal cases. At courts in Erigavo 20% of reported criminal cases were listed as SGBV (seven rapes of 36 criminal cases). Courts in Berbera have the highest percentage with 21% SGBV cases (12 rapes of 56 criminal cases). Across the five courts monitored, juvenile cases made up less than 5% of all cases.

The largest proportion of criminal cases from February to May 2017 was dishonesty offences (theft, robbery, fraud, breach of contract etc.), which accounted for 32.4% of the cases reported, followed by offences against the person (assault, violence, threats, homicide etc.), which accounted for 30.4%.

## **Budget Allocation and Management**

***Most of Judicial Budget Spent on Salaries:*** Although the exact breakdown of the budget is not available, the finance and administration department of the SC confirmed that most of the budget is spent on salaries, saying the percentage for operations was “not more than 30%.”

***Unpaid Court Staff Work in Hope of Remuneration:*** During the period of data collection, from January to May 2017, six district court judges of the 20 district courts visited outside of Hargeisa, and one regional court judge in Erigavo, were unpaid. In May 2017, however, the CJ ordered for a number of unpaid judges, classified as temporary judges, to be paid. This order covered the seven unpaid judges identified through data collection, but it did not include all unpaid judges in the system. For example, the judge at the War-Idaad District Court in Sool Region never received a salary. Appointed in 2016, he closed the court because he was not being paid and moved to Berbera to work as a common labourer to make ends meet. Because of a decision taken by the government, in light of the drought, to freeze the salaries of all civil servants added to the payroll in 2017, these judges have not yet been paid.

Of the 206 registrars working at the courts visited, 18% work on a voluntary basis. In several cases, male registrars were paid but female registrars were unpaid. For example, the four female registrars at the Borama District Court have been unpaid for two years while all their male counterparts are salaried. At the Berbera District Court, the female registrar is unpaid although she has been working for a year. At the Berbera Regional Court, the two female registrars have not been paid although one has been there for a year and the other for two years. The male registrars in Berbera all received a salary. The female registrars were all hired during 2015 and 2016 when the MoJ controlled the budget of the lower courts and they were never added to the payroll. While the volunteer status of the female registrars is not ideal, and will hopefully be remedied with the recent transfer of the budget of the lower courts to the judiciary, it is an indication that the number of female registrars is increasing which is a positive development.

Several court messengers, cleaners, drivers and watchmen are also unpaid. This is true at both urban and rural courts ([see Annex 1, Figure 6](#)). Of the total number of support staff working at the courts visited, only 59% receive payment ([see Annex 1, Figure 7](#)). People are working for free in the hope that they will eventually be paid. The Chairman of Oog District Court in Sool Region stated that the unpaid support staff “want to help the public receive justice and

we promised to pay them a salary in 2017.” Where regional court staff are paid, they receive payment late, closer to a quarterly basis, in common with other civil servants in the regions.

***Court Chairmen Have Limited Knowledge of Budget Allocation:*** Court chairmen, also termed president judges, are responsible for the budget of their courts but they have little to no knowledge of the finances at their disposal. Only seven of the 37 chairmen interviewed could give a rough budget estimate for staff, equipment and operational costs of their courts. The responses for equipment and operational costs ranged from “unknown” to “it depends” to “\$0” to “\$375.” The only chairmen who were confident in their responses on their overall budget were those at Baligubedle, Darasalaam, Sabawanaag, Dilla, Boon, Abdaal, Oodwayne, Garadag, and Oog, all rural district courts, that did not receive any financial resources from the government to run their courts at the time of data collection.

***Budget Not Allocated in Line with Case Statistics:*** All 37 courts visited for the baseline study collect case statistics but no court allocates resources in line with the statistics. Courts either do not have any financial resources to allocate or, in many cases, simply handle cases as they come in. At district, regional and appeal courts there is no consideration as to how the limited financial resources can be better aligned with demand for court services.

## **Operational and Material Resources**

***Severe Shortage of Working Computers:*** Between the 37 courts visited, which employ 159 judges and 206 registrars, there are only 49 working computers (*see Annex 1, Table 1*). This is an average of seven staff members to every computer, which means judges and registrars share computers. At the Gabiley District/Regional court there is one computer for 10 judges and five registrars.

***Technology Concentrated in Urban Areas:*** Most of the working computers are in urban areas. 42 of these computers are in courts in regional capitals: 16 in Hargeisa; five in Borama; four in Berbera; six in Burao; five in Erigavo; and six in Las Anod. Nine of the rural district courts visited did not have a working computer. At El-afwayn District Court in Sanaag Region, there is no computer so they use a typewriter. The same is true of printers and copiers.

***Electricity and Internet is Not Available at Every Court:*** All regional capitals have regular electricity paid for by the government. This includes all regional and appeal courts because they are only located in regional capitals. But the small district and regional/district courts do not always have electricity because they do not have a budget for electricity. For courts that do not receive government funds for electricity, sometimes the judges and court staff will pay.

Internet at all courts is only available if staff pays for it. Mainly regional and appeal courts in urban areas have Internet access, but some district and district/regional courts in rural areas also have Internet (*see Annex 1, Figure 8*). The courts that do have Internet stated that it was not a reliable use of communication because of slow speed in the regions and because they only have it when they can personally pay for it. The lack of Internet limits any interventions that would involve online systems. Both electricity and Internet access would have to be addressed before any tech based development solutions are recommended for Somaliland.

**Lack of All Resources to Carry Out Work:** Most courts do not have enough furniture. Only seven of the 37 courts had desks for all staff.<sup>4</sup> At the Sabawanaag District Court in Maroodi-Jeex Region there are no desks. At the 30 courts where all the staff do not have desks, usually multiple staff will sit at a single desk. At 22 courts, staff either purchased all or part of the furniture, or all or part of the furniture was borrowed from the local community. 10 of the 37 courts do not have any filing facilities. Of the 27 that have filing cabinets, only 12 courts can lock all of their cabinets to ensure files are secure. The other 15 courts could only lock some cabinets or none at all.

Courts do not have enough stationery to carry out their work. This is true at both urban and rural courts and at every level of courts (*see Annex 1, Figure 9*). If courts in the regions have a budget for stationery, they receive it on a quarterly basis. Judges and court staff often purchase stationery if the court runs out between quarterly instalments. At courts where there is no budget for stationery, the court staff or parties must purchase it. Stationery used by the courts includes file folders, pens, paper and printer ink. The most common stationery supply that courts cannot afford to purchase is printer ink.

**Legal Resources Are Not Available:** There are no law libraries in Somaliland or online legal resources. What a judge or registrar can access depends on what hardcopies of legal material happen to be at any given court or what they personally own. Most courts, including those in rural areas, had a copy of the Civil Procedure Code, the Civil Code, the Criminal Procedure Code and the Penal Code. Two courts, the Sabawanaag District Court and the Dilla District Court, did not have any legal material.

## Workforce

**One Judge to Every 18,000 Somalilanders:** (*see Table 1, below*).

**Table 1: Regional Population per Judge**

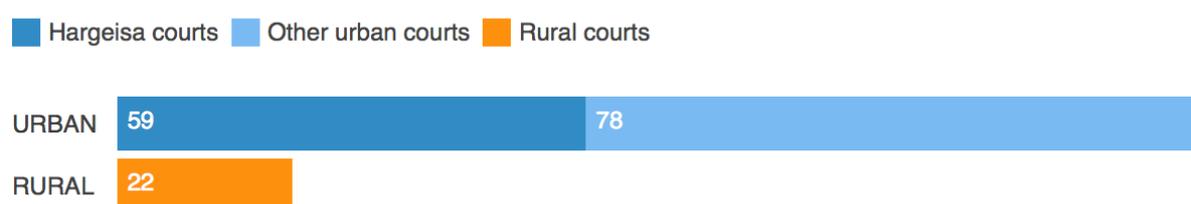
Region	Judges	Population	Persons per judge
Sanaag	20	544,123	27,206
Awdal	29	673,263	23,216
Togdheer	35	721,363	20,610
Sool	18	327,428	18,190
Maroodi-Jeex	68	1,071,517	15,758
Saahil	16	170,486	10,655
Somaliland (Total)	186	3,508,180	18,861

<sup>4</sup> These seven courts are Hargeisa Regional Court, the third branch of Hargeisa District Court, Salahley District Court, Dilla District Court, El-afwayn District Court, Garadag District Court and Aynabo District/Regional Court.

**Judges are Concentrated in Urban Areas but Rural Numbers are Increasing:** There are 186<sup>5</sup> judges working in Somaliland, including 21 newly appointed judges who are not being paid. 126 judges are in the six regional capitals of Hargeisa, Berbera, Borama, Burao, Erigavo and Las Anod, with only 60 outside these main urban areas. Between the 37 courts visited, there were a total of 159 judges. Over a third of these judges sit at courts in Maroodi-Jeex Region, with 49 of the 65 judges visited in Hargeisa courts (*see Figure 2, below*). Similarly, the majority of judges in the other five regions sit in the regional capitals: 25 of the 28 judges in Togdheer Region sit in Burao; 21 of the 23 judges in Awdal Region sit in Borama; 12 of the 15 judges in Saahil Region sit in Berbera; and 12 of the 15 judges in Sanaag Region sit in Erigavo. Only in Sool Region was there an equitable split with seven judges in the regional capital of Las Anod and six in the rural areas visited.

There is a push, however, to open more courts in rural areas. In 2016 alone, 12 judges were appointed to small districts.<sup>6</sup>

**Figure 2: Number of Judges (Urban vs Rural)**



**District Court Judges Carry the Heaviest Caseload:** District court judges carry the heaviest caseload on average per year (*see Table 2, below*). The next highest is regional court judges. Judges sitting at district/regional courts with dual jurisdiction are treated separately since these judges handle both district and regional cases.

**Table 2: Cases per Judge (by Court Type)**

Court type	Cases	Judges	Cases per judge
District courts	7,262	61	119
District/Regional courts	1,156	20	58
Regional courts	4,654	48	97
Appeal courts	1,248	30	42
Total	14,320	159	90

<sup>5</sup> This figure has been arrived at by checking individually with every court in Somaliland. Because of unreliable documentation, it is not possible to rely on the figures from the HJC. There are, currently, 177 judges on the HJC payroll, and an additional 21 new judges who are not being paid but will be when there is no longer a freeze on paying new civil servants. But the courts contacted by Horizon dispute the accuracy of these figures and said it includes a number of judges who are deceased but whose families continue to receive their salary.

<sup>6</sup> Las Geel, Sabawanaag, Zaila-Bari, and Darasalaam in Maroodi-Jeex Region; Boon and Dilla in Awdal Region; Haji-Saalaa and Dhoqoshay in Togdheer Region; Bulahaar and Abdaal in Saahil Region; and Oog and War-Idaad in Sool Region. As mentioned earlier, the War-Idaad judge has quit in protest.

**Each Judge has at Least One Dedicated Registrar:** Court registrars are central to the work of the judiciary. At the 37 courts, there were 206 registrars, either fulltime employees or volunteers. On average, there are 1.3 registrars to every judge.

**Judges and Registrars Manage Courts:** There is not a clear division of labour between judicial and administrative work at the district, regional and appeal courts. Chairmen fulfil financial duties because there are no financial staff. Similarly, registrars carry out a dual role. Registrars are usually assigned to a specific judge for both legal and administrative duties. Their tasks include keeping case records, writing judgments, summoning parties, scheduling hearings and attending court with judges. But they also take on the administrative function because there are no secretaries. Beyond registrars, all other support staff at district, regional and appeal courts are non-professionals. They include messengers, cleaners and drivers. There are no positions for secretaries or court scribes as the registrars fill those roles.

**Number of Educated Judges Increasing:** More judges have higher education than in the past. In 2013, less than 10% had attended school beyond secondary school. As of June 2016, 57% had a university degree and another 28% had some form of training after secondary school. This upward trend has continued. Of the 159 judges that the baseline collected data on, 49% had an LLB and 42% had trained in *Sharia* law with only 9% having only secondary school education (*see Annex 1, Figure 10*).

**Judges Requested More Training:** Despite the increase in educated judges, all judges said their training and education was inadequate and that they, as well as their registrars, need additional training. 23 of 37 respondents asked for training on civil and criminal procedures and codes; this indicates a need for focusing on basic legal skills. However, 18 respondents also asked for training in human rights, environmental and terrorism law, signifying that there is also a need for specialised training beyond basic legal skills. Nine respondents asked for training in judicial administration and 12 respondents said registrars need IT and office management training.

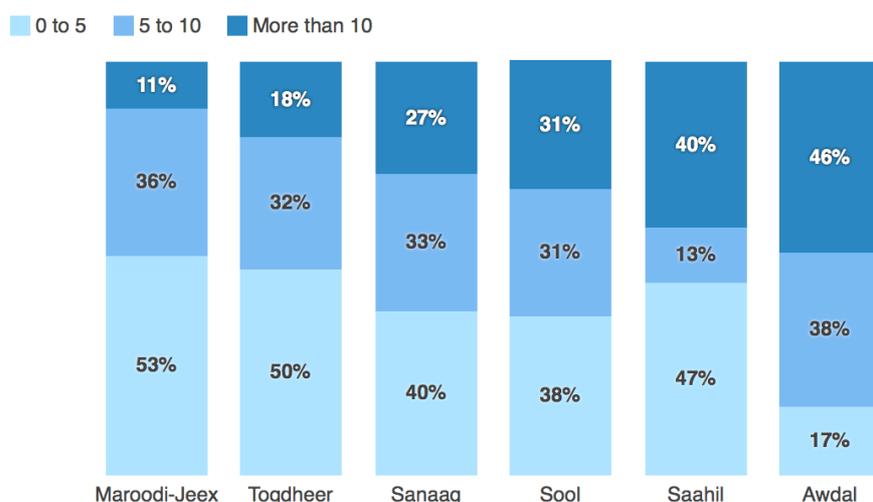
**Growing Cadre of Judges with Education and Experience:** In 2002, law degrees were first offered by Hargeisa University. Since that time, there has been a stark divide between newly graduated law students and legal professionals, including judges, who were trained under the Siad Barre regime. What was missing were mid-career judges with both an educational background and experience. However, this is starting to change with a significant number of judges with both an LLB and at least five to 10 years of experience (*see Table 3, below*).

**Table 3: Percentage of Judges with Experience and Formal Education**

Education/experience	Percentage of judges
Formal education (LLB)	49.1
At least 5 years experience	56.0

**Most Experienced Lower Court Judges Sit on Appeal Court:** The level of experience of judges is different between district, district/regional, regional and appeal courts. Both regional and appeal courts have judges with a greater level of experience, with the appeal court having the most experienced judges (*see Annex 1, Figure 11*). The experience level almost mirror each other in urban and rural courts. However, experience level fluctuates by region (*see Figure 3, below*).

**Figure 3: Experience of Judges (Years, by Region)**



**Majority of Judges Aware of Code of Conduct and Complaint Procedure:** Nearly 90% of the judges at the 37 courts were aware of the Code of Conduct and nearly 80% knew the complaint procedure. However, 60% of respondents said judges at their court were not trained on the Code of Conduct. 86% of respondents said complaints are not made public.

## Court Buildings

**Not All District Courts Have Purpose Built Courthouses:** In all the regional capitals, there are government owned courthouses in relatively good repair that are purpose built with courtrooms and offices. The only one-room government owned courthouse visited was the Berbera District Court. All courts operating from rented or shared facilities are at the district or district/regional level. In many small districts, the working space for the court is either rented or the court is assigned a room in another government building (*see Annex 1, Figures 12 and 13*). There are urban courts in rented and shared facilities. The branch District Courts in Hargeisa are in a local government building. The Wajale District/Regional Court works from a one-room rented warehouse. In such situations, the court’s working space is not purpose built so there are no separate courtrooms and offices; often the court works from a single room.

When the working space for the court is rented, it is the responsibility of the municipality to pay rent. If they do not, the court is sometimes locked out of the space and cannot operate until rent is paid. The judge in Wajale stated that he has been locked out of his workspace on multiple occasions when the municipality did not pay rent.

**Workspace is Restricted at all Courts:** Workspace is at a premium at all courts in Somaliland. In all district, regional and appeal court locations space is inadequate and offices usually double as courtrooms. Multiple staff, usually a mix of both judges and registrars, share the available offices.

**Judges Working in Courtyards:** When there is not enough space to share an office, or an office is being used as a courtroom, judges work in other parts of the court building and compound. At the Gabiley District/Regional Court, there is one courtroom and two offices built for single occupancy for the 10 judges. Most of the judges in Gabiley sit in the courtroom. But when a hearing is in session the judges not involved in the case have to work

in the courtyard. At the appeal court in Borama, two of the judges use an outhouse built for court security guards as an office. The lack of space undermines morale when judges do not have a designated workspace, especially when they have to conduct their jobs in the open air in courtyards.

The absence of waiting rooms for the public further strains the already limited space. Even at purpose built courts, there is no designated space for court users to wait. Members of the public either wait in the courtyard, or in offices. Often judges set a row of chairs or benches in their offices for court users and this is where people wait even if the judge is attending to another case in the office.

***Lack of Space Threatens Confidentiality:*** Insufficient space results in crowded court buildings where there is little to no privacy and court staff often cannot ensure confidentiality of proceedings. At the Garadag District Court in Sanaag Region, which is located in a Ministry of Livestock building, the judge noted that because the court is not purpose built, there is no space to store confidential documents. In one-room court buildings, if there is a prosecutor, they are usually based within the same room as the judge—like in Wajale District/Regional Court and El-afwayn District Court—which means there is no sound barrier separating the two working spaces which further jeopardises confidentiality.

***Newer Courts Not in Better Repair:*** The majority of urban court buildings were constructed 50-75 years ago when Somaliland was a British Protectorate. Of the 13 rural districts visited, six district courts were also purpose built with a courtroom and one or two offices. The majority of rural courthouses were constructed less than 25 years ago ([see Annex 1, Figure 14](#)). Generally, the newer court buildings are not in better repair than those built more than 50 years ago. For instance, the Abdaal District Court in Saahil Region, constructed in 2014, already has structural issues. This is blamed on poor construction methods. The new building for the SC has been faulted even before it has been completed.

***New Court Buildings Expected to be Set Up in 2017 or Included in Future Donor Support:*** According to the CJ, funds have been included in the 2017 government budget to enable the SC to construct a number of new courts from scratch, such as the Berbera Regional Court, a new building for the SC in Hargeisa just opposite where the HJC is located, Zaila District Court and the Zaila Bari District Court.

New courts, and improvement and or expansion of existing premises, in a number of regions has been given priority by the CJ in terms of potential new donor support. These include:

- Maroodi-Jeex Appeal Court;
- Awdal Appeal Court;
- Sool Appeal Court;
- Las-Anod Regional Court.

All the courts above share premises with other courts, either regional or district, and it is hoped that dedicated buildings will prove possible in the near future. The courts listed below either need to be constructed or repaired.

- Togdheer Appeal Court to be expanded and improved;
- Gabiley District/Regional Court also to be expanded and improved;

- Oodwayne District/Regional Court has one office which doubles as a courtroom, and needs a new building;
- A District Court in Oog, Sool Region, where none exists.

## **Court Performance**

***Civil Cases Take Twice as Long on Average as Criminal Cases:*** The duration of cases varies. The longest average reported for civil cases was four months by the Sanaag Regional Court in Erigavo; the shortest was one day by the Boon District Court in Awdal Region. The longest average reported for criminal cases was two months by both the Aynabo District/Regional Court in Sool Region and Togdheer Regional Court in Burao; the shortest was one day by the Sheikh District Court in Saahil Region. On average, however, civil cases take twice as long as criminal cases (*see Annex 1, Figure 15*). Only four courts, out of the 37, stated that criminal cases took longer than civil cases.

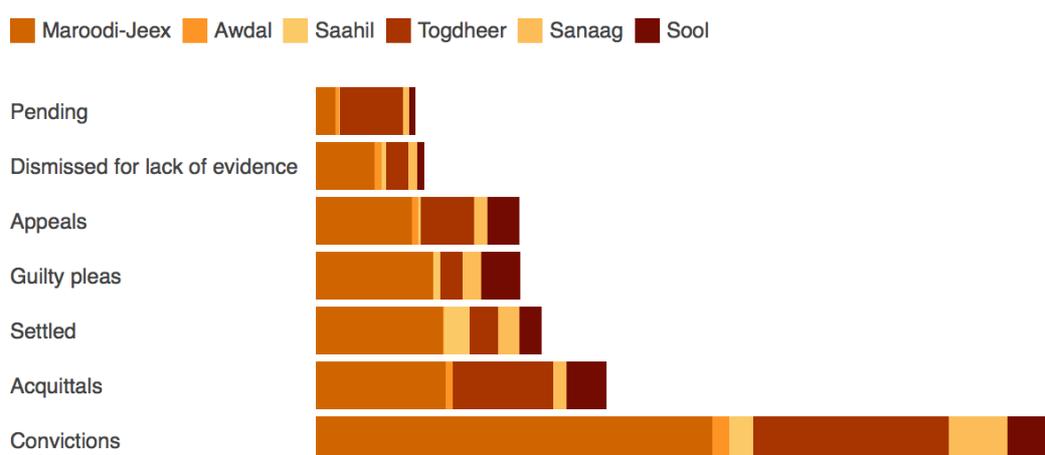
***Majority of Criminal Cases End in Conviction:*** Of the seven outcomes tracked in criminal cases in 2016, the most common ruling is conviction. The least common outcome is a case dismissed because of lack of evidence (*see Figure 4, below*).

***Criminal Cases Continue to be Settled in Customary System:*** Despite a push to end customary agreements in criminal cases, such settlements were the third most common resolution in criminal cases in 2016 (*see Figure 4, below*). Of the 29 courts that could supply detailed statistics on the resolution in criminal cases, 916 were settled. This trend has continued in 2017. For example, in a criminal trespass case at the Saahil Regional Court, the case was ended after two hearings because the victim and accused had reached an agreement in the customary system.

***Majority of Cases End at District and Regional Courts:*** In 2016, only 1,248 of the 14,320 cases in the court system were appeals, indicating that most cases are not appealed. Like the majority of cases entering the system in 2016, nearly half of the appeals concerned the capital, Hargeisa, with Maroodi-Jeex Appeal Court receiving 550 appeals. There was nearly an even split in criminal and civil appeals, with 695 criminal appeals and 529 civil appeals in 2016.

***High Clearance Rate in Criminal Cases:*** Of the 14,320 cases reported lodged in 2016, only 366 were pending at the beginning of 2017 (*see Figure 4, below*). This indicates a high clearance rate for criminal cases in the formal courts.

**Figure 4: Criminal Cases in 2016 by Outcome (by Region)**



**Strong Adherence to Certain Court Proceedings and Procedures:** Nearly all respondents at all court levels responded that court decisions are written. The majority of courts can also provide a copy of a court decision for parties quickly—either immediately or within a day or two—and decisions have a high rate of enforcement. There is also a high rate of judges explaining the proceedings to parties and defendants. The only area where figures are low is courts making decisions public, largely because decisions in civil cases are not public (*see Table 4, below*).

**Table 4: Adherence to Certain Court Procedures (% by Court Type)**

Procedure	District Courts	District/Regional Courts	Regional Courts	Appeal Courts
Judge communicates proceedings to the parties and defendant	95	80	100	83
Court decisions written	95	100	100	100
Court decisions can be obtained quickly	90	80	100	83
Court decisions made public	70	40	83	100
Court orders enforced	95	100	100	100

**Public Opinion Still Low but Improving:** All judges interviewed for the baseline study said the community they serve is confident in the court system. However, only half of the 101 court users surveyed had a positive view of the courts. There was indication that public opinion is improving though, with 68 members of the public stating they have witnessed positive changes in the court system within the last year, citing among other developments:

- The establishment of a court in their district/town;
- Renovation of older buildings;
- Less bias amongst court staff;
- Number of pending cases has decreased;
- Greater public awareness of, and confidence in, the justice system and the law, due to television and radio announcements about reforms and changes taking place in court systems;
- Courts are easier to access and are better managed/administered;

- Better communication between court staff and the local police force;
- Staff and proceedings are more punctual, hearings are quicker, trials are more fair and verdicts are better enforced;
- More direct communication between the public and judges;
- Court procedures are followed more compared to previous years;
- There is more supervision of lower courts by higher courts in Hargeisa and greater communication between them;
- Judges have been reshuffled and new court staff hired;
- Improvement in time management and efficiency of how cases are processed;
- Corrupt judges are fired;
- More young people are involved in the legal sector;
- The SC is stepping in and resolving cases that could not be settled in the lower courts;
- Judges are more thorough when reviewing cases.

The court users who remained critical gave the following reasons for their continued dissatisfaction:

- Favouritism based on clan considerations;
- Disregard for court procedures;
- Poor court services;
- Abuse of power by court staff;
- Accumulation of cases, compounded by the short working hours with the result that people are turned away;
- Lack of public trust in the courts;
- Poor sanitation in the court buildings;
- Little change seen in the work ethic of the staff;
- Lack of verification when it comes to evidence/documents;
- The need for an overhaul of court staff to bring in fresh faces;
- The new reforms are not being implemented;
- Bias and corruption amongst prosecution and police.

**Public View Formal Courts as a “System of Last Resort”:** The majority of the public surveyed viewed the formal justice system, customary system and *Sharia* as one system and did not differentiate between them. Respondents saw *Sharia* law as the most important and felt it was present in both the customary system and at the courts. Of the 101 members of the public surveyed, 35 attempted to use the customary system first and then turned to the formal justice system only when they could not reach a resolution under customary law. While demand is on the rise for the formal justice system, it is still often seen as the “system of last resort.”

**Women Prefer Courts Because of Equal Treatment:** The one group that strongly preferred the formal justice system to the customary system is women. They said the courts treated them more equally with men than the customary system. Without being directly questioned on the topic, 17 respondents confirmed that the formal courts are more equitable.

A woman with a case at the Gabiley District/Regional Court said she first tried to use the customary system.

However, as a female, it was very hard for me to feel as if my case was being treated fairly. People were siding with the other party simply because he was a man. I brought my case to

the formal courts because I would be treated equally and the courts have the power to enforce the ruling made.<sup>7</sup>

Another female court user at the Baligubedle District Court had a similar experience. After taking her case to the customary system she “soon realised that [it] wasn’t a system suited for women.” She added: “I felt as if the other party was being given an advantage purely on the basis of being a man. My case wasn’t being treated fairly, so I took it to the courts.”<sup>8</sup>

## Implementation of the Chief Justice’s Reforms: Minimal Impact in the Regions

**Current Reforms Have Had Little Impact in the Regions:** Implementation of the CJ’s reforms is weak to non-existent in the regions. A major contributing factor is that this reform strategy does not exist in writing. While the CJ has publicly spoken about his reforms on TV and in meetings, they have not been captured in writing, making it hard to know the specifics, and thereby gauge performance. Many judges had heard about the reforms; only six had not heard of the reforms at all. 67% said the reforms had positively influenced their work (*see Table 5, below*). But no judge had a hardcopy of the reform strategy and none were able to describe what, in tangible terms, was required of them to meet the goals. Moreover, what judges knew about the reforms ranged widely. Many stated the CJ wanted to improve the speed of trials while others thought he was focused on building courts in rural areas. While the CJ generally makes clear, in meetings, what reforms he wants to make, until his ideas are fully developed into written policies and action plans, very few of his reforms will take hold.

**Table 5: "How Have CJ's Reforms Influenced/Changed Your Work?"**

Effect	Number of courts	% of courts
Positively	25	67.6
Negatively	0	0.0
No or minimal effect	7	18.9
Do not know	5	13.5

Based on the CJ’s public statements, and what he has articulated in various meetings, some of the core tenets of the strategy are discussed below.

**Working Hours Not Enforced:** Increasing the productivity of the courts, and people’s access to justice, is a cornerstone of the CJ’s reforms. The old hours, 7:00 am to 12:00 pm, have been changed to 7:00 am to 2:00 pm. With the exception of Sanaag, however, no region, even Hargeisa, has adopted these new working hours (*see Figure 5, below*).

Members of the public also confirmed this: 69 of the 101 surveyed stated that the court staff do not work until 2:00 pm but leave at noon. A woman interviewed in Las Anod said that judges “work whenever they wish.” She clarified that “sometimes they arrive at 7:00 am or 9:00 am, and they leave sometimes at 10:00 am or 11:00 am.” The only courts that are

<sup>7</sup> Interviewed in Gabiley on 12 February 2017.

<sup>8</sup> Interviewed in Baligubedle on 19 February 2017.

routinely working from 7:00 am to 2:00 pm are the District, Regional and Appeal Courts in Erigavo. This is because the Appeal Court Chairman in Sanaag enforces these working hours.

This failure is not only an indication of weak implementation of the reforms, but also undercuts judicial administration because courts simply do not have enough time to carry out their duties, especially as demand for court services is increasing. A court user at the Gabiley District/Regional Court, noting that staff leave at 12 p.m., blamed the short hours for “the fact that cases are prolonged.”

**Figure 5: Average Working Hours (by Region)**



*Rounded to the nearest half hour.*

**Few Women Appointed to Leadership Positions:** The appointment of women to positions within the court is also central to the CJ’s reforms. But, at the time of writing, women do not occupy senior positions in the judiciary. In 2016 and 2017, only 33 women were appointed to district, regional and appeal courts and 21 of these women were appointed to courts in Hargeisa (*see Annex 1, Figure 16*). Similarly, only four women were promoted within the lower court system and three of these promotions were at Hargeisa courts (*see Annex 1, Table 2*). All female appointments and promotions were to the position of registrar.

**Majority of Promotions and Demotions in Capital City of Hargeisa:** Performance based promotions and demotions are another aspect of the CJ’s reforms and a number of judges have been promoted, demoted or fired in 2016 and 2017 (*see Annex 1, Figure 17*). The same is true of registrars (*see Annex 1, Figure 18*). However, while there have been a number of promotions and demotions in the regions, the majority have been in Hargeisa.

**Limited Knowledge of Judiciary Staff Fired for Corruption:** A pillar of the CJ’s reform strategy is fighting corruption within the judiciary. However, only eight of 37 respondents could recall a few judiciary staff being fired in 2016 and 2017 for corruption (*see Annex 1, Figure 19*). Most judges did not know of any member of the judiciary fired for corruption under the CJ. As for the public perception, while a number responded that corruption had decreased, 39 of the 101 surveyed described corruption as rampant.

**Not All Courts Are Sensitive to the Needs of Women and Children:** The CJ has said he aims to make the judiciary more sensitive to vulnerable groups like women and children, in part by establishing juvenile and women sections in courts. These sections would have judges specifically trained on how to best approach women and children. To date, only four courts—the District, Regional and Appeal Court in Hargeisa and the Las Anod Regional Court—stated they have a juvenile section (*see Annex 1, Table 3*). These four courts have judges

specifically trained in juvenile proceedings. No court has a women's section. Any accommodation for women and children are *ad hoc* efforts of individual judges.

***Continued Misapplication of the Law in Remand Cases:*** The abuse of remand continues to be a serious problem. Suspects are arrested and kept in custody prior to trial often in total disregard of the safeguards set down in the Criminal Procedure Code and without consideration to being released on bail. Of the five regional capitals monitored for fifteen weeks from February to May 2017, there were 259 remands reported. Courts in Erigavo had the highest rate of remands, with 81% (29 of 36) of criminal cases remanded. Courts in Berbera remanded 62% (35 of 56) of criminal cases. Courts in Las Anod remanded 49% (42 of 85) of criminal cases. Courts in Burao remanded 38% (114 of 301) of criminal cases. Courts in Borama had the lowest rate of remand at 33% (39 of 117) of criminal cases.

Regional courts saw a significantly higher number of remands (138) than district (63) or appeal courts (52).

Accused persons are remanded for all levels of crimes, including those without prison sentences. They are not always brought before the court within the prescribed seven days after arrest, and often overstay the permitted remand period. For example, at the Regional Court in Burao, a defendant in an attempted rape case was remanded nine times for a total of 81 days when the maximum period of remand for this offence is 45 days under Article 47(1)(c) of the Criminal Procedure Code. The number of remandees "forgotten" by the justice system is so high in Berbera that the prison, at one point, stopped accepting remanded prisoners and they were sent to police stations.

***Judiciary Not a Human Rights Friendly Environment:*** Making the judiciary a fair and professional arbiter between the government and the media/human rights defenders is part and parcel of the CJ's reforms. He has kept his door open to journalists and human rights organizations and listened to their concerns, an open-door policy which created goodwill at the outset. But, in reality, little of substance has changed, as many recent incidents illustrate. The police and the prosecution continue to act with impunity in arresting and charging critics, the relevant laws have not been updated, the judiciary, using an outdated penal code, is seen as largely acquiescent and Somaliland is criticised internationally for seeking to silence independent voices.

The Annual Case Report of the Somaliland Journalists Association recorded the arrests of 20 journalists between January-October 2016. The April 2017 Quarterly Report of the Human Rights Centre said 11 journalists had been arrested between 10 December 2016 and March 2017 in different regions.

The circumstances in which a number of journalists were arrested since the field research for the baseline study began in February shows the government's heightened sensitivity to criticism.

- On 8 July 2017, Omar Ali Hassan Serbiya, a member of the Goobjoog Media based in Mogadishu, was arrested without a warrant upon his arrival at Hargeisa airport. The Interior Minister, Yaasin Mohamoud Hiir, justified the action by saying that the journalist's views on social media had "threatened the security and stability of the country," on the basis that he had criticized Somaliland on Facebook, saying the government had not backed up a claim that it had banned Qatar Airways from using its airspace. He was released three days later, on 11 July, without charge.

- On 24 May 2017, Mohamed Adan Dirir, Editor of the online news site *Horseed Media*, was arrested and held at the CID in Hargeisa. He was arrested by the police, apparently at the behest of the Minister of Health, after he criticized his performance.
- On 11 April 2017, Abdirahman Arab Da'ud, a journalist with *Hangool News*, was arrested after writing a news article accusing the Police Commissioner of clan-based favouritism and about conditions at Hargeisa central police station. He was not charged or brought before a court and was released after Ibrahim Osman Ahmed, *Hangool News* Editor, offered to be arrested in his place.
- On 20 February 2017, Mohamed Baashe Hassan, director of Star TV, was arrested in Hargeisa on the grounds of “inciting and disturbing public order,” after he attended a public meeting where he raised questions about how the Somaliland government handled the Berbera port deal granted to the UAE.
- On 15 February 2017, Abdimalik Eldoon, a journalist and blogger, was arrested in Hargeisa. He had just returned from a trip to Mogadishu where he had met the newly elected President of Somalia. He was accused of treason and supporting the unification of Somaliland and Somalia. In April 2017, he was given a two-year prison sentence by the Regional Court in Hargeisa. He was released in May 2017 as part of a Presidential pardon.

There have been a number of other incidents in 2017. On 26/27 April, a forum bringing together government officials, the three political parties, journalists, human rights defenders and others met to discuss the treatment of the media and agreed on steps to pave the road for reform, including using civil laws and the formation of an independent commission to hear complaints against journalists. To date, no initiatives have been undertaken as a result of this meeting.

Staff with the Human Rights Centre (HRC), the only independent monitoring group, have not fared much better either. In January 2017, the Centre circulated a public petition calling for reform of the police force, specifically that it be held to account under a civilian authority. Guled Ahmed Jama, the head of HRC, was charged with defaming the police, crimes against the state, propaganda and creating a public disturbance. He was taken to the Regional Court, but was not detained. In retaliation, on 5 February, the spokesperson of the Centre, Ahmed Hussein Abi, was arrested, after he issued a press statement defending Guled, and charged with disseminating false information. He was held incommunicado for 8-9 days and eventually released unconditionally.

***Perception by Majority of Judges is that Speedy Trials Have Improved:*** Improvements in the speed of trials is an area where the CJ’s reform plans have met with perceived success. 62% of respondents said the speed of trials has improved since the appointment of the CJ. The main explanation was that judges now set a court date for cases when they receive a case rather than waiting. However, of the 101 court users surveyed, 52 reported their cases were taking over two months and often upward of one to two years.

***Majority of Judges Have Received a Pay Raise but not Uniforms:*** Part of the CJ’s reform strategy is to professionalise the judiciary and improve working conditions. This has been achieved to an extent. Of the 159 judges Horizon collected data on, 141 received a two-part pay raise: 50% increase in 2016 and 10% in 2017 (*see Annex 1, Figure 20*). However, of the 37 courts visited, less than half had uniforms for all court staff (*see Annex 1, Figure 21*).

## Overall Trends

***Lack of Innovation:*** The court system in Somaliland has scarce resources. At the same time, there is a strong sense of inertia on how to improve services without a large injection of financial resources into the system. This has resulted in a dearth of ingenuity.

***Stated Reform Strategy Not Enough to Effect Lasting Change:*** The CJ's reform efforts have been instrumental in creating new energy within the court system. There is a stronger sense than ever before that someone is trying to make changes. However, the weak implementation of the reforms to date show that stating a reform strategy is not enough to institutionalise change.

## FACTORS UNDERLYING FINDINGS

This sections aims to explain the factors underlying the current trends in the court system. This is by no means an exhaustive list. It first analyses what drives members of the public to use or not use the courts. Then it looks at factors limiting the services of the courts.

### ***Opting for the Customary System***

Customary law is still often the system of first resort. Of the public surveyed, 35 used the courts only after they failed to settle their case in the customary system and another 40 respondents confirmed that they would use the customary system first. There are a number of factors driving the public to try to settle disputes through the traditional system first. A male shop owner in the district of Abdaal attributed the influence of culture as to why people tend to navigate towards the customary system in the first instance: "Culturally you go to the elders first out of deference. If your case is not resolved, and the parties cannot agree, then it should be taken to the formal courts."<sup>9</sup>

The customary system is also seen as showing consideration for the clan system, as an elder in Las Anod commented: "Sometimes out of respect, people use the customary system to save face within their clan."<sup>10</sup>

There is also a wide perception that the customary system is more amicable and will lead to reconciliation between disputing parties. A male business owner in the district of Dilla expressed this hope.

The customary system is better because it allows the two parties to deal with their dispute in a more agreeable manner. When cases are taken to the formal courts and become legal issues, it can end a relationship between the two parties.<sup>11</sup>

However, the customary system is also preferred for more practical reasons; it is often more economical and time efficient. A businesswoman in Sheikh said "money was an issue."

Going through the courts puts a financial strain on a person. I was asked for money to process my case which I didn't have . . . [Court] staff need to improve their work ethic and treat the poor with the same regard as those with more money.<sup>12</sup>

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<sup>9</sup> Interviewed in Abdaal on 11 March 2017.

<sup>10</sup> Interviewed in Las Anod on 5 May 2017.

<sup>11</sup> Interviewed in Dilla on 1 March 2017.

<sup>12</sup> Interviewed in Sheikh on 13 March 2017.

Similarly, court users surveyed often found the courts time consuming. A community leader in Garadag in Sanaag Region lamented the pace at which courts work. “Cases take a very long time and people want their cases resolved quickly, so they choose the customary system instead.”<sup>13</sup>

### ***Customary System Still Popular for Land Disputes***

Only a small percentage of land disputes end up at the formal courts. This is partially because the customary system is still used for land disputes. Of the 101 people interviewed, only 27 had used the courts to mediate a land dispute. An elder in Borama, who said traditionally land disputes are settled in the customary system, added: “If we don’t reach a decision or can’t come to an agreement, [only then] we will take the dispute to the court.”<sup>14</sup>

Another factor potentially diverting land disputes from the court system is the Land Dispute Tribunal (LDT). The LDT is an administrative tribunal under the Ministry of the Interior. It opened in Hargeisa in 2010, Berbera in 2014 and Borama in 2016. In these three towns, the LDT has specific jurisdiction over urban land disputes. Land disputes only enter the court system on appeal and if a criminal case like fraud evolves out of the dispute. This seems to be the case in Berbera. Court monitoring in 2017 showed that only six land disputes were heard at courts in Berbera from February to May 2017. However, Borama courts dealt with 34 land disputes.

In June 2017, the Ministry of the Interior closed the offices of the LDT in Hargeisa. The Ministry argued that the Hargeisa LDT exceeded its time in office. According to the Ministry, the LDT was told they would be replaced within a month, and that within that month they should not do any new work but simply hold on to documents and await a handover. Instead, the Hargeisa LDT continued to work, according to the Ministry, which then shut down the office.

### ***Customary System for Sensitive Cases***

The desire to keep some disputes private also motivates members of the public to use the customary system. A man in Borama explained why he elected to take a rape case to the customary system.

This was a sensitive case of a young woman becoming pregnant out of wedlock. Issues such as these are dealt with privately and not brought into the public’s attention for fear of shame.<sup>15</sup>

Similarly, a student in Burao commented that: “The customary system is better for cases dealing with women, for example, sexual assaults. This is because it can be kept more private in this setting.”<sup>16</sup>

The courts are supposed to respect the privacy of parties, especially victims, in rape cases and other cases where confidentiality is essential. However, this does not always happen. For example, on 26 February 2017, at the Regional Court in Las Anod, a judge listened to a rape

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<sup>13</sup> Interviewed in Garadag on 26 March 2017.

<sup>14</sup> Interviewed in Borama on 28 February 2017.

<sup>15</sup> Interviewed in Borama on 28 February 2017.

<sup>16</sup> Interviewed in Burao on 15 March 2017.

case in the open instead of holding a closed session. Everyone at the court could establish that the victim had been raped and who was accused.

While there are issues of privacy encouraging the public to use the customary system instead of the courts, there is some understanding that the courts may be better in rape and sexual assault cases. A community member in Dilla felt strongly that rape victims should use the courts so that convicted persons are punished.

Women are the ones who really need the courts when they are raped . . . I've mediated a rape case because the family didn't want it to become public in the courts. But I really believe that these types of cases need to come before the courts because, if there are no consequences, then women will keep facing these problems.<sup>17</sup>

### ***Court System Used for Enforcement***

Another factor steering members of the public to use the courts after cases fail in the customary system is their power of enforcement. A woman in Borama looked to the courts for enforcement.

The elders worked very well and came to a reasonable settlement. However, the other party rejected their decision. This is an example of how the customary system is unable to enforce final decisions and why most people end up at the formal courts.<sup>18</sup>

An engineer who had used the courts twice in Borama echoed her opinion:

If an agreement is reached between two parties outside the courts, then the resolution often doesn't hold. The courts are better for people using its authority to make sure the verdict is upheld. People fear the courts' authority because they know that there are consequences if one does not comply with the solution that has been reached.<sup>19</sup>

### ***Some See Customary System as Outdated***

A number of respondents also saw the customary system as antiquated and, as a result, said they would choose the formal courts first. A homemaker in Darasalaam in Maroodi-Jeex Region is one of them.

I haven't used the customary system because I believe it is outdated and not suitable for a younger generation. This was a system used prior to the establishment of a formal court system. It was the only option at that time. It's still used today simply because that is how cases have always been settled traditionally, or the parties are not yet comfortable with using the courts because they are somewhat new for them.<sup>20</sup>

A man from Berbera said he thought there was a growing trend, among society as a whole, to view the customary system as out of step with the times.

It seems as if the public have changed their preference. The majority are using the formal system because the customary system is outdated and based on clan bias. The formal courts are just and uphold the law.<sup>21</sup>

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<sup>17</sup> Interviewed in Dilla on 1 March 2017.

<sup>18</sup> Interviewed in Borama on 28 February 2017.

<sup>19</sup> Interviewed in Borama on 28 February 2017.

<sup>20</sup> Interviewed in Darasalaam on 8 February 2017.

<sup>21</sup> Interviewed in Berbera on 12 March 2017.

## **Weak Judicial Administration**

Good judicial administration is essential for guaranteeing that justice is efficient and dispensed correctly. With the workload, and complexity, of cases in Somaliland's court system continuously increasing and outpacing the availability of new financial resources, improving court management is more important than ever before. This includes creating and implementing management systems and making court proceedings and processes at all levels more effective. Currently, district, regional and appeal courts have no systems of governance. No court, including those located in Hargeisa, had a vision or mission or a strategic plan in place. The absence of systems was also true for measuring performance of subordinates, ensuring a fair distribution of work and managing caseloads.

### ***Court Leadership***

The leadership structure is hierarchical. Court chairmen, also termed president judges, are responsible for leadership at their individual courts. District and regional court chairmen report to the appeal court chairman in their region. Then the appeal court chairmen report to the CJ.

No lower court has a written mission, vision or court values, or were able to articulate what these should be. All 37 courts responded no as to whether or not there was a mission, vision and core values in place at their court. At most, courts had a list of priorities they shared with the CJ which is simply a needs list. Other court officials, including the Chairman of Darasalaam District Court, spoke about a vision and core values, but said they are not written down. Similarly, the Borama District Court only has objectives that are discussed at internal meetings. Moreover, a number of respondents did not fully understand what a mission, vision or core values entailed, indicating a need to start at square one when developing such standards.

Similarly, no chairman had set out a target for resolving a certain number of cases per month. The courts simply handle the cases that come to their courts with no set target in mind. This approach is true of all district, regional and appeal courts whether in urban or rural areas. For example, the Hargeisa District Court, which has nine judges and received 3,562 cases in 2016, tries to "finish all the cases on a daily basis" but does not set performance targets. The Chairman at the Wajale District/Regional Court said the number of cases they resolve "depends on the number of cases we get and also whether the cases are civil or criminal." Judges work on a daily basis and do not fix the number of cases they will hear.

Several small district courts felt there was no need to have monthly targets for the resolution of cases. For instance, at the time of data collection, the Boon District Court had only heard a total of two cases. Because they receive so few cases, they did not see the need for establishing a target. The Chairman of the Ibrahim Koodbuur Branch District Court in Hargeisa, which received 215 cases in 2016, expressed a similar opinion.

While court leadership was found lacking in establishing goals and targets, the majority of courts did show leadership in collaborating with other justice sector actors. 25 of the 37 courts said their court conducts meetings with other justice sector actors like the prosecution, police and prisons. Some courts only meet with certain institutions. The Regional Court in Hargeisa only meets with the AGO. However, meetings between justice actors in the regions do not take place on a regular basis, but only when necessary to address difficult cases. For example, the Appeal Court in Burao only interacts with other justice sector actors "when

there are issues to be discussed.” Borama has the most regular schedule, meeting almost monthly. The appeal court chairman, or the highest-ranking judge, is responsible for calling such meetings. In small districts, there is usually no cross institutional collaboration because of the absence of other justice sector actors.

### ***Lack of a Strategic Plan at Lower Courts***

A strategic plan is essential to promote judicial administration because it allows courts to “establish clear goals, targets and plans for improvement.”<sup>22</sup> It also enables courts to determine how to allocate resources in line with their vision for improvement. The district, regional and appeal courts in Somaliland, however, do not actively or regularly plan for the short or long-term.

No court, including those located in Hargeisa, had a strategic plan in place setting out goals, targets and plans for improvement. Moreover, no region had a common strategic plan for improving court services. However, there was indication of courts having thought about plans for improvement, with a number of courts having written out a list of needs they had shared with the CJ or stating they had unwritten improvement plans. The Chairman of the Regional Court in Hargeisa said their “strategic plan is unwritten but it includes rebuilding courts, improving case management, securing better equipment and uniforms for all staff.” Other courts, including the Chairman at the Appeal Court in Borama, simply stated they rely on the CJ to define plans.

With no strategic plan in place at any district, regional or appeal court, resources are not allocated in line with plans. Moreover, no policies or performance standards are developed with a clear strategy in mind. The lack of a clear strategic plan that is written and communicated to all stakeholders, limits the improvements the court system can achieve because court staff are not working towards clear goals or targets.

### ***Case Management Not Formalised or System Wide***

There is no system-wide approach to case management followed at the lower courts. A number of courts said they had systems in place to make sure cases were handled in a timely manner. But most of these systems amounted to registrars recording cases and judges encouraging the parties to be on time for hearings. At the Erigavo District Court, the registrar records cases manually so the chairman knows if a case is not proceeding in a timely fashion and can follow up. At the Oodwayne District/Regional Court, the judge simply asks parties to “remain on time and come to the court on the appointed day.”

However, a majority of courts did apply a uniform case number. Only three small district courts—Sabawanaag, Abdaal and Oog—did not use the case referencing system.

### ***Court Staff Not Proactively Managed***

The most important resources of a court are the judges and other court staff. At the lower courts in Somaliland, however, human resource systems are either limited or non-existence. Neither judges nor registrars are proactively managed.

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<sup>22</sup> “The International Framework for Court Excellence,” available at: <http://www.courtexcellence.com/Resources/The-Framework.aspx>.

No lower court has written job descriptions in place for judges or any other court staff. If staff are oriented, this is done verbally either by a superior or another staff member working in the same position. At the Appeal Court in Berbera, new registrars are verbally oriented by the judge they are assigned to. While at the Regional Court in Berbera, the current staff member working in the same position as the newly hired staff explains what their duties are. At other courts, there is no orientation and new staff, including judges, are expected to perform their duties without any instruction. At the Borama District Court, new judges are simply given a copy of the Code of Conduct.

No district, regional or appeal court has formal measures in place to track staff performance. Of the 37 courts visited, only two courts stated they have a formal staff evaluation system. At the Appeal Court in Erigavo, the Chairman evaluates subordinate judges on punctuality, behaviour, knowledge of the law and whether they follow court procedures. At the Regional Court in Hargeisa, the Chairman reviews the attendance and performance of staff yearly. However, most chairmen only evaluate staff informally by observing them at work. Similarly, no Chairman formally monitors the efficiency of their staff. The Chairman at the Gacan Libaax Branch District Court in Hargeisa and the Appeal Court Chairman in Awdal said that tracking the efficiency of judges was the responsibility of the HJC and not the chairmen of individual courts.

Moreover, most courts do not have systems in place to oversee the caseloads of judges. Of the 37 courts, only three said they had a formalised system. These courts were the Regional and Appeal Courts in Hargeisa, and the Awdal Appeal Court in Borama. The Chairmen at each of these courts tracks the cases of their subordinate judges so they can distribute cases in an equitable manner.

17 other courts said they have an informal system in place where the chairman tried to make sure none of the judges had too many cases but did not track the caseload of each judge. For example, the Chairman at the Saahil Regional Court commented that he “observes the workload [of judges] and makes adjustments as needed.” The other courts did not have any system to manage the caseload of judges and felt that the court did not receive enough cases to merit such a system. For instance, the Sheikh District Court, which received 67 cases in 2016, said their caseload was too small.

One positive practice happening at the majority of lower courts are internal staff meetings. 29 courts said they conducted meetings with judges and registrars at their courts. Some courts only have staff meetings when needed, but a number have regular meeting times, either weekly or monthly. For example, the Aynabo District/Regional Court meets twice a month to discuss the work of the court, including how to improve services and pending cases. At the El-afwayn District Court, staff meet monthly to go over court performance. Some chairmen even use these meetings as a form of internal training. For instance, at the Sheikh District Court, the Chairman discusses how staff should conduct their work and how to follow procedures in criminal cases.

### ***Hiring and Firing is Centralised in Hargeisa***

Chairmen have limited influence over hiring and firing at their court. All judges are hired and fired through the HJC in Hargeisa. Chairmen at district, regional and appeal courts are able to request a new hire and suggest who should be fired, but ultimately this is the decision of the HJC. Chairmen at the district and regional courts will write a request for an appointment or firing to the appeal court chairman of their region. Then the appeal court chairman will

forward this request to the HJC which makes the final determination. For example, the Chairman of the Boon District Court will send a request to the Chairman of the Awdal Appeal Court who will then forward this request to the HJC. However, in line with other civil servants, all non-judicial positions, such as registrars, bailiffs and cleaners, apply through the Civil Service Commission which organizes entrance exams, checks their qualifications and forwards the names of the successful candidates.

### ***Financial and Operational Resources Not Proactively Managed***

Somaliland's lower courts do not proactively manage their resources. While all budget data was mixed and all judges were unsure of concrete figures, what was clear is that all courts, including those in Hargeisa, lack financial resources. As noted earlier, judges and other court staff will make up the short fall by paying for the utilities and purchasing items they deem necessary for their work like furniture and stationery. However, there are no systems to get the most out of the resources that are available.

Only the District and Regional Court in Hargeisa, and the Appeal Court in Borama, responded that they have a formalised system to manage financial resources. 13 courts said they work with informal systems. The other 21 courts said they had no systems at all. Of the 21 with no formal or only informal financial systems, only nine were small district courts that do not receive any budget at the time of data collection. The other 12 were courts that receive a budget.

Of the courts that do have a formal or informal financial management system, there is no consistency. Some courts purchase items on credit and then the Ministry of Finance (MoF) reimburses the vendor, while other courts simply keep receipts. Only seven courts, which included the District, Regional and Appeal Court in Hargeisa, said they report financial information to the MoJ (prior to January 2017 as explained below) or the SC. All courts visited responded that their finances are never independently audited and that there is no institution that monitors how the court spends its money. The lack of financial management systems undermines the efficiency of the courts and needs to be addressed before greater sums of money are given to the individual courts to manage.

### ***Court Budgeting***

Court chairmen are fully aware of the salaries of their staff, as they have to sign vouchers for receipts of all salary payments. Sometimes, however, a staff member who has been transferred from his home base, where his family still lives, may opt to continue to have his salary paid there for the convenience of his family. In this case, the chairman of the new court where he is working may not know the salary.

Chairmen have some control over equipment and operational costs to cover stationery and utilities. Yet, financial resources for equipment and operations are severely limited ([see Table 6, below](#)). For example, at the Salahley District Court, they only receive \$40 every three months for stationery. 17 of the 37 courts said they received no monies for operational costs, which includes four branch district courts in Hargeisa. Similarly, 12 courts stated they did not receive any money for equipment, including costs like stationery, and another three, including two district courts in Hargeisa, said they received stationery supplies from another court.

**Table 6: Responses to Equipment/Operations Monthly Budget Question**

Budget	Equipment	Operating
Zero/Nothing	10	15
Up to \$450	13	9
Between \$450 and \$900	5	4
Above \$900	1	3
Did not know or could not answer	2	1
Received the money from another court	2	0

### ***2017 Budget Transfer from the MoJ***

A majority of chairmen were confident that the recent budget transfer would help address the financial problems facing their courts. In January 2017, the Ministry of Finance budget for the lower courts—district, regional and appeal courts—was transferred from the Ministry of Justice to the SC. Prior to the transfer, the judiciary only had responsibility for the SC’s budget.

The purpose of the transfer was to increase the independence of the judiciary by giving it control over court budgeting. 35 of the 37 courts said they were confident that budget shortfalls would start to be addressed, or that they would begin to receive monies for court expenses, because the SC can better allocate the budget to meet the needs of the courts. The District Court Chairman in Erigavo was hopeful that the budget transfer would result in financing for stationery, furniture and building repairs. The Chairman of the Appeal Court in Burao sees the budget transfer as an opportunity to create more accountability within the courts as the judiciary would now have direct control over budgets.

### ***Case Statistics Collected for Reporting Purposes Only***

Good judicial administration requires human, financial and operational resources to be aligned with the demands for court services. However, as identified above, case statistics are not used to allocate resources at the lower courts in Somaliland. The 37 courts all collected case statistics in some manner, but no court distributed resources in line with these statistics. When asked why, 24 respondents said they considered the court’s resources too limited to merit allocating them in line with case statistics. Instead, case statistics are collected only for reporting purposes.

Moreover, the same court statistics are not collected at every court. Each individual court determines how and what statistics they will gather.

### ***Court Fees Are Not Transparent***

Judicial administration includes making sure court fees are reasonable and made known to the public. Only 10 lower courts, however, have a policy on the collection of court fees. Only two courts—the Las Anod District Court and the Burao District Court—said they posted

court fees for the public. A number of courts said they inform court users verbally or that the MoF is responsible for this. According to the head of administration and finance at the SC, the MoF collects the fees. But it is the chairman/president of the court who is responsible for directing the public regarding the sum of the fees and where the fee should be paid, in line with the tax rate that covers the case. The chairman has the power to waive the entire fee, or part of it, if he concludes that the person starting the litigation cannot afford to pay. If the court system wants to provide better services and improve public opinion, taking an active role in the setting and publication of court fees is paramount.

### ***Public Feedback Only Obtained on Ad Hoc Basis***

An essential pillar of judicial administration is obtaining public feedback and using that information to improve services. None of the 37 courts formally elicit court user feedback. 26 courts stated that they obtain feedback from court users, namely from members of the public who talk with judges, which is often just a casual exchange in public. At the Dilla District Court, the Chairman said he receives feedback when he meets a court user at a tea shop. Because feedback is not formalised, it is acquired irregularly at best.

However, despite the lack of formalised feedback systems, a majority of the courts take the feedback seriously and use it to make improvements. 15 courts responded that they reviewed court user feedback whenever they received it. Moreover, 18 courts said they use the information to make improvements to the service they provide. The Chairman at the Burao District Court said that he discusses the feedback from the public with his staff and they collectively decide how to respond.

### ***Limited Outreach and Information Made Available to the Public***

Part of good judicial administration is making information on court services available to the public. However, public information on the lower court system in Somaliland is limited. Over half, 23 of 37, of the courts visited said they provide information on court services to the public. Available information is usually posted on a public board at the courthouse. However, only four of these courts provide the public with information on court procedures and processes. The majority only give information on what type of cases the court adjudicates.

Of the 14 courts that said they do not make any information available to the public, several said they only do so if someone asks or files a case. For example, at the El-afwayn District Court, the Chairman stated that there is “no awareness raising for the general population. They only learn [about the court’s service] if they come and ask.” Other judges felt that raising awareness about court services was not their responsibility. At the Boon District Court, the Chairman said the Awdal Appeal Court had not undertaken any efforts to promote public knowledge about the newly established court since it had opened.

Moreover, individual outreach by judges to members of the public is minimal. Only 11 of the 37 respondents said judges at their court were involved with community education, either because they lecture on law at universities or speak on *Sharia* at mosques.

### ***No Dedicated Administrative Staff***

Sound judicial administration requires staff dedicated to court management. However, the lower courts lack the staff to put in place, and operate, such systems, in the process prolonging cases. In the regions, there is no position dedicated to administration and finances.

The president judge is responsible for the finances while a registrar, usually the Chief Registrar, deals with administrative tasks.

## **Court Facilities Are Not Adequate or Safe**

### ***Limited or None Existent Facilities for the Public***

The majority of courts visited had an available WC for staff and members of the public (*see Annex 1, Figure 22*). Not all courts, however, have facilities that work or are maintained. At the Boon District Court, which is in a rented building, court staff and members of the public have to use a toilet at a neighbouring home. At the Oog District Court, the sewer is almost full. Moreover, at other courts there are simply not enough WCs. At the District Court in Hargeisa, which saw 3,562 cases in 2016, there is only one WC for staff and public.

### ***Security Infrastructure***

There is a general perception, especially in Sool and Sanaag, that courts are not safe because security infrastructure is minimal. 28 of the 37 courts are within a walled compound that provides a level of security. At the Las Anod District Court, Borama Regional Court and the Hargeisa District Court, the wall is either too short to provide security or incomplete. Walled compounds, however, do not necessarily ensure security or stop vandalism. At the Borama District Court, rocks thrown into the compound have broken glass windows. Several of the courts visited have additional security infrastructure: the Borama District Court has barbed wire on top of the security wall; the Sheikh District Court has bars on the window; and the Baligubedle District Court, the Hargeisa Appeal, Regional and main District court all have barbed wire on the compound wall. Security guards offset the lack of security infrastructure (*see Annex 1, Table 4*), but the general feeling of judges is that their courts are not secure.

## **Chief Justice's Reforms**

The CJ's reform strategy has begun the process of improving Somaliland's court system, but to date it has fallen far short of system-wide change. As shown above, there has been little or no impact of the reforms in the regions. This is not because courts are resistant to change, but because judges do not have written guidelines about the content of the reforms. They are therefore unclear about how to carry them out.

### ***Lack of Monitoring Systems Limits the Impact of Judicial Reforms***

In Hargeisa, the CJ can personally follow up on whether judges and judiciary staff are carrying out reforms. However, the judiciary does not have a functioning monitoring mechanism to determine whether reforms are being applied in the regions. Consequently, the CJ does not know whether or not his initiatives are having the intended effect outside of Hargeisa.

The HJC includes a judicial monitoring function, but it has limited reach into the regions due to constraints of resources and staff capacity. Investing in a robust monitoring system would create a greater sense of oversight in the regions and would increase the likelihood of reforms being carried out to a better degree.

## ***CJ Does Not Have Dedicated Staff***

The CJ does not have a dedicated office that can support the articulation or execution of his reforms, build an international network of support, maintain relations with donors or help with funding prospects. Not having the necessary support staff makes it difficult to take advantage of opportunities which would help the CJ achieve his goals and means the CJ himself carries out most of the day-to-day activities.

Instead, the CJ is dependent on the lower court judges and the staff at the HJC to ensure his reforms are carried out. However, within the HJC, staff capacity is extremely low, there are no personnel files, job descriptions, work plans, performance management systems or oversight. Most worrying is the near complete absence of the most basic data, without which reforms lack a foundational basis. It has taken months of painstaking work to establish simple information, such as how many judges work in the judiciary, how many courts exist, how resources are allocated, what the government spends on mobile courts etc... The lack of dedicated staff to carry out his reforms, and the insufficient capacity of staff at the HJC, undermine the execution of any reform strategy. As long as these difficulties persist, the HJC cannot spearhead meaningful reforms.

Moreover, not having a dedicated staff often prevents the CJ from carrying out activities meant to improve his office and build the capacity of the HJC. For example, an assessment of the HJC under the baseline study shows that hardly any of the recommendations made under a 2015 functional review by Horizon<sup>23</sup> have been implemented and there is no action plan in place to execute the recommendations. The recommendations put forth in the functional review are meant to strengthen the capacity of the HJC. But to date no staff member has been appointed or taken the initiative to start implementing these recommendations. This means that if the CJ wants to carry out the recommendations in this report, it will be solely up to him because he does not have staff with the necessary capacity to whom he can delegate this responsibility.

## **Judges and Registrars Need Ongoing Training**

While the formal education of judges is increasing, each respondent stated that judicial training was still needed. The capacity of the judges to carry out their work is still inadequate. The only way to combat this is to establish a permanent training institute. Such a training institute should also include court support staff to improve the management of the courts. A Professional Development Unit (PDU) has been established within the HJC to chart training needs and coordinate trainings. To date, however, the PDU has not carried out any significant work and courts continue to receive training on an *ad hoc* basis by various actors without coordination.

Moreover, no individual court invests in judges with internal training. No district, regional or appeal court had an internal training plan in place and all courts thought the courts themselves should not carry out the training of judges. The Maroodi-Jeex Appeal Court Chairman stated that the court was a place of work and not a place to train people. Only four out of 37 court chairmen said they ever completed a training needs assessment for their court.

As for registrars, they are only required to have a secondary school education and do not receive any on the job training. When asked about the training needs of court staff, 12

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<sup>23</sup> Horizon Institute, "Report on the Functional Review of the High Judicial Council," (December 2015) available at: <http://www.thehorizoninstitute.org/resources/>.

respondents said registrars need IT and office management training. Registrars play an integral role not just in supporting judges in substantive matters of law, but also in managing the courts. They are, in fact, the institutional memory of the courts. Any development interventions focused on judicial administration should include registrars as a main focus.

## Chapter 2

### ACCESS TO JUSTICE

#### MOBILE COURTS, LEGAL AID AND PUBLIC DEFENDERS

Improving access to justice in Somaliland centres on three initiatives: mobile courts operated by the judiciary; public defenders provided by the Ministry of Justice and private legal aid.

#### MOBILE COURTS

Mobile courts are part and parcel of the court system, and a key program the judiciary uses to increase access to justice. Through this program, judges and other justice sector actors are able to travel to communities without courts to hear cases and adjudicate complaints. The mobile courts were established with the help of UNDP in 2008<sup>24</sup> and operate at the regional, appeal and Supreme Court (SC) levels. With the regional and appeal courts located in regional capitals, and the SC located in the capital of Hargeisa, the mobile courts are designed to increase access to justice in areas where there are only district courts or no courts at all. The SC started functioning as a mobile court in 2015 and visits the regional capitals to hear cases.

The analysis in this section is focused primarily on mobile courts operating at the regional and appeal court levels, with an explanation of the SC's mobile court program when relevant. There are seven mobile court teams managed by the chairmen of the appeal courts in all six regions of Somaliland: in Hargeisa and in Gabiley (Maroodi-Jeex Region); in Borama (Awdal Region); in Berbera (Saahil Region); in Burao (Togdheer Region); in Erigavo (Sanaag Region) and in Las Anod (Sool Region). Each was visited for the baseline study. The demand for mobile court services is measured by the inflow of cases in 2016. The budget and operational resources, workforce, performance and overall trends are distilled from data collected from each region's mobile court team from January to May 2017.

#### Demand for Mobile Court Services

***Lack of Case Statistics Make Measuring Demand Problematic:*** Of the seven regional and appeal mobile court teams, only four were able to provide case statistics for the baseline study. This is because mobile court statistics are not kept separately from the formal court statistics. As the Togdheer Appeal Court Chairman explained, when the Mobile Court Coordinator needs statistics for reporting, they pull out the mobile court cases from the overall formal court statistics. This information is sent via hard copy to the Mobile Court Coordinator in Hargeisa and the relevant mobile court does not retain a copy. Consequently, the limited case statistics has resulted in few measures to determine demand for services.

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<sup>24</sup> UNDP, "Evaluation of UNDP's Support to Mobile Courts in Sierra Leone, Democratic Republic of the Congo, and Somalia," (May 2014).

**The Mobile Court Cases Handled by the SC:** Normally, the SC does not keep figures specific to the mobile court cases it handles. However, in early July, at the request of Horizon, the cases were segregated to establish the total number of mobile court cases the SC took up in 2016, and whether they were still pending or had been settled. The relevant details are as below:

- Total Number of Mobile Court Cases in the SC in 2016: 210
- Criminal: 129
- Civil: 81
- Disposed: 179
- Pending Cases: 31

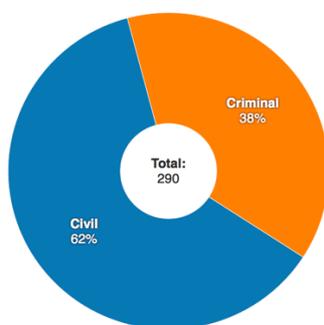
It was difficult to establish precisely the number of times the SC went on mobile court visits in 2016 because there is no travel log. But visits to the towns detailed below were confirmed for 2016. The short visits ranged from 2-6 days, depending on the distance from Hargeisa.

- Buraao (around five times, all the trips were short trips except one in which the CJ participated which took 21 days);
- Borama (around four times; all the trips were short trips except when the CJ took part and which lasted about 15 days);
- Berbera (around six times, all short trips);
- Gabiley (around six times, all short trips);
- Erigavo (around twice, all were short trips);

The Mobile Court Coordinator, blaming lack of office space, said they currently do not have access to previously filed hard copies of cases and are wholly dependent on soft copies. The information on case statistics is either sent to them by email or the details are received orally through the phone and written down and then compiled into a report.

**Demand for Civil Cases Greater than Criminal Cases for Lower Courts:** Of the four regional and appeal mobile court teams that could provide case statistics—Hargeisa, Berbera, Erigavo and Las Anod—civil cases were almost two thirds of all cases heard (*see Figure 6, below*). Of the 179 civil cases tracked in 2016, only 37 were land disputes and 33 family cases. This is because Sanaag Region’s mobile court dealt with 102 other cases.<sup>25</sup> The SC, on the other hand, said it handles more criminal cases.

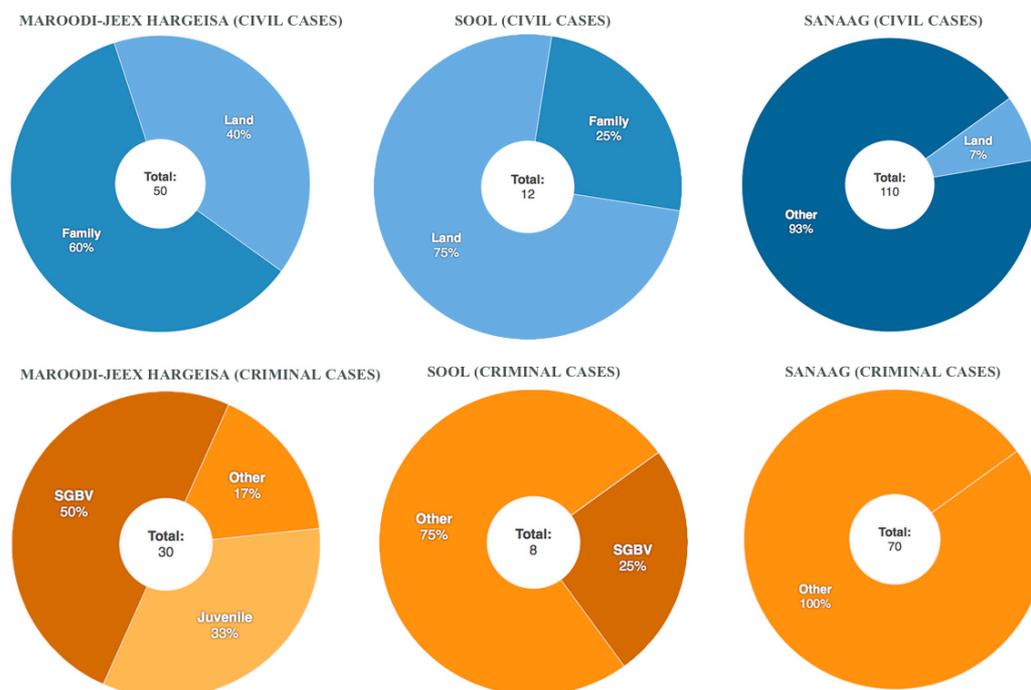
**Figure 6: Mobile Court Cases in 2016**



<sup>25</sup> For Sanaag, the breakdown is as follows: disputes over farms, 22; conflict over building ownership, 3; disputes over land, 30; loan/debt cases, 31; and blood compensation money, 24.

**No Subject Matter Focus:** The expectation that mobile courts will help vulnerable groups, like victims of SGBV and children, by prioritising certain cases like sexual violence or juveniles, is not supported by the facts. The mobile court in Somaliland, including at the SC level, does not focus on specific categories of cases. There is no subject matter focus, and the type of cases varies from region to region (*see Figure 7, below*). When pressed for time, the SC gives priority to criminal cases.

**Figure 7: Classification of Mobile Court Cases**



**Demand Highest in Sanaag Region:** The demand for mobile court services appears to be highest in Sanaag Region (*see Annex 1, Figure 23*). Of the four mobile court teams that could provide statistics, Sanaag reported 180, which was more than the combined total of 110 cases of teams in Maroodi-Jeex Hargeisa, Sool and Saahil. The SC said it receives the most cases from the Regional Courts of Togdheer and Sanaag respectively.

## Budget and Operational Resources

**No External Funding for Mobile Courts Since March 2016:** UNDP funding for mobile courts ended in March 2016. The sole funding for mobile courts was through UNDP with no government funds allocated specifically for the initiative. The only government contribution has been providing judges in kind and paying for their fuel and accommodation.<sup>26</sup> Since UNDP funding stopped, mobile courts have still functioned when resources have been made available. In a civil suit, the parties will be asked to pay expenses. In criminal cases, expenses, such as fuel, will either be paid for by the presiding judge or taken on credit.

**Inadequate Funding:** Prior to UNDP funding ending in March 2016, each mobile court team was allotted \$400 per month for fuel and \$200 per month for stationery from UNDP. However, even when UNDP was funding the mobile courts, respondents said the resources

<sup>26</sup> Despite repeated attempts to obtain figures for government expenditure on mobile courts, the Mobile Court Coordinator was unable to provide any information, saying he did not record these expenses.

were insufficient. With the exception of the Awdal mobile court, all respondents reported that the funding they actually received in 2016 was lower than the funding assigned to their court (*see Annex 1, Figure 24*).

***Insufficient Vehicles and No Budget for Fuel:*** Of the seven regional and appeal mobile court teams, those based in Gabiley, Sanaag and Sool did not have a dedicated vehicle. The inadequacy of transport has major implications for the work of mobile courts, including at the level of the SC. There are working vehicles owned by the court system in every region (*see Annex 1, Figure 25*) and the mobile court teams use these cars. The mobile court in Gabiley is the only team without access to a court owned vehicle; they borrow a car owned by a registrar at the District/Regional Court in Gabiley. All mobile court teams replied that they did not currently have a budget for fuel.

***Judges Make Up Financial Shortfall:*** When there is a budget shortfall, judges usually provide the necessary funds from their own pockets, making them susceptible to undue influence and corruption. Even when there was UNDP funding, there was never money for per diems or refreshments for mobile court participants. In most cases, either the regional or appeal court chairman or judge participating on the mobile court would pay.

***Meagre Resources Not Aligned with Case Statistics:*** Similar to the formal courts, the mobile courts do not allocate resources based on case statistics, even when they were receiving funding. Respondents explained that there were insufficient resources to make it worthwhile doing so.

## **Mobile Court Workforce**

***Same Judges as Court System:*** The staff of the formal courts and the mobile courts are one and the same. There are no judges or registrars dedicated solely to the mobile courts. At the SC, the CJ assigns cases to one of three teams. Each chairperson of an appeal court oversees the activities of the Mobile Court in his region and reports directly to the Mobile Court Coordinator in Hargeisa.

***No Selection Procedure or Specialised Judges:*** The chairman of the relevant court simply assigns whichever judge is available to the mobile court. For example, at the Gabiley mobile court, the judge dealing with the least number of cases will be tasked with a mobile court case. Some consideration may be given to a judge's background; the Hargeisa mobile court in Maroodi-Jeex Region said they try to "find a judge who has the right skills."

***Strong Cross-Institutional Collaboration:*** All mobile court teams collaborate with other justice sector actors (*see Annex 1, Table 5*). Because the mobile courts travel to locations to adjudicate cases, they have to work with the other institutions. As the Togdheer Appeal Court Chairman explained, the police always travel with the mobile courts for security and then a prosecutor or private lawyer may also participate depending on the case. In Somaliland, where cross-institutional collaboration is weak, the mobile courts are an area where it has proven strong. The Saahil Appeal Court Chairman commented that "[the mobile court has] a good relationship with [other institutions] and they are always readily available" for cases.

***Sporadic Use of Legal Aid:*** Depending on the case, the mobile court, including the SC, may also collaborate with a public defender or private legal aid provider (*see Table 7, below*). The resources available to the mobile court to appoint a public defender are the same as those available to the formal courts, which are discussed below in the section on public defenders.

Only two mobile court teams, those in Hargeisa and Burao, worked with private legal aid lawyers. This is because of the very limited availability of legal aid lawyers in general in Somaliland, which is discussed below.

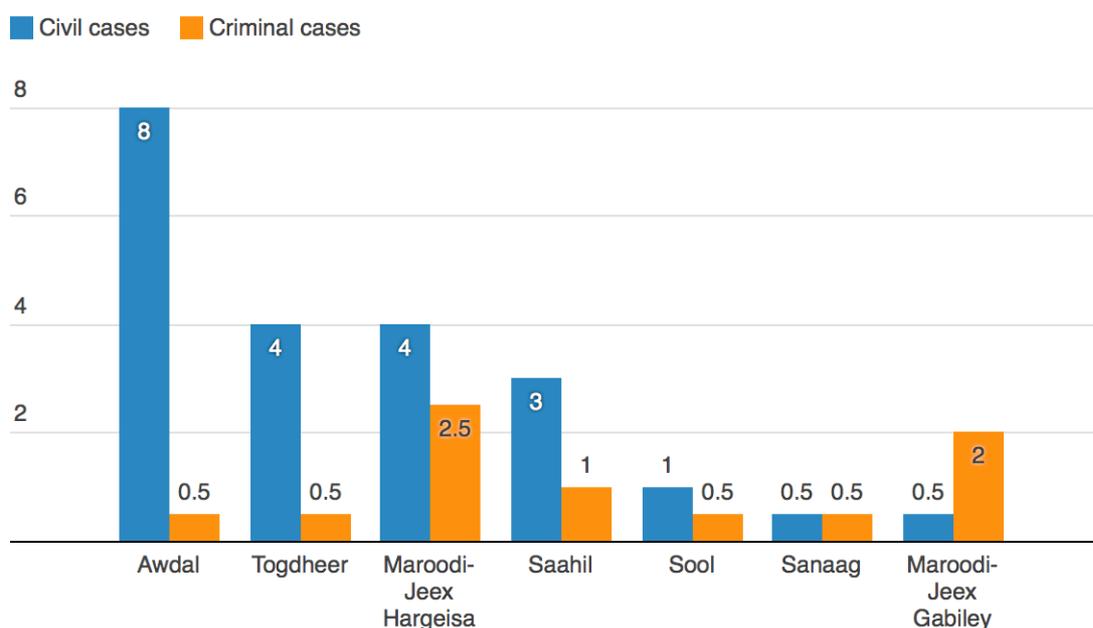
**Table 7: Use of Legal Aid**

Mobile Court	Maroodi-Jeex Gabiley	Maroodi-Jeex Hargeisa	Awdal	Saahil	Togdheer	Sanaag	Sool
Resources to appoint a public defender	YES	YES	YES	YES	NO	YES	NO
How often does the mobile court use a public defender?	5 cases per month	2 times per month	2 times per month	Only a few times	-	1 time per month	-
Legal aid lawyers accompany the mobile court	NO	YES	NO	NO	YES	NO	NO

## Mobile Court Performance

**Civil Cases Nearly Three Times as Long as Criminal Cases:** The average length of a regional or appeal mobile court civil case (2.9 weeks) is almost double that of a criminal case (1 week). However, when compared by mobile court team, the average length of both civil and criminal cases ranges widely (see Figure 8, below). The SC said it takes a maximum of two days to process a criminal case as they do not listen to witnesses “but look only at the article of the law which has been violated, and the factual evidence.” The judgement for criminal cases is issued immediately. Civil cases also take two days at most, and often one day. Here, witnesses are heard but only if it is determined that the lower courts refused them a hearing without reason. However, the judgement is issued and submitted to the parties about six weeks later, after the judges have had time to analyse the evidence.

**Figure 8: Average Length of Mobile Court Cases (Weeks)**



**Majority of Criminal Cases End in Conviction:** Like the formal court, the majority of criminal cases handled by the mobile court end in conviction (*see Annex 1, Figure 26*).

**High Clearance Rate in Criminal Cases:** Of the 290 reported cases, only four were pending at the end of 2016. This indicates a high clearance rate for criminal cases handled by the mobile courts.

**Strong Adherence to Certain Court Proceedings and Procedures:** All respondents stated that judges working on mobile courts explain case proceedings, and that decisions are written and enforced. The SC said it never takes a case, whether criminal or civil and whether in Hargeisa or mobile court, where a party does not have a lawyer. If the party cannot afford a lawyer, the SC will approach a public defender in criminal cases, or a legal provider in both criminal and civil litigation.

**Public Opinion Considered Positive:** While no mobile court team collects public feedback, there is a general sense that beneficiaries view the mobile courts positively. In the view of the Chairman of the mobile court team at the Gabiley District/Regional Court: “The community is very happy to have mobile courts come to their area because it saves them money and time. This initiative is increasing the public’s trust and confidence in the formal courts.”

## Overall Trends

**Instrumental in Judicial Reforms to Increase Access to Justice:** The CJ has made expanding judiciary services into remote areas of Somaliland a mainstay of his reform strategy. Since taking office in 2015, the CJ has worked to broaden the mobile courts and he has created a mobile court team at the SC level.

**Mobile Court Frequently Functions as an Investigation Tool:** Often a case will have a mobile court element, meaning that the mobile court will be used to view evidence, while most of the case is heard at the courthouse. For example, when a land dispute is lodged at the Gabiley District/Regional Court, which has a mobile court team, the mobile court will be used to go and view the land at issue.

**No Set Circuit or Operation Times:** Caseload determines when and where a mobile court team operates. The court does not function on a set circuit like the UNDP funded mobile courts in Sierra Leone.<sup>27</sup> According to the Maroodi-Jeex Appeal Court Chairman: “When enough cases amass in an area, we fix a date and go there as a team.”<sup>28</sup> An Appeal Court Judge in Hargeisa said that how often the mobile court operates “depends on how many appeals we have [and] what resources are available.”<sup>29</sup> As a result, the number of times a mobile court team operates varies widely (*see Annex 1, Figure 27*).

**Disputed Reach of Mobile Court:** The reach of the mobile courts is questionable. Often an appeal court will say that they go to a certain rural district, but upon visiting that district it has been found that the mobile court has not been to this area. For example, the Mobile Court Coordinator and Maroodi-Jeex Appeal Court Chairman stated that the mobile court visits both the small districts of Baligubedle and Darasalaam in Maroodi-Jeex Region. However,

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<sup>27</sup> UNDP, “Evaluation of UNDP’s Support to Mobile Courts in Sierra Leone, Democratic Republic of the Congo, and Somalia,” (May 2014).

<sup>28</sup> Interviewed in Hargeisa on 6 September 2016.

<sup>29</sup> Interviewed in Hargeisa on 6 September 2016.

when the Baligubedle and Darasalaam District Court judges were asked if the mobile court had ever come to their districts, they both answered no. The judge in Baligubedle speculated that the mobile court has not come to his district because “perhaps the roads are not good enough.” The mobile court teams at appeal courts often go to prisons to hear appeals from prisoners. The CJ commented that “the Maroodi-Jeex Appeal Court goes to Gabiley and Mandera a lot because this is where the prisons are located and so there are a lot of appeals coming from there.”<sup>30</sup>

## FACTORS UNDERLYING FINDINGS ON MOBILE COURTS

### Low Public Awareness of Mobile Court Services

There is little public knowledge about mobile court services. Of the 101 court users surveyed under the baseline study, only 21 had heard of the mobile courts, but none had detailed knowledge or personal experience. Only one person, living in El-afwayn, had used the mobile court, and it was for a land dispute.

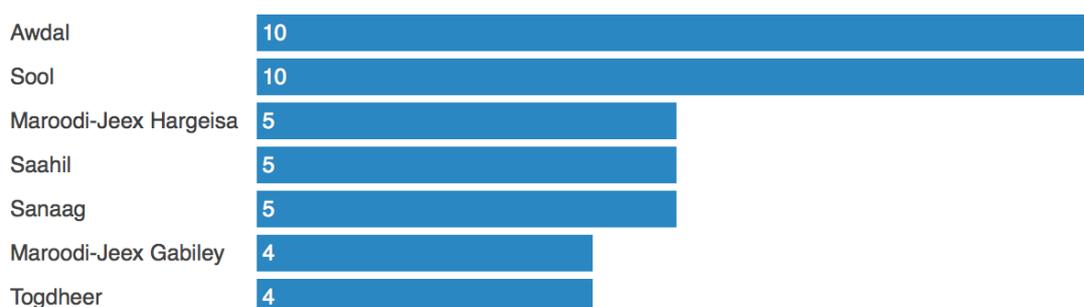
This level of public awareness is problematic because mobile courts are designed to respond when a request for service is made from either a district court judge or member of the public. However, court users routinely only learn about the mobile court services after filing a case, including this man from Agamsa in Maroodi-Jeex Region who had filed his land dispute at the Gabiley District/Regional Court.

I started the case here in Gabiley, but I told the court that I’m a poor man and that I didn’t have enough money to bring all the witnesses here to Gabiley . . . [The judge] suggested that I make a request for the court to come to my home and look at the land that was taken from me. This is how I came to know that the court could come to me.<sup>31</sup>

### Mobile Court Team Composition

The mobile court is a service of the judiciary but mobile court participants usually include actors from other justice sector institutions. The average size of a mobile court team in the field varies (*see Figure 9, below*). Judiciary staff usually includes an appointed judge, or a panel of judges if required by law, and a registrar. Other institutions that participate include the police, who provide security, the Attorney General’s Office (AGO) in a criminal case, and private lawyers if a party has contracted one, or a legal aid lawyer if they are available.

**Figure 9: Average Size of Mobile Court Team**



<sup>30</sup> Interviewed in Hargeisa on 8 September 2016.

<sup>31</sup> Interviewed in Gabiley on 18 September 2016.

## Case Selection and Determination of Location

The mobile court teams pre-determine the cases they will address before traveling to a rural area. They do not simply show up in a district on a given day and ask if there are any cases to be tried. For example, the Sool mobile court team only goes out once they have a case file.

Caseload determines where they travel. There is no set caseload for when the mobile court operates. The SC will travel to a region on a mobile court that has at least 10 cases. The appeal court also waits for a number of cases to accumulate. The regional court, however, may travel to a district that has only one case, as highlighted by the Chairman of Gabiley District/Regional Court.

Since we are a court of first instance and we have to hear all the evidence, we usually only handle one case per trip. At most we hear two cases, but that's unusual because there is always a lot of evidence to review and witnesses to speak to.<sup>32</sup>

## Adjudication of Cases

**Case Preparation:** The presiding judge of the mobile court prepares a case before traveling to the location. In appeals, this involves reviewing the case file and submissions by the parties. A prosecutor who has participated in the mobile courts four times, including on three appeals, confirmed that for appeals the cases are almost completely prepared in advance of the hearing.

An accused will write an appeal from prison and send it to the appeal court in Hargeisa. If the appeal has merit, the appeal court will send the statement to us and we will send our response back to the court and they then send our response to the appellate. This means that before we go out on the mobile court, the judge is able to review the appeal, analyse it and, if the case is not complicated, prepare his judgment. Often the judge only needs to listen to a few words from the parties to the appeal before making a decision.<sup>33</sup>

The regional court cases are also prepared in advance as much as possible. The Chairman of the Gabiley District/Regional Court, who manages a regional level mobile court, described the preparation process.

Before we go on a case, we do as much preparation as possible. We analyse whatever evidence we have in advance. Usually in a civil case the first hearing has already been held in Gabiley so we have a lot of information about the case. In a criminal case, we prepare by looking at the charge sheet and any evidence collected like photos. We also normally have the date the accused was arrested, and the names and number of witnesses.<sup>34</sup>

**Hearings:** The mobile courts try cases either in a space provided in a government building or under a tree out in the open. If the hearing is in a rural area with a district court, the court building will be used. Sometimes they even hear cases in police stations.

When the hearing is in the open, there are no facilities available for a closed court in sensitive cases like rape. The Chairman of the Awdal Appeal Court said that in those instances, they

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<sup>32</sup> Interviewed in Gabiley on 10 September 2016.

<sup>33</sup> Interviewed in Hargeisa on 7 September 2016.

<sup>34</sup> Interviewed in Gabiley on 10 September 2016.

try to speak to “the victim in a private place but normally witnesses are examined in public and the judgment is made in public.”

Mobile court visits generally last only one day. A private lawyer in Hargeisa who has participated in the mobile courts six times explained the timeframe of a general mobile court visit.

We usually leave Hargeisa at 7:00 am. It takes about an hour and forty minutes to get to Mandera, and only about 40 minutes to get to Gabiley, so court usually starts around 9:00 am. How long the court lasts depends on the case we are dealing with, but we usually leave around 2:00 pm. If there are complications, we might only deal with one case. But if it's straightforward, we can handle three or more appeals in one day. But we always leave by 2:00 pm for Hargeisa.

**Judgments:** The judgment will either be announced on the day or at a later date. For appeals, the judgment is usually given during the mobile court hearing because judges often make a determination prior to a hearing. However, if the mobile court is being used as an investigation tool for the judge to view evidence as in a land dispute, then the judgment is often given at a later date.

**Enforcement:** Enforcement of mobile court judgments is reportedly strong. All seven Chairmen of mobile court teams said that orders and rulings are enforced. There are three main forms of enforcement. If it is an appeal at a prison, which is common, then the AGO, police and Custodial Corps can carry out the order or judgment. If there is a district court nearby, then the judge presiding on the mobile court will collaborate with the district court judge to enforce any ruling. The mobile courts also work with the police in small villages where there are no other justice sector actors to ensure that judgments are followed.

## **Weak Judicial Administration of Mobile Courts**

The mobile court services, being an integral part of the formal court system, suffer from weak judicial administration and the lack of systems.

**Mobile Court Leadership:** The appeal court chairman of each region is in charge of mobile court services, save for the regional court mobile court team in Gabiley headed by the regional court chairman. The chairmen manage the mobile courts but are also supposed to provide leadership.

Similar to the formal court, no mobile court team has a mission, vision or core values. At most, there was a list of priorities. Nor does any team have a strategic plan.

There are also no standards for solving a certain number of cases per month or attaining other targets. Cases are taken up as they come to the courts.

**Inadequate Case Management:** As with the formal courts, there are little to no systems in place to ensure cases are managed properly. At most, the teams have informal systems in place to make sure all participants are on time the day of travel. The Sanaag mobile court team tries to limit mobile court cases to two sessions.

**Mobile Court Judges are Not Proactively Managed:** The judges who participate in the mobile courts are the same judges that work at the regional and appeal courts. This means

that positive practices like the Code of Conduct are applied to the mobile courts, but also that the weaknesses of the formal courts are reflected in the mobile courts. For example, no judge has a job description and judges new to the mobile courts are only verbally oriented at most. Training is also *ad hoc*, with only five mobile court teams having received an initial training conducted by the UNDP. Moreover, there are only informal systems at best to handle the workload of judges participating on the mobile courts and no performance systems to measure their effectiveness.

***No Formalised Financial Management Systems:*** There are only informal systems in place to administer financial resources. When the UNDP was providing funds for fuel and stationery, receipts were sent to Hargeisa.

***Public Feedback Not Sought Out:*** Feedback on services is only gained when a member of the public tells a judge his or her opinion. Moreover, only three mobile court teams said this feedback was used to plan improvements to services.

***Limited Communication with Public:*** Members of the public only know if the mobile court is coming to their area if they have a court case. The parties to a case are usually informed verbally as to when the court will come to their area. It is then the responsibility of the parties to notify witnesses. Sometimes the registrar will call the party directly, or the appeal court chairman of the region will convey the message through a district court judge.

***Reporting and Case Statistics Driven by Funding:*** Mobile court reporting and collection of case statistics for the UNDP has created a desire to improve statistical outcomes rather than service delivery. Statistics are not collected separately from formal court statistics so the mobile court teams can better understand demand and need, but solely to comply with requirements set by funders. Similarly, quarterly reports are to meet funding requirements. While reporting to funders like the UNDP is a necessity and not damaging in and of itself, if too much emphasis is placed on it, it can undermine the provision of justice.<sup>35</sup>

The focus on improving statistical outcomes rather than mobile court services is indicated by the disparity between the 2016 case statistics reported by UNDP and those collected under the baseline study. In the 2016 UNDP Annual Report, 1,231 cases were reportedly lodged with the mobile court.<sup>36</sup> Only 290 regional and appeal and 210 Supreme Court mobile court cases were reported under the baseline study as lodged in 2016. This is a discrepancy of 731 cases. This can be explained partially by the fact that the baseline was only able to collect case statistics from four of seven mobile court teams. However, it is doubtful if the remaining three regional and appeal mobile court teams would make up the discrepancy of 731 if the four reporting regional and appeal mobile court teams only handled a total 290 cases combined.

Moreover, how the mobile court teams collect case statistics also indicates that this reporting is focused more on statistical outcomes rather than improving services. No mobile court team keeps separate case statistics for mobile courts. This means that when they need to report, they have to extract this data from the overall case statistics for the court. While this puts in question the reliability of the case statistics reported, it also shows that the mobile court teams are not using case statistics to improve services because they themselves are not analysing this information.

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<sup>35</sup> Wayne Martin, "Court Administrators and the Judiciary – Partners in the Delivery of Justice," *International Journal for Court Administration* (December 2014).

<sup>36</sup> UNDP Somalia "Programme Annual Progress Report," (2016).

## **Lack of Funding Constrains Reach of Mobile Court Services**

Limited funds restrict the impact of mobile courts. Somaliland's mobile courts run at a relatively low cost. No honorarium is paid and the main cost is transport. If participants are given a per diem or provided lunch, that is at the expense of the presiding judge. While expenses are modest and only cover fuel and resources like stationery, available funds have never been adequate even when UNDP was funding the mobile courts. The Chairman of the Gabiley District/Regional Court said he often has to curb the use of the mobile court or ask parties to pay for services.

The Gabiley mobile court usually goes about three times a month because funds are scarce. There are a lot of cases, but we don't have the money to go out every time. There are even times when we don't have any funding. [Under UNDP funding] the Mobile Court Coordinator usually sent us \$1,800 every three months. We used \$800 for stationery and the other \$1,000 was for fuel. That money had to last three months. If we ran out of money, we still did the work but we either asked the parties to pay for fuel or we asked the petrol station if we could borrow fuel and pay them once the funding comes.<sup>37</sup>

The Chairman of the Appeal Court in Borama described a similar situation with UNDP funding.

We received a budget of \$1,800 every three months and this was from the UNDP and came through the Supreme Court. It only covered fuel and stationery, but not per diems. Usually it only lasted one or two months. Sometimes we took loans on fuel.<sup>38</sup>

Since UNDP funding ended in March 2016, the mobile courts have stopped working or are operating on borrowed funds.

## **PUBLIC DEFENDERS**

Public defenders (PDs) are the only government legal aid service in Somaliland. Appointed, managed and paid by the MoJ through the government payroll, there are currently 5 PDs based in the regional capitals of Hargeisa, Borama, Las Anod, Erigavo and Berbera. The PD in Berbera was appointed in June 2017, after the completion of the baseline field research. There is no PD in Togdheer region, but it is planned that one will be appointed.<sup>39</sup> Four were named in 2014 and one in 2015. When cases involving PDs from the distant regions of Sool and Sanaag reach the SC, the PD working out of Hargeisa is responsible for the proceedings.

The regional MoJ offices are located only in the regional capitals, which means their work, including PDs, is restricted. While it is important that the MoJ has offices outside of Hargeisa, severe constraints on transport and funding mean they do not extend their reach into rural areas.

The initiative was launched by the MoJ in 2014 after UNDP funding to legal aid providers was cut back, so as to ensure that as many people accused of crimes with a minimum of 10 years' punishment as possible were represented. But apart from a monthly salary of about \$242, PDs receive no other financial support from the MoJ. Abdirahman Ibrahim Abil, the

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<sup>37</sup> Interviewed in Gabiley on 10 September 2016.

<sup>38</sup> Interviewed in Borama on 11 September 2016.

<sup>39</sup> The Head of the Planning Unit of the MoJ HQ in Hargeisa was, for a while, assigned as a PD in Togdheer on a temporary basis.

PD in Hargeisa, said that despite his meagre salary, he finds it necessary to pay for some costs related to his work out of his pocket.<sup>40</sup>

There is a draft 2013 Legal Aid Bill, which has been approved by the Cabinet but is pending in Parliament. The Bill stipulates that PDs must be nominated publicly and chosen among the nominees by a selection committee that includes the Minister (as Chair), the CJ, the AG, the Chair of the National Human Rights Committee and the Chair of the largest association of lawyers.

On occasion, the president of a court may, using the court's small quarterly budget, appoint a lawyer for a poor person, in a civil or criminal case, and facing a sentence less than 10 years. One lawyer in Berbera, who said he had been asked to work on several such cases, said he was not paid in the end due to lack of funds. However, these court appointed lawyers are separate from the PDs.

This section analyses three main trends on the PDs distilled from data collected from the five regional MoJ offices supplemented by interviews with the MoJ headquarters in Hargeisa and with PDs.

***Public Defenders Do Not Substantially Improve Access to Justice in the Regions:*** The public defenders only took up a total of 71 (5.1%) of the 1,404 criminal cases handled in the capitals of these regions in 2016. Their impact and contribution is severely constrained by their numbers, lack of office space, transport and a budget other than their salary. The PD for Hargeisa, for example, is supposed to cover the entire region of Maroodi-Jeex but said he is confined to Hargeisa, for the most part, for practical reasons.

***Public Defenders Limited to Assize Cases:*** Despite the low caseload, public defenders are only appointed to assize cases where punishment is ten years or greater. Consequently, any indigent defendant charged with a crime with a prison sentence lower than 10 years does not benefit from a public defender.

***Outcomes Varied in Criminal Cases Managed by Public Defenders:*** There was no overall trend in the resolutions reached in the cases handled by the PDs.

***Some Judges Do Not Know They Can Appoint a Public Defender:*** Regional and appeal court judges are responsible for appointing PDs to cases within their jurisdiction. However, four of the 12 chairmen of the regional and appeal courts did not know they could appoint a PD. How often the judiciary appoints a PD to a case varied from three to four times per month at the Regional Court in Hargeisa, to three to four times per year at the Regional Court in Borama.

***The Public Has Little Knowledge of the Existence of Public Defenders:*** Without offices and publicity, it is difficult for the public to be aware of the services PDs can provide.

## **FACTORS UNDERLYING FINDINGS ON PUBLIC DEFENDERS**

***Very Few Public Defenders:*** As noted earlier, there are only five PDs, working out of the MoJ offices in the main urban areas. There is no regional MoJ office in Saahil Region, so the Berbera PD does not work from an office. Their work is overwhelmingly at the regional and

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<sup>40</sup> Interviewed in Hargeisa on 16 July 2017.

appeal courts located in the regional capitals. The only time a PD may be assigned to a case outside a regional capital is if they are involved in a mobile court case.

**Public Defenders Constrained by a Narrow Interpretation of Somaliland’s Constitution and Laws:** The MoJ restricts the work of the PDs to assize cases on the basis that this is what is permitted by law. However, this is not explicit in Somaliland law. At most, what is set forth is a standard of when the government *must* provide free legal representation. The judiciary strictly enforces this limitation on the PDs casework. When the PD in Erigavo in Sanaag Region tried to represent an indigent defendant for a crime not included in the assize section, the Chairman of the Regional Court would not allow him to proceed with the case.

**Lack of Oversight of Public Defenders:** There are no systems in place to manage the PDs. No regional MoJ office had a target number of cases for the PDs to resolve each month. The Hargeisa PD said he covered three to four cases, both criminal and civil, per month but was not working against a target. There were also no systems in place to measure the performance of the PDs or for case statistics. Other than being required to submit quarterly statistics reports, the PDs work without oversight or management.

**Little to No Feedback from Beneficiaries of the Public Defenders:** No PD formally seeks out feedback from beneficiaries of their services. Both the PDs in Berbera in Saahil Region and Las Anod in Sool Region said they only received feedback when a client approached them outside of court. Of the feedback received, no PD used it to improve their work.

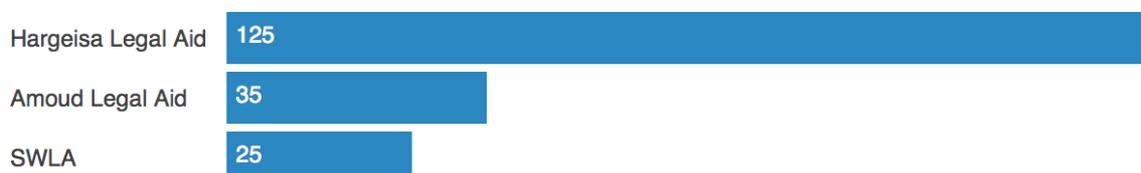
## LEGAL AID

Somaliland has four non-governmental organisations that are meant to provide legal aid services: Somaliland Lawyers Association (SOLLA); Somaliland Women’s Lawyers Association (SWLA); University of Hargeisa Legal Aid Clinic (Hargeisa Legal Aid) and University of Amoud Legal Aid Clinic (Amoud Legal Aid). This section outlines the major trends occurring with private legal aid. These trends are drawn from data collected from SWLA, University of Hargeisa Legal Aid Clinic and the University of Amoud Legal Aid Clinic. It proved impossible to meet with SOLLA during the data collection process.

**Legal Aid Does Not Significantly Improve Access to Justice:** The current legal aid providers only operate in two urban areas in Somaliland – Hargeisa and Borama. While the reported approximate number of legal cases handled per month is relatively substantial ([see Figure 10, below](#)), their geographic concentration means they provided very limited access to justice.

**Available Legal Aid Services Dependent on Funding:** The organisations only provide legal aid support when they get external funding, which is available sporadically. For example, Amoud Legal Aid have averaged 35 cases per month ([see Figure 10, below](#)). But this is only when they have funding, which they currently do not have. Of the 37 courts visited, only the courts located in Hargeisa said legal aid was currently available.

**Figure 10: Approximate Number of Legal Aid Cases per Month**



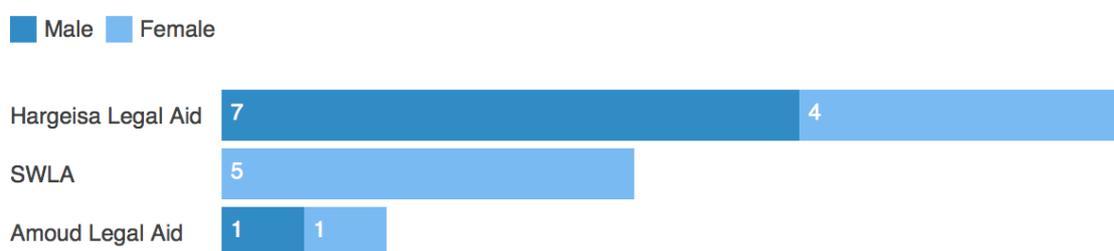
**Offices Easily Accessible:** SWLA, Hargeisa Legal Aid, and Amoud Legal Aid all have offices that are easily accessible, only minutes from the courts in Hargeisa and Borama.

**Legal Aid Organisations Provide For-Profit Services:** All three legal aid organisations extend for-profit services which usually cost less than an independent lawyer. The lawyers at Amoud Legal Aid sometimes take on cases and allow clients to pay whatever they are able to afford.

**Legal Aid Organisations Staffed by Lawyers and Paralegals:** Legal aid providers are staffed by both lawyers and paralegals.

**High Number of Female Lawyers Provide Legal Aid:** Female lawyers outnumber their male counterparts at the legal aid providers visited for the baseline study (see Figure 11, below). This was not true for paralegals (see Figure 12, below).

**Figure 11: Number of Legal Aid Lawyers**



**Figure 12: Number of Legal Aid Paralegals**



## FACTORS UNDERLYING FINDINGS ON LEGAL AID

**Low Public Awareness of Legal Aid:** Of the 101 court users surveyed under the baseline study, only 37 had heard of any legal aid services but had no detailed knowledge or personal experience.

**Funding Determines Available Services:** As noted earlier, if there is no funding, then services end or are greatly reduced. The lawyers turn to for-profit services because the organisations can no longer pay their salaries. Amoud Legal Aid, where the UNDP contributed 80% of resources, has had no external funding since 2014. The University could not increase its contribution of 20%, which mainly covers operational costs and not salaries, so lawyers take on private cases to supplement their salaries. SWLA had funding from Axiom for operational costs for January, February and March 2017 but currently has no funding.

For now, only Hargeisa Legal Aid, which has some funding from UNHCR and the Norwegian Refugee Council, has funding to take up three to four cases per month, as confirmed by the Chairmen of the District, Regional and Appeal Courts in Hargeisa.

All three providers have at least one working vehicle and some fuel. They also have working computers and printers/photocopiers: Hargeisa Legal Aid has ten computers and eight printers/photocopiers; SWLA has six computers and five printers/photocopiers; and Amoud Legal Aid clinic has four computers and four printers/photocopiers. Moreover, all entities had furniture to outfit their offices. While they may not have consistent financing to pay for staff, they do have some resources at their disposal.

## Chapter 3

### THE ATTORNEY GENERAL’S OFFICE

#### Locations

Horizon has previously conducted or commissioned studies on the Attorney General’s Office, including a Needs Assessment in 2014,<sup>41</sup> a review of the human resources management in 2015,<sup>42</sup> and a Justice Snapshot in 2015 that used a similar approach of data collection and analysis to identify pressures, challenges and opportunities for the institution.<sup>43</sup> These studies were, however, primarily conducted in the National Office of the AGO in Hargeisa. For this baseline study, Horizon collected data from the eight regional offices of the AGO, located in Gabiley, Wajale (which operates as a branch of Gabiley AGO), Borama, Berbera, Burao, Erigavo, Aynabo and Las Anod. When combined, and compared with the data collected earlier from Hargeisa,<sup>44</sup> this will create a more complete picture of the state of the AGO in Somaliland.

#### Demand for AGOs

**One Prosecutor to Every 57,000 Somalilanders:** There are currently 46 Deputy Attorneys General and 15 prosecutors in Somaliland. This works out as an average of 57,511 Somalilanders for every prosecutor/DAG. This is significantly higher than the number of Somalilanders per judge, which is 18,000. Additionally, a third of the prosecutors and 25 of the 46 DAGs are in Hargeisa, which means the number of persons per prosecutor are much higher in other regions (*see Table 8, below*).

**Table 8: Regional Population per Prosecutor/DAG**

Region	Prosecutors/DAGs	Population	Persons per prosecutor/DAG
Sanaag	4	544,123	136,031
Awdal	6	673,263	112,211
Togdheer	7	721,363	103,052
Sool	4	327,428	81,857
Saahil	5	170,486	34,097
Maroodi-Jeex	35	1,071,517	30,615
Somaliland (Total)	61	3,508,180	57,511

<sup>41</sup> Horizon Institute, “Attorney General’s Office, Somaliland: A Needs Assessment,” (October 2014).

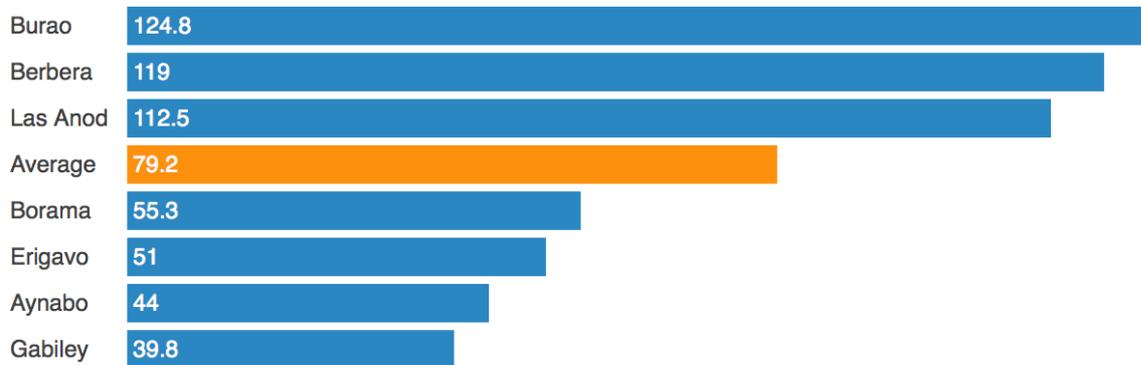
<sup>42</sup> Horizon Institute, “A Review of the Management of Human Resources in the Attorney General’s Office of Somaliland,” (June 2015).

<sup>43</sup> Horizon Institute, “Somaliland Justice Snapshot,” (April 2016).

<sup>44</sup> Data was not collected from the National Office in Hargeisa for this report.

Based on these figures, it is not surprising that prosecutors face a heavy caseload. Among the eight AGOs visited, there are a total of 16 DAGs and 10 prosecutors, in addition to 18 secretaries/registrars. In 2016, each prosecutor/DAG in the AGOs visited handled an average of 79.2 cases. There was significant variation among the AGOs, ranging from 39.8 in Gabiley to 124.8 in Burao (see Figure 13, below).

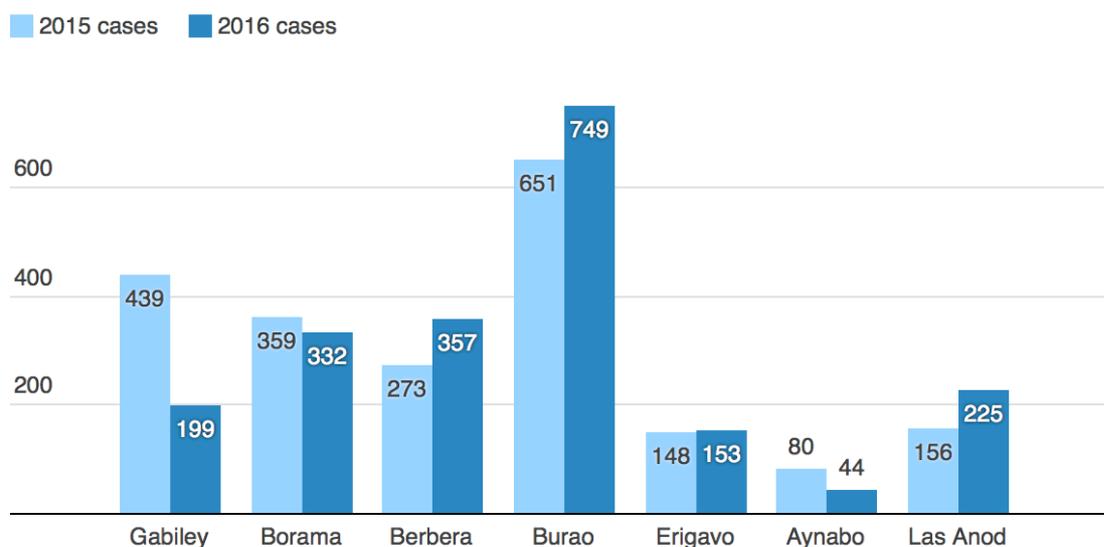
**Figure 13: Cases per Prosecutor/DAG**



*Case statistics for Wajale are included in Gabiley*

**No Significant Change in Cases Prosecuted:** Half of the AGOs visited took more cases in 2016 than in 2015, but the total number of cases handled by the AGOs visited in 2016 (2,059) was slightly lower than in 2015 (2,106). The biggest drop was in the Gabiley AGO, which took up less than half the number of cases it did in 2015 (see, Figure 14, below). The DAG in Gabiley was uncertain why the number of cases decreased so dramatically in 2016 (from 439 in 2015 to 199 in 2016) but speculated that there were fewer criminal cases arising from land disputes because of the 2016 drought. However, among the other AGOs, the difference in cases was relatively small, and the case statistics are unlikely to be accurate due to improper documentation and reporting systems in both courts and the AGO. Nevertheless, these statistics suggest that there has not been a significant change in prosecutions since 2015.

**Figure 14: AGO Criminal Cases (2015 vs 2016)**

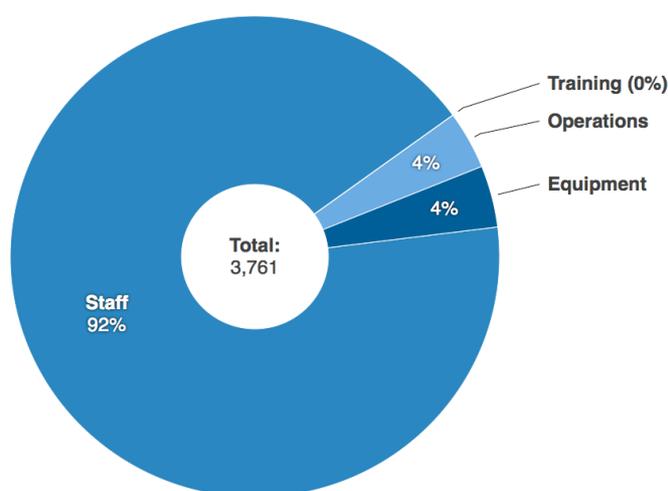


## Budget Allocation and Management

**Heads of Office Have Limited Knowledge of Budget Allocation:** Six of the heads of regional offices could provide at least a rough estimate of the respective budgets for staff, equipment and operations; Borama’s head of office did not know the staff budget. Only in Burao and Las Anod could the head of office provide an estimate of their total quarterly budget. Responses for equipment and operational quarterly budgets ranged from less than \$225 for three offices, between \$225-\$450 for two offices, to over \$450 for one office (*see, Annex 1, Table 6*).

**Budget Spent Mainly on Salaries:** Despite incomplete and potentially inaccurate budget figures, it is clear that AGO funds are spent principally on salaries (*see, Figure 15, below*).

**Figure 15: Allocation of Budget in AGOs**



Total shown (3,751) is the total quarterly budget in USD of the eight AGOs visited.

## Operational and Material Resources

**Shortage of Working Technology:** 14 working computers are used across the eight offices, which means that, on average, each computer is shared between three staff members. The situation is much the same with printers and copiers (*see, Annex 1, Table 7*). Las Anod and Burao, in particular, complained about a shortage of office equipment.

**A Total Absence of Vehicles:** None of the offices have a vehicle, including Berbera which has an allowance of 2.5 litres of fuel a day that it cannot use.

**Lack of All Resources to Fulfil Mandate:** Only two offices - Wajale and Borama - have desks for all staff, and only three have sufficient stationery. Burao AGO is the only office with more than two filing facilities; neither Gabiley nor Borama have any filing facilities at all. Of the six offices with filing facilities, only Erigavo is able to lock all the filing cabinets to keep files secure. Staff have contributed to the purchase of furniture out of their pocket in both Wajale and Las Anod.

**Limited Access to Legal Resources:** The comments in the chapter on formal courts about the lack of law libraries and online legal resources apply in full to the regional AGO offices. Gabiley noted that their office never receives from the AGO National Office copies of new

laws passed. In Las Anod, the copies are provided by the Solicitor General’s Office, not the AGO National Office.

Nevertheless, all the AGOs visited have, at a minimum, the Criminal Procedure Code, the Penal Code and the Piracy Act.

**Uncertain Access to Electricity and Internet:** All AGOs have regular electricity. But for many, it is paid for by the court or MoJ office with which they share a building. In Wajale, the prosecutor and judge pay for the electricity themselves. Similarly, although three quarters of AGOs have access to the Internet, this is only because the staff pay from their own salaries.

## Workforce

**Limited Support Staff:** Seven of the eight AGOs have two or three registrars who provide crucial support to the prosecutors. Wajale AGO does not have any registrars, but does have one unpaid secretary who covers many of the relevant tasks. Wajale, Gabiley, and Las Anod AGOs have no additional support staff, including cleaners. Only Borama AGO has a bailiff, and only Borama, Berbera and Burao AGOs have a watchman.

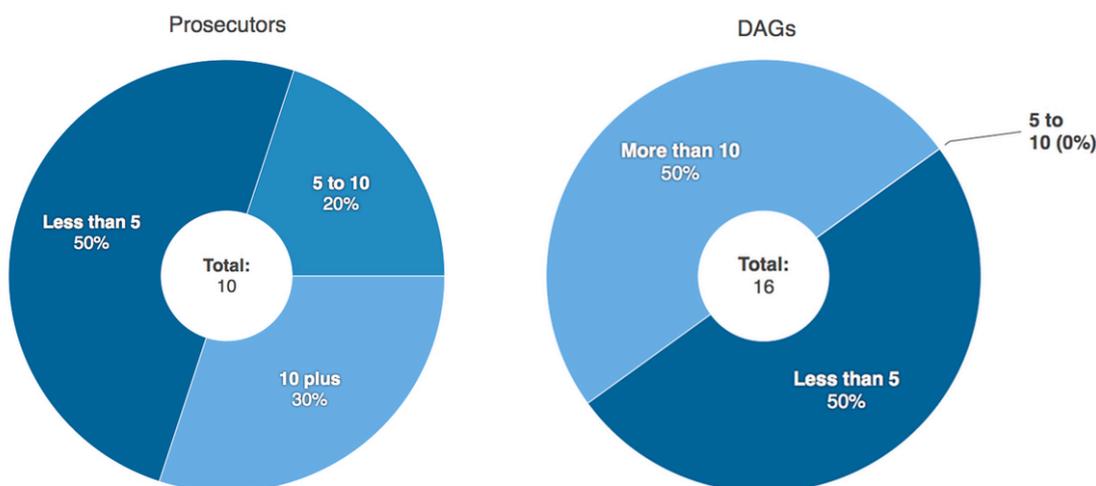
**Low Number of Women in Positions of Leadership:** Women make up 40% of prosecutors in the AGOs visited, but only 19% of the DAGs.

**Education:** Almost 40% of prosecutors in the AGOs visited have an LLB, while 27% have secondary-level education. None are trained in *Sharia* law (see, Annex 1, Figure 28). One prosecutor in Aynabo AGO had a degree in education.

The educational level of the other 35% of prosecutors was not specified in the responses.

**Those Occupying Senior Positions Tend to Have a Greater Level of Experience:** 50% of DAGs have more than 10 years’ experience, compared to 30% of prosecutors. However, there are still numerous inexperienced individuals occupying senior positions in the AGO: the other 50% of DAGs had less than five years of experience (see, Figure 16, below).

Figure 16: Experience of Prosecutors and DAGs (Years)



***Need for Additional Training:*** Professional staff of the AGOs visited had undertaken at least one additional training course, including on human rights, evidence and terrorism, although both the subject and length of trainings varied significantly.

All the offices expressed a need for further training for prosecutors on a range of subjects, particularly prosecutorial procedures and investigative skills. Six offices asked for office management and IT skills training for their registrars. Less than half have received training on SGBV, and only Wajale AGO has received training on juvenile justice.

***Most AGO Staff Aware of Code of Conduct and Complaint Procedure:*** The staff in five of the eight offices are aware of the Code of Conduct and, of those five, four were also trained on it, an improvement since Horizon’s 2014 Needs Assessment.<sup>45</sup> However, AGO staff in Berbera, Burao, and Erigavo were neither trained on, nor aware of, the Code of Conduct.

All the offices, except for Erigavo, know of the complaint procedure for members of the public. However, the resolutions of complaints are not made public. Borama and Berbera did not even know whether resolutions are made public or not.

***No AGO Staff Fired for Corruption:*** Among the AGOs visited, only the respondent in Borama knew of a member of staff being reprimanded for corruption, and that staff member (a former DAG) was transferred rather than fired.

## **AGO Buildings**

***Not All AGOs Have Purpose Built Offices:*** The AGOs in Gabiley, Borama, Berbera and Burao all operated out of their own purpose-built building and, with the exception of Borama, share a compound with the courts and/or the Ministry of Justice.

The other AGOs operate out of other institutions’ buildings. In Las Anod and Aynabo, the AGOs work in offices provided by the local court; in Wajale, the AGO shares a large open room with the District Court; and, in Erigavo, the AGO has been assigned two rooms in the local Ministry of Justice building.

***Workspace is Constrained for all AGOs:*** The majority of AGOs, including those with their own building, only have one or two offices. Las Anod operates out of a single, tiny office that is only 3m x 3m. In every office, two or more staff share an office; in Gabiley, six staff share a single office.

***AGO Buildings Generally in Good State of Repair:*** Of the purpose-built AGO buildings, those in Burao and Borama were built within the past six years and are in relatively good repair. Gabiley AGO’s building, constructed in 1996, is in poor shape. Berbera AGO’s building has two rooms: one was constructed in 1940 and the other in 2000. It is in a terrible state and has structural issues.

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<sup>45</sup> Horizon Institute, “Attorney General’s Office, Somaliland: A Needs Assessment,” (October 2014).

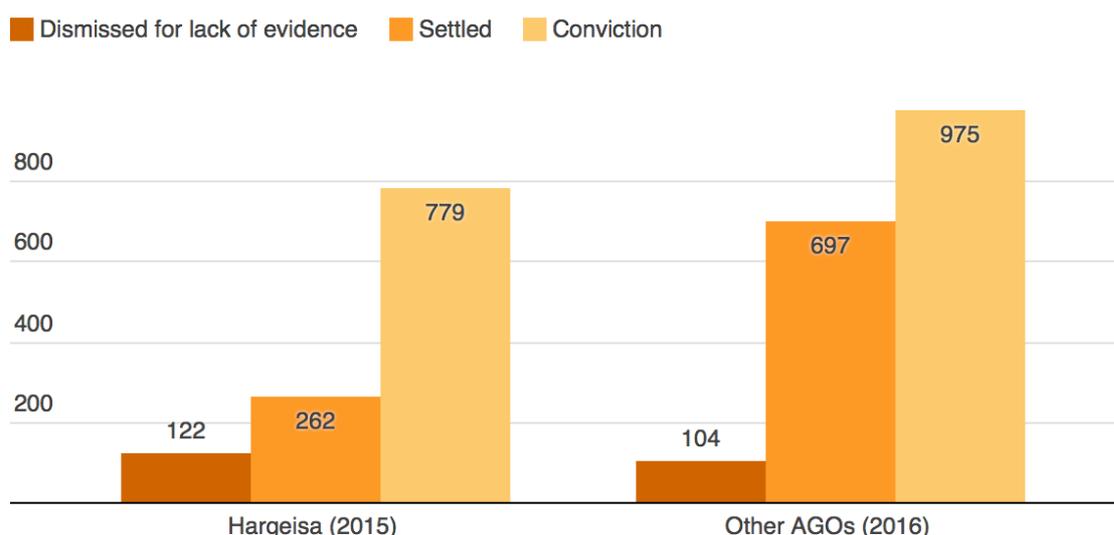
## Performance

**Fewer Criminal Cases Recorded by AGOs Than by Courts:** The criminal case statistics provided by courts were higher than those provided by the AGOs. There could be a number of reasons for this, including improper documentation and reporting systems in both courts and the AGO. Secondly, the police and the courts will record a registration number for a case as soon as it is filed in court. But if that case is then settled outside the court, before the AGO records the charge sheet, the AGO is unlikely to have a record of that case in its registration book. Thirdly, civil cases may, in the course of a hearing, be reclassified as criminal (for example a land dispute may in fact be fraud or trespass), in which instance the civil case will be stopped and a criminal case will begin. The AGO will be informed about this, but they may not include it in their record book. Lastly, most of the cases settled outside the court in the customary system in the early stages do not appear in the statistics of the AGO.

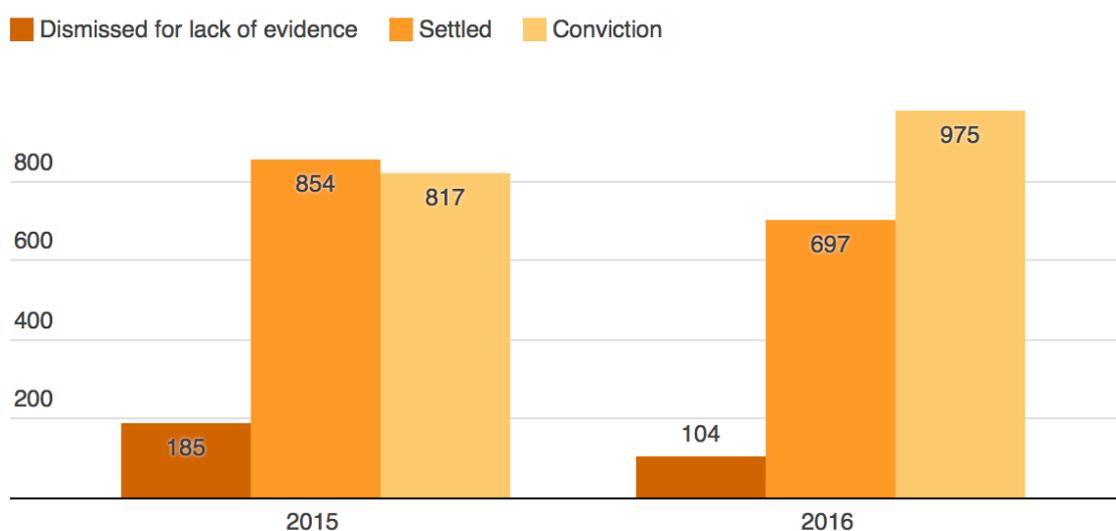
**Increased Use of Computerized Record Keeping:** Four AGOs - Wajale, Gabiley, Burao and Las Anod - now use computers to keep case files and records. But computerized systems have not entirely replaced manual record keeping. All four still keep, to some degree, manual records, an understandable approach in light of the potential for power cuts, loss of Internet, or computer problems.

**Criminal Cases Continue to be Settled in Customary System, But There is an Upward Trend in Convictions:** In the AGOs visited, a third of cases in 2016 ended in an out-of-court settlement, a noticeably higher proportion compared to Hargeisa AGO the year before (*see, Figure 17, below*). Nevertheless, when compared to statistics from 2015, these figures suggest there is a downward trend in settlements and an upward trend in convictions: the number of convictions increased from 817 in 2015 to 975 in 2016, while those settled decreased from 854 in 2015 to 697 in 2016 (*see, Figure 18, below*).

**Figure 17: AGO Criminal Cases by Outcome (Hargeisa vs Regional AGOs)**



**Figure 18: Criminal Cases in AGOs Visited by Outcome (2015 vs 2016)**



AGOs were also asked to provide statistics for acquittals and guilty pleas, but responses were too incomplete to include in these charts.

**Low Number of SGBV and Juvenile Prosecutions:** Only a small percentage of the cases prosecuted in 2016 were cases involving juveniles or SGBV (*see, Annex 1, Figure 29*).

**Low Number of Corruption Cases:** Only two of the AGOs had ever prosecuted a corruption case: a member of the Ministry of Finance was prosecuted in Berbera, and a secretary of the municipality was prosecuted in Aynabo.

## FACTORS UNDERLYING FINDINGS

**Continued Reliance on, and Preference for, Customary System:** As underlined in the chapter on the courts, judges frequently encourage parties to settle their cases outside the court, particularly if it is not a serious offence. In 2014 the AG issued a directive instructing prosecutors not to withdraw rape cases from the courts, but it has had little impact. The number of cases ending in a customary settlement without a conviction are still relatively high across the board.

**Undue Influence of Traditional Leaders:** The pervasive involvement of elders presents potential problems for the AGO, as it does for the courts. The Borama AGO commented: “Clannism always overshadows the law because people believe in the clan system more than they believe in the law.”

### Weak Administration

**Lack of Vision and Planning:** A five-year strategic plan was developed by the National Office for 2012-2016. However, a strategic plan had not been prepared for the regional offices and none have developed one themselves. Furthermore, none of the AGOs visited have a defined mission, vision, core values or a strategic plan, making it more difficult to set targets, work efficiently, evaluate the office’s performance, encourage professionalism and boost morale by establishing a greater sense of purpose among staff.

**The Imperative for Proper Information Management Systems:** Both Horizon’s 2014 Needs Assessment and its 2015 Human Resources (HR) Review identified the risks of AGOs not

having a computerized information management system, particularly those dealing with juvenile and SGBV cases.<sup>46</sup> Such cases involve highly sensitive information, and a manual system is not only less efficient, but also more susceptible to breaches of security and confidentiality, compounded by the absence of lockable filing cabinets. Several of the regional AGOs now use computerized systems, albeit to varying degrees. However, the introduction of computers is of limited benefit if staff do not have the necessary IT skills. Berbera, Aynabo and Las Anod AGOs all asked for training in computer skills. Computerized systems are also of little use if, as was the case in several offices, there are not sufficient funds to purchase working computers or maintain regular electricity and Internet access.

## **Poor Management of Staff**

***No AGO Has Written Job Descriptions in Place:*** The lack of written job descriptions persists in all regional AGOs and makes it difficult for staff to recognise their objectives and identify their responsibilities, which in turn prevents them being held accountable. It can also create a confusing and unbalanced relationship between staff, with factors such as age and gender determining the hierarchy rather than one's position or rank. Additionally, regularly reviewing the staff roles can help to streamline an institution's work, but this is also not done by any of the regional AGOs.

***Hiring and Firing Staff is Centralised in Hargeisa:*** AGOs in the regions send a request to the national office in Hargeisa in order to dismiss staff. Recruitment of new staff is done through the Civil Service Commission, and heads of office are rarely consulted at any stage of the process, including the final interviews and selection.

***No Formal Measures to Track Performance of Staff:*** Horizon's 2015 HR Review strongly recommended the introduction of a performance management system whereby staff and their managers create work plans, agree on targets and exchange feedback to improve the performance of staff and the communication between staff members and their supervisors.<sup>47</sup> However, in all AGOs visited, the approach to the evaluation of staff continues to be informal, including for prosecutors and DAGs. In five offices, there is no system of evaluation, and in the other three it is an informal evaluation of "punctuality," "performance," or case processing. None of the AGOs set a target number of cases per month, opting instead to work with daily targets. Additionally, none of the offices conduct regular and formal internal meetings which would provide an opportunity for staff and their supervisors to discuss workload, targets and performance. The introduction of job descriptions, clear duties and targets, regular evaluation and a functional hierarchy would improve work ethic and encourage professionalism in the work of AGOs.

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<sup>46</sup> Horizon Institute, "Attorney General's Office, Somaliland: A Needs Assessment," (October 2014); Horizon Institute, "A Review of the Management of Human Resources in the Attorney General's Office of Somaliland," (June 2015).

<sup>47</sup> Horizon Institute, "A Review of the Management of Human Resources in the Attorney General's Office of Somaliland," (June 2015).

## Poor or Strained Relations with Other Justice Institutions

***No AGOs Hold Regular Meetings with Other Justice Sector Actors:*** Weak coordination between justice institutions, particularly in the approach to law reform, was identified as a major issue in the 2015 Justice Snapshot.<sup>48</sup> This is still the case among the regional AGOs. None of the AGOs visited hold regular meetings with other justice sector actors such as the courts, police or prison service. Instead, the AGOs will generally only hold meetings if there is a specific issue or case that needs to be addressed.

***Strained Relationship with Police:*** AGO offices are critical of what they see as poor quality criminal investigations and case preparation by the police. Las Anod's AGO listed the inadequate investigative skills of the police as one of the principal barriers to its work, and several respondents identified investigatory skills as an area of training their staff need.

## Heavy Workload

***Problematic Court Procedures:*** Horizon's 2014 Needs Assessment noted that prosecutions are unnecessarily burdened by certain court procedures, such as the absence of pre-trial hearings, a rush to list and hear cases, bail hearings happening in the absence of prosecutors, and the lack of standardized forms and procedures.<sup>49</sup> The eagerness of courts to list and hear cases, and the absence of pre-trial hearings to manage cases, contribute significantly to the caseload of prosecutors identified in this baseline survey. Rushed cases also create a serious risk of injustice for the accused. While speedier trials, a result of the CJ's reforms, are laudable, they must be accompanied by the necessary reform of court procedures in order to protect the rights of the accused.

***No Formal Systems for Timely Case Processing and Managing the Workload of Prosecutors:*** The already substantial caseload faced by most prosecutors as a result of certain court procedures is further complicated by the absence of efficient systems to manage their caseload. Half of the AGOs visited have no system to administer the workload of their prosecutors, while the other half use an informal system that simply involves the head of office assigning new cases to the prosecutor handling the fewest number of cases. None had a formal system, and Las Anod AGO had no system at all. Wajale and Gabiley simply follow the Criminal Procedure Code requirement for timely case processing; Borama, Berbera and Burao AGOs try to ensure police, victims, and witnesses are punctual in case hearings; Erigavo AGO processes cases as soon as they get the information report from the police; and Aynabo AGO demands weekly and monthly updates from the prison on the number of remandees.

## Dearth of Resources and Facilities

***Evident and Severe Deficiency of Financial Resources:*** Numerous vulnerabilities in the AGOs, ranging from equipment to staff morale to transport, stem at least in part from acute scarcity of financial resources. Entirely dependent on Hargeisa, none of the regional AGOs have a financial reporting system beyond keeping and sending receipts to the National Office. Nor did any have their finances audited independently or by an external organization.

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<sup>48</sup> Horizon Institute, "Somaliland Justice Snapshot," (April 2016).

<sup>49</sup> Horizon Institute, "Attorney General's Office, Somaliland: A Needs Assessment," (October 2014).

**Staff Shortages:** The staff shortages are a result of the scarcity of funds and difficulties in retaining staff in the regional offices, made worse by the inexperience of many of those in senior positions. As noted above, 50% of DAGs have fewer than five years' experience.

**No Funds Available for Training:** None of the AGOs have a separate budget to organise additional training internally. Instead, training courses for AGOs are *ad hoc* and conducted by external institutions.

**Operating Out of Shared Spaces Impedes the Work of the AGO:** Erigavo AGO cited the lack of a designated building as one of the biggest impediments to its work. If the workspace is rented, it is the duty of the municipality to pay rent. If the municipality fails to do so, the AGO may be locked out and unable to continue their work. This has happened to the AGO and District/Regional Court in Wajale, where rent is often not paid. In Las Anod, the AGO staff are frequently asked to vacate their office by the court when the court needs more space. Not having designated workspace lowers morale among AGO staff and also jeopardizes confidentiality; in Wajale, the prosecutor's office is separated from the court by makeshift wooden walls that provide minimal privacy and do not block out sounds.

**Lack of Transport:** As noted above, none of the regional offices currently has a vehicle. Five of the AGOs listed lack of transportation as one of the main problems they face, constraining their ability to visit other justice institutions - such as police stations and prisons - with whom cooperation and collaboration is crucial for case management, preparation and investigations.

# Chapter 4

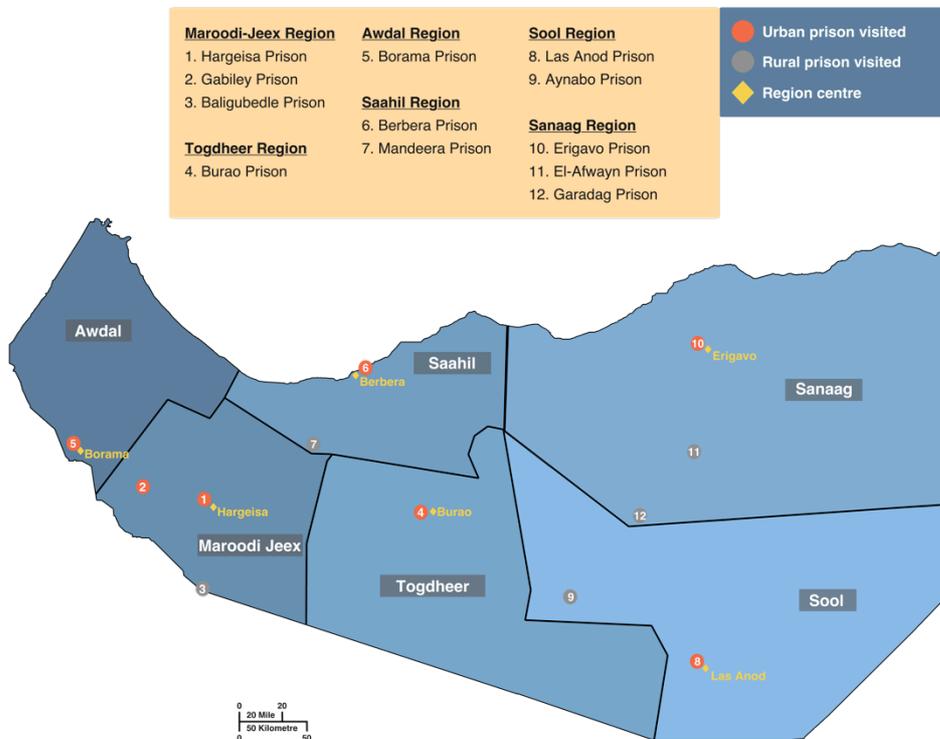
## PRISONS

Of the 13 prisons in Somaliland, 12 were visited between February-May 2017 for the baseline survey. The only prison not visited was in Salahley, Saahil region, which consists of one small room. This chapter examines, among other issues, the condition of prisons and the resources they have available, the prison population and the treatment of prisoners.

### Locations

(See, Figure 19, below)

Figure 19: Map of Prisons Visited



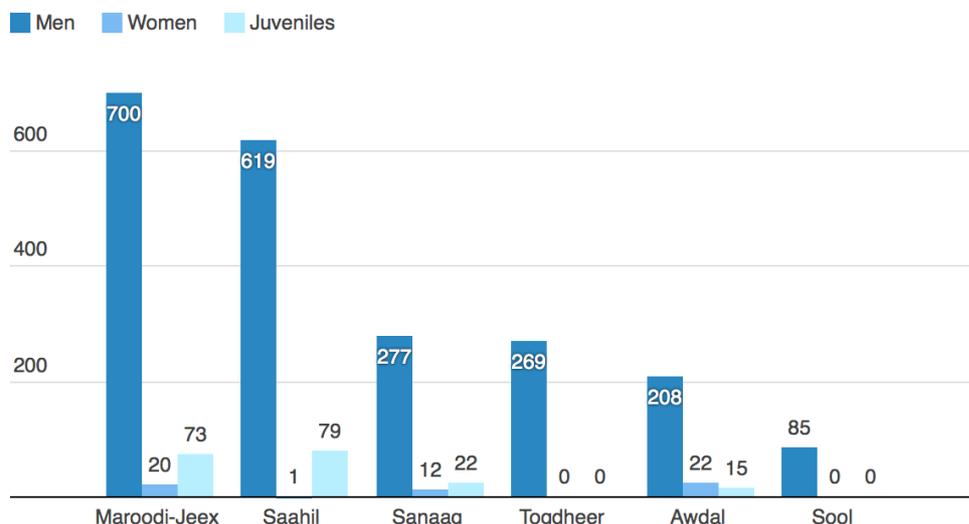
### Prison Population

**The Vast Majority of Prisoners Are Young Men in Urban Prisons:** There is a total of 2,402 prisoners in the prisons visited at the time of this study. Only a small fraction are juveniles (7.9%), and even fewer are women (2.3%). Five prisons - Baligubedle, Burao, El-afwayn, Aynabo and Las Anod - have no women or juvenile prisoners.

Over two thirds of the remaining 2,158 male prisoners are in urban prisons. Additionally, urban prisons house double the number of juveniles, and more than eight times the number of women. The numbers are also skewed regionally: of the 12 prisons visited, Maroodi-Jeex and Saahil have more prisoners (1,492) than the other four regions combined (910) (see Figure 20, below).

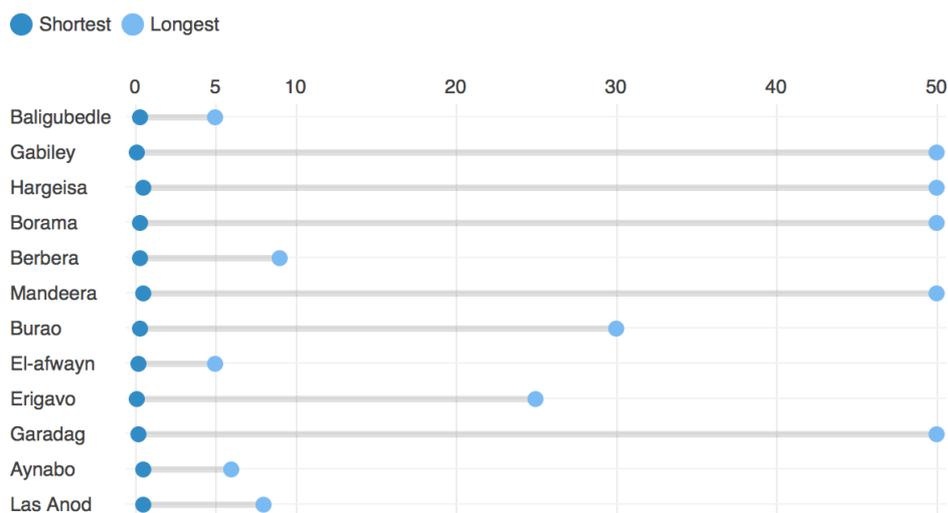
The average age of an adult prisoner in Somaliland is 35.3-years-old. For juveniles, it is 16.5-years-old. This is fairly consistent across all prisons. The youngest average age is in El-afwayn, which is 25 for adults and 14 for juveniles. Hargeisa Prison has the oldest average age at 45 for adults and 18 for juveniles.

**Figure 20: Number of Prisoners (by Region)**



**Sentences:** Sentences being served range from a minimum in all prisons of a few months, up to life imprisonment or death penalty in Gabiley, Hargeisa, Borama, Mandeera and Garadag. In Baligubedle, Berbera, El-afwayn, Aynabo and Las Anod the maximum sentences being served are all under 10 years (see Figure 21, below). The most common offences are theft/robbery, rape and murder.

**Figure 21: Range of Sentences Being Served**

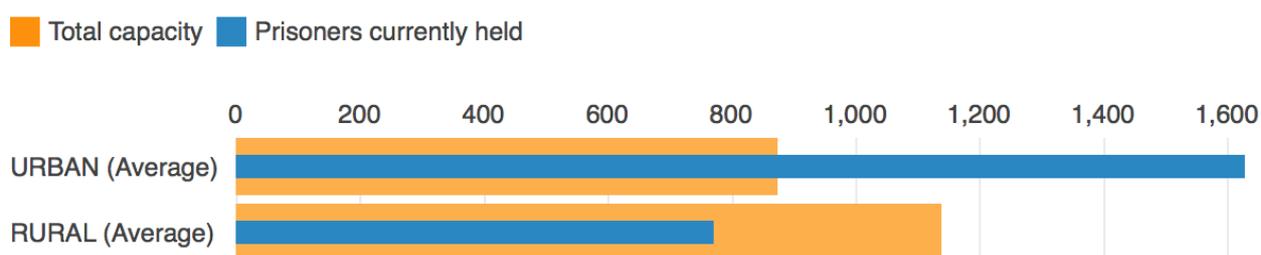


Prisons with life sentences being served are shown as having a maximum of 50 years.

## Prison Conditions

**Urban Prisons Operating Far Above Capacity:** Many prisons are in need of expansion, particularly urban prisons. Rural prisons operate at approximately two thirds of their capacity: a rural prison has, on average, a capacity of 228 prisoners and houses 154. The only rural prison that operates above capacity is Mandeera Prison. By comparison, urban prisons operate well above capacity at an average of 186.2%: an urban prison has on average a capacity of 125 prisoners yet houses over 230 (see Figure 22, below). The highest is Borama Prison, which, at the time of the survey, was operating at 350% of its capacity.

Figure 22: Average Capacity of Prisons (Urban vs Rural)



**Severe Overcrowding, Particularly in Urban Prisons:** Prisoners have little individual space. This is particularly true in urban prisons. The average number of prisoners sharing a large group cell in rural prisons (33) is not significantly different from urban prisons (28.6). However, the average size of a large group cell in an urban prison (45.7 m<sup>2</sup>) is less than half of that of a rural prison (98.2 m<sup>2</sup>); the average urban prisoner therefore has 1.6 m<sup>2</sup> of space, compared to 3 m<sup>2</sup> in a rural prison (see Annex 1, Table 8).

This problem is even more acute when the prison is overcrowded, when the number of prisoners doubles or, in Erigavo Prison, even triples. During these periods the average space per prisoner can shrink to 0.9 m<sup>2</sup> in urban prisons and 1.8 m<sup>2</sup> in rural prisons (see Annex 1, Table 8).

**Ventilation/Lighting:** All prisons have windows; but El-afwayn in particular has poor ventilation. No prison has fans. This makes the prisons of Berbera and Mandeera especially unbearable during the months of April to September when the temperatures soar. Prisoners in Berbera are taken elsewhere during the summer months.

All cells have a combination of natural and electric lighting.

## Operational and Material Resources

**Record Keeping:** Record keeping within prisons is at best patchy. All have files that include, at a minimum, name, crime, judgment and release date. No prison updates the file system. All but two prisons use only the manual registration book. Las Anod and Hargeisa are the only prisons to also use some form of computerized record keeping. They are also, along with Aynabo and El-afwayn, the only prisons that say that prisoner files are kept confidential. Baligubedle, Hargeisa, Aynabo and Las Anod are the only prisons that allow prisoners access to their file.

**Shortage of Stationery and Furniture and the Absence of Libraries:** No prison has desks for all its staff. Three of the five rural prisons visited have sufficient stationery, compared to just two of the seven urban prisons. None of the prisons have a budget for stationery, and instead rely on the headquarters or other institutions to provide it. Alternatively, staff purchase the stationery and furniture themselves, as those in Borama, Aynabo and Las Anod have done. Only four prisons - Borama, Berbera, Mandeera and Erigavo - have secure filing facilities, and only Borama's can be locked, but even those are in bad condition and need replacing. No prison has a library.

**Shortage of Working Technology, Especially in Rural Prisons:** There is a general shortage of working technology, but more so in rural prisons. There are 10 working computers used across the seven urban prisons visited (an average of 1.4 computers per prison), and only three in the five rural prisons (an average of 0.6 per prison). The disparity is much the same with printers and copiers (*see Annex 1, Figure 30*). Aynabo, Garadag and El-afwayn prisons have no computers or printer/copiers. No prison has Internet access.

**Scarcity of Fuel:** Seven of the prisons have one working vehicle. Hargeisa has two. However, in all these prisons the fuel they are provided is a fraction of what they need. Hargeisa Prison needs an additional 1000 litres of fuel per month, and all three prisons in Sanaag region - El-afwayn, Garadag and Erigavo - have no fuel at all (*see Annex 1, Figure 31*).

**Significant Need for Medical Facilities:** None of the prisons have sufficient medical supplies. The majority of prisons have no doctor or nurse, and only Las Anod has an infirmary. All respondents expressed a need for additional medical staff, equipment and facilities. Of the six prisons that can provide healthcare services, this is usually no more than an examination by a nurse or basic medicine. For serious illness or emergencies, prison staff will have to transport the prisoner to the nearest public hospital or, in some cases, to a private hospital and pay the costs themselves; this has happened in Las Anod, Aynabo, El-afwayn, Gabiley and Baligubedle. The limited healthcare provided to prisoners is free.

Only Hargeisa and Mandeera prisons conduct a basic medical examination of prisoners upon arrival and keep medical files. The files are kept confidential, but Mandeera Prison does not allow prisoners to access their own files.

**Prisoners Depend on Families for Bedding, Clothes and Toiletries:** None of the prisons visited are the sole provider of bedding, clothes or toiletries. Prisoners are entirely dependent on their families for bedding, clothes and toiletries. This is particularly true in the cold season, when prisoners will rely on their families for warm clothes and blankets.

Nevertheless, prisoners will usually have at least a mattress or mat to sleep on and will be able to wash their bedding and their clothes at least once a week.

## **Workforce**

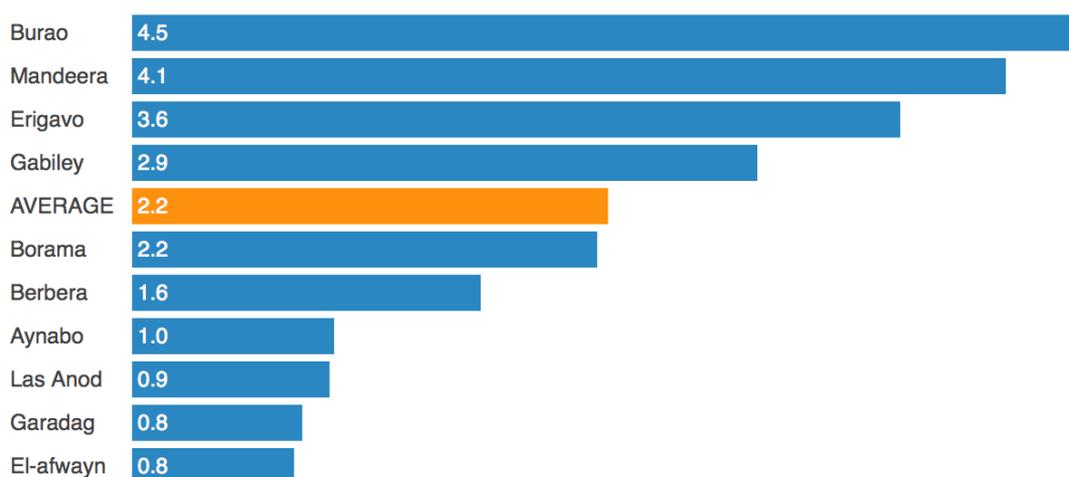
Two of the three prisons visited in Maroodi-Jeex - Hargeisa and Baligubedle - unfortunately refused to provide statistics on their staff numbers.

**Generally Sufficient Number of Guards, But Too Few Are Women:** Among the prisons that provided statistics, the number of guards is generally adequate for the number of prisoners; there is an average of 2.2 prisoners to every guard. The highest number is in Burao prison,

where there are 4.5 prisoners to every guard. In Las Anod, Garadag and El-afwayn, there are more guards than there are prisoners (see Figure 23, below).

However, in a number of prisons, women make up only a fraction of guards, particularly in rural prisons, where women make up only 19% of guards, compared to 46% in urban prisons. Of the prisons that accept women prisoners, Burao Prison has the highest proportion of women staff (66.7%); Berbera Prison has the lowest (16%). Berbera Prison is also one of the only prisons, along with Erigavo and El-afwayn, that allows male guards to supervise female prisoners.

**Figure 23: Number of Guards per Prisoner**



*Hargeisa and Baligubedle prisons did not provide statistics on the number of staff.*

**Most Custodial Staff Are Experienced:** Almost 60% of the custodial staff in the prisons visited have over 10 years' experience, and 27% have at least five years'. Only in Berbera and Hargeisa prisons are the majority of custodial staff inexperienced with less than five years' experience.

## Prison Buildings

**Prisons in a Poor State of Repair:** Prison buildings across Somaliland need urgent attention. Most have infrastructure problems and require repairs. Problems observed include poor ventilation, weak structures and damaged roofs. In El-afwayn and Erigavo prisons the sewage is full and needs to be drained. Unsurprisingly, those in the worst state of repair are those built a long time ago. All prisons older than 25 years are in urban areas except for Mandeera Prison (see Annex 1, Figure 32). The oldest building is in Berbera, which was built in 1847; the newest is Hargeisa Prison, built in 2006, which is also in the best condition of all prisons.

**Most Prisoners Kept in Group Cells:** The majority of the 12 prisons keep all prisoners in group cells. Burao, Erigavo, Garadag, Aynabo and Las Anod prisons have between one and four individual cells. Mandeera Prison has 15 individual cells but which were not used.

**All Prisons Separate Male and Female Prisoners, But Few Separate Other Types of Prisoners:** All prisons that accept female prisoners separate them from male prisoners. However, less than half of prisons have separate cells for children, juveniles, those accused of terrorism offences, dangerous offenders or those awaiting trial. For some this is simply because they do not accept such prisoners. Most prisons that segregate certain prisoners do

not have designated cells or sections. Instead, they will vacate a cell if and when it is needed. For some it is a temporary measure; rural prisons such as Aynabo and El-afwayn will try to transfer prisoners such as juveniles or terrorist suspects as soon as possible to other prisons that can accommodate them. When vacating cells is not possible, there is an element of improvisation: El-afwayn Prison, for example, keeps young offenders in their offices, and in Burao women prisoners were housed in the police station while the prison's women section was being expanded.

***WCs and Bathing Facilities Generally Available, But Juveniles Often Made to Share with Adults:*** Almost all prisons have WCs and bathing facilities that are cleaned by the prisoners daily and available to use at any time. Most prisons have the WCs inside each cell. Only in El-afwayn Prison do prisoners and guards share the WCs. Since WCs are usually inside cells, separate WCs are available for different types of prisoner insofar as those prisoners are kept in separate cells. Only in Berbera, Mandeera and Garadag prisons are juveniles provided separate WCs; in other prisons that accept juveniles, they must share with the adult prisoners.

***Irregular Supply of Electricity and Water in Rural Prisons:*** All urban prisons have a regular supply of water and electricity. In contrast, only 20% of rural prisons have a regular supply of water, and only 40% have a regular supply of electricity. 40% of rural prisons have no electricity at all (*see Annex 1, Figures 33 and 34*). Garadag and Las Anod prison staff pay for water out of their own pocket, and Aynabo prison staff pay for both water and electricity.

## **Treatment of Prisoners**

***Substantial Variation in the Time Prisoners Can Spend Outside:*** All the 12 prisons allow their prisoners outside into the compound during the day. All prisons also stated that their prisoners can exercise, but by this they simply mean that prisoners can walk around while outside; Mandeera Prison allows its prisoners to play football. However, the amount of time prisoners are let out for varies considerably, ranging from one hour in El-afwayn, Erigavo, Gabiley and Baligubedle, to over 10 hours in Mandeera, Borama and Berbera (*see Annex 1, Figure 35*).

***Few Prisons Offer Work:*** However, only three prisons - Mandeera, Hargeisa and El-afwayn - offer their prisoners the chance to work, mostly in construction. The work is available on a daily basis in Mandeera, but scarce and irregular in both Hargeisa and El-afwayn. Hargeisa Prison is the only prison to pay the prisoners for their work; Mandeera Prison will instead give them extra meat.

Mandeera and Hargeisa offer limited vocational training for prisoners. In Hargeisa, the training is in construction and conducted by the prison guards, but are rarely done due to a shortage of raw materials. Mandeera offers training in tailoring, welding and construction. Both the training and materials are provided by the International Committee of the Red Cross. The prisoners produce furniture and water tanks, which are then sold.

***Food and Drinking Water is Provided, but Nutrition is Poor:*** Drinking water is available at all times in all of the prisons visited, except two: El-afwayn allocates 10 litres of water per day to each prisoner, and Garadag has salty and insufficient water. The water is also too salty in Mandeera Prison. In Aynabo Prison, the staff must purchase the water themselves as there is no tap water or well.

All prisons visited provide their prisoners three meals a day, which usually consists of rice, maize or wheat which is neither sufficient in quantity or nutritional value. Only three prisons - Borama, Berbera and Burao - provide food without contributions from families.

***Significant Variance in Visiting Times:*** Although all prisons surveyed allow visits, the frequency and length varies significantly. Nine of the prisons allow visits two or three times per week; Borama only allows it weekly. Some prisons allow no more than five or ten minutes per visit; El-afwayn and Gabiley allow up to an hour (*see Annex 1, Figure 36*).

These visits are important as prisons generally provide no other form of communication with family and friends. Some allow phone calls in cases of emergency, but none allow prisoners to have mobile phones. In four prisons - Borama, Baligubedle, Aynabo and El-afwayn - prisoners do not have access to any newspapers or radios. And only in Gabiley, Borama, Garadag and Las Anod are non-dangerous prisoners allowed to visit, under supervision, dying relatives or attend funerals. Therefore, without regular visits, some prisoners can end up effectively shut off from the outside world.

***Continued Use of Solitary Confinement and Restraint as Punishments:*** Half of the 12 prisons visited use solitary confinement to punish prisoners.

Eight of the 12 prisons use restraints. Three of the four prisons that do not use restraints are those that use solitary confinement instead; Hargeisa Prison is the only prison that uses neither restraints nor solitary confinement. No prison said they use the placement of a prisoner in a dark or constantly lit cell or the reduction of a prisoner's diet or drinking water as punishments.

***Some Prisoners Stay Behind Bars After Completing Their Sentence:*** In eight of the 12 prisons, there are prisoners who have completed their custodial sentence. They are there because they have not paid the civil liability part of their sentence, which is usually a fine or compensation to the victim.

***Few Adjustments are Made for Disabled Prisoners:*** Almost none of the prisons make adjustments for prisoners who are physically or mentally disabled or have special needs.

## **FACTORS UNDERLYING FINDINGS**

***Lack of Institutional Independence:*** The prison service comes under the Ministry of Justice, and has long complained that the MoJ does little to offer them support and advocate for their needs but prevents them from acting independently to seek assistance, including from the government directly.

***The MoJ Does Not Proactively Manage the Prisons:*** The Human Rights and Prison Affairs Department of the MoJ reportedly monitors prisons in Hargeisa on a monthly basis and in the regions every six months. The reports are forwarded to the prison commander and the Minister. However, because the Ministry does not have the staff or technical expertise, it does not play an active and visible role in managing the prisons or holding them to account.

***The Leadership is Set in a Militaristic Mind-set:*** Like many institutions in Somaliland, the prison service has a top layer of older and experienced officials, but whose training and skills, including IT, have not been updated. Their younger colleagues are very young, and while more educated, they have little experience. What is missing is middle level staff with

education, skills and experience. Most of the leadership in the prison service worked in the militarized and hard-line government of the Siad Barre regime in the 70s and 80s when prisons were an integral part of an abusive government that used prisons to incarcerate and punish citizens, often for political reasons.

***Prisons Do Not Have Legally Qualified Staff:*** The fact that prisons do not have staff with legal qualifications deprives prisoners of much needed support, and results in prisoners staying longer than necessary because they are unaware of the legal process.

***Prisons Continue to be Seen as Places of Punishment and Not Rehabilitation:*** Prisons in Somaliland are not viewed as institutions to rehabilitate offenders, but essentially as places to hold and penalize troublemakers. Youngsters are held with adults convicted of the most serious crimes, and people serving sentences for minor offences spend years with prisoners accused of terrorist related charges. There are few opportunities for vocational training, employment that can earn prisoners some money or self-improvement through education, sports and exercise.

***Poor Remuneration of Staff Leads to Corrupt Practices and Endangers Security:*** Like other civil servants, prison staff earn a pittance. At the same time, they work in an environment that offers constant temptations for corruption from prisoners, their families and networks, including those held on terrorism charges. Mobile phones and money are regularly delivered to detainees and have been discovered during searches. A serious incident in Hargeisa Central Prison a few years ago was found to be linked to corruption.

***Little Training for Staff Facilitates Human Rights Abuses:*** Most prison guards are trained only once in custodial or “soldier” training provided by the Custodial Corps HQ. But some guards don’t even have this basic training. No prison has job descriptions in place, and none have minimum qualifications; Borama commented that some guards have no education whatsoever.

All guards have an AK47. The absence of appropriate training in how to handle a prison population, coupled with a leadership that thinks in militaristic terms and the absence of meaningful safeguards, facilitates the violation of human rights. It also endangers the prison population as staff who are not well trained will face difficulties in managing high risk detainees.

***Complaints and Prospects for Redress:*** All the prisons said they have a complaints procedure, but this amounts to no more than informing the commander. Prisoners are not allowed to see their lawyer in a private setting. The only organization given free access to prisons is the semi-independent National Commission for Human Rights which has tended to focusing on material aspects of prison conditions, such as water and sanitation.

## Chapter 5

### INDEPENDENT DEFENCE LAWYERS

A robust and fair legal system requires independent defence lawyers whose role is respected and regulated by the State. Lawyers, as essential agents of the administration of justice, are required to uphold professional standards as a crucial part of maintaining the rule of law and providing access to justice. This chapter looks at how defence lawyers function and how they engage with other actors in the justice sector. It also highlights factors that undermine a lawyer's ability to fulfil his or her professional duties, and thereby hinder justice delivery in Somaliland.

#### Geographical Representation, Regulation & Oversight

***A Scarce Commodity:*** Defence lawyers are concentrated in urban areas: Hargeisa has roughly 30-40 lawyers; Gabiley has 3; Borama has 8; Berbera has 3; Burao has 13; Las Anod has 2 and Erigavo has 6. Court users in rural districts without lawyers either represent themselves or bring a traditional elder to represent their interests.

***No Regulation of Licenses by the State:*** The legal profession is wholly unregulated. The *Somaliland Advocates Law 2004* (as amended in 2013) grants authority to the Lawyers Licensing and Ethics Committee (LLEC) to deal with applications, annual renewals and discipline of advocates. The LLEC is held in extremely poor regard across the justice sector, and is a barely functioning entity without an office.

While many lawyers hold licenses issued by the LLEC, others have licences issued by the MoJ and still others practise law without a licence and suffer no consequences from the courts and related institutions. Many of the unlicensed lawyers are older and do not have the necessary qualifications. There appear to be no records quantifying how many people are practising law without a license.

***No Code of Conduct or a Functioning Bar Association to Uphold Standards or Enforce Discipline:*** There is no centralized database recording practical and professional information on all lawyers. There is no formal Code of Conduct for lawyers governing the activities, duties and obligations of a lawyer. Nor is there a body like a Bar Association to ensure lawyers have a minimum educational requirement, hold a valid licence, meet the requirements to practise, receive continuing legal education as part of their professional development, set standards, investigate malpractices, enforce discipline, impose penalties or promote ethical behaviour. There is no oversight to protect clients' interests. In the absence of a Bar Association which can suspend or disbar a lawyer, none of the lawyers interviewed for this report believe that any action will be taken against them by the State for violating even the most basic obligations of a lawyer.

The two main groups of lawyers - the Somaliland Lawyers Association (SOLLA), which represents mainly male lawyers, and the Somaliland Women Lawyers Association (SWLA) – are voluntary professional associations with none of the attributes of a Bar Association. There are also independent lawyers who are not affiliated with either SOLLA or SWLA.

***No Effective Complaints Procedure Against Lawyers:*** Most lawyers do not explain to the client the procedure for making a complaint against them. Members of the public said they were only told they could hire another lawyer. Although some lawyers said there is a procedure for making complaints, their answers varied with respect to what that procedure is.

## **Resources, Finance Management & Training**

***Most Have an Office Facility:*** This is especially true of Hargeisa. In some cases, office space is shared with another party. In other towns, some operate their business from home and others rent office premises. Except for the lawyers who had a higher volume of cases, or were more experienced practitioners, few had administrative support.

***Education and Training:*** The majority of the lawyers interviewed had obtained a Bachelor of Laws either at the University of Hargeisa or the University of Amoud. The older and most experienced do not have a law degree. However, there is no formal continuing legal education for lawyers. The lack of any formal requirement for training, or any form of continuing professional development or education, undermines a lawyer's ability to act competently.

***Fees/Income:*** The most charged in criminal cases was generally \$500 and exceptionally up to \$1,000 if the case reached the SC. In civil cases, the maximum charged in complex or unusual cases was in the region of \$2,000 from commencement through to its conclusion. The average fee for a criminal or civil matter across all cities and towns seemed to be the same.

With virtually no exception, all said they derived most of their income from civil cases, especially land and property disputes and contractual and commercial matters.

## **Barriers to the Proper Delivery of Service**

***Relations with State Institutions:*** In larger towns, lawyers reported significant barriers between State institutions and independent defence lawyers. In smaller cities and towns there appears to be a greater level of co-operation and better working relationships.

***Delays in Proceedings:*** Poor court administration was blamed for administrative delays in processing paperwork and cases promptly, compounded by the belief that some sitting judges do not have the requisite qualifications, experience and knowledge. Lawyers and their clients were also blamed for delays. In criminal cases, the police and prosecution were cited as causing significant delays, fuelled by a determination to win cases or secure a conviction, even if it meant not strictly adhering to due process.

***Outright Denial by Police for Requests Regarding Evidence, Information or Access to Clients:*** There is a near complete breakdown in relations between the police and defence lawyers with outright denial by the police to grant witness and documentary evidence, information or access to clients. The police look upon the work of defence lawyers as "interference" or worse. Lawyers in smaller towns like Gabiley and Berbera found it relatively easy to meet with clients in police custody, while those in the larger towns, such as Hargeisa or Borama, found it impossible. Meeting clients in prison was just as difficult, and when it happened, there was no confidentiality.

**Poor Assessment of the Police:** The police were criticized for not knowing the law, lacking appropriate or sufficient training, harbouring a strong resentment of defence lawyers, wanting to prevent them from exercising their duties to their clients and showing little interest in seeing cases resolved equitably.

**Deep Mistrust in Police Criminal Investigations:** The depth and breadth of the lack of confidence in police criminal investigations is a cause of concern, if not alarm. Serious allegations of corruption, failure to properly compile investigatory evidence and information, persistent failure to disclose the Charge Sheet or allow meetings with clients, prejudice against the alleged perpetrator and an unrelenting determination to secure convictions, at all costs, were levelled against the police time and again. The result was to limit investigations conducted by defence lawyers since they cannot access police investigation materials and were forced to obtain the Charge Sheet from either the prosecution or the court.

**“One and the Same:” The Police, Prosecution and Courts:** Defence lawyers accuse the police of systematically favouring the prosecution, and described the relationship as too close. They also accuse the courts of not exercising sufficient independence and supporting the prosecution.

**Withholding of Evidence by the Prosecution:** Service Disclosure, the serving and disclosing of evidence to the defence in trial proceedings, is a core principle of a fair trial. But the AGO in Somaliland has stubbornly refused to accept this basic tenet of the right to a fair trial.<sup>50</sup> Despite a verbal or written request from the defence attorney, evidence is disclosed by the prosecution only just before, or during, the initial hearing. Prosecutors who refuse to disclose evidence suffer no consequences from judges and such behaviour is regarded as “normal,” making a complaint to the court pointless.

## Public Perception of Lawyers

Several court users surveyed stated that they preferred to represent themselves because they did not have confidence in lawyers. Others stated that lawyers were too expensive. As a result, they decided to resolve their case in the customary system. Previous research by Horizon<sup>51</sup> found the public and judges did not view lawyers as trustworthy, responsible or diligent. The reasons given included:

- Both members of the public and judges complained that lawyers failed to attend meetings or court hearings on time, or at all, demonstrating poor case management due primarily to taking on too many cases;
- Both members of the public and judges found that lawyers are inexperienced, not properly trained or qualified and do not know enough about the law.

In light of these perceptions, a number of recommendations were put forward by the public and judges:

- Lawyers should have registered offices with addresses;
- They should be professional, honest and not corrupt;
- They need an organised, functioning and responsible association;

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<sup>50</sup> On 18 June 2015, Horizon sent a detailed memo to the Attorney General on Service Disclosure.

<sup>51</sup> In 2015, Horizon conducted a survey among the public, judges, government institutions and lawyers themselves on Professional Conduct for Lawyers.

- There needs to be an established system for the licensing of lawyers and a code of conduct that can be enforced;
- The power of attorney between lawyers and clients' needs to be standardised to ensure they all include the rights of the client.

## FACTORS UNDERLYING FINDINGS

***Lack of Political Leadership in the Justice Sector:*** The complete vacuum in which the legal profession functions is a powerful testament to the failure of successive governments in Somaliland to exercise clear political leadership over the justice sector. It also shows the extent to which important issues continue to fall through the cracks because no single institution has been mandated to take charge, as with the licensing of lawyers where tensions between the LLEC and the MoJ allow unlicensed lawyers to practise. On the crucial issue of lawyers practising without a license, the MoJ seems unable to either work with the LLEC to address the problem, or to have the political clout to work with others in the government to make headway.

In the case of the legal profession, the consequences are serious in the extreme. People may be sentenced to death, or be condemned to life imprisonment, because lawyers who are unqualified and who do not have licenses, represent them without fear of any repercussions.

***Failure to Rein in the Police:*** The consistent and strong criticism of the police from lawyers underlines the extent to which the police are a major impediment to respect for the rule of law.

***A Judiciary Which is Not Sufficiently Independent:*** In addition to lawyers themselves, even members of the public who were surveyed commented on the frequency with which judges show favour to prosecutors and side-line defence lawyers.

Some lawyers thought judges have the power to fine lawyers. However, since there is no oversight over judges exercising this power, it is potentially an unfair mechanism that can hinder lawyers from carrying out their duties.

***The Reluctance of Lawyers to be Regulated:*** The reluctance shown by SOLLA and SWLA to seek to become an internationally recognized Bar Association speaks volumes about the *laissez faire* context in which lawyers in Somaliland operate.

## Chapter 6

### THE PROSPECTS FOR APPOINTING FEMALE JUDGES

One of the hurdles facing the justice sector in Somaliland is the lack of gender equality, particularly with regard to the judiciary. While there are female prosecutors, DAGs, lawyers and court registrars, there are no female judges, in contrast to many other Muslim majority countries like Sudan and Pakistan. 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. This is largely the result of social prejudice, resulting from Somaliland's deeply ingrained patriarchal society, and the wide acceptance of the *Shafi* school of thought. Old customs and traditions are reinforced by the traditional law system of *Xeer*, which is dominated by male clan elders who regulate inter-clan relations and disputes, and restrict the involvement of women in the public sphere.

Somaliland's Constitution, which came into force in 2001, does not prohibit the appointment of female judges. Under the Constitution, *Sharia* is mandated as the supreme law of Somaliland, but the type of *Sharia* is not specified. Article 5 designates Islam as the religion of the State and provides that the "laws of the nation shall be grounded on and shall not be contrary to Islamic *Sharia*." But the Constitution is silent on which school of *Sharia* applies in Somaliland. The State is only required to promote general *Sharia* principles and not necessarily the doctrines of the *Shafi* school of thought, the most conservative form of *Sharia*, which are interpreted as prohibiting female judges.

As part of the baseline study field research, Horizon conducted a public survey, interviewing 87 people throughout the regions and across the social, educational and regional spectrum, to gauge their views on the appointment of women judges.

#### Public Support for Female Judges

**Hard-Working:** 70% of interviewees responded positively to the prospect of female judges, in large part because they see women as hard working. They explained that their support stems from what they have experienced with male judges, namely insufficient dedication to the job and a poor work ethic. Others think female judges would perform better than their male counterparts because of their positive experience with women lawyers. As a court user in Gabiley stated, "people now prefer female lawyers because they're more active than male lawyers."<sup>52</sup> Some also argued that women are better listeners and better at resolving problems.

A female court user from Baligubedle complained that her case was often ignored by male judges and preference was given to male court users: "Women are often overlooked in the court system and having a female judge would change that for the better." Saying women are rarely given opportunities and positions of responsibility, she argued that having to prove themselves would make women work harder.

**Facilitate Access:** 25% of both female and male interviewees said a female judge would make the courts more accessible to the public, especially because, in the words of a young

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<sup>52</sup> Interviewed in Gabiley on 10 September 2016.

female student in Burao “women would feel more comfortable bringing a case to a court with a female judge.” She added that having female judges would also lead to more public discussion of the problems women face in society and could help bring about change.

**Help Women Victims of SGBV:** Because sexual assault is traditionally dealt with amongst male family members, leaving the female victim without a voice, 80% of respondents thought a female judge would make female victims feel more at ease and forthcoming with information. 10% said she would be too emotional and biased and favour the victim. The other 10% argued against her involvement on the grounds of *Sharia*.

**Lead to Less Corruption in the Courts:** Complaining about corruption in the formal court system, 20% of respondents linked their support for female judges to the belief that they would be “more honest” and “less corrupt” which would, in turn, help to eliminate corruption in the judiciary. They said women are less likely to take bribes and would therefore make unbiased decisions in the courts.

**Open Up Jobs for Women:** Of the 70% who endorsed the idea of female judges, 15% said they thought it would create more job opportunities for women in Somaliland even though a woman “would have to work harder to reach this goal.” For this to happen, they said women themselves needed to lobby harder.

## **Public Opposed to the Idea of Female Judges**

**Sharia Does Not Permit Female Judges:** Of the public interviewed, 30% said they would not feel comfortable with a female judge. When asked if women, who held the same qualifications as a male judge, could fulfil the duties of a judge to the same extent, 33% commented she *could*, but that it would be wrong to appoint a female judge in light of the opposition of *Sharia*. The same respondents argued that this was a role intended for men.

Of the total respondents, 15% believed that if *Sharia* were to be reviewed and reinterpreted by religious scholars, and it was found that women could indeed become judges, society could not oppose the idea. They acknowledged that the initial opposition to the idea of women as prosecutors and registrars was overcome once people became accustomed to seeing them in that role and agreed that if a review of *Sharia* allowed women judges, they would be similarly accepted in time.

**Women Lack Capacity:** Among those reluctant to accept a female judge, some believe women do not have the required capacity, saying they would be too emotionally involved in cases, making them too biased and unfit to make a clear judgement. According to a male respondent in Wajale: “She would not be able to handle cases of a difficult nature. Those dealing with crime or violence are not suitable for women.” When pressed, he added that in a rape case, for example, a female judge would sympathize with the victim.

**Women as Judges Conflicts with Their Traditional Role:** 30% of those who reject female judges believe that women and men have predetermined roles in society, that of a woman being a caretaker. Putting a woman in what they regard as a demanding position of power would, they said, conflict with her responsibilities as a caretaker and make it impossible for her to be both a judge and a wife/mother at home.

**Assigning Women Limited Responsibilities:** While resisting women as judges, 15% of respondents said they would be open to the idea of a woman assisting or consulting in cases

dealing with family, children or women's issues. Bringing up the traditional role of a woman in Somali society as a caretaker, they argued this background would be beneficial, particularly in dealing with juveniles. Children, they said, would find a woman approachable and communicate more openly with her compared to a male judge.

## **FACTORS UNDERLYING FINDINGS**

***Absence of Drive Among Women Due to Social Pressures:*** When asked about the obstacles that prevent women from becoming judges, 5% said it was due to a lack of ambition coming from Somali women themselves. They called for a shift in the mind-set of women to reflect greater self-confidence, determination and unity. According to an elderly female shop owner: "Women do not seem to take the initiative to pursue a career as a judge...They know that was not a role for them in the past. However, rather than trying to change that, they are glued to the stereotype that they are incapable of fulfilling positions that carry authority."

She added that many young women do not think about becoming the first female judge because they are afraid of social pressure and the backlash they will receive. "It is this 'going against traditional norms' that prevents young women from being more ambitious when pursuing a career in justice."

***Religious Opposition:*** When looking at responses overall, 95% of interviewees believe that without a change in the interpretation of *Sharia* law, or in the perception and support of religious leaders, there was little likelihood of a woman being appointed as a judge in Somaliland.

***Lack of Public Awareness:*** Those who support the idea of a female judge said the absence of public discussion was a contributing factor. To encourage change, they called for public awareness through discussion and dialogue. In addition, they urged the government to provide more educational and training opportunities for women and encouraged more women to study law.

## Chapter 7

### PARLIAMENTARY OVERSIGHT OF THE JUSTICE SECTOR

The bi-cameral Parliament of Somaliland, with an unelected upper house of elders, the *Guurti*, and the House of Representatives (HoR, the lower house), whose 82 members are elected, potentially has a critical role to play in scrutinising the justice sector and holding it accountable. The HoR's Justice, Judiciary and Human Rights Committee, with eight members, is considered one of the most significant committees and provides a platform through which Parliament could exercise far-reaching powers to demand accountability from the justice sector, while also being an advocate for support to the different justice institutions. Unfortunately, there has been little progress on bills under deliberation, negligible assessment of government performance and minimal discussion of policy issues.

The HoR, elected in September 2005, has a 3-prong mandate of legislation, representation and oversight. Since the current government came into power in July 2010, the HoR has gone from an opposition-ruled House to one with a ruling party majority. While many people interviewed for this report see positive aspects to the co-operation between the government and parliament, they also underlined its dangers, principally in undermining the checks and balances that show a parliament at work and which enable a democracy to function as it should.

The Chief Justice, Adam Haji Ali, spoke of “a chamber which no longer exists as an institution.” He added: “You only see personalities. There doesn't seem to be any effort exerted in getting the institutional process back on track.”

#### Passage of Laws

***Very Few Laws Related to the Justice Sector Have Been Passed in 12 years:*** Since September 2005 when the current HoR was elected, it has enacted a total of only four laws relevant to the justice sector,<sup>53</sup> while another<sup>54</sup> is at its second reading with the *Guurti*, and a further two bills<sup>55</sup> having been returned by the President. By comparison, the HoR has as a whole has enacted 40 laws, while 13 are presently under deliberation at the *Guurti*, and another 28 bills having been returned by the President/Executive in that same period.

***Bills Take Years to Pass:*** Draft bills can take months or at times years to pass through the chamber.

***Parliament Is Not Involved with Drafting of Bills:*** For the most part, the relevant ministry drafts bills and Parliament is not involved in this process. For example, the MoJ drafted the Legal Aid Bill and then presented it to Parliament. Moreover, it is often an outside actor, like the United Nations or another development body, which is drafting the bill. This results

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<sup>53</sup> These are: The Law Establishing the Judiciary (08/04/2008); The Juvenile Justice Law (21/04/2008); The Human Rights Law (25/12/2010); and The Transfer of Prisons Act (21/03/2012).

<sup>54</sup> Rape Custody Bill.

<sup>55</sup> The Police Bill and the Prisons Bill.

in bills that are sometimes not relevant to Somaliland's context and which have not involved Parliament.

## Oversight

***Currently No Monitoring Activities Take Place and No Reports Are Published:*** The Justice Committee is not conducting any monitoring of the justice sector at all, whether it is prisons, one of its main functions, police stations where people are detained or the courts. As with many other institutions, Parliament only seems ready to deploy on fact-finding missions when donor funding is available, without creating alternative and more sustainable sources of support. The Committee no longer produces reports and updates for circulation.

***The Committee Does Not Act on Information:*** Nor does the Committee act on the information which it is sent from, for example, the National Human Rights Commission (NHRC) which reports to Parliament and the President. MPs cite shortage of funds to explain their inactivity. But there is nothing to prevent them from monitoring, at the very least, facilities in Hargeisa where they are based, or using the information from the Commission to call hearings, if the political will existed. Abdisamad Saad Hassan, the NHRC's Head of Monitoring and Investigation, commented that the reports which the organisation publishes regularly "are available to the Committee as well as any other group or individual that may be interested."

## FACTORS UNDERLYING FINDINGS

***MPs Are Assigned to Committees Without Regard to Expertise or Interest:*** The Speaker of the House and his two deputies assign MPs to one of the 10 specialist committees without regard to their professional background, specialization or interest, which curtails their ability to engage with their counterparts at the relevant Ministry.

***Absence of a Formal Legislative Agenda:*** The absence of a clear legislative agenda, for the HoR as a whole, is made worse by the fact that the Justice Committee operates in a highly informal fashion with inadequate internal processes, work-plans and agenda setting. The Committee is provided a set of six key functions, namely to;

- Draft and advise on laws pertaining to justice, judiciary and human rights and related areas of focus;
- Designate and authorise members to represent the committee at important HoR events;
- Monitor the implementation of laws approved by the HoR;
- Monitor the country's human rights situation and provide the HoR with regular reporting and updates;
- Monitor the effectiveness of the justice and judicial system;
- Oversee the country's prisons and provide updates to the HoR on matters pertaining to the country's prison system.

However, specific terms of reference have not been drafted which state, clearly, how the Committee's day-to-day responsibilities are to be fulfilled—a drawback faced by the majority of the HoR's committees.

***Insufficient Technical Capacity and Lack of Resources:*** Only four MPs out of 82 have a legal background, and two of them are members of the Justice Committee. There have rarely been more than two legal drafters among the support personnel. Nor does the HoR have

funds to call on outside legal expertise. The Justice Committee's four support staff of young professionals have degrees in either business administration or economics rather than law.

The enormous vacuum in terms of technical expertise is especially pertinent to the justice sector given the tendency for justice-related bills to be politically and or socially sensitive, technically demanding and given the involvement of a range of stakeholders with different and often competing interests. A case in point is the Police Bill to transform the police into a civilian force or the Legal Aid Bill to provide a coherent framework for the provision of justice services to people who cannot afford to hire a lawyer.

# ANNEX 1

## Additional Visualisations and Tables

### THE LOWER COURTS

Figure 1: Cases Lodged in 2016/17 (by Region)

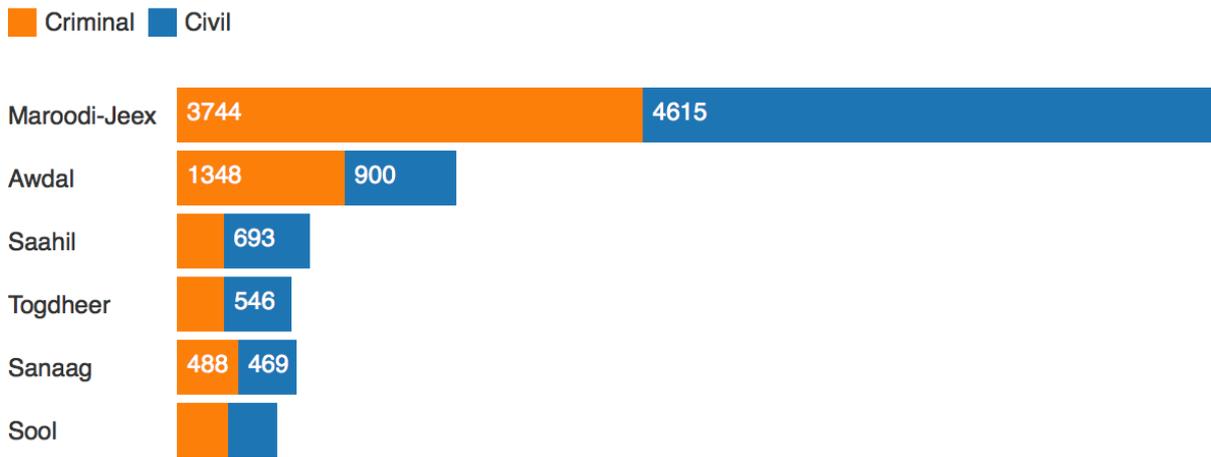


Figure 2: Cases Lodged in 2016 (by Region)

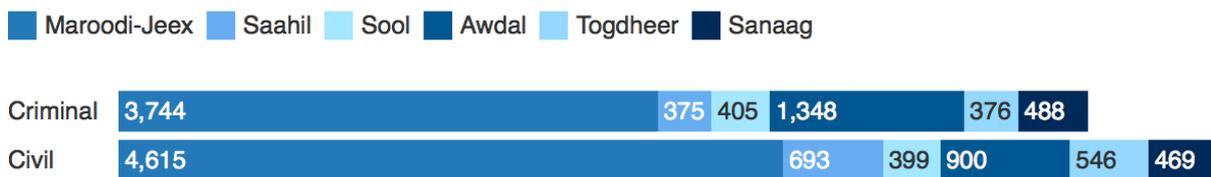
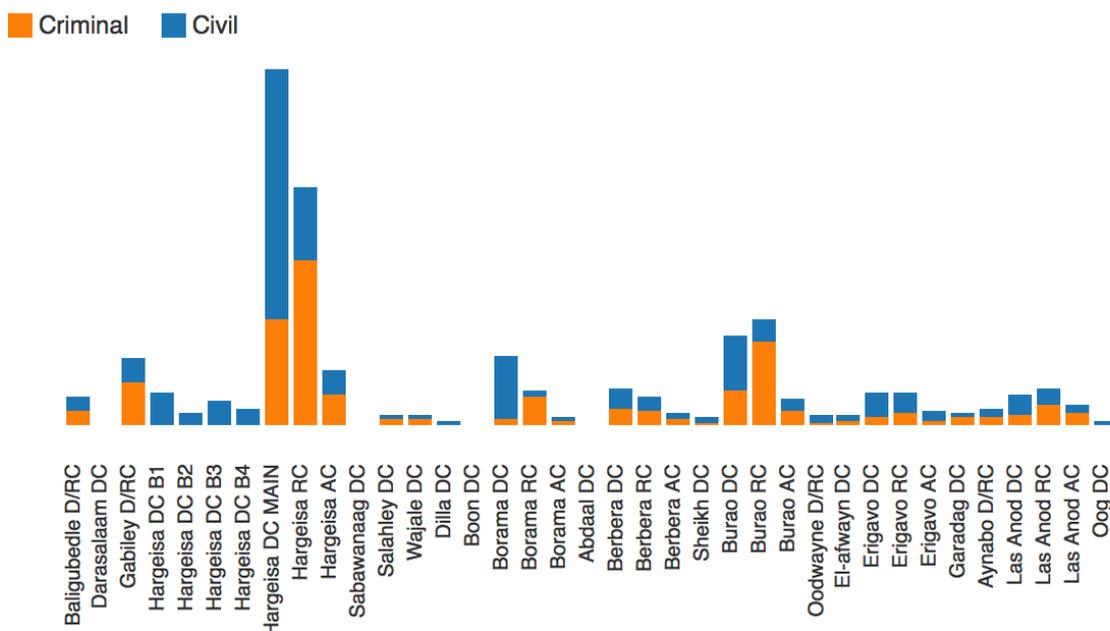
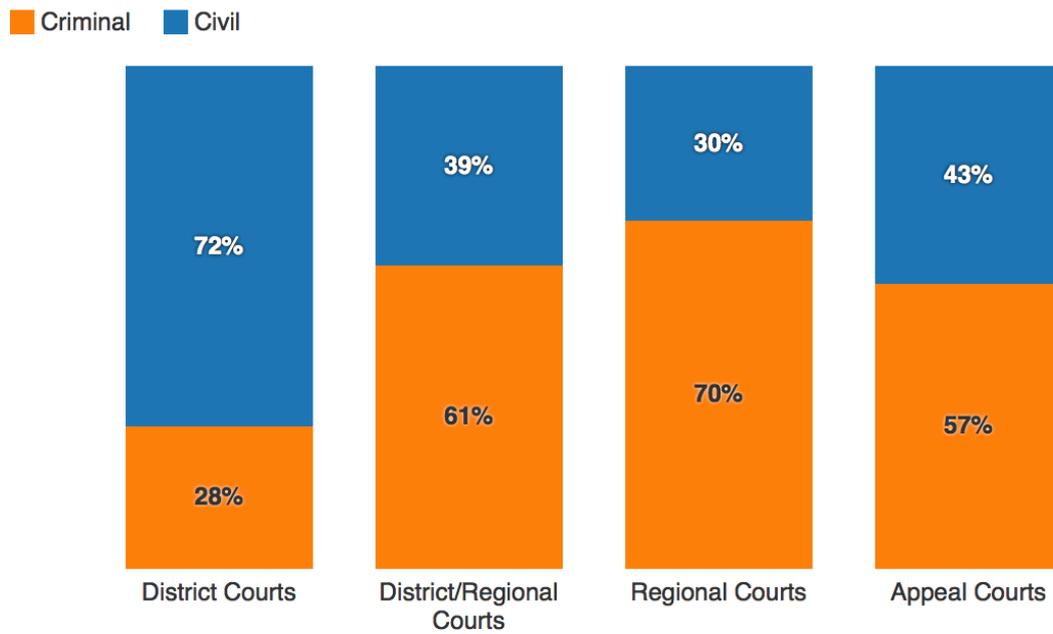


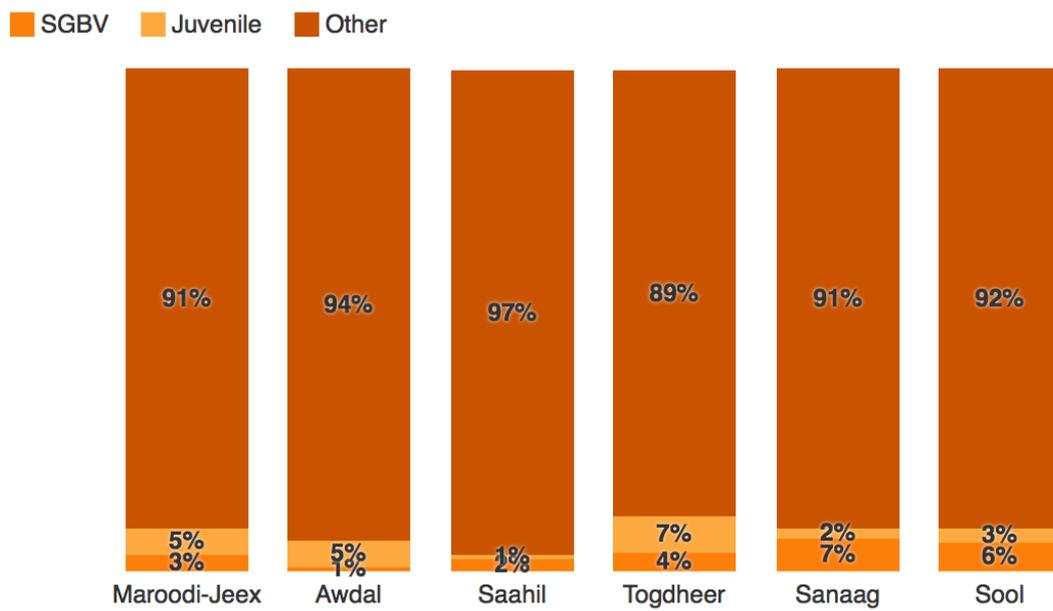
Figure 3: Cases Lodged in 2016 (by Court)



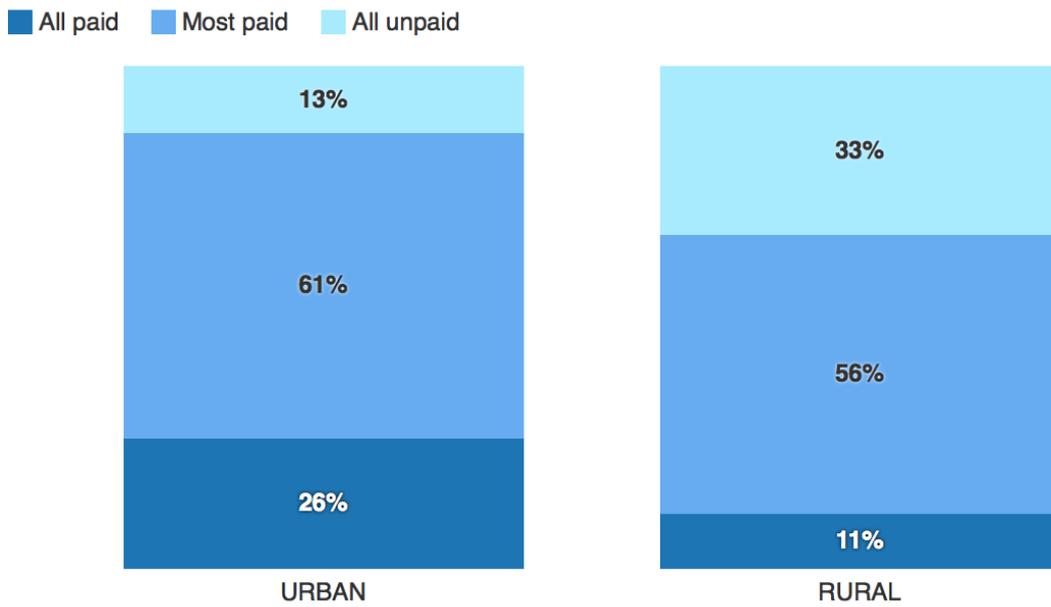
**Figure 4: Proportion of Criminal and Civil Cases in 2016 (by Court Type)**



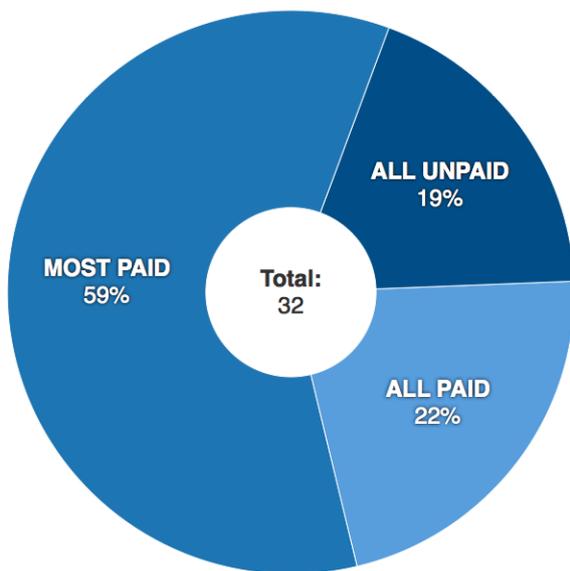
**Figure 5: Classification of Criminal Cases in 2016 (by Region)**



**Figure 6: "Are Support Staff Paid?"**



**Figure 7: Payment of Support Staff in Courts Visited**



**Table 1: Number of Employees per Working Computer (Urban vs Rural)**

Employees/computers	Total	Urban	Rural
Employees	363	321	42
Working computers	49	43	6.0
Number of employees per computer	7.4	7.5	7.0

**Figure 8: Internet Access (Urban vs Rural and by Region)**

Every day    None/irregular

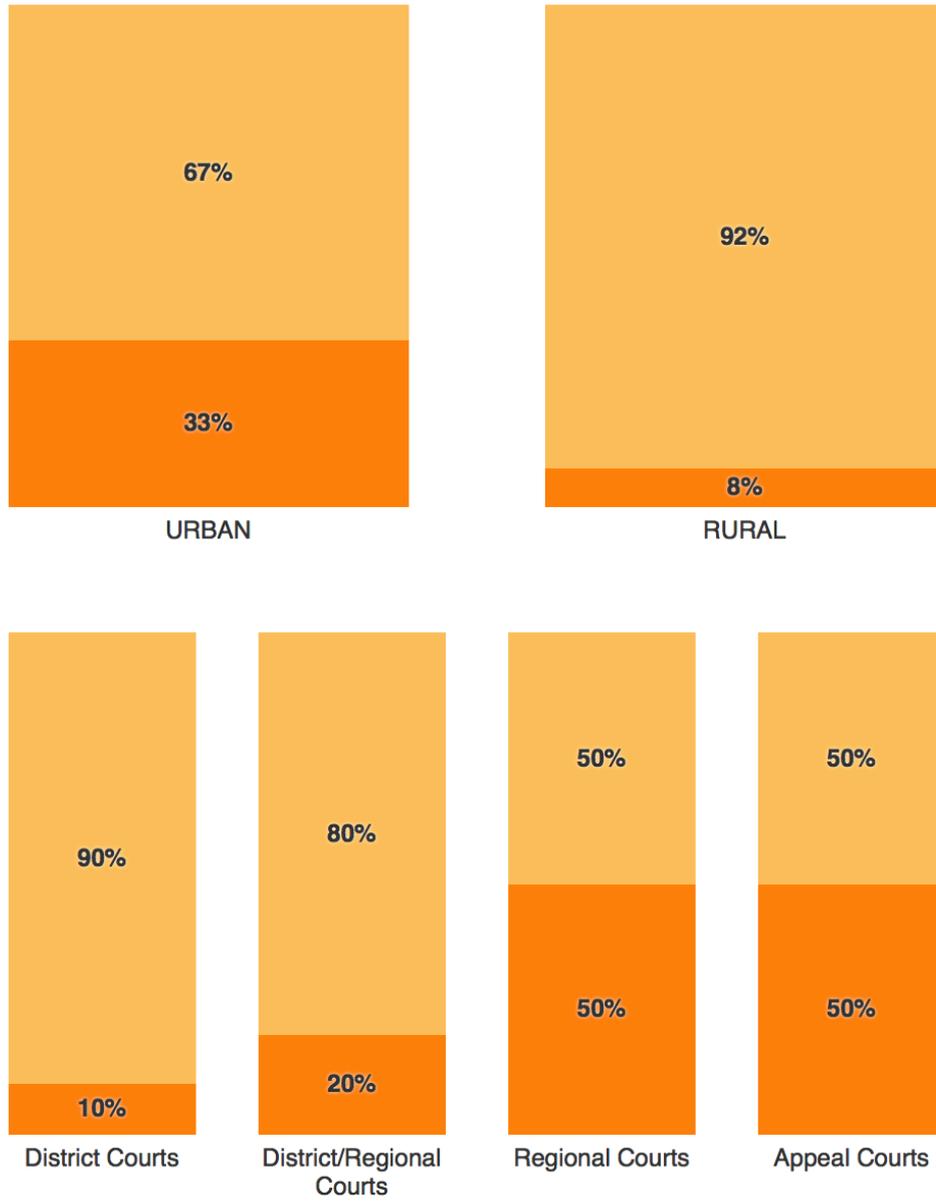


Figure 9: Sufficient stationery

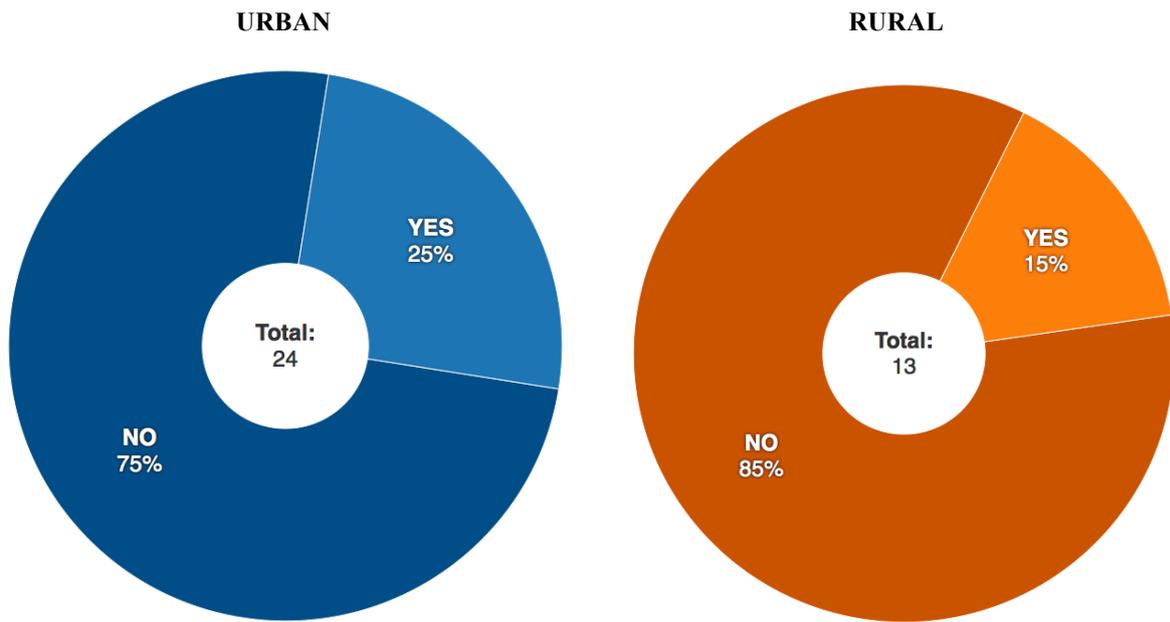
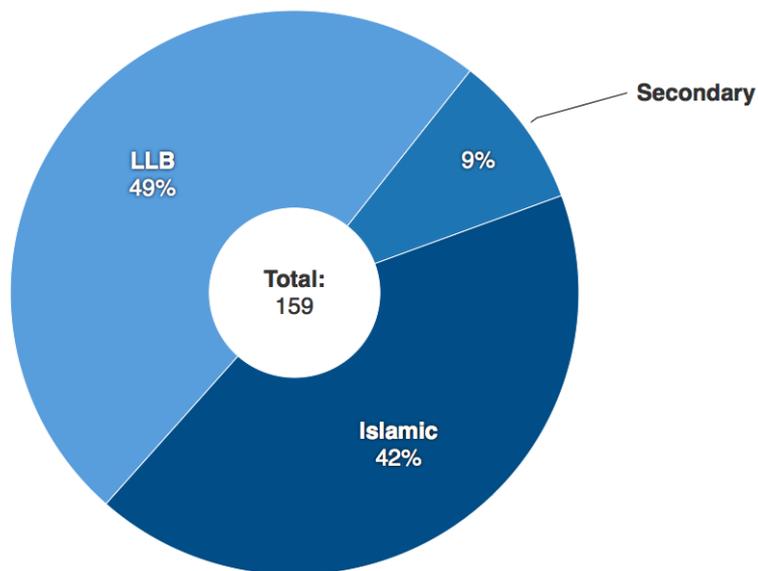
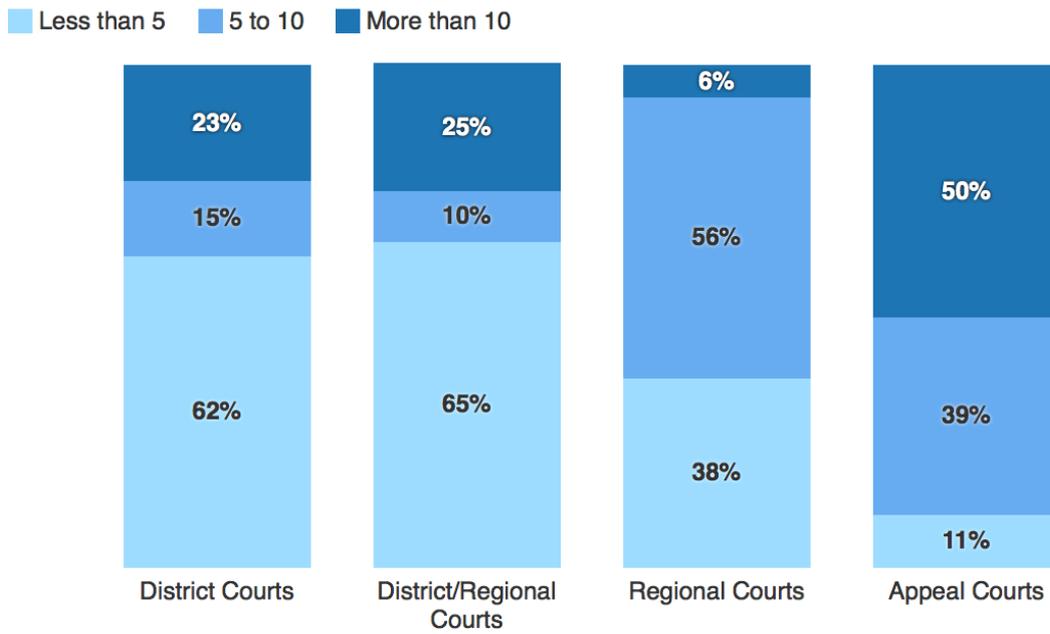


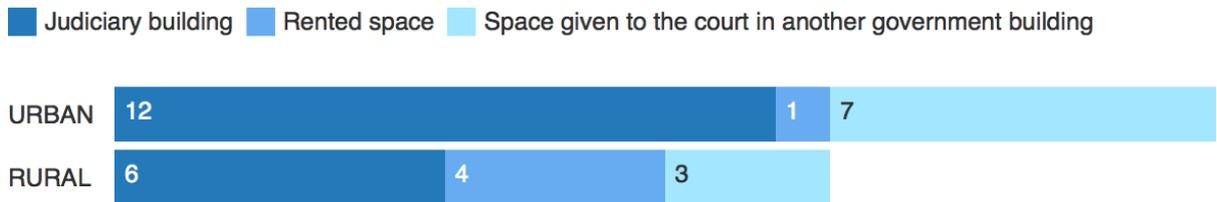
Figure 10: Education of Judges



**Figure 11: Experience of Judges (Years, by Court Type)**

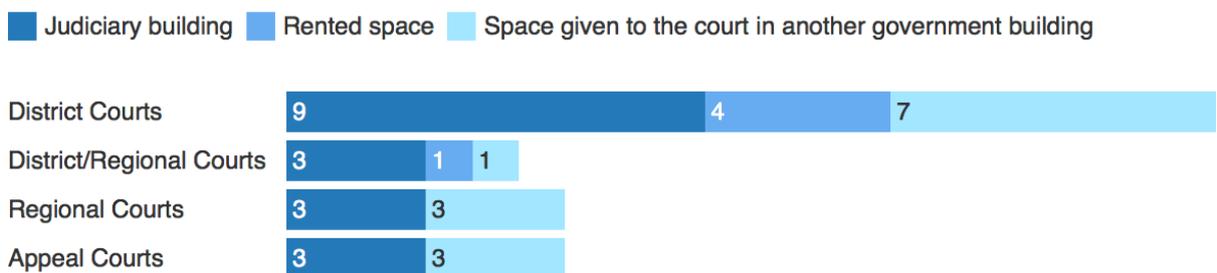


**Figure 12: Types of Building that Courts Work in (Urban vs Rural)**



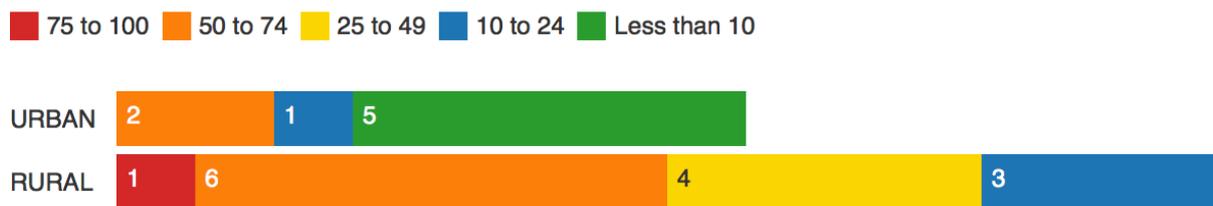
*Sample size: 33 (the chairmen of 37 courts were interviewed, but some of those courts share the same work space, hence the smaller sample size).*

**Figure 13: Types of Building that Courts Work in (by Court Type)**



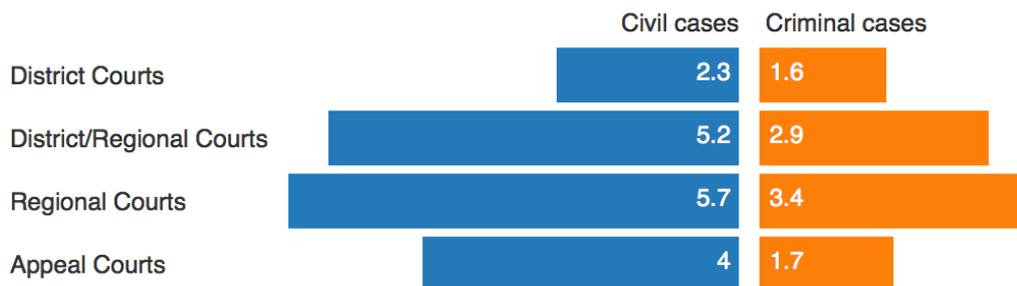
*Sample size: 37 (note: some of the courts, particularly the Regional and Appeal Courts, share a building; the total number of court buildings in which the courts interviewed operate in is 33).*

**Figure 14: Age of Court Buildings (Years, Urban vs Rural)**

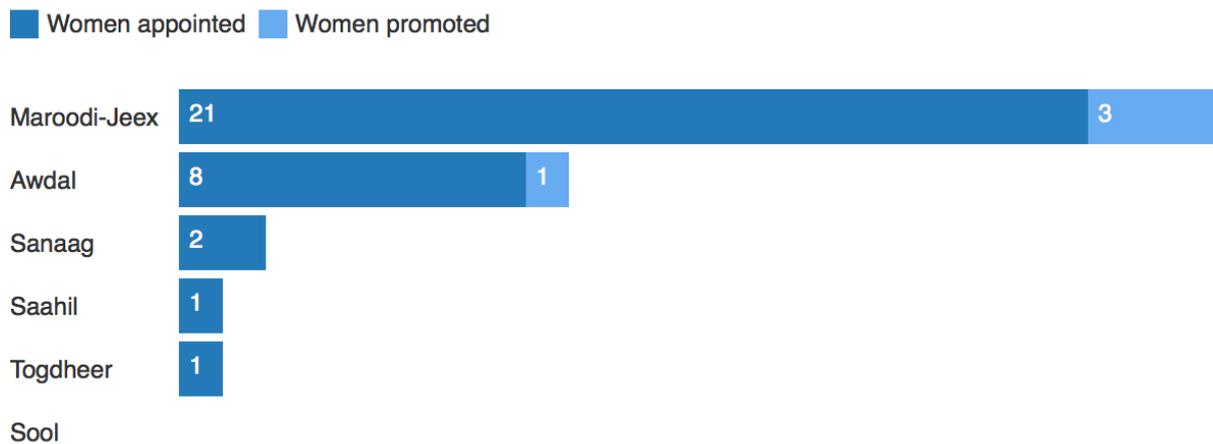


Sample size: 22 (only those courts that own the building in which they operate are included in this graphic; this should be 23, but one of the respondents did not know the age of the building).

**Figure 15: Average Length of Cases (Weeks, by Court Type)**



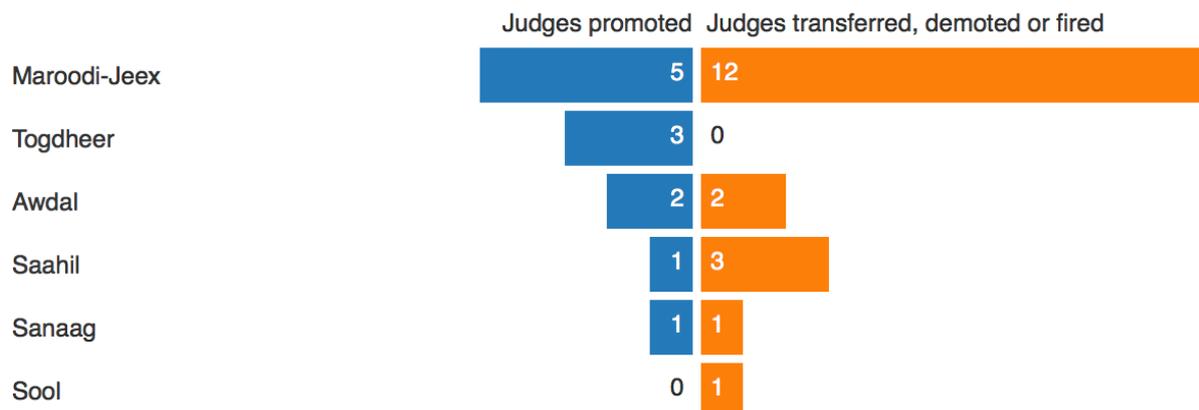
**Figure 16: Appointments and Promotions of Women (by Region)**



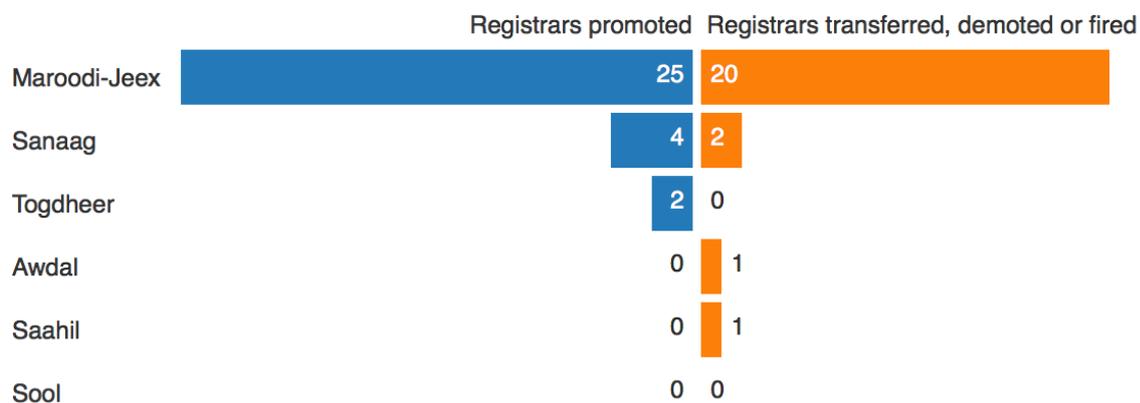
**Table 2: Appointments and Promotions of Women (by Court Type)**

Court type	Women appointed	Women promoted
District Courts	10	3
District/Regional Courts	0	0
Regional Courts	13	0
Appeal Courts	11	1

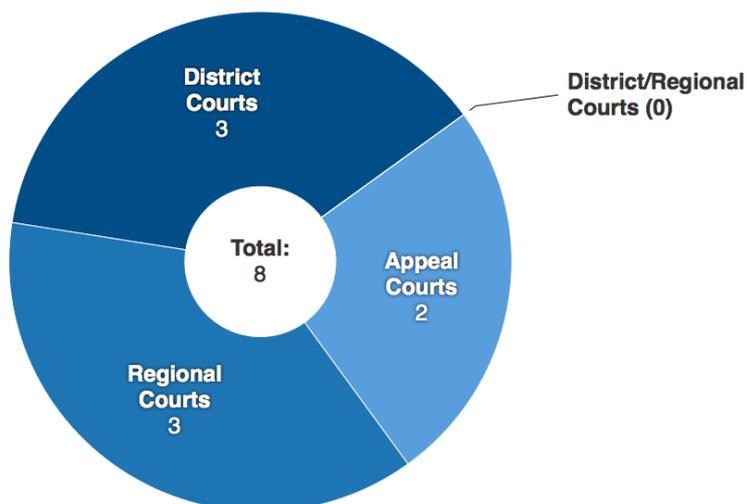
**Figure 17: Promotions, Transfers, Demotions and Firings of Judges (by Region)**



**Figure 18: Promotions, Transfers, Demotions and Firings of Registrars (by Region)**



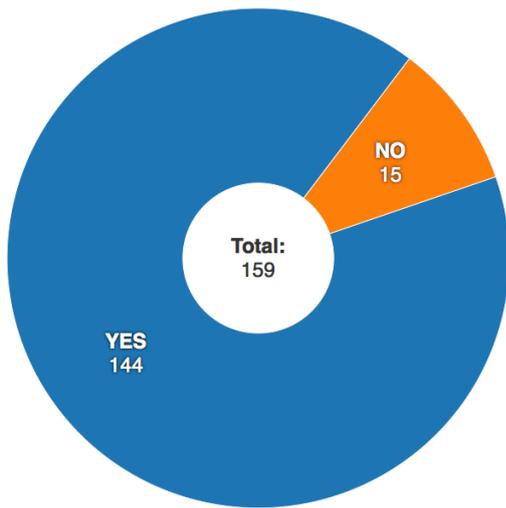
**Figure 19: Number of Courts in Which a Member of the Judiciary was Fired for Corruption in 2016/17 (by Court Type)**



**Table 3: Courts with a Juvenile or Women's Section**

Court type	Juvenile section	Women's section
District Courts	2	0
District/Regional Courts	0	0
Regional Courts	2	0
Appeal Courts	1	1

**Figure 20: Judges that Received a Pay Rise in 2016/17**



**Figure 21: All Staff Have Uniform**

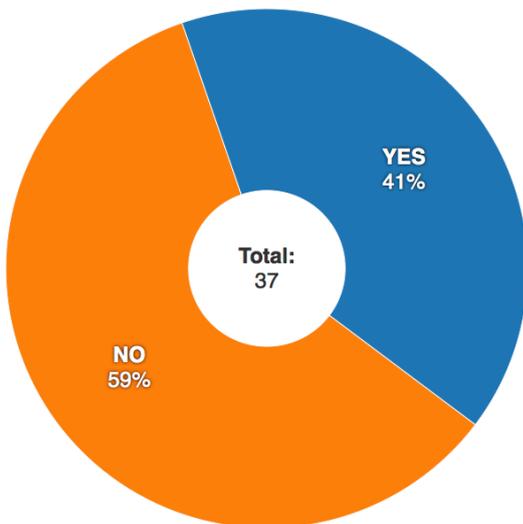


Figure 22: Courts with WCs

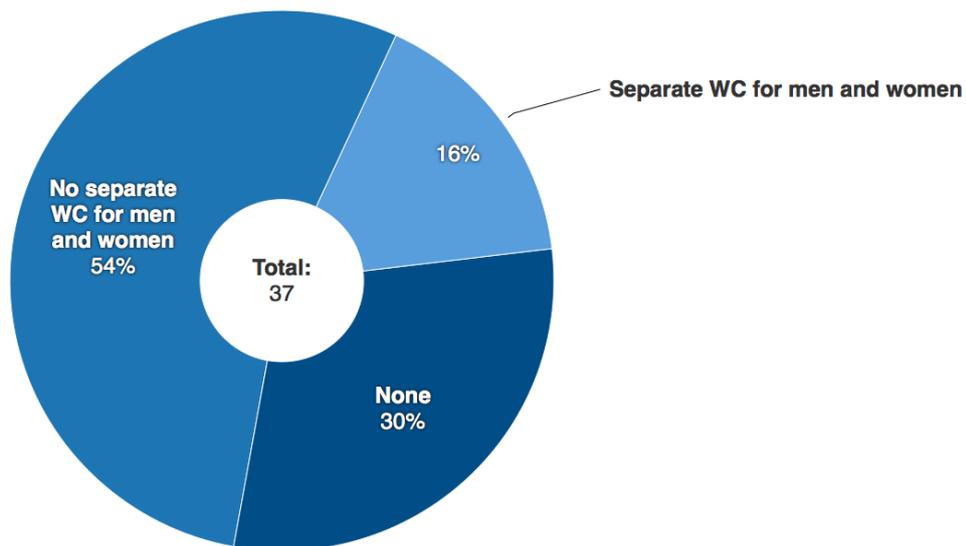


Table 4: Security Staff (Urban vs Rural)

Position	Urban Total	Rural Total	Urban Average	Rural Average
Watchmen	7	10	0.3	0.8
Police guards	60	6	2.6	0.5

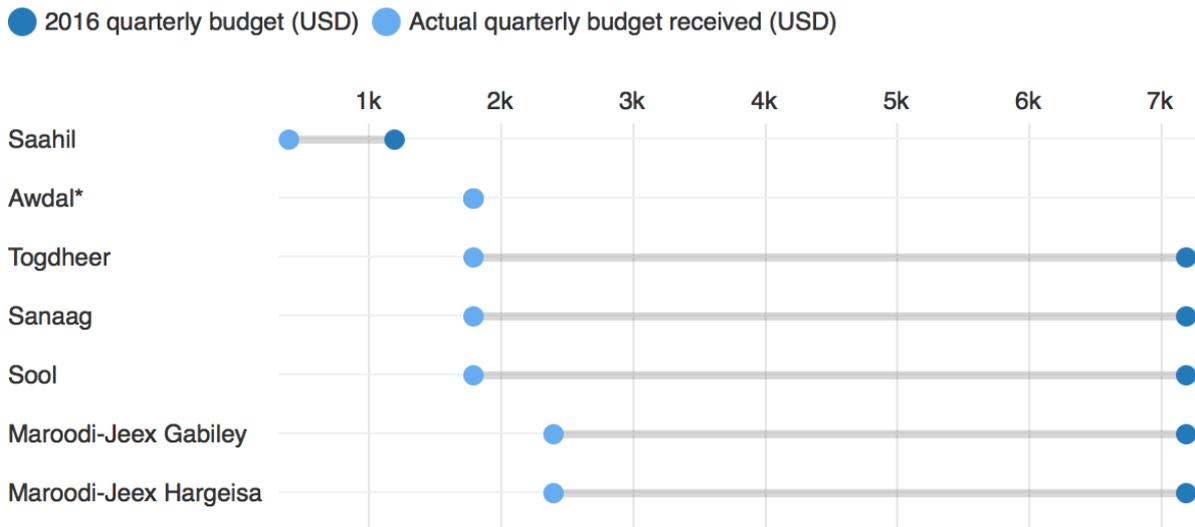
## ACCESS TO JUSTICE

Figure 23: Number of Mobile Court Cases in 2016



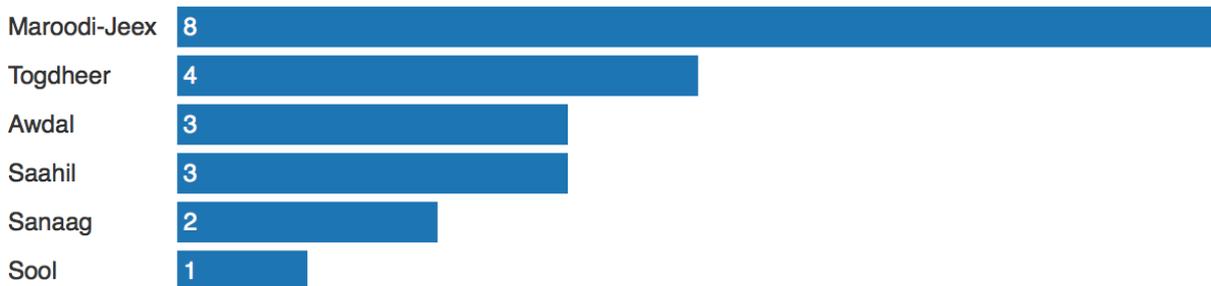
Only 4 of the 7 respondents had case statistics.

**Figure 24: Mobile Court Funding - Quarterly Budget vs Funds Received (USD)**



*\*Awdal shows a single dot because there was no gap between the budget and the amount received*

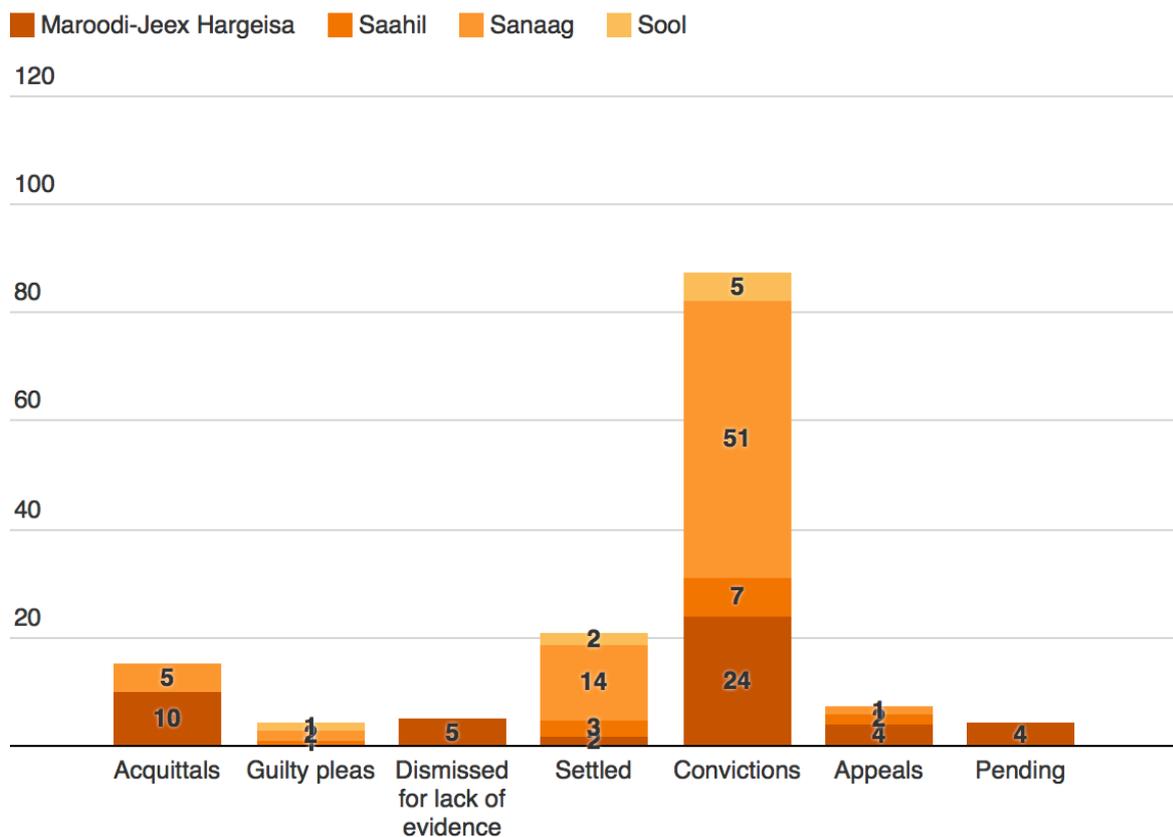
**Figure 25: Working Vehicles for Courts (by Region)**



**Table 5: Mobile Court Collaboration With Other Institutions**

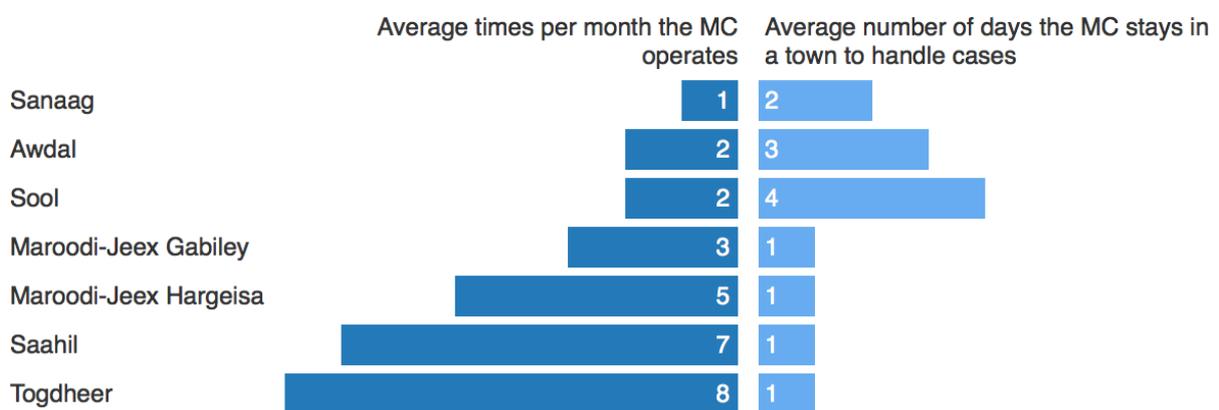
Institution	Number of mobile courts that collaborate with the institution
AGO	7
Police	7
Custodial corps	2
MoJ	1
Lawyers	1

**Figure 26: Mobile Court Criminal Cases by Outcome (2016)**



Only 4 of the 7 mobile courts surveyed recorded case statistics.

**Figure 27: Operation of Mobile Courts**



# THE ATTORNEY-GENERAL'S OFFICE

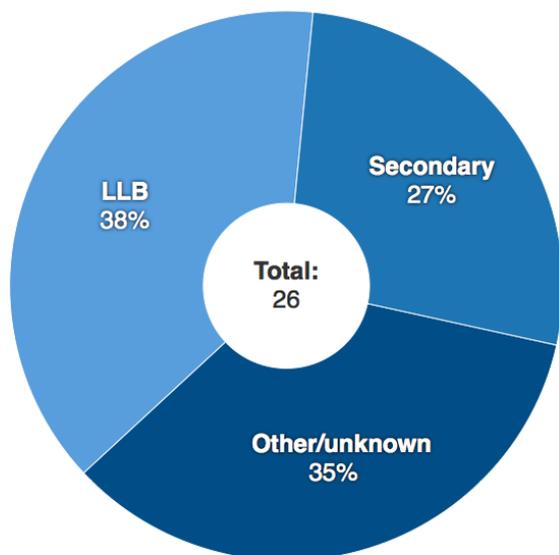
**Table 6: AGO Responses to Equipment/Operations Quarterly Budget Question**

Equipment/operations budget	Number of AGOs
Under \$225	3
\$225 to \$450	2
Above \$450	1
Did not know	1

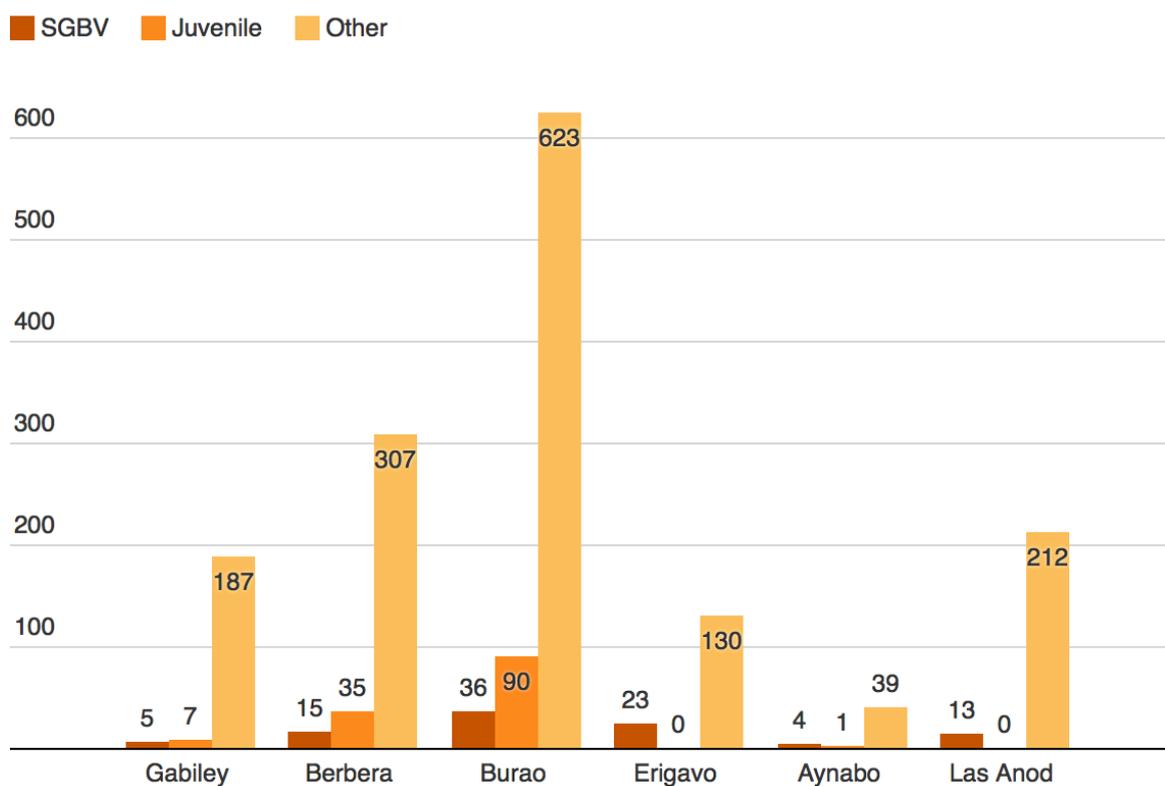
**Table 7: Working Photocopiers/Printers and Computers in AGOs**

Equipment	Photocopiers/printers	Computers
Total	16.0	14.0
Average per office	2.0	1.8
Average number of staff per equipment	2.8	3.1

**Figure 28: Education Level of DAGs/Prosecutors**



**Figure 29: Classification of AGO Criminal Cases (2016)**



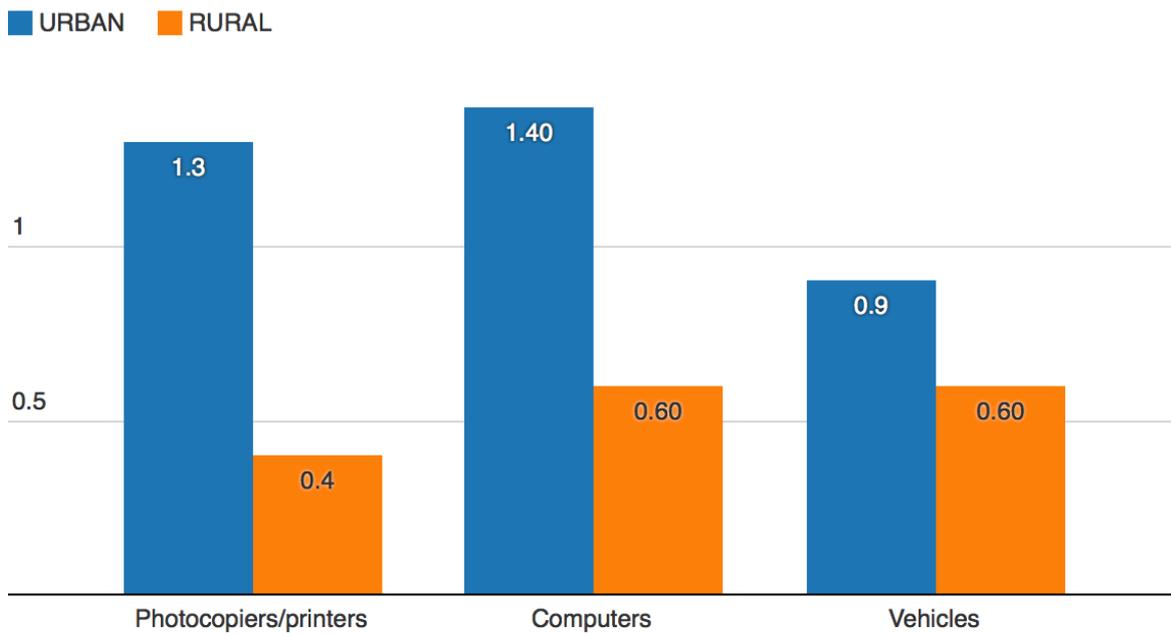
*Case statistics for Wajale are included in Gabiley.*

## PRISONS

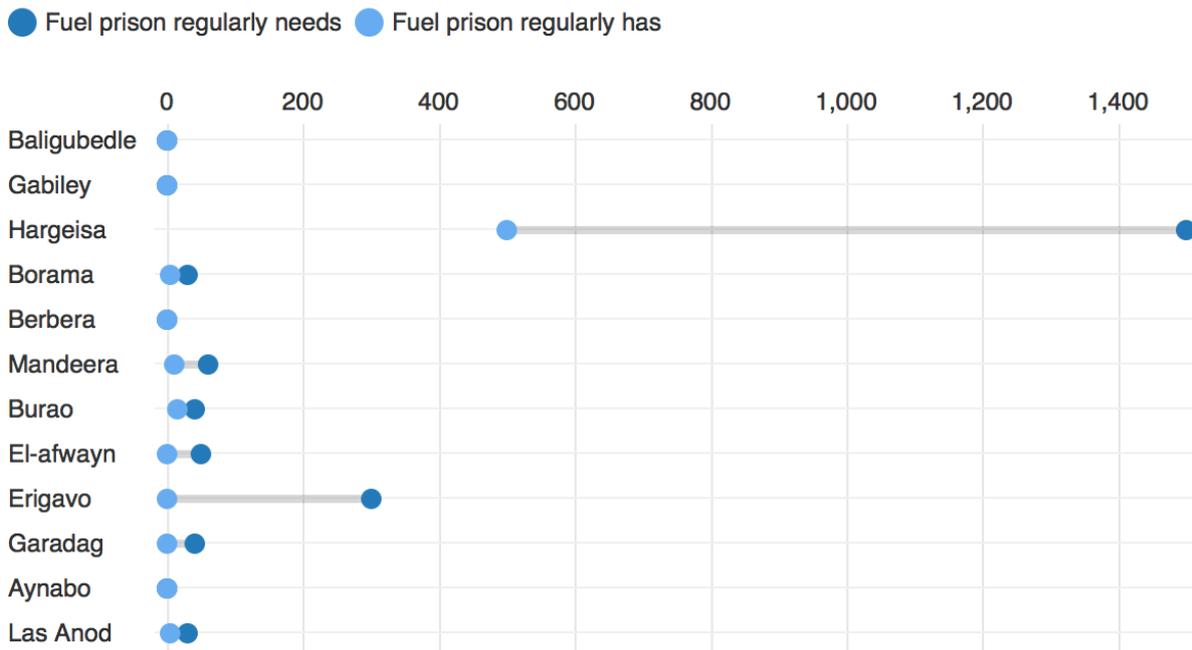
**Table 8: Amount of Space per Prisoner (m2, Urban vs Rural)**

Cell size/space	URBAN	RURAL
Average size of large cell (m2)	45.7	98.2
Average number of prisoners sharing large cell normally	28.6	33.0
m2 per prisoner (normally)	1.6	3.0
Average number of prisoners sharing a large cell during overcrowding	53.6	54.0
m2 per prisoner (overcrowding)	0.9	1.8

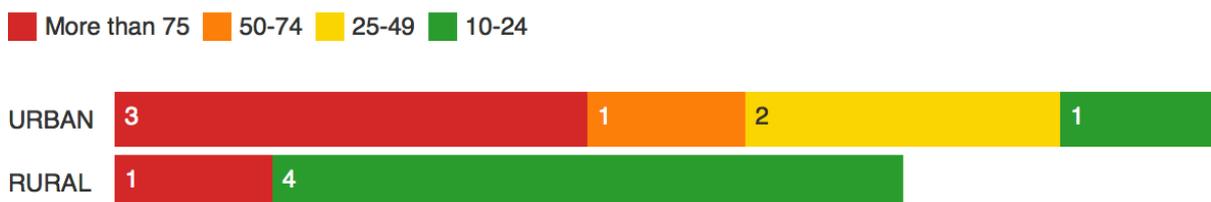
**Figure 30: Average Amount of Equipment per Prison (Urban vs Rural)**



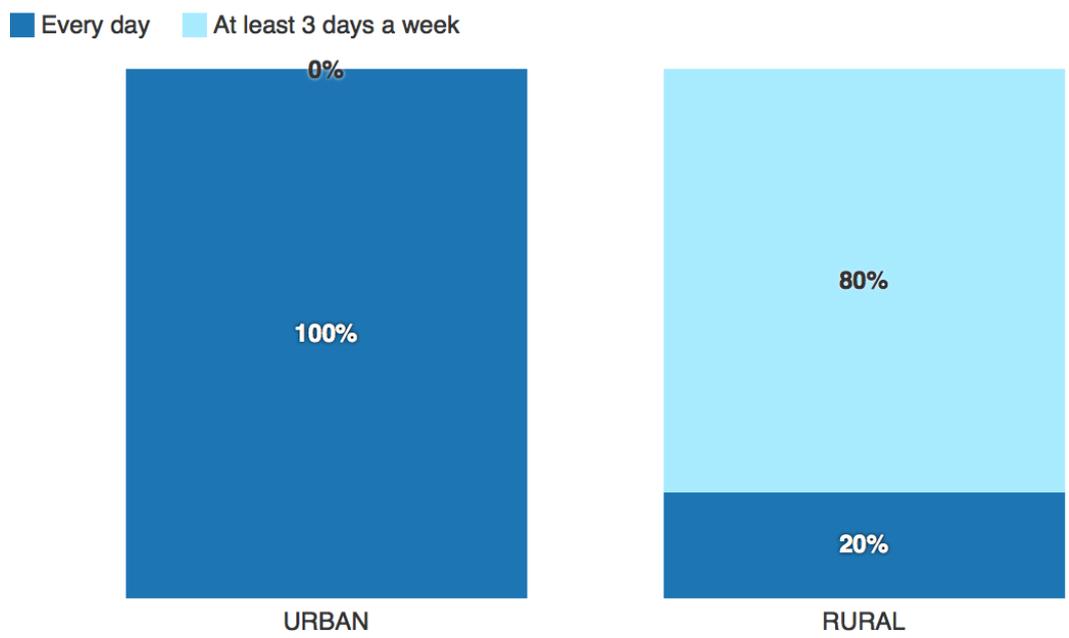
**Figure 31: Fuel Needs of Prisons (Litres per Month)**



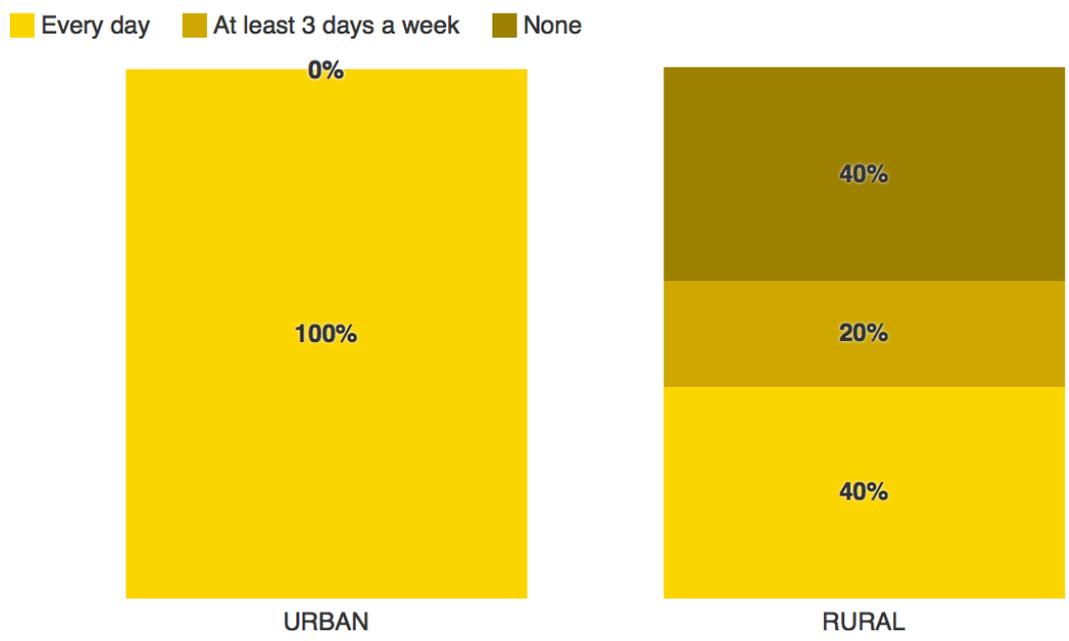
**Figure 32: Age of Prison Buildings (Years, Urban vs Rural)**



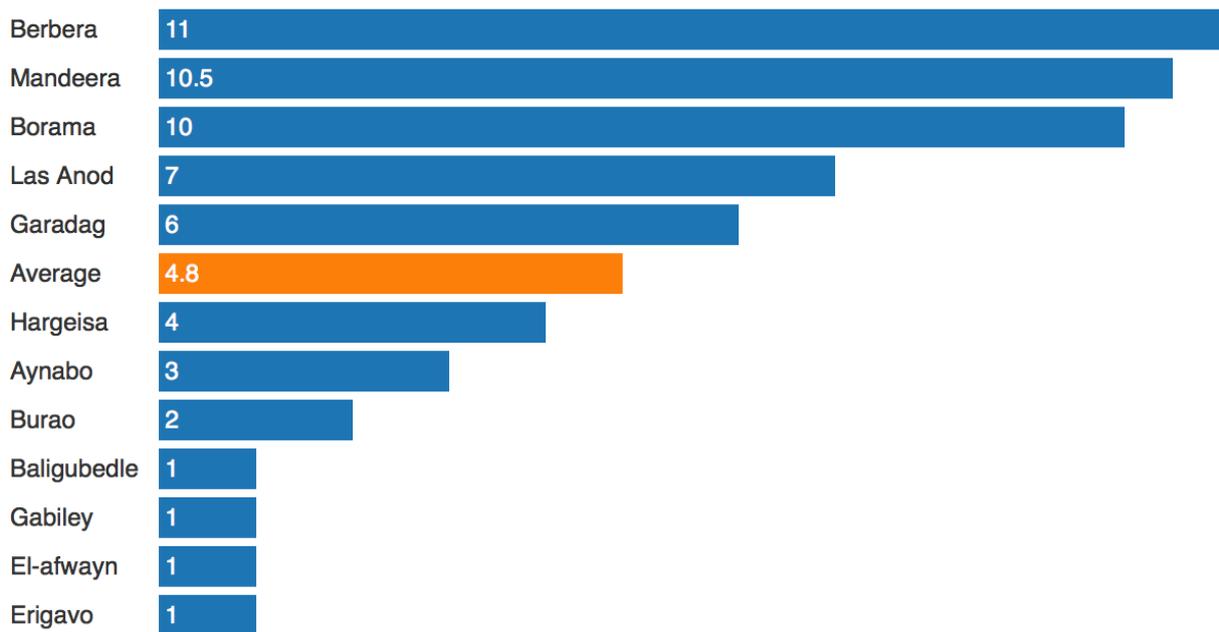
**Figure 33: Water Supply to Prisons (Urban vs Rural)**



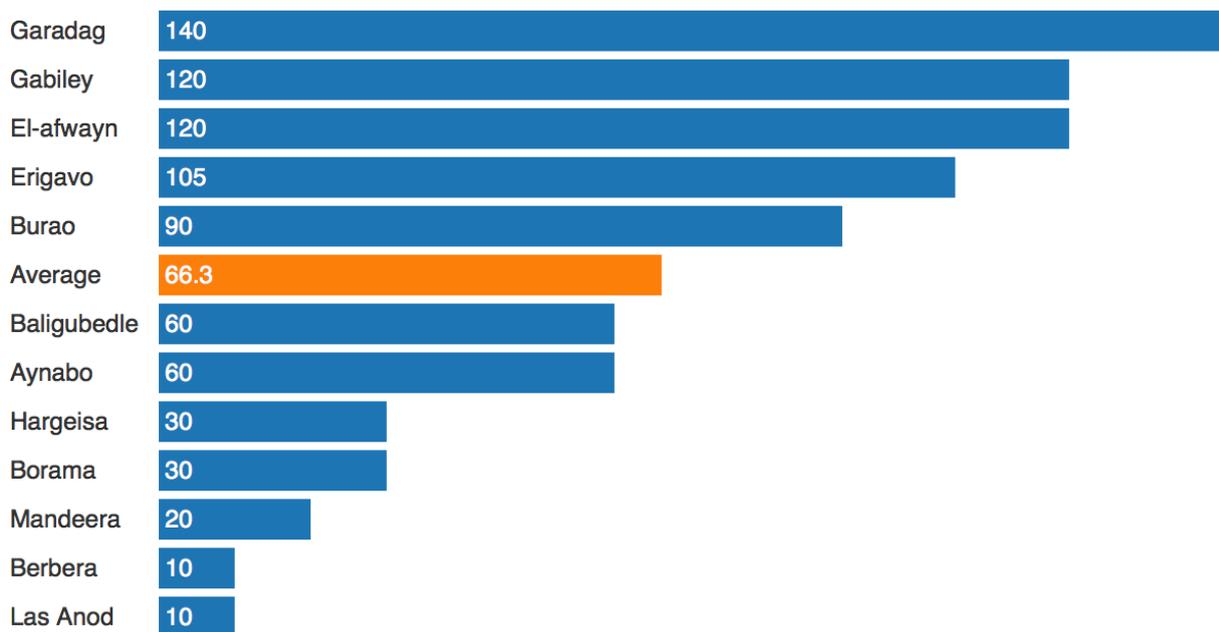
**Figure 34: Electricity Supply to Prisons (Urban vs Rural)**



**Figure 35: Hours per Day Prisoners Are Allowed Outside**



**Figure 36: Maximum Visiting Time per Prisoner (Minutes per Week)**



*Calculated by multiplying the maximum duration of visits by the number of times per week prisoners can be visited (e.g. prisoners in Gabiley can be visited for up to an hour twice a week).*

**ANNEX 2**  
**Quantitative Data Questionnaire**

**FORMAL COURTS**

<b>INFRASTRUCTURE</b>
Does the court have a building?
Rented or owned?
Date of construction?
Single or multiple rooms?
Number of courtrooms?
Number of offices?
Offices that double as courtroom?
Staff per office?
Sufficient courtrooms?
Within walled compound?
Other security infrastructure?
Other institutions share the compound?
If yes, which institutions?
WC for men and women?
Regular water supply?
Days per week of water?
Regular electricity?
Days per week of electricity?
Regular internet access?
Days per week of internet?
What is internet used for?

**OTHER RESOURCES**

Desks for all staff?

Secure filing facilities available?

Can filing facilities be locked?

Who purchases furniture for the court?

Sufficient stationery?

If no, what stationery is lacking?

Number of working photocopiers/printers

Number of working computers

Number of working vehicles

Year and  
condition of  
working vehicles

Year

Condition

Amount of fuel  
(litres)

Court regularly has per month

Court regularly needs per month

Access to law library?

If no, what legal material do you have access to?

**HUMAN RESOURCES**

Number of  
judges

Paid

Unpaid

Experience of  
judges

Less than 5

5 to 10

More than 10

Court registrars

Male

Female

Unpaid

If shared court, do you share court registrars?

Duties of court registrars?

All staff have uniforms?	
Support staff paid?	
Number and positions of support staff?	
Number of guards	Inside
	Outside
Job descriptions for each position?	
If no job description, how do you orient new staff?	
Court working hours	Start
	Finish
Average number of judges and registrars absent each day?	
Promotions in 2016/17 for good performance	Judges
	Registrars
If yes, year of promotion?	
If yes, reason for promotion?	
Transferred, demoted or fired in 2016/17 for misconduct	Judges
	Registrars
If yes, which year?	
If yes, reason?	
Number of women appointed to positions in 2016/17?	
If yes, to what positions?	
Women promoted in 2016/17	
If yes, promotion from what position to what position?	
Members of marginalized groups appointed to positions in 2016/17	
If yes, which groups?	
If yes, to what positions?	

How are judges hired/fired?	
How are court staff hired/fired?	
Judges and staff aware of this process?	
Staff evaluation system in place?	
If yes, what is the system and how often?	
Are staff informed of the evaluation?	
Level of education of judges	Islamic education
	Secondary level
	LLB
If LLB, where was it received?	
Additional trainings that judges have taken?	
Providers of additional training?	
Length of additional training?	
Internal training plan in place for judges and other staff?	
If yes, what kind of training do judges and other staff receive?	
How often do you provide such training?	
Do you ever do a training needs assessment?	
What training do judges need?	
What training do other staff need?	
Are internal meetings conducted with judges and registrars?	
If yes, how often?	
If yes, what topics are discussed?	
Code of Conduct for judges and staff?	
How do judges and other staff know about the Code of Conduct?	
Judges trained on code of conduct?	
If yes, how often?	

Who enforces code of conduct?
Complaint procedure in place that can be used by court staff and the public for violations of the Code of Conduct?
If yes, do you make the resolution public?
If no, why not?
How do you address issues of corruption at your court?
Any judiciary staff fired for corruption in 2016/2017?
If yes, by whom?
If yes, why specifically?
Do you hear cases of corruption committed by members of the public?
If yes, how often?
Who has been prosecuted (member of public or organization)?

<b>FINANCIAL RESOURCES</b>
Who is the budget manager(s)?
Total budget (USD per 3 months)?
Budget provider(s)?
Staff budget
Equipment budget
Operating budget
Training budget
Number of judges that received a pay increase in 2016/17
If yes, which judges?
If yes, what was the increase?
Will the budget transfer from MoJ to Supreme Court improve your work?
If yes, how?
System in place to manage financial and other resources?

Financial reporting process?

Finances independently audited?

If no, is there an outside institution that monitors how the court spends money?

Who monitors?

Policy on collection of fines?

If yes, is information made known to public?

Who collects and distributes fees and fines?

## **SYSTEMS OF GOVERNANCE**

Court has mission, vision and core values?

If yes, who drafts the mission, vision and the core values?

If yes, do the staff and stakeholders know about them?

How do they know?

If yes, are the vision, mission and core values carried out?

Court has a strategic plan?

Is there a common strategic plan for all courts in the region?

If yes, are the strategic plan(s) monitored and reviewed?

If yes, who is responsible for this?

Does the strategic plan influence how resources are allocated?

If yes, how?

Judges and court staff involved in reviewing performance and policies?

Is there a standard for solving a number of cases per month or attaining other targets?

If yes, is there a system in place for that?

What is the system?

A system to measure the performance of judges and other staff?

Obtain feedback from court users?
If yes, how is this feedback obtained?
If yes, how often do you obtain feedback?
If yes, is this feedback reviewed regularly?
If yes, how regularly is feedback reviewed?
If yes, what is the feedback used for?
Is it used to plan improvements?
Systems to make sure cases are handled in a timely manner?
Average length of civil case (weeks)
Average length of criminal case (weeks)
Judges and other staff reviewed for efficiency?
System in place to manage the caseload of the judges and other staff?
What is the system?
Judge communicates with the defendant/parties and lawyers to ensure they understand proceedings?
Court decisions written?
Court decisions can be obtained quickly?
Court decisions made public?
If no, why not?
Court orders enforced if non-compliance?
If yes, how?
Information on court services available to public?
If yes, what kind of information?
If no, why not?
Judges involved in community education?
If yes, how?

Collect data on cases?

If yes, what kind of data?

How is the data recorded?

Do you issue reports on the data?

If yes, for whom and why?

If yes, report made public?

How often is the report made?

## CASE STATISTICS

Cases Carried forward from 2015

Cases lodged in  
2016

Total

Criminal

Civil

Classification of  
civil cases in  
2016

Land

Family

Other

Classification of  
criminal cases in  
2016

SGBV

Juvenile

Other

Classification of  
Criminal Cases  
per Stage in 2016

Acquittals

Guilty pleas

Dismissed for lack of evidence

Settled

Convictions

Appeals

Pending

How do you categorize cases?

Case reference number?

Case reference explanation or example
Resources are allocated in line with these statistics?
If yes, how?
If no, why not?
What steps has your court taken to improve speedy trials?
What steps has your court taken to improve cases involving the media?
Does your court have a juvenile section?
If not, does it make special arrangements to hear cases involving juveniles?
If yes, have the judges in charge received specialized training?
When did they receive the specialized training?
Does your court have a women's section?
If yes, have the judges in charge received specialized training?

<b>GEOGRAPHICAL REACH</b>	
Estimated household size/population within the court's jurisdiction	
Furthest point in the court's jurisdiction	Distance (km)
	Time (hr)
Distance court users must travel to appeal cases if no appeal court (km)	

<b>LEGAL AID PROVISIONS</b>
Court has resources to appoint a defense lawyer in cases mandated by law
If yes, where does the money to pay them come from?
How often on average does the court appoint a defense lawyer (per month)?
Legal aid providers in the area
If yes, list of them
If yes, which legal aid providers make these lawyers available?
If yes, are the legal aid providers located within walking distance of the court?

How often on average does the public use the legal aid providers?

Which types of cases does the public use for legal aid providers for?

### **CHIEF JUSTICE REFORMS**

Do you have a copy of the CJ's reform strategy?

What do you know about the CJ's Reform Strategy?

How have CJ's Reforms influenced/changed your work?

In which areas?

How is your communication with the CJ?

Improvements in the speedy trial since the appointment of the CJ?

If yes, how you reached this conclusion?

Is the community in the area confident with the formal court recently?

If yes, how have you learned this?

If yes, what is the main reason you think the public are more confident in the formal courts?

### **MOBILE COURTS IN RURAL DISTRICTS**

Has a mobile court ever come to your district?

If yes, how often?

If yes, for what cases?

If no, why not?

Has the Supreme Mobile Court ever come to your town?

If yes, how often?

If yes, for what cases?

If no, why not?

### **OTHER JUSTICE SECTOR ACTORS**

Are any of these JSAs located in	Police
----------------------------------	--------

the town?	MoJ
	AGO
	Prisons
If no, how far away (km)?	Police
	MoJ
	AGO
	Prisons
If no AGO, who represents the defendant in criminal cases?	
Lawyers available in the town?	
Number of lawyers	

<b>CROSS INSTITUTIONAL COLLABORATION</b>
Does the court conduct meetings with other justice sector actors like prosecutors, police and custodial corps?
If yes, how often?
If no, why not?
Court allows access to human rights organizations and civil society groups?
If yes, how often?
Type of access
If no, why not?

<b>OTHER OBSERVATIONS</b>
State of furniture
State of court building
Court building has entrance gate with facility for disabled court users?
Other

# MOBILE COURTS

<b>STRUCTURE</b>	
Does the MC function at all levels of the court system?	
Who manages the finances and administration of the MC?	
Average times per month the MC operates?	
Average number of days the MC stays in a town to entertain cases?	
Does the MC stay in that town until it resolves the case?	
How does the MC select the cases it will entertain?	
Number of days for MC to conclude an assize section case	
Where does the MC visit?	
How do you determine the location that the MC is visiting?	
Furthest location that the MC visits?	Kilometres
	Hours
How do people know that the MC is coming to their area?	
Who tells them?	
How is this info conveyed?	
Advance notice they receive before MC arrives (days)?	

<b>OTHER RESOURCES</b>	
MC has a designated building in each location?	
Where does MC entertain cases when it arrives at a location?	

Facilities available for a closed court in sensitive cases?	
MC has vehicles?	
If yes how many?	
Year and condition of working vehicles	Year
	Condition
Budget for fuel?	
How much fuel is sufficient to operate the vehicle (litres)?	
Actual budget for fuel (excl. UNDP)	
MC has stationery?	

<b>HUMAN RESOURCES</b>
Does the MC have a permanent staff different from the formal court?
Who determines which judge is assigned to a MC case?
Selection procedure in place for selecting judges?
Specific criteria in place to select MC judges?
How is the workload of the MC judges managed?
Who goes with the MC other than judges?
Who determines the prosecutor/defense lawyer to go with MC?
Selection procedure in place for selection prosecutors / defense lawyers?
Specific criteria in place to select prosecutors / defense lawyers?
Average size of MC team?
MC has security?
Security travels with MC?
Does the MC ever receive any training specific to conducting a MC?
If yes who provided it?

If yes how long was the training?

Is the judicial code of conduct applied to the MC staff?

How do you let the judges and other staff know about the code of conduct?

Who enforces the code of conduct?

## **FINANCIAL RESOURCES**

MC has separate budget from the formal courts?

What does the budget cover?

MC budget adequate?

MC budget provides a per diem and accommodation to the judges, prosecutors, lawyers and other staff?

If not, who pays those costs?

Budget for MC security?

If no, how is security provided?

Government subsidises the MC budget?

2016 budget of MC (USD per 3 months)

Amount received in 2016 (USD per 3 months)

How much of budget (until 2016) was given by:	UNDP
	Govt

If UNDP, to which institution is the money given?

System in place to manage financial and other resources?

Finances independently audited?

If no, does UNDP or other institution monitor budget spending?

**SYSTEMS OF GOVERNANCE**

MC has mission, vision and core values?

If yes, who drafts the mission, vision and the core values?

If yes, are the vision, mission and core values carried out?

Strategic plan for MC in place?

If yes, monitoring and review process for the strategic plan?

If yes, who does the monitoring and review?

Does the strategic plan influence how resources are allocated?

Judges and court staff involved in reviewing performance and policies?

Is there a standard for solving a number of cases per month or attaining other targets?

A system to measure the performance of judges and other staff?

System to measure MC activities in general?

Obtain feedback from court users?

If yes, how is this feedback obtained?

If yes, how often do you obtain feedback?

If yes, how regularly is feedback reviewed?

If yes, what is data used for?

Is it used to plan improvements?

Systems in place for timely case proceedings?

Average length of MC civil case (weeks)

Average length of MC criminal case (weeks)

Does the MC communicate clearly with defendants and lawyers to ensure they know the case proceedings?

MC keeps separate records from the formal court?

Decisions can be obtained quickly?

Decisions written?

Court hearings are public?

Court orders enforced if there is non-compliance?

## REPORTING

Track and collect data?

What kind of data?

Report this data?

If yes to whom?

Why?

Is the report made public?

If yes, how often?

## CASE STATISTICS

Cases Carried forward from 2015

Cases lodged in 2016	Total
	Criminal
	Civil
Classification of civil cases in 2016	Land
	Family
	Other
Classification of criminal cases in 2016	SGBV
	Juvenile
	Other
Classification of Criminal Cases per Stage in 2016	Acquittals
	Guilty pleas
	Dismissed for lack of evidence
	Settled

	Convictions
	Appeals
	Pending
System in place to record this info	
How do you categorize cases?	
Case reference number?	
Case reference explanation or example	
Resources are allocated in line with these statistics?	
If yes, how?	
If no, why not?	

<b>LEGAL AID PROVISIONS</b>
MC has resources to appoint a Public Defender?
If yes, how often does the MC use a PD?
Do legal aid lawyers go on MCs?
If yes, how often?
If yes, what cases do they usually participate in?

<b>CROSS-INSTITUTIONAL COLLABORATION</b>
MC collaborates with other justice institutions
If yes with which ones?
If yes, how often?
How do you collaborate?

## LEGAL AID

<b>INFRASTRUCTURE</b>
Is there a legal aid building?

Where is the office?
Distance between office and court?
Staff per room?
WC for male and female?
Regular supply of water?
Days per week with water?
Regular supply of electricity?
Days per week with electricity?
Internet access?
Days per week with internet?

<b>HUMAN RESOURCES</b>
------------------------

Number of lawyers	Total
	Male
	Female
Experience of lawyers (years)	10 plus
	5 to 10
	Less than 5
Number of paralegals	Total
	Male
	Female
Number and positions of other staff	
Job description for each role?	
Minimum qualification for staff?	
If no job description, how do you orient staff?	

<b>FINANCIAL RESOURCES</b>
----------------------------

Where do you get your budget from?
How often do you receive funds?

Percentage of budget that goes to providing legal aid for public?

Percentage a sufficient amount?

How do you pay your lawyers?

How much do you pay them?

### **OTHER RESOURCES**

Desks for all staff?

Secure filing systems?

Can they be locked?

Sufficient amount of stationery?

Budget for stationery?

Number of working printers/photocopiers

Number of working computers

Number of working vehicles

Year of vehicle

Condition of vehicle

Fuel needed (USD/month)

Fuel currently have (USD/month)

Record keeping computerized or manual?

Access to law library?

If no, what other legal materials do you have access to?

### **SERVICES PROVIDED**

What kind of cases do you provide free legal aid for?

Types of civil cases you provide free legal service to?

Types of criminal cases you provide free Legal Service to?

Why these types of cases in particular?

How do you select the cases to provide legal aid to?

Do you have a selection system?

What is the criteria to be met when selecting people to provide legal aid to?

How do people know you provide legal aid?

Signs posted in front of court?
Provide a for-profit service?
What type of service?
Approximate number of legal aid cases per month?
Do you create a performance report?
How often?
Is it made public?

## MINISTRY OF JUSTICE

<b>INFRASTRUCTURE</b>
Do you have a building?
If yes, rented or owned?
Date of construction?
Number of rooms?
Staff per room?
Sufficient rooms for work?
WC for men and women?
Regular water supply?
Days per week with water?
Regular electricity?
Days per week with electricity?
Internet access?
Days per week with internet?
<b>RESOURCES</b>
Desks for all staff?
Secure filing facilities available?

Can filing facilities be locked?
Sufficient stationery?
Number of working photocopiers/printers
Number of working computers
Number of working vehicles
Year of vehicle
Condition of vehicle
Sufficient fuel for vehicles?
Record keeping computerized or manual?
Access to a law library?
If no, what laws and other legal materials do you have access to?

<b>FINANCIAL RESOURCES AND MANAGEMENT</b>	
---	--

Budget (per 3 months)	Total
	Staff
	Equipment
	Operating
	Training
Budget allocated for public defenders?	
Systems in place to manage financial and other resources?	
What is the financial reporting process?	
Finances independently audited?	
If no, is there an outside institution that monitors how the MoJ spends its money?	
If yes what is this institution?	

<b>HUMAN RESOURCES</b>	
------------------------	--

Number of staff	Total
	Male
	Female
Type of staff positions in this office	
Is there a public defender in this office?	

Number and positions of support staff?	
Job descriptions in place for each position?	
If no how do you orient new staff?	
Level of education of professional staff	Islamic Education
	Secondary level
	LLB
If LLB, where did they receive it?	
Trainings taken by professional staff?	
Who provided training?	
How long were the trainings?	
What training do they need?	
Policy in place for hiring and firing staff?	
Do staff know about the policy?	
Staff evaluation system?	
If yes, how often do you evaluate?	
Do staff know about the evaluation?	
Code of conduct for MoJ staff?	
How are staff made aware of the code of conduct?	
Train staff on the code of conduct?	
Who enforces the code of conduct	
Complaint system that the public can use	
If yes, do you make the resolution public	

<b>SYSTEMS OF GOVERNANCE</b>
MoJ has a defined vision, mission and core values?
If yes, who drafts it?
If yes, do staff and stakeholders know about it?
If yes, is it carried out?
Does the MoJ have a strategic plan?

If yes, does the strategic plan address the work of other justice sector actors?
If yes, did they contribute to the strategic plan?
If yes, is there a monitoring and review process for the strategic plan?
If yes, who conducts this review?
If yes, does it influence how resources are allocated?
Do you track and collect data?
What kind of data?
Do you report this data?
If yes to whom?
If yes, why?
Do you make the reports public?
How frequent are the reports?
Does the MoJ conduct meetings with other JSAs?
If yes, how often?

<b>PUBLIC DEFENDERS</b>
Target number of cases per month or other targets for MoJ public defenders?
Targets formalized or informal?
System in place to measure performance of PDs?
System in place to measure activities of MoJ in general?
If yes, example
MoJ asks for feedback from beneficiaries of PDs?
If yes, how is this feedback obtained?
How often is the feedback obtained?
Performance data and feedback reviewed regularly?
What is the data used for?

Used to plan improvements?

## CASE STATISTICS

Cases carried forward from 2015

Cases involving PD in 2016

Classification of cases in which PD was involved by crime	SGBV
	Juvenile
	Other
Classification of cases by stage	Acquittals
	Guilty pleas
	Dismissed for lack of evidence
	Settled
	Convictions
	Appeals
	Pending
System to record this info?	
Who is in charge of the system?	
How do you categorize cases?	
Allocate resources in line with these statistics?	

## ATTORNEY GENERAL'S OFFICE

### INFRASTRUCTURE

AGO has a building?

Year of construction?

Number of rooms?

Staff per room?

Other institutions in building or compound?
WC for male and female?
Regular supply of water?
Days per week with water?
Regular supply of electricity?
Days per week with electricity?
Internet access?
Days per week with internet?

<b>OTHER RESOURCES</b>
Desks for all staff?
Secure filing facilities available?
Can they be locked?
Sufficient stationery?
Number of working photocopiers/printers?
Number of working computers?
Number of working vehicles?
Year of vehicles
Condition of vehicles
Fuel you regularly have?
Fuel is sufficient?
Access to law library?
If no, what laws and other legal material do you have access to?

<b>FINANCIAL RESOURCES</b>	
Total budget (USD per 3 months)	
Budget allocation (per 3 months) for:	Staff
	Equipment

	Operations
	Training
System in place to manage finances?	
Financial reporting system?	
Finances independently audited?	
If no audit, is there another institution that monitors how the AGO spends money?	

<b>HUMAN RESOURCES</b>	
Number of DAGs in the office	Total
	Male
	Female
Experience of DAGs (years)	10 plus
	5 to 10
	Less than 5
Number of prosecutors in the office	Total
	Male
	Female
Experience of prosecutors (years)	10 plus
	5 to 10
	Less than 5
Number of registrars	
Number and positions of support staff	
Education level of DAGs/prosecutors	Islamic
	Secondary
	LLB
If LLB where did they receive it?	
What trainings have the DAGs/prosecutors undertaken?	
Who provided the training?	
How long were the trainings?	

What training do they need?
Job descriptions in place for each position?
If no, how do you orient new staff?
Policy for hiring/firing new staff?
AGO staff aware of this policy?
Staff performance evaluation system?
How often do you evaluate staff?
How do you let staff know about the evaluation?
Code of conduct for AGO staff?
AGO staff made aware of code of conduct?
DAGs, prosecutors and other support staff trained on the code of conduct?
If yes, how often?
Can the public make complaints on violations of the code of conduct?
If yes, do you make resolutions public?
How do you address issues of corruption in your office?
Number of staff fired for corruption in 2016/2017
Why?
By whom?
Prosecute cases of corruption committed by the public?
If yes, how often and who has been prosecuted? (Member of public or organization?)
Does your office hold internal meetings for DAGs, prosecutors and other support staff?
If yes, how often?
Does your office hold meeting with other justice sector actors like the courts, police and custodial corps?
If yes, how often?

<b>SYSTEMS OF GOVERNANCE</b>
Does the AGO have a defined mission, vision and core values?
Who drafts it?
Do staff and stakeholders know about it?
Are they carried out?

AGO has a strategic plan?
Do all AGOs have a common strategic plan?
Is there monitoring and review of the strategic plan?
Who conducts such a review?
Strategic plan influences allocation of resources?
System for timely case processing?
Length of average criminal case (weeks)
Are the roles of AGO staff reviewed to ensure efficiency?
How are case files/records kept?
Target number of cases each month?
Target formalized?
System to measure DAG and prosecutor performance?
Performance data reviewed regularly?
If yes, what is data used for?
Used to plan improvements?
Systems in place to manage the workload of DAGs and Prosecutors?
Collect other types of data?
If yes, what kind?
Report this data?
To whom?
Why?
Data made public?
How often?

<b>CASE STATISTICS</b>	
Cases lodged in the court in 2017	
Cases lodged in 2016	
Cases lodged in 2016 by type:	SGBV
	Juvenile

	Other
Types of other crimes prosecuted	
Classification of cases in 2016 by stage:	Acquittals
	Guilty pleas
	Dismissed for lack of evidence
	Settled
	Convictions

<b>OTHER</b>
Biggest challenges faced by the office?

## PRISONS

<b>INFRASTRUCTURE</b>	
Year building was built?	
Capacity of prison?	
Number of prisoners currently held?	
How do you record the number of prisoners?	
Prisoners kept in single or group cells?	
Number of individual cells?	
Number of group cells?	
How often are cells cleaned?	
Who cleans the cells?	
Different cells for male and female inmates?	
Different cells for juvenile inmates?	
Different cells for convicted prisoners and those awaiting trial?	
Different cells for dangerous criminals and low-level offenders?	
Different cells for adults and children?	
Different cells for those accused of terrorist crimes?	
Average prisoners sharing a group cells at	Large cell
	Small cell

normal times	
Average prisoners sharing a group cells during overcrowding	Large cell
	Small cell
Size of average cell (m2)	Large cell
	Small cell
Cells supervised at night?	
Cells have ventilation?	
What type of ventilation?	
Average number of windows per cell?	
Can prisoners open windows?	
Fans in cells?	
Do cells have a source of light?	
Is light source electric or natural?	
Facilities for solitary confinement?	
If yes, used regularly?	
WC for male and female?	
Separate WCs for juveniles and adults?	
If shared, do they use at different times?	
Is there a separate WC for prison guards?	
If shared, do they use at different times from prison guards?	
How often do they have access to the WC?	
How often are WCs cleaned?	
Who cleans the WC?	
Bathing facilities available?	
How often can a prisoner use them?	
Soap and shaving facilities?	
Regular supply of water?	
Days per week with water?	

Regular supply of electricity?
Days per week with electricity?
Regular internet access for staff?
Days per week with internet?
Where are prisoners belongings kept?
Library for prisoners to use?

<b>OTHER RESOURCES</b>	
Desks for all staff?	
Secure filing facilities available?	
Can filing facilities be locked?	
Sufficient stationery?	
Budget for stationery?	
Number of working photocopiers/printers?	
Number of working computers?	
Number of working vehicles?	
Amount of fuel (litres)	Prison regularly needs
	Prison regularly has
Method of communication available?	
Sufficient medical supplies?	
If no, what is lacking?	

<b>HUMAN RESOURCES</b>	
Staff employed by prison	Total
	Custodial
	Civil
Number of female guards employed?	
Do male guards supervise female prisoners?	
What kind of training do the custodial guards have?	
When is the training?	
Who provides training for guards?	
Experience of	10 plus years

custodial guards (years)	5 to 10
	Less than 5
Job descriptions in place for each position?	
Minimum qualifications required?	
All custodial guards employed full time?	
Custodial guards armed?	
If yes, with what?	
If yes, trained on how to use the weapon?	

### **SYSTEMS OF GOVERNANCE**

Is there a prisoner file management system?
If yes, what detail does it include?
How often is it updated?
Who updates it?
How is the record kept?
Prisoner files kept confidential?
Prisoner allowed to access his or her file?
System for prisoner to make complaint or request?
If yes, what is it?
System for regular inspections of the prison?
If yes, how often?
Who does the inspection?
Anything that inspectors are not allowed to view or access?
Who do you report death or disappearance to?
Who investigates such cases?

### **TREATMENT**

Can prisoners exercise?
If yes, how many times per day?
Prisoners allowed outside?

If yes, how many hours per day?	
What kind of exercise do they do?	
What kind of jobs are prisoners given?	
How often do they work?	
Compensated for their work?	
How are they compensated?	
What do prisoners sleep on?	
Who provides prisoners with sleeping material?	
How often is bedding cleaned?	
Who provides prisoners clothes?	
How often are clothes cleaned?	
What kinds of clothes are available for prisoners in cold season?	
What material is used to handcuff prisoners?	
Prisoners ever chained together?	
If yes, why?	
Prisoners ever restrained while in the cell?	
Who provides meals to prisoners?	
What type of food is served?	
Food serving	Times per day
	Quantity
Drinking water available at all times?	
How do prisoners get drinking water?	
When can prisoners be visited?	
How often?	
For how long (minutes)?	
Any other way prisoners can communicate with friends and family?	
Prisoners ever allowed out of prison to visit dying relatives or for funerals?	
Prisoners have access to newspapers or news broadcasts?	
Prisoners allowed mobile phones?	

Prisoners provided healthcare services?
If yes, what kind?
Is it free to use?
Where are prisoners taken in case of medical emergency?
Specific facilities for pregnancy, childbirth and childcare?
If a woman gives birth in prison, does the child stay with the mother or given to her family?
Medical files kept for each prisoner?
Files confidential?
Prisoner can access them at any time?
Each prisoner medically examined upon arrival?
If yes, what kind of things are checked and recorded?
Prisoners allowed to freely practice their religion?
Do prisoners have access to a mosque and other religious services?

<b>STATISTICS</b>	
Number of prisoners	Men
	Women
	Juvenile
Average age of adult prisoner?	
Average age of juvenile prisoner?	
Range of sentences being served?	
Main crimes prisoners have been charged with?	
Percentage of prisoners that are literate?	

<b>SANCTIONS AND DISCIPLINE</b>	
Type of discipline most commonly used?	
For how long?	
Does the prison use solitary confinement for 15 or more days as punishment?	
If yes, how often?	
Does the prison place inmates in constantly dark or lit room for punishment?	

If yes, how often?
Does the prison reduce inmates food or water as punishment?
If yes, how often?
Does the prison use restraints on inmate as punishment?
If yes, how often?
Does the prison keep records of disciplinary actions?
Do prisoners have access to legal assistance or judicial review for serious accusations?
Any rewards or privileges for good behaviour?
If yes, what?
How often are cells searched?
Records kept of searches?
Strip searches used?
If yes, done in private?
If yes, does a guard of the same sex always performs the strip search?

<b>RIGHTS</b>
How does prison ensure sentences are carried out?
A system in place for that?
Adjustments made for prisoners who are physically or mentally disabled or have special needs?
Untried prisoners entitled to anything that other prisoners are not?
Each prisoner got legal representation in his/her case?
If yes, private lawyer or legal aid?
If legal aid, who provided?
Does the lawyer or legal aid come to the prison?
Can prisoners meet privately with their lawyer without supervision?

Each prisoner given written or oral information on prison law and regulations?
Each prisoner given written or oral information on his or her rights in prison?
Each prisoner given written or oral information on right to access legal assistance?
Each prisoner given written or oral information on the consequences of breaking rules?
Any prisoner who has served their term but is still behind bars?
If yes, why?
Prisoners have opportunities for vocational training?
If yes, what kind?
If yes, who provides it?
Details of training
Does the training result in products that can be sold?

<b>OTHER</b>
Condition of infrastructure
Condition of prisoners viewed