

THE CASE OF QEYBIDIID

CUSTOMARY LAW & SETTLEMENT INVOLVING CLAN CONFLICT IN SOMALIA

October 18, 2005

There are several things to be considered in the case of Mr. Abdi Hassan Awale “Qeybdiid”, Chief of Police of Somalia accused of MASS MURDER (*ergo omnes*) and imprisoned since 17 October 2005 in Gothenburg, Sweden.
<http://www.aftonbladet.se/vss/nyheter/story/0,2789,714513,00.html>.

Mr. Qeybdiid is a well-respected and highly trained Chief Officer of the Somali Police Force. Below are pictures of the Somali Police force in Mogadiscio participating in a solidarity rally for their Chief.

http://www.hobyonet.com/News/2005/Oct/News%20oct_%2018_ciidamada.htm

<http://www.dayniile.com/Oktoobar/18Oktoobar7.htm>

Given the fact that **the police force is the institution that is involved in enforcing of the law**, Mr. Qeybdiid came to attend the IV Horn of Africa Conference on “Good Governance and the Rule of Law” organized by the Somali International Reconstruction Center (SIRC). The Conference was held on 14-16 October 2005 in Lund, Sweden.

With the present article, I wish to highlight some elements regarding the Restorative Justice System that is prevalent in Somalia and that seeks remedies and settlements involving clan conflict in Somalia. I hope to shed a light to the Swedish prosecutor by presenting some elements to be considered in the case of **Mr. Qeybdiid**.

IMPUNITY AND RECONCILIATION

1. During the Somali Reconciliation and Peace Conference in Nairobi, Kenya, no decision was made with respect to the issue of **IMPUNITY**. Somalis have not yet discussed whether to extend GENERAL AMNESTY to the various warring factions that were involved in the civil war of Somalia or whether to start the legal process of bringing justice to the perpetrators of past atrocities.

RESTORATIVE JUSTICE IN SOMALIA: THE “XEER” SYSTEM

2. **Somalis have a customary law that is called “XEER”** that seeks to restore peace among warring factions and to settle inter-clan disputes. For the sake of peace building in neighboring communities the Somali XEER has the same function as the Truth and Reconciliation of South Africa where past atrocities are most likely forgiven. Somalis have not yet decided whether to choose XEER in restoring justice for past atrocities or whether to proceed to an International War Tribunal for Somalia.
3. In Somalia, under its customary law **XEER**, community and inter-clan violence are settled not by the Courts but by an Alternative Dispute Resolution (ADR) body known as the “Council of the Elderly”. The role of

the Council of Elderly is to seek the most effective way to repair damages caused by clan violence and other crimes such as bodily harm, material damages and psychological traumas. Through a community consensus building the Council of Elderly decides on how to redress past injustices through retribution. In the Somali clan system, the individual is not separated from his/her clan, in particular in dealing with violence, past grievances and crimes. . Subsequently, the Council of Elderly from the respective clans where the individual is born come together to debate and decides what type of retribution is necessary.

4. Somali clan violence has a long history of resolving the conflict through **“Restorative Justice”** rather than choosing other types of State sponsored Criminal Justice system. Restorative Justice is defined as a process to **“make things as right as possible”** which includes: attending to needs created by the offense such as safety and repair of injuries to relationships and physical damage resulting from the offense. Restorative Justice requires a peace building approach that attends to the needs of the community as a whole and not the individual/s in question. Restorative Justice is very effective during the peace-building phase. It has also been documented that restorative justice works well in clan based societies where most of the crimes are handled using a cooperative structure of the **“community”**. The **Somali XEER system not only seeks remedies but it also extends community type support and accountability for both the individual and the clan so that the offender and the victim do not feel alone in coping with past grievances.**
5. Some of the various restorative justices that exist in Somalia are **forgiveness, payment in cash or in kind and other penalties** as decided by the Council of Elderly. For example, all the members of a particular clan can decide to make payment in the form of “DIYA” (blood money) so that to compensate the loss of life, property and income of the victim/s and his/her family. This form of paying the family of the victim a “fair compensation” is similar to the Viking law of **WEREGILD** that existed during 8th to 11th Century in Scandinavian countries. Islamic law also recommends waiving retaliation wherever is possible.

CLAN BASED ALTERNATIVE CONFLICT RESOLUTION IN DEALING WITH IMPUNITY: the case of warlords from the Majerteen vs. Habargidir clans. These two clans co-habit in the Central region of Somalia known as Mudug.

6. During this year, one of the most notorious warlord of Somalia: General MORGAN belonging to the Omar Mohamud sub-clan of Majerteen who was fighting against Mr. Qeybdiid’s clan the Sa’ad sub-clan of Habargidir during the civil war came to Mogadiscio to ask forgiveness to the Sa’ad clan. Mr. Qeybdiid’s clan decided to allow the general to come to Mogadiscio and requested him to make a public announcement via the local radios and explain to the civilian in Mogadiscio his intention in seeking forgiveness. Another noteworthy fact is that upon Gen. Morgan’s arrival at N° 50 airport in Mogadiscio the very same Mr. Qeybdiid and

other men involved in the civil war welcomed him. This goodwill gesture of reconciliation constitutes the Somali way of resolving past conflicts: the XEER which purpose is to bring healing between the concerned clans in order to avoid further conflict. General Morgan today is a civilian man who is forgiven by the Sa'ad sub-clan of Habargidir. The group based in Gothenburg who have brought the charges against Mr. Qeybdiid's are also from the same Majerteen clan as General Morgan. In the even that a judgement is passed on Mr. Qeybdiid's case, what will happen to General Morgan case? **P.S. MR. QEYBDIID AND MR; MORGAN's ARMED GROUPS HAVE FOUGHT AGAINST EACH OTHER DURING THE CIVIL WAR;**

7. The Habargidir clan sees the imprisonment of Mr. Qeybdiid as witch-hunting aimed at them. On one hand the Sa'ad feel humiliated since the Sa'ad have forgiven General Morgan and the Habargidir in Mogadiscio are asking questions such as: Why are the Omar Mohamud prosecuting Mr. Qaybdiid? Where is the agreed XEER? Why did the Omar Mohamud break the pact and why do they want to revert the wheels back to 1991 the beginning of the civil war. On the other hand, the Omar Mohamud in Somalia are shocked and are reflecting few questions over this case: What is wrong with our clansmen in the Diaspora don't they know that we have co-signed a cease-fire with the Sa'ad in 1993? With this case how are we going to reconcile with the Sa'ad since we have a long way to go before we can reach a genuine reconciliation in Somalia? Why does the Omar Mohamud Diaspora in Sweden want to provoke a renewed conflict between us? From these popular reactions, we can analyze that the Omar Mohamud in the diaspora who brought the charges against Mr. Qeybdiid have no clue of the NEGATIVE CONSEQUENCES that their actions would produce inside Somalia.

CLAN VENDETTA

8. The case of Mr. Qeybdiid will definitely have a negative impact on the "fragile peace process of Somalia" and could trigger clan animosity since people in Somalia are still ARMED and Somalia did not yet embark on a Demobilization, Demilitarization and Reintegration (DDR).
9. Mr. Qeydiid's case could re-start another round of violence (revenge) between the clans involved in the case. REMEMBER THE INDIVIDUAL IS PART OF A CLAN, whatever the charges brought against the individual are they will affect the integrity of the clan as a whole.

THE MORAL AND PRACTICAL QUESTIONS THAT THE PROSECUTORS IN SWEDEN SHOULD ASK THEMSELVES ARE:

1. Will it be worth to cause further violence among civilians from the various clans involved in Mr. Qeybdiid's case for the sake of one man given the fact that the Disarmament process did not yet start in Somalia? **PLEASE REMEMBER PEOPLE INSIDE SOMALIA ARE STILL ARMED** and any judgement imposed on Mr. Qeybdiid will have negative consequences to

the respective clans. Kindly read the latest information from the UN Security Council on the violation of the arms embargo and the recent increase in tension in Somalia.

<http://www.un.org/apps/news/story.asp?NewsID=16238&Cr=somali&Cr1=>

2. Is the Swedish government going to take part in a RENEWED CLAN-WAR in Somalia since Sweden was one of the donors that funded the IGAD led Somali Peace and Reconciliation Process in Kenya (2002-2004).
3. What constitutes War crimes in conflict situation where everyone is part of the conflict? **How do you distinguish who is the victim and who are the perpetrator between armed warring factions?**
4. How is the Swedish justice system going to reconcile International Criminal Law and the Customary/National Law of Somalia?
5. What about the thousands of Generals and military personnel during Siad Barre regime who have committed torture, mass murder, systematic execution and other brutality? Will the ex-government military officials also be brought to justice?
6. In the event that warlords are to be brought to justice, will Sweden be involved and become the host nation for such trial? If yes, has the government of Sweden thought of the financial and energy needed for such a trial?
7. Finally, the Somalis who immigrated to Sweden did that mostly for one reason: to escape conflict. Is Sweden prepared to confront civil disturbances as a result of the arrest of Mr. Qeybdid among the Somali community from the opposing clans living in its democratic soil?
8. As you may be aware, the Transitional Federal Government is split into two groups who are located in Jowhar and Mogadiscio. In summary, this case may be politically motivated, as Mr. Qeybdid's clan controls Mogadiscio while the President of Somalia, Mr. Yusuf, who is Omar Mohamud, is based in Jowhar.
9. It is recommended that this case be resolved in Somalia, through the Somali traditional system and not in another country. However, if this trial goes ahead, it should also be applied to all other parties who have been involved in inter clan warfare, and it should be done systematically, not on a case by case basis. In such a case, it should bring forth an impartial Trial for all the warlords involved in the conflict of Somalia including **the present Somali president Mr. Yusuf one of the most cruel warlords of Somalia.**

Amina Abdi Mohamud
Law Student at the University of London
Waterloo, Belgium
Amina@tvcablenet.be