

**RULE OF LAW REFORM INITIATIVES:
IMPACT ON GENDER JUSTICE IN FRAGILE,
CONFLICT-AFFECTED STATES**

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About the practice notes

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The Exchange also aims to explore and contribute to the evidence-base on the relationship between development and the rule of law. The Exchange launched a call for practice notes in May 2015 to this end. Among other things, these short documents (around 3,000 words) aim to provide new ideas, identify research gaps and discuss what works and what does not in rule of law interventions. The full list of practice notes touch on a wide array of topics, including corruption, access to justice, legal aid, prison systems and international justice mechanisms, and the impact and measurement of rule of law reforms. The list of published practice notes can be accessed online: <http://binghamcentre.biicl.org/ruleoflawexchange/research-to-practice>

There are two categories of practice notes in the series: '**Comments**' capture those that analyse a discrete rule of law issue or theme (e.g. access to justice) and '**Field Notes**' tend to be papers that present a new approach or framework to studying rule of law and/or provide new evidence (sometimes drawing on the author's own research).

'Rule of Law reform initiatives: Impact on gender justice in fragile, conflict-affected states'¹

COMMENT

War frequently coincides with the erosion of the rule of law (RoL), displacement, and widespread human rights violations.² Under these conditions, violations of women are exacerbated such that sexual and gender-based violence (SGBV) (the experiences of women often differs from those of men). There is now recognition that mainstreaming gender considerations into all aspects of RoL programming in conflict-affected states is key to sustainable peace and security. The United Nations Security Council (SC) has passed a number of resolutions on Women, Peace and Security (WPS) calling for an end to conflict-related SGBV and the need for women's participation in peace processes, including RoL reform.³ As a result, UN bodies are increasingly mainstreaming gender considerations across their RoL work.⁴ Whilst transitions present opportunities for reforming legal systems in a way that promotes gender justice, the question, is how effective and transformative RoL programmes are in ensuring better access to justice for women and girls.⁵ Drawing on field research from Timor Leste and Somalia, this paper explores the extent to which gender considerations are being integrated into RoL initiatives. It focuses on two activities that are characteristic of UNDP RoL programmes: i) women's access to justice in the context of SGBV 'one stop' centres and ii) mobile courts.

Timor-Leste and Somalia have plural legal systems, with weak formal justice beyond the capitals, and, in Somalia, within urban areas.⁶ The *Xeer* and *Adat/Lisan* customary systems in Somalia and Timor Leste respectively play important roles in regulating society, but do not always adequately protect females.⁷ In both countries, RoL actors must deal with customary

¹ This paper draws on a project funded by the Irish Research Council

² Kirsti Samuels, 'Rule of Law Reform in Post-Conflict Countries Operational Initiatives and Lessons Learnt' (2006) World Bank Social Development Papers 37
<http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf> accessed May 2016

³ SC Res 1325, UN SCOR, 55th sess, 4213th mtg, UN Doc S/RES/1325 (31 October 2000); See also, SC Res 1888, UNSCOR, 6195th mtg, UN Doc S/RES/1888 (30 September 2009); SC Res 1960, UNSCOR, 6453th mtg, UN Doc S/RES/1960 (16 December 2010); SC Res 1889, UNSCOR, 6196th mtg, UN Doc S/RES/1889 (5 October 2009); SC Res 2122, UNSCOR, 7044th mtg, UN Doc S/RES/2122 (18 October 2013)

⁴ Strengthening and Coordinating United Nations Rule of Law Activities - Report of the Secretary General, 66th sess, UN Doc A/66/133 (8 August 2011) [2]

⁵ See Niamh Reilly, 'Seeking gender justice in post-conflict transitions: towards a transformative women's human rights approach' (2007) 3(2) International Journal of Law in Context 155; Elena Baylis, 'Reassessing the Role of International Criminal Law: Rebuilding National Courts Through Transnational Networks' (2009) 50 Boston College Law Review 1; Christine Bell, Colm Campbell, and Fionnuala Ni Aolain, 'Justice Discourses in Transition' (2004) 13 Social and Legal Studies 305; Christine Chinkin, and Hilary Charlesworth, 'Building Women into Peace: The International Legal Framework' (2006) 27 Third World Quarterly 937; Laura Grenfell, 'Legal Pluralism and the Rule of Law in Timor-Leste' (2006) 19(2) Leiden Journal of International Law 305; Fionnuala Ni Aolain, Dina Francesca Haynes and Naomi Cahn *On the Frontlines: Gender, War, and the Post-Conflict Process* (OUP 2011); Vasuki Nesiah, 'Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice' (2006) 15 Columbia Journal of Gender and Law 799

⁶ M Anne Brown, 'Security, development and the nation-building agenda - East Timor' (2009) 9(2) Conflict, Security & Development 141

⁷ Asia Foundation, *Timor-Leste Law and Justice Survey 2013* (2013) 8; UNDP, *Breaking the Cycle of Domestic*

systems and understand cultural contexts.⁸ Moreover, as in other transitional societies, the promotion of gender justice relies heavily on partnerships between international actors, government and grassroots organisations.⁹

The programmes discussed here are premised on the principle that access to justice entails the ability to obtain an enforceable remedy through an affordable, linguistically and geographically accessible justice institution.¹⁰ Timorese and Somali women, particularly rural, face constraints, including lower literacy levels; lack of legal awareness and access to legal aid; geographic, linguistic and financial barriers; labour and child care responsibilities; and stigma.¹¹ This calls for gender-sensitive justice structures.¹²

An entry point for UNDP RoL programming has been the issue of SGBV, including domestic violence. In both Timor Leste and Somalia, 'one stop' centres have been established to address SGBV, provide medical assistance, shelter (in Timor), and link individuals to legal services. UNDP has also supported mobile courts, targeting rural communities, and to varying degrees, women.¹³ There is increasing support in RoL programmes for mobile courts in conflict-affected states, where the formal justice system remains weak rurally (e.g. DRC, Somalia, Chad, Pakistan, CAR, Sierra Leone and Timor Leste). The subject-matter jurisdiction of these courts varies, some focusing on mass human rights violations, others on ordinary domestic criminal/civil cases, and others on SGBV.¹⁴ In Somalia and Timor Leste, these courts are still recent so measuring impacts can be tentative only.¹⁵

Violence in Timor-Leste: Access to Justice Options, Barriers and Decision-making Processes in the Context of Legal Pluralism, Justice System Programme, UNDP Timor Leste, (2013) 12 ('Breaking the Cycle').

⁸ See Ryan Lincoln, 'Recent Developments Rule of Law for Whom?: Strengthening the Rule of Law as a Solution to Sexual Violence in the Democratic Republic of the Congo' (2011) 26 (1) Berkeley Journal of Gender Law and Justice 139; 'Gender Equality', United Nations Rule of Law, <http://www.unrol.org/article.aspx?article_id=28> accessed on 2 May 2016; Laura Grenfell, *Promoting the Rule of Law in Post-Conflict States* (Cambridge University Press, 2013); Eve Grina, 'Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings' (2011) 17(2) William & Mary Journal of Women and the Law, 435; UN Economic and Social Council, Report of the Economic and Social Council for 1997, UN Doc A/52/3 (18 September 1997) 28; Peggy Levitt and Sally Merry, 'Vernacularization on the ground: local uses of global women's rights in Peru, China, India and the United States' (2009) 9(4) Global Networks 446

⁹ UN Doc A/HRC/27/21, *Analytical study focusing on gender-based and sexual violence in relation to transitional justice* (30 June 2014) para 9

¹⁰ For instance, in Timor Leste, Portuguese and Tetun are the national languages, but much of the population uses other dialects, and few speak Portuguese. See also: Vivienne O'Connor, *Practitioner's Guide: Defining the Rule of Law and Related Concepts* (2015) 19 INPROL; UNDP, *Programming for Justice, Access for All: A Practitioner's Guide to a Human Rights-based Approach to Access to Justice* (2005)

¹¹ See Centre of Studies for Peace and Development, *Women's Access to Land and Property Rights in the Plural Justice System of Timor: Research Report 16*

<http://www2.unwomen.org/~media/field%20office%20eseasia/docs/publications/2015/01/cepad%20a2j%20research%20report_english_to%20print.pdf?v=1&d=20150105T053502> accessed on 2 May 2016.

¹² Erica Harper (ed), *Working with Customary Justice Systems: Post-Conflict and Fragile States* (2011 International Development Law Organization) 74

¹³ Human Rights Council, *Activities to support efforts by States to strengthen their judiciary system and administration of justice - Report of the High Commissioner for Human Rights*, UN Doc A/HRC/22/32 (11 January 2013); Eric Witte, *Putting Complementarity into Practice: Domestic Justice for International Crimes in the Democratic Republic of the Congo, Uganda and Kenya* (2011 Open Society Justice Initiative) 53

¹⁴ There has been little examination of the impact of these mobile courts. See, however, Monica Rispo, 'Evaluation of UNDP's Support to Mobile Courts in Sierra Leone, Democratic Republic of the Congo and Somalia' (2014 UNDP)

<http://www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP_ROL_Mobile%20CourtsEvaluation_Nov2014.pdf> accessed on 1 July 2015

¹⁵ Interviews Timor Leste, New York, Kenya and via Skype, 2013 and 2014, on file with the author.

1. Timor Leste

Timor Leste has a history of colonisation, occupation and conflict. Independence was formalised in May 2002. Although there was an outbreak of violence in 2007, the country is now relatively stable. The United Nations Transitional Administration in East Timor (UNTAET) engaged in transitional administration of Timor Leste from 1999 until 2002. Since then, UNDP has been active in supporting RoL reform, not least through the Justice System Programme (implemented jointly with the government) and the establishment of a Vulnerable Persons Unit (VPU) within the national police, addressing SGBV.

A. SGBV

Domestic violence is a significant problem in Timor Leste.¹⁶ In the past, it was kept within the family or customary system and largely normalised, but it was outlawed in 2010 through the Law Against Domestic Violence (LADV).¹⁷ The LADV provides for legal, physical, psychological and social support for people suffering from domestic violence as well as for legal awareness-raising, including through education and engagement with traditional leaders. It is largely the product of efforts of a Timorese grassroots organisations' network, with support from external actors such as the UN.¹⁸ UNDP provided technical and training support to the justice sector personnel on SGBV, and supported outreach sessions for the community in urban and rural areas on the LADV and the formal legal system.¹⁹ It supported gender-sensitive legal system reforms, including through advocating for mechanisms to encourage female entry to the legal profession. These initiatives were implemented in partnership with local actors, civil society and government.²⁰

Perceptions of domestic violence are slowly changing, but many perceive this and other human rights norms as Western concepts, making normative vernacularisation through domestic partnerships key to change.²¹ Implementation of the LADV has been hampered by limited reach of the formal justice system to rural areas, interference by customary authorities, and inadequate police training.²² Fear of divorce, ostracism, and financial implications prevent reporting. RoL programmes need to focus further on socialisation of the law within the justice sector, customary leaders and the community (urban and rural).²³ Some training of customary leaders has been conducted by the state and NGOs and it is slowly having an

¹⁶ SEPI, *Timor-Leste Beijing Platform for Action National Review and Appraisal Report*, (2014) 28.

¹⁷ SEPI, note 15, UNDP, *Breaking the Cycle* (note 6) 30; Under the customary system, the victim's family was compensated rather than the individual

¹⁸ Nina Hall, 'East Timorese Women Challenge Domestic Violence' (2009) 44(2) *Australian Journal of Political Science* 309, 316; UNDP Timor Leste, 'In-depth'

<http://www.tl.undp.org/content/timor_lestes/en/home/ourwork/democraticgovernance/in_depth/> accessed 8 December 2015

¹⁹ See, 'Members of Village Councils in Oecusse Municipality received training from JSMP on access to justice and women's rights' 2015 East Timor Law and Justice Bulletin

²⁰ Entry of females to the legal profession remains dismally low. See, UNDP Timor-Leste, *Strengthening the Justice System in Timor-Leste, Second quarter progress report* (July 2013) <[http://www.tl.undp.org/content/dam/timorleste/docs/reports/DG/JSPQ2Report_July%20\(final%20for%20PRINTING\).pdf](http://www.tl.undp.org/content/dam/timorleste/docs/reports/DG/JSPQ2Report_July%20(final%20for%20PRINTING).pdf)> accessed on 3 May 2016

²¹ One such organisation involved in the process of socialising prohibitions against domestic violence is the Timorese Association of Men against violence (AMKV).

²² UNDP, *Breaking the Cycle* (n 6) x.

²³ UNDP, *Breaking the Cycle* (n 6); Martha Finnemore and Kathryn Sikkink. 'International Norm Dynamics and Political Change' (1998) 52 *International Organizations* 887, 903.

impact in gaining support for LADV, including through finding links with traditional belief systems.²⁴

With the support of the GBV Referral Network and external donors, grassroots organisations have established safe houses, provided legal advice, monitored SGBV cases and connected survivors with support services.²⁵ The UN often contributes through advisory, capacity-building and financial support. The Organisation for Psychosocial Recovery and Development in East Timor (PRADET), a lead grassroots organisation, has established safe houses within the main hospitals in Dili and Suai, which link SGBV survivors with legal services; conduct forensic medical examinations using a protocol devised with the support of AusAID Justice Facility and UNFPA; and provide emergency shelter and psychological and other supports.²⁶ The lack of a forensic medical protocol made it virtually impossible to preserve evidence for subsequent SGBV prosecutions.²⁷ Numerous SGBV survivors are accessing 'one stop' shops and shelters.

B. Mobile Justice

Access to justice rurally, particularly for women, presents challenges. The mobile justice system in Timor Leste over the last few years has been run by the Ministry of Justice, with support from UNDP's Justice System Programme in Dili, Suai, Baucau, and Oecusse. The courts are embedded in the Timorese justice system with the same jurisdiction as the ordinary courts. The mobile teams include prosecutors, judges, public defenders, court clerks and other support personnel. Locations are chosen on pre-selected criteria, largely relating to the number of cases pending, gravity, and capacity to transport victims and witnesses.²⁸ In 2013, mobile courts in rural parts of Suai district dealt with 96 cases.²⁹ Legal awareness-raising was conducted for community members in parallel. The vast majority of cases tried by these courts are criminal, many involving domestic violence. Civil cases will often be dealt with within the customary justice system.³⁰ Mobile justice needs to be coupled with effective and accessible legal aid for women.³¹

Rural communities have gathered to observe court sessions, enabling dissemination of knowledge about the formal justice system, including how it operates and resolves cases of SGBV. However, a number of interviewees pointed to cases wherein SGBV victims' identities

²⁴ UNDP, *Breaking the Cycle* (n 6) xiv-xv.

²⁵ See further, List of Issues in Relation to the Combined Second and Third Period Reports of Timor Leste, CEDAW, 62nd sess, UN Doc CEDAW/C/TLS/Q/2-3/Add.1 (25 June 2015) para 46 ('CEDAW Report').

²⁶ The Protocol was adopted in 2010 by the National Institute of Health (MoH) and improved by government and civil society organizations, with technical assistance from AusAID's Justice Facility and UNFPA. Ibid.

²⁷ See Bu Wilson, 'Justice Sector Support Facility (JSSF): Fatin Hakmatek, the Referral Network and the Medical Forensic Protocol' (PRADET, January 2014). Victims will often be referred later onto longer term safe houses, or organizations providing training and livelihood support.

²⁸ Summary Report – Evaluation of UNDP Supported Mobile Court Interventions in Somaliland, Sierra Leone and the DRC (UNDP, July 2013) <<https://erc.undp.org/evaluation/documents/download/7233>> accessed on 10 April 2016

²⁹ Nina Hall, 'East Timorese Women Challenge Domestic Violence', (2009) 44(2) Australian Journal of Political Science 309

³⁰ This is likely due to weaknesses in the formal justice system, prioritisation of criminal cases due to conflict and civil unrest, lack of state capacity, and local preferences

³¹ There is a plan by the Ministry of Justice to pilot legal aid programmes based on a Mozambique model, with delivery support from Timorese law students. See, UNDP <<http://www.undp.org/content/dam/timorleste/docs/Procurement/IC%20Notice%20&%20ToR.pdf>> accessed on 10 April 2016

were not adequately protected (court session was held in public).³² For that reason, measures must be enacted to protect victims and witnesses.

These mobile courts had international personnel and judges working alongside national personnel, but this gradually reduced. UNDP is phasing out its support to allow for Timorese ownership, though it would be premature to think this is suggestive of a strengthened state capacity to deliver justice remotely. The legal system in Timor Leste is still highly fragile. In October 2014, the Prime Minister gave seven foreign legal advisors and judges just days to leave the country, alleging that they were the cause of the country losing a tax evasion case. This was widely criticised as an interference with the separation of powers and, some allege, motivated by fear on behalf of some government officials of facing corruption charges. Because this undermines capacity-building of national justice sector personnel by international counterparts, it has negative impacts on the trial of domestic violence cases, the ability to continue mobile courts, and case management.³³

2. Somalia

The various Somali regions have complex plural legal systems, underpinned by clan systems and a legacy of conflict. Somalia is regulated by customary and religious laws and a weak formal legal system. South Central, Puntland and Somaliland come under separate governance structures. RoL programmes in Somalia operate in what remains a highly volatile environment, where access to rural areas is difficult. Somaliland has developed along a separate trajectory and is relatively stable. It has had its own Constitution since 2001 as well as a democratically elected government.³⁴ From a demographic standpoint, 70% of Somalis reside in rural areas, which UNDP reaches primarily through local partners³⁵.

A. SGBV

SGBV is rampant in Somalia. The UN documented over 1,700 cases of sexual violence in IDP camps around Mogadishu between January and November 2012 alone.³⁶ UNFPA and UNDP

³² Interviews Timor Leste 2013 and 2014, on file with the author; see also, 'Timor Leste's Mobile Courts Promote Access to Justice', (IRIN News, 20 May 2014) <<http://www.irinnews.org/report/100108/timor-leste-s-mobile-courts-promote-access-to-justice>> accessed on 16 July 2015

³³ Gabriela Knaul, *UN human rights expert urges Timor-Leste to reconsider dismissal of international judges and prosecutors* <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15339&LangID=E>> accessed on 24 July 2015; 'Dismissal of international officials and advisors in the Timor Leste Judicial Sector: An Analysis of the constitutionality, legality and impact of Parliamentary Resolution No. 11/2014 and Government Resolutions No. 29/2014 and 32/2014, December 2014' (Judicial System Monitoring Programme, 2014) <http://www.jca.asn.au/wp-content/uploads/2013/11/P52_02_14-JSMP-report-re-Timor-leste-Dec-2014.pdf> accessed on 7 July 2015

³⁴ The Somali Compact (Federal Republic of Somalia, 2013) 20 <http://eeas.europa.eu/archives/new-deal-for-somalia-conference/sites/default/files/the_somali_compact.pdf> accessed on 6 June 2015

³⁵ 'Mobile Courts Workshop Opens in Mogadishu' (UNDP Somalia, 16 December 2015) <<http://www.so.undp.org/content/somalia/en/home/presscenter/pressreleases/2015/12/16/joint-press-release-mobile-courts-workshop-opens-in-mogadishu.html>> accessed on 5 January 2016; UNDP Somalia Country Programme 2011-2015 <http://www.undp.org/content/dam/somalia/docs/Project_Documents/Democratic_Governance/UNDP_CPD%20Booklet%20A4_AB_PM.pdf> accessed on 5 January 2016

³⁶ Legal Action Worldwide (LAW), *Legal Aid Providers Supporting Gender Based Violence Survivors in Somalia: Report and Recommendations* (LAW, 2014) 32 <<http://legalactionworldwide.org/wp-content/uploads/2014/11/Legal-Aid-Providers-Supporting-Survivors-of-Gender-Based-Violence-in-Somalia-2.pdf>> accessed on 18 April 2015

have been prominent actors in strengthening the justice sector to better prevent and respond to SGBV. They have assisted with establishing case management systems, reporting mechanisms, and legal reform, in partnership with the government. Actors such as the UN and foreign states are funding or otherwise supporting one-stop centres, mobile courts, community and elder awareness raising on SGBV, including through local NGOs.³⁷ They are also providing capacity-building for justice sector personnel dealing with SGBV.³⁸

With UNDP support, women and children's desks/'one-stop' centres have been set up in various locations in Somalia, providing legal, medical and psychological supports to SGBV survivors. According to NGO Legal Action Worldwide (LAW), at least 13 NGOs were involved in providing legal aid to SGBV survivors as of 2013. Partnerships with national NGOs and civil society organisations are fundamental to RoL programme targeting SGBV. In Puntland, a SGBV referral pathway was established in 2013 to link UNDP and UNFPA programmes to a network of NGOs and civil society organisations to connect survivors of SGBV with police and health services.³⁹

Reporting SGBV is highly stigmatised. SGBV is predominantly dealt with in the xeer system, which frequently does not adequately protect women.⁴⁰ Links and jurisdictional divisions between formal, religious and customary systems need to be addressed. Informal systems which operate *de facto* cannot be ignored and replaced with a dysfunctional formal legal system with little rural reach. Moreover, strengths in traditional legal systems might be drawn on to protect women and girls. Training needs to be provided to customary actors on gender justice. There have been efforts to do this which have engaged some support of customary leaders in addressing SGBV.

UNDP, LAW, UNFPA and UNHCR have provided technical support to government in drafting the Sexual Offences Bill in Somaliland, Puntland and South Central.⁴¹ There has been an increase in the number of rape cases reported.⁴² In Somaliland, 326 SGBV survivors were provided with assistance by 'Baahikoob', the sexual assault referral centre. 171 SGBV cases went to Court in 2013, with 54 successful prosecutions.⁴³ In South Central, only 2 in 1,600 rape instances reported in 2013 resulted in convictions. These low prosecution rates are due to factors such as lack of capacity to collect and store evidence, lack of coordination between

³⁷ See, eg, 'UK's National Action Plan - implementation of Security Council Resolution 1325' (UK Department of International Development and Department of Defence) 19 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385958/141211_-_FCO726_NAP_Implementation_Plan_FINAL.pdf> accessed on 1 February 2016

³⁸ Interviews New York, Kenya and via Skype, 2013 and 2014, on file with the author; See also, UNDP, *UNDP Somalia's Gender Equality and Women's Empowerment Strategy (2011-2015): Progress Report 2013* <[%202013.pdf](http://www.undp.org/content/dam/somalia/docs/Project_Documents/Womens_Empowerment/Somalia%20Gender%20Progress%20Rpt.%202013.pdf)> accessed on 2 August 2015 ('Somalia Gender Progress Report').

³⁹ See, Somalia Gender Progress Report (n 37) 16-17.

⁴⁰ Indeed, females are often represented by male relatives in dispute resolution. Maria Tungaraza, 'Women's Human Rights in Somaliland' (NAGAAD, 2010) <<http://www.progressio.org.uk/sites/default/files/Womens-human-rights-in-Somaliland.pdf>> accessed on 7 June 2015.

⁴¹ LAW (n 35).

⁴² This was partly to replace outdated legal provisions based on a 1930's Italian Penal Code 21 men were convicted of gang raping two women in Hargeisa in 2013, with 20 sentenced to 10 years in jail. Somalia Gender Progress Report (n 37) 3

⁴³ *Ibid* 4.

services, threats to the survivors and legal aid providers,⁴⁴ lack of forensic medical examinations,⁴⁵ interference by customary authorities and clans, security, lack of justice sector SGBV training, lack of female legal practitioners, etc.⁴⁶ Female integration into the legal profession and police has been prioritised under the Somaliland National Justice Reform Strategy and Action Plan (which is a partnership between the Somaliland justice and security sector and the UNDP's Rule of Law and Security programme).⁴⁷ UNDP has been supporting the Somaliland Women's Network (NAGAAD) in improving capacity of paralegals and gender sensitisation amongst service providers, in addition to the establishment of a Judicial Monitoring Tool to monitor SGBV cases. Progress is less evident in other regions of Somalia. A SGBV unit has been established within the Puntland police Criminal Investigation Department.⁴⁸

The above efforts, according to some interviewees, are driving some subtle shifts in access to formal justice for SGBV survivors, making it more approachable.⁴⁹ That stated, informal justice systems remain where the majority of disputes are resolved. Rights protection in the Somali customary system is influenced by gender but also intersects with clan affiliations. Women and girls from minority clans and IDP camps are particularly vulnerable.

B. Mobile Justice

Access to justice for women and girls in rural communities and IDP camps is severely restricted by geographical, security, financial, and other constraints. Mobile courts have been embedded in the Somali legal system since the 1970s, but have fallen into disuse. *Akil* courts also had an element of mobility, with parts of Somalia being traditionally nomadic. The Federal Government's Ministry of Justice is being supported by UNDP in establishing the Joint Rule of Law Programme mobile courts in Mogadishu and throughout South Central.⁵⁰ However, these have been hampered by security concerns, inadequate transportation, and lack of staff and resources. In South Central, disturbingly, there have been high incidences of prosecution of those alleging rape by government security forces for defamation of government.⁵¹ Partnership in institutional development between UNDP, the Somaliland government and its people is set out in the Somaliland Special Arrangement.⁵² In part because of this, UNDP supported mobile courts in Somaliland are functioning better than in

⁴⁴ 'Engaging communities in promoting women's rights, security and peace in South Central Somalia' (Seminar, CISP and International Alert, 30 October 2015)

⁴⁵ Ibid.

⁴⁶ LAW (n 35) 30

⁴⁷ In Somaliland, there has been an increase in the number of women working in the justice sector from 5 in 2008 to 75 in 2013, not least through UNDP scholarships. Ibid 58; Somalia Gender Progress Report (n 37) 5; *A New Deal for a New Somalia: UNDP Annual Somalia Report* (UNDP, 2013) 15; *Strengthening the Rule of Law in Crisis-affected and Fragile Situations* (UNDP, 2011) 100-101 <<http://www.ndrf.org.nz/assets/UNDP-Strengthening-the-Rule-of-Law-report.pdf>> accessed on 2 June 2015

⁴⁸ LAW (n 35)

⁴⁹ Interviews New York, Kenya and via Skype, 2013 and 2014, on file with the author

⁵⁰ 'Mobile Courts Workshop Opens in Mogadishu' (UNDP Somalia, 16 December 2015)

<<http://www.so.undp.org/content/somalia/en/home/presscenter/pressreleases/2015/12/16/joint-press-release-mobile-courts-workshop-opens-in-mogadishu.html>> accessed on 5 January 2016

⁵¹ Ibid 2.

⁵² The Somali Compact (Federal Republic of Somalia, 2013) 20 <http://eeas.europa.eu/archives/new-deal-for-somalia-conference/sites/default/files/the_somali_compact.pdf> accessed on 6 June 2015

other parts of Somalia.⁵³ In 2013 alone, Somaliland UNDP-supported mobile courts heard 1,824 cases. The Somaliland Lawyers Association provides legal aid, accompanying mobile courts teams.⁵⁴ Yearly evaluations are conducted by justice sector personnel and mobile court teams, and the most recent review was composed of almost one-third women.⁵⁵

542 women accessed mobile courts during 2013 alone throughout Somaliland and Puntland.⁵⁶ The mobile courts in Somalia have dealt with high numbers of civil and criminal cases.⁵⁷ They often apply a mixture of Sharia and customary law and may come at the request of customary elders.⁵⁸ In Somaliland, UNDP has attempted to form linkages between mobile justice and the Xeer system, increasingly resulting in elders forwarding appropriate cases to the formal legal system and assisting with enforcing those decisions. Nevertheless, elders have also been known to interfere with SGBV cases. Key grievances in Somalia and Somaliland relate to land disputes, SGBV and serious criminal cases.⁵⁹ The mobile courts are enabling greater access to justice for vulnerable people in isolated parts of Somalia, including women, children, minorities and IDPs. However, the number of SGBV cases being brought by women to the mobile courts remains minimal.⁶⁰

3. Conclusion

UN Security Council Resolutions on WPS are having an impact on RoL programming at the UN level. UNDP has introduced a Gender Equality Seal, awarding UNDP country office performance awards for gender mainstreaming. Moreover, UNDP has also adopted a country specific Gender Strategy for integrating gender considerations across programmes.⁶¹ It has also rolled out sets of gender output indicators, which are included from the design phase of the programmes.⁶² Yet implementation, successes and failures are premised on government and civil society partnerships, local buy-in and local ownership.⁶³ These partnership dynamics

⁵³ *Draft Somaliland Special Arrangement Annual Report* (Republic of Somaliland Ministry of National Planning and Development, 2014) 43

<http://slministryofplanning.org/images/7HLACF/DRAFT%20Somaliland%20Special%20Arrangement%20Annual%20Report%202014_RDPB.pdf> accessed on 6 June 2015.

⁵⁴ Interviews New York, Kenya and via Skype, 2013 and 2014, on file with the author; See, also, 'Mobile Courts Speed Up Justice in Somaliland' (Somaliland Times, 2011) <<http://www.somalilandtimes.net/sl/2011/483/8.shtml>> accessed on 10 June 2015.

⁵⁵ UNDP, 'Access to Justice: What is the Project About' <http://www.so.undp.org/content/somalia/en/home/operations/projects/crisis_prevention_and_recovery/Access_to_justice.html> accessed on 11 November 2015.

⁵⁶ 'UNDP Somalia Gender Equality and Women's Empowerment: Progress Report (2011-2015)' (UNDP, 2013) 4 <<http://www.undp.org/content/dam/somalia/Reports/Somalia%20Gender%20Progress%20Rpt.%202013.pdf>> accessed on 11 November 2015.

⁵⁷ UNDP Somalia (n 34)

⁵⁸ Ibid.

⁵⁹ Interviews conducted in Kenya, New York and via Skype in 2013/2014, on file with the author; See also, the Somali Compact (n 33) 8

⁶⁰ Interviews conducted in Kenya, New York and via Skype in 2013/2014, on file with the author; Rispo (n 13) 14; In Somalia, mobile legal aid services have also been established; 'Somalia Annual Report 2013' (UNDP, 2013) 10 <<http://reliefweb.int/report/somalia/somalia-annual-report-2013-new-deal-new-somalia>> accessed on 11 November 2015

⁶¹ Ibid; UNDP held a staff workshop titled 'Overcoming Resistance to Gender' in which a handbook on mainstreaming gender in programming was presented. Somalia Gender Progress Report (n 37) 8

⁶² A gender mainstreaming guide was produced by UNDP to guide programme design

⁶³ See, *Analytical study focusing on gender-based and sexual violence in relation to transitional justice*, UN Doc A/HRC/27/21 (30 June 2014); UNDP in Somalia has adopted a Community Capacity Enhancement – Community

are clear both with respect to 'one-stop' centres and mobile courts. They require activities such as public dialogues, gender training, and engagement with traditional authorities.⁶⁴ As in many conflict-affected, plural legal states, the role of pre-existing customary justice remains important in the lives of both Somalis and Timorese. When feasible, linkages and partnerships should be established.

Support for one-stop centres and SGBV referral networks enhance SGBV survivors' access to the justice system but also, more holistically, other psycho-social, medical, and (in Timor) livelihood supports. Access to courts without these supports is unlikely to be attractive to SGBV survivors who have the possibility of losing access to livelihood for their families and themselves, and even access to their children. Local partners, with the support of actors such as the UN, are key to the delivery of SGBV services, particularly in volatile environments where accessing the justice system or medical care is risky for SGBV survivors and service providers alike. Locals have greater cultural and linguistic awareness. They may therefore be more approachable and discretely accessed.

Mobile courts have much potential for increasing access to justice for rural women (and men). It may also contribute to decentralising justice and imparting knowledge about the formal legal system and laws/norms, including on SGBV criminalisation. There appears to have been greater success with this in Timor Leste than Somalia, likely due to greater stability and local buy-in. However, they often face problems of sustainability, infrastructure, resources, and the absence of victim and witness protection measures, security, and enforcement of decisions. This is broadly related to state capacity, control and enforcement powers in rural areas.⁶⁵ Moreover, in Somalia and Timor Leste, mobile courts have operated on an *ad hoc* basis, which undermines planning and predictability for communities. Sustainability requires local customary and government buy-in capacity to deliver and local financing in the longer term. The budget of mobile courts is entirely funded by UNDP throughout Somalia. In Timor Leste, UNDP still provides some funds, but the system is largely nationally owned. The need for UNDP to plan for effective exit strategies is apparent, but RoL programming often requires longer-term engagements. Care when providing financial support must be taken to keep any per diems in line with local pay standards.

One-stop centres and mobile justice mechanisms offer increased access to justice for SGBV survivors and rural women. They are also useful RoL programming tools where appropriate safe-guards are in place and local contexts accounted for. Care must be taken not to do harm by promising justice but failing to deliver. RoL programmes, such as one-stop centres and mobile justice mechanisms need to be regularly monitored for effectiveness in increasing access to justice for women and girls, in particular in remote areas and IDP camps, including through local perception surveys and consultations.

Conversations Methodology to engage communities in identifying their own problems and priorities. Somalia Gender Progress Report (n 37) 10-11, 18-19. Grina (n 7) 436

⁶⁴ Finnemore and Sikkink (n 22) 898-899

⁶⁵ See, eg, UNDP, 'Access to Justice: What is the Project About' <http://www.so.undp.org/content/somalia/en/home/operations/projects/crisis_prevention_and_recovery/Access_to_justice.html> accessed on 11 November 2015



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