

# ACCESSING JUSTICE: ALTERNATIVE DISPUTE RESOLUTION IN SOMALIA

Globally, alternative dispute resolution (ADR) or informal justice services focus on resolving disputes through means other than litigation or a full-scale formal court process. With ADR, disputes are often handled through mediation or arbitration. Many customary and informal justice mechanisms complement formal justice institutions and support local dispute resolution.

IDLO reviewed structural, procedural and normative dimensions of justice in six ADR Centers in Somalia, documenting insights and contributions to access to justice from ADR Coordinators, Clerks, paralegals and Adjudicators as well as users of the Centers.



To ensure access to justice for all, justice systems must innovate and meet people's justice needs in appropriate ways to support the development of peaceful and inclusive societies and effective, accountable, and inclusive institutions. An integral part of achieving Sustainable Development Goal 16 is adopting a people-centered approach that ensures inclusive engagement, involving women and marginalized groups.

## Findings and recommendations from research in Somalia

In **Somalia**, a pluralistic history draws from four legal traditions—Xeer customary law, religious sharia law, Italian civil law, and British common law. For centuries, people relied on Xeer, a customary code of conduct, to settle disputes and it maintains widespread legitimacy and use within Somalia. However, this is not without concern, particularly in relation to gender equality and human rights.

The Ministry of Justice has established ADR Centers as a unique model of justice delivery, facilitating settlement of disputes through the use of informal dispute resolution, complementing concurrent strengthening of the formal judicial system. The process blends elements of arbitration, mediation and other conventional ADR methods while preserving alignment with Xeer customary norms and emphasizing consensus-building and voluntary agreement by parties. Centers have jurisdiction to hear and issue decisions over civil disputes and non-serious crimes between two or more individuals that can be remedied by awarding monetary damages or restitution. Sharia law and principles and Xeer practices may be applied, provided there is no conflict with relevant human rights standards.

### ADR Centers in Somalia (April 2020)



**169** Adjudicators  
**38** women and **131** men



**6** regions

**16** Centers



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## Structure

“Previously, we were not able to come to the table even if we were needed. We were asked our thoughts privately and only our thoughts were brought, without giving us the chance to participate at the dispute settlement tables. Now, we have educated girls and women, and we have been given the chance to sit at the table with the men. Even if we are few in number, our thoughts make sense.”

**Female Adjudicator**

“We have two female Adjudicators. They are very good. They are sometimes better than the male Adjudicators.”

**Male Adjudicator**

Adjudicator rosters are composed of Xeer elders from different clans, Sharia sheikhs, and a minimum of two women Adjudicators to ensure representation of constituencies and legal systems, in accordance with Somalia’s national ADR policy. The latter emphasizes the participation of marginalized groups and the accountability of ADR Centers, including in relation to the election and gender balance of staff, quality standards, and disciplinary or removal procedures for Adjudicators.

While initially some male Adjudicators demonstrated resistance in accepting women Adjudicators, progress is evident. However, the extent to which women Adjudicators meaningfully participate remains uneven. Gaps and areas for improvement for gender equality in the ADR process and procedural safeguards for gender-based violence and vulnerable groups are apparent, yet Adjudicators recognize the importance of their role and the need to be accountable for legitimacy, including through termination when mandated.

### Key findings

- » **47 per cent** of cases were initiated by women
- » **20 per cent** of Adjudicators and Clerks in six Centers are women
- » **83 per cent** of Adjudicators recognized the importance of being held accountable

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## Procedure

National ADR policy in Somalia recognizes limited jurisdiction and competence for ADR Centers and encourages due process through verifiable evidence and adjudicative impartiality.

Despite certain types of matters falling outside ADR jurisdiction, they are sometimes brought and adjudicated at the Centers, often due to barriers including cost, time, distance, and lack of trust in formal justice institutions which have insufficient capacity and resources. Overall, users were satisfied with evidence gathering and verification in the ADR process, the duration of proceedings, and the objective and unbiased nature of the process. Challenges remain for the collaboration and coordination between Centers and formal justice institutions and referrals to support services for victims of violence, identified unanimously as a gap due to lack of knowledge by ADR actors or availability of legal, social, health or other services.

### Key findings

- » **81 per cent** of ADR actors perceive the relationship between ADR Centers and formal justice institutions as good or very good
- » **61 per cent** of users identified that it took less than one week to resolve their dispute
- » **96 per cent** of users felt the process was based on accurate information
- » **95 per cent** of users felt their adjudicating panel was impartial and the process objective and unbiased

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## Norms and protections

Somali national ADR policy recognizes the importance of compliance with the Provisional Constitution and human rights, gender equality, the protection of children's rights and well-being, and clan equity, emphasizing application of law not in contradiction with rights and adherence to national law and human rights standards.

Xeer is the prevalent method used to resolve disputes in the Centers, but Xeer and sharia are applied alternatively or jointly on a case-by-case basis through a flexible approach directed at achieving solutions and satisfying all involved parties. ADR actors attributed low importance to the predictability of an outcome, emphasizing conciliatory approaches. Matters were identified as raising concern for contravention of legal and human rights, especially in relation to gender-based violence against women, protection of children, the right to be heard and give testimony, and the right of women to own property.

### Key findings

- » **64 per cent** of ADR actors affirmed that they would consider a decision not complying with the Provisional Constitution to be valid
- » **73 per cent** of respondents reported having low or very low knowledge of national laws
- » **54 per cent** of cases involving a form of gender-based violence against women resulted in a decision to reconcile the victim and the perpetrator

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## Access to justice for all

The importance of ADR Centers for the communities they serve was recognized unanimously. Valued features include accessibility, alignment with cultural aspects of dispute resolution and a conciliatory approach, timeliness, and the no cost nature of the services. Gaps and challenges were also identified, mainly related to lack of awareness, limited geographic reach of ADR services, insufficient financial incentives to ADR Adjudicators, and capacity development needs, especially in relation to human rights standards and national law. Despite a number of identified issues in operations, users ranked the ADR Centers highly, feeling they had participated meaningfully, received useful resolution, and witnessed an improvement in justice in their community since the opening of the ADR Center.

National ADR policy in Somalia places value on linkages between formal and informal dispute resolution as well as building a base of knowledge for future justice sector reform.

### Key findings

- » **39 per cent** of ADR actors identified the free nature of the services as a main value of ADR Centers
- » **63 per cent** of users felt that they contributed to the outcome or solution
- » **78 per cent** of users felt the resolution was very good or good
- » **93 per cent** of users indicated feeling that justice had improved in their community since the opening of the ADR Center

**“This Center has a significant value to the community. Elders had no Center to solve disputes in the past and used to sit under a tree. Now, elders received stationery and office. This helped elders document disputes they solve.”**

**ADR Actor**

**“My best experience during the case hearing, which I appreciate to this very day, is the fact that the man used to beat me before, but once I had presented my case at the ADR Center, he never beat me again. I was really relieved.”**

**Female ADR Center user**

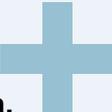
## Conclusions

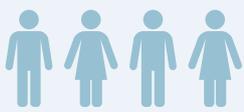
ADR Centers in Somalia are improving the availability and accessibility of justice across structural, procedural, and normative dimensions, contributing to dispute resolution through cost-effective, context-specific and innovative ways. While barriers to formal justice institutions remain challenging, ADR Centers offer simple, proportionate, and sustainable options that help empower participants. The process and outcomes are seen as fair, efficiently delivered, and instrumental in empowering participants and preventing escalation of conflict.

### PROGRESS BUT STILL WORK TO DO

However, important issues that must be addressed remain in the ADR Centers. Inequalities persist and representation of women and minorities must be enhanced. The capacity and skills of ADR actors can be strengthened on jurisdiction, legal and human rights standards, and safeguards for the vulnerable, notably on participation of children and protection of women victims of violence.

Research findings identify the following recommendations and action areas for future ADR policy and programming:

**INCREASE**   
representation,  
resources, community awareness  
and training frequency

**FOSTER**   
accountability,  
collaboration and  
information sharing

**EXPAND**   
to wider  
geographic areas and  
standardize data collection

**ADVANCING  
JUSTICE  
FOR ALL**

**STRENGTHEN**   
capacity, procedural  
safeguards, referral pathways  
and coordination mechanisms

This research is a contribution to the growing body of information that aims to help create an enabling environment for access to justice for all in the achievement of Sustainable Development Goal 16.

For more information, please visit:

<https://www.idlo.int/what-we-do/access-justice/customary-informal-justice>