

**Örebro University**  
**Department of Social Science**

# **Comparative law and legal development**

**A REPORT OF A WORKSHOP HELD IN GAROWE, PUNTLAND  
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**FACILITATED BY PDRC**

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## Glossary

<b>Barawan, Rer Hamar, Tumul, Midgan, Ybir, Bantu Somalis-</b>	Six of the minority clans in Somalia
<b>Diyah-</b>	Blood compensation collectively paid and received by the diyah paying group
<b>Garowe-</b>	Provisional capital of Nugaal region and capital in Puntland State of Somalia
<b>Guddoon-</b>	Consensus
<b>Heer Beegti-</b>	Experts on Customary law selected to arbitrate disputes
<b>Heer-</b>	Customary law
<b>Issaq, Darod Digil-Rahanweny Dir, Hawiue-</b>	Five major clans in Somalia
<b>Isim-</b>	Head of clan or sub-clan
<b>Jabinta-</b>	e.g. backbreaker, a nickname used on the Security forces during Siyad Barre's regime.
<b>Puntland-</b>	Self-declared state of Somalia comprising Bari, Nugaal, Mudug, Sool and the eastern part of Sanaag and Buuhoodle district
<b>Qisaas-</b>	Capital Punishment for deliberate murder
<b>Quadi-</b>	Sharia judgement
<b>Qur'aan-</b>	The Moslem holy Book
<b>Sharia-</b>	Islamic law
<b>Sheikh-</b>	Moslem scholar
<b>Shir-</b>	Gathering of adult men organized to deliberate matters of common interest as the need arises

## Introduction

Puntland State of Somalia is an autonomous part of Somalia proper established in 1998. It is situated in the northeast Somalia, encompassing the tip of the Horn of Africa. The environment is semi desert, best suited for traditional animal husbandry.

Somalia is often pointed out as a unique case in Africa since the population belong to the same ethnic group, with few exceptions, share a common cultural heritage, common language, albeit dialect differences and practice the same religion, Islam.<sup>1</sup>

Even so, the civil war and conflicts that burst out after the collapse of the military regime led by Siyad Barre proved to be one of the most disastrous and complex conflicts in Africa. The civil war was fuelled by drought, mass starvation, humanitarian intervention and a total collapse of government structure.

After nearly a decade of civil strife and severe fighting, Puntland State of Somalia declared its autonomy and set up its own administration, trying to restore and rebuild institutions and governmental bodies such as police, judiciary and prison corrective centres. From a legal perspective the newly established administration faced a multitude of problems, one example is that there is traditionally three legal systems operating within the country, Islamic law (Sharia) Secular law (Roman-Germanic) and customary law, (*Heer*)

This report by the Department of Social Science at Örebro University, Sweden, provides a record of the discussions and practical work achieved during a three-day workshop in Garrowe, Puntland entitled Comparative Law and Legal Development, focusing on the various aspects of legal development and comparative law relating to the three legal systems in Puntland.

The workshop facilitators, Puntland Development Research Centre (PDRC) and the 41 participants (52 including organizers), generated most of the material in the report. Some additional material has been included such as political background and constraints on development, and theoretical background.

## About Örebro University, Department of Social Science

Örebro University, Department of Social Science provide an education programme oriented towards international and comparative law in which a master level in law is offered. Among courses that is directed towards international law is; Public International Law, Human Rights, Foreign and Comparative Law, Law and Development, Legal Cultures, The Formation of the European Legal System and Paper on Law and Development.

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<sup>1</sup> Pastoral Justice p. 11

## **About PDRC**

Puntland Development Research Centre is an affiliated local organization to War Torn Societies Project International (WSPI).

In recent years, PDRC has conducted research concerning the three legal system operating in Puntland: sharia, secular law and customary law. The result is witnessed in the publication Pastoral Justice (2002), a participatory action research project on harmonization of Somali legal traditions. The work was carried out in cooperation with Diakonia, a Swedish INGO under the sponsorship of UNDP.

Additional not yet published material has been compiled relating to the same subject as a prolongation on the project of harmonization of Somali legal system. (Integration of Customary law Into Sharia and Secular Laws, Phase II, 2002)

## **About the report**

Chapter one will introduce a historical and political background to Somalia and Puntland State of Somalia and discuss constraints on development followed by a theoretical background to concepts such as rule of law and models for implementation and institution strengthening.

Chapter two provides a brief overview over various issues involved in a legal development with references to the Puntland situation. In Chapter three, the purpose of legal reforms is highlighted and problems with implementation and harmonization discussed.

The workshop report, chapter four, will provide a short introductions to the themes discussed by the moderators followed by the presentation of group work discussion.

In concluding remarks in chapter five the views and opinions that was raised by participants during group work presentation and in plenary discussions will be summed up and commented upon.

## Chapter 1. Background

### 1.1 Political background and constraints on development

Somalia is the only sub-Saharan country without functioning political, economic and social institutions.<sup>2</sup> Somalia was divided into three parts during colonisation, by three different countries. The northeastern and the southern area mounting to Kenya was under British government, the south and inter-river area was controlled by Italy and Djibouti, bordering to Eritrea, was a French colony.<sup>3</sup>

The British and Italian controlled areas was united when Somalia gained independence in 1960 and a period of nine years of democratic governance started with Ibrahim Egal as president. However, the democratic years resulted in widespread corruption and economic decline and the democratic governance of post-colonial Somalia ended with the overthrow of Ibrahim Egals government 21<sup>st</sup> October 1969. The overthrow started the leadership of Army General Siyad Barre that led to one of the most oppressive regimes in Africa.

During the first years of Siyad Barres scientific-socialism there was mass campaigns promoting literacy and the creation of a written Somali language, construction of schools and health clinics.<sup>4</sup> Nevertheless, during the 1970s the regime became more oppressive and less popular which resulted in a growing resistance and eventually the ousting of Siyad's regime in 1992.

The ousting of Siyad Barre was the product of long resistance from opposing groups dating back to the mid-eighties.<sup>5</sup> Conversely, the opposing groups with its base in clan-structure failed to reach an agreement and instead the overthrow of Siyad Barre led to an intense civil war.

During the 1990s Somalia faced intense and ravaging conflicts, mass starvation, humanitarian intervention by UN backed and US led troops called UNOSOM and an enormous displacement of people trying to avoid the horrors of fighting. During the civil strife millions of Somalis fled the country, either seeking refuge abroad or to become internally displaced persons within Somalia.

The north east and north western part of Somalia was largely spared from the worst fighting and destruction but in its turn received a large number of refugees: Puntlanders previously living in the south returning home and others seeking refuge.

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<sup>2</sup> Samatar p. 49

<sup>3</sup> Adam & Ford et. al p. 2 ff One area that was never incorporated in the independent and united Somali was the Ogaden region in Ethiopia. This border dispute has ever since been a source of conflict and spurge a war between Somalia and Ethiopia driven by Pan-Somali sentiments in 1977.

<sup>4</sup> Adam & Ford et. al. p. 4ff

<sup>5</sup> Samatar p. 25

Puntland State of Somalia is an autonomous part of Somalia proper. The Puntland administration was established in an all-clan conference in Garrowe 1<sup>st</sup> August 1998<sup>6</sup> following eight years of civil strife with Abdullahi Yusuf as president.

The geographical area of Puntland encompasses the regions *Bari*, *Nugaal*, *Sool*, *Mudug*, eastern *Sanaang* and *Boohoodle*.<sup>7</sup>

In the Puntland Charter, created in 1998, it was established that sharia, as in the former Somali constitution from 1960, should be the base for all legislation. Furthermore it states that the Universal Declaration of Human Rights from 1948 is to be part of the Charter. The Puntland Charter established four undertakings that needed to be fulfilled during President Abdullahi Yusuf's period of mandate as president:

- Referendum
- Drafting of the new constitution
- Population Census-taking
- Holding State elections<sup>8</sup>

However, the undertakings prescribe in the Puntland Charter as part of in the constitutional process failed to be addressed during the three-year term in office at the end of 2001. The Charter in addition specified that if the undertakings were not fulfilled, neither the Charter nor the governments mandate term could be extended, and that neither of these provisions could be amended.

This was the start of Puntland constitutional crisis, which created a period of instability in a region that had enjoyed relative peace and security, setting back the development and progress in Puntland.

The problems that the newly established Puntland administration faced and which still exist were manifold. The collapse of governmental institutions was widespread across Somalia such as the police and judiciary. At the same time the limited availability to revenues, high proliferation of weapons among formal and informal militia together with a growing number of refugees made the task a mountain to move.

From a juridical aspect, the existing body of judiciary institutions is still operating below minimum standard. In addition, there are three different legal systems in effect: sharia, secular law and customary law (*Heer*). During the civil strife and collapse of governmental institutions there was a resurgence of sharia and customary law to fill the vacuum. The issues of foremost importance in Puntland from a legal perspective are to focus on the three legal systems operating, to restructure a common and clear legal framework and strengthen the instable and weak judiciary and law enforcement institutions.

An additional constraint is the clan or kinship lineage relations that with its conservative structure can make it harder to formalize the legal systems and strengthen governmental institutions. In Puntland, as in the rest of Somalia proper,

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<sup>6</sup> Integration of Customary Law Into Sharia and Secular Laws, Phase II p. 4

<sup>7</sup> Pastoral Justice p. 17

<sup>8</sup> Project Proposal for Peace, Reconciliation and Conflict Prevention in Puntland p. 7

the population is divided into clan structure.<sup>9</sup> The clan structure is chiefly classified into five larger clans: *Issaq*, *Darod*, *Digil-Rahanweny*, *Dir* and *Hawiue*. In addition to this exist a number of sub-clans linked with one of the five major clans.<sup>10</sup>

The clan structure in Somalia can be divided into three groups starting at the primary level with *diyah*-paying groups and primary lineage which both might encompass a few hundred to a few thousand individuals. At the top is the clan-family, which might include as many as millions of individuals.<sup>11</sup>

The clan relation and clan protection was to a great extent suppressed and manipulated by Siyad Barre who formed a government based on clan relations, and tried to eliminate the traditional practice with diya payments and the function of elders in mediation in order to enhance his position in power.<sup>12</sup> The function of *Diyah* institutions is an elaborated scheme of economic cooperation and political solidarity as an effect from the traditional pastoral lifestyle.

During the conflicts following the overthrow of Siyad Barre, due to the insecurity and upsurge of warlords, the clan relations as a societal preserving dynamic grew in importance and became an important factor for stability and security.

In practice, *Diyah* institution functions as a collective obligation to honour certain debts and to claim restitution for wrong deeds committed against one of the members of the *Diyah*-paying group.<sup>13</sup> As will be seen from the examples at the workshop, the *Diyah* –paying institution serves both as social security and as a societal preserving instrument and additionally guarantees protection of life and property. Above the *Diyah*-paying unit is the clan that is associated with a particular area or territory and consequently can include a number of *Diyah*-paying units.

Another constraint when discussing legal reforms and legal development is the underdeveloped civil society that was a heritage from the military regime. Barre's rigid regime oppressed civil structures and hindered the evolution of an active civil society. As a consequence, there was no effective civil society to initiate and participate in the reconstruction of social, economic and political institutions after the collapse. However, during the second half of the 1990s there have been a growing number of NGOs and grassroots movements in Puntland that with international support assumes a greater responsibility in participating in societal restructuring.

### **Summation of the constraints on legal development**

- Existence of three legal systems operating in parallel entrenched in society
- Mistrust towards a centralized structured legal system
- Collapse of governmental institutions
- Clan and kinship affiliation
- Weak interaction between NGO and civil society representatives and government

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<sup>9</sup> Gassim p. 2 ff.

<sup>10</sup> Mukhtar p. 49 f. There is also a number of minority clans or minority groups within Somalia: *Barawan*, *Rer Hamar*, *Tumaal*, *Midgan*, *Yibir*, *Bantu Somalis*, *Dualeh* p. 11

<sup>11</sup> Pastoral Justice p. 12 *Diyah* –paying e.g. literally blood compensation

<sup>12</sup> Geshektek p. 76

<sup>13</sup> Pastoral Justice p. 12

- No secure income of public revenues

## **1.2 Theoretical background: Features of a legal system, implementation and harmonization**

The issues below intend to serve as a frame of reference to the text, both in theoretical background and in the workshop report. The issues reflect the problems that the Puntland administration and the people in Puntland are facing at present in the situation of trying to re-build and strengthen the legal framework and institutions of the society.

### **Overview**

- What are the characteristics of a legal system and what are the weak areas?
- In what way can the legal system participate in creation of a society with the ability to solve and prevent conflicts?
- What does the principles look like whose role it is to coordinate and harmonize different systems of norms in a society?
- What methods need to be developed in order to implement the principles identified in the aforementioned point in practice?
- In what way can the citizen's role in influencing, participating and controlling- the shape of a legal system be enhanced?
- How do one enhance/empower the knowledge regarding the content in existing norms?
- What margin of interpretation exists within separate parts of a legal system in order to achieve maximum result of harmonization?
- What responsibility rests on the actors in a legal system for implementing existing norms –judiciary, police, elders, others?
- What mechanisms exist within the legal system in order to provide good/necessary opportunities for changing the system?
- What role does “conflict” and “consensus” have in development of the legal system?

When discussing comparative law, development, and legal reform it is first necessary, as a basis for further discourse, to identify the components constituting a legal system. What norms evolve into a legal system, and what are the minimum standard, or minimalist criteria, for defining a set of norms as a legal system i.e. differentiation between legal ought and moral ought imposing obligations upon behaviour and attitudes.

In the context of Puntland, with three legal systems or systems of norms, the basic definition and identification of the components in a legal system is vital. Furthermore, with the background of three legal systems it is central to identify the principles that can coordinate and harmonize the different norms in society and also find an effective method so that there is a *de facto* implementation of the principles.

In addition, the citizens and communities role in the reforms and development must be considered. For answering the question in what way the legal system can participate in the creation of a society with ability to resolve and prevent conflict, the ways and methods for enhancing the citizens role in influencing, participating and controlling the shape of a legal system must be examined.

From a practical aspect this involves strengthening the knowledge regarding the content in existing norms and also defining the responsibility that rest upon actors for reforming and implementation i.e. judiciary, police, elders, political leaders and the community.

Legal reform and development is a process and inevitably concerns change of the existing order, in small or at large. In this perspective, the margin of interpretation for maximum result of harmonization that exists within the various active systems of norms must be highlighted and used. Experience and already established principles for change and evolution of a system can be vital both in the aspect of using mechanisms already established which might provide with the most sustainable solution and also render most popular support for changes.

### 1.3 The concept of Rule of Law

When discussing the concept of rule of law a distinction has to be made between the formal and material meaning. Formally, rule of law can be expressed as “law based”, “legal” or “law governed” which means that a state is identified as a rule of law regime if it has: *a legal order which follows certain principles for the exercise of state power.*<sup>14</sup>

In this formal sense of the concept, rule of law exists if the state is subordinate to enacted norms and laws and in its practice shows habit of obligation to follow the law in its exercising of power.

The material sense of the concept, which hereinafter will be used, is a latter definition influenced by the development of democracies in Europe and the expansion of human rights importance in public international law. The material definition of a rule of law state, in contrast to the formal, thus adds values to the concept and puts it on a moral or holistic perception between the relation of legal order and state, making the moral element central in defining the concept.<sup>15</sup>

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<sup>14</sup> Fogelklou p. 36

<sup>15</sup> Ibid. p. 38

Classifying a given case as rule of law state or not is hence not only an academic exercise. It has moral implications, as there seem to exist an agreement that rule of law state, together with democracy, is normatively the best type of rule.

In this material or substantive connotation of the concept, values can be traced with a analogy to fundamental rights and freedoms as expressed in human rights treatise such as: *right to a fair trial, right to life, freedom from torture, freedom from arbitrary detention, freedom of expression, freedom of religion, equality under the law, right to be recognised as a person, right to political participation, freedom from being sentenced twice for the same crime ect.*

Rule of law programmes or reforms initiated in various parts of the world is often focused upon specific issues within the rule of law framework. Three can be witnessed rule of law programmes directed towards market-economy focusing on legislators and enactment of laws that provides for a market-economy friendly environment and also on the judicial system strengthening it to provide with alternative dispute resolution forums and other means to enhance the basic structure for economic development.

Other projects within the rule of law scheme might be directed towards democratic transition and consolidation, establishing structures and institutions necessary for a functioning democracy and empowering the actors so as democracy will be “the only game in town”.<sup>16</sup> The common nominator for the above-mentioned approaches to rule of law reforms is that they are both concentrated towards a top-down and result oriented scheme.<sup>17</sup>

Another approach within the rule of law promotion on the international agenda is the bottom up orientation working with human rights reforms towards gender, minority and indigenous peoples issues. This perspective often operates at grassroots level, involving NGOs and civil society participation. In a legal development process from this perspective law is seen as a tool for advocacy for civil society and disadvantaged groups in society.<sup>18</sup>

There exist some tension among the programmes within the rule of law promotion especially among democracy and market-economy promotion and the human rights approach.<sup>19</sup> A combination and effective co-ordination, however rare, should perhaps produce the most beneficial outcome steering away from confrontation between legal aid provides.

This report, and the use of rule of law principles, is a synthesis of the aforementioned approaches. Due to the complexity of Puntland, the issues debated and discussed during the workshop integrated, overlapped and focused both on institutions such as the judiciary and on issues as human rights as part of a development process.

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<sup>16</sup> Linz & Stephan p. 17

<sup>17</sup> Carothers p. 13

<sup>18</sup> For further discussion regarding the various approaches and ideological and methodological differences in legal aid programmes see Greenberg, David F. *Law and Development in light of Dependency Theory* (1980). See also Trubeck, David M. *Towards a Social Theory of Law: An essay on The study of Law and Development* (1972).

<sup>19</sup> Carothers p. 14 ff

Furthermore, the workshop was conducted at a bottom-up level with women's NGO and other grassroots movements but included members of parliament and public servants.

In a developing process towards rule of law state in the substantive meaning of the concept, it is necessary to first establish the principle that law binds the states actions. Further, to realise the values, institutions should be focused upon to be able to uphold effectiveness of the rule of law principles and fully implement the reforms and changes. Institutions primarily affected at an early stage are the police, judiciary, and legislative bodies. Additional restructuring might affect the administrative institutions, and supervisory bodies with the purpose to control and curtail governmental authority such as the institution of *ombudsman* and a constitutional court.

In addition to, and complementing the institutional orientation, is a bottom up process where the citizen's rights are secured from state interference on a lower level thru NGOs and free press, implicating an active and contributing civic society.

In a development process from internal conflict to peace and reconciliation or transition from authoritarian to democratic governance, the process of rule of law is closely integrated and vital for progress. There is a clear interaction between rule of law and democracy, supporting one another since they are both ongoing processes, and also relative to each other and the situation of the state. Initiating a rule of law process is by no means a guarantee against erosion towards authoritarian rule or conflict but it might function as a safeguard making it harder for erosion.

Also, from an empirical aspect there seem to exist a causal relation between rule of law regimes and protection of human rights, whereas in countries lacking rule of law, or only adopting a formal rule of law, human rights abuses is more frequent. Consequently, in a development process where civil society is participatory, rule of law is not only an aspiration but an essential tool for implementation of the reforms. In the Puntland context, as will be evident below, strengthening institutions for rule of law is contingent upon at least a minimum of rule of law principles involved in the process, in particular the political rights and freedoms. The input of securing and guaranteeing political rights and freedoms can generate the output of a participatory community, accountable civil servants and legislators, and efficiency among the rule of law principles. As a consequence, the rule of law principles creates trust in the process supplementary to the qualities of good government.

As described above the rule of law concept used in this report is presented as bearing certain values or qualities. In this sense, rule of law is an ideal. When talking about a rule of law state or rule of law regime in this sense one has to integrate the formal rule of law: the supremacy of law, with the material values. The rule of law state thus consists of several mechanisms or principles that enables the rule of law to transform and progress.

The principles primarily identified to constitute a rule of law regime are: *Supremacy of law (legality) along with separation of powers, protection of the fundamental rights*

*and freedoms such as protection of life, liberty and property of persons, legal certainty, equality under the law, and effectiveness of the rule of law principles.*<sup>20</sup>

The principles above are only relative values and in a developing process they need to be implemented or realised in order for a state to be recognized as an established rule of law regime. The realisation must be made in parallel reforms intrinsically involving both top-down and bottom-up approaches, but also integrated with one another i.e. a restructuring of the judiciary institution making it accessible (legal certainty and confidence) to the citizens requires enactment of laws governing civil and criminal processes (in coherence with fundamental rights and freedoms) allowing the involvement of civil society. At the same time, legal training and independence of judges (effectiveness of rule of law principles) is imperative.

The integration between the parallel reforms and approaches is evident and, as can be concluded from above, necessary for a full enforcement of the reforms. Individuals accessibility is related to freedom of fair trial and proper frameworks for civil and criminal processes allowing participation of civil society and the outcome or product, will be upholding an effective application of rule of law principles.

## **Reflections**

- The material connotation of rule of law is perceived as endorsing certain values or qualities
- Rule of law is an ongoing process, requiring active participation from both governmental and civil society structures
- The principles primarily perceived constituting a rule of law state are: supremacy of law, protection of fundamental rights and freedoms such as life, liberty and property, legal certainty and effectiveness of rule of law principles.

## **Chapter 2. Comparative Law and Legal Development**

### **2.1 Comparative Law**

In legal development, as will be seen below, comparative law serves the fundamental purpose of providing the process with guidelines or a structural framework. Comparative law can be seen as a moderate and compromising tool in a development initiative from two aspects. The first is that a comparative approach has more flexibility and less value added perspective on development as opposed to adaptation or importation of foreign law and institutions. The other aspect is that comparative law is more focused on process-approach rather than result-approach. This latter aspect consequently allows than legal reform and development to progress without being locked in definitions and determined goals.

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<sup>20</sup> Fogelklou p. 39

Furthermore, comparative law as a tool for highlighting commonalities and differences, the *tertium comparationis*<sup>21</sup>, can be used on internal as well as external legal systems. In Puntland this is a beneficial instrument in harmonization work. In the aspect of establishing law enforcement and judiciary institutions, comparative perspective is useful providing the process with objective instruments and to draw references to other legal systems, institutional structure and international standards without losing ownership over the course of action.

## **2.2 Law as an instrument for conflict prevention and conflict resolving**

Law as a conflict prevention and conflict resolving mechanism in its most basic provisions is chiefly perceived as constituted by a police force in combination with an effective judiciary system with the goal to achieve and maintain security in the society as a whole and promoting the rule of law.

In a society scourged with conflict and insecurity the existence of a police force and judiciary plays a vital part in the process of rebuilding and strengthening the societal structures. The law enforcement institution has a dual part, both in securing governmental institutions and, in securing the well being and functioning of everyday life of the citizens.

In a generalized and simplified scheme of the basic occupation of the police and judiciary, the police consequently assume the function of preventing conflicts by securing law and order and assure that conflicts are dealt with in accordance with the law and the judiciary assumes the role of resolving the conflicts when they occur providing a due process of law and if necessary, imposing sanctions in accordance with the law.

## **2.3 The police**

The law enforcement institution is dependent on several factors guaranteeing its efficiency, independency and accountability that are to be seen as integrated with one another.

A legal code is one important factor acting as a framework for law enforcement, providing restrictions for the executing of power, safeguarding its independence and coherence with established norms and regulations. The situation of the state will shape the attention of legal reforms regarding enactment of laws and legislation. If it is a state with the attribute of failed or if it is an emerging democracy determines the structure of governmental institutions and the role and function of law enforcement institutions.

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<sup>21</sup> Bogdan p. 62, *tertium comparationis*- e.g. the common nominator between two systems. Another important aspect of comparison is to look at the substantive norms and the legal institutions of a certain system to determine their function, that is, their actual existence and normal use.

Puntland in general, and Somalia in special, has during the last decade witnessed a widespread civil and political breakdown. However, in the decay of governmental institutions, legislators, judiciary and police, there has been an upswing for the traditional systems and more significant for shari'a which, in contrast to customary law, has both civil and penal liability. Nevertheless, even with the upswing of the traditional legal systems that was kept on a tight control under Siyad Barres regime<sup>22</sup>, the establishment and effective governing of a police force has proven harder.

Accountability is vital in the process of conflict prevention and conflict resolving, meaning that the police force is responsible to the community as a whole e.g. an integrated police force represented by the whole community with involvement of all strata of society, civic leaders, elders, business people and ordinary men and women. This involvement is particularly important in Puntland with the clan structure and male dominated legal systems as customary law and sharia. In practice this would mean a bottom up process with the involvement starting at regional/district level and also in the aspect of society's involvement as a whole.

The distrust against police or other governmental authorities stems from mainly two factors, one dating back to the beginning of colonisation under the Italian rule and the other from more recent history emanating from Siyad Barres brutal regime and feared police force, the National Security Service (NSS) and the military police nicknamed jabinta (backbreakers).<sup>23</sup>

With this as a background, two historical factors influence the process at present. The first one is that police or other authoritative body imposed or, perceived as imposed from outside society (weather it be outside the nation state or outside district level) will find it hard to generate public support and trust. The second, establishing a centralized police force with low accountability and transparency in its actions might, as a heritage from the previous regime, create distrust or even resistance and as a consequence never become part of societal structures.

From this, the conclusion can be made that for a successful reform directed at police force in Puntland that will be properly implemented requires an involvement of civil society at an early stage of the process.

Also, a discussion has to be made relating to the regional/district level and central government to determine boundaries of jurisdiction and formal structure of the police. Important in this aspect is not to let the clan or kinship relations influence the divisional borders since this might put strong constraint upon the police. The discussion of regional/district structuring of police should be made with the background of Siyad Barres centralized regime and the possible reluctance to a centrally organised police force.<sup>24</sup>

Another constraint upon the police is the former militia members and members of armed gangs. One method of dealing with former militia is integrating them in the police and security forces, as one way of handling the disarmament, demobilization

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<sup>22</sup> Pastoral Justice p. 16

<sup>23</sup> Human Rights in Somaliland: Awareness and Action p. 11

<sup>24</sup> Adam & Ford et. al p. 1

and reintegration (DDR). However, in this context it is important that both proper education and financing is provided along with evaluation of the process of integration.

As a consequence of DDR and expansion of police force it is necessary to provide adequate training. Without proper training all the above mentioned issues for strengthening the police force, creating a legal framework, accountability and societal participation at district level, runs the risk of being counter productive.

A uniform training programme in accordance with international standards reaching over the clan boundaries is evident. Supplementary, it is important to emphasise that the police force acts in coherence with established norms and regulations. In practice this means that the actions by the police that violates the law is to be subject to due process of law and sanctions. A supervisory mechanism could help both creating discipline and generate public support.

With the background of Puntland and the existence of *parallel* norm systems Shari'a, secular law and *heer* means that there might be confusion regarding the legal basis for exercising jurisdiction or even an obstacle in creating common regulatory framework for enforcing agencies. There is therefore a need for harmonizing the three systems, creating a clear legal framework and one that will satisfy the needs of Puntland and international human rights standards.

The issue of financing and providing the police with modern equipment alongside with appropriate salaries has not been touched upon in this perspective. It is however a central subject in reforms oriented towards restructuring the law enforcement as will be evident below from workshop discussions.

## Reflections

- Puntland has a rich culture of traditional law (*heer*), Islamic law (sharia) and secular law.
- In Puntland there are many internally displaced persons (IDPs). Both returning puntlanders from south of Somalia and refugees from Somalia and Ethiopia in which several have been part of militia and armed gangs during conflict
- There is a high proliferation of weapons. In some cases, criminals are better equipped than the police. The process of DDR is apparent.
- The clan or kinship relations are strong, especially in rural areas, which might constrain the police in their actions.

## 2.4 The judiciary

The judiciary as an institution is directly linked with the police in criminal matters, but it should also serve as a mediator in civil law cases. For the process of evolving into a rule of law state the judiciary plays a central role. They serve as a dispute-resolving forum in both civil and criminal law cases.

Further, the judiciary functions as transitional justice and instrument for reconciliation in new democracies, or countries in transition. In this aspect the judiciary plays an important role in opposing the past and offering remedies to victims of past violations. Pursuit of justice in retrospective can be an urgent task of democratisation and in legal reform and legal development towards rule of law, transitional justice plays a central role. The new regime proceeds to, thru the judiciary, bring to light the fundamental difference between the old regime and further stress the critical role of rule of law and human rights in a democracy.<sup>25</sup> However, the ways and methods might vary from country to country and the pursuit of retrospective justice runs a risk of putting democracy in danger. The ways of reconciliation must especially take into consideration the circumstances and situation under the old regime as well as the circumstances under the present democratic or transitional regime. A balance need to be struck between on the one hand those who seek retrospective justice at any cost and the opposing factor, that seeks to let the past violations go by in order not to threaten the democracy.

In the case of Puntland with its own state-like structure separated from Somalia proper, the role of the judiciary in transitional justice must be further discussed in considering the aim of retrospective justice and the necessity or demand for such in the Puntland context.

As mentioned above the confidence of the public is important for a successful establishment of a functioning police force, a fact intimately linked with the courts function and equally important for the courts effectiveness. As in the aforementioned text regarding the police, equal attention should be given to the question how to involve society in the process of establishing and strengthening the judiciary.

During Siyad Barres regime, courts, as with the police, became instrument for control and suppression. Law was used efficiently to enhance and safeguard the military regimes interest. As an example can be mentioned that *habeas corpus*, the principle that evidence warranting the arrest is brought before a judge, was abolished. Another way in order to tighten the power and control was to legislate. Law no. 54 became notorious for denial of human rights as it listed 26 offences that were considered injurious to peace and order. Out of the 26 offences, 20 were punishable by a mandatory death sentence.<sup>26</sup>

As evidenced from the aforesaid examples on how law was used in suppressing and controlling the society it is important to keep a legislative or reformative process transparent and coinciding with information and education so as to enable individuals

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<sup>25</sup> Mendez p.1

<sup>26</sup> Human Rights in Somaliland: Awareness and Action p. 11

to participate. In the aspect of judiciary transparency and access should be enhanced in order to provide for control and supervision.

In addition to this, legal culture should be mentioned which might provide a basis for a rule of law state. Culture, whether it be legal or general is hard to define. The concept is often used as a broad-catch all term. Legal culture is in this context, when focusing on the judiciary, thought of consisting community and individual's relation to the court, in attitudes and habits in resolving disputes.<sup>27</sup>

With a legal culture of habitually using the courts for solving disputes and a functioning criminal procedure that provides for free and fair trials and efficiency of the courts dispute resolving function in civil law cases the courts position is enhanced and lays foundation for consolidating a legal culture that exists in harmony with rule of law. An improved position for the courts will further work as a safeguard for democracy and protect the citizens from interference from the state.

Mediation and arbitration as conflict resolution already exist within the Somali culture with the function of *shir*, a gathering of adult men to deliberate matters of concern as need arises, and judgement reached through consensus, *guddoon*. In addition, *shari'a*, Islamic jurisprudence as established being the basis for all legislation in the Puntland Charter (1998) is part of the culture for conflict resolving as part of the court system. The Charter also established a court system similar to that of the first nine years of independence (1960-1969) with a primary level of courts (district or regional), appeal courts and supreme courts.<sup>28</sup>

In addition to the secular law judicial system it is possible, as mentioned above, to identify two other enforcing organs: customary law with a traditional structure based on *diyah* paying group and *shari'a* with government law enforcing agencies and religious sheiks.<sup>29</sup>

With aforementioned, the challenge towards establishing a functioning rule of law judiciary is primarily the harmonization of the three systems so as to provide the judiciary with a common and foremost clear legal framework and the society with a common judicial structure for resolving disputes.

At the same time, and linked with the challenge is the important factor of making the judiciary part of the community, accessible to individuals and foreseeable in its processes. The concepts of foresee ability and accessibility is contingent upon a clear legal framework, but also upon factors more related finances and allocation of resources.

From this financial aspect, accessibility and foresee ability can partly be achieved thru legal training of judges, especially where there exists judges with training in only one of the legal systems, training of public officials, equipping courts with modern

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<sup>27</sup> On the discussion of legal culture and conflicts regarding ethnocentricity see Thomas M. Frank (1972) *The New Development: Can American Law and Legal Institutions Help Developing Countries?* and also David M. Trubek (1972) *Towards a Social Theory of Law: An essay on the Study of Law and Development*.

<sup>28</sup> Pastoral Justice p.17

<sup>29</sup> Pastoral Justice p.10

technique, recruiting administrative personnel and restructuring legal training at higher education to create a base for recruitment of judges and lawyers with broad knowledge of the legal systems operating in Puntland and with expert understanding of the harmonized legal system.

Finally, and perceived as being of outmost significance for a rule of law function is the independence of the judiciary. This is important from two aspects; the first to receive public confidence and the second to fully enforce and implement the law. Judicial independency is often cited as being the foundation for the rule of law and three characteristics are primarily presented as constituting judicial independency:

- First, is that judicial decisions are not influenced by the judge's personal interest and affects the outcome of the case.
- Second, that the judicial decisions once rendered are respected, either the parties comply voluntarily or that the court has the power to force compliance
- The third characteristic is that the judiciary is free from interference, both from parties to a case and from the state or state organs.

The absence of government creates difficulties for judges to keep their independence and professionalism, especially under the influence of clan constraints and lack of protection.

Reforming the judiciary in this former sense is to a great extent contingent on resources that in its turn, is dependent on proper taxation. Even though this reformation might be seen as a more progressive and as a step-by-step implemented restructuring than creating a legal framework, the institutional attention is equally important so as to give substance to the formal implementation of the legal framework governing the judiciary.

### **Reflections**

- There are three systems for conflict resolution operating in Puntland, shari'a, secular and traditional law.
- A clear legal framework supporting the judiciary with a broad based popular support is lacking.
- The clan and kinship relations might constrain the judiciary and the traditional method of settling disputes has to be taken into account.

## Chapter 3. Implementation and Harmonization

### 3.1 Legal aid and motives for reforms

The goal of legal reforms governs the methods used for successful achievement. Much of the discussion regarding goals and obstacles of legal reforms has been touched upon in the theoretical background, focusing on legal reform directed at law enforcement and judiciary. Here will only be mentioned something about the motives and methodology behind legal reform projects that is being implemented.

If generalized, legal reforms are influenced and initiated by two actors. The first one is the political ruler in the given country and the other, foreign stakeholders, INGOs or governmental organisations. These are the two dominating dynamics in legal development.<sup>30</sup>

As a consequence, many legal initiatives fail to be properly implemented because the underlying structure for reform is not well established within the society as a whole. There is therefore an additional actor on the legal reform agenda, INGOs and its correlatives in the targeted country, including grassroots movements. This latter approach to development can often succeed with gaining popular report and work on a participatory bottom-up level.

This existence of various actors pursuing legal reforms can as a consequence of different approaches create tensions and clashes, rather than development and progress.<sup>31</sup> It is therefore necessary to identify the underlying dynamics in order to reach a reform initiative that is in coherence with all parties in the process, foreign stakeholders, domestic politicians and civil society.

### 3.1 The purpose of legal reform and legal development

Legal reforms and legal development endorses implicit as concepts the meaning of progress and improvement and can therefore, just as rule of law, be regarded as an ideal bearing certain qualities or values. Often the term legal reform or legal development is an attribute to specific areas of law such as: legal reform towards gender equality, or legal development towards independent judiciary.

In the perspective of this report, the endorsement of value is implicit when talking about legal development or reform, and the concept of development and reform relates to the concept of rule of law mentioned in the theoretical background. The

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<sup>30</sup> This approach, corresponding with law and development movement established during the 1960s, has received criticism for being too static and adapting too much of a modernization theory influence. However, in general this is the approach still dominating legal initiatives.

<sup>31</sup> Another aspect relating to the various approaches is the ethnocentricity visible in the promotion of the foreign stakeholders 'own' legal system and institutions.

different specific areas such as gender equality, is then a product or result in realising the substantive rule of law state.

Similarly, it is important to notice that legal reform and development when aspiring to reach certain values, is an ongoing process, and that this process is relative to the circumstances and situation in the country at present. This is not to imply that there exist no general motivation or general background principles governing the process but merely intended to explain that the process in its appearance might vary from country to country.

A reform or development towards rule of law from a structural perspective is essentially perceived containing a three-step process: *drafting and enacting laws*, *implementing laws* and *enforcing newly enacted laws*<sup>32</sup>. In this situation it is imperative to closely observe the needs and demands of the country since the enactment of laws is mainly a political process. The country's support and attitude towards reforms is vital and further it needs support from the society as a whole in implementing and enforcing laws.

Enacting new laws can be achieved thru adopting or transplanting draft model codes from other countries or, draft codes developed by international organisations. This can be a point of departure and a resource effective option. However, enactment of laws is a domestic process and, as mentioned above, the circumstances and country specifics must be considered when initiating a legal reform. In the end, the country at present must own the process of legal reform, restructuring and development.

In addition can be mentioned, as stated in the WSP publication "*Rebuilding Somalia: Issues and Possibilities for Puntland*", that trying to rebuild a country, ravaged by conflict is not just about replacing damaged buildings it is primarily about; "restoring trust, rebuilding relationships and underpinning hope for the future".<sup>33</sup>

When focusing on assistance to legislator or legal reforms concentrated on enactment or amendment of laws, three important relations should be considered.<sup>34</sup>

The first is the relationship between the legislator and other branches of government i.e. the initiating of laws, removing judicial branch officials and how the executive branch is responsible to the legislator, also in this aspect can be mentioned the legislators relation to party organizations.

The second issue involves the legislator's relation with civil society. The issue of societal participation has already been touched upon and need not be referred to further. It can only serve to mention that the involvement in general, and especially in Puntland, of civil society is an important factor in establishing rule of law. Involvement by letting civil society influence and participate in the procedure of legislation is the foundation of a rule of law and democratic process. As a consequence, the issue of public awareness and understanding of the process needs to be raised i.e. to what extent do the civil society have an understanding of the legislative process? At present there exist quite a number of NGOs in Puntland and what needs to be strengthen and examined is the relation between the NGOs and government.

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<sup>32</sup> Sarkar p. 34

<sup>33</sup> Rebuilding Somalia: Issues and Possibilities for Puntland p. 31

<sup>34</sup> Lippman & Emmet p. 11

The third relation regards the legislatures relation with media. Is the media restricted in any way, covering the legislative process and how do they cover the legislature? In what way is the legislative process communicated to people, and how great share of the society is concerned and receives the information?

In the situation of Puntland or Somalia in general which often is given the attribute of a failed state, the lack of governmental institutions influences the appearance of legal reform. In addition, the system of clans and kinship in the Somali culture and the presence of three different legal systems strongly affect legal development when there has to be taken into consideration social norms, and supplementary legal systems with a strong popular base. Taking this into reflection appears to make it even more necessary to work with a participative method and a perspective focused on a bottom up process.

These circumstances as mentioned above must be acknowledged, analysed and evaluated. The purpose of legal reform is influenced by, as in Puntland, when there exists three legal systems, and the question thus becomes one of harmonization and implementation of the systems. Both in respect of drawing a consensus among the community for the reforms, for without, it runs the risk of being merely formal changes, but also to harmonize so as the values of rule of law is met.

In addition, whenever there is a discussion on legal development and reforms Puntland directed at including the whole society, the clan and kinship relations and constraints must be reckoned. In the participatory process, clan interest must be carefully balanced and equally distributed among the partaking parties so as not to create obstacles or become counter productive.

### **Reflections**

- Puntland has for a long time been without strong governmental institutions
- Customary law and especially Sharia has grown in importance
- For a substance, and not only formal, legal development and reform requires focusing on institutions, comprehensive and clear legal code and popular support (civil society)
- Legal reforms have to consider the country specifics and circumstances of the host country, drawing from legal culture already existing.

### 3.2 Harmonization and implementation of legal reforms

Under the Puntland Charter (1998) Islamic jurisprudence, shari'a, is the basis for all legislation in Puntland. And additionally, as mentioned above, there is *de facto* two other legal systems operating in Puntland, *heer* and secular law, the latter with its roots in history and the former originating from the time of colonisation in a combination of Romano-Germanic jurisprudence.

In a summation of the main features of the three legal systems, customary law is unwritten; male dominated, influenced by shari'a and has civil liability only. Secular law is formally written, codified and includes civil and penal liability. Finally, sharia is male dominated, with a popular base and has strongly influenced the other Somalia legal systems. Sharia has also civil and penal liability.<sup>35</sup>

For harmonisation and implementation of rule of law principles there can be defined some basic requirements involved and integrated in the process: civil society, orientation towards structural legal reform and improvement on the administration of justice.<sup>36</sup>

Civil society is here meant as the foundation of democracy, open and participatory, and able to curtail the power of the executive branch. As mentioned above in discussion about police and judiciary, an active civil society and the association of NGOs as representing organized interest creates a counterbalancing the government and is an important component in the process. Civil society's participation can influence the political responsiveness and safeguard public freedom.<sup>37</sup> From this aspect the inclusion of non-governmental actors are important from primarily four aspects. First, reform processes are difficult and cumbersome with many actors and interests involved. It is therefore necessary to enable different voices to be heard.<sup>38</sup> Second, citizens are the final users of the legal system and are affected by reforms. Third, ownership and commitment are required to make the changes and reforms legitimate. Fourth, societal participation can promote greater transparency and accountability among governmental officials.<sup>39</sup>

Structural legal reform involves restructuring existing laws, enacting new regulations and creating governmental agencies. The latter is especially important in implementation of a new regulatory framework. For a successful and efficient implementation of enacted laws or harmonized legal framework the strengthening of enforcing institutions is apparent.

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<sup>35</sup> Pastoral Justice p. 87

<sup>36</sup> Sarkar p. 34

<sup>37</sup> Dakolias p. 84 ff.

<sup>38</sup> In relation to this could be mentioned that the participation of non-governmental actors should be carefully examined so as to include as many of concerned groups. NGOs and civil society representatives can sometimes lack major support and represent narrow interest groups within society. Disadvantageous groups might not have the ability to form associations and advocate their opinions. From this aspect, when working with participatory approach, the method for selections should be examined.

<sup>39</sup> Dakolias p. 84 ff.

Improving the administration of justice directly engage the judiciary both in accessibility, and fair trials as mentioned above, but also in implementing the newly enacted law giving them substance and *corpus*. The administration of justice is vital in both harmonization and implementation since the institution of judiciary give the reforms legal effect. In the Somali and Puntland perspective it is important to thorough examine and evaluate the three existing systems enforcement institutions in order to achieve an establishment of an effective judiciary that are fully capable of implementing the reforms without inconsistency.

As an end result, it is therefore crucial to identify the constraints upon the legal reform and development i.e. can the constraints be removed, does the reforms have enough political support and, does the reforms have involvement and support of the civil society in order to reach an effective implementation.

What is equally important when defining constraints is to identify principles within the existing system norms that can act as coordinator or harmonization factor. In addition to identify the margin of interpretation within the system of norms is also imperative, providing a basis for harmonizing that exists “naturally” within the systems.

Legal reforms and rule of law promotion whether it is concentrated on police, judiciary or market-economy laws is conditioned upon an effective implementation in order to achieve the aspired results. Implementation of laws can be perceived as dependent upon three factors:

1. That enacted laws and restructuring of already existing meets the criteria of legal clarity and accessibility.
2. That the reforms have support from both political and civil society sections.
3. That effectiveness in enforcing the laws is upheld within governmental institutions and among civic society, meaning that the rules established are accepted and followed.

Legal clarity and accessibility has already been examined and in addition can be mentioned that in implementation of legal reforms these both criteria's are outmost important from two perspectives, both in order for the courts to apply new laws effective and to gain confidence from the society for the reforms conducted. The confidence is connected with the second factor in implementation and also correlate with the third topic presented above.

The third factor, effectiveness and enforcement, can be seen as the output or product of the two other factors applied. Upholding the effectiveness and enforcement is dual, and also an ongoing process without a definite stage. It requires that the government recognizes the institutions needed and establish and supports them and, at the same time, that the civil society is given the freedom necessary to participate and become involved in the process.

Identification of key actors that is responsible for implementing existing norms a newly enacted is also a way of structuring the reform i.e. the judiciary, police, elders, political leaders and the community. Involvement of society as a whole consequently

produces more support and strengthens the citizens role in the reforms by being able to control, participate and influencing the process. It also serves as a counterweight against a too much institutional orientation of reforms and the risk of reforms: enacting laws, implementing laws becomes only formal changes. On the other hand it is a process that is time-consuming and one that grows slowly.

In addition to the discussion above, relating foremost to a bottom-up approach is the concentration of government and working top-down. Even though the reforms and development may be conducted on a lower level at district or regional and involving both grassroots NGO and other civil society NGO it is imperative that there is an official connection with the government.

There seems to exist a philosophical difference between the two approaches, top-down and bottom up where the former, oriented towards institutions and close cooperation with government is mainly focused on result, and the latter, working on grassroots level is more directed towards a process.<sup>40</sup> However, there is a tendency towards a synthesis and the demarcation line is not always clear. What stands out is the fact that both approaches are vital and integrated in the development process.

This involvement and participation as mentioned above in a synthesis of the two approaches serves to be stressed. When focusing on harmonization problems and strengthening institutions in Puntland a dialogue needs to be struck between centralized level of government and district or regional level.

This participation and involvement, even though it might be of a more passive character on the governmental part, renders legitimacy to the process and provides for a more sustainable development. On the other hand it should be highlighted that an active and engaged civil society does not mean merely opposition and supervision of government authority but also a reciprocal relationship of dialogue and discussion. Civil society as represented by NGO and other interest groups hence have a share of the responsibility in the relationship with top-down approaches.

## Reflections

- The support from both political actors and civil society is important for substantive legal reforms.
- Islamic jurisprudence is the basis for all legislation in Puntland and has a wide popular support.
- A civil society needs to be participatory and have full enjoyment of civil and political rights in order to be involved in the legal restructuring and reforms.
- The courts play a vital part in implementing enacted laws, giving them “legal” effect and substance.

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<sup>40</sup> Carothers p. 14

## Chapter 4. Workshop Report

### 4.1 Workshop objectives

The workshop took place in Garrowe, Puntland state of Somalia, under the sponsorship of Diakonia Sweden. It was facilitated by Puntland Development Research Centre (PDRC) with Department of Legal Science at Örebro University in Sweden functioning as moderators leading the discussion during the workshop. Diakonia and the Department of Social Science at Örebro University initiated the workshop.

The participants at the workshop numbered 52 including members from PDRC. The participants were invited and selected by PDRC and represented various parts of society; judiciary, police, prison corrective centres, civil society, members of Puntland parliament, lawyers, elders, sheiks and women's groups. Some of the participants had been partaking in workshops previously held by PDRC focusing on harmonization of the three legal systems in effect in Puntland; Shari'a, Secular law and Customary law.

The workshop had duration of three days, from 24 to 26 November 2002. The aim was to follow up the previous research of PDRC in harmonization of the three legal systems. The work carried out by PDRC has resulted in one publication, "Pastoral Justice": 2001, and "Integration of Customary Law into Sharia and Secular Laws, Phase II": 2002 (unpublished material).

At the time of the workshop there had thus been composed a wide material collection on the legal systems operating in Puntland and the workshop objective was as follows:

- Discuss the importance of a legal system to be able to solve problems and prevent conflicts in a society
- Look at characteristics and weaknesses of a legal system
- Learn what mechanism exists within the three Somali traditional legal systems to provide good/necessary opportunities for change and harmonization.
- Find out what methods need to be developed in order to achieve maximum results of harmonization.

## 4.2 Comparative law

**Day one, 24 November:** The workshop was opened by welcoming remarks from the governor of Garowe followed by presentation by the moderators. The participants were then asked to present themselves, their profession and background.

Roland Haglund, the leading moderator, gave an introduction to the themes to be discussed at the workshop explaining that law is an integral part of human life. He explained that although law is an instrument that guarantees good and stable human life, nevertheless, different cultures reflect different laws or legal systems. He then gave an introduction to comparative law from a Swedish perspective, discussing the importance of comparative law when deciding on forum for conflict resolving and what law that should be applied. Also the curiousness of other legal cultures and systems was brought up as an inspiration and guidance for legislators and legal practitioners. He went on to give example on how comparative law is used in Sweden, how the lack of laws inspired the use of analogies. The comparison in its turn was described as not only focused on differences, but also on similarities, and that a comparative perspective can offer advantages in the development of law and legal structures, avoiding stagnation or static approach.

Question for group work:

Consider a case:

- What law should be applied?
- What court has jurisdiction?
- Who influences the decision?

Participants at the workshop were divided into three groups. They had freedom in choosing any case or situation to answer the question.

Group one:

Group one chose a murder for case study. The murder was intentional, not unintentional or by negligence. The group concluded that all three of the operating legal systems could be applicable.

- In Sharia, the normal ruling on this type of murder is usually *Qisaas*, capital punishment. However, the next of *male* kin of the victim is asked to choose among the following solutions; capital punishment, compensation (*Diyah*) and exonerate the criminal (forgiveness)
- In secular law the punishment for deliberate murder is capital punishment.
- The traditional Somali *Heer* is different from the above-mentioned legal systems and would consequently reach a different solution. Often, it is not the victim who upholds the decision but the *Diyah* –group of the deceased. Usually *Heer* transfers this type of cases to sharia courts.

On the question, who influences the decision on the aforementioned questions the group stated that the society (where the act is committed) influences decision of forum and law.

Group two:

The second group chose a case concerning camel rustling.

- In a camel rustling incident, due consideration is given to the location where the event took place. Often, customary law deals with this type of case and it is free for the parties to choose a court. If they are not satisfied with the decision in *Heer*, they can take the issue to sharia court or secular court.
- In looting or theft of livestock, sharia jurisprudence awards one of the following three rulings (*quadi*); *isdhaaf goyn*, arm and limb mutilation by cutting of the right hand and left leg at the first occasion of theft, crucifixion of the offender with nails in front of public to serve as a deterrent against such action or exile the offender(s) to another area or another country.

The group stressed the difference between theft and robbery where the latter included using physical violence or threat of physical violence in committing the act. It is the offended party that has the freedom of choosing court and also the offended party that can influence the sharia rulings.

Group three:

The third group choose a case involving road accidents were a person is unintentionally killed. The group presented the below mentioned rules on such a case.

- The police would first initiate an inquiry into the case (Traffic Dept.) the case would then go to the secular court. However, the evaluation of damage and compensation is referred to the sharia court based on secular law court procedures
- Both above-mentioned courts are first instance courts.
- If there arises a conflict over jurisdiction between two courts, each claiming competence the Court of Appeal decides over competence if the courts are in the same area. If, however, the conflicting courts are in separate regions the High Court decides over competence.

On the question of who influences the decisions of law and forum the group concluded that the affected parties have the right to choose which type of legal system that should hear their dispute: secular, sharia or customary.

### **4.3 Law as an instrument for conflict prevention and conflict resolving**

After the presentation of group-work on comparative law Richard Sannerholm gave a presentation on law as an instrument for conflict prevention and conflict resolving. He presented law as an instrument in three parts; law as a general concept, institutions such as police and judiciary and finally, acceptance of the decision by the parties.

He described the necessity of legitimacy of law, in order to make it an effective instrument for conflict prevention and conflict resolving. Legitimacy in its turn could be seen as constituted by three factors: accessibility, clarity and communication.

A holistic approach was presented constituted upon society's attitude, behaviour and trust towards law in general and the institutions for conflict resolution in particular.

He went on to describe two examples where conflict might occur if the law does not fulfil the criteria's for legitimacy, a murder case and a dispute between two business people. In this context it is also important that the institutions that are to apply the law has knowledge, resources and independence to apply the law correctly.

The third aspect, acceptance, was presented as being the outcome of the above-mentioned components. If the law is clear, communicated to people, and accessible and applied correctly by the institutions it will generate an acceptance even though one party might not agree on the outcome. An acceptance on the "rules of the game" will emanate from the legal system.

Question for group-work:

- Does law create conflict or does it resolve conflicts?
- What are the weaknesses of the system?

The question was explained that sometimes in the event of a dispute, law, being precise and rigid might further antagonise two parties instead of making them reach an agreement.

Group one:

All laws (secular, sharia and customary) are designed to solve conflicts. Of the three legal systems that Somalis apply, two are man made while sharia is God-made and flawless. The man-made laws originates from the people and can in principal both prevent and resolve conflicts no matter what system that is chosen.

Sometimes, law (secular and customary) can create conflict when they do not serve the interest of the society. One example is when laws are enacted to safeguard the interest of certain groups and not directed towards society as a whole. Law can also originate conflict if it is imposed from above or outside society without taking into consideration the needs and societal structure.

On the other hand, the spirit of law and how it is implemented need a distinction. In the aspect of implementing law, it is the institution and civil servants that might create conflict if they, while implementing, seek to satisfy their interests. A weakness in the system is thus when there is misuse of the governmental institutions or lack of collaboration between institutions i.e. police, judiciary and prisons. This weakness can from this perspective become source of conflict.

Group two:

Group two stated the same view as no. one in considering man-made laws and sharia. The group expressed an opinion that all man-made laws have weaknesses depending on who is applying the law.

The group went further stating that although sharia is a divine law and perfect, it can be misinterpreted and applied wrongly and that this could be a weakness.

The group went on focusing on man-made laws and said that they withhold weaker points. As an example, without going into substantive norms, the group stated that *Heer* is male dominated and applied by men. Women are not allowed in the decision-making process, *Heer Beegti* where experts on customary law are selected to arbitrate disputes, and that this exclusion of women participation is a weakness.

Group three:

The third group stated in the beginning of their presentation that they would not comment upon sharia since it is a divine law and did not withhold any weaknesses.

The group expressed that law is based on the general need and interest of the community. They also strongly emphasized that the judiciary and legal system cannot be examined apart from the prevailing political system. The political system influences and shapes the legal system and the political system can also determine what the interest and needs of the society are.

Therefore, secular law and customary law can be in conflict with the fundamental rights and interest of the people if the political system determines the need from its own perspective. For this reason, when examine the weaknesses one has to look at two factors: who made the law and for what purpose was it made?

After the three groups had presented their work Abdulkadir of PDRC briefly summoned up the day and ended the first day of workshop.

#### **4.4 How to combine codified law with customary law?**

**Day two 25 November:** The workshop opened with koranic verses.

Roland Haglund discussed the different methods for a successful harmonization and different approaches for harmonization. He presented two main approaches: the legislator approach meaning top-down and the grassroots/civil society approach meaning bottom-up. The latter, could be seen as an inclusive method including society as a whole.<sup>41</sup>

Another approach was brought forward considering that custom/practice can be a part of a system even if it is not codified. One example was used from the Swedish law on administrative procedure where certain procedures were in effect (used from civil procedurals code) even though not codified in the law on administrative procedures.

Roland Haglund concluded that even though practices and customs can exist within codified law it is an advantage to codify. It creates a common law that is clear and easily accessible. This would consequently mean a method of unification (the various system of norms) rather than diversification (with the risk of consolidating the separation and continuing parallel function). In this sense it would be necessary to

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<sup>41</sup> This could also be seen as a vertical respectively horizontal approach. However, using a vertical approach does not presuppose the exclusion of a wider range of actors. For certain reforms, starting at the top-down (vertical) could be more advantageous, before commencing on drawing support from society more general (horizontal) in the process.

make explicit what kind of issues that should be a matter for respective system. This approach could be pursued by means of adapting elements of customary law that is functioning and useful (and which has support) in a description, satisfying the societies need for a clear and accessible legal system.

In his presentation he also expressed an opinion that there might be a need for a different solution in Somalia than the ones discussed but that customary law should be considered in a further development of the legal systems or it might create conflicts and a static society. There has to be an acceptance among the actors for; diversities, differences, customs and solutions.

Roland Haglund also brought up the question regarding where the harmonization should take place, regional or central and pointed out the importance of involving society as a whole.

Question for group work:

- What are the needs for harmonization?
- What could be the methods used?

Before commencing on the group work, one participant asked to re-divide the groups so as to better mix interests. After the groups were divided the participants was asked to answer the questions in depth and later in plenary session agree on a declaration/recommendation for future workshops.

Common agreed needs for harmonization:

- To minimize the conflicts and contradictions in the legal systems
- To strengthen social justice
- To earn public support for the law
- To maintain common values
- To achieve standard judgements
- To enhance efficiency
- To make procedures cost effective

During and after when the viewpoints for recommendation was summoned there was a lively discussion explaining some of the points.

Regarding the first point, minimize contradictions; one participant said that it sometimes happens that one case is determined in three different systems with three different decisions. Another constraint is that the different instances of courts in the secular legal system refer to different books.

Another participant stated that sharia and secular law should be harmonized and related literature, common for all instances should be provided so as to get a coherent system. Regarding customary law, the participant expressed that the codified and harmonized laws (sharia and secular) should include an article that excluded laws and norms that does not conform to the positive cultural norms of the country. This view means recognizing all customary norms that are useful and excluding those that are contradictory to positive cultural norms.

Common agreed methods for harmonization:

- Sharia should be the base for all legislation (as established in the Puntland charter 1998)
- Professionals from each system should work together, free from biased and with balance among interests
- Rules and norms contradictory towards sharia should be changed or excluded
- Elimination on all forms and rules of discrimination

After the participants in plenary session had agreed on the needs and methods they were asked to go further into what actors that could be involved in a harmonization process. The participants was asked to list important actors, and as in before, to reach a common agreement.

Actors important in the harmonization process:

- Professionals from each system and professionals from various interest groups (NGOs, INGOs)
- Social-structure groups from whole society
- Professionals, preferably with knowledge in both systems to avoid unequal balance
- Sociologists and political scientists

The participants also stressed the importance of the actors involved in the process being neutral.

After all the groups had presented their opinions and all participants together with Richard Sannerholm had collected and agreed on the aforementioned points for needs, methods and actors, Roland Haglund gave an introduction to the development of law enforcement institutions in the Somalia context.

## 4.5 Developing law enforcement institutions

Roland Haglund discussed the importance of effective law enforcement institutions and the components that constitute the efficiency and well function.

With examples from Sweden he went on talking about the importance of loyalty of the civil servants to the system meaning that they apply the law even though they do not approve of it. It is also a matter of trust in the system that relates to the legitimacy of law and institutions that exists. After this introduction, Abdulkadir Shiekh Mohamud from PDRC gave a short presentation over the research being made by PDRC, starting from the Publication of "Pastoral Justice" in 2001 to the recent collected material (unpublished) "Integration of Customary law into sharia and Secular laws, Phase II".

After Abdulkadir Shiekh Mohamuds overview of the present research at PDRC one of the participants Gen. Abdinoor Yusuf Ahmed from Diakonia informed about the reforms and programmes that Diakonia is supporting in relation to law enforcement institutions providing training of police and Para-legal training.

The question for group work was presented and it was decided that it would be discussed following day because of shortage of time.

Question for group work:

- What are the weaknesses of the law enforcement institutions?
- How can they be strengthened?

#### **4.6 Day three 26 November**

The final day started with presentation of the group work conducted the previous day on the question of the law enforcement institutions weaknesses and how they could be strengthened.

Group one:

The group started by highlighting a weakness with an example. In a murder case, if the murderer escapes it is the family's obligation to bring him/her to justice. If the family is not successful it has to make peace with the victims family. But, if this also fails it might give rise to a conflict and a conflict that might escalate due to the collective responsibility that the family shares with the diyah –paying group. Therefore, the group stated, it is important to strengthen the law enforcement so that they can fully implement or enforce the law and avoid such situations. In another aspect it is also important to implement and strengthen what the law says so that the individual who committed a crime is held responsible and not the family or diyah-group.

The group further presented what they had identified as problems and solutions with the law enforcement institutions at present.

Problems:

- Staff lack proper training and skills
- Lack of facilities e.g. transport, communication radios, computers
- Absence of state power – the state cannot guarantee the life and security of law enforcement personnel
- Clan affiliation
- Strong reliance on clan power challenging the state authority
- Absence of public trust
- Inadequacy or absence of corrective centres

Solutions:

- Staff training
- Provision of equipment and financial support
- Financial support
- Enhance discipline
- Public support
- Disarmament and demobilization of clan militias
- Decent performance of police to earn public trust and acceptance, i.e. attitudinal change so as to impact society's thinking.

Two additional examples were used to highlight the problems that law enforcement faces. The first was that in a situation where a judge adjudicates in what is perceived by the convicted family to be unjust i.e. death penalty, the diyah-paying group might attack the judge. There is no government protection, hence judges are cautious in adjudicating. The second example is related to the prevailing socio-economic conditions. If a person is convicted to death penalty, the family loses a source of income. There is no social-welfare to take care of the family and due to the harsh conditions and poverty such a penalty will thus be dual penalizing of the offender and the family.

Group two:

The second group listed similar problems and solutions as the first group but stressed the lack of public support for law enforcement institutions as vital and also as a part of the solutions to provide for relevant and coherent literature (law books) to be consulted.

In addition the group stated that what was needed was a decree or law expressly stating that the government and not individual members of the police force is responsible for acts performed during duty and within the regulations of their jurisdiction. They group also shared the first group's view that part of the problem was a lack of social security for the victims and offenders family that loses a source of income.

Group three:

The third group divided the focus groups for discussion into two parts, prison and police institutions and the judiciary.

Police and prison problems:

- Staff lack proper training and skills
- Lack of facilities and equipment
- High proliferation of weapons
- Absence of state power
- Police abuse power
- Irresponsible and undisciplined police officers
- Lack of financial resources

Police and Prison solutions:

- Staff training
- Provision of equipment and financial support
- Enhance discipline
- Appropriate corrective centres
- Inclusion of women in law enforcement bodies (as a way of making them more able to defend their interests)
- Strengthen control mechanisms that supervise the police and prisons
- Include traditional elders in the process and in the training

Judiciary's problems:

- Different legal systems operating in parallel
- Lack of proper facility and equipment
- Heavily armed public
- Inadequate skills
- Rampant injustices in application of the law on the part of police and judges
- Lack of financial resources, low salaries to judges
- Corruption
- Lack of personal security for judges
- Shortage of reference literature

Judiciary's solutions:

- Harmonization of the three legal systems
- Provision of financial resources
- Supply of relevant facilities and equipment
- General disarmament of militias
- Strengthen control and supervisory mechanisms

After all the groups had presented the opinions from group work a discussion in plenary session took place and additional issues and examples was raised.

One participant, a professional lawyer, stated that in the two regions that he practiced law, he only knew of one fair judge. He therefore stressed the importance of a control mechanism enable disciplinary rules to restrict and supervise the judges.

In addition to this an opinion was raised concerning corruption. Corruptions was to be seen as the symptom of low salaries or in situations where salaries were withheld because lack of resources. This fuels corruption and has become an accepted institution in society.

Another participant mentioned, as an example on the low skills and knowledge of police officers that they often make arrest without proper authority and that are kept too long in detention.

A third opinion was raised in relation to society's behaviour and attitude. The participant stated that the problems to a large extent evolve around social behaviour and that the behaviour is inherited from the collapsed government and the following period of civil strife. The participant concluded by saying that the social behaviour can be changed by enforcing the listed solutions to the problems above, and also by instituting disciplinary action for law enforcement members.

#### **4.7 Rule of law (courts and other actors as dispute resolution forums, created rules and their implementation)**

Roland Haglund started by presenting the basic provision in rule of law principles from a Swedish perspective namely, the division of powers functioning as a control system and the loyalty of professionals towards the legal system creating trust and confidence and a solid jurisprudence. A brief introduction to the Swedish legislative process was conducted primarily stressing the specific preparatory groups and the

procedure of opinions on proposals, prolonging the process but at the same time creating transparency, and participation, vital for a democratic and rule of law system.

He also gave a presentation regarding the interpretation of law prevailing within the Swedish court system: extensive, analogy, teleological and using preparatory work. A commonly used interpretation was explained as originating from a common legal background and common way of reasoning.

Roland Haglund then went on discussing how the Swedish law dealt with various situations by using examples from the material content of Swedish law. The situations used were as follows: oral contract with no witnesses, purchase of goods or product that is defect and tort and negligence and the burden of proof relating to such issues.

The participants were then asked to discuss the aforementioned issues. How did each system deal with such cases, source of law and procedures?

Question for group work:

1. Oral contract
  - How can the court modify oral contract?
  - No witnesses to the contract
2. Goods or product which are defect
  - What will be the result between the seller - buyer?
3. Tort and negligence
  - No witnesses, discuss burden of proof

Compiled answers from all three groups:

How can the court modify an oral contract with no witnesses?

- The groups all stated that secular law does not recognize oral or unwritten agreements.
- Sharia, recognizes oral agreements, but requires the plaintiff to bring proof or testimony. In the absence of proof, the defendant might be required to take an oath to prove his/her case.
- *Heer* recognizes unwritten agreements since *Heer* itself is unwritten. But, like sharia it requires presentation of evidence i.e. testimony for the plaintiff or oath or the defendant. In some cases, *Heer* courts, *Heer Beegti*, resolve on mediation to avoid oath taking.

If the goods or product that are defect: what will be the relationship between the seller and buyer?

- According to the secular law the agreement/transaction is invalid if the goods are defected. The buyer can as a result return the goods or be compensated to the value of the defect.

- Sharia states that the defected goods belong to the seller, the agreement is null and void. If however, the buyer waits to long before making a complaint the goods cannot be returned.
- *Heer* applies the Somali rule “*Ayn Xumaatey ninkeedaa leh*” defected goods belong to the seller. If the buyer waits to long before making a complaint the goods cannot be returned.

Tort and negligence: no witnesses discuss burden of proof:

- Secular law requires the plaintiff to provide evidence. If that is not possible the defendant can take an oath against the plaintiffs charge.
- Sharia provides the same provisions as secular law.
- *Heer* resolves on mediation and compromise.

Abdiraham Abdille Osman from PDRC presented some concluding and summarizing remarks on the issues discussed. He stated that all three legal systems had first and foremost three aspects in common: acceptance between parties, out of court settlement and a common procedure.

Acceptances between parties’ mean that the parties submit to an outside objective part to adjudicate, whether it is customary law where elders are involved or sharia or secular.

The second aspect that exists within all three systems is that they allow for out of court settlements. The parties can agree on an issue but, in order to make it binding towards third part, have to take it to court and get the settlement validated.

The third common aspect relates to a common procedure when handling cases. All three systems require an investigation of the dispute, witnesses, and if no witnesses can be found, they resort to the institution of oath taking.

## 4.8 Human Rights issues

As a final theme for the workshop, Richard Sannerholm presented human rights and asked the question; in what way can the concept of human rights be useful in Puntland?

The presentation started with outlining a brief historical development of the concept and also the foremost important conventions, Universal Declaration of Human rights, International Covenant on Civil and Political Rights and International Covenant of Economic, Social and Cultural Rights. The system of courts and commissions was mentioned as a mean for seeking remedy, and Somalia’s membership in OAU (Organisation of African Unity) was brought up.

The various conventions specifying in certain areas such as the Convention on the protection of the Child, Convention Against Torture and the Convention of the Elimination of all Discrimination Against Women was also brought up.

The concept of human rights was discussed as being constituted by, universality, independent of law, inherent and inviolable.

Finally there was a brief presentation relating back to the issues during the workshop on how human rights can be useful in Puntland providing a more sustainable development.

Due to shortage of time there was no group work conducted to the question asked.

After the presentation of human rights issues Roland Haglund held a concluding remark of the workshop, followed by Abdirahman Osman from PDRC and concluding remarks from the participants.

## **Chapter 5. Concluding Remarks and Recommendations**

### **5.1 Concluding remarks**

What conclusions can be drawn from the issues discussed at the workshop? There was a variety of subjects debated ranging from harmonization problems and strengthening institutions to comparative law and human rights.

Even so, the common nominator holding the patchwork of various issues together is the understanding, which emanated during the workshop, that all the issues discussed are integrated and equally important components in a capacity building process.

When examining the opinions and recommendations that originated from the group work questions and from discussions in plenary session, an observation as a point of departure for further conclusions can be made specifically: there is a common awareness and understanding of the problem that Puntland, from a legal perspective is facing today, and a common will to focus on the problems at hand.

As a baseline study there can be drawn some general conclusions regarding the present situation in Puntland.

- There is a common need for harmonisation, and the lack of harmonisation is perceived as a weakness and obstacle in establishing an effective administration.
- Islamic jurisprudence is the basis for legislation, but harmonizing experts from each field (system) should be present and in proportion to each other.
- Clan and kinship relations are perceived as constraint towards establishing law enforcement institutions.

- The judiciary, police and prison attendants lack knowledge regarding which regulations they should abide.
- There is a lack of financial resources to strengthen and maintain the aforementioned institutions.
- There is a need for creating supervisory mechanism that can control the judiciary, police and prisons.

One aspect that was raised in relation to limited resources is the lack of a social welfare or social security system. Since the government offers no social security, the victims and the convicted's family loses a source of income and hence creates a situation where there is no efficient mean to replace the institution of diyah-payments.

Limited resources and lack of revenues is the most cited problem when the weaknesses of the institutions (judiciary, police, prison) were discussed. However, the participants also pointed out and emphasised the importance of other components that do not need a great allocation of resources. These can be summoned up being:

- Involving women in the police force.
- Training and upgrading of skill within the judiciary, police and prison.
- Creating a common regulatory framework for law enforcement and judiciary.
- Include traditional elders in the training process.
- Harmonization of the three legal systems.

The common nominator for all these provisions mentioned above, problems and solutions, that originated during the workshop is that all the reforms need to involve the society as a whole.

Lack of public trust, was mentioned and stressed as one factor undermining the function of the secular legal system and the law enforcement institutions. This lack of public trust is due to many reasons, both as a heritage from the period of Siyad Barre and from the civil strife that followed after his period at power ended. Distrust can also be seen as a down-warding spiral, a result from the inefficiency of the institutions at present and at the same the time stronger reliance upon customary law and sharia in the absence of governmental institutions.

The existence today of three legal systems creates confusion and inefficiency and can also be seen as a constituting factor in hindering future development. Even so, there is an awareness regarding the needs for a harmonization process and also on what provisions that should be excluded in order to harmonize. This was discussed, both in the workshop that took place and in previous workshops on customary law

conducted by PDRC.<sup>42</sup> Provisions that are discriminatory, in contradiction with sharia or with positive cultural values should be abolished. This is of principal importance and affects those provisions that accept FGM and provides low penalty on rape and women abuse.

When discussing harmonization another important aspect relating to secular law is the equal balance of interests and the knowledge of recognizing advantages within the existing legal.<sup>43</sup> Although Islamic jurisprudence is expressed as being the basis for all legislation in The Puntland Charter and, during the workshop was described as the “axis” from which the two other systems evolves, secular law serves an important function in the administration of a modern state. When performing an integration and harmonization process it is vital that there is an equal balance among interest and also a careful planning for what function the law should serve in a future Puntland State of Somalia. Further, identification of principles and methods of interpretation within each of the three systems enabling them to change and develop should be acknowledged and used as a tool for reforms and restructuring.

When examined, the workshop results show a clear and commonly understanding regarding the needs for harmonization of sharia, customary and secular law into a coherent and well-supported legal framework. There is also a clear base of understanding regarding the methods that should be used and actors involved.

During the whole workshop, the bottom-up approach was present and discussed as important in strengthening and supporting law enforcement institutions and in a continuing harmonization process. In addition to this, as mentioned above in Harmonization and implementation of legal reforms, the regional/central, NGO/governmental relation is of importance so as to render legitimacy to the process and provide for a more sustainable and stabile development. Seeking to fulfil reforms on a grassroots level runs the risk of never become effectively implemented. The relation with governmental agencies needs to be initiated and nurtured at an early stage.

The rule of law principles and human right issues touched upon was by the participants raised as vital and integrated factors in a capacity-building process. When discussing the weaknesses of the law enforcement and judiciary, the lack of components chiefly perceived as constituting rule of law and human rights was raised. This included right to an effective remedy, fair trial, exclusion of women, undisciplined and untrained police and judges, freedom from arbitrary detention, combating corruption, supervision of the enforcement agents making them accountable under the law and safeguarding the independence of the judiciary.

Another weakness of the police and judicial institutions was the lack of a clear and efficient legal framework, common for all parts of Puntland. This weakness was mainly perceived originating from the existence of three legal systems, and as witnessed from the workshop, the variation in judges application of existing laws when adjudicating.

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<sup>42</sup> Workshop on *Heer Somali*, Pastoral Justice p. 144 This is also discussed in the conclusions of “Integration of Customary Law into Sharia and Secular Laws, Phase II” p. 85

<sup>43</sup> This was also discussed in the workshop on secular law previously conducted by PDRC, Pastoral Justice p.145

There is a wide support and an identified need for restructuring and strengthening law enforcement institutions. Rule of law, democracy and human rights in its most basic functions and essence is in demand for law and order. This need stands out when the weakness of the present day system was discussed.

A fair conclusion to be drawn from the above-mentioned provisions is that harmonization and integration of the various legal systems cannot and should not be pursued independently from a institutional orientation. The institutions are necessary to implement the harmonized result. Furthermore, the harmonization process, as evident from group work presentation, is an integral part in strengthening the institutions: judiciary, police and prisons.

A parallel reform approach is apparent, focusing on both strengthening institutions and harmonizing the legal systems since both approaches overlap and in the end have the same result at sight: to provide Puntland State of Somalia with a sustainable and progressive development towards democracy and rule of law.

Therefore, as a consequence, continuing legal development in Puntland requires integration of harmonization work with institution strengthening using a synthesis of bottom-up and top-down orientation with consideration given to both result and process characteristics of the reforms.

A supplementary need for central subject of reform can be drawn from the conclusions. A large part of strengthening the institutions is related to training and upgrading the skills of public and civil servants. Education is a vital part in a legal development and essential for consolidating development and progress made. Training is necessary in judiciary, police, and civil servants sector working in administration bodies.

From this, a conclusion can be made that that attention need to focus on education centres and higher education e.g. universities providing basis for judges, lawyers, prosecutors ect. In order not to make Puntland State of Somalia dependent on foreign and domestic NGO for maintaining a standard in development, education as part of the legal reform process should be establish early as an important component.

## **5.2 Recommendations for future capacity work in Puntland**

From the aforementioned concluding remarks there can be drawn a few recommendations for future work in capacity building in Puntland.

1. Harmonization process is vital for establishing a common legal framework
2. Integrate the work on harmonization with the process of strengthening institutions (police/judiciary/supervisory bodies “watchdog” functions)
3. Work with society’s access to justice – accessibility, clarity, and uniform usage of a common legal framework

4. In relation to society's access to justice a need for judicial independence is evident as part of the process
5. Attention should also be focused on establishing education. In the aspect of legal development an education programme of higher education or university is apparent focusing on judicial education.
6. Work with a bottom up process at regional level, involving the society as a whole: women, elders, religious leaders and governmental officials.
7. Examine and evaluate the relation between NGO/civil society and governmental institutions and, where it is needed, strengthen the relation for a more productive dialogue.
8. At an early stage raise the issue on regional v. central approach and relationship in the reform process

The workshop was productive from several aspects, both as a baseline study to firmly establish the needs at present and in the aspect of providing a platform for further reforms. In the latter sense, the workshop participants reaffirmed the urge for harmonization and in the former, provided an important output for the harmonization work namely: integrating it into the process of strengthening institutions.

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## Chapter 6. Appendix

### 6.1 Appendix one: workshop schedule

#### Day one:

8.00 > 8.05	Koranic verses
8.05 > 8.20	Introductions
8.20 > 8.30	Workshop objectives
8.30 > 9.15	Introduction to Comparative Law
9.15 > 10.00	Group work and presentation
10.00 > 10.45	Law as an instrument for conflict prevention and conflict resolving
10.45 > 11.30	Group work and presentation

11.30 > 12.00                      How to combine codified law with customary law

### **Day two:**

7.00 > 8.00                      How to combine codified law with customary law, methods for a successful harmonization

8.00 > 9.00                      Group work and presentation

9.00 > 10.30                      Discussion in plenary session, needs, methods and actors in harmonization process

10.30 > 11.30                      Developing law enforcement institutions

11.30 > 12.00                      Group work

### **Day three:**

8.00 > 9.30                      Presentation of group work

9.30 > 10.15                      Rule of law (courts and other actors as dispute resolving forums, created rules and their implementation)

10.15 > 11.15                      Group work and presentation

11.15 > 11.45                      Human Rights issues

11.45 > 12.00                      Closing remarks

## **6.2 Appendix two: questions for group work**

### **Day one**

1. Consider a case;
  - What law should be applied?
  - What court has jurisdiction?
  - Who influences the decision?
2. Does law create conflicts or does it resolve conflicts?
  - What are the weaknesses of the system?

### **Day two**

3. What are the needs for harmonizing and integrating the legal systems? Discuss possible methods for a successful integration and harmonization.

#### 4. Who are the actors that need to be involved in the process?

#### Day three

5. What are the weaknesses of the law enforcement institutions?  
How can they be strengthened?

#### 6. Comparative Law using three different cases

Oral contract

➤ How can the court modify oral contract

➤ No witnesses to the contract

Goods or product that are defect

➤ What will be the result between the seller - buyer?

Tort and negligence

➤ No witnesses, discuss burden of proof

#### 7. Human rights issues

In what way could the concept of human rights be useful in Puntland?

### 6.3 Appendix three: list over participants

Mahdi Ali Osman	civil society	Bari
Ahmed Mohamed Yussuf (Tarane)	judge	Bari
Mohamed Muse Ismail	legal state lawyer	Bari
Abdulkadir Sh. Ahmed	lawyer	Bari
Yusuf Haliye Samanter	elder	Bari
Mohamed Salha Mohamud	district council member	Bari
Said Yusuf Sharmake	police	Bari
Mohamud Ahmed Yusuf	elder	Bari
Abdi Warsame Jama	military court lawyer	Bari
Mohamed Farah Mohamed	military court lawyer	Bari
Mohamed Osman Hassan	m. parliament	Bari

Col. Gani Mohamed Abdi	police	Bari
Col. Ali Aydiid Farah	police	Bari
Salad Hareed Ali	m. parliament	Bari
Mohamed Jama Yusuf	police	Sanaag
Col. Mohamed Osman Mohamuud	police	Sanaag
Sahra Isse Farah	m. parliament	Sool
Ibrahim Elmi Warsame	m. parliament	Galkayo
Abdurahman Abdulle Dirir	judge	Galkayo
Sh. Hussein Mohamed Khalif	judge	Galkayo
Hassan Hussein Walore	elder	Galkayo
Abdirahman Aabi Sugulle	lawyer	Galkayo
Abdirashid Salad Farah	lawyer	Galkayo
Col. Noor Muse Ali	police	Garowe
Abdulkadir Mohamed Adan (Sh. Isse)	m. parliament	Garowe
Said Mohamed Farah	judge	Garowe
Ali Hagi Abdulle	intellectual	Garowe
Ahmed Abbas Deni	intellectual	Nuugal
Hawa Isse Barre	Kaalo women's group	Garowe
Samsam Siciid Yusuf	SRCS	Garowe
Laylo Salad Weyrah	civil society	Garowe
Fadumo Daahir Warsame	Kaalo women's group	Garowe
Fadumo Ahmed Noor	local government	Garowe
Amin Ahmed Abdi	Kaalo women's group	Garowe
Hawa Aad Godogodo	civil society	Garowe
Asha Shiek Abdisalan	SWA	Garowe

Fadumo Caydaruus Yusuf	civil society	Garowe
Hawa Muse Jama	Nasteex women's NGO	Buntinle
Ubah Abdi Osman	Nasteex women's NGO	Buntinle
Farxiyo Khaliif Hirsi	women's group	Garowe
Mohamed Abdi Ali	Diakonia	Garowe
Gen. Abdinoor Yusuf Ahmed	Diakonia	Garowe
Prof. Dahabo Farha Hassan	Diakonia	Garowe
Osman Haji Mohamud	FSAU	Garowe
Abdirahman Abdille Osman Shuuke	PDRC	Garowe
Abdullaahi Sheikh Mohamud	translator	Garowe
Abdulkadir Shiekh Mohamud	PDRC	Garowe
Abdisan Ali Farah	PDRC	Garowe
Mohamed Yassin Essa	PDRC	Garowe
Abdi Kayto Hassan	Diakonia	Garowe
Abdikafar Abdirahman Ali	Radion Galkayo	Galkayo
Farah Dabajoog	Technical support	Garowe

#### 6.4 Appendix four: acronyms and abbreviations

<b>CAT-</b>	Convention Against Torture
<b>Diakonia-</b>	Swedish International Non-Governmental Organisation
<b>FGM-</b>	Female Genital Mutilation
<b>FSAU-</b>	Food Security Assessment Unit- UN Agency
<b>ICESCR-</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICCPR-</b>	International Covenant on Civil and Political Rights

<b>IGAD-</b>	Intergovernmental Authority on Development
<b>Kaalo Women's Group-</b>	Puntland based NGO women's group
<b>NASTEEX-</b>	Local women's NGO in Garowe
<b>NGO/INGO-</b>	Non-Governmental Organisation, International Non-Governmental Organisation
<b>NSS-</b>	National Security Service a police force under the military regime
<b>OAU-</b>	Organisation for African Unity
<b>PDRC-</b>	Puntland Development Research Centre
<b>SNM-</b>	Somali National Movement
<b>SRCS-</b>	Somali Red Crescent Society
<b>SSDF-</b>	Somali Salvation Democratic Front
<b>SWA-</b>	Somali Women Association
<b>UDHR-</b>	Universal Declaration of Human Rights
<b>UNOSOM-</b>	United Nations Operation Somalia
<b>UNDP-</b>	United Nations Development Programme

## **6.5 Appendix five: Somalia in recent times<sup>44</sup>**

**1960** Independence.

**1969** Coup d'état led by Siyad Barre.

**1972** Nationwide literacy campaign.

**1974** Somalia joins the Arab League.

**1974** Friendship treaty with USSR (renounced in 1977).

**1977** Invasion of Ogaden region of Ethiopia and subsequent defeat of Somali forces.

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<sup>44</sup> Mukhtar p 56

**1978** Creation in northern Somalia of first insurgent movements - SSDF (1978) and SNM (1980).

**1980** Closer links with West and US develop.

**1988** Armed insurrection by SNM in northwest Somalia. Violent repression by Somali army follows.

**1989** Insurrection breaks out in other regions.

**1991** Siyad Barre flees Mogadishu. Somaliland declares Independence.

**1992** Famine in southern Somalia. UN-led relief and security operation (UNOSOM).

**1995** End of UN operation. Siyad Barre dies in exile.

**1997** Cairo Peace Accord signed by most faction leaders but not implemented.

**1998** Puntland Regional State of Somalia is established with former SSDF chairman Colonel Abdullahi Yussuf Axmed as president

**1998** Saudi Arabia livestock ban imposed on Somalia. Puntland State created.

**1999** Eritrea-Ethiopia conflict develops 'southern Somalia front'.

**2000** Djibouti Peace Conference

**2000** A 245 strong Transitional National Assembly, based on clan representation elects Abdiqasim Salad Hasan as the new president of Somalia.

**2001** Puntland Constitutional crisis begins when the constitutional criteria's are unfulfilled

**2001** Colonel Jama Ali Jama is elected president at a conference in Garowe

**2001** Col. Abdullahi Yusuf Axmed recapture Garowe

**2002** Abdullahi Yusuf Axmed *de facto* president in Puntland

**2002** Reconciliation talks, sponsored by the regional Intergovernmental Authority on Development (IGAD) in the Kenyan town Eldoret.

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**Diakonia East Africa Office**

**Diakonia Stockholm**