

Order out of chaos

Somali customary law in Puntland and Somaliland

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Terms like ‘anarchy’ and ‘chaos’ are regularly used to describe the catastrophe that followed the collapse of the Somali state in 1991. But in the absence of government and a judicial system, Somalis fell back on traditional institutions and practices of governance to manage security and maintain order, including customary law and Islamic law (*shari’a*) (see *Islam and social order*, p. 94).

Even in Somaliland and Puntland where public administrations and formal judicial systems have been revived, customary law has remained important. In south central Somalia, where no judicial system exists, customary law, together with *shari’a*, has provided a framework for managing conflict and protecting people.

Customary law and peacemaking

Somali customary law, known as *xeer Soomaali*, comprises a set of unwritten conventions and procedures that are passed down orally through generations. These define reciprocal rights and obligations between kin and clans, covering domestic matters, social welfare, political relations, property rights and the management of natural resources.

Xeer is more than a contract. It shapes basic values, laws and rules of social behaviour. It incorporates aspects of *shari’a*, while the application of *shari’a* in Somalia is also influenced by customary law.

Unlike either *shari’a* or secular law, *xeer* is not universalistic. It is specific to relations between any two clans or sub-clans, although there are rules that are common to all Somali communities, relating to payment of *diya* compensation,

to marriage practices and to the management of property resources. Different rules exist for different livelihoods systems, such as agriculture and pastoralism. They can vary between urban and rural settings and can change over time.

Historically there has been a sub-set of customary law for warfare. These laws proscribe violence against certain groups, such as women, children and elders, who are ‘spared from the spear’ (*biri-ma-geydo*), and they prohibit certain violent practices and protect specific economic assets. Since 1991 these Somali ‘laws of war’ have frequently been violated. Local peace processes commonly involve the renegotiation or renewal of *xeer* between belligerents, with the peace accord itself representing, in effect, a new *xeer*.

Upholding the law

The observance and enforcement of customary law depends on respect for authority and social pressure. *Xeer* are negotiated by councils of elders (*xeer-beegti*) with specialist knowledge of customary law.

More generally clan elders have, in the absence of government, played a critical governance role to manage conflicts as mediators, facilitators or negotiators. In theory any adult male can be an elder with the right to speak in council (*shir*). In practice elders are selected as representatives of their clan for their attributes, which may be age, powers of oratory and wealth.

Elders have moral authority and power because these are delegated to them by clan members to advocate on their behalf on all matters that affect or influence their interests. Some clans



Collecting camels for diya (compensation payment) as part of a reconciliation process © PDRC

have more senior titled elders, variously called *Isim*, *Suldaan*, *Garaad*, *Ugaas* and *Malaq*. They commonly acquire the title by inheritance and rarely engage in the day-to-day management of clan affairs.

The institution of elders and the power and authority that they command vary considerably within Somali society, and in the past two decades the place of elders has gone through significant changes. In the absence of the state, elders have proven to be immensely important in upholding law and order and they have been central to all Somali-led reconciliation processes.

Neither Puntland nor Somaliland would have survived their internal wars without the constant support and involvement of elders in resolving political and security problems. Although these traditional institutions do not enjoy the resources of a state, their decisions – whether reached under a tree in the pastoral areas or in a modern house in urban centres – can carry the power of a government.

Elders and religious leaders work daily with pastoralists to share wells and grazing land without resorting to violence. When an incident occurs between two clans, the elders of both sides ideally would convene a meeting to discuss the matter frankly and to resolve the conflict through peaceful dialogue and consensus. The resolution reached may involve reparation of damages followed by a solemn statement that such incidents should be avoided in future. Religious leaders who assess the damages and the value of the reparation to be made according to *Shari'a* assist the elders in their deliberations.

Elders and modern government

The role of elders is not confined to the 'traditional' sphere. In Puntland and Somaliland they are engaged in modern government institutions. In Somaliland their role as guardians of peace and security has been institutionalized in the Upper House of Elders (the *Guurti*) and they have been involved in the selection of party candidates. In Puntland they have engaged in the nomination of candidates for parliamentary seats.

In Puntland and Somaliland, despite the presence of a public administration and security forces, elders continue to have a law and order role, drawing upon customary laws and *shari'a* and sometimes acting in cooperation with religious leaders. Often government law enforcement institutions have to resort to traditional methods to tackle intractable security issues. In Puntland, for example, many traditional and religious leaders are engaged in persuading young sea pirates to abandon their criminal activities. They have made steady progress in their endeavour as many youngsters have abandoned pirate activities.

Elders have the experience and authority to mobilize human and other resources for communal security. Given the respect they enjoy from their communities, the Puntland administration will consult them and secure their support before taking any action on security issues that would affect their people, such as banditry, militia roadblocks, kidnapping of foreigners, the rebellion of a clan against the government, and disarmament.

Cooperation between the Puntland administration and elders also occurs regarding political differences between members of parliament and the president, when clan elders and religious leaders are called in to mediate between the parties in conflict to avert the use of force.

Lessons

Somalia is passing through a difficult historical moment. The country is still divided into separate territorial entities, held together by clan militia, warlords or weak administrative structures created on clan lines. In spite of the existence of a variety of *ad hoc* social, commercial, administrative and political arrangements, it is the traditional structures that hold the people together. There are many obstacles yet to be overcome to restore fully functioning modern, religious or customary legal systems in Somalia.

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