

# Journal of Somali Studies (JoSS)

Research on Somalia and the Greater Horn of African Countries

Indexed by: SCOPUS, IBSS, EBSCO, COPERNICUS, ProQuest, J-Gate and SABINET

Volume 12, (Number 2), August, 2025  
Pp 149-168

## Access to Justice and the Right to a Fair Trial in Somalia

DOI: <https://doi.org/10.31920/2056-5682/2025/v12n2a7>

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### ***Abstract***

Access to justice and the right to a fair trial are the capstones of human rights and key instruments for the realisation of human rights, especially for suspects and accused persons waiting for trial. The study describes the challenges that led the judicial institutions to infringe litigants' rights to a fair trial. The objective of this research was to access to justice and the right to fair trial in Mogadishu, Somalia. The study specifically seeks to account for the national and international instruments pertaining to access to justice and fair trial and also determines challenges affecting access to justice and fair trial in Somalia. Mixed methods of data collection were used. The study was employed a descriptive approach that collected qualitative and quantitative primary data through questionnaires and structured interviews with the respondents. Questionnaire used structured questions, including both open and close-ended formats. The data was analysed and summarised using frequency distribution and descriptive tables. Despite access to justice and the right to a fair trial as guaranteed by international, regional and national laws, there are impediments to realise access to justice in the judicial system due to legal and practical loopholes. The study findings reveal violations of the rights of the accused persons, judicial corruption, high court fees, and delayed court hearings coupled with a weak justice system, low capacity of judges, prosecutors, and law enforcement bodies, which resulted in the distrust of the formal justice system by the public. Finally, the study recommends strengthening the institutional capacity of judicial officers, prosecutors, and lawyers, and providing legal aid to those who cannot afford it. If this is done, the rights of the accused persons will ultimately be protected, promoted and observed. The study also recommends raising public awareness through religious and cultural platforms to educate people about legal systems and procedures, enabling them to conveniently access justice, fair trials, and their legal rights.

***Keywords:*** *Access to justice, Fair trial, Human rights, Mogadishu, Somalia*

### **Introduction**

Considering any vision regarding system of access to justice human rights protection, theories of change set assumptions as to the dynamics that bring significant changes. In this regard, the modalities of access to justice and the right to a fair trial are probably inspired by three different levels: global, continental and national levels. ICC, once a seemingly idealistic idea in the early 1990s, became a reality with the adoption of the Rome Statute in 1998. Therefore, it might be regarded as setting an

example as a process by which the international community indicates the spans of its jurisdiction and powers and handles war crimes and crimes against humanity that could be adjudicated by international courts, with a dream-come-true optimistic vision in which dozens of crimes are now subject to the court's jurisdiction. Prosecuting a few individuals for heinous crimes is far less ambitious than establishing a world court for human rights (Alston, 2014).

On the other hand, victims of international crimes, which consist of serious human rights violations, may hold procedural roles as victim participants in or parties to reparations claims before the International Criminal Court appeals. At the ICC, victim participants cannot appeal final or interlocutory decisions. However, they can display and express their concerns in these appeals and exercise procedural rights, mostly by finding competent lawyers. For those victims seeking remedies, post-conviction reparations proceedings can appeal reparations orders through their lawyers. They are entitled with procedural rights in reparations appeals. Generally, the ICC's practice and procedure on victims in appeals align with international human rights law standards. Victims' procedural rights as participants in or parties to ICC appeals enable victims of atrocities to realise their rights to access to justice, participate and be heard in fair criminal proceedings, claim and obtain reparations in their time-consuming ICC appeals. The right to a fair trial appears in Article 14 of the 1966 ICCPR, which is ratified by 172 state Parties, including Somalia. As a result, Somalia has obligations to respect, protect, and fulfil the rights recognised by the ICCPR, including the right to a fair trial of a person charged with a criminal offence. Both the provisional federal Constitution and the Criminal Procedure Code contain provisions guaranteeing accused rights, closely mirroring those in the ICCPR. Although the evolving political landscape, ongoing insecurity, and challenges in legal infrastructure within Somalia further complicate the effectiveness of the judiciary system (Mohamud et al., 2025).

The right to a fair trial is further recognised as a fundamental human right in some regional and international documents: Art. 10 of UDHR, ICCPR Art.14; ECHR Art. 6 paragraph 1, and ACHPR Art. 7. Notably, these documents proclaim the right to a fair trial in both criminal and civil cases. However, it has uplifted the regional human rights system at large (Udombana, 2000). In addition, the Principles on Fair Trial in Africa clarify that the impartiality of the appeals tribunal would be undermined if it included a judge who participated in or decided the case

before a lower court. The right to appeal is likely violated if the higher reviewing body is a member of an executive body rather than an appellate jurisdiction (African Commission, 2000).

At the national level in the context of Somalia, in addition to the two major legal systems, meaning common law and civil law as well as customary clan and Islamic laws still govern several aspects of life in Somalia, including socio-economic, political environment and cultural tendencies. Despite the fact that Somali people lived under socialist laws for almost 21 years, this did not terminate their clinging belief in sharia and customary law. In the 1960s post-independence era, four significant codes and laws were promulgated to integrate judicial, commercial, and financial institutions. Legislation of this sort determined revenue and taxes and, in principle, extended from Southern Somalia to the self-declared independent state of Somaliland and autonomous Puntland. Unlike the 1960s, Somalia today lacks a strong central authority, existing as a fragile state where governance primarily stems from clan law and religious courts; central government institutions like parliament, courts, army, and police are largely non-functional (Maru, 2008). Somalia began legal reforms and drafting its provisional constitution only after the Transitional Federal Government (TFG) was established in November 2004.

## **Statement of the Problem**

A fair trial of the judiciary is crucial when it comes to distributing justice among the litigants as everyone wants to get his or her rights and win the case. A fair trial is the last resort of ensuring justice for both the victim and the criminal. However, often fails to deliver justice due to weak procedural and substantive administration, coupled with existing loopholes. These malpractices ultimately lead to case backlogs, eroding public trust in the country's formal justice system. If the administration of justice is not framed out of these complications, people will be driven into despair and shift seeking justice by taking the law into their hands. On the other hand, "If it is true that justice delayed, justice denied, it is also equally true that justice hurried, justice buried" (Chowdhury, 2004).

While waiting for trial, a lot of suspects remain in prison. The reasonable justification for why they remain in detention is that investigation of their cases is yet to be concluded. Sometimes, prosecutors need ample time to investigate incidents and gather clear evidence. Nevertheless, some of the accused remain in prison custody

for almost a decade without bringing them before a court hearing (Agbonika, 2014). Article 35(5) of the federal provisional constitution of Somalia provides that a person under custody must be brought before the judiciary within 48 hours from the time of arrest. Paragraph 1 of the article states the accused is presumed innocent until proven guilty by a final court judgment. Moreover, paragraph (7) of the article states that every person brought before a court of law for an alleged criminal offence is entitled to a fair trial, yet military courts tried civilians and defendants in military courts who are accused of being a member of Al-Shabaab<sup>1</sup>, and they rarely had legal representation or the right to appeal. The study is imperative for triggering the justice provision and the preservation of litigant's rights to comply with the minimum international human rights standards for administering justice. Therefore, this study seeks to examine access to justice and the right to a fair trial in Somalia.

## **Purpose of the Study**

The main purpose of this research is to study access to justice and fair trial in Mogadishu, Somalia

## **Specific objectives**

- To account for the national and international instruments pertaining to access to justice and fair trial in Somalia
- To determine challenges affecting access to justice and fair trial in Somalia.

## **Significance and Scope of the Study**

The study will contribute to the body of knowledge about the accessibility of justice and the fairness of trials in Somalia by engaging in a deep analysis of how ordinary people access justice and expect a fair

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1 Al-Shabaab is an extremist terrorist group that publicly pledged loyalty to al-Qa'ida in 2012. The group works to overthrow the Somali Federal Government, expel foreign forces from Somalia, and establish a fundamentalist Islamic state as they claimed (Ahmed et al., (2024).

trial. The findings will also contribute to the literature for academicians interested in further studying justice and fair trials in the country.

In this way, this research is anticipated to dig deep and trigger and the application and compatibility of plural justice systems in the country as well as justice reforms to ensure that it complies with international and domestic human rights obligations. This study covered the period from mid-2023 to the end of 2024. The study seeks to investigate judicial proceedings of Mogadishu district courts, regional court, appeal court, and Supreme Court. The research was conducted in Mogadishu because of its significance as the capital city of Somalia with a large population base.

## **Literature Review**

### ***Empirical Review on Justice and Fair Trial***

From the public perspective, it is assumed that access to justice is reserved for the rich, from whom the poor suffer. Predominantly, before advocating for universal equality in justice, access to justice primarily focused on aiding the poor (UNDP, 2004). The proposed mechanisms for strengthening the rule of law and international protection of human rights are also relevant to access to justice. Access to counselling and legal assistance is such a mechanism that has been developed in this regard. Furthermore, any failure to punish perpetrators can undermine the rule of law and bring mistrust of the law by the poor. On the other hand, Zimerman et al. (2010) found that the denial of access to the justice system is owing to a lack of financial resources to consult and hire a lawyer.

Even though the rule of law is an integral part of justice administration for adjudicating society, its effectiveness depends on citizens' access to justice. According to Dias (2009), acknowledges that with most general legal concepts, there is no specific definition of access to justice. The author adds that the term access to justice describes various provisions that protect and promote equality before the court and the right to a fair trial. Most people consider access to justice as access to courts and getting legal representation from lawyers in court. Cappelletti (1992) defines access to justice for historically marginalised groups as their ability to obtain legal advice for both in-court and out-of-court matters. The fact that people have the right to access justice does not necessarily mean that they indeed have access to justice. Access to

justice is a broad term that refers to diverse issues that affect the ability of people or communities to endeavour and receive restitution when their human rights have been violated. These matters are not limited to the formal legal system only; they include access to the informal justice system as well. Moreover, Robb-Jackson (2012) supports the observation of Dias that there is no legally agreed-upon definition of access to justice as it varies widely in the literature, and that there has lately been a shift from a one-dimensional focus on the procedural aspects of access to justice to a broader assessment of the legal system.

Robb-Jackson (2012) also points out that a definition of access to justice comprises three main aspects. Access to justice requires both citizens and service providers to possess adequate knowledge: citizens need to know their rights and how to access them, while providers need the expertise to offer effective services. The second is the environment, as government systems and infrastructures must be effective and easily accessible for service delivery; and the third is the quality of the service. For this study, the similar definitions from Dias and Robb-Jackson are adopted. According to Francioni (2007), the right of access to justice is a basis of human rights protection. It is of fundamental importance, as in international law any domestic legal system, that respect for and protection of human rights can only be guaranteed through the accessibility of effective judicial remedies.

The development of international human rights law is not the only domain of international courts and quasi-judicial bodies. Domestic courts also play a role. Access to justice remains a challenge in many African countries. However, if a litigant succeeds in bringing a human rights claim, courts should take the opportunity to participate not only in the application of domestic law but also in the development of international human rights law (Killander et al., 2010). Given Somalia's international obligations, post-conflict reconstruction needs an explicit, currently missing, international law component. Somalia's post-conflict priorities cannot be adequately addressed without the application and explicit reference to international law. Adopting an international legal framework will accelerate reconstruction, ensure stability, and facilitate international community participation (Giorgetti, 2014). Access to justice in Africa includes access to traditional justice systems as well as formal and informal systems (Stapleton, 2007). On the one hand, Wojkowska (2006) describes the formal justice system as one that includes a constitutional civil and criminal justice system. East and Central African countries have inherited English common law, and South African countries such as

Zambia and South Africa have inherited Roman-Dutch law or the codified civil law of Western nations. A fair trial, as a legal concept, establishes rules and procedures to balance parties and ensure judicial independence and impartiality (Udombana, 2006).

## **Review on Access to Justice and Fair Trial in Somalia**

After three decades of war and conflict, Somalia's national criminal law is in the process of modernisation. Its basic element is the Criminal Code of the Republic of Somalia, which was passed as a legislative decree in December 1962 but entered into force on April 3, 1964. This penal code has been in force for almost 60 years. Significant changes occurred during this period as criminal law theory made remarkable advances. New crimes and complex forms of criminal activity, such as terrorism, also emerged (Girginov, 2019). The judicial system of any country can be divided into formal and informal justice systems, where the former is subordinate to the state and the latter may or may not be subordinate to the state. However, as both justice systems provide access to justice, the informal system is seen as a threat to the formal justice system (Ahmad, et al., 2021).

In addition to that, the term Sharia refers to certain principles that make up Islamic law. The Arabic word sharia means the clear, well-trodden path to water, but within the legal term it refers to the laws revealed by Allah. Sharia deals with many aspects of a person's public and private life, and from the beginning, Sharia has been interpreted by independent lawyers who base their opinions on many things, including precedents. Sharia Laws come from four main sources: The Quran, as the word of Allah, along with the Sunna (Prophet Muhammad's deeds and wisdoms), the consensus of legal experts and the Prophet's Companions, and the principle of legal justification by analogy, form the foundational sources (Wahid, 2018).

In present-day Somalia, Sharia is formally written down and applied in every territory. Despite major political differences between the federal government and federal member states, similar judicial systems based on the structures and laws of the previous Somali government have been introduced in these federal member states. By and large, the law de jure in Somalia is a confluence of legal institutions from English, Italian, Islamic and common law. While Shari'a is often just one element of the law, Shari'a and customary law remain connected from a social point of view. The differences lie in the respective sources and levels of

legitimation: Sharia refers to Allah, and customary law belongs to society (Abdulkadir & Ackley, 2014).

## **Research Methodology**

This study will use a mixed-methods approach, collecting both primary and secondary quantitative and qualitative data. The combination of primary and secondary data is a very effective approach for the particular study, as the secondary data narrows down the scope of the research and primary data leads to deep qualitative findings. The quantitative approach is employed to provide a more comprehensive analysis of the research findings (Creswell, 2009:4).

## **Sample Size and Procedure**

The target populations of this study were judicial/legal personnel, police officers and accused/suspects. The researchers selected five districts of the city, namely Hamarweyne, Waberi, Hawlwadag, Hamar Jajab, and Karan. Researchers selected these districts due to their higher population density compared to other Mogadishu districts. Additionally, the study used triangulation of quantitative and qualitative methods to conduct the research. To determine the sample size for this study, Arikunto (2005) Arikunto (2005) states that for populations over 150, researchers should sample 30%. Based on Arikunto's statement, the researchers collected 60 respondents. We conducted a data clean-up and found and removed 10 responses that were missing. Thus, this study took the remaining 50 respondents as a sample. The selected respondents for questionnaire and interview were designated into two categories: twenty for legal personnel consisting of judges, prosecutors and lawyers, and thirty respondents from accused persons. The researchers considered the suitability and relevance of participants as criteria to locate participants. The quantitative and qualitative data gathered through questionnaires and interviews were transcribed and analysed.

## **Data Collection and Analysis**

The study employed mixed data collection instruments to generate qualitative and quantitative data to meet the desired outcome stated under the objective of the study. The data collection consisted of Observation, Questionnaire, and Interviews. The observation is a

method of data collection in which researchers observe within a specific research field. The purpose of using the observation was to provide a brief account of the context of the data source, to facilitate an understanding of the setting in which the respondents work and to provide information about the study. The questionnaire, designed for scheduled quantitative interviews, is mostly self-administered and uses both open and closed-ended questions for the access to justice study respondents. The purpose of the questionnaire was to compare the reviewers' comments and the authors' perception of the problems. The questionnaire focuses on meeting the research objectives and answering the research questions.

The data collected from the respondents was analysed to give context to the quantitative and qualitative findings and also to identify common themes. Data from key informant interviews was coded according to the generated themes and then analysed. Analysis of quantitative study was used in SPSS version 20. Analysis of qualitative data was done in basic descriptive analysis of the summarised findings and extraction of key issues raised by respondents. The Interview was used to collect information through oral or verbal communication between the researchers, and the respondents and the consent of the interviewee was ensured before conducting the interview.

## **Ethical Consideration**

All questionnaire respondents and interviewees were informed of the study's objectives and asked for their consent to participate. The researcher introduces himself and explains the purpose and the institutional context of the study. Interviewees were also informed of confidentiality rules and that their data would be used exclusively for this study. During such process, the participants are informed of the purpose of the study and are assured the confidentiality of their responses.

## **Data Presentations and Findings**

All the participants of the study were adults, there were no minors as adult are responsible enough to provide the concrete results that the study sought. This indicates the respondents' maturity, ensuring the accuracy of the study's information.

**Table 1: Demographic Information of the Respondents from legal personnel**

Table one above presents the demographic profile of the respondents.

Variable	Frequency	Percentage
Gender		
Male	13	63.2
Female	7	36.8
Total	20	100.0
Age		
18-25	7	36.8
26-49	10	52.6
50 and above	3	10.5
Total	20	100.0
Education		
Secondary School Certificate	0	0.0%
Bachelor Degree	12	63.2
Master's Degree	8	36.8
Total	20	100.0
For how long have you serving in the legal system?		
Less than 5	11	57.9
5-10	6	26.3
11-15	2	10.5
Above 15	1	5.3
Total	20	100.0

Most respondents were male, at 63.2% compared with female respondents at 36.8%. This shows that males were more outnumbered in the responses than females whose participation in the legal system is less than that of male here in Somalia. The second demographic question was the age of our respondents. The age of respondents who participated in the study shows that the majority of respondents were between 26 and 49 years old, with 52.6% followed by 18-25 with 36.8% and those above 50 years old, with 10.5%. The third question was the degree level of our respondents. The educational level of the respondents in the judicial system revealed that there were no secondary-level personnel in the system. Moreover, the majority of legal personnel were Bachelor's degree holders with 63.2%, followed by Master's degree holders with 36.8%. The last question was the years of experience among respondents in the legal system. The result we obtained illustrates that most legal practitioners have been working for less than five years with a percentage of 57.9%, followed by those who had been working from five to ten years with percentage of 26.3%. The least frequencies were obtained by

those whose experience are between eleven to fifteen and those above fifteen years of experience with percentage of 10.5% and 5.3%.

Secondly, Table two illustrates the demographic information of gender, age and years of detention among accused persons in custody. The majority of accused persons in custody are male, with 73.3% (22 participants) of the research respondents being male, compared to 26.7% (8 participants) female. Adult males tend to be in conflict with the law and commit crimes that result in their arrest and trials, whereas female adults are deemed too vulnerable to break the laws and commit crimes. The age distribution among accused persons represents half of the research respondents were aged 18-25 with percentage of 50%. This indicates that crime commitment of young adult are much more than elder people. This second category was those participants aged 26-49 with a percentage of 36.7% and lastly those aged fifty and above deemed to show the least crime commitment with percentage of 13.7%. Lastly, the researchers also examined years of detention of every accused person. We found that 80% of the respondents were being detained for less than a year and up to three years. Those detained for three to five-plus years each account for 20% of the total, as the table shows.

**Table 2: Demographic Information of the Respondents from the Accused Persons**

Variable	Frequency	Percentage
<b>Gender</b>		
Male	22	73.3
Female	8	26.7
Total	30	100.0
<b>Age</b>		
18-25	15	50.0
26-49	11	36.7
50 and above	4	13.3
Total	30	100.0
<b>For how long were you detained</b>		
less than 1 year	12	40.0
1-3 years	3	10.0
3-5 years	3	10.0
Over 5 years	3	10.0
Total	30	100.0

## Descriptive Statistics Analysis for the Views of the Respondents

Table 3 shows researchers used a seven-item Likert scale questionnaire to assess Mogadishu citizens' access to justice and fair trial rights among

legal practitioners. For the primary analysis, we calculated descriptive statistics (means and standard deviation) for the SPCILS aggregate database. This means that the researchers used the mean column that contains the average responses of the participants, where: 1.1.80 means strongly disagree, 1.81-2.60 disagree, 2.61-3.40 neutral, 3.41-4.20 agree, and 4.21-5 strongly agree in reference to (Best & Kahn, 2006).

**Table 3:** Descriptive Statistics on the analysis of legal personnel responses

Statements	Mean	Std. Deviation
The accused /suspects in Somalia have access to justice and fair trial	1.74	.452
The suspects have access to legal advice before trial	4.16	.375
Detainees have the right to be presumed innocent until proven guilty	3.89	.567
The suspects have the right to legal representation	4.00	.577
Criminal cases are handled more than civil cases	3.95	.705
Detainees have the right to apply and be released on bail	3.79	.631
Litigants prefer alternate dispute resolution (ADR) rather than the formal justice system	3.89	.567

In the first statement of Table 3, the mean is 1.74, which means that the vast majority of the legal practitioners of the study strongly disagreed that the accused /suspects in Somalia have access to justice and fair trial. The second statement, whose mean is 4.16, shows that the majority of the study participants agreed to the accessibility of legal advice before trial for the accused persons and suspects. The suspects have access to legal advice before trial mainly provided by the defense lawyers. In the third statement, with a mean of 3.89, respondents agreed that detainees are treated with the presumption of innocence during investigation. In the fourth statement the mean which is 4.0 reveals that the participants of the study agreed the suspects and accused persons have the right to legal representation. In the fifth statement, the mean which is 3.95 shows that the respondents agreed that more criminal cases are handled at courts than civilian cases. In the sixth statement mean of 3.39 shows that respondents of the study agreed on the right of detainees to apply and be released on bail. The seventh statement's mean of 3.89 indicates participants agreed litigants prefer Alternative Dispute Resolution (ADR)

over the time-consuming formal justice system, largely due to unbearable legal fees

**Table 4: Descriptive Statistics on analysis of the accused persons' responses**

Statements	Mean	Std. Deviation
The suspects/accused persons have a fair trial without undue delay	1.83	.379
Suspects / accused persons know the reason of their detention	4.03	.490
Do the suspects/ accused persons have adequate time for the preparation of a defence?	3.93	.450
Suspects / Accused persons have legal counselling	3.97	.556
Suspects / Accused persons know their rights	3.97	.556
Court fees are a potential obstacle to access to justice	3.80	.484
Suspects/ Accused persons' rights are respected in the process of the investigation	3.93	.450

In the first statement in the Table 4 above, the mean is 1.83, which means that the vast majority of the accused respondents strongly disagreed that the suspects/accused persons have a fair trial without undue delay. In the second statement, the mean is 4.03, which means that the participants of the study agreed that the suspects and accused persons know the reason for their arrest. With a mean of 3.93, the third statement indicates that suspects and accused persons agreed the police treat detainees poorly. In the fourth statement, the mean is 3.97 which mean that the participants of the study agreed that the suspects and accused persons are accessible to legal counselling. In the fifth statement, the mean is also 3.97, which indicates that the respondents of accused or suspect persons agreed that accused and suspects know their rights. The mean of 3.80 for the sixth statement indicates respondents believe court fees are a significant barrier to justice, favoring the affluent. In the seventh statement the mean is 3.93 which signify that the accused and suspect person's participants of the study agreed that their rights are respected during the investigation of their allegation.

## **Discussion**

The general objective of this study was to refer to access to justice and fair trial in Somali. Access to justice involves extending the reach of formal justice system for the rule of law institutions while removing barriers that impede justice seekers to find a fair public hearing at courts. Strengthening access to justice through informal justice system engagement enhances the judicial system's effectiveness. The right to a fair trial entails meaningful procedural safeguards to ensure the proper administration of justice and protect against infringements, as well as preserving human rights enshrined both in domestic laws and international human rights law.

Article 39 of Somali Criminal Procedure Code says, “A person arrested without warrant shall be taken immediately and in any case not later than 48 hours from the time of his arrest before a competent court” hence, the suspect or accused person cannot be held in police station custody more than 48 hours. The establishment of such a framework is intended to reduce the prevalence of unlawful detention and the violation of overall human rights for defenceless accused persons waiting for a trial. Article 66 of the Somali Criminal Procedure Code holds “Habeas Corpus” The Supreme Court or the court of appeal within the limits of its jurisdictions may order that any person held in arbitrary detention or in cases other than those provided by law shall be set at liberty at once. The adherence to and incorporation of human rights laws into national legislation is a constitutional right enshrined in Somali law. Article 39 of the Somali Provisional Constitution holds redress of violations of human rights. The article says “The law shall provide for adequate procedures for redress of violations of human rights. Redress of violations of human rights must be available in courts that the people can readily access. A person or organisation may go to court to protect the rights of others who are unable to do so for themselves”.

Respondents of legal practitioners mainly quoted Articles 34 and 35 of the Somali Provisional Constitution regarding Access to Courts and Legal Defence. Article 34 reads especially paragraphs 1,2,3,4, and 5. “Every person is entitled to file a legal case before a competent court.” Every person has the right to a fair public hearing by an independent and impartial court or tribunal, to be held within a reasonable time, and to determine (a) Any question of civil rights and obligations; or (b) Any criminal charge. Every person is entitled to defend him or herself from the case they are a party to, whatever the level or stage of the

proceedings may be. The state shall provide free legal defence to the people who do not have the means of doing so themselves. The state shall provide free legal defence to individuals or communities if they are legally pursuing the public interest". Every person brought before a court of law for an alleged criminal offence is entitled to a fair trial. The accused has the right to be present at their trial. The accused has the right to challenge the evidence presented against him or her. The accused has the right to an interpreter if they don't understand the court's language. The accused cannot be kept in an illegal detention centre, and must be granted visits by his or her family, doctor or lawyer. Criminal liability is a personal matter and no person may be convicted of a criminal offence for an act committed by another person".

Article 47, paragraph 1-4 of the Criminal Procedure Code specifies pre-trial custody durations. "Unless the court has ordered the trial of the accused in accordance with sub-paragraphs, the accused person shall be released when his period of custody has exceeded (a) 90 days if the offence falls within the jurisdiction of the assize section or the military penal section of the regional court and the punishment laid down by the law is death or life imprisonment (b) 60 days for other offenses which fall within the jurisdiction of the assize section or of the military penal section of the regional court (c) 45 days when the offence falls within the jurisdiction of the general section of the regional court. (d) 15 days when the offence falls within the jurisdiction of the criminal section of the district court, provided that the court of appeal, on application from the Attorney General or one of his deputies, may allow the period of custody to be increased for a further period not more than the maximum period of custody provided above for each type of offence.

Low capacity of the judges and prosecutors who are juniors has also contributed to the weakness of the justice system. Most of the legal practitioners are not well trained. Moreover, legislation has not been reviewed in decades. Some participants of the study mentioned the ineptitude of junior prosecutors who handle cases badly under investigation. The prosecutors do not collaborate with lawyers during their investigation, which causes the lawyers to think some evidence from the prosecutors is fabricated or exaggerated. Most high-paid advice and representation come to bear in land disputes. Land dispute cases last longer than other torts. Property disputes largely involve squatters refusing to vacate buildings they occupied while owners fled during the civil war. When landlords or landladies returned after a relative peace, their land was already occupied by people of opposing clans. Sometimes,

the squatters make fake title deeds and claim to own the land or property. Such cases last years and bear immeasurable cost from the first instance court, appeal court, to the Supreme Court. The study found a lack of public awareness regarding how courts function. Ordinary citizens are not aware of their rights and the court procedures. Some even do not know where to begin when it comes to defending themselves, such as hiring a lawyer or seeking legal advisors who would pinpoint the procedures and how courts deal with the accused ones, when they engage in a public hearing.

## **Conclusion and Recommendation**

This study sought to describe the obstacles to accessing justice and the right to a fair trial, and how these barriers can be removed from society in the process of access to justice and the right to a fair trial. The infringement of rights of the accused in Somalia was attributed to judicial corruption, delayed court hearing as well as high court fees. This can be attributed to the nature and the circumstances surrounding justice institutions, ranging from investigative organs to those charged with the duty of administering justice. Subsequently, corruption, interference and delayed court hearings need to be eliminated from the institutions involved in the administration of justice.

To do so, the federal government of Somalia is expected to take some measures and conduct reforms in the justice institutions. On the other hand, massive public awareness and sensitisation, is needed to familiarise ordinary people with the fact that it is their constitutional right to get access to justice and a fair public hearing in front of a competent court. Without such awareness, people will continue to believe that suspects or accused individuals forfeit their rights entirely. Moreover, such sensitisation will enable the citizens to become rights oriented persons; gain the confidence and the will to defend themselves in front of the courts ensuring equality before the law as well as the protection of their rights.

## **List of abbreviations**

ACHPR	African Charter on Human and Peoples Rights
ADR	Alternative Dispute Resolution
CAT	Convention against Torture

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CID	Criminal Investigation Department
CRC	Convention on the Rights of the Child
ECHR	European Court of Human Rights
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRL	International Human Rights Law
ICCPR	International Covenant on Civil and Political Rights
HRC	Human Rights Committee
TFG	Transitional Federal Government
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme

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