Report

Somalia: Protection and Conflict Resolution Mechanisms

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SUMMARY

The Somali clan system is amazingly adaptable, and in spite of nearly two decades of turmoil and unrest, it is still functioning. Scarce resources, and natural disasters such as floods and drought, limit however both the opportunities and the will to support newcomers in an area, even though these may belong to the same Diya group, or the same clan. Clan protection issues, especially in Shabaab-controlled areas, are complex and depend on several factors. Affiliation to one of the major clans does not automatically provide protection. Political, ideological or religious issues are not negotiable with Shabaab. On other matters clans might be able to influence the decisions of the movement, but in strategically important places Shabaab's control is strong, and clan influence is very weak.

SAMMENDRAG

På tross av årelang konflikt er klantilhørighet og klannettverket fortsatt sikkerhetsnettet – og grunnfjellet – i det somaliske samfunnet. Men knappe ressurser, og naturkatastrofer som flom og tørke, begrenser både mulighetene og viljen til å støtte nyankomne i et område, selv om man tilhører samme *diya*-gruppe, eller samme klan. Tilhørighet til en stor klan innebærer i dag ingen automatisk beskyttelse. Politikk, ideologi, internasjonale og lokale forhold splitter og svekker klanens og de tradisjonelle konfliktløsernes autoritet. Klanbeskyttelse, særlig i Shabaab-områder er begrenset.

CONTENTS

INTRODUCTION

This report describes clan protection and conflict solution mechanisms in Somalia, with a focus on the situation in Southern Somalia. The report is based on various sources. The report draws partly on publicly available information in the form of publications, printed and web-based, and partly on interviews with representatives of UN organisations, international organisations, Somali organisations and Somali resource persons in Nairobi on several occasions, the most recent being in the period from 26 March to 3 April 2011. This information-gathering mission was undertaken in cooperation with representatives of the Swedish Migration Board, which is publishing a separate report (Migrationsverket 2011).

All of our interlocutors were made aware of the fact that the provided information would be published. Landinfo was granted consent, yet the majority did not wish to be quoted by name or position. As agreed, these will be referred to anonymously. To avoid recognition they have also been omitted from the list of references.

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1. CLAN PROTECTION IN GENERAL

In traditional Somali society, individual security depended on the ability of the clan, i.e. the *diya* group, to pay compensation or defend itself from possible attacks. *Diya* (or *mag*, which is the Somali term) is the compensation that, in the Somali context, is paid by the clan of someone who has caused a death or an injury to the clan and immediate family of the dead/injured person. In other words, this penalty is a collective, rather than an individual responsibility. The element of protection is mainly inherent in the fact that a large and/or militarily strong clan will deter a possible attacker.[1]

In spite of many years of conflict, clan affiliation and clan networks still remain the safety net – and the bedrock – of Somali society. All experts on Somalia as well as various Somali resource persons emphasize this (interviews in Nairobi, march 2011).

The Country of Origin Information Centre emphasizes that kinship and clan affiliation are flexible structures; they are reinforced when external threats occur, but may have less significance in peaceful situations. Clan affiliations and identities are also subject to change, as described in the following manner by Little (2003, p. 46):

> *Instead of searching within "traditional" social structure for explanations each time a new (or old) clan identity or alliance is expressed, one needs to examine the external power relations and the material benefits associated with such changes. And these have been exceptionally dynamic in the past decade. The clan system is amazingly adaptable to the changing demands of the international community, as well as the challenges of statelessness and pastoralism. In fact there is little doubt that the proliferation, fragmentation, and – in some cases – consolidation of clan identities were strongly*

[1] See also Section 1.1.

influenced by the presence of outside, resource-rich groups, such as the United Nations and Western development agencies. They held static traditionalist definitions of what a clan is and the necessary resources to reinforce these stereotypes.

Clans are thus essentially different from rigid social categories and must be regarded as the result of shifting social and political processes.

Clan identity and knowledge of ancestry are, according to Somali sources, still strongly featured in the Somali population around the Horn of Africa, also amongst children and youth. The bond between the clan and the homeland is equally strong, and Somalis – regardless of where they live – feel obligated to pay their share of Diya and give financial assistance to close and distant relatives when needed.[2] Those who do not contribute, should not expect to receive support, and for those with aspirations of leadership, reputation is important. Failure to provide support leads to loss of reputation. In such cases, one may as well abandon any prospects of leadership at either a clan, community or national level.

Minor clans or groups have traditionally sought protection through affiliation with the dominant clans in a given area. Internal clan conflicts and politicisation of the situation in recent years, as well as al-Shabaab's advancement, have affected these mechanisms negatively.

1.1 THE SOCIAL SAFETY NET

The clan, or more properly, the *diya* group, constitutes the social safety net that Somalis traditionally have relied on. This basic unit in the clan system consists of the male members of one or more kinship lines who have a common ancestor four to eight generations back, and is collectively responsible for the acts of the members. The *diya* groups are sufficiently large to pay compensation, and traditional jurisprudence is exercised and agreements (*xeer*) are made between these groups. The members of the *diya* group are thus obligated to support each other in the political and legal responsibilities defined by the *xeer* agreements.[3] (Gundel 2006). Traditionally, the *diya* group has also been responsible for assisting its members financially or otherwise. However, this responsibility does *not* imply that the members have anything resembling a legal entitlement to assistance (Notten 2005).

Scarce resources and natural disasters such as floods and droughts restrict the opportunities as well as the willingness to support newcomers to an area even if they belong to the same *diya* group or the same clan. However, little effort is spared when it comes to helping relatives[4] and neighbours. In a meeting with the Country of Origin Information Centre in Nairobi in March 2009, a representative for an international aid organisation with long experience from work in Somalia stated that it is common to find families consisting of six to eight members who open their

[2] Diya is payed only by adult men. Yet, financial assistances is expected from both men and women.

[3] *Xeer* constitutes the key element in alliances between Somali clans, and is regarded as the glue that holds Somali society together. *Xeer* agreements are made only between Somali clans – minority groups not considered of Somali origin are mainly excluded from the *xeer* and *diya* systems.

[4] In this context, relatives comprise a network extending far beyond the nuclear family, including second cousins, third cousins, fourth cousins, etc., on the father's as well as on the mother's side.

homes to another six to eight relatives. Whatever resources available are shared, but without the transfers of money from abroad, living conditions would have deteriorated considerably for the vast majority, from a situation which is already extremely difficult (interviews in Nairobi, March 2009). Newcomers without affiliation to a local clan, as well as people who have not been in touch with their local kinsmen for a long time, have fewer opportunities for protection and support (interview in Nairobi, March 2009).

2. MECHANISMS FOR CONFLICT RESOLUTION

The transitional institutions in Somalia, including the legal system, are weak, and the ability of the transitional authorities to safeguard the rights of the population is extremely limited (see also Landinfo 2010).

In Somalia, legal disputes are currently settled in three different ways (Le Sage 2005):

- Traditional common law, enforced by councils of elders/clan leaders.
- Islamic law, enforced by *sharia* courts.
- Secular laws, enforced by the regular civilian courts.

However, the regular court system was almost completely destroyed during the civil war, and remains nearly non-existent in Southern Somalia (see also Landinfo 2010). Traditional common law represents the most widespread and regularly used system of jurisprudence in Somalia today. Traditional Somali laws may contradict international standards of human rights, and the collective responsibility resting on the *diya* groups eliminates individual responsibility for criminal acts. In a meeting with the Country of Origin Information Centre, a representative of an international organisation reported that total impunity prevails at the individual level. To be sure, the traditional system of compensation still functions, but remains based on collective responsibility and not on punishment of individuals. The UNHCR has confirmed this information (interview, 2007), but with the proviso that local conditions, the strength of the clan, conflict lines and gender may have a decisive influence on the way in which this system works. This information has been corroborated in later interviews with various sources.

In addition, traditional mechanisms of conflict resolution and compensation presuppose a certain amount of stability. According to Gundel (2006), traditional jurisprudence implies that a group must be able to pay compensation, and rights and security can only be maintained through defence, and if necessary by the use of force. The absence of impartial mechanisms that are able to coerce a militarily stronger clan to abide by a decision in favour of a weaker clan also implies that the Somali minorities and the weak clans have often been discriminated against. This situation may have changed in favour of the minorities in some of the areas controlled by Shabaab, and it is claimed that many members of minorities have therefore joined this movement (interviews in Nairobi, March 2009, March 2010 and March 2011).

2.1 SHARIA COURTS

Sharia courts are found inside as well as outside areas controlled by Shabaab in Southern Somalia, where they process civil as well as criminal cases. In the areas where Shabaab is in control, the *sharia* courts impose harsh punishments, for example in the form of executions and floggings. The judges are closely associated with Shabaab, and follow the *hanbali* and *shafi'i* legal schools.[5] In civil cases, the *sharia* courts leave the decision to the clan elders, but with an obligation to inform the court about the outcome. If one of the parties is dissatisfied with the decision, the court may intervene and pass a verdict contrary to the decision of the elders. Criminal cases, on the other hand, are processed only by the *sharia* courts in the Shabaab areas, and their verdicts are to become effective immediately.

The judges may also redefine certain types of cases from civilian to criminal. One example could be property-related matters involving forged documents (Marchal 2011).

2.2 ELDERS UNDER PRESSURE

The long-standing conflict situation, the absence of law and order and rapid changes in socio-economic conditions have entailed continuous pressure put on traditional leaders in their role as enforcers of law and order, within and between the clans (Gundel 2006). In Southern Somalia, the traditional mechanisms and structures are therefore facing major challenges (Gundel 2006, p. 28):

> *The traditional structures in South Central Somalia are different and more composite, fragmented, weakened and confused than in the North, for a range of reasons: First of all, as mentioned in the introduction to section 2.1, the ethnic composition of people are very different due to a heterogeneous mix of sedentary agriculturalist, agro-pastoralist, old urbanised cultures along the coastline and pastoralist people - all with differing cultural heritage and traditional structures.*
>
> *Secondly, the history including the colonial experience is different and with that a diverse historical social construction of the traditional structures. Finally, the dynamics of the civil war in the South differed as well, resulting in an equally different impact on the traditional structures.*

These worrisome trends manifest themselves all over Southern Somalia, and they are more prominent in the cities than in the rural areas. However, the erosion of the authority of the elders started *before* the emergence of Shabaab. Globalisation and, not least, the long-standing national conflict have driven this development forward, because young people lend an ear not only to the elders. Gundel (2006), on the other hand, estimates that *xeer* is used to settle from 80 to 90 per cent of all conflicts and criminal cases. A number of other observers, international as well as Somali, also point out that the system is still working, although to a varying extent and depending on several factors, including location. In other words, the situation is complex.

[5] Within Sunni Islam there are four legal schools; *shafi'i*, *hanbali*, *maliki* and *hanafi*. The Salafists prefer the *hanbali* school, but Somalis in general follow the *shafi'i* school.

In recent years, international as well as Somali resource persons have pointed out these problems, and as recently as March 2011, examples indicating that the authority of the elders is undermined and eroding in areas controlled by Shabaab were brought forward in interviews in Nairobi. In Ceel Bur, the movement arrested five elders after demonstrations, and in Merka young Shabaab soldiers arrested elders from their own clan. But does this indicate that the clan system in itself is eroding? To be sure, the traditionally dominant clans have lost some of their influence to Shabaab, but as pointed out by Rosen (2010), even though some of the actors believe that they fight for "God and honour", the leaders are far more pragmatic and the conflict is anything but a holy war: *jihad*. Behind the religious rhetoric, this conflict is also the expression of social inequalities and desires for political power among rival clans and groups, who are fearful of losing their entitlements, their access to development assistance funds and their political influence.

3. CLAN PROTECTION AND CLAN INFLUENCE TODAY

Today, affiliation with a major clan does not imply automatic protection.[6] Clans remain important, but politics and ideology as well as international and domestic conditions divide and weaken the authority of the clans and the traditional mediators in conflict situations. Shabaab seeks to distance itself from the clan dimension for reasons of principle, but will also cooperate with clans and enjoy a certain amount of support from clans and minority groups in the areas under their control. Thus, large clans in many areas are subject to Shabaab and must comply with Shabaab's enforcement of *sharia* law. Small clans and groups could therefore see that their role has been strengthened in relation to the large clans. The smaller Hawiye clans Duduble, Murosade, Haber Gedir Ayr, Salebaan, Hawadle and Galjeel have allied themselves with Shabaab.[7]

According to some observers, one of the factors that has served to weaken the influence of the certain (large) clans, is that the clans are no longer armed – with some exceptions. The exceptions are the Ahlu Sunna Wal Jammaah (ASWJ) and other armed groups that are more or less allied with the TFG. On closer inspection, these groups are also clan-based. The ASWJ is divided, with divisions following clan lines.

The aspect of protection is therefore complicated, and the vulnerability and opportunity of individuals to find protection and support depend on a number of circumstances, such as local conditions, balance of power, kinship ties or relationships, financial position and status (interviews in Nairobi, March 2007, June

[6] The system has been under strain for several years, not least during the Ethiopian intervention in 2007-2008, when the clans, and thus clan protection, came under strong pressure. Masked persons – assumed to belong to Shabaab – attacked individuals and institutions. Since those responsible could not be identified, responsibilities eroded, and thereby also the clan's opportunities to act in accordance with traditions and customs.

[7] In Somalia, however, alliances are traditionally fragile. Strategies tend to be opportunistic, meaning that alliance partners may switch sides.

2008, March 2009, March 2010 and March 2011). This implies that opportunities for protection may vary from one area to another, and from one individual to another.

Clan protection is not a realistic alternative with regard to conflicts or disputes pertaining to ideology, religion or politics in areas under the control of Shabaab. This includes recruitment to Shabaab or marriage with Shabaab soldiers. With regard to conflicts without political or ideological undertones, such as disputes over access to pastures or water, the clans remain influential and conflicts are solved by traditional means. On the other hand, the clan system and clan protection still function in areas *outside* the control of Shabaab, but first and foremost for the local inhabitants. Newcomers without affiliation to a local clan, as well as people who have not been in touch with their local kinsmen for a long time, have fewer opportunities for protection and support, and remain dependent on the resources and goodwill of the local population (interview with well-informed international representative in Nairobi, March 31st, 2011).

As described above, the clan's ability to provide protection depends on a number of factors. Place of residence is one variable, and Shabaab undoubtedly emphasises maintenance of control in strategically and financially important cities such as the capital (see Section 3.1), the port city of Kismayo, Beled Weyne (which is a hub for transport and trade with Ethiopia), towns along the Kenyan border, etc. In these cities and towns, the clans have very limited influence. Outside these areas the situation is different, and the clans have retained a certain influence. The Shabaab administration or prominent leaders with a local base of support, such as Mukthar Robow from the local Rahanweyn clan in Bay and Bakol, can also grant some influence to local people and clan elders, but only to a certain extent and only to the extent that this does not threaten Shabaab's political goals on the local level or otherwise. The influence of the council of elders remains restricted even here. According to various international sources and Somali representatives, the expulsion of the international aid organisations is a good example of this lack of influence (interviews in Nairobi, March 2011).

3.1 MOGADISHU

The situation in Mogadishu has been complicated for years. Until the beginning of August 2011 the city was split into areas controlled by Shabaab and TFG. On 6 August 2011, Al-Shabaab however announced its withdrawal from positions it had held in Mogadishu for nearly two years. This has led to a significant improvement in the security situation according to the independent expert on the situation of human rights in Somalia, Shamsul Bari (UNHRC 2011). It is however, too soon to say if and how this will affect clan protection issues in the capital.

The population in Mogadishu belongs to various clans, even though the majority in the southern part of the city belong to the Hawiye Abgal clan. This clan also had a strong influence on security in the Medina district which was outside the control of Shabaab and was a relatively stable area in terms of security, since the Abgal militia, in contrast to other clan militias in the city, was armed and proved to be militarily strong. The Haber Gedir population, which previously constituted a considerable and powerful group in Mogadishu, has been strongly reduced after the majority left the city in 2007-2008. Many of them are currently living in the settlements for displaced persons in the so-called Afgoye-corridor.

In the areas of the capital that previously was controlled by Shabaab, the clans had a generally weak position, and hence a very limited influence. Mogadishu is strategically important, the leadership of the movement was located there, and the population was tightly controlled. Those seeking to obtain benefits for themselves or their kin within such areas will find it easier if the local commander himself has a local base of support. This provides an opening for influence by way of relatives, but here, too, some restrictions prevail. Conflicts or issues of an ideological, political or religious nature are not negotiable.

Those who leave conflict-ridden areas often travel to regions where their clan has traditionally been settled – provided that this offers better security than their current area of residence. Today, the issue of protection is first and foremost associated with the situation in the areas of arrival and the resources that are available to the family, the networks and the local population there (interviews in Nairobi, June 2008, March 2009, March 2010 and March 2011).

3.2 CLANS, ARBITRARY VIOLENCE AND CONFLICTS

Nor are the clans able to protect anyone against arbitrary violence, as pointed out by many informants: "Your clan cannot protect you from bombs" (interviews in Nairobi, June 2008 and March 2009). However, clans remain important with regard to *where* people flee – most of them want to resettle in a region where there are many others with the same clan affiliation (interview with UNHCR, June 2008).

3.3 PROTECTION AND MINORITY GROUPS

When asked about the protection provided to Midgan groups, a well-informed international source (interview in Nairobi, March 2009) stated that these groups often rely on various variants of paid protection.[8] The same source described protection in Mogadishu as similar to a mafia-like protection racket. In a meeting with the Country of Origin Information Centre, another well-informed international source reported that minorities who are forced to leave their homes because of the security situation will attempt to establish a client relationship with a host clan in their new place of residence (interview in Nairobi, June 2008). See also Section 3: Clan protection and clan influence today.

[8] This concurs with information made available to the Country of Origin Information Centre on previous missions to collect information on conditions in Somalia, especially with regard to the Benadir population.

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