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INCLUSIVE PRACTICES IN ALTERNATIVE DISPUTE RESOLUTION: DELIVERING PEOPLE-CENTRED JUSTICE IN SOMALIA

ISSUE BRIEF



This issue brief was developed in the framework of the '*ADR Somalia*' programme, funded by the Government of the Netherlands and implemented by IDLO, which supported the establishment and operationalisation of fifteen Alternative Dispute Resolution (ADR) Centres in Somalia between January 2019 - September 2023.

The issue brief seeks to provide an overview of the ADR Centres' operational model and focuses on how the Centres contribute to enhancing inclusiveness in the delivery of community justice. Promising practices and recommendations can be taken into consideration in the design and implementation of similar interventions engaging with customary and informal justice (CIJ) actors.

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INTRODUCTION

Since the establishment of the Federal Government of Somalia in 2012, the country has embarked on a path of political stabilisation and reconstruction. Tangible progress was made on institutional development and public sector management, including through extensive reforms in the security and justice sectors, reconciliation at the local and national levels, and peaceful elections in May 2022. Significant results were also achieved in re-establishing justice institutions: courts and Attorney General Offices are operating in the main urban centres and at both federal and state levels, although these are characterised by limited capacity and dire working conditions. Efforts were made to establish key institutions such as the Judicial Services Commission, the Constitutional Court, the Judicial Training Institute, and the Anti-Corruption Commission.

These advances notwithstanding, formal courts in Somalia continue to lack coherent policies and procedures, adequate financial resources, and the required physical infrastructure. As a result, the majority of the population relies on customary and informal justice (CIJ) mechanisms¹ that evolved out of problem-solving by clan elders responsible for justice and security in rural areas.² In practice, customary norms, known as *Xeer*, and sharia law³ resolve the vast majority of civil and criminal disputes. Procedures and outcomes of these customary and informal justice processes can fall short of international human rights standards, especially with regard to the rights of women and marginalised and excluded groups, notably people from minority clans and internally displaced persons (IDPs). Moreover, as CIJ practices and decisions vary from region to region and are not integrated with the formal system,⁴ they often lack enforcement and recognition by state institutions.

In this context, the ADR Somalia programme, funded by the Government of the Netherlands, was implemented by IDLO in January 2019-December 2021 and July 2022-September 2023, with the aim of promoting fair and equitable access to justice through the establishment of Alternative Dispute Resolution (ADR) Centres. The programme built on the experience acquired through prior ADR programmes implemented by IDLO in Somalia, which fostered establishment of six ADR Centres in the Benadir region (Hamar-Jajab, Hodan, and Karan districts, Mogadishu) and Puntland State (Badhan, Buhoodle, and North Galkayo).

Based on this model, the ADR Somalia programme established nine additional ADR Centres in Galmudug State (Abudwak and South Galkayo); Hirshabelle State (Beledweyne); Jubaland State (Dolow and Kismayo); Puntland State (Garowe and Qardo); and Southwest State (Afgoye and Baidoa). Key components of the programme were to:

1. Strengthen linkages between formal and informal justice mechanisms;
2. Improve ADR justice mechanisms' compliance with the Constitution of Somalia, Somali laws, and international human rights standards;
3. Enhance gender equality in ADR processes;
4. Improve processes for the referral of gender-based violence (GBV) survivors and affected communities;
5. Enhance knowledge of ADR processes and practices across Somalia.

Between August and November 2023, IDLO conducted an impact assessment on the performance of the fifteen ADR Centres in partnership with Demos Africa Centre from City University of Mogadishu. The study utilised mixed quantitative and qualitative data collection tools and techniques,⁵ drawing from the experience of the prior IDLO research study 'Accessing Justice: Somalia Alternative Disputes Resolution Centres'⁶ conducted in 2019-2020 focusing on the first six Centres, and a previous end of project impact assessment conducted in 2020 under the ADR Somalia programme (January 2019-December 2021) focusing on nine ADR Centres. Despite being conducted in different periods and targeting different ADR Centres, the studies produced common findings and identified convergent recommendations.

Significant insights emerged from both studies related to policies and practices that promote inclusiveness in the work of the ADR Centres, and the close association of inclusiveness with the perceived performance of ADR Centres among their users. This issue brief seeks to shed light on how inclusiveness has been promoted at different levels to deliver people-centred justice and identifies a number of recommendations for further action by ADR practitioners and stakeholders in Somalia.

IN FOCUS: CUSTOMARY AND INFORMAL JUSTICE IN SOMALIA

Understanding Somalia's plural legal system

Somalia is characterised by a plural justice system, which is a legacy of four coexisting legal traditions: customary law known as *Xeer*, sharia law, Italian civil law, and British common law.

With the adoption of Somalia's Provisional Constitution in 2012, a Federal Government replaced a transitional government after two decades of civil war. During the war, public institutions were severely damaged and Somali communities heavily relied on the strengths and durability of the *Xeer* system, contributing to its increased importance in the country. In a context of protracted political fragility and weak governance, the *Xeer* system, which provides for collective assumption of responsibility, functioned as an efficient mechanism for regulating inter-clan affairs and maintaining stability.

Indeed, throughout the years, *Xeer* has become the primary source of justice used to settle disputes in Somalia.⁷ This is partially explained by the fact that currently the formal justice system falls short in its provision of services for multiple reasons. As shown by recent research,⁸ barriers to accessing formal court proceedings in Somalia include fees charged at every step of the process, limited geographic accessibility, and lack of understanding of formal judicial processes by individuals, notably due to the complexity of legal language used and the lack of a consensus-building approach central to Somali tradition.

For these reasons, *Xeer* is recognised as “an integral component of Somali... life and continues to be the preferred and most widely used legal system across Somali regions, applied in up to 80–90 percent of civil disputes and criminal cases”⁹.

Discrimination and exclusion in Somali customary law

While the application of *Xeer* is an efficient means of maintaining stability, “it fails to provide adequate protection for vulnerable groups and tolerates harmful customary practices in abrogation of both international human rights standards and sharia”.¹⁰ Somali customary justice mechanisms are predominantly composed of male elders, selected by male community members based on reputation and status inherited from family members.¹¹ This implies a systematic exclusion of marginalised groups, particularly women, youth, IDPs, ethnic minorities, and members of minority clans, from participating as decision-makers and reduces the prospects of those groups receiving fair justice outcomes.¹²

Ethnic minorities and minority clans are in disadvantaged positions by entrenched local power dynamics that result in their having minimal expectation of obtaining remedy against members of more powerful clans. Similarly, without the rights and protections offered by *Xeer*, IDPs rarely receive fair justice outcomes in dispute resolution processes managed by host communities.¹³

In general, women have limited access to participation as decision-makers and restricted influence in the *Xeer* system. Practices that abrogate women's rights in the *Xeer* legal system are also widely recognised, including lack of justice for survivors of rape and other forms of GBV, limited recognition of land rights, and forms of compensation such as the giving of women in marriage to restore peace between clans in conflict.¹⁴

While Somali law and sharia explicitly proscribe many of these discriminatory and exclusionary practices, the prevalence of customary law and the deep-rooted social norms underpinning them have prevented their abolition. Considering the relevance of CIJ in Somalia, but also the challenges and barriers affecting the most marginalised and excluded, it is critical to engage with CIJ systems to increase access to justice for all and promote compliance with human rights standards of these systems.

ADR CENTRES: PROMOTING INCLUSIVENESS FOR PEOPLE-CENTRED JUSTICE

The ADR Centres' operational model

The ADR Centres represent a tailored approach to enhancing community justice and building more peaceful and inclusive societies. IDLO supported the Somali Federal Ministry of Justice and the Ministries of Justice of Galmudug, Hirshabelle, Jubland, Puntland, and Southwest to establish ADR Centres across the country. The ADR Centres are coordinated and overseen by ADR Units established in each Ministry of Justice.

In each Centre, disputes are settled by a panel of adjudicators identified by the respective Ministries of Justice in consultation with community leaders and representatives among elders, sheikhs, women's leaders, and IDPs. Each ADR Centre has a roster of about 10 adjudicators, one clerk, and one community paralegal.

The ADR clerk is responsible for daily administration of the Centre, case recording, and maintaining working relationships with other justice and community actors, particularly district courts and police offices, especially in cases of referral. An ADR community paralegal supports the ADR clerk and adjudicators in the classification of cases based on the nature of each dispute; the provision of legal advice and assistance, especially for women, before and during the hearings; and the delivery of legal awareness sessions in communities, with a focus on the IDP camps.

The ADR Centres resolve cases using both *Xeer* and sharia law, or a mix of both. As for dispute resolution methods, cases are mainly resolved through negotiation, mediation, or arbitration. The

settlement of disputes and their enforcement relies on the acceptance of the agreement or decision by the parties.

The ADR Centres operate in line with Standard Operating Procedures (SOPs) and other complementary guidelines, such as the Code of Conduct for Adjudicators and the GBV Referral Protocol developed under the 2019-2021 ADR programme.

Jurisdiction of the ADR Centres

The *Xeer* National Policy adopted by the Federal Ministry of Justice of Somalia in 2016 establishes that CIJ mechanisms are not allowed to manage serious crimes. Despite the fact that this prescription is not widely respected, the ADR Centres operate in accordance with this requirement and only settle disputes falling within their jurisdiction as outlined in the ADR SOPs issued by the Federal Ministry with IDLO technical support, namely:

- Family disputes (e.g. disputes related to valid consent for marriage, livelihoods, childcare and maintenance, and inheritance)
- Domestic violence and other forms of GBV not resulting in serious bodily harm

Jurisdiction of the ADR Centres, Cont.

- Threats of physical or mental harm (including attempted female genital mutilation)
- Disputes related to contracts or business
- Disputes over ownership, possession, or rent of immovable and movable property
- Disputes related to theft and minor injuries or offences
- Disputes involving extra-contractual liabilities and/or related damages incurred as a result of an accident, road accident, or similar causes

As per the SOPs, disputes outside of this jurisdiction must be referred to the formal justice system and, if necessary, to other complementary services (health clinics, mental health and psycho-social support, etc.).

The SOPs and related tools are widely in use and serve as an operational reference for adjudicators. This has contributed to standardising and improving transparency and fairness of processes in the ADR Centres. Notably, the ADR Centres provide a unique example of case recording. For the first time, cases are classified and documented using a standard Complaint Registration Form, Agreement Form, or Referral Letter for the Court.

“Most of the adjudicators have experience in dispute resolution through traditional methods. However, the Centre has set up procedures that we are required to use when there are issues to be addressed.”

Adjudicator in Galkayo

Based on the indicators of the impact assessment conducted at the end of 2023, the performance of the ADR Centres is regarded positively by users. For example, 97.3 percent of users affirmed that their cases were handled in a timely manner. Respondents indicated that 36.3 percent of ADR cases were resolved within one week of their submission; 71 percent of users affirmed satisfaction with the Centres' decisions and 93 percent found the process impartial, regardless of the outcome. Furthermore, 82.2 percent of the surveyed users felt they contributed to the outcome and 97.4 percent believed that their opinions were effectively considered during the dispute resolution process, demonstrating a high level of participation. Accessibility was also highlighted as a strength of the Centres by 76 percent of users, who found accessing the ADR Centres easy, and 95 percent who considered their location good or very good.¹⁵

Inclusiveness in the ADR process

The ADR Centres seek to promote inclusiveness through inclusive justice service delivery. The role of adjudicator is traditionally held by men, elders and sheikhs who hold legitimacy at community level in light of their age and experience in mediating disputes. However, this leads to underrepresentation and creates barriers to justice for marginalised and excluded groups. In response, IDLO and the Federal Ministry of Justice promoted the inclusion of different categories among the adjudicators.

ADR Centres' operating principles focus on:

Impartiality: Adjudicators must assist parties in resolving their dispute acting as neutral third parties. For this purpose, they must resolve disputes independently and with impartiality.

Equal and fair treatment: All parties must be present or duly represented for the ADR process to proceed. The adjudicating panel has a duty to treat parties equally and fairly throughout the hearing and the decision-making process. Lack of compliance with the principle of equal and fair treatment or the absence of one or more parties in the ADR process constitutes grounds for invalidating an ADR decision by the courts.

Transparency in the provision of information, including by ensuring the explanation to the parties of processes and the rationale and reasons for decisions rendered.

Dignity and respect are preserved and shown in all interactions with all parties, community members, and justice actors.

Today, the adjudicators' rosters of the ADR Centres consist of elders and sheikhs but also of women, IDP leaders or other local leaders, and youth representatives. The presence of women, IDP leaders, and youth seems not to have affected the authority and legitimacy of the adjudicators, which was rated by 97.1 percent of users as good or very good.¹⁶

The ADR Centres also promote inclusiveness through legal empowerment, especially legal awareness sessions and community dialogues reaching the most marginalised and excluded groups. Increasing awareness about rights and public confidence in the ADR Centres is crucial to ensure all people are motivated to seek justice through these mechanisms. Additionally, community dialogues contribute to developing accountability at community level, as they enable ADR users to meet and share their views and past experience in the ADR Centres with adjudicators. This promotes a practice of learning by doing on the part of adjudicators, who grow more responsive, transparent, and consistent in their decisions when required to explain themselves and address issues raised by different groups in various forums.

Women's participation in the ADR Centres

Women are largely excluded from formal justice institutions due to structural discrimination, limited access to education and training opportunities, as well as a "culture of impunity for allegations of harassment and sexual assault".¹⁷ Women's access to and participation in customary justice processes is also traditionally limited due to persisting cultural stigma.¹⁸ In this context, the SOPs developed for the ADR Centres are intended to support Somali women in overcoming some of the structural barriers and traditional practices preventing their participation in customary justice processes.

Importantly, the SOPs assign to ADR Centres the mandate of ensuring that equal weight is given to women's and men's voices.¹⁹ At the same time, the SOPs require the representation of both women and

men in the management team of ADR Centres²⁰ as well as in adjudicating panels.²¹ While initially some male adjudicators resisted the presence of women in the ADR Centres, gradually women adjudicators and paralegals have increased their involvement in the ADR process. Out of the 155 adjudicators, 22 percent are women²² and at least two women adjudicators are present in each ADR Centre.

The role of women adjudicators, paralegals, and clerks is essential not only because the majority of family disputes are filed by women,²³ but also due to the fact that women are reluctant to reveal family-related issues or display physical injuries to the adjudicating panel. Moreover, for cultural reasons, most women do not speak out in front of men and fear stigmatisation for violating cultural norms of behaviour. All of these factors affect how women participate in the ADR process as plaintiffs, witnesses, or defendants. Therefore, the presence of women ADR actors allows certain matters to be addressed privately and mitigates the risk of revictimisation. Research findings²⁴ show that the SOPs were key in overcoming these barriers, as they recommend separate hearings for women and the presence of women adjudicators and women community paralegals in cases involving women. ADR Centres are equipped with a separate room to receive, welcome, and interview women.

During the impact assessment, women adjudicators explained that, as a result of the application of the SOPs, they now feel more empowered and freer to participate in decision-making processes as equal members of adjudicating panels; in some instances, they take on leading roles during hearings, particularly in cases involving women.²⁵

“We give equal chances both to men and women. There are issues that women cannot tell in front of men, so the female adjudicators and the paralegal sit with these women in a separate room, then report back to the adjudicating panel.”

Adjudicator in Baidoa

As for women justice seekers, 98 percent of female respondents confirmed feeling comfortable speaking in front of the adjudicators and that they had been treated with courtesy during the hearing.²⁶ One important area of future improvement relates to encouraging women adjudicators and paralegals to regularly use the designated women’s office to ensure a safe and respectful environment of women’s privacy.

Youth participation in the ADR Centres

Customary justice mechanisms are predominantly composed of male elders, selected by male community members, and age in Somalia is seen as an important factor in establishing the authority of CIJ adjudicators and ensuring acceptance of their decisions. However, youth actively participate in ADR Centres both as justice seekers and staff, with the impact assessment illuminating a significant engagement. The feedback survey highlighted that a majority of ADR users belong to the youth demographic, with 68.2 percent aged between 18 and 35 years.²⁷

The findings of the impact assessment made clear that achieving a balance between elder and youth participation in the ADR Centres will be important to achieving people-centred justice in the future. There exists a real risk that the presence of young adjudicators can reduce the legitimacy of the

decisions made by the adjudicating panel; on the other hand, while age is vital to ensure trust in and credibility of adjudication, elders often struggle to understand the justice problems prevalent among young people—even the language that young people use in presenting those problems.

In this context, having young clerks and paralegals, who actively work with the adjudicators, can address the issue of youth inclusion while preserving the legitimacy associated with the age and experience of the older adjudicators. ADR actors can also explore innovative ways to embed youth in the adjudication process, such as institutionalising partnerships with youth-led civil society and community-based organisations, or inviting an external youth representative or focal point to formally serve in each ADR Centre.

The role of ADR Centres in the protection of children

Impact assessment findings confirmed that children²⁸ and their families are among the marginalised and excluded groups seeking to access the ADR Centres to resolve justice problems. It has been observed that children attend hearings as witnesses, third parties (mostly for cases of family disputes involving childcare and family maintenance), or as both victims and accused perpetrators of minor offences.

Similar to other marginalised and excluded groups, children face barriers in accessing the formal justice system. ADR Centres could reduce the workload of formal justice institutions and play a critical role in addressing civil cases and minor offences where children are involved, thereby enhancing children's access to justice. Considering the level of recognition and legitimacy of the adjudicators at community level, the ADR Centres can enable restorative and rehabilitative justice that is preventive and avoids criminalisation of children. Finally, the ADR Centres can promote referral pathways when cases involving children exceed ADR jurisdiction or when complementary services are required, such as child protection or health care.

Investment in the capacity of adjudicators to manage cases concerning children is urgently needed, including provision of specific basic standards. Adjudicators should be equipped to take a child-friendly approach that recognises and responds appropriately to children's distinctive levels of emotional and intellectual development, seeking outcomes that protect children and foster their growth and participation.

The impact assessment highlighted that the inclusion and participation of children during hearing processes varies across ADR Centres due to different factors. Firstly, and despite the fact that according to the Provisional Constitution the majority age is 18, sharia law, sets the age of adulthood at 15. This implies that children aged 15 and above are traditionally considered adults by society and adjudicators might not require them to be accompanied by their parents. Secondly, parents are not always willing to bring their children to the ADR Centres despite the requests of the adjudicators, and in daily practice hearings can take place without them present. Finally, there is a risk that procedural safeguards and the best interest of a child are disregarded in favour of awarding reparation and compensation to the family of a child victim, in line with customary norms.

Considering the aforementioned gaps in relation to child protection, IDLO developed the Child Rights and Protection SOPs at the conclusion of the ADR Programme. This document builds on the general SOPs to improve procedural safeguards for cases involving children. Importantly, the SOPs set the age of criminal capacity at 15 and establish participation and the best interest of the child as a guiding principle in ADR processes involving children.

These supplemental SOPs address the current capacity gaps and set minimum standards for cases involving children. They regulate and streamline children's participation in hearings as third parties, victims, or offenders, including determination of whether a child needs parental support, how to explain the process to the child, and how to permit

and support the child to participate. Finally, the SOPs outline the conditions to be met for the ADR Centres to accept a case diverted from the formal courts in accordance with the law.²⁹

Child Rights and Protection SOPs: Guiding Principles

Age of the child. A child is any person below age 18 and criminal capacity is age 15 according to Somali Law. For the purposes of the ADR Centres, if a child accused of a petty offence, which is within the Centres' jurisdiction, was age 14 or younger at the time of the alleged offence, only customary compensation can be sought. The child cannot be punished, and for the ADR Centre to handle such a case, the child's parents must give express consent.

Best interest of the child. All decisions concerning a child must consider what is in the child's best interest; children must be treated in an age-appropriate manner.

Participation. The involved child must be given an opportunity to express his or her views and opinions freely during the ADR process. If the child is unable to speak on their own behalf due to young age, then a representative can be appointed to assist them.

Parental involvement in proceedings. The ADR Centre must involve parents or guardians in processes concerning children. In most cases, a parent or guardian should accompany the child during the hearings, unless their exclusion is determined to be in the child's best interest.

Confidentiality. The ADR Centre staff and adjudicators must maintain a high level of confidentiality when handling a case involving a child.

Choice of ADR adjudicators. When handling a case involving a child, the ADR Centre clerk or paralegal must consider inclusion in the panel of adjudicators who are able to create an enabling environment for the child.

As a result of the application of these SOPs, the ADR Centres are expected to take a restorative and rehabilitative approach to children. For example, in a case where a child is accused of a minor offence, adjudicators should not aim to punish the child but rather help the child understand their mistake, apologise for the wrongdoing, and reintegrate into their community. In all cases, ADR adjudicators must be able to make a sound judgment on the engagement of children based on their age and emotional and intellectual capacity. To this end, enhancing the capacity of adjudicators and ADR staff on case management involving children is key, by providing practical trainings and monitoring the effective application of SOPs.

The participation of minority clans and IDPs

In Somalia there are four majority clans and many intermediate or smaller kinship networks, distributed unevenly across the country and divided into internal sub-clans. Members of minority clans are disadvantaged due to economic factors and entrenched local power dynamics, which severely constrain their prospects of obtaining remedy against members of more powerful constituencies in society.³⁰

The ADR Centres promote representativeness and fairness by engaging adjudicators at each site belonging to different clans. Users were asked if their clans were represented at the ADR Centres: 12 percent noted that their clan (or sub-clan) was not represented, 17 percent confirmed that their clan was represented, and 72 percent were not aware of their clan representation in the panel.³¹ Notwithstanding these results, the representation of some clans or sub-clans did not appear to influence the positive feedback of justice users on the performance of the ADR Centres, as 70 percent of the interviewees declared being satisfied or very satisfied with the outcome of their case.³²

In the future, it will be important to monitor the representation of different clans and the power dynamics in the ADR Centres, especially in case of turnover in rosters. The ADR Centres should always promote a participatory process for the selection of adjudicators, involving the Ministry of Justice, local institutions, and the community. Community engagement is critical to mitigate the risk of interference and determine roster composition in alignment with the clan make-up of the respective communities.

IDPs face exclusion due to their outsider status as well as economic deprivation, and are often unable to pay court fees or transportation costs to visit ADR Centres.³³ Site selection for the ADR Centre location is thus especially relevant to the promotion of their access. The locations of the ADR Centres vary depending on the state or region: some are situated in urban centres, while others on the outskirts of town and thus often more proximate to IDPs and marginalised communities.

A good practice noted in Abdwak, Baidoa, Beledwyne, and Dolow (among other ADR Centres) was to ensure regular visits of the adjudicators to IDP camps, so that they could settle disputes on-site and mitigate the transportation issues faced by IDPs. In Boodhle, the ADR adjudicators spontaneously built a hut in one of the IDP camps, to receive people and settle cases directly in the camp. These practices could be institutionalised as “mobile ADR” services, with regular provision of adjudication in line with the SOPs delivered outside the established ADR Centres.

KEY RECOMMENDATIONS

The current ADR Centre model provides a coherent and effective set of capabilities and services which can improve people-centred justice processes while fostering the inclusion of women, youth, and other marginalised and excluded groups. By implementing the following recommendations, the inclusiveness of ADR practices in Somalia can be further strengthened:

- 1. Increase the number of women adjudicators and their assigned responsibilities.** Despite the fact that 22 percent of the adjudicators and 90 percent of the community paralegals are women, it is important to continue to increase women's participation and, in the future, encourage the progressive replacement of male adjudicators ending their mandates with women adjudicators. The ADR Units have a key role in promoting this change, endorsing the role of women as adjudicators and including a quota for each ADR Centre in the SOPs. Evidence from the programme shows that this is a progressive process, with male adjudicators' attitudes shifting as they realise that women's presence can facilitate more effective adjudication processes. A good practice to overcome the resistance of male adjudicators is to ensure that the staff of the ADR Centres (i.e., coordinators) fully endorse and monitor the active engagement of women adjudicators and assign them roles comparable to those usually occupied by men, such as deputy chair or focal point for relations with community groups.
- 2. Match adjudicators with young clerks and paralegals, and establish partnerships between the ADR Centres and youth organisations.** Having young clerks and paralegals who work with adjudicators could address the issue of youth inclusion while preserving the legitimacy of the ADR process with panels predominantly composed of elders. ADR actors should explore innovative ways to embed youth in the adjudication process, namely through the creation of partnerships with youth-led civil society and community-based organisations or having an external youth representative or focal point in each ADR Centre.
- 3. Promote a fair and inclusive engagement of children in the ADR hearings in line with the provisions of the Child Rights and Protection section of the SOPs, and encourage diversion of cases to ADR Centres.** This will help reduce overload on the formal justice system and avoid unnecessary criminalisation of children. ADR Centres personnel, if properly trained and monitored, can contribute to ensuring faster access to justice for children and their families through resolution of civil disputes and minor offences involving children, while ensuring the protection and rehabilitation of children in their communities.
- 4. Ensure participatory processes for the selection of adjudicators.** This strategy will support efforts to offset the potentially biased approach of some adjudicators and meet the specific justice needs of targeted communities, especially marginalized and excluded groups like members of minority clans. As this approach could meet the resistance of some political actors, the SOPs should include provisions requiring consultation through community meetings on the establishment of ADR Centres and the recruitment of adjudicators, with the rosters of each ADR Centre ensuring representation of minority clans, IDPs, and other groups.

5. **Institutionalise mobile ADR teams in each ADR Centre to enable regular visits to IDP camps.**

While the appropriate location of the ADR Centre depends on the political and security context of each district, every effort should be made to ensure that they are proximate and accessible to the largest number of justice seekers possible. The use of regular mobile ADR teams will enhance the capacity of the ADR Centres, irrespective of location, to reach and manage cases on-site as needed by IDPs and other marginalised and excluded groups.

ENDNOTES

- 1 The vast majority of justice problems, especially in fragile and post-conflict states, are resolved through CIJ mechanisms. See Working Group on CIJ and SDG16+ (2023), *Diverse pathways to people-centred justice*, available at: <https://www.idlo.int/publications/diverse-pathways-people-centred-justice>.
- 2 Vargas Simojoki, M. (2010), 'Evaluating the Effectiveness of Legal Empowerment Approaches to Customary Law Reform in Somaliland and Puntland,' IDLO.
- 3 USAID (2020), *The Shari'ah in Somalia*, available at: <https://2017-2020.usaid.gov/sites/default/files/documents/1860/Shariah-in-Somalia.pdf>.
- 4 The terminology "formal and informal justice systems" is in line with the terminology used by the majority of the development partners operating in Somalia (including the United Nations and the World Bank) and the wider literature. It refers to two complementary aspects of the Somali justice system and is used to highlight the differences, not only in terms of sources of law but also concerning the procedural rules followed by the two systems.
- 5 The data collection process included observations in six ADR Centres; two Focus Group Discussions with representatives of ADR staff and adjudicators; key informant interviews with 60 ADR Centre staff and adjudicators; review and analysis of 100 case files; and a user feedback survey drawing on responses from 300 users from the fifteen ADR Centres (50 percent men and 50 percent women, of which 68.6 percent were complainants and 31.4 percent defendants).
- 6 IDLO (2021), *Accessing Justice: Somalia's Alternative Dispute Resolution Centres*, available at: <https://www.idlo.int/publications/accessing-justice-somalias-alternative-dispute-resolution-centers>.
- 7 Van Nooten, M. (2005), *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa*, p. 36.
- 8 Pact and American Bar Association Rule of Law Initiative (2020), *Alternative Dispute Resolution Initiatives in Somalia*, p. 15.
- 9 Vargas Simojoki, M., 'Unlikely Allies: Working with Traditional Leaders to Reform Customary Law in Somalia', in Harper, E. (ed.) (2011), *Working with Customary Justice Systems: Post-Conflict and Fragile States*, IDLO.
- 10 Federal Government of Somalia Ministry of Justice and Judicial Affairs (2016), 'Policy on the Xeer Traditional Dispute Resolution Unit,' unpublished.
- 11 Danish Demining Group and Forcier Consulting (2019), 'End-line evaluation of the Danwadaag Project,' available at: https://www.forcierconsulting.com/files/ugd/67feb2_e2fd9012b55d47269fdd4406ceb18e51.pdf.
- 12 UNDP, "Assessing Challenges of Access to Justice for Women and Vulnerable Groups Across Mogadishu, Baidoa and Garowe, Somalia", revised draft (15 February 2020), pp. 18–25.
- 13 Danish Demining Group and Forcier Consulting (2019), 'End-line evaluation of the Danwadaag Project,' available at: https://www.forcierconsulting.com/files/ugd/67feb2_e2fd9012b55d47269fdd4406ceb18e51.pdf.
- 14 IDLO (2021), *Accessing Justice: Somalia's Alternative Dispute Resolution Centres*, available at: <https://www.idlo.int/publications/accessing-justice-somalias-alternative-dispute-resolution-centers>.
- 15 IDLO (2023), 'Impact Assessment of IDLO ADR Centres in Somalia,' unpublished.
- 16 Impact Assessment of IDLO ADR Centres in Somalia, p. 13-14.
- 17 UNDP (2020), *Assessing Challenges of Access to Justice for Women and Vulnerable Groups Across Mogadishu, Baidoa and Garowe, Somalia*.
- 18 UNFPA Somalia (2022), 'Overview of Gender-Based Violence Situation in Somalia,' available at: <https://reliefweb.int/report/somalia/overview-gender-based-violence-situation-somalia-advocacy-brief-2022>.
- 19 Section 5(d) of the ADR SOPs.
- 20 Section 10(2) of the ADR SOPs.
- 21 Section 18(a) of the ADR SOPs.
- 22 IDLO (2023), 'Impact Assessment of IDLO ADR Centres in Somalia,' unpublished.
- 23 Of the 300 users interviewed by IDLO in the context of the assessment, 48 percent were involved with family disputes, including domestic violence and other GBV not resulting in serious bodily or mental harm.
- 24 These findings are based of the triangulation of the data collected through the interviews of 60 ADR adjudicators and staff and the user feedback surveys.
- 25 For more information on women's leadership in the ADR Centres, see IDLO (2023), *Women's Participation and Leadership in Customary and Informal Justice Systems*, available at: <https://www.idlo.int/publications/navigating-complex-pathways-justice-womens-participation-and-leadership-customary-and>.
- 26 IDLO (2023), 'Impact Assessment of IDLO ADR Centres in Somalia,' unpublished.

- 27 As for the role of youth as ADR providers, out of the 16 ADR staff (including paralegals and data clerks) interviewed during the impact assessment conducted by IDLO in 2023, 14 were under the age of 35. See Impact Assessment of IDLO ADR Centres in Somalia, p. 20.
- 28 Children are people under age 18 in line with Article 29.8 of the Somalia Provisional Constitution.
- 29 Since the formal courts and police stations started referring cases concerning children to the ADR Centres, the process must be regulated, and conditions clarified according to which the ADR Centres can receive these cases. In short: the case must be referred by the court; the diverted case must be within the ADR Centre's jurisdiction; the accused children cannot be detained on remand, but should be released on bail and free to attend hearings in the ADR Centres; and the parties involved in the case must consent for it to be handled through ADR.
- 30 Skjelderup, M., et al. (2020), 'Militant Islamism and local clan dynamics in Somalia: The expansion of the Islamic Courts Union in Lower Jubba province,' *Journal of Eastern African Studies*, 14(3).
- 31 IDLO (2023), 'Impact Assessment of IDLO ADR Centres in Somalia,' unpublished.
- 32 Ibid.
- 33 Hujale, M. (2023), 'The missing link in Somalia's peacebuilding process: The exclusion of internally displaced people,' University of Oxford Refugee Studies Centre, Refugee-Led Research Series Working Paper No. 1.



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