

# ACCESSING JUSTICE: SOMALIA'S ALTERNATIVE DISPUTE RESOLUTION CENTERS





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## ABBREVIATIONS

<b>ADR</b>	alternative dispute resolution
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>GBV</b>	gender-based violence
<b>GBVAW</b>	gender-based violence against women (and girls)
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IDP</b>	internally displaced person
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>SDG</b>	Sustainable Development Goal
<b>SGBV</b>	sexual and gender-based violence
<b>SOPs</b>	Standard Operating Procedures
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNDP</b>	United Nations Development Programme

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## PART I: BACKGROUND

With the adoption of the Constitution of Somalia in 2012, a Somali Federal Government replaced a transitional government after two decades of civil war. As a consequence of conflict, public institutions were severely damaged and Somalia’s development and humanitarian indicators remain among the lowest globally. With national partners, IDLO is helping rebuild and strengthen institutions, as a precondition to improving the lives of Somali citizens. This includes strengthening the justice sector, to help achieve sustainable pathways to peace and security.

During 2019–2020, IDLO studied six alternative dispute resolution (ADR) Centers in Somalia and their contribution to access to justice, within the context of Sustainable Development Goal (SDG) 16 of the 2030 Agenda for Sustainable Development. Agenda 2030 offers an overarching framework in which to view development achievements and SDG 16 provides guidance to advance a peaceful and inclusive society, access to justice for all, and effective, accountable and inclusive institutions.

Culminating in this report, the research focused on justice seeker needs, consistency with justice administration standards, gaps or barriers, performance and comparative perspectives, and recommendations for policy and programming. The core goal of the research is to provide evidence of the progress, quality and responsiveness of ADR Centers as a justice mechanism in Somalia, particularly with respect to access to justice for marginalized populations, with consideration for available resources and the existing political, socio-economic and service environment. This report is divided into the following sections:

- Part I:** Background
- Part II:** Methodology and Framework of Analysis
- Part III:** Research Findings
- Part IV:** Conclusion and Recommendations

An integral part of achieving SDG 16 is adopting a people-centered approach that ensures inclusive engagement, involving women and marginalized groups. As noted by the Task Force on Justice, a

### RESEARCH FOCUS

- Concerns and needs of justice seekers
- Consistency with national and international law and justice standards
- Gaps or barriers in enabling environment and justice mechanisms
- Discrimination or bias in process or outcomes for vulnerable groups
- Performance and perspectives of ADR actors
- Recommendations for policy and programming

“people-centered approach to justice starts with an understanding of people’s justice needs and designs solutions to respond to them”, through a justice system that is open and inclusive.<sup>1</sup>

### UNDERSTANDING JUSTICE TRADITIONS IN SOMALIA

Somalia maintains a pluralistic justice system, which is a legacy of four legal traditions – Xeer customary law, religious sharia law, Italian civil law, and British common law. With the collapse of Somali judicial institutions during the civil war, people relied on long-standing forms of dispute resolution, including Xeer, and ad hoc mechanisms established by militia factions.<sup>2</sup> During the war and its aftermath, Somalis continued to rely on the strengths and durability of the Xeer system, contributing to its increased importance in the country.<sup>3</sup> Indeed, through the years, Xeer has become a primary source of law used to settle disputes in Somalia.<sup>4</sup>

1 The Task Force on Justice, *Justice for All* (April 2019), p. 11, available at: <https://www.justice.sdg16.plus/report>. Recent synthesis by the Organisation for Economic Cooperation and Development (OECD) identifies people-centered design criteria for justice systems. See OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre* (OECD, 2019), p. 195, available at: <https://doi.org/10.1787/597f5b7f-en>.

2 M. Vargas Simojoki, “Unlikely Allies: Working with Traditional Leaders to Reform Customary Law in Somalia”, in E. Harper, ed., *Working with Customary Justice Systems: Post-Conflict and Fragile States* (IDLO, 2011), p. 35.

3 M. Vargas Simojoki, *Evaluating the Effectiveness of Legal Empowerment Approaches to Customary Law Reform in Somaliland and Puntland* (IDLO, UNDP Somalia and the Van Vollenhoven Institute, Leiden University, 2010), p. 11, available at: <http://www.idlo.org/Documents/SomaliaFinalReport.pdf>.

4 M. Van Nooten, *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa* (The Red Sea Press Inc., 2005), p. 36.

## IN FOCUS: Xeer customary law

Historically, as adjacent clans competed over scarce natural resources, particularly water and land, a customary code of conduct, known as Xeer, which translates as “agreement”, took form and governed the relations and disputes among members of different clan units. Xeer has become a “tradition that has been passed down orally from one generation to the next”<sup>5</sup> based on voluntary acceptance of the system by all parties, thus facilitating compliance.<sup>6</sup> Under the Xeer process, once a conflict has occurred, male elders discuss matters until they reach an acceptable agreement.<sup>7</sup>

In Xeer custom there is an emphasis on collective responsibility by family or clans for the actions of individual members. This evolved to protect individual members unable to pay compensation for grievances, which risks triggering a cycle of revenge killing and loss of important members with resulting economic and security implications.<sup>8</sup> Xeer is mainly based on precedent, however, it is not a static legal system; instead, it varies across clans – particularly between south-central Somalia and northern regions. Its norms evolve over time to reflect new agreements among clans and emerging practices grounded, for example, on land acquisition by stronger clans or the need to protect a weaker clan.<sup>9</sup>

In a context of protracted political fragility and weak governance, the Xeer normative code and collective assumption of responsibility has functioned as “an effective tool for promoting social cohesion and for the regulation of inter [and intra]-clan affairs”.<sup>10</sup> Xeer is widely recognized as “an integral component of ... Somali... life and continues to be the preferred and most used legal system in all Somali regions, applied in up to 80–90 per cent of disputes and criminal cases”.<sup>11</sup>

The widespread use and application of Xeer is not without concern, particularly in relation to gender equality and human rights. Aspects of Xeer custom may violate provisions of the Somali Provisional Constitution, particularly when it comes to the rights of women and other vulnerable groups.<sup>12</sup> Indeed, “while Xeer is an efficient mechanism for regulating inter-clan affairs and 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”.<sup>13</sup> Additionally, the lack of recognition of customary law in Somalia’s national legal framework, a generalized lack of accountability, and a lack of structured linkages between formal and customary systems create confusion among individuals as well as courts as to the legal status and role of Xeer.<sup>14</sup>

### Justice challenges

In 2019, 3 per cent of the Federal Government’s total budget for the fiscal year was allocated to the justice sector (US\$10.3 million out of a total amount of US\$344.2 million). Of this portion, the majority (US\$6.7 million) was allocated to the police Custodial Corps with a little over US\$700,000 allocated to the Ministry of Justice.<sup>15</sup> With limited funding for the formal court system, issues such as the training and security of judges, low salaries, insufficient record-keeping and

5 Van Nooten (2005); and N. Leite, “Reinvigoration of Somali Traditional Justice through Inclusive Conflict Resolution Approaches”, *Conflict Trends* 2017, Accord website, available at: <https://www.accord.org.za/conflict-trends/reinvigoration-somali-traditional-justice-inclusive-conflict-resolution-approaches/>. Generally recognized Xeer principles include: the collective payment of “blood” compensation or *diya* (usually livestock) for certain crimes such as murder, assault, theft and rape; the promotion of inter-clan harmony through the protection of certain social groups including women, children, the elderly and guests; and the payment of dowry obligations. See Vargas Simojoki (2011), p. 36.

6 Danish Demining Group and Forcier, *Establishing a Knowledge Base on the Engagement of Somali Customary Institutions in Justice Programs* (September 2019), p. 9.

7 Pact and the American Bar Association Rule of Law Initiative, *Alternative Dispute Resolution Initiatives in Somalia. The Expanding Access to Justice Program* (Nairobi, June 2020), p. 2.

8 E. Harper, *Customary Justice: From Program Design to Impact Evaluation* (IDLO, 2011), p. 26.

9 Pact and the American Bar Association Rule of Law Initiative (2020), p. 2.

10 Vargas Simojoki (2011), p. 36.

11 *Ibid.*

12 Federal Government of Somalia Ministry of Justice and Judicial Affairs, “Policy on the Xeer”, Traditional Dispute Resolution Unit, (unpublished, March 2016), p. 3.

13 Vargas Simojoki (2010), p. 10.

14 Federal Government of Somalia the Ministry of Justice and Judicial Affairs, “Policy on the Xeer”, Traditional Dispute Resolution Unit, (unpublished, March 2016), p. 6.

15 According to the Somali Public Agenda, “The formal judicial authorities such as the Supreme Court (\$952,744); Benadir Court (\$1.5 million); Appeal Court (\$270,284) also receive a small portion of the budget.” See Somali Public Agenda, “Review of Somalia’s 2019 Budget for Judiciary Institutions, Public Services and Economic Development” (2019), available at: <https://somalipublicagenda.org/review-of-somalias-2019-budget-for-judiciary-institutions-public-services-and-economic-development/#:~:text=The%20total%20budget%20appropriated%20for,year's%20%24274%20million%20fiscal%20budget.>



enforcement, diversion of funds, and susceptibility to bribery and influence from powerful clans and lobbies continue to affect the transparency and accountability of the administration of justice.<sup>16</sup> Coupled with no state-funded legal aid, formal court proceedings remain challenging and costly for a large spectrum of the population, which does not yet have full confidence in the independence and legitimacy of the judiciary.<sup>17</sup>

Further, Somalia’s political and security context remains volatile. Federalist ideals clash with traditional clan divisions with corresponding delays in justice and security reforms and renewed instances of violence,<sup>18</sup> creating popular pressure for social stabilization.<sup>19</sup> While formal justice institutions are operationalized around colonial-era legislation and penal code provisions, a strong priority is given in the Somali context to ending violence and preventing future conflict, thus making customary justice – which emphasizes reconciliation and community harmony over protection of individual rights – more aligned with local values and priorities.<sup>20</sup>

As shown by recent research, barriers to accessing formal court procedures in Somalia include fees charged “for every step” of the process, lower geographic accessibility and lower understanding of formal judicial processes by individuals, notably due to the complexity of the legal language used and the lack of a consensus-building approach, central to Somali customary justice.<sup>21</sup>

Moreover, police and courts have insufficient capacity for matters involving vulnerable parties, resulting in discriminatory practices by police officers and judges. Poor enforcement of decisions contributes to individuals utilizing traditional dispute resolution<sup>22</sup> and access to formal justice mechanisms presents barriers for

marginalized and vulnerable groups, particularly women and children, internally displaced persons (IDPs) and minority clans. Recent studies highlight a persistent lack of capacity, infrastructure, resources and accountability throughout the formal judicial system.<sup>23</sup>

Similarly, a major challenge in the Xeer customary system is the disadvantaged position of children, women and minority clans, as well as foreigners and husbands living with their wives’ clan. Customary justice mechanisms are predominantly composed of elderly males, selected by male community members based on status inherited from family members and reputation within the community.<sup>24</sup>

Children lack basic legal protection in Somalia as Xeer norms “protects parents’ right to raise [children] without interference”<sup>25</sup> and formal juvenile justice policy is underdeveloped.<sup>26</sup> Ethnic minorities and minority clans are also considered to be in disadvantaged positions due to entrenched local power dynamics that result in minorities having little prospect of remedy against members of more powerful clans.<sup>27</sup> Women remain virtually excluded from formal justice institutions due to structural discrimination, including limited education and training opportunities for women and girls, and a “culture of impunity for allegations of harassment and sexual assault”.<sup>28</sup>

In general, women also have limited participation as decision makers and restricted influence in the Xeer system. Women’s access and participation as parties in customary justice are traditionally limited due to persisting cultural stigma towards women addressing male leaders directly.<sup>29</sup> Women are usually represented by a male family member or another intermediary in hearings in front of elders.<sup>30</sup>

16 Heritage Institute for Policy Studies, “Perceptions of Security and Justice in Mogadishu”, HIPS Policy Brief 8 (Mogadishu, Heritage Institute for Policy Studies, 2014), p. 3, available at: [http://www.heritageinstitute.org/wp-content/uploads/2014/09/HIPS\\_Policy\\_Brief\\_008\\_2014\\_ENGLISH.pdf](http://www.heritageinstitute.org/wp-content/uploads/2014/09/HIPS_Policy_Brief_008_2014_ENGLISH.pdf). See also IDLO, “The Political and Economic Forces Shaping IDLO Program Implementation in Somalia” (unpublished, June 2020), pp. 41–43.

17 World Bank, “Political Economy of Justice in Somalia”, Working Paper, Justice Security and Development Series (April 2016), pp. 22–23, available at: <http://katuni.net/wp-content/uploads/2016/11/Somalia-WP-Final-PDF.pdf>.

18 See Human Rights Watch, *Somalia, World Report 2018*, available at: <https://www.hrw.org/world-report/2018/country-chapters/somalia>; and Human Rights Watch, *Somalia, World Report 2020*, available at: <https://www.hrw.org/world-report/2020/country-chapters/somalia>.

19 Leite (2017).

20 Coffey International, “Understanding Potential Development of the Justice System in Somalia and Opportunities for Promoting Rule of Law and State and Peace Building Informed by Baseline Analysis of Formal Regional Criminal Courts in Urban Somalia” (unpublished, July 2017); and IDLO, *The Political and Economic Forces Shaping IDLO Program Implementation in Somalia* (2020), pp. 8–9.

21 Pact and the American Bar Association Rule of Law Initiative (2020), p. 15.

22 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.

23 Coffey International (2017); and Heritage Institute for Policy Studies (2014).

24 Danish Demining Group and Forcier (2019), p. 10.

25 Vargas Simojoki (2011), p. 39.

26 Human Rights Watch (2020).

27 Danish Demining Group and Forcier (2019), p. 9.

28 UNDP (2020), p. 4.

29 Pact and the American Bar Association Rule of Law Initiative (2020), p. 24.

30 UNDP (2020), pp. 11–12.

However, women’s participation varies significantly across districts: from women not even being permitted to attend Xeer meetings in some districts to being recognized as elders in others.

The detrimental outcomes for women in some Xeer decisions are also widely recognized. These include persistent lack of justice for victims/survivors of rape,<sup>31</sup> the practice of giving women in marriage as a form of compensation from a perpetrator’s family to a victim’s family,<sup>32</sup> and the practice of exchanging women in marriage between clans to end conflict.

Notably, research on gender-based violence against women (GBVAW) shows that enforcement of women’s rights remains a challenge in both customary and formal justice systems. A Sexual Offences Bill submitted to Federal Parliament in 2019 has yet to be approved and repeated concerns have been raised in relation to the Somali Penal Code’s current definition of sexual violence.<sup>33</sup> GBVAW matters are often handled as collective clan responsibility, and without appropriate procedural safeguards in relation to conduct of hearings and evidentiary standards, leaving victims/survivors without justice and at risk of re-victimization and repeated trauma.<sup>34</sup>

### IN FOCUS: Understanding gender-based violence against women

An understanding of GBVAW is rooted in human rights law at the international, regional and national levels; in international, regional and domestic criminal law; in international humanitarian law; and in international, regional and national instruments to promote gender equality. Globally, adequate protections for women are scarce, particularly in countries lacking criminalization of specific forms of GBVAW such as domestic violence.<sup>35</sup>

**Violence against women** means “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war”.<sup>36</sup>

**Gender-based violence** (GBV) is “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>37</sup>

**Sexual and gender-based violence** (SGBV) refers to GBV, but with an added emphasis on the need to address sexual violence in the emergency stages of humanitarian intervention.<sup>38</sup> Similarly, an explicit definition of **domestic violence** means “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.<sup>39</sup>

Internationally, a consensus has emerged on the use of GBVAW as a “term that makes explicit the gendered causes and impacts” of all forms of violence against women.<sup>40</sup> References to women are inclusive of girls as violence that is gender-based affects women throughout their lives.<sup>41</sup>

31 It was discussed during prior consultations with elders that the outcome for female victims of rape can depend on clan dynamics, for example, women from minority clans rarely get “justice” if the perpetrator is from a majority clan. However, if the woman involved is from a majority clan and the accusation is against a man from a minority clan, the woman is more likely to receive some form of “justice”.

32 This would only be if requested or consented to as a way to resolve the dispute by the victim’s family.

33 Sexual violence is classified “as an ‘offence against modesty and sexual honor’ rather than as a violation of bodily integrity”. See Human Rights Watch (2020).

34 Danish Demining Group and Forcier (2019), p. 10.

35 IDLO, *Navigating Complex Pathways to Justice: Women and Customary and Informal Justice Systems* (2020), pp. 13–16, available at: <https://www.idlo.int/sites/default/files/pdfs/publications/idlo-issue-brief-women-cij-final-web.pdf>.

36 African Union, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) [2003], Article 1.

37 Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 19 on violence against women (1992), para. 6, available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf)

38 There has been growing acknowledgement in literature and by practitioners that sexual violence exists as part of a “continuum of violence” which females are exposed to often multiple times throughout their lifespan, in peacetime as well as humanitarian emergencies and that related programming should reflect the full spectrum of violations of which sexual violence is only one. See, for instance, Jeanne Ward, “It’s Not About the Gender Binary, it’s About the Gender Hierarchy: A Reply to Letting Go of the Gender Binary”, *International Review of the Red Cross*, vol. 98 (2016), p. 275; and Liz Kelly, “The Continuum of Sexual Violence”, in Maynard, M., Hanmer, Ja. (Eds.), *Women, Violence and Social Control* (London, Palgrave Macmillan, 1987), pp. 46–60.

39 See Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), Article 3, para. b.

40 CEDAW, General Recommendation No. 35 on gender-based violence against women (2017), para. 9, available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf).

41 *Ibid.*, para. 14.

## NATIONAL POLICY AND IDLO PROGRAMMING

Recognizing that discrimination and unjust outcomes can undermine any justice process and by extension peace and security, with IDLO support, the Somali Federal Government developed the current National ADR Policy in 2016. It outlines the Federal Government’s position on Xeer processes and practices and prioritizes areas to support the progressive reform of the Xeer system in Somalia, including “gender equity” in Xeer.<sup>42</sup> Notably, there is recognition for the important balance needed to

preserve existing socio-political structures and cultural values while realizing rights for all Somalis.<sup>43</sup>

Rigid or excessively bureaucratic structures for Xeer ADR risk de-legitimization<sup>44</sup> and balance is needed to safeguard Xeer’s essential role in preventing conflict and maintaining peace within and among Somali clans. As shown in Figure 1, focusing on seven core areas, the overarching policy goal is to “contribute to ensuring access to free and fair justice and dispute resolution for all Somalis regardless of economic class, gender, age, clan or ethnicity”.<sup>45</sup>

Figure 1: National policy on Xeer



Complementing concurrent strengthening of the formal judicial system in Somalia, IDLO has supported the establishment of six ADR Centers in Benadir (Hamar-Jajab, Hodan and Karan) and Puntland State (Galkayo, Buhoodle and Badhan), in addition to 10 ADR Centers

established with the support of the United Nations Development Programme (UNDP). Nine additional IDLO-supported Centers are planned to open.<sup>46</sup> All six IDLO-supported ADR Centers include women among ADR staff, as shown in Table 1.

42 Federal Government of Somalia Ministry of Justice and Judicial Affairs, “Policy on the Xeer”, Traditional Dispute Resolution Unit, (unpublished, March 2016), pp. 8-9.

43 Federal Government of Somalia Ministry of Justice and Judicial Affairs, “Policy on the Xeer”, Traditional Dispute Resolution Unit, (unpublished, March 2016), p. 7.

44 Pact and the American Bar Association Rule of Law Initiative (2020), p. 15.

45 National ADR Policy, p. 6.

46 This programming also focuses on: enhancing knowledge of basic human rights standards and sharia law and national law for Adjudicators; training and embedding paralegals in each Center; enhancing data collection skills, analysis of data and reporting of ADR staff; enhancing women’s engagement in ADR Centers by training women with a relevant role in the community as well as creating opportunities to increase legal awareness on women’s rights at the community level.

**Table 1: ADR Centers in Somalia**

REGION	ADR CENTER DISTRICTS (as of April 2020)	CENTER ADJUDICATORS (as of April 2020)
<b>BENADIR</b>	Hamar-Jajab	2 women; 7 men
	Hodan	2 women; 6 men
	Karan <sup>47</sup>	3 women; 8 men
<b>GALMUDUG</b>	Dhusamreb	2 women; 14 men
<b>HIRSHABELLE</b>	Jowhar	2 women; 11 men
<b>JUBALAND</b>	Kismayo	2 women; 5 men
	Garbaharey	2 women; 6 men
<b>PUNTLAND</b>	Galkayo	2 women; 10 men
	Buhoodle	2 women; 10 men
	Badhan	2 women; 10 men
	Burtinle	0 women; 5 men
	Dhadhar	0 women; 5 men
	Bossasso	0 women; 7 men
	Garowe	0 women; 5 men
<b>SOUTHWEST</b>	Baidoa	15 women; 15 men
	Hudur	2 women; 7 men
<b>6 Regions</b>	<b>16 Centers</b>	<b>169 Adjudicators (38 women and 131 men)</b>

ADR Centers represent a unique model of justice delivery aimed at facilitating the settlement of disputes through the use of informal dispute resolution methods. Importantly, the ADR process blends elements of arbitration, mediation and other conventional ADR methods while preserving alignment with customary norms and emphasizing consensus-building and voluntary agreement of parties.

With an average yearly operational cost ranging between US\$40,000 and US\$50,000 per Center, ADR offers a cost-effective complement to formal judicial mechanisms which are still being rebuilt in Somalia, aimed at ensuring wider justice accessibility, including through standard referral to competent formal authorities where appropriate.

### Standard Operating Procedures

In June 2018, IDLO supported the Ministry of Justice in developing Standard Operating Procedures (SOPs) for ADR Centers. These were revised in 2019 and included a complaint registration form to record information about matters brought to the Centers.<sup>48</sup> The SOPs contain a set of guidelines and regulations outlining the ADR process and provide a framework to ensure adjudication and practices within the Centers are efficient and consistent across Centers, transparent and accountable, and in line with international principles.<sup>49</sup>

Importantly, the SOPs are aimed at institutionalizing customary dispute resolution practices in order to “form and maintain a workable and administratively effective Alternative/Customary dispute resolution process to solve disputes or conflicts”, while preserving and strengthening linkages and coordination between the formal and the customary justice systems, in accordance with the ADR National Policy objectives.<sup>50</sup>

<sup>47</sup> One female Adjudicator joined the Karan roster following completion of key informant interviews and participated only in a focus group discussion.

<sup>48</sup> Government of Federal Republic of Somalia Ministry of Justice and Judiciary Affairs, Alternative Dispute Resolution Standard Operating Procedure, Alternative Dispute Resolution Unit, June 2018, later revised in September 2019 and adopted by the Ministry of Justice in February 2020. The SOPs are conceived as a living document and may be further revised following roll out in Federal Member States to address limits and gaps that might arise from operational experience.

<sup>49</sup> Ministry of Justice and Judiciary Affairs, Standard Operating Procedures, revised version September 2019, section 2.

<sup>50</sup> *Ibid.*, section 3.

Principal aim of ADR Centers	Section 5, SOPs
<p>The mandate of ADR Centers is to facilitate the resolution of disputes through ADR which includes:</p> <ul style="list-style-type: none"> <li>» Facilitating the settlement of disputes through arbitration, mediation and other voluntary dispute resolution procedures</li> <li>» Strengthening the linkages between formal and informal ADR justice</li> <li>» Promoting gender equality and ensuring women and men have equal access to ADR mechanisms and that equal weight is given to women’s and men’s voices, arguments and testimonies, as parties and witnesses</li> <li>» Promoting the rule of law to avoid inconsistency with national law and relevant international law and ensure equal access to justice for all in Somalia</li> <li>» Modernizing traditional Somali culture to enhance the role of resolving disputes through elders and <i>ulama</i> (Islamic scholars) while ensuring compliance with sharia law, national laws and human rights; and</li> <li>» Providing ADR Center staff and Adjudicators with training on ADR practices and approaches across Somalia.</li> </ul>	

Each ADR Center has, within its respective district/region, the jurisdiction to hear and issue decisions over civil disputes and select non-serious crimes between two or more individuals that can be remedied by awarding monetary damages or restitution. In doing so, sharia law and principles and Xeer practices may be applied, provided there is no conflict with relevant human rights standards and sharia law and principles.

According to SOPs, section 10, each ADR Center is assigned with a roster of Adjudicators, male and female, and an administrative team responsible for the overall management of ADR Center activities. While administrative team members, including paralegals, are recruited through competitive processes by the Ministry of Justice, the latter appoints Adjudicators upon consultation with community representatives and institutional stakeholders. Table 2 provides an overview of the staff of each ADR Center.

**Table 2: ADR Center staff roles and responsibilities**

<b>ONE COORDINATOR PER REGION</b>	<b>Appointment:</b> Recruited by the Ministry of Justice through a competitive process.
<p><b>Main responsibilities:</b> Leading and overseeing the day-to-day operations and overall management of ADR Centers including: (a) case filing and registration; (b) submitting periodical financial and narrative performance reports to the Ministry of Justice; and (c) coordinating the creation of a network between the ADR Centers and complementary legal, psychological, health and women’s support services at the community level.</p>	
<b>ONE CLERK PER CENTER</b>	<b>Appointment:</b> Recruited by the Ministry of Justice through a competitive process.
<p><b>Main responsibilities:</b> Performing a record-keeping role under the supervision of the ADR Coordinator including: (a) receiving, registering and filing disputes or complaints submitted to the Center which the Center has jurisdiction to hear; and (b) maintaining and safekeeping case registers, records, case files and all documents for disputes filed and decisions rendered by the Center.</p>	
<b>ONE PARALEGAL PER CENTER</b>	<b>Appointment:</b> Assigned by the Ministry of Justice.
<p><b>Main responsibilities:</b> Assisting parties in resolving their dispute including: (a) providing legal assistance and advice to ADR Center users; (b) making referrals to community-based organizations for integrated support and counseling; (c) advising Adjudicators on international human rights standards, sharia law, national law, and the SOPs; (d) identifying and referring matters outside of Center jurisdiction; (e) supporting ADR Clerks in the correct classification of cases and data entry; and (f) contributing to creating accountability mechanisms for the Center at the community level.</p>	
<b>ROSTER OF 10–15 ADJUDICATORS PER CENTER</b>	<b>Appointment:</b> Selected by the Ministry of Justice upon consultation with community representatives and institutional stakeholders.
<p><b>Main responsibilities:</b> (a) mediating and encouraging disputing parties to resolve their dispute based on agreement, resorting to arbitration if parties are not able to agree; (b) ensuring that disputing parties are given equal opportunity to express their positions and opinions; and (c) assuring a safe, constructive, cooperative, problem-solving environment by offering suggestions on alternatives or proposing solutions which lead to the resolution of the dispute.</p>	

## PART II: METHODOLOGY AND FRAMEWORK OF ANALYSIS

### METHODOLOGY

To study the six IDLO-supported ADR Centers, primary data collection was conducted over a period of nine months (July 2019 to March 2020). A national Lead Researcher supported by three Research Assistants (one in Puntland and two in Benadir) collected and

analyzed data with support and guidance from IDLO. This report presents the findings from combined desk review and primary data collected through a participatory process and mixed methods. Figure 2 outlines the research methods utilized, which were designed to triangulate information and assess alignment with existing national policy.<sup>51</sup>

Figure 2: Summary of research methods



**Desk review**  
Context, legal framework and comparative perspectives



**Observation**  
2 rounds at 6 Centers by 2 researchers for a total of 120 hours (10 hours/Center/round)



**Key informant interviews**  
64 interviewees (17 women and 47 men) among ADR Center actors – Coordinators, Clerks, paralegals and Adjudicators



**Case file review**  
447 case files during 2019 from 6 Centers



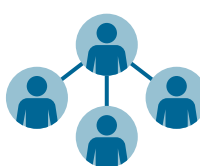
**User feedback survey**  
155 users (60 women and 95 men) of the Centers during 2019



**Focus group discussions**  
3 groups among Clerks, paralegals, women Adjudicators and women community leaders for a total of 25 participants



**Case studies**  
3 Adjudicators (2 women and 1 man)  
4 users (3 women and 1 man)



**Validation workshops**  
Regional forum with experts, workshop with national stakeholders, and online workshop with Puntland government and partners (UNDP)

Notably, revision of the 2019 SOPs was ongoing during the study of the six IDLO Centers, and the majority of key informant interviews were conducted with ADR actors who had participated in a single training on the prior version of the SOPs, resulting in a lag between the understanding expressed by ADR

actors and the regulatory content of the current version of the SOPs presented in this report. There are also necessarily limitations to the findings, which include self-reported data and uneven data availability.<sup>52</sup> As well, insecurity and stigma around GBVAW inhibited data collection in some instances.

51 National ADR Policy, Annex I: Strategy for the Implementation of the Xeer Policy, p. 14. Articulated questions in the Policy include: what principles inform elders’ decision-making; who influences Xeer decisions and how; how do elders enforce the decisions they make, and are decisions made by elders respected by communities; and where are women participating and where do women have authority.

52 Insecurity impacted the scope and scale of data collection as it restricted opportunities to travel for observations and collection of case files and made it difficult to reach Center users. Response rates in the phone-administered user feedback survey were generally low in all Center locations. Further, limited or unclear recorded case file data meant it was not possible to identify a representative, stratified sample of Center users to interview and impeded a complete analysis of information related to disputes brought to ADR Centers.

## FRAMEWORK OF ANALYSIS

The existing National ADR Policy and standards detailed in the SOPs provide a primary framework for analysis of research findings, however, more broadly, universally applicable standards adopted under the auspices of the United Nations serve as the normative basis for activities in support of justice and the rule of law.<sup>53</sup> There is no single definition of access to justice, but it is commonly understood and defined as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards”.<sup>54</sup> International human rights law recognizes pluralism within States, provided that the legal system conforms with international human rights standards. As research identifies:

*“people-centered justice services encompass a growing spectrum of processes and procedures in addition to formal judicial and non-judicial proceedings: alternative mechanisms for dispute resolution such as mediation, online dispute resolution, paralegals, public legal education providers, community advocates, collaborative service provision from legally-trained and other professionals, and pre- and post-resolution support”.*<sup>55</sup>

The international legal foundation for access to justice is recognized in the Universal Declaration of Human Rights<sup>56</sup> (UDHR) and enshrined in international human rights law. Relevant articles within international human rights instruments include provisions outlining the general principle of non-discrimination in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and

Cultural Rights (ICESCR). These standards prohibit discrimination on several grounds: “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>57</sup> Article 26 of the ICCPR, which guarantees the right to equality before courts and tribunals, specifically applies the principle of non-discrimination.

The ideal of access to justice for all is not without significant challenges, especially in conflict-affected countries. Elements obstructing justice or influencing access to justice have been identified.<sup>58</sup> Practical categorizations to classify various barriers to access to justice include: legal and regulatory barriers; economic and financial barriers; practical and institutional barriers; and cultural and social barriers.<sup>59</sup> In the context of ADR Centers, which are rooted in local communities as customary and informal justice mechanisms, a number of these traditional barriers are removed, yet many also remain.

Those who are poor, geographically isolated or otherwise vulnerable are especially affected by barriers as they struggle with legal issues related to housing, family, debt, crime, property and other matters that affect their well-being, and often cannot obtain assistance in resolving their legal problems.<sup>60</sup> Unable to afford lawyers and ignored by authorities, their rights are routinely violated under discriminatory laws or due to a lack of legal means to enforce norms that should protect them.<sup>61</sup> It is thus necessary to adopt a rights-based approach to analyze justice service delivery, reflecting on human rights standards across three dimensions of justice – structural, procedural and normative – as shown in Figure 3.<sup>62</sup>

53 The Secretary-General has stated in his report, “The normative foundation for our work in advancing the rule of law is the Charter of the United Nations itself, together with the four pillars of the modern international legal system: international human rights law; international humanitarian law; international criminal law; and international refugee law. This includes the wealth of United Nations human rights and criminal justice standards developed in the last half-century. These represent universally applicable standards adopted under the auspices of the United Nations and must therefore serve as the normative basis for all United Nations activities in support of justice and the rule of law.” [S/2004/161, para. 9].

54 See also UNDP Asia-Pacific Regional Centre, *Programming for Justice: Access for All. A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice* (Bangkok, 2005), p. 5, available at: <https://www.un.org/ruleoflaw/blog/document/programming-for-justice-access-for-all-a-practitioners-guide-to-a-human-rights-based-approach-to-access-to-justice/>; and UNDP Justice System Programme, “Access to Justice Concept Note” (2010), p. 2, available at: <https://www.un.org/ruleoflaw/blog/document/concept-note-strengthening-womens-security-and-access-to-justice/>.

55 OECD (2019), p. 107.

56 UDHR, Articles 1, 2.

57 ICCPR, Article 2(1); ICESCR, Article 2(2).

58 See UNDP, “Access to Justice Practice Note” (UNDP, 2004), p. 4. The United States Institute for Peace (USIP) elaborates further: “There is no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system. Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.” See USIP, “Necessary Condition: Access to Justice”, available at: <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>.

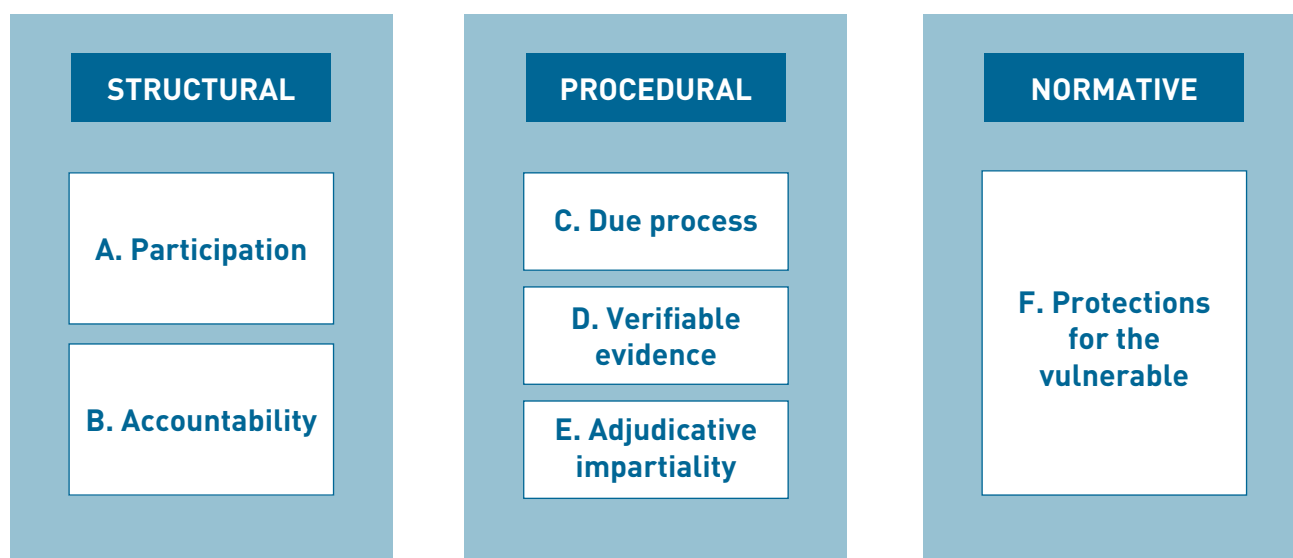
59 IDLO, *Women Entrepreneurs’ Access to Justice in Jordan* (IDLO-EBRD, 2020).

60 Open Society Foundations, *Community-Based Paralegals: A Practitioner’s Guide* (The Open Society Justice Initiative, 2010), p. 11.

61 *Ibid.*

62 Danish Institute for Human Rights, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (2013), p. 11, available at: <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2013/1/informal-justice-systems-charting-a-course-for-human-rights-based-engagement.pdf?la=en&vs=5500>.

Figure 3: Dimensions of justice framework (Danish Institute for Human Rights)



In the Somali context, these three dimensions were analyzed through a layered approach drawing from:

1. **National policy:** to assess whether Centers are operating in alignment with national policy objectives and operating procedures across all dimensions as detailed in the 2016 National ADR Policy and the 2019 SOPs.
2. **Human rights:** to assess compliance, especially towards non-discrimination and gender equality, regional and global human rights standards were utilized in relation to *procedural* dimensions to assess compliance, especially towards non-discrimination and gender equality, including “whether parties to a dispute are treated equally, that their case is decided by a person with no interest in the case, who is obliged to render a decision solely on the basis of fact and objective rules rather than on personal preferences”.<sup>63</sup> Additionally, the analysis relates to *structural* (*participation*) and *normative* dimensions, reviewing the practices and decisions of the Centers through the lens of international human rights standards for non-discrimination and equality, particularly for women and children.

3. **SDG 16:** to assess access to justice for all, SDG 16 targets were utilized in relation to *structural* (*accountability*) and *normative* dimensions and whether justice services offer quick, effective and fair responses to protect rights, prevent or resolve disputes, and control abuse of power through a transparent and efficient process that is available, affordable and accountable for all.<sup>64</sup>

#### Addressing gender-based violence against women

It is well established that gender inequality is a concern in Somalia. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides for the obligation of States to ensure that women have access to remedies, in particular, access to competent, gender-sensitive dispute resolution systems.<sup>65</sup> Regionally, the Protocol on the Rights of Women in Africa (African Protocol on Women’s Rights), an accompanying protocol to the African Charter on Human and Peoples’ Rights (African Charter), advances the protection and the promotion of the rights of women in Africa, particularly in the context of customary justice systems, as shown in Table 3.

<sup>63</sup> *Ibid.*

<sup>64</sup> IDLO, *Practitioner Brief: Engagement with Customary and Informal Justice Systems* (IDLO, 2019), p. 24, available at: <https://www.idlo.int/sites/default/files/pdfs/publications/IDLO-Practitioner-Brief-Customary-and-Informal-Justice-web-FINAL.pdf>.

<sup>65</sup> CEDAW, Articles 2(c), 3, 5(a), 15 and 16. See also IDLO, *Navigating Complex Pathways to Justice: Women and Customary and Informal Justice Systems* (2020).



**Table 3: Human rights obligations – African Charter and Protocol on Women’s Rights**

ARTICLE	OBLIGATION
<b>African Charter on Human and Peoples’ Rights</b>	
<b>Article 2</b>	Elimination of discrimination based on race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status
<b>Article 3</b>	Equality before the law and equal protection of the law
<b>Article 7</b>	Right to a fair trial
<b>Article 18(3)</b>	Elimination of every discrimination against women and protection of the rights of women and children as stipulated in international declarations and conventions
<b>Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa</b>	
<b>Article 2</b>	Elimination of discrimination against women
<b>Article 4</b>	Prohibition of all forms of violence against women
<b>Article 5</b>	Obligation to eliminate all harmful practices against women
<b>Article 6</b>	Prohibition of marriage without the free and full consent of both parties and fixing the minimum age of marriage for women at 18

While Somalia has not yet ratified CEDAW or the African Protocol on Women’s Rights, the standards are universally recognized along with the UDHR, ICCPR, ICESCR, the Convention on the Rights of the Child (CRC), and the African Charter, which provide a robust framework for equal protection before and under the law. General Recommendation No. 35 of the CEDAW Committee recognizes that the “prohibition of gender-based violence against women (GBVAW) has evolved into a principle of customary international law”<sup>66</sup> and also provides guidance in preventing, responding to, prosecuting and punishing GBVAW while recognizing that matters can be adjudicated through ADR processes where:

- » the referral is not mandatory or does not prevent women from accessing formal justice
- » there is free and informed consent by the affected victims/survivors
- » there are no indicators of further risks for the victims/survivors or their family members; and
- » the ADR procedures empower victims/survivors and are provided by professionals trained to understand and adequately intervene in cases of

GBVAW, ensuring protection of women’s and children’s rights, as well as an intervention with no stereotyping or re-victimization of women.<sup>67</sup>

General Recommendation No. 35 also establishes the obligation to “[adopt] and implement effective measures to protect and assist women complainants and witnesses of gender-based violence before, during and after legal proceedings”. This includes providing appropriate and accessible protection mechanisms to prevent further or potential violence; ensuring access to free or low-cost legal aid, medical, psychosocial and counseling services for victims/survivors; and establishing and implementing “appropriate multi-sectoral referral mechanisms to ensure effective access of women survivors to comprehensive services, ensuring full participation of and cooperation with non-governmental women’s organizations”.<sup>68</sup>

Moreover, States are urged to ensure effective access of victims to courts and tribunals and to enable authorities to adequately respond to all GBV cases, ensuring alleged perpetrators undergo a fair, timely and expeditious trial, imposing adequate penalties. Importantly, the Recommendation explicitly states that no fees or court charges should be imposed on victims/survivors.<sup>69</sup>

<sup>66</sup> CEDAW, General Recommendation No. 35, para. 2.

<sup>67</sup> *Ibid.*, para. 32.

<sup>68</sup> *Ibid.*, para. 40 b), c) and e).

<sup>69</sup> *Ibid.*, para 44.

### Applying the framework

The international principles discussed identify an objective standard to consider how the substantive outcome in specific ADR Center cases compares with the expected outcome based on external objective human rights standards such as the right to life, protection against cruel, inhumane or degrading treatment, protection from discriminatory treatment, etc. Based on available evidence and desk review, the research identified matters such as gender-based crimes, inheritance and property ownership, children’s rights, and matters affecting minority and IDP groups as especially relevant for study.

In sum, the framework of inquiry and analysis considers whether justice services are available and how the services are delivered for the benefit of all Somalis, in order to inform policy options and recommendations. Necessarily, in order to identify policy avenues, the identified standards were used as a guiding lens to assess and analyze the information and data obtained. Accordingly, the following section presents main findings viewed through relevant national and international standards, with emphasis on the Somali National ADR Policy objectives, and SDG 16 targets. The strengths and limitations of the Centers are highlighted in relation to structural, procedural and normative dimensions of justice, identifying pathways for further programming and policy action.

### COMPARATIVE PERSPECTIVES

Many countries have a customary law tradition that continues to have relevance and legitimacy. Throughout this report, examples will be highlighted of customary or ADR practices that present comparative perspectives from other countries in Africa.

## PART III: RESEARCH FINDINGS

In line with the knowledge generation objective of the National ADR Policy, research findings are presented

and structured to help supplement existing knowledge gaps where possible.

### STRUCTURAL DIMENSION

This section focuses on strengths and limitations in the **participation** of marginalized groups and the **accountability** of ADR Centers. This includes staff composition (election and gender) and regulation of quality standards and disciplinary/removal procedures.

#### A. PARTICIPATION

##### General overview of cases

The total number of cases received in 2019 in the six ADR Centers was 1,068 – 337 cases in Benadir and 731 in Puntland. For this study, 447 case files were collected, and the number of cases reviewed per Center ranged from 32 to 130 as indicated in Figure 4. The Galkayo Center had the highest number of cases, which may be due to several factors. The Center is located near IDP camps and has one IDP representative among the roster of Adjudicators, who actively works to link IDPs in neighboring camps to the Center. Additionally, a working relationship with

the First Instance Court of the District means cases are referred to the Center in instances where parties are not able to afford court fees. The Hodan Center had the lowest number of cases, linked to security concerns in the district due to recurrent terrorist attacks in areas surrounding the Center’s location and to the fact that the Center is located in a government building, thus increasing the risk of targeted attacks. Police and security forces at the front gate have increased oversight and safety measures, which were identified by Adjudicators as a deterrent for people to come to the Center.

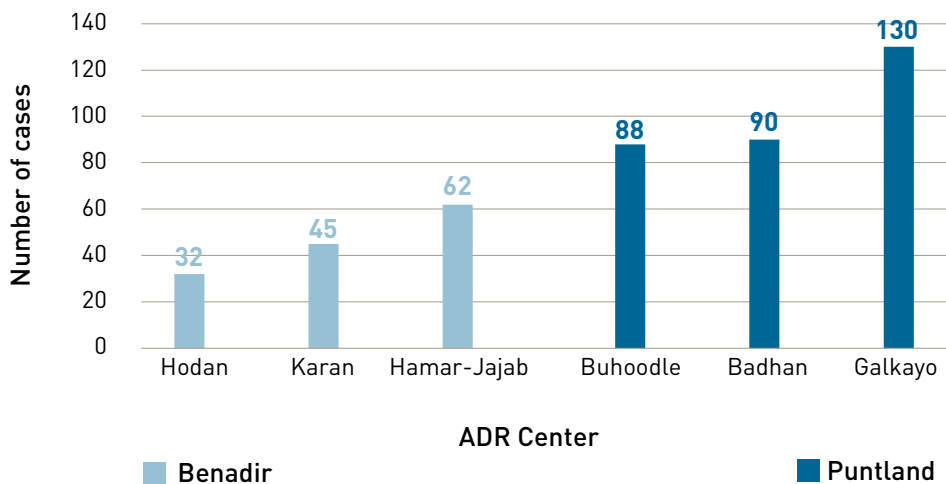


Figure 4: Number of case files reviewed among registered cases per Center

Most individuals using the Centers were aged between 25 and 29 (28 per cent of the defendants and 26 per

cent of the complainants). Figure 5 provides the ages of complainants and defendants in matters reviewed.

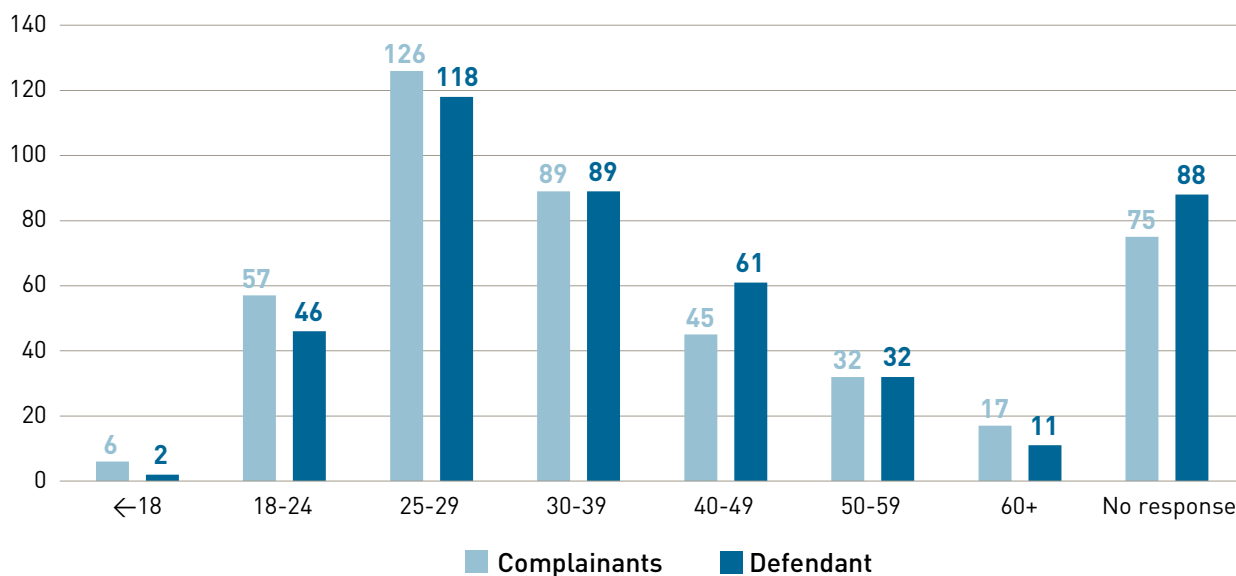


Figure 5: Number and age of complainants and defendants in case files reviewed

In Benadir, the majority of complainants were female (53 per cent) and the majority of defendants were male (75 per cent), with only Karan having more male complainants. Conversely, in Puntland, the majority of both complainants (56 per cent) and defendants (80 per

cent) were male. More specifically, Badhan and Buhoodle had a majority of male complainants and defendants, with Galkayo being an exception with a majority of female complainants and male defendants. Table 4 provides a regional indication of gender in cases reviewed.

**Table 4: Number of complainants and defendants by gender and region in case files reviewed**

REGION	COMPLAINANT/ DEFENDANT	FEMALE	MALE	UNDISCLOSED	TOTAL CASES
BENADIR	Complainants	74 (53%)	64 (46%)	1 (1%)	139 (31%)
	Defendants	28 (20%)	104 (75%)	7 (5%)	
PUNTLAND	Complainants	135 (44%)	173 (56%)	0 (0%)	308 (69%)
	Defendants	63 (20%)	245 (80%)	0 (0%)	
TOTALS	<b>Complainants</b>	<b>209 (47%)</b>	<b>237 (53%)</b>	<b>1 (0.2%)</b>	<b>447 (100%)</b>
	<b>Defendants</b>	<b>91 (20%)</b>	<b>349 (78%)</b>	<b>7 (2%)</b>	

The larger number of female complainants and male defendants in Hodan, Hamar-Jajab and Galkayo may be explained by a higher proportion of cases categorized as family disputes. These included disputes over childcare costs or negligence towards other family-related duties such as lack of financial support for the wife, and requests for separation or divorce by female parties.<sup>70</sup>

Finally, in relation to geography, the majority of complainants resided in the same location as the Center where the matter was brought, while Hodan, Hamar-Jajab, Badhan and Buhoodle Centers also received cases from neighboring areas. Conversely, in Karan and Galkayo Centers, almost all cases came from these districts.

### Participation of children

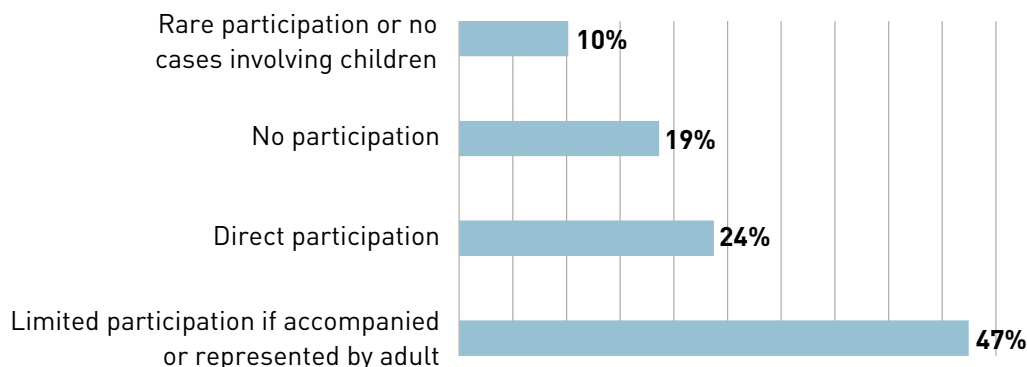
Children	Section 27, SOPs
The adequate protection of children’s rights should be ensured by ADR Centers with referral to competent authorities for offences against children amounting to sexual violence or serious bodily harm.	

The SOPs offer limited guidance on the participation and protection of children, leaving ADR Centers without clear guidelines. As shown in Figure 6, there were different views and available evidence on the participation of children. Some respondents stated that teenage children participate directly in the process, can bring a case and can be heard as witnesses. Others highlighted limited participation of children: a child participates to a certain extent if accompanied or represented by parents or the clan leader or another adult representative. For instance, in Badhan, children can participate only as parties to a case and if accompanied by parents, they are not heard as witnesses.

Conversely, about one fifth of ADR actors interviewed (19 per cent) affirmed that children do not participate at all and may come with parents but only listen in hearings and cannot be involved in discussions or participate, whether present in the Center or not. Article 12 of the CRC establishes that children, defined as individuals below the age of 18, shall “be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.<sup>71</sup> Finally, others stated that ADR Centers rarely or never receive cases involving children.

<sup>70</sup> At the time of data collection, the 2018 version of the SOPs for ADR Centers was in force which included divorce matters within ADR jurisdiction. These were subsequently excluded in the revised 2019 version following requests from representatives of Federal Member States.

<sup>71</sup> United Nations, CRC, General Assembly resolution 44/25 of 20 November 1989, Article 12.2, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.



**Figure 6: ADR actor views on participation by children in the ADR process**

The participation of children and the level of application of child-friendly measures would benefit from further study. Considerations for children’s age and evolving capacity appear to relate to whether prevalence is given to sharia or constitutional

standards. Some respondents indicated 15 as the age of maturity, while others identified 13–14. The Somali Penal Code (1962) sets the minimum age of criminal responsibility at 14 years and provides for reduced punishment for persons aged 14 to 17 years.<sup>72</sup>

**“A person is considered a child if he/she is under 15 years old. Those below the age of 15 are considered not responsible and are represented by their parents. Those above 15 years of age are listened to. If the case is complex, they are asked to bring along their family members.”**

**“If parents come with a married girl of 15 or 16, we listen to the children through their parents; if they don’t come with their parents and have their own families, we consider them as mature and if needed, we ask them to come back with their family/families.”**

#### **ADR actors**

As noted by a respondent, “children may not be believed and are asked to bring parents to verify their claim”. The significant age gap between Adjudicators, only 10 per cent of whom are 35 or younger, and the young people who come to ADR

Centers for disputes was identified as a challenge. In one case observed, a young man providing evidence was using slang and adjudicating sheikhs and elders found it difficult to understand and relate to the testimony.

<sup>72</sup> See Somalia Penal Code, 3 April 1964, Articles 60 (1) and 177 (1), available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=88090&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=88090&p_lang=en); see also Child Rights International Network, “Minimum Ages of Criminal Responsibility in Africa”, available at: <https://archive.crin.org/en/home/ages/Africa.html>. The Code also provides for juvenile courts. In Somaliland, the Juvenile Justice Law provides for the minimum age of criminal responsibility at 15 years and harmonizes the provisions of secular, sharia and customary laws. In both cases, enforcement is identified as a challenge. See Somaliland, Juvenile Justice Law, 2007, Article 10, available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=91559&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=91559&p_lang=en)

**COMPARATIVE PERSPECTIVES | Children’s participation**

In **Uganda**, local council courts operate at village, parish and sub-county levels. The Local Council Courts Regulations (2007) lays out specific procedures for cases involving children: “(a) proceedings shall be held in camera (private); (b) proceedings shall be as informal as possible and by inquiry rather than by exposing a child to adversarial procedures; (c) parents or guardians of the child shall be present whenever possible; (d) a child shall have a right to be represented by a lawyer; (e) the court shall explain the right of appeal to the child”.<sup>73</sup>

Section 27 of the 2007 Regulations also details the types of offences committed by a child that are under the jurisdiction of local council courts and the types of decisions that may be issued: “A village local council court may, notwithstanding any penalty prescribed by the Penal Code Act [...], make an order for any of the following reliefs in respect of a child against whom the offence is proved – (a) reconciliation; (b) compensation; (c) restitution; (d) community service; (e) apology; or (f) caution.”<sup>74</sup>

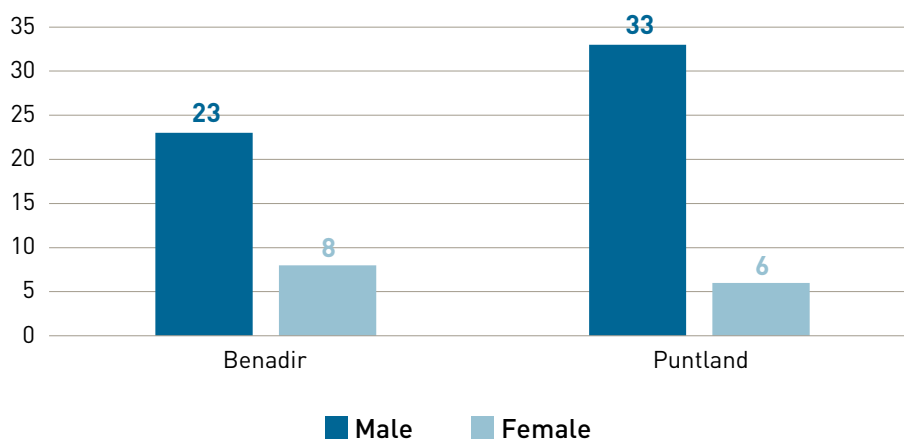
In **Sierra Leone**, piloting of court diversionary measures is implemented for children committing petty crimes, referring matters to local community actors for the negotiation of an agreed settlement through a child-friendly mediation process. In pilot districts, police, local courts and traditional chiefs refer matters involving children to trained community mediators who facilitate dispute settlement through a restorative justice approach. This allows other justice actors, including chiefs, to reduce their caseload.<sup>75</sup>

**Staffing composition**

Staffing	Section 10, SOPs
ADR Centers are managed by an administrative team composed of one Clerk, one paralegal and two support staff (cleaner and watchman) under the supervision of one ADR Coordinator per region and should maintain a roster of 10 to 15 Adjudicators with equal representation by men and women.	

Figures 7 and 8 show the composition of Adjudicators and Clerks at the ADR Centers during the time frame of the research, disaggregated by region, gender and

age range as available. Women are represented at 26 per cent in Benadir where one Clerk is also a woman, and 15 per cent in Puntland.



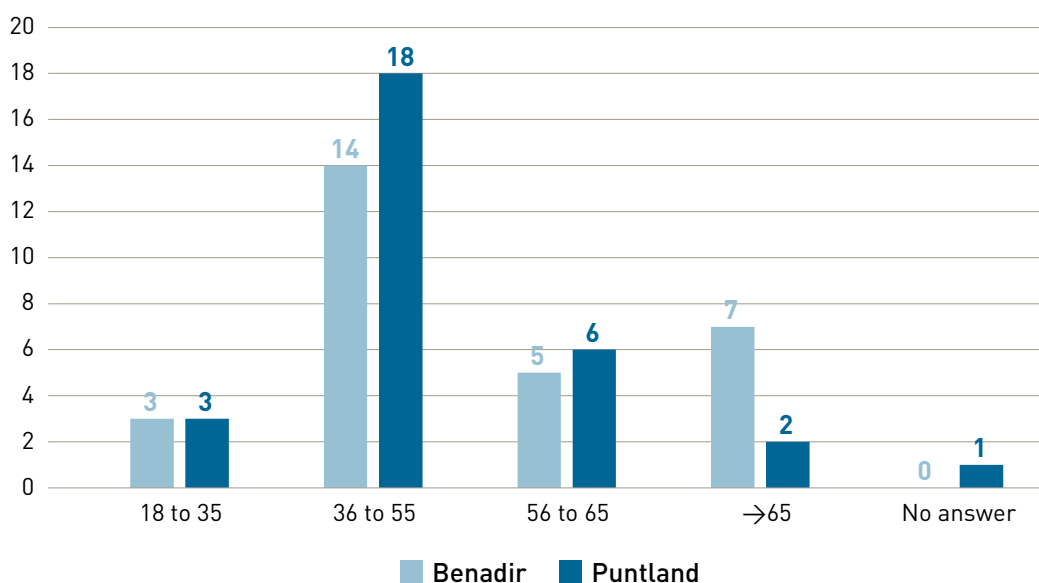
**Figure 7: Composition of Adjudicators and Clerks by gender per region as of April 2020<sup>76</sup>**

73 See Uganda Local Council Courts Regulations (2007), Part VII, section 50, available at: <http://mlhud.go.ug/wp-content/uploads/2019/03/Local-Council-Courts-Regulations-2007.pdf>. See also Uganda, Local Council Courts Act (2006), available at: <http://extwprlegs1.fao.org/docs/pdf/uga138974.pdf>.

74 See Uganda Local Council Courts Regulations (2007), section 27. According to section 27(1), offences committed by a child falling under the jurisdiction of village local council courts include affray, common assault, bodily harm, theft, criminal trespass and malicious damage to property, among others, in accordance with relevant sections of the Penal Code Act (1950, as amended in 2007) and section 92(2) of the Children Act (1997, as amended in 2016).

75 Minister of Social Welfare, Gender and Children’s Affairs of Sierra Leone, “Child Justice Strategy for Sierra Leone, 2014–2018” (2014), p. 7, available at: <https://unsierraleone.files.wordpress.com/2014/04/sierra-leone-child-justice-strategy-2014-2018.pdf>.

76 Figure 7 shows the gender composition of the total number of adjudicators and clerks (70) working in IDLO’s six Centers as of April 2020.



**Figure 8: Self-reported age composition of ADR Adjudicators and Clerks per region (at the time of data collection)<sup>77</sup>**

In general, adjudicator rosters in each Center include a minimum of two women and the majority of Adjudicators were between the ages of 35 and 55 years. With respect to youth representatives, six Adjudicators were 35 years or younger, but many

Adjudicators and Clerks explained that youth are not perceived as legitimate decision makers or mediators in Somali custom, where age and maturity are important factors for gaining respect and authority.

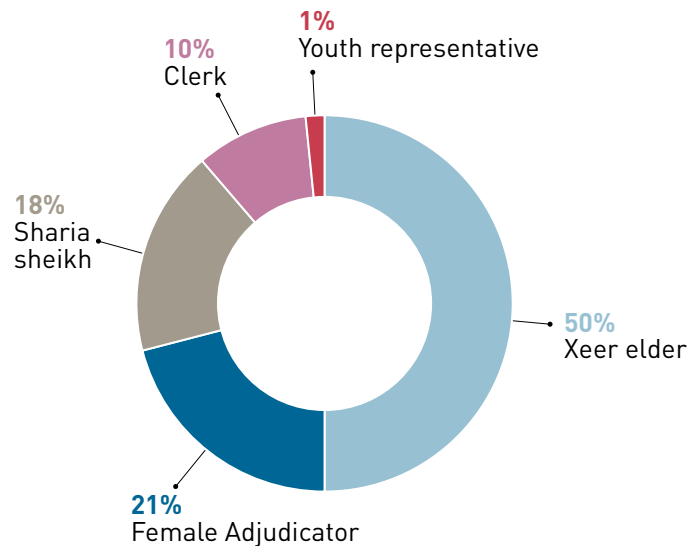
**Background of Adjudicators**

Criteria for the selection of Adjudicators	Sections 18 and 19, SOPs
<p>To qualify for selection and registration in an adjudicator roster, candidates must be the most qualified in the targeted districts and:</p> <ul style="list-style-type: none"> <li>» Identified and selected among specific social categories (elders, sheikhs and women as well businesspersons) to ensure a credible, authoritative and gender-balanced representation of the concerned community as well as representation of minority groups; and</li> <li>» Persons who are well-known and respected at the community level for their honesty, integrity, impartiality and service to their community as well as for their skills and experience in mediation and/or dispute resolution.</li> </ul> <p>The Ministry of Justice consults with civil society and community leader organizations in districts to appoint a roster of Adjudicators for a Center.</p>	

In both regions, one or more sheikhs are required to be present, as well as one woman, leaving Xeer elders to generally be the most numerous. In Karan, uniquely, three Adjudicators identify themselves as both sheikh and Xeer elders. Overall, the majority of interviewed respondents

and focus group participants affirmed that everyone participates equally in decision-making regardless of the nature of the case and the gender of the parties involved, and all rosters include women, sheikh and Xeer elder representation (Figure 9).

<sup>77</sup> Hereinafter, figures presenting information collected from ADR actors refer to 59 key informant interview participants interviewed in 2019.



**Figure 9: Composition of ADR actor roles in the Centers**

In line with National ADR Policy objectives and section 18 of the SOPs, all rosters include representation of different “social categories”, with some Centers including minority clan representatives and two Centers including IDP representatives.

In relation to inter-clan equity, ADR actors were asked their views on the importance of including representation of minority clans on Adjudicator Panels. With the exception of Badhan, where two respondents did not consider this an issue, there was unanimity in all Centers in considering minority clan representation important. A variety of reasons were provided including traditional and religious values of equality and the principle of equal participation of parties. The value of diversified clan representation was also linked to the need to build trust in the ADR Center for the community.

Some ADR actors highlighted the disadvantaged position of minority clans due to economic and power imbalances among clans. Specifically, when asked if it is important to consider the special position of minority clans when making decisions, 97 per cent of Adjudicators said yes and identified specific gaps related to their ability to access formal and informal justice mechanisms, including poverty and IDP status. One respondent also mentioned that minority clan members may face challenges in the implementation of a decision in their favor in practice.

The highest diversity of clan representation in the composition of the roster was observed in Hamar-Jajab, in line with the significant presence of minority clans in the district. In Puntland, some Centers also opened the possibility for other clan elders to resolve inter-clan disputes, aiming to strengthen peace and harmony in the community.<sup>78</sup>

**“It is very important to include minority clan representation in ADR Centers. It creates confidence. We discussed this in the past. If two to three minority clans can be added to the Adjudicators, that would be great. Most of the IDPs are from minority clans in this area, they need to be represented.”**

**“The parties who fear to speak freely are mainly from minority clans. If they have Adjudicators representing them, that would encourage them to speak out.”**

**“Minority clans live with specific circumstances and have a different Xeer system. They live in specific geographic locations. In terms of their internal violence, if we do not get dedicated ADR Centers for IDPs, the violence rate may increase.”**

**ADR actors**

<sup>78</sup> Clan elders reportedly approached Badhan and Galkayo ADR Centers to request use of the Centers’ space for meetings or gatherings mostly taking place in the afternoon.



## Decision-making and roles

Formation of the Adjudicator Panel	Sections 23 and 31, SOPs
<p>The ADR Clerk identifies Panel members based on criteria determined by the Center, in consultation with the Adjudicators and paralegal. The Panel formed and assigned to hear a dispute should be composed of three or five Adjudicators depending on the nature, complexity and gravity of the dispute or other relevant factors. Each Center may establish specialized Panels based on the expertise of the different Adjudicators and it is recommended that a dedicated Panel is established for handling family disputes and disputes involving women. Each adjudicating Panel assigned to hear a case selects a member who will chair the Panel.</p>	
Responsibilities of the Chair of the Adjudicator Panel	Section 23, SOPs
<p>Responsibilities of the Chair of the Adjudicator Panel include presiding over the hearing and proceedings of specific cases assigned to the Adjudicator Panel as well as ensuring that: the hearing appointment is communicated to parties; arguments of the parties, witness testimony and evidence are registered in the complaint registration form and filed; and the positive role of women in traditional dispute resolution is emphasized and encouraged.</p>	

In most Centers, Adjudicators hear cases in Panels of three to five members depending on the complexity of the case at hand, in accordance with section 23 of the SOPs. Flexibility and autonomy are left to each Center in determining shifts and the number of Adjudicators hearing cases.<sup>79</sup> Roles and functions are mainly based on availability, although specific skills and expertise are also considered depending on the nature of the case. In both regions, one or more sheikhs are required to be present if the nature of the case requires sharia law expertise while Xeer elders, generally more numerous, take the lead in disputes requiring traditional negotiation or specifically related to Xeer custom. Female Adjudicators generally acquire a more prominent role – in some cases guiding the hearings’ discussions – in disputes involving female parties.

The division of roles identified relates to different procedural tasks including the selection of a Chair, a deputy Chair, and a notetaker recording discussions. The notetaker role is often performed by a Clerk or paralegal, but also by Adjudicators at times. In some instances, a spokesperson or moderator for the hearings is also identified.

While the SOPs state that “[e]ach adjudicating Panel assigned to hear a case will select a member who will [preside over] the Panel”, they do not define

criteria for the identification of the Chair, leaving important aspects of internal processes to the autonomous determination of ADR actors. The rationale or system for selecting the chairperson of the adjudicating Panel and deciding who leads the hearing sessions varies across the Centers – in one Center, for example, the chairperson is the oldest elder.

In Benadir, the chairperson of the Panel of Adjudicators reads to the parties the rules and instructions to be observed during the hearing of the case and leads the hearing session. In Puntland, the Chair of the Panel announces the final decisions, and in one Center, the Chair also appoints the adjudicating Panel for a given case.

Instances of influence on the internal division of roles by government authorities have taken place. While the majority of Chairs and deputy Chairs are male, in one Center, under the guidance of the Ministry of Justice, a female Adjudicator was appointed deputy Chair, despite the initial resistance of other male Adjudicators and one resulting resignation. In this instance, explicit recognition from the Ministry of Justice was fundamental in empowering a female Adjudicator to acquire and maintain a leading role within the Center and facilitated acceptance of change by male ADR actors.

<sup>79</sup> In Badhan, for instance, Adjudicators present do not divide themselves into groups, rather they all participate in dispute resolution, resulting in Panels of six or more Adjudicators for one case.

Role of women Adjudicators

<b>Composition of the ADR Center team</b>	<b>Section 23, SOPs</b>
Reasonable efforts to ensure equal representation of men and women in the management team are required.	
<b>Formation of the Adjudicator Panel</b>	<b>Section 23, SOPs</b>
Prominent female figures from communities where the Centers are established should be encouraged to participate during all levels of the dispute resolution process. Adjudicators have the same authority and decision-making power regardless of age, gender, clan or status and particular attention needs to be directed to cases that involve women as victims/survivors, parties or witnesses.	
<b>Procedures for domestic violence, sexual and gender-based violence, and violence against children</b>	<b>Section 27, SOPs</b>
For cases involving domestic violence, SGBV or violence against children, the ADR Center must ensure participation of at least one female Adjudicator in the Adjudicator Panel. If there are no female Adjudicators available, it is recommended that the participation of a female leader from the community is ensured.	

When asked if the role and authority of female Adjudicators is different from or similar to those of men, the majority of ADR actors (83 per cent), including all female respondents, identified no differences and

affirmed that women contributed and participated equally in the ADR Centers, as shown in Figure 10. Notably, two male Adjudicators identified that women are sometimes better than men at adjudicating cases.

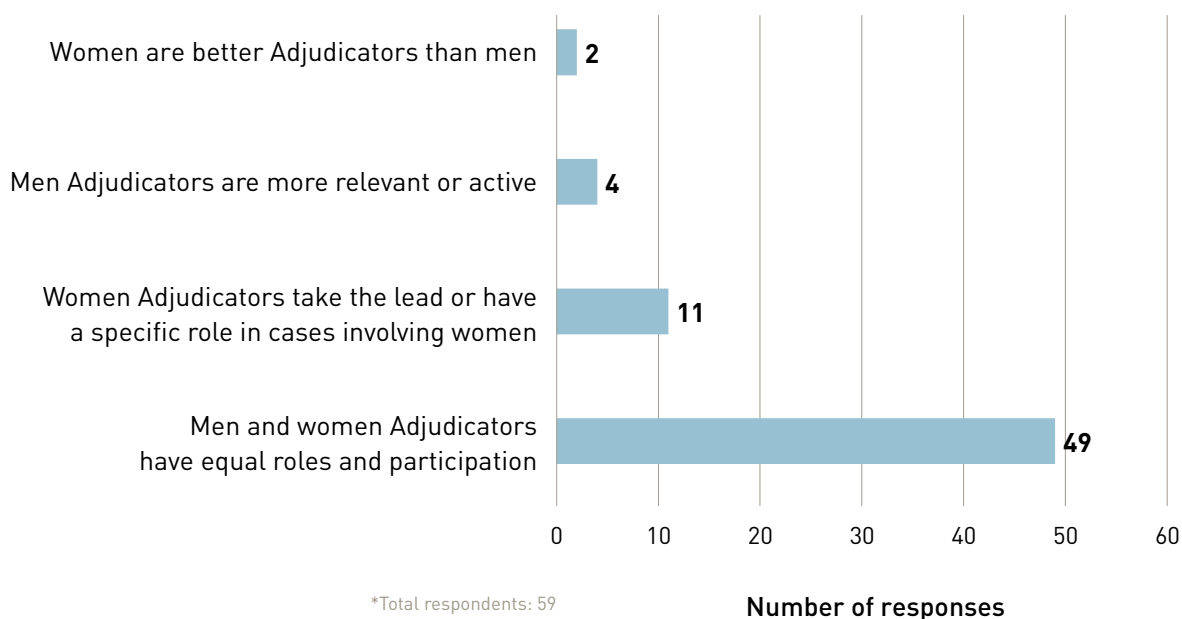


Figure 10: ADR actor views on differences in roles and participation between men and women Adjudicators\*

**“Women Adjudicators are active and effective in our Center. They sometimes bring new ideas that lead to resolution.”**

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

**“There is no specific division of roles between the Panel members or Adjudicators, but in some cases, when related to cases regarding females, a female Adjudicator might be assigned to them, but this is not an agreed and written rule.”**

**“The Panel starts their meeting with some verses of the holy Qur’an and the Hadith. The complainant is listened to first and then the defendant is listened to next and then the Panel starts questioning. If one of the parties is a woman and cannot express her thoughts, we assign a female Adjudicator to listen to her and then share. We ask how they want resolution; in other words, what each wants. Then, when agreed on one thing, the Panel pronounces, and then we register it and then collect signatures from both of the two parties.”**

**“We can say women have an additional role. They welcome women to the Center and inform them of their rights. They are also part of the decision.”**

**“Both female Adjudicators are clever and active. They interrogate women separately to get correct information. We also have a paralegal lady.”**

#### **ADR actors**

Female Adjudicators and female paralegals perform an enhanced role in cases involving women parties. Specifically, 11 respondents noted that female ADR actors have an additional role in the investigation phase of cases involving women parties or take the lead in hearings in which family disputes or other cases involving women are discussed. This can include welcoming women to the Centers, informing them of their rights and gathering evidence or hearing their statements separately to ensure their privacy. This is seen as important as issues of stigma and reluctance on the part of women to speak about their personal problems in public and in front of male

elders in particular emerged. In these cases, female Adjudicators speak with female parties in private ahead of the hearing and report relevant information to the Panel later to inform decision-making.

This is in accordance with section 23 of the SOPs, which states that “[p]articular attention shall be paid to those cases that involve women as victims/survivors, parties or witnesses”.<sup>80</sup> However, this is not a systematic rule according to respondents and varies depending on the specific case at hand and on the assessment of the needs and concerns of the female party involved.

<sup>80</sup> SOPs, section 23 (3)(d).

## COMPARATIVE PERSPECTIVES | Women’s participation

In **Ghana**, the Asateman Council and the Kimasi Traditional Council are the highest customary courts having jurisdiction over matters governed by customary law for the Ashanti ethnic group residing in Ghana. While these are headed by the Ashanti King, a third high court exists, the Asantehemaa Court, chaired by the “Queen Mother” of the Ashanti people, which is responsible for hearing complaints brought by women.<sup>81</sup>

In most cases, women do not access justice through the “ordinary” customary courts in Ghana, but instead, bring claims to the wives of traditional justice actors or community leaders. In these instances, the wives of traditional leaders fulfill the role of advisors, by counseling and encouraging female applicants with the aim of increasing their confidence, thus “facilitat[ing] their access to traditional justice”. Additionally, the “Asantehemaa Court deals with social and personal conflicts involving women, such as curses, insults, accusations of witchcraft, or disputes over land use or labor input”. Lower-level courts in villages and towns also have either Ashanti chiefs or queens, and hear matters at the local level, mainly related to chieftaincy conflicts and land and family-related disputes, including inheritance and child custody.

In **Sierra Leone**, GBVAW victims/survivors often access justice through informal avenues due to the shortage of police and courts, their limited capacity, and the length and cost of proceedings. Specifically, women’s societies operate alongside the male-dominated chieftaincy system and are central in facilitating access to justice for women, especially in rural communities. In addition to regulating community life, society members, known as *soweis* also act as a first point of contact for many vulnerable women and girls and support navigation of both informal and formal justice processes. Their role ranges from examining survivors for signs of rape, referring them to the police or local chief, assisting with transportation or accompaniment to court, mediating domestic disputes, encouraging school attendance, and overseeing compliance with the ban on under-age female genital mutilation. While women’s societies still lack full adherence to human rights standards and can contribute to the perpetuation of harmful practices against women and girls, studies highlight a role for *soweis* as providers of affordable ADR for women and girls, particularly given that local chiefs are generally more likely to protect the interests of male perpetrators of violence.<sup>82</sup>

*Identified gaps and challenges for gender equality*

Overall, a number of gaps and areas for improvement for gender equality in the ADR process and procedural safeguards for GBVAW victims/survivors and other vulnerable groups can be identified. Respondents identified the role of men Adjudicators as prominent in final decision-making or more active among the adjudicating Panel during the process. In fact, the Panel Chair and deputy Chair are always men in all Centers, with the exception of one female deputy Chair. This may be due, as noted by one female respondent, to the fact that men generally have more experience than women in dispute resolution.

Additionally, some noted that while women contribute to discussions in hearings, the final decision maker is always a man, and only men gather evidence outside of the hearing, including going on site visits, for instance related to ascertaining ownership in disputes over land. These findings raise concerns in relation to gender-balanced decision-making in the ADR process, and are at odds with section 23 of the SOPs which states that “[f]emale

and male Adjudicators sitting in the Panel shall have the same authority and decision-making power regardless of age, gender, clan or status”.<sup>83</sup>

Moreover, male Adjudicators outnumber female by approximately three times in Benadir and five times in Puntland. One female Adjudicator in Puntland highlighted the risk of imbalance in a Panel’s decisions due to the lower presence of women Adjudicators: “A question: what shall we do if we feel that the male Adjudicators are leaning on a man who is part of the case and we are only two female Adjudicators?” Further, instances of difficulties experienced by appointed women Adjudicators in integrating the roster and performing their function occurred in Karan and Galkayo Centers. In these Centers, two women Adjudicators faced strong resistance by some male members to accept them as part of the ADR decision-making process, showing a persistent reluctance and lack of understanding by some Adjudicators of the purpose of including women in decision-making roles. As noted, one male Adjudicator left when a woman was appointed as deputy Chair.

81 See E. P. Ermakova *et al.*, “Legal Regulation of the Activity of Courts of Customary Law in the Republic of Ghana”, Conference Paper, 6th International Conference on Education, Social Sciences and Humanities (Istanbul, Turkey, June 2019).

82 F. M’Cormack-Hale, “Secret Societies and Women’s Access to Justice in Sierra Leone: Bridging the Formal and Informal Divide”, *Stability: International Journal of Security and Development*, vol. 7, No. 1 (2018), pp.13ff, available at: <https://www.stabilityjournal.org/articles/10.5334/sta.604>.

83 SOPs, section 23, (3)[d].

**“During the selection and appointment of the ADR Adjudicators, the Panel needed a woman who could deal with and take part in women’s issues in the Center, and that is why I was engaged as I was a very active member of the community. When I joined the Center, I faced a challenge from the Panel in terms of integration and contribution. One of them said: ‘How can you be on the adjudicating Panel when you are a woman?’ That is just a reflection of the deeply conservative culture of Somalis, always sidelining women in issues of decision-making and community volunteering.”**

**“We participate in the decision-making process. We don’t pronounce the final decision, but we participate and suggest our thoughts.”**

**“There is a difference. Men go to distant places to see a disputed area, work more hours. But women do not. Women also participate in the Panel and contribute their views, but don’t take the final decision [the Chair pronounces it].”**

#### **ADR actors**

Further, observation showed that the presence of women is not required in all ADR Center Panels systematically and may vary depending on the specific case at hand and on the assessment of the needs and concerns of the female party involved. When asked, 16 respondents (10 per cent) of users surveyed considered the gender sensitivity of staff as very poor.<sup>84</sup> Of the 23 users who ranked poorly the gender sensitivity of staff, all were in Puntland, with the Badhan Center having the highest number of negative assessments.

#### *Promising findings for women’s participation*

Overall, the practices observed at the Centers show

that gender equity has been enhanced to an extent. While initially some Adjudicators showed resistance to accepting the presence of women in the adjudicating Panel, gradually, female Adjudicators and/or paralegals/Clerks have started to play crucial roles in the ADR process. Currently, the composition of Benadir Centers meets the 20 per cent female quota threshold established by Objective 3.3 of the National Policy on ADR at 25 per cent participation, while Puntland remains at 17 per cent. All Adjudicators interviewed affirmed that parties are given equal opportunities to be heard and participate in the process regardless of their gender.

**“My best experience while working in the Center is, as a woman, I had never been at a decision-making table, and I have learned a lot from the Center, including where to start a case as an Adjudicator, things to consider during the case, the process to follow when making decisions and the overall things to consider when you are making the final decision of the case.”**

#### **ADR actor**

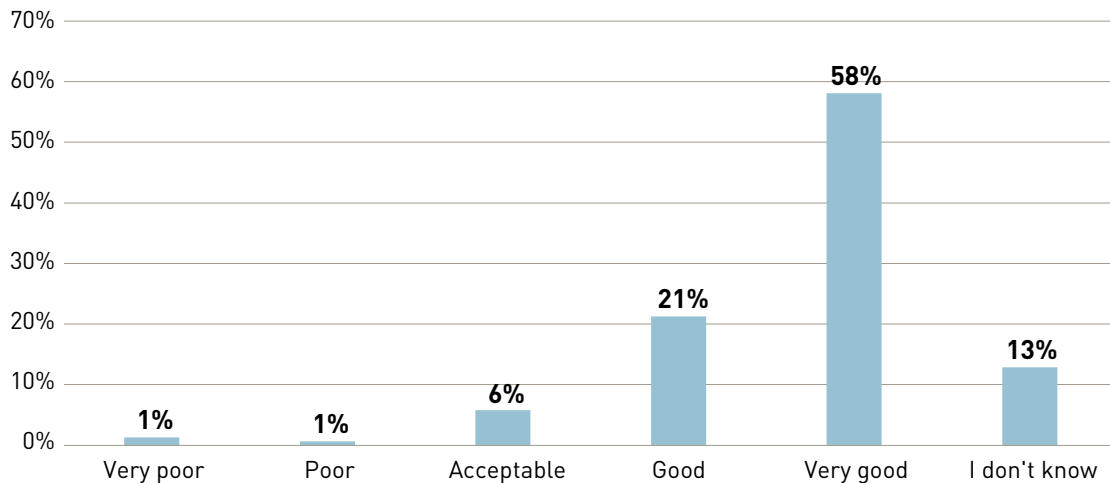
During focus group discussions, female Adjudicators in Benadir explained that they now feel more empowered and freer to participate in decision-making as equal members of the adjudicating Panel, and in some instances, they even take on a leading role during hearings, particularly in cases involving women parties. They stressed that their views are valued as much as their male counterparts in the discussions and decision-making, regardless of gender.

According to observation, one female Adjudicator is particularly active in fulfilling her role, undertaking a number of different functions, from arranging cleaning and maintenance services for the ADR Center to organizing hearings and taking the lead in discussions. During the hearing of a case observed, she instructed everyone to put their mobiles on silent, limit movements, and respect and listen to the other person speaking. She gave directions and explained the rules of the hearing and also actively contributed to the discussions of the Panel.

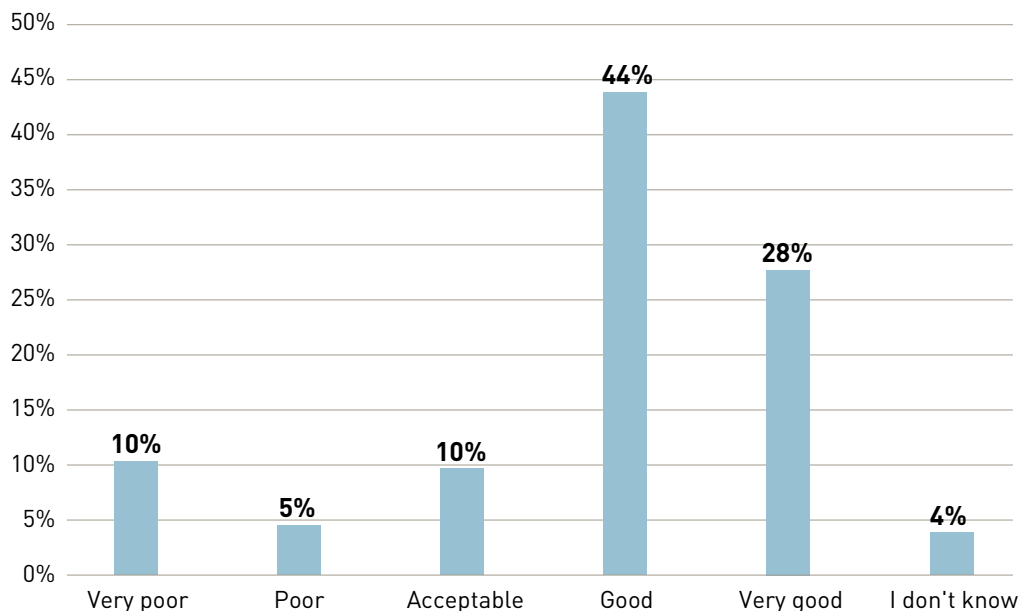
<sup>84</sup> Specifically, of the 16 who said very poor, seven were in Badhan, six were in Galkayo and three were in Buhoodle. Of the seven who said poor, four were in Buhoodle, two were in Badhan, and one was in Galkayo.

This is confirmed by feedback from users surveyed, the majority of whom considered ADR Center staff to be gender sensitive and felt there was no gender-based discrimination in the process. As shown in Figures 11 and 12, specifically, 79 per cent of those surveyed ranked gender equality in the ADR Centers

as either very good (58 per cent) or good (21 per cent), and 72 per cent ranked gender sensitivity of staff as very good (28 per cent) or good (44 per cent), which may be due in part to the presence of women Adjudicators and paralegals in the Centers.



**Figure 11: Views of users on gender equality in ADR Centers, including equal treatment of men and women as parties and witnesses**



**Figure 12: Views of users on the gender sensitivity of ADR Center staff**

On the whole, the extent to which female ADR actors participate equally and meaningfully in decision-making processes remains uneven and varies across Centers. While in some Centers, women ADR actors have begun to participate actively in leading roles and are acquiring increasingly more weight in the decision-making

process, other women were observed as “shy” and/or much younger than male elder Adjudicators and are only called in to handle cases that “women can be part of”. Overall, a growing acceptance on the part of male elders as well as increased empowerment of women in the ADR function is visible in the ADR process.

**“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**

## B. ACCOUNTABILITY

### Roles and responsibilities of Adjudicators

Roles within the adjudicating Panel vary and are assigned by Adjudicators themselves, thus leaving a level of discretion and flexibility in operations. Indeed, while the ADR Coordinators, Clerks and paralegals have clear terms of references, and are recruited through advertised positions and sign a renewable contract, Adjudicators have no written terms of reference detailing their role and duties.

However, when asked if they received training, all but one ADR actor interviewed affirmed having received some level of training, and 84 per cent reported implementing knowledge acquired through training often or very often in their work. Accordingly, Adjudicators showed a clear understanding of their function: 92 per cent of respondents indicated their role and responsibilities were to resolve disputes or deliver justice through a fair process. Preserving the legitimacy of the ADR process and community trust

also emerged as understood priorities. In this regard, respondents mentioned the need for a transparent and corruption-free process. Professionalism and due diligence were also recognized as important, particularly respect for the working schedule and fulfillment of the mandate. Further, emphasis was placed on the need to preserve community peace and stability, building consensus among parties, and ensuring everyone is satisfied with the outcome.

Significantly, some respondents noted the importance of providing a forum where parties are listened to carefully and equally, and of adjudicating impartially, avoiding conflict of interest. Some stressed the need to ensure that the most vulnerable have access to justice and that Xeer is in alignment with human rights standards. Finally, the majority of ADR actors consider positively a monitoring and oversight role for paralegals to increase accountability of the ADR process, with 85 per cent of respondents indicating that this would be useful.

**“Adjudicators are the community leaders. They have the trust of the community. And they are the most skilled in resolving disputes in this district. Their responsibility includes setting up an adjudicating Panel for cases and resolving them.”**

**“Adjudicators have been trusted to provide justice to the community. They are the mirrors of the people. Their responsibilities include being transparent and avoiding corruption.”**

**“Our responsibilities include refraining from adjudicating a case that involves a friend or relative to avoid a conflict of interest; speaking separately with one of the parties of a case; and listening to one party attentively and not the other during the hearing. We should avoid anything that can create distrust among the parties.”**

**“The ADR Center is one that links sharia and traditional Xeer to national and international laws. Provision of fair adjudication and advancing peace and stability are the responsibilities of Adjudicators.”**

**“The role of Adjudicators is to promote justice in society. To advocate for marginalized groups, they should be fair [...] They should be mediators and also help the government spread justice.”**

**ADR actors**

Instances of termination

Termination	Section 22, SOPs
The mandate of an Adjudicator is terminated when: (a) the Adjudicator’s appointment is revoked; (b) for any reason the Adjudicator is unable to perform his/her functions; or (c) the Adjudicator withdraws from office, resigns or dies.	

In practice, instances of both voluntary and mandatory termination were reported by ADR actors interviewed, for a variety of reasons. As shown in Figure 13, among the examples of voluntary resignations, 22 respondents reported instances of Adjudicators having left the Center due to the unpaid nature of the work. Adjudicators are not remunerated

except for a small allowance to cover transportation and function-related expenses. Eight respondents reported instances of Adjudicators who resigned because of insufficient time to perform ADR functions due to other, often remunerated, commitments, and two mentioned distance challenges or relocation as reasons for leaving.

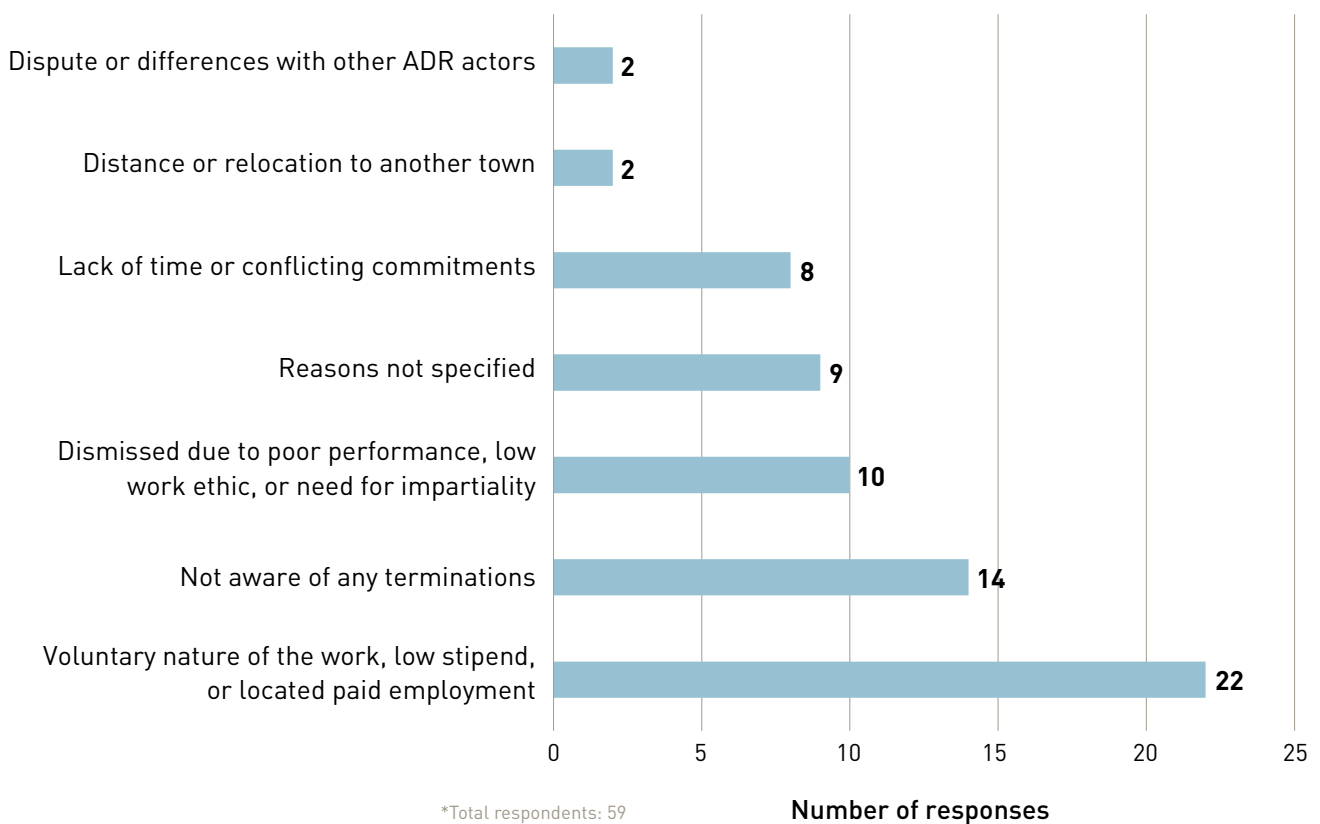


Figure 13: Reasons identified for voluntary or mandatory Adjudicator termination\*

In relation to dismissals, 10 respondents mentioned instances of ADR actors having been dismissed due to poor performance, poor work ethic or the need to preserve the impartiality of the Panel. The main performance-related reasons identified were high absenteeism, inefficiency, low capacity to fulfill duties

or conflicts of interest. These findings indicate the existence of some level of self-regulating accountability and reinforce findings on the importance attributed to the legitimacy of the ADR process to preserve trust and compliance by communities.



“Four Adjudicators left us because of a lack of time. Elders are the government in this town. They have more responsibility. They were selected from the outskirts of the town. And the salary was not enough.”

“One elder has never come since the Center was established. He got involved in politics. We replaced him to preserve the legitimacy of the Center Adjudicators.”

“The main reason they left is that they are busy with their own work. They have families in villages outside of the district. Some wanted more money and were not willing to volunteer.”

#### ADR actors

### COMPARATIVE PERSPECTIVES | Termination

In **Ghana**, the Alternative Dispute Resolution Act (2010) regulates formal arbitration and in alignment with international rules and good practices, provides for mediation as a legally recognized ADR method and codifies customary arbitration which previously existed in verbal tradition and case law only.<sup>85</sup> The Act provides for the possibility of customary arbitrators resigning from office at any stage of the arbitration, subject to the duty to refund any fees paid by the parties as per initial agreement with the arbitrator. In the event that a dispute on the refund of fees arises upon the resignation of a customary arbitrator, the arbitrator or any of the parties should refer it to the District Court or to “any person the customary arbitrator and the parties agree on and in the case where that person fails to settle the dispute, the dispute may be referred to the District Court”.<sup>86</sup>

In **Uganda**, the Local Council Courts Act (2006) establishes courts at village, parish, town, division and sub-county levels consisting of five members – two of whom must be women for each town, division and sub-county council court – appointed on the recommendation of the respective executive committee of the local-level government body.<sup>87</sup> Section 7 of the Act also establishes that the relevant executive committee may recommend the removal from office of a local council court member on any of the following grounds: “(a) abuse of office; (b) corruption; (c) if the member is continuously and persistently unable to discharge the functions of the court; (d) if the member is convicted by a court of competent jurisdiction for a criminal offence specified in the Penal Code or any other written law if punishable by not less than six months imprisonment with or without an option of a fine; (e) misconduct or misbehaviour; (f) if a member has such physical or mental incapacity that renders the member incapable of performing the functions of the court as determined by the Medical Board as specified in Section 14 of the Local Governments Act”.<sup>88</sup>

Moreover, the office of a member of a town, division or sub-country local council court shall be considered vacant and replaceable by the relevant executive committee if the member in question resigns, dies or “has been absent for three consecutive court sittings unless such a member has grounds acceptable to the court”.<sup>89</sup>

85 B. Mawuli Koblavie and C. Yaw Nyinevi, “A Review of the Legislative Reform of Customary Arbitration in Ghana”, *Commonwealth Law Bulletin*, vol. 45, No. 4 (2019), pp. 587–607, at p. 590.

86 Ghana, Alternative Dispute Resolution Act No. 798 (2010), section 101, available at: <https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh036en.pdf>.

87 At the lower levels, e.g. village and parish, council court members often “play a dual role as executive officers of Local Council Committees and (quasi) judicial officers” in courts. See R. Nakayi, “The Role of Local Council Courts and Traditional Institutions in Resolving Land Disputes in Post-Conflict Northern Uganda”, *Malawi Law Journal*, vol. 7 (2013), pp. 119–137, at pp. 120–121.

88 Uganda, Local Council Courts Act (2006), section 7(1).

89 *Ibid.*, section 7(2).

Accountability measures

<b>Oversight</b>	<b>Section 9, SOPs</b>
The Ministry of Justice at both Federal and State levels may issue directives and has a right to exercise administrative and operational oversight over ADR Centers through affiliated ADR Coordinators, without interfering or otherwise influencing the hearing and decision-making process of any dispute pending before an ADR Center.	
<b>Record-keeping</b>	<b>Sections 16 and 33, SOPs</b>
The Centers must maintain accurate records of the documents related to each case, including complaint registration information, registration letter to court, referral form to court, and final agreement, as well as of any evidence and documentation provided during the hearing.	

Overall, the majority of Adjudicators recognized the importance of being held accountable for their function. As shown in Figure 14, when asked to rank the importance of accountability

of ADR Adjudicators, 39 per cent of ADR actors considered it a priority and 44 per cent ranked it as important. Only one respondent considered it unimportant.

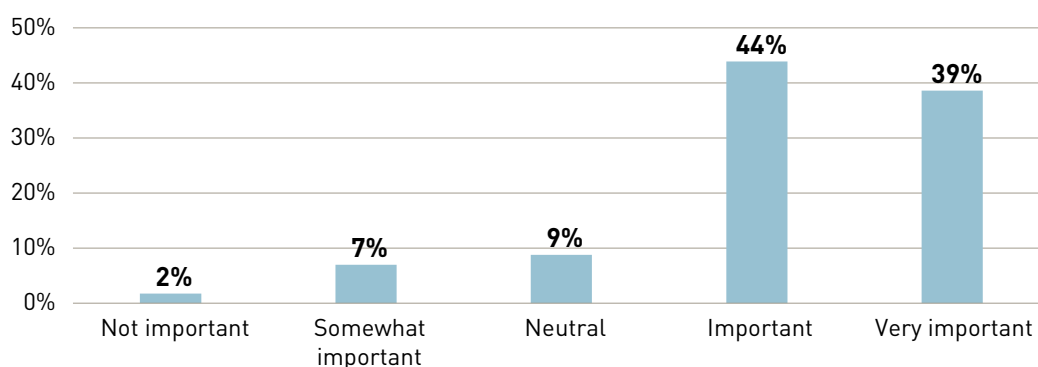


Figure 14: ADR actor views on the importance of Adjudicator accountability

When asked whether they feel there need to be quality standards and removal procedures in place at the Centers, 88 per cent of ADR actors said yes. Similarly, 97 per cent of the ADR actors interviewed felt that a code of conduct or guidelines for Adjudicators would be beneficial.

Those who did not agree explained that regulations would make ADR Centers become too similar to formal courts and noted the importance of preserving flexibility in the ADR processes. Others queried the application of regulations as the Adjudicators are not employees, but volunteers. Two respondents in Puntland mentioned that Adjudicators had already attempted to draft regulations, while a respondent in Benadir referred to a law on the organization of the judiciary from 1962 as guidance to regulate their conduct.

Importantly, record-keeping is present as an accountability mechanism, but can be improved, especially in relation to capturing complete

information about cases and in a standardized and consistent manner for aggregate review and policy decisions. During analysis of case records, the majority of case files reviewed did not include complete or sufficiently clear information on the facts, background of the disputes, evidence, claims of the parties and other essential elements to arrive at full assessment, especially in relation to potential violations of human rights or national law.

Further, weekly attendance sheets are signed by all ADR actors, including Clerks and paralegals, which allow identification of absenteeism. However, monitoring is mixed – some respondents indicated the Panel Chair as responsible for checking attendance, while the majority attributed this responsibility to the Clerk. One respondent highlighted the importance of remunerating ADR actors in order to increase their accountability: “Adjudicators need a proper salary in order to make them accountable for the work. They will have the confidence that they are employees.”

## COMPARATIVE PERSPECTIVES | Accountability measures

In **Kenya**, a Mediation Accreditation Committee is established under the Kenya Civil Procedure Act, appointed by the Chief Justice among representatives of various justice institutions and civil society organizations from the public and private sectors.<sup>90</sup> The Chief Justice also designates a Registrar, in charge of administration of the Mediation Accreditation Committee. The Committee itself is responsible for determining criteria and rules for the certification of mediators; maintaining a register of qualified mediators; enforcing an appropriate ethics code for mediators; and setting up adequate mediator training programs.<sup>91</sup> Qualified mediators registered by the Accreditation Committee form a pool from which mediators are selected to take part in the Court-Annexed Mediation Pilot Project, currently under implementation.<sup>92</sup>

In **Sierra Leone**, local courts operate in all rural areas with the aim of providing access to justice in alignment with the local customs of each community. The Local Courts Act (2011) sets out a number of measures aimed at ensuring a minimum level of transparency and accountability. In particular, the Act establishes that a “Magistrate shall have access to all local courts in his District and all books, records and other documents in the custody of the Courts”.<sup>93</sup> Additionally, an oversight role is attributed to the Customary Law Officer who may exercise power of review over any decision of the local court, where “a prima facie case of miscarriage of justice is disclosed or where there is an error of law on the face of the record”, with the exception of cases for which appeal is pending. The power of review granted to the Customary Law Officer is broad, and includes being able to set “aside the conviction, sentence, judgment or order of the Court and where he considers it desirable, order any case to be re-tried by the same Court or any other Court of like jurisdiction or before a Magistrate’s Court or, make such consequential order as he may think necessary”.<sup>94</sup>

Similarly, in **Uganda**, the Local Council Courts Act (2006) attributes supervisory powers to the Chief Magistrate over local council courts on behalf of the High Court.<sup>95</sup> Local council courts are mandated to keep written records of all proceedings, and in particular, of the following information at a minimum: “(a) the serial number of the case; (b) the statement of claim; (c) the date of witness summons; (d) the date of hearing of the case; (e) the names and addresses of the claimant and his or her witnesses; (f) the names and addresses of the defendant and his or her witnesses; (g) a brief description of the case; (h) the documentary exhibits, if any; (i) the judgment or final orders of the court and the date of the judgment or final orders; (j) the date of payment of the judgment debt; (k) the particulars of execution of the judgment, if any”.<sup>96</sup>

## PROCEDURAL DIMENSION

This section reviews strengths and limitations in **due process** and the functioning of ADR Centers in relation to jurisdiction and referrals, registration/appeals, duration of proceedings, **verifiable evidence**, adjudicative **impartiality**, and coordination and collaboration between justice service providers with a view to easy-to-navigate justice pathways and accessibility.<sup>97</sup>

90 See Kenya Civil Procedure Act [2012], Chapter 21, section 59A(1), [2]. Specifically, members of the Mediation Accreditation Committee shall include: “(a) the chairman of the Rules Committee; (b) one member nominated by the Attorney-General; (c) two members nominated by the Law Society of Kenya; and (d) eight other members nominated by the following bodies respectively—

(i) the Chartered Institute of Arbitrators (Kenya Branch); (ii) the Kenya Private Sector Alliance; (iii) the International Commission of Jurists (Kenya Chapter); (iv) the Institute of Certified Public Accountants of Kenya; (v) the Institute of Certified Public Secretaries; (vi) the Kenya Bankers’ Association; (vii) the Federation of Kenya Employers, and (viii) the Central Organisation of Trade Unions.”

91 *Ibid.*, section 59A(3), [4].

92 See Kenya Law, “Mediation Accreditation Committee” [2016], available at: [http://kenyalaw.org/kenyalawblog/mediation-accreditation-committee/#:~:text=The%20Mediation%20Accreditation%20Committee%20\(MAC,21%2C%20Laws%20of%20Kenya\)](http://kenyalaw.org/kenyalawblog/mediation-accreditation-committee/#:~:text=The%20Mediation%20Accreditation%20Committee%20(MAC,21%2C%20Laws%20of%20Kenya)).

93 Sierra Leone, Local Courts Act [2011], section 33, available at: <https://sierralii.org/sl/legislation/act/2011/10#:~:text=Being%20an%20Act%20to%20provide,in%20this%20present%20Parliament%20assembled.>

94 *Ibid.*, sections 35–38.

95 Uganda, Local Council Courts Act (2006), section 40.

96 *Ibid.*, section 22.

97 Geographic and economic considerations are also normally reviewed for accessibility; however, ADR Centers are located within communities and do not charge fees for services.

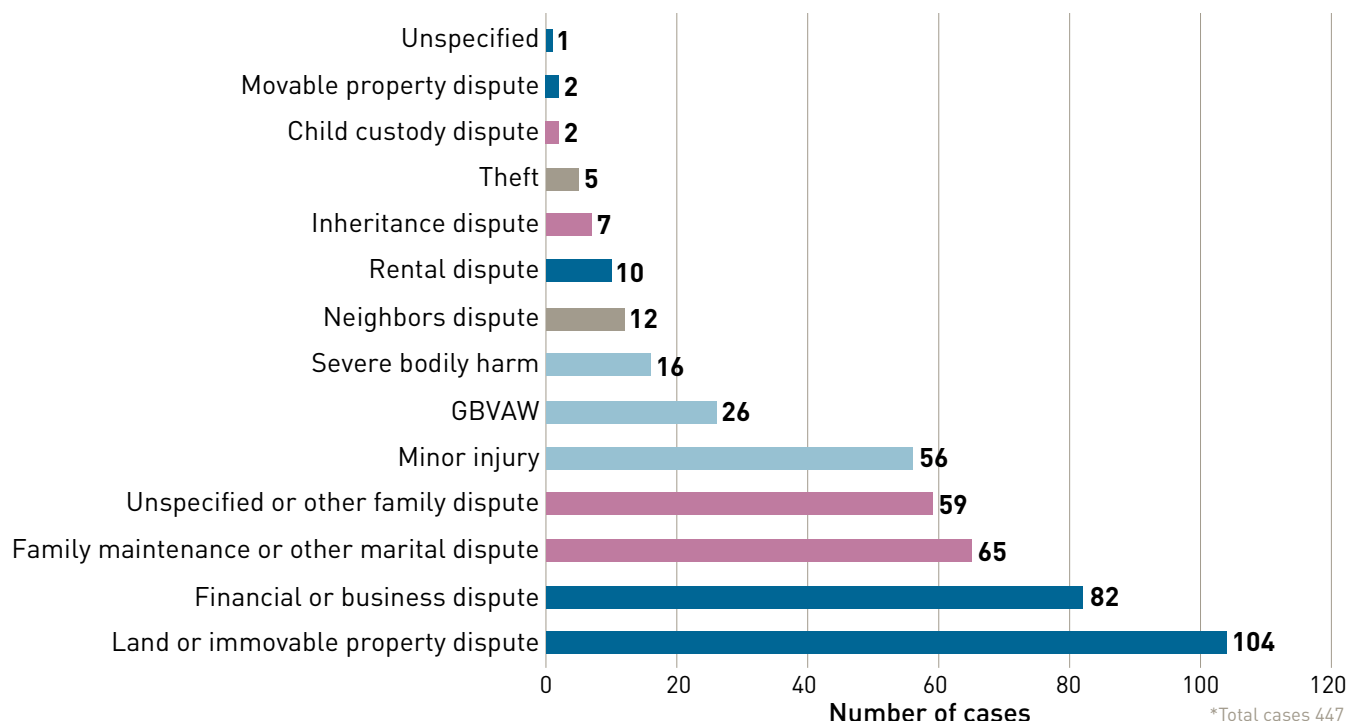
### C. DUE PROCESS

#### Case volume and types

Jurisdiction	Section 6, SOPs
Within its respective district/region/area, Centers have jurisdiction to hear and give decisions over disputes between two or more individual persons that may be remedied by awarding monetary damages or restitution, including:	
<ul style="list-style-type: none"> <li>» Family disputes such as: (i) valid consent for marriage; (ii) livelihood dispute; (iii) childcare and maintenance of the family; and (iv) inheritance</li> <li>» Disputes related to injuries not resulting in serious bodily harm</li> <li>» Acts of physical and other forms of violence, including domestic violence but excluding sexual violence and other forms of GBV that result in serious bodily and mental harm, and any other type of violence that results in serious bodily harm<sup>98</sup></li> <li>» Threats of physical or mental harm, including attempted female genital mutilation/cutting</li> <li>» Disputes in contracts or business</li> <li>» Disputes over ownership, possession or rent of immovable and movable property</li> <li>» Disputes involving extra-contractual liabilities and/or related damages incurred as a result of an accident, including road accidents, falls or similar causes</li> <li>» Disputes related to minor theft; and such other disputes of a similar nature which are not excluded from ADR Centers’ jurisdiction.</li> </ul>	

Overall, a review of 447 case files revealed important insights regarding jurisdiction and record-keeping, namely that lines of distinction between the nature of

cases can be unclear, and interpretation of information is contingent on a specific cultural understanding of matters, especially in relation to GBVAW.



**Figure 15: Nature of disputes in case files reviewed\***

<sup>98</sup> Section 6(1) of the SOPs indicates that physical violence, not including sexual violence, is understood as: “shaking, slapping, pushing, punching, scratching, kicking, biting, locking someone out of their house or inside their house, sleep and food deprivation, trying to strangle or choke someone, forced feeding, physical restraint”. Domestic violence includes “verbal abuse, psychological abuse, threats, coercion, and economic or educational deprivation”. Serious bodily harm means: “serious physical harm caused to the human body and in particular bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty”.

Figure 15 represents the most detailed presentation feasible based on reviewed records, but it is not possible to determine the proportion of cases by nature of the dispute with exactitude due to the incompleteness or lack of sufficient detail in case files. What can be indicated is that approximately 30 per cent of disputes brought to the ADR Centers in both regions are disputes that have been categorized in the complaint registration forms by Clerks as family disputes. This encompasses family maintenance and childcare costs or disputes related to the negligence of other marital duties, including requests for separation or divorce, as well as disputes over inheritance, and child custody (shown separately). Of these family disputes, 13 per cent were unspecified, meaning no further details were available to discern the facts behind the dispute or its specific nature. Of the total disputes categorized as family disputes, 85 per cent were brought by women complainants. Notably, the only two child custody disputes identified were brought by male complainants.

In terms of volume, family disputes were followed by disputes related to land or other immovable property (23 per cent) and women represent 17 per cent of complainants bringing such claims. Financial or business disputes mainly over a debt, shared profits or payment for goods and services represent 18 per cent of total disputes and women represent 34 per cent of individuals bringing these claims.

Injury disputes are classified in various ways. Minor injury disputes concern cases of bodily harm not considered severe and are compensated usually with a number of camels (generally lower than ten).<sup>99</sup> These represent 13 per cent of disputes heard, while cases involving serious bodily harm represent 4 per cent of the total. Matters involving serious bodily harm were received by Puntland Centers only, and refer to injuries considered severe, often affecting the head, or grave damage to an eye, arm, leg, or other vital organ of the body, and which are usually compensated by an amount corresponding to the value of 30 to 55 camels or in some instances financial compensation as well as treatment and medication costs. Section 6 of the SOPs explicitly attributes to ADR Centers

jurisdiction over “disputes related to injuries not resulting in serious bodily harm”, indicating unclear understanding of jurisdiction in Puntland. As explained by a woman Adjudicator in Benadir: “We handle slight injuries. If the injury is not physically or mentally apparent, the Center handles it, but if it is physically or mentally apparent, we refer it to the courts.”<sup>100</sup>

The majority of parties to minor injury cases were men at 73 per cent of complainants, with women representing only a quarter of the total parties to these cases. For disputes involving serious bodily harm, 52 per cent of complainants and 49 per cent of defendants who disclosed their age were younger than 30 years old, including three minors among the complainants and two minors among the defendants.

#### Matters involving gender-based violence against women

GBVAW disputes represent 6 per cent of the total cases reviewed, although this volume is not precise but indicative. As it became clear that not all relevant matters were identified by ADR actors as GBVAW, special attention was paid during case file review to include both cases where GBVAW was explicitly identified in the complaint registration form and cases where the dispute was categorized as a family dispute but there was an indication of GBVAW.<sup>101</sup> Specifically, family disputes were re-classified in analysis as GBVAW cases where violence was reported in the complainant’s claim and a number of reliability criteria to assess the truthfulness of the claim were met, namely:

- (i) violence was explicitly acknowledged by the Panel in the agreement
- (ii) violence was explicitly recognized by the male defendant in his statement (even if not by the Panel); or
- (iii) violence was not explicitly denied or disproved (through witnesses, for instance) by the defendant and the outcome of the case was in favor of the woman complainant as evidenced by

<sup>99</sup> The large majority of injuries concern bodily harm with only a few cases of compensation for damage to property, and are mainly evaluated in camels, with a few exceptions in which a monetary compensation may be awarded instead. For example, in cases of GBVAW, a compensation in dollars is awarded for the “moral injury”.

<sup>100</sup> The findings are in accordance with documented Somali Xeer principles that consider an injury severe when it affects “the main organs of the human body, causing highly grave injury from which one cannot quickly recover”. Body parts explicitly related to severe injury cases include the eyes, legs, hands or “one of the six main organs”. See section 1.2.1 on “Severe/grievous injury” of the English translation of the documented customary law of Baidoa district, ratified in 2017 through a process facilitated by the Danish Demining Group, available at: <https://somhub.org/research-report/ddg-the-somalia-customary-law-xeer-database/>.

<sup>101</sup> To note, in Galkayo, 50 cases categorized as “family disputes” lacked sufficient detail to determine facts. It is therefore possible that the number of matters involving GBVAW are actually higher as a number of these cases have recorded outcomes similar to those awarded in GBVAW disputes, including reconciliation or reconciliation and monetary compensation for moral injury.

an order of compensation for the moral injury inflicted or an order of apology or both.<sup>102</sup>

The Galkayo Center presented the highest number of GBVAW matters (nine), followed by Hamar-Jajab (eight). This might be explained by the documented higher rates of violence that occur in IDP camps, Galkayo Center being located in proximity to an IDP sheltering facility. However, the proportion of GBVAW cases out of the total cases received is much higher in Hamar-Jajab than in Galkayo (13 per cent and 7 per cent of the total of each Center respectively). Indeed, the majority of GBVAW cases reported in Benadir were located in Hamar-Jajab.

In relation to parties to GBVAW matters, five were 30 years old or over, five were undisclosed, and 16 out of 26 complainants were below 30 years of age, with four of these below the age of 25 and one below the age of 18. Of the matters brought to the Centers, 24 out of 26 GBVAW matters were brought by women or girls. The two matters brought by men are interesting. One involved the complainant husband claiming that he had not committed violence against his wife and wanted her to return to the family home, while the defendant wife indicated she had left due to abuse.

In the other matter brought by a male complainant, the victim of violence was represented by her brother, giving cause for concern in light of fair trial principles, including Article 3 of the African Charter and procedural safeguards elaborated in Section 33 of the SOPs, which state that ADR Adjudicators should not hear disputes in the absence of one of the parties and that a decision taken without having heard all parties to a case can be invalidated in court.<sup>103</sup>

Additionally, users surveyed were asked to identify the nature of their case and responses aligned overall with the case file review, except with respect to domestic violence, where 19 per cent of the 155 users surveyed indicated this had been the nature of the dispute brought to the ADR Center. This higher proportion of domestic violence cases reported may be because surveyed users were directly provided with this response option. In essence, cases of domestic violence reported by users were three times higher compared to GBVAW cases recorded at the ADR Centers. As well, a high number of male users identified their case as relating to domestic violence. It is clear that GBVAW remains an important issue to address in Somalia, especially given that it is often perceived as a “family dispute”.

**Jurisdictional issues**

Matters excluded from jurisdiction	Sections 7 and 27, SOPs
<p>Matters explicitly excluded from the jurisdiction of the Centers are disputes involving damages resulting from any of the following acts: murder; rape, sexual violence, and GBV resulting in serious bodily harm; trafficking and inhuman exploitation of persons; child physical abuse; terrorism; corruption; money-laundering; organized crime; and criminalized theft.</p> <p>Cases related to GBV and serious bodily harm offences (including offences against children) are to be referred to the competent authorities. Additionally, the Centers have no authority to hear a dispute if it concerns robbery or divorce, if the subject matter of the dispute is pending in a court, or if there is a final court judgment which has already disposed of the subject matter of the dispute.</p>	

The majority of ADR respondents (64 per cent) reported hearing only civil cases in the Centers, mainly related to family disputes, including marriage, divorce, property and rent disputes, inheritance, land disputes and loans. Approximately 20 per cent of respondents indicated dealing with matters including minor injuries and wounds, with the exception of some serious crimes. However, in alignment with the analysis of case files, four

respondents reported handling all types of cases, including serious crimes.

In Puntland, the majority of ADR actors affirmed hearing disputes that fall outside of the Center’s jurisdiction, including criminal law matters, if people preferred their cases to be dealt with at the ADR level. Overall, responses by ADR actors with regard to crimes under their jurisdiction appeared inconsistent

102 Terms recorded in complaint registration forms to describe GBV include: “physical harassment”, “abuse”, “attack”, “slapping”, “beating”, “hitting” and “rape”. One case involving “threat of violence” from the husband to the wife was categorized as a GBV matter. Conversely, disputes involving insults were left out of the GBV category, as well as disputes in which the complainant (woman) claimed to be a victim of physical harassment by her male partner but there was no indication of recognition of these facts by the adjudicating Panel or by the defendant (not mentioned in the summary of facts and defendant’s statement and no indication of the defendant being recognized as guilty of violence in the final agreement).

103 Section 33.2 of the SOPs (2019) states that “The Panel shall not hear any dispute if both parties, or any party to the dispute, are not present or duly represented. Hearing the case in the absence of parties, or one of the parties, is a violation of the absent party’s basic and constitutional guaranteed right to equal and fair treatment as provided in Section 33.5 below of the SOPs. According to Article 331/32 of the Civil Procedure Code, this is one factor or a ground to invalidate decisions of the ADR Cases by the Court.”

and contradictions emerged among Adjudicators, including within the same Center. Other respondents showed a vague understanding of the jurisdiction and indicated their mandate is to focus on cases involving marginalized or vulnerable parties or to focus on community harmony or clan reconciliation.

As noted, case file analysis revealed that 4 per cent of cases involved severe bodily harm, and these matters were all in Puntland. While this contravenes sections 6 and 7 of the SOPs which explicitly exclude disputes relating to injuries resulting in serious bodily harm

from Center jurisdiction, practical explanations relate to the absence of formal justice alternatives or the perception that formal mechanisms are ineffective in the region. However, one respondent also explained that people prefer the ADR Center over formal law enforcement to avoid imprisonment. This highlights the potential for forum shopping in instances where Centers do not adhere to jurisdictional boundaries. Other respondents expressed that serious crimes such as murder and rape are sometimes adjudicated outside of the Center through a traditional process and Adjudicators may participate.

**“Since there are no formal courts functioning, all cases, including murder, are brought to the Center.”**

**“Clan-related killings are resolved outside of the Center. We have even resolved murder cases but they have not been registered in the documentation. We do not adjudicate rape. There is no police force that can arrest people. Clan militias are asked to arrest perpetrators.”**

**“We don’t adjudicate rape, murder, armed theft, terrorism. We resolve the rest of the cases.”**

**“The office does not receive rape and murder cases. All remaining cases are resolved at the Center.”**

#### **ADR actors**

Conversely, in Benadir, most respondents stated that they do not handle criminal cases and disputes involving serious injuries because they fall outside of the Center’s jurisdiction. Inconsistencies in responses among Adjudicators between regions

may be attributed to a general lack of distinction between civil and criminal cases, which is unfamiliar in Xeer custom as well as changes to the SOPs and delays in related awareness raising and training.<sup>104</sup>

**“The Center’s jurisdiction is to resolve the disputes of vulnerable people in the community who cannot pay court fees.”**

**“We have jurisdiction over six categories of disputes, namely family disputes, money disputes, land disputes, minor injuries, major injuries, and GBV. GBV includes a lady verbally insulted or slapped. If the case is worse than insulting and slapping, we fine the one who did it and compensate the woman.”**

**“The resolution of cases depends on their nature, Islamic principles and the Somali culture. If there is physical or mental abuse, it is referred to the courts but if it is related only to the family and does not have any physical and mental abuse, ADR Centers handle them.”**

#### **ADR actors**

In Puntland in particular, the understanding of matters related to GBV appeared inconsistent, and some respondents reported hearing matters related to SGBV as they are considered family disputes or minor crimes. Six respondents stated that these types of matters are often resolved at ADR Centers, despite admittedly falling outside of their jurisdiction.

Self-reported information of this nature needs to be

viewed carefully, considering that the understanding of SGBV crimes among ADR actors is not consistent and often diverges from national and international definitions. In reference to verbal insults, one respondent indicated: “We adjudicate cases such as an attempt to rape a woman if the two parties come to the Center to resolve their case. Other SGBV cases we resolve include a verbal insult to a woman or a woman slapped by a man.”

<sup>104</sup> Training on the previous version of the SOPs was conducted in December 2018 for the first time. A second training and participatory process leading to validation and revision of certain sections took place in September 2019, after key informant interviews were completed.

The visibility or invisibility of harm inflicted is a notable criterion referenced to determine seriousness of injury. Revisions in the 2019 SOPs indicate in section 6 that: “Serious bodily harm refers to serious physical harm caused to the human body and in particular bodily injury that involves a substantial risk of death,

unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” To assess whether or not to refer cases to the police and courts, two Centers in Benadir have begun to work with healthcare professionals.

“There are some visible injuries and invisible injuries. If visible, we refer it to the courts and the police station; when they investigate and consider that we can handle it, they refer it back to us and we resolve it.”

#### ADR actors

Similarly, while cases involving violence against children are required by the SOPs to be referred to formal justice institutions, there were three cases identified in the case file review which were not reported to the police or formal courts. One case was categorized as a “minor injury” where a compensation in camels was awarded, indicating resolution through sharia law. In the two other cases where the perpetrator of violence was the father, there was no indication of referral to health and other child-support services by the ADR

Centers nor to formal justice authorities.

Additionally, although section 7 of the SOPs excludes “criminalized theft” from the jurisdiction of ADR Centers, five cases of theft identified through case file review were not referred to formal justice institutions. The SOPs do not reference national criminal law or thresholds, creating uncertainty around distinctions between minor and criminalized theft and the jurisdiction of ADR Centers.

## COMPARATIVE PERSPECTIVES | Jurisdiction

In **Ghana**, the Alternative Dispute Resolution Act (2010) establishes that any form of ADR, including customary arbitration, may adjudicate any dispute with the exception of matters relating to “(a) the national or public interest; (b) the environment; (c) the enforcement and interpretation of the Constitution; or (d) any other matter that by law cannot be settled by an alternative dispute resolution method”. Additionally, section 89 of the Act establishes that, as a general rule, criminal cases cannot be resolved through customary arbitration.<sup>105</sup> However, an exception is possible under the Courts Act (1993) which encourages reconciliation and “settlement in an amicable manner of an offence not amounting to felony and not aggravated in degree, on payment of compensation or on any other terms approved by the Court before which the case is tried”, thus allowing the court to order referral of the case to customary arbitration. In the latter case, during negotiations for a settlement, the court may “stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person”.<sup>106</sup>

In **Sierra Leone**, local courts have jurisdiction over all civil disputes governed by customary law, including cases involving land titles disputed between customary local authorities (Paramount Chiefs or Chiefdom Councils) and cases under applicable formal law if the claim, debt, duty or other matter in dispute does not exceed one million leones.<sup>107</sup> Additionally, local courts have a limited jurisdiction to hear criminal cases. Specifically, they may adjudicate criminal matters governed by customary law and criminal offences punishable by “a fine not exceeding fifty thousand leones or a term of imprisonment not exceeding six months or by both such fine and imprisonment”. The Act explicitly excludes a number of claims from jurisdiction, namely those founded upon “libel, slander, false imprisonment, malicious prosecution, seduction or breach of promise of marriage”, which are reserved for the jurisdiction of state courts. In practice it is documented that local courts routinely hear cases beyond their jurisdiction due to preference by parties to disputes and lack of knowledge or inaccurate understanding of jurisdictional boundaries of local courts by both litigants and local court officers.<sup>108</sup>

<sup>105</sup> Ghana Alternative Dispute Resolution Act (2010), sections 1 and 89.

<sup>106</sup> Ghana, Courts Act No. 459 (1993), section 73.

<sup>107</sup> Or for claims for recovery of possession, “where the annual rental value of the property does not exceed three million leones and the term of the lease does not exceed five years”. See Sierra Leone, Local Courts Act (2011), section 15.

<sup>108</sup> J. B. Simbo-Bo, “Dispensation of Justice at the Local Court: Persisting Challenges to Face” (2016), available at: <https://www.carl-sl.org/pres/dispensation-of-justice-at-the-local-court-persisting-challenges-to-confront/>.



Referrals to formal justice institutions

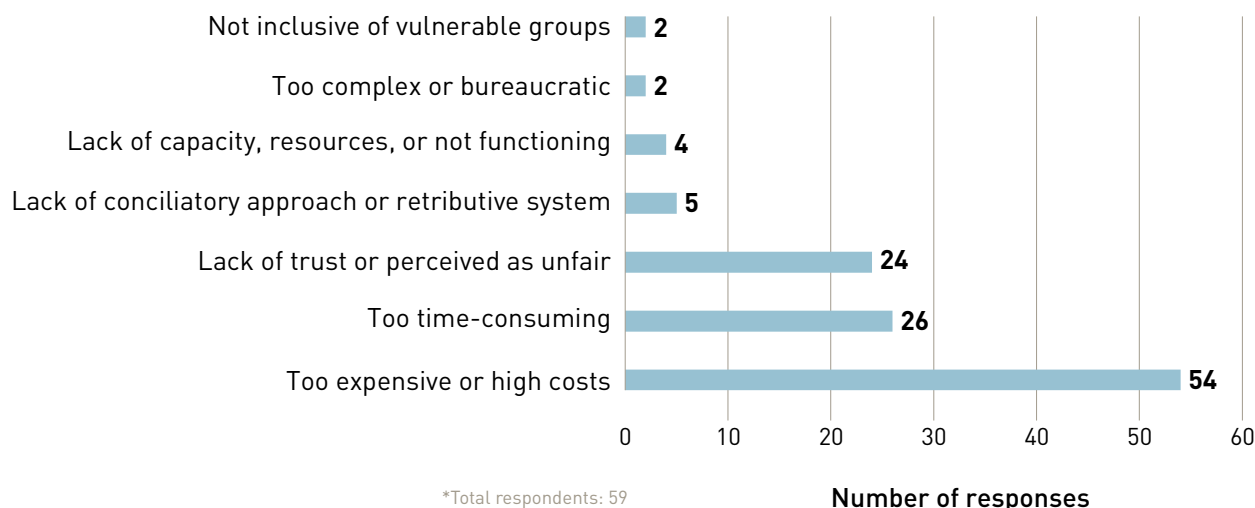
Referral	Section 38, SOPs
At any stage of the proceedings or in case of failure of the Panel to resolve the dispute, the parties may decide to take their dispute before the District Court. The case will be referred in writing through a referral form from the ADR Center to the competent authority.	

ADR Center referrals to and interactions with the police and the courts are not without complexity as jurisdictional issues highlight. What emerges from the data is a mixed picture, rooted in local context and challenging realities. For instance, because of the absence of police in parts of the Puntland region, clan militias may be involved, and serious crimes beyond ADR jurisdiction are at times resolved by Adjudicators “unofficially” outside of the ADR Center framework. In other instances, the District Court authorities have low capacity or no community trust. There are no appeal courts from district level established and there are instances of the courts or

the police in both regions referring matters to the Centers, even though they lack jurisdiction.

**Barriers to accessing the formal system**

When asked to identify barriers to accessing formal justice mechanisms, ADR actors highlighted a number of challenges and issues that may deter use of the formal justice system, as shown in Figure 16. These barriers result in more people seeking justice through the ADR process, including at times for theft, serious crimes and other matters beyond ADR jurisdiction.



**Figure 16: ADR actor views on barriers to accessing justice through formal mechanisms (e.g. the courts and the police)\***

A large majority of ADR actors pointed to the high costs associated with starting a proceeding with courts and other procedural fees, noting this deters people from seeking justice through formal mechanisms. Fees result in a widespread preference for informal justice avenues, including

in cases beyond ADR jurisdiction such as divorce matters, as parties fear that their assets may be subject to government taxation. Further, lack of transparency, low salaries and inconsistent accountability cultivate bribes and illegal increases of procedural fees.

**“The court and police collect fees. People here greatly welcome our justice service since we do not collect fees. The court file opening fee is \$30. The district and regional courts refer such people to our Center.”**

**“Since courts practice injustice and favor those who corrupt them, confidence levels are low. It is time-consuming. Vulnerable communities are not able to access courts and courts do not treat people equally. Courts collect fees.”**

**ADR actors**

While 44 per cent of ADR actors described formal justice processes as time-consuming, 41 per cent also highlighted lack of trust and perception of unfairness as another barrier. Respondents noted

particular discrimination towards marginalized groups, corruption, lack of transparency and unfair outcomes as disincentives for use of formal justice institutions.

**“I haven’t faced any challenges at the Center but I have faced many challenges at the courts (regional and federal). Those courts treated me unjustly and took bribes of thousands and did nothing for me. When I came to this ADR Center, they resolved my issue which had been going on for seven months for free. I could not believe how fair they were. The justice they offer is 100 per cent. I would recommend that they are supported because they work for free while the workers at the courts who are corrupt take more money.”**

**ADR Center user**

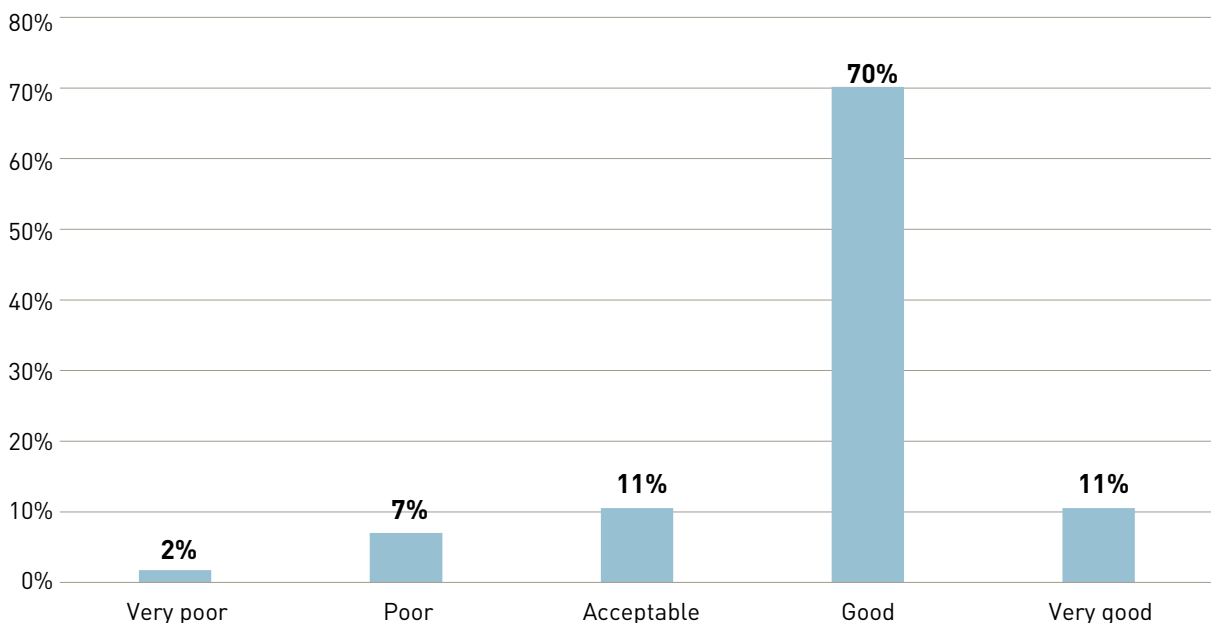
Another challenge faced when accessing formal courts is the lack of a conciliatory approach and flexibility, resulting in a system that disregards party engagement in favor of a retributive justice approach. Additionally, respondents also identified as barriers a lack of capacity and resource or inefficiency of formal justice mechanisms, complexity and bureaucracy, and a lack of inclusivity.

**Cooperation with formal authorities**

ADR actors interviewed generally perceived the link between the ADR Centers and the formal courts as

well functioning. In fact, 81 per cent of ADR actors interviewed perceive the relationship between the ADR Centers and formal justice actors as either good (70 per cent) or very good (11 per cent), as shown in Figure 17.

Nevertheless, linkages between formal justice institutions and ADR Centers vary depending on the region and Center location. While some Centers face greater challenges in effectively collaborating with formal courts and the police, others provide identifiable good practices in mutual case referral and collaboration in justice delivery.



**Figure 17: ADR actor views on links with formal justice institutions**

Eight respondents indicated referring cases for appeal to the court when a dispute has been resolved but parties are not satisfied with the outcome or when parties bring the same case to the Center again. A few respondents mentioned referring complex disputes that Adjudicators are not able to resolve or disputes where one or more parties are untraceable or refuse to appear. Only one ADR actor interviewed indicated never having made a referral to court.

With respect to complex disputes, ADR actors in Benadir mentioned divorce and inheritance among the cases they refer to the competent District Court. Reasons provided included the need to apply specific sharia provisions to these disputes and the impossibility of resolving such cases when rights are involved. Inheritance disputes are also considered by ADR actors to be particularly complex because of the need to divide multiple assets among different owners. The sharia approach focuses on allocating rights and shares of resources, which is different from the traditional approach of Xeer custom that focuses on resolution satisfactory to both parties and achieving a compromise between conflicting interests.

The majority of referrals recorded in case files were submitted to the District Court or Commissioner. Uniquely, some land disputes were referred to a District Engineer where the size or location of land owned was not verifiable solely through the evidence brought by the parties. Based on case file review, among the disputes brought to the ADR Centers, land and immovable property disputes had the highest proportion of referrals, with 17 out of a total of 29 disputes referred. This is likely influenced by the specific complexity of land disputes which often require travelling to a site to examine the land in issue or a technical assessment by an expert.

#### *Disparities in referral and cooperation*

A review of case files by region and district reveals some disparities. Of the 6 per cent of disputes referred, all were made by Centers in Benadir with no referrals recorded in Puntland. The lack of referrals

in Puntland may be explained by lower capacity and resources for formal justice actors as opposed to Benadir, where formal courts are functioning in all ADR Center districts and are located in the same buildings as the ADR Centers. In Benadir, while issues of cooperation were identified, they have been resolved and there is evidence of effective referrals, including use of ADR Center decision letters.

In Hamar-Jajab, one respondent reported accompanying parties to the court when cases are referred to ensure they are not asked to pay unnecessary fees. Further, Clerks and paralegals from Benadir Centers identified during focus group discussions that there are instances where, after receiving referrals from the ADR Center, the police and courts refer cases, including domestic violence matters, back to the ADR Center. This practice is particularly observable in instances where parties cannot afford the case file opening fees required by courts. Even where formal institutions are accessible and operational, fees create barriers for access to justice.

In Puntland, referrals and cooperation were initially found to be much less developed, although follow-up interviews revealed improvements. Newly recruited and trained Clerks and paralegals in all three Centers indicated making and receiving referrals to and from courts and the police and referring victims/survivors and vulnerable parties to local support organizations. They also reported using a specific form for referrals, summarizing details of the case for the receiving authority.

In summation, findings point to the difficulty of establishing a systematic and uniform referral system for cases reserved for the jurisdiction of formal justice authorities. The main reasons identified are the uneven level of capacity or operation of formal justice institutions throughout Somalia, and the uncertainty accompanying jurisdictional boundaries or blurring in practice, influenced by a lack of trust and negative perception of formal justice institutions by community members.

## COMPARATIVE PERSPECTIVES | Referral

Under the Local Courts Act (2011) in **Sierra Leone**, the function of Customary Law Officer is established.<sup>109</sup> A Customary Law Officer may “of his own motion or on the application of the Court or any party to the proceedings, for reasonable cause, transfer any proceedings initiated before the Court, to another Local Court, or the District Appeals Court as, in all the circumstances, appear to be most expedient, and any proceedings so transferred shall be commenced de novo”.<sup>110</sup> Powers of Customary Law Officers include: reviewing any decision by the local court, criminal or civil, where “miscarriage of justice” is disclosed or where an error of law or record is apparent; setting aside convictions or other sentences by the local court; and ordering any case to be retried by the same or other local court or Magistrate’s Court.<sup>111</sup>

In **Uganda**, local council courts have jurisdiction over civil matters governed by formal and customary law with certain limits defined by the Local Council Courts Act (2006). In particular, where a civil case requires awarding compensation exceeding “twenty-five currency points” the local council court “shall refer the case to the Chief Magistrate of the area for the purposes of execution of the order and the Chief Magistrate may, if he or she finds that the judgment award is grossly excessive, reduce the amount of the award taking into account awards in similar cases”.<sup>112</sup> Moreover, the possibility of objecting to the jurisdiction of the local council court is provided to the defendant, who may exercise this right and, where the objection is upheld, the case is referred to a court having jurisdiction to adjudicate the case. If the objection is rejected, “the local council court shall record the objection and its reasons for rejecting it, and proceed with the trial of the case”.<sup>113</sup>

## Decision registration and appeal

Registration	Section 39, SOPs
Any case settled by the Adjudicator Panel can be registered with the competent District Court within a reasonable time. If parties agree to register their case in the District Court, the ADR Clerk of the ADR Center submits a copy of the agreement/decision to the District Court and requests registration. The ADR Clerk keeps a record of the registration in the case file at the ADR Center.	
Appeal	Sections 38 and 39, SOPs
No appeal mechanism is expressly provided, but parties have the ability to refer their case to the competent District Court if not satisfied with the decision of the Adjudicator Panel or the case cannot be resolved. The case will be referred by the ADR Center using a Referral Form.	

While all ADR actors confirmed formally registering all decisions, they provided inconsistent responses when asked if an appeal mechanism for decisions of the ADR Centers exists. While all respondents reported that decisions are registered with formal courts, 45 per cent of respondents indicated that a formal appeal mechanism is available, while 55 per cent said the opposite. Puntland respondents were more likely to identify an appeal mechanism than respondents in Benadir.

A simple explanation for this confusion is the lack of clarity in the 2018 SOPs regarding appeals and subsequent changes in the 2019 SOPs. Some respondents identified the possibility of appealing to court without any additional procedure or

documentation as ADR Center decisions are registered and considered equivalent to decisions from First Instance Courts. Others identified a requirement to provide a special appeal letter when requested by a party intending to appeal a decision.

Additionally, some respondents conflated appeal with cases for which parties come back to the Center at a later stage, unsatisfied with the outcome or enforcement. Several respondents mentioned that parties appeal to the same Center that issued a decision and ask for a review. However, other respondents indicated this was not possible and parties unsatisfied with the ADR outcome would have to file a new case in court.

<sup>109</sup> Sierra Leone, Local Courts Act (2011), section 52.

<sup>110</sup> *Ibid.*, section 34.

<sup>111</sup> *Ibid.*, sections 35 and 38.

<sup>112</sup> Uganda, Local Council Courts Act (2006), section 10.

<sup>113</sup> *Ibid.*, section 12.

In the present version of the SOPs, no mechanism for appealing an ADR decision is expressly established, but in instances where a matter cannot be resolved

successfully by a Center or the parties wish, the matter is referred by the ADR Center through a case referral form and initiated in the District Court.

**COMPARATIVE PERSPECTIVES | Registration and appeal**

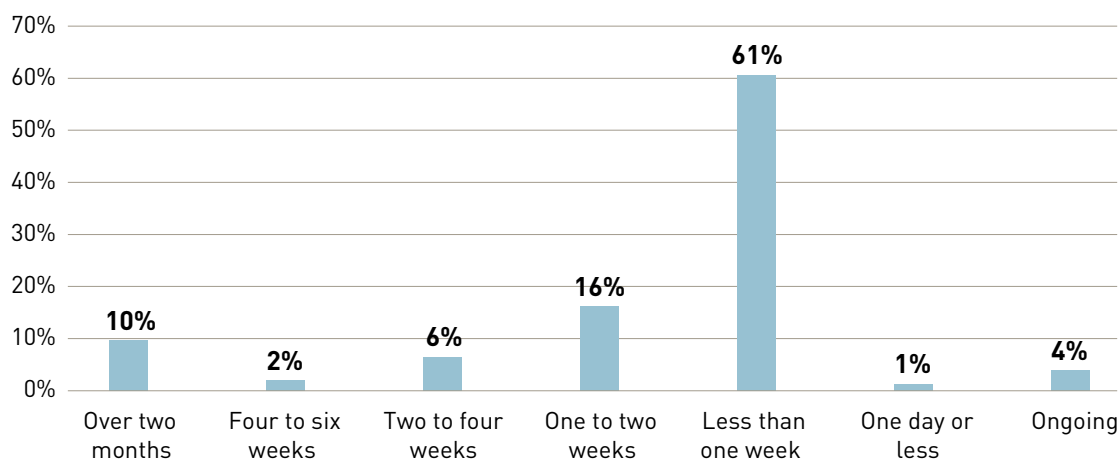
In **Ghana**, the ADR Act (2010) codified customary arbitration, which previously existed only in practice. The Act establishes that an award in a customary arbitration has automatic binding force between the parties, without a need to register it with a court. However, parties have the possibility of registering the customary arbitration award “at the nearest District Court, Circuit Court or High Court as appropriate”. An award “may be enforced in the same manner as a judgment of the court” and may be appealed to the competent District, Circuit or High Court on specific grounds. Namely, appeal is possible within three months of the award, in instances where the latter “(a) was made in breach of the rules of natural justice, (b) constitutes a miscarriage of justice, or (c) is in contradiction with the known customs of the area concerned”.<sup>114</sup>

In **Uganda**, the local council courts structure is integrated with the formal court structure as decisions made by local council courts can be appealed via the formal system. Decisions by a village local council court may be appealed before the parish local council court, and so on up to the town division or sub-county level. Decisions by the higher local council courts can be appealed before a court presided over by a Chief Magistrate. Further, “decrees and orders made on appeal by a Chief Magistrate” may be appealed before the High Court on grounds of substantial questions of law only or in cases where the decision appealed appears “to have caused a substantial miscarriage of justice”.<sup>115</sup>

**Duration of proceedings**

As shown in Figure 18, when users were asked how long it took for their case to be resolved, the majority (61 per cent) indicated that it took less than one

week, while 16 per cent indicated one to two weeks, and 10 per cent said over two months. Only 1 per cent of respondents indicated that their case was resolved in one day or less.



**Figure 18: User indications of the duration of ADR proceedings**

When asked if they thought that their cases had been resolved in a timely manner, a large majority of users surveyed said yes (88 per cent). Findings indicate that land disputes are among the most complex and

time-consuming cases to resolve. Overall, the ADR process is perceived by both users and ADR actors as efficient in terms of length of proceedings and less time-consuming in comparison with courts.

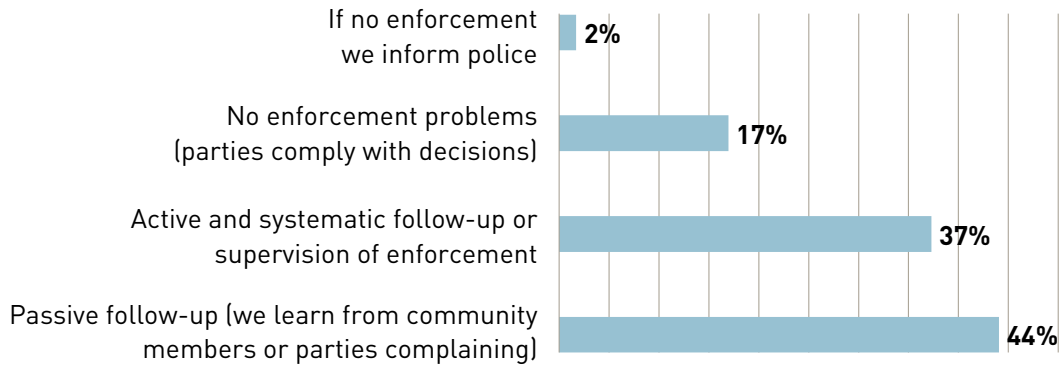
114 See Ghana, Alternative Dispute Resolution Act (2010), sections 109–112. On customary arbitration in Ghana, see also Mawuli Koblavie and Yaw Nyinevi (2019).

115 See Uganda, Local Council Courts Act (2006), Part X, section 32.

**Enforcement of decisions**

There are no provisions related to enforcement in the SOPs beyond a general indication in section 31 that parties agree and sign a statement indicating they will accept and honor the decision of the Adjudicator Panel. Some users reported challenges related to enforcement of their ADR Center decision, mainly referring to resistance from a defendant to comply with payment of an amount due to a complainant. As

shown in Figure 19, there are different approaches to enforcement among the ADR Centers. Forty-four per cent of the ADR actors interviewed reported not exercising any active form of follow-up on cases. However, they indicated that if a decision has not been implemented, they are informed about the non-compliance either by other community members or by parties who come back to the Center to complain.



**Figure 19: ADR actor descriptions of systems of follow-up and enforcement of ADR decisions**

However, 37 per cent of ADR actors interviewed reported actively taking the initiative to follow up on cases, especially matters involving family and financial disputes, by contacting parties on the phone. In Benadir, respondents reported following up on cases referred to formal authorities on an ad hoc

basis by informally contacting police stations or gathering information from community members. Overall, 17 per cent of ADR actors indicated they have not received complaints about a decision not being enforced and only 2 per cent said that they do inform the police if parties fail to abide by decisions.

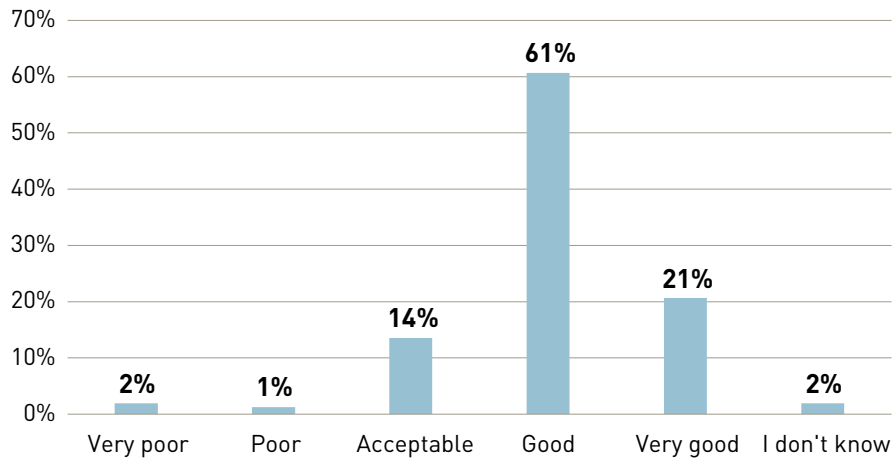
**“I did not face challenges when I brought a case to the ADR Center other than from the defendant’s side who, even when he was ordered to pay me rent, did not do it. The office referred my case to the District Court but later on, I just forgave him since he was not going to pay anything.”**

**“I did not face any challenges from the ADR Center but from the defendant who, during the hearing of the complaint, accepted the decision and then later said, ‘I have nothing to give’.”**

**ADR Center users**

Despite the absence of an enforcement mechanism within ADR Centers, only five ADR Center users (3 per cent) considered the enforcement of ADR decisions as

poor or very poor, as shown in Figure 20. More than 80 per cent of the users surveyed stated that the enforcement of decisions was good or very good.



**Figure 20: User views on enforcement of ADR Center decisions**

The largely positive perception of compliance with ADR decisions may in part be explained by the specific role played by clan elders or other responsible third parties acting as guarantors. With clan elders in particular, case file review and

interviews revealed the importance of their role in ensuring compliance after the decision is issued or even in participating in the process to incentivize compliance or – when involving financial or business matters – acting as guarantors of payment of debt.

**“Before releasing a decision, the Center asks disputing parties to bring their relatives who are responsible to be involved in the enforcement of the decision made by the Adjudicators. So, if the Center receives a call from any party [complaining about non-compliance with the decision], the Center calls the clan elders of the other party, who are aware of how the dispute was resolved, to take action. If this does not work, the Center refers the case to the court or the police.”**

**“After the ADR office heard the case of both of the two parties and saw the evidence, the ADR office decided that the victim should be given his money. And responsibility for this was taken by his clan elder with payment to be within 15 days.”**

**“We record the cases we resolve and follow up, especially in family dispute-related cases. We call back the cases we resolved to see what happened after it was resolved. Vulnerable people face some difficulties when their cases are referred to other actors like police stations and we help them and follow up on their cases.”**

**ADR actors**

## COMPARATIVE PERSPECTIVES | Enforcement

In **Sierra Leone**, decisions by traditional justice actors are generally enforced as disputants are subject to social pressure exercised by the community, and fear of “supernatural sanctions”.<sup>116</sup> Under the 2011 Local Courts Act, which gave legal recognition to local courts, it is established that the latter may, under the limits of their jurisdiction, “make such orders and impose such punishments as may be made or imposed in a Magistrate’s Court” and may order parties convicted of any offences before the local court to pay a reasonable compensation for damages (not exceeding 25,000 leones), provided that “the award of such compensation shall be a bar to all further proceedings in respect of the damage so suffered”. Moreover, the Local Courts Service Committee, e.g. the coordinating body of legally established local courts, may, by statutory instrument, establish rules for the execution of civil judgments and criminal sentences, including rules relating to the arrest of accused persons and execution of search warrants.<sup>117</sup>

In **Ghana**, the Alternative Dispute Resolution Act (2010) establishes that customary arbitration awards may be verbal, except where the case was referred by a court or a party explicitly requests and pays for a written award.<sup>118</sup> Section 109 specifies that a customary arbitration award, written or not, is binding between the parties and “need not be registered in a court to be binding”,<sup>119</sup> and “may be enforced in the same manner as a judgment of the court”.<sup>120</sup> However, in practice, the award must be in writing for enforcement purposes and to guarantee to any party the possibility of challenging it with the competent court, as the court requires at a minimum a written record of the decision to enforce or review it. Indeed, a customary arbitration award may be set aside by the District, Circuit or High Courts on grounds of breach of natural justice rules, the decision constituting a miscarriage of justice, or contradiction with the customs of the area concerned.<sup>121</sup>

## D. VERIFIABLE EVIDENCE

## Evidence used in hearings

Hearing evidence	Section 34.2, SOPs
<p>If the Adjudicator Panel cannot resolve the dispute through settlement by agreement in the first hearing, the Panel, in consultation with the parties, fixes a date for a second hearing in which both parties appear before the Panel again with their evidence. Evidence that the parties may present to the Panel can be witnesses, documents, information on public administration, and technical expert(s).</p> <p>The Panel may also decide to: conduct an inspection to investigate the evidence in connection with the proceedings; hear an expert witness in relation to a matter connecting or presented as evidence to the dispute; and call and hear as witness any other person whom the Panel believes to have a connection with or knowledge of the subject matter of the dispute, or may request and obtain from any public or private institution evidence which concerns the case, or search and find any additional evidence on its own motion, provided that the parties are duly informed.</p> <p>After all evidence has been presented, the Panel declares the hearing closed. The Adjudicators may, upon request by a party or for an appropriate reason, re-open the hearing at any time before a decision is made, upon prior notification to the parties.</p>	

Case file analysis showed that while the majority of complainants (70 per cent of all women and 62 per cent of all men) in Puntland brought witnesses or documentary evidence in support of their claims,

most complainants (70 per cent of all women and 55 per cent of all men) in Benadir did not bring evidence or witnesses. For defendants, the majority in both regions did not bring evidence or witnesses.

<sup>116</sup> See M. Sesay, “Harmonizing Customary Justice with the International Rule of Law? Lessons from Post-Conflict Sierra Leone”, in R. Friedman *et al.*, eds., *Evaluating Transitional Justice Accountability and Peacebuilding in Post-Conflict Sierra Leone* (2015), p. 179.

<sup>117</sup> See Sierra Leone, Local Courts Act (2011), sections 20 and 55.

<sup>118</sup> Ghana, Alternative Dispute Resolution Act (2010), section 108.

<sup>119</sup> *Ibid.*, section 109.

<sup>120</sup> *Ibid.*, section 111.

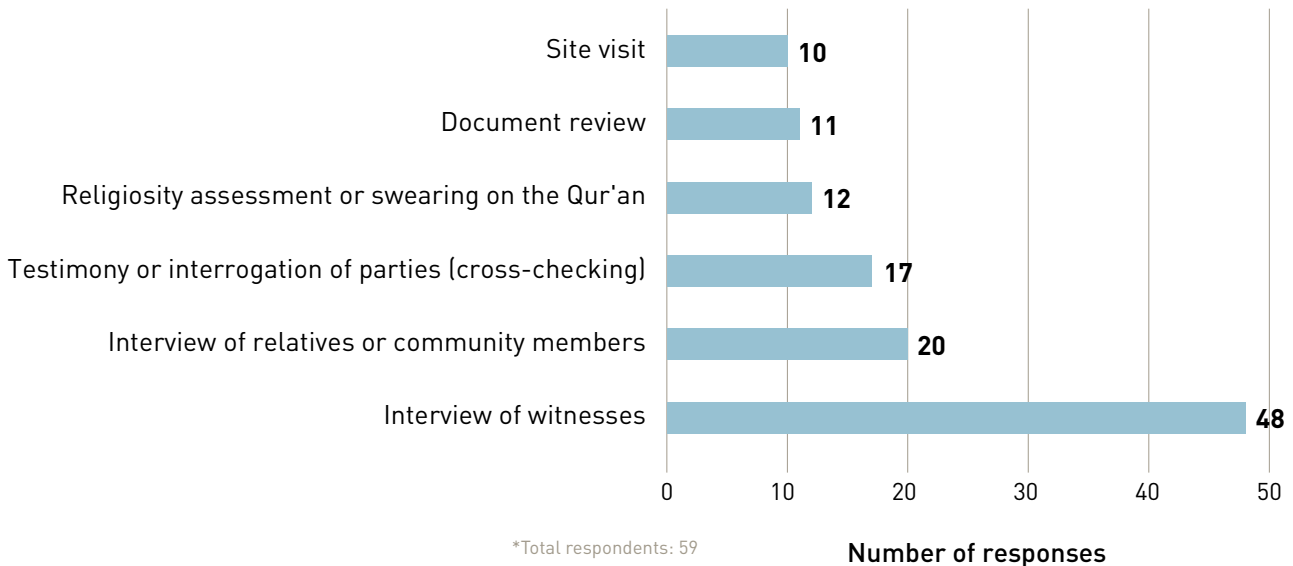
<sup>121</sup> *Ibid.*, section 112. See also E. Onyema, “The New Ghana ADR Act 2010: A Critical Overview”, *Arbitration International*, vol. 28, No. 1 (2012), pp. 118–119.



Irrespective of gender, Galkayo Center received evidence or witnesses from the most complainants (92 per cent) and defendants (97 per cent).

When surveyed, both complainant and defendant users were asked if they were able to bring witnesses or submit evidence in support of their position and 95 per cent said yes, while 5 per cent

said no. The higher proportion of yes answers compared with case file review findings could indicate either an unclear understanding of evidence by users or that this was not systematically recorded by Center staff in case files, despite evidence being presented. Figure 21 shows the methods of verification of evidence reported by Adjudicators and Clerks.



**Figure 21: Methods of verification of evidence described by ADR actors\***

Witness examination was identified by ADR actors as the main method of evidence verification. Twenty respondents (34 per cent) reported reaching out to relatives, neighbors or other community members who did not participate in the hearing to interview them. Further, testimony, cross-checking or interrogation of parties to verify consistency were mentioned by 17 respondents (29 per cent). These techniques are confirmed by case file review which identified instances of oaths, affirmations and testimony, although these terms are used interchangeably.

Documentary evidence use, mentioned by 11 respondents (19 per cent) was also confirmed through case file review, consisting mainly of land or other

property ownership certificates, referral letters from medical or hospital personnel in cases concerning bodily injuries, and debit/credit records, written contracts or payment receipts in cases of financial or business disputes. Verification of religiosity or checking if prayer is observed five times a day through formal swearing was mentioned by 12 respondents (20 per cent), who reported using it as a morality check towards the concerned party. Finally, site visits were mentioned by 10 respondents (17 per cent), usually related to ascertaining land ownership claims.

Users were also asked if they felt that the process was based on accurate information and 96 per cent of those surveyed said yes. Only 4 per cent thought that the process was not based on accurate information.

**“We cross-check the information of each party with the other. We then ask them to bring reliable witnesses.”**

**“We extend the timeframe to get more evidence and witnesses. We ask for documents. We have contact with the relevant authority. For example, in land dispute cases, we contact the land department of the local government. If the person was referred to a hospital, we contact the health provider.”**

**“We get some people to swear on the holy Qur’an. We visit the site and talk to neighbors.”**

**ADR actors**

**E. ADJUDICATIVE IMPARTIALITY**

<b>Impartiality</b>	<b>Section 24, SOPs</b>
The duty of Adjudicators is to assist parties in resolving their dispute or controversy acting as neutral third parties. For this purpose, they shall resolve disputes independently and with impartiality.	
<b>Equal and fair treatment</b>	<b>Section 33, SOPs</b>
All parties must be present or duly represented for the ADR process to proceed and hearing a case in the absence of one or more parties constitutes a ground for invalidating an ADR decision by the court. The Panel has a duty to treat parties equally and fairly throughout the hearing and the decision-making process. Particular attention should be paid to avoiding gender stereotypes and unequal treatment of women and men. Lack of compliance with the principle of equal and fair treatment is grounds for invalidating a decision by the court.	

Of the surveyed users, 95 per cent indicated that their adjudicating Panel was impartial, and the same proportion of users considered the ADR process objective and unbiased. Some Centers have mechanisms to replace an Adjudicator from the Panel if the neutrality is questioned by a party or individual present in the process. While a conflict of interest is not formally declared, it was reported by ADR actors and observed that where the impartiality of an Adjudicator is placed into question for any reason, the Adjudicator is replaced by another from

the available roster. Conflict concerns identified related to an existing relationship with one of the parties or a suspected bias or personal interest related to the matter.

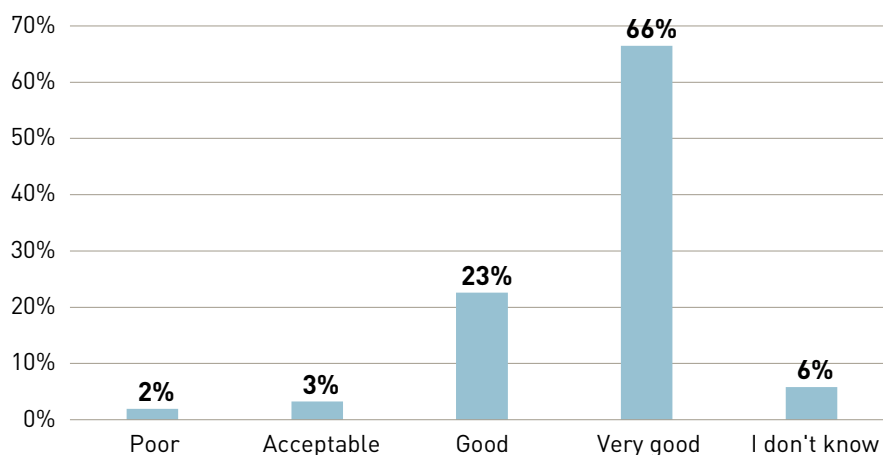
During focus group discussions in Benadir, Adjudicators explained that Panel members accused of bias are removed and if the matter is related to the family or relatives of one of the Panel members, that member is not allowed to take part in the hearing.

**“One of the Panel members’ wife fought with someone and their case was brought to the ADR Center. The Panel member voluntarily asked not to be part of the Panel who resolves that case.”**

**ADR actor**

Examples in which Adjudicators were removed from the Panel due to an identified conflict of interest highlight the importance attributed by ADR actors themselves to the preservation of their legitimacy in the eyes of the communities they serve. This assessment is in line with user responses to a series of questions regarding the

impartiality of ADR Adjudicators and the objectivity of the process. As shown in Figures 22 and 23, the majority of users ranked the impartiality of Adjudicators as either very good (66 per cent) or good (23 per cent). A total of 95 per cent of users surveyed perceived the ADR process as objective and unbiased.



**Figure 22: User views on impartiality of Adjudicators**

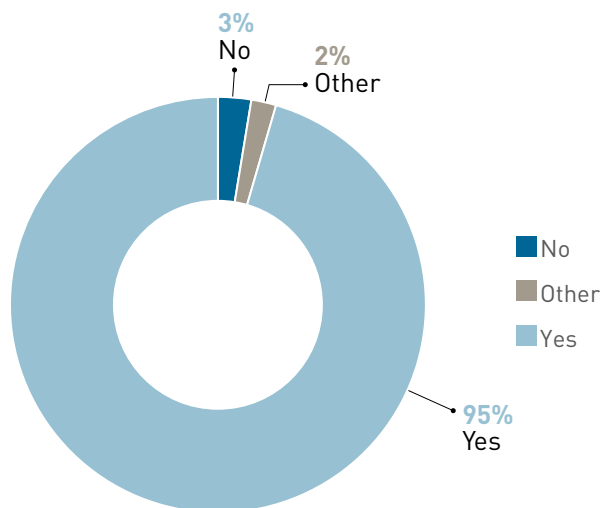


Figure 23: User views on whether the ADR process was objective and unbiased

**COMPARATIVE PERSPECTIVES | Impartiality**

The Alternative Dispute Resolution Act (2010) in **Ghana** provides the possibility for a party to challenge a customary arbitrator if: “(a) circumstances exist that give rise to reasonable cause to doubt as to the arbitrator’s independence or impartiality; or (b) the arbitrator does not possess a qualification agreed on by the parties”. This provision applies only where the party has not participated in the appointment of the arbitrator or the party has become aware of the circumstances justifying the challenge after the appointment has been made. The challenged customary arbitrator shall “step down and the party who appointed the challenged arbitrator shall appoint another arbitrator to replace the challenged arbitrator”.<sup>122</sup>

Further, parties have the possibility of jointly revoking the appointment of a customary arbitrator in the event that: “(a) there is sufficient reason to doubt the impartiality of the arbitrator; (b) the arbitrator is physically or mentally incapable of conducting the proceedings or there is reasonable cause to doubt as to the arbitrator’s capability to conduct the proceedings; or (c) the arbitrator has refused or failed to conduct the arbitral proceedings properly; or use reasonable dispatch in conducting the proceedings or making the award”. Section 10 of the Act also allows parties to agree beforehand on the circumstances that would determine revocation of the customary arbitrator appointed.<sup>123</sup>

**NORMATIVE DIMENSION**

This section assesses strengths and limitations of ADR Centers in relation to **protections for the vulnerable** through laws applied, remedies granted and adherence to human rights protection.

**F. PROTECTIONS FOR THE VULNERABLE**

**Application of law**

Typical normative frameworks employed	Section 6, SOPs
Centers may apply sharia law and principles, to the extent that they do not conflict with nationally applicable international human rights treaties and standards, and customary law (Xeer) practices and business norms that are not in conflict with national law or nationally applicable international human rights treaties and standards or sharia law and principles.	

122 Ghana, Alternative Dispute Resolution Act (2010), section 99.

123 *Ibid.*, section 100.

Overall, review of case files showed that Xeer is the prevalent method used to resolve disputes in all of the ADR Centers. There are, however, variances across regions and Centers, depending on the nature of the dispute.

In Benadir, 83 per cent of all disputes were resolved using Xeer, while 7 per cent were resolved by a mix of both Xeer and sharia and only 1 per cent were resolved using only sharia. In 9 per cent of cases, the law applied was not specified in the case files. On the other hand, in Puntland, although Xeer prevails slightly (57 per cent), sharia was also quite commonly used across all types of disputes (34 per cent). Only 6 per cent of matters were resolved by a mix of both Xeer and sharia and in 3 per cent of cases, the law applied was not specified.

Case files revealed that the only types of matters for which the use of sharia was prevalent were bodily harm cases, both minor and severe. Sharia was used in 13 out of 16 serious bodily harm cases, and 28 out of 51 minor injuries. Moreover, contrary to the traditional perception that sharia is the preferred legal route to adjudicate family and marital matters, only 13 per cent of total family maintenance, marital and other family disputes were resolved through sharia, making Xeer the primary legal framework used. Similarly, the majority of financial and business

disputes and disputes related to land and immovable property were resolved through Xeer, with sharia being the framework applied in approximately only one quarter of financial and business disputes and one fifth of land and immovable property disputes and only in Puntland.<sup>124</sup>

In both regions, Xeer is the main legal framework applied for GBVAW matters, with 20 out of 26 cases resolved using Xeer, four using sharia and two using principles from both. It is important to highlight that these indications are based on available record-keeping by Clerks. While complaint registration forms show that Xeer is utilized more often to resolve disputes, the analysis of outcomes recorded signals that final decisions or agreements may often involve both legal approaches through compensation and forgiveness.

Many outcomes involve both the payment of compensation through money or other material goods such as camels in accordance with sharia principles, as well as a Xeer element such as forgiveness by one party of a portion of compensation or an emphasis on the reconciliation of the parties and preserving good relations. This interpretation is reinforced by indications from the key informant interviews that most cases are resolved using both sharia and Xeer norms, as shown in Figure 24.

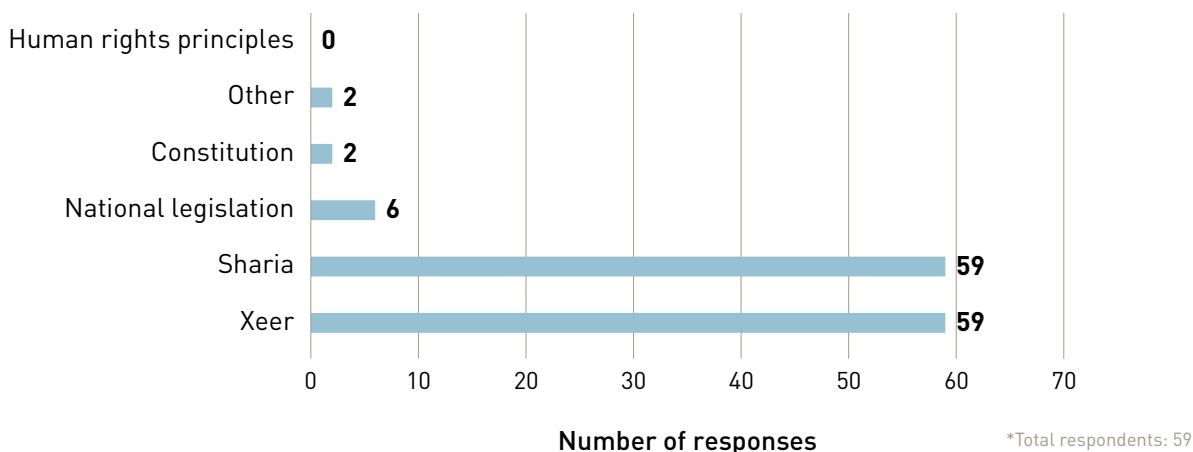


Figure 24: Legal frameworks used by Adjudicators to resolve disputes\*

<sup>124</sup> Based on the case file analysis, financial and business disputes as well as land and immovable property disputes were all resolved through Xeer alone in Benadir, with the exception of two disputes which were resolved using both legal frameworks.

Indeed, when ADR actors were asked what legal frameworks are typically used to resolve disputes, all respondents reported using sharia and customary law. Only six respondents indicated also applying national legislation and two respondents referenced constitutional provisions. Among the two respondents who selected “Other”, one mentioned using civil law, and the other indicated that Adjudicators use all laws that do not infringe sharia.

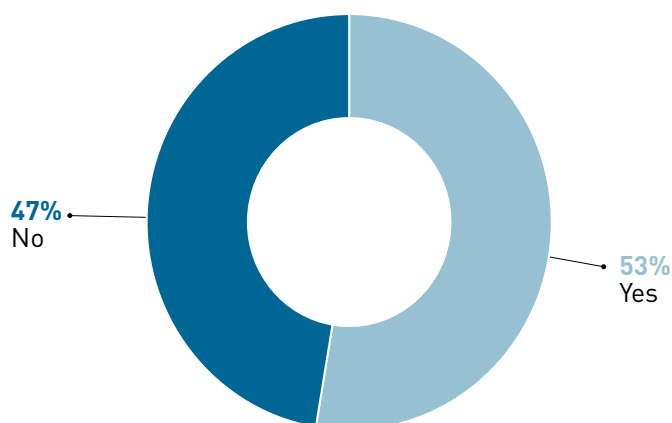
When asked which legal framework is applied in cases where different legal principles have a bearing on the same matter, ADR actors were divided. While 30 indicated that sharia prevails over Xeer in cases of conflicting norms, 18 indicated that Xeer is prioritized and if no resolution is reached through Xeer – sometimes referred to as “conciliation” by respondents – then sharia is applied. Six respondents mentioned that the choice of the preferred framework to be applied is left to the parties of the case, in particular in cases where sharia would also be applicable, and parties might prefer it to Xeer. Finally, other respondents stated

that it depends on the case at hand and it is the nature of the case that determines which legal principles or provisions are applied, as some cases require the application of sharia.

In all six ADR Centers, it was observed that Xeer and sharia are applied alternatively or jointly on a case-by-case basis through a flexible approach directed at achieving the best possible solution and satisfying all involved parties.

#### Predictability of decision outcome

ADR actors tended to attribute low importance to the predictability of an outcome, prioritizing other considerations such as finding a compromise among the parties or conflict resolution. As shown in Figure 25, when asked if the outcome of a similar case with similar facts would be the same or different, 53 per cent of respondents said the outcome would be the same, but 47 per cent said it could be different. And when asked whether outcomes are predictable or unpredictable, the majority of respondents (54 per cent) affirmed that outcomes are generally not predictable.



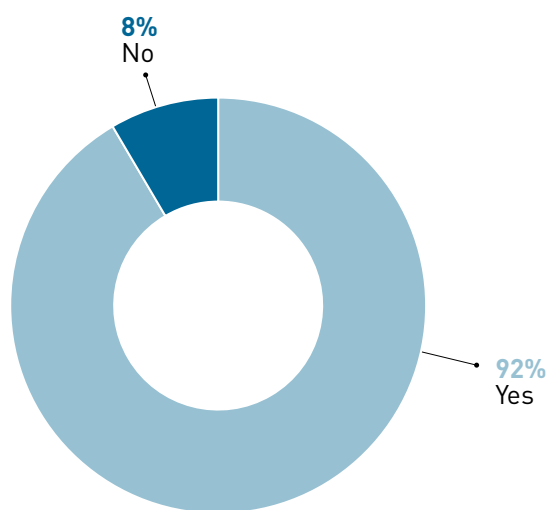
**Figure 25: ADR actor views on whether outcomes are usually consistent in similar cases with similar facts**

In this regard, respondents noted that the unpredictability of the outcome relates to the fact that cases are always different, and even in instances where cases are similar to a certain extent, the parties are different, which requires finding tailored solutions to achieve compromise. This supports the interpretation that ADR Centers prioritize conciliation and restoring good relations

among community members, and that the acceptance and behavior of parties thus has a significant impact on the outcome, in some cases prevailing over formal application of legal principles. This interpretation is further reinforced by the fact that parties are given the choice of the preferred normative framework to apply to their dispute and the voluntary nature of the process.

However, ADR actors do rely on precedent in ADR decision-making. As demonstrated by Figure 26, when asked if they rely on resolution from previous cases to find solutions to the case at hand, only 8 per

cent of ADR actors said no, while 92 per cent said yes. There is use of custom and precedent, however it is often adapted and tailored for solutions on a case-by-case basis.



**Figure 26: ADR actor indications of whether they rely on precedent for decision-making**

### Case outcomes and patterns

Of the 447 cases reviewed, the most common outcome was compensation for damage, related mainly to bodily harm and representing 23 per cent of the total, as shown in Figure 27. In 34 of these cases, reconciliation was also agreed. Next, 21 per cent of cases were resolved by an allocation of resources such as division of land plots or properties, exchange of services or goods, or sharing of profits from business. Payments of an amount due were also evident in 22 per cent of cases, usually made for financial or business disputes involving debts or family maintenance bills.

In 18 per cent of cases reviewed, the matter was resolved through reconciliation only, namely through a compromise between the claims of both parties or

forgiveness by one party towards the other. An overall emphasis was often placed on restoring or maintaining good relations between the parties. Additionally, a form of reconciliation, was included in 34 per cent of the total case outcomes, which were accompanied by an explicit invitation by the Panel for the parties to restore their good relations or forgive each other. This was particularly frequent in decisions ordering compensation for damage or payment of debts or other money or resource allocation due.

The only two cases resolved through a retributive approach where punishment of the perpetrator was decided were GBVAW matters in Puntland. Additionally, there was one instance in which the prospect of being referred to the police was used as a deterrent, also in a case involving GBVAW.

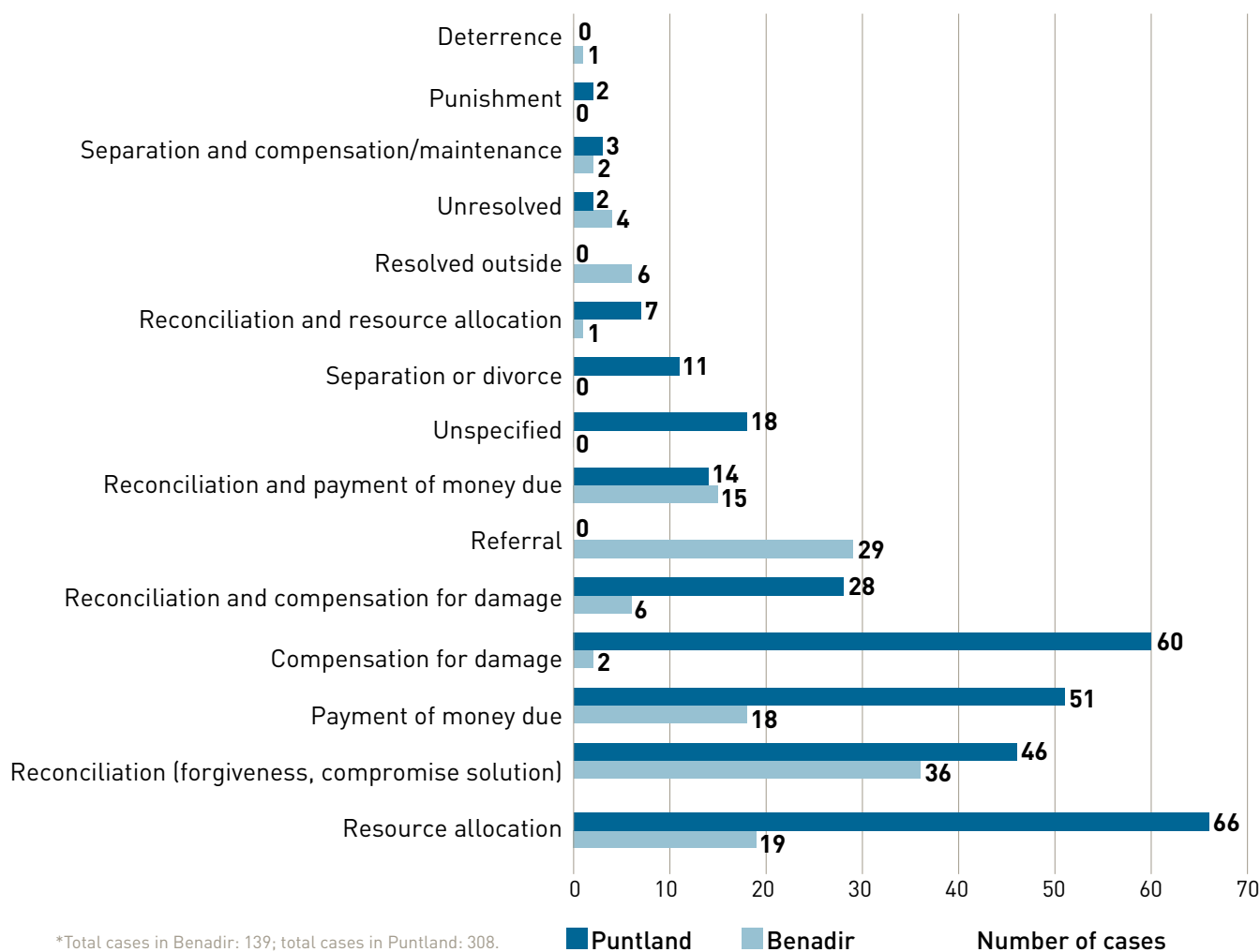


Figure 27: Analysis of case outcomes per region\*

A number of patterns were identified between the nature of disputes and certain outcomes. In particular, land and immovable property disputes were resolved predominately (72 per cent) through resource allocation, with reconciliation included in 13 per cent of the resolutions. Additionally, in alignment with key informant interviews, land disputes had the highest proportion of referrals recorded, all in Benadir.

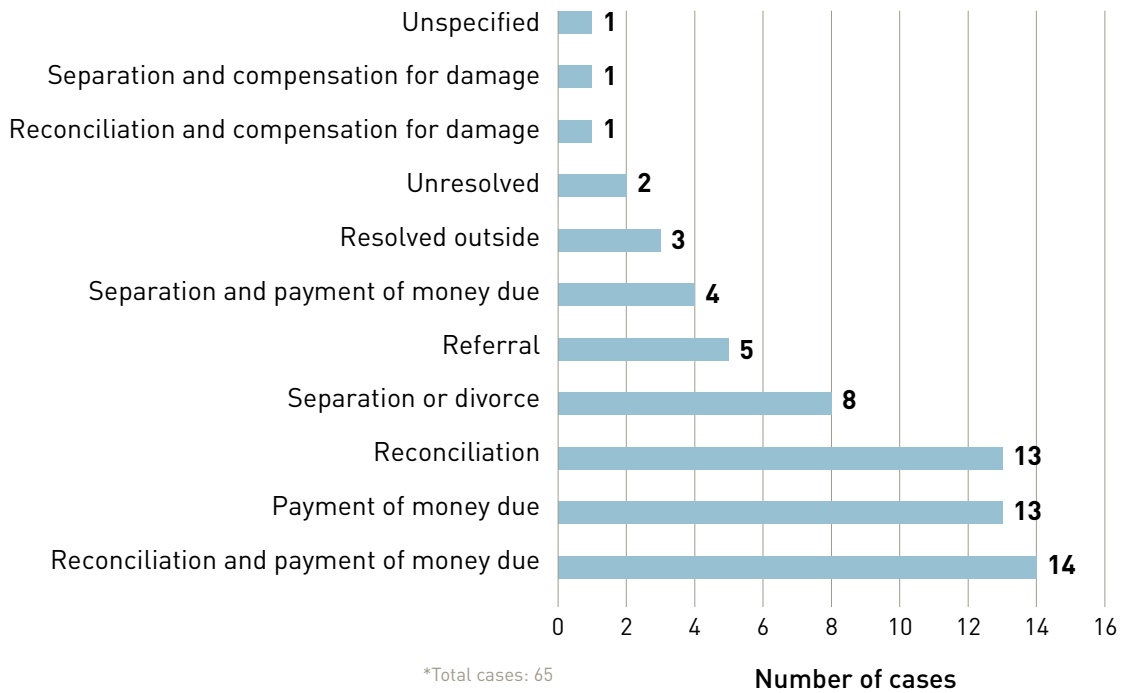
In regard to financial and business disputes, these were resolved predominately through an order of payment of money due (76 per cent) and a quarter of these disputes included some form of reconciliation. As noted, in cases related to payment of money due and resource allocation, the role of clan elders as guarantors emerged clearly. Specifically, leaders of the respective clans of the parties involved were requested to guarantee the payment of debt at the set deadline or participate in the hearing to help mediate among the parties and witness the final decision made, with a view to reinforcing its binding nature. As an example, in a case related to a pending debt, the Adjudicators decided as follows: “The ADR

Panel decided that the defendant pays the money within 25 days and his clan elder, A.M.S. is responsible for him.”

Adjudicators play a leading role in facilitating fit-for-purpose solutions in which parties compromise on their claims in order to achieve an agreeable outcome. This pragmatic and flexible approach is a distinguishing feature of ADR Centers.

Finally, analysis of 65 disputes related to family maintenance and other marital matters reveals that payment of the amount of money due was the most common outcome. As shown in Figure 28, this occurred in 48 per cent of the cases. Reconciliation of the parties in dispute, most often married couples, is also the norm, with 43 per cent of disputes involving a form of apology, forgiveness or promise by the parties to improve their relations in the future. Further, separation or divorce was decided in 20 per cent of cases, while 8 per cent were referred to court and another 8 per cent were unresolved or resolved outside of the ADR Center.<sup>125</sup>

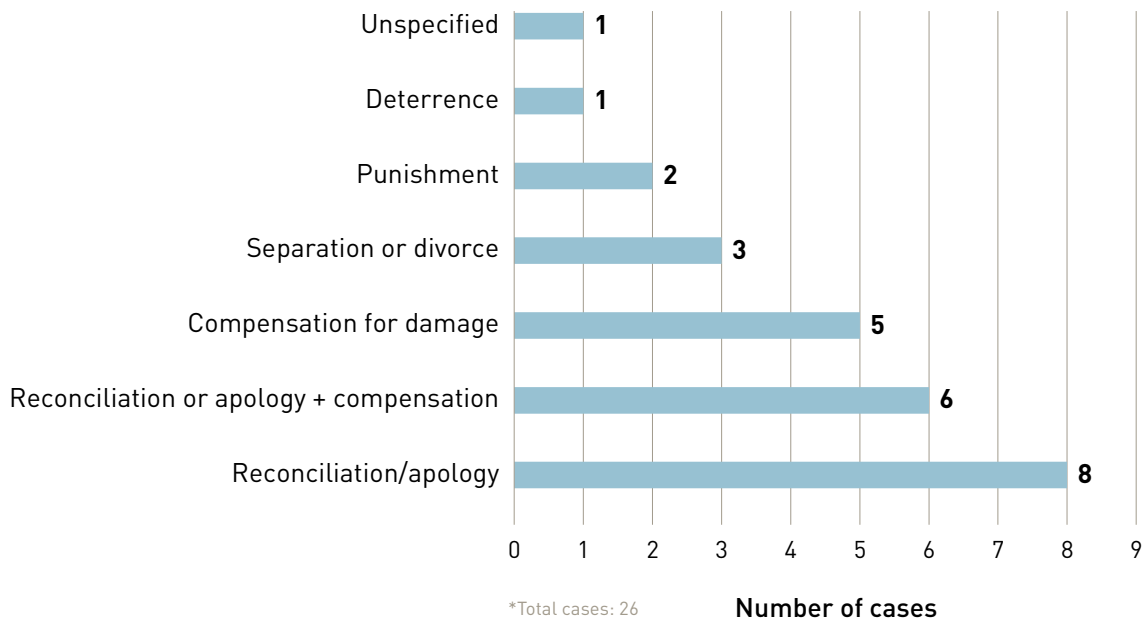
125 As previously noted, the provision explicitly excluding divorce from ADR Center jurisdiction in the current version of the SOPs (section 7) was not present in the previous SOPs in use at the time of data collection.



**Figure 28: Case outcomes for family maintenance and other marital disputes\***

Analysis of the 26 disputes identified as GBVAW matters filed with the ADR Centers reveals that, similar to outcomes in cases involving family maintenance and other marital disputes, preference is given to an amicable reconciliation of the parties and the maintenance of good relations within the family. Figure 29 shows that

54 per cent of cases involving some form of GBVAW resulted in the decision to reconcile the victim and the perpetrator. In the majority of these cases, this concerned disputes between a married couple in which the husband was asked to apologize to the wife and the wife was asked to go back home with him.<sup>126</sup>



**Figure 29: Case outcomes for disputes involving GBVAW\***

<sup>126</sup> In 14 out of 26 identified GBV disputes, there was a clear indication that the parties are husband and wife, while in the remaining 12 disputes, it is either unclear (nine cases) or the parties are divorced (one case) or unrelated (two cases).



Compensation for damage for “moral injury” is in most instances awarded in cases involving forms of violence occurring between unrelated parties, for example, rape, but not in cases of domestic violence. Only in two out of 11 cases did the Panel decide to award compensation to a wife victim. In one case, compensation for damage was awarded to the father of the victim, not to the victim directly. In the remaining cases, the perpetrator was only prompted to apologize to the victim.

The ADR Centers ruled in favor of a separation or divorce in three GBVAW cases, and in certain instances, the decision for separation or divorce was based on both the fact that the husband failed to provide financial support for his family and the fact that he was absent at the hearing or impossible to reach. No final decision of separation explicitly mentions domestic violence as a reason. For

instance, in a case in which domestic violence was claimed and was confirmed by witnesses, the decision referenced family-related expenses: “After the defendant has admitted that he can’t get anything for his wife (complainant), the Panel decided to separate them since he is not able to feed them and pay the bill. Their uncle guaranteed the bill.”

It is also interesting to observe that only two of the GBVAW cases resulted in some form of punishment. In one case, the perpetrator was exiled from the region and his clan was ordered to pay compensation, likely as a result of the victim being a young woman with a disability and the offence being of high severity. Based on case file analysis, no GBVAW matters were referred to the police or to health or social services and focus group participants confirmed the absence of referral pathways.

**Identified gaps and challenges in safeguards**

<b>Procedures for domestic violence, sexual and gender-based violence and violence against children</b>	<b>Section 27, SOPs</b>
<p>Centers have limited jurisdiction for GBV and must ensure:</p> <ul style="list-style-type: none"> <li>» the safety, dignity and privacy of victims/survivors, their free and informed consent, and the confidentiality of information disclosed</li> <li>» that any stereotyping or re-victimization of women throughout the procedure is avoided</li> <li>» the presence of one female Adjudicator at a minimum on the Panel adjudicating the case or of a female community leader facilitating the process in the absence of a woman Adjudicator</li> <li>» referral to appropriate legal, medical, socio-economic, psychosocial as well as community-based organization support services and authorities;<sup>127</sup></li> <li>» that victims/survivors are informed of their rights, including the freedom to choose between using the ADR Center and taking the case to the police/court, and of available referral pathways to support services</li> <li>» that documented free and informed consent of the victim/survivor for all procedures and evidence collection is obtained prior to the initiation of proceedings and by a representative of the ADR Center adequately trained in handling GBV matters</li> <li>» that a risk assessment is conducted by an adequately trained ADR Center representative to ascertain that there are no indicators of further risks for victims/survivors or their family members, and</li> <li>» that files related to GBV matters are documented and stored separately.</li> </ul>	

Overall, female representation on the adjudicating Panel and separate hearings for women who are too intimidated, emotionally distressed or shy to speak openly in front of an entire Panel composed of male members were indicated as practices undertaken in all Centers. This shows that some measures are being implemented to ensure safeguards and avoid secondary victimization in GBVAW cases. These measures are in line with section 27 of the SOPs which expressly mandates the presence of at least one female Adjudicator on the Panel in cases of GBV which fall under ADR jurisdiction, as well as appropriate measures to ensure that no stereotyping

or re-victimization of women occurs throughout the process and that the privacy and confidentiality of victims/survivors is preserved.

However, the majority of ADR Centers lack a separate office space for private hearings, evidence collection or counseling among female Adjudicators and paralegals and women parties. In fact, while the majority (93 per cent) of ADR actors affirmed that there are no practices in the ADR Centers which could be described as detrimental or harmful to women’s well-being, 7 per cent indicated that the contrary may be true.

<sup>127</sup> Guidelines on the handling and referral of GBVAW matters are to be issued in collaboration with relevant authorities. IDLO is working with national partners to develop a tailored protocol for all IDLO-supported Centers detailing referral processes and pathways for GBVAW and other abuse cases.

**“The Center has no separate office for both Adjudicators and women coming to the Center. When I am alone, it is difficult for me. I cannot talk as I would in a women-only office.”**

#### **Woman Adjudicator**

Other respondents stressed the need to further prioritize the special needs of vulnerable individuals. Overall, perspectives show that further efforts are needed to consolidate a gender-balanced environment in ADR Centers, both in relation to increasing gender sensitivity of male elders and ensuring the building includes enough privacy and a safe space to allow women to feel comfortable speaking openly about their cases.

Additionally, the current SOPs also reference the need for specific capacity and expertise to assess the level of further risks for victims/survivors or their family members. This represents a gap in ADR Center operations, as clear inconsistencies emerge in the handling and outcomes of GBVAW cases. Indeed, neither case file review nor qualitative data collection resulted in clear criteria used by ADR actors to assess the level of severity of physical or psychological violence and abuse and the level of risk of such violence reoccurring.

The current SOPs provide in section 27 that in cases where evidence of GBV or violence against children emerges at any stage of the ADR process, victims/survivors should be referred to “appropriate legal, medical, socio-economic, psychosocial as well as community-based organization support services and

authorities” and measures to ensure the safety and dignity of the victim/survivor and the confidentiality of the information shared in relation to the case should be undertaken.

The lack of referral to support services for survivors of GBV and other vulnerable parties was unanimously identified as a gap by all respondents. Although Center staff across both regions find referral to services for victims/survivors either important or very important, the majority do not have adequate knowledge of legal, social, health or other services available in their areas of operation and identified legal counseling provided by paralegals or sheikhs at the Centers as the only available service for vulnerable parties or victims/survivors.

A few exceptions were identified in Puntland, showing promising practices. These included referral of SGBV matters to the Puntland Ministry of Women and linking survivors of violence or child abuse with pro bono lawyers and civil society organizations in Galkayo. During a focus group discussion, female Adjudicators in Benadir commonly expressed the need for referral of GBVAW matters to other support services such as health or healing centers. Efforts by ADR Centers to strengthen local referral networks for victims/survivors of violence is necessary.<sup>128</sup>

**“If the case needs support, we advise visiting the hospital and sometimes, many Center staff will contribute to the cost of medication. If it is a non-physical issue, it is referred to organizations that deal with GBV.”**

**“We don’t have any relationship with any service providers like health centers which assess injuries for us. We ourselves (female Adjudicators) assess if there is any physical harm to the victim’s body. If we see any physical injury on her/his body, we refer the case to the courts. We don’t have any relationship with other centers that handle those issues like trauma healing.”**

#### **ADR actors**

##### **Preserving community harmony and upholding rights**

Despite instances of lack of compliance with SOPs provisions and adequate standards of protection for GBV victims/survivors and other vulnerable groups, some promising practices illustrate how Adjudicators utilize their community-based authority in a positive way to restore peaceful relations and in some cases by protecting the rights of vulnerable groups.

In Buhoodle, due to the large proportion of users with IDP status who were unable to afford transport to the ADR Center, Adjudicators decided to open an office inside the IDP camp in early 2020. To make this possible, Adjudicators divided their weekly working schedule in shifts so that at least a few days every week they work on-site in the IDP camp, thus turning Buhoodle’s Panel into a mobile ADR Center.

<sup>128</sup> The Ministry of Justice and IDLO are undertaking a process of mapping available support service providers in each ADR Center location.

**“Other than lack of transport facilities, there are no other challenges for marginalized groups to access the Center. So, in order to address this challenge, the Center recently opened a sub-center at an IDP camp in Buhoodle which operates on a voluntary basis and is in a temporary shelter.”**

#### ADR actor

Positive examples were also found showing the importance of Adjudicators’ role in maintaining good relations among families and members of the same or neighboring communities. Instances of promising practices in relation to upholding human rights and the rights of the most vulnerable also emerged through case file review. Specifically, in one case involving a marriage arranged by the parents of a couple, the two fathers brought the case to an ADR Center as the couple were not getting along and physical harassment had reportedly occurred. The Panel made the following decision, indicating freedom to dissolve the forced marriage: “Since the families could not understand each other and the arranged marriage was not working, the ADR Panel had advised the complainant to divorce the girl, as requested by the defendant family. In doing so, the defendant family will reimburse 50 per cent of the money which had been spent on the wedding and the whole marriage.”

Moreover, a number of cases demonstrate promising practices in relation to children’s rights. In a case involving a divorced couple with two children, in which the wife was preventing her former husband from seeing the children on the basis that he failed to provide the necessary financial support, the Panel’s decision upheld the best interests of the children involved in the case. Specifically, the Adjudicators underscored the importance of visitation as well as his responsibilities in relation to family maintenance and childcare costs: “The defendant had to rent a house of \$30 per month for his children and their mother. And he will also pay for the milk and the bills of the children.”

Similarly, in a case regarding differential treatment by a father towards one child that his wife had from a previous marriage, the Panel decided as follows, upholding the child’s rights and the responsibility of any parent or guardian for the child’s upbringing and

development:<sup>129</sup> “After hearing the case, the ADR Panel asked the complainant to allow both the wife and the son whom he (complainant) raised to stay with him and that he becomes the responsible father of the whole family. The husband (complainant) should treat the son as he treats his other kids.”

#### Protecting victims/survivors of violence

Evidence also points to a role acquired by the Adjudicators in protecting victims of violence by using their authority to deter husbands and male family members from violent conduct at home and in some instances, following up to ensure a certain level of support and protection is provided to female survivors.

While outside of the jurisdiction of ADR Centers in the 2019 SOPs, a review of decisions made by Adjudicators showed that divorce was granted without the husband’s consent in response to ascertained cases of abuse, violence or negligence of family-related duties such as unpaid childcare costs.<sup>130</sup> The accessibility of ADR Centers offers opportunity for protective measures. An illustration of this is provided by one case in which the complainant claimed she had not received any financial support from her husband for two years and was subject to physical abuse and insult from him. The Panel made the following decision in the absence of the husband, who did not attend the hearing, after asking the complainant to formally swear she was telling the truth: “After the traditional elders heard the argument of the victim after she was sworn in, the traditional elders decided a separation without the consent of the husband.”

As previously noted, the lack of sufficient detail in cases categorized as family disputes may indicate a higher number of GBVAW cases in reality, particularly in cases with outcomes similar to those categorized as GBVAW such as compensation for “moral injury”

<sup>129</sup> See United Nations, CRC. Specifically, Article 18.1 established the principle that “both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.” Further, Article 27 establishes the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development, and the primary responsibility of the parents or guardians to “secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development”.

<sup>130</sup> In a majority of cases reviewed, this occurred where the male defendant does not participate in the hearing, in contravention of section 33.2. of the SOPs which establishes that “[t]he Panel shall not hear any dispute if both parties, or any party to the dispute, are not present or duly represented”.

to the woman complainant.<sup>131</sup> A case recorded as a family dispute illustrates this complexity. According to the case file record, a female ADR Center complainant requested an official divorce due to “severity of the case and lack of harmony”. Divorce was granted with the husband’s responsibility for family maintenance assured. The female complainant

reported that she was satisfied with the process, finding it equal and fair, as well as with the outcome. An interview also revealed that she had previously reported incidents of violence committed by the husband to the ADR Center and that these had stopped once ADR Adjudicators had reached out to the husband to deter him from abusive behavior.

**“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**

Domestic violence was neither recorded nor mentioned in the case file, and it remains unclear from information recorded to what extent this claim was given due weight by the adjudicating Panel. While this reinforces concerns around the number of cases of violence being higher than those identifiable in official ADR records, it also illustrates a role that Adjudicators perform in the community, responding to and preventing violence and abuse. Given the complexities of referring and coordinating with formal justice authorities and law enforcement, this role is of particular importance, especially where there is risk of abuse and secondary victimization by formal justice authorities, particularly police forces. Together with additional barriers related to capacity, high cost, inaccessibility, lack of trust, and fear of stigma and subsequent marginalization as a result of reporting to formal authorities, GBVAW matters will continue to be complicated.

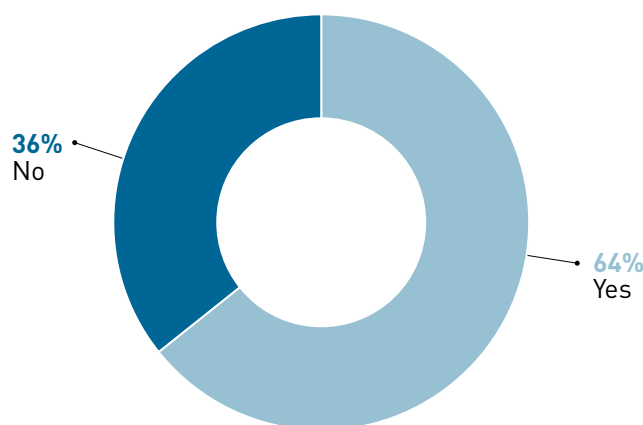
Moreover, a number of case studies and findings from focus groups also illustrate ADR Center staff themselves filling gaps and responding to urgent needs of victims/survivors. These include reported instances of Adjudicators and Clerks following up on urgent cases outside of their mandates/assigned capacities in substitution of formal law enforcement and other service providers which are absent or not functioning in some districts.

Overall, while often imperfect, examples identified are evidence of the importance of the Centers’ role in protecting the rights of the most vulnerable and supporting increased access to justice for all, especially in communities lacking functioning formal justice mechanisms.

#### Identified violations of rights

The Centers are not without concerns over rights violations. Generally, Adjudicators at the ADR Centers expressed their belief that the process and decisions comply with the provisions of the Constitution and international human rights standards. There is significant variation within each Center, however, on whether a decision is valid if it does not comply with the Constitution: 73 per cent in Puntland stated that a decision is still valid despite non-compliance with the Constitution, while in Benadir, opinion was split down the middle. Combined, as seen in Figure 30, 64 per cent of respondents believe that decisions remain valid. Those who said yes explained that the priority should be towards satisfaction with the outcome by the parties. Some also stressed that the Constitution is provisional, and many Adjudicators are not familiar with constitutional principles, and consider sharia as the prevailing normative system. Those who said no explained that decisions should violate neither the constitutional rights of people nor sharia law principles.

<sup>131</sup> On the other hand, it remains unclear from available case file data why some claims of abuse are recognized in the Panel’s decisions and others are not. The possibility of women parties misrepresenting violence which did not occur cannot be disregarded, particularly in matters related to divorce, child custody or a maintenance bill where violence is not mentioned or otherwise recognized in the defendant’s statement or the Panel’s agreement (e.g. no form of compensation awarded, no mention of physical or moral “injury” as in other final agreements).



**Figure 30: ADR actor views on whether a decision by the ADR Center not complying with the Constitution would be valid**

At the same time, the level of knowledge of ADR actors towards national law was generally low or very low. Specifically, 86 per cent of respondents in Benadir and 60 per cent in Puntland reported having low or very low knowledge of national laws. Similar assessments were found with regard to knowledge by respondents of international human rights standards.

Interestingly, a central role for paralegals emerged in relation to upholding rights. During focus groups with Clerks and paralegals, a participant explained that paralegals provide explanation to parties about respective rights and legal provisions applicable to

the matter at hand at both the stage of a jurisdiction check and during the process at the ADR Center, “in accordance with Islamic sharia and international law standards”.

The need for rights awareness and realization continues to be very important. Table 5 sets out human rights violations identified during case file review, in contravention of the African Charter and African Protocol on Women’s Rights. As noted, as case files are at times incomplete, observations are based on the information available, as triangulated with known issues and indications by ADR actors.

**Table 5: Human rights violations identified through case file review**

Issue or matter	Rights violation evident
<b>Violence against women as a form of gender-based discrimination</b> <sup>132</sup>	11 cases of ascertained domestic violence against a wife in which she was encouraged to forgive the husband and resume marital life and cohabitation
<b>Failure to protect children’s rights</b> <sup>133</sup>	0 cases of child abuse referred to formal authorities despite record of cases involving child abuse
<b>Right to be heard and give testimony</b> <sup>134</sup>	7 cases identified where a right or interest of a female party was in issue, but she was not physically present at the hearing and was represented by male family or community members without express indication of waiver of the right <sup>135</sup>
<b>Prohibition of marriage without free and full consent of both parties</b> <sup>136</sup>	3 cases identified concerning marriage or continuation of the latter in which consent to marry or remain married by the female party was not expressly indicated in the case file
<b>Right of women to own property</b> <sup>137</sup>	3 cases related to land or immovable property where outcomes favor men, without clearly justified reasoning

<sup>132</sup> African Charter on Human and Peoples’ Rights, Article 18(3) and the Protocol to the Charter, Articles 4 and 5.

<sup>133</sup> African Charter on Human and Peoples’ Rights, Article 18(3).

<sup>134</sup> *Ibid.*, Article 7. The SOPs provide that the adjudicating Panel cannot hear disputes if any party to the dispute is not present or duly represented. Hearing the case in the absence of one of the parties is a violation of his/her basic and constitutional right to equal and fair treatment. According to the Civil Procedure Code, the absence of any party during a hearing is a ground for the Court to invalidate ADR cases. See SOPs, sections 33.2 and 34.1.

<sup>135</sup> Instances of disputes that were adjudicated in the absence of male parties were also found. These concerned mainly family disputes in which separation or divorce was claimed by the wife and awarded by the Panel as the husband was untraceable or refused to come to the Center.

<sup>136</sup> African Charter on Human and Peoples’ Rights, Article 6.

<sup>137</sup> Article 3 of the African Charter on Human and Peoples’ Rights on equality before the law and equal protection of the law, and Article 2 of the Protocol to the African Charter on the elimination of discrimination against women.

**ACCESS TO JUSTICE FOR ALL SOMALIS**

Having reviewed structural, procedural and normative dimensions of justice, this section explores the value of ADR Centers, gaps and challenges, and user satisfaction with services.

**The value of ADR Centers**

ADR actors were asked their perspective on the value of ADR Centers, and the majority explicitly identified the importance of ADR Centers for providing access to justice in their respective communities as well as to people living in surrounding communities (Figure 31). Additionally, 39 per cent of respondents identified the main value as the fact that the services are completely free, noting that this is essential to a large portion of the population who cannot afford court fees.

Others specifically noted the role of ADR Centers in relation to enabling access to justice for vulnerable groups such as women and IDPs. Some ADR actors mentioned the function of the Center in providing a venue and structured framework for disputes resolution and formalizing the role that elders were already performing in their respective communities. Others mentioned the system of documentation and record-keeping of cases as an added value compared to the traditional dispute resolution process which takes place “under a tree” and is completely oral.

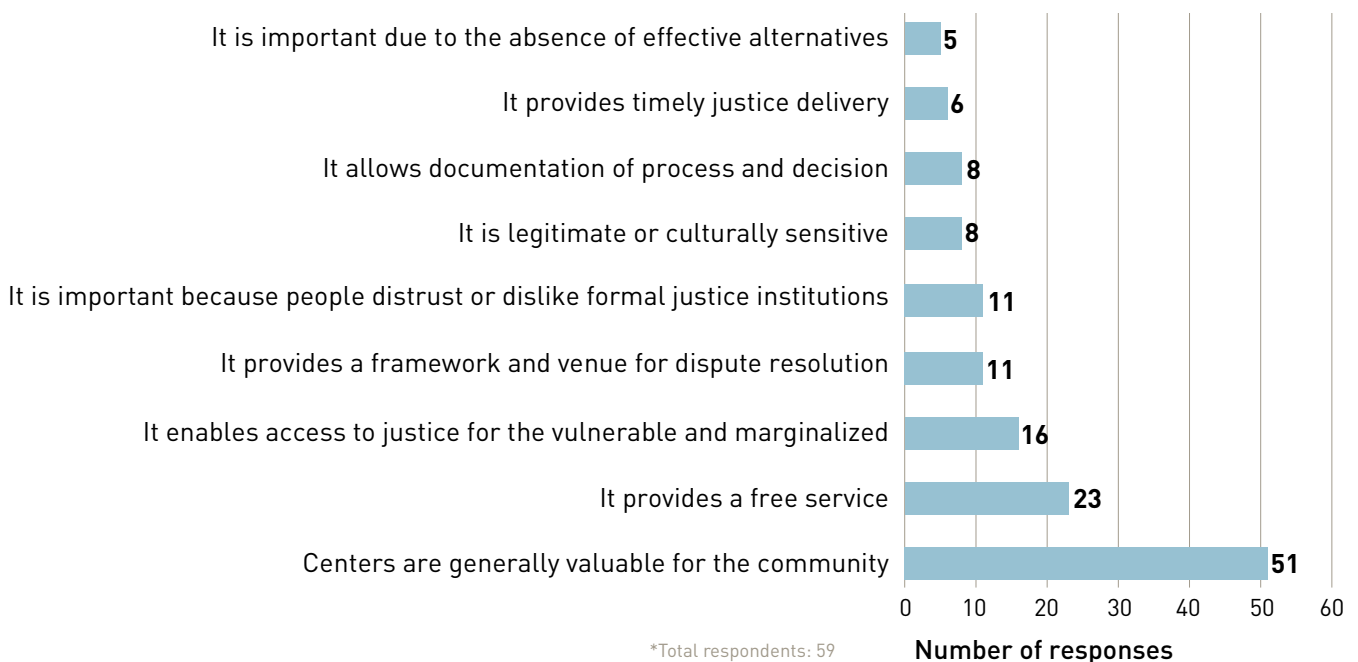
**“The Center contributed to the community immensely. There are no effective administrations in the region, so the traditional elders have an active role. Now, their role is formalized. The number of cases received is getting higher.”**

**“This Center is significantly valued by the community. Elders had no Center to resolve disputes in the past and used to sit under a tree. Now, elders received stationery and an office. This has helped elders to document the disputes they resolve.”**

**ADR actors**

Some ADR actors specifically identified the added value of ADR Centers by comparison with the formal justice system and noted limitations. Indeed, some described the ADR process as speedier or easier to access and understand than formal justice proceedings that involve more bureaucracy. Others mentioned the distrust and

dislike of formal justice institutions by communities, and the importance of ADR Centers’ compliance with Somali culture, highlighting that the ADR process is closer to communities as it is based on the application of Xeer and sharia, and focuses on reconciliation and consensus-building among parties to the case.



**Figure 31: ADR actor views on the value of ADR Centers in their communities\***

Importantly, references to sharia and Xeer practices were made by ADR actors in connection with the need to promote rights and access to justice. Indeed, the majority of Adjudicators recognized their responsibility to foster equality and protect the rights of marginalized groups such as women, IDPs and minority clans by referring to sharia and traditional Xeer values. Culturally and religiously familiar frames of reference and nuanced language were perceived as more acceptable and adoptable entry points to promote human rights as compared to using

international normative references to human rights.

Finally, observation showed that most ADR Centers have a secondary function as community hubs where various community issues of relevance are discussed in a participatory environment. Specifically, Centers in Puntland function as fora for other elders and community leaders to meet outside of working hours, and the Centers in Benadir are also used for community dialogues and other awareness-raising or humanitarian activities.

**“It is a very important Center for a number of reasons. First, it is something that people understand. Second, disputes are resolved in a short period of time without paying money. Third, we document decisions.”**

**“It was a much-needed Center. The Center advanced community cohesion and healing. People trust this justice mechanism more. It has eased the burden of the courts.”**

**“The Center has a great value to the community. Most of the people are displaced and vulnerable people. The courts ask these vulnerable communities to open a case file and pay a fee. We have resolved many disputes.”**

**ADR actors**

### Gaps and challenges

#### Common gaps and challenges identified

As established from a combined reading of Figures 32 and 33, ADR actors and Center users shared similar observations with regard to the gaps and challenges in the ADR Centers.

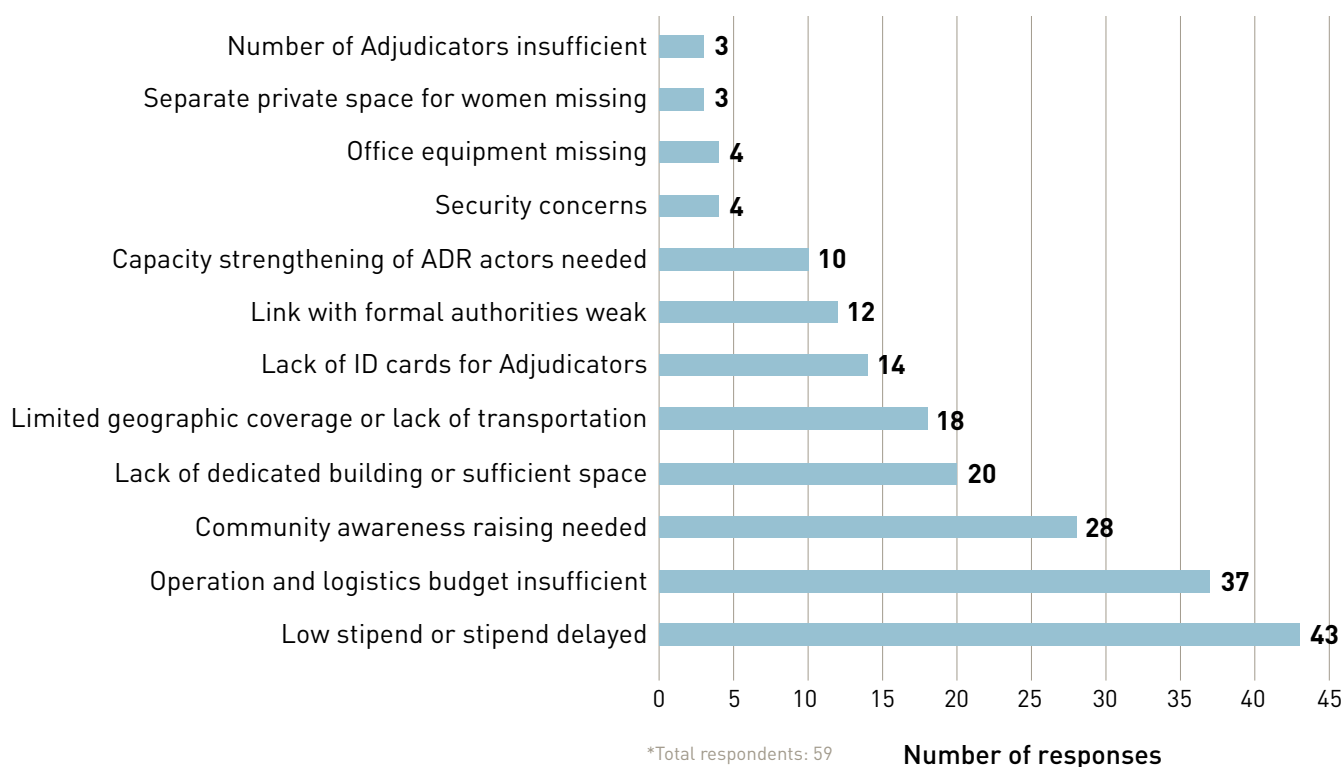


Figure 32: ADR actor perspectives on gaps, challenges and areas for improvement in ADR Center operations\*

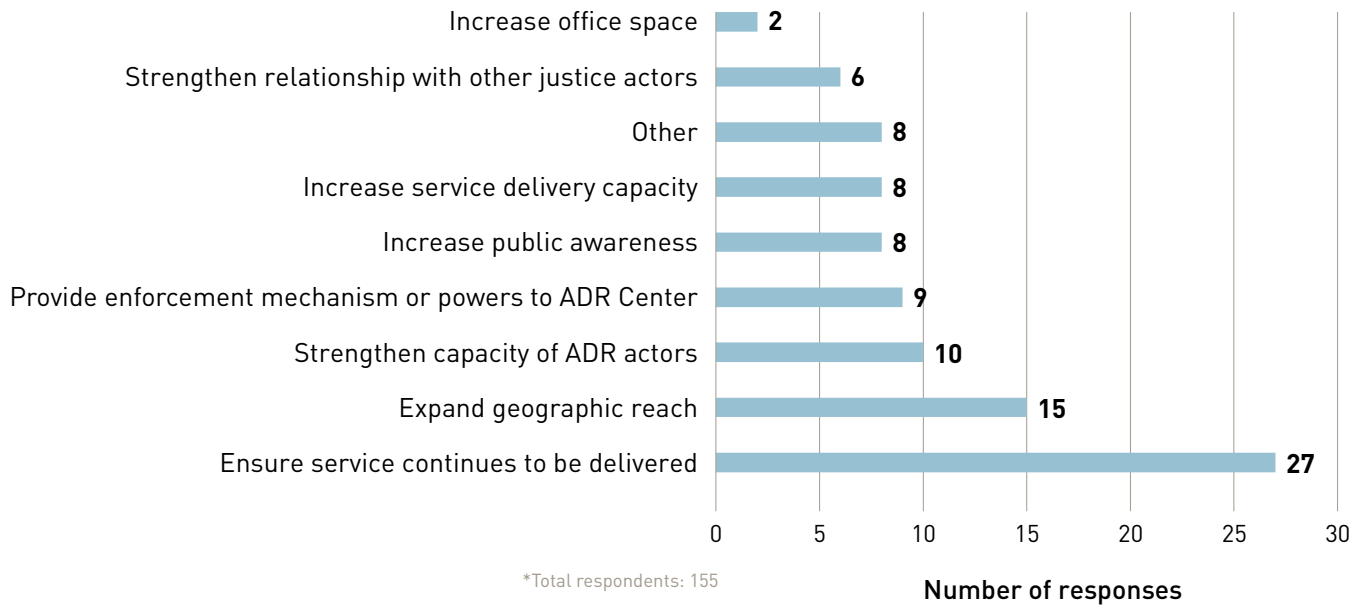


Figure 33: Perspectives of users on areas for improvement in ADR Center operations\*

**Lack of community awareness**

When asked about existing barriers preventing the use of the Centers, as shown in Figures 32 and 33 both ADR actors and ADR Center users

reported lack of awareness or understanding of the Centers as a barrier affecting access to justice. For instance, there were reports of individuals thinking that ADR Centers charge fees similar to courts.

**“The Centers should be advertised so that people get to know them because many people think that they are private and that they charge money. Even I was thinking the same before I came. So, I would recommend that they spread the word that the services ADR Centers provide are free. People need ADR Centers so much but are not aware of them.”**

**ADR Center user**

In this regard, ADR actors identified a role for paralegals as all respondents interviewed considered that paralegals working in ADR Centers should also provide legal information, education and legal literacy at the community level.

**Limited geographic coverage of ADR Centers**

Transportation and location were also raised as issues, as the Centers have limited geographic coverage due to their distance from some villages as well as the lack of available transportation. This was identified as particularly important for groups such as women, IDPs and minorities, and people with disabilities.

**“The main challenge that IDPs, vulnerable people, disabled people and minorities face is that they live far away from the ADR Centers and that distance is a challenge to them since they can’t afford transportation.”**

**“Mobility challenges: we do not have a vehicle to visit distant places plus lunch and refreshment facilities during site visits. We need branch offices that can work with us in remote areas.”**

**ADR actors**



However, ADR actors and users differ in their proposed solutions. ADR actors specifically focused on the need to increase ADR Centers’ transportation budget to conduct on-site evidence collection or to reach parties living in remote areas. On the other hand, users identified the need to open more Centers or branch offices to expand the geographic coverage of the ADR justice system. One ADR Center user, in particular, noted the need to open an ADR Center in IDP camps, while another highlighted the importance of expanding geographic reach of ADR Centers so

that “people are encouraged to go to the ADR Centers rather than police stations for family disputes”.

#### **Lack of financial incentives to ADR actors**

Both ADR actors and users underscored the lack of sufficient incentives to ADR actors. From the perspective of users, providing ADR actors with sufficient incentives can help preserve their integrity and accountability as well as improve the effectiveness of ADR Centers.

**“I would recommend that ADR actors are supported because they work for free while workers at the courts who are corrupt take more money. These volunteers deserve to be supported and given incentives.”**

**ADR Center user**

From the perspective of ADR actors, the insufficient allowance for Adjudicators results in low morale, higher turnover or absenteeism among Adjudicators. Several Adjudicators were not regularly present in the Centers according to their working schedules because they have paid jobs in parallel in order to make a living.

#### **Capacity development needs**

Both ADR actors and users identified the need to provide further training to ADR Center staff. Specifically, ADR actors were asked to rank training needs in different capacity areas from very low to very high. International human rights standards (46 per cent), ADR methods (42 per cent) and formal national laws (41 per cent) were the top three capacity areas where the training need was identified as very high. These were followed by sharia law (34 per cent), gender issues (34 per cent), child protection (32 per cent) and case management skills (32 per cent). With

regard to case management skills, the need to strengthen Clerks’ case registration skills, in particular, emerged through case file review, which showed that necessary elements of case files are often compiled with approximations or left blank, thus posing problems in relation to accurate reporting.

#### **Gaps and challenges identified by ADR actors Integration of paralegals**

ADR actors were asked their views on the integration of paralegals in ADR Centers and all respondents considered this as useful (49 per cent) or a priority (51 per cent), including providing technical advice on legal aspects to ADR actors (noted as useful by 57 out of 59 respondents). Essentially, many Xeer leaders and sheikhs demonstrated openness and interest in learning new human rights and mediation standards, skills and methods to improve the services they provide at the Centers, with direct support from paralegals.

## COMPARATIVE PERSPECTIVES | Paralegals

In **Sierra Leone**, paralegals are recognized by the Legal Aid Act No. 6 (2012) and recruitment is participatory. The Legal Aid Board assigns paralegals to chiefdoms selected through a process involving local communities and authorities. Moreover, section 14(2) of the Legal Aid Act specifies the functions of paralegals, assigning them an advisory role and function of providing legal assistance and education to both community chiefs and inhabitants, including referring cases to the formal justice system as appropriate. The legitimacy of paralegals at the community level is reinforced by a Community Oversight Board which monitors the work of paralegals. This system of participatory appointment and supervision helps ensure recognition and authority for paralegals within their communities, facilitating effective awareness raising and community outreach activities including dialogues through which chiefs and community members are brought together to exchange views on respective rights and duties.<sup>138</sup>

In **South Sudan**, paralegals play a central role in providing access to justice to vulnerable communities affected by poverty and conflict. In addition to legal literacy, legal aid and referral of cases to formal and informal justice authorities, community paralegals engage in advocacy to interact with decision makers and promote change at the community level, including, for instance, lobbying local government officials to introduce female chiefs in lower courts.<sup>139</sup> Research has also identified that paralegals are well placed to play an oversight role for customary courts, documenting harmful practices and gender discrimination by chiefs, as well as good practices in handling disputes.<sup>140</sup>

### Lack of a dedicated building and space for ADR Centers

The lack of a dedicated separate building for the Centers was indicated as a challenge by 20 ADR actors, all from Puntland Centers, referring to the fact that ADR Centers do not own their building and are located in rented spaces, which results in multiple logistics management issues. Specifically, an Adjudicator said that relocation from one rented space to another, as has happened with one ADR Center, can make it difficult for community members to find the new location.

Space in facilities was also mentioned as posing a challenge to accessing ADR Centers. The

current space allocated to ADR Centers was viewed by ADR actors as too small as it does not allow them to resolve more than one case at a time. Space was seen as particularly important for women as the lack of a private area for disclosing personal or sensitive information creates a barrier for women to access justice. Adjudicators explained that some women are not comfortable standing and speaking in front of elders and only speak openly about their cases in the presence of other women alone. Privacy concerns were also raised by one respondent in Galkayo as a general issue affecting all people seeking justice at ADR Centers: “Some people want to be secretive and don’t bring their clan-specific cases to the ADR Center.”

**“We need: a vehicle for Center operations; to increase the salary of Adjudicators; to have our own building instead of having a rented house; regular training for Adjudicators.”**

**“IDPs need a new ADR Center. They need their own building. We cannot resolve two cases in parallel. The space is small.”**

**ADR actors**

138 H. Dancer, “Power and Rights in the Community: Paralegals as Leaders in Women’s Legal Empowerment in Tanzania”, *Feminist Legal Studies*, vol. 26 (2018), pp. 47–64, available at: <https://link.springer.com/article/10.1007/s10691-018-9371-6>.

139 This effort, targeted at mitigating gender inequality in customary courts processes, resulted in the introduction of female chiefs in two village courts in Kuajok. See IDLO and the University of Juba, College of Law, “Towards a People-Centered Human Rights State in South Sudan”, collection of papers presented at the Symposium on Human Rights in South Sudan Juba, 24–26 May 2016, p. 89, available at: [https://www.idlo.int/sites/default/files/pdfs/highlights/IDLO-COL%20Towards%20a%20People%20Centered%20Human%20Rights%20State%20in%20South%20Sudan\\_0.pdf](https://www.idlo.int/sites/default/files/pdfs/highlights/IDLO-COL%20Towards%20a%20People%20Centered%20Human%20Rights%20State%20in%20South%20Sudan_0.pdf)

140 See R. Ibreck and N. Pendle, “Customary Protection? Chiefs’ Courts as Public Authority in UN Protection of Civilians sites in South Sudan”, The Justice and Security Research Programme, Working Paper 34 (2016).

## Security challenges

The lack of identity documents was raised as a challenge by 24 per cent of ADR actor respondents, who reported difficulties in being recognized at the entrance to Centers in Benadir (specifically in Hamar-Jajab and Hodan). However, this was identified as a safety measure by the Ministry of Justice aimed at ensuring the security of Adjudicators working in an area that is a target for terrorist attacks. Importantly, security concerns were mentioned by participants as constituting a challenge, both due to the presence of armed groups in Hodan and Karan and in relation to clan disputes where clans may be armed and may react violently to Adjudicators’ decisions or threaten them to obtain a favorable outcome.

Hodan, in particular, is the Center receiving the lowest number of disputes, and is not working full-time due to the fact that users are not able to move freely in that area and may be reluctant to access government buildings, where the Center is located, for fear of terrorist attacks.

### Gaps and challenges identified by ADR Center users

#### Lack of power to compel parties to attend case hearings and enforce decisions

Users noted the need to provide ADR Centers with enforcement mechanisms or powers with the twofold aim of reducing referrals to formal justice authorities and increasing compliance by defendants with ADR decisions.

**“The power and authority of the Center should be increased so that it can execute its decisions. Sometimes it happens that the defendant refuses to come to the Center and if the Center does not have the authority or power to bring the defendant or does not have a close relationship with the police, it will be difficult to implement or accept the decision of the Center.”**

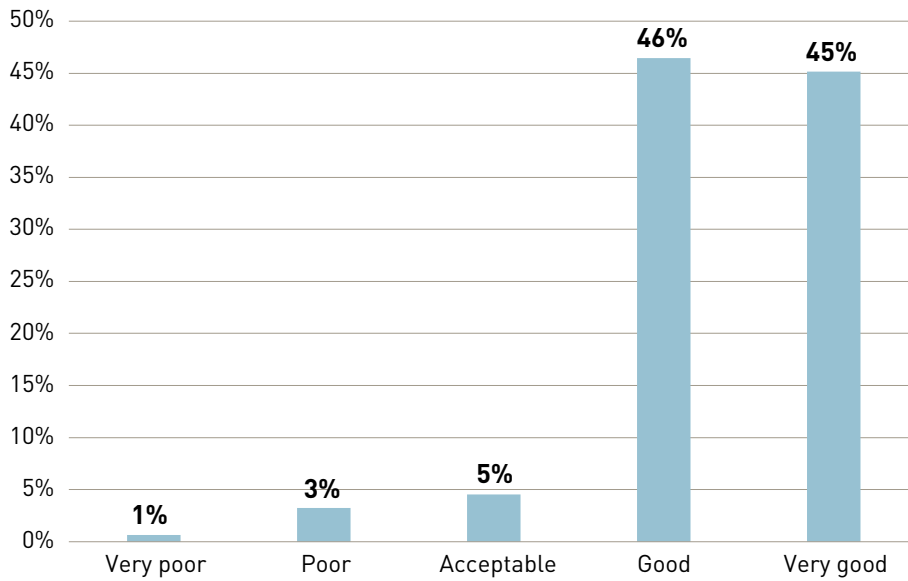
**ADR Center user**

## Satisfaction with ADR Center services

Despite the identified gaps and challenges in the operation of the ADR Centers, the overall view of ADR Center users was positive. When Center users were asked if they see the process as fair, regardless of the outcome, a significant majority (90 per cent) agreed, while 3 per cent said the process was not fair, and 7 per cent were not sure. The majority of users felt that they contributed to the outcome or solution (63 per cent), considered their opportunity to be heard was equal and fair (76 per cent), and ranked

highly the equality and fairness of treatment of parties (96 per cent) in the ADR process.

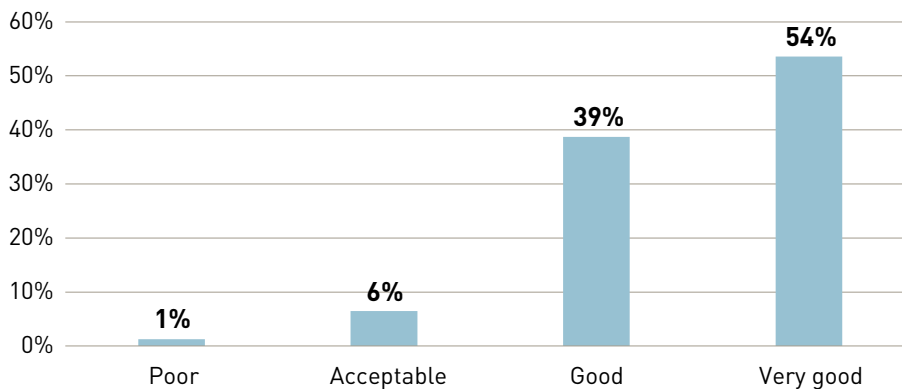
Importantly, when asked to rank the legitimacy of Adjudicators (Figure 34), 91 per cent of users surveyed described Adjudicators as either very good (45 per cent) or good (46 per cent). Only five respondents ranked them as poor while one user ranked them as very poor. Moreover, clan representation in the ADR process was also perceived very positively by users, who ranked clan equity in the ADR process as very good by a large majority, at 91 per cent.



**Figure 34: User views on the legitimacy of ADR Adjudicators**

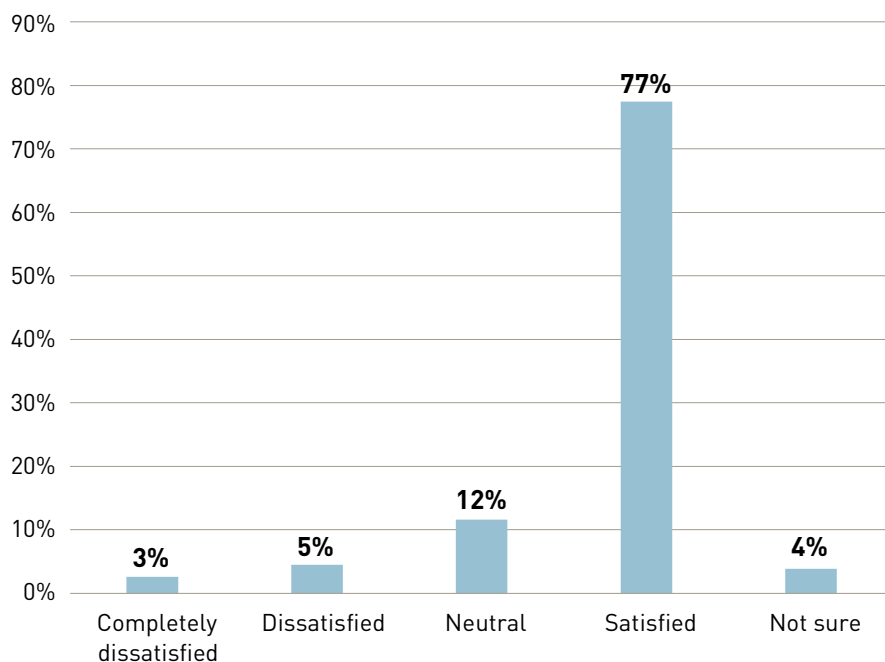
Additionally, when asked to assess the authority of and respect for Adjudicators among their respective communities (Figure 35), 93 per cent of users surveyed ranked Adjudicators’ authority as good or very good. Feedback

collected from users is reinforced by observation which points to Adjudicators enjoying a high level of authority in the eyes of parties, who appeared to respect the ADR process and resulting decisions.



**Figure 35: User views on Adjudicator authority and respect in the community**

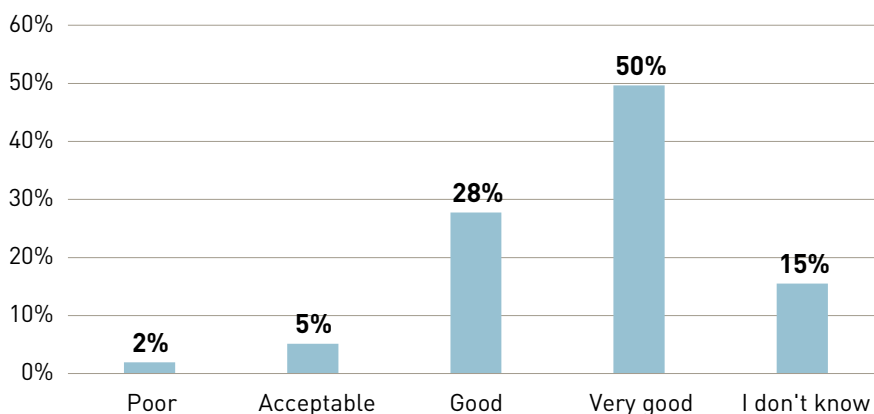
Further, 77 per cent of users indicated that they were satisfied with the ADR outcome, as shown in Figure 36.



**Figure 36: Average level of user satisfaction with the ADR outcome**

Similarly, when asked to rank the usefulness of the resolution, as shown in Figure 37, 50 per cent of those surveyed said that the resolution was very good, while 28 per cent

said it was good. Of the remainder, 15 per cent did not know, while 5 per cent ranked the resolution as acceptable and only 2 per cent said it was poor.



**Figure 37: User ratings of the usefulness of the resolution provided by the ADR Center**

Further, the majority of users assessed the level of transparency of proceedings within the ADR Centers positively, with 54 per cent ranking it as very good, 35 per cent good, and only 3 per cent ranking the level of transparency as either poor or very poor.

When Center users were asked to assess aspects of their participation in the ADR process, the majority indicated they had received necessary and useful information at the Center (71 per cent), felt they could safely present their case (96 per

cent), and had their views and/or opinions heard (94 per cent) and their needs and concerns considered (92 per cent). Overall, the perception of ADR Center users was very positive in most aspects assessed, and when asked to rank the overall performance of the Centers in resolving disputes and enabling access to justice, 78 per cent ranked them good or very good. Importantly, 93 per cent of users indicated feeling that justice had improved in their community since the opening of the ADR Center (Figure 38).

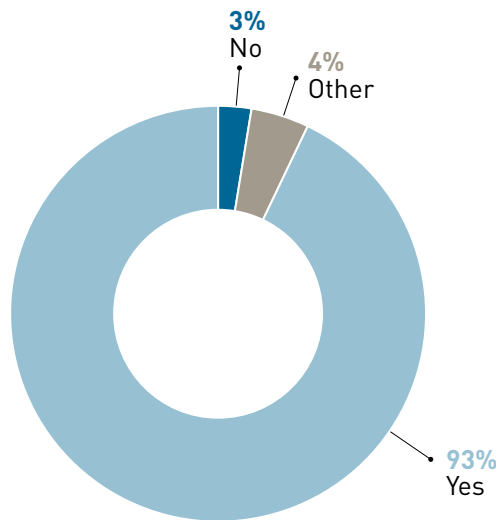


Figure 38: User views on whether justice has improved since the opening of the ADR Center in their community

**“I would recommend that the Centers are expanded and that people are encouraged to go to ADR Centers rather than police stations for family disputes.”**

**“I would recommend that the Center is expanded to branches offices... There are many family-related disputes that happen every day in the district and the Center has helped very much in resolving these disputes.”**

**“The Centers are doing great work, 100 per cent better than the work of the courts and delivering more justice. Therefore, I would recommend that they are expanded, invested in and supported.”**

**ADR Center users**

## PART IV: CONCLUSION AND RECOMMENDATIONS

SDG 16 promotes equal access to justice for all to help realize peace and security through strong institutions, especially justice institutions. As reflected in the 2019 Declaration on Equal Access to Justice for All by 2030, justice reforms must be people centered, helping to solve problems, improve the journey to justice, prevent escalation of disputes and provide access to services and equal opportunities for all.

When matched against these criteria, it is clear that ADR Centers in Somalia are improving the accessibility and availability of justice across structural, procedural and normative dimensions of justice. In communities with ADR Centers, services help prevent escalation of conflict and offer timely dispute resolution, with tailored solutions. While barriers to formal courts remain large, ADR Centers offer simple, proportionate

and sustainable options that empower participants with meaningful involvement.

While important issues exist that must be addressed, the process and outcomes in ADR Centers are seen as fair and efficiently delivered, at no cost to the user. Inequalities persist, but efforts towards inclusion are progressing, with innovative ideas and solutions to reach and involve women and other marginalized populations, including in remote regions of Somalia. Like in many countries, the ADR Centers studied are part of a system of justice that is imperfect and evolving, providing needed services, which can be strengthened through more holistic community involvement and support. Table 6 provides an overview of ADR Centers and their contribution to SDG 16 indicators.

Table 6: Select SDG 16 targets and indicators and related data

DATA COLLECTED RELATED TO SDG 16 TARGETS AND INDICATORS	
<b>16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms</b>	19 per cent (30/155) of users surveyed were involved in a matter related to domestic violence
<b>16.6.1 Primary government expenditures as a proportion of original approved budget, by sector (or by budget codes or similar)</b>	The average yearly cost of one ADR Center is approximately US\$40,000 in Puntland and US\$50,000 in Benadir (including staff salaries, Adjudicator allowances, operation and building rental costs)
<b>16.6.2 Proportion of population satisfied with their last experience of public services</b>	78 per cent of users surveyed ranked the overall performance of ADR Centers as good or very good
<b>16.7.1 Proportions of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service, and judiciary) compared to national distributions</b>	Of 70 Adjudicators and Clerks in six ADR Centers, 14/70 (20 per cent) are women and 56/70 (80 per cent) are men (as of April 2020).
<b>16.7.2 Proportion of population who believe decision-making is inclusive and responsive, by sex, age, disability and population group</b>	92 per cent of users surveyed said their concerns were considered while 94 per cent said their views and/or opinions were heard
<b>16.B.1 Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law</b>	96 per cent of users surveyed ranked equal and fair treatment in the ADR process as good (31 per cent) or very good (65 per cent) and 95 per cent ranked the ADR process as objective and unbiased

While remaining gaps and areas for improvement need to be addressed, the strengths of the ADR Center system can help focus and complement the role of formal justice actors in Somalia. Notably, ADR Center services are completely free, which makes it possible for many individuals who cannot afford court fees to access justice. Further, the Centers provide an efficient and quick resolution of disputes through a timely process, free from complexities typical of the formal justice system, which is essential for vulnerable groups and populations affected by poverty. The issues being heard relate primarily to financial and business disputes and women claiming payment of family maintenance bills. Additionally, the ADR decision-making process is based on the mixed application of negotiated settlement and sharia and Xeer law and norms, emphasizing reconciliation and peaceful coexistence of different community members and groups. These features make ADR Centers more aligned with traditional Somali dispute resolution, ensuring resonance with communities.

In all districts studied, a reluctance by individuals to access justice through formal avenues, coupled with the lack of capacity or willingness of courts and police to address GBVAW or other abuse cases,

make the Centers a predominant option for accessing justice. Promising practices and findings identified through the study indicate further potential for ADR Centers to fill justice gaps, particularly with regard to referring victims/survivors and vulnerable parties to adequate support services. Moreover, the special role undertaken by women ADR actors in ensuring equal participation and safety of female parties emerged clearly.

Challenges and areas for improvement remain in relation to the capacity and skills of ADR actors on jurisdictional aspects, legal and human rights standards and safeguards for the vulnerable, notably with regard to participation of children and protection of victims/survivors of violence. In particular, protection mechanisms for women to prevent further or potential violence should be strengthened by ensuring: appropriate assessment of danger in cases when the ADR Center has knowledge of women being subjected to violence, even violence that is not considered “severe”; evidence collection; and access to comprehensive services for victims/survivors, including through closer cooperation with local women’s organizations. Representation of minorities and vulnerable groups in ADR Centers could be further

enhanced through strengthening the role of women Adjudicators and building the capacity of paralegals in acquiring a stronger role in informing parties of their rights, referring cases beyond ADR jurisdiction to competent authorities, and monitoring and overseeing the ADR process more broadly. Moreover, further capacity building is needed for ADR actors on case recording and management, accountability and case file data reporting mechanisms, which emerged as weak or inconsistent between different Centers.

While a mapping of relevant services and civil society organizations aimed at creating systematic referral pathways for victims/survivors appears essential, capacity building of the police and formal courts emerged as another priority area for further programming, particularly in relation to respective jurisdictional scope, procedural safeguards for victims/survivors of violence and other vulnerable categories, and strengthening coordination and cooperation with ADR Centers.

With dedicated investment by the Somali Government and a supportive international community, access to justice for all and inclusion, justice and peace can continue to advance through ADR Centers. This is not without significant challenges, and long-term commitment and efforts are required, moving beyond ad hoc and fragmented efforts. Center users signaled clear value and benefit from the six Centers studied, but this can only be sustained through dedicated engagement and investment in the evolution of traditional systems that support access to justice for all Somalis.

## RECOMMENDATIONS AND ENTRY POINTS TO IMPROVE ACCESS TO JUSTICE FOR ALL

The research findings identify the following recommendations and action areas for Government and partners with sustained donor support for future ADR policy and programming in Somalia:

- » **Increase representation of all constituencies in ADR Centers:** include youth representatives in support functions, include IDP focal points within adjudicator rosters, further promote representation of clan minorities present in communities, and ensure equal representation of women as Clerks and paralegals, and on adjudicating rosters.
- » **Extend and locate ADR Center operations to reach wider geographic and populous areas:** emphasize areas around IDP camps, remote areas, and areas particularly affected by poverty, including through the use of mobile operations with adjudication on-site.
- » **Increase community awareness and understanding of the purpose and operation of ADR Centers:** reinforce existing awareness-raising activities through further targeted community dialogues and radio programs, including enhanced involvement of paralegals in community outreach activities.
- » **Ensure long-term sustainability of ADR Center operations and expansion:** provide dedicated human resources, budget and capacity from Federal or State Ministries of Justice to integrate ADR Centers within the justice system of Somalia, while preserving flexibility and independence. Community outreach activities can reinforce a sense of ownership of the Centers by communities to foster collaboration and volunteer support networks at the local level, including through continued use of the premises as community hubs to conduct humanitarian and awareness-raising activities outside of working hours in collaboration with civil society organizations.
- » **Allocate sufficient budget to ADR Center operations and promote a more flexible financial management model:** to facilitate logistical operations and office administration and provide the necessary equipment to ensure optimal case management within ADR Centers, ensure sufficient budget allocations and gradually promote financial autonomy to allow ADR staff to respond to unpredictable expenditures and circumstances related to case management, including transportation support for users coming from remote areas or costs related to the collection of evidence.
- » **Promote transparent financial operations:** ensure accountability of spending, initially through implementing partners and then with gradual and more direct management of operations including in relation to office equipment, transportation and administration.
- » **Continue to review jurisdiction and adjust the SOPs:** based on evidence and in consultation with ADR stakeholders, continue to monitor, update and amend the SOPs when justified, with consideration towards:
  - » *Sections 6 and 7:* guidance on degrees of severity of harm and a review of appropriate jurisdiction to promote timely, fair and affordable justice, especially following further capacity building and study in relation to matters such as uncontested divorce, which predominately affects women, and matters in relation to land, which often fail to find resolution at the Centers; and




- › *Section 27*: detailed guidance that includes handling cases of children victims/survivors of violence or abuse, including a tailored protocol for referral to competent authorities and child-support services; and adequate response in GBVAW cases, especially appropriate assessment of further risks for victims/survivors of violence or their family members and that victims/survivors are empowered through participation in the ADR process.
- » **Conduct a regular program of continuing professional development for ADR actors, emphasizing similarities with sharia and Xeer law and utilize frequent refresher training to focus on key areas of concern:** strengthen capacity of Adjudicators, paralegals and Clerks through training and development focused on: the SOPs and procedural safeguards for victims/survivors of violence and abuse, particularly women, children and other vulnerable parties; human rights standards and specifically gender equality; the Constitution; dispute resolution methods; and case management and recording.
- » **Make concerted efforts to strengthen procedural safeguards for GBVAW victims/survivors and other vulnerable individuals:**
  - › Build capacity of ADR actors on a victim/survivor-centered approach, psychosocial first aid – including assessment of further risk of violence – and safe identification of services and referrals
  - › Ensure ADR Centers have safe and separate spaces for female staff to hear sensitive cases brought by GBVAW victims and other vulnerable individuals
  - › Map legal, social and health support services and ensure focal points are identified and appropriate networks and referral pathways created
  - › Develop a referral and follow-up protocol through a participatory and culturally sensitive process for cases involving GBVAW and child abuse, to be annexed to the SOPs and made available in printed format in Somali in every Center
  - › Conduct focused capacity building on the content of the referral and follow-up protocols for all ADR actors upon appointment to function and periodically thereafter.
- » **Continue to strengthen the role of paralegals within ADR Centers:** focus on jurisdictional aspects of both ADR Centers and formal justice authorities, as well as awareness raising and providing basic legal aid and legal literacy to community members, including in remote areas of IDP camps, referring victims/survivors of violence or parties to disputes to formal justice and ADR actors as appropriate, and strengthening community dialogue and accountability.
- » **Provide hard copies of relevant legal resources and regulations in Somali in all Centers:** beginning with the SOPs and the Constitution, develop and provide simple and easy-to-use versions of legal resources for ADR actors.
- » **Encourage collaboration and information sharing among different ADR Centers:** through regular exchanges and peer learning activities coordinated nationally, identify lessons and good practices on ADR. This could be done through regular participatory dialogues or periodic short-term secondments of ADR staff members to other Centers.
- » **Provide for mechanisms of oversight and monitoring of ADR Center operations:** to reinforce accountability of all ADR actors and overall transparency and efficiency of ADR Centers, consider accountability mechanisms such as a code of conduct, reporting templates to regularly report on performance to Ministry of Justice focal points, regular on-site visits and monitoring by Ministry of Justice representatives as well as oversight and reporting by paralegals.
- » **Establish a standardized data collection system across ADR Centers:** ensure that information is collected at regular intervals and in a consistent manner that enables data aggregation across different Centers, regions and districts to inform justice policy.
- » **Strengthen referral pathways with formal justice authorities:** collaborate with formal justice actors, including the police, courts and district and other local government actors, to promote understanding of the functioning of ADR Centers and jurisdictional issues, as well as waiver or removal of court fees for vulnerable and indigent individuals.
- » **Establish regular coordination mechanisms:** ensure information sharing between formal authorities, ADR Centers, community organizations and support service providers to foster coordination for referrals, understand gaps and barriers, and facilitate cooperative solutions to unmet justice needs.

» **Strengthen formal justice institutions:** prioritize efforts to strengthen the police and courts in locations where these institutions are not operational or have significant capacity gaps, including adequate capacity building on responding to GBVAW and other serious crimes, emphasizing gender sensitivity, non-discrimination and anti-corruption to ensure timely, expeditious and fair trials. Strengthening should be done through an

approach aimed at increasing cultural sensitivity and responsiveness to community needs to facilitate wider access, including by women and vulnerable groups for serious crime prosecution. In particular, the Federal and Member States Ministries of Justice should ensure that no fees or other court charges are imposed on victims/survivors of GBVAW seeking justice through the formal systems.

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

**FOSTER**   
**accountability, collaboration and information sharing**

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



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

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Viale Vaticano, 106 | 00165 | Rome | Italy

Tel: +39 06 40403200 | Fax: +39 06 40403232 | Web: [www.idlo.int](http://www.idlo.int) | Email: [idlo@idlo.int](mailto:idlo@idlo.int) | Twitter: @IDLO

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