



## Conflict Research Programme

### Research Memo

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# The Kismayo Bubble - Justice and Security in Jubbaland

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## Overview

The absence of a credible and functional government, in Somalia, since the late 1980s has been felt particularly strongly in the arena of the rule of law. Under President Siad Barre, the judicial system was resented for being corrupt, politically manipulated and for rejecting Islamic precepts, and many welcomed its demise. It was perhaps inevitable that in the absence of a system of state courts that Islamic law and courts would emerge. As Muslims, Somalis were able to call upon a well-formed body of jurisprudence and practice that enjoyed social legitimacy and historically validated practices, to establish courts. Islamic law has a particular advantage in this regard in that it encompasses a penal code, a civil code, and commercial and tax codes. All of these are essential for the conduct of everyday life.

Recent analyses of the justice and security sector have highlighted its politicisation and, particularly in Mogadishu, a political economy centred around clan-based mobilization and conflict, ideological divisions between supporters of different versions of Islamic and secular law as well as rent seeking behaviour. At a practical level, although some significant developments are noticeable, government courts remain subject to high levels of corruption and manipulation, are slow, limited by poor security and a lack of enforcement capacity. The persistence of Al Shabaab as a credible actor in the provision of justice sits in stark contrast to that of the Government.

This memo brings attention to Kismayo town and its developments in relation to both justice and security.<sup>1</sup> A capable intelligence and security capacity in the town have limited criminality and the penetration of Al Shabaab, enabling reforms in the justice sector to take place. The at least partial resistance to clan hegemony in Kismayo has been a second enabling factor. The recruitment of locally respected judges, moved from the private sphere to the Government district courts, in 2018, brought a credibility that was previously lacking. The district court coordinates well with an elders committee and local sheikhs

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<sup>1</sup> The Conflict Research Programme has conducted several hundred court observations as well as in-depth interviews, in Mogadishu and Kismayo.

practicing Islamic law bringing a coherence to the provision of justice. In the district courts, cases are seen in an efficient and informal manner, at low cost. A wide variety of identity groups within the city are using the courts and report their satisfaction with its processes and decisions. These developments have all been driven by local actors.

This positive picture of the justice and security environment in Kismayo has been weakening since the controversial August 2019 election in the town. The resultant political tensions within Jubbaland and in relation to the national level, have affected the security capacity and are threatening the gains that have been made in this area; there is a risk that the Kismayo experience portrayed here will be short-lived.

## Background

At the time of independence in Somalia, there were 4 different legal systems in operation, being conducted in 3 or 4 different languages, a complication that was unresolved prior to the coup led by Siad Barre in 1969. Under Barre's dictatorial regime, from 1969-1990 a militarisation of the courts took place, with the National Security Council (NSC) established as the symbolic and practical justice arm of the military junta. This period also saw the subjugation of customary law – *xeer* – and *sharia'a*, and the centralisation of judicial authority. Courts were both weakened and populated with loyalists.<sup>2</sup>

Following the collapse of the state, both *xeer* and *sharia'a* were able to assume their historical position, with different developments taking place across the country. Somaliland continued to use the established legal infrastructure but recognised the supremacy of *sharia'a*. Puntland, established in 1998, created the most developed legal system and one that informed the design of the recently established Federal Government and constitution. *Xeer* continued to be practiced as a dispute resolution mechanism throughout the country.<sup>3</sup>

The result today is that three main justice systems can be identified in Somalia: the formal judiciary structures of regional administrations and central governments; *xeer* or customary law; and *sharia'a* law (practiced through private sheikhs as well as through Al Shabaab managed courts). These systems frequently co-exist in the same locations creating multiple and often contradictory sources of law.<sup>4</sup>

Three sets of factors are said to be influencing the justice system in Mogadishu: clan-based mobilization and conflict; ideological divisions between proponents of different versions of Islamic and secular law; and rent seeking in the context of a war economy.<sup>5</sup> A recent report highlights the politicisation of the entire legal system in the capital Mogadishu.<sup>6</sup> At a practical level, the government justice system faces a number of limitations, evident to different degrees across the country. These include a lack of qualified professional at all levels, an urban bias of such courts, a lack of knowledge of existing laws by judges and the public and slow processes. The enforcement of the different systems vis-à-vis the Government system is not clear. These factors, identified by Andre le Sage fifteen years ago<sup>7</sup>, essentially still apply today and continue to undermine public trust in the courts.

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2 HIPS (2020), 'Rebuilding Somalia's Broken Justice System: fixing the politics, policies and procedures'. Heritage Institute.

3 Ibid.

4 Le Sage, A. (2005), 'Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives, Humanitarian Dialogue' (and still relevant today).

5 Gundel, J., Berg, L.A., and Ibrahim, Y. (2016), *Political Economy of Justice in Somalia*. Working Paper, World Bank, Justice, Security and Development Series; 1.

6 HIPS (2020), op cit.

7 Le Sage (2005), op cit.

An important development since the 1990s has been the emergence of localised *sharia'a* courts, which emerged in different parts of southern Somalia as instances where different combinations of actors – faction leaders, businessmen, clan elders, community leaders and religious leaders – came together to manage inter-clan conflict and reduce the cost of business.<sup>8</sup> These courts, some of which were episodic, coalesced in 2006 in a rapid expansionist movement that took over much of southern Somalia – the Islamic Courts Union (ICU).<sup>9</sup> This is an important juncture in Somalia's social, political and judicial history as it represented a domestically resourced business-security pact.<sup>10</sup> Although the ICU was shattered by the Ethiopian incursion into Somalia, its judicial legacy continues today through Al Shabaab as well as in various other localities, as we suggest for Kismayo.

### **Mogadishu today**

While the focus of this memo is on Kismayo it is worth briefly noting the far more complex environment found in the capital Mogadishu. According to a recent District Commissioner (DC) from one the most populous district in Mogadishu, elders and Al Shabaab handle many more cases than the district courts.<sup>11</sup> In addition, business disputes are settled at the Abu Hureira mosque (in Bakara market); these disputes use respected Sheikhs, with the parties often having an informal pre-agreement to hold to the final decision. Observations by the CRP research team in a number of district courts and the regional court revealed irregularly heard cases which proceeded slowly, with individual cases difficult to follow.<sup>12</sup>

The ex-DC summarised the Mogadishu legal system as follows; 'The court process, at the regional court is accompanied by haggling ... and the ... haggling continues throughout the different levels of courts and enforcement'.<sup>13</sup> He further explained that when cases (including land disputes) are referred to the regional court, they 'go into a black hole'. They may not be heard of again and 'elders, corruption, mismanagement and intentional neglect all play a role but you don't know [which]'.<sup>14</sup>

A woman diaspora returnee, interviewed for this research, provided an in-depth account of her experience in Mogadishu, around a land dispute. After approaching her elders and the Benadir dispute resolution committee, she pursued two land cases through the entire system, over several years. She has noticed some positive changes over time, in particular that more credible and knowledgeable judges have been recruited.<sup>15</sup> However, her overall experience conforms to that described previously and she pointed out that without money, determination and bravery, it is very difficult to start legal processes let alone continue them. Some of the improvements in the quality of judges has been observed in Mogadishu, concerning land disputes; there are increasing numbers of cases where the Government judges and Al Shabaab judges reach the same verdict. Only Al Shabaab has the power of enforcement however.

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8        Ibid.

9        Aisha, A. (2015), 'The security bazaar: business interests and Islamist power in civil war Somalia.' *International Security* 39(3): 89-117.

10       De Waal, A. (2015), *The Real Politics of the Horn of Africa: Money, War and the Business of Power*. Cambridge, UK: Polity.

11       Interview, 20/07/19. The interviewee served as DC for nearly 2 years between 2018 and 2019.

12       CRP local researchers were employed on a part-time basis and delays and unclear follow-up appointments meant the same case was not easily followed.

13       Interview, 20/07/19.

14       Ibid.

15       This is noted in other interviews conducted.

## Security and Inclusion in Kismayo

Kismayo is Somalia's second city, a modest, sized coastal town with a cosmopolitan history. It is the *de facto* capital of Jubbaland and where the state parliament and main courts are located.<sup>16</sup> For much of the last thirty years the town has had a particularly volatile and violent history.<sup>17</sup> The current President of Jubbaland, Ahmed Islam 'Madobe', has a long history in Kismayo, including as the Governor of the town under the Islamic Courts Union (ICU) in 2006, and later as the strongman and then President of the town from 2010/11 when he led the capture of Kismayo from Al Shabaab with the support of the Kenyan Defence Force (KDF).<sup>18</sup> He was the interim President from 2012-2015 and the elected President from 2015-2019. He remains as President after the controversial and discredited election of 2019.

One of the defining features of Kismayo in recent years has been the relative success of its intelligence and security apparatus which has kept the town relatively peaceful, with limited criminality and where Al Shabaab have limited reach. Madobe's background with the ICU and previous affiliation with Al Shabaab, along with astute recruitment in the intelligence area have limited Al Shabaab's influence in the town and may also have informed developments in the justice sector. Menkhaus explains that the relatively good security is 'mainly attributed to the effectiveness of the Jubaland State's security sector, most notably the intelligence branch, JISA, which monitors the city and its population more robustly than arguably any other local armed authority in Somalia except Al Shabaab'.<sup>19</sup> He explains another important feature of Kismayo that contribute to this relatively good security picture, as 'the fact that the Jubaland authorities have made the city open to all former residents, from a variety of previously quarrelling clans, has reduced the risk of clan-based clashes over the city for the time being'.<sup>20</sup> One vivid illustration of this is indicated in an infamous event in 2016/17 took place where Madobe very publicly supported the execution of soldiers from his own clan who were unwilling to expose the individual responsible for a crime.<sup>21</sup> This is not to say that abuses of power do not take place by Ogaden-identified groups but many groups, including minorities claim conditions are better than under previous regimes.<sup>22</sup>

This security capacity, that has existed for many years in Kismayo, has been undermined and weakened since the August 2019 election and the resultant tensions within the state and in relation to national level politics.

## The Court System

The formal organisation of the justice system in Kismayo consists of two district courts (the court of first instance, which has been combined with the Regional Court<sup>23</sup>), a High Court and an Appeals Court. As well as the Government courts, an Elders Committee was established as a widely representative body to which disputes could be taken, where they have not been resolved

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16 Buale is the official capital but is under the control of Al Shabaab. Like many coastal towns, prior to the civil war the city had a large Yemeni population as well as identity groups from other parts of the country.

17 Hatchet, J. (2013), 'Talking Tactics: Kismayo, Somalia. Humanitarian Practice Network', ODI: London. [Talking tactics: Kismayo, Somalia - Humanitarian Practice Network \(odihpn.org\)](https://www.odihpn.org/publications/talking-tactics-kismayo-somalia)

18 Majid, N. and Abdirahman, K. (2021), 'The Jubaland Project and the Transborder Ogadeen: Identity Politics and Regional Reconfigurations in the Ethiopia-Kenya-Somalia borderlands', CRP Research Memo, LSE: London. [The Jubaland project and the transborder Ogadeen: identity politics and regional reconfigurations in the Ethiopia-Kenya-Somalia borderlands - LSE Research Online](https://www.lse.ac.uk/Research/CRP/Research-Memos/2021-07-20-The-Jubaland-Project-and-the-Transborder-Ogadeen-Identity-Politics-and-Regional-Reconfigurations-in-the-Ethiopia-Kenya-Somalia-Borderlands)

19 Menkhaus, K. (2017), *Dadaab Returnee Conflict Assessment*, Report prepared for Danish Demining Group, 20-21.

20 Ibid

21 The soldiers concerned were all killed symbolising that clan affiliation to the President did not guarantee impunity from involvement in crimes.

22 A Yemeni elder interviewed by CRP researchers supported this and a common complaint of some Ogadeen groups is that Madobe has been too lenient or generous to others, thereby limiting their own 'rights'.

23 This merging of district and regional courts has taken place in other Federal Member States.

by the more immediate families/kin involved, using customary law. Sheikhs continue to dispense *sharia'a* law privately. These three justice systems exist in coordination and under the umbrella of the Government courts; final decisions are lodged in the Government court. Over the last 2 years, a special Land Committee has been established in order to deal with complex and sensitive land cases, focused on untitled land. This Committee has a special Police Unit attached to it, to assist with enforcement.

The police force in Kismayo town remains problematic and has not been subject to the same level of reform as the court system itself.<sup>24</sup> However, the overall environment of governance and security mean that the capacity of the police – through interference, ignorance or incompetence – to undermine the justice processes is considered limited, particularly in comparison to other locations such as Mogadishu.

Following recognition of corruption within the Government court system, reforms were undertaken in early 2018. This resulted in the removal of the district judges and their replacement with locally respected sheikhs, who were practicing *sharia'a* law, familiar with Somali constitutional law and popular in the town. The Minister of Justice, Constitutional and Religious Affairs at the time and the Jubbaland President were instrumental in these changes.<sup>25</sup> The President is seen as the most powerful figure in Jubbaland and sometimes cases are taken to directly to him.

The district court in Kismayo sees a wide variety of cases providing everyday justice to the local population; these may be broadly grouped into family disputes, accidents and injuries, land disputes, business disputes and some rape/homicide cases.<sup>26</sup>

## The District Court Environment & Practices

The main district court, a modest building, in the centre of Kismayo is easily accessible and has minimal security. Attendance at the courts generally reveals an orderly, open and informal setting. Access to the courts and to judges is easily arranged with judges open and forthcoming in discussing their issues and problems.

Representation of disputing parties is typically by 'elders' and kin or by the parties themselves.<sup>27</sup> Legal representation by lawyers was not seen although one or two lawyers are known to be practicing in the town. Clan/lineage identity was recorded for research purposes and reflected the cosmopolitan identity of the town, with many different groups represented. Minority groups were not well represented in general although there were examples. An analysis of outcomes against identity did not reveal any obvious biases towards more powerful clans.<sup>28</sup>

The district court was notable for the speed with which cases were heard and brought back where further hearings were necessary; cases were heard within 20 minutes to an hour and follow-up hearings typically took place within a matter of days, although occasional long delays did occur. Follow-up hearings took place where witnesses, or further evidence was required, or where the disputing parties failed to resolve their dispute after guidance provided from the judge. This efficiency is a characteristic of Al Shabaab courts and not one generally associated with government courts.

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24 This is recognised by leadership figures in Kismayo.

25 These two figures were from the two dominant clan families (Marehan and Ogaden respectively).

26 Some land cases take place in the district court and whereas the Land Committee sees cases on untitled land.

27 Elders, in the Somali case, may refer to any adult male given such a position.

28 Some local minorities, such as the Bajuni and Somali Bantu were not well represented in comparison to other social groups (although cases of both were seen and appeared to have fair outcomes) but this may be more to do with a long-standing distrust of such systems and a high reliance on their own customary systems.

Disputing parties that were interviewed overwhelmingly indicated their satisfaction with their experience and the outcomes in the courts. It is interesting to note that local knowledge of the relative success of these courts is not necessarily widespread, even within the town, a legacy of long-standing corruption and low expectations. It is interesting to note that the local research team, local university graduates, were themselves surprised with the court system, assuming like many town residents that the courts would be problematic, but changing their minds after spending time in them.

Enforcement of judicial outcomes is largely abided to by local people, reflecting the credibility of the judges and the overall justice and security environment. Abuses of power are attempted on the basis of political position and clan identity, as illustrated below, but these are considered limited, and evidence was gathered of where they have been successfully resisted.

The following section provides a selection of cases with a brief discussion, reflecting the plural legal environment in Kismayo and the position of the district courts within that.

## **Marital disputes**

Marital/family disputes were amongst the more common types of cases seen by the Kismayo district courts. The following two cases indicate how marital disputes move within the plural legal local environment.<sup>29</sup>

### **Case 1. – a divorce denied**

*A woman wanting a divorce accused her husband of being verbally abusive, of not paying for domestic expenses and of not taking on his family responsibilities. She also accused him of coming and going when he wants and sometimes sleeping elsewhere. The woman claims she has complained to his family, to no avail and has tried to persuade her husband to change his ways but he has not done so. The husband accepted some of these accusations and rejected others. He stated that he does not want a divorce and instead will change his behaviour. The wife claims she is not convinced and insists on a divorce.*

*The judge, explaining that he sees many similar cases, explains to the couple that divorce is not an easy thing and that Islam warns of divorce; he reads verses from the Koran and traditions of the Prophet, concerning divorce and its bad consequences. He scolds the husband very strongly, explaining that he has a responsibility towards his family and must treat them well, in accordance with the law of Islam.*

*The judge ends the proceedings by encouraging the couple to try and resolve their differences and asks the wife to contact him judge if any further problems arise. In a follow-up interview the wife said she was not happy with the decision and still wanted a divorce.*

### **Case 2 - a divorce granted**

*The second case concerned a woman requesting a divorce from her husband. The judge had concluded the first session of this case several days previously, asking the elders from the husband and wife to try and solve the problem themselves. On this, the second hearing, with elders representing both parties, an elder stood from the woman's side, explaining that the two sides had sat together and agreed to keep the family together, but when they sat with the woman, she refused. She would not accept anything other than divorce. The elder stated she is an adult and no one can coerce her. The only other option is therefore for divorce. The elder stated he went to the husband's elders and explained that they saw no other option, but*

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29 Further case details are not provided for confidentiality purposes.



*they refused to accept this and therefore have brought us back to the court. After a discussion about compensation the judge finally granted a divorce and ordered the wife's family to pay US \$2,000 compensation to the elders of the husband.*

These two cases involved short hearings and low costs. In the first case, the individual parties represented themselves and in the second elders/family represented the parties. These two apparently mundane cases raise a number of interesting issues. In both cases, the district court has been sought in order to resolve a dispute that was not being resolved by family members or elders. In Somalia's highly patriarchal society the government court has provided an alternative platform for disgruntled wives to have their issues and cases heard, where their elders and husbands have resisted divorce or been unable to resolve the issue.

In case 2, a divorce was eventually granted and financial compensation determined. In case 1, while the wife was privately unhappy with the ruling, she appears to have the opportunity to return to the judge, as the judge himself has indicated and as actually happened in case 2.

Although it is unclear whether it is the credibility of the individual judges or the symbolic power of the state embodied in the court, or a combination of the two, that brings cases to this setting, the high demand on the court as well as the frequency of similar family disputes, point to an important social regulatory role that is nevertheless being provided under the name of the state.

## **Land Disputes<sup>30</sup> – 'trying your luck'**

Land and property disputes are commonplace throughout Somalia, especially in major urban centres where many people fled during the civil war, and whose homes were occupied by incoming groups in their absence.<sup>31</sup> The return of populations as power has shifted and security has improved in towns such as Kismayo has been bringing these disputes back to the fore; improved security and the passage of time is also associated with diaspora returns and investment, increasing land and property values. In the capital Mogadishu, the number and value of property disputes is a motivation for seeking or supporting political position, given the protection this can enable.

### **Case 3. Multiple sales of the same property**

*A land dispute between a man and a woman was heard over 3 separate sessions in the Kismayo district court, within 2 weeks of each other. On Day 1, the woman claimed she had bought a plot of land in the Sinai area of Kismayo. She did not have money to build on it for a long time but was checking on the land from time to time. When she finally had the money she bought materials and employed builders. Soon after, a man suddenly appeared with his family and soldiers and stopped the work saying the plot belonged to him. The accused claimed he bought the land in a legal manner and paid \$3500 and had all legal documentation and witnesses. He said he has also been looking for enough money to build and checked on the land from time to time. Both parties explained that they have the documents, signed by a notary and with witnesses. The judge asked them to bring their evidence the next day.*

*On Day 2, both parties brought their papers. The judge identified that both parties bought the land from the same person, 2 years ago. The judge advised them that neither are at fault, but that the fault is with owner who sold it more than once, so bringing them into conflict. The judge advises the two parties to bring the original landowner to them. The judge points out that he is aware of other similar cases in Kismayo.*

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30 Further case details are not provided for confidentiality purposes.

31 See RVI (2017), 'Land Matters in Mogadishu: Settlement, Ownership and Displacement in a Contested City', RVI and HIPS.

The following day, the parties return and explain to the judge that they looked for the man together and found out he had gone to Kenya and that he might have also sold the same plot to other people. Witnesses were brought who confirmed they had witnessed these sales. The judge concluded that the case was over as they are not in dispute with each other and advised them to approach the family of the original owner.

#### **Case 4. Brokering land and customary resolution**

This case involves a dispute between a land broker and 3 parties who bought a piece of land together, in Kismayo, from the broker. This dispute was dealt with by their respective elders, not through the district court (or land committee). The case involved three distant relatives (based abroad) of the broker who provided US \$25,000 to buy a piece of land. The land was bought in town, in 2017, demarcated and monitored by the broker. When the buyers later came to Kismayo they were unhappy with the piece of land, saying it was not in the direction that the city was expanding into and therefore would not be easy to sell.

The buyers went to their sub-clan elders and made their complaints. The broker explained that he only represented the men and was not told where to buy the land. The elders then visited the land and held another meeting. They informed those in attendance that the land has no problems and is in a good area, and they should be content with their land, and they should not be insulting or putting any pressure on their brother. The buyers refused to accept this and demanded their money back. The elders determined the land be sold and the money returned. However, since land was not currently selling well, the broker said he would buy the land instead. He was given 6 months to find the money and all parties and the elders signed an agreement.

#### **Case 5. Abuse of power?**

This case concerned a land dispute between a Government Minister, his business partner and a group of 4 men. The Minister and partner were informed by a local broker that a good piece of land (6 plots) was going cheaply as the owners were facing financial difficulties. An agreement was made to buy the land, reportedly for US \$57,000.

After 15 days, the Minister asked his partner to start building on the land. Another 2 weeks later, 4 men appeared at the plot saying the land belonged to them. Both sides claimed they had documents. A meeting was held between all of the parties where the 4 men showed the Minister their documents and said the land should not have been sold. The Minister did not agree and demanded that the building work continue.

The 4 men went straight to the President and told him what was happening. The President called the Minister and told him to stop building on the land until later. Building work stopped after a reported US \$24,000 had been spent on the building. The President then made a committee to investigate the matter. The committee after a long investigation decided in favour of the 4 men. The Minister was told to hand over the land and building to the 4 men, and they were asked to pay the US \$24,000 costs.

The Minister was told to reclaim the money for the land from the seller. Follow up interviews revealed that the Minister may not have paid for the land at all and took it. In this case the Minister was from the same clan as the President and the 4 men were from other clans (Marehan and Mijerteen), but the complainants felt that the issue was dealt with fairly.

These three land cases reveal some of the complexities of land and property disputes in Kismayo and which are likely to be common to many other urban centres in southern Somalia. They also reveal the plural legal landscape and different avenues and parties that might be involved, including



up to the President.<sup>32</sup>

A phrase used in Kismayo around land disputes is 'trying your luck'. This reflects the fact that there is no punishment or cost for fabricating a land dispute. These disputes are managed through the different systems in the town and while there is a history and continuity of fraudulent practices and false claims there is also the space for many cases to be investigated and settled without recourse to violence or intimidation.

## Conclusions

The provision of a credible everyday justice is an essential requirement of an aspiring government. In the complex Somali environment, as Gundel et al. point out, 'the alignments of interests across the dimensions of clan, religious ideology, and economic interest can result in institutions that provide some measure of stability, public order, and justice.'<sup>33</sup> The district courts of Kismayo in their plural legal context appear to provide such a case, where efforts to incorporate the participation of different clan interests and resist the threat of Al Shabaab, provided an enabling environment for later reforms to the district courts themselves. Sadly, these developments have been under strain since the August 2019 elections in the town including in relation to the security capacity.

The Kismayo courts described here contain important continuities with the experience of the various iterations of the local Islamic Courts that have existed in Somalia since the 1990s. The President of Jubbaland was an important actor in the period of the ICU, holding the position of Governor in the town in 2006. His knowledge of the social and political environment of the town as well as the success and appeal of the ICU (and Al Shabaab) is formidable. The intervention of other key actors, most notably the Minister of Justice, Constitution and Religious Affairs, brought in, in 2016, have also been critical in reforming the district courts. Some of these actors have been involved in justice developments in other localities.<sup>34</sup>

Ultimately much of the everyday justice being dispensed in Kismayo does not involve complex legal interpretation and knowledge but requires that judges be impartial, competent and committed. The police service do remain a weak link within the wider justice environment, as does coordination between different government actors across the justice sector. However, the credibility of the judges and the wider security environment in the town have enabled a large throughput of cases to be heard through the district courts and suggest a credible rule of law is being applied in the town under the umbrella of the regional government. Policy considerations are made in a separate policy brief.

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32 Other examples, in Kismayo and in Mogadishu were identified where the President intervened.

33 Gundel et al. op cit.: iii.

34 Garbaharey town, in Jubbaland, has been mentioned but was not part of the CRP research.



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