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Government and Clan system in Somalia.

**Report from Fact Finding Mission to Nairobi,
Kenya, and Mogadishu, Hargeisa and
Boosaaso in Somalia in June 2012.**



Elders in Guurti.
Photo: Christer Svan

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This report was written according to the common EU-guidelines for processing factual COI (2008). It was therefore composed on the basis of carefully selected, publicly available sources of information. All sources used are referenced.

The information provided has been researched, evaluated and processed with utmost care within a limited time frame. However, this document does not pretend to be exhaustive. Neither is this document conclusive as to the merit of any particular claim to refugee status or asylum.

If a certain event, person or organization is not mentioned in the report, this does not mean that the event has not taken place or that the person or organization does not exist. The information in the report does not necessarily reflect the opinion of the authority and makes no political statement whatsoever.

1. Introduction

1.1. Background

During the period of 6 – 19 June 2012, Lifos conducted a Fact Finding Mission to Nairobi in Kenya and to Mogadishu, Hargeisa and Boosaaso in Somalia for the purpose of obtaining updated and in-depth knowledge of the conditions in Somalia, primarily concerning the security situation, clan protection and the ability to return to Somalia. This report primarily presents information concerning government protection and clan protection.

1.2. Scope

During the trip, the delegation conducted forty-six interviews and had conversations with employees at NGOs, UN organisations, Somalis from civil society in Somalia, journalists, clan Elders and representatives of the government in Somalia, as well as employees at embassies and military security experts in Nairobi and tried to get as diverse a picture of the situation as possible through the selection of interlocutors.

Unless otherwise stated, this report presents information collected during the Fact Finding Mission. The sources are listed in footnotes and the fact that only one source is reported does not necessarily mean that more sources have not stated the same information. Some of the sources are kept anonymous at their own request to avoid the risk of being singled out. The anonymous sources have been given separate anonymous identities (for example, international organisation A). In parts of the report where Lifos' assesses the collected information it is presented in the text.

Due to the poor security situation in Somalia, amongst other things, the delegation was not able to travel to parts of Somalia other than Mogadishu, Hargeisa and Boosaaso in order to study the situation on site. The situation in the country still prevents international organisations from working in certain areas in southern and central Somalia and in the cases where organisations are on site, there are no international personnel. The sources which the delegation spoke with in Nairobi have close contact with colleagues in places in southern and central Somalia and in some cases made their own short visits to the area. In light of this, it is important to consider that the information the delegation obtained during their conversation in Nairobi was not first-hand information. The interviews conducted in Somalia were with interlocutors who either have origins there or who have stayed there for a long time through their work.

The interlocutors Lifos met during the research trip had very limited information about the situation in the area in southern and central Somalia, which is still controlled by Al Shabaab, and the information was only second or third-hand information. Therefore, Lifos has very little updated and reliable information about these areas to report.

This report presents the findings discovered during the research trip in June 2012 and how the clan protection works. In order to understand the clan system and its basic structure, the reader is referred to other reports.

2. Individual opportunities for protection and redress in Somalia

Somalia is a clan-based society in which individuals have their legal and economic position and security in the Diya-paying subclan¹. The clan system has changed over time, and in at least some geographic areas it is no longer fully functioning.

When Siad Barre's regime fell in January 1991, the Somali state also collapsed and its functions such as police, judiciary system and administration stopped working. The developments since then have led to three major areas being distinguished in Somalia, with somewhat different situations, namely southern and central Somalia, Puntland and Somaliland. It is important to remember that even within these major areas, the situation is complex and nuanced.

In southern and central Somalia, different regimes have held power over different geographic areas for shorter or longer periods. However, none of these have managed to establish a functioning state over time. From 2004 to 20 August 2012, there was a transitional government supported by the international community (Transitional Federal Government, TFG). After the transitional period, new institutions have taken over. Somali National Government (SNG) is currently the government supported by the international community. In its time, TFG was a very weak government, which for a long time only managed to contain territory in parts of Mogadishu and this was only with support of the African Union Mission in Somalia (AMISOM). After Al Shabaab's withdrawal from major parts of Mogadishu in August 2011, TFG drove Al Shabaab out of more and more areas with the support of AMISOM and allied clan militias. The SNG has basically taken over the TFG's role.

Somaliland declared its independence in 1991 and has since functioned as a de facto independent state, but is not internationally recognised. Puntland declared its autonomy in 1998. In both Somaliland and Puntland, parliamentary and presidential elections have been held. In Somaliland and Puntland, there are police systems and judicial systems, even if they are led by a weak or very weak state.

2.1. Lifos' comments

Lifos notes that the traditional clan system, the collective thought patterns which come with it and the Somali common law, Xeer, which is traditionally used within the clan system, permeate all of Somalia. This also applies in parts where there is a police and judicial system and even where police and judicial systems are being used. An analysis of police and judicial systems in Somalia must include the clan system's influence on them.

Lifos notes that since the research trip was conducted in June 2012, the transitional period ended on 20 August of the same year and a new Parliament, a new Speaker of Parliament, a new President and a new government have been appointed (Somali National Government, SNG). Lifos notes that the SNG basically shouldered the TFG's role in the political context in Somalia and believes that the structures described in this report in terms of police and judicial system, clan

¹ Diya is blood compensation paid from one Diya-paying subclan to another. The Diya-paying subclan is the level of subclan which is collectively responsible for their subclan's security and has an obligation to compensate other subclans for damages which their own subclan has caused them.

system and the relationships between them still apply after 20 August 2012.

3. Government

Before the end of the transitional period, the clan had influence through the Elders in the process of forming institutions, amongst other things, which would then be built by the appointed Parliament and later the elected Speaker of Parliament and President. There were also conferences before the end of the transitional period in which the clans were represented by the Elders. During this period, there were problems with so-called "false Elders". A genuine Elder inherits his position from his father upon the latter's death. A false Elder is not in the right place in the "order of succession" to be an Elder. These false Elders who were sent to represent the clan instead of the genuine Elders compromised the traditionally recognised Elders. A genuine traditionally recognised Elder thinks and makes sacrifices for his clan and represents the entire clan, which is not always the case with false Elders. Before the end of the transitional period, there was a power struggle within the clans and within the TFG in which everyone wanted to improve their positions for after the end of the transitional period on 20 August 2012. If the traditionally recognised Elder does not come to the meeting, someone else is appointed as Elder. The clans do not accept the outcome of the meeting if their leaders do not participate. If you want to have stability, you have to work with the traditionally recognised Elders.²

An international organisation (G) stated in a conversation in June 2012 that clan protection is parallel with secular law. A person sent to prison for having killed another person may be forced to pay Diya. If Diya is not paid, the offender may remain in prison but he is released once Diya has been paid. If there is an agreement between the victim's and offender's clans, the offender may be sentenced to a short prison term. Therefore, people who have no value to the clan may remain in prison for a long time. The formal legal system is used for all types of crime, such as disobedience to parents. The clan system works better in rural areas and perhaps even in larger towns such as Baidoa.³

3.1. Mogadishu

3.1.1. Police

An employee of AMISOM stated that the TFG is a government in name only, without the power to act. It is not a unit and is more reactive than active.⁴ The TFG can be seen as a number of islands which use and abuse the TFG as an organisation. It has a very small police force. You cannot report to the police and there is very little police activity. In some areas, the militias act as police.⁵ The police in Mogadishu are corrupt.⁶ The chain of command within the police is not upheld.⁷ Abdi Mohamed Ismail at Radio Shabelle gave examples. A friend and colleague of Abdi visited the immigration authorities in Mogadishu and was met with threats that he would be killed when he left the mosque, which then happened. After the attack, a man tried to follow the perpetrator, which led the TFG to kill the man. The day after, the TFG accused another man of the deed and executed him by shooting.⁸ Another example of the lack of discipline and lack of chain of command is rape, primarily of women who are internally displaced. The perpetrators are police

² Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

³ International organisation (G), talks in Nairobi 08.06.2012

⁴ Employees at AMISOM, talks in Nairobi 07.06.2012

⁵ International organisation (E), talks in Nairobi 07.06.2012

⁶ International organisation (F), talks in Nairobi 07.06.2012

⁷ Elman Peace Human Rights Center, talks in Mogadishu 10.06.2012

⁸ Abdi Mohamed Ismail at Radio Shabelle, talks in Mogadishu 10.06.2012

officers and soldiers from TFG, but also freelance militia members.⁹

An international organisation (G) stated that there are about 10,000 militiamen who are not formally integrated into the TFG. There are local militias governed by District Commissioners who perform police duties. There are about 6,000 police officers and about 12,000 men in the TFG army.¹⁰ There are 6,000 police officers on the payroll, but in reality there are not as many police officers as that in Mogadishu. Those which exist are poorly armed, do not have sufficient access to vehicles and are not committed to their work. One example is the internal refugee camp Badbaado, which is run by the TFG and can be categorised as a disaster in terms of security. The police don't dare do anything about the problems in the camp.¹¹ TFG men loot and rape and in Lifos conversation in Nairobi in June 2012, it was stated that they had not been paid for nine months.¹² Even Elders from Hawiye stated that TFG police officers remained unpaid. This leads to the police running illegal roadblocks to get an alternative income.¹³ Roadblocks are run for income purposes by TFG police, TFG military, District Commissioners and others who lay claim to an area with a roadblock. Disagreement about distribution of income can lead to shot-outs.

These shot-outs can occur between different groups within the TFG police, between different groups within the TFG military, between the police and military, between District Commissioners' militias and TFG police, etc. - it is everyone against everyone.¹⁴

An international organisation (G) stated that some progress had been made and that some government functions are performed by the TFG. There are no statistics on how many cases are reported to or investigated by the police. However, there are over a thousand people held in detention. Some are held for links with Al Shabaab, but there are also common criminals. The police and the judicial system are partially functional, but the question is whether it serves the interest of the people. A person who is in custody can be bailed out of prison or arrest. The system of police detention is such that the victim's side will turn to the police, who detains the suspect. This is a way to put pressure on the perpetrator's side in a conflict. The problem is then solved outside the police system. Only cases which have a political aspect go through the entire process in the police system.¹⁵ Elders from Hawiye stated that law and order exists in name only. There are no effective police or courts and offences against an individual cannot be taken to these authorities. The police do nothing about a report and have no capacity to investigate cases. There are police stations in all of Mogadishu's sixteen districts, but sometimes there is not even one police officer on site at the station. It is expensive for individuals to pursue a case in court.¹⁶

An international organisation (G) stated that those seeking protection or redress have the possibility to turn to the police in Mogadishu if they know who the perpetrator is and the perpetrator is not above them in the hierarchy. The victim pays for the alleged perpetrator's livelihood while he is in prison and also pays for the police investigation. When the perpetrator is sentenced to a prison term, it is his family who from then on has to pay for his livelihood in prison.¹⁷

⁹ Somali Women Development Center, talks in Mogadishu 10.06.2012

¹⁰ International organisation (G), talks in Nairobi 08.06.2012

¹¹ International organisation (F), talks in Nairobi 07.06.2012

¹² Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹³ Elders from Hawiye, talks in Mogadishu 08.06.2012

¹⁴ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁵ International organisation (G), talks in Nairobi 08.06.2012

¹⁶ Elders from Hawiye, talks in Mogadishu 08.06.2012

¹⁷ International organisation (G), talks in Nairobi 08.06.2012

3.1.2. District Commissioners

An international organisation (F) stated that government institutions exist in name only. Ministers have few employees. There is no bureaucracy, but no service either. When a minister leaves office, there is no longer anyone at place in the ministry. It is the District Commissioners who administers, for example, land, buildings and other property.¹⁸ Power structures other than the courts and police are returning, for example, warlords coming back in the form of official persons, such as mayors or District Commissioners.¹⁹

The District Commissioners have power and can provide security, they have weapons and militias and you can turn to them to solve problems. Many districts have strong clans with a lot of power. The outcome of a dispute between a clan and the District Commissioner is likely to depend on who has the most firepower.²⁰ An international organisation (G) stated that the District Commissioners are less clan-based or clan-oriented, and that power and alliances are important to them instead. They also operate fairly independently from the TFG and the mayor of Mogadishu. The mayor is President Sheikh Sharif Sheikh Ahmed's man. Some District Commissioners are allied with the mayor, but only when it suits them. District Commissioners may be in conflict with each other.²¹

It is difficult to tell the difference between the District Commissioners and the warlords, and an international organisation (F) stated that there is probably no difference. The District Commissioners are placed under the governor, who is also the mayor, but do not give up power to anyone else. An international organisation (F) also stated that there are certainly District Commissioners who have contacts with Al Shabaab, not necessarily for ideological reasons, but for economic reasons. There is still support for Al Shabaab in Mogadishu. Somalis are not particularly interested in ideology, but are rather more interested in money and the District Commissioners see to it that their business affairs are doing well.²²

3.1.3. Courts

An international organisation (F) stated that there are no active courts, but that there is an attempt to introduce a secular court system. There are only mobile courts in the areas where local militias, District Commissioners' militias, support the idea, for example in Hodan. They also stated that the Secret Service (National Security Agency, NSA) arrests people suspected of being members of Al Shabaab. The case is investigated while the person in question is being detained. The family must figure out how to get the person out of jail.²³

There are prisons, even prisons belonging to the NSA, throughout Mogadishu.²⁴ It is not possible for the TFG military courts to follow orders. However, military courts function in regard to arrested and accused persons. They have handed down death sentences to be enforced.²⁵ An international organization (G) stated that there are some parts of the judicial system which are not satisfied with the military courts. The military courts are based in Mogadishu but can also travel around the country and have, for example, been on the front lines in Baidoa. A court has nine judges. Judges are not well educated, which is not even a requirement under military law.²⁶

¹⁸ International organisation (F), talks in Nairobi 07.06.2012

¹⁹ International organisation (E), talks in Nairobi 07.06.2012

²⁰ International organisation (F), talks in Nairobi 07.06.2012

²¹ International organisation (G), talks in Nairobi 08.06.2012

²² International organisation (F), talks in Nairobi 07.06.2012

²³ International organisation (F), talks in Nairobi 07.06.2012

²⁴ International organisation (F), talks in Nairobi 07.06.2012

²⁵ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 07.06.2012

²⁶ International organisation (G), talks in Nairobi 08.06.2012

An international organization (G) enumerated the following criminal courts in Mogadishu: District courts, regional courts, appeal courts and the Supreme Court.

These courts may have judges who have no education, not even at a low level, but there are also some judges who are well educated. The transitional constitution is used in areas which are not covered by the Criminal Code from 1960. The United Nations Political Office for Somalia (UNPOS) teaches on the basis of the 1960 Criminal Code – which has not been used for over 20 years.²⁷

3.1.4. Access to government

Influential people who acquired their power through their clan or by other ways have the power to open doors. If you are close to President Sheikh Sharif Sheikh Ahmed, Speaker Sharif Hassan Sheikh Aden or anyone who is rich, or if you yourself are rich, you have access to protection.²⁸ An international organisation (G) stated that you do not necessarily seek redress and protection from the government, but from a power centre.²⁹ The Somali Women Development Center stated that an important and powerful person in the community cannot be reported to the police. Such a person has enough influence to pull strings and to redirect the investigations to such an extent that the report becomes meaningless.³⁰

3.1.5. Threats from Al Shabaab

In Mogadishu, Al Shabaab still wields influence in the north-eastern districts and in Daynile. In these areas, it is possible for Al Shabaab to hide, but the areas are still not completely safe for them. There is a larger presence of dissidents in the population in those areas.³¹ If someone has received a threat from Al Shabaab, they turn to the NSA or TFG for help.³²

4.1.6. Women

The chain of command within the police is not upheld, which, amongst other cases, becomes apparent when women report rapes to the police. The Elman Peace Human Rights Center gave examples from Mogadishu. When a woman reports a rape, the police send her to a doctor for a medical examination. The doctor is a member of the police and so far the Elman Peace Human Rights Center is unaware of the doctor ever assessing that injuries were caused by rape. The stigma of having been raped is high and there is no protection, which means that women who are raped do not report to the police. The victim must also make practical arrangements, such as who is going to protect her when she leaves the police station after making a report. If she identifies the offender, she can be killed. The police ask the woman questions such as "Where were you? Were you in a dark area alone? Why were you there? Did you attract or tempt the man?" so as to put the blame on her.³³

The Somali Women Development Center stated that women who have experienced domestic violence rarely report the matter to the police. The police then write a report which is sent to the court, which could lead to the conviction of her husband (who is often the abuser in domestic violence cases). However, the clan Elders will intervene and, if sentenced to a prison term, the man will soon be released, sometimes after only one day. The woman is then expected to forgive

²⁷ International organisation (G), talks in Nairobi 08.06.2012

²⁸ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

²⁹ International organisation (G), talks in Nairobi 08.06.2012

³⁰ Somali Women Development Center, talks in Mogadishu 10.06.2012

³¹ Employees at AMISOM, talks in Nairobi 07.06.2012

³² International organisation (F), talks in Nairobi 07.06.2012

³³ Elman Peace Human Rights Center, talks in Mogadishu 10.06.2012

the man for beating her.³⁴

The Somali Women Development Center stated that there are no safe women's shelters in Mogadishu.³⁵

3.2. Southern and central Somalia – the area from which Al Shabaab was driven out

There are local administrations headed by a District Commissioner (DC). Each region has its own specific local conditions and different clans are influential in different geographical areas. An employee of AMISOM stated that if local administrations are created on a bottom-up basis, clan tensions will increase.³⁶ Hibo Yassin and Zakaria Mohamed Sheikh Yusuf stated that the TFG administration is strong in the liberated areas, but that the TFG administers these areas without consulting local leaders. They appoint people in leadership positions from clans other than the dominant clan of the area. The appointed leaders do not have the confidence of the local clans, which leads to tension. Afmadow, Baidoa, Belet Hawo and Ceel Waaq are all examples of places where only one clan is represented in the TFG's administration, which has led other local clans to conclude alliances. The TFG's administration protects anyone and it is the clan which facilitates this protection. However, the TFG does not protect members of clans linked to Al Shabaab, such as the Murosade. The TFG harasses members of clans which support Al Shabaab, even if the person in question does not support Al Shabaab. TFG administration is strong in the liberated areas. Al Shabaab is located outside the cities from which it has been driven out. The clans which are not included in the TFG administration turn to Al Shabaab if they feel unfairly treated.³⁷

AMISOM has control over some areas, but between cities they only have influence but do not exercise control.³⁸

The situation in southern and central Somalia in the areas from which Al Shabaab has been driven out is worse than in Mogadishu in the sense that situation regarding administration remains unclear, but regarding security the situation is not worse for the average person than in Mogadishu.³⁹

An example Lifos heard from several interlocutors in June 2012 is the following. A man in Afgooye with a nine year old daughter in school asked the teacher to stop keeping the girl after school, but continued to send his daughter to school. The girl was sexually abused. When the case went to court, the court stated that testimony from four witnesses is needed for a conviction. The teacher swore his innocence on the Koran. The father was then called to court, because according to the court he lied about the teacher abusing his daughter sexually. The father fled Afgooye and went to Mogadishu, but left his wife and his nine year old daughter behind. The wife was arrested, but apologised and was then punished with flogging. It is unclear what happened to the girl. The family comes from the Hawiye clan Ayr, who are a minority in Afgooye. The father got in touch with his network and asked them to contact AMISOM and the international community to get help from there, since he did not get help from the court and could not rely on the clan either. This pattern does not exist in, for example, Galkaacyo, which is a clan administration, and it didn't use to happen in Afgooye either.⁴⁰

³⁴ Somali Women Development Center, talks in Mogadishu 10.06.2012

³⁵ Somali Women Development Center, talks in Mogadishu 10.06.2012

³⁶ Employees at AMISOM, talks in Nairobi 07.06.2012

³⁷ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

³⁸ International organisation (E), talks in Nairobi 07.06.2012

³⁹ International organisation (F), talks in Nairobi 07.06.2012

⁴⁰ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

Afgooye

The TFG has appointed a person from the Digil clan, which is not from the area, as head of their administration. The local clans in Afgooye frown on this.⁴¹

Baidoa

Baidoa was previously controlled by Al Shabaab. Now there are Ethiopians in the city along with AMISOM and the TFG. There is a power dynamic in the city in which the three centres of power challenge each other.⁴²

An international organisation (F) asked the rhetorical question of who is the government in Baidoa and answered it by saying it is a person who reports more to Ethiopia than to the TFG. Baidoa is a garrison town where you are safe if you stay in your clan's area.⁴³

An international organisation (G) stated that a military court moved to Baidoa to handle a number of cases. There are few known cases of people who are detained by the TFG, but there are probably more cases than are known.⁴⁴

Beledweyne

A District Commissioner has been appointed in Beledweyne, but in a way that does not fit with how leaders are traditionally chosen. This has led to a dispute between the District Commissioners and Shabelle Valley State (SVS).⁴⁵ Hibo Yassin and Zakaria Mohamed Sheikh Yusuf stated that there are more than four clans in the area, but only one clan is represented in the TFG's administration, which leads to tension between the local clans. The leader of the TFG administration comes from Hawadle and has a background in the Islamic courts. Having been left out, the three other clans support Ahlu Sunna Waljamaa (ASWJ) or al-Shabaab.⁴⁶

Galmudug and Himan & Heeb

Both Galmudug and Himan & Heeb are entirely clan-based administrations. The administrations are fundamentally weak, possibly more in Himan & Heeb than in Galmudug. There is a tense situation within the administration in Galmudug.⁴⁷

3.2.1. Lifos' comments

Lifos notes that the administration in southern and central Somalia in the areas from which al-Shabaab has been driven out can vary between locations in terms of scale and composition of government structures. Lifos has no detailed knowledge of how the administrations look in different places.

3.3. Puntland

An international organisation (F) stated that Puntland's government is corrupt and that self-interest reigns. There is corruption at many levels. There are politically motivated murders and it will be a long road until Puntland is relatively stable. Puntland's administration is weak and the population can survive without a state, they have their clans and their militias on which to fall back. There is a lot of crime in Puntland. The Golis Mountains were attacked and there is a lack of activities to

⁴¹ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

⁴² International organisation (E), talks in Nairobi 07.06.2012

⁴³ International organisation (F), talks in Nairobi 07.06.2012

⁴⁴ International organisation (G), talks in Nairobi 08.06.2012

⁴⁵ International organisation (E), talks in Nairobi 07.06.2012

⁴⁶ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

⁴⁷ International organisation (F), talks in Nairobi 07.06.2012

stop piracy, which, according to an international organisation (F), Puntland's ministers are involved in.⁴⁸

The traditional clan system and common law Xeer are very strong in Puntland and are usually used in criminal or other proceedings. Cases involving threats against the state and its security, for example, cases which concern al-Shabaab or piracy, go through the formal police and court system. Convicted persons are imprisoned, but may be released after a certain time.⁴⁹ Mohamud Osman Mohamed, judge at a Sharia court, stated that there were two types of crimes in which clan were not involved: when street boys are involved or when a person from another area, such as southern and central Somalia, is involved.⁵⁰ Deputy Security Minister Abdirizak Mohamed Ismail stated that the clans help the police and courts in their work.⁵¹

The judicial capacity in Puntland is still not sufficient.⁵² There are no courts in rural areas. Cases there are referred to larger cities; a court can sometimes also travel to a rural area to take on a case.⁵³ An employee at the Norwegian Refugee Council stated that the court system functions in urban areas, but it is not always that good at protecting the individual. If there is a victim in the conflict, there will be negotiations within the clan system.⁵⁴ The Ministry of the Interior stated that the government in Puntland tries to provide the judicial system with sufficient resources, both in terms of finances and knowledge, for example, through a legal faculty, and works towards changing attitudes this way. Elders who handle the majority of cases within the clan system have been made aware of individuals' rights.⁵⁵

It takes four years of study in the Sharia to become judge at a Sharia court. It is possible to study at the University of Boosaaso. Judges who are appointed to work at Courts of First Instance are approved by Parliament. If there is no trained person available at appointment, UNDP has capacity-building programs where a person can get a six-month training in Sharia law.⁵⁶

In the court system, there is a First Instance, a Court of Appeals and a Supreme Court. The president signs the cases in the Supreme Court.⁵⁷

In most cases, the clans take cases out of the courts. The court usually hands the matter over to clan Elders. The clans negotiate and prepare a written agreement. The local court registers the agreement and monitors how it is being kept. If one party does not keep the agreement, the court will come back to the party.⁵⁸ If the two clans agree, the court will release the perpetrator.⁵⁹

Mohamud Osman Mohamed, a judge at a Sharia court, stated that the crime determines whether the case is tried in court or handled within the clan system. If someone is killed, Diya is paid, but the case is also taken to court and if convicted, the perpetrator will receive a prison sentence of two to four years. Mohamud Osman Mohamed also stated that the length of the prison term depends on the injury caused to the victim.⁶⁰

⁴⁸ International organisation (F), talks in Nairobi 07.06.2012

⁴⁹ International organisation (J), talks in Boosaaso 18.06.2012

⁵⁰ Osman Mohamed, Mohamud, judge at a Sharia court, talks in Boosaaso 18.06.2012

⁵¹ Mohamed Ismail, Abdirizak, Deputy Security Minister, talks in Boosaaso 18.06.2012

⁵² International organisation in Puntland (H), talks in Boosaaso 17.06.2012

⁵³ Representative of OCHA in Boosaaso, talks in Boosaaso 19.06.2012

⁵⁴ Employees at the Norwegian Refugee Council, talks in Boosaaso 18.06.2012

⁵⁵ Ministry of Interior, talks in Boosaaso 18.06.2012

⁵⁶ Osman Mohamed, Mohamud, judge at a Sharia court, talks in Boosaaso 18.06.2012

⁵⁷ Elders in Bari, talks in Boosaaso 18.06.2012

⁵⁸ Representative of OCHA in Boosaaso, talks in Boosaaso 19.06.2012

⁵⁹ Employees at the Norwegian Refugee Council, talks in Boosaaso 18.06.2012

⁶⁰ Osman Mohamed, Mohamud, presiding judge at Bari Regional Court, talks in Boosaaso 18.06.2012

Abdiafit Ali Yusuf, a judge at a Sharia court, stated that in cases where two clans do not come to an agreement, the case may be referred to secular law.⁶¹

There are two types of homicide: accidental and intentional homicide. The penalty for accidental homicide is less severe than for intentional homicide. In case of intentional homicide, there are severe penalties in terms of both Diya payment and imprisonment.⁶²

When the clans agree during negotiations that a perpetrator should be killed, the agreement is taken to court. The court refers the matter to the president for approval. The president signs the agreement and returns it to the court.⁶³ The clans' agreement is final and cannot be appealed.⁶⁴ The police monitor the implementation of the decision to execute, but it is a relative of the victim who performs the execution. There is an execution site on the outskirts of Boosaaso, near the cemetery.⁶⁵

However, agreements that a perpetrator should be killed are rarely concluded. During Lifos' visit in June 2012, it was stated that the most recent case occurred two weeks earlier in Qardho and that another such agreement had been reached in Boosaaso a year earlier.⁶⁶

When asked directly by Lifos whether the death penalty existed under secular law in Puntland, one of the judges in the Sharia court stated that there are books which the judges can use and there are crimes under secular law for which the death penalty is prescribed, depending on the crime.⁶⁷

A judgement handed down by the court can be appealed, unlike an agreement between clans.⁶⁸

3.3.1. Military courts

There is a military court in Puntland handling crimes committed by soldiers.⁶⁹

3.3.2. Women

In cases of rape, the case may go through the police and court system. The woman who was raped contacts a nurse and the nearest police station. The police investigate the case and it goes to court. If the perpetrator comes from a strong clan, the clan may try to protect the perpetrator when he is tried in court. It depends on the capacity of the government whether this is successful or not. The clans may also take rape cases out of the courts. In such cases, the court must have a representative at the negotiations between the clans. There is a comparison between the amount of the Diya payment and the length of imprisonment. The amount of the Diya payment varies according to whether someone was killed or injured.⁷⁰

It is very difficult to take cases of adultery to court. It requires four witnesses, which it is very unusual to find. If this were to happen, which the judges from the Sharia court which Lifos spoke to in Boosaaso in June 2012 had never experienced, the person would be sentenced to between

⁶¹ Ali Yusuf, Abdiafit, judge at a Sharia court, talks in Boosaaso 18.06.2012

⁶² Hussein Isse, Abdirizak, judge at a Sharia court, talks in Boosaaso 18.06.2012

⁶³ Osman Mohamed, Mohamud, judge at a Sharia court, talks in Boosaaso 18.06.2012

⁶⁴ Representative of OCHA in Boosaaso, talks in Boosaaso 19.06.2012

⁶⁵ Osman Mohamed, Mohamed, judge at a Sharia court, talks in Boosaaso 18.06.2012

⁶⁶ Ali Yusuf, Abdiafit, judge at Sharia court, talks in Boosaaso, 18.06.2012

⁶⁷ Osman Mohamed, Mohamud, judge at a Sharia court, talks in Boosaaso 18.06.2012

⁶⁸ Elders in Bari, talks in Boosaaso 17.06.2012

⁶⁹ Elders in Bari, talks in Boosaaso 17.06.2012

⁷⁰ Ministry of Interior, talks in Boosaaso, 18.06.2012

five and eight years in prison.⁷¹

3.3.3. Minority groups

Minority groups raise their complaints with a clan with the clan in question. If they do not reach negotiations, they can go to court instead. However, this normally does not occur because minority groups often have mullahs and sheiks who can put pressure on the clan who is not listening to the minority group. This applies in urban environments as well as in rural areas.⁷²

3.3.4. Internally displaced persons (IDPs)

IDPs are weak within the clan system and therefore tend to turn to the police. The police sometimes give advice to solve problems, but not always. If the perpetrator is reported to be armed, the police back off and shelve the report. They may try to follow up on the case later, but in most cases, the perpetrator is released from custody. Nowadays, almost everyone except IDPs is armed.⁷³

3.4. Somaliland

3.4.1. Police

Members of the Guurti⁷⁴ stated that the police in Somaliland consists of people from different clans and that all Somali clans could thus be found within the police. Therefore, if a person commits a crime, others from their clan will be found within the police system. The police will contact the person's clan.⁷⁵ It is primarily the police's responsibility to investigate crimes, but the clan will assist the police. The clan members are the police's eyes.⁷⁶ In urban environments, the victim goes to the police station and reports crimes. In rural areas, the victim goes to the clan in the same case.⁷⁷ This depends on the availability of police officers.⁷⁸ In rural areas, two clans who do not agree can turn to the police.⁷⁹

An employee at UNDP stated that the police's capacity is limited in terms of human rights. All police stations have received training in the matter of human rights, which does not necessary mean that these rights are implemented. More support is needed for the police in Somaliland.⁸⁰ The police cannot ensure law and order efficiently. Everything has to do with clan and the family can go through the clan to get relatives out of jail. The only serious crime for which this is not possible is if the suspect has connections with Al Shabaab.⁸¹

The police have received new "civil" police uniforms which are different from the uniforms they wore previously.⁸²

3.4.2. Legal system

The legal system consists of three parts – Somali common law (Xeer), Islamic law (Sharia) and

⁷¹ Osman Mohamed, Mohamud and Hussein Isse, Abdirizak, judges at Sharia court, talks in Boosaaso 18.06.2012

⁷² Ali Yusuf, Abdiafit, judge at Sharia court, talks in Boosaaso 18.06.2012

⁷³ Representative of OCHA in Boosaaso, talks in Boosaaso 19.06.2012

⁷⁴ Guurti is the upper house in Somaliland and consists of elders.

⁷⁵ Mohamed Dheeg, Mohamed, Committee of Elders, talks in Hargeisa 16.06.2012

⁷⁶ Ahmed Aden, Mohamed, Chairperson Standard Committee, talks in Hargeisa 16.06.2012

⁷⁷ Mohamed Dheeg, Mohamed, Committee of Elders, talks in Hargeisa 16.06.2012

⁷⁸ Abdi Hussein, Adam, Consultant, Secretary of Foreign Standing, talks in Hargeisa 16.06.2012

⁷⁹ Mohamed Dheeg, Mohamed, Committee of Elders, talks in Hargeisa 16.06.2012

⁸⁰ Employees at UNDP, talks in Hargeisa 13.06.2012

⁸¹ IOM Hargeisa, talks in Hargeisa 13.06.2012

⁸² Employees at UNDP, talks in Hargeisa 13.06.2012

secular law. Somaliland appears more secular than Islamist, but both Sharia and civil law play a part in the system, directly or indirectly. Xeer is still a very strong instrument, but there are no particular rules for its function in the system. Xeer comes into play at any time and to a wide extent in the court system, even after court proceedings have taken place. Xeer is more flexible than civil law. Subclans can in some cases be very important and this can have to do with exchanging favours. Some judges are a little more Xeer-minded and Xeer can change their interpretation of secular law.⁸³

Mohamed Jama at Legal Clinic gave an example from 2009. Two rapists were found by the court to be guilty of the rape of a fourteen year old girl and sentenced to seven years imprisonment. The perpetrators were held in a police station, from which they escaped. There was no evidence that the police facilitated their escape. After the convicted rapists escaped, their parents were detained in order to get intervention in the matter through Xeer. Within Xeer, the clans decided that 75 camels would be paid in compensation and the perpetrators would be fined. The clans' agreement under Xeer was then taken to the court for registration. The same prosecutors and judges who had previously ruled in the case also accepted the agreement in accordance with Xeer. The father of the rape victim accepted the agreement in accordance with Xeer, but her mother had a different view.⁸⁴

However, it is the father who is entitled to consent to an agreement or not according to Xeer and therefore an agreement could be reached. Neither the child nor her mother has any say in the matter.⁸⁵ An international organisation (K) stated that the family has no decision-making authority, but that it is the clan Elders who decide whether or not the case will be taken out of court to be handled within Xeer. The clan acts as a representative of the people concerned.⁸⁶

An international organisation (K) also stated that almost a hundred percent of all cases are handled within Xeer. Therefore, the agreement which was made in 2006, the National Declaration, which was signed by Elders and which laid out certain principles regarding the framework for women's rights, amongst other things, does not function in practice. In particular, the agreement concluded that rape should be referred to secular law, petty crime should be handled within Xeer and more serious crimes should go to court. The fact that almost all cases are handled within Xeer also means that the perpetrator is released from custody.⁸⁷ The Ministry of the Interior stated that murder, corruption and rape should be handled within the legal court system, while other conflicts are best solved within the clan system.⁸⁸

The Attorney General of the Sharia court legal system in Hargeisa stated that the written laws approved by Parliament apply in Hargeisa. If a case does not fall under a law established by Somaliland, the old laws from the Republic of Somalia are applied so long as they are compatible with article 130 of the Somaliland Constitution. The traditional system, in which the clan negotiates between the two parties, is not directly applicable. However, the clan may take the case out of court and reach an agreement. There are no prescribed rules for this and the agreement between clans is not put into writing. There is a bill proposed that it should no longer be possible for the clans to take cases out of court, but it has not been approved yet. The purpose of the bill is to introduce a fixed and non-negotiable penalty for each crime. According to the proposal, which has not yet been approved, convicted murderers shall receive a prison term of at least five years,

⁸³ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

⁸⁴ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

⁸⁵ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

⁸⁶ International organisation (K), talks in Hargeisa 14.06.2012

⁸⁷ International organisation (K), talks in Hargeisa 14.06.2012

⁸⁸ Ministry of Interior, talks in Hargeisa 13.06.2012

in addition to the payment of Diya.⁸⁹ According to a legal expert in the Sharia court legal system in Hargeisa, the clan can intervene, but the court usually does not accept the clan taking a case involving rape out of court.⁹⁰ However, as was revealed in a conversation in the Guurti, the court accepts Elders taking the case out of court, regardless of the magnitude of the crime, except in cases involving serious crimes against the state.⁹¹ According to law, the clan cannot interfere in cases involving crimes against the interests of the state.⁹² Mohamed Mohamed Dheeg gave an example, from the very week the interview was held, of Elders taking a case out of court for their clans to meet and negotiate. The clans go together to the judge with a written request for them to resolve the case together within seven days. Afterwards, the case is reported back to the court, which closes the case.⁹³ Even after a judgement has been handed down by the court, such as a prison sentence, the clans may free the person from prison if they both agree. The agreement of the clans can be seen as an appeal and the court will go along with the clans and accept the agreement between them. Diya is paid before the previously convicted person is released from prison. It is estimated that most cases are resolved within Xeer and between clans.⁹⁴

A legal expert in the Sharia court legal system stated that there are two types of courts. In addition to those mentioned above, there are also private courts which are financed by private individuals. These courts have a license to operate from the government and only handle civil cases. Those who work at these private courts are well educated and those who turn to the court must pay for the case to be settled. There are private courts in both Hargeisa and Burao.⁹⁵

The Supreme Court in Hargeisa is the final decision-making body for all courts and also has jurisdiction for administrative decisions. The Supreme Court acts as a constitutional court and decides on all constitutional matters. The Supreme Court has a mandate to review the government's decisions, which may include immigration issues, but this does not happen in practice. They also have the power to review legislation in accordance with the Constitution. The Supreme Court is divided into subsections. One department is in charge of petty crime, which means any crime punishable by less than ten years imprisonment. Another department is in charge of serious crime punishable by more than ten years imprisonment.⁹⁶

The time for a case to reach the Supreme Court is as follows. The Appeals Court renders a decision, which can be appealed before the Regional Appeals Court. The Regional Appeals Courts decide on appeals in their respective regions. In order for a case to be taken up by the Supreme Court, leave to appeal is required, which is issued in precedent-setting cases.⁹⁷

The law in Somaliland does not distinguish between different clans or groups.⁹⁸

A case can end in three different ways. 1/ A court may impose a prison sentence (but the perpetrator is released if the clan pays Diya). 2/ The victim's family can choose to forgive the perpetrator, which means, amongst other things, that the perpetrator's clan does not have to pay Diya. 3/ An agreement between the leaders of the clans leads to Diya being paid to the victim's

⁸⁹ Attorney General, Sharia court legal system, talks in Hargeisa 14.06.2012

⁹⁰ Legal expert, Sharia court legal system, talks in Hargeisa 14.06.2012

⁹¹ Mohamed Dheeg, Mohamed, Committee of Elders, talks in Hargeisa 16.06.2012

⁹² Ahmed Aden, Mohamed, Committee of Elders, talks in Hargeisa 16.06.2012

⁹³ Mohamed Dheeg, Mohamed, Committee of Elders, talks in Hargeisa 16.06.2012

⁹⁴ International organisation (A), talks in Hargeisa 15.06.2012

⁹⁵ Legal expert, Sharia court legal system, talks in Hargeisa 14.06.2012

⁹⁶ Presiding judge, Supreme Court Hargeisa, talks in Hargeisa 14.06.2012

⁹⁷ Presiding judge, Supreme Court Hargeisa, talks in Hargeisa 14.06.2012

⁹⁸ Ahmed Aden, Mohamed, Chairperson Standard Committee, talks in Hargeisa 16.06.2012

clan.⁹⁹ If the victim chooses to forgive, the government still has some rights to prosecute.¹⁰⁰

According to Sharia, *suluh*, reconciliation, is allowed. When a case ends in *suluh*, there is no complaint. In cases which are decided in a court, there is always one party which is dissatisfied and another which is satisfied.¹⁰¹

Judgements involving murder and terrorism which prescribe the death penalty require a final decision from the president. There are also temporary punishments in the range of sentences for both murder and terrorism.¹⁰² The presiding judge at the Supreme Court in Hargeisa stated that capital punishment may be pronounced in cases of intentional homicide in which the perpetrator is found to be legally accountable, i.e. mentally sane.¹⁰³

Capital punishment is handled by a special unit at the Sharia court. In most cases when Sharia law applies to a charge of murder, it is the victim who chooses the law.¹⁰⁴ If the court rules in favour of the death penalty, the written approval of capital punishment from the family, the ruling and a document from the Supreme Court are sent to the president. Somaliland's president signs it, then sends the ruling to the Supreme Court. The Supreme Court does not hold a new trial without sending the ruling to the court which initially made the decision.¹⁰⁵ The president often signs death sentences. Enforcement of rulings is a matter for the clan. The convicted person is shot in a public place, some people who are sentenced to death are still in prison. There are no statistics. The Attorney General for the Sharia court legal system in Hargeisa stated that in two years, two death sentences had been sent from the court to the president. The Attorney General is not sure whether the rulings have been implemented yet or not.¹⁰⁶ The presiding judge at the Supreme Court in Hargeisa stated that he held this position for less than a year and during that year, no executions were implemented.¹⁰⁷

Cases which involve Al Shabaab or otherwise involve a threat against the state are always handled within the secular police and judiciary system. The clan cannot negotiate the release from prison of a clan member convicted of such a crime. The clan can only intervene if it can solve the problem and the clan cannot get a supporter of Al Shabaab to stop, which would affect respect for the clan.¹⁰⁸

3.4.3.Lifos' comments

Lifos clarifies the information presented above. When an agreement according to Xeer is reached between clans, the victim or the victim's male representatives approve the agreement. However, it is up to the clan Elders to decide whether a case be taken out of court or not in an earlier stage in the process. Lifos would also like to point out that in Somali society there is a long tradition of common law Xeer, in which mutual oral agreements are reached between two clans. The possibility that agreements are made which deviate from the normal rules cannot be excluded.

⁹⁹ Mohamed Jama, Legal Clinic, talks in Hargeisa 14.06.2012

¹⁰⁰ Attorney General, Sharia court legal system, talks in Hargeisa 14.06.2012

¹⁰¹ Haj Abdikarim Hussein (Haj Abdurabe), Speaker in Guurti, talks in Hargeisa 16.06.2012

¹⁰² Attorney General, Sharia court legal system, talks in Hargeisa 14.06.2012

¹⁰³ Presiding judge, Supreme Court Hargeisa, talks in Hargeisa 14.06.2012

¹⁰⁴ Attorney General, Sharia court legal system, talks in Hargeisa 14.06.2012

¹⁰⁵ Presiding judge, Supreme Court Hargeisa, talks in Hargeisa 14.06.2012

¹⁰⁶ Attorney General, Sharia court legal system, talks in Hargeisa 14.06.2012

¹⁰⁷ Presiding judge, Supreme Court Hargeisa, talks in Hargeisa 14.06.2012

¹⁰⁸ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

3.4.4. Military courts

Military courts are mentioned in the Constitution and have their own hierarchy and their own prosecutors. There is a First Instance, a Court of Appeals and a Supreme Court. There is a First Instance military court in each region, as well as a Court of Appeals. The Supreme Court is located in Hargeisa. Most of the judges were formerly judges in the Republic of Somalia's military courts. They have a legal background and a military approach. The military courts have their own rules of procedure.¹⁰⁹

Military courts are only for military armed forces, including the police and paramilitary forces, and handle cases between members of the military. The matter is disputed and controversial and it is unclear which jurisdiction applies if a civilian kills a member of the military. If, in the course of his duties, a member of the military commits a crime against a civilian, for example a rape, the matter falls under the jurisdiction of the military court.¹¹⁰

The clan cannot directly intervene in cases handled by the military courts, but they can get involved. If a member of the military shoots and kills someone, his clan may pay Diya – the government does not pay Diya. It is very rare for the clan to get involved in cases handled by the military courts.¹¹¹

3.4.5. Women

In court, there is equality under the law. For example, it is up to the persons themselves to decide whether to represent themselves or be represented by someone else, i.e. a lawyer. This also applies to women.¹¹² A member of the Guurti stated that women are ashamed to face the court and therefore prefer to be represented by a male relative or a female lawyer.¹¹³

It is not common for women to be taken into custody, but women in custody are kept separate from men. In one place, there is a special women's prison.¹¹⁴

There is a law which prohibits violence of any kind, but no law expressly prohibits domestic violence and it is culturally acceptable for a husband to beat his wife.¹¹⁵

3.4.6. Children

There is no law that explicitly prohibits parents from beating their children and corporal punishment is culturally acceptable.¹¹⁶ An international organisation (K) stated that in Somali families, there is a friendly attitude towards children and violence against children in the family does not normally occur. The perception of what counts as violence may be different compared to, for example, Sweden.¹¹⁷ An international organisation (B) is not aware of many reported cases of child abuse.¹¹⁸ A child cannot be protected from its parents. The law in Somaliland allows parents to put their child in prison if the child has been disobedient. It is not common, but it happens and the child can be kept in custody for four to five days.¹¹⁹ However, an international organisation (I) stated that a large number of children remain in prison for years because their parents put them

¹⁰⁹ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

¹¹⁰ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

¹¹¹ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

¹¹² Shiire Farah, Adan, member of Guurti, talks in Hargeisa 16.06.2012

¹¹³ Abdi Hussein, Adam, Consultant, Secretary of Foreign Standing, talks in Hargeisa 16.06.2012

¹¹⁴ Unicef Somaliland, talks in Hargeisa 13.06.2012

¹¹⁵ Unicef Somaliland, talks in Hargeisa 13.06.2012

¹¹⁶ Unicef Somaliland, talks in Hargeisa 13.06.2012

¹¹⁷ International organisation (K), talks in Hargeisa 14.06.2012

¹¹⁸ International organisation (B), talks in Hargeisa 13.06.2012

¹¹⁹ Unicef Somaliland, talks in Hargeisa 13.06.2012

there.¹²⁰

Teachers in school can beat their pupils, since it is not expressly forbidden. Corporal punishment of children in schools primarily occurs in Koran schools, where the teachers are not trained.¹²¹

An international organisation (I) gave an example of a case where an eight year old girl was taken to the police station because she threw a rock which hit another child hard enough that the other child died. The girl is in custody for her own safety and at the time of Lifos' visit to Hargeisa, she had been there for three or four months.¹²²

There is a specific juvenile detention centre, Mandera Prison Juvenile, from which there are reports of sexual violence.¹²³

There is no specific law in Somaliland which protects underage girls from forced marriage. If one wants to rescue a girl who is at risk of such a marriage, this is done by negotiating with and appealing to the girl's father and the girl's future husband. It is common for parents to use violence against a girl who has left her husband and returned to her parents' home, to push the girl to go back to her husband.¹²⁴

3.4.7. Minority groups

In practice, minority groups, such as the Midgan, and weak clans can intervene and take cases out of court. There is no difference between their ability to do so and the stronger clans' ability.¹²⁵

3.4.8. Internally displaced persons (IDPs)

There is a law that gives people from southern and central Somalia the right to stay in Somaliland.¹²⁶ Somaliland only accepts the return of people, for example from Europe, who are domiciled in Somaliland.¹²⁷

If a person from southern or central Somalia commits a crime, this goes through the court system like for anyone else. They cannot be deported, they are Somalis and regarded as good neighbours. According to the Ministry of the Interior, there is no discrimination against people from southern and central Somalia. If a person from southern or central Somalia is a victim of a crime, the justice system is open to them.¹²⁸

It is not possible for foreigners to take a case out of court, this is only a possibility for citizens of Somaliland.¹²⁹ People from southern and central Somalia are regarded as foreigners and have the same rights as other foreigners.¹³⁰

3.5. Lifos' comments

Lifos would like to point out the difference in Xeer compared to secular law regarding homicide.

¹²⁰ International organisation (I), talks in Hargeisa 13.06.2012

¹²¹ Unicef Somaliland, talks in Hargeisa 13.06.2012

¹²² International organisation (I), talks in Hargeisa 13.06.2012

¹²³ International organisation (I), talks in Hargeisa 13.06.2012

¹²⁴ Employees at CCBRS, talks in Hargeisa 16.06.2012

¹²⁵ International organisation (K), talks in Hargeisa 13.06.2012

¹²⁶ Ministry of Interior, talks in Hargeisa 13.06.2012

¹²⁷ Ministry of Resettlement Rehabilitation and Reconstruction (MRR&R), talks in Hargeisa 13.06.2012

¹²⁸ Ministry of Interior, talks in Hargeisa 13.06.2012

¹²⁹ Mohamed Dheeg, Mohamed, Committee of Elders, talks in Hargeisa 16.06.2012

¹³⁰ Shiire Farah, Adan, member of Guurti, talks in Hargeisa 16.06.2012

In Xeer, it makes no difference whether someone is killed intentionally or by accident. However, under secular law, emphasis is placed on the motive and the cause of the person's death when considering the sentence, with the result that there are differences between, for example, murder, manslaughter and involuntary manslaughter.

4. Clan system

4.1. General

Lifos refers initially to another report covering information on the clan system and Xeer common law, such as Joakim Gundel's *The predicament of the Oday. The role of traditional structures in security, rights, law and development in Somalia*. However, Lifos wishes to point out, that which is called clan protection, i.e. the facility of an individual to be protected by his clan against violence, primarily describes that an individual belongs to a clan which, for instance, by military power can deter a possible aggressor. Punishment within the clan system is collective and the Diya paying subclan,¹³¹ to which the individual belongs, pays Diya if a clan member has caused death or injury to a person of another clan. It is also the Diya paying subclan, together with the victim's family, that receives such payment if the victim is a member of the clan, or injury has occurred against the clan. The Diya paying subclan has also traditionally assisted the clan members when in financial difficulties.¹³² The Somali common law, Xeer, is primarily founded on bilateral agreements between mainly the Diya paying subclans. This means that Xeer law is continuously changing.¹³³

4.2. General results from the investigation trip in June 2012

An international organisation (D) informed Lifos in June 2012 that the Somali clan system is built on trust. For instance, goods are sold from Mogadishu in Luuq in the Gedo region. Goods are changing hands on the journey between Mogadishu and Luuq, and money changes hands in the same way but in the other direction. If the chain of goods or money is broken the trust is also broken. A broken trust results in revenge by death.¹³⁴

Paul Kellett stated that clan protection works for crime and family matters. It depends on the subclan and its connections if the same applies to Al Shabaab. If one belongs to the clan Abgal, one is connected to the President, Sheikh Sherif Sheikh Ahmed, who comes from that clan.¹³⁵ An international organisation (E) stated that clan protection exists and has always existed. In the end even Al Shabaab accepted clan protection and withdrew, whereby the clans emerged again and marked their position. Some clans are allied to Al Shabaab, or are at least pro-Al Shabaab, while others are allied to TFG.¹³⁶ The clan system does not recognise TFG. It is the subclans that are the basis for clan protection.¹³⁷

¹³¹ Diya is a blood compensation paid by one Diya-paying sub-clan to another. The Diya-paying sub-clan is a sub-clan level which is collectively responsible for the security of its sub-clan and is duty-bound to compensate the other sub-clan for injury that their own sub-clan has caused.

¹³² Landinfo, *Temanotat Somalia: Beskyttelse og Konfliktløsningsmekanismer*, 5f, 06.07.2012

¹³³ Gundel, Joakim, *The predicament of the Oday. The role of traditional structures in security, rights, law and development in Somalia*, 01.11.2006

¹³⁴ International organisation (D), talks in Nairobi 08.06.2012

¹³⁵ Kellett, Paul, talks in Nairobi 07.06.2012

¹³⁶ International organisation (E), talks in Nairobi 07.06.2012

¹³⁷ Kellett, Paul, talks in i Nairobi 07.06.2012

It is very difficult to say if the Somalis have clan protection or not.¹³⁸ An international organisation (E) reported that clan protection worked quite well in Mogadishu.¹³⁹ Hibo Yassin and Zakaria Mohamed Sheikh Yusuf stated that they are in some ways dependent on their clan protection. Previously the big clans and the militia offered protection. In 2007 the situation changed by Al Shabaab taking the greater part of southern and central Somalia thereby disarming the biggest clans and the militia. The years 2009 – 2010 were the era of the minority clans. Clan protection is based on trust. The stability of clan protection is no longer there. The clan protects if one has contacts to a powerful person. If that person is also from the clan, it is of additional value.¹⁴⁰ Somali Women Development Centre informed that clan protection works if one can identify the perpetrator. The ordinary man would rather go to the clan than to the police. Even when one can identify the perpetrator, they are seldom prepared to go on with the case because of stigma and fear. There is stigma attached to bringing the case to the police. Approximately 80% of the cases are never taken up by the police or the court system.¹⁴¹

An international organisation (D) reported that the Somalis are mainly protected by the clans and that they respect the clan protection.¹⁴² An international organisation (E) reported that as long as they remained in their village or area where the clan reigned, the clan protection worked.¹⁴³ When bloodshed occurs, when somebody has been killed and this is handled within a clan system, the agreement on Diya payment is discussed. The reason for the bloodshed is then immaterial. There is no distinction between murder, manslaughter or involuntary manslaughter.¹⁴⁴

4.3. Mogadishu

The clan is of importance in Mogadishu. You can move around, but not live in an area where your clan does not exist. The clan is and has always been of importance in Mogadishu. Al Shabaab failed in removing the clan system. The clan dispute mechanism is in place for crime and family disputes. If a problem concerns a threat from Al Shabaab, the clan can get involved.¹⁴⁵ The situation in Mogadishu has changed and there is no reason to be afraid of coming from a big and powerful clan. The President, Sheikh Sharif Sheikh Ahmed (Hawiye – Abgal) and the speaker, Sharif Hassan Sheikh Aden (Rahanweyne), can pull strings to make things happen. The Prime Minister Abdiweli Mohamed Ali has no men from his clan, Darood, on site in Mogadishu but is protected by AMISOM. The Hawiye-Abgal clan has power in Mogadishu and clan protection works via the Abgal clan.¹⁴⁶ An international organisation (G) reported that the clan is of no importance for the common man in Mogadishu for criminal offences. It is, however, of importance for power and influence as a way of solving problems and as a part of politics.¹⁴⁷ The Elder of Hawiye said that the clan can't protect the individual. A threat can come from the same clan; even your brother can kill you. However, if a crime is committed by someone who is not a member of Al Shabaab, the matter can be resolved between the clans. In that way the clan can be of a some protection. As for threats from Al

¹³⁸ International organisation (E), talks in Nairobi 07.06.2012

¹³⁹ International organisation (F), talks in Nairobi 07.06.2012

¹⁴⁰ Yassin, Hibo and Mohamed Sheik Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁴¹ Somali Women Development Center, talks in Mogadishu 10.06.2012

¹⁴² International organisation (D), talks in Nairobi 08.06.2012

¹⁴³ International organisation (E), talks in Nairobi 07.06.2012

¹⁴⁴ Mohamed Jama, Legal Clinic, talks in Hargeisa 14.06.2012

¹⁴⁵ International organisation (F), talks in Nairobi 07.06.2012

¹⁴⁶ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁴⁷ International organisation (G), talks in Nairobi 08.06.2012

Shabaab, the situation is different. There is no way to track the perpetrator.¹⁴⁸ Abdi Mohamed Ismail stated on Radio Shabelle that clan protection is not used in Mogadishu when fighting is in progress. If a person is killed by another clan, the clans don't solve the problem by negotiations but by revenge.¹⁴⁹

Citizens of Mogadishu know to which clan they belong and where they originate, even very young people know this. It is an important identity reference to know the clan several generations back.¹⁵⁰

An international organisation (E) stated that if one does not have a family in Mogadishu one is without clan protection.¹⁵¹ An international organisation (D) stated that the clan system is weaker now but still works.¹⁵²

An international organisation (G) stated that Mogadishu is a rather homogenous city and not too clan based. However, people use the clan, but in the end it is a question of family, kinship and who controls the territory.¹⁵³

The Elders are not important for the stability in Mogadishu, apart from at the end of the transition period in the summer of 2012. After that, their role in the city will once again become peripheral.¹⁵⁴

The interest for investments in land and buildings in Mogadishu has focused on who owns the land and the houses in the city. Many of the houses have stood abandoned for years, people other than the owners have moved in – sometimes group after group. An international organisation (D) stated that people know who owns the houses and the Somalis have no problems with the question of ownership. Generally in Somalia, with its nomadic culture, land belongs to everybody, despite the presence of owners along the rivers Shabelle and Juba and houses in the cities. Ownership disputes are resolved within the clan system.¹⁵⁵

4.3.1. Women

Women without a male network lack clan protection and are, in such circumstances, not safe.¹⁵⁶ Women move around alone from one place to another without male company during the day. The clan protection does not follow you when you are in a dangerous situation, like visiting the latrine when it is dark. An assault can take place at any time but is more common during the night.¹⁵⁷

The clan system and the Somali common law, Xeer, is in itself a danger to women. It is a totally patriarchal system and the system is in its entirety a threat to women.¹⁵⁸ The Somali Women Development Centre stated that women seeking redress from violence in their homes

¹⁴⁸ The Elder from Hawiye, talks in Mogadishu 08.06.2012

¹⁴⁹ Mohamed Ismail, Abdi, Radio Shabelle, talks in Mogadishu 10.06.2012

¹⁵⁰ International organisation (G), talks in Nairobi 08.06.2012

¹⁵¹ International organisation (E), talks in Nairobi 07.06.2012

¹⁵² International organisation (D), talks in Nairobi 08.06.2012

¹⁵³ International organisation (G), talks in Nairobi 08.06.2012

¹⁵⁴ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁵⁵ International organisation (D) talks in Nairobi 08.06.2012

¹⁵⁶ Kellett, Paul, talks in Nairobi 07.06.2012

¹⁵⁷ International organisation (E), talks in Nairobi 07.06.2012

¹⁵⁸ International organisation (F), talks in Nairobi 07.06.2012

usually take their cases to Xeer and the clan and not to the police. When a woman turns to the clan she is told she must respect her husband and there is mostly no arbitration. The conclusion of the Somali Women Development Centre is that the clan does not protect women from violence in their homes.¹⁵⁹

4.3.2. Internally Displaced Persons (IDPs)

Mogadishu can be seen as one big IDP camp, within which are different IDP settlements. Within these settlements there are separate areas for separate clans or minority groups within which there are separate leadership structures with their own leaders. The Somali society has a strong verbal tradition and people know each other. The system for IDPs is, however, very weak and does not offer the same security as it does to those who live in the city. Another reason for weak clan protection of IDPs is that most people living in the IDP camps are women. The men are found in different militias, are killed or remain in their home areas somewhere in Somalia to care for cattle etc.¹⁶⁰. Among the IDPs people from minorities are overrepresented.

A mixture of people from different clans and minorities live in the Mogadishu IDP camps. Sometimes in a camp there are more from one clan than from another. The IDPs then hang together in their clan. However, from a protection point of view it does not matter, as they are unarmed. This leads to assaults regardless of whether they live together with their clan or not. People in Mogadishu belonging to the Rahanweyne clan and other individuals coming from other regions, are more subject to assaults.¹⁶¹

4.4. Southern and central Somalia – areas from which Al Shabaab has been driven away.

The clans to which the President Sheikh Sharif Sheikh Ahmed (Hawiye – Abgal) and speaker Sharif Hassan Sheikh Aden (Rahanweyne) belong, have more influence and power. If one, for instance, comes from the Hawiye clan Abgal, it is possible to directly visit the president. This cannot be said to be clan protection in the traditional sense, but also, one can't say that it isn't.¹⁶² Clan protection works for those who belong to a clan with an influential clan member. The protection is connected to power. A clan can be a power factor, but there are also other power centres, like AMISOM, Ethiopia and Kenya through their armies in Somalia and NSA. Power centres can also use the clans for influence. Kenya and Ethiopia have used two subclans of the Ogaden clan at top level. This means that those who are within these areas and belong to the Ogaden clan have access to clan protection but those who belong to other clans have not.¹⁶³

Al Shabaab skilfully utilized existing cracks in the clan structure. Now, after Al Shabaab having been driven away, the weak clans are once again weak. Clan based commanders, who during the Al Shabaab period in the area used Al Shabaab's name to promote their own interests, melted back into the clan after Al Shabaab's withdrawal.¹⁶⁴

¹⁵⁹ Somali Women Development Center, talks in Mogadishu 10.06.2012

¹⁶⁰ International organisation (D), talks in Nairobi 08.06.2012

¹⁶¹ Somali Women Development Center, talks in Nairobi 10.06.2012

¹⁶² Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁶³ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁶⁴ Associates of AMISOM, talks in Nairobi 07.06.2012

The clan protection works to some extent in areas in southern and central Somalia, from which Al Shabaab has been driven away. It is possible, for instance, on a given site only to have access to clan protection if you belong to a given clan.¹⁶⁵

The Elder can solve emerging problems in a traditional way. Most people are nomads and live in the countryside.¹⁶⁶ The Government does not reach that level of the society which is run by the Elders and religion. Since the warlords Ahmadi and Aideed came on the scene in the 1990s, the Elders have been exploited by these warlords. Young armed militia began to hate the Elders. Most clans are not armed, but have also not given up their arms, they have just hidden them.¹⁶⁷

An international organisation (D) stated that clan protection can't protect you from external aggression, like sex based violence against women, but can give socio-economical protection. The same organisation reported that the socio-economic protection is built on "those who have share with those who have not". This is the situation in the Gedo region. The city of Luuq was given as an example, but also the camps in Mogadishu. Let's say that 100 food parcels are handed out at an IDP camp, and then re-distributed by the inmates to become 200 food parcels, thereby reaching more people in the camp.¹⁶⁸

Bay and Bakool

Al Shabaab leaves the cities in these regions but still controls the areas outside the cities. TFG are those entering the cities to drive out Al Shabaab, but there is often clan militia defending the area.¹⁶⁹

Hiiran

In Beledweyne those belonging to the Hawadle clan have access to clan protection, not the others.¹⁷⁰

4.4.1. Women

In Gedo there are groups supporting victims of sexual violence. The clan has its own way of punishing perpetrators. Women having been subjected to sexually based violence are stigmatised and do not seek help from hospitals.¹⁷¹

4.4.2. Minorities

In southern Somalia, the Bantus are integrated into the society. There is no violence specifically directed at the minorities right now.¹⁷²

4.5. Southern and central Somalia – areas controlled by Al Shabaab.

In areas controlled by Al Shabaab, clan protection does not work. Al Shabaab and their members are, however, protected by Al Shabaab.¹⁷³

¹⁶⁵ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁶⁶ International organisation (D), talks in Nairobi 08.06.2012

¹⁶⁷ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁶⁸ International organisation (D), talks in Nairobi 08.06.2012

¹⁶⁹ Associates of AMISOM, talks in Nairobi 07.06.2012

¹⁷⁰ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁷¹ International organisation (D), talks in Nairobi 08.06.2012

¹⁷² International organisation (E), talks in Nairobi 07.06.2012

4.6. Puntland

The Government in Puntland tries to use traditional Elders in their work on security and to arrange debates. The Elders receive gifts from the Government in the form of vehicles and cash. When the Government looks after the clan by giving things to the Elder, the clan feels cared for. It appears that Elders who do not feel cared for by the Government spoil the work of the Government. The Government facilitates and organises clan negotiations so that the clans can finalise agreements. One example is a clan conflict that led to many people being killed; the Government, together with the traditional Elders, succeeded in solving it with an agreement between the clans. The Government also seeks help from the Elders when they need to persuade society on a given matter.¹⁷⁴

The Elder in a clan has considerable power and influence. They negotiate on behalf of the clan for positions in the Government. Most decisions taken go through the Elder and it is the Elder's duty to maintain peace and stability. In that way the clan system has made it easier for the Government of Puntland to function. The Parliamentarians are elected by the Elders and each clan has its own local politician.¹⁷⁵

The Puntland Government has carried out work to make the Elders aware of the rights of the individual, that each individual has the right to protection.¹⁷⁶

Everybody, even those from vulnerable and exposed groups, prefer their cases to be handled by the clan and Xeer law instead of by police and the courts.¹⁷⁷ This leads to the majority of cases being handled by the clans. The clan system is more powerful than the legal system.¹⁷⁸ In the countryside it is, in principal, exclusively the clans that solve problems that arise.¹⁷⁹

If there are two strong clans meeting in negotiations, there is no reason to take the case to Court. If a vulnerable person reports that a powerful person has committed a crime against him, the powerful person will attack the vulnerable person who reported him. This is primarily the situation in cases of rape.¹⁸⁰

The clans negotiate and arrive at a decision which they then bring to a court where the agreement is signed.¹⁸¹ The negotiations on Diya follow the Sharia laws and can end in three different ways. 1/ The perpetrator's clan pay Diya to the victim's clan. 2/ The perpetrator is killed. 3/ The perpetrator is released (forgiven).¹⁸² If the clans agree that Diya is to be paid, the agreement, when settled, is final. If the clans agree that the perpetrator is either to be released (forgiven) or killed, the President of Puntland must sign the agreement.¹⁸³

¹⁷³ Yassin, Hibo and Mohamed Sheikh Yusuf, Zakaria, talks in Nairobi 08.06.2012

¹⁷⁴ Ministry of Interior, talks in Boosaaso 18.06.2012

¹⁷⁵ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁷⁶ Ministry of Interior, talks in Boosaaso 18.06.2012

¹⁷⁷ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁷⁸ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁷⁹ Mohamed Ismail, Abdirizak, acting Minister for Security, talks in Boosaaso 18.06.2012

¹⁸⁰ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁸¹ Mohamed Ismail, Abdirizak, acting Minister for Security, talks in Boosaaso 18.06.2012

¹⁸² Abdullahi Ali, Abdinasir, Judge at a Sharia Court, talks in Boosaaso 18.06.2012

¹⁸³ Elder in Bari, talks on 17.06.2012

If a perpetrator from a clan has been taken into prison, he can be released if the clan so requests.¹⁸⁴

The victim must provide for a perpetrator deprived of his liberty during his time on remand. If the perpetrator is then sentenced to imprisonment, the government and the perpetrator's family will provide for him.¹⁸⁵

It can happen that the clans agree that a person -a perpetrator- is to be killed. This decision is carried out by the victim's father. A representative for OCHA in Boosaaso reported that the last time this took place was six months before Lifos's visit to Boosaaso in June 2012. Big clans tend to shoot the perpetrator resulting in a lot of killings. During Lifos's visit it was said that two clans had recently been in conflict with each other resulting in 250 people being killed. There are no negotiations if the perpetrator's side takes less smart decisions, then a fight takes place.¹⁸⁶ A member of the Norwegian Refugee Council in Boosaaso said, it is increasingly common that the clan hands over the killer to the victim's clan so that they can avenge by killing. The perpetrator's clan does so to prevent the conflict from escalating. The victim's clan can always return the perpetrator to his own clan and instead initiate negotiations on Diya payment.¹⁸⁷

If, in an agreement between clans, they arrive at a decision that the perpetrator is to be killed but they can't find him, they will take another important person in that clan, like a businessman. Only men over the age of fifteen can come into question.¹⁸⁸ It is not possible to appeal against a decision between the clans, but there is the possibility that they might arrive at a new separate agreement. Mohamud Osman Mohamed, Judge at a Sharia Court, said during talks in June 2012, that during the previous year an execution had been interrupted after the clans had arrived at a new agreement.¹⁸⁹

During an agreement for Diya payment, the value of a murder is normally set at 100 camels. In June 2012, a camel cost approximately US \$200. For a Diya payment of 100 camels, 15-20 camels go to the victim's family while the rest is distributed within the subclan. It has happened that the payment for a murder was 100 camels plus a bride. It is then the perpetrator's sister who must marry somebody in the victim's clan. In reality she has no choice, but if she refuses, another woman has to go through with the marriage. Forced marriages are an old Somali tradition. This is beginning to change in urban areas.¹⁹⁰

When a person is killed, the perpetrator firstly loses his liberty. Thereafter negotiations start between the clans. If the negotiations end with the perpetrator's clan paying Diya, the prison sentence is set at three years. If no Diya is to be paid, the prison sentence is ten years. According to Mohamud Osman Mohamed, a Sharia Court Judge, the perpetrator cannot be released from prison when the clan has finished negotiating. There will be a prison sentence, even if there is an agreement between the clans of Diya payment.¹⁹¹ Abdiafit Ali Yusuf, a Sharia Court Judge, said that in the countryside the clans can release the perpetrator when the

¹⁸⁴ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁸⁵ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁸⁶ Representative for OCHA in Boosaaso, talks in Boosaaso 19.06.2012

¹⁸⁷ Member of the Norwegian Refugee Council, talks in Boosaaso 18.06.2012

¹⁸⁸ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁸⁹ Osman Mohamed, Mohamud, Judge at the Sharia Court, talks in Boosaaso 18.06.2012

¹⁹⁰ Representative for OCHA in Boosaaso, talks in Boosaaso 19.06.2012

¹⁹¹ Osman Mohamed, Mohamud, Chairman and Judge, talks in Boosaaso 18.06.2012

negotiations on Diya payment have ended. There the clan system works as traditional Xeer law courts.¹⁹²

An agreement on Diya payment between clans is final and can't be appealed against.¹⁹³

If the perpetrator who is to be killed has disappeared, the perpetrator's relatives must find him within a given timeframe. If he fails to appear, the Elder negotiate with his relatives. If these negotiations don't lead to the perpetrator appearing, some other member of his family with a very important position must take his place and be killed. This is a procedure accepted within Sharia.¹⁹⁴

If a person from Mogadishu kills a person from Hargeisa in Boosaaso, the Elder in Boosaaso speaks with the Elder in Mogadishu as well as the Elder of Hargeisa. The Elders in Mogadishu and Hargeisa come to Boosaaso, where the crime was committed, to negotiate on Diya. The agreement reached is taken in writing to the court in Boosaaso.¹⁹⁵

4.6.1. Women

Women from a big clan have, for instance, protection from their clan against rape. Women from minorities, or who are IDPs, lack that protection.¹⁹⁶

A strong clan can help in seeking redress for a raped woman, but only if the perpetrator is caught. The rapist can be anybody, like a policeman or someone from their own clan.¹⁹⁷ Rapes are not often reported, as there is a stigma attached to having been subjected to rape. It is recommended that the case is brought to court, but this seldom happens because of the shame attached to a rape. The family does not want the rape to be made public. It is not common that the raped girl has to marry the rapist. Compensation can be given in another way, like the girl's father being compensated by being given land.¹⁹⁸

A woman giving birth to a child outside marriage is stigmatised but is still protected by her clan, as nobody else will protect her. Pregnancy is, however, hidden as a secret not even known by the neighbours because the pregnant woman is kept hidden within the family.¹⁹⁹ The Elder in Bari said that a woman can be pushed out of the clan if she is raped, or has become pregnant, while not married. However, men cannot be pushed out from the clan.²⁰⁰

It is not legal to hit the wife, but the courts say that nobody must interfere when that takes place, as a man has a right to hit his wife. It is culturally accepted. However, it must not go to excess, demonstrated by a hard case where the husband burnt his wife with hot water. The clan system and Xeer law favours the man at the expense of the woman.²⁰¹

¹⁹² Ali Yusuf, Abdiafit, Director General for Leaders Network HASAN and previously Governor in the Bari region, talks in Boosaaso 18.06.

¹⁹³ Mohamed Ismail, Abdirizak, acting Minister for Security, talks in Boosaaso 18.06.2012

¹⁹⁴ Elder in Bari, talks in Boosaaso 17.06.2012

¹⁹⁵ Elder in Bari, talks in Boosaaso 17.06.2012

¹⁹⁶ Representative for OCHA in Boosaaso, talks in Boosaaso 19.06.2012

¹⁹⁷ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

¹⁹⁸ Member of the Norwegian Refugee Council, talks in Boosaaso 18.06.2012

¹⁹⁹ Ali Yusuf, Abdiafit, a Sharia Court Judge, talks in Boosaaso 18.06.2012

²⁰⁰ Elder in Bari, talks in Boosaaso 17.06.2012

²⁰¹ Female network based in Puntland, talks in Boosaaso 18.06.2012

Lifos notes that the reply to whether a woman who gives birth to a child outside marriage is pushed out from the clan, thereby losing her clan protection is ambiguous. Bearing in mind that those who have given the information are the Elders, who can influence the matter, Lifos has found that there can be circumstances in which the clan has made other decisions where women have not been pushed out from the clan after having been raped or becoming pregnant when unmarried.

4.6.2. Children

According to a female network based in Puntland, it is unlawful to hit your own children. However, a slap on the face is not seen as cruelty. Violence is unusual and not accepted. This has led people to say that children now are undisciplined. Parents shout at their children instead.²⁰²

4.6.3. Minorities

Minorities like Midgan and Bantu have no means to negotiate, but some groups/structures can negotiate. In the case of a rape there is practically nothing they can do if the person from a minority is the victim.²⁰³ Both parties, minority and clan, come to the negotiating table but the clan is the stronger in the negotiations.²⁰⁴ A representative of OCHA in Boosaaso said that minorities, like Midgan and Bantu, lack clan protection. Madhiban are connected to the bigger clans and usually receive clan protection.²⁰⁵

4.6.4. Internally Displaced Persons (IDPs)

If a dispute between a person from southern or central Somalia, living as a refugee in Puntland, and a person from a clan in Puntland, is solved within the clan system, the clan from Puntland has more power and influence. Persons from southern and central Somalia have their own Elders but they are not that strong.²⁰⁶ A representative for OCHA in Boosaaso said that IDPs lack clan protection. It is especially problematic for IDPs originating from southern and central Somalia. They are not given that much attention and a perpetrator, who has committed a crime against anyone of them, is difficult to identify and apprehend. IDPs from southern and central Somalia live in clusters, but in spite of this they are not so strong. As a group, they try to lift the problem up above clan level, but as a group they are not accepted as a clan.²⁰⁷

There are also IDPs that are integrated into the host society by marriage. They have thereby access to the clan system. It depends on the individual's situation if he has access to the clan system or not.²⁰⁸

If both parties, IDP and the clan member are in agreement, the case can be brought to a group Elder who takes over the case. The Elders are then neutral to both sides. The case is then brought to the perpetrator's clan and time is set for negotiations.²⁰⁹

²⁰² Female network based in Puntland, talks in Boosaaso 18.06.2012

²⁰³ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

²⁰⁴ Member of the Norwegian Refugee Council, talks in Boosaaso 18.06.2012

²⁰⁵ Representative for OCHA in Boosaaso, talks on 19.06.2012

²⁰⁶ International organisation in Puntland (H), talks in Boosaaso 17.06.2012

²⁰⁷ Representative for OCHA in Boosaaso, talks on 19.06.2012

²⁰⁸ Member of the Norwegian Refugee Council, talks in Boosaaso 18.06.2012

²⁰⁹ Member of the Norwegian Refugee Council, talks in Boosaaso 18.06.2012

4.7. Somaliland

There are no types of cases in which the clans can't interfere, but cases including Al Shabaab, or any other threat against the state, are the exceptions to the rule. Threats against the state are handled by the judiciary (police and courts) and not by Xeer law.²¹⁰ Six out of ten people in Somaliland live in the countryside where the government is weak. There the agreements between clans are the rule under Xeer law. Agreements are strong and respected.²¹¹

The Ministry of Interior described the clan system as double-edged sword. Its function is to guarantee peace and stability, but this can also lead to dangerous situations, like war between clans. This happens when own interest is set above that of the clan.²¹²

Traditional Elders can easily involve the clan. The clan is the basis of society. The population turns primarily to the clan and Xeer. Only if they are not satisfied with Xeer do they turn to the courts.²¹³ The clan and Xeer is a part of the system beside the written law and decisions by the Elders are judicially accepted. The traditional duty of the Elders is to guarantee peace and security.²¹⁴ Everybody belongs to a clan or a minority group. Society is built up so as not to be vulnerable as an individual but to be a part of a collective, the clan.²¹⁵

If a man is injured it is up to the man himself to decide if he is to seek Diya payment or not. If the injured man has died the decision is up to the father. If the father is dead it is the man's Uncle who decides, and if no Uncle exists another male relative takes over, but never the wife or any other woman. If Diya is to be paid after a woman has been subjected to a crime, Diya is sought by a male representative often the father or husband. In cases where a woman is guilty of causing Diya to be paid, it is the woman's clan that pays Diya. The husband can sometimes be generous and pay his wife's Diya.²¹⁶

The clan Elder seeks out the person accused of having committed a crime, regardless if this is a man or a woman, to hear their side of the case. Thereafter the Elder will speak for that person. The person accused of having killed somebody else is taken to the police, where he will be kept for his own safety and to calm the situation. He will remain on remand until the negotiations have ended. If that is not accepted, another family member of the person accused of the crime will be imprisoned instead.²¹⁷

The perpetrator's clan must agree that a crime has been committed, or damage has occurred, before initiation of negotiations to an agreement can take place. If the perpetrator's clan pays the initial preliminary compensation for treatment of the victim, it means that they have accepted that a crime has been committed. This is accepted by the clan that also signs the agreement. If there is no payment according to the agreement, one can bring the signed agreement to court. The court will then demand payment from the leader of the clan. Thus payment to the other clan is not demanded from the perpetrator but from the clan leader who

²¹⁰ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²¹¹ National Human Rights Commission of Somaliland, talks in Hargeisa 12.06.2012

²¹² Ministry of Interior, talks in Hargeisa 13.06.2012

²¹³ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²¹⁴ National Human Rights Commission of Somaliland, talks in Hargeisa 12.06.2012

²¹⁵ International organisation (A), talks in Hargeisa 15.06.2012

²¹⁶ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²¹⁷ International organisation (A), talks in Hargeisa 15.06.2012

is responsible for the agreement. The clan leader is the person who collects the money from the clan members and then pays the other clan.²¹⁸

An agreement, in accordance with Xeer law, is in writing and signed by the clan Elder and the man of the family involved. If it does not concern an adult male, it is the woman's, or the child's male representative, who consents to the agreement and signs it. If the woman is an adult but unmarried, the father makes decisions on matter concerning her and Xeer. If she is married, then her husband decides. If none of those exist it is up to another male relative, like the father's brothers or some other older relative.²¹⁹ After the clans have negotiated and the agreement is registered in a court, the decision is definite and final. There is no possibility to appeal.²²⁰

If a crime is committed in Hargeisa by a person connected to a clan elsewhere, like Burao, the Elder, responsible for the person from Burao, has to come to Hargeisa to negotiate within Xeer.²²¹

Only married men pay Diya. An older man, like a grandfather in a family, pays Diya for the whole family. If one of the married sons is poorer than his married brothers, the better off pay a bigger share to the grandfather for payment. People in the Diaspora do not pay Diya in Somaliland, they pay Diya for events in the Diaspora where they live, (for instance in Sweden). If a person from the Diaspora visits Somaliland and his clan in the meantime has to pay Diya, he must, despite actually living in Diaspora, pay his share of the Diya.²²² The subclan paying Diya save in advance so that they are able, when needed, to pay any Diya.²²³

Corruption exists within the Diya system when collecting money from the clan, as a part of the compensation for damage to which all the clan members have to contribute. Mohamed Jama at the Legal Clinic gave an example. A man, originally from Ethiopia, moved to Hargeisa in Somaliland. When he was relatively new in Hargeisa he was contacted by a person of the clan, whom he did not previously know, who asked for payment of his part of a Diya. The man felt that his share asked for was unreasonably large. He turned to a man in the clan whom he knew and made it clear that, as from now, I will only pay Diya to you, to avoid overpayment.²²⁴

An agreement between clans can be taken to a Public Notary for registration.²²⁵ The agreement handed to a Public Notary states the number of camels that are to be paid and when payment is to take place. Public Notary can stipulate a timeframe during which the payment must be made. There is no need for any further investigation, both parties have already consented and accepted the agreement. If payment is not forthcoming, the court can call the paying clan and ask why payment has not been made. The court can issue an order where the clan is requested to pay within a given timeframe. If payment is not made the court can enforce the agreement by sending someone to confiscate property necessary to fulfil the

²¹⁸ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²¹⁹ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012 and the Attorney General of the Sharia Courts Judiciary in Hargeisa, talks in Hargeisa 14.06.2012

²²⁰ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²²¹ International organisation (A), talks in Hargeisa 15.06.2012

²²² Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²²³ International organisation (A), talks in Hargeisa 15.06.2012

²²⁴ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²²⁵ National Human Rights Commission of Somaliland, talks in Hargeisa 12.06.2012

agreement. The court can also deprive the responsible person in the clan of his liberty, i.e. the Elder who has signed the agreement, until payment has taken place. Seizure of property to pay Diya seldom takes place, as the clans have already solved the size of the payment in the agreement.²²⁶

In general, an agreement between clans under Xeer law when someone has been killed is of 100 camels, but it is up to the two clans to negotiate the size of the payment.²²⁷ The size of the payment varies depending on if it is a case of death or injury. In case of an injury the size of the payment depends on the type and extent of the injury. Payment is bigger for a man than for a woman. If the payment is 100 camels for a man, it is 50 camels for a woman.²²⁸ The clans negotiate bilateral terms where the sum paid as Diya can vary in different agreements for the same crime. The number of camels the clans agree to be paid as Diya for a given crime will be used again in an agreement the next time a similar case appears between these two given clans. The agreement is made in camels, but payment can be in camels or in the form of money. The value of the camels is negotiated for each given case and this value can change during different negotiations between the clans and can be between US\$100 to US\$200 per camel. If the clans are unable to agree, the Supreme Court decides what value the camels should have.²²⁹

4.7.1. Women

When a woman marries a man from a clan far away from her own home and clan, the clan geographically closest to the woman will protect her.²³⁰

Previously women could have their voices heard in a clan but always through a man. Now women are educated as well and can speak for themselves. This is also accepted by society. Women are often family providers. Despite this, it is still a society run on male condition. It takes time to change things and the situation for women is influenced by tradition and religion but also viewed with modern eyes. An example of change is that Somaliland has three female ministers, two out of eighty two members of parliament are women and one woman in Guurti has taken her husband's place. In the countryside the situation for women is still traditional.²³¹

No woman from a clan would ever say that she has been raped. This would cause shame on the entire clan and the woman would probably leave home.²³² Rape cases are referred to secular law and not solved by Xeer law.²³³

4.7.2. Groups of minorities

Negotiations can take place between clan and minority group. According to the constitution minority groups like Midgan can refuse an agreement in line with Xeer. However, it is not possible to refuse payment of an agreed Diya to Midgan.²³⁴ Minority groups like Midgan, Gabooye, Madhiban and Askisho from Ethiopia are not respected. Negotiations will take place but it can happen that the agreement is not implemented. A strong clan exerts pressure

²²⁶ The Attorney General of the Sharia Courts Judiciary, talks in Hargeisa 14.06.2012

²²⁷ The Attorney General of the Sharia Courts Judiciary, talks in Hargeisa 14.06.2012

²²⁸ International organisation (A), talks in Hargeisa 15.06.2012

²²⁹ The Attorney General of the Sharia Courts Judiciary, talks in Hargeisa, 14.06.2012

²³⁰ International organisation (A), talks in Hargeisa 15.06.2012

²³¹ National Human Rights Commission of Somaliland, talks in Hargeisa 12.06.2012

²³² IOM Hargeisa, talks in Hargeisa 13.06.2012

²³³ International organisation (K), talks in Hargeisa 13.06.2012

²³⁴ The Attorney General of the Sharia Courts Judiciary, talks in Hargeisa, 14.06.2012

on minority groups. Minority groups can take a case to court to make sure that the agreement is adhered to. The clan must then give in.²³⁵ An international organisation (K) said that negotiations between a minority group and a clan are normally seen as fair, even if this is not always the case. Minority groups are weaker and poorer and the financial muscles of strong clans shatter the negotiation power of minority groups. Bribes can exist.²³⁶

Minority groups living in Somaliland can be affiliated to a clan. In such a situation the clan runs the negotiation on behalf of the person from the minority group.²³⁷

Another weak group is previous asylum seekers in Somaliland. They have no clan structure that can help them to pay Diya. It is sometimes the case that Diya payments are adjusted so that they become more reasonable and in line with income, or can be paid in instalments.²³⁸

4.7.3. Internally Displaced Persons (IDPs)

IDPs from southern and central Somalia belonging to minority groups or lacking a strong clan have problems with security.²³⁹ People belonging to clans from southern and central Somalia and who are a minority in Somaliland, have people representing them despite these people not being from the same clan. It turns out like a clan in the Diaspora. It works the same way in the Diaspora outside Somaliland.²⁴⁰ The Ministry of Interior reported that if one does not live together with one's clan, one can set up a committee of three persons who speak on behalf of a person within the clan system. The committee is respected.²⁴¹

Half of the IDPs in Somaliland do not live in camps or settlements but in the host society. They are protected as well as anybody else living in Hargeisa. They are made welcome by the population of Somaliland.²⁴²

5. Lifos's comments

Lifos notes that there are contradictions as to whether clan agreements are in writing or not, but establishes from the information that the Elder, as well as a man in the family concerned must sign an agreement, and that this agreement can be taken to a Public Notary, indicates that written agreements do exist, at least in the urban areas. Lifos deems this to be the case in both Somaliland and Puntland.

5.1. Lifos' comments – the interaction between the authorities and the clan system

5.1.1. Mogadishu

The Somali society is permeated with the clan system. The clan system is integrated with all functions of society, even with the structure of the governing bodies. It means that the weak and insufficient structure of governing bodies, which nevertheless are in place in Mogadishu, such as the police and the judiciary, is in symbiosis with the clan system. During the period Al

²³⁵ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²³⁶ International organisation (K), talks in Hargeisa 14.06.2012

²³⁷ International organisation (A), talks in Hargeisa 15.06.2012

²³⁸ Jama, Mohamed, Legal Clinic, talks in Hargeisa 14.06.2012

²³⁹ International organisation (B), talks in Hargeisa 13.06.2012

²⁴⁰ International organisation (A), talks in Hargeisa 15.06.2012

²⁴¹ Ministry of Interior, talks in Hargeisa 13.06.2012

²⁴² International organisation (A), talks in Hargeisa 15.06.2012

Shabaab controlled Mogadishu, clans as such have been less influential even if some clans through connections with other power centres still have had a role to play in solving conflicts and when an individual seeks protection or redress. Other power centres may be the District Commissioners, appointed by TFG, but also others e.g. warlords and financially strong and influential businessmen. These power centres have influence on the authorities. Al Shabaab still has influence in some parts of the city even if they no longer control any part of it.

The police lack ability and capacity to take action, they are corrupt and the policemen are undisciplined and do not follow the chain of command. The individual cannot rely on the rule of law when dealing with the authorities but must, when deciding whether to make a report to the police or not, take into consideration that the victim has to pay for the alleged perpetrator's subsistence when being detained and the costs for the police' investigation of the case, as well as the fact that the alleged perpetrator can be brought out of detention or jail. This means a cost for the victim and can as well mean a risk to the victim when the perpetrator is let out.

In the same way as an analysis of the clans' and other power centres' influence in the authority's actions is required, the clans' possibility to act in Mogadishu must be analyzed. The possibility for the individual in Mogadishu to get clan protection depends on the clan's position in the city, e.g. a clan member in an influential position in TFG or other power centres. Clans which are represented in influential positions can facilitate clan members' needs of protection and redress. Persons from clans which lack connections to power centres are referred to the structure of governing bodies with all its above mentioned weaknesses. Lifos got contradictory information about the clans' ability to solve family related problems and petty crimes. Some are of the opinion that the clan system is still used for these matters but others argue that in Mogadishu of today clan does not have any relevance or in any case very little relevance in these kinds of matters. Many of those who live in Mogadishu are internally displaced and they have often no clan in the city which can facilitate their contacts with power centres or handle their cases within the clan system. Many of the internally displaced are women and children from minority groups which reduce their possibility to get protection and redress further more.

5.1.2. Southern and central Somalia outside Mogadishu

The situation in the areas in Southern and central Somalia from which Al Shabaab has been driven away is in many respects similar to the situation in Mogadishu. There are local administrations with District Commissioners, appointed by TFG. These have sometimes been appointed by TFG without consideration to the local clan dynamic, which has led to that a District Commissioner can belong to one of several major clans in a place or to a major clan that is in minority in this particular place. This leads to the fact that the other clans feel left out and are discontented, which in turn leads to a tense situation.

TFG provides protection to individuals who ask for it, but this is facilitated by clan. The clan protection works to some extent but in some places it just works if you belong to a specific clan. Clan is also important as there is information that TFG does not protect individuals belonging to clans which are considered to support Al Shabaab, regardless of the individual's personal point of view. TFG is, as earlier pointed out, weak and corrupt which affect the protection an individual can expect. In rural areas, where most people are nomads, the government has difficulties reaching out and the clan system is strong as long as it is not an area controlled by Al Shabaab. Al Shabaab is still present in the rural areas beyond the cities

seized by TFG and African Union Mission in Somalia (AMISOM) and in these areas clan protection does not work. TFG's weak position in some areas means that it can be more advantageous to turn to other power centres, such as clans, warlords, financially strong and influential businessmen but also to an international force such as AMISOM to facilitate protection. The individual must calculate the risks involved in turning to a power centre, e.g. how long one can predict the incumbent power to be in place, who will eventually take over and how will the new power centre react to the individual's actions during the earlier administration.

5.1.3. Puntland

The administration in Puntland is weak and corrupt and the people turn primarily to the clans for protection and redress. The police and the judiciary handles cases concerning Al Shabaab and cases concerning street boys and IDPs, i.e. cases where the clan does not have power or where the victims do not have access to clan on site which can speak on his/her behalf.

The judiciary has not enough capacity and in the rural areas there are no courts so the cases have to be referred to the big cities. The clan system and the government bodies are closely interlinked. The government keeps on a friendly footing with the clan Elders, e.g. by giving them valuable gifts, in order to through them govern the people. Apart from the exceptions mentioned above, cases which are reported to the police and go to the court system will be taken out of the court system by the clan and handled within the common law, Xeer. The police and the court system can be seen as helping the clans in their administration of justice according to Xeer. The police' detention of people can be used as pressure in a negotiation between clans and the courts can assist if a clan does not pay the agreed Diya. If a case is processed within the judicial system until a judgement is pronounced, the clans can still take the case out of court and negotiate an agreement according to Xeer.

In Puntland it occurs that clans agree that a person should be killed instead of one clan paying Diya to the victim's clan. Such a decision is formalized by the judiciary and signed by the president, but is executed by someone in the victim's family who shoots the perpetrator at the place of execution. The decision is made out of the negotiation process between clans, and the clans' decision cannot be appealed. Within the judiciary there is a system with several instances, which in practice is irrelevant as the clans at any time during the process and even after a judgement is pronounced can take the case out of court and handle it according to Xeer. The system in Puntland, which in practice is completely built on Xeer, means that IDPs and people from minority groups who do not have access to clan where they live are vulnerable.

5.1.4. Somaliland

The authorities in Somaliland are weak and suffer from lack of capacity. However, there is a judicial system with several instances, private courts which operate with a license from the government, and military courts which all operate after a written set of rules and regulations. According to an agreement from 2006, the National Declaration in which certain main principles were established, certain kinds of crimes shall not be handled within the clan system, e.g. rape. As is clear from Lifos' interviews in Hargeisa, the agreement does not work in practice as even these kind of cases are brought out of court to be handled within the clan system and Xeer. As almost a hundred per cent of all cases are handled within Xeer, it is only

threats from Al Shabaab and other threats against the state which according to law have to be handled within the court system.

As in Puntland, the courts in Somaliland can assist the clans in their practice of Xeer. The clans have the possibility to take cases out of court, even after a judgement has been pronounced. Lifos has also received information that it is not possible for persons not originating from Somaliland, e.g. IDPs, to take cases out of court. If the court convicts someone to a death sentence for more serious crimes, such as murder or terrorism, the president is required to sign the verdict.

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Abbreviations

AMISOM	African Union Mission in Somalia
ASWJ	Ahlu Sunna Waljamaa
NSA	National Security Agency (Transition period)
OCHA	Office for Coordination of Human Affairs (UN)
SNAF	Somali National Armed Forces (From August 2012)
SNG	Somali National Government (From August 2012)
SNP	Somali National Police (From August 2012)
SNSF	Somali National Security Force (From August 2012)
SVS	Shabelle Valley State
TFG	Transitional Federal Government
TFP	Transitional Federal Parliament
UNHCR	United Nations High Commissioner for Refugees
UNPOS	United Nations Political Office for Somalia

Map



Base: B02850A1 (C0029B) 1-02

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