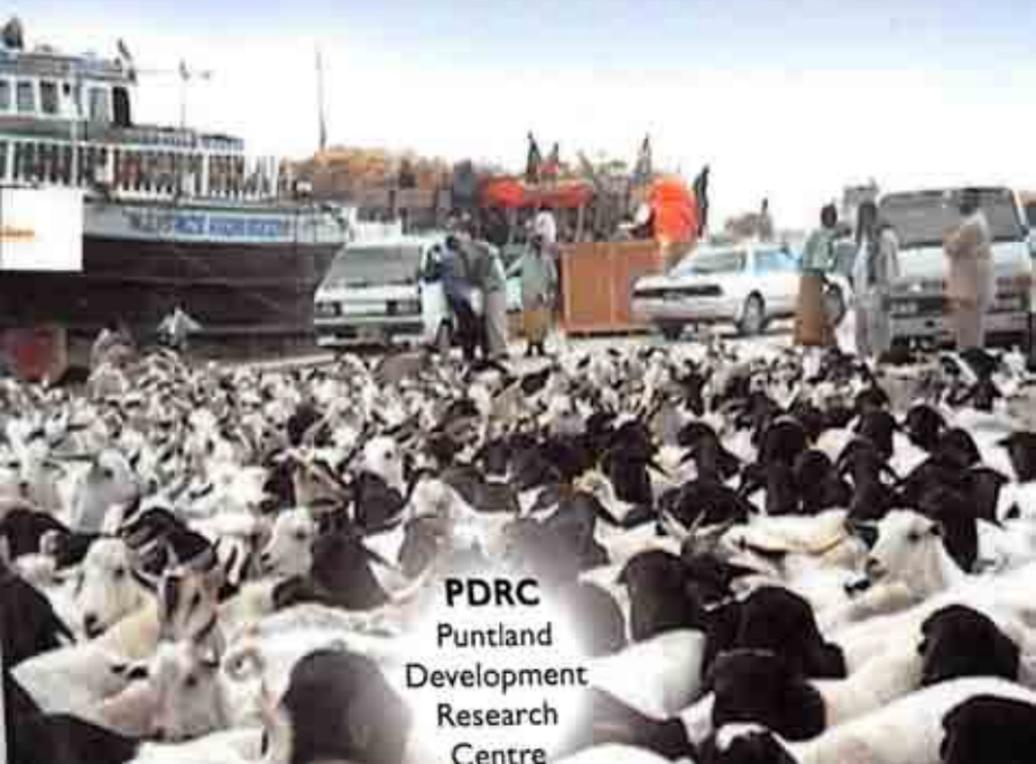


Somali Customary Law and Traditional Economy

Cross sectional, pastoral, frankincense,
and marine norms



PDRC
Puntland
Development
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Contents

Part	Page
Preface	7
1 Introduction	11
2 'Heer in the 21 st Century	25
3 The Pastoral 'Heer	45
4 'Heer on Forest and Water	61
5 The Frankincense 'Heer	71
6 Law of the Sea: 'Uruf Alba'hr, the Marine 'Heer	93
7 'Heer Procedures: Bridge Building and Conflict Mitigation	125
Conclusion: The Common Good and Public Responsibility	157
Notes	163

Preface

In our last research on the subject of Somali legal traditions, published under the title *Pastoral Justice – A Participatory Action Research Project on Harmonization of Somali Legal Traditions: Customary Law, Shaaria and Secular*, we analysed and presented the three legal systems that simultaneously operate in Somalia: customary law, Sharia law and secular law. However, *Pastoral Justice* was limited in scope, because it only treated some aspects of the pastoral society's legal tradition and other codified legal norms: sharia and secular.

As a follow up and enrichment of the previous research, this present study brings in new dimensions. It treats other areas of the Somali customary laws that were not dealt with before – different rules that underly nomadic laws, and laws related to the frankincense trade and to marine practices. Since the beginning of the last century, Somalia has been using different legal systems based on cultural traditions, religious tenets and imported statutory Western laws.

This multiplicity constrained the development of a unified legal system for the country. The pastoral communities have always, in spite of the existence of legal authorities, been marginal in relation to the centre of political and judicial power. And as the various governments did not fully control the daily life of the nomadic populations in the countryside, customary law remained the main instrument for resolving disputes. In 1968, the

Somali government brought together two hundred traditional and religious leaders in Mogadishu to consider integrating the traditional 'Heer in the state legal system. Their deliberations and suggestions did not go beyond this meeting, as the government was not really serious about developing a legal system that encompassed all existing laws, and addressed the specific legal needs of different populations – urban, pastoral, agricultural and fisheries.

The military regime of 1969 to 1990 tried to abolish the Diyah system, but it did not succeed because 'Heer is anchored in a long-established tradition.

This study, as stated above, also treats rules and norms involved in two major sectors of Puntland's economic and social life – frankincense and fisheries. The regulations that are used in these sectors have been developed not by governments, but by the people themselves. It is the first time that the customary laws of these sectors have been researched in a comprehensive way.

The study also presents, in a more analytical manner, the rules of procedures followed by clan elders and paramount chiefs in resolving disputes. These procedures, though unwritten, exhibit a fair amount of sophistication in terms of structuring decisions, conducting case investigations and forming court juries and teams of advocates. Each of the seven parts of the study deals with a particular aspect of customary law, whether concerned with pastoral customs, the frankincense trade, fisheries or procedural matters.

In conducting the study, researchers at Puntland Development Research Centre (PDRC) employed various methods – interviews, field surveys, a literature review, participatory workshops and other discussion forums.

I supervised and co-ordinated the various phases of the research activities. The research document was re-

viewed several times and new inputs were incorporated.

It is my earnest hope that this study will help the Puntland government and its people in reviewing the present legal structures and in developing a viable, acceptable legal system that satisfies the wishes, needs and aspirations of all stake holders. At the same time, I would be gratified if this study benefits potential researchers, both foreign and national, of Somali legal and cultural systems.

I would like to thank Abdulkadir Sheikh Mohamud, PDRC Research Coordinator, who produced the first draft report of this research and facilitated the research activities; Mohamed Ismail, who conducted part of the survey; the working group and workshop participants; government officials who participated in the activities; Diakonia staff – Ms Saida Hersi, the Country Representative; Jan Owe Wilback, the Legal and Human Rights Officer; Owe Blidelius, the EA Director; Ms. Mirjam Dahlgren; Urban Sjostrom, former initiator of this project; and the Orebro University team of Richard Sannerholm and Roland Haglund for their academic cooperation with PDRC. I also extend my thanks and appreciation to our Board Chairman Dr. Abdirizak Osman Jurille, and Vice Chairman Mohamed Abshir Waldo, who constantly guided us in this research, and all PDRC staff, who contributed to the realisation of this study.

Finally, I thank John Fox for assisting us in editing, Dali Mwangore for proofreading and Damary Odanga for layout and designing the book.

Abdurahman A. Osman (Shuke)
Director, PDRC
Garowe, August 2003

Introduction

The Puntland administration, which was established on 1 August 1998 in an all-clan conference in Garowe to administer the north-eastern regions of Somalia for a transitional period of three years, confronted formidable obstacles; it had to build basic institutions of government from scratch after eight years of statelessness and political uncertainty. The new administration was mandated to consolidate the fragile peace – secured only by traditional authority – prevailing in Puntland since the ouster of General Mohamed Siyad Barre's regime in 1991. It was also mandated to prepare the ground for free and fair elections under a multiparty democracy. The new administration faced the difficult task of integrating the various armed militias in the absence of functioning organs of law and order. While the administration succeeded in demobilising active armed militias by integrating them into the security forces of the administration – at the price of spending the bulk of its revenue on security – it however lacked the necessary financial resources and expertise to restore law and order and strengthen the organs of governance.

In its efforts to restore law enforcement institutions, the administration found it imperative to address the application of the three legal systems: customary, Sharia

and secular, that had been functioning side by side in Puntland since 1991. The administration found that none of these legal systems could be simply renounced, as each had its own legal and historical validity as well as its own upholders within Puntland society. In practical terms, however, it was obvious that the three legal systems could not operate in a single entity and in a modern setting as they contradicted one another in important areas of jurisdiction. To resolve this difficult legal problem and to restore basic legal structures that were harmonious with the history and tradition of the society, the administration turned to international agencies operating in the region for assistance in studying ways of harmonising the three legal traditions.

Diakonia, a Swedish NGO that has been operating in Puntland since 1994 supports the Puntland administration in the areas of governance, education, low-cost housing and water. It contributes to reinforcing law enforcement organs, and it assists in capacity building for a number of local NGO partners and community-based organisations.

The Puntland Development Research Centre (PDRC), a national NGO based in Garowe, the capital of Puntland, is a successor and affiliate organisation of War-torn Societies Programme International (WSPI), which carried out participatory research-dialogue in the three regions of Northeast Somalia (North Mudug, Nugaal and Bari) between 1997 and 1999. Since its formation in October 1999, PDRC has undertaken a number of research projects in collaboration with aid agencies operating in the region that have relevance for the recovery and reconstruction of Puntland. It successfully completed a six-month study on "Harmonisation of Somali Legal Traditions" in the first half of 2001. The result of this re-

search project was published in 2002 in a book titled *Pastoral Justice – A Participatory Action Research Project on Harmonisation of Somali Legal Traditions: Customary Law, Sharia and Secular Law*. SIDA financed the book's publication.

Based on recommendations in the published study, Diakonia again contracted PDRC to do a follow-up study on the potential integration options of customary law. In addition, the second phase of the project also sought to generate additional data on customary law pertaining to the pastoral economy, and to conduct new research on customary law as applied in other sectors of the economy: frankincense and fisheries. This participatory study presents the results of the second phase of the research project on harmonisation of legal traditions and supplements the previous research produced by PDRC in the first phase of the programme.

1.1 Documenting the Unwritten: Constraints/ Assumptions

In spite of its overwhelming importance to the pastoral sector of society, Somali customary law must count as the least documented and understood legal system prevailing in the area. Customary laws are unwritten traditional norms passed down in verbal form from one generation to another. Another constraining factor is the high mobility of the Somali community in general and, in particular, the pastoral population, which this study mainly addressed. Despite the drought that certain regions and parts of regions were experiencing, the political unrest that often interrupted its progress, not to speak of the time limit imposed upon data collection, analysis and write-up, the research work went according to plan.

1.2 Accounting for Cultural Values: The Participatory Process

The research on "Harmonisation of Puntland Legal Traditions" was conducted using a participatory approach that brought together concerned actors in a neutral forum that facilitated free discussion and dialogue on issues and enabled interested parties to reach a consensus. The working group continuously guided the process. The Director of PDRC, Abdirahman Abdulle Osman-Shuke, put together the initial proposal and other preparatory work for the second phase of the research project. PDRC then hired a project co-ordinator, Abdulkadir Sheikh Mohamoud, who was a member of the research team in the first phase of the research. In addition three new researchers, who were not familiar with participatory action research (PAR) methodology, were hired. The team formed the project working group, composed of seven members, representing all regions and diverse actors, to lead the research activities. In their first meeting the working group discussed the research process and approaches to be adopted in implementing research activities. For practical purposes, the theme "Integration of Customary Law into Sharia and Secular Law" was divided into four sub-themes, namely 1) Integration of customary law, 2) Customary pastoral norms (*'Heer Daaqsimeed*), 3) Customary frankincense norms (*'Heer Hijiyeysato*), 4) Customary marine norms (*'Heer-badeed/Uruf-Alba'hr*). Secondly, the group employed two approaches in the research: 1) carrying out a survey in the regions of Puntland, and 2) holding an inclusive workshop attended by participants and stakeholders from across the various regions of Puntland.

The next step was to train the new researchers in the PAR methodology. The centre hired a consultant/trainer

who had participated in the WSP interactive dialogue-research in Puntland during 1997-1999. The consultant organised a seven-day training workshop for the new researchers. As part of the training exercise, the research team and the working group produced a four-questionnaire format; each questionnaire being developed around one sub-theme.

The original questionnaires had been pre-tested and tried out in a two-day exercise in Garowe attended by community members representing the regions of Puntland. In the pilot survey, the following concepts were taken into consideration: whether the questions in the questionnaire were practical, relevant, and acceptable—that is, they did not offend interviewees' cultural values. This pre-testing activity proved useful as many questions were refocused and adjustments made, while others were reconstructed or further refined.

1.3 The Survey: How to Cover Such a Vast Area

The survey exercise lasted two weeks. The working group and research team opted to apply a predefined sampling method, with both the study regions and sample size predetermined. Due to the vastness of the study area, not to speak of limited resources, time constraints and the political tension prevailing at the time of the survey, accessible areas were selected: Bossaso town, on the coast of the Gulf of Aden; the towns and villages of Taageer, Baargaal, Binna, Handha, Hurdiya and the town of Iskushuban in Bari region; the towns of Badhan and Dhahar in Sanaag region; Eil, Garowe and Burtinle in Nugaal region; and the towns of Galkayo, Galdogob and other villages of Mudug region; and towns of Laas fnood and Xudun, and the villages of Tukarraq, Sarmaanyo,

Saaxdheer, Taleex, Boocame, and Xabaalo Camaare in Sool region.

Likewise, the exercise targeted a sample size of 190 interviewees, divided for each sub-theme as follows: Integration of customary law (90); Pastoral norms (60); Frankincense norms (20); and Marine norms (20). Sample sizes were allocated to the regions respectively. At the end of the exercise, 178 interviewees' forms, that is, filled-in questionnaires, were turned in. In certain cases, focus groups discussions were needed to reach consensus on issues where the views of interviewees diverged. The interviewees comprised elders, traditional leaders, religious men, fishermen, frankincense collectors, frankincense traders and women's groups.

The survey's aim was to fill in the gaps in documenting pastoral norms in the first phase of the project. It also sought to generate basic data on the non-pastoral economic sectors of frankincense collection and exploitation of marine resources for debate and discussion at the workshop. The exercise began on 23 November and ended on 7 December 2001.

Four teams carried out the exercise, each consisting of one leading researcher and two enumerators. Each team surveyed one administrative region, with the exception of one team that covered the regions of Bari and Eastern Sanaag. From the second week of December 2001 to the end of the month, the researchers processed raw data collected from the field, rearranging and grouping it according to the specific themes addressed. Responses to the questionnaire forms were analysed, focusing on validity, reliability and uniformity of responses. The recorded responses were computerised.

During January 2002, the researchers produced four drafts, one on each sub-theme, on the survey results. In

February 2002, the political crisis in Puntland turned critical, temporarily halting research activities. The survey draft reports were presented to the working group in March, and the group's comments and contributions were incorporated.

1.4 The Workshop

In the first week of April 2002, the research team and working group met to deliberate on the workshop, set the outline of the discussion paper that preceded the forum and select participants. The workshop was held in Burtinle town (Nugaal region) from 22 to 24 April, bringing together 41 selected participants comprising representatives of relevant stakeholders – traditional and religious leaders, representatives from the fishing community, the pastoral nomadic community, sea-trading merchants, experts in marine culture, women's groups, frankincense collectors and owners, Puntland administration officials and international aid agencies. Participants from the region of Eastern Sanaag were unable to attend the workshop due to the tense political situation prevailing at the time. The researchers wrote the workshop output in the remaining days of the month.

To complete the research findings, a second workshop on "Procedures of 'Heer" followed by clan juries when resolving both individual and collective cases" was held in November 2002. This research component dealt with the procedures and modalities developed by the 'Heer courts or juries and adopted in almost all regions of Puntland, though local variations exist.

For convenience, the research document is divided into seven parts or main sections.

Part One: Introduction

Part Two: 'Heer in the 21st Century

Part Three: The Pastoral 'Heer

Part Four: 'Heer on Forest and Water

Part Five: Frankincense 'Heer

Part Six: Law of the Sea: 'Uruf Alba'hr, the Marine 'Heer

Part Seven: 'Heer Procedures: Bridge Building and Conflict Mitigation

Conclusions: The Common Good and Public Responsibility

Notes

1.5 'Heer, the Customary Law: Filling the Post-1991 Vacuum

Before the conquest of Somalia by the British and Italian colonial powers at the turn of the 19th century, traditional Somali society practised two legal systems operating concurrently: Somali customary law and Islamic Sharia. The colonial powers imposed a third tier of secular law leading to a decline in the use of traditional legal norms in the urban areas. In the post-independence era, secular law continued to thrive as the law of the state. However, given that the Somali people are historically a pastoral society, Sharia and customary law persisted at many levels, remaining the main legal systems of the pastoral and agricultural communities who constitute the majority of the country's population. With the disintegration of the public institutions of the central government after 1991, following the collapse of the Somali state, secular law virtually disappeared from the scene in Puntland and other regions of Somalia. The vacuum was filled by Sharia and customary law, which effectively replaced secular law throughout Puntland, including the urban areas.

The system of laws that is known as 'Heer, was formulated over the centuries by nomads and farming communities. The research participants and survey interviewees all agreed that 'Heer was a highly specialised legal institution, remarkably well adapted for administering, managing and regulating common property such as pasture, grazing land and forests, water and watering points; fishing, sailing and sea trade; and frankincense gathering.

However, the literature on Somali customary law is scanty; it does not appear to have aroused the interest of researchers and research institutions until recently. While the works of such scholars as Ferrandi, Cerulli, I.M. Lewis, Cassanelli and others gave valuable information on the subject, there is no exclusive documentation or agreed-upon frame of classifying customary law. Su'ad Ibrahim Abdi in her paper on "The Impact of War on the Family"¹ categorised 'Heer into "general terms" that establish individuals' reciprocal rights and obligations and sharing of natural resources, and "more specific 'Heer terms" that apply to settling disputes, which are further divided into the blood code or *'Heer Dhiig*, which pertains to grave crimes such as death, injury and rape, and the social code, *Heer Dhaqan*, which deals with theft, banditry, and family-related issues.

Despite its appreciation of such division, this study intends to classify 'Heer into:

- a. Norms of a general nature (*'Heer Guud*), encompassing or cutting across communities living under diverse economic and social conditions and carrying provisions promoting moral values, co-operation and assistance among kinsmen and clans, as well as settlement of disputes such as *Diyah* (blood compensation), rape, etc. This study looks only into the

adaptability of those norms in this category that the first phase of the research found did not fit in with other codified laws;

- b. Relatively specialised professional norms (*'Heer Gaar*) regulating traditional economic relations, which, in the Puntland context, consist of (i) Pastoral norms that address "ownership", use and management of primary resources such as pasture, grazing land, water and water points, (ii) Marine norms, known as *'Uruf Alba'hr*, that regulate fishing and management of marine resources, sailing and sea trade, and (iii) Frankincense norms that refer to frankincense gathering.

Interviewees and workshop participants were unanimous in recognising the significance of customary law for the Somalis. However, their views diverged on the source of *'Heer* and why pastoral society favours *'Heer* over other codified laws. On sources of *'Heer*, the majority affirmed that the clan elders' jury constitutes the source of *'Heer* and serves as its supreme guardian. The jury enforces *'Heer* and lays down new rules in the absence of precedents. A minority view among the survey interviewees and workshop participants contested the view of the elders' jury as the foundation of *'Heer*; instead, they argued, Sharia provides the basis of *'Heer*.

Meanwhile, three views emerged on why pastoral society adheres to *'Heer*. Some pointed out that customary law is a flexible and pervasive legal system that serves the pastoral population as a tool for conflict resolution because its arbitrators or jury are on the one hand locals and, on the other, readily available, in contrast with the other two legal systems. Furthermore, codified laws are less flexible in terms of case judgment, while *'Heer* sentences are often more lenient and flexible. This is so

because 'Heer is based on consensus among the disputing parties, whereas Sharia and secular law often have unbending provisions and require law-enforcing organisations that are able to execute court orders.

Others maintained that the Somali prefer 'Heer to other codified laws because it is anchored in clan culture. They noted that 'Heer is a vital element in the clan-based social system, acting as a powerful factor cementing clan unity and political solidarity through the institution of *Diyah*, which sanctions collective payment and receipt of blood compensation. Here, 'Heer provides an alternative to the capital punishment that Sharia and secular laws may impose on kinsmen who commit homicide, for a kinsman is important for a clan's population growth as well as for its defence. A Somali proverb strengthens this:

"Xukun Shareeco oo lagu kala go'o, waxaa dhaama maslaxaad lagu heshiiyey"

"A negotiated settlement serves a better purpose than an inflexible Sharia judgment that sows more division among disputing parties."

A third view was that 'Heer is a deep-rooted cultural heritage that Somalis cannot simply throw out. There is a Somali saying: "*Caado la gooyaa caro alle ayey leedahay*", which means, "Abandoning tradition calls forth God's wrath". Somalis, through most of their history, have practised 'Heer and rarely been subject to other legal systems. They experienced formally structured legal systems only in the brief colonial and post-colonial eras, which added together, come to just over 100 years.

The research documented 90 occupational norms that are practised in different economic sectors and sections of society. But the list cannot be considered exhaustive.

Customary laws practised by Somali farming communities are not included in this study. The latter need more extensive coverage of the various regions of Somalia.

The research reveals that customary law is an important mechanism for managing and resolving conflicts and disputes both among and between clans and primary lineages as well as among families. However, since customary law lacks policing arrangements or a central authority with correctional establishments and systems of preventive measures against crimes, its judgments are necessarily based on consensus, are flexible and do not have a clear formal structure. The judgments that emanate from 'Heer carry mostly symbolic penalties, such as slaughter of a draft animal, moral condemnation or stigmatisation of the offender, payment of nominal material penalties (*Haal*) to the offended party or application of the standard blood compensation for a murder case, etc.

1.6 Terminology and Phonetics

Different literature about Somali social structure has used different terms to describe the segmentation of Somali genealogy-lineages. This study uses the following terms of kinship groupings in the following manner:

Clan	Harti level kinship political grouping
Primary lineage	Large groupings such as Majerteen, Dhulbahante, Warsangeli
Lineage	One or several segments from the same primary lineage living in the same area such as Dubeys, Naleeye Ahmed, Omar Mohamoud, Ali Suleiman

Corporate Diyah group or Diyah group	Lowest level of political unit that collectively pays and receives Diyah blood compensation
Family, Household or Hamlet	Smallest unit consisting of father, mother, their children and dependents

The terms "sub-clan" or "sub-sub-clan" are not used in this research to avoid ambiguity.

Phonetic transcriptions

In transcribing Somali words, we have tried to represent them in anglicised spelling as much as possible, to enable the reader to pronounce them. Doubling of a vowel represents long vowels. The casuistic Somali or Arabic post-alveolar plosives of "c" and "x" are transliterated as ('a) and ('h) respectively. As in the following examples:

Somali	Anglicised spelling
Curuful-Bahr, Maca'ad	'Uruf-Alba'hr, Ma'ad
Cawaaji, Tararaceyn	'Awaaji, Tarara 'eyn
Xeer, Xeer-beegti, Xoobaali	'Heer, 'Heer beegti, 'Hoobaalli
Ya'car	Yag'ar

2

'Heer in the 21st Century

2.1 'Heer and Human Rights

Attempts to formalise 'Heer as a legal system are not new; they date as far back as the 1960s, to the days of the civilian administrations. The government of Prime Minister Mohamed Ibrahim Egal (1967-1969) made the first move in this direction. In 1968, the government established a National Advisory Council made up of traditional leaders and other knowledgeable individuals, with members drawn from all regions and districts of the country, to advise it on constitutional matters and application of laws, particularly customary law.

The Advisory Council convened in August 1968 in Mogadishu and the government presented it with, among other issues, a discussion paper on integration of customary norms that do not fit in with other laws, especially collective responsibility for crime and *Diyah* payments. The council recommended² abolition of collective responsibility for crime and argued that it should be replaced by the application of death sentences for deliberate murders.

The military coup that followed shortly after and subsequent events eclipsed this initiative. Later on, the military government was itself to address this issue, but again the endeavour proved short-lived.

In the year 2001, the Puntland Development Research Centre (PDRC) dwelt on the subject. The first phase of the research on "Harmonisation of Somali Legal Traditions", published in the book *Pastoral Justice*, 2002, dealt with, among other issues, identifying customary norms that are currently in common use and comparing these norms with the positions of Sharia and secular law. The research proved that many of these customary norms are in clear contradiction with both Sharia and secular law.

This research seeks to find out whether 'Heer norms—such as those on Diyah sharing, rape, forced marriages and denial of inheritance rights to women in some communities—that are out of step with international norms on fundamental human rights, can be brought in line with the codified laws. It discusses and analyses with key actors of the Puntland community the options open for integration of 'Heer with modern democratic ideals.

2.2 Getting Away With Murder: 'Heer and Collective Responsibility for Crime

'Heer further holds the entire Diyah-paying group collectively responsible for a crime committed by one or more of its members. The Diyah norm obligates the group to receive and pay the price collectively. The rationale for this tradition probably derives from the fact that the typical nomadic household leads a subsistence existence and is thus too poor to pay Diyah on its own, if one of its members commits homicide.

On the other hand, family members too poor to pay Diyah are unlikely to accept capital punishment as an alternative solution. Regardless of whether their kinsman has committed a heinous crime, in the view of his

family and corporate kin group, he is a valuable asset, a potential progenitor of male offspring to increase the numbers of the family and the Diyah-paying group. This is crucial because the size of the family and the strength of its lineage determine the demographic balance of clans and confer social prestige, which ensures in turn the protection and survival of the lineage group against opposing groups. Thus, collective payment of Diyah avoids capital punishment even when poverty renders individual families unable to pay blood money.

How does the Diyah system work?

'Heer specifies the Diyah or blood value of a male as 100 camels, while that of a female is 50. The origin of the 100-camel valuation is unknown though several theories exist. The most plausible is that it derives from a pre-Islamic Arab tradition that was later adopted by Sharia.³

Workshop participants and interviewees differed on the mode of Diyah payment. Those from Sool and Sanaag Regions and the District of Buuhoodle held that Diyah is paid in kind, that is in live camels, whether murder is premeditated or not. Participants from Bari, Nugaal and North Mudug Regions, however, said that whereas when murder is deliberate, Diyah is often paid in kind – camels – in other cases Diyah is usually paid either all in cash or in mixed assets, that is, in camels and cash.

On the exact criteria that define a Diyah-paying unit, the majority held the view that the wealth and size of the corporate family group is the main determining factor. When the number of men in a group reaches a certain figure, it becomes an independent Diyah group (a process referred to as *Qoora-tiris*, literally, counting testicles). The wealth of the group is also an important factor. There was little consensus on the exact number of men that

make a group independent. Opinions ranged from 100 to 1,000 men or households. Some respondents stated that an extended family becomes an independent *Diyah*-paying unit when, irrespective of numbers, it feels it has enough wealth, usually camels, to pay *Diyah* on its own.

It was pointed out that splinter groups can sometimes break off from a *Diyah*-paying unit as a result of frequent *Diyah* violations by the latter, where some members of a large *Diyah*-paying unit fail to defray their share of the required *Diyah* price or else fail to share a received *Diyah* price with the wider group.

But, its critics say, the *Diyah* system of collective responsibility for homicide and other serious offences committed by individual members of a corporate group often ends up protecting hardened criminals, instead of serving as a deterrent.

Diyah payment is not confined to the nomadic groups of the interior, but extends to kinsmen living in urban settlements, and, in recent times, to Somalis in the Diaspora, who are obliged to send money home to their particular *Diyah* group. Many participants wondered how long the children of the Diaspora would remain willing to continue paying *Diyah* compensation to their original clan, growing up as they were in distant, culturally different environments.

Proposals to eliminate 'Heer norms, such as *Diyah*, which contradict *Sharia* and secular laws, provoked heated discussion among workshop participants and survey interviewees. While agreeing that it was "unfair" – some even described it as a black mark on the otherwise flexible and effective 'Heer – they pointed out that it is deeply entrenched in the Somali clan-based political culture and has been practised for centuries.

Nevertheless, the *Diyah* system is in crisis, a crisis brought on by the collapse of the Somali government and the consequent anarchy and lawlessness, which have led to a sharp increase in incidences of homicide. The people of Puntland are said to be under enormous pressure as *Diyah* payments become ever more frequent. This has created social tension as collective responsibility for crimes committed by individuals has degenerated into "eye for an eye" killings where clan units have been unable to pay *Diyah*. Many innocent individuals, it appears, have been killed in retaliation for murders committed by members of their *Diyah* group. Traditional and religious leaders also acknowledge that *Diyah* is prone to abuse as blood compensation is often neither collected equitably nor distributed fairly. For example, the family of the deceased receives only 11 out of the 100 camels, and the bulk of the *Diyah* is shared among the larger *Diyah* unit. Neither the mother nor the wife of the victim are entitled to a share in the *Diyah* payment as women do not contribute to or receive proceeds from *Diyah* compensation.

The reformist camp saw no hurdles in the way of abolishing the *Diyah* institution. However, some participants and interviewees challenged this optimistic view and expressed reservations about the practicality of banning *Diyah*. This group based their argument on the lessons of past efforts by government to do so. In 1971, the military regime promulgated a law abolishing collective responsibility for crime. The new law was enforced from 1971 and 1974. During this period, only five persons, including one woman, were executed for murder. Strong public resistance and weak application of the law in nomadic areas forced the government to effectively drop the law in 1974. Eventually, as government power and control weakened, 'Heer rule re-emerged.

After intense debate, a consensus emerged that the termination of *Diyah*, the principal pillar of 'Heer, was a test case for the difficult process of transforming 'Heer norms. If such a deep-rooted institution as *Diyah* were to be abolished in Puntland, eradicating other unpalatable customary laws, such as the 'Heer norms on rape, would become that much more feasible. A number of participants raised doubts about whether this proposal was practicable at present, given the absence of a strong central authority to enforce it.

As it happens, there are signs that there may be more widespread support for changes to the *Diyah* system than had previously been supposed, as is shown by the following case:

Case 1: A Challenge to the *Diyah* Distribution Pattern⁴

*The village of 'Harfo, on the tarmac road between Burtinle and Galkayo, is the seat of the highest-ranking traditional leader – the Islam – of one of the clans living in Mudug region. In 1994, a murder took place in the area and clan elders handed over the *Diyah* compensation to the Islam to pass it on to the victims. The Islam then convened a meeting to confirm receipt of *Diyah*. However, in his speech, he stated that his people were "lost" as they always took sides with the wrongdoer against the wronged. He urged the elders to think deeply and fear God, then closed the meeting.*

Most of those present in the meeting did not understand what their leader was aiming at and sought an explanation. They found that what the Islam was saying was that, on the one hand, they defended the culprit by not taking him before the law, and, on the other hand, they did not give *Diyah* to the rightful inheritors (the

close kin of the victim) but instead distributed it to the wider kin group. After further discussion, the lineage decided to change the pattern of Diyah distribution among the close relatives of the slain person and the wider Diyah group. This case became a precedent. A new ruling has emerged as part of the customary 'Heer and ever since clan elders have given the aggrieved family 22, instead of the standard 11, out of the 100 Diyah camels. The case also set an example for other lineages to follow and similar changes in the 'Heer are increasingly taking shape. There are cases where lineages have decided to strictly practice Sharia in the case of homicide—offer the whole Diyah price to the bereaved family, but this is a rare exception.

2.3 Sacrificed for Honour: 'Heer and Rape

Regional differences in the 'Heer penalty for rape emerged during the workshop consultation and the survey. One group stated that the penalty for the rape of a virgin is to force the offender to marry the victim, while rape of a married woman sanctions payment of the value of her *mehar* or bride price. According to this 'Heer norm, the "honour" of the raped victim can only be protected in this way. Indeed, in pastoral communities, rape is not a penal matter between the culprit and the victim, but between the two clans and the compensation accrued out of the crime is not for the victim alone but for members of the lineage. Because the rape becomes known to the public, that victim's "honour" is "tainted", and potential grooms will not propose marriage to her.

A second group, from Sanaag and Sool and the district of Buhoodle, stated that the 'Heer penalty for rape is compensation ranging from five to 50 camels and forced marriage of the victim to the offender. A third

group stated that in their area the penalty is payment of 44 sheep/goats only.

Other regions of Puntland levy still more lenient penalties. In these regions, the arbitrating elders have the discretion to levy what penalty they choose. Women participants complained that elders' juries often levied token penalties, such as a piece of cloth that women wear as an upper garment (*Garbosaar*). They strongly condemned such 'Heer penalties for rape as insulting. They protested that men often ignore or underestimate the moral, social, and psychological damage inflicted upon victims of rape. They urged the intervention of traditional authority and religious leaders in the reform of 'Heer rules on rape.

Many workshop participants and survey interviewees went farther, strongly denouncing the lenient penalty that 'Heer levies against rape and demanding that it be replaced by Sharia, which imposes heavy punishments including the death penalty, or by secular law, where the penalty ranges from 5 to 15 years of imprisonment.

It was further pointed out that 'Heer does not take into consideration the human rights aspect of rape. Forcing a raped woman to marry the man who raped her ignores her rights as an individual, concentrating instead on the interests of the family, as the elders justify this penalty on two grounds: (1) the bride price that would have been obtained if the girl were not raped, and (2) the honour and the prestige of the family, because a raped girl is a "worthless woman" to whom no potential groom will propose marriage.

2.4 Negotiated Marriage and Bride Selection

Somali marriage customs require that grooms look for a bride from a distant clan. Scholars say this is designed to

enhance intra-clan political relationships and ensure that marriages have an economic benefit for the clan. Thus, I.M Lewis in his recent book *Saints and Somalis*⁵, writes:

"Marriage is viewed as a subsidiary source of social and quasi-political ties. Hence, ideally one marries where one has already no strong agnatic ties, and marriage is preferentially directed outside the close circle of agnatic kin. Thus, marriage rarely takes place within the Diyah-paying groups; and the customarily preferential parallel cousin marriage of Arab Muslims is not practised by most northern Somali nomads".

However, there is another more important rationale for this custom that study participants noted. Anticipating the modern science of genetics, the ancient Somalis, they said, had observed that offspring from two distant spouses had healthier characteristics and were likely to be more intelligent and capable than those of close relatives.

Despite this, Somali customs encourage marriage between the children (*ilmo abti iyo ilmo eaddo*) born from a brother and a sister (assuming that the sister's husband is from a distant lineage or clan). They presume these children to be from different origins and bearing quite different blood characteristics. Traditionally, Somalis also recognised that some diseases could be passed from parent to offspring. For a traditional pastoral society to possess such knowledge may seem surprising, but it should be noted that the British explorer Richard Burton, who visited Somalia in the mid-19th century, noted that Somalis knew that the bite of the mosquito caused malaria, something that his people had yet to discover.

Secondly, the Somali consider the mother more important than the father when it comes to characteristics

of the offspring. Two sayings express this traditional wisdom: "*Awr waa kan hoose*" ("As regards the children, the mother is the key breed"); and "*Wiil waa abtigiis*" ("The son often takes on the characteristics of his maternal uncle, or *Abti*").

Based on this belief, Somalis spend much time and effort in identifying the "right" bride (*Awrdayid*, meaning "looking for a better breed"). The prospective bridegroom, it goes without saying, is too young to possess the knowledge required for assessing brides and their background. Therefore, in Somali culture, one of two approaches is taken: either the prospective bridegroom identifies a girl and then consults his parents, who then start the process of scrutinising the girl and her family; or, after the family unit agrees on the marriage of the son, the parents begin looking for the "best" bride — tracing the history of the girl, her brothers and her father and mother, and, sometimes, the history of the whole extended family. The families of both the father and mother of the prospective groom become involved in this process, as the extended family has a great stake in the new marriage. The mothers play a key role in the selection. Somalis have a saying: "*Gabari waa hooyadeed*", which means, "A girl is a duplicate of her mother". Usually, the two mothers make the initial preparatory contacts before the matter proceeds to the fathers and other relatives.

Since independence in 1960, urbanisation and the spread of Western values have eroded traditional Somali marriage customs. The younger generation, especially in urban areas, often do not consult their parents or bother about tracing the background of their partners before marrying. Parents may contribute to the wedding expenses and the setting up of the new household, but the security that they traditionally offered, when they

were actively involved in the organisation of the marriage and played a key role in resolution of conflicts arising in the course of the couple's married life, is greatly weakened. As a consequence, the divorce rate has increased. This, added to economic hardships, has resulted in greater numbers of broken homes and divorced women with children.

Payment of bride price is an established part of pastoral 'Heer. Although Somalis generally do not emphasise class distinctions, the amount of bride price depends upon a number of criteria that include the physical attributes of the potential bride, the wealth of her family and the reputation of her family in the community (Su'ad, 2002)⁶. Participants in the study pointed out that, in addition to the above, the amount of bride price also depends on the wealth of the groom or his family. Also, the more distant the groom's kin from the bride's, the higher is the dowry.

Traditionally, unlike their agricultural counterparts, nomadic pastoralist communities paid dowry mostly in camels and horses.

With the introduction of firearms by the colonial powers, the gun became a valued component of bride price for those who could afford it. However, after independence, owing to the proliferation of weapons among the population, the firearm lost its status as a valued item of bride price.

The horse too — once highly valued as the fastest means of transport in pastoral society, as a "rain-finder" that could sniff out rain in distant locations, as an asset in clan wars and camel raids — declined in value when the colonial powers came in with motor-driven transport.

However, the camel still retains its status in pastoral society as a measure of value in bride price.

2.5 Giving Away the Bride: 'Heer and Arranged/ Forced Marriage

'Heer acknowledges four types of arranged/forced marriage. These are:

- a. The common practice whereby the guardian (father, brother or close male relative) of the girl engages her to a man of his own choice or approves an engagement after a proposal without seeking the consent of the girl. Usually, the guardians do this in good faith. However, there are instances where guardians act from hidden motives such as acquiring a large bride price;
- b. Forcing a widow to marry the brother or cousin of her deceased husband (*Dumaal*) without her consent. This norm sanctions the absolute right of brothers, or immediate cousins in the absence of brothers, to inherit in marriage the widow of a brother/cousin. Where there are a number of brothers, the uterine brother (*Shaqiiq* in Sharia) has priority over half-brothers from the same father. However, 'Heer does allow a widow to choose a spouse from among contending brothers or cousins. If a widow refuses to comply with the marriage inheritance custom, she faces grave consequences that may include denial of custody of her children or the right to manage the wealth of her deceased husband or, in extreme cases, expulsion and a ban on marrying outside the brothers or male relatives of the deceased. It is important to add here that in spite of the above penalty, the widow cannot lose her right to her individual share of the inheritance from the deceased husband's wealth (*Dha'hal*), which is one-eighth of his total assets, according to Sharia;

- c. Forcing a sister of a deceased wife to marry the widowed husband (*Higsiiisan*); and
- d. Forcing a girl to marry the brother or next of kin of a murdered man (*Godobtir* or soothing of rancour) as an additional asset to the *Diyah* price in order to alleviate the bitterness of the aggrieved party.

In the northern areas of the country, where the majority of the population adheres to a pastoral lifestyle, natural resources are limited and conflicts over pasture, water, or camel rustling often result in violent clashes and killings. To manage these tensions, neighbouring clans tend to forge conflict-resolution mechanisms to prevent escalation of violence that include paying higher values of *Diyah* for deliberate murders and supplementing *Diyah* with the gift of a girl in marriage to the brother or nearest male relative of the victim. The girl's marriage creates a social relation between the conflicting parties and diminishes hatred and the desire for revenge.

A Somali saying expresses this idea graphically: *Meeshii Xinjiri ku daadato xab baa lagu burburiyaa*. (Where blood is shed, amniotic fluid must be sprinkled on it).

Godobtir is not compulsory, but it is a gesture of goodwill on top of the standard blood compensation that is intended to create an in-law bond between the clans, especially where a murder has such grave implications that it is likely to spark a cycle of revenge and counter-revenge. Here, tradition and clan interests override the girl's human rights. Very often, the girl is subjected to verbal and physical abuse by her new female in-laws, as she is seen as a "worthless woman" belonging to a hostile clan. The in-laws' hostility cools only when the wife bears her husband male children. Male children are the greatest protective shield a woman can possess against divorce and mistreatment from her in-laws. She is then

considered a "multiplier" of the clan's male strength. The more boys she bears, the higher her status in the extended family and in the clan as well.

Workshop participants and interviewees not only decried 'Heer norms on forced marriages, they pointed out that the practice is declining rapidly. They attributed this new trend to a number of factors, such as an increased understanding that many traditional 'Heer rules contradict Islamic teachings, rapid urbanisation accompanied by a modernist outlook, and the introduction of purist religious practices by a newly emerged class of Sheikhs who are striving to separate religion from tradition and culture. Despite the legal problems and gender bias associated with the tradition of forced marriage and bride wealth, elders still insisted that 'Heer performs useful functions that should not be underrated. While they categorically denounced forced marriage in principle, they nevertheless maintained that guardians exercise "the privilege of seniority," as they are more experienced than young girls in selecting a suitable partner. This, to a great extent, guarantees the future stability of marriages. In analysing Somali marriage institutions, Su'ad⁷ pointed out in her study:

"A fundamental precondition for marriage used to be that an individual should be deemed fit (by the parents) to bear a family's responsibility. Young couples intending to marry would need the consent of their respective parents and of elders within the immediate lineage. This enabled the latter to assess the suitability of the match and assigned them a degree of responsibility for the future success of the marriage. If problems later arose, then the immediate family members would be obliged to assist in resolving them and restoring stability to the marriage."

In Sharia, the father has, as guardian, the prerogative of arranging the marriage of his daughter, but with her consent. Sometimes, the father abuses this power by marrying his daughter to a man she does not want to marry. However, if a woman is a divorcee, her father and brothers cannot force her to marry the man they propose unless she is willing to do so. Once divorced, a woman is free to choose a new husband without the consent or even knowledge of her parents. Payment of bride price or dowry is not obligatory for a divorcee. It is interesting to learn that age is not a factor here, as a young divorcee, say 20 years old, is free to marry any man she deems fit, while her elder sister of 21 will need permission from her father or brothers to marry the man of her choice.

Somalis, like other traditional societies, attach great significance to the rearing of children. Elders believe that orphaned children need a caretaker after the death of their father or mother and that the paternal uncle (*Adeer*) or maternal aunt (*Habaryar* or junior mother) are the best replacements. The institutions of *Dumaal* (wife inheritance) and *Higsiiisan* (marrying off the younger sister of a deceased wife to the widower) are considered a practical solution to the problem of caring for orphaned children.

The elders insisted that the marriage of a widow to the deceased husband's next of kin — brother or cousin — is preferable to her marrying a distant spouse, which often creates tensions between the family of the children and the new husband over the children's care, and management of the deceased father's wealth. They also claimed that, in Somali culture, prospective "marriage inheritors", such as brothers-in-law, cultivate a deeply respectful attitude to their sisters-in-law to avoid rejection in the event of the death of their brother. A popular saying from a poem goes: "*Ma dumaalo naaguhu ninkay*

nolol ku dayrshaan" meaning, "Those who do not respect the wives of their brothers before their death, have no chance of marriage inheritance". They said a man who had not shown courtesy and respect to his sister-in-law when his brother was still alive could be rejected by her in favour of a younger brother or even a cousin.

Women participants in the workshop, however, strongly objected to the continued practice of these institutions and called for the complete cessation of forced marriages.

Case 2: Widow Inheritance No Longer Automatic in Burtinle Town⁸

In 1994, 70 prominent elders representing the community living in Burtinle held deliberations on the issue of widow inheritance (Dumaal) and reached a consensus on banning forced marriage inheritance in the area. The new ruling stipulates that widows wait a period of 6 to 12 months after the death of their husbands, after which they are free to marry any man they want. The nearest male relative of the deceased has a bridging time to offer his proposal and gain acceptance by the widow. If he succeeds, well and good, if not, the widow is free to choose her husband. This provision is still practised in Burtinle town.

Case 3: A Forced Marriage Leads to 30 Years of Unhappiness⁹

"I was a young and wealthy man. At the age of 25, I earned the title of Chief. One day, I decided to choose my future wife, so I went to a father with daughters and submitted a marriage proposal for one of his daughters. The father welcomed the proposal and consulted his daughter. The girl refused. Learning of her negative response, I went directly to the girl in an attempt to reverse her decision. Again she

turned down the offer. I became angry, went to the father, paid a large dowry and demanded an immediate wedding. The father married me to his daughter without her consent. We lived together for the following 30 years until she died. I should admit, unfortunately, that our relationship remained tense and we never developed true love."

2.6 No Ships, No Camels, No Houses: 'Heer and Women's Inheritance Rights

Historically, in some communities, women were denied the right to inherit capital assets such as camels, horses, buildings, seagoing vessels and frankincense plantations. However, this tradition is declining and is already almost extinct in many areas. Participants and interviewees stated that townswomen today generally receive their fair share of family assets.

Still, workshop participants recognised that while the norm was more widely used before the colonial powers conquered Somalia, the practice persists in some nomadic settings and frankincense-owning communities. They decried this denial of the right to inherit as a grave criminal act, as this aspect of 'Heer is contrary to Sharia and fundamental human rights and accepted conventions. Women participants in the workshop voiced great concern about this 'Heer norm, which they said violates the fundamental human rights of women, and demanded its abandonment.

2.7 Tolerating the Intolerable: 'Heer and Battering of Women

Regional and rural-urban divisions emerged on the 'Heer treatment of wife beating. Women participants naturally condemned the 'Heer concept of "tolerable limits", whereby only severe battering of women attracts

penalties under customary law. Moreover, it became obvious that changing social attitudes are already turning wife beating from an accepted practice into one that is increasingly stigmatised. Workshop participants and survey interviewees generally accepted that wife beating is a violation of a woman's human rights.

Nevertheless, a number of "justifications" were advanced. According to customary law, men are the guardians and protectors of women and children. Husbands beat their wives for a wide range of transgressions; the most common is as punishment for neglecting the family's livestock herds, such as when goats and sheep, which are under the direct supervision of wives, go astray or are eaten by marauding foxes, hyenas, etc. For the pastoral household, sheep and goats are a "cash crop" that can be readily sold to buy essential consumer goods; therefore, it was said, their loss is intolerable and anger and frustration drive "emotional husbands" to beat their wives.

Different parts of the country displayed sharply different attitudes to the battering of women. Wife beating is seldom met with in urban areas and urban communities stigmatise husbands who indulge in the practice. In some rural areas such as Bay and Bakool, wife beating is an accepted norm and is seen as a "corrective act"; while in the Puntland regions it is generally frowned upon.

Generally speaking, relatives of a battered wife usually take no action when the damage is light; but in violent cases in which grave injury is inflicted, relatives take legal action. The victim's relatives can ask for punitive action against the husband for beating his wife beyond "tolerable limits". This usually takes the form of a demand for *Diyah* or blood money. Under 'Heer, women possess a two-faceted status: that of the marriage relationship on the one hand or *Dha'hdin* (woman's status by jury);

and that of blood relationship (agnatic right) on the other, or *Dhalasho* (woman's status by sanguis) – in other versions, *Dhaqan* (usufruct) and *Dhiig* (blood) respectively. According to this norm, a woman bears offspring for her husband and his agnatic family. However, her blood compensation goes by right to relatives by birth: father, brothers and clan, etc. In other words, compensation for the injuries she has sustained goes to the male relatives of the battered women.

When the damage afflicted on the woman is light, a jury of elders from the lineages of both wife and husband adjudicate the case, usually awarding light penalties ('*Haal* or apology); however, if the damage is severe, a *Qaadi* (judge) evaluates the injuries sustained by the woman and the husband compensates her family accordingly. Participating elders noted that, in some cases, serious beating might warrant divorce, if the woman demands it. In the event that the husband or any of his relatives kills a woman, the blood compensation is for her larger clan (*tol*) in accordance with 'Heer.

Finally, workshop participants and interviewees noted that wife battering is declining. Nowadays, in most cases, wives leave men who practise wife beating, while other women in the area stigmatise those men and refuse to marry them.

All women participants strongly favoured banning of this practice and heavy penalties for those who commit such crimes. A number of survey respondents proposed the initiation of a public awareness campaign to seek total eradication of the practice.



3

The Pastoral 'Heer

3.1 Pastoralism: Puntland's Economic Mainstay (Meat, Milk and Hides)

The livestock sector dominates the Puntland economy. In 1998, livestock export earnings amounted to US\$ 22 million¹⁰ out of total export proceeds of US\$ 33 million, or almost 67% of total export income. As in the rest of Somalia, with the exception of the river basin, most of the population are nomadic pastoralists dependent on livestock production. The small proportion of the population living in towns and villages also depends on the pastoralists for a substantial part of their food supply in the form of meat and milk. Although Puntland pastoralists rear all types of livestock including cattle, the predominant animals are goats, sheep and camels.

While there are no up-to-date figures for livestock numbers, the report of the War-torn Societies Programme (WSP, 1997-1999) estimated the combined livestock population in the three regions of Bari, Nugaal and North Mudug as of 1998 on the basis of earlier publications¹¹ to be 20,751,700 heads divided as follows: 12,507,000 goats (60%); 6,335,300 sheep (30.5%); 1,475,300 camels (7.12%); and 434,100 cattle (2.1%). There are no available estimates for the other two regions of Puntland, Sool and Eastern Sanaag.

At present, the sector is experiencing major constraints to which the nomadic pastoralists are poorly equipped to respond.

Foremost among these are the successive, albeit intermittent, Saudi livestock bans of 1997, early 1999 and 2002 (the latter still holding). Saudi Arabia being the region's largest livestock market, this ban has impacted heavily on the pastoral economy, greatly diminishing the community's purchasing power, while other businesses related to the livestock trade such as transporters, suppliers of fodder, workers seasonally employed in the livestock trade and, to a certain extent, even importers, have all been affected.

Despite the Saudi ban (perhaps even because of it), the number of animals exported on the hoof to Yemen and other Gulf states in the second half of 2001 and the last eight months of 2002 consisted of 1,400,000 heads of goat and sheep¹², 65,200 heads of cattle and 9,000 camels. The income generated from this livestock trade has been estimated at about US\$ 50 million. In 1884 only 15,000 heads of livestock were exported¹³. The comparison of the two export figures is staggering.

Parallel to this, increasing rural-urban migration of the younger generation of herders is siphoning off the labour force from livestock husbandry and old parents are finding themselves left to take care of livestock. This poses a serious threat to the future of the sector in the longer run. On the other hand, the labour that has abandoned livestock husbandry is sitting idle in towns and villages where there are few job opportunities, fuelling the violence and lawlessness that is rife in some urban areas. This phenomenon of rural-urban migration – one of the greatest challenges facing African countries in the post-independence era – was exacerbated in Somalia by

the civil war, during which large sections of the pastoral community descended on urban settlements and flooded distressed markets with unskilled nomads, heightening insecurity and destabilising the demographic pattern of population settlements.

Another major constraint facing the pastoral community is the intensification of drought cycles, reduced and unreliable rains that upset the ecological balance and the regenerative capacity of vegetation, particularly pasture. This in turn results in poor animal health, reducing the coping capability of livestock and making livestock susceptible to diseases to which they are otherwise resistant. The situation is compounded by the collapse of veterinary services after the fall of the Somali state, leaving pastoralists to fend for themselves.

Despite all this, pastoralism remains the economic mainstay of Puntland. The pastoral population, it must be remembered, has waged a centuries-long struggle with a harsh environment, scarce pasture and shortages of water. To share the meagre common resources, pastoralists have evolved their own customs, traditions and customary laws. The following sections examine customary laws governing pastoral communities' use of common resources such as pasture, grazing land and the grazing patterns arising from forests and water.

3.2 Grazing on 'Alien' Pasture: 'Heer and the Crisis of Pastoral Land

3.2.1 Land Ownership

Most study participants agreed that 'Heer recognises the community permanently living in the area as owners of the land who have exclusive control and management privileges over grazing land, forests and other resources

found in their area. At the broadest level, land is divided along clan lines: Hartland, Ogaadeen land or Issaac land. Thus the poet Samatar Bahnan, talking to his camels after the land of Nugaal became desolate and without pasture, lamented: "*Geelyahow galbeed iyo la qabey gurigi lidoore*" ("O, my camels, now I drive you to the west, the alien land of the Issaac clan").¹⁴

This verse proves two things: that under Somali customary law pasture is shared, which is why Samatar was able to migrate to a faraway "alien" land in search of pasture; and that there is land ownership as the poet cites "the land of Issaac".

The second level of land division is along primary lineage lines. Pastoralists refer to various areas as '*Hero Majerteen*', '*Hero Warsangeli*', '*Hero Dhulbahante*', and '*Al Warsangeli*'—the "land of Majerteen", "the land of Warsangeli", "the land of Dhulbahante", "the mountain range of Warsangeli" respectively. In some areas, land may be further apportioned among primary lineages. For example, one often hears of "the land of Naaleeye Ahmed" or "the mountain range of Ali Suleiman". Hence, the rule is that "visiting" pastoralists can graze the land but cannot cut grass or trees or erect on host land such infrastructure as buildings, wells, permanent barns (*Bino*) etc, as this implies permanent residence and hence land ownership.

The clan's right over rangeland is not formally recognised by the state. Among pastoral communities, the dominant element that determines or influences land use is the clan. In the Constitution of the former Somali Republic, land is defined as the property of the state, and no one other than the state can claim ownership of or exclusive rights to land. While no special law was put in place for the use of pastoral lands, agricultural land (land tenure)

and urban land (lease) were regulated by laws developed under the colonial administration. Agricultural land tenure (*Fondiario*) was limited to 50-year leases for commercial agricultural lands, while land leases in urban areas (*Demanio*) were for unlimited periods. Both types of land lease could be revoked in the public interest. However, despite these laws, land used for subsistence farming by rural families was not affected.

An elder made a point about the pastoral 'Heer during the workshop. It is here, in the area of ownership, that the state law on land tenure and use and 'Heer are in direct collision with each other. The pastoral land issue will be a hot potato for any government to regulate as long as the majority of the Somali population remain pastoralists.

3.2.2 The Grazing 'Heer

Pastoralists regard pasture as a common asset for all. Pastoralists, irrespective of clan affiliation, can migrate in search of pasture to areas that other clans or lineage segments control. But, study participants also pointed out that in order for migrant clans to use grazing lands in other areas, a compelling need must exist. This means that drought must constrain the visiting grazers to seek pasture. In recent times in some areas of Puntland, pastoralists have enclosed their grazing land for commercial purposes in direct contravention of 'Heer grazing norms. These "commercial pastoralists" have, on migrating to other areas in search of pasture, found themselves driven out by the owners of the land on the grounds that the former have violated grazing norms by enclosing their lands. According to grazing 'Heer, one has no right to enclose one's own grazing land and at the same time seek pasture in other areas.

Indeed, grazing 'Heer forbids the commercial use of

pasture. This is a simple survival measure. Owing to the scarcity of rain and the aridity of the land, which limits the area of pasture available for livestock grazing both during the wet and dry seasons, cutting of grass for sale is not realistic. Similarly, grazing 'Heer forbids fencing off of farms or enclosures, for whatever purpose, on land earmarked for grazing, and cutting or burning forests for purposes other than individual household basic needs.

There are other grazing 'Heer. In some areas, pastoral households must settle at the periphery and not in the middle of grazing valleys for two reasons: first, to enable free grazing of animals in the valleys; second, because settling in valleys would mean cutting valley vegetation for erecting animal pens. A grazing norm requires transient pastoralist households to be situated at least one kilometre apart to give space to household animals to graze in the vicinity of the household in the mornings and evenings. This "private space" is termed *Kobta Mayra'ashada* (vicinia, nearness) or *Neylo Daaqeenka* or *Sabada* (household environs or ambience). Another grazing norm named *'Heerka Meesiga* obliges, under normal conditions, camels to graze in peripheral zones at a reasonable distance from nomadic hamlet settlements, leaving nearby areas for sheep, goat and cattle grazing.

Collective pasture sharing continues as long as the need exists. However, when it rains in the land of the migrants, the visitors usually return there immediately. But, if they remain as a group without a justifiable reason, 'Heer allows the host community to demand the return of the guests to their homeland to relieve the pressure on the grazing land. 'Heer, however, permits men who marry into the host community during a grazing visit to stay behind and live with their in-laws.¹⁵

Based on the 'Heer that prohibits the creation of private enclosures on grazing land, the British colonial administration in the northwest of the country issued the Cultivation and Use of Land Ordinance¹⁶. This ordinance protected grazing land by prohibiting the erection of private enclosures, which were automatically demolished wherever they were found.

Nevertheless, a form of individual land ownership exists in Erigavo and the neighbouring areas of the Sanaag region. The area south and east of Erigavo town is a meeting place for three distinct and distant lineage segments, which historically competed fiercely for acquisition of more land. According to the elders' accounts, to safeguard possession of land and avert inter- and intra-clan conflict, over time each of these lineages divided the land it occupied into two categories: the more productive valleys and the less productive plains. Each then distributed the valleys among its members on a household basis. Each household received a piece of land about one square kilometre in area, where it constructed its huts and a permanent animal enclosure, at particular locations along the valley. The lineages kept the less productive plains communal for their members to graze their animals on during the rainy season. During the dry season when pasture shrinks, each household withdraws to its reserved area to graze its animals until next rainfall.

This system of land appropriation in Sanaag region, which the British administered, was adopted during the colonial era. A clan of the area had introduced land distribution in 1926 in Jidali valley, another did so in 1946 around Birhamur, followed by yet other group in the years 1950–1960. Households prepared legal documents, filed registration papers at government offices and paid an annual land fee to government.

Other regions in Puntland have not developed similar formal communal land ownership systems. Some study participants argued that the two colonial powers who administered the two contiguous regions in the north of the country differed in their outlook towards the environment. The British encouraged environmental protection more than the Italians, a difference reflected in the present attitudes of the peoples of the two areas. It was pointed out that one lineage segment, who occupies the eastern-most part of Sanaag region, does not share this system with the rest of Sanaag. This group, significantly destroyed a large proportion of *Acacia nilotica* trees in their area for charcoal export after the collapse of the Somali state in 1991. However, in Sool region, the picture is somewhat better. The people of Sool are more concerned about environmental protection than their neighbours. They preserve certain valleys, such as *Dhidayo*, for exclusive grazing of sheep, goats and cattle. This is done, they explain, to curb the spread of animal diseases and to avoid overgrazing.

3.2.3 Conflicts Over Grazing Land

One would expect nomads to develop over the centuries a body of rules that regulate grazing in order to ensure free access to pasture, which is vital for the survival of nomadic herds. Participants of this study confirmed that 'Heer serves this purpose with regard to management of grazing land. Nonetheless, they stated that it was a common occurrence for pastoralists to compete for pasture. Typical conflicts arise over water points (*Éel*), pasture (*Árshin*) and animal pens (*'Hero*) or, in the mountainous environment, caves for shelter from rains (*God*). While this occurs in the rainy season of plenty as well as in the precarious dry season when there is an acute scarcity of pasture and water, conflicts over grazing and ani-

mal watering are most pronounced during the long dry season. Pastoralists often fight over possession of or access to grazing resources. Those who own the land where there is pasture try to contain the "visitors" who wish to share it with them and are often, in case of refusal, ready to fight to gain access to it.

During the long dry seasons, when pasture contracts to small pockets or when it rains over a limited area, large herds of livestock converge there and overcrowding occurs. Similarly, conflicts occur when owing to scarce pasture, adversary groups are constrained to graze together or close to each other, thereby offering an opportunity for settling old scores or new camel-rustling raids. To avoid this happening, adversary pastoralists usually maintain a good distance from each other when grazing, keeping an informal buffer zone that often remains unused, if there is no neutral third party to exploit it. Somalis call the buffer zone "*Geedo Waran Gaaxshey/Dhaqay*", meaning, "pasture preserved by hostility".

Again, when the rains resume after a dry season, pastoralists will rush to where it rains first and conflicts can erupt over appropriating old pens. Acquiring an old pen relieves the pastoralist group of the necessity of constructing a new one (called *Yagleel*). Usually, as the animals and household approach the area where it rained, the head of the family goes ahead to identify potential sites and secure an old pen for his hamlet. He then returns to direct the animals and household to the location. To ensure that no one occupies the pen during his absence, the rule requires that the head of the household place a freshly cut branch at the entrance of the pen (*Laansaar*) or, in the absence of that, mark visibly the brand of his camel on the ground in front of the pen. According to 'Heer, that pen is now reserved. However, it can happen that an unscrupu-

lous group removes the marker and settles at the marked pen; conflict often ensues, resulting in injuries and sometimes deaths.

3.2.4 Conflicts Over Land

Land conflict is endemic in Somalia. Historians and social scientists who have studied the people of the Horn describe a state of near-perpetual war over access to grazing land, a war that has raged for centuries. They also describe an uninterrupted trend of population movements from the arid north and north-eastern parts of the Horn¹⁷ towards the south and southwest. The two rivers of Jubba and Shabelle enclose this land, known for its rainfall and soil fertility.

Since conflict over land is a historical feature of Somali society, clan territorial boundaries were prone to frequent alterations as the northern pastoralist clans sought to gain more land with better pasture and water points. Each pushed its neighbour towards the south and southwest, developing an expansionist culture. I.M. Lewis¹⁸ corroborates this:

“As regards absolute static boundaries or rights over pasture and wells, such a picture is untrue, for the equilibrium.”

These wars and frequent transfers of control over land from one clan to the other continued until the arrival of the colonial powers in the 19th and 20th centuries, which contained the intra-clan wars and further land annexations. The colonial powers contained the clans in the respective territories each occupied, defined clan territorial settlements and drew up maps marking these borders. It is important, however, to note that, on the other hand, the

colonial powers did not respect these clan borders when they divided the Horn among themselves. The status quo of land ownership with respect to the Somali clans remained unchanged until independence in 1960.

It seems that both the British and Italian colonial administrations recognised the 'Heer on land ownership and complied with it insofar as it was compatible with their interests, helped maintain peace and curbed frequent pastoralist clashes. Records exist of numerous occasions when the colonial administrations upheld the application of clan or primary lineage land ownership 'Heer to stop skirmishes between neighbouring groups. One example is the Italian-delineated border named *Linea Tomasselli*—after the governor of the time—between the then Mudug region's two main clans.

Informed elders and chiefs say that the Somali nationalist independence movements were probably the first to reject the supremacy of the 'Heer on land ownership, followed by the modern Somali State. The independence movements, in their liberation struggle against the colonial powers and to mobilise public unity and support, preached new contemporary nationalist ideals of brotherhood among all Somalis, abandonment of clan loyalty and abdication of clan land ownership systems. In the preamble to the Somali Youth League's Constitution it is said "SYL's mandate is to promote brotherhood among all Somalis, and youth in particular, to attain national amalgamation with consequent elimination of division of Somalis by clan, lineage, religion and social status"¹⁹. The public responded enthusiastically to these new ideals during the independence movement. Moreover, the first State Constitution of 1961, the subsequent constitution of 1979, and other state laws proclaimed, without distinction, that land and any resources discovered on and beneath it be-

longed to the state, that any Somali citizen could settle anywhere in the republic, and that the use of natural resources was open to all.

Clans and lineages living on relatively poorer land made use of this opportunity to "expand" to the richer grazing lands of neighbouring clans or lineages. This was particularly felt in such regions as Mudug, where in the late 1980s disputes over grazing land provoked fighting between neighbouring clans. By the time government power declined, the new settlers were deeply entrenched and clan militias began to clash over land use. *Many Somalis believe that the fall of the Somali state and outbreak of civil war had their roots in grazing land disputes in some areas and the ambitions of certain clans to grab as much as they could of the richer southern lands.*

One pastoralist who participated in the study narrated the following stories:

Case 4: The British Commissioner who Failed to Command the Rain

In the late 1940s, the British District Commissioner of Gardho, a town in Bari region, in a bid to end the frequent conflicts over pasture between two primary lineages living in neighbouring areas, banned the migration of pastoralists. The Commissioner called elders from both parties to Gardho and read out a new ordinance prohibiting the two clan lineages from crossing into each other's territory on pain of arrest and prosecution. The elders for the most part received the Commissioner's announcement in silence. However, one elder raised his hand and stated that he would ask one question on the senselessness of the new law, after which the District Commissioner was free to carry out his threat; said he, "Sir, when it rains on one side and not on the other, will you then order it to rain on the dry side?" The baffled Commis-

sioner, understanding the impracticality of his decision, then withdrew the rule but put the elder in jail for challenging a government order.

Case 5: No Diyah for a Murderer

In 1995, at Kabadhilis, on the Noobir coastal plain of Bari Region, one Mohamed Said Qoordheere settled at a good grazing location. One morning, Guure Osman's nomadic hamlet arrived to settle a site nearby. Qoordheere came to them and ordered them to leave immediately, Guure Osman turned a deaf ear to Qoordheere's demand; whereupon the latter became very angry, went back to his house, returned with a gun and fired at Guure, his elder son and a third person who had come to mediate. Guure's son died on the spot. The man who had come to mediate, Mohamed 'Arris, was injured. The elders of Qoordheere's clan took him to the Bossaso Sharia Court, which condemned him to death, a sentence that was soon executed. The Diyah-paying group of the culprit opted to hand the man to the Sharia court for two reasons: a) to check further escalation of violence against themselves, and b) to eliminate the irresponsible culprit so that he would not commit further crimes.

Case 6: In the Dry Season, Sharing Water is Critical

In the year 1987, at Galdogob town, a number of conflicts over grazing land and use of pasture took place between sub-lineages of a major clan living in the same neighbourhood. One sub-lineage, which was numerically weaker than the other, traditionally grazed / owned the land and refused to share the pasture. Elders from other lineages in the area arbitrated the case and resolved that since, according to grazing 'Heer, pasture was communal, both parties should peacefully share it. The reason the elders sanctioned communal grazing was because the dispute occurred dur-

ing a dry season. Very often, 'Heer rules are flexible and can be adjusted, unlike formal laws, to the circumstances and social and economic conditions existing at a particular time. Different approaches and decisions may be used in a case involving neighbouring communities in dry and rainy seasons. Resources, seasonal conditions and the preservation of peace play a fundamental role in the application of 'Heer.

Case 7: In Conflict Prevention, 'Heer Reigns Supreme

In 1999, at Darowda-Bil'il Quraan, south of Dharkeyngeenyo, the indigenous community and a grazer from a visiting lineage became involved in a dispute over a water reservoir that the visiting grazer intended to build. The local inhabitants argued that the visiting grazers had no right to erect structures on the grazing land, as this would constitute a claim on ownership of the grazing land. Each party took up arms and prepared for a fight. Fortunately, elders of other lineages living in the area intervened and called a meeting, to which they invited both parties. First they ordered the two sides to disarm, and then proceeded to arbitrate. Finally, the elders issued a statement in which they condemned the visiting grazer for breach of grazing 'Heer. Many times, such decisions are based on conflict prevention considerations rather than legal argument. Prevention of conflict escalation is one of the clan elders' political functions and the respect people accord them is generally linked to how successful they are in resolving difficult and complicated issues. It should be noted that banning the visiting pastoralists from digging a water reservoir on the host community's grazing land goes against the erstwhile state law that accords equal rights to all citizens to live wherever they want in Somalia.

Case 8: Camels and Ignorance: An Example of the Flexibility of 'Heer

In 1999, a camel herder was driving his flock through a grazing valley in Sool region called Dhidayo, when a man carrying a gun came and stood in front of the camels, blocking the way. The camel herder asked the man why he was blocking the camels; the latter responded that the camels would leave behind their excreta, which would breed animal diseases among the smaller ruminants – sheep and goats – grazing in the valley. The camel herder found this argument unacceptable, and insisted on moving on with his camels. The situation became tense. Fortunately, traditional elders of the area were informed and called an emergency Shir (meeting). The outcome of the Shir was that, according to their 'Heer, the valley was reserved for smaller ruminants and cattle, and camels were not allowed to graze in or pass through the valley. Once this was established, the elders took an extraordinary decision that the herder's camels could continue through the valley without grazing on condition that he did not return again to the valley with his camels. The question is why the elders made an exception to the rule. There are three reasons: a) 'Heer is flexible and is mostly based on compromise; b) the camel herder, being a visiting grazer, did not know the rules and norms that governed the valley's grazing system, and c) to prevent fighting from breaking out.

3.3 Grazing 'Heer: The II Covenants

1. Land and any resources found on it are common assets of the clan or the primary lineage that permanently lives on it.
2. Pasture is free for all pastoralists irrespective of clan affiliation in time of need.

3. Pastoralists should preserve, and not burn, deserted thorn pens for animals in order to avoid further cutting down of trees and so safeguard the environment and should not burn manure, because manure is useful for dry farming in some areas.
4. Generally, nomadic hamlets cannot settle in the grazing valleys. However, in some regions, pastoral hamlets may be allowed to settle in the middle of grazing valleys.
5. Individual pastoralists should not destroy shared pasture and fruit-bearing trees by cutting, burning or uprooting them.
6. Neither "visiting" grazers nor local pastoralists may establish commercial camps—permanent or make-shift—on grazing lands.
7. Pastoralists should not establish private enclosures or farms on grazing land. In grazing areas, pastoral hamlets should position themselves at a distance of at least one kilometre from each other to allow space for livestock to graze in the morning and evening. No one is allowed to cut green grass and transport it to another area.
8. Visiting grazers must respect grazing 'Heer and maintain peaceful co-existence with host communities.
9. A committee of elders from the visiting group and the local community is empowered to resolve any differences that arise between the two communities.
10. Kinsmen should assist each other in hard times, particularly during long migrations to distant locations (*Hayam*) in search of rains or distant wells.
11. To reserve an old pen for his own use, the head of a pastoralist group should clearly leave a mark in the front of the pen to ward off "pretenders."

'Heer on Forest and Water

4.1 Cut Down the Forest and You will have no Shade

Under colonial administration and to some extent Somali republican governments, forestry contingents guarded and protected forests and trees to prevent deforestation. The larger wildlife – giraffe, elephant, hippos, crocodiles and antelopes – was protected. But after the collapse of the Somali government and the proliferation of arms among the general population, animals both small and large have been systematically killed for commercial and food purposes. The researchers associated with this study discussed the issue with a number of focus groups to establish what, if any, customary laws apply to the protection of wildlife and forests.

A majority (80%) of participants asserted that there indeed are 'Heer norms on forestry. 'Heer, they said, prohibits the cutting down of shade and fruit trees, or the burning or cutting down of forest trees beyond quantities that are sufficient for basic needs. A Somali song emphasises the importance of taking care of the large shade trees: "*Dhirtaba geed aan la jarin iyo waxa jira lama garaacaan*", meaning, "In the forest, there are some trees that do not deserve to be cut down". Another "camel song" goes: "*Haddii Hadi dhaco oo Hareerigu hoosta ka engego, adaa hoogey 'e, xaggeed har u dayan*". This translates as: "If the big shade

trees vanish, it is you who will lose, as you will no longer find shade to rest under". However, 'Heer does allow chopping up or burning dead trees for domestic fuel. In case of need, pastoralists can cut branches from living trees for constructing animal pens, but they should do this as sparingly as possible.

The defunct Somali government's Agency for Range Management was responsible for range conservation, forestry and wildlife. The agency ensured, among other things, that trees were not cut down for commercial as against basic needs, while burning trees for charcoal exports was banned. Owing to the protracted civil war and the lucrative prices available abroad, burning of forest trees for charcoal exports has become a profitable trade in the past 11 years of statelessness. In response to this catastrophic charcoal trade, which is destroying the *Acacia nilotica* tree with devastating speed, different approaches have been employed. The pastoral community has attempted to reinstate the 'Heer rule that bans burning of forest trees for uses other than basic needs. The Puntland administration, on its part, took two initiatives in 1999: first, it passed legislation banning charcoal exports and assigned a special police force to combat this trade. The police force tracked down illegal charcoal traffickers throughout Puntland and closed coastal jetties used by charcoal exporters. Secondly, the administration contacted international agencies involved in environmental protection such as IUCN and Unep, and together they appealed to the "destination countries" of charcoal exports—the United Arab Emirate (UAE), Kuwait and Saudi Arabia—to assist in stopping the illegal trade. This last approach proved very successful, as the governments of the end markets blocked the import of charcoal from Puntland, leading to a sharp drop in charcoal exports.

Survey interviewees across the regions of Puntland acknowledged that increasing deforestation was taking place as a result of the charcoal export trade, and expressed keen interest in participating in any programmes that would conserve the environment and prevent further desertification. When consulted on the establishment of a formal range system, the majority expressed support for creating large rangelands and protected reserve areas. Nevertheless, they warned against setting up limited rangelands, explaining that this would increase, rather than halt, the process of desertification as large herds of livestock would rush into the limited rangeland areas when they were opened for grazing.

Case 9: 'Heer Reasserted: A Fight Over Timber

In 1996, a nomadic sub-clan migrated to the land of a neighbouring clan north of Laas-Anood in search of better pasture. The visitors started cutting down forest and bush for building pens and for commercial purposes. The local community reacted by forcing the group to offload a truck carrying timber off the grazing land. There were no deaths in the incident, but severe injuries were sustained on both sides. A council of elders from both parties convened and reached a decision that eventually became a ruling or convention. It says: "After this incident, we agreed that no one was allowed to cut or damage trees in any form. However, visiting grazers can still come to the land seeking pasture." The injuries on both sides were evaluated accordingly and compensation paid.

Case 10: 'Heer Reasserted: A Fight Over Charcoal

In 1990, a clan visiting the Laas-Anood area for grazing purposes started burning trees for charcoal. Fighting broke

out between the two communities causing four deaths, two on each side, with three injured. The elders of the two communities met and resolved the case. The ruling they came up with was: "Visiting grazers have no right to burn the trees of the forest of the host community".

4.2 'Heer Rules on Forests and Charcoal Exports

1. Users should not destroy, in any form, the forest by burning or cutting.
2. Cutting forest trees beyond basic needs is prohibited.
3. No one may burn forest trees for charcoal beyond basic needs.
4. Shade and fruit-bearing trees may not be cut down.
5. Establishment of commercial camps on grazing land is not allowed.

4.3 Sharing God's Gift: 'Heer and Water

The northern and central parts of Somalia have a characteristically semi-arid climate. Puntland State lies on the north-eastern tip of this zone. Puntland typically receives an unreliable annual precipitation of 100 mm, with the exception of the Al-Madow Highlands, which receive an annual precipitation of 300 mm. There are no rivers flowing through the region and permanent water sources are few and far between. A high evaporation regime intensifies the harsh climatic conditions and renders the area suitable only for a nomadic life based upon animal rearing.

The region experiences two rainy seasons (*Gu*: March, April, May and *Dayr*: September, October and November) and two dry seasons (*Hagaa*: June, July, August and *Diraac*: December, January, February). Despite the avail-

ability of some permanent wells along the coastal belt and shallow wells in the Nugaal and Mudug valleys, the rest of Puntland has no easily accessible groundwater. In the long dry season, groundwater levels often sink, forcing pastoral populations to drive their animals to distant water points. This scarcity of water, before the era of colonisation, not only led to periodic migrations to the south, but also to frequent fighting—regularly cited in Somali history—for control of the few permanent water points in the region.

The research team visited 147 water points: shallow wells, seasonal springs, boreholes, natural water ponds (*Balli*) and man-made cemented reservoirs (*Barked*). The majority of participants in the study replied that the water of drilled boreholes and seasonal springs as well as water in natural depressions is communal and free access is the norm. This is because water points are God-given, collectively inherited from past generations or provided by external aid, such as national governments or international agencies.

Hand-dug wells providing water are generally also communally owned, as the following Somali sayings illustrate: "*Ceel nin baa qoda ee nin ma cabbo*", meaning, "One individual may dig a well but that individual alone does not draw water from that well" and "*Ceel ninkii qoday waxa uu leeyahay magaciisa iyo maaxdiisa (oo keli ah)*", meaning "The person who digs a well gives his name to the well but stands last in the queue for its water". Nevertheless, although water from these wells is free for all, the lineages of the individuals who invested in the digging sometimes claim ownership. In some areas when pressure for water mounts, the status of these wells gradually moves to the private end of the continuum. In contrast, water of artificial cemented water catch-

ments (*Barked*) is exclusively private property and is for sale or for the exclusive use of the owner.

In addition to the water rules already dealt with, study participants cited a number of other pastoral water customs: for example, at water points, the rule of first-come-first-served applies. The water committee at the water points usually prepares a watering list that users conform to. Queue jumping is not allowed. Weaker animals such as sheep and goats have priority over camels, cattle and donkeys; transport animals carrying water containers for human consumption have precedence over the rest, as they need to fetch water quickly for the children left behind at hamlets; animals driven to the water point by women and children receive special treatment; and, when water is scarce, camels should leave the water point for the weaker animals and seek water elsewhere at distant water points.

In response to whether 'Heer applies penalties for violation of water norms, an overwhelming majority of research participants replied in the affirmative. In the dry season, when water is in high demand, the local community appoints a committee to manage the water points. The water committee decides on penalties to be applied for violation of 'Heer norms on water management, which, depending on the magnitude of the damage, range from rebuke, stigmatisation and condemnation to slaughtering of a sheep or goat or even the burden camel of the defaulter.

4.3.1 Conflicts Over Water

The study results also confirmed the frequent occurrence of conflicts over control of wells and springs where expansionist pastoralists endeavour to forcibly share with or dislodge the local community. Disputes often arise

from queue jumping, claims to priority, allowing one's animals to rush to the water point while others are watering theirs, prolonging of one's drawing cycle at the water point when others' animals are waiting their turn, and refusal by visiting grazers to acknowledge the rights and privilege enjoyed by the hosts.

On the issue of sharing water between hostile neighbouring clans, the majority of study participants stated that rules do exist to ensure collective use of water across clan lines. These include: a clan owning a water point should share the water even with a hostile clan when the need arises. Water 'Heer also obligates the water-managing elders to protect the men of the hostile clan from locals during their watering time at the water point. Preferably, women and children of the hostile clan should drive the animals to the water point. The visiting hostile clan should, on its part, observe certain procedures such as sending negotiating elders to the hosting clan before approaching the water point and ensuring that those of its members who have committed crimes against the hosting clan do not appear at the water point, lest they tempt the latter into a retaliatory act.

Water is central to pastoralist life and the emotional sanctity of the water 'Heer is attested to in the Somali literary heritage, as in the famous poem of Ali Dhuh, composed when he was barred from watering his camel at a water point usurped by the Habar Yonis from the Reer Dalal lineage: *"Were Abdullahi and Yusuf of Reer Dalal still alive... you would have drunk water from this well."*²⁰

Case 11: Blood is Not Always Thicker Than Water

In 1989, at the water point of Holhol near 'Hudun village, Sool region, a confrontation over priority in watering livestock occurred between two neighbouring clans.

The confrontation caused the deaths of four persons, two from each side. The elders of the respective groups came together and solved the conflict, agreeing that priority and decisions on water sharing belonged exclusively to the host clan. Secondly, blood compensation was not awarded, simply because the number of people killed was the same on both sides. However, the exogenous clan, who initiated the fight, were told to pay a fine of one million Somali shillings (US\$ 50) to the children of the deceased. Thirdly, the case of each injured person was judged on an individual basis and damages paid. The interesting element in this case, as in many blood compensation judgments, is that blood compensation for the four killed was nullified as both parties lost two men each.

Case 12: You Can Take a Camel to the Water, But You Must Wait Your Turn

In mid 2000, at Galdogob Town, a nomad refused to respect the queue for watering animals. He insisted that his animals be watered as soon as they arrived. When the water committee told him to wait his turn, he became violent, injuring one of the committee members with a knife. The committee punished the offender by slaughtering his burden camel plus five goats as compensation for the injuries he had inflicted on their colleagues. The burden camel and the milking she-camel are the most valued animals among pastoralists. Slaughtering the burden camel was thus a harsh penalty indeed.

Case 13: Blood Money Plus Water Money

In the year 2000, two neighbouring sub-clans from different clans, clashed over watering priority at Humboweyne water well, west of Garowe. This water point is character-

ised by slow seeping water that needs time to fill up. One man was killed in the encounter. However, elders from both parties mediated and decided that the indigenous clan, who managed the well traditionally, had the right of control over the water point and should manage it. The result was blood compensation for the man's death and an additional penalty for breaking the water 'Heer.

Case 14: The Man Who Did Not Drink Water for 30 Years

In 1971, during a hard dry season, Abdullahi Mohamed Dafar and his family trekked to the settlement of Gooba Ali Geri, a transient camp, in search of water. When he got there, however, the settlers denied him water. According to 'Heer, water sharing is a traditional obligation and as there were no other water sources in the area that he could fall back on, by denying him water, the settlers of Goob were virtually sentencing Abdullahi and his family to death. Besides this, Abdullahi was also a distant in-law to the hamlet's people, and in Somali customary law respect for in-laws is sacred. Nevertheless, though Abdullahi begged humbly for water, his great distress did not move his hosts. He could not believe that people of this area could commit such a grave violation of the tradition of water sharing. He went back to his people with empty containers and a burning thirst. In order to heap scorn on those who violated the water 'Heer, and to make the issue historical so that no one would violate the norms in future, Abdullahi vowed not to drink water for the rest of his life. To the indelible shame of his in-laws, for 30 years Abdullahi did not drink water, though he drank milk. By the time of his death, on 27 November 2001, in Sool region, Abdullahi's body had shrivelled up until it was no more than dry skin and brittle bones.

4.4 'Heer Rules on Water Sharing

1. In principle, water is a free commodity for all.
2. Generally, the first-come-first-served rule applies in watering animals from wells.
3. Visiting grazers are allowed access to water and can take their turn to water their animals.
4. Everyone must wait his/her turn; queue jumping is prohibited.
5. Flocks brought to the water by the weaker sections of society, for example, women and children, have priority access to water.
6. A flock from a widowed household with orphaned children (*Agoon*) has priority.
7. Transport camels carrying water containers for human consumption have priority.
8. Relatively weaker ruminants such as sheep and goats have access to water before cattle and camels.
9. Sheep have priority over goats and are watered in the early morning.
10. During a water shortage, camels must trek to other distant water points.
11. Both visiting grazers as well as locals should maintain water points and keep them clean.

5

The Frankincense 'Heer

5.1 No Money for New Clothes: The Frankincense Economy

Compared with the dominant pastoralist and fishing economies, the frankincense industry is neither independent nor self-sufficient. Workshop participants and survey interviewees explained that collectors of commercial frankincense are often the surplus labour of nomadic pastoralist households – impoverished individuals or households practising traditional animal husbandry. A small number of fishermen also gather frankincense during the off-season to earn extra income. Wealthy nomads do not collect frankincense because of its low returns and generally despise it as an inferior occupation fit only for the impoverished. Puntlanders often say “*Shaqdaas Hiji gal ban dhamta*”, meaning “Any job is better than frankincense collecting”. (The term *Hiji* is a collective name for all types of frankincense and some claim it to mean “demarcation”.)

Thus, frankincense collecting is mainly a supplementary occupation of nomadic pastoralist households. They spend most of the time on livestock rearing, their economic mainstay, and allocate only a small portion of it to collecting frankincense. Needless to say, the collector nomad’s incense haul is much less than the optimum harvest. But the income so realised, however small, is

useful to cover household needs such as clothing.

While workshop participants and survey interviewees agreed that frankincense collecting is a poor man's activity in a general sense, exceptions to this rule are provided by Alula and Baargaal districts, which are renowned for production of high quality incense, which brings in good income. Still, before the last military government (1969–1991) nationalised and regulated the export of frankincense in 1972, its collectors were the most deprived and destitute sections of society. Thus the proverb: "*Kalluun iyo Hiji labaduba marada waa kaa laayaan, kuumase gadaan*", meaning, "Fishing and frankincense collecting quickly wear out your clothes, but they never generate sufficient income to buy new ones".

On the percentage of frankincense collectors in the population, participants provided the following guesstimates:

- a. In the main production zone of Al-Miskeed, which comprises Bossaso, Kandala, Alula and Baargaal districts, the population draws its livelihood from the following sources:
 - i. 40% from frankincense products.
 - ii. 50% from frankincense and livestock.
 - iii. 10% from other activities such as fishing and small businesses.
- b. In the other major production area, the *Karkaar* flatlands of Bari region where only the Mohor tree (*Beeyo*) grows, pasture is abundant and pastoral production is predominant. Estimates of the number of collectors were not available, but frankincense collectors in the workshop confirmed that the percentage of collectors in this area is much lower than in the mountainous coastal ranges, which are less suitable to animal husbandry.

Frankincense collectors who participated in the research stated that the collectors traditionally faced chronic constraints such as: a) Lack of start-up capital, b) Difficulty of access to fields, mostly found in difficult mountain terrain, c) Lack of water in the vicinity of the fields, and d) social isolation of collectors from their families. The continuous work preceding harvest time – six months for the Beeyo (*Boswellia frerenia*) harvest and twelve months for the Meydi (*Boswellia sacra*) – prevents collectors from visiting their families.

5.2. The Sweet Incense of the Heights: Geography, Climate and Types of Trees

The workshop participants and survey interviewees specified the major frankincense and myrrh tree species found in Puntland: Mohor-Lufood²¹ and Yag'ar; Ankokib (Acacia), Malmal (Dhidin) and Hadi; and myrrh. Except for the Hadi and Malmal trees, which grow in the flat hinterland and extend across the border to Ethiopia, all the other species grow in the mountain ranges bordering the south-eastern shores of the Gulf of Aden and the neighbouring Bari and Sanaag Regions. All these different types of trees produce an incense or resin that has been exported throughout the course of history. Hankookib and myrrh grow wild, while the others are harvested.

Although each frankincense field is owned, no one could give an exact figure of the total number of fields found in a particular area because the fields are spread over a vast area in mountain terrain. Likewise, elders could not determine the average size of a *Kob*, a frankincense field. They range from small ones that accommodate one collector per season to others that are worked

by five collectors. The produce is graded by quality into four categories of origin: (i) *Koraad*, frankincense grown at higher altitudes in such areas as El-Gal, Dhurbo, Mudiye, Baargaal, 'Asayr, and parts of Bossaso District, which is of superior quality and quantity; (ii) *Haysimo*, from the frankincense trees facing the coast of the Red Sea, (iii) *Gagaab*, from the frankincense fields on the lower mountain slopes of Turmasale, Timirshe, Buq 'Atooti, Daw 'aley, Ufeyn, Taageer in the Bossaso area and the flat lands of *Karkaar* area in the centre of Bari region, growing exclusively the Beeyo type, which yield a correspondingly low-quality product.

Generally, the quantity and quality of produce depends on factors such as habitat. The various habitats of the frankincense tree differ in soil content, annual rainfall, temperature and altitude:

- a. *Altitude*: Frankincense forests lying at higher altitudes yield more produce than those at lower altitudes. The higher the altitude, the higher the quality of the yield.
- b. *Rain*: Frankincense forests require rain. The more rainfall an area receives, the higher the quantity of produce.
- c. *Trade winds*: The trade winds also have a positive effect on produce. Frankincense forests facing the Red Sea are exposed to the moisture-laden north-eastern trade winds and therefore produce more incense.
- d. *Labour*: The yield also depends on the amount of labour that collectors invest in production. The production cycle of Yag'ar is 12 months, while that of Mohor is 6 months. The collector has to work continuously on tapping the trees during the production cycle. Disruption of the tapping cycles has a negative impact on production. The amount of produce is directly pro-

portional to the amount of labour invested in the enterprise.

5.3 Perfumed Poverty: Ownership of Frankincense Fields

5.3.1 The Poor Stake their Claim: The History of Demarcation

Elders from Bari region described Yag'ar and Mohor as the main tree species producing commercial incense. These two incense plants have for the past two centuries been privately owned by families belonging to particular lineage groups.

While little is known about how ownership of frankincense trees in Sanaag Region came about, in Bari, the story goes that the frankincense forest was allocated to the pastoral communities by a king named Mohamoud Yussuf 'Hawadane, who reigned over the region from 1809–1818 and developed the rules of frankincense forest appropriation. According to the elders, there was a boom in the prices of frankincense during this period, and a number of families from the Majeerteen, Gesagulle, Dishiiishe and Jambel lineages, the indigenous inhabitants of Bari Region at the time, demarcated the fields that lay in their area of residence and appealed to the king to legitimise ownership, which he did. The rule used in the distribution of frankincense fields was that each household could establish ownership rights over a range extending as far as the average grazing distance of sheep or goats, or *Ari-Sooof*. Demarcation was carried out by piling up stone mounds at the perimeters of the field. Ridges, clefts, cliffs and other natural landmarks also often make up field boundaries. Participants also said that it was the impoverished families and the numerically smaller lineages of the community who

laid claim to the frankincense forests, as the wealthier families, owners of large herds of livestock, showed little interest in an economic activity characterised by hard work and relatively low returns, not to speak of the then already established perception of frankincense harvesting as an inferior occupation.

5.3.2 Inheritance: Yet Another Male-Dominated Field

Participants noted that male descendents of the original owner of a frankincense forest have exclusive right of inheritance. In the absence of a male heir, the closest woman relative receives the rent from the fields until her death, whereupon control of the trees passes on, according to 'Heer, to the closest male kin of the deceased owner. This is because frankincense forest ownership follows lineage lines, meaning that it is ultimately the property of the corporate Diyah group. So a woman cannot inherit a frankincense forest because if she did, upon her death, the asset would pass on to her children, who might be from another lineage segment or clan. If, that is, she married a husband from another clan, thus entitling him and his children to inherit.

The elders concluded that ownership of a frankincense forest was acquired in one of the following ways:

- Through the approval of the king at the initial demarcation.
- As a gift from the owner (*Hibo*).
- As a Diyah (blood compensation) payment.
- As dowry or bride wealth.
- As debt clearance (payment), when the debtor has no other wealth.
- By fiat as, for example, when a king took it away from the owner and handed it over to another person for whatever reason.

- Through mediation. This happens when owners of (usually neighbouring) frankincense fields dispute particular tracts and a panel of elders sits in mediation. Such a panel sometimes finds no other solution but to take away the disputed part of the field from the disputants to end the conflict. As a result, the panel assumes ownership of such frankincense trees. This is known as *Ka-dhex-qaadasho*.

5.3.3 Unclean Income: Sharia vs. Tradition

Traditional customary law and Islamic Sharia come into conflict in many areas. Somalis being a Muslim society, it might be expected that Sharia would take precedence in such cases. Nevertheless, in many instances, the reverse is the situation: denying women the right to inherit a frankincense forest is an example. I. M. Lewis²² recognised this truth of pastoral society:

"...even within the clan, the jurisdiction of the Sharia is limited by the force of local custom ('Heer)..."

"Islamic principles have been assimilated while what in the Sharia is inapplicable to a clan society has largely been ignored."

In discussion, most elders disapproved of the practice of excluding women from inheriting frankincense forests and agreed that this was against Sharia and human rights. However, in private, they complained that the transfer of frankincense forests to another lineage or clan was a concern that could not be ignored. Traditional elders and religious scholars also pointed out (again in private) that income accruing from the lease of frankincense trees is unclean in a religious sense and thus forbidden (*Haraam*), because frankincense trees grow wild and are not planted,

and therefore cannot be considered an individual or corporate Diyah group property. They disdain and discourage the use of lease earnings as the basis of family income, claiming that history shows that many families who subsisted on frankincense forest leases are now extinct – God’s punishment for this forbidden practice.

5.3.4 Frankincense Today: Owned by Many, Worked by a Few

Today, individual households no longer own frankincense fields. Those households who owned fields during the time of appropriation are now extended families or a full Diyah-group. Up to 200 men belonging to a corporate group may now own one frankincense field. Moreover, the number of frankincense trees does not increase. Nor is the lifespan of a frankincense tree known. No one has ever seen a young frankincense tree grow and bear fruits during the course of their life. Elders estimate the life cycle of a frankincense tree at over three centuries or more!

Therefore, corporate Diyah ownership has little practical significance, as the static income from the frankincense fields does not amount to much if distributed among the entire extended family members of owners. In other words, the increase in multiple ownership rights over the same unchanging frankincense fields makes a crop sharing arrangement difficult. Hence, in practice, a number of families, over the past 50 years, have tended to leave the management and income of frankincense fields to their poor relatives. Overall, a number of different exploitation patterns exist.

5.4 Taking Turns: Sharing the Income from Frankincense

In many areas, owners who are interested in exploiting the collectively owned frankincense forest are allowed to

harvest incense or lease fields on a rotating basis. This system is called *Ganfeyisi* meaning, exploiting in turns. However, in most cases, owners do not cultivate the fields themselves. They instead prefer to lease the fields to professional collectors or negotiate agreements known as '*Awaaji*. This term and *Sed'* (share), or *Kiro* (lease) are also used to describe the value taken as rent by the owners.

The value of the lease fluctuates according to location, size and yield of field. Large fields yield more rent than smaller ones and high-yielding fields have higher values. The rule is that the frankincense collector pays rent after the harvest. In the event that an owner asks for an unreasonably high rent, the frankincense collector can take the case to experienced collectors and elders in the area, who are familiar with the size and yield of the concerned field. This jury determines a reasonable lease value for the particular field. Usually, both sides accept the elder's verdict.

Workshop participants added that a new pattern of exploitation is developing. Because frankincense products are attracting higher prices these days, the field owners are replacing the old lease system with a shareholding system. An owner becomes a shareholder equalling one frankincense collector. Thus, after deducting food expenses and production costs, the net income is shared equally, that is, if two collectors harvest the field, the net income is divided into three portions with the owner and the collectors each taking a one-third share.

5.5 Frankincense Farming: A Quick Route to Malnutrition

All Yag'ar trees and most Mohor trees grow on precarious mountain sites, along cliffs and steep-sided ridges. To tap these trees, frankincense collectors (*Hijiyeysato*)

often have to climb up there barefoot and with minimum clothing. Falls, sometimes fatal, are frequent. Frankincense sites are mostly far from the grazing areas inhabited by the collectors' families. During tapping cycles, the collector is isolated and separated from his family. He lives in a cave near his field, where he stores his food and water as well as the harvest. His food lacks essential nutritious items such as milk, meat and vegetables, as the main food item are rice cooked with oil. Many frankincense collectors contract tuberculosis and other diseases associated with malnutrition.

Each frankincense species has a distinct production cycle:

- a. The Yag'ar tree, which produces incense known as Meydi, has a production cycle of 12 months. The last two months are usually spent on preparing the produce for transportation to villages and trade towns. Exploitation commences in July with tapping trees and closes in June the following year. The initial tapping is known as *Nagfid* (incision). A hardworking collector taps a one-man capacity field at the first tapping in three days. Seven successive tappings follow, known as *Qolofqaad* (scratching, that is, reopening the incision made in the initial tapping). The intervals between tapping increase with the number of incisions and range between 15 and 25 days. The amount of work increases as resin oozes out. Usually, after the initial one, each successive tapping cycle takes a collector 10 to 12 days.

As the resin oozes out, it coagulates beneath the incision. The mature resin collects there. This process of accumulation is called *Biriin*. The collector scrapes off the mature resin into a small collecting basket (*Dhuraad*). The final accumulated resin, *Jadar*, is har-

vested at the end of the eighth tapping cycle. However, during the last four tappings, as the volume of resin produced increases, a rounded resin forms and blocks the opening of the wound. The collector scrapes off this resin each time he administers a new incision on the wound. This type of resin is also called *Firito* or *Ill*. After it has been sorted the resin of the Yag'ar tree is classified into four categories: *Mushaad*, *Mujarwal*, *Fas Kaibir* and *Fas Saqiir*. The remaining residue is called *Shooto*. An important conservation rule obligates the collector to give one-year respite (*Gaa'hin*) to the field after two years of successive exploitation. Often, a collector harvesting a field alone in a given season takes along an assistant, called *Magda*. This assistant serves as a companion on the one hand, and as an assistant on the other. His tasks include preparing food and fetching water on camelback from distant wells. The *Magda* is not a shareholder but works for an agreed monthly wage.

- b. Unlike Yag'ar that grows only on ridges, Mohor trees grow both on mountain ridges and in the flat lands south of the coastal mountain range. The production cycle of Mohor trees is six months and the plant produces the incense known as *Beeyo*. The process of exploitation is just the same as that of Yag'ar. The collector taps the tree after every 15 to 18 days. The incense usually appears on the second or third taping and does not drain down but collects at the wound, where the collector harvests the coagulated resin. Harvest time starts in the fourth month of the year and ends in the tenth, the hot season. Unlike Yag'ar, the Mohor tree needs a recuperating period of six months each year. The harvested resin is separated into *Beeyo* (resin) and *Shooto* (residue). The same tools

are used for harvesting both types of trees: the *Mingaaf* (scraping knife), *Dhuraad* (small collecting bowl), *Koley* (large collecting basket or sack) and a wooden ladder for climbing up trees.

From a focus group discussion on estimates of produce of frankincense fields, the following results emerged:

Trees	Yield per workman (kg)
Meydi fields:	
Fertile fields	400-500
Low yield fields	200-300
Beeyo fields:	
Fertile fields	300-500
Low yield fields	200-300

The frankincense trade has been a source of revenue since Pharaonic times. In 1843, the recorded export quantity to Arabia was 712 tonnes²⁵.

5.6 From the Aromatic Country, 100 Camels to Egypt: Marketing of Frankincense

Somalis began exporting myrrh and incense products millennia ago, to the ancient Egyptians and to the Far East. Baargaal town elders narrate a story of the frankincense trade passed down the generations. Thousands of years ago, a king named Barha, who lived in Bareda town, ruled the area of Alula at the tip of the Horn. He had trade links with Queen Hatshepsut of Egypt, who once sent him a gift caravan of 100 camels loaded with goods. The story relates that 30 out of the 100 camels carrying the load died on the way from Egypt to Alula and 70 laden camels reached the king. The king, to show

his appreciation of the gift, replaced it with the same number of loads of frankincense as a present to the Queen. From then, on the frankincense trade flourished. The Queen named the area Punt-land, the Aromatic Country.

The incense tapped from the Meydi and Beeyo trees and exported is used in the cosmetics, perfume and pharmaceutical industries as well as in domestic perfuming and chewing in the Gulf countries, while Hadi and Malmal are exported and to a limited extent locally used as medication for humans and livestock. The resin of the Acacia 'Hankokib is not presently exploited. Knowledgeable elders stated that, in general, two-thirds of the incense produced annually is Meydi, while the remaining one-third is Beeyo.

Despite the low returns to the frankincense collectors, both participants and interviewees confirmed that the overall volumes of incense produced in Puntland are large and commercially viable. While no current export figures are available, J. Coulter, in his 1987 book *Market Study of Frankincense and Myrrh from Somalia*, estimated annual production of Meydi at 1,000 metric tonnes and Beeyo at 300 metric tonnes (both types of frankincense trees are predominantly found in the Bari and Sanaag regions of Puntland). Annual export returns from incense are fairly high. The War-torn Societies Programme estimated annual export earnings in 1998 at US\$ 3,500,000²⁴. In international markets, a kilogramme of average quality Meydi (both types are sorted into commercial grades by women labourers) sells in the range of US\$ 8-20 according to the grade; while a kilogram of Beeyo normally fetches US\$ 2. As always, the middleman trader reaps the bulk of the profit from the frankincense business, while the collectors earn a dismal return.

Interviewees and workshop participants were in agreement that Meydi does not go beyond the Gulf States, where wealthy Arabian families use it for chewing and perfuming their houses. Meydi prices thus depend on the economic conditions of these countries. When their economies are booming, demand and prices for Meydi rise. When economic growth slows down, demand and prices fall. Oddly, the lower priced Beeyo has a larger world market. In addition to the perfume and cosmetics industries in Europe, all types of churches burn this incense at religious rituals. Somali producers and middlemen do not export Beeyo directly to the end-users in Europe. They export Meydi to Saudi Arabia, while Beeyo is exported to the UAE and Yemen. There the incense is sorted and packed again and sent to markets in and outside the Gulf States.

5.7 Absentee Landlords, Bonded Collectors, Wicked Middlemen: Actor Relationships

As mentioned earlier in this discussion, the renting frankincense collector owns nothing more than his bare hands. He is sandwiched between the owner of the frankincense field and the greedy middleman who appropriates most of the income realised from frankincense exports. Most collectors obtain food on credit and are perpetually in debt. Local traders in the villages adjoining frankincense fields are quick to exploit the collectors' plight. They "bond" the collectors by selling them foodstuffs on credit far above market prices, and forcing them to enter into contractual agreements obligating them to sell the product to the trader at village-market prices. This exploitation of indebted frankincense collectors has been going on for centuries.

The phenomenon of absentee landlords poses a formidable problem for developmental initiatives. While the

sector needs urgent assistance such as provision of water reservoirs at or near frankincense fields, questions arise: Who will be the ultimate beneficiary, the owner or the collector? Who will manage the facilities? Previous administrations have struggled with these problems to little avail.

On analysing the situation, these administrations called for assistance to be channelled to the collector, the real producer and a perennial victim. In 1955, the Italian colonial administration set up an agency to buy incense products directly from the collectors at reasonable prices and arranged storing, sifting and grading facilities. This initiative was aimed at enabling the collector to stand on his own feet to the exclusion of the exploitative middlemen traders. In the end, the agency failed to achieve its objective because the indebted collectors remained loyal to the traders.

The Somali military government of 1969–1991 also intervened in the sector and tried to change the lopsided and exploitive relationship between the trader and the frankincense collector. It organised collectors into co-operatives, offered foodstuffs on credit and built towering storage and grading facilities at convenient collecting centres to buy the frankincense. Once again, the traders outsmarted the government. In both cases, traders used extended family ties – *Tol* – to bind collectors to their side and offered temporarily higher prices, which collectors invariably responded to.

In both instances, illegal exports of incense flourished. Participants and interviewees admitted that when the government agency collapsed, the traders invariably reverted to the old exploitive patterns. Despite this, as a consequence of the breakdown of the government monopoly of frankincense exports after the collapse of the Somali state in 1991, export prices of incense and

fish products increased. As a result, frankincense incomes improved to the point where they began to cover the minimum needs of poor collecting families.

5.8 Fields of Conflict

Workshop participants and survey interviewees confirmed that conflicts occur with some frequency in the frankincense economy. Elders residing in the production areas use the frankincense code or frankincense 'Heer to resolve these disputes. A distinct feature of frankincense 'Heer is that it often enjoins the frankincense forest jury to convene at the site of the disputed trees. This is done for two reasons: first, the jury cannot judge fairly without physically examining the disputed trees and site layout and secondly, informed elders, who can provide information or evidence, are on hand at the field location. A jury court held away from the site is liable to base its judgment on mere guesswork. The rule is "*Gar Xiji xijigeedaa lagu gala*," which means, "Frankincense courts' judgements must be reached on the field."

Specific sources of conflict were identified as:

- a. Conflicts over rent/lease of frankincense fields.
- b. Conflicts over fields that cultivators have transferred in contravention of the 'Heer to others: daughters, in-laws or friends. The living descendents of the original owners will then claim ownership and challenge the legality of the transfer.
- c. Conflicts arising from long-time exploitation with non-owning cultivators claiming ownership on the basis of *Fadhi* – usufruct or settler right.
- d. Conflicts over theft of incense either by collecting directly from the tapped tree or from the cave store, *Gole*.
- e. Disputes over fields whose owners' line has died out.
- f. Disputes over field boundaries – *Soorimo*.

Case 15: A Militia Land Grab: The Puntland Administration Upholds 'Heer

Elders in Taageer village, 60 km west of Baargaal, along the Bossaso-Baargaal main road, cited a recent conflict over ownership of a frankincense field north of the village. The dispute took place between a group of Dir and an extended family named Reer Sha'ib.

In the reign of King Osman, who ruled Bari from 1865 until the Italians dethroned him in 1927, a family named Reer Sha'ib, from Siwaqron lineage, killed a man from the Dir group. The king and his jury ruled, among other things, that a frankincense field owned by the Reer Sha'ib be transferred as part of blood compensation (Diyah) to the aggrieved family. The Dir have held the field ever since. In 1999, the descendents of Reer Sha'ib, capitalising on the prevailing statelessness, laid claim to the field and demanded that the Dir evacuate it. The owning Dir denounced the claim and sent seven armed men to settle in the field. The Sha'ib group attacked the field with a large militia with the intention of dislodging the defending Dir party. The ensuing fighting ended with three Dir and one Siwaqron dead. The remaining four Dir fighters ran away, as they were outnumbered and overwhelmed.

The inhabitants of Bari condemned the violence as outright aggression against the Dir and urged the Puntland Administration to take action. The Administration detained six elders from Siwaqron until they accepted responsibility for the crime, and agreed to pay Diyah and return the frankincense field to the Dir.

5.9 The Frankincense 'Heer

The Frankincense 'Heer is the established customary law that regulates economic relationships, ownership and ex-

ploitation, and conflict resolution. Frankincense collectors of long standing form an ad hoc jury as the need arises to adjudicate conflicts in the sector. Collectors, owners and middlemen traders are obliged to obey the frankincense jury's decisions. Frankincense 'Heer is not written but orally transmitted. Workshop participants and survey respondents defined its more important provisions as follows:

5.9.1 Gaafeysi: The Rule of Rotation

Gaafeysi literally means using frankincense fields in turns. This rule prescribes how a number of people owning a frankincense field may share its exploitation equitably, with each member of the owning group taking his turn or season in a rotating system of exploitation.

5.9.2 'Awaaji: The Rent Contract

'*Awaaji* means renting or leasing. This rule establishes contractual terms between an absentee owner and a collector who exploits the field on a seasonal basis. It defines the obligations and rights of the owner and the collector-client. A collector has to pay the seasonal rent on schedule and observe exploitation rules. The owner on his part cannot rent the field to another collector or breach the agreement without good reason.

5.9.3 Rules on Overexploitation

These rules aim at preventing misuse of the fields by non-owner seasonal exploiters:

- a. *Over tapping*: The collector should not make incisions that exceed the reasonable limit or capacity of the tree, depending upon the size and condition of the plant. In order to maximise output, avaricious collectors sometimes tap the incense tree over more than eight

cycles, which is the ceiling for the number of incisions allowed to be made in the bark. This can kill the plant.

- b. *Jafo* or *Jagayn* (jabbing): This refers to making a deep incision with the knife (*mingaaf*) in the tree at the last eighth tapping, in order to extract more resin. If this is done, the tree will ooze more resin, but may die or yield less resin the following year as a result.
- c. *Qayo* or *Tarara'yn* (wounding): This means wounding the protective outer bark of the tree in the process of scraping off accumulated resin from the surface of the wound. If this is done, the wounded part provides entry for a deadly insect called *Dowsar* that can eventually kill the plant.
- d. *Cutting off branches*: Livestock like browsing the frankincense tree. For this reason, no one, including the collector, is allowed to cut branches from the tree to feed animals, because the *Dowsar* insect will enter the tree where it is cut and kill it.
- e. *Gaa'hin* (resting the field): To give the Yag'ar tree respite from continuous exploitation, the collector is obliged to let the field lie unexploited for a year after every two years of successive exploitation.

5.9.4 Obligation to Sell to the Trader/Creditor

This rule obligates the collector to sell the incense harvest to the trader who supplied him foodstuffs and other essentials on credit during the production season. Although this rule undermines the collector's freedom of choice, he must nevertheless, comply with it. In the absence of this rule, the collector could take his product to the main trade centres, where he would get a better price for his product.

5.9.5 Aas Hiji: Dispossession by the King

Aas Hiji, literally, burial of the field, refers to the expropriation of a frankincense field by the ruling authority. Kings in the past exercised this prerogative, which allowed them to take a frankincense field away from the owner for one reason or the other. A good example is that cited on page 87 (Case 15) of King Osman, who ruled between 1865 and 1927, transferring a frankincense field from the Reer Sha'ib family to the Dir group as a *Diyah* payment.

5.9.6 Fadhi: Usufruct or Settler Right

Fadhi or usufruct refers to a situation where a collector has exploited the same field on rent or lease continuously for a prolonged period—usually a period of 30 years or more—in the process earning a special status protecting him from eviction and rent increases and ensuring his children the right to continue exploiting the field after he dies. As long as the field is for rent, the long-time tenant retains the right of exploitation. In addition, the owner of the field cannot raise the seasonal rent as he wishes. Elders said they knew of many occasions where long-time settlers refused to pay rent or even to allow the owners to exploit their fields when they needed to; some long-term settlers went as far as to challenge the ownership of the field, particularly when they felt that they were in stronger position than the owners. The customary law provides a ruling by which the “*Fadhi*” system cannot be changed, but the economic exploitation of the field can be discussed and resolved. Eviction is out of the question.

5.9.7 Men Only: Inheritance of Frankincense Fields

The inheritance 'Heer stipulates that only male descendants of a deceased owner can inherit frankincense forests. Women cannot inherit. However, the elders noted that this rule has a clause obligating inheriting males to offer part of the income from the frankincense fields to sisters who may be in need and request support. This assistance is said to be quite different from the traditional support women receive from their kinsmen (*Kaalo*), since it acts as a compensation for women who are denied the right to inherit frankincense.

Participants including elders, religious men and members of the educated elite, all denounced the exclusive male inheritance norm as unjust, un-Islamic and against fundamental human rights and international conventions. Indeed, while this rule still holds, public opinion is gradually turning against its observance and in the course of time it may wither away.

5.9.8 Hadhiino (Rent Only) — When a Woman is the Sole Descendant

On the rare occasions when a woman is the sole descendant of the owner of a frankincense property, she is accorded the right to receive income from renting the field during her lifetime. This case is known as *Hadhiino*. When the woman dies, the next male relative reclaims the field. The woman's children cannot inherit the field. Many cases of this nature are reported in Bari region.

5.9.9 Eviction of a Collector from a Frankincense Field

The owner can evict a collector from his field when the latter:

- Fails to pay seasonal rent.
- Claims ownership of the field.

- Overexploits the frankincense trees.
- Fails to report appropriation of part of the owner's field by usurpers.
- Lastly, when the owner genuinely needs to exploit the field.

6

Law of the Sea: 'Uruf Alba'hr, the Marine 'Heer

6.1 From Wooden Dugouts to Foreign Trawlers: The Fishing Economy

Somalia possesses immense untapped marine resources. The Somali coastline extends 3,300 km around the Horn of Africa, and Puntland accounts for one-third of it, from Laaso Surad on the Gulf of Aden to Gar'ad on the Indian Ocean, roughly 1,100 km of waters which constitute the richest fish habitats in the region. The Trade Winds govern the fishing patterns of these coasts, allowing local fishermen to fish only 150 days in the year.

Fishing communities have lived and prospered along the Gulf of Aden and Indian Ocean coasts of Puntland since time immemorial. The important fishing villages and towns on this coast are: Las Qorey, Elayo, Bossaso, Kandala, Dhurbo, Bender Muranyo, Garsa, Gesaley, 'Haabo, Afkalahayo, Bolimoog, Alula, Las Daud, Biyo 'Addo, Wareegsimo, Bareeda, Ollog, Damo, Toohin, Saymo, 'Anood, Baargaal, 'Adayo, Hurdiya, Dabdheer, Hafun, 'El 'Adde, Fo'aar, Bender Beyla, Gabba', Badey, Baarba'adle, Illig, Gar'ad and many other small fishing settlements. Fishing remains a mainly subsistence activity. Fishermen go to sea for rockfish for home consump-

tion and the domestic market; a small surplus of tuna, mackerel and shark fins is earmarked for export.

Historically, fishermen used artisanal boats (*Yadaad*) a collective name for small oar boats of two types: *Huuri* (plural *Hawaari*) or *Qori*, dugout canoes carved out of tree trunks; and *Beden* or *Khashabad*, made from warped wooden planks nailed together. Traditionally, these simple rowboats were imported from Bombay in India and Karachi in today's Pakistan, or bought second hand from Mukalla in Yemen. The local fishermen developed repair skills as time went on. In the 1970s, small, modern fibreglass crafts joined the artisanal fishing trade, both small outboard engine-mounted boats, *Laash*, and rowboats, *Sahiimad*.

Participants and interviewees recalled that the old artisanal boats could not go farther out to sea than 2-3 km offshore. They employed rudimentary fishing gear and went after shallow-water, inshore species. The catch was not always reliable, as evidenced by the popular saying: "*Bad-dhac male ayuu ku hurdaa*", meaning "a fisherman can only cast his fishnet into the sea and hope; if he is lucky, he will catch some fish." In spite of all this, artisanal fishing from crude vessels was historically a more self-sufficient occupation than traditional animal husbandry and frankincense collection, as the fishermen, even in the worst of times, could always feed their families. In some areas, in extreme cases, fishermen can wade out from shore into knee-deep water and still net a catch of mullet. For export, fishermen catch tuna (*Tabadin*) and process it to make smoked tuna. Till relatively recently, Yemeni and Pakistani fishing boats visited the Puntland coast to buy mackerel and *Tarraaqad* (kingfish) from local fishermen. Fishermen also dried, salted and exported shark meat to the East African ports of Dar es Salaam,

Zanzibar and Mombasa. Another sideline for fishermen in the past was diving for pearls. Areas such as Bereeda and Hurdiya Bay were renowned for their pearls, which were exported to Arabia, the Far East and other international markets. Diving for pearls ceased to be a viable industry after independence in 1960. This may be attributed to the introduction of cheap artificially bred pearls from Asian and Western countries, and to a certain extent, to new opportunities for pearl fishers in other areas of fishing, as the government introduced fishing projects and established credit funds for the fishery industry.

Motorised craft that replaced the artisanal row boats did not fare much better as they were too small to withstand the Trade Winds and so were unable to venture into deep waters. Some fishermen along the coast of the Gulf of Aden said that their small *Hawaari* were able to go to sea beyond the traditional 150-day fishing season as these crafts performed better at sea than the larger *Beden*, *Laash* or *Sahiimad*.

Some fishermen go to work in the frankincense sector in the slack season to harvest Beeyo, which, as mentioned above, has a 6-month harvest cycle, unlike Meydi, whose production cycle is 10 to 12 months.

The study participants stated that, from the 1970s onwards, during the era of military government, the Somali fishing community made substantial advances. On the one hand, the community's numbers increased when the government took many nomadic pastoralists stricken by the 1974 drought and resettled them at the coast; the fishing settlement of Bedey at Eyl being one of these. On the other hand, the military government organised the existing and new fishing communities into fishery co-operatives, offering support in the form of grants and soft loans. The former Soviet Union provided

fishing equipment, construction material for housing and technical support to the programme, including training of management staff. Moreover, with SIDA assistance, a plant manufacturing small fibreglass motorised craft was set up at Jazira in Mogadishu to support fishing co-operatives and individuals, who bought the boats using loans provided by the Somali Development Bank. In the 1980s, when the government's trading monopoly ended, the sector made further advances as the private sector started to harvest high-value spiny lobsters (*Panulirus spp*) and shark fins for export.

The private export trade enjoyed a remarkable boom in the Puntland region in the 1990s, after the collapse of the Somali state and the ending of government-imposed trade restrictions. The spiny lobster industry flourished, particularly along Puntland's Indian Ocean coast, while the shark fin and meat business brought fishermen relatively high returns, substantially improving the fishing community's income. For example, in 1998, lobster and shark fin exports to the UAE and other markets brought in US\$ 3,500,000 each. In the UAE, a kilo of shark fin could fetch as high as US\$ 80, while the average price of a kilo of lobster was US\$ 20. Shark meat exported to East Africa earned US\$ 500,000²⁵. This is substantial income when taking into consideration the historical household income in the fishery communities.

Another source of income for the fishery sector economy is visiting foreign boats calling at ports on both the Gulf of Aden and the Indian Ocean coast to buy mackerel from local fishermen, some of whom have entered into partnerships with these visiting boats.

Nevertheless, there is a dark side to the new-found prosperity of the Puntland fishery community: sea piracy, over-fishing and illegal fishing of its coastal waters

by foreign trawling ships, taking advantage of the collapse of a strong central government.

6.2 To India with the Monsoon: Seaborne Trade

The people of Puntland have a long seafaring tradition. They had strong trade links with the ancient civilisation of Pharaonic Egypt in the era of Queen Hatshepsut. For centuries, dhows from the Horn plied the sea routes to Egypt, the Persian Gulf – Kuwait, Basra, Jeizan, Mukalla – and India on the north-eastern arm of the monsoon, and to Mombasa, Zanzibar and ports farther down the East African seaboard on its south-western arm up to Sofala. These dhows carried goods from the Horn such as gum and myrrh, frankincense, pearls, oyster, skins and hides, smoked tuna, ostrich feathers, mackerel and salted shark meat, and brought back finished goods such as clothing, ornaments, building material, equipment and food grains, etc.

The Trade Winds regulated the sea traffic. The single masted sailing dhows were slow and a sea voyage took over six months as the dhows had to stay moored for the off-season (*khariif*) at their ports of destination waiting for the onset of the opposite arm of the monsoon to drive them back to their home ports.

Survey interviewees and workshop participants pointed out that Puntland's seafarers and fishing communities developed over time a rich marine culture in areas as diverse as navigation, astronomy, weather forecasting, etc. A distinctive feature of the Puntland marine culture is the *Nayruus* or *Dab-Tuur/dab-shiid* calendar, which has 365 calendar days but no leap year. To this day, Puntland seafarers stick to this calendar. The year 2001 thus started on 23 July. Sailors use this calendar to

determine wind patterns and sea currents in the marine zone extending from India to Egypt to Zanzibar.

For navigation, traditional seagoing captains referred to the stars at night and the sun in the daytime to determine North, East, South and West: *Jaah*, *Madlac*, *Qudub*, and *Muqib*. They were expert navigators in their own domain. The lore of the sea was handed down in numerous popular songs and sayings:

*"Sidii ximir muddadii soo baxdey oo mir iyo roob keeney,
Shiraaceeda muulka ah hadduu moofirka u geeyo,
Inuu kaasi meel daran ku wado magane yaw sheega"*

"After the onset of the 'Himir rains, pouring down in torrents day and night,

He who sets sail on a voyage, let all men know that such a sailor is headed to his doom"

*"Boowe, ma doonteenmaas ayaan raacnaa,
Mise berrigeenna ayaan marnaa oo ilaah baan tawakalnaa"*

"Brother, shall we sail on the sea in that boat or walk overland to our destination, submitting our destiny to Allah?"

"Badi waa jaair, jaairbaana looga baxaa"

"The sea is harsh and only the seasoned mariner can master it"

The dhows had, of course, no echo sounders to determine the sea depth (*Mool*). Instead, they used sounding leads (*Buldi*); a piece of metal with a flat base covered with a thick layer of grease lowered on a chain until it touched the seabed. After pulling it up, the sailors inspected the flat base. If sand particles were found clinging to the grease, the seabed was sandy and the area one

of shallow water, indicating that the coast was near. If there were groove-marks on the grease, this meant the seabed was rocky, indicating deep water. At night, the mariners employed another method: a sailor was sent down to the cargo holds to put his ear against the hull and listen for external sounds. An absence of external sounds meant the location was deep sea. Knocking sounds meant rockfish picking at *Dowsar*, insects living in the boat planking, indicating shallow waters.

Another way of figuring out the distance to shore was to examine the colour of the seawater; a deep blue indicated deep water, meaning the boat was on the high seas. A light blue meant shallow water, indicating approaching land.

6.3 Poverty in a Sea of Plenty: Exploitation of Marine Resources

6.3.1 Marine Resources

The waters off the Puntland coast form an ideal fish habitat. The continental shelf off the Somali coast is narrow, mostly 15 km wide, and has an area of roughly 27,432 km². Puntland accounts for 17,432 km²²⁶ of this, or 63%. Furthermore, in the area of 'Haafuun²⁷, the continental shelf extends 80 km offshore. The southwest monsoon, blowing from May–August, creates fast flowing surface currents are deflected as they approach the northeastern Somali coast and this results in replacement of the water in the coastal zone with cold and nutrient-rich up-welled water. The northeast monsoon of December–February²⁸ reverses this trend, but does not generate upwelling. Trade winds and high tides thus constitute the major constraints on traditional fishing, confining most fishing activities to the periods between the two mon-

soons: the months of October and November and March and April.

The fish population in Puntland's coastal waters varies in diversity and density. No recent data is available. Nevertheless, it is known that the prevalent species are large pelagic varieties such as yellow fin tuna, long-tail tuna, bonito, skipjack, and Spanish mackerel. Smaller pelagic species include Indian Oil Sardinella, rainbow, sardine, scad, horse mackerel and anchovies, while the main commercial demersal fish are grouper, snapper, grouper and sea beam. Large populations of shark and ray are also registered. Commercial populations of inshore spiny lobster, genus *panulirus*, and offshore types of *Puerulus Sewell* and *Puerulus Carinatus* are found at depths of 150–400 metres.²⁸

No exact figures are available for harvests of large pelagic varieties but the former Ministry of Fisheries and Marine Resources estimated in 1986 that the annual harvest yields of large pelagic and spiny lobster were 8,000 and 1,500 metric tonnes respectively. However, in the case of lobster, P.J. Fielding and B.Q. Mann,³⁰ who conducted a survey in Puntland, produce estimate figures: total lobster between Fo'aar and Eil as 1,200,600 lobsters or 264 tonnes and annual catch in the region of 280²⁸ tonnes. Other annual catch figures were reported of 116 tonnes in 1985, 540 tonnes in 1994, and 300 tonnes in 1995 (Everett & Jelleher 1998). This demonstrates that while in the early years the stock was untapped, the decline in later years is due to overexploitation and indiscriminate fishing practices.

With such vast resources and a population living in such abject poverty, a total fishing season of only 150 days in the year does not make sense. On the one hand, Puntland's fishing communities need to acquire fishing vessels that can withstand the strong winds and high

tides, and to adopt modern fishing technologies and conservation techniques in order to exploit these marine resources beyond subsistence levels. On the other hand, experts are sounding urgent warnings about the present tempo of shark and lobster harvesting. As indicated by the falling harvest yields of lobster, *Panulirus homarus*, from 1994 onwards and the disparity between existing stock and yield identified by the two diving scientists (Fielding and Mann), this resource is on the brink of depletion. Foreign ships are illegally trawling for the other two types of lobster offshore and no information is available on the level of exploitation. Lobster exploitation needs immediate intervention that includes: limitation of the number of lobster fishermen, respite periods for lobster to reproduce, and strong measures against catching small or pregnant lobsters. Although there are no accurate figures, shark and eagle rays can be safely included on the endangered list at the present level of exploitation.

Protecting marine resources is an urgent priority. Unfortunately, this seems a distant dream in the absence of a strong authority and effective marine sector administration...

6.4 As Far as the Eye Can See: The Marine 'Heer of Fishing Zones

According to the customary law of fishing (the marine 'Heer, known as the 'Uruf Alba'hr), the sea's resources are the common property of the exploiting community. It is permissible to share these resources with Somalis living in other parts of the country but not with foreigners, who are excluded from any right of use. One of the important laws of the sea is that no fisherman can claim

ownership of a particular site or area. However, survey interviewees and workshop participants differed over the status of the marine 'Heer on designation of fishing zones among local artisanal boats, local fishing ships and foreign-licensed ships; the majority were of the view that although marine resources were communal, the marine 'Heer designated fishing zones for different vessels, with small artisanal craft being allotted that part of the sea from the shore to the horizon, that is, as far as the naked eye can see. National fishing ships and licensed foreign ships can fish in the waters beyond the horizon. Some survey interviewees and workshop participants insisted that the actual limitation depended on how far out small outboard-engine vessels could go, saying the "horizon theory" for artisanal craft was used before motorised boats were introduced into the industry.

The respondents also stated that the military government had enacted two laws: one institutionalising the traditional marine 'Heer by demarcating fishing zones among small craft and bigger ships; and the other designating fishing zones among fishery co-operatives. This latter law defines the respective fishing zones for each co-operative and penalises any vessel found fishing in a zone outside its own designated area. The co-operative confiscates the illegal catch, but reimburses its value to the intruding vessel.

The interviewed groups and workshop participants were unable to give definite information on the rules governing sustainable use and management of marine resources. The majority insisted that no such laws existed, while a minority group contended that certain norms do exist, citing the marine 'Heer prohibiting wastage of marine resources and catching fish without need, and stipulating an unspecified penalty for non-compliance. The final

consensus was that, due to the vast untapped marine resources of the region, combined with their limited exploitation and the scattered location of fishing communities, the issue of sustainable use and management of marine resources has not yet emerged at the grassroots level.

6.4.1 The Three Habitats Tended by the Nomads of the Sea

Just as the nomads rearing livestock in the harsh, dry environment of Puntland have an intimate understanding of their animals, how to deal with them and the kind of conditions in which they thrive, fishermen – the herders of the sea – also classify their 'flocks' and their habitats and have different ways of tending or catching them. Traditional dugout canoes, whose crew are called *Jistoad*, use long lines (*Shakad*) to hunt shark as well as the rockfish that live on the seabed (*Shuquur*). They also trail shorter lines alongside the moving craft to catch mackerel, tuna and sometimes shark, a process known as *Shaayad*. The fishermen also cast nets of various sizes to catch mostly shark, mackerel and tuna. They recognise three fishing habitats according to depth: a) the seabed, usually at 40 *baa'* (*baa'* is a measuring unit of 2 m used in measuring both sea depth and wells). At this depth, a type of fish lives in cracks among the bedrock, hence the name rockfish or *Kalluun Qareed*; (b) intermediate depths between the surface and seabed where mackerel and shark are found; and (c) just below the surface of the sea.

Again like the pastoralists, the fishing community has its own specific sub-culture. The fishermen and pastoralist camel herders boast to each other.

The nomad says:

Geelayagu Libow daaq Our camels grazed at Libow
Labi looga laan gooy They fed on the Lebi trees

Ragii jiray warmaha jabi The herders have broken their
 spears defending their camels
Isaguna murqaha jebi Who are so fat they sprain
 their ankles just supporting
 their own weight

The fisherman says:

Geelayagu Summaan daaq Our camels grazed on rock fish
Gahash looga laan gooy They ate Ga'hash fish
Ragii jiray Idaad jiid Their herders hauled in the
 heavy nets
Isaguna Jilbaha jabi And the camels snapped the
 long lines

The fishermen's reply is an elaborate insult to the whole race of camels!

Then there is the verse:

We are men of the sea, who have no camels
We are men of the sea, who own no other wealth than fish

This song has a subtle undercurrent of pride: the "aristocratic" camel herders must trek long distance in search of rainfall and water points, while the humble fisherman knows that there are always more fish in the sea.

In the same way that nomads sing songs of desert hardships to their camels, fishermen sing to their canoes and boats of the dangers of the sea.

Dark that which dark is
Stormy sea
Morning rain
A woman's veil is dark

*You, my horned (canoe)
May your wood never break up
Fly over the sea
Skim to the shore
Speed us to land
Driven by our oars and paddles*

6.4.2 Coming Out in the Lobster Season: The Changing Role of Women in Fishing

As in other sectors of the traditional economy, division of labour among the sexes is pronounced among the fishing communities of Puntland. Fathers and sons big enough to go out to the sea, carry out all fishing activities. Young boys begin accompanying their fathers to sea at the age of 10 to pick up fishing skills while helping out with light chores. At the age of 18, a boy becomes an independent fisherman with his own fishing gear. In the old days, youngsters had to undergo the challenge of cracking their eardrums (*dhagadalooshi*) in deep sea diving so as to prove their seamanship and equip them to stay longer on the seabed while harvesting pearls. After the *dhagadalooshi*, their fathers would heal the area above the cracked ear by cauterising it with fire sticks. That is why you often find cauterising marks above the ears of older fishermen.

Meanwhile, mothers and daughters of the household take care of children, perform domestic chores such as making mats and handicrafts and tend what small livestock herd the family may have. Many fishing households are only semi-sedentary since fishing is seasonal and cannot sustain them throughout the year. Women keep small herds of sheep and goats, usually a subsistence level of 50-80 heads, to provide basic nutritional needs of meat and milk.

As the fishing industry becomes commercialised, women are increasingly also mending nets and cooking and selling food at fish processing sites, especially the lobster trading centres of Eyl, Gara'ad, Beyla, and Fo'aar. During the lobster season, all sorts of outsiders, including women, converge on the coastal villages. A good deal of money changes hands, of which women receive a small share selling khat, cigarettes, mineral water and soft drinks to the nomad youths who seasonally swell the lobster diving workforce. Indeed, during the season, marriage is common at the fishing sites, which become meeting places of people from different areas.

In spite of this increased participation in income-earning activities, women in the fishery community still have no say in the sale of the fish caught by their husbands, sons and brothers, and like their counterparts in pastoral communities are excluded from most decision-making powers.

6.4.3 Obligatory or not? Mutual assistance among fishermen

Mutual assistance and economic co-operation at various levels within the fishing communities are said to be cultural values sanctioned by 'Heer. However, workshop participants and survey interviewees disagreed on whether these rules are obligatory or not, a majority maintaining that the existing rules were indeed obligatory for fishermen both at shore and on the high seas. Some however argued that while norms and regulations existed, these were neither obligatory nor effectively enforced.

6.4.4 The New Sharks: Foreign Trawlers Stoke Conflict

Most fishermen interviewed maintained that, except in the lobster industry, conflicts among local fisherman are

not common. Marine resources are generally abundant and fishing sites are not congested. Lobster stocks, however, are limited and concentrated in relatively small zones fished by a large number of competing lobster companies; hence conflicts often arise among these companies over fishing sites. Conflicts are also common in the seaborne trading community, the common causes having to do with discharged goods, missing goods, drenched goods, and breach of contract among traders or vessels and so on.

The fishermen said that the most difficult standing conflict they faced was the presence of illegal foreign fishing trawlers in Somali waters. They stated that, since the fall of the Somali Government in 1991, Puntland's rich marine resources have been subjected to unrestricted, devastating plunder. Foreign trawlers from around the world have been relentlessly exploiting resources without reprisal or seeking licence from local authorities where these exist. At first, these pirate ships feared coming close to shore. Soon, however, with the help of self-serving Somali militias, they ceased to respect all demarcations of the country's exclusive economic zone and began fishing close inshore, challenging artisanal fishermen and deliberately running down their nets at sea. The fishermen at first tried to defend their fishing zones. But, with the collaborator militias' assistance, the foreign trawlers have armed themselves and outgunned the poor local fishermen. An example of this is the recent Laamiye conflict.

Case 16: Big Guns Over Laamiye

In the year 2001, fishermen of the coastal settlement of Laamiye, located between Bender Beila and Hafun, were infuriated by trawlers destroying their nets. They mobilised

themselves and, using motorised boats, attacked the foreign ships with small arms. The bigger trawlers retaliated the next morning by attacking the fishing boats in the area using heavy weapons and shelling the coastal settlement of Laamiye, inflicting heavy losses. The fishermen were powerless to fight back, nor could the Puntland administration help, as it lacked coast guard equipment and capacity.

6.5 Sailor Shareholders: Income Distribution on Boats

The sailors and fishermen interviewed described in detail the distinctive features of the marine 'Heer with regard to the distribution of wealth. 'Uruf-Alba'hr, like other seafaring traditions, recognises sailors as shareholders rather than employees, and hence makes no provision for labour rights or fringe benefits for sailors or fishermen.

At the workshop, all participants agreed that, under 'Uruf-Alba'hr, 1) the operational cost is first deducted from the gross income of the vessel; 2) that an unspecified amount of money, depending on the capacity of the vessel and the amount earned, is earmarked for the captain, the *Naakhuude*, as management allowance, known in Somali as *Haqul-qalin* (right of pen); 3) that the captain takes four shares: two shares each from the crew and owner's shares. This means that if net income of a vessel is US\$ 2,000 and crew and owner split this fifty-fifty, the share of the sailors is US\$ 1,000. If there are eight crewmen, plus the captain who equals two sailors, then the US\$ 1000 will be divided into 10 shares (*Saami*), with each sailor receiving one share of US\$ 100 and the captain receiving two shares or US\$ 200. The captain will also take from the owner's portion an amount equalling

that he received from the crew share, in this case another US\$ 200.

However, these distribution patterns are changing. In the case of the dhows, the majority of sailors interviewed responded that, after deduction of operational costs and the captain's management allowance, the remaining income is shared as follows: one-third for the crew and two-thirds for the owner of the dhow, while a minority group reported that the allocation remained fifty-fifty. Captains retain their traditional four shares. With the introduction of bigger motorised boats, respondents reported that one of two options is applied: a) sailors work on a monthly salary of US\$ 100 each; or b) after deduction of the boat's operational cost, including costs of boat repair, and the captain's management allowance, the rest of the income is divided as: one-third for crew, including food expenses, and two-thirds for the owner. In this case, the difference lies in that where, with dhows, the owner sustained the cost of boat maintenance, here he shares it with the crew as it is deducted from the lump sum while the crew, in addition to this, incurs the cost of food.

However unfair this may seem, advances in technology and increasing automation are inexorably redefining employer-employee relationships: engine-powered artisanal craft and boats have replaced the oar-driven canoes and sail-driven dhows, and sailors are no longer involved in casting or weighing anchor as electro-motor devices do the job. Modern boats navigate using radar and echo sounders. Boat-building technology has also advanced and the boats are more reliable. All this reduces the amount of work required of the sailor, making his role less important and thus altering the sharing equation.

In the event that, for one reason or another, a sailor wishes to quit the boat before the season is over, the 'Uruf Alba'hr rules govern the settling of his account: if the boat has already earned an income above the operational cost, the sailor gets his proportionate share. If costs are still greater than the income, the sailor gets nothing.

Crew shares are also no longer equal, and tend to be distributed as follows: captain, 4 shares (2 from crew allocation, and 2 from the owner's allocation); *Saranji* (second officer), 1.5 shares (all from crew allotment); the rest of the sailors – wheelmen, divers, deck assistants, cook, etc. – get one share each; while the assistant cook gets $\frac{3}{4}$ of a share and the errand boy (*Kimiscun*) gets $\frac{1}{4}$ of a share.

6.5.1 The Gear Gets its Share: Income Sharing on Artisanal Craft

As already pointed out, with the introduction of new technology, income-sharing arrangements between crew and owners are also changing. Nowadays, income-sharing is generally negotiated. However, interviewees noted that the following options are now in use for row boats (*Huuri* and *Beden*). 1) If the craft owns the fishing gear, allocation of shares is along the following lines: after deduction of production and operational costs (repair costs of craft not included), half the net income goes to the owner of the vessel and the other half to the crew; 2) When the craft does not own the fishing gear, the shares change to: one-third of net income for the owner, one-third for the owner of the fishing gear and one-third for the crew. In both options, the share of the skipper is 2 shares from the owner's and 1.5-2 shares from the crew's allotments. A minority practice, in cases where the craft does not own the gear, is to divide net income as: half

for gear and half for crew, where the owner of the craft is included in the crew allotment and gets a share equivalent to that of the person who gets the highest, that is, the captain, at 1.5 shares. In this case, the share of the skipper falls to one share from the crew allotment and half a share from the allocation for gear.

6.5.2 The Gear is King: Income Sharing on Motorised Craft

Study participants noted that the income-sharing formula on motor-driven craft—*Laash*—mostly follows the same lines as that for artisanal craft: when the craft owns the gear, income is shared fifty-fifty between owner and crew. However, when it does not, one-third of the net income goes to the owner, one-third for gear and one-third for crew. This arrangement is now most common. Whereas on row boats the crew constituted the main actors, most of the work being physical as in rowing the craft out to and back from sea, on motorised craft machines do most of the work. The crew's job is confined to laying the nets, drawing them in, retrieving the catch and gutting the caught fish or cutting out the fins from sharks. The fishing gear—fishnets, buoys, hooks, ropes, etc—is not locally made and thus accounts for a high proportion of the costs in the fishermen's economy. In the fishing sector, labour is abundant and easily available, unlike in the seagoing boats sector, which requires from the sailor specialisation and long years of training. Meanwhile, fishing gear needs to be bought with scarce foreign currency from external markets or at prohibitive sums in the local market, thus displacing the crew as the main player in the fishery business. Motor-driven craft can spend 16-33% of their income on hiring nets alone. This is known in Somali as *Jembi-laash* or *Hoobaalli*.

6.6 Conflict Resolution and Mutual Support: The Rules of 'Uruf Alba'hr

The traditional marine 'Heer in Puntland regulates all aspects of the seagoing economy such as sailing, fishing, assistance to vessels in distress, vessel chartering, buying, loading and offloading of goods. Beyond its legal functions in regulating seaborne trade and fishing, participants unanimously asserted that 'Uruf Alba'hr was an important instrument of conflict resolution among the sea trading and fishing communities of Puntland and was more or less informally applied in all sea-related activities off Puntland and the wider Somalia. They also suggested the need codify and institutionalise the existing marine norms.

6.6.1 Function and Importance

Traders and fishing communities in Puntland respect and follow 'Uruf Alba'hr. Marine 'Heer constitutes established practices and procedures developed over time to regulate patterns of fishing, sailing and seaborne trade. It defines interactions and relationships among concerned parties, as well as the rights and obligations of all those who are engaged in the industry. It sets forth moral and material penalties for breach of customary rules. 'Uruf Alba'hr also has socio-economic importance as it defines situations calling for social assistance and support among peers. A jury consisting of marine experts known as *Amiir Alba'hr* holds informal court sessions to arbitrate disputes and decide cases. 'Uruf Alba'hr is passed down orally from generation to generation, is flexible and recognises precedents.

'Uruf Alba'hr is ultimately a body of customary laws partly of local invention and partly assimilated from for-

eign rules and procedures borrowed from ancient civilisations such as the Egyptian, Persian and Indian, with which the seagoing people of Puntland have had cultural and commercial ties for centuries.

'Uruf Alba'hr can be classified into:

6.6.2 Khat is Allowed, But No Sex or Fighting on Board: Rules on Sailing and Seaborne Trade

1. The captain of a vessel has the sole responsibility for the management and leadership of the vessel. The owner (*Saa'hib-Ul-Maal*) cannot interfere in operational matters whether he is on board or not.
2. Fleet sailing (*Sinjaar*): Dhows in the old days were built of wood and were therefore flimsy and prone to accidents, so the marine 'Heer obliged dhows to sail in fleets of at least two or three along defined sea-lanes so they would be able to assist each other in case of accidents at sea.

Case 17: The Sin of the Son of Hiirad

In the misty distant past, a man named Ina Hiirad breached the law of collective sailing. A dhow accompanying him had developed problems, but he refused to assist and left the vessel in distress on the deep sea. The case outraged the marine community, which stigmatised him for the rest of his life by coining a proverb to refer to the incident. The proverb killed Ina Hiirad morally and is quoted frequently "Sinjaar Ina Hiirad baa Gooyey" meaning, "The Son of Hiirad has destroyed the collective sailing rule".

3. Vessels are banned from hiring sailors who cannot swim.
4. The captain of the vessel is not liable for unintentional damage to or wrecking of the vessel. How-

ever, he is responsible for damage inflicted by another person whom he may have allowed to run the vessel.

5. Vessels sailing as a fleet should keep a minimum distance between them of one nautical mile in daytime and at least two nautical miles at night to avoid collisions.
6. A passing vessel should keep to the left, while a crossing vessel should give way to one heading straight down a sea lane.
7. In case of collision, where one vessel is stationary and the other is moving, the moving vessel is at fault, regardless of whether it was an accident or the vessel was drifting due to a technical problem.
8. Fighting aboard a vessel is prohibited and the belligerent who instigates the fight is severely penalised. If one or both fighting parties refuse to refrain from fighting during a voyage, marine 'Heer rules that the captain has the right to tie him/them to the mast until arrival at the first port of call, where he/they are dismissed and handed over to port authorities.
9. Consumption of drugs on board a vessel is prohibited. However, consumption of khat (a green leafy stimulant grown in Ethiopia, Yemen and Kenya) is allowed as marine 'Heer does not consider it a drug.
10. If women happen to be aboard a vessel, marine 'Heer prohibits courting, sexual relations or even normal conversation with them. This is because such activities are likely to lead to neglect of duty and create rivalries and jealousies among crew that can weaken team spirit or create open conflict among sailors. Captains of modern steel ships are allowed to take their wives on board. However, the Somali marine 'Heer does not consent to captains taking wives on board,

since in the early days wooden dhows ran a high risk of being wrecked at sea.

11. Seaworthiness or dry-docking rules (*Qolfaad*): Owners must repair and maintain their vessels on a regular basis. As dhows are made of wood, marine 'Heer makes this rule crucial and obligatory. The people of Puntland, therefore, have developed a solid technical grounding in dry dock work and to a limited extent in boat building. Those vessels that do not comply with this rule are considered renegades and not subject to the benefits of marine 'Heer.
12. Vessels berth at ports of call on the first to arrive rule called *Farsad*.
13. In the event that a vessel loses its anchor, marine 'Heer obligates all other vessels nearby to go immediately to its rescue.

6.6.3 No Sea Burials in Sight of Land: Rules on Death at Sea

14. If a person falls overboard, marine 'Heer obligates the captain to perform the following operations: a) return immediately to the site, b) employ all means possible to save the life of that person – throw ropes, buoys, lifejackets or any other buoyant material, even if it is nighttime and visibility is limited. If the captain fails to do this, the captain/vessel is liable to pay *Diyah* to the lineage of the lost person.
15. The captain and vessel are not liable to pay *Diyah* in cases in which a person falls overboard without being noticed, or for a person who could not be saved.
16. A vessel is liable to pay *Diyah* for any passenger swept off the deck into the sea when aft – that is, from the passenger compartment behind the cabin or in the case of dhows behind the mast, particularly if all

possible efforts to rescue the person were not undertaken. The vessel is exempted from this rule if any passenger is swept off from forward – that part of the vessel in front of the mast of the dhow. This is because passengers are not supposed under any circumstances to leave their living quarters when the vessel is under sail.

17. A vessel is liable to pay *Diyah* for a sailor who falls overboard from any part of the vessel because the crew is supposed to do duty at whatever station on the vessel is necessary for the running of the vessel. Marine 'Heer does not provide for insurance procedures for either business or crew losses.
18. A vessel is liable to pay *Diyah* for any sick person, mentally ill or otherwise, who falls overboard. This is because the vessel and its crew are required to take care of such a person – *Daya*.
19. In the case of death aboard a vessel at sea, marine 'Heer requires the crew to take the following steps: cleanse the body, wrap it in a white winding sheet, conduct funeral prayers and drop it into the sea weighted with an anchor or any other heavy tool to ensure that it sinks to the seabed. This Islamic funeral at sea is allowed when land is not visible. However, if land is visible, the sailors should keep the corpse until the vessel arrives ashore, where a normal land burial and funeral ceremony can be performed.

6.6.4 To the Rescue: Rules on Vessels in Distress

20. Distress (*Shiimiyyad*): Any vessel that comes across or is informed of another in distress must rescue it and offer all required assistance without asking for pay-

ment. The required assistance may include: providing fuel or oil, towing to the nearest port or safe harbour, etc. If a vessel deliberately withholds assistance and all or some of the people on board the distressed vessel perish, the offending vessel is liable to heavy penalties, including payment of *Diyah* for the lives lost and offering apologies to the relatives of the deceased. Exemptions to this rule include: a) when the vessel cannot berth with or approach the distressed vessel due to storm or high winds, and b) when the owner of the vessel in distress has not conducted regular repair work on his boat and so the vessel is not seaworthy. In such cases, the concerned vessel is not obligated to offer assistance and it is exempted from any penalty.

21. A vessel in distress has first priority to berthing and service. If necessary, the port authority should move moored vessels to make space for a distressed vessel.
22. If a vessel finds itself in distress, marine 'Heer gives the captain the right to jettison cargo to save lives and the vessel. Distress situations include: a) violent storms; b) when the vessel's main engine fails or the mast breaks off in the case of dhows; c) when the water discharge pumps fail; or d) when a lateral plank (*Hashwad*) separates from dhow.
23. Before jettisoning of cargo in distress situations, the captain should observe the following rules: a) to validate that it is a genuine distress situation, the first item thrown overboard should be a vital article of vessel equipment, such as: anchor, anchor chain, a considerable portion of drinking water, or a reasonable amount/quantity of vessel fuel. The vessel is liable to compensation for lost cargo if it fails to comply with this rule.

6.6.5 No Notice from the Captain: Rules on Sailors

24. Division of labour: Seagoing dhows have a highly developed task specialisation. The number of crew on board depends on the boat's size and ranges between 12 and 15. The sailors are categorised as: captain (*Naakhuude*), officers (*Daraag*) and sailors (*Ba'hri*). Officers comprise the second officer (*Saranji*), who is also the accountant, 2-3 wheelmen (*Shukuuni*), a diver (*Quusaa*) and the mast man or mast climber (*Takhal-raac*). According to marine 'Heer, officers are exempt from menial tasks such as cleaning, loading or offloading goods. The diver secures the anchor on the seabed and conducts repair work below the waterline. Ordinary sailors include: cook (*Qaarjoog* or *Dabaakh*), assistant cook (*Suqayar/ Dabaakh*), deck assistant (*Suqayar Dereg*), errand boy (*Kimiscun*), etc.
25. A crewmember found guilty of theft is made to return the stolen property. He is also handed over to the authorities at the first port of call.
26. Dismissal of a sailor from duty may take place under the following conditions: a) proven theft; b) instigating a fight aboard the vessel; c) repeated misconduct; d) inability to perform his duty or laziness, and e) insubordination. No notice or warning is required of the captain prior to dismissal.
27. Season-to-season payment (*Hawl ilaa Hawl*): This rule regulates payment of sailors and refers to the seasonal dhow accounting system. Closing of financial accounts of the dhow takes place at a fixed time at the end of the trading season, which is usually six months, when the sailors are paid their earnings.

6.6.6 Assigning Liability: Rules on Merchandise

28. A vessel is not liable for compensation for damage to cargo wrought by external elements. However, a vessel should pay compensation for any damage that arises out of negligence on the part of crew or captain. This includes accumulation of water in the dhow's holds and goods drenched because the crew failed to properly secure the canvas covers that protect them against rain or waves sweeping over the deck.
29. A vessel is liable for payment of the value of goods whose passage has been paid but which are found to be missing at the receiving end. This rule applies in the absence of proved distress in which goods were jettisoned overboard.
30. When a vessel arriving at a destination port reports distress and jettisoning of merchandise, a committee is set up to investigate and verify the case. The committee conducts, among other things: a) an inspection of the vessel's manifest or captain's log to ensure compliance with the vessel's permissible loading tonnage; b) an inspection of the boat's equipment to determine if any crucial item is missing, that is, has been thrown overboard as proof of genuine distress; and c) an interrogation of the captain, who has to take an oath before the committee that his account of the distress experienced at sea is true and accurate.
31. Unloading merchandise from a vessel at port is the sole responsibility of the captain. Should owners of cargo violate this rule, the vessel is not liable for any missing goods.

Case 18: Captain Said and the Missing Cartons: Rule 31 is Upheld

Said Yussuf Sharma'rke provided this account at Bossaso. He started learning seamanship at an early age. He became a sea captain and later in life owner of a boat that was eventually wrecked at sea. Presently, he is captain of a boat belonging to a friend. The following case occurred in March 1999 at Bossaso. Captain Said, having set sail from Mukalla, Yemen, arrived at Bossaso with a wide range of merchandise onboard. When the boat moored at Bossaso port, the cargo-owning merchants charged aboard, each with his private porters from his/her clan, to unload the merchandise. Captain Said demanded compliance to 'Uruf Alba'hr, which confers responsibility for unloading on the captain of the vessel. The merchants ignored him and proceeded to unload their goods.

Two days later, when the offloading of merchandise was complete, one of the merchants started to demand compensation for 15 cartons missing from his goods. Captain Said responded that he was not bound to pay. The merchant took his case to a marine conflict-resolution committee. The merchant-plaintiff lost the case, because he had violated the marine 'Heer rule which prohibits merchants from unloading their goods.

The traders' selective engagement of members of their clan is a new development that has complicated sea trade and marine management after the collapse of the Somali state. In the absence of state power, the responsibility for the individual's security and that of his property has fallen on the clan. Clan politics now extend to the state level as the clans begin to discharge the functions of the state. The clan defends the trader and his business, while

the trader provides the clan with the funds it needs to shoulder these enhanced responsibilities. As part of this trend, to guarantee clan protection, the traders have got into the habit of employing kinsmen to load, offload, transport and guard their goods at ports and inland stores.

32. The captain is not allowed to overload his vessel. If the captain exceeds the vessel tonnage limit and, under any circumstance, is forced to jettison goods overboard during the voyage, the captain/vessel is liable for compensation for the jettisoned cargo.
33. The marine 'Heer sanctions compensation for goods that a captain jettisons from a vessel at sea without proven circumstances compelling him to resort to such an action.
34. As a general rule, individual owners bear the loss of goods jettisoned at sea in times of distress or spoilt due to external factors.
35. Collective purchasing and bargaining (*Minshag*): Traders buying from foreign ports often bargain for and buy goods as a group, in order to get a better price for buying in bulk.
36. Collective sharing of the loss occasioned by spoilt or jettisoned goods in time of distress, is applicable in the following occasions: a) if goods were *Minshag* (owners collectively bought and loaded goods on the vessel without any distinguishing individual marks or brands on the goods), and/or b) there was a prior agreement among proprietors of the merchandise to share any loss of property in case of unexpected distress or spoilage.

6.6.7 Cast Not Your Net Too Close to Mine: Fishing Rules

37. Marine resources are communal property collectively owned by the fishing communities and no one can claim ownership of a particular fishing site.
38. In the event that a fishing boat loses its anchor, all other boats nearby are obliged by marine 'Heer to immediately go to its rescue and offer necessary assistance.
39. Fishermen casting nets in the same area, should position their nets a good distance apart, as laying them too close together may cause entangling due to drift. In addition, nets should be laid parallel to shore—*Mool* to *Maakhir* (south to north) — as the fish tend to approach either from the direction of the shore or from the open sea.

6.6.8 Solidarity of the Sea: Rules on Mutual Assistance

40. As fishing craft are often limited in number in any given area, new generations of fishermen may not all be able to own their own boats. In such circumstances, marine 'Heer rules that vessels going out fishing should take with them the nets of those who have no craft and are left ashore. Any fisherman who violates this law and appears accused before an elders' court is obliged to comply with this rule henceforth.
41. In the event that a fisherman's craft becomes unseaworthy and is laid up on shore, the rule is that other fishing craft must take its net to sea without charging any fee. *Huuri* and *Beden* rowboats still comply with this rule. However, motor-driven craft consuming fuel charge payment for this service, 16–33% of the net's output. This practice is called *Jembi-laash*,

- meaning, putting additional nets on a motor-craft.
42. Marine 'Heer obliges fellow fishermen to contribute fishnets to a fisherman who loses his nets due to external factors, for example, drifting away to sea.
 43. On returning ashore from a fishing expedition, if a craft or nets are found to be missing, the custom is that all or some of the other boats go back to sea to search for the missing craft or nets.
 44. If a craft finds it has netted a catch so big that it cannot haul it back to shore on its own, its crew hoist the customary white flag for help, whereupon any nearby or passing boats are obliged to come to its assistance free of charge.
 45. Marine 'Heer also requires any passing or nearby boats to transport to shore free of charge the catch of a craft that has developed a fault at sea.

6.6.9 Wealth from Shipwrecks (Bad-ka soo-bah): Rules on Salvage

46. Marine 'Heer assigns the ownership of ships running aground to the paramount clan chief in the area, as the saying goes: "*Bad-ka-soo-bah boqor baa leh*" meaning, "Adrift wealth belongs to the king." Any salvage, other than that specified above, found adrift at sea or washed ashore belongs to the first fisherman who appropriates it (*Mulkiyah*). If a fisherman finds a large object adrift at sea and is unable to transport it to shore and in the process of waiting for it to wash ashore, other craft on the sea discover it and take it ashore with them, marine 'Heer rules: If the first discoverer fails to take a sample of the drift wealth as evidence of ownership or engrave a mark on it such as his name or the brand of the camels of his family, then the wealth goes to the second group of discov-

erers who transported it ashore. If the first discoverer takes a sample or marks it, then it becomes his property and the second group have right to payment of a transportation fee in kind.

47. If a fish or other sea booty is found entangled in two or more nets belonging to different fishermen, marine' Heer rules that the catch belongs to one of the following: the owner whose net the catch is lying in meaning the net next to the body of the catch; the one whose net holds the hind part of the catch; or the one whose hook is in the mouth of the fish. A committee selected from the fishing community is tasked to settle such complex cases. To do this, the committee take the entangled nets ashore, lay them out, penetrate straight to the catch and tie a white thread to the net lying next to the fish or object. They then carefully disentangle and spread out the nets. The owner of the net found carrying the white thread appropriates the catch.

7

'Heer Procedures: Bridge Building and Conflict Mitigation

7.1 Pre-Trial Procedures: Only When Talking Breaks Down Does Fighting Occur

7.1.1 Elders and Wise Men: Dispatching Emissaries (*Ergo*)

Workshop participants all agreed that in the Somali tradition, dispatching emissaries is a conflict-mitigating strategy; the most extensively practised procedure of advancing a claim or expressing a grievance. *Ergo* has an overarching importance in terms of bridge-building between the sides, and hence, the opening of an effective line of communication. The objective of an *ergo* can vary: it can be an invitation to, or request for presentation of a case to a jury or a demand for implementation of an unexecuted jury ruling or pledge. Research participants also said that, while the ultimate responsibility for initiating contact and communication lies entirely with the disputing sides, 'Heer nevertheless requires that parties not involved in the conflict should try, for the common good, to intervene or at least facilitate opening of a line of communication between the feuding parties. The Somalis have a saying, "*Raqba waa ku raggeeda*," meaning, "Those present where a conflict breaks out have to resolve it".

Moreover, apart from open conflict where the actors are known, if an incident happens or a dispute arises, the affected side, before taking any action, determines the validity of the case or otherwise identifies the perpetrators. This is equivalent to establishing burden of proof that other codified legal systems—secular and Sharia—require.

However, the difference lies in who conducts the investigation. In secular and Sharia procedures, the authority (the police) makes the inquiry, while under 'Heer, the aggrieved side must do so. Only after determining the burden of proof can the aggrieved side send emissaries, if such an option is deemed necessary.

Emissaries are made up of elders and wise men. According to tradition, emissaries go unarmed and, therefore, are protected by 'Heer from any harm or harassment, they are *Biri-ma-geydo* (untouchable)³¹. 'Heer also requires the host community to feed and take care of the emissaries during their stay. The emissaries' sole mission is to convey a message to the other side and to prepare the ground for holding a 'Heer court or jury council to settle the case. The Somali saying: "*Ergo wihii la farona waa geysaa wihii la siiyona waa cuntaa*", expressly clarifies the mission of emissaries: "The sole mission of emissaries is to convey a message to and eat whatever food the host provides."

Another Somali dictum describes the necessary characteristics of an emissary team as:

*Ergo waxa geli kara:
Nin kudkude ganjo uga adkeysin badan,
kurtunna qorrah uga adkeysii badan,
waarabena/Tukena 'ay uga adkeysii badan*

An emissary team should:

Endure hunger like the argasida tick

Withstand the scorching sun like the stump of a dead tree

Be as meek in the face of insults as a hyena or crow

Cases initiated through *ergo* can be both civil and penal and of either a collective or individual nature. When the case involves a group, the aggrieved party usually sends emissaries to the other side to inform it of a standing claim and fix a date and venue (*Muddo iyo Medal*) for a trial. Since the nomadic community tend to be busy tending to their animals in the dry season, the two sides often fix the date of the case hearing for the rainy season or a period of milder weather (*jilaal jim'oon*) during the dry season. In the interval, the accused side investigates the validity of the claim made against it and consults among its members to formulate a defence strategy.

At times, a third party may play the role of *ergo* and form a jury for the feuding parties. On the other hand, when the claimant is an individual, he or she usually takes the case to his/her immediate elders, who contact, as *ergo*, the elders of the indicted side to arrange a case hearing. The importance of mediation is expressed in the proverb.

Haddaan afku 'humaan ga'ani ma 'humaato

Only when the talking breaks down, does fighting occur

In extreme cases, where fighting has erupted and the men of the two contending sides cannot approach each other without a clash taking place, women play the role of emissaries. By tradition, women, through marriage, acquire two identities: the identity of their clan by birth (agnatic) and that of their husband and children by mar-

riage. This dual status enables them free movement and makes them the perfect messengers in volatile situations. This unique role of Somali women came to the fore in the aftermath of the disintegration of the Somali state in the 1990s.

Though Somali tradition categorically prohibits the murder of emissaries during clan wars, history records numerous instances of emissaries being killed for one reason or another. Depending on the importance of the case, 'Heer obliges an emissary team to include individuals who are conversant with the local culture, have a good understanding of Sharia, are energetic and willing to perform casual work for the team and have the ability to foresee potential dangers and to analyse the issues at stake. In addition emissaries should know the community's culture, attitude and behaviour, should have proven peacemaking qualities, patience and flexibility, farsightedness for the common good (*Samo-talis*), problem-solving skills (*Hajoyaqaan*), honesty and moral integrity, be articulate in speaking and debating, and have the ability to assess critical situations, and finally strength of personality and assertiveness. The process of dispatching and welcoming emissaries, however, is not trouble free. At times they fail to achieve their objectives, as the following story illustrates.

Case 19: Let Disease Kill Their Camels—the Clan That Snubbed the Ergo

An emissary team from Gardho in the Bari region went to Karamaanyo, a locality in the present-day Sanaag region, to plead for the return of stolen camels. Contrary to local tradition, the host community ignored the emissaries' claim. The emissaries were not discouraged, and stayed on, hoping for a response. The waiting, the story goes, lasted

almost a year. One of the emissaries composed a poem describing the frustration of their situation.

*Kalkaan imid kalkiisii miyaa kaabigu i saaray
Kayakayihii dayreed miyaa kacakan ii muuqday
Ma baqaalladii baa katwiray kirada doonaayey...
Kud ha laayo geel aan ka sugo maanta Karamaanyo*

Alas! My stay here is approaching a year
Already the rent-seeking foreign dhows have left the
coast and gone on to their destinations
O' I wait no more, let the disease of Kud kill the cam-
els I expect from Karamaanyo

The poem has subtle cultural implications. First, the emissaries deliberately waited for the unusual period of one year for a response from the host community, in order to make the bad treatment they suffered a historical precedent, to heap shame on their hosts and make the case known to all clans in the country, ensuring that the host community would in their turn receive similar treatment in future. Second, they were ensuring that if the claimants won the case, an additional penalty would be added to what was being claimed by the accusing party. The case thus became part of the cultural history of the local population, and is often mentioned as a unique and shameful episode. Very often, poems use it to refer to a clan that behaved unethically.

7.1.2 Unpaid Traditional Lawyers: Formation of Advocate Teams

The return of the emissaries heralds a new process whereby the two parties to the conflict prepare to frame their charges or defence arguments. Prior to the com-

mencement and the adjudication of any case, traditional jury teams are formed; two teams from the opposing sides and one arbitrating jury (*'Heerbeegti*). The study participants noted that long established *'Heer* criteria dictate the composition of these teams or panels.

Essentially, the teams may be seen as traditional lawyers. However, *'Heer* does not recognise a professional group defined as lawyers. In practice, any adult who has the required merits in the eyes of his clan can act as a *'Heer* lawyer. Unlike the professional lawyers of the secular courts, these traditional advocates are not legal practitioners but relatives of the disputing sides, and neither charge fees for their services nor enjoy any special status. In individual cases, *'Heer*, like Sharia, allows the plaintiff or defendant to bring a relative to represent him/her if he/she is mentally unfit, unable to articulate proficiently, or is incapable in one way or another.

7.1.3 Eloquence and Brinkmanship: Selection Criteria for Advocates

Traditional *'Heer* court advocates should have certain qualities, such as knowledge of Sharia and Somali *'Heer* (*Heeryaqaan*), patience and prudent investigation techniques, problem-solving skills (*Haajo-yaqaan*), honesty and integrity in handling cases, decision-making experience, especially in critical situations. They should also be articulate in speech. The Somalis are an oral society and adore eloquence and poetry. The Somali proverb: "*Nin kaa af badani dha' halkii aabahaana waa ku dhaafshaa*", captures the importance given to eloquence: "He who is more eloquent than you can even deny you your father's inheritance". Another proverb, however, warns against excessive eloquence: "*In dood la yaqaan in dan la yaqaan ayaa ka fiican (dhaanta)*". This translates as: "Knowing

one's interest is better than indulging in rhetoric". This recognises that overblown flights of rhetoric may be counterproductive as the advocate may in the process miss important points that would enrich the case presentation.

On occasion, the advocating teams take along with them one or two "hardliners". The latter's task is to take an intransigent position to soften up the opposite camp. Such brinkmanship can similarly prove counterproductive, leading to a premature break-up of the jury.

7.1.4 Shouldering the Blame: Constitution and Composition of the Adjudicating Jury

The two sides now need to agree on whether the adjudicating jury members will come from the contending sides or from a third party. Generally, feuding sides opt for a third party. When the jury members are from the two disputing sides, the members should be matched in number. Such 'Heer juries reach decisions on the basis of consensus as the bench represents the two disputing sides, whereas, in juries from a third party, the number of members should be an odd one so they can reach a decision on the basis of a majority vote. Of course, disputing sides must agree on the individual members of the third party jury beforehand.

The Somali 'Heer is gender biased; it prohibits women from participating in the advocating teams or the arbitrating jury. It also bars three other types of individuals from being members of the jury: those who have maternal, in-law or interest relationships with either side; those who have paternal kinship (father, cousin, brother, cousin, or sons) with one of the sides; as well as anyone, who has previously participated in a jury appointed for the particular case, or has previous grievances against either side.

Both Islamic Sharia and secular law differ from 'Heer when it comes to the constitution of the court. While 'Heer and secular law oblige a jury to arbitrate on a case, Sharia normally restricts arbitration to one male individual known as the *Qaadi*, who passes judgment alone, though he may consult others if need be and may have assistants for various tasks. If he decides alone, he is not obliged to share his legal opinion with anyone. However, in cases of extreme difficulty, the Sharia court may allow a council of sheikhs from the disputing sides or a third party to arbitrate on the case. Unlike 'Heer and secular law, in Sharia a judge's relationship to either of the disputing sides does not bar him from officiating in a case. Sharia trusts in the conscience and moral integrity of the *Qaadi*, who is supposed to be first and foremost accountable to God, who will punish him for any miscarriage of justice. The affected side may, if dissatisfied, lodge an appeal to another *Qaadi*, who can abrogate the ruling.

In the nomadic environment, the 'Heer jury usually hold their proceedings under the shade of a tree and do not charge for the services they render. However, during court proceedings, the disputing sides have to feed the jury members alternately. In farming villages and urban centres, however, the jury charge a fee known variously as *Hawl*, *Hagarbey*, or *Agabare*, according to locality. Sharia courts normally charge for their services and name this fee *Haqul-qalin*, meaning "pen fee".

The grave responsibility vested in the 'Heer jury is expressed in the Somali saying, *Nin gar galey eed gal* (He who arbitrates shoulders the blame).

7.1.5 Selection Criteria for Adjudicating Jury Members

In addition to the above, a jury member should have individual attributes that render him trustworthy. These

include experience in 'Heer and its procedures (*Garyaqaan* or *Geedjooge*), knowledge of the culture of the people, readiness to shoulder responsibility (*Waxgarad* / *'Hilkas*), arbitration skills, fairness in decision making, a strong character and some knowledge of Sharia and devotion to God, expertise in language (*Hadalruug*) enabling him to weigh, analyse and clearly understand the content of the other side's arguments and oratory, and a proven peacemaking ability. There are names that crop up whenever people discuss the composition of an adjudicating jury. And some men are well known in the whole region for their fairness in arbitrating difficult cases.

7.2 Three Civil, Three Criminal: Types and Levels of 'Heer Courts

'Heer juries deal with both civil and criminal disputes and adopt the same procedure for both. On the one hand, 'Heer procedures are a duplicate of Sharia procedures, and, on the other, mostly when the 'Heer court undertakes the hearing process, it turns to Sharia for definition of judgment by summoning in Sharia clergymen. It is important to note that 'Heer does not demonstrate such affinity with secular law and its procedures. Uniquely, however, 'Heer provides, in both civil and penal cases, two other forms of procedure: mediation and arbitration.

7.2.1 Mediation or *Masaalaxo*: The 'Brotherly' Court

The jury, having heard the case and determined the facts, bases its decision not on the specific rules of 'Heer or Sharia, but on mediation and compromise. This mediation effort, research participants said, tends to bring to-

gether the two parties on a middle ground and, whatever the case, the penalty imposed in the end is lower than the normative penalty value. While in civil cases, the amount waived would depend on the adjudicating elders, the nature of the claim and the specific circumstances surrounding the case, in criminal cases the norm is to waive one-third of the assessed value. This norm is known in the Daarood inhabited regions as *'Heer Daarood*.

On the question of why the Somali favour mediation to arbitration, the clan elders argued that this is because there is no central organisation or law-enforcing body in the nomadic environment. The elders often say: *"Wa'haan moodney dan"*, meaning, "We do this in the common interest." On the other hand, both disputing parties generally agree on mediation; each for its own benefit. The accused side accedes because it knows that if it loses the case, its liability will be below the normative or standard value, while the aggrieved side complies because it is aware that a ruling reached on mediation has the group's blessing and also guarantees speedy execution of the judgment. This is so because either the elders of the losing side have participated in the jury and hence have agreed to the ruling or neutral third party elders have reached the decision. The jury makes the two options public and the two parties, having agreed on one, must abide by it.

Another factor that influences the accusing side to accept mediation is that otherwise a judgment may not, for lack of an official enforcing organ, be executed, and this may rekindle hostilities — not an easy choice. When the opposing parties have agreed to solve the dispute on mediation, the atmosphere becomes friendly and relaxed; that is why the *'Heer* court is also named *Gar-sokeeye*, the "brotherly court".

7.2.2 Arbitration or *Gar jdaawe*: The 'Cruel' Court

Gar jdaawe literally means "cruel judgment." All courts rigidly applying 'Heer norms, Sharia or secular provisions are cruel courts in the context of Somali tradition. In other words, any court judgment other than that reached on mediation is rigid and inflexible. *Gar jdaawe* jury hearings usually involve repeated horrendous crimes such as mutilation of a dead body, rape or murder of a prominent personality, an elder, a wealthy or notable person. At this court, neither of the opposing sides contemplates a lenient verdict. The ruling is according to the letter of 'Heer. No discount on liability or damages or blood price is allowed. The 'Heer-*Daarood*, that generally provides a discount of one-third of the damage value (*Dalool-'hoor*), is not applicable in *Gar jdaawe* deliberations. Immediate and prompt execution of judgment—payment of liability or blood price or value of damage—is sought; *Mag-dharaareed* or immediate payment of the compensation is one of the rulings of *Gar jdaawe*. However, close lineage members do not employ *Gar jdaawe* in resolving conflicts; by the same token, application of *Gar jdaawe* does not take place between groups who have special 'Heer agreements.

Both types of 'Heer courts, civil and penal, have three levels. For purposes of comparison with Sharia and secular law, we may classify 'Heer courts as first level jury (sub-clan elders jury), second level jury (appointed by the titled elders to review the case) and third level jury or paramount titled leaders, also called *Isimo* (*Boqor, Sultan, Islam, Garaad, Ugaas, Beeldaaje*), may adjudicate cases.

While 'Heer and secular law have a multi-level court structure in common, a Sharia court is a one-Qaadi or Sheikh court that does, however, permit its judgments to be appealed before another court of the same status.

The latter may repeat the hearing of the case to endorse, nullify or make changes to the ruling of the previous court. In the pastoral areas where government courts do not exist, the losing party may resort to a group of religious men who are thought to be more knowledgeable in Sharia than the adjudicating Sheikh.

7.3 A Blessing on Our Work: The Jury Hearing

A jury hearing is public and anyone interested can attend. It opens with a Fataha (the first Surah of the Qur'an) with the eldest member of the jury or the one most learned in religion invoking a blessing (*Duco*) on its work. A jury member then delivers a speech highlighting advice, preaching and persuasion in order to relieve tension, preparing the ground for the jury to proceed and encouraging the concerned parties to accept the jury's judgment. This speech refers to Qu'raanic verses, 'Hadiith axioms and other quotable religious literature. The jury then selects from among its members a president and his aide. The president is selected on the basis of knowledge, integrity, seniority and known impartiality. The aide's task in the old days, before the Somali language was written, was to repeat loudly the statements of the two sides, allowing everyone present to hear them clearly. He also made a summary of the main points thereafter. On their part, the jury members memorised their own statements to refer to later stages during deliberations. However, the research participants said that, in the times before the development of a written form of the Somali language, the jury would usually call upon a person literate in Arabic, often a religious person, to record the judgment.

Before the trial proceeds, the jury may require from disputing parties a written or oral pledge of compliance with its judgment (*Qoordhiibasho* or, submission to judgment).

Elders from Sanaag region noted that in their area this is done before issuing the verdict. In the old days, this procedure was administered orally. On individual charges, the jury requires at least two guarantors (*Xireyaal* or *Bud-dhigeyaal*) from each side to pledge that their side will respect the judgment. The jury consults the disputing parties on the type of jury they prefer, whether a mediation (*Masaala'ho*) or an arbitration (*Gar ;daawe*) jury.

The aggrieved party takes the floor first. The most articulate or informed individual or individuals of the accusing side present the charge. In the traditional courts or elders' jury the plaintiff usually starts his first intervention with these words: "*I/we hereby present my/our charge/case (Da-wad), and am/are ready to respond to the other side's rebuttal (Dood) and to challenge the validity of the evidence or witness (Durid) and reserve the right of case review if I/we find any fresh evidence at any time in the future (Didiif)*". If the case is by or against an individual, that individual will personally present the charges/rebuttal or delegate a representative, usually a close relative. Each side continues its intervention until it declares that it has exhausted all elements of its case – *Illaa ay ka soo wareegto*. The accusing side, as a rule, may not change the essence of the charge in whole or in part during the course of the hearing. The accused side then responds accordingly. Each side gets two chances to speak. According to 'Heer, those who spoke in the first session for each side do not speak again, and fresh speakers take up the second session.

If the accused side confesses to committing the offence or accepts liability, the hearing is closed and the jury proceeds to deliberate on the case. If not, the jury requests the indicting side to produce evidence. If the accusing side presents witnesses, they must take an oath and testify publicly before the jury. The other side, in turn, may cross-

examine the witness to test the truthfulness of their statement. Moreover, 'Heer allows the accusing side to present to the jury anyone having supporting information on the case. This procedure, called *Hor-godol*, applies to someone who is not a direct witness but has second-hand information about the case. This type of witness provides additional information to the jury in private, which corresponds to the information-gathering method that police use while investigating a case before presenting it to a secular court. If the accusing side has no more witnesses to present, the defendant may take an oath declaring his innocence (this corresponds to Sharia procedure.) The hearing closes at this stage and the jury asks the two sides to leave them to deliberate in private.

7.4 The Judgment

7.4.1 Judgment in Camera, by Vote or Consensus: The Jury Deliberations

As noted above, before the start of the hearing, the jury elects from within its ranks a chairman (*Guddoomiye*) and an aide. As with secular and Sharia courts³², the 'Heer jury adopts a decision-making procedure whereby the jury discusses the findings about the case in private and reaches a decision by majority vote if its members are from a third party. However, if the jury is comprised of members from the disputing sides, the decision is reached by consensus. No member can abstain from voting and, after reaching a decision, no member can reveal individual jury members' opinion on the case. Furthermore, with regard to the nature of the case, the 'Heer jury bases its judgments on either Sharia or a precedent 'Heer ruling (*rad*) or, if a precedent 'Heer ruling does not exist, elders may establish a new 'Heer ruling (*Ugub*).

The adjudicating jury, having heard the presentations of the opposing sides as well as the necessary witnesses, deliberates on the case immediately after or as soon as possible after the closing of the hearing. However, in certain cases, when tension between parties in conflict is high, the jury may call an adjournment as a delaying tactic until tempers have cooled. The following poem warns against misinterpreting jury deferments:

Gar sisibatay waayeel kolkii odayo loo soo' o
Shir sasaba muddada saandambe ah, amase saakuun ah
Suhulkaaga soo leef kolkii badowgu sooyaansho
Kii kala sabaaleyn jirey iyo sayn 'addihii dhimaye

When elders are called on to constitute a jury
They may defer pronouncement of judgment to dispel
hostilities
If the ignorant fail to understand this and refuse to wait
Alas, the elders may quit in desperation

7.4.2 Forgive Us Our Omissions: Pronouncing Judgment

When the jury has agreed on the verdict, the next step is to call the parties back to hear the judgment. The jury chairman, or a member delegated by him, pronounces the judgment publicly in the presence of the defendants and plaintiffs. Another member of the jury may then add further clarification. Usually, the pronouncement begins with the following adage: "*Eebbow eexna ha nooga tegin, aqoondarrona ha nagu cadaabin*" (O Lord! forgive us not for deliberate partiality but do forgive us for omission). The jury then reviews the statements that the two sides have presented, repeats the salient points, and asks whether anything is missing. If the sides raise missed points, the jury duly takes note. *However, the sides cannot*

add new points at this stage. In contrast, secular and Sharia courts allow the disputing sides to adduce additional points or evidence any time before judgment is pronounced.

Somalis have a saying: "*Gari laba nin kama wada qosliso*", meaning, "A jury judgment will never make both sides laugh". So, an alternative jury is constituted if a group or a clan raises objections against a judgment. On the individual level, if the plaintiff rejects the judgment but his guarantors accept it, the case is considered closed. If, however, both the plaintiff and the guarantors protest against the judgment, the case will be handed over to a new jury equivalent to an appeal jury. The appeal may also be taken to a Sharia court, if the dissatisfied party feels that Sharia may be more advantageous than a 'Heer jury.

Finally, irrespective of whether the opposing sides accept or reject it, the jury records its judgment on the case in written form and provides copies to the disputing sides and later on a copy to the government (District Courts and/or District Commissioner). Following the development of written Somali in 1972, many people are now able to write and read among the pastoralists as well as townspeople. In the early days, as noted above, someone literate in Arabic was called upon to record the judgement. Today, the jury asks a literate person from among its members or those present at the trial to document the ruling in Somali, after which the members sign it.

7.5 Rules of Evidence, Appeal and Execution of Judgment

7.5.1 Semen Before Urine: Presenting Evidence

As in Sharia and secular law, an 'Heer jury may require evidence to prove whether a case exists. This may be in the form of material proof or witness. 'Heer makes testi-

fying before an elders' jury (if called upon to do so) a social obligation on all Somalis. The community may repudiate a member who refuses to testify before the jury. The witness must take an oath before the jury and testify orally in the presence of the accused. If the testimony adduced is not sufficient to prove a point, the jury disqualifies such testimony. When the Somali converted to Islam, most pagan practices were abandoned. Therefore, the present 'Heer oath that the witness takes prior to testifying is expressed in this form: "I solemnly swear on the Qur'an that I will tell the truth". The standard oath of 'Heer matches Sharia's "Wallahi, Billahi, Tallahi". Nevertheless, participants recalled that as recently as the 19th century the oath took this form in pastoral communities: "Qoodhay iyo heraday iyo hiniintay iyo dhurkay iyo dhaqankay" (I solemnly swear on my sons, on my livestock (wealth), on my testicles, on my existence, and on my values) or a shouted form of spell casting: "Wa tii shahwada iyo kaadida, shawadu i soo hormarto in aanan been sheegeyn", (May my semen flow before urine if I testify falsely.) Another oath formula may also be administered if the plaintiff demands it. The oath refers to one's marriage and is called *xilodalaag* or *Xilofur*, meaning "swearing to divorce your wife, if your testimony proves false". This kind of oath, inherited from the pre-Islamic pagan culture, reflects an enduring cultural trait of Somali society, particularly in the pastoral communities. Here, marriage is a sacred institution, and a wife represents for her husband his greatest asset for bringing up his children, tending the family's domestic animals and managing the household. Besides, the husband would have to pay a substantial dowry to remarry, a capital investment that he renounces by divorcing his present wife.

Research participants said that, for one to be a witness before a 'Heer jury, certain conditions must be fulfilled: the witness must be of age, that is, over 15 years old, mentally fit, and must be conversant (theoretically) with the five pillars of Islam. To challenge the credibility of the witness, the opposing party may probe him on his knowledge of the Islamic principles and invalidate his testimony if he is found wanting. Additional requirements for a witness are observance of prayers, no previous record of perjury, no criminal record such as rape, and that he have no known grudges against the party that he testifies against, no vested interest in the case and no blood or other relationship with the party that called him to testify in their favour. According to 'Heer, if a witness is closely related to a party, he or she cannot testify on their behalf. Such relationships include maternal ties (*Naasjiid* or having fed on the same breast), in-law ties (*Lugjiid*), or other relationships based on interest and kinship. Research participants were in agreement that an agnatic relationship with regard to a witness can ascend up to second cousins (*Ina adeer labaad*). The attorneys who participated in this research pointed out that in contrast, secular law courts allow a close relative to testify on behalf of a claimant, but not of a defendant. Religious men noted that a Sharia court disqualifies the testimony of a close relative if the judgment is thought either to bring benefit to the witness or if he or she stands to incur a material loss such as paying part of the damage. However, while Sharia recognises that such relationships can prejudice a witness, it nonetheless grants discretion to the Qaadi. If, after scrutinising his credentials, the Qaadi feels that the witness is liable to be prejudiced, then he may dismiss the testimony of such an individual. If not, the Qaadi can authorise receipt of the

witness's testimony, irrespective of any objection that the affected side may raise. According to Sharia, father and son can stand witness against each other but not for each other.

7.5.2 Cross-Examining Witnesses

As with Sharia and secular law, Heer allows the opposite side the right to cross-examine a witness to test his/her veracity. It can also call in others to prove that the witness is not credible. The jury has the power to rebut a witness, or nullify his or her testimony if it finds it unworthy, as the following case illustrates:

Case 20: 'I Am Also a Plaintiff'

The aggrieved party had summoned a man as a witness at an elders' jury. After swearing the oath, the man started his statement with: "Ma Waxaan markhaati ahay, mase waxaan muddici ahay", meaning, "On the one hand I stand here as a witness, and on the other I am a plaintiff". The jury immediately disqualified him as a witness.

7.5.3 Beyond Sharia: Women as Witnesses

The majority of participants agreed that, according to the Somali traditional 'Heer, a single woman can testify before a 'Heer jury. This is contrary to Sharia, which requires that two women testify in place of one male witness and bars women from testifying in a number of cases such as those involving rape or the marriage contract. In secular law, women can testify in all cases. A section of the research participants from Sanaag region insisted that 'Heer bans women from appearing as witnesses, particularly in murder cases. However, the majority re-

jected this view. Nevertheless, it was established that, in some areas of Puntland, women are not allowed to testify before the jury, but can give information about the case privately to members of the jury. Not all regions agree on this issue.

7.5.4 Titled Leaders as Supreme Court: Appealing Against a Jury's Judgment

The majority of research participants said that 'Heer permits appeal of individual or group cases wherever one of the disputing sides feels a jury verdict to be unjust. Either party can do this. Participants from Sanaag region said that in their area, once a case is heard and decided upon by a jury, no appeal is allowed even though this may revive animosity between the two parties. They insisted that their 'Heer juries tried as far as possible to eliminate error during the hearing and decision-taking stages. In the other regions, a party can appeal to a second group of elders who will constitute a new jury to hear the case afresh. If one side once again is not satisfied with the new jury's judgment, the appeal may go farther up to the traditional titled leaders of the area. The titled clan leaders may come from the two contending parties or from a third party or both.

However, as explained earlier, while the titled leaders, or *Isimo*, retain the final say on the verdict, they do not conduct the trial themselves except in special cases such as the one mentioned in the case study below. The titled leaders avoid taking on a direct arbitration role because this will eventually diminish their reputation among their clan. They instead delegate a committee of handpicked elders to review the case. After hearing the case and reviewing all previous conclusions by previous 'Heer juries, the committee reaches a verdict and

takes it to the titled leaders, who, after reviewing it, either endorse it as it is or make changes to it. The titled leaders then call in the disputing parties and ask selected spokesmen to announce the judgment the jury has reached. The titled leaders will back up such a judgment using their political power and respect and demand that the parties in conflict accept it. The titled leaders' judgment (*Guddoon*) is final and closes the case.

Case 21: 'Unwarranted' Revenge Killing Among the Meheri Lineage of 'Harfo Village

*In the Muslim holy month of Ramadan, which coincided with the months of November–December, 2001, a member of the Meheri lineage killed another of the same lineage in the small town of Harfo, a pastoral settlement in Galkayo district. This apparently premeditated murder was linked to a previous murder in which the two groups had reached, through their own efforts, a satisfactory conciliation, with *Diyah* payment and a bride being given to the offended branch "to soothe rancour" (*Godobtir*). Hence, this subsequent revenge killing was seen as unwarranted and unjustified, and created considerable tension between the two sides.*

Fortunately, the Islam, the paramount traditional leader in the area, intervened and succeeded in bringing the situation under control by immediately sending private militias not belonging to the feuding parties to ward off any possible confrontation. He formed a third party jury to look into the case. Members of the jury comprised the Islam himself and three other titled leaders, who were also from the area. The committee made the paramount traditional leader its chairman. Given the urgency and the seriousness of the case, this traditional jury of titled leaders constituted the final decision jury without appeal. After nearly five months of debate and deliberations, the jury finally

succeeded in resolving the conflict on April 15, 2002. This clearly attests to the positive role the titled elders have in conflict resolution and crisis management in Somali society in general, and the Puntland regions in particular.

7.5.5 When New Evidence Emerges: Procedures of Judicial Review

As in other legal systems, the Somali 'Heer recognises the principle of revision of a traditional jury's judgment. A case may be reviewed if new evidence or new facts emerge that prove the initial judgment was not accurate, that a case had not existed at all, or that the victim was not associated with the case. Case revision can also take place as a result of proven perjury by a witness or proof of disqualification of a witness for other reasons, such as discovering that the witness has a blood relationship with those he or she gave evidence on behalf of.

Not all cases, though, can undergo revision. 'Heer provides that a jury can revisit a case only if revision is possible or the case can be reversed. For example, in view of Somali 'Heer, little can be done if an executed man is later found not guilty. Similarly, a case cannot be revisited if a virgin girl claimed to have been raped by a man, and, as the tradition requires in some of the regions of Puntland, the man was sentenced to marry the raped girl³³, even if the claim is subsequently found to be untrue. 'Heer does not allow revision of such cases, which it considers unalterable. Sharia and secular law disagree with 'Heer on this and revise previous judgments, irrespective of their consequences or cost. In addition, Sharia penalises witnesses who falsely testified in cases that resulted in executed judgments, either a death penalty sentence or payment of *Diyah* to the victim's lineage.

7.5.6 Without Benefit of Police: Execution of Judgment

As many authors have acknowledged, authority and coercion are not entertained in the Somali 'Heer. The power vested in elders stems from moral authority. Whereas the enforcement mechanisms of the secular and Sharia laws rely upon law enforcement agents, implementation of the judgments reached by Somali traditional juries depends largely on societal norms. I.M. Lewis³⁴ corroborates this:

"...The ruling on the amount of damages appropriate to a particular injury provided the basis for negotiations in disputes between lineages where arbitrators were called in. There was no formal machinery for enforcing such awards except that engendered by the desire of parties to a dispute to make peace, and this, of course, was a function of their relative strengths and of the total political situation at any point in time. Ultimately, force or its threat was the final sanction supporting a settlement".

Workshop participants cited a number of factors that play a part in persuading the losing party to comply with the judgment: avoiding a future cycle of revenge; community or clan pressure; respect for the jury members; and the relative strengths of the opposing parties. If those whom the judgment favours are stronger or have the same strength as the other side, then execution of the jury's judgment duly takes place. However, if the winning side is weaker, the stronger side may try to evade fulfilment of its obligations; here, the commitment it made at the start of the hearing (*Qoordhiibasho*), the prior pledge its guarantors had given (*Xireyaal* or *Bud-*

dhigeyaal), and reference to precedents become factors in encouraging it to respect the judgment. The awareness that similar previous cases have been solved by the same ruling serves to discourage the losing party from lodging an appeal, because a new jury is likely to reach the same judgment. Even though the individual or party may believe the verdict to be unfair, nevertheless, they will comply with the judgment, and keep it on record for future reference and reciprocity. The accepting party usually says "*Tani waa inoo 'Heer*", meaning "From now on, this ruling will serve as a precedent between us."

Other factors influencing acceptance of the verdict are: belief in the righteousness of the ruling (*Qanac*); maintenance of peace and a cordial environment in the area or enhancement of collegial relationships; adherence to moral values, both 'Heer and Sharia, preach acceptance of jury judgment in principle and see this as a moral quality (*Ammaan*) of the individual; out of humanity (*Banii'adannimo*); and finally, avoidance of ostracism. In Somali culture and history, there are several instances of groups who became alienated from their clans for refusing to obey traditional norms, such as collective sharing of penalty or liability. The accused individual does not pay alone for the crimes he committed but shares with his *Diyah*-group. John Drysdale writes:

"The concept of obligating the offender's *tol* (including the offender's family and other members of the *tol*) to pay compensation in equal amounts to a complainant for injuries sustained. Shame (*xishood*) on the part of the offender is usually a sufficient deterrent against repetition... Compensatory justice is thus a two-way system of reciprocal obligations. A member of a *tol* either pays his share of a compensatory award

to the aggrieved or receives his share of compensation if his tol is the aggrieved party."

Case 22: Father, Son and 'Heer

A father was once told that his son had lost a case. He responded that it was natural to lose, and asked, "But did he accept the jury's judgment?" "Yes, he did", was the reply. Thereupon the father commented, "Then my son is truly a worthy person".

7.5.7 Renegades and Rebels: Penalties for Refusing to Abide by a Jury Judgment

In general, the type of punishment administered to those who reject a jury's verdict depends on the jury's decision and the value of damage involved in the particular judgment. However, refusal to abide by a jury judgment presents a serious challenge to the concerned parties and the community at large. At worst, in collective cases where whole clans are involved, it can be taken as a declaration of war and fighting can break out between the two sides.

Most times, however, traditional sanctions apply, including: "naming and shaming" or ostracising of the recalcitrant side. Moreover, participants agreed, if an individual rejects a jury's judgment, community elders usually intercede. The punishment then could be material, physical or moral: (a) *materially*, the jury might order the guilty man to slaughter his burden camel (b) *physically*, he may be tied to a tree full of ants or exposed to the blistering sun until he accepts the judgment (this physical torture is carried out in public to humiliate him) and, (c) *morally*, the intransigent person may be stigmatised and given the nickname *Gardiid*—the one who rejected judgment. The moral ethos of the Somalis abhors those who refuse the jury judgment; to underline this,

they say *Gardiid waa alle-diid*, meaning, "He who rejects right judgment does not believe in Almighty God either". Other individual punishments include forced seizure of livestock; doubling of the original value of the damage or denial of access to the clan's safety net and benefits (*Diyah*, subscription, services, etc.). The offending individual then becomes a *Dayro*, or renegade.

7.5.8 Communication Channels: Role of Titled Leaders (*Isimo*)

The role of titled leaders has already been discussed. In addition, the colonial and subsequent Somali administrations also supported 'Heer jury judgments and the role of traditional leaders as a "communication channel" between the state and the pastoral population. In the post-civil war period, in the absence of government institutions, clan elders and traditional leaders extended their role even further by solving political disputes, not only within pastoral communities in the rural areas but also in urban centres. In addition to that, in a situation of conflict when an accused party refuses to respond to a case or to appear before a 'Heer Jury, the dispute is taken to the *Isimo*. Being the traditional leaders of clans or sub-clans, wielding both power and respect, the titled leaders may summon an individual or a party that fails to respond to an accusation or refuses to appear before a jury and order them to do so. Likewise, they will intervene when the losing side fails to implement a jury's judgment, by persuading it to comply with the verdict immediately. The following case illustrates this:

Case 23: Share the Water or Lose Your Camel

Decades ago, Nugaal region experienced a serious drought, forcing the pastoralist population to migrate with their

herds to the coastal area bordering the Indian Ocean, east of Garowe. There were only a limited number of wells in Dhanganle watering village, a small settlement south of Eyl, and these soon became overcrowded. The shallow wells included Waqtiile, Hamur, El-jeeh, and Mataan, and were each owned by a different lineage group. The owners of one of the wells, which yielded more water than others, refused to share with other herders. In a typical overcrowded water point situation, a dispute developed among the various lineages present in the locality over the water. The ensuing conflict reached such a level that it warranted intervention by elders. The supreme traditional titled leader of the area, along with his assistants and a number of Ilaalo (local police), held an all-inclusive emergency meeting (Shir), where he carefully listened to the arguments of the various parties. In the end, mindful of the raging drought, he ruled that all wells should temporarily be the property of all.

This judgment did not go down well with the group owning the well in question, and one of them rejected the ruling. In response, and as a way of punishing him, the traditional leader ordered the slaughter of the man's burden camel (Awrka gurugur). Two elders from the man's group now took the same position and repeated the same response at the top of their voices. The traditional leader thereupon ordered the slaughter of the two men's burden camels. At this point, the head of the group, who was present at the meeting, intervened to calm the situation and suggested the meeting be adjourned for consultations. After much debate among themselves, the group acceded to the ruling and agreed to share the well with the rest.

One of the prerogatives of the paramount traditional leader, *Isim*, is to take a drastic decision without consulting clan elders, if the situation calls for immediate

action to forestall impending violence. In the case of this particular well, the Isim did not appoint an elders' committee to hear the water-sharing dispute, because the elders of the intransigent side had challenged his moral authority. However, for a paramount clan chief to opt for such a course of action without consultation is the exception rather than the rule.

7.6 Hands Off: The Role of Government

The government does not usually intervene in a traditional jury judgment. On the contrary, it supports the jury's decision by providing police to enforce the verdict in case of non-compliance by the guilty party. During the colonial era, the British and Italian administrators routinely gave their full backing to traditional jury judgments. Succeeding Somali governments similarly validated traditional jury judgments. Eventually, the Somali government passed Law N. 19, of "*Codice di Procedura Civile Somalo*", issued on July 27, 1974, which in Article 333 says of extra-judicial conciliation:

"The extra-judicial conciliations concluded between the parties spontaneously or through the representatives of the political offices of the city, the villages and settlements, do acquire legal validity and executive efficacy via the chancery of the District Tribunal of the place in which the conciliation occurred".

In response to this law and in order to keep the government informed, 'Heer juries began forwarding signed copies of their judgments to the District Commissioner of the locality concerned.

The workshop participants went further to state that a mutually advantageous relationship existed between

the government and the traditional 'Heer jury system. Indeed, they pointed out, sometimes the government itself used the traditional jury system by transferring cases to 'Heer juries. Drysdale writes:

"But a complainant is permitted by the courts to transfer a case, even a capital offence, to elders for settlement by customary law. This testifies to the efficacy and durability of Somali 'Heer. The difference between the two legal systems is that 'Heer transmits the responsibility for wrongdoing to the heart of the offender's family and sub-clan in order to elicit compensation for civil or criminal transgressions".

Participants also noted that the government only intervened in traditional jury rulings when the case was thought to be detrimental to public order and security.

7.7 Simply and Readily Available: The Potentiality of 'Heer

'Heer constitutes the main conflict-resolution tool of Somali pastoral society. Nevertheless, traditionally conflicts tended to be confined to neighbouring settlements, sub-clans or clans, and when fighting did occur, the weapon most commonly used was the spear. This contrasts sharply with the present situation of politicised clan warfare using highly destructive modern weaponry. In the traditional context, the clan elders managed to fulfil their role of conflict resolution with a fair degree of success.

The word 'Heer, in the Somali tradition, has a range of connotations. I.M. Lewis³⁵ writes:

"The word 'Heer means any agreement, treaty, or pact binding individuals and groups... on the other

hand, the term may be applied to describe an agreement between autonomous *Diyah*-paying groups or clans... More narrowly, the word may be used to describe the code of rules relating to the use of a particular water-point, particularly an artificially excavated pond (*war*), and also to the tariffs or fines imposed for their neglect. Finally by extension, 'Heer comes to mean customary practice in general'.

'Heer as a legal system has one distinct negative feature: it is gender biased and excludes women from mediation and advocacy teams as well as from membership of traditional juries. In addition, while the majority of research participants agreed that a woman can be called in by 'Heer juries as a witness whose testimony is given equal weight to that of a man – in contrast to *Sharia* under which two women equal one male witness – some participating elders nevertheless insisted that 'Heer also restricts women from testifying as witnesses before traditional juries.

The nomadic Somali society, which constitutes the majority of the population, uses 'Heer as its main legal system, because it is simple and readily available and as such it is suitable for a nomadic way of life. In dealing with clan conflicts, 'Heer employs a number of problem-solving techniques and establishes traditional courts. Furthermore, the absence of a central organisation and policing system means that 'Heer relies on mediation rather than arbitration though it does have its civil and penal sanctions, and its rulings usually end up in mediation and compromise.

In addition, participants pointed out that 'Heer, as a legal system, does not stand independently. In spite of the fact that it possesses its own indigenous norms, 'Heer

juries, after hearing the case, frequently call in Sharia experts to administer judgments. Although no one knows the exact operation and structure of 'Heer prior to Islam, one may conjecture that 'Heer underwent basic reforms and was to a certain extent blended with Sharia in certain aspects and often operated in conjunction with Sharia in others. For instance, the present 'Heer procedure is virtually a duplicate of Sharia. I.M. Lewis³⁶ confirms this:

"Customary Somali procedure has been modified by the Islamic Sharia. In inter-tribal relations, Muslim jurisprudence exerts a negligible influence, but within the tribe, especially in family and personal relations, it has made considerable inroads".

This, when augmented by its wide use by the pastoral society, makes 'Heer a functioning legal system. It has a great potentiality for fusing with other legal systems and so codifying those parts of the 'Heer that do not contradict human rights and sharia.

Conclusion: the Common Good and Public Responsibility

The search for "Harmonisation of Somali Legal Traditions" must recognise that the Somali society is at a crossroads where three different legal systems meet, systems that emanate from three different and conflicting historical sources: the Western tradition of secular law, which abjures theology and argues that the people are the sole makers of their laws; the Islamic tradition, which argues that human thinking is subjective and situational and as such is incomplete, necessitating divine legislation and subjecting social relations to revealed jurisprudence drawn from the Qur'an and 'Hadiith; and finally, the Somali 'Heer, a manifestation of complex, interacting pastoral rules and regulations that emanate from deep-seated cultural traditions and customs based on the dictates of a volatile and harsh environment.

'Heer has undergone a great deal of evolution over the centuries and is today a blend of Islamic jurisprudence and the dictates of a nomadic culture that is a product of a harsh, arid environment characterised by limited natural resources. Islam modified the pastoralist 'Heer as far as it could without disturbing the nomadic equilibrium and tipping the balance, which would otherwise have culminated in a total rejection of the change sought. What was

at stake was the way of life and indeed the very psyche of the nomadic pastoralists. A participant in this study clearly expressed this on behalf of his colleagues, when asked why pastoralists don't comply fully with Sharia:

"We know that 'Heer includes norms that are against Sharia provisions but we are constrained by circumstances which compel us to continue applying 'Heer for the common good – *Maslaxad*, lacking other alternatives that are practicable in the pastoral environment."

Despite the fact that the three legal traditions exist side by side, Sharia seems, at least in the Somali context, to have the upper hand and constitutes the axis round which the rest revolve. Most participants in both the first phase of this project³⁷ and this study concluded that harmonisation of the three legal systems is achievable in many aspects. A good indicator is the fact that urban Somali communities have already shed some negative aspects of 'Heer. Nevertheless, in practical terms, for the large majority of the pastoral population, challenges to harmonisation can be identified: while Sharia and secular law agree in principle on the mode of penalty in most civil and penal cases, in that both employ fines, imprisonment and the death penalty, because of ideological differences they differ sharply in such areas as gender inheritance rights, apostasy, adultery, usury, gambling, theft, alcohol consumption, etc.

The secularist and the Muslim do not see things from the same perspective. What is good and right for one might not be so or may even constitute a taboo for the other. For example, the Muslim believes in the righteousness and appropriateness of the Sharia penalties of

amputation of limbs for theft, and death by stoning for the adulterer, while to the secularist such punishments as amputation, stoning and flogging are a violation of the fundamental human rights of the individual. However, despite their zeal for Islam, Somalis seem unwilling to adopt flogging, amputation or stoning, which are alien methods of punishment in the context of the all-encompassing clan culture. Indeed, in Somali culture, flogging is an extremely offensive act, as it is degrading and shameful not only for the victim but also inevitably for his clan as a whole.

The Somali secular law has undergone adjustments to Sharia and Islamic ideals, though it seems neither is ready to bow to the other on substantive principles. Secular law enjoys strong international backing, constituted the law of the Somali state and has the local support of the Western-educated elite, while Sharia originates from Islam and the beliefs of the populace and has local support from religious groups and urban illiterates.

However, as we have seen, the Somali have never applied Sharia to the letter. The fundamental contradiction of these coexisting laws—Sharia and 'Heer makes harmonisation of these legal systems a complex challenge. Nevertheless, a case exists for the integration of 'Heer and Sharia for the following reasons:

- a. As a legal system, 'Heer remains at an embryonic stage, is limited in its application and does not instil a sense of public responsibility and respect for public institutions and statehood into its pastoral adherents. I.M. Lewis³⁸ notes this:

"The individual's loyalty is submerged in the agnatic segment to which he belongs, and towards which he

has rights and obligations; the Somali tribesman has, of course, no sense of public responsibility..."

- b. 'Heer had long ago submitted to Islam and in theory there are no objective differences at all. An informal process of gradual integration is underway without formalising policies.
- c. Certain negative 'Heer norms are still practised. The practice of these norms is conditional on scarcity of resources. These norms, which are discussed in Section 2 of this study, are however recognised as negative and, as participants confirmed, pastoral society is prepared to shed them in certain circumstances.

The other three components of this research – pastoral, marine and frankincense 'Heer – document the customary laws and economic structures that regulate the production systems that traditionally sustained the Somali people. These norms emphasise access to and sharing of scarce resources, excluding marine resources, which are underutilised. With slight variations, these norms follow the same principles, reflecting the crude means of production available to Somali society and its rudimentary social development. However, these laws generally respect fundamental human rights, apart from specific areas such as denial of inheritance rights to women and 'Heer norms bonding frankincense collectors to sell their product only to the trader who extends them credit.

The 'Heer norms that urgently need review if harmonisation of the three legal systems is to be feasible include: collective sharing and payment of *Diyah*, 'Heer penalty on rape, rules on forced marriage, battering of women and denial of women's property and rights in some com-

munities. These norms are totally against the spirit of both Sharia and secular law. As forced integration is not feasible, the obstacles in the way of integrating these norms need to be removed. More fundamentally, such an integration implies a number of broad social changes: economic transformation of the pastoral system; decentralisation of the political and administrative powers of the government; a strong government capacity to enforce the law; an education system that reaches all sections of society; and, a reduction in the power of the clan as a political entity with strong traditional roots. As earlier attempts by the colonial powers and successive Somali governments have failed to harmonise these legal systems, any future attempt, by any government—regional or central—will have to take into consideration the fundamental historical and economic realities of Somali society.

8.1 Towards a National Conference: Recommendations on Integration of 'Heer

Workshop participants and survey respondents strongly recommended that for the reform process to succeed, traditional and religious leaders who exercise great influence over public opinion should play a central role in the campaign to scrap irrelevant and unacceptable 'Heer norms. In the meantime, they suggested the following as essential steps in the reform process:

- Increased involvement of state, jurists, Qaadis and non-government organisations in legal development.
- Increased public education and understanding of Sharia vis-a-vis 'Heer.
- Public awareness-raising campaigns about the injustices resulting from application of some 'Heer codes

and the position of Sharia on such codes. This can be done through mosques, local radios and newspapers, public meetings, civil society organisations, campaigns, posters, etc.

- A conference of traditional and religious leaders: Workshop participants stressed the central role of traditional leaders, the source of 'Heer, in the process of integration of 'Heer. For this purpose, an all-inclusive conference of jurists, political leaders, traditional and religious leaders and women's organisations needs to be organised. This conference would adopt a resolution banning 'Heer rules identified as irrelevant or harmful, while clearly identifying substitutes and explaining how these will work for the wellbeing of the affected sections of society, namely the pastoral population, whose basic interests are invariably linked to 'Heer.
- Law enforcement: Beyond awareness raising efforts and adoption of resolutions, a strong law enforcement mechanism is essential.
- Organisation and funding: Local NGOs, professionals and international agencies will have to assist in the organisational and advocacy aspects of the campaign as well as in raising funds for the purpose.

Notes

- ¹ Suad, Ibrahim Abdi, Impact of war on the family. Unpublished paper of WSP/APD Study, Hargeisa, July 2002. p. 6.
- ² National Advisory Council Conference [NACC]. 1968. Integration of customary norms. Ministry of Interior: Mogadishu, Somalia
- ³ Ibnu Hishaam recounts from the works of Ibnu Is-haaq the following story:

"In the early years of the 6th century AD, Abdul Mudhalib, the grandfather of Prophet Mohamed, was a respected leader from the highest branch of the Qureysh tribe, who controlled the area of Mecca. He was the guardian of the K'aba, the House of God, located in Mecca. (One day) Abdul Mudhalib took an oath before God: if God blessed him with 10 sons and granted him the opportunity to live up to their maturity, he would sacrifice one of those sons at the K'aba to Him.

God answered his appeal and bestowed on Abdul Mudhalib 10 sons, who grew to maturity during his lifetime. One day, he called his sons to him and told them of his pledge to God. They told him to go ahead and fulfil his promise. To select the son who would be sacrificed, he made each write his name on a piece of wood and took them to his favourite idol, named Hubal, which was kept at the K'aba. The Qureysh would turn in distress to their idols in the K'aba, which they believed they were the representatives and mediators of God, to pass their petitions to God, seek explanation of events and make rulings on disputes.

So Abdul Mudhalib brought his 10 sons before 'Hubal and, telling its caretaker of his intention, handed him the 10 pieces of wood and charged him to cast lots with the assistance of the idol Hubal.

The caretaker did so, and the lot fell on the youngest son, Abdullahi, the one whom his father loved most. Greatly grieved, Abdul Mudhalib nevertheless took a knife and advanced upon his son in order to fulfil his promise to God. However, his Qureysh kinsmen stopped him. The strongest objection came from the famous and wealthy Muqiira ibnu Abdullahi ibnu Omar ibnu Makhzuum, the son's maternal uncle, who vowed he would not permit the slaughter of Abdullahi until all other options had been tried, and would even trade off all his wealth, if need be, against the life of his nephew. In the end, the Qureysh notables advised the father to seek the assistance of a witch well known in the Medina area. After consulting with her associate witches, the woman asked Abdul Mudhalib to tell her the value of a man's Diyah (blood money) in his area, to which he responded "10 camels". She then told him to return home and cast lots for the 10 camels against Abdullahi. If it fell on his son, he was to add 10 more camels and repeat the operation. She told him to keep adding 10 camels at a time until the lot fell on the camels, whereupon God would accept the replacement of the sacrifice of his son with the slaughter of that number of camels.

Returning to Mecca, Abdul Mudhalib brought camels and son before the idol Hubal and drew lots. The lot fell again and again on the son and the father continued to add 10 camels at a time until the number of camels reached 100, when the lot fell on the camels for the first time. To ensure God's acceptance, Abdul Mudhalib repeated the operation three times and each time the lot fell on camels when they reached 100. Finally satisfied, he hurried to slaughter the

100 camels at the K'aba. From that day onwards, the Qureysh adopted the Diyah value of a male as 100 camels. This practice, like many other Qureysh conventions, was integrated into the Islamic Sharia. It is probable that the 100-camel figure for a man's blood value was brought to Somalia with Islam, and spread in the succeeding centuries to all regions of Somalia.

Ibnu Hishaam. *A Summary Account of Prophet Mohamed's Biography*, Somali translation, p 22-23, Resalah Publishers, Beirut, 2001

² Mohamoud Islam Abdulle has provided this case study. He acted as a resource person in this case.

³ Lewis I.M. 1998. *Saints and Somalis*. p. 76

⁴ Suad, Ibrahim Abdi. Impact of war on the family. Unpublished paper prepared for WSP/APD Participatory Study, Hargeisa, July 2002, p. 19.

⁵ Ibid.

⁶ Abdullahi Abdulle Illal, an elder from Burtinle, narrated this story.

⁷ Farah Mohamud Ali, a chief from Sool, shared this episode with participants.

⁸ Ayan M.A. 1990. *Somalia and National Efforts*. IGAD, Djibouti. p. 228.

⁹ WSP Somali Programme: 2001. *Rebuilding Somalia: Issues and Possibilities for Puntland*. HAAN Associates: London. p. 146.

¹⁰ Data collected in August 2002 from Bossaso Port, Department of Customs, Government of Puntland.

¹¹ Gruttenden, C. 1884. *Report of the Majerteen* quoted by Congress Library in a report in 1986

¹² Poems on grazing and land management

1. Samatar Bahnan

Samatar Bahnan was a well-known Somali poet. The following reproduces the feeling of alienation and uncertainty of a camel man and his herd in a foreign land. In legal terms, the poet implicitly states his clan's lack of grazing agreement with another clan, to whose land the poet plans to drive his camel herd. Not knowing what might happen to his herd, whether they will be stolen or killed in "the land of Issaac", he says:

*Wax badan baad Garowiyo fadhiday guda Nugaaleed e
 Wax badan baa gawaannada Ildheer gool ku laacdamaaye
 Geelyahow galbeed iyo la qabey gurigi lidoor e.
 Iminkana goldheeraha sare yaan kuu gudbinayaaye
 Garanuugle weeye halkaad galabta joogtaa e.
 Gabaarreyda meeshi lahayd baad ku geediyiye
 Gunbuur iyo 'Igaal Aaden baa goolka kaa qali e,
 ga- gaabyadii Dhogori baa guri habeenkii e.*

*O', my camel, you did prosper long in Garowe area, deep inside
 your familiar Nugaal valley
 Long have grown male camels duelled each other in the Ildheer
 grazing grounds
 O', my camel, now I drive you west, to the alien land of Issac
 We shall make our way over the high plains
 This afternoon you will cross the Garanugle pass
 You will arrive at the grazing infected with ticks
 The clans of Gunbur and 'Igaal-Aden will slaughter your fat males
 The short Dhogori men will steal you at night*

2. Khalif Hassan Walah

The first part of the following poem by Walah explains the pastoralist pattern of constant movement in search of pasture and thus the rationale for the collective sharing of pasture beyond clan borders. The last two verses of the poem

also highlight the social contract, 'Heer, of clan support in difficult times. During long treks, when pasture and water are scarce, 'Heer requires kinsmen to support each other in every way. Failure to do so earns stigma and loss of reciprocal assistance:

*Dhoosaali iyo Erago dhoolka ka hilaacay
Geedigu dhibveeyee haddii dhiga-jac loo guuro
Niinka ararka kula dheeli tira kuna dhaqaaleeya
Iyo kii dhabada kugu maray aan hoosna kuu dhugan
Midba waxaa dhitaystay baa ugu jira dhiisha caanaha e.*

When lightning flashes over the Dhoosali and Erago grazing grounds,

We nomads must pack up our huts and move towards the rain

The man who gives you a hand in straightening your tilting camel load

And the one who contemptuously passes you by on the track

Each will receive the reward that he merits

3. Samatar Bahnan

The following poem describes how the clans migrate to the rich grazing lands of other clans during the rainy seasons of Gu (Spring) and Dayr (Fall). The genesis of this poem came about like this: A poet named Yawle composed a poem insulting a neighbouring clan. Samatar Bahnan, who belonged to the targeted clan, responded with this poem. He warns Yawle, that by producing such a provocative poem, he has instigated hostilities between the two clans. He predicts that, during the rains, the Yawle clan will not be able to come to their pasture for grazing and watering, because this poet has poisoned the clan relationship:

*"Haddii ay dayrtu waa mudan Hartiye idinka soo meerto.
Meer-meerka Gubadood haddii laga maqaan waayo.
Sida maylka geedigu hadduu mudh isa soo siiyo.*

*Oo Muusayaal nala darsaan uaganta maarmaan e,
Maatada xagee reer Cismaan madaxa loo saari
Masbaa kaga tufaye ceelka ya mar uga soo dhaamin.
Magligaad afaysaa ku goyn muruqa Yawlow e"*

(Muses are Diyah groups):

*When the fall rains attract the camels of Harti to our side,
You are bound to miss the Gubado grazing land,
When, like ship masts, the loaded burden camels appear on the
horizon
And the two Muses who cannot do without us, arrive at our land
Where will the vulnerable Osman family head to then?
Alas, a snake has poisoned the water well, where will they draw
water from?
O' you, Yawle, you shall fall victim of your own intrigue*

¹⁵ Such men take the title of *Inan-la-yaal* - meaning "men living with the group on the basis of marriage" and the new husband and the children of the marriage become part of the family of the wife, earning the rights of the natives. However, the Diyah of husband and his children still to go back to his original Diyah group. The husband and his children, while coming under the protection of the wife's clan, thus retain their original clan identity and so cannot assume leadership positions in the hierarchical social organisation of the wife's family. In other words, they become permanent residents without political rights in the hosting lineage.

In some areas outside Puntland, a husband and his children who abandon their original clan identity may acquire the identity of the wife's lineage or community where applicable, thus "melting" into the hosting community as the generations go by, and even aspiring to leadership positions (the Rahanweyn clans in the south and Ogaadeen

clans in the south and southwest are known to practise such adoption).

¹⁶ Ministry of the Interior. 1968. *National Advisory Council Conference*. Ministry of the Interior: Mogadishu, Somalia.

¹⁷ Ibid

¹⁸ Lewis, I. M. *Peoples of the Horn*. 4th ed. p. 46.

¹⁹ Somali Youth League [SYL]. 1947. *Somali Youth league Constitution*. SYL, Mogadishu, Somalia

²⁰ Ali Aden, known as Ali Dhuh, a leading Somali poet, once, searching for a beloved she-camel he had lost named 'Artan, found her on the Hawd grazing lands. On the way home to his settlement, he stopped at a water point that traditionally belonged to Reer Dalal, a lineage of the Ogaadeen clan. However, Habar Yonis, a primary lineage of the Issaac clan, had taken over the well not too long before and, when Ali Dhuh drove the she-camel there, they refused to let him water her. Ali Dhuh, angered by the way he was treated, composed the following poem to express his sorrow at the violation of the Heer on water sharing, urging the original owners of the well, the Reer Dalal, to fight back and reclaim this water point that they had lost:

*Cartaney Cammuud la isu diid iyo Ceelkii Reer Magan e
Cabdullaahi iyo Yuusuf baa ciidda hoos galay e
Hadday curaddadii nool yihiin waad cabbi lahayd e
Cayn iyo Hartaad leedahaye caraqda fuuq fuuqso
Oh, my camel 'Artan, we are barred from Amoud and the great
wells of Reer Dalal.*

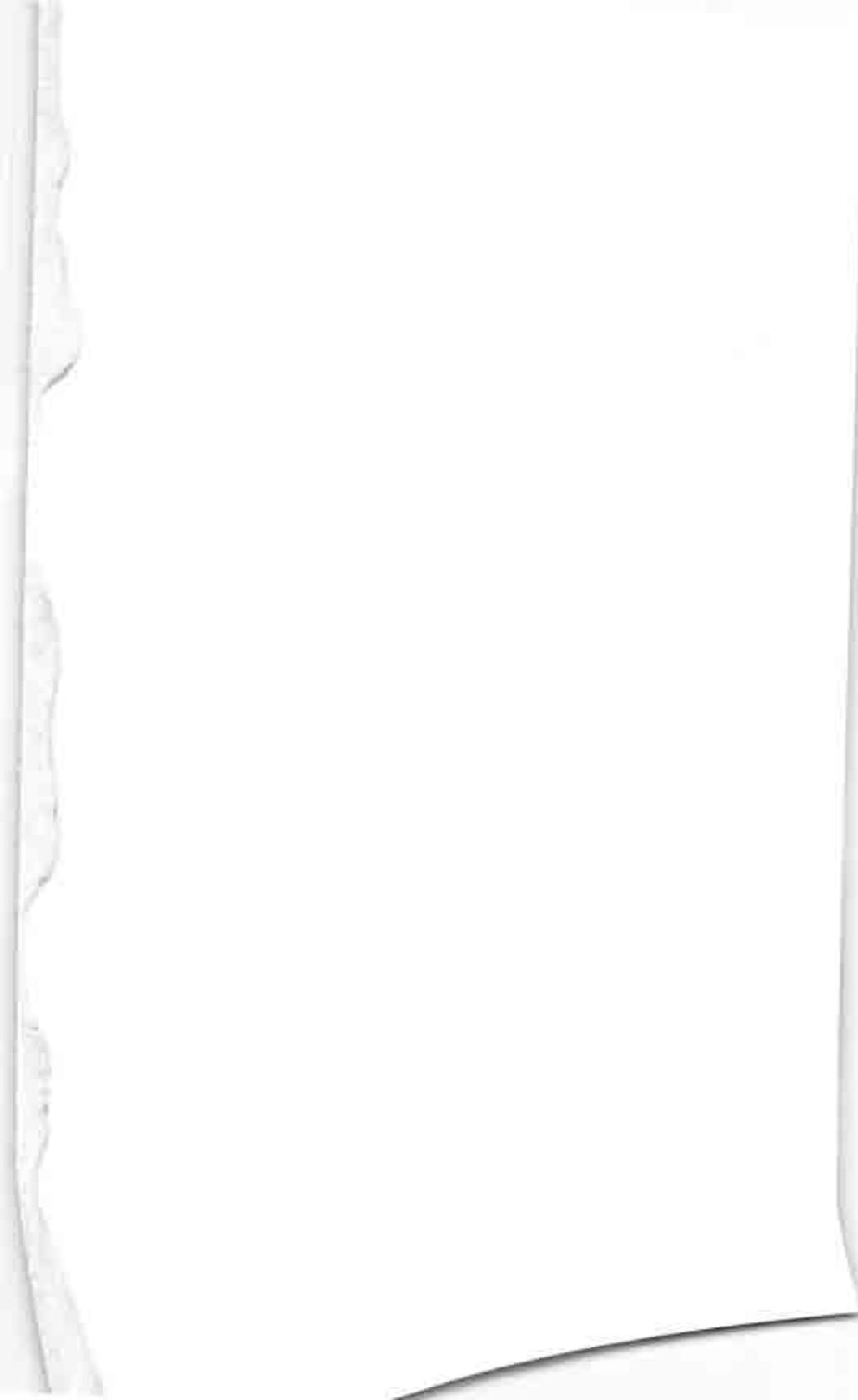
*Were Abdullahi and Yusuf of Reer Dalal still alive
Were those valiant men here, you would have drunk water from
this well.*

*But, Oh, my camel, you who own Ayn, the Hartiland, until then,
gulp this dirty water spilt from the troughs*

- ²¹ *Lufood* is a frankincense tree that has the characteristics of Yag'ar, growing on rocky mountainsides without visible roots, but at the same time bears the resin (*Beeyo*) of the other type of tree – *Mohor*.
- ²² Lewis, I.M. 1998. *Saints and Somalis*. London p. 25-26.
- ²³ Gruttenden, C. 1884. *Report of the Majerteen* quoted by Congress Library in a report in 1986
- ²⁴ War-torn Somali Programme [WSP]. 2001. *Rebuilding Somalia: Issues and Possibilities for Puntland*, HAAN Associates, London 2001. p. 146
- ²⁵ *Ibid.*
- ²⁶ Fielding P. J. and Mann B. Q. 1998. *A Survey of the Lobster Fishery of Puntland*. IUCN Eastern Africa Programme, Somali Natural Resources Management Programme.
- ²⁷ *Ibid.*
- ²⁸ Stormme, T. 1987. *Coastal and Marine Environmental Problems of Somalia*. UNEP Regional Seas Reports and Studies No. 84 Annex IV, Sectional Report on Marine Living Resources, p. 93.
- ²⁹ Fielding P. J. and Mann B. Q. 1998. *A Survey of the Lobster Fishery of Puntland*. IUCN Eastern Africa Programme, Somali Natural Resources Management Programme..
- ³⁰ *Ibid.* The authors admit that the total catch is higher than their stock estimate and that the stock estimate may be under-rated.
- ³¹ *Biri-ma-geydo* is a category of people who are protected and spared in war situations; they include: emissaries, women and children, elderly, poets, religious personalities, traditional elders, etc.
- ³² In cases where a council of religious men is adjudicating.
- ³³ This ruling is limited to virgin girls; however, in cases of

rape of or sexual assault of a married woman, a divorcee or an old woman, the penalty applied is lenient and much lower than that for a virgin girl

- ³⁴ Lewis, I.M. 1998. *Saints and Somalis*. p. 50
- ³⁵ Lewis I.M. 1998. *Peoples of the Horn of Africa*. 4th ed. HAAN Associates: London. p. 201
- ³⁶ Lewis I.M. *Saints and Somalis*. 1998. p. 26
- ³⁷ Puntland Development Research Centre [PDRC], 2002. *Pastoral Justice – A Participatory Action Research Project on Harmonization of Somali Legal Traditions: Customary Law, Sharia and Secular Law*. PDRC: Garowe, Somalia
- ³⁸ Lewis, I.M. 1998. *Peoples of the Horn of Africa*. 4th ed. HAAN Associates: London. p. 130



Puntland State of Somalia was founded in a consultation conference in March 1998, arranged both by political parties and by traditional leaders in northeastern Somalia. They decided to form a regional administration in a future federal Somalia. They approved a charter for a transitional three year period, elected a parliament, appointed a president and set up a judiciary. Although the resources were very limited the ambition to create a viable system was there for all to see.

As a part of the Diakonia Legal and Human Rights Programme for northeastern Somalia, Puntland, Diakonia requested the assistance of the Puntland Development Research Centre (PDRC) to conduct interactive participatory research at the entry point: "Harmonization of Somali Legal Traditions: Sharia, Xeer and Secular law." The main objective of the research was to contribute to the ongoing search by the Puntland administration for the development of a judicial system that is in conformity with the culture, religion and tradition of Somali society, and which at the same time respects international norms and human rights. Another aim was to initiate a dialogue for the various stakeholders - Religious and traditional leaders, representatives of Civil Society, the Puntland Government and the donor community.

This book is the outcome of this project. It reflects the reality of life in Somalia today, the widespread use of Customary law in the resolving of disputes, the increased role of religion in the judicial system, and both the lack of knowledge and the history of abuse of secular law. It also indicates the need for a dialogue to create a legal system based on the Somalia context which at one and the same time respects the global norms of human rights.



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