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ENABLING ACCESS TO JUSTICE FOR SURVIVORS OF GENDER-BASED VIOLENCE AGAINST WOMEN IN SOMALILAND

ISSUE BRIEF



This issue brief was developed as part of the project “*Strengthening the Social Contract through Access to Justice in Somaliland*”, which aims to foster the social contract by increasing the legitimacy of justice institutions. It seeks to summarize the barriers affecting women’s access to justice, notably when they are survivors of gender-based violence against women (GBVAW). The issue brief considers possible pathways to addressing some of these barriers, including through the provision of support by the Alternative Dispute Resolution Centres.

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INTRODUCTION

During the last 15 years, Somaliland has made considerable progress in increasing the accessibility of justice. This progress is reflected in the doubling of the number of judges in under a decade (90 in 2011, 186 in 2018), rolling out of mobile courts in the six regions of Somaliland, and appointment of female prosecutors and court registrars in a male-dominated patriarchal environment.¹

In spite of this progress, many justice gaps continue to affect the population of Somaliland. The multi-layered justice system, which does not have a clear jurisdictional division between *Xeer* (Somali customary law based on oral agreements between clans), statutory law handed down by government courts based on the colonial common law system, and sharia (Islamic religious law), restricts access to justice for vulnerable groups who are less informed about their rights and less able to navigate these different justice pathways.²

Women face specific forms of exclusion and marginalization. Although their rights are in many cases better protected under statutory law and sharia, their ability to access courts is highly restricted. Traditional elders prefer to resolve cases of gender-based violence against women (GBVAW) through *Xeer*, despite the often harmful outcomes for female survivors in this legal framework.³ As women grow increasingly disillusioned with *Xeer* and, at the same time, are unable to access and trust the formal justice system, they are left with virtually no meaningful options for redress.

In contexts of fragility, structural gender-based discrimination, lack of adequate legal frameworks, and limited capacity of formal justice institutions to handle GBVAW cases, the establishment of state-directed or hybrid CIJ structures contributes to promoting equal access to justice for all through people-centred approaches.

The six Alternative Dispute Resolution (ADR) Centres in the Eastern Regions of Somaliland supported by the International Development Law Organization (IDLO) aim to expand and improve access to justice, through people-centred approaches. The ADR Centres offer free, accessible, and fair justice services for basic criminal and civil law disputes while strengthening the government's means of safeguarding the rights of women, children and vulnerable persons. This issue brief describes the key barriers preventing access to justice for survivors of GBVAW in Somaliland and outlines opportunities for addressing some of these barriers through the IDLO-supported ADR Centres.⁴

GENDER-BASED VIOLENCE AGAINST WOMEN IN FOCUS

GBVAW is a global problem and a serious and pervasive form of insecurity in Somaliland. According to statistics compiled by the United Nations (UN) Somalia Security and Justice Programme, approximately 99 per cent of women aged 15-49 in Somalia have been subjected to female genital mutilation.⁵ By one estimate, 45 per cent of women are subjected to child marriage.⁶ A 2018 prevalence study found that 35.6 per cent of women experienced physical or sexual intimate partner violence in their adult lifetime, and 16.5 per cent experienced physical or sexual non-partner violence.⁷ These figures are likely to be under-estimates, as social norms in Somalia generally discourage reporting of GBVAW cases. A perceived increase in GBVAW in Somaliland has been reported during the COVID-19 pandemic.⁸ It should also be noted that women, adolescent girls and children represent 95 per cent of the survivors that reported incidents of GBV in Somalia in 2020, and almost 75 per cent were from displaced communities.⁹

Survivors face systemic challenges when seeking access to justice

Survivors have limited awareness of their rights and how to realize and protect them. The reasons for this lack of awareness are multiple and intersecting. Many survivors are illiterate and struggle to access reliable legal information.¹⁰ In any case, this information is not readily available, especially in rural areas. There are also significant financial costs associated with pursuing redress through formal justice institutions, which prevent survivors from accessing courts. Regional Courts, which have jurisdiction over sexual and gender-based

Definition of Gender-Based Violence Against Women

GBVAW¹¹ refers to “violence that is directed against a woman because she is a woman or that affects women disproportionately”, including acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Violence against women can take place:

- Within the family, including domestic violence, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation/cutting and other traditional practices that are harmful to women.
- Within the community, including rape and sexual abuse; sexual harassment and intimidation at workplaces, educational institutions, public physical and virtual spaces; trafficking in women; and forced prostitution.
- When condoned by the State including physical, sexual and psychological violence.
- When it is economic in nature including acts such as denial of funds, refusal to contribute financially, denial of food and basic

needs and controlling access to healthcare, employment, etc.

- When there are violations of rights of women in situations such as armed conflict, including systematic rape, sexual slavery and forced pregnancy, forced sterilization, forced abortions or coerced or forced use of contraceptives, pre-natal sex selection and female infanticide and targeting of women facing intersectional discrimination.

violence and land cases, are located in urban areas where travel from a rural area can cost up to \$300.¹² GBVAW survivors from low-income backgrounds and/or rural communities cannot travel to a major city or hire a lawyer due to prohibitive costs.¹³

A pervasive challenge survivors face when accessing formal justice institutions is the lack of specialized courts and trained judges with the capacity and qualifications required to handle sensitive GBVAW cases. A related challenge is protection of confidentiality:¹⁴ due to the open nature of court hearings, and the lack of specialized procedures to preserve confidentiality and anonymity, survivors often fear that their case may be widely disclosed, leading to stigmatization and social discrimination.¹⁵

Moreover, legal protection for survivors is insufficient. Somaliland does not have specific laws on sexual offences; instead, survivors and their advocates must rely on prohibitions contained in the 1962 Somali Penal Code. The Code contains major gaps that can be used by perpetrators to escape justice.¹⁶ Crimes in the Penal Code are too narrowly defined to satisfy international legal standards of protection from GBVAW. Somaliland does not have a law that

specifically addresses domestic violence, and there are no specific laws against spousal rape.¹⁷

Appreciating the inadequacies of the Penal Code, concerted efforts have been made by civil society since 2013 to advocate for a comprehensive sexual offences law. The Rape and Sexual Offences Act was adopted in 2018 to improve the prosecution of GBVAW. The law introduced new and improved definitions for the offences of rape, gang rape, sexual offence, sexual assault, sexual exploitation, forced marriage, and abuse of positions of trust or authority, and provided for criminal liability for early marriage and human trafficking for sexual exploitation. The law also introduced procedural safeguards for the prosecution of GBVAW, and provisions for the protection of aggrieved parties, witnesses, and certain vulnerable groups.

However, shortly after its adoption, the Act was suspended due to opposition from religious leaders and traditional elders, who found the new law too progressive and demanded amendments in line with more conservative interpretations of sharia law.¹⁸ In August 2020, a new bill, the Rape, Fornication and other Related Offences Bill,¹⁹ was introduced; rooted in a conservative reading of sharia law, it focused more on criminalizing fornication and adultery, as opposed to rape and other sexual offences. It introduced an evidentiary requirement of four male eyewitnesses in cases of rape and a reduction of the age of consent to 14 years old.²⁰ This law substantially reduced protections for victims, including allowing child and forced marriages if parents consider that it is in the best interests of the minor or of a woman affected by intellectual disability. The bill was passed by the House of Representatives in August 2020 and transmitted to the House of *Guurti*. At the time of writing, the bill is still with the *Guurti*, and advocacy (including by women's organizations such as Somaliland Women in Law) has been ongoing, demanding

withdrawal of the bill and reintroduction of the 2018 Rape and Sexual Offences Act.

In addition to limited legal protection, the capacity of the police to investigate and prosecute GBVAW is very limited. Somaliland does not have forensics laboratories to properly analyse evidence which would typically be used in such cases.²¹ The lack of forensics processing facilities presents a significant barrier to the effective prosecution of GBVAW. Without forensic evidence, prosecutors must rely on witness testimony, and in these cases (especially sexual assault cases) there are rarely any eyewitnesses beyond the survivor and the accused. Fear of reprisal from the perpetrator and their family or clan is also a challenge for survivors.²² This fear is particularly acute among survivors coming from minority clans and displaced persons, or when there is an income or power disparity between the survivor and the accused.²³

Survivors of GBVAW have limited choices when seeking justice

Contrary to international standards,²⁴ customary and informal justice (CIJ) mechanisms in Somaliland are often used to address crimes involving GBVAW.²⁵ While most GBVAW cases go unreported, those that are reported are dealt with mainly through CIJ. These informal dispute resolution mechanisms are governed by *Xeer* and/or sharia.²⁶

Survivors tend to rely on such mechanisms because they are physically and financially more accessible than formal courts, which are confined to Hargeisa and other major cities. Additionally, the court premises themselves tend to be unfriendly spaces for survivors, not necessarily because of the prejudices of the judges or staff – although this may be the case – but because they are congested and cases are heard publicly, making survivors feel exposed and vulnerable.

The *Xeer* system, which has historically been the mechanism for the resolution of all disputes in Somaliland, and which continues to be used more than any other forum, does not include the notions of individual rights or responsibilities.²⁷ Under *Xeer*, resolution of rape and gang rape cases can result in compensation split between the families or clans of the perpetrators, or forced marriage of women to members of an opposing clan for appeasement.

The Somaliland Women's Movement

Recently, civil society and women's groups in Somaliland have demanded that elders refrain from intervening in GBVAW cases. Their advocacy has been successful, and clan elders in certain locations have agreed to abstain from handling these cases. This development is a significant step forward in terms of appropriately addressing GBVAW.

For example, 12 partner organizations worked on the Amplified for Change project to create a unified civil society coalition, advocating for the reduction and prevention of GBVAW. This is the first coalition of its kind in Somaliland.

Women and marginalized groups enjoy better theoretical protection under sharia, which makes no distinction between clans or displacement status.²⁸ In reality, Islamic Arbitration Centres (IACs, which apply Islamic law in everyday justice matters)²⁹ often fail to adhere to international fair trial and human rights standards. Marginalized groups have limited access to the legal tools and representation that they need. When women try to access arbitration processes, clans often intervene to pressure them to withdraw their

case. While privileged women with their own money or the backing of their clan may be able to access justice through IACs, women lacking in social and economic capital, including displaced women and members of minority groups, are less able to do so.³⁰ At the same time, IACs often lack the skills and training to effectively resolve cases in accordance with the law, relying instead on social and customary norms and beliefs which disadvantage or discriminate against women, particularly women from minority groups.

Furthermore, the decision-makers who govern both the *Xeer* and sharia mechanisms are predominantly men, and even the formal justice system is characterized by a limited number of women judges, prosecutors, and police officers.

Social and cultural pressures often prevent survivors of GBVAW from seeking justice

GBVAW survivors often face intense social pressure that prevents them from taking their cases to court or from seeking justice at all. In Somaliland's traditional society, GBVAW cases are highly sensitive because of concerns related to the victim's "honour" (and the honour of her family), thus any incident can have far-reaching social implications.³¹ Cases involving GBVAW are even more sensitive when suspected perpetrators come from wealthy or high-status families, or are prominent personalities such as traditional or religious leaders.³² Rather than resorting to court, it is often a more socially acceptable option to resolve GBVAW cases quietly through informal mechanisms or even privately.³³ Survivors face pressure from elders and religious leaders to use CIJ mechanisms, where the anonymity of all parties, even perpetrators, is ensured, to resolve their cases. Elders believe that these mechanisms promote better social cohesion, despite this being to the detriment of the victims.³⁴

Support services for GBVAW survivors are limited

Often, the first contact of a GBVAW survivor (or their intermediary) with the formal justice system in Somaliland is with the police or medical professionals.³⁵ To protect their rights, survivors depend on defence lawyers, and referral mechanisms established by social workers, including providers of immediate medical assistance, temporary protection and accommodation (safe houses), legal aid, psychosocial counselling, and material aid.³⁶

Most of these services are provided by local independent organizations, such as the Somaliland Women Lawyers Association, the Somaliland Bar Association, the University of Hargeisa, the Armoud Legal Clinics, the Baahi Koob one-stop centres, as well as international organizations that support these efforts.³⁷

The availability of these services is very limited. In major cities such as Hargeisa and in general hospitals, survivors have access to free legal aid, medical support, psychosocial counselling, safe houses, dignity kits, and minor financial support.³⁸ Outside of major cities, these services are often not available, and even in Hargeisa their delivery is affected by significant coordination gaps.³⁹

ADR CENTRES: HELPING TO ADDRESS GBVAW IN SOMALILAND

The IDLO-supported ADR Centres assist in addressing Somaliland's access to justice challenges by functioning as CIJ service integration hubs. They provide free dispute resolution services through the application of *Xeer* and sharia law, while referring cases to courts when their complexity or criminal nature necessitates the application of formal procedures and laws.

They are located proximate to formal justice institutions or in the neighbourhoods of vulnerable communities, particularly informal settlements of internally displaced persons (IDPs). The Ministry of Justice (MOJ) has provided buildings with an adjudication courtroom for hearings, space to register and confidentially provide advisory services, as well as a records room in which the Centres' case management system and physical records are accommodated.

The work of both staff and adjudicators is directed by the MOJ's standard operating procedures (SOPs), which set out the Centres' jurisdiction and procedures for provision of advisory and referral services, including a dedicated GBVAW referral protocol, and the application of customary laws and sharia in dispute resolution work. Section 6 of the SOPs provides for the application of sharia law and principles and *Xeer* practices and norms by ADR adjudicators, to the extent that these "are not in conflict with national and nationally applicable international human rights legislation and standards", and that the disputes fall under ADR jurisdiction. Accordingly, Section 6 specifies that each ADR Centre has "jurisdiction to hear and give decision over civil disputes as specified

in these SOP between two or more individual persons that may be remedied by awarding monetary damages or restitution." These include family disputes, contractual or business-related disputes, and disputes over ownership, possession, or rent of movable and immovable property, including land.

Additionally, a number of criminal matters are listed under ADR jurisdiction, namely disputes related to minor thefts, injuries not resulting in serious bodily harm, and acts of physical and other forms of violence, including domestic violence. However, sexual violence cases are explicitly excluded, and referral to formal courts is mandatory for these cases, as well as for "other forms of gender-based violence that result in serious bodily and mental harm" and "any other type of violence that results in serious bodily harm". Section 7 further provides for exclusive formal court jurisdiction over a number of serious crimes, such as murder, terrorism, money laundering, child physical abuse, and trafficking in persons, among others.

ADR Centres link to legal and social support and referral services

A MOJ-hosted ADR administrative clerk oversees the work of each Centre and its staff, ensures proper case filing and registration, and coordinates the Centre's legal and social support functions and relations with formal justice actors (police, prosecutors, and courts). Paralegals assist parties and adjudicators with legal advice, supervise the work of community-based paralegals, and maintain case records. Paralegals are supported by a Centre lawyer

providing more in-depth legal advice and court representation for survivors when required. A full-time social worker provides counselling and coordinates all related medical and psychosocial services for survivors of GBVAW and child abuse.

As per SOPs' prescription, the social worker evaluates all children and persons suffering from a disability called to testify to determine their competency and the potential trauma their participation may cause. If deemed appropriate, the social worker acts as an intermediary during hearings to assist a child or disabled person in understanding and answering questions and in ensuring that they are not subject to harsh questioning or any form of intimidation that may cause trauma. Staff members are selected from local communities through a competitive process. Women are encouraged to apply for all positions.

Each Centre is assigned a roster of 10 to 15 adjudicators selected by the MOJ and the regional authorities in consultation with each community. The SOPs prescribe that at least 20 per cent of the adjudicators should be female and that a minimum of one female adjudicator will participate in every adjudication panel hearing a case involving women and children.

Criteria for selection of adjudicators

The MOJ consults with community leaders and civil society in the selection of adjudicators, who are:

- Identified and selected from among specific social categories (elders, sheikhs, IDP community members, women, business persons) to ensure inclusive community representation.
- Persons who are well-known and respected at the community level for their integrity, impartiality, and service to their community, as well as for their skills and experience in mediation and/or dispute resolution.

ADR Centres' role in addressing GBVAW cases

International standards recognize that handling GBV cases through CIJ mechanisms is not advisable.⁴⁰ However, the introduction of ADR Centres represents an innovative, pragmatic, and people-centred approach. They aim to ensure that, in such cases, referral mechanisms to formal justice and support services are operational. Thus, for GBVAW cases, the Centres act as a bridge to both the police and the courts.

Paralegals stationed at the ADR Centres provide survivors of GBVAW with advice on how to open criminal cases with the police. When necessary, the Centres' paralegals, civil society organizations partnering with the ADR Centres, or community paralegals ensure the referral of GBVAW survivors by physically accompanying them to the police and courts and ensuring that they obtain the medical and legal assistance they require.

When a Centre decides to provide accompaniment referrals, all court and related costs such as transport are covered for those who cannot afford them. This support continues until the resolution of each case. Where a decision has been made by an ADR staff member (either a paralegal or an adjudicator, based on criteria set out in the GBVAW referral protocol⁴¹ for the ADR Centres) to refer a GBVAW matter to the police, and for any required medical examination and treatment, the Centre (or its contracted legal aid provider) will ensure confidentiality and safety. ADR Centres also provide safe spaces for interviews, legal advice, and witness hearings.

Based on research conducted on the first six IDLO-supported ADR Centres in the Benadir and Puntland regions, adjudicators selected from the local community's leadership, supported by community-based paralegals and the formal justice system, are effective in reducing

intimidation and incentivizing enforcement of ADR decisions, including by acting as guarantors of compliance by parties from their own clans, and by actively following-up on sensitive cases after referral.⁴² In addition, the mandatory presence of female adjudicators allows for greater women's participation in justice outcomes, including those related to GBVAW.

In this way, the Centre's use of community-based paralegals, the authority of its adjudicators, and the endorsement by the formal justice system effectively encourage survivors to seek help from community-based paralegals, the Centres, and the police. Building on findings from ADR Centres in Benadir and Puntland, the ADR Centres' legitimacy as CIJ institutions, and the effective manner in which they refer GBVAW matters to the police and support survivors throughout the justice process, begins to challenge the social norms and attitudes impeding survivors' access to justice.⁴³

While data is still weak on criminal justice outcomes, through the ADR Centres, IDLO and other organizations also help to raise public awareness of the problem of GBVAW and the rights of survivors. Community awareness-raising events on GBVAW are hosted by the ADR Centres, elevating the profile of this contentious issue within Somaliland communities and promoting broader policy changes which can ensure access to justice for all through a coherent people-centred system.

Extending ADR Centres' reach through remote services

Interactive radio programming and Call-in Centres are employed as supplementary services. As radio is a medium with coverage across urban and rural areas in Somaliland, radio programming is utilized to promote awareness of rights and justice services and allow citizens to call in for specific advice. Radio programming supplemented by social media

promotes the use of these Call-In Centres for personalized telephone-based justice advice.

Call-In Centres are located at each ADR Centre and staffed by the on-site paralegal and social worker. In addition to telephone-based advice, and as required, Call-In Centres can initiate ADR processes or referrals to formal justice institutions.

A model for responding to GBVAW

The current ADR Centre model provides a coherent and effective set of capabilities and services, which can improve community justice processes for GBVAW survivors by ensuring compliance with international human rights standards, as well as strengthening linkages with the formal justice actors and relevant support services.

How can ADR Centres contribute to protecting the rights of GBVAW survivors? Areas for further exploration

- **Improved information for stronger advocacy.** GBVAW justice data is shared (with the necessary confidentiality measures) with women's groups to facilitate the indispensable advocacy and oversight role these organizations play in applying persistent pressure on formal and CIJ institutions to respond to women's justice needs through fair and inclusive processes.
- **Increased involvement of community members in development of local justice solutions.** ADR Centres provide a ready-made platform for community engagement, and present significant opportunities for community consultation around local justice problems and solutions. These community engagements could have an impact on broader policy processes, including ongoing discussions around the Rape and Sexual Offences Bill.
- **Greater engagement with IDP communities.** ADR Centres can increase the participation of IDP communities (who suffer disproportionately from GBVAW) in the resolution of relevant disputes.
- **Enhanced preservation of forensic evidence in GBVAW cases.** ADR Centre trainings on preservation of forensic evidence can be used to educate and inform investigators and the broader community.

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- 39 Id.
- 40 For example, CEDAW General Recommendation No. 33 on women's access to justice recommends States Parties to "[e]nsure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures" (CEDAW/C/GC/33, 23 July 2015, para. 58). Additionally, Article 48 of the Istanbul Convention requires States Parties to "prohibit mandatory alternative dispute resolution processes, including mediation and conciliation" in relation to GBVAW (Council of Europe, 'Convention on preventing and combating violence against women and domestic violence', 12 April 2011, Art. 48).
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