

IDLO Evaluation Brief

FINAL EVALUATION OF THE IDLO-IMPLEMENTED PROJECT “STRENGTHENING LINKAGES BETWEEN FORMAL JUSTICE SYSTEM AND TRADITIONAL DISPUTE RESOLUTION SYSTEM TO IMPROVE ACCESS TO JUSTICE IN SOMALIA (PHASE II)”

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1. Background

Years of war in Somalia resulted in the destruction of the governance and judiciary system in the country. The absence of robust formal justice mechanisms is one of the reasons why Xeer, a “traditional dispute resolution” (TDR) system¹, has been filling this gap. After the establishment of the Federal Government of Somalia (FGS) and an adoption of the Provisional Constitution in 2012, it became evident that due to Xeer courts’ accessibility, low-cost, and increased legitimacy in the eyes of local communities, TDRs have a potential to improve access to justice in Somalia.

Within this context, the International Development Law Organization (IDLO) designed a short-term project “Strengthening linkages between formal justice system and traditional dispute resolution system to improve access to justice in Somalia (Phase II)” aiming at enhancing the compliance of Xeer with the Provisional Constitution and international human rights standards. Building on a small-scale “Phase I” pilot intervention, the project had the following key objectives:

- Supporting the FGS Ministry of Justice (MoJ) TDR Unit to expand its work to newly liberated areas;
- Facilitating the development of the TDR Policy;
- Implementing the TDR Policy to engage with TDR in the selected districts;
- Facilitating and carrying out community-based social reconciliation processes².

The project was financed by the United States Department of State, Bureau for African Affairs, had a budget of USD 921,631 and ran from September 2014 to January 2016.

This Evaluation Brief presents the summary of the final independent evaluation of the project.

2. Evaluation Purpose and Methodology

The objectives of the evaluation were to: (i) provide an independent assessment of the project and to measure the extent to which the expected results were achieved; and (ii) identify relevant lessons learned with a view to informing the design and implementation of future projects and programs in Somalia and beyond.

The OECD DAC-based evaluation criteria (relevance, efficiency, effectiveness, sustainability prospects and impact prospects) guided the evaluation. The reconstructed project’s Theory of Change (ToC) served as the key reference point to formulate a set of five Evaluation Questions (EQ) and their corresponding indicators to systematically assess the project against each of the evaluation criteria.

Data for this evaluation was collected through: (i) a desk study of relevant documents and (ii) remote interviews (via Skype, WhatsApp or telephone) with key informants (i.e. IDLO staff, independent consultants who worked for the project, and stakeholders from Somalia). Field data gathering mission did not take place due to the precarious security situation in Somalia.

¹ Xeer is defined by the Ministry of Justice as: a “...traditional dispute resolution (TDR) and customary justice system of Somalia. The Xeer is recognized as a code of conduct to settle disputes and keep the peace

between clans and sub-clans. Historically and today the Xeer is the primary mechanism used for dispute resolution...”

² This component was added later following an amendment of the project

3. Findings

Responsiveness to the needs of key stakeholders

After the adoption of the 2012 Provisional Constitution of the Federal Republic of Somalia, there was a renewed effort by the FGS to include Xeer-based TDR into the mainstream of the judicial system. However, despite its advantages, this mechanism had also deficiencies. It had been known to discriminate against women³ and be clan biased.⁴ For these reasons, special attention was given to improving Xeer's compliance with national laws and international human rights standards.

The project design responded well to these efforts. It was aligned with the 2013-2015 Somali Justice Sector Implementation Plan priorities of supporting capacity development of the justice system and strengthening trust in justice institutions. In a broader sense, the project was consistent with the Provisional Constitution and the so-called Somali Compact⁵ aiming at, *inter alia*, establishing independent and accountable justice institutions. Moreover, the intervention was congruent with IDLO's 2013-2016 Strategy, especially with the objectives of improving access to justice, supporting legal services for marginalized communities and promoting legal institutional reforms. A convergence with the State Department – USAID 2014-2017 Joint Strategic Plan was also identified, particularly in terms of advancing democracy, human rights and strengthening civil society.

Capacity building aimed at the TDR unit and elders

The quality of the training provided to the TDR unit was rated as high by all parties. The topics covered meetings' facilitation, report writing, interviewing, logistics and organizational competencies. The newly acquired skills were further consolidated through the TDR Unit-led consultations with elders from five districts⁶. This process provided, *inter alia*, awareness raising on Xeer's weak points *vis-à-vis* human rights standards. Feedback from stakeholders indicated that, as a result, awareness about human rights increased, particularly in terms of women rights and the needs of

vulnerable groups. However, the topic of gender equality did meet some resistance.

The TDR unit further engaged the elders on a capacity building exercise on the Provisional Constitution in which 71 representatives took part, including 10 women. The initiative made the elders rethink some of the Xeer processes and decisions they had been following for several years and gave the opportunity to share best practices.

Due to limited internal monitoring data, the evaluation could not ascertain whether the project enhanced the elders' ability to reach "fair" TDR as foreseen in the subsegment of the project design. Nevertheless, the collected anecdotal evidence suggested a positive progress in this sense.

TDR Policy adopted

The TDR Policy Consultation Paper on harmonizing the Xeer with national legislation and human rights standards was developed during the pilot phase of the project. It was revised during the main phase and presented to relevant stakeholders. Subsequently, the document was transposed into TDR Policy by national authorities in August 2016, to foster a more equitable TDR from which vulnerable groups would benefit. The Policy facilitates a wider access to justice in Somalia and enhances elders' position as being part of the judicial system through implementing Xeer. The document has also further institutionalized the TDR Unit and strengthened its mandate to provide updates to the elders on the harmonization of Xeer with the national and international legislation.

The viability of the TDR Unit and the TDR concept

The long-term sustainability of the TDR Unit is at risk due to a full dependency on foreign donors as FGS lacks financial resources. While the provided training improved certain skills of the Unit's staff, and its institutional positioning, there is a need for further capacity building, especially in terms of internal knowledge management and proficiency in PCM methodology.

³ "Islamic Sharia contains provisions that potentially offer women more rights than Xeer, however, in Somalia, Sharia is only administered by men, and is often misapplied in the interests of men – this means that women do often not receive justice, and men go unpunished". From Gender in Somalia, UNDP Gender Brief 2015

⁴ "The Xeer system has the potential to reinforce old power structures and perpetrate discrimination against the less powerful clans and

minority groups". UNDP, Doing Justice, How informal justice systems can contribute, supra note 25, 20, in A Model of Transitional Justice for Somalia, by Margherita Zuin, in PRAXIS The Fletcher Journal of Human Security, 2008, p. 9.

⁵ "An overarching strategic framework for coordinating political, security and development efforts for peace and statebuilding activities [in Somalia] over the years 2014-2016", Somali Compact, p.4

⁶ Adado, Baidoa, Beletweyne, Kismayo and Mogadishu.

The TDR concept appears viable, judged from the documented community-level interest to improve the quality of TDR rulings. Key enabling factors in this regard are the (i) enhanced capacity of elders in dispensing TDR-related decisions and (ii) their recognition of the need to reintegrate disengaged combatants into their communities to curb hostilities.

Reintegration of disengaged combatants

The project had a potential to positively affect the communities of the elders that participated. At the local level, it provided a venue where low-level disengaged combatants were able to rejoin their communities with a prospect of contributing to socio-economic development. The elders confirmed that the two successful pilot forgiveness ceremonies, facilitating ex-fighters' reintegration, provided a "working template" for conducting similar activities in the future. At the national level, the project delivered a conduit for present combatants to demobilize and reconcile with their communities.

Allocation of resources and staff

The project budget was spent according to the plan and the cost-effectiveness of the project was judged positively. The ratio of salaries and delivered outputs was standard, comparable to similar interventions in Somalia. The unpredicted cease of financial resources from the government of Kenya to Somalia, a measure taken in a response to the terrorists' attacks in Kenya in 2015⁷, was successfully contained. The team of professionals at the IDLO regional office in Nairobi, backstopped by headquarters, functioned well.

While the project reports were clear and covered all important activities carried out in a given period, the data on results was limited.

IDLO's support did not overlap with the work of other development partners as no other major organizations were working on similar projects. IDLO's experience of operating in countries under an armed conflict, with unstable governments and a permanent security threat, has been well utilized.

4. Conclusions

Relevance

The project was congruent with international development aid approaches to strengthen local resources and traditional practices for improved access to justice, while ensuring the compliance of these practices with international human rights standards.

The intervention was well designed and aligned with the FGS's strategic plans for access to justice, strengthening civil society and advancing democracy and governance. The project was consistent with Somalia's laws as well as IDLO's and the U.S. Department of State's strategies.

Efficiency

The project was carried out without major delays. The financial and human resources were adequate to achieve a timely completion. The unexpected budget shortfall after Kenya withdrew its funding was flexibly managed. However, a complex risk analysis, which was not conducted, might have facilitated a more effective response to this challenge. It is considered good practice for operations in volatile countries to have robust contingency plans in place.

Monitoring and reporting were limited, mostly focused on the activity and output level without sufficient results-oriented OVI tracking. This resulted, *inter alia*, in limited data availability for evaluation purposes.

Effectiveness

The project achieved its short-term objective of enhancing the capacity of the TDR Unit in dealing with TDR mechanisms and the expansion of the TDR Unit's work to new districts. However, the unit's internal knowledge management systems and PCM competencies are not optimal and need further attention.

The adoption of the developed TDR Policy was a significant achievement given the Policy's broad strategic implications. The project also contributed to increased peer learning among the elders and enhanced their capacity of reaching "fair" TDR-based decisions in line with human rights standards. By including forgiveness ceremonies, the project

⁷ Bombing of the Garissa University College by Al Shabaab militants in 2015.

contributed to its goal of strengthening social stability through the integration of disengaged fighters.

Impact and Sustainability Prospects

The FGS's adoption of the TDR Policy provides a viable platform for Xeer to continue its alignment process with the Constitution and human rights laws. In particular, it increases the likelihood for better protection of the rights of women, children and the most vulnerable. This can enhance equality and fairer TDR-related decision-making in the country. The Policy has also reinforced the TDR Unit's short-term institutional sustainability. However, its long-term financial sustainability remains conditional to foreign donors' support.

The forgiveness ceremonies provide a path for disengaged combatants to rejoin their communities and contribute to their development. They have also a potential to serve as an incentive for other low-level fighters to demobilize, without fear of being ostracized and/or persecuted.

All these results generated prospects for positive, long-lasting, socio-economic impact. However, given the limited scope of the project and the challenging security situation in the country, those achievements should not be overrated. They cannot be sustained without a continuous commitment of internal stakeholders and external foreign donors to the peace process in Somalia.

5. Recommendations

Overarching recommendation:

- Based on generally positive results of this project, the TDR-related assistance to Somalia shall be continued.

On the design of future projects and PCM:

- Future actions shall build on the gained momentum in promoting human rights while paying attention to cultural sensitivities and customary practices.
- Future projects shall develop robust contingency plans given the higher likelihood of obstacles to face when operating in a fragile country. These conceptual frameworks are especially important for projects that only last a few months and have a very limited flexibility to react to unforeseen events.
- Introduce and utilize the PCM methodology. Whilst adoption of the PCM is not necessarily a precondition for a successful implementation, it

contributes to it. Usage of the LFM is helpful for a risk analysis and a development of OVIs/internal monitoring system. This improves project management as well as results-oriented data sets (to be further processed within evaluations).

On the TDR Unit:

- Design and conduct a knowledge management exercise with the TDR Unit. A culture of depositing knowledge (documents, emails, etc.) in an organized manner in a stationary computer system (desktop) needs to be introduced alongside a backup system (USB sticks or memory cards). This does not need to involve expensive equipment but a dedicated system and a level of governance for it to work.
- Train the TDR Unit on the PCM methodology. This can strengthen its data gathering and reporting abilities.

Other recommendations:

- In case there would be more IDLO project activities in Somalia, the organization should consider a permanent presence in the country, subject to thorough security and risk assessments.
- Continue gatherings of large groups of elders discussing different ways decisions are heard, considered and delivered. This good practice enables a useful exchange of information that otherwise would not take place.