

## **TERMS OF REFERENCE**

### **UNDERSTANDING POTENTIAL DEVELOPMENT OF JUSTICE SYSTEM IN SOMALIA AND OPPORTUNITIES FOR PROMOTING RULE OF LAW & STATE AND PEACE BUILDING INFORMED BY BASELINE ANALYSIS OF FORMAL REGIONAL CRIMINAL COURTS IN URBAN SOMALIA**

#### **A. Background**

DFID Somalia has recently had approved a £36.3 million business case to support the development of the police and justice sector in Somalia. The UK also has wider commitments to promoting justice sector development and the rule of law as a key component of its NSC strategy for Somalia, which also benefits from funding through other mechanisms including the CSSF.

As part of this approach (and articulated within the business case) it was determined that UK resources could be best placed to support the development of the criminal justice chain in the Federal Member states. The business case also recognised that, until the system of “judicial federalism” (i.e. how the justice sector institutions and actors throughout Somalia and in each Federal Member State will work together and what the delineation of jurisdictions is) is finalised, substantial investments in the formal justice sector could only achieve so much.

HMG and most international actors granular quantitative knowledge about how the courts function in the federal member states is extremely limited. This terms of reference has therefore been developed to (a) assist with increasing that store of knowledge (b) Map out a series of possible interventions and (c) Provide guidance as to how the UK as a whole may support the development of a Federal justice system in Somalia.

#### **B. OBJECTIVE**

The overall goal of this ToR is to provide an initial baseline to guide UK investments over the next four years in the criminal justice sector in Somalia to promote rule of law and access to justice. This will inform both future investments from the CSSF as well as DFID bilateral funds within the recently approved “Security and Justice Programme”. In particular, this will explore opportunities for complementing investments in police reform at both federal and regional levels with engagement on wider access to justice – particularly the linkages with processing those arrested and charged through the formal court system.

The primary objective of this work is to identify priorities, opportunities/entry points, risks and potential resource implications for donor support to strengthening access to justice and promoting rule of law in Somalia over the coming 4-5 year period, and propose a theory of change.

This will be informed by two key areas of enquiry:

1. To develop a better understanding of potential future developments in the justice sector in Somalia:
2. To develop a clear baseline of how the formal justice sector currently operates – and identify potential indicators for measuring future progress;

C: **SCOPE OF WORK:**

The consultancy services should:

Develop a better understanding of potential future developments in the justice sector in Somalia: The consultancy will explore, document and understand wider “structural” questions about the overall development trajectory of the court system in Somalia and how it fits within the broader state building aims of the country. Through engaging with key informants in government, the donors and civil society as well as with broader community consultations as appropriate analyse and explore the following questions (for this purpose the level of consultations may extend well beyond the urban capital criminal court centres):

- i.) Gather current views/perceptions/assumptions on how responsibilities and relationships for the delivery of justice are likely to develop within a federated system - identifying the key issues/questions that need to be addressed and where points of tension may arise as well as key risks and opportunities. What would an effective process likely look like to begin to discuss/negotiate these arrangements – who would need to be involved and facilitated through which potential mechanisms and what might be a realistic timescale? How can the international community play a positive role and what are the risks?
- ii.) Understanding of how the formal system interacts with the traditional/informal justice system – where and how do they interact and are there any opportunities entry points for engagement to strengthen and improve consistency of access to justice; or do the risks outweigh the potential benefits and create the potential for doing harm?
- iii.) How might we best approach a conflict sensitive approach to promoting increased rule of law and access to justice in Somalia – what are they key considerations and what might be a practical framework for applying them?
- iv.) Where are the opportunities for improving access to justice for women and girls – and what are the risks?

Develop a clear baseline of how the formal justice sector currently operates – and identify potential indicators for measuring future progress:

Sub-objectives include:

- Undertake a mapping of the “criminal justice chain” in relation to the main criminal justice court houses in each regional capital in Somalia that currently exists (including Benadir, Kismayo, Baidoa/Barawe, potentially Beletweyne).
- Work with each court to establish an agreed “score card” about the appropriate functions of criminal justice courts in Somalia which should act as the basis for the annual and strategic developments of the court.
- Create a realistic set of objectives and propose a viable (based on existing resources and any pre-identified external (e.g. donor) resources theory of change for the period 2017-2020 .
- Create a basic data set about the financial and human resource conditions of each criminal court house in the regions.

The work must deliver as granular detail about the operations of the court functions as possible and rely on first hand quantitative and qualitative data as much as possible. In order to develop this level of granularity it is expected that the consultancy will:

- 1.) Undertake a mapping at each main criminal court of the overall “justice chain” associated with processing an individual from arrest through to detention. This mapping ought to be undertaken at a both *de jure* and *de facto* level with an appropriate sample size of cases (e.g. seriousness of the charge, gender and age of the respondent) being analysed. There are multiple mapping tools that can be used and adapted in this regard for example this analysis from the UNODC [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/Decision\\_Points.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/Decision_Points.pdf). The purpose is to identify weak/lengthy points in the system where interventions to alleviate those problems may prove effective.
- 2.) Document and map whatever case management systems are currently in existence at each court and, as part of the work strands here, identify the degree to which they are actually utilised.
- 3.) Conduct a broader case file analysis of at least the last 2 years (assuming that case files exist in analysable form in each regional criminal court house) in order to understand the broader typologies, processing times and disposal of cases that are entering the courts. The consultancy can suggest as part of its initial scoping an appropriate methodology in this area.
- 4.) Have each court undertake a basic self-assessment of key areas that courts are supposed to deliver. The International Framework for Court Excellence can be used and adapted if necessary in this regard - <http://www.courtexcellence.com/~media/Microsites/Files/ICCE/Self-Assessment%20Checklist%20E%202014%20V3.ashx>. This is needed in order to deliver a “Somali scorecard” that can be compared

across courts in order to demonstrate those courts making better progress and those that may be lagging.

5.) Undertake a basic financial and human resource mapping of each court that captures at a minimum:

- i. Budget of the court
- ii. Revenues of the court
- iii. Expenditures of the court (with as much detail as possible)
- iv. How legal aid for defendants through each court is administered
- v. Legal and administrative basis of the court
- vi. Number of administrative staff (and qualifications)
- vii. Number of judicial staff (and qualifications)
- viii. Number of prosecutors (and qualifications)
- ix. How defence council is accessed
- x. Number of custodial staff present (and qualifications)
- xi. Where appeals are made to

6.) Undertake a series of “user” surveys to identify overall satisfaction levels with the court and obtain additional qualitative information about necessary issues and proposed reforms from a “user” perspective. The “users” (appropriately gender and age disaggregated) should capture at minimum:

- a. Defendants;
- b. Victims;
- c. Prosecutors;
- d. Defence lawyers;
- e. Judges;
- f. Court administrative staff.

7.) Identify how judges and prosecutors are appointed – including qualification for office, education and experience but also retention/promotion/deployment – what are the procedures for this? What plans are there to grow the judiciary/prosecution etc...

8.) Identify what the overall availability and qualifications of defence counsel are. Identify how defence counsel are appointed and how cases are distributed amongst defence counsel.

9.) Determine both the *de jure* and *de facto* role/influence of Shari’a (in addition to traditional/clan based justice mechanisms) in the formal justice sector and whether this differs both in and between the federal member states.

#### **D: DELIVERABLES**

The consultancy service should deliver a synthesis report of no more than 30 pages with an executive summary of no more than 3 pages. Supporting evidence should be provided within a series of annexes. As a minimum these annexes should include:

- 1.) A *de facto* and *de jure* mapping of the criminal justice chain as it relates to each of the main criminal justice court houses in each regional state;
- 2.) A case file analysis of the last two years for each of the main criminal justice court houses in each regional state;
- 3.) A “scorecard” capturing the basic practices of each of the main court houses in each regional capital that can act as the basis for short to medium term reforms and allows cross comparability of reform efforts between the court houses;
- 4.) A basic financial and human resource mapping of each of the main criminal justice court houses in each regional state;
- 5.) A series of “user” surveys;
- 6.) A proposed theory of change;
- 7.) A political economy analysis of each individual court house analysed - identifying what the best entry points/opportunities for reform efforts may be and informed by key stakeholder mapping and a risk assessment. In addition, a political economy analysis of opportunities for reform around the justice sector as a whole and how to support the process of federalising the justice sector will be an important background document to inform the theory of change; and
- 8.) A full list of all those consulted and a bibliography of reference material drawn upon.

## **E: TIMELINE**

Given the security situation, limited access and expected poor record keeping, it is expected that the scope of work and deliverables set out above may take up to [6] months in order to deliver a product of sufficient quality – particularly in order to follow a sufficient number of cases “through the chain”. However, many of the work streams can be carried on in parallel with sufficient team resources and so the work may be completed sooner.

## **F: APPROACH**

It is a strong expectation that the majority of the deliverables under this consultancy service can be delivered. While an inception phase is built into the approach, this is in order to provide additional time to determine how to

obtain as much granular information as possible, rather than to reduce the level of detail and deliverables.

The following approach is suggested which may be modified following the initial scoping/inception phase:

Phase	Timeline/Details
Inception	4 weeks – visit each court house, determine availability of information, finalise work plan
Mapping	14 weeks – undertake key data collection
Synthesis	3 weeks – analyse key data and develop first draft report
Presentation	1 week – present to key stakeholders in the regions
Revision	2 week – based on presentations revise and deliver report

## G: PERSONNEL

It is vital that as much of this work carried out by the key personnel is carried out in country and in partnership with key counterparts. However, the cost of providing security for “international” experts to operate in the provincial capitals is extremely high and as such, from a value for money perspective, a balance will have to be struck between key international experts and local Somali experts.

The following key international personnel would be required for this assignment:

- **Team Leader:** Ideally with at least 10 years of experience in court administration reform and at least 3 of those in fragile and conflict affected state environments;
- **Somalia governance/political economy expert:** Ideally with significant experience and understanding of Somali political economy and networks at federal and regional levels;
- **Criminal Justice Chain Mapping Expert:** Ideally with at least 8 years experience in analysing and reforming “criminal justice chains” with at least 2 of those years spent in fragile and conflict affected state environments;
- **Court Administration Reform Expert:** Ideally with at least 8 years experience in analysing and reforming “court administration” functions with at least 2 of those years spent in fragile and conflict affected state environments.
- **Somalia “Traditional Justice” (Xeer) Expert:** ideally with at least 7 years of experience of analysing traditional justice systems and their linkages with formal justice systems. Deep knowledge of Somali traditional justice systems would be highly desired.

- **Sharia Law Expert:** Ideally with at least 7 years of experience of advising on both substantive and procedural law reforms of Sharia law with at least 3 of those years spent working in fragile state or low income countries.
- **Gender and Social Inclusion Expert:** ideally with at least 7 years of experience analysing both “formal” and “non-formal” traditional justice systems from a criminal justice perspective and designing actionable reform initiatives. Experience in fragile and conflict affected states, as well as specifically in East Africa or the Middle East.

Given the security conditions in Somalia and the likely poor status of the records available a strong “on the ground” presence in each regional capital will be needed in order for basic liaison functions with the courts, interviews with users and collecting key data. As such, the consultancy should demonstrate a strong and technically competent “Somali” team who would be able to undertake this work and feed the data back while operating under appropriate security conditions.

## H. Duty of Care

The Supplier is responsible for the safety and well-being of their Personnel and Third Parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.

DFID will share available information with the Supplier on security status and developments in-country where appropriate. DFID will provide the following:

- All Supplier Personnel will be offered a security briefing by the British Embassy/DFID on arrival. All such Personnel must register with their respective Embassies to ensure that they are included in emergency procedures.
- A copy of the DFID visitor notes (and a further copy each time these are updated), which the Supplier may use to brief their Personnel on arrival.

The Supplier is responsible for ensuring appropriate safety and security briefings for all of their Personnel working under this contract and ensuring that their Personnel register and receive briefing as outlined above. Travel advice is also available on the FCO website and the Supplier must ensure they (and their Personnel) are up to date with the latest position.

This Procurement will require the Supplier to operate in conflict-affected areas and parts of it are highly insecure. Travel to many zones within the region will be subject to travel clearance from the UK government in advance. The security situation is volatile and subject to change at short notice. The Supplier should be comfortable working in such an environment and should be capable of deploying to any areas required within the region in order to deliver the Contract (subject to travel clearance being granted).]

The Supplier is responsible for ensuring that appropriate arrangements, processes and procedures are in place for their Personnel, taking into account the environment they will be working in and the level of risk involved in delivery of the Contract (such as working in dangerous, fragile and hostile environments etc.). The Supplier must ensure their Personnel receive the required level of training and complete a UK government approved hostile environment training course (SAFE)<sup>12</sup> or safety in the field training prior to deployment.

**DFID Overall Project/Intervention / Summary Risk Assessment matrix**

Project/intervention title:

Location: **Mogadishu/South Central Somalia**

Date of assessment: **13 July 2016**

Assessing official:

Theme	DFID Risk score	DFID Risk score	DFID Risk score	DFID Risk score	DFID Risk score	DFID Risk score
	Mogadishu Airport	Mogadishu	Kismayo Airport	Kismaayo	Dollow	Other Parts of South Central Somalia
OVERALL RATING	4	4	4	4	4	4
FCO travel advice	4	4	4	4	4	4
Host nation travel advice	Not available	Not available	Not available	Not available	Not available	Not available
Transportation	3	4	4	4	4	5
Security	3	4	3	4	3	4
Civil unrest	2	4	2	4	4	4
Violence/crime	3	4	2	4	4	4
Terrorism	3	4	3	4	4	4
War	2	2	2	2	2	2
Hurricane	1	1	1	1	1	1
Earthquake	1	1	1	1	1	1
Flood	1	1	1	1	1	1
Medical Services	2	4	4	4	5	5
Nature of Project/ Intervention						

1 Very Low risk	2 Low risk	3 Med risk	4 High risk	5 Very High risk
			SIGNIFICANTLY GREATER THAN NORMAL RISK	

**DFID Overall Project/Intervention  
Summary Risk Assessment matrix**

Project/intervention title:

Location: **PUNTLAND**

Date of assessment: **13 July 2016**

Assessing official:

<b>Theme</b>	<b>DFID Risk score</b>	<b>DFID Risk Score</b>	<b>DFID Risk score</b>	<b>DFID Risk score</b>
	<b>Garowe</b>	<b>Bossaso</b>	<b>Galkayo</b>	<b>Other Parts of Puntland</b>
OVERALL RATING	4	4	4	5
FCO travel advice	4	4	4	4
Host nation travel advice	Not available	Not available	Not available	Not available
Transportation	5	4	5	5
Security	4	4	5	4
Civil unrest	3	4	3	4
Violence/crime	3	3	5	4
Terrorism	4	4	5	5
War	2	3	3	3
Hurricane	2	2	1	1
Earthquake	1	1	1	1
Flood	2	2	1	1
Medical Services	4	5	5	5
<b>Nature of Project/ Intervention</b>				

<b>1</b> Very Low risk	<b>2</b> Low risk	<b>3</b> Med risk	<b>4</b> High risk	<b>5</b> Very High risk
			<b>SIGNIFICANTLY GREATER THAN NORMAL RISK</b>	

