

## The Clannish Dogma of *Hiil Iyo Hoo*: A Source of Both Order and Injustice in Somalia

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### ABSTRACT

This paper examines the impact of the clannish dogma "*hiil iyo hoo*" on justice and governance in Somalia. Rooted deeply in Somali culture, "*hiil iyo hoo*" emphasizes protection and social security within clans, influencing individual and group behaviors and perceptions of justice. Using a multi-method approach to explore the intricate relationship between "*hiil iyo hoo*" and Somalia's justice system, the study contrasts this traditional principle with Somalia's formal justice system, imported from the West, which fails to align with these local values. The coexistence of these systems has contributed to corruption, mistrust, and political instability. The paper discusses the customary *xeer-dhaqameed* system, which emphasizes restorative justice and clan unity, and highlights the challenges posed by the formal system's presumption of impartiality and independence. It also addresses issues in service delivery, exacerbated by nepotism and favoritism rooted in "*hiil iyo hoo*." The paper concludes with recommendations for harmonizing traditional and modern justice systems, including the integration of Sharia law and the establishment of mechanisms to mitigate clan influences on governance.

*Keywords: Hiil iyo hoo, justice, governance, clannish dogma, xeer-dhaqameed, restorative justice*

## Introduction

Justice is an indispensable virtue of social institutions, an essential component in social life, and a matter of concern for every individual and group (Rawls, 1999; Hamilton and Joseph, 2002). Though interrelated, different dimensions of justice – i.e., distributive justice,<sup>i</sup> retributive justice,<sup>ii</sup> restorative justice, and procedural justice<sup>iii</sup> – serve different purposes and apply to different situations. When all dimensions of justice are duly fulfilled, people are likely to trust one another and feel a sense of commonality. Moreover, it strengthens cooperation and conceives the legitimacy of government or other social institutions governing society, not to mention its impact on peace and development.

Efforts to achieve justice are futile unless the laws and institutions through which justice is administered are weaved into the sense of justice of the society concerned and its socio-economic needs. Due to the necessity of defence and the sharing of scarce resources, in the absence of state or central authority, Somalis are traditionally organized in clans and sub-clans through which social assistance, welfare and protection are provided (Lewis, 1965; Adam, 1992; Zoppi, 2018). At the centre of the clan system is the moral principle of '*hiil iyo hoo*', which obliges clan members to collectively shoulder the liability of its members, share the wealth and provide social security as well as protection to its members. Perceptions about justice and how it is handled depend mainly on the principle of '*hiil iyo hoo*'.

Without due consideration to these actual socio-economic conditions that shape the sense of justice of the Somali individual and groups, Somalia adopted, at independence, a mode of governance transplanted from the West where the nationhood was solid and individual rights were at the centre of its justice system. This resulted in a severe mismatch between the adopted mode of governance system, the behaviour of those responsible for its implementation and the real socio-economic needs of the governed, which contributed to Somalia's multifaceted crisis.

This paper explores how the moral principle of *hiil iyo hoo* is deeply rooted among Somalis, its impact on the behaviour of individuals, including leaders, the obliviousness of the governance system to it and the cumulative effect of these on justice. The paper argues that the simultaneous existence of a society committed to *hiil iyo hoo* with a justice system tailored to it and a heterodox state system is a significant source of Somalia's justice-related crisis, including grievances, corruption, mistrust and political instability. Finally, the paper offers possible suggestions on how to address these problems.

## Methodology of the study

This paper employs a multi-method approach to explore the intricate relationship between *hiil iyo hoo* and Somalia's justice system. The data collection process began with a comprehensive desk review, examining academic literature, legal documents, and reports from various organizations to build a solid theoretical foundation. Following this, the author conducted over 30 in-depth interviews with key stakeholders, including traditional leaders, religious scholars, justice experts, and frequent users of the justice system. These interviews provided valuable insights into the lived experiences and perspectives on both formal and informal justice systems in Somalia. Additionally, the author's experience as a member of the Somali community and their work within both justice systems offered a unique perspective, enriching the analysis with contextual understanding. This combination of methods ensures a thorough and nuanced examination of the complex dynamics at play.

### The Clannish Dogma of *Hiil iyo Hoo*, its Rationale and How it Works

Somalis, including those populating northeast Kenya, the Ogaden Region and Djibouti, form one of the largest single and most homogenous ethnic groups in the Horn of Africa. They share the same language, religion and culture and believe they are the offspring of a single ancestor (Touval, 1963; Lewis, 1965; Kusow, 1995). Yet, they are sharply divided into clans, sub-clans and

smaller units, of which the mag-paying group is the most important that enjoys strong solidarity and a sense of belongingness (Lewsi, 1999). Though the dominant perception suggests that clanship is always based on well-defined patrilineal genealogical structures, it is sometimes based on a contract between members from various lineages who agree to coexist and cooperate in a clanship fashion (Seid, 2007).

Regardless of its formation, clanship is a system of life in which members have duties and entitlements simply because they belong to the group, influencing the conduct and attitudes of individual members. The clanship system with its different layers, how the layers interrelate or interact with one another, the moral and normative rules and principles that underpin them, and the duties, as well as entitlements embodied within the clanship system have an enormous effect on almost every major issue in life.

The dogma of "*hiil iyo hoo*", which means 'protection and social security' is indispensable for the clanship. Almost all duties and entitlements sanctioned by the clanship system fit it. It dictates that clan members should protect one another from any threat and extend a provision of welfare to one another. For instance, if a member is a victim of aggression or faces any security threat, clan fellowmen mobilize their resources and forces not only to protect that member or get revenge for him but also to demonstrate solidarity and the clan's capacity to protect its members.

On the obverse, if someone incurs criminal liability, all male members of his mag-paying group, including the perpetrator, will equally share the liability: usually the compensation payment.<sup>iv</sup>

Similarly, when a member faces financial challenges, others within the group have a moral obligation to assist financially. Good description is the first part of the Somali proverb saying, *tol wuxuu tol ku yahay: nin gooman garashadii iyo nin gardaran qabashadii*, which in essence means 'Clanship survives when it's capable of supporting the impoverished and stopping the aggressor'. *Xoolo-gooyo* and *kaalo* schemes in which members of the clan amass resources to help the impoverished and the newly married ones among them respectively epitomize the provision of welfare as per the dictates of the clannish dogma of *hiil iyo hoo*.

Thus, relying on the clan for sustenance, safety and security influences both attitudes and actions of the clan members, thus assuaging one's courage to decide even for himself without the guidance of the clanship system. This is so even when an individual is transacting with another one! Usually adapted to the strength of respective clans and the relationships that exist between clans, individuals from different clans, usually, deal with one another within the context of their respective clans, even though class, friendship and sorts of relations or social institutions also play a role. Thus, it is hard for individuals to survive without the protection of clans in the absence of more substantial authority independent of the clanship system.

The Somali adage saying, *tol waa tolone*, roughly translated as 'clan fellowmen are indispensably interdependent', gives a fair description of this reality. Somalis describe this reality in proverbs, which serve as principles from which rules stem. To draw resemblance between one's inherent need for shoes that protect from the hot sand, the acacia thorns abundant in the Somali territories or from the jaggy surfaces, and one's essential need of clan protection and sustenance Somalis say "*tolkaa iyo kabtaada dhexdaa lagaga jiraa*". The proverb means, in essence, 'one should distance himself neither from his clan nor from his shoes'. Another instructive proverb says, "*fiqi tolkii kama janno tago*" which means that a religious jurist should not prefer heaven to his clan. The proverb advises religious jurists to trade jurisprudence for narrow clan interests. From these, one can imagine how deeply rooted the dogma of '*hiil iyo hoo*' is, its practical connotations and the impact it could have on justice.

One reason why kinship solidarity and various types of (social and other) obligations are still so marked in Somali society is that the modern state did not sufficiently provide welfare security. In a context where one cannot rely on state-provided social, economic, political and security, it is very rational to rely on kinship (Adam, 1992; Balthasar, 2014). Zoppi (2018:62) found out in his research of Somalis in the Scandinavian that kinship became less significant among the Somalis due to the welfare state affording them provisions of welfare and security, whereas, in the homeland, clan solidarity is solid and capable of attracting clan members' trust.

## Hiil iyo Hoo vis-à-vis Justice

Justice as “a fundamental concept in social life” (Hamilton and Sanders, 2002:3) usually is expressed through the law, which is, according to philosophers, a human construction with social origins that link it to a particular conceptual background (Tamanaha, 2012:6). As underlined by the famous aphorism that says, “justice must not only be done, but must be manifestly seen to be done” (Roberts and Zuckerman, 2004:16), the law should reflect the sense of justice of the society concerned. Since the clannish dogma of ‘hiil iyo hoo’ looms large in every aspect of life in Somali society, the law, to have normative validity, needs to be sensitive to and come to terms with it.

The customary system known as xeer-dhaqameed and the formal systems are Somalia's two dominant justice and legal systems.<sup>v</sup> Although applied to the same society, the two vary in the way they address justice and their sensitivity to the notion of ‘hiil iyo hoo’ that, in turn, grossly impacts their normative validity as well as effectiveness.

### The Xeer-Dhaqameed System

Xeer-dhaqameed is a Somali term that means ‘traditional law’ and refers to a body of unwritten principles, rules and values used by Somalis for governance. It is vital in regulating political, economic and social relationships among individuals and groups. Unlike the formal system in most third-world countries,

which is criticized as either transplanted or imposed (Tamanaha, 2001), xeer-dhaqameed is a pragmatic adaptation tailored to fit local needs despite the undue influence wielded by the stronger groups. Closer observation of xeer-dhaqameed reveals that it is designed to promote the interest of clan members through strengthening unity among its members and consolidating the clan’s power, reputation and integrity.

The clannish dogma of ‘hiil iyo hoo’, which commands relatives to protect and extend welfare provision to one another, is the bedrock upon which xeer-dhaqameed rules are constructed. The Somali proverb ‘tol xeer leh’, which in essence means that ‘having xeer is a pre-requisite for clanship’, underlines the rationale behind the existence of xeer-dhaqameed is to keep the clanship bond intact. In anticipation of incidents among their respective members, different clans negotiate and agree upon rules that govern their future behaviour. However, if an incident happens without prior convention or a precedent,<sup>vi</sup> clans negotiate for a settlement, and the decision becomes a rule for future incidents of the exact nature (Seid and Chotte, 2008). Depending on previous relations and foreseeable future interdependence between the concerned groups, negotiators make a trade-off between sulux<sup>vii</sup> and sadar.<sup>viii</sup>

For instance, if the two groups had good relations in the past and feel interdependence, they tend to opt for *sulux*, which refers to reaching pragmatic solutions that foster cooperation and mutual respect among groups. In either case, the respective clans' interest, as underpinned by the notion of *hiil iyo hoo*, guides elders in their negotiation and decision-making.

In resolving any conflict between two individuals or groups belonging to the same clan the guiding principle is preserving unity by extending maximum care to all members and nurturing relations, even if it takes appeasing the perpetrator. The Somali maxim of "akhyaari ninkii gar-daran bay la jirtaa", which means "gentlemen are too lenient with the aggressor", - is a derivative of this principle. The assumption is that if clan elders punish or annoy the violator, that may emasculate, if not diminish, the person's loyalty to the clan, and lead him, in the worst-case scenario, to deviate and give allegiance to a rival clan: something known as, in clanship politics, 'toloow'. Sometimes elders (as elders in the Xeer) avoid analyzing the real issues in dispute to avoid escalating the tension. In support of that, the Somali adage of "gacmo geel-jire hoos baa loo dhaqaa", which, in essence, means 'camel-herders' palms should be washed covertly' is frequently cited. The point here is that washing camel-herders' palms, which are usually dirty, covertly avoids distressing the viewers, so too is reconciling the adversaries without discussing the issues deeply.

The concern is that delving too deeply into the issue/s might trigger heated discussion, accusations and counter-accusation and the emergency of things that may annoy even the elders.

On the other hand, *xeer-dhaqameed* uses some techniques to soothe the victim. For instance, being recognized as a patient person who forgives his clan fellowmen is a sign of prudence. To accentuate this, the Somali adage of 'nin wayn bay haadi cuntaa', which essentially means, "a wise man is altruistically malleable for prey", is recalled. It is to convince the victim that he should accept the suffering as he understands, better than the victim, about brotherhood, decency, responsibility and the negative impact of confronting your clan members. Supplication of elders and religious leaders in *quid pro quo* for patience also plays a role in mollifying the grieved victim.

On the obverse, showing strength, ensuring the observance of clan members' rights, and saving the life of the members by avoiding conflict with other clans, especially if they are strong enough to revenge for the victim are the guiding principles when the dispute is between individuals from different clans. Again, this revolves around the dogma of '*hiil iyo hoo*'. Firstly, the issue is addressed as something between two clans, and the representatives of the respective clans speak for the individuals.



Secondly, the outcome impacts, usually, the entire clan since all adult members will equally share any financial responsibility judged, and the wealth given to the other clan will be shared, too. However, the victim or his/her heirs receive the larger share.

Since the safety and welfare of the individual clan member are paramount, retributive justice is usually avoided in favour of restorative justice. To keep the bond of clanship strong, Elders focus on mending the broken relationship rather than establishing right and wrong (Schlee, 2013), especially when the issue is between individuals belonging to the same clan. Elders still emphasise restorative justice and the "spirit of compromise dominates their proceedings, and their rulings reflect compromise rather than verdicts of guilt and innocence" (Samar, 1982:35) even when the issue is between individuals from different clans. The reason is to avoid confrontation with other clans, which may jeopardize the safety and welfare of their men. Though every clan endeavours to maximize the welfare and safety of its members, it expects the same from other clans, prompting them to negotiate and compromise to avoid a confrontation that could affect the safety and welfare of clan members. This is worrying as *xeer-dhaqameed* incentivizes strong clans to entirely focus on getting the maximum benefit for their member and disregard the other side's concern as long as that side cannot disturb the safety and welfare of the strong clan's members.

Thus, the outcome is, expectedly, unjust for minority clans and members without clan affiliation. Wherever you look at it, *hiil iyo hoo* kindles elders' perception of justice and the decisions they reach.

The composition of elders also takes the notion of *hiil iyo hoo* very seriously. Contrary to the Western conception of judges' impartiality, elders of *xeer-dhaqameed* are selected from the respective clans of the disputants where each side strives to defend the interest of its clan member, which means by extension, the interest of the entire clan. Due to the notion of *hiil iyo hoo* aligning individuals with their clan, elders believe to be duty bound to side with their clan fellowman and, concomitantly, judgment-debtor feels injustice if all elders happen to be from a different clan. By and large, the composition of elders is suited to fit this social reality.

Its predictability, the legitimacy of elders, the chance of every clan to negotiate the rules, its adjudication and focus on compromise rather than a verdict of innocent and guilt make the *xeer-dhaqameed* the perfect match for a society with a strong moral conviction of *hiil iyo hoo*. Yet, trading individual rights for community rights, falling short of international human rights standards and leaving little or no protection for individuals with no affiliation to strong clans are the blots on *xeer-dhaqameed's* character.

## Justice under the Formal System

At independence on 1 July 1960, Somalia adopted its first constitution, which "was essentially a democratic instrument based on the Western model, and especially on the model of the constitution of Italy" (Muhammad, 1972:129) despite the social structures and way of life of Somalis being significantly different. With this, a number of complex but interrelated concepts alien to Somalis were adopted to govern. These include "the imperative of 'nation state', the unitary and highly centralized system of rule, the western model of representative government, the bureaucratic mode of administration, a western code of law and justice" (Doornbos and Markakis, 1994:84). Subsequent constitutions, administrative structures and the overall legal system followed the same path.

With little or no meaningful deliberations about the notion of 'hiil iyo hoo' that is deeply entrenched among Somalis, this transplanted modern system is applied directly to Somali society. Due to this hodgepodge, "the politicization of [clan] solidarity got even worse after state institutions were established, as clans treated and appropriated this foreign imposed entity in ways that benefitted the welfare of the extended family rather than the welfare of the entire Somali nation" (Zoppi, 2018:59-60).

## The legitimacy of the Law and Law Makers

Where previously adult members of the clan used to meet and negotiate for rules to govern their members, since the independence, Somalia has a parliament that is elected by individuals of various clans, which is not designed to represent any clan. At different times, state lawmakers in Somalia tried to abolish the clan's status and its customary justice system. For instance, "On the eve of independence, on the 2 March 1960, the legislators of the Somali Republic abolished the status of clan by law no. 13" (Balthasar, 2014: 231). Again, Somali lawmakers issued Law No. 67 of 1 November 1970 on the 'Social Protection and for the Prevention of Certain Serious Crimes Against Life, Safety and Property of Individuals'. This law criminalizes a number of acts which are the essence of clanship. For example, article one prohibits any association having tribal character; Article 3 abolishes tribal rights in respect of land and water resources; Article 4 abolishes tribal titles and functions; and Article 5 prohibits tribal contributions.

Such laws are passed without addressing the socio-economic conditions that necessitated the clanship or even without undertaking genuine research and consultations on how to approach it. Since people had more allegiance to clanship than to the state, such laws were neither persuasively abided by the public nor the state could enforce them; instead, the clanship and its institutions continue to function unabated.



The outcome is the simultaneous existence of a newly introduced formal laws and its lawmakers, which is at odd with '*hiil iyo hoo*', and the customary laws and its lawmakers, which is constructed upon the notion of '*hiil iyo hoo*'. Both claim authority over the same society, make competing claims and impose, in many cases, conflicting demands. Without harmonization, the two institutions simultaneously claim control over the same people. Despite the parliament claiming to represent the entire nation and issuing laws for the country, in reality, the elders of every clan represent their clan's fellow members and issue rules for them. Otrusively, people's allegiance and loyalty to the clan institution than to the parliament impacts immensely on the laws these institutions issue.

In addition, each institution's modus operandi plays a role in the legitimacy of the institution and its work. In making laws, for instance, the parliament has procedures that only minority politicians and professionals understand. In contrast, rule-making in the traditional system is open to all male adult members of the concerned clan directly and to adult female members indirectly. As such, it is more transparent, participatory and responsive. Furthermore, the Western legal tradition mirrors its societies who has a strong sense of nationhood and individualistic kindles laws issued by the parliament to the Somalis, who are communitarian imbued with a sense of clanship.

Laws made by the parliament focus more on retributive justice, whereas the traditional justice system is lenient to restorative justice that focuses more on compromise, negotiation and reconciliation. Because of the way each operates and the principles guiding them, clan members understand better the rhetoric, rationales, motivations and the context of the traditional rules issued by clan elders than those issued by the parliament.

Understandably, the formal system's oblivion to '*hiil iyo hoo*' and the independent existence of the traditional justice system affects the legitimacy of lawmakers and the laws they issue and also compromises the society's sense of justice, which reflects the '*hiil iyo hoo*'. Concomitantly, when people's sense of justice and morality toward the law and the authority making it is compromised, compliance will depend on the calculated personal gain or loss and punishment and successful escapes associated with following or defying the law (Tyler, 1990).

### **Administration of Justice**

Judiciary is the most vital institution of the modern state system in dispensing justice and ensuring the rule of law. In Somalia, however, the architect of the justice delivery institutions and their modus operandi vis-à-vis its incompatibility with the clannish dogma of *hiil iyo hoo* and the social perceptions about procedural justice stifle the effectiveness of those institutions in a number of ways.

Firstly, the judiciary is built upon the presumption of judicial independence and its impartiality; procedural rules governing the behaviour of the judiciary are also tailored along those lines. The Achilles heel of this presumption is that it overlooks that judges, clerks, and prosecutors are usually indoctrinated in *hiil iyo hoo* by their respective families and clans. By instructing individuals to extend the collective defence and social security to clan members, *hiil iyo hoo* jeopardizes independence and impartiality. More specifically, practitioners are at the bosom of their clans and can hardly do the job independently of their respective clans and the defining character of *hiil iyo hoo*.

Another aspect of the problem is its impact on public confidence in the judiciary. Where the customary justice, in conformity with *hiil iyo hoo*, ensures that every litigant is represented by their clan men among the adjudicators, the formal judiciary does not consider such representation. So then, frequently, a judge or judges from the clan of one of the litigants adjudicate the case. In such cases, the implication for the average Somali person is clear: injustice, favouritism and nepotism. Because the widespread assumption is that everyone unescapably sides with his clan men. The problem is severer when there is tension or active conflict between the clan of the litigant and the judge/s, and the judge is seen as someone serving the interest of his clan or taking revenge on the clan of the litigant. It is worth mentioning that it is not only the litigant who gets the negative image about the judge, but others also tend to view it as such.

Deterioratingly, the truth is that the judiciary in Somalia is neither independent nor impartial. Moreover, the regulatory authority supposed to ensure judicial independence and accountability is not established yet; nepotism highly influences judges' appointments, and their capacity to understand and defend judicial independence and impartiality is limited. So, the average Somali person aware of these facts is unlikely to impress the justice of the verdict, especially if it's against them.

Secondly, the '*hoo*' aspect of the clannish dogma of '*hiil iyo hoo*' dictates that everyone with income or wealth should financially assist his relatives, and because of that judge's salary is co-shared with members of his relatives with lesser or no pay. Thus, there is always asymmetry in the judge's salary and expenses, likely to induce bribery and other forms of corruption.

Thirdly, senior officers within the judiciary or outside the judiciary who are supposed to supervise judges and preserve the judiciary's integrity are also suffering from similar drawbacks. The practices of nepotism and patronage that are rooted in *hiil iyo hoo* hamstring senior officers' urge to take disciplinary measures against misbehaving judges.

Yet, neither adaptation is made to the architecture and the modus operandi of the judiciary to fit the social reality, nor sufficient efforts are made to tackle the repercussions of the clannish dogma of '*hiil iyo hoo*' on the judiciary.

Thus, the result is a judiciary designed and operating in a way that mismatches the social reality.

### Service Delivery

Arguably, the state is a means of human development and social progress. To a large extent, a state's success depends on its ability to deliver services that promote the social, economic, cultural, and political rights of its subjects, both individuals and groups, in a fair and equitable manner. When such welfare is not forthcoming, legitimacy diminishes, and rulers might find themselves forced to move from persuasive to coercive governance (Clements, 2014:13). As will become clear in the coming paragraphs, the clannish dogma of *hiil iyo hoo* is a grim challenge for the government of Somalia to deliver services properly as it induces government officers to selectively serve the interests of the few (e.g., clan members) while remaining indifferent to or being detrimental to the majority.

Government officers, whether elected, nominated, or hired as civil servant officers, are not isolated from Somali society, in which the notion of *hiil iyo hoo* is a defining characteristic. In this context, the administration and distribution of resources and other entitlements common to the nation are entrusted with such officers. On the other hand, the adopted modern state system, built upon the notion of nationhood rather than clan interest, did not come up with a proper mechanism of checks and controls to tackle the repercussions of *hiil iyo hoo*.

The result is to experience 'hiil iyo hoo' dictates, divorced from their conventional streams and, implemented through state machinery that is designed to serve a nation rather than a clan. Many of the predicaments in service delivery stem from this mismatch and the concomitant abuses.

For instance, for a few years in a row, Somalia ranked the lowest in corruption (Transparency International, 2018). I don't think this can be explained well without looking at what part Hiil Iyo Ho played in it. Many public officials are appointed through nepotism, simply because those in charge of hiring prefer to satisfy their sense of *hiil iyo hoo* over meritocracy and the interests of the nation. This draws less qualified manpower, in terms of both integrity and skills, to the public service sector, which in turn affects the way public services are run. Moreover, it reinforces the commitment to *hiil iyo hoo* of those employed on the basis of *hiil iyo hoo*. The cumulative effect of this is that public services are unjustly distributed or delivered. Aggravatingly, it becomes hard to hold such officers accountable, the reason being that perpetrators normally enjoy the patronage of those senior officers or decision-makers who handpicked them in the first place. Experience shows that the more an officer serves the narrow interests of his or her clan, the closer s/he is to the bosom of his or her clan, including politicians and senior leaders of the clan who might be in a position to protect him or her.

In a different vein, the salary allocated for the employee is, in most cases, insufficient due to the social value dictating that everyone should support his or her relatives financially. Axiomatically, the resulting disparity between one's income and expenditures incentivizes corruption. Furthermore, the employee's awareness that assisting his or her relatives attracts clan members' support and consolidates his/her power within the clan increases his brazenness in trading the national interest for narrow clan interests.

The more one favors his or her clan in terms of service delivery and resource distribution, the more others are excluded and grieve. Obtrusively, "no clan wants a disproportionate share of domestics and unemployed members while others monopolize the business, civil service, and professional sectors of society" (Adam, 1992:14). In such a situation, aggrieved clans are likely to see the government as a tool that promotes the interests of a particular clan. In response to this, history shows that the clans that dominate the government feel their interests are threatened by those disappointed with the government's way of doing business, and that foments antagonism between clans. Such cleavage is particularly acute in times of tension or conflict among different clans, and the risk of mobilizing state resources for clan superiority becomes real.

The fear of using the state's powers to one's detriment and the lust for the undue benefits associated with government capture create

tough competition among clans for state capture. The rationale is simple: everybody understands that due to the *hiil iyo hoo*, officers are likely to preferentially serve their clan members, which is the mistreatment of others. Thus, everybody or every group strives to become those who are preferentially treated rather than becoming subjects of mistreatment.

## Conclusion and Recommendation

*Hiil iyo Hoo* is a deeply rooted clanship moral principle necessitated by the living conditions of Somalis in the absence of an impartial authority that delivers justice by distributing resources fairly, promoting development evenly, settling disputes justly, punishing criminals proportionately, and safeguarding the rights of individuals and groups. The justice system of the modern state, adopted by Somalia, has neither accommodated *Hiil iyo Hoo* to appease the sense of justice of the public nor been able to reconfigure society and the socio-economic conditions that necessitated people's commitment to *Hiil iyo Hoo* to inhibit commitment to it. As such, the formal system is not aligned with the insignificantly changed socio-economic conditions that necessitated *Hiil iyo Hoo* and the concomitant public perceptions of justice. Even statesmen, who are supposed to carry out the formal system, are more loyal to *Hiil iyo Hoo* than to the state system, which has horrible effects on justice.

A visible remedy could be either reversing the socio-economic conditions that necessitate *Hiil iyo Hoo* or redesigning the formal system in a way that takes into account people's commitment to *Hiil iyo Hoo* and the conditions that awaken it. However, the two options are not mutually exclusive and can be eclectically reshaped into one that is sensitive to social reality and at the same time destined to reshape it to the extent that such social reality hinders social justice and progress. To achieve this, the following recommendations might be helpful:

**Incorporate *Hiil iyo Hoo* into Government Plans:** Ensure that government plans, strategies, laws, and structures take *Hiil iyo Hoo* into account. Sensitivity to it will incentivize safeguarding against its negative impacts. The government needs to consult with religious and traditional authorities and properly deliberate on options for its enforceability/practicality and creating legitimacy among the masses.

**Integrate Sharia and Religious Leaders:** Ensure Sharia and religious leaders are incorporated into government structures, and the constitutional obligations of its compliance are practically implemented. Sharia rigorously addresses the ramifications of *Hiil iyo Hoo*<sup>ix</sup> while enjoying broad legitimacy among Somalis. Its reliance provides an opportunity to address the negative effects of *Hiil iyo Hoo* through a tool with public legitimacy, constitutional supremacy, and widespread acceptance.<sup>x</sup>

Both the *xeer-dhaqameed* and the formal system recognize Sharia as a final authority and both are drifting towards it, which can be used to speed up the harmonization of *xeer-dhaqameed* and the formal system.

**Establish a Legal Reform Commission:** Set up a legal reform commission to study and suggest changes to laws that don't fit the current social and economic situation and to find a way to combine the formal system and the *xeer-dhaqameed* in a way that works for both.

**Create and Enforce Social Safety Nets:** Encourage creating or enforcing social safety nets to reduce individuals' dependence on clans. Business communities, the largest employers in Somalia, should have a regulatory system to ensure employment competitiveness and respect for employee rights, including pension and gratuity rights. Any improvement in government safety measures will reduce people's reliance on clans for protection.

**Adopt a Rigorous Vetting System:** Develop a tailored vetting system to tackle the negative impacts of *Hiil iyo Hoo*, along with a system for follow-up, supervision, and monitoring of officers' behavior in relation to *Hiil iyo Hoo*.

## Notes

<sup>i</sup> -Distributive justice imagines justice as the even distribution of wealth, power, entitlements and services.

<sup>ii</sup> - Retributive justice imagines justice in the punishment of offenders.

<sup>iii</sup> - Restorative justice, which is widely practiced in Somalia and other parts of Africa, focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.

<sup>iv</sup> -Since the size of the clan, to a large extent, determines the power of the clan both in terms of wealth and army, clans do their best to preserve the life of their members even when such member commits premeditated murder. Reflecting this reality and knowing that the alternative is confrontation, clans accept compensation instead of demanding retribution.

<sup>v</sup> - Sharia is another system widely used in Somalia. Many of the rules of xeer-dhaqameed is derived from sharia.

<sup>vi</sup> - This is called 'xaajo ugub ah', which means a prototype case

<sup>vii</sup> - Sulux is term borrowed from sharia, which means conciliation or compromise .

<sup>viii</sup> - Sadar, literally means a written line. However, in the xeer-dhaqameed context it refers sharia.

<sup>ix</sup> - For instance, verse number 135 of chapter four (surah an-nisa) of the Quran unequivocally prohibits behaving unjustly even if that favours to one's closest family members. It says, "O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both..."

<sup>x</sup> - See Article 2(3) and Article 4(1) of the Provisional Constitution of the Federal Republic of Somalia.



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Mohamed has over 20 years of experience in law, peace/conflict, development, and humanitarian work in Somalia, the Somali Region of Ethiopia, and the UK. He is well-versed in Sharia and Somali Customary Law (xeer) in addition to the formal legal system and peace studies. At the Office of the Prime Minister in Somalia, Mohamed led the drafting of key legislation and policies. In the Somali Regional State (Ogaden), he drafted the Truth and Reconciliation Establishment Proclamation, which was enacted by parliament. Mohamed holds an M.A. in Conflict Resolution from the University of Bradford, an LLM in Constitutional Law from the University of Amsterdam, and an LLB from the Ethiopian Civil Service University.

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