



# Reforming Somali Customary Justice

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## Pathways to Adapting *Xeer* Procedures and Practices

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December 15, 2023

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INSTITUTE

## Acknowledgements

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This report was written with support from the Clingendael Institute and the Knowledge Platform for Security & Rule of Law (KPSRL), via a generous grant from their Knowledge Management Fund.

The report would not have been possible without the help of a number of excellent Somali researchers. We especially thank the following for their help on this project:

- Abdisamad Omar Sheikh
- Ahmed Hersi
- Fuad Hussein Abdi
- Ibrahim Xaraash
- Mahad Xaraash
- Mubarik Abdirahman Abdillahi
- Saeed Mohamed Abdi Baane

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## Introduction

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The Somali system of customary justice, *xeer*, plays a central role in Somali society, offering a vital avenue for dispute resolution. Coexisting with formal state-backed courts, *xeer* operates through clan elders who draw on precedent, Sharia law, and bilateral oral agreements between clans to adjudicate disputes and prescribe resolutions. It holds particular significance in rural areas and areas of limited state capacity, where state courts may be inaccessible, providing a cost-effective and expeditious alternative. Despite criticism for perceived incompatibility with individual rights and gender bias, *xeer* has experienced a resurgence following the collapse of the state in 1991. It acts as a stabilizing force and is used widely to resolve conflicts between individuals, families, and clans.

Despite its importance, *xeer* faces substantial criticisms, particularly concerning its alignment with international human rights standards. The system's reliance on collective responsibility, where the perpetrator's lineage group as a whole pays restitution, raises concerns about individual accountability and the limited deterrent effect of punishment. This approach also diminishes the direct restitution survivors receive, particularly in cases of sexual and gender-based violence (SGBV). Moreover, the procedural exclusion of women from decision-making processes and the inability to present evidence or advocate for themselves places women at a significant disadvantage, undermines their belief in the system, and violates important tenets, such as the right to confront one's accuser and the right to present evidence. Additionally, the bilateral nature of *xeer*, based on agreements between lineage groups, results in unequal treatment under the law, as the relative power of each group influences the outcomes and enforcement of decisions. These issues, contribute to a view among many – rule of law practitioners and Somalis alike – that *xeer* may provide short-term stabilization but is incompatible with long-term solutions and international human rights standards.

## Objectives

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The goal of this study is to assess the potential for adaptations to Somali customary justice that would make it more acceptable to many Somalis and bring it in line with international human rights and legal standards. As described in the introduction, customary justice is the predominant venue for dispute resolution and “criminal prosecution” in much of Somalia and Somaliland, especially in rural areas. While state-backed courts are increasingly available in urban areas of south-central Somalia – and have been active in Somaliland and Puntland for much longer – these courts are inaccessible to many Somalis, especially those in rural areas. Customary justice is also trusted by many Somalis and they tend to appreciate the speed and ease with which disputes can be resolved.

On the other hand, *xeer* comes with problems. It tends to sideline women, who have limited legal standing within the system and who are not considered full members of their *maag* groups. There are also complaints about the unfairness of the system, particularly from marginalized clans, who lack the manpower and military capacity to credibly threaten violence and, therefore, are at a disadvantage in *xeer* negotiations. The lack of military capacity also reduces their ability to enforce decisions that are made in their favor. Regular Somalis also occasionally cite the lack of information about *xeer*, the proceedings of a particular case, or how privacy is favored over transparency. This issue arises most often in the context of sexual assault cases, where we have heard reports of women who survived sexual assault but were not told the outcome of their case, were not told the *maag* payment that was made to their clan, and received a fraction of the *maag* payment (or no payment at all). Opaqueness and the use of collective punishment (and collective receipt of compensation) undermines both the deterrent benefits of punishment and the restorative value for the victim/survivor.

Given the legitimacy and trust placed in elders and these shortcomings, our goal is to understand whether *xeer* can evolve in ways that would remove or soften some of its more problematic characteristics. Doing so would preserve much of its value in modern Somali society: its reach into rural areas, the speed with which cases can be resolved, the relatively larger pool (compared to trained jurists) of available labor for dispute resolution, and the trust already placed in elders. But reforming *xeer* in a few key ways has the potential to outcomes for women and other marginalized groups, and increase public trust in *xeer*.

In this report, we consider four areas in which *xeer* has received criticism from the Somali public, in past research, or from those working on access to justice programming in Somalia and Somaliland. The four areas are:

- Women’s ability to participate in *xeer* processes and hearings
- Use of collective punishment, and collective compensation, as opposed to individual punishment and restorative justice targeted to the victim/survivor
- Opacity of decisions, the reasoning for decisions, and *maag* payments
- Unequal treatment of individuals under the law.

For each topic, we address two research questions. The first concerns prevalence: how common is the issue in question? For example, there are de jure restrictions on women’s ability to participate in *xeer*, but it is not clear how often these restrictions are enforced or relaxed. Similarly, Somalis who have had cases adjudicated via *xeer* occasionally complain that they do not understand the reasoning behind the decisions made, or were not told the compensation their clan received in response to the dispute. But we do not know how widespread – or how institutionalized – this lack of transparency is.

The second research question focuses on the attitudes of elders, assessing whether they are open to reforms in the four areas outlined above. When presented with specific adaptations to *xeer* – such as allowing broad access to information about how cases are decided, or allowing women to give evidence in hearings to which they are a party – what share of elders support it? And, as an extension of this question, are there specific coalitions of elders that could be assembled to support reform, even if support is not universal?

To the best of our knowledge, this is both the first quantitative survey ever conducted with clan elders, and the first attempt to empirically investigate whether *xeer* could be adapted or reformed to expand women’s participation and reduce the use of collective punishment, among other reforms. The goal is to assess the feasibility of reform, with the hope of informing future justice programming.

## Methodology

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The methodology of this study was relatively straightforward, with the exception of sampling decisions that needed to be made. The core decisions related to research design came in two phases: survey development and instrument design, on one hand, and survey sampling, on the other.

Survey design was a lengthy, iterative process. Our goal was to capture a wide variety of information from elders. However, many of the topics we inquired about were very specific to Somali *xeer*, and had not been addressed in previous surveys. For example, we sought to understand whether elders would support the codification of *xeer*, such that one *xeer* agreement would apply to all clan-dyads, rather than negotiating different agreements bilaterally. This is a complex question, because it required respondents to grapple with a slightly abstract idea that might be new to them. It also required us to establish that we understand how *xeer* agreements are *normally* negotiated, because we wanted

elders to indicate whether they would support a shift from the status quo. If they thought they survey designers misunderstood the nature of *xeer*, we ran a risk that they would interpret our question as asking whether codification was *allowed* or whether codification was *already* how *xeer* is implemented. This type of question requires clarity about terminology and precision in the question structure.

The survey was designed over several weeks, with repeated rounds of feedback from Somali researchers who have significant experience conducting qualitative interviews with elders, including on aspects of customary justice. This was important, because their experience helped them understand how elders would interpret questions. This process also allowed us to receive feedback on the terminology and dedicate time to investigating the proper terminology to clearly articulate our questions. For instance, our team spent considerable time arriving at the *gar-ta weyn* (“big gar”) to indicate a more formal and larger judicial hearing within *xeer*, and *gar-ta yar* (“small gar”) to indicate a less formal, more mediation-focused, hearing that is frequently used.

This process of iteration also allowed us to identify areas in which terms – some of which we understood to be universal – vary across regions or clan groups. Elder titles provide one example, because elders who oversee *maag*-paying groups and other practically important levels of lineage group can be called *aqil* in some contexts, *nabadoon* in others, and still other terms elsewhere. Iteration ensured that these inconsistencies were identified, because Somali researchers reviewed the survey and the translations, and often flagged areas where the word choice did not match their experience or understanding.

While we were able to employ best practices during tool design and translation, this was less feasible when designing the sampling methodology. The core issue we faced was that constructing a sample frame, capturing the full population of elders, is impractical. First, identifying every lineage that has elders would be a monumental task; we sought to represent elders at the clan-family, clan, and sub-clan level, recognizing that attempting to enumerate divisions below that level would require resources far beyond those available to us. Second, for elders without a specific, titled position, their position as an elder might be context-dependent. When living in a community where their clan is a minority, they might be an elder due to the lack of other senior men in the clan; upon moving back to their clan homeland, they might not be considered an elder. The idea of a fully clear *population* of elders is a fuzzy one.

At the same time, we wanted to ensure the sample design was as rigorous as possible under the circumstances, and we did not want to rely on convenience sampling from among our researchers’ networks. We followed a two-step process for constructing a sample frame. First, we asked our researchers to identify as many elders as they were able, using their existing networks, including their clan affiliation. Second, we supplemented this initial list by mandating specific quotas of elders from those clans that were underrepresented. For example, our researchers initially listed few Rahanweyn-Digil elders, and particularly few of the some of the larger Rahanweyn-Digil sub-clan lineages, such as the Digil-Geledi. For clans that were underrepresented, we set a quota and asked the research team to contact individuals they knew in relevant locations, to identify elders from the target clans.

The sample frame we constructed consisted of 715 elders from almost all the major clans and subclans in Somalia and Somaliland.<sup>1</sup> It also included strong representation of groups that are ethnically non-Somali (e.g., the “Somali Bantu”) and from occupational minorities, all of which have tended to adopt

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<sup>1</sup> A few moderately-sized clans, though represented in the sample frame, had few elders included. For instance, our sample frame includes just two Isaaq-Issa Muse elders, and just two Darood-Leelkase elders.



structures that mimic Somali clans, including the naming of elders. From this wide-ranging frame, we randomly selected 400 elders for inclusion in the sample, stratifying the sample by clan-family and clan. Our stratification approach was not rigid; we allocated interviews to clan-families and clans in line with approximate estimates of population sizes, which are notoriously contested. Within clan-families, our main goal was to ensure one clan did not dominate the sample. We did not aim to represent all clans within a clan-family, but sought to include elders from all of the larger divisions within clan-families, and to do so in relatively equal proportion. A table documenting the clan-family and clan composition of the sample is available in the appendix.

Data collection took place over 4 months in late 2022 and early 2023, and was completed by a team of 32 enumerators working part-time. The expansive team was necessary due to the geographic dispersal of the sample; it was also necessary, as noted above, to expand the set of elders we were able to identify from our team’s collective network. Elders completed the survey either over-the-phone or in-person, but most elders preferred in-person administration. In total, 62.0 percent of the surveys were completed in-person.

Data quality control was extensive. From the outset, our core team was selected with data quality in mind, utilizing researchers we had worked with for years and who deeply understood our goals and the purpose of the project. They had all participated in past projects on the Somali justice sector, including several on *xeer* specifically. All had personally interviewed tens or hundreds of traditional elders in the past, on a wide range of projects.

Back-end quality control took the form of reviewing audio recordings of interviews for correct survey administration, and close review of the data. We analyzed the time taken to complete surveys, response patterns, and enumerator-specific idiosyncrasies to identify any enumerators who were administering the survey in an unusual, hurried, or otherwise problematic manner. For each enumerator, several full surveys were reviewed using a full audio recording of the interview, which provided an opportunity to identify problematic administration and provide refresher training on particular points.

## Sample Demographics

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Before reporting the results of the survey and our data on elder attitudes, it is important to understand the composition of our sample. As described in the previous section, the process for sampling elders was as rigorous as possible under the circumstances, due primarily to the difficulty of assembling a sample frame of elders. Our goal was to ensure broad clan and regional representation and to survey elders at a variety of seniority levels. Unfortunately, there is no existing documentation of what constitutes a “typical elder” to which we can compare our sample; to the best of our knowledge, this is the first quantitative survey with traditional Somali elders. Therefore, the demographics of our sample are informative in terms of both contributing to our understanding of elders – as they provide a picture of elders, even if it is a non-representative picture, in statistical terms – and to our understanding of the results that follow.

The final sample consisted of 408 elders, drawn from all but two regions of Somalia and Somaliland.<sup>2</sup> The table below provides a breakdown by geographic zone, which represent the five Federal Member

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<sup>2</sup> The two excluded regions were Bari (Puntland) and Middle Juba (Jubaland). Neither region was purposefully excluded, but our researchers did not have deep connections in these areas; in the case of Middle Juba, this stems from major accessibility limitations due to al Shabaab’s control of even the regional capital, Buale.



States, the Banadir Region (which is not part of any FMS), and Somaliland. The geographic composition was driven to a significant degree by two factors: our goal of achieving wide clan representation and the nature of our researcher networks. For instance, Somaliland makes up the largest group in our sample due to the fact that the Isaaq clan-family is found in only small numbers in Somalia; similarly, while members of the Dir clan-family are found throughout Somalia, they are most concentrated in western Somaliland, and our attempt to include a significant number (48) of Dir elders required allocating a large number of interviews – larger than would be justified by its population – to Somaliland’s Awdal region.<sup>3</sup> In contrast, the Darood homeland, Puntland, is somewhat underrepresented due to the fact that Darood are present in many areas of Somalia – and regions whose control is disputed between Somaliland and Puntland. We interviewed many Darood elders outside Puntland, in Gedo, Lower Juba, and Togdheer, reducing the impetus for a large sample in Puntland.

*Table 1: Geographic distribution of sample of elders*

Geographic Zone	Interviews Completed	Share of Overall Sample
Somaliland	131	32.1%
Banadir	10	2.5%
Galmudug	15	3.7%
Hirshabelle	82	20.1%
Jubaland	52	12.7%
Puntland	20	4.9%
SW State	98	24.0%
Total	408	100.0%

The sample is fairly concentrated in urban areas. Just 16.7 percent of elders interviewed reside and complete the majority of their duties in rural areas. Again, this reflects in part our researcher’s networks – because research in most rural areas of Somalia has been impossible for over a decade, our researchers have fewer contacts in rural villages. It also reflects the increasing urbanization of Somalia and Somaliland, where the aggregate population is now approximately 60 percent urban.<sup>4</sup>

As aforementioned, the sample represents each of the major clan-families, as well as marginalized or minority groups, where we define marginalized groups in line with the “4.5 system” for allocating political representation in Somalia. The table below reports the share of the sample that each clan-family or clan grouping represents.<sup>5</sup>

*Table 2: Composition of sample, by clan family, including clans included in each clan-family*

Clan Family or Group	Share of Sample	Distinct Clans Represented
Hawiye	17.4%	11
Darood	11.8%	7

<sup>3</sup> A similar explanation applies to South West (SW) State, which is the main home of both Rahanweyn-Mirifle and Rahanweyn-Digil members. Because we wanted to ensure a large sample of both subgroups of Rahanweyn, this required a fairly large sample to be drawn in SW State.

<sup>4</sup> Somali Health and Demographics Survey. 2020. Table B2.

<sup>5</sup> In common usage, Rahanweyn is a single clan-family, while Mirifle and Digil are Rahanweyn divisions. We treated them as separate sample groups to ensure broad representation. With regard to Isaaq, there is disagreement of whether Isaaq are a clan within the Dir lineage or their own clan-family; we treat Isaaq as a clan-family because it has so many politically and socially salient subdivisions. However, this is simply based on present circumstances, and is not a statement regarding lineage or descent, which is far outside our collective expertise.

Isaaq	21.6%	6
Marginalized or minority group	16.4%	11
Rahanweyn - Mirifle	7.4%	15
Dir	12.3%	5
Rahanweyn - Digil	13.2%	9
Total	100%	64

The rightmost column of the table indicates the extent of within-group divisions our sample captures. As a segmentary lineage system, Somali clan-families can, and are, divided into clans, sub-clans, sub-subclans, and so forth. While it is context-dependent, the politically relevant lineage level is generally the clan or sub-clan, though this ignores many exceptions. Nonetheless, the table demonstrates that our sample is diverse *across* and *within* clan-families. Within Isaaq, for instance, our sample includes elders from the Arap, Ayub, Eidagalle, Habar Jeclo, Habar Yonis, and Sacad Muse clans; within the Mirifle – which has a larger number of subdivisions – we interviewed elders from 15 different lineages and a much larger number of sub-subclans. In the appendix, we include a clan-by-clan breakdown of the sample for full transparency.<sup>6</sup>

Beyond clan and geography, our sample includes a wide range of *levels* of elders, as shown in the table below. In Somali society, most clans have one highest-ranking elder or a set of elders who sit atop the clan – these positions go by different names (e.g., Suldaan among Isaaq clans, Ugaas among others) but they all represent positions of authority over a very large group of men. Like these highest-ranking elders, middle-rank elders have different titles in different clans, but they typically represent smaller lineage groups, including the *maag*-paying groups that are important for social organization. Finally, there are a large number of elders that do not have a specific title, but perform many of the day-to-day duties of elders, including conflict resolution and participating in *xeer* hearings.

*Table 3: Composition of sample, by rank/seniority of respondents*

Elder Level	Sample Size	Share of Sample
Highest Ranking (Suldaan, Ugaas, etc.)	37	9.1%
Middle Rank ( <i>Aqil</i> , <i>Nabadoon</i> , etc.)	234	57.3%
Non-Titled Elders	137	33.6%
Total	408	100%

Unsurprisingly, a majority of the high-ranking elders we interviewed are the highest-ranking elder from their subclan in their local area. In other words, they may not be the highest-ranking elder in their lineage group, but 81.1 percent of them are the highest-ranking sub-clan representative in their

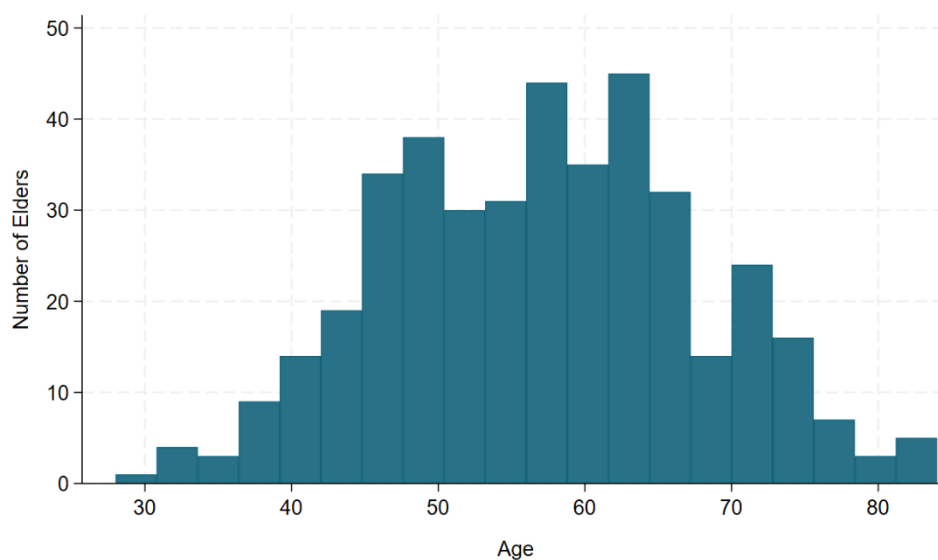
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<sup>6</sup> A point we briefly raised earlier in this section concerns the correlation between region and clan. Our Dir and Rahanweyn samples are heavily concentrated geographically, because both groups are geographically concentrated as a whole. Most of the Dir elders in our sample hail from Awdal, in western Somaliland; nearly all the Rahanweyn elders hail from SW State, which is the homeland of Rahanweyn. Drilling down to the regional level, our sample is decidedly non-representative of clan-families – for instance, most of the Hawiye elders in our sample were drawn from Middle Shabelle and Hiraan. But they make up a significant share of the population of Mudug and Galgaduud, which is not reflected in our sample.

respective district. Even some non-titled elders have this distinction, often because they are living in an area with relatively few of their kinsmen.

The figure below reports the age of elders we interviewed. The typical elder in our sample is 57 years old, but they range from 28 to 84 years of age. The vast majority fall between 45 and 70 years old.<sup>7</sup> Interestingly, age is only slightly correlated with their position in the hierarchy of the clan: the median Suldaan was 59.4 years of age, while the median non-titled elder was 56.2 years old.

*Figure 1: Age distribution of elders interviewed*



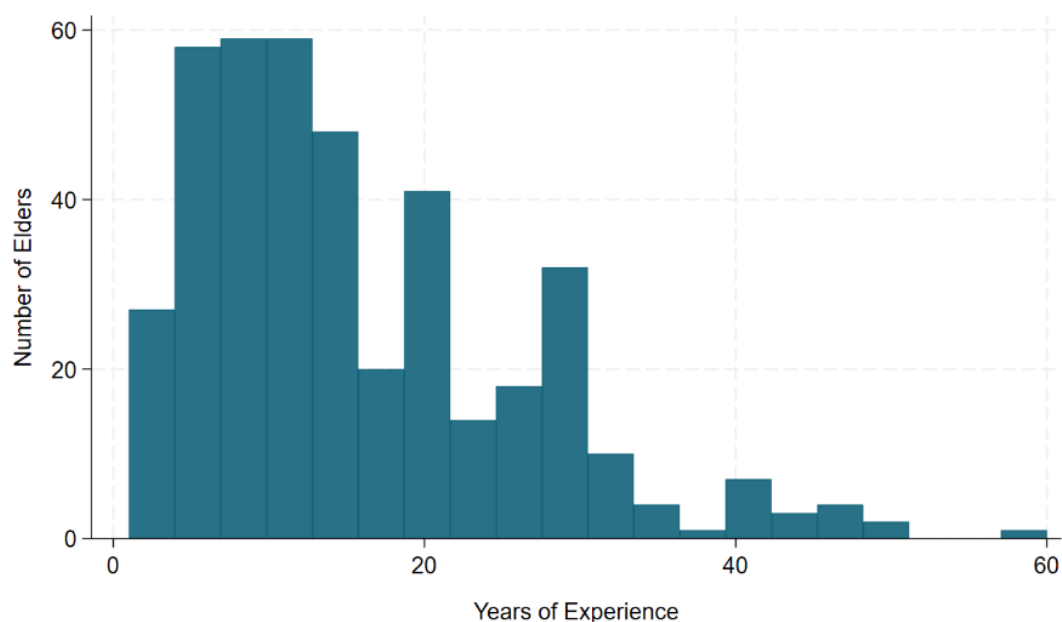
Almost all the elders are married, with just four (1.0 percent) reporting that they are single and have never been married. A significant minority – 44.9 percent – have more than one wife, which is broadly in line with their positions and importance. Going along with multiple marriages, elders tend to have many children: 9.6 on average, among those who have ever been married.

The typical elder became an elder at the age of 41.2 years, which is younger than we expected. This means the average elder in our sample has 15.4 years of experience as an elder, which is documented in the figure below. The distribution in the figure is skewed, though a surprising number of elders (60, or 14.7 percent of our sample) claiming 30 or more years of experience as an elder.

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<sup>7</sup> Of course, the age of elders and their years of experience are likely shaped by recent Somali history, as many elders were adolescents or young men during the most tumultuous years of the Somali civil war. This event may have shifted the average age of elders downward, if it resulted in the death or displacement of many elders.

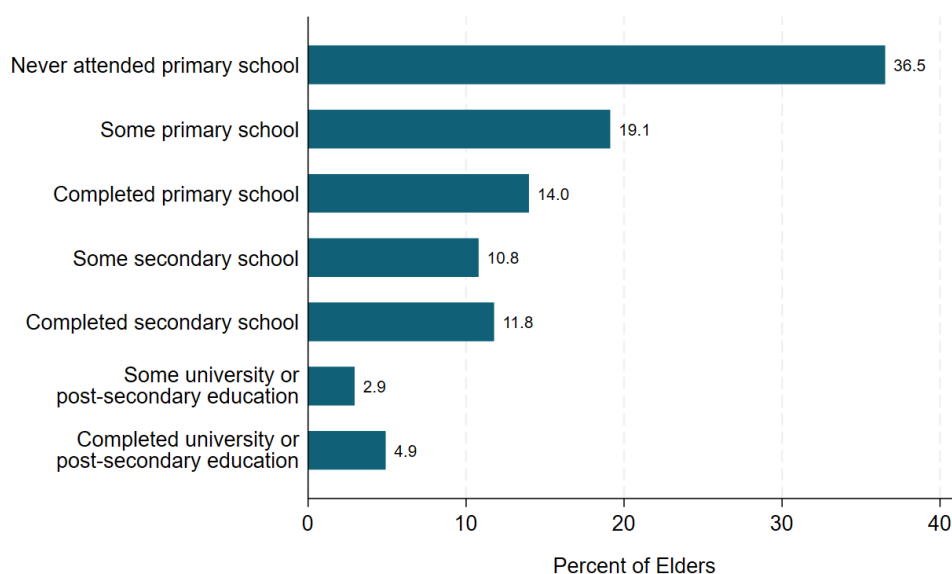
Figure 2: Years of experience as an elder



Most elders have experienced some form of both formal and Islamic education. As the figure below shows, most elders have attended primary school, though the share that completed primary school or continued their education beyond that point is relatively low. To be clear, however, this does not mean elders are more or less educated than comparable non-elders in Somalia, as we have not compared them to existing population-based surveys conducted in the last several years.

Most elders have completed Quranic or madrasa education, which is typical for Somali children more generally. Only 10.8 percent of elders have completed more intensive Islamic education, in the form of education in Islamic law (shari'ah) or lengthier education in Islamic theology. More common is Quranic school, which 63.2 percent of elders completed when they were young. For individuals with positions of authority in a largely oral society, overseeing a largely oral dispute resolution system, and with limited formal education, a surprising number of elders are literate, at least when asked to self-report their ability to read and write. Just 10.7 percent indicate that they would be unable to read a Somali poem at all; 74.5 percent report they could read a poem with ease.

Figure 3: Educational achievement of elders interviewed



Finally, we briefly sought to capture information about elders' sources of income. Elders adjudicating disputes are often compensated, though this compensation is usually small. In our sample, only 30.6 percent of elders cited compensation or pay derived from their work as an elder as a source of income, and it was the primary source of income for just 17.4 percent of elders. The most common income source was agricultural outputs – farming or raising livestock – despite the fact that the sample is largely urban. This is likely because many individuals living in urban or peri-urban spaces still engage in agriculture.<sup>8</sup> It is also possible that respondents derive income from herds they do not personally attend.

## Findings

### Women's Participation

A concern that is often raised regarding customary justice, including in the Somali context, is the treatment of women. Under *xeer*, the standard view is that women are broadly excluded from the proceedings and receive unfair treatment by the system, partially as a result of that exclusion. Previous research (e.g., Zaki and Nolte 2021) has documented women's exclusion and lack of voice within *xeer*, including particularly the exclusion of female survivors of sexual assault. Limiting women's ability to participate fully prevents them from receiving fair treatment and is an area of *xeer* that would have to be adjusted for *xeer* to gain wider acceptance among women and the international community.

Our own data confirm that women are systematically excluded from *xeer* hearings. We presented elders with scenarios in which we described a criminal dispute, and asked them how the dispute would proceed, including the type of hearing the hearing the dispute is likely to trigger, who would be able to participate, and how they see their own role. Elders were randomly assigned to receive one of three scenarios: a case of theft, in which the aggrieved shop owner is a woman; a case of rape, in which the

<sup>8</sup> This is especially common in insecure locations, where residents may live in towns but farm or raise livestock on the periphery of the town.

survivor is a woman; and a case of homicide, in which there is a female perpetrator and a female widow of the victim.

As part of each scenario, we asked elders about three forms of women’s participation and inclusion in the proceedings:

- Would [the woman] be able to attend and observe the small *gar*? (hear the discussion and evidence)
- Would [the woman] be able to speak and give evidence in the small *gar*?
- Would [the woman] be told the reasons for the decision, including the relevant *xeer* agreements and past cases that were used as precedents?

In the scenario involving theft, we asked elders to consider a male shop owner and whether he would be able to participate, followed by an alternative in which the shop owner was female.

Across the scenarios, women are widely, though not universally, excluded from the proceedings. In the table below, we document the difference in inclusion in *xeer* proceedings for male and female victims of a theft – a robbery of their shop. We presented respondents with a scenario in which the shop owner was male, and asked them whether the shop owner would be able to participate in the hearings; we then asked them to imagine a female shop owner and whether they would be able to participate.

*Table 4: Women’s ability to participate in a theft case, by gender*

Form of Participation	Male Shop Owner	Female Shop Owner
Attend and observe	64.8%	38.6%
Speak and give evidence	71.7%	45.5%
Be told the reasons for the decision	76.6%	68.3%

As the table shows, women are much less likely to be able to participate, despite being exactly equivalent to the men in the scenario. In other words, the difference in these rates cannot be attributed to differences in their role (e.g., victim versus witness) or to the type of crime, because these were held exactly equivalent. What we see is that a male shop owner would very likely be allowed to speak and give evidence themselves in the *gar* hearing (71.7 percent of elders say a male shop owner is “very likely” to be allowed to do so), while a female shop owner is much less likely to be able to (just 45.5 percent of elders say a female shop owner is “very likely” to be allowed to speak or give evidence).

This outcome is not restricted to cases of theft. Women are broadly excluded from sexual assault and homicide cases as well. In the table below, we report the share of women who would be able to participate in hearings if they were, in turn, a victim of shop theft, a survivor of sexual assault, or a surviving widow of a homicide victim.

It is important to note that these outcomes are not precisely comparable. First, there are differences in the women’s role in the case – especially when comparing homicide cases, in which our hypothetical woman is a surviving widow, rather than a direct victim. Second, the structure of the survey was slightly different across scenario types. In the case of theft, we asked respondents to consider a male victim, and *then* a female victim. By priming respondents to acknowledge the difference between male and female victims – by first asking about a male shop owner and then immediately asking them how things would vary if the shop owner was female – we very likely pushed respondents toward a socially

desirable response (that women would be included).<sup>9</sup> This structure did not apply to the sexual assault or homicide scenarios, which means that responses regarding women’s participation in sexual assault and homicide cases are likely more reflective of reality.

Note, however, that our purpose is not to precisely estimate the difference in inclusion rates by case type; rather, our purpose is to demonstrate that exclusion is widespread across case types. By this metric, the table below is compelling. Women are widely excluded: just 6.7 percent of elders report that a female survivor of sexual assault would be allowed to attend and observe the hearings in which her case was adjudicated, and just 13.3 percent would be allowed to give evidence. A surviving widow would generally not be allowed to testify or observe the proceedings in her husband’s murder case.

*Table 5: Women’s ability to participate in a xeer hearing, by case type*

Form of Participation	Theft (victim)	Sexual Assault (victim/survivor)	Homicide (widow)
Attend and observe	38.6%	6.7%	12.7%
Speak and give evidence	45.5%	13.3%	14.3%
Be told the reasons for the decision	68.3%	54.8%	63.5%

Notably, women are much more likely to be given information about the case, including the precedent cases that were used in the judgment, and the logic of the decision. Across every scenario, this form of participation by women was most common. This is consistent with findings we will discuss in the next section, regarding transparency, because this form of participation is primarily about information-sharing, as opposed to *participation* in the process. In short, women can be informed about the hearing – what happened and why – but cannot observe, attend, or speak within it.

Both the findings above – that women are broadly excluded, and that women have access to information but are excluded from participation – apply equally to women accused of a crime. In our homicide scenario, the accused is also a woman. Despite her centrality to the case, a woman accused of murder would almost certainly be unable to attend or observe the hearing that will decide her fate – including, in some cases, incarceration. Almost all elders (82.5 percent) of elders believe a woman accused of murder would be unlikely to be able to attend or observe her own *xeer* hearing. But 59.5 percent believe an accused woman *would* be told the reasoning underlying the decision.

When women are excluded, who is able to participate on their behalf? In part, this relates to the role of elders within *gar* hearings, as an elder serves as advocate for their group member, whether they are the accused or the accuser. Beyond this role as advocate, though, male family members seem to be viewed, within *xeer*, as a suitable proxy for female participation. For instance, if a female survivor of sexual assault cannot be told the reasons underlying the decision in her case, it is likely her father would be told in her stead; if not her father, a majority of elders report that an uncle or brother could be told the information, which can be relayed to the woman in question. At the same time, a number of elders admit that these male family members would not share this information with the woman –

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<sup>9</sup> Social desirability is a common form of bias in public opinion surveys. Respondents who indicated that a male shop owner could participate in *xeer* may have been hesitant to admit a female shop owner could not, because they are explicitly revealing that the shop owner’s gender determines whether they can be included. If this fact embarrasses them or they do not wish to reveal the gender-exclusive nature of *xeer*, they are more likely to indicate that women can be included.



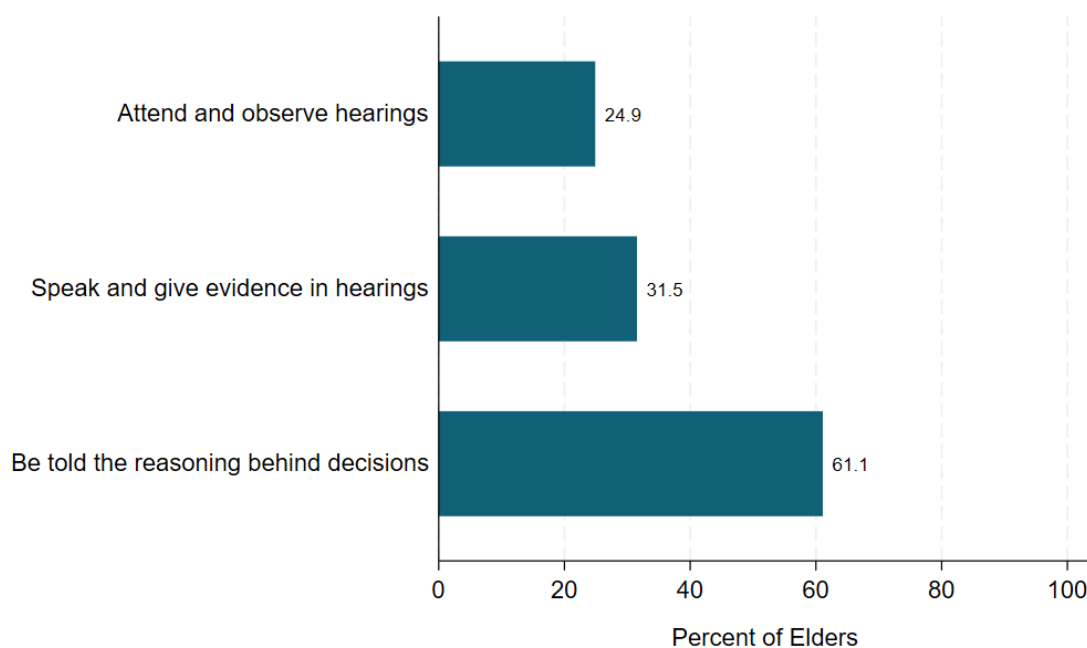
while a minority, the fact that 31.2 percent of elders believe the woman would not be told the reason for the decision is deeply problematic.

Even more problematic is the fact that a woman accused of murder would be unable to testify and that her father – or husband, or elder – would testify and give evidence on her behalf. Being excluded from directly receiving information about the decision reduces the depth of information available to the woman, reduces her understanding of her own case, and likely undermines trust in the process. But being excluded from testifying has more damaging consequences: evidence may be inaccurately transmitted, reducing the strength of her case.

Given the exclusion of women, how open are elders to reform of this aspect of *xeer*? It is important to note that the principles of *xeer* forbid female participation outright (Zaki and Nolte 2021, 19). Furthermore, while women are considered members of their father’s clan, they are not expected to make *maag* contributions and are thus not *full* members of the *maag* group to which their brothers and father belong. In other words, when victimized, the *maag* group represents them in *xeer* hearings, but they are not included in the count of men who make up the group. If elders are willing to include women in hearings, it would buck at least some tenets of *xeer*, though it is unclear whether those formal rules or social norms regarding women’s participation are more powerful barriers.

To understand elders’ attitudes, we asked them whether they would support women’s participation under the same three scenarios – theft, sexual assault, and homicide – utilized above. Aspects of participation were also the same: attending and observing; speaking and giving evidence; and being told the reasoning of the decision. Aggregating across case types, the figure below reports the share of elders who would support women’s ability to participate in *xeer* hearings.

*Figure 4: Elders who support allowing women’s participation in xeer hearings, by form of participation*



The clearest finding from the figure above is that elders support providing post hoc information to women about the reasoning for their decisions. However, support for more female participation in hearings is more muted – for instance, just 31.5 percent of elders support allowing women to speak

and give evidence in hearings. And even fewer believe women should be allowed to attend and observe hearings more generally.

These findings differ slightly between case types, though the main takeaway remains the same: a majority of elders do not support increasing women's ability to participate in *xeer* hearings. Interestingly, elders are slightly more supportive of women's participation in theft versus sexual assault cases, despite the fact that the woman in each scenario was presented as the victim/survivor. This may reflect a view that participating in a sexual assault case may re-traumatize the female survivor, while participating in a theft case would not. Perhaps more likely is that elders believe maintaining the privacy of the woman is particularly important in sexual assault cases, because public knowledge of a woman's rape reduces her ability to marry. By preventing them from participating in the hearings, they may believe they are preserving the woman's privacy and marriageability. However, this argument can only explain the gap between elders' views regarding theft and sexual assault cases; the fact that a majority of elders oppose greater female participation even in theft cases suggests that the main concern is not the privacy or dignity of the woman.

Leaving aside case type, there are sizable differences in support for expanding women's participation across geographic zones. Elders in Somaliland – and, to a slightly lesser extent, Banadir and Hirshabelle – are the least supportive of women's participation, while elders in Jubaland, Puntland, and SW State tend to be heavily in favor of women being able to observe hearing and speak/give evidence. The correlation between geography and support is very strong: elders in SW State, for instance, are 20.3 percentage points more likely than elders in Somaliland to support women's ability to observe *xeer* hearings; a similar gap exists on support for women's ability to give evidence in those same hearings. These results are illustrative – as noted above, a significant gap exists between elders in Puntland, Jubaland, and SW State, on one hand, and those in Somaliland, Banadir, and Hirshabelle, on the other.<sup>10</sup>

Age and the title an elder holds have contradictory impacts on an elder's support for reform and expansion of women's participation. For example, older elders are more supportive of women giving evidence, but less supportive of women observing and attending *xeer* hearings. Similarly, the highest-ranking elders (e.g., ugaas, suldaan) are the most supportive of women attending hearings, but less supportive than lower-ranked elders of women giving evidence or testifying in hearings. It is difficult to explain these patterns, and they defy simple recommendations regarding how to identify elders who would be open to reform.

One pattern that is consistent across the different types of participation is that rural elders are more supportive of women's participation in general. Holding all else equal, rural elders are 8.7 points more likely to support women's right to attend *xeer* hearings, when compared to their urban counterparts. They are similarly more supportive than urban elders of expanding women's ability to speak or give evidence and to be told the reasons for case outcomes. Despite this, it is important not to overstate the extent of support, even among rural elders. For both attending hearings and giving evidence, even among rural elders, these proposals have significantly less than majority support.

This section paints a rather bleak view of both women's rights within *xeer* and the potential for reform. Consistent with past qualitative research, our large sample of elders have confirmed that women are,

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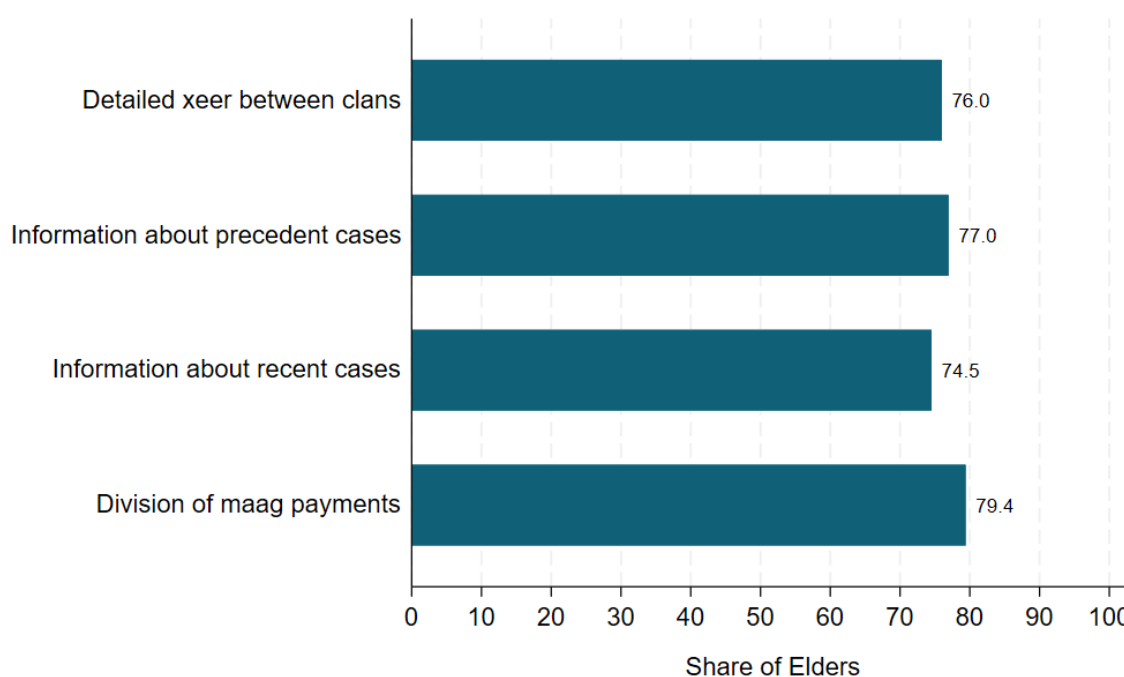
<sup>10</sup> These results cannot be explained as a result of small area-specific sample sizes, because many of the states concerned have relatively large numbers of elders in the sample. Moreover, the differences across states are sufficiently large that they are statistically significant even when factoring in the broadly small sample with which we are working. These results also hold after controlling for each elder's respective ranking or level of seniority, their age, and whether they work mostly in rural or urban areas.

indeed, prevented from full participation in cases that have grave consequences for their lives. And a minority of elders support expanding these rights – an outlook for reform made more pessimistic by the fact that there is no obvious new cohort of elders (e.g., younger elders) who have more inclusive attitudes. Women’s participation, if left to the preferences of most elders as they are currently, will remain limited.

## Access to Information & Transparency

A less noticeable shortcoming of *xeer*, when measured against international legal standards, is the lack of transparency regarding both the procedures and the outcomes. However, this issue comes out in qualitative interviews with women – especially those who have survived sexual assault – and occasionally men as well. Previous research has documented complaints that the process for arriving at a decision are opaque and that the reasoning behind decisions is not shared widely (Peterson and Zaki 2021). Even worse are cases where female survivors of sexual assault are not even told the outcome of the case or the amount of compensation paid by the perpetrator’s clan, a fact that reduces trust in elders and causes women to assume – rightfully in some cases – that elders and male clan members are, in essence, profiting from their assault.

Figure 5: Current access to information by male clan members, as reported by elders



As with our approach to women’s participation, we first sought to understand the current level of transparency provided via *xeer*, before asking whether elders would support additional transparency. We asked elders to consider transparency of four kinds, asking whether all male members of the clan could be given:

- The detailed *xeer* between your clan and another clan
- Information about precedent cases between your clan and another clan. Precedent cases are those that are used as examples to guide decisions in new cases about what is fair.
- Information about recent cases, including information about the ruling and why the case was decided in a specific way

- How *maag* payments are divided between a victim, their family, and the mag group. For example, if a man was injured and *maag* was paid in camels, what number of camels the victim received?

Our prior expectation was that these types of information were closely held, but this does not appear to be the case, at least in terms of the *rules* of *xeer*. The figure above reports the share of elders who reported each type of information could be accessed by *every male clan member*. All four types of information are broadly accessible – as the figure shows, there is virtually no variation across types.<sup>11</sup>

An interesting pattern is that both elders of greater seniority and elders of older age report higher rates of transparency. This gap arises from high-ranked elders’ much greater willingness to share – and here we mean *current* transparency with male clan members – information regarding recent cases, the logic of their resolution, and the division of *maag* payments from a case. As the table below shows, “titled” elders believe this information is accessible, while non-titled elders feel it cannot be shared. One reason non-titled elders may feel that case and *maag* details cannot be shared is thanks to their position relative to the communities they serve. Non-titled are often close to those involved in the disputes and may feel that preserving privacy is of the utmost importance, to the point of obscuring information.<sup>12</sup> The views of titled elders are interesting because they presumably have a deeper understanding of the tenets of *xeer* and are also the elders more likely to “make the rules.”

*Table 6: Current access to information for men, by rank of elder interviewed*

Elder Level	Highest-Ranking (Suldaan, ugaas)	Middle Rank (Aqil, Nabadoon)	Non-Titled Elders
The detailed <i>xeer</i> between clans	70.3%	76.1%	77.4%
Information about precedent cases	75.7%	77.8%	75.9%
Information about recent cases	78.4%	78.2%	67.2%
Division of <i>maag</i> payments	83.8%	82.1%	73.7%

At the same time, that information *can* be shared does not mean that it *is* shared, that non-elders know it is available to them, or that non-elders know how or who to ask for such information. For instance, elders may feel that clan members are entitled to such information but provide no avenue for accessing it and do not indicate to members that it can be obtained. It is possible that most clan members are operating under the apparently false assumption that information about *xeer* is secret.

Turning to the expansion of information access, elders are broadly in favor of the proposals with which we presented them. We asked elders whether, for the same four types of information, they would support making this information available to all members of the clan, including women and youth.

<sup>11</sup> This lack of variation may suggest that elders were not engaging closely with the questions, giving the same answer for each type of information described. This is not the case, however: while responses across the questions are obviously correlated, the correlation is far from overwhelming. Overall, only 64.0 percent of elders indicated all forms of information could be shared. And 23.8 percent of elders gave non-uniform answers across the four information types; in other words, they did not provide the same answer each time.

<sup>12</sup> Rural elders were also less likely to feel there is transparency at present. It is impossible to know, with our data, whether this is similar to our speculation regarding non-titled elders – that, being in rural areas, where “everyone knows everyone” means privacy is essential – or if there are other factors reinforcing privacy and opposing transparency in rural areas.

Support for these proposals ranged from a high of 77.2 percent – in the case of how *maag* payments are divided – to a low of 71.6 percent – with regard to the details of recent cases, including information about the ruling and its logic.

These findings are surprising, given the way regular Somalis often talk about *xeer*. However, in light of the fact that elders largely believe this information is already accessible to all male clan members, it is less surprising. That is, we expected elders to both feel information was not accessible and to desire to keep it that way. Instead, they believe information is accessible, and they support widening that accessibility to other groups.<sup>13</sup>

Patterns across subgroups are somewhat similar to those we observed in the context of current transparency. Older elders are significantly more in favor of expanding access to information to women and youth – telling, given that some of the elders in our sample are just a few years above international cutoffs for defining youth. These results also cut against the perception of older elders as impediments to progress; indeed, they are the most open to reform of this kind and, in this sense, the least conservative regarding gender roles.

*Table 7: Elders' support for providing information transparency to women and youth, by rank of elder*

Elder Level	Highest-Ranking (Suldaan, ugaas)	Middle Rank ( <i>Aqil, Nabadoon</i> )	Non-Titled Elders
The detailed <i>xeer</i> between clans	83.8%	70.5%	77.4%
Information about precedent cases	78.4%	71.8%	77.4%
Information about recent cases	81.1%	69.7%	72.3%
Division of <i>maag</i> payments	67.6%	76.1%	81.8%

The highest-ranking elders are also the most in favor of expanding access to information. Relative to current accessibility, though, this comes with a caveat: in the case of expanding access to women and youth, mid-ranking elders – *aqil, nabadoon*, and equivalent – are particularly opposed, as shown in the table above. It is only among the highest cadre of elders – ugaas, suldaans, and equivalent – where support expanding access to women and youth is greatest.<sup>14</sup>

Another important pattern concerns differences across clan-families. Elders affiliated with the Dir and Rahanweyn clan-families (in the latter case, both Rahanweyn-Digil and Rahanweyn-Mirifle) were the most opposed to greater transparency, by a wide margin. For instance, when presented with the idea of making the core *xeer* agreements between clans available to women and youth, just 45.8 and 65.0 percent of Dir and Rahanweyn elders, respectively, supported the proposal. This is compared to 81.1 percent among the remainder of the sample.

<sup>13</sup> As with questions regarding current accessibility of information, elders seem to have engaged meaningfully when asked about expanding that accessibility. A significant number of elders (9.6 percent) supported expanding transparency into three of the topical areas but not four, suggesting a level of nuance in their thinking about access to information.

<sup>14</sup> The exception is the division of *maag* payments, where high-ranking elders are less likely to support greater transparency.

We do not have a satisfying explanation for these results. The pattern among Dir elders can perhaps be explained away as idiosyncrasies from our sample, with Dir elders concentrated heavily in just one region – though there is little reason why that region should exhibit more conservative views than others.

The pattern among Rahanweyn elders is even harder to explain, as Rahanweyn constitute a large share of our sample and the elders we interviewed are fairly diverse geographically. Rahanweyn social organization differs from the other clan-families, as Rahanweyn are traditionally agro-pastoralists, not nomadic pastoralists; settlement, as opposed to nomadism, has been argued to explain Rahanweyn social organization, which is more hierarchical and includes stronger non-state political structures (Mukhtar 1996). This comparative hierarchy could explain the greater resistance to transparency – it is consistent with the fact that Rahanweyn elders also report lower levels of *current* information access among male clan members. This would suggest the issue is not one of female access to information, but of access to information more broadly; again, this would be consistent with hierarchical organization as a causal explanation, as opposed to more conservative gender norms.

The results of the survey suggest that access to information – if we consider only the *ability* to access information under the rules of *xeer* – is greater than we would have predicted. A majority of elders report that male members of their *maag*-paying group can access information about the bilateral agreements that govern *xeer*, about precedent cases, about the division of *maag* payments, and about the outcome of recent cases. Building on this, elders are broadly open to expanding access to information for women and youth, with a sizable majority supporting making these same sorts of information accessible to women and youth as well. What is less clear is whether access is inhibited by other barriers, such as clan members being unaware that such information can be shared, or unaware of how to request access.

## Equal Treatment Under the Law

*Xeer* is a universal system of law in only the most general sense. Core tenets are shared across all clans, including the utilization of collective responsibility and the bilateral negotiation of agreements between clans. These bilateral negotiations, however, ensure that *xeer* lacks universality at the meso or micro levels, because clans negotiate according to the specifics of their respective relationships within a clan dyad. A number of factors affect these negotiations, including traditional affinity between the clans, shared lineage or “brotherliness,” and their respective size, military power, and political influence.

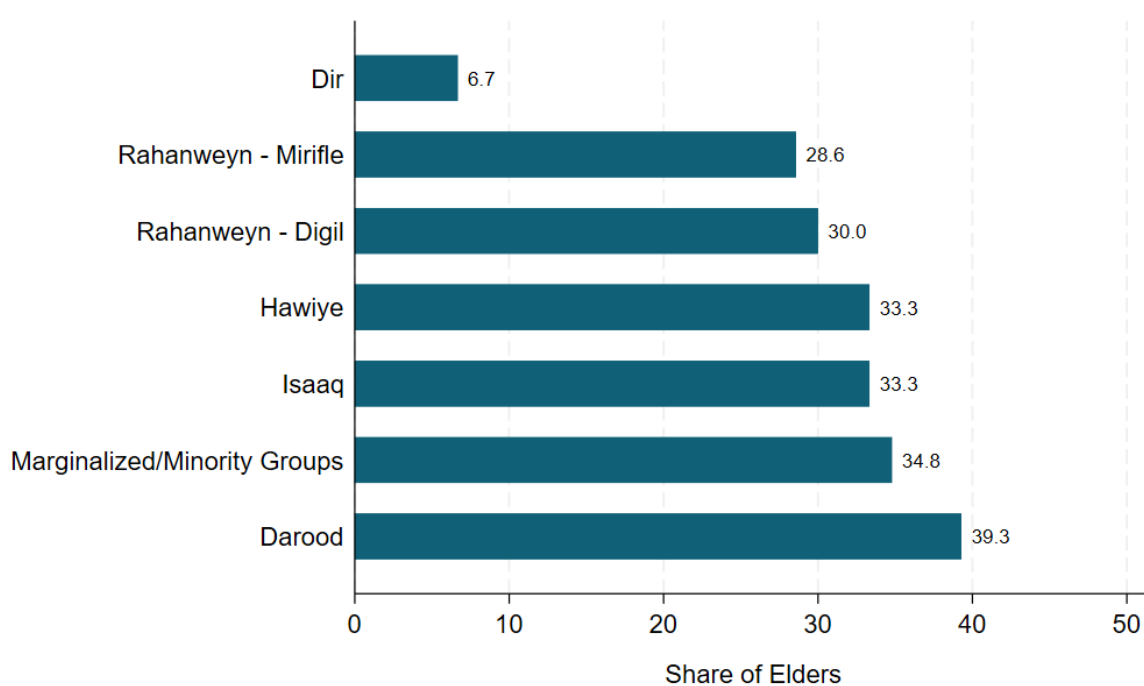
Bilateral negotiations are both a relic of tradition and a nod to the fact that *xeer* was meant to resolve specific problems, between specific groups, in specific places. It is not simply a body of criminal or civil law, but also clarifies the respective rights of each group to access water points, pasture, or migratory routes under various circumstances.

Bilateralism’s context-specificity, unfortunately, lends itself to unequal treatment of different victims and perpetrators who have committed otherwise identical crimes. This tendency is amplified by the fact that the only enforcement mechanism – for *xeer* agreements, writ large, and for case-specific decisions alike – available is the threat of violence. If one clan refuses to accept the outcome of a case or fails to make the required *maag* payment, it is the threat of retaliation or actual violence that prompts them to accept the outcome. Typically this consists of selective violence, with one clan targeting prominent members of the other clan for assassination. The bilateral nature of *xeer* and its reliance on the threat of violence means that individuals from “stronger clans” may benefit during disputes, receiving lighter punishments or not being prosecuted at all.

Establishing the prevalence of unequal treatment – what we would call discrimination or bias under systems in which equal treatment is expected – is difficult. A fair amount of qualitative evidence supports claims that cases are not decided in an evenhanded manner, or at least that individuals from smaller clans perceive unfairness of this kind. But there is no data on case outcomes which can be used to measure the extent of bias statistically.

Our interviews with elders shed a small amount of light on this question. We briefly described for elders a case in which a man has been credibly accused of rape. We then asked them to imagine that the perpetrator was “from a small clan that is not influential in this area” and asked whether this would impact the outcome of the case – the perpetrator’s guilt or innocence – or the *maag* payment agreed upon.

*Figure 6: Share of elders who believe an accused perpetrator from a smaller clan would be more likely to be found guilty*



The figure above reports the share of elders who believe the perpetrator would be more likely to be found guilty if they were from a locally weaker clan, broken down by clan family. Overall, 31.2 percent of respondents believed a man from a weaker clan would be more likely to be held to account for the rape he committed.<sup>15</sup> What the figure shows is that elders from both traditionally marginalized clans *and* from traditionally larger clans agree that relative clan power would shape the outcome of the case. That is, this finding is not driven exclusively by the perceptions of elders from smaller clans – it is a view broadly held. It might be natural for this view to exist among members of marginalized clans; the

<sup>15</sup> Notably, elders do not expect the *maag* amount specified would differ as a function of the perpetrator’s clan or their relative power. This is somewhat surprising, because it may

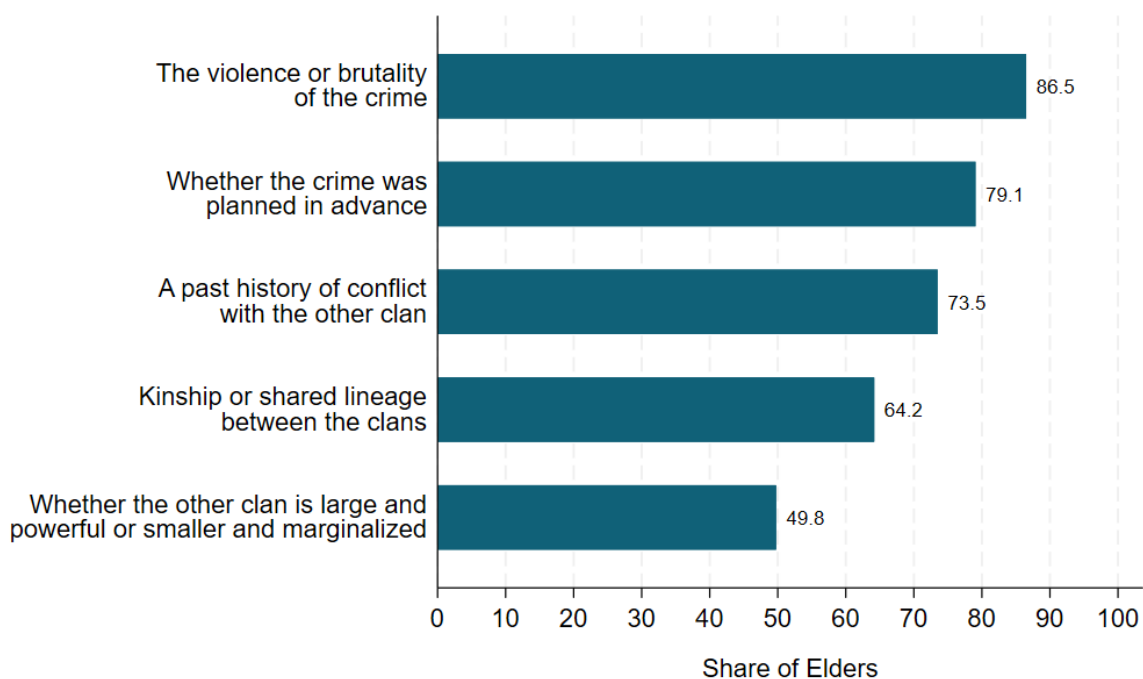


fact that it exists among larger, traditionally dominant clan-families as well gives us greater confidence that it is a consideration in how cases are adjudicated.<sup>16</sup>

We asked a separate subset of elders a similar question, framed slightly differently. Specifically, we asked elders which factors – in a case related to theft, assault, rape, or murder – would affect the outcome of the case. As the figure below shows, almost all elders agreed that the relative brutality and premeditation of the crime would matter, which is in line with most formal court systems, which take into account factors such as the intent of the perpetrator. Elders also believe that history or shared lineage matter – essentially, that a history of conflict between the groups would shape the outcome and that shared lineage would reduce the likelihood of finding a perpetrator guilty, similar to the arguments for “brotherliness” between clans documented by Schlee (2013).

Of particular note for our discussion is the last factor, which captures the relative power of clans. Of course, the fact that elders take into account past conflict and shared lineage is also a major impediment to equal treatment under the law; however, in the question regarding relative size and power of the clans, we have more direct evidence for unequal treatment. Here we see that approximately half of elders believe the relative power of the clans involved in a dispute would shape the outcome, a telling admission that two individuals charged with the same crime might receive very different outcomes, depending on the clan to which they belong.

*Figure 7: Share of elders who believe each factor impacts the outcome of xeer cases*



Given the bilateral nature of *xeer*, unequal treatment like that outlined above is almost inevitable. In our interviews with elders, therefore, we did not ask whether elders would consider simply not allowing power dynamics to enter into their adjudication of cases – because power dynamics will always be present in a bilateral system. Instead, we presented them with an idea for codifying a single

<sup>16</sup> It is important to note that clan-families are very large and mask huge differences in relative power within them. Nonetheless, when we dig into dynamics within clan families, we still find that elders from relatively powerful clans and elders from relatively weaker clans respond similarly to this question.

*xeer* agreement that would bind all clans, and which would therefore impose identical punishment standards for all clans.<sup>17</sup>

Codification would not entirely remove the issue of relative power, because any discretion – such as that which would be necessary to account for a particularly heinous or brutal act – can be used to provide favorable treatment to members of more powerful groups. And codification would involve specifying appropriate punishments for each crime, but members of more powerful clans could simply be less likely to be found guilty. On the other hand, codification would be a step in the right direction, not least because it would signal that equal treatment is the expectation, and that relative power should not be a consideration. Moreover, codification comes with other advantages, such as efficiency gains from not requiring bilateral negotiations and ensuring that no disputes occur in a situation where no *xeer* agreement exists.<sup>18</sup>

We described to elders a proposal for codification, in which a single *xeer* would apply to all clan-dyads, and precedent cases would carry over across clans. In our sample of elders, there was fairly strong support for this proposal, with 65.7 percent of elders stating they would strongly support a proposal of that kind (and a further 15.0 percent stating they would support it somewhat).<sup>19</sup> Support was weakest among high-ranking elders, who – holding all else equal – were 6.3 percentage points less likely to support codification than mid-ranking and non-titled elders. Age also comes into play, but only at the margins: a typical 40-year old elder is 6.0 points more likely to support codification than a typical 70-year old elder, after accounting for other predictors of support.

One barrier we might expect to codification is opposition from the strongest or largest clans, if they feel codification will cause them to lose advantages they currently enjoy within customary justice. As we hinted at above, we believe even strong groups will see some advantages from codification, because it ensures their members will receive equal treatment when they are living or traveling outside their home areas – areas where they are in the minority. Nonetheless, it would not be surprising if support for and opposition to the proposal mapped onto relative power levels, such that more powerful clans tended to oppose it, and marginalized clans tended to support it.

Importantly, our data does not support this relationship. Elders from traditionally marginalized groups – Somali Bantu, Reer Shabelle, Makane, and so forth – tend to support codification, as do smaller groups that lack military power, such as the Bravanese and Benadiri communities. However, elders from several of the clans we would classify as large and comparatively powerful – not just in a single area, but in most areas in which they reside – also express strong support for codification. For instance, elders from the Hawiye-Abgaal, Hawiye-Habar Gedir, Darood-Harti-Majerteen, and Mirifle-Hadamo clans all express moderate or strong support for codification – and these groups dominate politics in their respective home areas. Caution is warranted here – it is possible that, when actually proposed, elders from larger clans may object because codification would erode their clan’s bargaining positions.

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<sup>17</sup> Codifying a precise punishment may be difficult and is undesirable – as with most systems of law, the circumstances of the crime should be taken into account. However, specifying upper and lower bounds on punishment would be viable and still provide discretion for premeditation, for instance.

<sup>18</sup> Not all *maag* groups have *xeer* agreements with all other *maag* groups. Disputes between groups that lack a *xeer* agreement are increasingly common due to urbanization and the movement of people who previously were not in contact with one another. According to the elders we interviewed, over one-third of recent cases they handled were between groups that lacked a formal *xeer* agreement to guide their work.

<sup>19</sup> Our questions regarding reform on this front were relatively limited, because codification would likely be all-encompassing. It is difficult to imagine half-measures or partial reforms that would move toward codification; thus, our survey asked about the sole end outcome, rather than a wide variety of reforms, as in previous sections.

The hypothetical we posed to elders may not have demanded that they fully consider the downstream consequences, for themselves and their constituents, of codification, though their initial support is promising.

## Collective Punishment and Compensation

As with most forms of customary justice, one principle of *xeer* is the use of collective responsibility. When a member is found guilty of a crime or personally responsible for an injury they cause, the clan pools their resources to pay the compensation agreed upon by elders from the two groups. Indeed, the *maag* group referred to throughout this report is the lineage level which defines the set of men who will pool their money for a murder case. If a man is in my *maag* group, it means they will be responsible for a portion of the *maag* if I am found guilty of murder and I will, likewise, be responsible for a portion of the *maag* if they are found guilty of murder.<sup>20</sup> The size of the *maag* group is determined, in part, on the basis of whether the pooled group of men would be capable of paying the required 100 camels in response to a murder. *Maag* groups often split over internal disputes, but centrifugal pressures that arise from disputes are offset by the centripetal pressure of needing to raise funds in the event of a murder or other claim against a group member.

In this sense, *xeer* can be characterized as a form of insurance, in which individuals insure themselves against liability for injuries or crimes they commit. In this model, the *maag* group is the risk-pooling group. Individual members pay a small portion of the liability of other group members, when needed, and receive the same treatment when they are personally liable for a criminal act or injury. Thus, members avoid any very large personal liability, but must make frequent smaller contributions to the liability of other members.

It is difficult to imagine a scenario in which collective responsibility under *xeer* could disappear. The notion of collective responsibility is deeply embedded in the system and social organization that has arisen around *xeer* and as part of the clan lineage system. More practically, the impetus for collective responsibility remains in place: if a criminal act requires payment of 20 camels, few individuals could pay this debt over a reasonable timeframe themselves. Thus, collective responsibility is necessary unless *maag* levels are drastically reduced.<sup>21</sup> For now, we set this issue aside and assess how responsibility is distributed within the *maag* group currently. We will then turn to a discussion of small-scale actions that could increase individual responsibility within *xeer*.

Precisely how collective is punishment under *xeer*? While it is widely understood that members of the *maag* group pool their resources to pay the *xeer*-related debt of their members, it is not clear how much each member generally contributes. It would be surprising if all members contribute the same amount, especially when comparing the perpetrator to relatively distant family members.

We asked elders how *maag* obligations would be divided under three scenarios. In each, a member of their *maag* group was found guilty of a crime, and an agreement was reached to pay *maag* to the

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<sup>20</sup> The *maag* group is the most commonly referenced unit of this kind, but this refers specifically to those who will be jointly responsible for cases involving murder or accidental death. In practice, there are smaller constituent units within the *maag* group that may be responsible for pooling resources to pay smaller claims (e.g., for a traffic accident). The lineage level which takes responsibility for different offenses or types of liability is unclear; we refer to the *maag* group generically, regardless of the type of dispute or crime in question, because it is useful shorthand, clarifying that we mean the group who, in a given case, would be responsible for paying compensation.

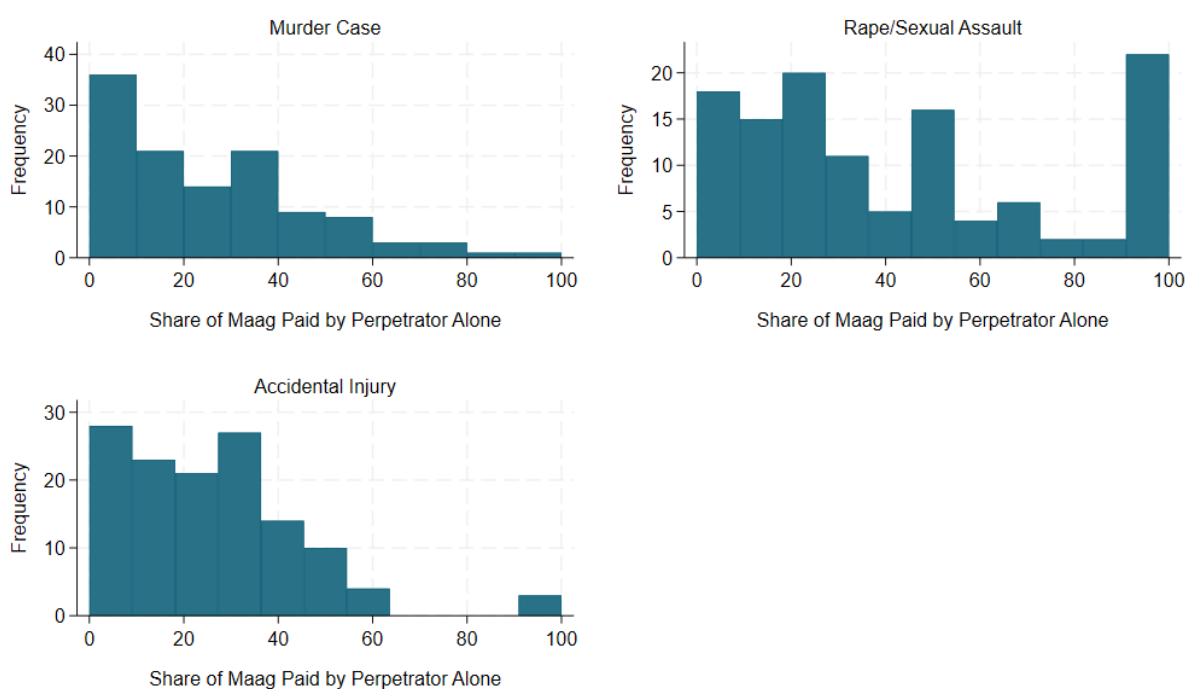
<sup>21</sup> Even if individual responsibility replaced collective responsibility, reducing the *maag* amounts associated with each type of crime would only dampen the deterrent impact of individual punishment and reduce the extent of restorative justice available to victims.

victim's family. The only difference across scenarios is the dispute type – murder, rape, and accidental injury as part of a car accident – and, therefore, the amount of *maag* owed. We then asked elders what share of the *maag* would be owed by each of three groups:

- The perpetrator himself
- The perpetrator's close family (brothers, uncles, etc.)
- The overall *maag* group

The figure below reports the share of *maag* elders expect would be paid by the perpetrator himself in each of the scenarios. The estimated share owed by the perpetrator ranges from 22.1 percent in a homicide case to 42.6 percent in a case of rape or sexual assault. These figures are likely overstated. Consider a man found guilty of homicide and asked to pay 80 camels, valued at approximately 40,000 USD. At 22 percent, the perpetrator's share of the compensation would be 8,800 USD, part of which he would very likely raise from his family members.

Figure 8: Share of *maag* paid by perpetrator, according to elders



Even leaving aside possible overestimates, the results in the figure make clear that a perpetrator pays only a small portion – far less than half – of the compensation required for his or her crimes. The median man found guilty of murder will pay 20 percent of the compensation himself, and his close family (uncles, brothers, etc.) will pay another 15 percent, while the remainder is paid by the *maag* group overall.<sup>22</sup>

<sup>22</sup> It is worth noting that the deterrent effect of compensation payments by other members of the *maag* group are small. In a *maag* group with 1200 male members – about average, according to elders in our sample – each member, outside the perpetrator and his close family, would be responsible for just 22 USD in compensation, even in the context of a relatively 80-camel penalty. While the threat of being required to contribute to a *maag* payment may theoretically motivate members to self-police and restrain aggression on the part of their co-

Given that risk-pooling is central to the idea of *xeer*, the adaptations available to shift responsibility to the individual perpetrator are somewhat limited. We presented elders with three possible ways to achieve this end, each of which we framed in terms of a repeat offender who had required repeated *maag* payments in the past.<sup>23</sup> The three methods for increasing individual responsibility were:

- Refuse to pay *maag* on his behalf and require him or his family to pay *maag* themselves
- Remove the man from the *maag* group
- Refuse to pay *maag* on his behalf and allow him to be arrested for his most recent crime, in lieu of paying compensation

Each of the three methods described above have *some* degree of acceptance already. For instance, 33.8 percent of elders were aware of a case, from the last five years, in which a perpetrator was sentenced to prison because his *maag* group refused to pay *maag* on his behalf, electing for him to be arrested instead. Fewer elders – 14.4 percent – reported that they knew of a case in the last 5 years where a man was removed from the *maag* group. This is a more drastic response, because it either requires the acquiescence of the man’s family (who are also members of the *maag* group) or prompts the splintering of the *maag* group.

Leaving aside current usage, we asked elders whether they would support another elder if they proposed these same actions. Again, we framed the questions around a repeat offender, about whom other members of the *maag* group had expressed dissatisfaction. The figure below reports their willingness to support each of the three proposed solutions.

At first glance, we can see that elders view removing a member from the *maag* group as the most extreme – and least acceptable – option. This is not surprising, given that removing a member might offend their family members and contribute to a split in the *maag* group. Removing a man might also prompt other members of the man’s family to refuse their *maag* obligations in the future. As one of our researchers described it, “the man is someone’s brother and cousin” and those family members are also part of the *maag* group. Extreme actions can prompt intra-group disputes that lead to splintering or a loss of cohesion.

Other options enjoy greater support. The most widely supported option is also the option that already occurs with the greatest frequency: refusing to pay the *maag* and allowing the repeat offender to be arrested instead. The use of state power to self-police the *maag* group already occurs at times.<sup>24</sup> A majority of elders would support this approach – 52.7 percent say they would strongly support this approach, with another 19.4 percent reporting they would support it somewhat.

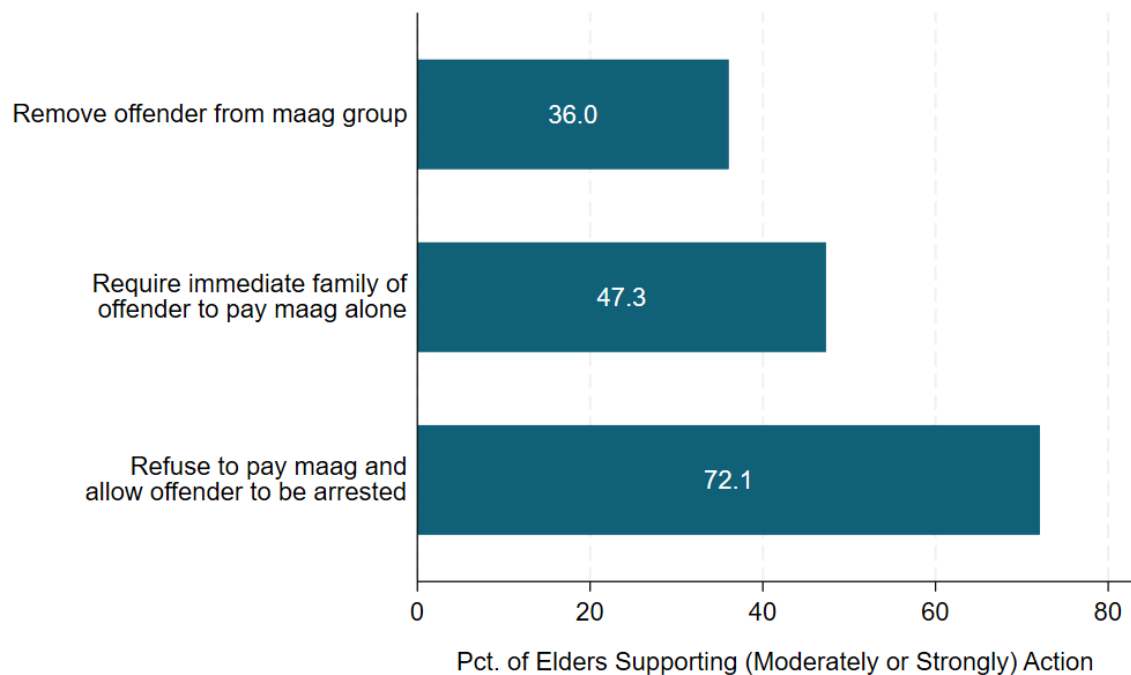
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members (see, e.g., Fearon and Laitin 1996), a relatively small payment is less likely to motivate this self-enforcement of internal discipline.

<sup>23</sup> We also asked elders whether they could talk to the man’s family and encourage him to change. However, this does not qualify as a reform or adaptation, as elders almost universally (93.7 percent) felt that this was an acceptable avenue currently. Indeed, this form of self-policing appears to common, based on qualitative data.

<sup>24</sup> It is also the case that the clan of a victim can refuse to accept *maag* payments in some cases. For instance, when there is a history of conflict or bad-faith dealing between two clans, one side might refuse to accept *maag* payments in the future, demanding the state-approved sanctions for a crime. For example, one group can refuse to accept *maag* and insist, instead, that the perpetrator of a homicide be put to death, in line with the Somali and Somaliland penal codes. The threat of relying on state power is also frequently used to ensure *maag* payments are actually made in line with *xeer* agreements.

Figure 9: Share of elders who would support each action for dealing with repeat offenders in their *maag* group



Rural elders and the highest-ranking elders tend to be the most supportive of these options. It is particularly surprising that rural elders tend to support these approaches – it is possible that this arises from the lack of state capacity to enforce the law in their areas, which requires creative solutions to the issues raised by repeat offenders. The fact that high-ranking elders are more likely to support each of the adaptation measures – including removing a man from the *maag* group – suggests that these measures are not necessarily contrary to *xeer*. After all, *suldaans* are the guardians of tradition and protocol – if they feel it is acceptable to, for instance, refuse to pay *maag* and shift the responsibility for a repeat offender to the man’s immediate family, then it is almost definitionally acceptable.

It is important to emphasize one caveat about our analysis. Elders are open to taking actions which counter collective responsibility, but these actions only apply to repeat offenders. The proposed adaptations do nothing to increase individual responsibility for first-time offenders, nor do they shift *xer* toward a focus on restorative justice for victims. Repeat offenders are certainly one part of the problem of collective responsibility, but this is a relatively marginal change when compared to the gap between *xeer* and systems – such as western-style courts – in which liability and punishment are entirely focused on an individual.

## Conclusions

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### The Operations and Procedures of *Xeer*

- Elders in our sample confirmed many of our preexisting expectations – and prior research – on specific aspects of *xeer*. One such confirmation was in the widespread exclusion of women from *xeer* proceedings, regardless of the type of criminal case being considered. Irrespective of their connection to the case, women are excluded and are much less likely to be included than men with identical links to the case.
- The bilateral nature of *xeer* negotiations and reliance on the threat of violence for enforcement both suggest that relative power would influence both long-standing *xeer* agreements and case-specific outcomes. Elders broadly confirmed this fact, indicating that – among other factors – relative clan power can influence case outcomes, and that individuals from smaller clans are more likely to be found guilty under otherwise identical circumstances.
- One area in which elders contradicted our expectations was in current access to information by non-elder members of the clan. Elders report that information about *xeer*, including bilateral agreements, precedent cases, *maag* payments, and recent case outcomes, is broadly accessible to all male clan members.
- This report provides the best empirical evidence regarding the distribution of *maag* obligations within the clan. While the collective responsibility mandated by *xeer* has long been known, our findings confirm that perpetrators are responsible for somewhere between 20 and 30 percent of *maag* payments made on their behalf in most criminal or accidental injury cases, though this likely takes into account money raised by the perpetrator, as opposed to their strictly personal contributions.

### Support for Reform and Adaptation

- Elders generally do not support significant reforms to enhance women's participation in *xeer* hearings. While there is some willingness to provide post hoc information to women about the reasons for particular decisions, support for broader participation, such as speaking, giving evidence, or attending hearings, is limited among the majority of elders.
- There is strong support for expanding access to *xeer*-related information to include women and youth – as opposed to only male clan members. A significant majority of elders endorse making details of precedent cases, *maag* payments, and recent cases more broadly accessible. However, it is important to note that accessibility in principle differs from accessibility in fact, as non-elders may not know how to access the information, who to ask, or even that the information is available to them. This issue is already present for men: elders state that all male clan members have access to information, but our experience is that most non-elders do not believe they have such access.
- Elders express a surprising degree of support for codification of *xeer*, with a single agreement binding all clans, as opposed to bilateral negotiations. Codification would contribute to – though certainly not ensure – equal treatment for all individuals under the law. A majority of elders, including those hailing from traditionally powerful clans – who we expected to be less open to codification and the erosion of their power that it might entail – show initial support for codification.
- Elders are open to some adaptations that increase individual responsibility for repeat offenders within the *xeer* system. Indeed, some measures are already used to reduce the *maag* group's liability for repeat offenders, in particular allowing the offender to be arrested in lieu of paying *maag*. This measure has strong support; more extreme measures, such as the



removal of a repeat offender from the *maag* group, face greater resistance, because these actions would cause internal strife and potential splintering of the *maag* group.

- Openness to reform varies across geographic space, the seniority of elders, and even clan families. However, these relationships are reform-specific, with elders from some clans or regions supporting reforms of one type and opposing reforms of other types. The most consistent pattern is that rural elders tend to be more supportive of reforms, all else equal, and the most encouraging finding is that the highest-ranking elders (e.g., *suldaan*, *ugaas*) are *often* quite supportive of reforms. In general, identifying a coalition that would support a particular reform appears possible in most cases.

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## Appendix

Table 8: Composition of sample, by clan family and clan

Clan Family	Clan	Sample Size
Darood	Harti - Dhulbahante	15
Darood	Harti - Majeerteen	19
Darood	Harti - Warsangeli	1
Darood	Sadde - Marehan	19
Darood	Leelkase	1
Darood	Ogaden	14
Darood	Other Darood clan	2
Dir	Biyomaal (Bimaal)	8
Dir	Fiqi Mohamed	2
Dir	Gadabursi	36
Dir	Samaroon	1
Dir	Other Dir clan	1
Hawiye	Abgaal	23
Hawiye	Baadicate	5
Hawiye	Galjecel	16
Hawiye	Gorgate - Silcis	2
Hawiye	Habar Gedir	12
Hawiye	Jijeele	3
Hawiye	Moobleen	1
Hawiye	Murusade	6
Hawiye	Sheekhaal	5
Hawiye	Xawadle	12
Hawiye	Other Hawiye clan	3
Isaaq	Arap	4
Isaaq	Ayub	3
Isaaq	Eidegalle	15
Isaaq	Habar Jeclo	15
Isaaq	Habar Yonis	15
Isaaq	Sacad Muse	15
Rahanweyn - Digil	Bagadi	4
Rahanweyn - Digil	Dabarre	3
Rahanweyn - Digil	Darbane	2
Rahanweyn - Digil	Garre	7
Rahanweyn - Digil	Gelledi	3
Rahanweyn - Digil	Jiide	2
Rahanweyn - Digil	Shanta Calemod	2
Rahanweyn - Digil	Tunni	6
Rahanweyn - Digil	Other Rahanweyn - Digil clan	1
Rahanweyn - Mirifle	Boqol Hore	4
Rahanweyn - Mirifle	Elay	2
Rahanweyn - Mirifle	Eylo	1
Rahanweyn - Mirifle	Gasaargude	1
Rahanweyn - Mirifle	Geledle	2
Rahanweyn - Mirifle	Hadamo	13
Rahanweyn - Mirifle	Hariin	3

Rahanweyn - Mirifle	Hubeer	4
Rahanweyn - Mirifle	Jiroon	2
Rahanweyn - Mirifle	Leysan	8
Rahanweyn - Mirifle	Luway	2
Rahanweyn - Mirifle	Macallin-weyne	3
Rahanweyn - Mirifle	Reer Dumaal	1
Rahanweyn - Mirifle	Wanjel	1
Rahanweyn - Mirifle	Yantar	3
Marginalized or minority group	Ajuuraan	1
Marginalized or minority group	Barawan	8
Marginalized or minority group	Benadiri	1
Marginalized or minority group	Gabooye	11
Marginalized or minority group	Jareer	8
Marginalized or minority group	Jareer - Eylo (Sab-Eyle)	1
Marginalized or minority group	Jareer - Shiidle	12
Marginalized or minority group	Makane	2
Marginalized or minority group	Reer Shabelle	1
Marginalized or minority group	Saddex Cumarow	1
Marginalized or minority group	Other marginalized clan	8

The Sababi Institute is an independent research center and registered social enterprise based in Hargeisa, Somaliland. Our goal is to increase understanding of the Horn of Africa and East Africa by improving research practices and increasing the availability of data.