

STRENGTHENING THE SOCIAL CONTRACT THROUGH ACCESS TO JUSTICE IN SOMALILAND:

Reflections from applying
the Problem-Driven Iterative
Adaptation approach



Creating a Culture
of Justice

International Development
Law Organization





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Strengthening access to justice in Somaliland

- During the last 15 years, Somaliland has made considerable progress in the accessibility of justice, including by doubling the number of judges in under a decade (90 in 2011, 186 in 2018), rolling out mobile courts in each region and appointing female prosecutors and court registrars in a male-dominated patriarchal environment. In spite of this progress, many justice gaps continue to affect the population of Somaliland. Overall, provision of services by formal justice institutions is weak outside the urban population centres, with non-governmental institutions striving to fill the gap. As a result, approximately 80% of the population relies on the local customary law, known as Xeer and Sharia, to solve their disputes.
- In this context, the project “Strengthening the Social Contract through Access to Justice in Somaliland” (also known as the Damal Programme), funded by the Government of the Kingdom of the Netherlands and implemented by IDLO aims to expand and improve access to justice through the establishment of physical and mobile Alternative Dispute Resolution (ADR) Centres in the eastern region of Somaliland, using an approach known as Problem Driven Iterative Adaptation (PDIA).
- The Centres directly provide justice through processes that incorporate elements of conventional ADR, such as mediation and arbitration, while maintaining alignment with Xeer and Sharia norms. In cases of gender-based violence (GBV) and of child abuse, referral to formal justice institutions is ensured by civil society organizations and community-based paralegals who provide legal assistance, while verifying that their medical, social and security concerns are taken into account.

What is the Problem-Driven Iterative Adaption approach?

PDIA has gained considerable attention among development practitioners in recent years. Rather than being a specific tool or methodology, it proposes an alternative way to design and implement complex development interventions, using a learning-by-doing approach. PDIA is rooted in four principles: (i) distinct problem-solving; (ii) encouraging positive deviation and experimentation; (iii) iteration, adaptation, and rapid learning; and (iv) scaling good practices through diffusion to a wide range of stakeholders. This is based on the understanding that a programme should focus on the problems it aims to solve and not be limited by the specific results envisioned at design.

In the context of the Damal programme, PDIA is pursued through the following actions:

Studies conducted during the inception phase: At inception, the programme conducted a rule of law analysis, political economy analysis, gender analysis and conflict analysis. Based on the findings, the initial theory of change (results and assumptions) was revised through a participatory approach.

Monthly reflection sessions: To ensure continuous reassessment of project activities, results, assumptions and implementation approach, the members of the consortium who are implementing the programme gather at least monthly to discuss the findings captured during implementation, identify necessary adaptations and confirm which of the tested solutions should be upscaled.

Justice forums: Accountability platforms are used to discuss specific justice challenges affecting the Somaliland population and identify possible solutions through dialogues involving communities and, formal, as well as customary and informal justice actors.

ADR Centres coordination meetings: These coordination meetings are organized on a quarterly basis. They aim to reassess the status of the services provided through the Centres and make necessary adjustments, such as the inclusion of paralegals, which was decided based on recommendations emanating from these meetings.

Mid-term review: The purpose of the mid-term review was to reassess more thoroughly the results, activities and assumption of the theory of change adopted after the inception phase. The mid-term review confirmed the relevance of the theory of change and the fact that the programme has a high likelihood of achieving its intended impact and making a meaningful contribution to SDG 16.

Government-led coordination meetings: These meetings are organized on a quarterly basis with justice stakeholders operating at the national level. Their aim is to ensure that the progress made at local level is recognized and catalyzed (and not undermined) by state structures, as well as other actors engaged in the justice sector.

Quick quarterly contextual analysis: Their aim is to capture political/economic dynamics, changes in institutional layouts and justice mechanisms, as well as key grievances preventing stability and social cohesion and to feed the relevant information into the consortium reflection sessions, the monthly justice forums, and the stakeholder dialogues, as well as the quarterly meetings organized in the ADR Centres.



Reflection 1: Reinforcing customary and informal justice (CIJ) mechanisms will translate into an improved social contract only if parallel efforts are made to strengthen the link with formal justice actors.

Gaps in the original theory of change

While conducting the four studies foreseen during its inception phase (rule of law analysis, political economy analysis, gender analysis and conflict analysis), the Damal Programme recorded a gap in the original theory of change, which assumed that: “IF there is increased participation by the citizens of Somaliland in accountability processes related to the provision of security and justice, THEN there will be an improved social contract due to the increased legitimacy of justice sector institutions in Somaliland.”

The assumption implied that by strengthening ADR mechanisms and promoting a more holistic support for GBV survivors, citizens would automatically be convinced that the State had an improved capacity to deliver justice services and protect the rights and security of its population. The problem with this logic is that even if ADR Centres are considered as an extension of formal justice institutions, since they operate under the auspices of the Ministry of Justice (MOJ), there are other important actors/institutions that are also essential for the provision of justice and security services. Indeed, and to really contribute to reinforcing the social contract, it is pivotal to analyse the gaps and strengthen the services provided also by formal justice actors.

Strengthening the link between formal and CIJ mechanisms through monthly justice forums

To address the link between formal and informal systems, the programme re-adjusted the theory of change and established local justice forums. These forums are organized on a quarterly basis to allow justice seekers and providers (including the MOJ) to discuss specific justice challenges affecting the Somaliland population (especially

vulnerable groups) and identify possible solutions. The forums’ findings are thoroughly documented and shared by the MOJ through the Rule of Law and Human Rights Platform to facilitate actions from both national and international stakeholders. Through these justice forums, the programme is offering a broader role to local communities in the identification, development and/or review of key policies/legal frameworks, which is in line with a human rights-based approach. Evidence of the impact of this adaptation is the inclusion of ADR in Somaliland’s National Development Plan III (2023-2027), which was advocated for through the forums.

As of 2024, the programme will also conduct short quarterly contextual analyses capturing political/economic dynamics and, changes in institutional layouts and justice mechanisms, as well as key grievances preventing stability and social cohesion in Somaliland. The findings from these analyses will feed into the justice forums.

Role and functioning of the ADR Centres

- Work as service integration hubs, facilitating the provision of medical and psychosocial services, especially to GBV survivors.
- Solve disputes through Sharia and Xeer traditional and customary laws.
- Refer more complex cases or those that fall outside of their jurisdiction to courts.
- Work through standard operating procedures.
- Facilitate the participation of communities in the development of local justice solutions.
- Operate in the proximity of formal justice institutions or vulnerable groups.



Reflection 2: The certainty of CIJ decisions are promoted through notary services.

Disputes brought several times to both formal and CIJ justice actors

Prior to the introduction of the ADR Centres, justice seekers who were unsatisfied with the agreements reached through local elders often brought the same cases to a different set of elders or to formal justice institutions. This goes against the principles of *ne bis in idem* (or double jeopardy) outlined in the International Covenant on Civil and Political Rights, which requires that no legal action is instituted twice for the same cause of action.

Changing the behaviours of CIJ actors and justice seekers

The establishment of the ADR Centres has led to behavioural changes, both among CIJ actors and justice seekers. One of these is the acceptance of the notary service, which was traditionally used only by formal justice institutions. Rather than viewing the notary service as an attempt to formalize informal justice mechanisms, elders have seen it as a useful tool, which could help enforce their decisions.

“Notarizing ADR Centre agreements holds significant value as it establishes a concrete and legally binding record of the parties’ intentions and commitments. This process ensures the utmost clarity and authenticity in ADR proceedings, enhancing the trust and reliability of the dispute resolution process. By affixing a notary’s seal, it adds an extra layer of security and credibility to the agreement, making it more likely to be upheld in a court of law [if the decision is appealed or not executed]. Moreover, notarization helps prevent future disputes or challenges related to the terms and conditions agreed upon, ultimately promoting fairness, equity, and efficiency.”

MOJ during the PDIA Workshop organized in Hargeisa on 30 October 2023



Step 1: Check jurisdiction

When parties approach an ADR Centre for assistance, its staff determines first if the Centre has jurisdiction over the matter. If it does not, they refer the matter to the formal justice system.



Step 3: Pre-hearing and reconciliation attempt

At the set date, the parties appear before the Centre’s Panel of Adjudicators. After allowing the parties to set out their positions and complaints, the Panel then proceeds to facilitate a mediated outcome, encouraging dispute resolution through restorative solutions or reconciliation processes.



Step 5: Decision notarized

Once agreed by both parties, the decisions of the ADR Centre is made legally binding through the inclusion of a notary seal.



Step 2: Registration

If the dispute falls within the Centre’s jurisdiction, the staff register the case and set a hearing date for its adjudication.



Step 4: If reconciliation fails, adjudication

If a mediated settlement cannot be achieved, the Panel sets a second hearing to adjudicate the dispute based on evidence, which allows it to reach a final justice outcome.



Reflection 3: Pastoralist communities are better served through mobile ADR Centres.

Climate change, pastoralist communities and herder-farmer conflict

Somaliland is highly susceptible to the effects of climate change, which manifest in extreme weather conditions such as periods of extended drought, flash floods, erratic rainfall, cyclones, sandstorms, and dust storms. Over the past 25 years, these events have negatively impacted Somaliland's agricultural sector, which is vital to the regional economy. This situation, combined with the lack of basic water infrastructure, especially in rural areas, takes a toll on both farmers and herders. With shifts in seasonal weather trends deteriorating traditional grazing routes and making nomadic mobility patterns more erratic, herders have adapted their migration routes and schedules, leading to increased conflict with farmers over land and natural resources.

The role of Mobile ADR Centres

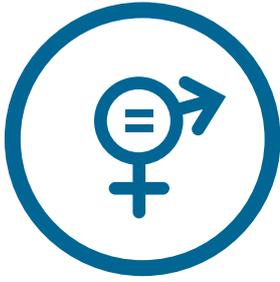
The original programme foresaw only the establishment of physical ADR Centres located near formal justice institutions (to facilitate cooperation and referral) or vulnerable communities. The studies conducted during the inception phase, however, revealed that pastoralist communities were not adequately served by physical ADR Centres, given their migration patterns and the increased competition with farmers, as well as the conflicts emerging with the growing number of internally displaced communities. Three Mobile Alternative Dispute Resolution (MADR) Centres have, thus, been deployed in both the Sanaag and Sool Regions. To ensure their responsiveness to conflict triggered or intensified by climate change, ADR Coordinators receive climate forecasts from the



National Environmental Research and Natural Disaster Preparedness Authority, setting out geographic hotspots of insecurity caused by climatic conditions. This allows the ADR Centres to direct the location of the MADR centres. Since their launch in 2022, the mobile centres have received 137 cases encompassing a variety of issues, including minor injuries, debt disputes, family conflicts, and disputes related to land and rangeland.

✓ Success story from the MADR Centres

In the remote rural area of el-Afwayn, a particularly challenging residential ownership dispute and rangeland issue had left farmers and herders in a state of ongoing conflict for nearly two years. Following multiple unsuccessful mediation attempts, district authorities referred the case to the Mobile ADR Centre. The Centre's elders were able to engage with local elders from the disputed area and, after only seven days, the parties agreed to establish a new boundary line.



Reflection 4: ADR Centres can help address gender-based violence in Somaliland, including through the provision of forensic services.

GBV survivors and access to justice

GBV survivors often face intense social pressure that prevents them from taking their cases to court or from seeking justice at all. In Somaliland's traditional society, GBV cases are highly sensitive because of concerns related to the victim's "honour" (and the honour of the family), thus any incident can have far reaching social implications. Cases involving GBV are even more sensitive when suspected perpetrators come from wealthy or high-status families or are prominent personalities such as traditional or religious leaders.

The role of ADR Centres in addressing GBV cases

International standards recognize that handling GBV cases through CIJ mechanisms is not advisable. However, the ADR Centres offer an innovative, pragmatic and people-centred approach to such cases by providing survivors with referral mechanisms to formal justice and support services. Thus, for GBV cases, the Centres act as a bridge to both the police and the courts. Paralegals stationed at the ADR Centres provide survivors of GBV with advice on how to open criminal cases with the police. When necessary, the Centres' paralegals, civil society partners or community paralegals physically accompany GBV survivors to police stations and courts and ensure they obtain the medical and legal assistance they require. When a Centre decides to provide accompaniment referrals, court fees and related costs (such as transportation) are covered for those who cannot afford them. This support continues until the resolution of each case.

The introduction of forensic services

In cases of sexual and gender-based violence (SGBV), timely forensic tests are essential to avoid losing the evidence needed for investigators and prosecutors to build a case against SGBV perpetrators. Without forensic evidence, prosecutors must rely on witness testimony, and in these cases (especially sexual assault cases), there are rarely any eyewitnesses beyond the survivor and the accused. After the end of its inception phase, the programme found that the legal aid and support services provided by the ADR Centres were not sufficient to ensure that SGBV survivors had the means required to seek justice against their perpetrators. This is why, in 2024, IDLO will test the introduction of forensic tests as an additional service. If found to be relevant, the Centres will promote the permanent inclusion of such tests and will strengthen the relevant referral process between ADR Centres, forensic labs and the Attorney General's Office.

Extending the reach of ADR Centres through hotlines

Paralegals and legal aid providers working with the ADR Centres are key in helping rights-holders navigate the justice system and obtaining the legal assistance that they need. Some of these justice seekers, however, are unable to physically access ADR Centres due to security concerns, reputational risks or simply because the ADR Centre is too far away. To address this situation – and expand the outreach of the ADR Centres – the programme has introduced two key innovations: (i) Justice call-in services, whereby ADR Centre paralegals help people seeking advice or assistance over the phone; and (ii) a dedicated GBV hotline (reachable through number 109), which can be accessed throughout the country by GBV survivors in need of support.



Reflection 5: Local partnership and hybridization promote people-centred and sustainable CIJ programming.

Ownership of justice sector interventions

A key challenge affecting the sustainability of justice sector interventions, including CIJ programmes, is the limited involvement of national actors in the consortiums established to implement these initiatives, and the unequal power dynamics between the international organization leading the consortiums and the national implementing partners. These challenges often combine with the inadequate empowerment of targeted national institutions. Too often they are not sufficiently involved in the design of project results and activities and are considered only as beneficiaries instead of key partners for successful implementation and long-lasting sustainability of an intervention.

The partnership between the MOJ and CIJ actors

The Damal Programme has been promoting a hybrid justice model, whereby CIJ actors work hand-in-hand with formal justice institutions, especially the MOJ. This model is proving extremely effective, since it combines the strengths of each part of Somaliland's plural legal system: the affordability, speed and restorative aspect of the customary system, and the individual justice and human rights-aligned services of the formal system. Hybridization also helps enhance the likelihood that the targeted CIJ mechanisms will last, as demonstrated by the sustainability strategy developed for the ADR Centres and the absorption of 25% of the costs of some centres by the MOJ. A key recommendation emerging from the programme's mid-term review is the benefit of developing a law, regulation or even ministerial order that requires a yearly allocation of resources to ADR/CIJ and mandatory mediation prior to litigation (with some limitations based on the value



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and nature of the case). Interestingly, mandatory mediation by traditional Abunzi committees is already required in Rwanda for all criminal cases not exceeding a value of 3 million RWF (about 2.5 thousand euros). As for the allocation of resources, the ADR policy should work as a basis and both the Ministry of Finance and the MOJ should be involved in these discussions.

Read more:

- [Diverse Pathways to People-Centred Justice](#) (2023), Report of the Working Group on Customary and Informal Justice and SDG16+
- [Women's Participation and Leadership in Customary and Informal Justice Systems](#) (2023), produced by the International Development Law Organization
- [Enabling Access to Justice for Survivors of Gender-Based Violence against Women in Somaliland](#) (2023), produced by the International Development Law Organization
- [Strengthening Climate Justice in Somaliland: The Role Of ADR Centres](#) (2023), produced by the International Development Law Organization



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